

 **ENTERED**



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Governor

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Lieutenant Governor

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BUTCH TONGATE
Cabinet Secretary
J. C. BORREGO
Acting Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

October 11, 2016

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

**RE: RESPONSE TO NOTICE OF VIOLATION
WESTERN REFINING SOUTHWEST INC., GALLUP REFINERY
EPA ID # NMD000333211**

Dear Mr. Riege:

The New Mexico Environment Department (NMED) is in receipt of Western Refining Southwest, Inc. Gallup Refinery's (Western) submittal *Response to Notice of Violation* (Response) dated July 7, 2016 in response to the April 20, 2016 Notice of Violation (NOV). The NOV addressed several violations stemming from the failure to make a hazardous waste determination for excavated soil prior to off-site disposal based on the *Hydrocarbon Seep Interim Measures Report* (Interim Measures Report) dated July 2015. NMED has reviewed the Response and has determined that Western did not provide sufficient supporting documentation and information to determine whether or not the Response adequately addresses the violations listed in NMED's April 20, 2016 NOV.

Western asserts that "[i]t 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." NMED based the NOV on facts provided by Western in the Interim Measures Report. NMED agrees with some of the statements made regarding potential listed wastes. However, based on the information available, it still appears that F037 and K049 listed wastes were present in the excavated soils. Because Western did not provide figures or diagrams of Solid Waste Management Unit (SWMU) 12 with the Response, it is not possible to verify

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Western's descriptions and statements. NMED requires further explanation in order to withdraw the NOV. Western must provide figures that support the assertions presented in the Response (i.e., provide figures that depict SWMU 12 and depict wastewater flow directions and piping connections). Additionally, the following comments are based on figures in NMED's administrative record (Figure 1 and Figure 2, attached). Western's responses to these comments may also provide more explanation regarding the potential violations.

- In Section A (No RCRA Waste Listing is Applicable), Western states, "[t]he 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 11.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." Based on a figure in a document titled "Stormwater Extension Project" dated October 2007 (Figure 2) and a figure from a RCRA Facility Investigation (RFI) conducted in the 1990s depicting the contact wastewater system (Figure 1), it appears that there is: 1) a stormwater drain pipe from the Process Area that connects to the Truck Rack Line south of the Heat Exchanger Bundle Cleaning Pad; and 2) there is a wastewater line from the Marketing Tanks, Transmix Loading Rack (which is not depicted on the figure, but is depicted on a Plant Layout map in the administrative record), and the Truck Loading Racks that connects to the Truck Rack Line. Therefore, it appears that process wastewater discharges into the Truck Rack Line, as well as wastewater containing slop oil.
- Western states that "[s]lop 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 K049." Based on the available figures, wastewater from the Transmix Loading Rack and Marketing Tanks appears to be conveyed to the Truck Rack Line. Transmix is slop oil, and therefore it appears the Truck Rack Line contained wastewater that carried slop oil and the excavated section of pipeline and associated soils contained K049 listed wastes.

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- Western states that “[t]he 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. [FOOTNOTE: 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.]” A more complete definition of F037 listed waste found in 40 CFR Subpart D includes “petroleum refinery primary oil/water/solids separation sludge – Any sludge generated from the gravitational separation of oil/water/solids during storage or treatment of process wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow.” The contact wastewater and process sewer lines (SWMU 12) are connected and meet the definition of a stormwater unit receiving dry weather flow. Based on Figure 2, “Stormwater Extension Project,” it appears that a storm drain pipe from the Process Area connects to the Truck Rack Line. The waste conveyed through the excavated sewer line contained sludges with F037 listed waste. Therefore, by definition, the excavated soils carry that listing.

Western’s initial Response was insufficient and therefore Western must provide additional information in order to demonstrate that listed waste was not conveyed through the Truck Rack Line. The additional information required above may help to clarify these issues. Upon receipt of the additional information, NMED will consider whether a violation occurred during the excavation of the sewer line. NMED is also willing to meet with representatives from Western to discuss any figures or other documentation that demonstrates that the violations outlined in NMED’s NOV did not occur.

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If you have questions regarding this letter, please contact Janine Kraemer at 505-476-4372 or by email at Janine.Kraemer@state.nm.us.

Sincerely,

A handwritten signature in blue ink, appearing to read "John E. Kieling". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

**John E. Kieling
Chief
Hazardous Waste Bureau**

**cc: D. Cobrain, NMED HWB
N. Dhawan, NMED HWB
K. Van Horn, NMED HWB
J. Kraemer, NMED HWB
J. Griswold, EMNRD OCD
C. Chavez, EMNRD OCD
A. Hains, WRG
L. King, EPA
G. Tidmore, EPA
J. Dougherty, EPA**

File: Reading File and WRG 2016 and File 2401

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FIGURES

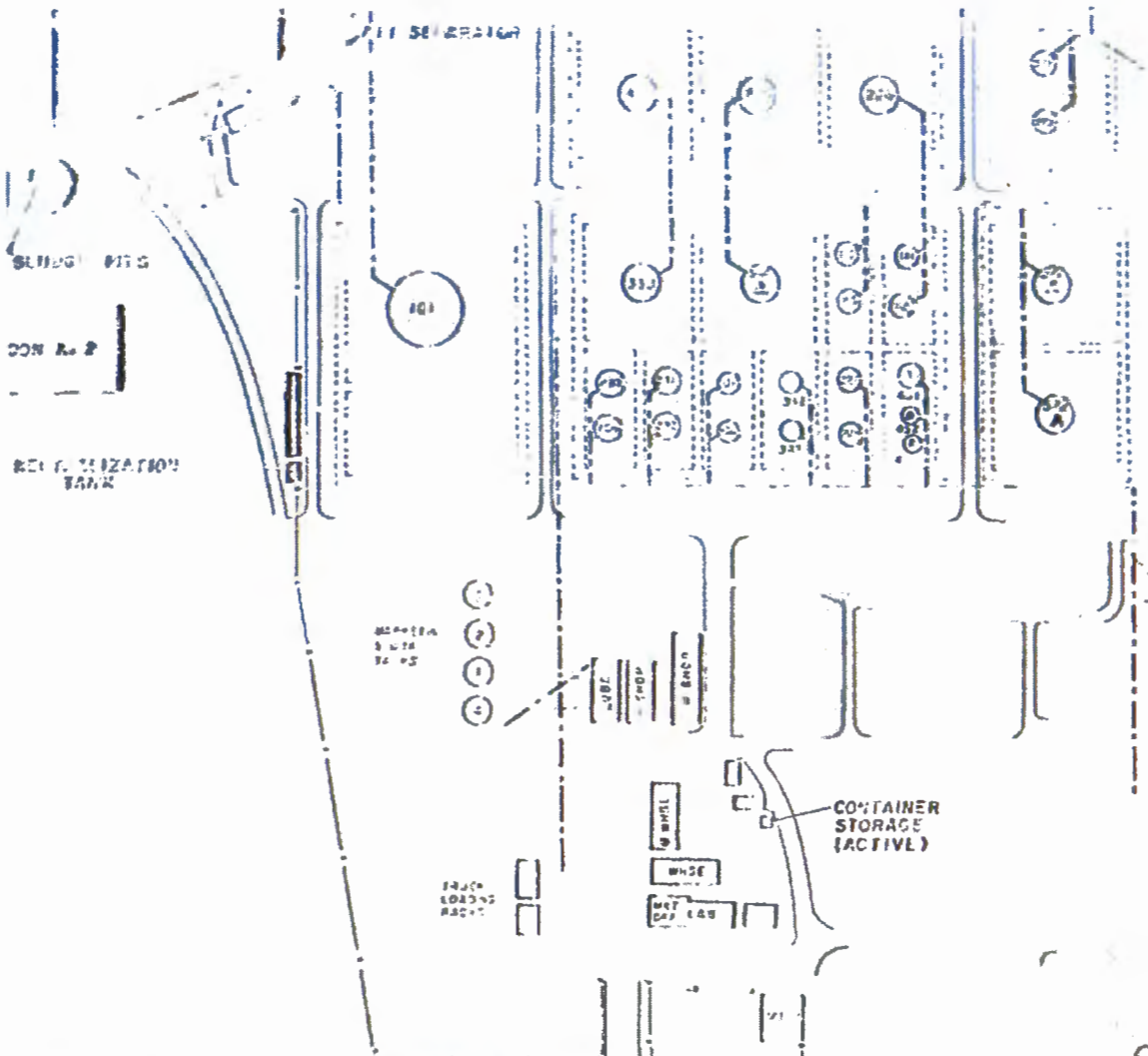


Figure 1. Section of Figure from 1990s RFI (Contact Wastewater System)

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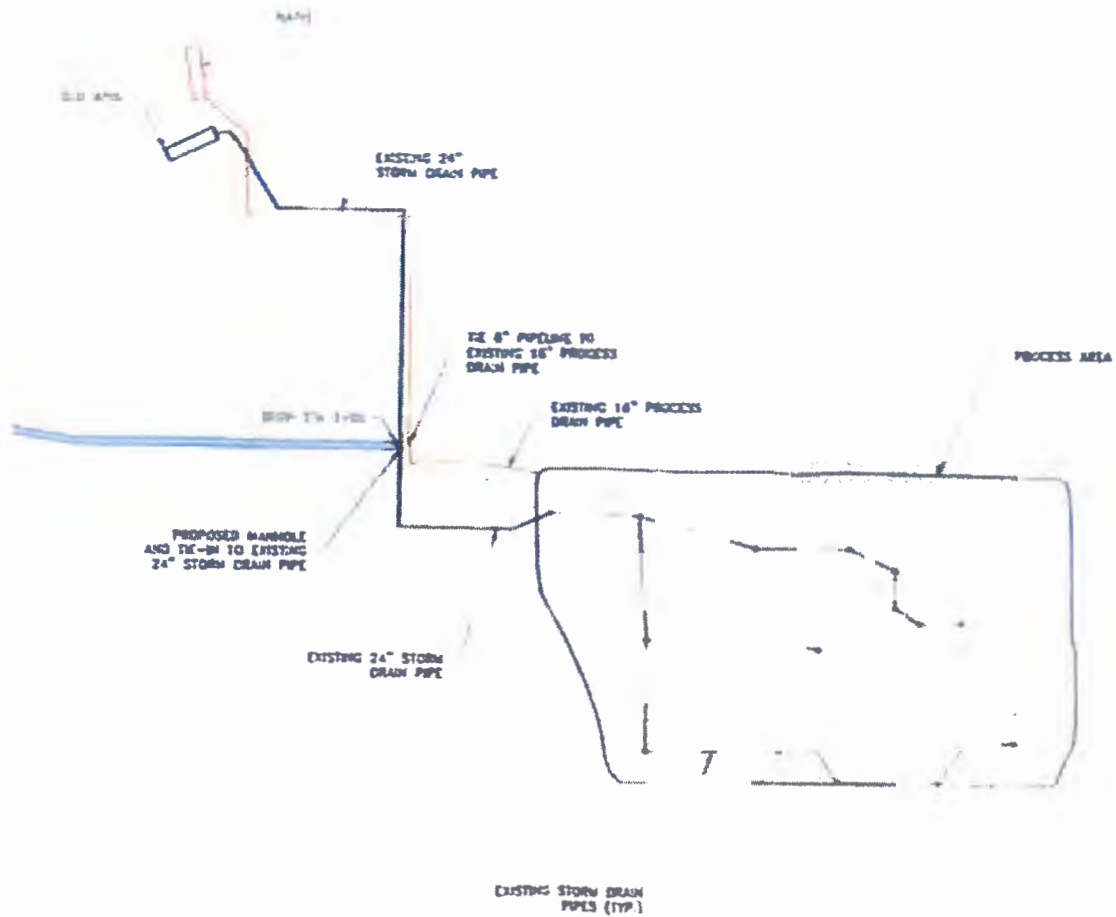


Figure 2. From "Stormwater Extension Project" document, 2007