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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

August 4, 2014

Mr. Ed Riege
Environmental Manager
Western Refining, Southwest Inc., Gallup Refinery
92 Giant Crossing Road
Gallup, New Mexico 87301

**RE: DISAPPROVAL
EVAPORATION POND 7 DIKE BREACH
WESTERN REFINING SOUTHWEST INC., GALLUP REFINERY
EPA ID # NMD000333211
HWB-WRG-14-003**

Dear Mr. Riege:

The New Mexico Environment Department (NMED) has received Western Refining Southwest Inc., Gallup Refinery's (Permittee) letter report, *Evaporation Pond 7 Dike Breach (Report)*, dated April 2014. Based on the review of the Report, NMED hereby issues this disapproval with the following comments requiring the Permittee's response.

Comment 1

The Permittee states in the final paragraph of page 2 of the Report that, "NMED noted in its March 20th email that previous water samples from Pond 7 had contained concentrations of several constituents above "screening levels." Western would like to clarify that the screening levels reported in the previous submittals of the Gallup Refinery Annual Groundwater Monitoring Reports are specific to groundwater and were included in all data tables for initial comparison purposes only. However, the groundwater screening levels are not applicable to water in the refinery's evaporation ponds. We also note that the evaporation ponds at the Gallup Refinery are not "surface water(s) of the State," as defined in New Mexico Administrative Code 20.6.4.7.CCC." It appears the Permittee used CCC as a placeholder, the citation is 20.6.4.7.S(5)

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NMAC which states, “[w]aste treatment systems, including treatment ponds or lagoons designed and actively used to meet requirements of the Clean Water Act (other than cooling ponds as defined in 40 CFR Part 423.11(m) that also meet the criteria of this definition), are not surface waters of the state, unless they were originally created in surface waters of the state or resulted in the impoundment of surface waters of the state.” The evaporation ponds are not waters of the state as defined in NMAC; however, evaporation ponds are hazardous waste surface impoundments, because hazardous waste has been discharged to the ponds in the past, and wastewater stored in the evaporation ponds remains subject to RCRA Subtitle C from its point of generation through and including its storage and treatment in the evaporation ponds. Once the wastewater left evaporation pond 7 through the breach, it became a release from a solid waste management unit (SWMU), SWMU No. 2, which the Permittee is required under 40 CFR § 264.101 and Permit Sections IV.H (Corrective Action Procedures) and IV.B.1 (Corrective Action beyond the Facility Boundary) to properly investigate and, if necessary, remediate any release. Such a release is also subject to the reporting requirements of Permit Section II.C. Additionally, screening levels indicate the potential for contamination; therefore, the screening levels used in the Facility-Wide Groundwater Monitoring Report (the Permittee compares the surface water samples collected at the evaporation ponds to: WQCC 20.6.2.3103 NMAC; 40 CFR § 141.62 MCL (Apr 2013); and EPA RSL Tap Water (Nov 2012)) are used as a screening tool to determine whether or not the wastewater held in the evaporation ponds may contaminate soil or groundwater.

Comment 2

The laboratory analytical reports included with the Report indicates that the soils that were affected by the pond breach were not affected by hazardous constituents; however, the Permittee did not include any information regarding the methods and procedures used to collect the soil and water samples. Therefore, NMED is not able to fully assess the spill or cleanup information. In a letter response, include descriptions of the methods used to collect soil and water samples, and the collection depths of the soil samples. Furthermore, the soil samples were analyzed for TCLP Metals only, for proper characterization the samples should have been analyzed for total metals. TCLP is used for waste characterization purposes, not site characterization and cleanup.

Comment 3

Under the heading “April 2014 Pond Dike Seepage”, the Permittee states, “Western submitted form C-141 on July 18, 2014 [NOTE: the correct date is July 18, 2013] to inform NMOCD and NMED of actions being taken to prevent future seepage and planned activities to investigate soils along the evaporation pond dikes where seepage had been previously observed. The soil samples were analyzed for semi-volatile organic compounds (“SVOCs”) and chloride, as reported to NMOCD and NMED on October 14, 2013. While no SVOCs were detected, chloride was found at concentrations exceeding values obtained from three background samples.” In addition NMED does not consider the “background samples” to be appropriate background samples. If the Permittee wishes to use background samples, then the Permittee must submit a soil

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background study work plan for NMED review and approval following the requirements outlined in Permit Section IV.J.6 (Determination of Background) and established in EPA and NMED guidance. The chloride levels reported in the October 2013 letter report exceeded the chloride standards set by the OCD.

Comment 4

The level of wastewater in the evaporation ponds has been an issue since at least 2012 when evaporation pond 1 overflowed. In May 2013 there was seepage noted from evaporation ponds 2, 6, 7, 8, 9, 11 as reported in the C-141 dated May 8, 2013, submitted to NMED on July 18, 2013. The Surface Water Quality Bureau NPDES compliance inspection report from May 8, 2013 states, “[a]s the inspectors were looking at Outfall 001, they noted that there was major seepage coming through the toe of the berms at evaporation ponds # 7 & 8... The way that the seepage was occurring was a concern because the water is not captured by the small ponding area prior to Outfall 001 and could essentially become an uncontrolled point of discharge of process water.” It appears that the Permittee did not immediately address the seepage, until the breach occurred on March 19, 2014, almost a year later. The Permittee is responsible for maintenance of the evaporation ponds. 40 CFR § 264.221(g) states that “[a] surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and wave action; rainfall; run-on; malfunctions of level controllers, alarms, and other equipment; human error.” In addition, 40 CFR § 264.221(h) states, “[a] surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes.” SWMU 2 is not a permitted unit; however, the standards for surface impoundments described in 40 CFR 264 Subpart K establish the design criteria applicable to this SWMU. The Permittee failed to properly maintain the facility’s structures and are subject to an enforcement action in the event of additional releases from the evaporation ponds. The Permittee must demonstrate that the dikes have been repaired and are currently maintained and must ensure that the head or freeboard maintained in the ponds is sufficient enough to maintain the structural integrity of the berms. Include information regarding the methods and materials used to repair the berms. The Permittee must note that 40 CFR § 264.227(a) requires that “[a] surface impoundment must be removed from service in accordance with paragraph (b) of this section if: (1) The level of liquids in the impoundment suddenly drops and the drop is not known to be caused by changes in the flows into or out of the impoundment; or (2) The dike leaks.” In the future, if additional berm failures occur, the Permittee will be subject to the requirements outlined in 40 CFR § 264.227(a) through (e). Provide a contingency plan and an inspection plan for berm maintenance. Provide a figure depicting the location of Outfall 1 and the groundwater monitoring wells in the vicinity of the breach.

Comment 5

At the time of the Report, the Permittee was waiting for off-site access. In the letter response, discuss whether off-site access was granted and whether or not chloride contaminated soils have

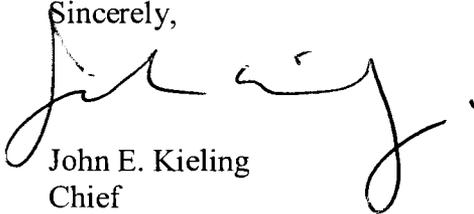
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been removed. Provide confirmation sample collection methods, analytical data and a figure depicting the locations of the confirmation samples. In addition discuss whether or not the methods proposed to maintain adequate freeboard in the evaporation ponds have been successful or not.

The Permittee must address all comments in this Disapproval and submit a response letter on or before **September 15, 2014**.

If you have questions regarding this Disapproval, please contact Kristen Van Horn of my staff at 505-476-6046.

Sincerely,



John E. Kieling
Chief
Hazardous Waste Bureau

cc: D. Cobrain, NMED HWB
N. Dhawan, NMED HWB
K. Van Horn, NMED HWB
A. Hains, WRG
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File: Reading File and WRG 2014 File
WRG-14-003