

Via Certified Mail
No. 7003 3110 0005 4965 9441

JUL 20 2012

July 20, 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 (“CAFO”)**

Sir/Madam:

Western Refining Southwest, Inc. (“Western”) received on July 5, 2012, a demand letter seeking a stipulated penalty payment under the above CAFO in the amount of \$108,000. In response, attached is a Cashier’s Check No. 1019014498 dated July 18, 2012, in the amount of \$108,000 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.

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: (i) EPA’s determination that stipulated penalties are appropriate and (ii) the manner of calculating the penalty. In particular, EPA asserts that Western failed to complete certain activities described in Milestone 8 by the deadline. However, as certified in a March 9, 2012 letter to EPA and NMED, Western completed the majority of the crucial construction activities required by Milestone 8 on time and demonstrated Western’s significant efforts to meet Milestone 8 even though a *force majeure* delay of equipment in Milestone 7 delayed completion of interrelated tasks in Milestone 8. The stipulated penalty demand clearly ignores this substantial work and assesses a penalty as though nothing had been done at all.

Moreover, even if it was appropriate to assess some stipulated penalty for the components of Milestone 8 that were delayed, EPA has calculated the stipulated penalty incorrectly. Paragraph 110 states that “for each day during which each failure continues,” an escalating penalty shall be paid. EPA cites to previous, completely unrelated stipulated penalty demands primarily associated with discharge data (to which Western also objected), as the reason for penalizing each day of the alleged non-compliance as though it occurred after 30 days of violation, i.e. at the highest stipulated penalty level. The CAFO’s use of the term “each failure” makes it clear that penalties associated with a particular alleged violation are to be calculated independently. EPA is using events that are unrelated, both in substance and time, to increase inappropriately the amount of the stipulated penalty it seeks. Our calculation indicates that this incorrect method leads to a penalty calculation that is over \$30,000 higher than the CAFO permits.

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Western is not, herein, invoking dispute resolution on the issues described above but reserves the right to do so in the future, Western is hereby making full payment of the demand in the spirit of cooperation and compromise and urges EPA to reconsider its overly punitive approach in this regard. Please note that Western's payment is not an admission of any kind.

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: Mr. John E. Kieling, Acting Chief
Hazardous Waste Bureau
New Mexico Environmental Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
Via Certified Mail No. 7003 3110 0005 4965 9458

Mark Potts
Associate Director
Hazardous Waste Enforcement Branch
U.S. EPA Region 6, Suite 1200
1445 Ross Avenue
Dallas, TX 75202-2733
Via Certified Mail No. 7003 3110 0005 4965 9465

Lorena S. Vaughn (6RC-D)
Regional Hearing Clerk
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Joel Dougherty (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA Region 6, Suite 1200
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Jeffrey M. Clay
Assistant Regional Counsel
Region 6
US Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202
Via Certified Mail No. 7003 3110 0005 4965 9496

Mark Turri, Western Refining – Gallup Refinery

Ed Riege, Western Refining – Gallup Refinery

Bank of America

Cashier's Check

No. 1019014498

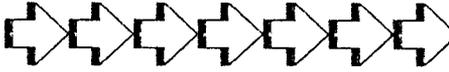
Bank of America, N.A.
Phoenix, Arizona
Deposit Services
318-0005594 L R

Void Over 90 Days

91-170/1221

DATE

07/18/2012 02:22:55 PM

PAY  BANK OF AMERICA **108000.00**
ONE ZERO EIGHT ZERO ZERO ZERO CTSCTS

*****\$108,000.00

To The Order Of Treasurer of the United States

Western Refining Southwest Inc. Docket No.
RCRA-06-2009-0936
SR 1-1431232034

Void Over \$ 108,000.00

Purchaser: WESTERN REFINING COMPANY LP

AUTHORIZED SIGNATURE

⑈ 1019014498 ⑆ ⑆ 22101706 ⑆ 457022259754 ⑆

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