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RYAN FLYNN
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Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

March 5, 2015

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

**RE: DISAPPROVAL
RESPONSE TO 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, *Response to Disapproval Evaporation Pond 7 Dike Breach* (Response), dated September 12, 2014.

In "Western Response to Comment 1" the Permittee states, "...we believe that Western and NMED share the same interest in assuring that the evaporation pond system at the Gallup refinery is well-functioning and protective of human health and the environment. As a responsible owner and operator of a wastewater treatment system that includes evaporation ponds, Western maintains, and repairs as necessary, the evaporation ponds." The Permittee has not addressed issues regarding dike repair and freeboard in a timely manner, resulting in previous overflows at the evaporations ponds and concerns about the structural integrity of the berms in the past. In 2011, the Permittee was interested in using soil from the Oil Conservation Division (OCD's) NE landfarm for evaporation pond repair and also interested in using soil from the STP-1 excavation; the Permittee has been aware that the evaporation pond berms were in need of repair since at least 2011.

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NMED acknowledges the Permittee's recent investments to ensure that freeboard levels are controlled and that improvements have been made to the dike system. These issues have been problems for several years. During an U.S. Environmental Protection Agency (EPA) corrective action inspection in August 2014, the EPA noted observations of discoloration at the bottom of some berms at the Evaporation Ponds, indicating that the seepage continues to occur. The Permittee must address seepage from the berms.

The Permittee also states, "[f]inally, we note that Western is unaware of any discharges of hazardous waste to Pond 7." NMED did not imply that hazardous waste has been discharged to Pond 7; however, hazardous waste has been discharged into the wastewater treatment system which include the evaporation ponds, and Pond 7. Additionally, even if hazardous waste has not been discharged to evaporation ponds, hazardous constituents are still a concern.

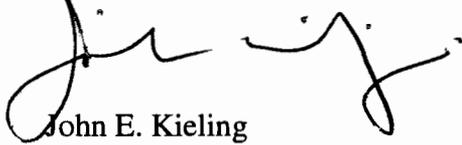
The Permittee claims force majeure because off-site access has not been granted. This does not constitute a force majeure event (see RCRA Permit Section I.J.13. The accepted definition of force majeure that, "essentially frees both parties from liability or obligation when an extraordinary event or circumstance beyond the control of the parties, such as a war, strike, riot, crime, or an event described by the legal term act of God (such as hurricane, flooding, earthquake, volcanic eruption, etc.), prevents one or both parties from fulfilling their obligations under the contract" does not apply.). 20.4.1.500 NMAC incorporating 40 CFR § 264.101(c) requires that the Permittee must conduct corrective action off-site unless the Permittee can demonstrate that, despite the Permittee's best efforts, the Permittee was unable to obtain the permission necessary to do so. Not being allowed to access off-site property does not relieve the Permittee of all responsibility to address an off-site release, the Permittee will have to address the release at some future time. The Permittee must demonstrate to NMED that best efforts were made to gain off-site access; provide this information to NMED within 30 days of receipt of this letter. Such demonstration does not relieve the Permittee of responsibility for cleanup of the release (40 CFR § 264.104(c)).

The Permittee must provide NMED proof that best efforts were made to gain off-site access by **May 8, 2015**.

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

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Kieling". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

John E. Kieling
Chief
Hazardous Waste Bureau

cc: D. Cobrain, NMED HWB
N. Dhawan, NMED HWB
K. Van Horn, NMED HWB
A. Hains, WRG
C. Chavez, EMNRD OCD
S. Holcomb, NMED SWQB
L. King, EPA

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