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Western would propose a very abbreviated “background section” that simply refers to the prior administrative record for more information.

NMED staff also informed Western that it would be necessary to submit a “petition for *No Further Action*” for the SWMU closures. Western conducted an extensive search of the files of the New Mexico Environment Department (NMED), the New Mexico Oil Conservation Division (NMOCD) and refinery records to determine the current status of these 14 SWMUs. Based on Western’s review of these records, it is apparent that a “petition for *No Further Action*” was submitted to the NMED on August 10, 2001 for 11 of the 14 SWMUs (i.e., SWMUs 1, 2, 3, 4, 5, 7, 9, 10, 11, 12, and 13). NMED requested supplemental information on November 2, 2001. Subsequently on October 2, 2002, the requested supplemental information was either provided or a cross-reference to NMED files was included, as much of the requested information was already in the NMED files.

We can find no record of NMED ever providing a written response to the petition and supplementary information in over a decade. Western acknowledges that RCRA facility investigation (RFI) activities have been conducted at one of the 11 SWMUs (i.e., SWMU 1 – Aeration Basin) under NMED’s direction since 2001. Western requests that NMED make a commitment to review the record of the remaining 10 SWMUs and provide a written response to the original “petition for *No Further Action*” before this permit is finalized.

On a separate point, during the recent meeting, NMED staff raised a question over the use of a clean stainless steel pan to collect samples prior to placement into laboratory containers. The discussion in the 1994 "Report on the Additional RFI Sampling" does not indicate any mixing or compositing of the samples. A review of the analytical results for volatile and semi-volatile constituents shows that most results are non-detect with only a single semi-volatile organic compound (SVOC) (di-n-butyl phthalate) detected at low concentrations and a single volatile organic compound (VOC) (methyl ethyl ketone) detected in one sample at a low concentration. Methyl ethyl ketone and di-n-butyl phthalate are both common laboratory contaminants as identified by the Environmental Protection Agency, placing further doubt on the presence of any contaminants in the subject samples. It is extremely doubtful that placing the sample in a clean pan prior to placing in a sample jar could have removed all but one VOC and one SVOC as shown in the sample results. Placing the sample in the bowl did not significantly impact the results. This practice is not sufficient evidence to justify starting over at the investigation work plan stage.

### 21 Areas of Concern (AOCs)

The RTPC and the November 7, 2012 meeting did not fully address Western’s concern about justification for the 21 AOCs in the administrative record and the double regulation. The intent of the RCRA Post-Closure Permit is to regulate the LTU post-closure care and historical waste disposal sites identified in the RCRA Facility Assessment (RFA), otherwise known as SWMUs

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or AOCs. Western could not find a RFA in the administrative record to justify the proposed 21 AOCS. The mere existence of refinery equipment does not justify an AOC. See the attached Memorandum: Authority for RCRA Corrective Action Relative to Areas of Concern.

Furthermore, the RPTC cites release information that is already regulated by New Mexico Energy, Minerals and Natural Resources Department - Oil Conservation Division (OCD) as justification for some of the AOCs. These releases were subject to the Release Notification regulations, NMAC 19.15.29, of the Oil and Gas Act. If necessary, subsequent corrective action is regulated by Remediation regulations, NMAC 19.15.30, of the Oil and Gas Act. Western's comments are summarized in Table A.

#### Other Comments

Redlined versions of the draft RCRA Permit Attachments E and G are attached. The edits reflect the comments above. As in the federal regulations, the Financial Assurance Estimate deadline should be March 31<sup>st</sup>. This allows calculation of the annual inflation factor using economic data published by the federal government each February.

We trust that these comments will lead to actions that will further both parties' goals to make timely progress toward completion of the RCRA Corrective Action obligations at the Gallup Refinery. Western will have additional comments as we proceed with the permit renewal process. If you have any questions, please contact me or my colleague, Allen Hains.

Sincerely,



Leslie Ann Allen  
Senior Vice-President  
Environmental and Regulatory Affairs

Attachments

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## MEMORANDUM

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### AUTHORITY FOR RCRA CORRECTIVE ACTION RELATIVE TO AREAS OF CONCERN

Several U.S. EPA Environmental Appeals Board decisions have considered whether RCRA § 3005(c)(3) authorizes corrective action requirements for “areas of concern” that are not SWMUs. Those decisions often reference *In re Morton International, Inc.*, RCRA Appeal No. 90-17, p. 5 (Feb. 28, 1992) which provides a lengthy analysis of this issue.

In the *Morton* decision, Morton argued that only § 3004(u) expressly authorizes corrective action beyond hazardous waste management units by requiring corrective action for releases from SWMUs. Morton maintained that § 3005(c)(3), the RCRA “omnibus provision,” does not extend this authorization beyond SWMUs. According to Morton, § 3005(c)(3) only allows conditions within the scope of the permit as delineated by other statutory provisions. In other words, Morton argued that the EPA’s ability to impose permit conditions necessary to protect human health and the environment is limited to those conditions expressly authorized by other Subtitle C provisions, in that case § 3004(u).

However, the U.S. EPA Administrator was not persuaded by Morton’s argument. He claimed that such interpretation would render § 3005(c)(3) superfluous in the corrective action context. Moreover, he argued that § 3004(u) is not the only provision in Subtitle C allowing corrective action beyond hazardous waste management units. The Administrator argued §3008(h)(1) allows corrective action for any release of hazardous waste at an interim status facility if necessary to protect human health and the environment regardless of whether the release is from a SWMU or non-SWMU area. He pointed out that as a matter of statutory interpretation, it makes little sense to allow corrective action for non-SWMU areas at interim status facilities pursuant to §3008(h)(1), but not to allow such corrective action at a permitted facility pursuant to §3005(c)(3).

The Administrator argued further that § 3004(u) is best read not as a limit on § 3005(c)(3), but as a mandatory minimum requirement that the Agency must fulfill. He claimed that the legislative history of § 3005(c)(3) shows an intent to authorize the Administrator to impose permit conditions beyond those mandated by the applicable regulations (i.e., those implementing § 3004(u)) as required to address situations at each permitted facility that threaten human health or the environment).

In light of these arguments, the Environmental Appeals Board held in *Morton*, as well as in subsequent rulings, that § 3005(c)(3) authorizes corrective action permit requirements, such as soil sampling or other preliminary detection activities, for non-SWMU areas when necessary to protect human health and the environment. However, this authority is not unlimited. As stated in *Morton*, the statutory context of RCRA “makes clear that the omnibus provision should not be used as a blank check for unbridled regulation without an adequate nexus to solid or hazardous waste.” See *Morton*, RCRA Appeal No. 90-17, p. 5. By its own terms, § 3005(c)(3) authorizes only those permit conditions necessary to protect human health and the environment. *Id.* Unwarranted uses of this provision are checked on a cases-by-case basis through petitions for review of final permit decisions. *Id.*

In this regard, Environmental Appeals Board decisions have rejected an “areas of concern” designation where the Agency has either: (1) failed to make a finding that corrective action is necessary to protect human health or the environment; or (2) if the Board concluded that such a finding lacks a sufficient factual basis in the record. *Sandoz Pharmaceuticals Corp.*, RCRA Appeal No. 91-14, p. 6-8 (July 9, 1992) (“It is not enough, however, for the Region to simply make a finding that a corrective action measure is necessary to protect human health and the environment. To justify an exercise of its omnibus authority, the finding must have a sufficient factual basis in the record.”); *In re GMC Delco Remy*, RCRA Appeal No. 95-11, n. 54 (June 2, 1997) (“The Region may not invoke its omnibus authority unless the record contains a properly supported finding that an exercise of that authority is necessary to protect human health or the environment. The Region has not pointed us to any specific finding in this respect; therefore, we need not consider the Region’s contention that the unit could also be an area of concern subject to corrective action.”).

Further, the *Morton* decision supports that such finding must include evidence of an actual release instead of one that is merely hypothetical. In this regard, *Morton* argued that the Region’s interpretation of § 3005(c)(3) would allow for unbridled regulatory access to production processes. See *Morton*, RCRA Appeal No. 90-17, p. 5. The U.S. EPA Administrator rejected this contention on the basis that § 3005(c)(3) only permits corrective action for *releases* that threaten human health and the environment.

The requirement of an actual release is further supported by the definition of SWMUs in the May 1, 1996 EPA ANPR (61 FR 19432, 19443) which states:

EPA notes that authority exists for requiring corrective action **for releases** that are not attributable to SWMUs. Given the legislative history of RCRA section 3004(u), which emphasizes that RCRA facilities should be adequately cleaned up, in part, to prevent creation of new Superfund sites, EPA believes that corrective action authorities can be used to address all unacceptable risks to human health or the environment from RCRA facilities. In the permitting context, **remediation of non-SWMU related releases** may be required under the “omnibus” authority (see 40 CFR 270.32(b)(2)) which allows EPA to impose such permit conditions as are necessary to protect human health and the environment. (Emphasis added.)

# TABLE A

## NEW AREAS OF CONCERN (AOCs) PROPOSED BY NMED IN RCRA PERMIT RENEWAL

Unit ID	Unit Description	NMED justification for inclusion in permit renewal	Jurisdiction	Western's Position
AOC 15	New API Separator	The Department has received from Western Refining eight C-141 Release Notification and related reports for spills at AOC 15 since 2006. These reports document the following releases: on June 23, 2007, approximately 10 barrels (420 gallons) of process waste water was spilled when a weir box became clogged with trash (Release Notification dated June 23, 2007); on July 19, 2007, approximately 5 to 10 barrels (210 to 420 gallons) of process waste water was released from a weir box that had become partially clogged during a rainstorm (Release Notification dated July 20, 2007); on June 10, 2009, approximately 2 barrels (84 gallons) of oil spilled onto the ground from the API Separator and the Baker Tank system during a heavy rainstorm (Release Notification dated June 22, 2009); on September 5, 2009, approximately 6.5 barrels (273 gallons) of oil overflowed from the API Separator in two events during heavy rain (Release Notification dated July 21, 2009); on December 8, 2009, approximately 739 barrels (31,038 gallons) of oily water spilled during intermittent overflows from the API Separator as a result of a power outage (Release Notification dated Dec. 18, 2009); on July 30, 2010, approximately 230 barrels (9,660 gallons) of oily water overflowed onto the ground from the API Separator during a rainstorm (Release Notification dated Aug. 13, 2010); on August 2, 2010, approximately 159 barrels (6678 gallons) of oily water overflowed onto the ground from the API Separator during a rainstorm (Letter from Beck Larson dated Oct. 29, 2010); on April 12, 2012, approximately 17 barrels (714 gallons) of oily water spilled onto the ground from the API Separator due to a pump failure. In each instance, some of the spilled material was reported to have been recovered, but not all of it. In addition, records show that petroleum substances were removed by vacuum truck at the API and overflow (Baker) tanks repeatedly from August 2009 through February 29, 2010. (Vacuum Truck Logsheets for Aug. 26, 2009, Aug. 27, 2009, Aug. 29, 2009, Sept. 2, 2009, Oct. 16, 2009, Oct. 20, 2009, Oct. 22, 2009, Oct. 23, 2009, Oct. 26, 2009, Oct. 27, 2009, Oct. 28, 2009, Oct. 29, 2009, Nov. 3, 2009, Nov. 4, 2009, Nov. 5, 2009, Nov. 13, 2009, Dec. 8, 2009, Dec. 9, 2009, Dec. 10, 2009, Dec. 17, 2009, Jan. 7, 2010, Jan. 8, 2010, Jan. 18, 2010, Jan. 19, 2010, Jan. 25, 2010, and Feb. 5, 2010). Inspection records contain photographs that show oil stains on the ground from the overflows at AOC 15. Furthermore, ground water monitoring wells (NAPIS-2, NAPIS-3, and KA-3) in the vicinity of AOC 15 (and AOC 16) have detected benzene, ethyl benzene, and MTBE in excess of the EPA RSLs for Tap Water and the WQCC standards for water quality as reported in the Facility-Wide Groundwater Monitoring Report(s).	Since 6/23/07 or earlier, this area has been under OCD jurisdiction, 19.15.29 NMAC Release Notification. Any subsequent remediation efforts would be subject to OCD Jurisdiction, 19.15.30 NMAC Remediation.	The C-141 Release Notifications documents that NMOCD has assumed jurisdiction over the releases.
AOC 16	New API Separator Overflow Tanks	Many of the spills reported at AOC 15 also affected the overflow tanks (Baker Tanks) at AOC 16, including the spills on June 23, 2007, June 10, 2009, September 5, 2009, December 8, 2009, July 30, 2010, and August 2, 2010. Similarly, logsheets cited above for AOC 15 show that the petroleum substances removed by vacuum truck were removed from the "API Baker" area. Inspection photographs also show oil stains at AOC 16. Further, AOC 16 is a likely source of groundwater contamination in the vicinity of AOC 15 and AOC 16.	Since 6/23/07 or earlier, this area has been under OCD jurisdiction, 19.15.29 NMAC Release Notification. Any subsequent remediation efforts would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	The C-141 Release Notifications documents that NMOCD has assumed jurisdiction over the releases.
AOC 17	Railroad Loading/Unloading Facility	Loading and unloading of petroleum products at AOC 17 is conducted using movable pipes and hoses temporarily connected to rolling stock; such operations inevitably result in occasional leaks and spills. As EPA notes in corrective action guidance: "Another example [of a solid waste management unit] might be a loading/unloading area at a facility, where coupling and decoupling operations, or other practices result in a relatively small but steady amount of spillage or drippage, that, over time results in highly contaminated soils." EPA Proposed Rule, Corrective Action for Solid Waste Management Units, 55 Fed. Reg. 30,798, 30,808-09 (July 27, 1990). Although EPA never issued this proposal as a final rule, it nevertheless relies on the preamble to the proposed rule as guidance. 61 Fed. Reg. 19,432, 19,434 (May 1, 1996). Inspection records show that water and oil have been vacuumed from the railroad rack and east of the tracks at AOC 17 in August 2009 and February 2010. (Vacuum Truck Logsheets for Aug. 28, 2009, and Feb. 19, 2010). An old sump at AOC 17 received oily water, which was discharged through a pipe to SWMU 8 (Railroad Rack Lagoon) and is the source of waste petroleum at SWMU 8.	Upon discovery, reportable quantity (RQ) releases are reported to OCD in accordance with 19.15.29 NMAC Release Notification. Any subsequent remediation efforts would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	Lack of evidence of a release under the NMED HWB regulations.
AOC 18	Heat Exchanger Bundle Cleaning Pad	Heat exchanger bundle elements are pressure cleaned of scale deposits on a partially-enclosed concrete pad at AOC 18. The sludge from the cleaning is collected using vacuum hoses. This sludge is a hazardous waste (K050). In September 2007, EPA inspectors noted in their report improper storage of hazardous waste at AOC 18. During years of operations, some of this sludge has been released into the environment.	Upon discovery, reportable quantity (RQ) releases are reported to OCD in accordance with 19.15.29 NMAC Release Notification. Any subsequent remediation efforts would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	Lack of evidence of a release under the NMED HWB regulations.
AOC 19	Asphalt Tank Farm (tanks 701-709, 713, 714)	Storage tanks and piping are potential sources of releases from AOC 19. The Department has received two C-141 Release Notification reports for spills at AOC 19. On September 16, 2007, approximately 200 barrels (8,400 gallons) of heavy oil (feed oil for fluidized catalytic cracking) was spilled when operators erroneously attempted to pump the oil into a fill tank (Release Notification dated Sept. 19, 2007); on March 19, 2008, approximately 5 to 6 barrels (210 to 252 gallons) of fuel oil were spilled when a pump failed (Release Notification dated March 26, 2008). Again, some but not all of the spilled material was recovered. A vacuum truck was also used to clean up several spills at AOC 19 in 2010 (Vacuum Truck Logsheets for (November 5, 2009). Photographs taken during an inspection in 2001 show streaks of oil on pipes and valves, oil and oil staining on the ground, and other evidence of spills around the asphalt tanks.	Since 9/16/07 or earlier, this area has been under OCD jurisdiction, 19.15.29 NMAC Release Notification. Any subsequent remediation efforts would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	The C-141 Release Notifications documents that NMOCD has assumed jurisdiction over the releases.
AOC 20	East Fuel Oil Loading Rack	The loading of petroleum products at AOC 20 is conducted using an overhead flexible hose temporarily connected to trucks, which inevitably results in occasional leaks and spills. See EPA Proposed Rule, 55 Fed. Reg. at 30,808-09. A vacuum truck was used to clean up several spills at AOC 20 in 2010 (Vacuum Truck Logsheets for 2010). The March 19, 2007 spill at AOC 19, which is almost adjacent to AOC 20, also affected AOC 20.	Since 3/17/07 or earlier, this area has been under OCD jurisdiction, 19.15.29 NMAC Release Notification. Any subsequent remediation efforts would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	The C-141 Release Notifications documents that NMOCD has assumed jurisdiction over the releases.
AOC 21	Crude Slop and Ethanol Unloading Facility	The unloading of petroleum products at AOC 21 is conducted using movable pipes and hoses temporarily connected to trucks, which inevitably results in occasional leaks and spills. See EPA Proposed Rule, 55 Fed. Reg. at 30,808-09.	Upon discovery, reportable quantity (RQ) releases are reported to OCD in accordance with 19.15.29 NMAC Release Notification. Any subsequent remediation efforts would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	Lack of evidence of a release under the NMED HWB regulations.
AOC 22	Main Loading Racks	The loading of petroleum products at AOC 22 is conducted using overhead hoses temporarily connected to trucks, which inevitably results in occasional leaks and spills. See EPA Proposed Rule, 55 Fed. Reg. at 30,808-09. The underground piping is also a potential source of leaks. The Department has received two C-141 Release Notification reports for spills at AOC 22. On December 4, 2007, approximately 6,800 gallons of gasoline was spilled when a truck driver operator erroneously opened a valve on a tanker truck (Release Notification dated Dec. 7, 2007); on December 23, 2009, approximately 44 barrels (1,848 gallons) of diesel fuel was spilled from a leaking underground pipeline at the west end of the loading rack (Release Notification dated Dec. 29, 2009). Not all of the material spilled in these incidents was recovered.	Since 12/4/07 or earlier, this area has been under OCD jurisdiction, 19.15.29 NMAC Release Notification. Any subsequent remediation efforts would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	The C-141 Release Notifications are proof that NMOCD has assumed jurisdiction over the releases.
AOC 23	Loading Rack Additive Tank Farm	The loading of gasoline additives, such as methyl tertiary butyl ether (MTBE), at AOC 23 is conducted using overhead hoses temporarily connected to trucks, which inevitably results in occasional leaks and spills. See EPA Proposed Rule, 55 Fed. Reg. at 30,808-09. The storage tanks and underground piping are also potentially susceptible to leaks. MTBE has been detected in groundwater downgradient of AOC 23, and AOC 23 is the likely source. MTBE is a toxic pollutant under New Mexico groundwater quality regulations. 20.6.2.7.WW(31) NMAC.	Upon discovery, reportable quantity (RQ) releases are reported to OCD in accordance with 19.15.29 NMAC Release Notification. Any subsequent remediation efforts would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	Lack of evidence of a release under the NMED HWB regulations.

# TABLE A

## NEW AREAS OF CONCERN (AOCs) PROPOSED BY NMED IN RCRA PERMIT RENEWAL

Unit ID	Unit Description	NMED justification for inclusion in permit renewal	Jurisdiction	Western's Position
AOC 24	Retail Fuel Tank Farm (tanks 1-10)	Storage tanks and associated piping are potential sources of releases from AOC 24. The Department has received two C-141 Release Notification reports for spills at AOC 24. On March 7, 2008, approximately 70 barrels (2,800 gallons) of diesel fuel was spilled during an "auto fill" when the transfer pump did not switch off at the preselected level (Release Notification dated March 10, 2008); on December 31, 2007, approximately 52 barrels (1,344 gallons) of ethanol was spilled when a pressure gauge on Tank 5 became loose and began leaking (Release Notification dated Jan. 2, 2008). AOC 24 is also a possible source of MBTE contamination in groundwater.	Since 1/2/08 or earlier, this area has been under OCD jurisdiction, 19.15.29 NMAC Release Notification. Any subsequent remediation would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	The C-141 Release Notifications documents that NMOCD has assumed jurisdiction over the releases.
AOC 25	Crude Oil Tank Farm (tanks 101 and 102)	Storage tanks and associated underground piping are potential sources of releases from AOC 24. The Department has received a C-141 Release Notification report for AOC 25; on December 31, 2006, approximately 6 barrels (250 gallons) of crude oil was spilled onto the ground when a process sewer drain line from the water draw on Tank 102 became clogged causing the drain box to overflow (Release Notification dated Jan 2, 2006).	Since 12/31/06 or earlier, this area has been under OCD jurisdiction, 19.15.29 NMAC Release Notification. Any subsequent remediation would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	The C-141 Release Notifications documents that NMOCD has assumed jurisdiction over the releases.
AOC 26	Tank 573 (Kerosene tank)	The storage tank and associated piping at AOC 26 are potential sources of leaks.	Upon discovery, reportable quantity (RQ) releases are reported to OCD in accordance with 19.15.29 NMAC Release Notification. Any subsequent remediation efforts would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	Lack of evidence of a release under the NMED HWB regulations.
AOC 27	Process Units	Drains and underground piping, valves and connectors, and various process units are potential sources of leaks at AOC 27. The Department has received three C-141 Release Notification reports for spills at AOC 27. On October 19, 2009, approximately 30 barrels (1,260 gallons) of oily water was discovered in a ditch immediately to the north of AOC 27 (Release Notification dated Oct. 20, 2009); on December 3, 2009, somewhat less than 79 barrels (approximately 79 gallons) of gasoline was found to have leaked from a product line in the process area (Release Notification dated Dec. 4, 2009). Department personnel have observed oil stains on the ground at AOC 27.	Since 11/19/11 or earlier, this area has been under OCD jurisdiction, 19.15.29 NMAC Release Notification. Any subsequent remediation would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	The C-141 Release Notifications are proof that NMOCD has assumed jurisdiction over the releases.
AOC 28	Boiler and Cooling Unit Area	Oily water was removed from the boiler house drain sump and sewer boxes at AOC 28 in 2009 and 2010 (Vacuum Truck Logsheets for Sept. 2, 2009, Jan. 6, 2010, Feb. 4, 2010, Feb. 5, 2010, Feb. 10, 2010, Feb. 12, 2010, and Mar. 3, 2010). According to a C-141 Release Notification report, on April 24, 2010 somewhat less than 18 barrels (740 gallons) of sour naphtha leaked from an underground pipe near the cooling unit (Release Notification dated April 26, 2010). Chromate undoubtedly was used in the past in the cooling unit.	Upon discovery, reportable quantity (RQ) releases are reported to OCD in accordance with 19.15.29 NMAC Release Notification. Any subsequent remediation efforts would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	The C-141 Release Notifications documents that NMOCD has assumed jurisdiction over the releases.
AOC 29	Warehouse and Maintenance Shop Area	Floor drains and underground piping at AOC 29 are potential sources of releases. These facilities have managed used oil and industrial solvents. Used oil and oil sludge was vacuumed from the site in October 2009 and January 2010 (Vacuum Truck Logsheets for Oct. 23, 2009, Jan. 18, 2010).	Upon discovery, reportable quantity (RQ) releases are reported to OCD in accordance with 19.15.29 NMAC Release Notification. Any subsequent remediation efforts would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	Lack of evidence of a release under the NMED HWB regulations.
AOC 30	Equipment Yard and Drum Storage Area	AOC 30 has been used to store old equipment, which may have leaked residual petroleum or used oil, and drums containing various chemicals, including liquids.	Upon discovery, reportable quantity (RQ) releases are reported to OCD in accordance with 19.15.29 NMAC Release Notification. Any subsequent remediation efforts would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	Lack of evidence of a release subject to NMED HWB regulations.
AOC 31	Laboratory	Laboratory sinks, floor drains, and underground piping at AOC 31 are potential sources of releases. On October 26, 2005, Department inspectors observed at the Laboratory two containers of cuprous chloride, a corrosive hazardous waste (D002), that were leaking their contents. Consequently, the Department sent Giant Refining Co. (predecessor to Western Refining) a notice of violation for mishandling corrosive hazardous waste on October 25, 2006.	Upon discovery, reportable quantity (RQ) releases are reported to OCD in accordance with 19.15.29 NMAC Release Notification. Any subsequent remediation efforts would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	Lack of evidence of a release subject to NMED HWB regulations.
AOC 32	Tanks 27 and 28	The storage tanks and associated piping, including old underground piping, at AOC 32 are potential sources of leaks.	Since 10/12 or earlier, this area has been under OCD jurisdiction, 19.15.29 NMAC Release Notification. Any subsequent remediation would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	The C-141 Release Notification for T-35, which is in the same area, is proof that NMOCD has assumed jurisdiction over the releases.
AOC 33	Flare and Ancillary Tanks (tanks Z85V2, V85V3, Z84-T105)	The storage tanks and associated piping at AOC 33 are potential sources of releases. The Department has received two C-141 Release Notification reports for spills at AOC 33. On January 2, 2011, approximately 12 barrels (504 gallons) of slop oil was spilled when a pipeline connecting Tank 105 and tank 107 ruptured due to a freeze in the line (Release Notification dated Jan. 14, 2011); on January 4, 2011, approximately 9527 pounds of sodium hydroxide was spilled from the caustic tank line due to corrosion and a line and valve freeze (Release Notification dated Jan. 14, 2011). Department inspectors observed oil stains near the flare and ancillary tanks during a site visit in 2007 and during a subsequent site visit in 2009.	Since 1/2/11 or earlier, this area has been under OCD jurisdiction, 19.15.29 NMAC Release Notification. Any subsequent remediation would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	The C-141 Release Notifications are proof that NMOCD has assumed jurisdiction over the releases.
AOC 34	Storm Water Collection System	The storm water collection system receives process water from the process area and other parts of the refinery. Much of the system is underground, and many points in the system are susceptible to leaks. The Department has received two C-141 Release Notification reports for spills at AOC 34. On December 27, 2006, approximately 5 barrels (200 gallons) of diesel fuel was released into the Storm Water Collection System when a heater tube in a process unit failed (Release Notification dated Dec. 29, 2006); on July 7, 2007, approximately 200 gallons of water mixed with kerosene was released into the Storm Water Collection System when a heater tube failed (Release Notification dated July 10, 2007).	Since 12/27/06 or earlier, this area has been under OCD jurisdiction, 19.15.29 NMAC Release Notification. Any subsequent remediation would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	Should be part of SWMU 12.
AOC 35	Scrap Yard	AOC 35 has been used to store old machinery, tanks, piping and valves, steel drums, paint cans, and other scrap. Old machinery may have leaked used oil or hydraulic fluid. Old tanks, pipes, and valves may have leaked residual liquid petroleum. On June 14, 1995, Department inspectors observed and photographed nearly 100 old one-gallon and five-gallon paint cans, some of them rusted or otherwise in poor condition, stored in the Scrap Yard ("Bone Yard"). On October 26, 1995, the Department sent Giant Refining Company (predecessor to Western Refining) a notice of violation for failure to make a hazardous waste determination for the contents of the containers.	Upon discovery, reportable quantity (RQ) releases are reported to OCD in accordance with 19.15.29 NMAC Release Notification. Any subsequent remediation efforts would be subject to OCD Jurisdiction 19.15.30 NMAC Remediation.	Lack of evidence of a release under the NMED HWB regulations.

**ATTACHMENT E**

**PERMIT ATTACHMENT E: COMPLIANCE SCHEDULE**

This Compliance Schedule briefly lists particular requirements specified in the Permit and their associated due dates. The complete requirements are found in the referenced Permit Sections.

**TABLE E-1  
Compliance Schedule**

<b>Permit Section</b>	<b>Requirement</b>	<b>Due date</b>
<b>Submittals Due After Permit Issuance</b>		
I.G.5	Permit Renewal	180 days before the expiration date of the Permit
II.C.12	Biennial Report	March 1 <sup>st</sup> of even numbered years
II.D	Annual closure cost estimate	<del>on an annual basis within sixty (60) days prior to the anniversary date of the establishment of the financial instrument for the Facility</del> <b>March 31st</b>
IV.C.2	Facility-wide Groundwater Monitoring Work Plan	April 1st <del>of odd numbered years</del> <b>of each calendar year</b>
III.E and Attachment D	Post-closure Care Sampling Events	19 <sup>th</sup> year sampling event 2018

TABLE E-2

Corrective Action ~~Work Plan~~ Submittal Schedule

Unit ID Number	Unit Description	<del>Work Plan</del> Submittal Date
SWMU 1	Aeration Basins	<del>Work Plan</del> - Submitted
SWMU 2	Evaporation Ponds	<del>Petition for NFA Submitted</del> January 31, 2019
SWMU 3	Empty Container Storage Area	<del>Petition for NFA Submitted</del> March 1, 2012
SWMU 4	Old Burn Pit	<del>Petition for NFA Submitted</del> June 30, 2012
SWMU 5	Landfill Areas	<del>Petition for NFA Submitted</del> September 30, 2012
SWMU 6	Tank Farm	<del>Work Plan</del> - December 31, 2012 2018
SWMU 7	Fire Training Area	<del>Petition for NFA Submitted</del> March 31, 2013
SWMU 8	Railroad Rack Lagoon and Fan-Out Area	<del>Petition for NFA Submitted</del> December 31, 2013
SWMU 9	Drainage Ditch and Inactive Landfarm	<del>Petition for NFA Submitted</del> June 30, 2013
<del>SWMU 10</del>	<del>Sludge Pits</del>	<del>Petition for NFA Submitted</del>
SWMU 11	Secondary Oil Skimmer	<del>Petition for NFA Submitted</del> December 31, 2013
SWMU 12	Contact Wastewater Collection System	<del>Petition for NFA Submitted</del> March 31, 2014
SWMU 13	Drainage Ditch Between API Evaporation Ponds and Neutralization Tank Evaporation Ponds	<del>Petition for NFA Submitted</del> June 30, 2014
SWMU 14	Old API Separator	<del>Work Plan</del> - Submitted
<del>SWMU 15</del>	<del>New API Separator</del>	<del>September 30, 2014</del>
<del>SWMU 16</del>	<del>New API Separator Overflow Tanks</del>	<del>September 30, 2014</del>
<del>SWMU 17</del>	<del>Railroad Loading/Unloading Facility</del>	<del>December 31, 2014</del>
<del>SWMU 18</del>	<del>Heat Exchanger Bundle Cleaning Pad</del>	<del>March 31, 2015</del>
<del>SWMU 19</del>	<del>Asphalt Tank Farm (tanks 701-709, 713,</del>	<del>June 30, 2015</del>

	714)	
<del>SWMU 20</del>	<del>East Fuel Oil Loading Rack</del>	<del>June 30, 2015</del>
<del>SWMU 21</del>	<del>Crude Slop and Ethanol Unloading Facility</del>	<del>September 30, 2015</del>
<del>SWMU 22</del>	<del>Main Loading Racks</del>	<del>December 31, 2015</del>
<del>SWMU 23</del>	<del>Loading Rack Additive Tank Farm</del>	<del>March 31, 2016</del>
<del>SWMU 24</del>	<del>Retail Fuel Tank Farm (tanks 1-7, 912, 913, 1001, 1002)</del>	<del>March 31, 2016</del>

<b>Unit ID Number</b>	<b>Unit Description</b>	<b>Work Plan Submittal Date</b>
SWMU 25	Crude Oil Tank Farm (tanks 101 and 102)	June 30, 2016
SWMU 26	Tank 573 (Kerosene tank)	December 31, 2014
SWMU 27	Process Units	April 30, 2019
SWMU 28	Boiler and Cooling Unit Area	September 30, 2016
SWMU 29	Warehouse and Maintenance Shop Area	December 31, 2016
SWMU 30	Equipment Yard and Drum Storage Area	March 31, 2017
SWMU 31	Laboratory	June 30, 2017
SWMU 32	Tanks 27 and 28	September 30, 2017
SWMU 33	Flare and Ancillary Tanks (tanks Z85V2, V85V3, Z84-T105)	December 31, 2017
SWMU 34	Storm Water Collection System	March 31, 2018
SWMU 35	Scrap Yard	June 30, 2018

**ATTACHMENT G**

**ATTACHMENT G: LIST OF UNITS**

**TABLE G-1  
SOLID WASTE MANAGEMENT UNITS (SWMUS) & AREAS OF CONCERN (AOCs)  
REQUIRING CORRECTIVE ACTION**

Unit ID Number	Unit Description	Notes
SWMU 1	Aeration Basins	
SWMU 2	Evaporation Ponds	
SWMU 3	Empty Container Storage Area	
SWMU 4	Old Burn Pit	
SWMU 5	Landfill Areas	
SWMU 6	Tank Farm	
SWMU 7	Fire Training Area	
SWMU 8	Railroad Rack Lagoon and Fan-Out Area	
SWMU 9	Drainage Ditch and Inactive Landfarm	
SWMU 10	Sludge Pits	
SWMU 11	Secondary Oil Skimmer	
SWMU 12	Contact Wastewater Collection System	
SWMU 13	Drainage Ditch Between API Evaporation Ponds and Neutralization Tank Evaporation Ponds	
SWMU 14	Old API Separator	
<del>SWMU 15</del>	<del>New API Separator</del>	
<del>SWMU 16</del>	<del>New API Separator Overflow Tanks</del>	
<del>SWMU 17</del>	<del>Railroad Loading/Unloading Facility</del>	
<del>SWMU 18</del>	<del>Heat Exchanger Bundle Cleaning Pad</del>	
<del>SWMU 19</del>	<del>Asphalt Tank Farm (tanks 701-709, 713, 714)</del>	
<del>SWMU 20</del>	<del>East Fuel Oil Loading Rack</del>	
<del>SWMU 21</del>	<del>Crude Slop and Ethanol Unloading Facility</del>	
<del>SWMU 22</del>	<del>Main Loading Racks</del>	
<del>SWMU 23</del>	<del>Loading Rack Additive Tank Farm</del>	

Unit ID Number	Unit Description	Notes
SWMU 24	Retail Fuel Tank Farm (tanks 1-7, 912, 913, 1001, 1002)	
SWMU 25	Crude Oil Tank Farm (tanks 101 and 102)	
SWMU 26	Tank 573 (Kerosene tank)	
SWMU 27	Process Units	
SWMU 28	Boiler and Cooling Unit Area	
SWMU 29	Warehouse and Maintenance Shop Area	
SWMU 30	Equipment Yard and Drum Storage Area	
SWMU 31	Laboratory	
SWMU 32	Tanks 27 and 28	
SWMU 33	Flare and Ancillary Tanks (tanks Z85V2, V85V3, Z84-T105)	
SWMU 34	Storm Water Collection System	
SWMU 35	Scrap Yard	

This list shall be modified if any additional SWMUs or AOCs are discovered or reported after the effective date of this Permit and the NMED determines that additional investigation of such SWMU or AOC is necessary.

**TABLE G-2**  
**SWMUs & AOCs**  
**CORRECTIVE ACTION COMPLETE WITH CONTROLS**

NAME	UNIT DESCRIPTION

**TABLE G-3**  
**SWMUs & AOCs**  
**CORRECTIVE ACTION COMPLETE WITHOUT CONTROLS**

NAME	UNIT DESCRIPTION