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ENTERED



RON CURRY  
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Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

April 5, 2010

Ms. Leslie Ann Allen  
Senior Vice President  
Health, Safety, Environment and Regulatory Affairs  
Western Refining Company  
123 W. Mills Avenue, Suite 200  
El Paso, TX 79901

**RE: RESPONSE TO WESTERN REFINING MARCH 15, 2010 FINANCIAL ASSURANCE FOR THE GALLUP REFINERY EPA ID# NMD000333211 AND THE BLOOMFIELD REFINERY EPA ID # NMD089416416 WESTERN REFINING SOUTHWEST, INC. HWB-GRCC-MISC AND HWB-GRCB-MISC**

Dear Ms. Allen:

The New Mexico Environment Department (NMED) has reviewed Western Refining, Southwest, Inc. (Western)'s March 15, 2010 *Response to Notice of Disapproval dated February 4, 2010 Financial Assurance Gallup Refinery EPA ID #NMD000333211 Bloomfield Refinery EPA ID #NMD089416416 Western Refining Southwest, Inc.* (Letter). In the Letter, Western also requests additional time to determine the financial assurance mechanism to be used (either through the use of the financial test and corporate guarantee by changing the guarantor or the use of another mechanism).

**The following comments address the additional \$1,100,000 to be added to the closure and post-closure cost estimate at the Bloomfield Refinery.**

**Comment 1**

Western states on page 2 of the Letter that they "do not believe that the additional \$1,100,000 to the total cost estimate for closure and post-closure activities at Bloomfield, set out in your February 4, 2010 letter is required. As discussed in your February 26, 2010 letter, Western understands that this increase is based on the cost required to remove the soils beneath the

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aeration lagoons. Western has reviewed all available information related to at the Bloomfield Refinery aeration lagoons, including operation history, approved Closure Plans and recently completed closure activities. Based on this information, the aeration lagoons have been closed in accordance with the "clean closure" requirements of 40 CFR §265.228(1). This analysis is set out in more detail in Appendix A to this letter."

NMED does not agree with the use of the term "clean closure": 40 CFR §265.228(a)(1) and (2) contain requirements for closure, neither of which have been completed by Western. Western completed partial closure and the ponds remain in use. Therefore additional cleanup activities are necessary to complete closure. Further, 40 CFR §265.228(a)(1) allows closure to be complete only when all contaminated subsoils are removed. This has not occurred at the Aeration Lagoons. See Comment 2.

**Comment 2**

As discussed in NMED's March 24, 2010 *Notice of Disapproval North and South Aeration Lagoons Closure Certification Report* (NOD), Western has completed partial closure of the Aeration Lagoons (i.e., the area within impoundments have been cleaned to the liners, damage to the liners has been repaired, and the units no longer treat hazardous waste). Western must comply with the requirements of 40 CFR 264.112 that by requires submitting a plan for final closure and establishment of financial assurance to complete closure in accordance with 40 CFR 264 subpart H. Because final closure will be conducted in conjunction with the Order (Group 9, SWMU 13 Process Area) and no final remedy has been selected for the Process Area (which includes the Aeration Lagoons), Western must provide a cost estimate for final closure (40 CFR 264.112(b)(8)) that assumes complete removal of the lagoons and all underlying contaminated soils. The estimate must include all costs for removal of equipment and contaminated soils, sampling and chemical analyses, monitoring, reporting, transport and disposal of removed materials, backfilling and any engineering or other related costs. The cost estimate must include complete descriptions of the assumptions made for each activity (e.g., volumes, unit costs). If Western does not add the additional \$1,100,000 to the closure and post closure cost estimate, Western must demonstrate to NMED that the additional financial assurance necessary for closure is different than the estimate provided by NMED.

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If the Permittee chooses to use the financial test and corporate guarantee by changing the guarantor, the guarantor must be able to meet all metrics of the financial test as stated in the regulations (40 CFR 264.143(f) and 264.145(f)) using its own financial statements.

Nevertheless, NMED grants Western additional time to determine a financial assurance mechanism and to provide a cost estimate to complete the closure (and if necessary, post-closure) cost estimate. Western must submit a financial assurance mechanism and documentation supporting for the additional closure and post-closure costs at the Bloomfield Refinery to NMED on or before May 24, 2010.

If you have any questions regarding this letter, please contact Hope Monzeglio of my staff at 505-476-6045.

Sincerely,



James P. Bearzi  
Chief  
Hazardous Waste Bureau

cc: J. Kieling, NMED HWB  
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Reading File and WRG 2010 and WRB 2010

