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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

December 16, 2009

Mr. Ed Riege
Environmental Manager
Western Refining, Southwest Inc., Gallup Refinery
Route 3, Box 7
Gallup, New Mexico 87301

**RE: APPROVAL WITH MODIFICATIONS
INTERIM MEASURES WORK PLAN TO COMPLY WITH RCRA STANDARDS
FOR DISCHARGE OF WASTEWATER TO SURFACE IMPOUNDMENTS
WESTERN REFINING COMPANY, SOUTHWEST, INC., GALLUP REFINERY
EPA ID # NMD000333211
HWB-GRCC-09-005**

Dear Mr. Riege:

The New Mexico Environment Department (NMED) has received Western Refining Southwest Inc., Gallup Refinery (the Permittee) *Interim Measures Work Plan to Comply with RCRA Standards for Discharge of Wastewater to Surface Impoundments, Revision 1* (Work Plan), dated November 2009. NMED hereby issues this Approval with Modifications. The Permittee must adhere to all requirements included in the Work Plan as modified by this letter.

Comment 1

In Comment 1 of NMED's *Interim Measures Work Plan to Comply With RCRA Standards For Discharge of Wastewater to Surface Impoundments* October 22, 2009 letter (October 22, 2009 letter), NMED stated that the Permittee "must operate all three benzene strippers in series." However, the Work Plan states that the Permittee will operate three benzene strippers as "a single stripper in series with two others in parallel." The facility may operate the benzene strippers as indicated; however, the sampling requirements will be more stringent because of the Facility's history of non-compliance with the discharge limit with the current system using two benzene strippers. See the Table in Comment 4.



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Comment 2

In Section 3.1 (Physical/Design Changes), page 4, the Permittee states “[w]hen compliance is consistently demonstrated during the Interim Measures Period prior to implementation of all above measures, Western Refining proposes that it retain the discretion not to implement measures that would, therefore be unnecessary to achieve compliance.”

NMED Response

Western does not have the authority to omit required measures without approval from NMED. Any changes that Western would like to implement during the Interim Measures Period and thereafter must be proposed to NMED in writing and approved by NMED prior to making the proposed change.

Comment 3

In Section 3.2 (Monitoring and Reporting), page 4, the Permittee states “Western Refining proposes an aggressive monitoring plan designed to provide meaningful information to Western Refining and the NMED well enough in advance of the conclusion of the Interim Measures period to allow for adjustments in the Interim Measures.”

NMED Response

The Work Plan accounts for sampling after the 120 day period in which the Facility has to come into compliance with the discharge limit of 0.5 mg/l for benzene. The Permittee must adhere to the Work Plan and all requirements established in this letter. Any adjustments to the Work Plan and sampling thereafter must be submitted to NMED in writing and approved by NMED before any adjustments may be implemented.

Comment 4

NMED did not approve Section 3.2.3 (Period 3: 120 days from the Effective Date of the Interim Measures Work Plan to startup of new upgraded wastewater treatment system) of the September 2009 Work Plan and does not approve this same section in the Work Plan as written (i.e., the first paragraph of Section 3.2.3 is irrelevant because of the requirement in the fourth paragraph). The Permittee must adhere to the monitoring requirements established in the table below (this Table replaces the sampling requirements found in Section 3.2.2, and 3.2.3, 3.2.4, and Table 2. All samples must be submitted to a certified off-site laboratory.

Revised Table 2

Period	Sample locations	Frequency	Analytical analyses	Reporting to NMED
Period 2: 75 to 120 days after IM Work Plan approved	Inlet to AL-1 ¹	2 samples times/week	BTEX and MTBE ³	All sample results submitted within 5 business days after sample collection
Period 2: 75 to 120 days after IM Work Plan approved	Measure effluent flow rates from the waste streams discharging to AL-1 ¹ and EP-1 ² on a daily basis			Daily effluent flow rates submitted on the third day of each month
Period 3: Day 121 onwards after IM Work Plan approval by NMED	<p>If any of the effluent wastewater samples collected from the inlet of AL-1 during "Period 2" of [implementation of] the Work Plan meet or exceed the discharge limit at or above 0.5 mg/l for benzene, beginning on day 121, the Permittee must implement the sampling requirements established in NMED's August 27, 2009 letter (Interim Measures Work Plan Requirements, Attached).</p> <p>If benzene concentrations in all wastewater effluent samples collected from the inlet to AL-1 during "Period 2" are less than the discharge limit of 0.5 mg/l for benzene, the Permittee must continue to follow the sampling requirements for "Period 2" for an additional 30 days. If benzene concentrations in all effluent samples collected from wastewater entering AL-1 during the additional 30 days are less than the discharge limit, then the Permittee must resume sampling effluent entering into AL-1 once a week until notified otherwise by NMED. The effluent samples must be analyzed for BTEX and MTBE. If at any time benzene concentrations detected in any effluent sample meet or exceed the discharge limit, the Permittee must implement the sampling requirements established in NMED's August 27, 2009 letter (Interim Measures Work Plan Requirements, Attached)</p>			
Period 3: Day 121 onwards after IM Work Plan approved	Measure effluent flow rates from the waste streams discharging to AL-1 and EP-1 on a daily basis			Daily effluent flow rates submitted every Friday to be consistent with Attachment 1 c.

¹ AL-1 =Aeration lagoon 1

² EP-1 = Evaporation Pond 1

³ BTEX and MTBE = benzene, toluene, ethylbenzene, total xylenes and methyltertiarybutylether

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Comment 5

In Section 4.0 (Schedule), page 8, the Permittee states “Western Refining will be prepared to implement this Interim Measures Plan as quickly as practicable upon approval from the NMED/HWB.”

NMED Response

The Permittee has 120 days to come into compliance from the date of this letter.

Comment 6

In Section 5.0 (Summary of Major Approval Requests), page 8, bullet two, the Permittee states “Western Refining has proposed an aggressive monitoring plan designed to provide meaningful information to Western Refining and the NMED well enough in advance of the conclusion of the Interim Measures period to allow for adjustments in the Interim Measures. Western Refining seeks approval to sample at different frequencies and report on corresponding different schedules during three (3) discrete periods identified in this plan. Western Refining proposes an increased sampling and reporting protocol as a contingency if our wastewater is found to be out of compliance.”

NMED Response

NMED does not approve of the proposed monitoring plan. The Permittee must follow the monitoring and sampling requirements established in Comment 5 (Revised Table 2). In addition, if the Permittee wishes to adjust the sampling frequencies, they must request the changes in writing to NMED and the changes must be approved by NMED prior to implementation (see Comment 3).

Comment 7

In the Permittee’s Response to Comments letter dated November 25, 2009 (Revised Interim Measures Work Plan), response to Comment 3 and Appendix A (Sampling Methodology), the Permittee discusses the overarching objective to collect appropriate representative samples (using the definition of 40 CFR 260.10 for representative sample) and how the sampling analysis, evaluation, reporting, and response(s) for AL-1 influent and effluent will be described in a forthcoming Waste Analysis Plan (WAP). In addition, the Permittee states the WAP development is consistent with EPA’s guidance manual titled “Waste Analysis at Facilities that Generate, Treat, Store, and Dispose of Hazardous Wastes (OSWER 9938.4-03).

NMED Response

As a reminder, NMED will not approve a document prior to its submittal (i.e., the proposed WAP). The purpose of submitting a WAP is unclear and not relevant to the Work Plan. The submittal of a WAP is unnecessary. The following items address the WAP and a representative sample.

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- a. A representative sample does not apply to the effluent sample(s) required to be collected at the influent to AL-1 to demonstrate all effluent entering into the Aeration Lagoons meets the discharge limit for benzene. As stated in Comment 7 item a of NMED's October 22, 2009 letter (Notice of Disapproval Interim Measures Work Plan to Comply with RCRA Standards for Discharge of Wastewater to Surface Impoundments), a daily wastewater effluent sample is defined as an effluent sample collected from the process wastewater effluent discharged into AL-1.
- b. The EPA document "Waste Analysis at Facilities that Generate, Treat, Store, and Dispose of Hazardous Wastes (OSWER 9938.4-03)" is a guidance document; however, the New Mexico is the authorized State for both the RCRA permitting and the corrective action programs. Therefore, the Permittee must comply with all conditions required by NMED.
- c. According to EPA's guidance document (Waste Analysis at Facilities that Generate, Treat, Store, and Dispose of Hazardous Wastes (OSWER 9938.4-03)), a "WAP is required for all TSDF, as well as generators treating hazardous waste in tanks, containers, or containment buildings to meet LDR standards." The WAP guidance does not directly apply to the Aeration Lagoons or the Evaporation Ponds. The Aeration Lagoons and Evaporation Ponds cannot receive, treat, or store hazardous waste because the Permittee does not have a permit to conduct these activities.
- d. The Permittee's response to Comment 3 of NMED's October 22, 2009 letter was inadequate.

Comment 8

NMED provided general reminders to the Work Plan in Comment 7 of the October 22, 2009 letter. The following comments apply to the Permittee's responses to Comment 7.

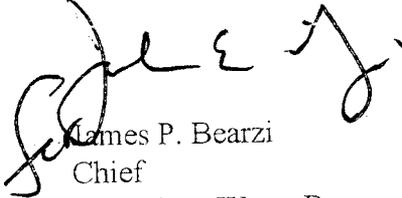
- a. In Comment 7, item (a), the Permittee states "[a]ppendix A of the revised Work Plan addresses Comment 7a regarding the definition of "daily wastewater effluent sample". NMED does not approve the discussion of a representative sample and a WAP in Appendix A (see Comment 7). Any wastewater entering into the Aeration Lagoons that contains characteristic levels of benzene result in illegal treatment of hazardous waste; averaging is not acceptable. In addition, per Section IV (Compliance Order), item 100 D of the Compliant and Consent Agreement and Final Order (CAFO), dated August 26, 2009 states "[d]ischarges of any hazardous wastewater to any surface impoundment shall cease within 120 days following NMED's approval of the Interim Measures Work Plan..." Item 100 D applies to any discharge.

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- b. In Comment 7, item (c), the Permittee's states "[w]e recognize that NMED reserves the right to collect effluent samples; however, Western notes that NMED's reservation of rights is (i) independent of the CAFO, (ii) does not create CAFO obligations for Western, and (iii) does not subject Western to stipulated penalties." Any time a sample is collected from the inlet to Aeration Lagoon 1, on day 121 of NMED's approval of this Work Plan, if any sample is characteristic for benzene, the Permittee is subject to stipulated penalties under the CAFO regardless of who collects the sample (e.g., EPA, NMED, OCD). The Permittee does not have a permit to treat benzene at the Aeration Lagoons; therefore, any wastewater entering into the ponds on day 121 cannot contain wastewater characteristic for benzene.

The Permittee must adhere to all comments contained in this Approval with Modifications. If you have 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
D. Cobrain NMED HWB
H. Monzeglio NMED HWB
K. Van Horn NMED HWB
D. McElroy, NMED AQB
C. Chavez, OCD
A. Allen, Western Refining Southwest, Inc.
D. Edelstein, EPA Region 6
J. Dougherty, EPA Region 6
File: Reading File and GRCC 2009 File
HWB-GRCC-09-005

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Attachment 1

Gallup must comply with the sampling requirements below as stated in NMED's August 27, 2009 letter (Interim Measures Work Plan Requirements).

- a. Beginning on day 121, Gallup must collect daily effluent samples of wastewater entering AL-1 and AL-2 for analyses of benzene, toluene, ethylbenzene, and xylenes (BTEX). The effluent wastewater samples must be submitted to a certified off-site laboratory and analyzed using EPA Method 8021B or EPA Method 8260. The analytical results for each sample must be submitted to NMED within four days of collection. The laboratory results may be forwarded to NMED by e-mail or delivered in hard copy.
- b. Daily effluent wastewater samples must be collected until NMED is satisfied that Gallup is consistently achieving the discharge limit of 0.5 mg/L. Based on the sampling results, NMED will adjust the frequency of sampling.
- c. Gallup must measure discharge flow rates entering AL-1 and entering Evaporation Pond 1 (EP-1) on a daily basis. The daily discharge flow rates must be submitted every Friday beginning on day 121. E-mail reporting of this data is acceptable.