

1-3-17



SETTLEMENT AGREEMENT

WHEREAS the New Mexico Environment Department (“NMED”) issued Post-Closure Care Renewal Permit No. NM000333211 (“Permit”) to Western Refining Southwest, Inc. (“Western”) for its Gallup refinery (“Facility”) on October 31, 2013 with an effective date of December 2, 2013; and

WHEREAS the Permit, among other things, includes twenty (20) new Areas of Concern (“AOCs”) which are identified in Table E-2 and Table G-1 of the Permit; and

WHEREAS Western filed a Notice of Appeal of the Permit in the New Mexico Court of Appeals on November 27, 2013, styled *Western Refining Southwest, Inc. v. New Mexico Environment Department*, Ct. App. No. 33,365 (“Appeal”); and

WHEREAS the Appeal challenges the inclusion of the 20 new AOCs in the Permit that are subject to corrective action, and seeks, among other things, removal of AOCs from the Permit; and

WHEREAS NMED and Western (collectively the “parties”) entered into mediation to explore potential resolution of the Appeal; and

WHEREAS the parties understand that each party has the right to further brief this matter before the Court of Appeals and the right not to enter into a Settlement Agreement; and

WHEREAS in order to avoid further litigation, the parties are willing to resolve this matter as stipulated below without the need for court adjudication and without any admissions of any kind.

THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES EXCHANGED BELOW, IT IS HEREBY AGREED AS FOLLOWS:

1. Within five (5) business days of the effective date of this Settlement Agreement, Western and NMED shall file with the Court of Appeals a Joint Motion for a Remand and for a Stay of Appellate Proceedings (“Joint Motion”), in the form attached hereto as Exhibit “A,” to allow the parties to implement the terms set forth in this Settlement Agreement.

2. The parties will attach this Settlement Agreement to the Joint Motion.

3. Within ten (10) business days of the date the Court grants the Joint Motion, the parties shall enter into a mutually agreeable Order on Consent (the “Consent Order”), the form of which is attached hereto as Exhibit “C.” The Consent Order will have an Attachment 1, as discussed below.

4. The Permit contains corrective action requirements for 20 AOCs listed in Table E-2 in Attachment E and Table G-1 in Attachment G of the Permit. Within twenty (20) business days of the date the Court grants the Joint Motion, the parties agree that Western shall seek, and NMED shall support and process expeditiously, a Class 3 modification to the Permit pursuant to 20.4.1.900 NMAC (incorporating 40 C.F.R. § 270.42(a)) (“First Permit Modification”) in the general form and substance of Exhibit “B” hereto.

5. The First Permit Modification will result in modified Tables E-2, G-1, and G-3 (including the modified schedules therein) to the Permit as shown in Exhibit “B” hereto. The First Permit Modification also will provide that:

- a. Each AOC removed from the Permit, identified in Attachment No. 1 of the Consent Order, shall be evaluated for whether or not it should be restored to the Permit;
- b. The AOCs that are not identified in Attachment 1 of the Consent Order will remain in the Permit [Tables E-2, G-1 and G-3] and will not be subject to the Consent Order.
- c. Revised Permit terms covering reporting of spills and releases at the Facility and more detailed standards for determining future AOCs will be included in Sections IV.B.3 and IV.B.4 of the Permit. The revised text of that section is set forth in the “Revised Permit Text/Tables/Figures” section of Exhibit “B” hereto.
- d. A new dispute resolution section will be added to the Permit as Section I.J.14 and will correspond with the dispute resolution procedure in the Consent Order. The text of the new dispute resolution section is set forth in the “Revised Permit Text” section of Exhibit “B” hereto.
- e. A new section of the Permit, Section IV.B.7, will be added to provide for more formal recognition of work that has been performed by Western that does not need to be repeated. The new section and related text are set forth in the “Revised Permit Text” section of Exhibit “B” hereto.
- f. A new footnote will be added to Table E-2 of the Permit stating: “The term “deferred” in the Corrective Action Submittal Date in Table E-2 for any SWMU or AOC shall have the following meaning: SWMUs and AOCs are deferred from full investigation or remediation until such time as the unit is taken out of service or otherwise becomes accessible. Partial corrective action or investigations must be

proposed if portions of the unit become accessible. The Permittee shall, at its discretion, determine when a unit is accessible or partially accessible."

g. The AOCs listed in Permit Attachment E, Table E-2, Corrective Action Submittal Schedule, and Permit Attachment G, Table G-1, Solid Waste Management Units (SWMUS) and Areas of Concern (AOCs) Requiring Corrective Action, of the Permit will be removed or combined as follows:

- i. Corrective Action Complete status on AOCs 19 (East Fuel Oil Loading Rack) and 25 (Tank 573 - Kerosene tank) which moves them from Tables E-2 and G-1, to Permit Attachment G, Table G-3, "SWMUs and AOCs Corrective Action Complete without Controls."
- ii. Combine AOC 32 (Flare and Ancillary Tanks - tanks Z85V2, Z85V3, Z84-T105) with SWMU 14 (Old API Separator), to be called SWMU 14, and both will remain in Permit Attachment G, Table G-1.
- iii. Combine AOC 33 (Storm Water Collection System) with SWMU 12 (Contact Wastewater Collection System), to be called SWMU 12, and both will remain in Permit Attachment G, Table G-1.
- iv. Combine AOC 20 (Crude Slop and Ethanol Unloading Facility), AOC 21 (Main Loading Racks), AOC 22 (Loading Rack Additive Tank Farm), and AOC 23 (Retail Fuel Tank Farm - tanks 1-7, 912, 913, 1001, 1002) and rename the combined AOCs as AOC 35. AOC 35 (the combination of AOCs 20, 21, 22, and 23), will remain in Permit Attachment G, Table G-1.
- v. AOC 15 (New API Separator) will remain in tables E-2 and G-1.

- vi. AOC 16 (New API Separator Overflow Tanks), AOC 17 (Railroad Loading/Unloading Facility), AOC 18 (Asphalt Tank Farm - tanks 701-709, 713, 714), AOC 24 (Crude Oil Tank Farm - tanks 101 and 102), AOC 26 (Process Units), AOC 27 (Boiler and Cooling Unit Area), AOC 28 (Warehouse and Maintenance Shop Area), AOC 29 (Equipment Yard and Drum Storage Area), AOC 30 (Laboratory), AOC 31 (Tanks 27 and 28), and AOC 34 (Scrap Yard) will be transferred to the Consent Order for evaluation to determine whether the AOCs should be restored to the Permit for further investigation and corrective action or removed from further corrective action requirements.
- vii. Move SWMU 8 (Railroad Rack Lagoon and Fan-Out Area) from Table G-1 to Table G-3 of the Permit to reflect Corrective Action Complete Without Controls.

6. After NMED grants the First Permit Modification request, if any court of competent jurisdiction subsequently determines that the investigation requirements in the Consent Order must be included in the Permit, Western shall submit a Class 1 permit modification request that incorporates those terms of the Consent Order which, as of the date of the permit modification, have not been met. Once that permit modification becomes effective, the Consent Order automatically shall be vacated.

7. The Consent Order will establish a process for NMED to evaluate each AOC identified in Attachment 1 of the Consent Order for whether or not it should be restored to Permit Attachment G, Table G-1, Table G-2, Table G-3, or possibly consolidated with other

AOCs for restoration to the Permit, or possibly consolidated with SWMUs already identified in the Permit.

8. Within 60 days of a final determination under the Consent Order by the NMED regarding whether or not to restore to the Permit each of the AOCs listed in Attachment 1 of the Consent Order, Western shall submit an application for a Class 1 permit modification to restore to the Permit, or consolidate with AOCs or SWMUs in the Permit, those areas determined to be appropriate for such action (the "Second Permit Modification"). Once NMED approves the Second Permit Modification, areas: (i) restored to Tables E-2 and G-1 of the Permit; or (ii) consolidated with AOCs or SWMUs in Tables E-2 and G-1 of the Permit, shall not be subject to any further Consent Order requirements and their "Corrective Action Submittal Dates" in Table E-2 shall be shown as "Deferred" unless otherwise specified by Western. Areas determined to have achieved corrective action complete shall be added to Table G-2 or Table G-3 in the Second Permit Modification and shall not be subject to any further Consent Order requirements. NMED will support and expeditiously process the Second Permit Modification no later than two-hundred and seventy (270) days after Western submits the application for the Second Permit Modification.

9. The AOCs listed in the Consent Order shall not be subject to the requirements of the Permit, during the term of the Consent Order except for the requirements of Section II.C.2 of the Permit, Sections IV.B.3 and IV.B.4 of the Permit as modified pursuant to the First Permit Modification and, for the limited purpose of AOC Assessment Report field work performed pursuant to Section IV.B of the Consent Order, Sections IV.J.1 through IV.J.6 (except for the introductory paragraph to IV.J.6) of the Permit.

10. Western agrees to file a Stipulated Motion to Dismiss, with prejudice, within thirty (30) business days after the later of the effective date of the Consent Order or the granting of the First Permit Modification. The dismissal with prejudice is limited in precedential effect to this proceeding only and shall not be admissible in any future proceeding other than for the purposes of enforcing the terms of this Settlement Agreement.

11. The parties have consulted with their respective counsel and agree to the terms of this Settlement Agreement. The parties knowingly, intentionally, and voluntarily execute this Settlement Agreement.

12. By entering into this Settlement Agreement, neither party makes admissions of liability of any kind or nature for the issues raised on appeal. The parties have voluntarily entered into this Settlement Agreement in order to avoid the time and expense of a formal adjudication of the issues raised on appeal.

13. Each person executing this Settlement Agreement represents that he or she has the authority to bind NMED and Western, respectively, to the terms of this Settlement Agreement, and such representation shall be legally sufficient evidence of actual or apparent authority to bind the NMED and Western to the terms of this Settlement Agreement.

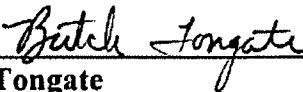
14. This Settlement Agreement shall not be modified without the written agreement of the parties.

15. This Settlement Agreement shall be binding upon NMED and its successor agencies and shall be binding on Western, its officers, directors, employees, agents, trustees, receivers, successors and assigns.

16. The effective date of this Settlement Agreement is the date of the last signature.

AGREED TO BY:

NEW MEXICO ENVIRONMENT DEPARTMENT




Butch Tongate
Secretary-Designate

1/3/17

Date

Certifying legal sufficiency:

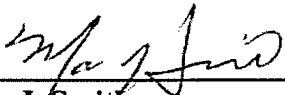


Jennifer L. Hower
General Counsel

1/3/17

Date

WESTERN REFINING SOUTHWEST, INC.



Mark J. Smith
Executive Vice President- Operations

12/20/2016

Date