

Mr. Turri
May 13, 2010
Page 2

Although OCD has not conducted a detailed technical review of Western's modification application because the application is not "Administratively Complete," Western must address the requirements that OCD specified in its November 20, 2009 letter by June 15, 2010. If Western does not address the deficiencies by that date, OCD will deem Western's modification withdrawn and will advise EPA that Western's draft NPDES Permit cannot be approved by the State of New Mexico.

Western must also submit a workplan with the following: a ground water monitoring system with additional monitoring wells down gradient of the outfall and the drainage feature leading to the Rio Puerco River to monitor the mixing zone (ground water-surface water interface zone); propose a monitoring frequency for these wells; a hydrogeologic report on ground water flow direction over time, hydraulic gradient; identify potential surface water discharge location(s); background water quality study to be used to determine when a discharge at a NPDES Outfall is in violation and State and Federal Environmental Regulations; and, a Contingency Plan to quickly remediate ground water and surface water if necessary. Western must submit this workplan by August 15, 2010.

In addition, Western's work plan must propose monitoring points along the Rio Puerco River to monitor losing and gaining stream conditions and to understand interactions between ground water and surface water. Western must also evaluate historical precipitation events and corresponding water levels in the Rio Puerco to determine when and/or if the Rio Puerco could become a surface water feature again with potential for impacts from the proposed discharge. For example, if the water table rose 10 feet, would there be a riverine wetland environment, wildlife issues, etc.?

Western's work plan must also characterize the hydrogeology beneath the facility toward the Rio Puerco. OCD is aware of a saturated zone beneath and near the NAPI Separator and is concerned that the hydrogeology beneath the facility has not been fully characterized. Western must determine if any perched saturated zone(s) pinch-out or are hydrogeologically connected to the deeper aquifer system that may discharge into the Rio Puerco during gaining stream conditions, seasonally, and/or permanently.

If there are any questions regarding this matter, please contact Mr. Glenn von Gonten of my staff at (505) 476-3488 or Glenn.VonGonten@state.nm.us. You may also contact me at (505) 476-3493 if there are any OCD policy issues or questions you may have based on this correspondence.

Sincerely,



Daniel Sanchez
Enforcement and Compliance Manager
DS/cjc

Attachment 1: OCD November 20, 2010 "Administratively Incomplete" Letter
Attachment 2: 1989 WQCC *Delegation of Responsibilities* memo

Mr. Turri
May 13, 2010
Page 3

xc: Jon Goldstein, EMNRD
Jim Noel, EMNRD
Maria Okpala, EPA Region 6
Diane Smith, EPA Region 6
Marcy Leavitt, NMED
Dave Cobrain, NMED
Glenn von Gonten, OCD
Gail Macquesten, OCD
Carl Chavez, OCD
OCD District III Office



New Mexico Energy, Minerals and Natural Resources Department

Bill Richardson
Governor

Joanna Prukop
Cabinet Secretary

Mark Fesmire
Division Director
Oil Conservation Division



November 20, 2009

Mr. Mark B. Turri
Refinery Manager
Western Refining Southwest- Gallup Refinery
Route 3 Box 7
Gallup, New Mexico 87301

**Re: Discharge Permit "Modification" Request to Discharge (GW-032)
Western Refining Southwest- Gallup Refinery
McKinley County, New Mexico**

Dear Mr. Turri:

The New Mexico Oil Conservation Division (OCD) has received Western Refining Southwest, Inc. (Western's), "Modification" application with all appropriate fees dated October 30, 2009, for authorization to discharge an estimated 100,000 gallons (~0.5 ft of evaporation pond network free board) of treated and untreated wastewater into Outfall 001 (N 35° 29' 26.23" & W 108° 26' 26.01") or "Waters of the State" at the west side of the property. Western proposes to minimize discharges from occurring into Outfall 001. When Outfall 001 (basically the furthest down gradient evaporation pond) overflows, runoff discharges into an off-property tributary ("South Fork") located about 0.8 miles from the Rio Puerco River (ephemeral or intermittent stream) on state land. Tribal land is located approximately 1-mile west and down-gradient from the Outfall 001 location.

OCD's review of the application is to determine if any additional information may be required before deeming the permit application "administratively" complete and will facilitate a complete technical review of the proposed modification by OCD. OCD has determined that the modification application is not "Administratively Complete."

Therefore, OCD requires additional information. In accordance with Subsection A of 20.6.2.3108 NMAC of the New Mexico Water Quality Control Commission regulations (WQCC), "to be deemed administratively complete, an application shall provide all of the information required by Paragraphs (4) through (5) of Subsection F of 20.6.2.3108 NMAC and shall indicate, for department approval, the proposed locations for providing notice (English and Spanish) required by Paragraphs (1) and (4) of Subsection B or Paragraph (2) of Subsection C of 20.6.2.3108 NMAC." Western did not provide any water quality information in support of its statement that "the waste water will have no hazardous components and levels of all contaminants will be below regulatory standards." Items 7, 9, 11, and 12 of the application (cross-section information is not discernable at the scale provided and boring logs with hydrogeologic information were not included with the cross sections) are not



adequately addressed. At least one cross-section with hydrogeologic information is required from the New API Separator (NAPIS) with well boring logs to the Outfall 001 area to evaluate the hydrogeology (aquifer(s)) present in the area of interest.

To satisfy the 20.6.2.3108F(4) NMAC "quality" and application form item requirements, submit historical water quality analytical data from historical pond monitoring data that supports the above statement and demonstrates compliance with 20.6.2.7(ww), 20.6.2.3103, 20.6.4.109 and 20.6.4.900 NMAC applicable water quality standards. In addition, Western must also provide new water quality data for evaporation pond 2 (EP-2) effluent, since the applicant indicated that there was about 1667 bbl/day of cooling tower blow down effluent and 1071 bbl/day of boiler effluent discharging into EP-2.

Due to the presence of sanitary effluent in the refinery wastewater treatment system (discharge location unknown at this time - aeration lagoon vs. EP-2?), biological analytical data in comparison with 20.6.2.2101 NMAC parameters must be provided in order to characterize any discharge to "Waters of the State" or Outfall 001. The existing approved facility "Biohazard Plan" may also need to be modified before the discharge to Outfall 001 can be considered.

Western should already be aware from its historical water quality monitoring data that some pond wastewater exceeds regulatory water quality standards. Consequently, a treatment system for the wastewater should have been proposed in the application to address the contaminants, but was not. With regard to the F(4) "volume", Western did not factor in the additional wastewater flow volume to the existing treatment system from its Bloomfield Refinery, which will be closed (~18,000 bbl/day crude oil refining capacity). Western is in the midst of a major wastewater treatment system conversion, which has yet to be specified. OCD is aware of the situation with one NAPIS and treatment capacity problems that occur routinely during precipitation events and has questioned the ability of the existing treatment system to handle wastewater at the facility without the additional wastewater that will occur as a result of the Bloomfield Refinery closure. This must be addressed along with the final waste water treatment system that will handle the type and total volume of treated effluent that may be discharged into Outfall 001.

To satisfy the 20.6.2.3108(F) NMAC "depth to and total dissolved solids concentration of the ground water", Western must submit data from nearby monitor wells.

From available pond monitoring information, there will likely be ground water contamination, which will require additional monitor wells to monitor ground water quality at the "mixing zone" where ground water interfaces with surface water, as well as ground water remediation system(s) to capture and prevent contamination from migrating down gradient to state and tribal lands. In addition, OCD will require Western to conduct more hydrogeologic work to assess the "mixing zone" and the complete hydrogeology beneath the facility before permitting the discharge of contaminants to Outfall 001. Plans to discharge into Outfall 001 without acknowledging the contaminants of concern and stipulating the type of treatment system needed to facilitate a discharge to Outfall 001 with plans to re-route fluids between ponds to avoid what appears to be an inevitable daily discharge scenario at Outfall 001 is of major concern to the OCD.

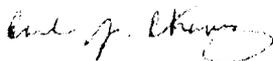
November 20, 2009

Page 3

Please review the attached 20.6.2.3108 NMAC flow chart and regulatory language pertaining to the WQCC public notice requirements for "Modifications." After the application is deemed "Administratively Complete", the revised WQCC notice requirements of 20.6.2.3108 NMAC must be satisfied and demonstrated to the OCD. OCD will provide public notice pursuant to the revised WQCC notice requirements of 20.6.2.3108 NMAC to determine if there is any public interest.

If there are any questions regarding this matter, please contact Carl J. Chavez at (505) 476-3490 or carlj.chavez@state.nm.us. On behalf of the staff of the OCD, I wish to thank you and your staff for your cooperation during this discharge permit review.

Sincerely,



Carl J. Chávez
Environmental Engineer

CJC/cjc

Attachments: 20.6.2.3108 NMAC (Public Notice)

xc: Willie Lane, EPA Region 6
Marcy Leavitt, NMED
Dave Cobrain, NMED
Glenn von Gonten, OCD
OCD District III Office, Aztec

WATER QUALITY CONTROL COMMISSION

DELEGATION OF RESPONSIBILITIES TO ENVIRONMENTAL IMPROVEMENT DIVISION AND OIL CONSERVATION DIVISION

In an effort to prevent duplication of effort and to clarify the division of responsibilities pursuant to the provisions of the Water Quality Act, NMSA Sections 74-6-1 et seq. (1978), as administered and enforced by the Water Quality Control Commission, the Commission hereby approves the following list of delegated duties and responsibilities for two of the agencies that are constituent agencies to which authority can be delegated, the Environmental Improvement Division ("EID") and the Oil Conservation Division ("OCD"). The Commission is specifically authorized to take this action by NMSA Section 74-6-4E (1978) and by other general provisions of the Water Quality Act. The Commission notes that pursuant to NMSA Section 74-6-9C (1978), constituent agencies may "report to the Commission and to other constituent agencies water pollution conditions that are believed to require action where the circumstances are such that the responsibility appears to be outside the responsibility assigned to the agency making the report." The Commission encourages OCD and EID to continue close communication and cooperation where responsibility is unclear, to ensure that water pollution is prevented or abated quickly, efficiently and consistently. In situations involving discharges or facilities under the jurisdiction of both agencies, the agencies shall mutually agree which shall be the lead agency and shall determine the method by which the discharge plan shall be evaluated and approved. In preparing this delegation statement, the Commission is cognizant of the limitations imposed on its authority by the Water Quality Act, especially NMSA Section 74-6-12G (1978) which prohibits it from taking any action which would "interfere with the exclusive authority of the Oil Conservation Commission over all persons and things necessary to prevent water pollution as a result of oil or gas operations...."

This delegation shall supersede all previous delegations to EID and OCD; reference to the dates and minutes of Commission meetings in which previous delegations were made are in parentheses and the minutes are attached. The specific grants of authority are not intended to be comprehensive. When a question of authority and jurisdiction arises, which is not specifically delegated, the general provisions below shall control.

1. General Provisions

As a general rule, OCD will administer and enforce applicable Commission regulations pertaining to surface and ground water discharges at oil and natural gas production sites, oil refineries, natural gas processing plants, geothermal installations, carbon dioxide facilities, natural gas transmission lines, and discharges

associated with activities of the oil field service industry. The Commission recognizes that OCD also administers regulations under both the Oil and Gas Act and the Geothermal Resources Act, and that OCD shall have discretion as to which regulations to enforce in any given situation. OCD shall have jurisdiction over all activities associated with exploration for or development, production, transportation before refinement, refinement, storage or treatment of unrefined oil and natural gas, or oil or gas products on refinery premises.

EID will administer and enforce Commission regulations regarding discharges from transmission, transportation and storage facilities for oil or oil by-products after refinement (including but not limited to gasoline stations), except those within refinery premises. EID will administer and enforce all Commission regulations pertaining to all other discharges to surface and ground water which are not specifically delegated to other departments and agencies. (Source: 1/13/69 and 5/8/84 Commission minutes)

2. Specific Grants of Authority

A. EID shall certify Section 404 dredge and fill material permits under the Clean Water Act ("CWA"). (Source: 1/13/76 and 6/14/83 Commission minutes)

B. EID shall administer the Wastewater Construction Grants program pursuant to Section 205 of the CWA. (Source: 6/14/83 Commission minutes)

C. EID shall certify NPDES permits pursuant to Title IV of the Federal Water Pollution Control Act Amendments of 1972 and S402 of the CWA. (Source: 10/1/74 and 8/14/84 Commission minutes)

D. EID shall certify hydropower licenses issued by the Federal Energy Regulatory Commission. (Source: 8/14/84 Commission minutes)

E. EID shall administer and enforce Commission regulations pertaining to the disposal of human excrement and bath water at oil and natural gas production sites, oil refineries, natural gas processing plants, geothermal installations, carbon dioxide facilities and natural gas transmission lines when the treatment facilities for the sewage are a separate and isolated discharge unmixed with any produced water, oil field waste or oil field service waste. (Such an isolated discharge would include: a small sewage treatment plant, package plant, or septic tank and drainfield.) If, on the other hand, sewage is in a discharge combined or mixed with produced water, oil field waste or oil field service waste, OCD shall have jurisdiction. (Source: 5/8/84 Commission minutes)

F. OCD shall administer and enforce Commission regulations at brine manufacturing operations and concerning discharges to ground or surface water at brine manufacturing operations, including all brine production wells, holding ponds and tanks. OCD shall have jurisdiction over all manufactured brine once it is transported, used or disposed of off brine plant premises for use in or directly related to oil and gas operations regulated by OCD. OCD shall regulate brine injection through its Class II Underground Injection Control (UIC) Program if the brine is used in the drilling for or production of oil and gas. EID shall regulate brine injection through its UIC Program if the brine is used for other purposes. (Source: 6/13/89 Commission minutes)

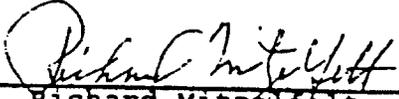
G. EID shall administer and enforce all programs implemented by the state under PL 92-500 (The Federal Water Pollution Control Act) and its Amendments, unless directed otherwise by the Commission. (Source: 7/8/75 Commission minutes)

H. OCD shall have general jurisdiction over the oil field service industry. Many activities that would ordinarily be regulated by EID are regulated by OCD when those activities occur in the oil field service industry. The following list, which is not intended to be inclusive, serves to help clarify this delegation:

OCD	EID
waste oil handled or processed by oil field service companies or treating plants	used motor oil handlers
all underground and above-ground tanks on refinery premises, unless the tanks contain unmixed sewage; all underground and above-ground tanks not on refinery premises which contain crude petroleum, produced water or oil field service chemicals	all underground and above-ground tanks not on refinery premises, unless the tanks contain crude petroleum, produced water or oil field service chemicals
tanker trucks hauling, spilling or disposing of well-service chemicals, kill water, produced water, crude oil, tank bottom sludge and other oil field wastes and oil field service materials	tanker trucks spilling or disposing of non-oil and gas production wastes, non-oil and gas service materials, or refined petroleum products
washings from trucks and other equipment used in the transport, production or refining of oil and gas crude products, production wastes or service materials	washings from trucks and other equipment not used for oil and gas production related purposes

Both EID and OCD are authorized to continue to take appropriate legal action in their respective areas of delegation (including initiating proceedings in court) on behalf of the Commission on a finding of good cause to believe any person is violating or is threatening to violate a Commission regulation or the Water Quality Act. The agencies shall send a copy of each Complaint, Settlement Agreement and Judgment to the Commission Secretary for distribution to Commission members. (Source: NMSA Section 74-1-8.2(B) (1978), 2/8/71 and 1/11/83 Commission minutes)

WATER QUALITY CONTROL COMMISSION


By: Richard Mitzelfelt, Chairman

July 21, 1989
Date