

April 15, 2011

APR 2011

Joel Dougherty (6EN-HE)  
Hazardous Waste Enforcement Branch  
U.S. EPA Region 6, Suite 1200  
1445 Ross Ave.  
Dallas, TX 75202-2733  
**Via Certified Mail**  
**No. 7006 2150 0003 5110 0221**

Chief  
Hazardous Waste Bureau  
New Mexico Environment Department  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, NM 87505-6303  
**Via Certified Mail**  
**No. 7006 2150 0003 5110 0238**

**RE: In the Matter of Western Refining Southwest, Inc.  
Complaint and Consent Agreement and Final Order  
Docket No. RCRA-06-2009-0936**

Gentlemen:

Western Refining Southwest, Inc. ("Western") received on January 19, 2011, a demand letter stating that "Western has failed to comply with the terms of the CAFO and the CAFO Modification. Paragraph 110 of the CAFO prescribes Stipulated Penalties if the Respondent fails to comply with any provision in the CAFO. Western is hereby ordered to pay Seven Thousand Five Hundred Dollars (\$7,500.00) to the Treasurer of the United States as prescribed by Paragraphs 110 through 114 of the CAFO." Note that Western's payment of the subject stipulated penalty does not constitute agreement by Western that such stipulated penalty is appropriate or warranted. To the contrary, although Western is voluntarily satisfying the subject stipulated penalty demand, Western disagrees with, and objects to, EPA's determination that Western is not in compliance with the CAFO and the incorporated RCRA benzene discharge limit. Western is not, herein, invoking dispute resolution on this issue, but reserves the right to do so in the future, and urges EPA to take the following sampling issues into consideration in the future.

Section 100 of the CAFO prohibits discharges of "hazardous wastewater" to any surface impoundment "**unless such discharge complies with applicable RCRA standards.**" (emphasis added.) The RCRA regulations at 40 CFR § 261.24(a) clearly state that, in order to determine if a waste is hazardous for the toxicity characteristic ("TC") (which is the basis for the benzene limit), a "representative sample" of the waste must be compared to the TC limit. A "representative sample" is defined at 40 CFR § 260.10 as:

a sample of a universe or whole (e.g., waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole.

Applicable EPA sampling procedures and EPA guidance consistently recognize that a representative sample may be developed from multiple grab samples, and using statistics to incorporate a level of confidence in the average.

Joel Dougherty, US EPA Region 6  
Chief, NMED HWB  
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However, Western is being held to a single grab sample standard imposed by the New Mexico Environment Department over Western's objections. On information and belief, no other continuous discharge at a refinery in the United States is being held to a similar, and practically impossible, standard. A single grab sample is not "representative" within the meaning of RCRA and should not serve as the basis for a stipulated penalty demand. A statistical review of Western's sampling results in fact demonstrates that Western's discharge does comply with applicable RCRA standards as required by the CAFO. Western is prepared to provide a more detailed briefing on these issues to EPA on request.

Western is hereby making full payment of the demand in the spirit of cooperation and compromise rather than seeking further dispute resolution. Please note that Western's payment is not an admission of any kind.

Attached is a copy of the Cashier's Check No. **9494145604** dated April 12, 2011, in the amount of \$7,500.00 made payable to the Treasurer of the United States. This payment is being made within the required 30 days of receipt of the demand letter. Simultaneous notices of payment with a copy of the Cashier's Check are being provided to the following EPA representatives as required by Paragraphs 102 and 105 of the CAFO.

Lorena S. Vaughn (6RC-D)  
Regional Hearing Clerk  
U.S. EPA – Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733  
**Via Certified Mail No. 7006 2150 0003 5110 0245**

Ragan Broyles (6EN-H)  
Associate Director, Hazardous Waste Enforcement Branch  
U.S. EPA – Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733  
**Via Certified Mail No. 7006 2150 0003 5110 0252**

David Edelstein (6RC-ER)  
RCRA Legal Branch  
Office of Regional Counsel  
U.S. EPA – Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733  
**Via Certified Mail No. 7006 2150 0003 5110 0269**

Joel Dougherty, US EPA Region 6  
Chief, NMED HWB  
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Please call me at (915) 534-1480 if you have any questions.

Sincerely,



Leslie Ann Allen  
Senior Vice President  
Health, Safety, Environment and Regulatory Affairs

Enclosure

copy: Mark Turri  
Western Refining – Gallup Refinery

Ed Riege  
Western Refining – Gallup Refinery

Bank of America 

Cashier's Check

No. 9494145604

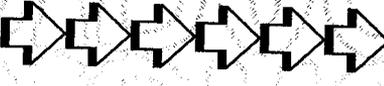
ANTI-FRAUD PROTECTION - PATENTED 2,197,785 & 2,200,000

Bank of America, N.A.  
San Antonio, Texas  
Deposit Services  
318/0005197 EE

Void Over 90 Days

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PAY  BANK OF AMERICA SEVEN FIVE ZERO ZERO CT SCTS

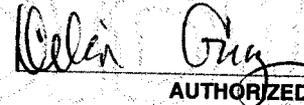
\*\*\*\*\*\$7,500.00

To The Order Of Treasurer of the United States

In the Matter of Western Refining Southwest, Inc., Docket No.  
RCRA-06-2009-0936  
SR#1-1023194423

Remitter: WESTERN REFINING COMPANY, L.P.

Void Over \$ 7,500.00



AUTHORIZED SIGNATURE

⑈9494145604⑈ ⑆121000358⑆ 1397285075⑈

THE ORIGINAL DOCUMENT HAS A REFLECTIVE WATERMARK ON THE BACK. HOLD AT AN ANGLE TO VIEW WHEN CHECKING THE ENDORSEMENTS.

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