

*Via E-Mail and Certified Mail
No. 7003 3110 0005 4965 9632*

March 6, 2013

Mr. John E. Kieling, Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building I
Santa Fe, New Mexico 87505



**Re: Draft Hazardous Waste Permit for Western Refining Southwest, Inc.,
Gallup Refinery/Public Notice 11-05/Additional Comments of the Permit
Applicant and Request For Technical Meeting**

Dear Mr. Kieling:

As you know, by letter dated December 14, 2011, Western Refining Southwest, Inc. ("Western") submitted comments ("December 2011 Comments") on the above-referenced draft hazardous waste permit. The Hazardous Waste Bureau ("HWB") responded to these comments in a draft "Response To Public Comments" dated September 6, 2012 ("RTPC"). Subsequent to exchange of these documents, the parties met at your offices on November 7, 2012 to discuss the issues and concerns that had been raised by both sides and to develop a path forward on the permit renewal. The purpose of this letter is to follow up on certain matters covered in the November 7, 2012 meeting, including the timing and substance of the next meeting.

At the meeting, you requested that, in light of the RTPC, Western submit follow-up comments it has on the boilerplate terms of the draft permit. In response to that request, please find attached a table that summarizes Western's December 2011 Comments, the corresponding RTPC responses, and Western's follow-up comments on the RTPC responses. Since the dialogue between the parties is still in progress, including consideration of jurisdictional conflicts between your agency and the New Mexico Oil Conservation Division ("OCD"), Western reserves the right to modify or supplement these comments in the future. In addition, they should be considered as only a part of Western's overall responses to the draft permit.

In addition to the attached table, we have one other technical comment that needs to be made. The correct name of the permittee is "Western Refining Southwest, Inc." not "Western Refining Company Southwest, Inc.". We request that the HWB make this correction in the final permit.

Another matter covered during the November 7, 2012 meeting involved the scheduling of the next meeting between the parties. It was agreed that, prior to such meeting, Western would be afforded an opportunity to review relevant files, including those in the HWB's possession, and further evaluate the basis for HWB's inclusion of the twenty-one (21) newly-proposed "areas of concern" ("AOC"s) in Appendix G of the draft permit. In addition, as Western informed you during the November 7, 2012 meeting, Western planned to further consider the legal and practical conflicts presented by OCD's assertion of jurisdiction over these same areas, as reflected in the attached letter dated February 15, 2012 from OCD to Western ("OCD Letter"). Having had an opportunity to review these matters further, Western is now prepared to have a technical meeting on the draft permit with the HWB in the next thirty (30) days, as further described below.

Western believes that the meeting should focus solely on future permit requirements associated with the existing solid waste management units ("SWMU"s). We believe that further dialogue on the newly-proposed AOCs should be deferred pending further discussion between legal and management representatives of the HWB and Western regarding the inter-agency jurisdictional concerns mentioned above.

Western has a good faith belief that its jurisdictional conflict concerns are justified in light of the broad remedial authority claimed by OCD in the attached OCD Letter as well as the historic, customary, and well-documented course of conduct by OCD in addressing spills and releases at the Gallup refinery. Moreover, we will not repeat here the legal analysis that Western provided in its December 2011 Comments on this matter, but suffice it to say that there also appear to be significant statutory problems with the HWB's assertion of jurisdiction over matters within the province of OCD. One response made by the HWB in the RTPC (page 4) reveals that even the HWB struggles with the jurisdictional conflict:

***Response:** The Department recognizes that the Oil Conservation Division has authority over some of the environmental issues at the facility. The Department has been working with the Oil Conservation Division to ensure that there are no conflicting or inconsistent regulatory requirements. However, the Environment Department, pursuant to its authority under the HWA, has exclusive authority to require corrective action for soil and groundwater contamination at the facility.*

Moreover, it is impossible to see how HWB's above assertion of "exclusive authority" can ever square with the jurisdiction asserted by OCD in the attached OCD Letter.

Notwithstanding the preceding concerns, and in the interest of moving this process forward, Western is prepared to send the HWB a proposed agenda for a technical meeting on the SWMUs, and we look forward to hearing back from your office on possible dates. We also remain open to continuing a dialogue aimed at resolving the differences that exist between the parties over inter-agency jurisdiction.

Mr. John E. Kieling
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We look forward to hearing from you. If you have any questions, please contact me or my colleague, Allen Hains.

Sincerely,



Leslie Ann Allen
Senior Vice-President
Environment and Regulatory Affairs

Attachments

**Western/Gallup LTU Permit Renewal
Western Replies to NMED/HWB Responses
to Western General and Detailed Comments**

Comment #	Western's Comment December 14, 2011	NMED Response September 6, 2012	Western's Reply
7	Nowhere in the Draft Permit is there any significant recognition of corrective action work already performed by Western or in progress at the facility.	Any work that has been satisfactorily completed prior to issuance of a final permit can be used to satisfy the requirements of the permit.	Western remains concerned that significant work may have to be repeated or started over again. The parties will be engaging in technical discussions to address Western's concerns on an item-by-item basis. However, with respect to SWMU #1, Western seeks approval of the Lagoon Corrective Measures Work Plan prior to permit issuance so that the associated requirements are finally determined and Western can close out the 2009 EPA CAFO that references that work plan. Western also seeks recognition that performance of that Work Plan will satisfy all corrective action requirements under the LTU renewal permit for SWMU #1 and the RCRA CAFO.

Comment #	Western's Comment December 14, 2011	NMED Response September 6, 2012	Western's Reply
8	Permit should have force majeure provision to cover events or circumstances beyond control of Western.	NMED doesn't include force majeure provision in hazardous waste permits. Permit does allow for extension of time.	Merely providing relief for delays does not address issues where permit compliance is beyond control of Western, e.g. technical impossibility of implementing or completing certain remedial measures. The technical impracticability provisions in Section IV.E.2. appear to relate only to cleanup levels.
9	Permit should have dispute resolution provision procedure to resolve permit disputes prior to formal administrative process.	There is no requirement to include dispute resolution provision in hazardous waste permits, and not consistent with NMED policy or general practice.	A dispute resolution process will promote resolution of disputes at an early stage without the need for litigation. This would benefit both parties. Contrary to its assertions, NMED has agreed to Dispute Resolution provisions in hazardous waste permits; see, e.g. Sandia National Laboratories (September 2012), Safety Kleen Systems (September 2003), and Holloman Air Force Base (February 2004).

Comment #	Western's Comment December 14, 2011	NMED Response September 6, 2012	Western's Reply
10	Western is concerned about consenting to a greatly expanded corrective action program for new AOCs without knowing what the ultimate remedy is that NMED will require.	NMED will not impose corrective action requirements unilaterally or without consultation.	If Western accepts NMEDs authority to impose corrective action remedies in the permit, the standard of review for NMED's determination is limited. Western would like some assurances in the permit that there will be meaningful consultation prior to any final determination by NMED. Western suggests adding a provision requiring reasonable, good faith consultation with Western prior to determinations under Section IV.H.6.e. and Section IV.H.6.g.
13	Western wants a provision that allows the agency to shorten deadlines by mutual agreement.	Actions can be completed before their respective deadlines.	90 days is too long of a notice requirement. Such a time period is not required in 40 CFR § 270.30(l)(3). Either as a function of the transaction or securities law considerations, substantial advance notice may not be feasible. Suggest that NMED use same verbiage as in Navajo Refining (December 2010) and Sandia National Laboratories (September 2012) permits (which have no set time for advance notice).

Comment #	Western's Comment December 14, 2011	NMED Response September 6, 2012	Western's Reply
16	Need a provision requiring NMED to comply with facility health and safety plans.	The permit does not impose obligations on NMED, but NMED will observe health and safety requirements.	The permit imposes obligations on both parties, and if NMED agrees to comply with the health and safety plans, then what is the reluctance to so indicate in the permit?
17	Needs a modification to require NMED to inform Western of a deficiency in a work plan or other submittal and provide an opportunity to cure.	NMED is only required to provide reasons for any disapproval or denial.	Western's proposal is not prohibited by the regulations and would allow the parties an opportunity to cure any problems prior to initiation of formal administrative process. This will benefit both parties.
19	Permit should reference "planned changes" instead of "planned activities"	Permit is being changed to "planned activities" to conform with the regulation.	Regulation actually references "planned physical alterations or additions to the permitted facility." 40 CFR § 270.30(1)(1).
22	Certification requirement is overly broad.	NMED agreed, and proposed a change.	NMED's proposed change is too vague and does not resolve the issues. Western believes certification should be limited to reports, applications, and work plans, and for other submissions when certification is specifically requested by the Department.
23	Western asked for clarification concerning submission date for submittals.	NMED stated that delivery date is date of submittal.	Can submittal date be date of e-mail delivery?
48	The term "ZOI" should be "zone of incorporation" instead of "zone of infiltration"	Disagreed.	Section III.E.1 of the permit uses "zone of incorporation". Why would this be different in the post-closure plan?



New Mexico Energy, Minerals and Natural Resources Department

Susana Martinez
Governor

John H. Bemis
Cabinet Secretary

Brett F. Woods, Ph.D.
Deputy Cabinet Secretary

Jami Bailey
Division Director
Oil Conservation Division



FEBRUARY 15, 2012

Mr. Ed Riege
Western Refining Southwest Inc.
Route 7 Box 3
Gallup, NM 87301

Dear Mr. Riege:

Based on your responses given in the "Oil & Gas Facilities Questionnaire for Determination of a WQCC Discharge Permit" and a file review, the Oil Conservation Division (OCD) has determined that one of your facilities with an expired or soon to be expired permit is not required to operate under a Water Quality Control Commission (WQCC) Discharge Permit. This means that the WQCC Discharge Permit for and **GW-032 (Gallup Refinery)** is hereby rescinded and you are not required to proceed with the renewal of this WQCC Discharge Permit. OCD will close this discharge permit in its database.

Previously, Western Refining Southwest Inc. has conducted abatement of ground water contamination at this facility under the authority of its WQCC Discharge Permits, pursuant to 20.6.2.4000 NMAC (PREVENTION AND ABATEMENT OF WATER POLLUTION). OCD has determined that Western does not intentionally discharge at this facility; therefore, no WQCC Discharge Permit is required. However, because of existing ground water contamination at these facilities, OCD is requiring Western to continue to abate pollution of ground water pursuant to 19.15.30 NMAC (REMEDIATION). The new Abatement Plan case number for the former GW-032 site is **AP-111**. Please use this Abatement Plan case number in all future correspondence.

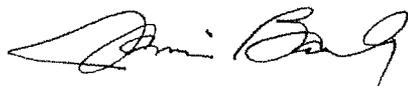
Because this WQCC Discharge Permits will now longer be in effect, you may be required to obtain separate OCD permit(s) for other processes at your facility, such as: pits, ponds, impoundments, below-grade tanks; waste treatment, storage and disposal operations; and landfarms and landfills. OCD will determine if any of these existing processes may require a separate permit under OCD's Oil, Gas, and Geothermal regulations. If OCD determines that a separate permit(s) is required, then a letter will be sent to you indicating what type of permit is required.

Please keep in mind, if your facility has any discharges that would require a WQCC Discharge Permit now or in the future, then you will be required to renew or obtain a WQCC Discharge Permit.

Mr. Ed Riege
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If you have any questions regarding this matter, please contact Glenn von Gonten at 505-476-3488.

Thank you for your cooperation.

A handwritten signature in black ink, appearing to read "Jami Bailey". The signature is fluid and cursive, with a large initial "J" and "B".

Jami Bailey
Director

JB/gvg