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**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

October 13, 2010

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

**RE: NOTICE OF DISAPPROVAL  
FINANCIAL ASSURANCE  
GALLUP REFINERY EPA ID# NMD000333211 AND THE  
BLOOMFIELD REFINERY EPA ID # NMD089416416  
WESTERN REFINING SOUTHWEST, INC.  
HWB-WRG-MISC AND HWB-WRB-MISC**

Dear Ms. Allen:

The New Mexico Environment Department (NMED) has reviewed Western Refining, Southwest, Inc. (Western) May 26, 2010 financial assurance submittal and hereby issues this Notice of Disapproval (NOD). Western must address the deficiencies identified below.

**Comment 1**

Western states in the cover letter that “[t]his letter and attachments provide financial assurance for facilities at Western Refining Southwest, Inc. (Western), Gallup and Bloomfield Refineries in the form of two surety bonds guaranteeing payment...[f]inancial assurance for the Gallup refinery and Bloomfield refinery facilities are provided under 40 CFR 264.143(f) for closure and for post closure care pursuant to 40 CFR 264.145(f).” Reference to 40 CFR 264.143(f) and 40 CFR 264.145(f) for closure and post closure care refer to the financial test and corporate guarantee mechanisms. The financial assurance mechanism for this submittal is a surety bond

guaranteeing payment into a closure trust fund in accordance with 40 CFR 264.143(b) and 264.145(b) for Gallup and 265.143(b) for Bloomfield. Western must ensure the response letter references the correct regulations.

### **Comment 2**

The Financial Guarantee Bond (FGB) wording, for both the Bloomfield and Gallup Refineries, does not comply with the wording requirements found in 40 CFR 264.151(b). The following discrepancies have been identified for each refinery:

- a. The wording in 40 CFR 264.151(b) states "Principal: [legal name and business address of the owner and operator]." Page 1 of the FGB for the Bloomfield Refinery has the Principal as "San Juan Refining Company, as the owner, and Western Refining Southwest, Inc., formerly known as Giant Industries Arizona, Inc., as operator." However, the cover letter does not mention the San Juan Refining Company and recent submittals from Bloomfield list the owner as Western Refining, Inc. and the operator as Western Refining Southwest, Inc. Further, Western provided the physical and mailing addresses of the Bloomfield Refinery. Western must clarify the business address of the owner and operator. Western must revise Bloomfield's FGB to cite the correct owner/operator, as well as include the associated business address(es) required by the regulations.
- b. The wording of 40 CFR 264.151(b) states "Principal: [legal name and business address of the owner and operator]." Page 1 of the FGB for the Gallup Refinery has the Principal as "Western Refining Southwest, Inc., formerly known as Giant Industries Arizona, Inc. and formerly doing business as Giant Refining Company Ciniza Refinery." This statement does not identify the owner or the operator. The FGB also does not reference the Gallup Refinery as provided in the cover letter and recent submittals from Gallup indicating the owner as Western Refining, Inc. and the operator as Western Refining Southwest, Inc. Further, Western provided the physical and mailing addresses for the Gallup Refinery. Western must revise Gallup's FGB to cite the correct owner/operator and include the associated business address(es) required by the regulations.
- c. The last page of the FGB for Bloomfield, under the "Principal," Western lists "San Juan Refining Company, as owner." Western must revise the FGB to cite the correct Principal; see item a above.
- d. The last page of the FGB for the Gallup Refinery, under the "Principal," Western lists "Western Refining Southwest, Inc., formerly known as Giant Industries Arizona, Inc. and formerly doing business as Giant Refining Company Ciniza Refinery." Western must revise the FGB to cite the correct Principal; see item b above.

- e. The last pages of the FGBs for the Bloomfield and Gallup Refineries are missing the signature section under Principal. The regulations for the FGB in 40 CFR 264.151(b) states “**Principal** [Signature(s), [Name(s)], [Title(s)], and [Corporate Seal].” The FGBs are missing the [Name(s)] and [Title(s)]. Western must revise the FGBs to comply with 40 CFR 264.151(b).
- f. Western is missing information on the last pages of the FGBs for the Bloomfield and Gallup Refineries under the “**Corporate Surety(ies)**.” The FGBs state **Corporate Surety**, whereas, the regulations state **Corporate Surety(ies)**. Further, Western is missing the State of incorporation, Liability Limit:\$, co-surety, if any, and the Bond premium:\$ . Western must revise the FGBs to include this information in accordance with 40 CFR 264.151(b).
- g. The FGBs for the Bloomfield and Gallup Refineries list the surety as being issued by Bond Safeguard Insurance Company with an address in Tennessee. However, the Circular 570 provides a different address (10002 Shelbyville Road, Suite 100, Louisville, KY 40223) in Kentucky. If both addresses are correct, Western must provide an explanation for this in the response letter or revise the FGB to provide the correct address.

### Comment 3

The following items refer to the actual bonds from Bond Safeguard Insurance Company for the Gallup and Bloomfield refineries (Ciniza AO 28580 and San Juan Refining Company AO 28579).

- a. The official notary seal for Maureen K. Aye states “[m]y Commission Expires 9/21/2009.” These bonds were issued on May 24, 2010, therefore, the notaries of these bonds are not valid. Western must submit the bond with a current notary seal.
- b. The bond numbers on each bond (AO 28579 and AO 28580) do not match the bond numbers on page 1 of the FGB (i.e., San Juan Refining Company Surety’s Bond number 5036638 and Ciniza Surety’s Bond number 5036639). Western must correct this discrepancy or, if the Bond numbers are correct, explain how the bond numbers were derived.

### Comment 4

The Trust Agreement wording for the Bloomfield and Gallup Refineries do not comply with the wording requirements found in 40 CFR 264.151(a)(1). The following discrepancies have been identified for each refinery

- a. In 40 CFR 264.151(a)(1) under the Trust Agreement, the last sentence of the first paragraph, the following is stated: “[insert “incorporated in the State of \_\_\_” or “a national bank”], the “Trustee.” The Trust Agreements for the Bloomfield and Gallup refineries state “a national banking association” instead of “a national bank.”

Western must revise these paragraphs to include the wording as stated in the regulations.

- b. In the Trust Agreements, the Refineries are referred to as the Ciniza and San Juan Refining Company. However, the cover letter lists the refineries as the Gallup and Bloomfield. Western must correct these discrepancies throughout the submittal and use the current name(s) of the refineries. Western must revise the Trust Agreements accordingly.
- c. The last portion of the Trust Agreement in 40 CFR 264.151(a)(1) requires the [Signature of the Grantor] and [Title]; Attest: [Title], [Seal], and [Signature of the Trustee]; and Attest: [title] and [Seal]. However, the Trust Agreements for both Refineries are missing information for the "Attest". Western must revise the Bloomfield and Gallup Trust Agreements to include all information for the Attest, clarify that US Bank, N.A. is the trustee, and ensure all information for this portion of the Trust Agreement complies with the information required in the regulations.
- d. The Trust Agreements for Bloomfield and Gallup refineries are missing the certification of acknowledgement, required under 40 CFR 264.151(a)(2), which must accompany the Trust Agreement for a trust fund. Western must revise the Trust Agreement to include the certification of acknowledgement.
- e. Western must revise the language in Exhibit A, which is addressed in **Section 14. Instruction to the Trustee** found in 40 CFR 264.151(a)(1) to state "Attached to Trust Agreement between \_\_\_\_\_[Bound Holder] And \_\_\_\_\_[Bond Issuer] Persons designated to sign orders, requests, and instructions to the trustee: [provide the names, titles, and signatures]."
- f. Schedule B of the Trust Agreements for the Bloomfield and Gallup Refineries must be revised to state "This trust is currently unfunded (i.e., standby trust). Under the terms of an established Surety Bond, all payments made there under will be deposited by the surety directly into the standby trust fund in accordance with instructions from the New Mexico Environment Department."

**Comment 5**

The Penal sum of FGB for the Gallup Refinery is \$2,874,786 and the Bond Safeguard Insurance Company's (the Surety) underwriting limitation is \$2,362,000. The underwriting limitation of the Surety cannot be a lower monetary value than the closure/post-closure costs. In addition, the combined penal sum for the Gallup and Bloomfield Refineries is \$5,059,002 and the combined value of the closure/post-closure costs is greater than the underwriting limitation of Bond Safeguard Insurance Company as well. Western must either acquire a new or additional surety bond for both facilities in which the underwriting limitation is greater than the combined value of the closure/post-closure costs or acquire a new or additional surety bond for the Gallup Refinery.

Western Refining Southwest, Inc.  
October 13, 2010  
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**Comment 6**

Western must submit updated cost estimates for closure and post-closure at the Gallup (Ciniza) Refinery for the Bloomfield (San Juan Refining) Refinery as they were derived for the financial assurance submittal (see 40 CFR 264.142(b) and (c), 264.144(b) and (c), and 265.142(b) and (c)).

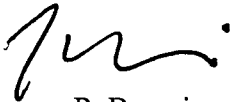
**Comment 7**

The information required by 40 CFR 264.147 (Liability Requirements) was not provided in the submittal. Western must comply with 40 CFR 264.147 (Liability Requirements) and submit the appropriate documentation.

The Permittee must address all comments contained in this NOD and submit the revised financial assurance submittal to NMED on or before January 17, 2011. The revised financial assurance must be submitted with a response letter that details where all revisions have been made, cross-referencing NMED's numbered comments. In addition, an electronic version of the revised financial assurance must be submitted that identifies where all changes have been made in redline strikeout format.

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

Sincerely,



James P. Bearzi  
Chief  
Hazardous Waste Bureau

JPB:hm

cc: J. Kieling, NMED HWB  
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