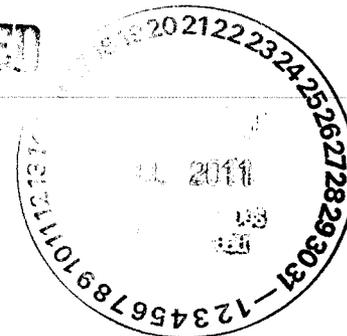


July 19, 2011



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. 7007 2560 0002 9659 8475

Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505-6303
Via Certified Mail
No. 7007 2560 0002 9659 8482

**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 June 28, 2011, a June 21, 2011 demand letter under the above-referenced CAFO stating that "EPA demands that Western pay Nine Thousand (\$9,000.00) 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 further disagrees with EPA's determination that the days of alleged violations should be considered as the 25th through 30th days of non-compliance, since many of EPA's allegations of non-compliance since the CAFO became effective involve separate circumstances (in some cases months apart) that should be considered independent of one another. 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.

SCANNED

Joel Dougherty, US EPA Region 6
Chief, NMED HWB
July 19, 2011
Page 2

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.

However, Western is being held to a single grab sample standard imposed by the New Mexico Environment Department (“NMED”) 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. On July 15, 2011, Western submitted to NMED and EPA proposed monitoring plans that we understand are under consideration by the agencies and which would establish protocols that are supported by the federal and state hazardous waste program.

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. **9494153872** dated, July 19, 2011, in the amount of \$9,000.00 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. 7007 2560 0002 9659 8499

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. 7007 2560 0002 9659 8505

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. 7007 2560 0002 9659 8512

Joel Dougherty, US EPA Region 6
Chief, NMED HWB
July 19, 2011
Page 3

Please call me at (915) 534-1480 if you have any questions.

Sincerely,



Leslie Ann Allen
Senior Vice President
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. 9494153872

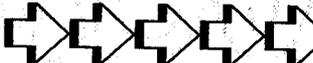
ANTI-FRAUD PROTECTION - PATENTS 5,197,795; 5,340

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

Void Over 90 Days

30-1/1140

DATE
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PAY  BANK OF AMERICA ^{NINE} 900000
ZERO ZERO ZERO CTCTS

*****\$9,000.00

To The Order Of Treasurer of the United States

Ref: In the Matter of Western Refining
Southwest, Inc. Docket No. RCRA-06-2009-0936
SR 1-1104669454 Void Over \$ 9,000.00

Remitter: WESTERN REFINING COMPANY, L.P.


AUTHORIZED SIGNATURE

⑈9494153872⑈ ⑆121000358⑆ 1397285075⑈

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