



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

ENTERED



August 31, 2010

Jean M. Flores
Guida, Slavich & Flores, P.C.
750 N. St. Paul Street, Suite 200
Dallas, TX 75201

Re: Western Refining Complaint, Consent Agreement and Final Order Modification

Dear Mrs. Flores:

Enclosed is the Western Refining Complaint, Consent Agreement and Final Order Modification (Order) negotiated between the Environmental Protection Agency, Region 6, the New Mexico Environment Department, and Western Refining.

Thank you for your cooperation throughout the process of negotiating this Order. If you have any questions, please contact David Edelstein at (214) 665-2258.

Sincerely,

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

approval, all deadlines, work/design requirements, and sampling and monitoring requirements in the Lagoon Corrective Measures Implementation Workplan shall become part of, and enforceable under, this CAFO.

- B. Respondent shall cease the operation of, and dismantle, all existing Benzene/ Air Strippers at its facility. All Benzene Strippers must be permanently removed from service within 90 days of demonstrating that the upgraded wastewater treatment system is achieving treatment criteria as specified in an approved Process Design Report for Wastewater Treatment Plant Workplan (described in Paragraph C. below). Hereinafter, any references to a "Process Design Report for Wastewater Treatment Plant Workplan" that has, or will be, approved is a reference to the "Process Design Report for the Wastewater Treatment Plant Work Plan (Alternative Design, Revision A), dated April 30, 2010, approved with modifications by NMED on May 24, 2010, and further modified in Paragraph 100.I and Paragraph 100.J below.
- C. Respondent shall design, construct, properly permit, and commence operation of an upgraded wastewater treatment system according to the Process Design Report for Wastewater Treatment Plant Workplan as approved by NMED and the New Mexico Energy, Minerals and Natural Resource Department, Oil Conservation Division ("OCD") and that is capable of treating all wastewater in accordance with the start up milestone established in Paragraph 100.I below. Upon NMED and OCD approval, all deadlines, unless otherwise specified in Paragraph 100.I below, work/design requirements, and sampling and monitoring requirements in the Process Design Report for Wastewater Treatment Plant Workplan shall become part of, and enforceable under, this Order.

- D. Respondent shall, within 30 days following the effective date of this CAFO, submit to NMED for approval an Interim Measures Workplan for ceasing the discharge of any hazardous wastewater to any surface impoundment, unless such discharge complies with applicable RCRA standards. Discharge of any hazardous wastewater to any surface impoundment shall cease within 120 days following NMED's approval of the Interim Measures Workplan, unless such discharge complies with applicable RCRA requirements. If air strippers are used during this interim period under the approved Interim Measures Workplan, this CAFO shall constitute authorization, for purposes of RCRA compliance, for such air strippers. However, all air strippers shall be subject to the removal described in paragraph B (except for dismantling) once the upgraded wastewater treatment system is achieving treatment criteria as specified in an approved Process Design Report for Wastewater Treatment Plant Workplan. All deadlines, work/design requirements, and sampling and monitoring requirements in the Interim Measures Workplan, as approved by NMED, shall become part of, and enforceable under, this CAFO.
- E. Respondent shall commence operation of the storm water management system and the upgraded wastewater treatment system in accordance with the start up milestones established in Paragraph 100.I below. The tanks and ancillary equipment in the upgraded wastewater treatment system that are in operation downstream of the API Separator shall be compliance with 40 C.F.R. § 232.34(a) (RCRA Permit Exemption Requirements for Generators) and Respondent, if needed, shall secure any necessary permitting. Upon commencing operation of the upgraded wastewater treatment system, Respondent shall, at the same time, commence operation of a diversion tank system to handle wastewater that does not meet discharge standards from the above described upgraded wastewater treatment system. Respondent will

also implement a storm water management system in accordance with this CAFO and all applicable NMED and/or OCD approved Workplans. The construction of the diversion tank system shall be addressed in the Process Design Report for Wastewater Treatment Plant Workplan which must be approved by NMED and OCD and shall be installed in accordance with the schedule established in Paragraph 100.I below. Upon NMED and OCD approval, all deadlines, unless otherwise specified in Paragraph 100.I below, work/design requirements, and sampling and monitoring requirements in a Process Design Report for Wastewater Treatment Plant Workplan shall become part of, and enforceable under, this Order.

- F. In regard to the upgraded wastewater treatment system and diversion tank system, as described in paragraphs 100.C and 100.E, Respondent shall be responsible for the proper design, construction, and, if needed, permitting of all associated tanks, pipes, and ancillary equipment, in addition to, and including, the upgraded waste water treatment system and diversion tank system. The tanks and ancillary equipment in the upgraded wastewater treatment system that are in operation downstream of the API Separator and any diversion tank that is in operation downstream of the API Separator shall be compliant with 40 C.F.R. § 262.34(a) (RCRA Permit Exemption Requirements for Generators) and Respondent, if needed, shall secure any necessary permitting.
- G. Respondent shall limit volatile organic ("VO") air emissions from the upgraded waste water treatment system described in paragraph 100.C and 100.E to the limits in 40 CFR 265 subpart CC. If after the upgraded wastewater treatment system is operable, Respondent exceeds this RCRA air emission level, Respondent shall, within 90 days from the date on which Respondent becomes aware that it is exceeding this RCRA air emission level, submit a VO Air Emissions Workplan for review and approval to NMED for the design and

construction of a mechanism to capture, treat, and/or recycle the benzene air emissions from the waste water treatment system. Upon NMED approval, all deadlines, work/design requirements, and sampling and monitoring requirements in the VO Air Emissions Workplan shall become part of, and enforceable under, this CAFO.

- H. In order to financially assure the closure of AL-1 and AL-2 and the removal of the benzene strippers under this CAFO, Respondent shall establish and provide financial assurance for the benefit of the EPA utilizing one of the financial mechanisms established pursuant to the New Mexico authorized hazardous waste regulations. Respondent shall provide to EPA and NMED a detailed written cost estimate, including supporting documentation, for the work within 60 days of the effective date of this CAFO. If Respondent already utilizes the corporate financial test or the corporate guarantee for any environmental obligations or financial assurance it is required to meet or provide to the State of New Mexico, Respondent shall submit to New Mexico an updated financial mechanism. Respondent will provide the financial assurance or update the existing financial assurance mechanism within 30 days of EPA's approval of the cost estimate.
- I. Respondent shall design, construct, and commence operation of the upgraded wastewater treatment system, including diversion tank system, consistent with the Process Design Report for the Wastewater Treatment Plant Workplan that is approved by NMED and OCD and in accordance with the following schedule of milestones. Respondent will also implement a storm water management system in accordance with this CAFO and all applicable NMED and/or OCD approved Workplans.

Milestone	Implementation Date
1. Submit proof of procurement including vendor Acknowledgement of Order, vendor's factory order number, and estimated delivery date for DGF and MPPE units to demonstrate Respondent will comply with milestone 7 of this chart.	September 30, 2010
2. Commence construction of Equalization Tank	September 30, 2010
3. Complete installation of Tanks 27 and 28, and Equalization Tank and ancillary equipment and connect the storm water management system to the current Waste Water Treatment System.	December 31, 2010
4. Commence operation of the storm water management system	January 15, 2011
5. Complete measures to prevent the Old API Separator from receiving any flows, including removal of segments from, and insertion of cement plugs in, all inlet piping to the Old API Separator. ²	March 1, 2011
6. Complete site preparation and foundations for DGF and MPPE equipment	July 31, 2011
7. Complete installation of interconnecting piping and transfer pumps for DGF and MPPE units	January 31, 2012
8. Complete connection of the storm water management system to the new Waste Water Treatment System and commission and Start-Up of DGF and MPPE units	February 29, 2012
9. End of system startup grace period for achievement of all discharge limits as required by the CAFO.	May 31, 2012

“Completion” of a milestone means that Western has implemented the milestone in all material respects in accordance with the approved Process Design Report for Wastewater Treatment Plant Workplan. Respondent shall provide written certification to NMED and EPA within five business days of completion of each milestone.

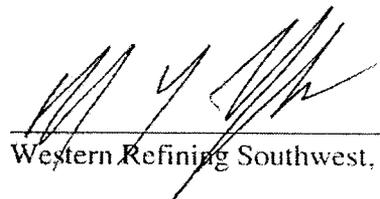
² Such measures shall not be construed to limit the authority of the NMED with respect to corrective action at any solid waste management unit or area of concern at Respondent's facility.

J. In regard to the upgraded wastewater treatment system and storm water management system, as described in Paragraphs 100.C and 100.E, Respondent shall meet the following discharge limits for any and all wastewater discharged to any surface impoundments: benzene concentration in wastewater shall always be less than 0.5 mg/L; wastewater shall have no RCRA hazardous characteristic; wastewater shall not be a RCRA listed hazardous waste; wastewater shall comply with the OCD Discharge Permit GW-32 requirements; wastewater shall contain no free oil and shall not impart a visible sheen to any surface waters; wastewater discharge shall not create the potential to impact ground water.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

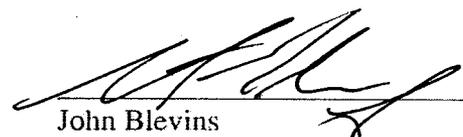
FOR RESPONDENT:

Date: 8/31/10


Western Refining Southwest, Inc.

FOR THE COMPLAINANT:

Date: 8-31-10


John Blevins
Director, Compliance Assurance
and Enforcement Division
US EPA, Region 6

FOR THE PLAINTIFF-INTERVENOR:

Date: 8/31/01


Marcy Leavitt, Director
Water and Waste Management Division
New Mexico Environment Department

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of Sept., 2010, the original of the foregoing Consent Agreement and Final Order ("CAFO") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method identified below:

The Corporation Process Company
205 E Bender Ste 150 Hobbs New Mexico 88240
As Registered Agent for Western Refining Southwest, Inc.

Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505-6303

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 1003 050000030875 1872

Teri Jackson, paralegal