



July 07, 2016

Via Email and Certified Mail, Return Receipt Requested

Mr. John E. Kieling
Chief, Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 2
Santa Fe, NM 87505-6303

**Re: Response to Notice of Violation
Western Refining Company Southwest, Inc., Gallup Refinery
EPA ID #NMD000333211**

Dear Mr. Kieling:

Western Refining Southwest, Gallup Refinery (“Western”) submits this letter in response to the New Mexico Environment Department Hazardous Waste Bureau’s (the “Bureau”) April 20, 2016 Notice of Violation (“NOV”) relating to a soils excavation described in the July 2015 *Western Refining Hydrocarbon Seep Interim Measures Report* (the “Report”).¹ Pursuant to an April 20, 2016 email from Kathryn Roberts, NMED Resource Protection Division Director, to Ann Allen of Western, the deadline for completing the “Compliance” actions outlined in the NOV is August 5, 2016. Western is providing this response letter well in advance of that deadline to allow ample time for a meeting between Western and NMED, if needed, to discuss any differences in perspective on the points raised in the NOV and below.

I. The NOV’s Assertions

As noted in the NOV, on October 23, 2013, Western excavated a corroded portion of an underground pipeline. As also noted in the NOV, the impacted media (soils) associated with that work were sampled and the Hall Environmental Laboratories’ analytical results demonstrated that the contaminated media did not require management as characteristic hazardous wastes. Additionally, based on the known source of the release, the contaminated media did not contain listed hazardous wastes. As a result, the impacted soils were handled and disposed as non-hazardous waste. However, the NOV makes two general and summary assertions: (i) that Western failed to consider the source

¹ Note that Western also received an April 26, 2016 “Disapproval” letter from the Bureau concerning the Report. That letter repeats some of the allegations that are contained in the NOV. Accordingly, Western expects that today’s letter, in part, will inform Western’s response to the “Disapproval” letter on overlapping issues.

of the release, and (ii) that the impacted soils contained listed RCRA hazardous waste and should have been disposed as hazardous. The NOV asserts that “the soils contained listed hazardous waste (F037 at a minimum and potential others; e.g., D049, K050, K169, and K170) because of the types of waste conveyed in the sewer system.”

II. Western’s Response

Western specifically denies that it did not consider the source of the release. It appears that NMED may have a basic factual misunderstanding about the contents of the portion of the pipeline at issue. The facts, summarized below, indicate that the contaminated media did not contain, and could not have contained, listed hazardous waste based on the actual source.

A. No RCRA Waste Listing is Applicable

In previous correspondence, and the Report, the subject portion of the truck rack line is generally described at various times as being part of the “process sewer system,” also sometimes referred to as the contact wastewater system or the wastewater collection pipeline. The particular pipeline at issue in the NOV, referred to herein as the “truck rack line” (and sometimes described geographically by its proximity to above-ground units such as Crude Tank 102 or the bundle cleaning pad) carries an intermittent water flow originating from the truck rack, and is intersected by the instrument and electrical (“I&E”) maintenance shop (described more fully in Section II.C. below) and lab sink drains. The truck rack line, a portion of which was excavated and replaced, conveyed storm water and truck loading area wash water containing small quantities of gasoline and diesel drained from trucks and hoses into the sewer system. The I&E line contributed hand wash water and instrument testing water, and the lab sinks contributed bottle washings and unused or spent water samples and hydrocarbon samples. No process wastewater was discharged into the truck rack line from these sources, and no process wastewater would enter the refinery’s sewer system until a point that was downstream of the replaced line. The sole sources of the contamination in the excavated media were associated with wastewater from the truck rack, the lab sinks, and the I&E maintenance shop. Consequently, based on the source, no F037, F038, or any other waste listed in 40 C.F.R. Part 261 was released from the truck rack line or contained in the contaminated media excavated with the line.

As you are aware, the regulatory RCRA listings for hazardous waste are very specific, and limited to precise materials generated in specifically defined ways in specifically designed processes and units:

F037: The F037 listing is specifically limited, and applicable only, to refinery primary oil/water/solids separation sludge generated from gravitational separation during storage or treatment of process wastewaters and oily cooling wastewaters. The excavated sewer line never contained process wastewaters or oily cooling

wastewaters; therefore, no sludge from gravitational separation of such materials could be present in the line. Any materials associated with the subject truck rack line could not be F037.²

F038: The F038 listing is specifically limited, and applicable only, to sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. The excavated truck rack line never contained process wastewaters or oily cooling wastewaters. (For your information, the refinery's dissolved gas flotation ("DGF") unit is located at the wastewater treatment plant ("WWTP"), which is approximately 1,056 feet to the NW at a lower elevation than the truck rack line.) Therefore, no sludge from physical or chemical separation of process wastewaters or oil cooling wastewaters could be present in the line. Any materials associated with the subject truck rack line could not be F038.

K048: This listing is specifically limited, and applicable only, to dissolved air flotation (DAF) float. The refinery does not have a DAF unit. The excavated truck rack line is not associated in any way with a DAF and, thus, could not (and did not) contain DAF float. Any materials associated with the subject truck rack line could not be F048.

K049: This listing is specifically limited, and applicable only, to slop oil emulsion solids. The excavated sewer line is not associated with the slop oil system. Slop oil and solids are primarily produced at T-35, T-27, T-28, and the NAPIS, which are at least 1,056 feet downstream to the W/NW, and at least 200 feet lower elevation than the excavated truck rack line. The excavated truck rack line, thus, could not (and did not) contain slop oil or slop oil emulsion solids. Any materials associated with the subject truck rack line could not be F049.

K050: This listing is specifically limited, and applicable only, to heat exchanger bundle cleaning sludge. Although there is a heat exchanger bundle cleaning pad on the surface in the vicinity of the subject truck rack line, bundle cleaning sludge is collected in a sump at the bundle cleaning pad, and this sump and connecting sewer line are geographically downgradient from the excavated truck rack line. The excavated soils are not associated with the heat exchanger bundle cleaning pad. References in the Report and on the manifests to the bundle cleaning pad and the cleanup were included solely as a geographical reference to the nearest surface unit to the soils, not as an indication of a source. The source of the soils

² Western also notes that sludge meeting the regulatory F037 hazardous waste listing would not have been at issue even if the excavated line had received process wastewaters or oily cooling wastewaters. However, that legal point is not reached in this matter since no process wastewaters or oily cooling wastewaters were present in the line.

contamination was the truck rack line and any material associated with that line could not be K050.

K051: This listing is specifically limited, and applicable only, to API separator sludge. The refinery's API separator is located at least 1,056 feet NW, and at 200 feet lower elevation, than the excavated truck rack line. The excavated truck rack line is not associated in any way with an API separator and, thus, could not (and did not) contain API separator sludge. Any materials associated with the subject truck rack line could not be K051.

K052: This listing is specifically limited, and applicable only, to leaded tank bottoms. Production of leaded gasoline ceased in the late 1980's and there are no storage tanks containing leaded gasoline at the refinery. All leaded gasoline tank drain lines, including the marketing tank, entered the line downstream of the excavated portion of the truck rack line. The portion of the truck rack line is not associated with leaded gasoline stored in a tank and, thus, could not (and did not) contain leaded tank bottoms. Any materials associated with the subject truck rack line could not be K052.

K169: This listing is specifically limited, and applicable only, to crude oil storage tank sediment. The excavated sewer line is not associated in any way with a crude oil storage tank. The crude tanks process sewer line joins the truck rack line approximately 100 yards to the north, and at a lower elevation (i.e. downstream) of the excavated truck rack line. The excavated material could not (and did not) contain crude oil storage tank sediment. The crude tank T-102 referenced in the Report as being in the general vicinity of the removed truck rack line (280 feet southwest), as well as crude tank T-102, were also eliminated by distillation analysis results as the source[s] of the contamination of the soils excavated with the line. Any materials associated with the subject truck rack line cannot be K169.

K170: This listing is specifically limited, and applicable only, to clarified slurry oil tank sediment and/or in-line filter/separation solids only. The excavated sewer line is not associated in any way with a clarified slurry oil tank. Slurry oil is associated with the FCC unit. The process sewer line from this unit does not join the truck rack line until approximately 15 yards downstream to the north. Thus, the excavated material could not (and did not) contain clarified slurry oil tank sediment. Any materials associated with the subject truck rack line cannot be K170.

K171: This listing is specifically limited, and applicable only, to spent hydrotreating catalyst. The excavated sewer line is not associated in any way with hydrotreating catalyst. Hydrotreating catalyst is associated with the diesel hydrotreater, kerosene hydrotreater, and naphtha hydrotreater units.

(Additionally, we note that K171 hydrotreating catalyst is a solid, not a liquid that might be discharged to a sewer.) The process sewer lines from these units do not join the truck rack line until approximately 15 yards downstream to the north of the excavated area. Thus, the excavated material could not (and did not) contain spent hydrotreating catalyst. Any materials associated with the subject truck rack line cannot be K171.

K172: This listing is specifically limited, and applicable only, to spent hydrorefining catalyst. The refinery does not have any processes that use hydrorefining catalyst. The excavated sewer line is not associated in any way with hydrorefining catalyst and, thus, could not (and did not) contain spent hydrorefining catalyst. Any materials associated with the subject truck rack line cannot be K172.

B. The Contaminated Media Was Properly Managed and Disposed

Based on the above, the facts and relevant regulations do not support NMED's assertions that the excavated contaminated media contained listed hazardous waste, and that regulatory violations resulted. Western, therefore, disputes all of the alleged violations in the NOV, including:

- 20.4.1.300 NMAC referencing 40 CFR § 262.11. As noted above, Western made a proper waste determination on the excavated contaminated soil;
- 20.4.1.300 NMAC referencing 40 CFR § 262.12 and § 262.20: The waste at issue was properly characterized as non-hazardous. Western did not offer listed hazardous waste to a facility without an EPA ID number for disposal, and was not required to prepare a hazardous waste manifest for the excavated contaminated soil.
- 20.4.1.300 NMAC referencing 40 CFR § 262.34(b): The waste at issue was properly characterized as non-hazardous. Western was not subject to the 90-day storage accumulation time in 40 CFR § 262.34(b), and did not need an extension of time to store the material.
- 20.4.1.800 NMAC referencing 40 CFR § 268.7(a)(1) and § 268.35: The waste at issue was properly characterized as non-hazardous. Western properly disposed of the waste and is not subject to the referenced LDR requirements applicable to listed hazardous waste.

C. The "Compliance" Actions

Western does not agree that any violations have occurred and, therefore, does not agree that any actions are required to "resolve" the alleged violations. In particular, Western believes that providing the notification to Gandy Marley, Inc. described in the first bullet of the "Compliance" section of NOV not only would be grossly inaccurate but would imply permit violations of Gandy Marley, Inc. that Western has no reason to

believe have occurred.

Western is glad to provide, on a voluntary basis and not as corrective measures, the additional information that NMED seeks in the "Compliance" section of the NOV. (Of course, to the extent that the NOV seeks information about excavated contaminated media that is "listed hazardous waste," there is no relevant information since there was no listed waste managed in connection with the subject excavation.) In response to the second, third, and fourth bullet items in the "Compliance" section of the NOV:

Waste Management: Soil was removed from the trench and placed into a dump truck. The soil was then hauled to a staging yard and placed onto 10 mil plastic surrounded by an earthen berm. A composite sample was taken from selected locations on the pile using a hand auger. Samples were sent to Hall Environmental Laboratories. After our receipt of the laboratory analysis from Hall Environmental Laboratories indicating that the soil was non-hazardous, the soil was placed into 20 cubic yard bins for offsite shipment. Manifests indicate soil was sent off for non-hazardous disposal beginning August 10, 2014 and ending December 16, 2014. The excavated pipe was power washed at the bundle cleaning pad and placed in a 40 cubic yard container prior to being sent offsite to Valley Scrap Metal as scrap metal.

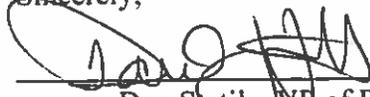
Quantity of Excavated Soil. The Report's reference to 278 cubic yards of soil originally appeared in Western's October 2014 Update-Hydrocarbon Seep/SWMU 12 letter dated October 2014 that was calculated at the time of the letter. Although that October 2014 number appeared in subsequent reports, Western's non-hazardous waste manifests indicate a total quantity of 830 cubic yards was sent for off-site disposal.

The I/E Shop. The I/E shop is a building where instrumentation and electrical technicians perform maintenance and calibration on control valves, transmitters and level indicators. Repair of electrical components and other forms of instrumentation also takes place in this building. Western previously has provided the Bureau detail about this shop, including photos, in connection with AOC 28.

We hope that the preceding discussion will clarify the activities described in the Report. Although Western firmly believes that the violations alleged in the NOV have not occurred, Western would appreciate the opportunity to meet with the Bureau and further discuss the Bureau's perspectives after it has reviewed this letter response, particularly if the Bureau intends to take further enforcement or requires additional clarification. Ann Allen will plan to contact your office in the near future to discuss available dates to meet. Please note that the preceding response is a good-faith effort on the part of Western to resolve differences with NMED over the relevant issues, and

nothing herein should be construed as an admission of any kind. Western reserves all applicable rights and defenses in this matter.

Sincerely,



Dan Statile, VP of Refining

cc: Kathryn Roberts, NMED (via email)
C. Chavez, EMNRD OCD (via email)
Ann Allen (via email)
Allen Hains (via email)