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WNR
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NYSE

Via Certified Mail
No. 7003 3110 0005 4965 9298

May 16, 2012

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

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

Gentlemen:

Western Refining Southwest, Inc. ("Western") received on April 27, 2012, 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 Sixty Six Thousand Dollars (\$66,000.00) 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. In fact, a portion of the stipulated penalty has been assessed for a brief construction delay for which a force majeure claim was filed timely by Western under the CAFO, and to which EPA's only response has been the issuance of the stipulated penalty demand. The remainder of the stipulated penalty has been assessed for discharge data resulting from an inappropriate and impossible sampling scenario imposed unilaterally over Western's strenuous objections. Western is not, herein, invoking dispute resolution on these issues, 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.

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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 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 has provided a more detailed briefing on these issues to EPA and also has submitted proposed widely-accepted alternative methodologies for EPA's consideration.

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 Cashier's Check No. 1019005097 dated May 9, 2012, in the amount of \$66,000.00 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.

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: Joel Dougherty (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Via Certified Mail No. 7003 3110 0005 4965 9304

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Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505-6303
Via Certified Mail No. 7003 3110 0005 4965 9311

Lorena S. Vaughn (6RC-D)
Regional Hearing Clerk
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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. 7003 3110 0005 4965 9335

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. 7003 3110 0005 4965 9342

Mark Turri, Western Refining – Gallup Refinery
Ed Riege, Western Refining – Gallup Refinery

Bank of America

Cashier's Check

No. 1019005097

Bank of America, N.A.
Phoenix, Arizona
Deposit Services
318-0005594 L R

Void Over 90 Days

91-170/1221

DATE
05/09/2012 09:18:44 AM

PAY  BANK OF AMERICA ^{SIX} ^{SIX} **66000000** _{ZERO ZERO ZERO} CTSCTS *****\$66,000.00

To The Order Of TREASURER OF THE UNITED STATES

IN THE MATTER OF WESTERN REFINING
SOUTHWEST, INC., DOCKET NO. RCRA-06-2009-0936
SR 1-1359031291

Void Over \$ 66,000.00

Purchaser: WESTERN REFINING COMPANY LP

AUTHORIZED SIGNATURE

⑈ 1019005097 ⑈ ⑆ 122101706 ⑆ 457022259754 ⑈

THIS CHECK IS VOID UNLESS IT IS DEPOSITED WITHIN 90 DAYS OF THE DATE OF ISSUANCE. IT IS VOID IF ANY PART OF THE CHECK IS NOT READ AS ABOVE.