

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

IN THE MATTER OF:)
)
WESTERN REFINING SOUTHWEST, INC.,)
RESPONDENT)
)

ORDER ON CONSENT

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I. INTRODUCTION

This Order on Consent ("Consent Order" or "Order") is issued pursuant to the Hazardous Waste Act, NMSA 1978, § 74-4-10 and entered into by the Secretary of the New Mexico Environment Department ("NMED" or "the Department"), and Respondent, Western Refining Southwest, Inc. ("Western"). NMED and Western shall comply with the terms and conditions hereinafter set forth in this Order.

As further described herein, this Order contains certain investigation requirements for Western's petroleum refining facility near Gallup, New Mexico.

This Order is divided into four Sections. Section II of this Order sets forth the Department's findings of fact and conclusions of law in support of this Order. Section III contains general provisions, such as purposes, definitions, entry and inspection, force majeure, dispute resolution, availability of information, reservation of rights, and enforcement. Section IV sets forth the requirements for the work to be performed by Western pursuant to this Order.

The actions undertaken by Western in accordance with this Consent Order do not constitute an admission of any liability, or any agreement with any Findings of Fact or Conclusions of Law contained in this Consent Order. Western does not admit, and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Consent Order, the validity of the Findings of Fact and Conclusions of Law in this Consent Order. Western agrees to comply with and be bound by the terms of this Consent Order and agrees that it will not contest the basis or validity of this Consent Order.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

II.A. FINDINGS OF FACT

The Department makes the following findings of fact.

II.A.1. Department

The New Mexico Environment Department is an instrumentality of the State of New Mexico and the department within the executive branch of the New Mexico State government charged with administration and enforcement of the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978, §§ 74-4-1 to -14, and the Hazardous Waste Regulations, 20.4.1 NMAC.

II.A.2. Western

The Respondent Western Refining Southwest, Inc. is the owner and operator of the "Facility" as defined in Section II.A.3 below.

II.A.3. The Facility

The Gallup Refinery (the “Facility”) is an operating refinery that has been in service since the 1950’s. Western acquired the Facility in 2007. The Facility has a crude oil capacity of approximately 25,000 barrels (“bbls”) per day. The current and historic operations of the Facility are practices related to processing crude oils into final products which include propane, butane, naphtha, unleaded gasoline, diesel (low sulfur and ultra-low sulfur), and residual fuel.

The Facility is located in McKinley County, New Mexico, approximately 17 miles east of Gallup, NM at Exit 39 of Interstate 40 (I-40), Jamestown, New Mexico. The refinery is situated on an 810 acre tract of land. Specifically, the Gallup Refinery is located in Township 15 North, Range 15 West, Sections 28 and 33 and the northern one-third of Section 4 of the New Mexico coordinate system.

II.A.4. Regulatory History of Facility

Subtitle C of RCRA provides “cradle to grave” environmental regulation for the management of hazardous waste at hazardous waste treatment, storage, and disposal facilities. The United States Environmental Protection Agency (“EPA”) has authorized the State of New Mexico to implement and enforce Subtitle C requirements, including corrective action requirements, under its own hazardous waste management program. The State’s enabling authority for the program is the HWA, which authorizes the State’s Environmental Improvement Board (“EIB”) to adopt regulations and NMED to implement and enforce the provisions of the HWA and regulations.

On November 19, 1980, the RCRA regulations became effective, and it became unlawful to treat, store, or dispose of hazardous waste without having, or having applied for, a permit. For existing treatment, storage, or disposal facilities (“TSDFs”), the requirement to submit an application is satisfied by submitting the “Part A” portion of the Application; the “Part B” portion may be submitted at a later time. The roles of these Parts are clarified in 40 CFR § 270.10.

As part of the State’s program, the EIB has adopted regulations relating to, among other things, the issuance of hazardous waste permits. These regulations incorporate by reference pertinent sections of the code of federal regulations – 40 CFR parts 260 through 270, and 273 – and are codified in the Hazardous Waste Management Regulations (“HWMR”), 20.4.1 NMAC.

The HWA and HWMR require each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or

disposal of hazardous waste to have a permit. *See* 42 U.S.C. 6925 and 20.4.1.900 NMAC (incorporating 40 CFR 270.1). A treatment, storage or disposal facility in existence on November 19, 1980 is eligible for “interim status.” Interim status authorizes an existing facility to operate, subject to the interim status standards set forth in 20.4.1.600 NMAC, incorporating 40 CFR 265, until NMED issues or denies a RCRA permit or until interim status is otherwise terminated.

The HWA and HWMR authorize corrective action for certain releases from any Solid Waste Management Unit (“SWMU”) at a facility seeking a permit, regardless of the time at which waste was placed in such unit. 42 U.S.C. 6924(u), Sections 74-4-4(A)(5)(h) and 74-4-4.2(B), NMSA 1978, and 20.4.1.500 NMAC incorporating 40 CFR 264.101(a). Corrective action is also required beyond the facility boundary. 42 U.S.C. 6924(v), 74-4-4(A)(5)(i), NMSA 1978, and 20.4.1.500 NMAC incorporating 40 CFR 264.101(c).

On January 25, 1985, the State received from EPA authorization to implement its hazardous waste program under the HWA in lieu of the federal program. 50 Fed. Reg. 1515 (Jan. 11, 1985). Subsequent program revisions were approved effective on April 10, 1990, July 25, 1990, December 4, 1992, August 23, 1994, December 21, 1994, July 10, 1995, January 2, 1996, March 10, 1997, July 13, 1998, October 9, 2001, October 16, 2007, May 26, 2009 and December 27, 2010. On January 2, 1996, the State received from EPA authorization to implement the corrective action program under the HWA. *See* 60 Fed. Reg. 53708 (Oct. 17, 1995); 61 Fed. Reg. 2450 (Jan. 26, 1996).

A permit implementing a land treatment demonstration was issued by NMED to the Facility on December 1986. An operating permit for land treatment at the Land Treatment Unit (“LTU”) was issued in November 1988 and expired in November 1998. A post-closure care permit for the LTU was issued in 2000 and, as referenced below, the permit was renewed in October 2013.

II.A.5. Regulatory History of This Consent Order

On September 16, 2011, NMED issued a draft renewal permit for post-closure care of the LTU and, after a public comment period in which Western was the only party that submitted comments. NMED and Western met to discuss comments on the draft permit. On October 31, 2013, NMED issued the renewal permit (the “Permit”). The effective date of the Permit was December 2, 2013. Western appealed the Permit on November 27, 2013.

The appeal was primarily prompted by NMED’s addition of twenty (20) new areas for investigation and remediation (“areas of concern” or “AOCs”) in the Permit. Western challenged the basis for the addition of these areas.

Following the filing of the appeal, Western and NMED entered into mediation and agreed to address Western's objections to the addition of AOCs, in part, by means of this Consent Order. In connection with the mediation, the Parties agreed to modify the Permit to transfer certain AOCs from the Permit to coverage under this Order. The applicable AOCs are listed in Attachment 1 and shall be covered by the terms of this Order upon final approval of the First Permit Modification referenced in Section III.A below ("First Permit Modification").

II.B. CONCLUSIONS OF LAW

The Department makes the following conclusions of law:

1. Western is a "person" within the meaning of Section 74-4-3(M) of the HWA, and the Hazardous Waste Management Regulations at section 20.4.100 NMAC (incorporating 40 CFR 260.10).
2. The Facility is a "facility" within the meaning of the Hazardous Waste Management Regulations at 4.1.100 (incorporating 40 CFR 260.10).
3. Western is the "owner" and "operator" of the Facility within the meaning of the Hazardous Waste Management Regulations at Section 20.4.1.100 NMAC (incorporating 40 CFR 260.10).
4. Western previously engaged in the "storage," "treatment," and "disposal" of "hazardous waste" at the Facility within the meaning of section 74-4-3(P), (T), (E), (O), and (K) of the HWA and the Hazardous Waste Management Regulations at section 20.4.1.100 NMAC (incorporating 40 CFR 260.10).
5. Soil and groundwater are part of the "environment" within the meaning of section 74-4-10(E) of the HWA.
6. A hazardous waste permit is required for the Facility pursuant to the Hazardous Waste Management Regulations 20.4.1.900 NMAC (incorporating 40 CFR § 270.1(b)).
7. Corrective action may be required at the Facility pursuant to section 74-4-4.2(B) of the HWA.

III. GENERAL PROVISIONS

III.A. PURPOSES AND SCOPE OF CONSENT ORDER

This Consent Order is entered into under the terms and conditions of a Settlement Agreement between NMED and Western. The Settlement Agreement requires two modifications to the Permit. As provided in the Settlement Agreement, after the First Permit Modification, the terms and conditions of this Consent Order are not enforceable as terms of the Permit and are solely enforceable under this Consent Order.

The purposes of this Consent Order are:

1. To determine if sufficient cause exists to designate certain areas of the Facility included on the Attachment 1 list as AOCs, for purposes of RCRA corrective action at the Facility;
2. Where appropriate, to eliminate areas listed in Attachment 1 from further investigation or remediation as AOCs under the Facility's Permit;
3. Where appropriate, designate areas listed in Attachment 1 as AOCs for purposes of corrective action pursuant to the Permit; and
4. As necessary, to serve as a basis for modifying the Permit to reflect the preceding changes (such modification to be referred to as the "Second Permit Modification").

After the Second Permit Modification, the Permit shall be the only enforceable instrument relative to AOCs restored to the Permit. In no case shall both the Consent Order and the Permit be applicable to any AOC at the same time.

The requirements of this Consent Order shall not terminate upon renewal or re-opening of the Permit. The Permit, and any future modifications, renewals, or reissuance of the Permit, shall not include: (i) any corrective action requirements for the AOCs in Attachment 1 until such time as any of the AOCs are added back into the Permit by the Second Permit Modification; or (ii) any other requirements that are duplicative of this Consent Order related to the AOCs listed in Attachment 1.

III.B. DEFINITIONS

Unless otherwise specified, terms used in this Consent Order will have the same meaning as set forth in Section I.I of the Permit.

III.C. JURISDICTION

This Consent Order is issued to Western pursuant to section 74-4-10 of the HWA.

III.D. TERM OF ORDER

III.D.1. Effective Date

The effective date of this Consent Order is the date on which both of the following conditions have been satisfied: (i) NMED and Western have signed the Consent Order; and (ii) the First Permit Modification is approved and issued by the NMED.

III.D.2. Termination Date

When all of the actions required by this Order are completed, Western shall notify NMED that the Consent Order is eligible for termination. NMED shall respond in writing within thirty (30) days terminating or denying the termination of this Order. If NMED denies the termination request, the Parties shall thereafter informally seek to resolve any differences or invoke the Dispute Resolution provisions in Section III.G. of this Consent Order.

III.D.3. Final Action

If NMED fails to take final action on the Second Permit Modification by **270 days after submission of Western's application** or denies approval of the Second Permit Modification in whole or in part, either or both Parties may invoke the Dispute Resolution Provisions in Section III.G of this Consent Order.

III.E. BINDING EFFECT

This Order shall apply to and bind Western, its officers, directors, employees, agents, trustees, receivers, successors, and assigns. No change in ownership, corporate or partnership status relating to the facility will in any way alter Western's responsibilities under this Order. Western shall be responsible for any failure to carry out all activities required of Western by the terms and conditions of this Order, irrespective of its use of employees, agents, or consultants to perform any such tasks. Western shall give notice of this Order to any successor-in-interest prior to transfer of ownership or operation of the Facility and shall notify the Department in writing within 15 calendar days of such transfer. This Consent Order shall apply to and be binding upon the Department, its officers and agents when acting in their official capacity but not in their individual capacity.

III.F. FORCE MAJEURE

III.F.1. General

For the purposes of this Consent Order, “force majeure” shall mean any event arising from causes beyond the reasonable control of Western or their respective agents, contractors, or employees that delays or prevents the performance of any of the obligations of Western under this Consent Order and that could not be overcome by due diligence. A force majeure shall not include unanticipated or increased costs or expenses associated with the implementation of this Consent Order.

III.F.2. Procedure for Claiming Force Majeure

If any event occurs that causes or may cause a delay in, or that prevents or may prevent, the performance of any obligations of Western under this Consent Order, Western shall notify the Department orally, or in writing in accordance with Section III.J (Notice), within 72 hours of when Western first knew that the event might cause a delay. Within seven business days of Western’s verbal notification to the Department, Western shall provide a written notice to the Department in accordance with Section III.J (Notice). The notice shall describe in detail: a) the cause or causes of the delay; b) the expected duration of the delay, including any obligations that would be affected; c) the actions taken or to be taken by Western to prevent or minimize the delay; and d) the timetable by which those actions will be implemented. Western shall take all reasonable actions to prevent or minimize any such delay. Western’s failure to provide notice pursuant to the terms of this Paragraph without good cause shall constitute a waiver of any claim of force majeure as to the event in question.

The Department will notify Western, in writing in accordance with Section III.J (Notice), whether it agrees or disagrees that a force majeure has occurred, and will provide such notice within seven business days after receipt of Western’s notice of the event. If the Department agrees in writing that a delay or anticipated delay is attributable to a force majeure event, as defined in Section III.F.1, the time for performance of the affected obligation or obligations will be extended for a period not to exceed the actual delay resulting from the force majeure event, and stipulated penalties shall not be due for such delay. If the Department does not agree that a delay or anticipated delay is attributable to a force majeure event, it will notify Western in writing and provide the basis for its conclusion.

III.G. DISPUTE RESOLUTION

Any dispute that arises under this Consent Order shall be subject to the procedures of this section (III.G).

III.G.1. Informal Discussions

Any dispute that arises under this Consent Order shall in the first instance be the subject of informal discussions among or between NMED and Western. The period for informal discussions shall not exceed ten business days from the date the dispute arises, unless the period is extended by written agreement. The complaining Party (or Parties) shall send the other Party (or Parties) a written notice of dispute by overnight mail, facsimile, or hand delivery in accordance with Section III.J (Notice to Parties). Such notice shall describe in detail the disputed issue and propose a resolution. The dispute shall be considered to have arisen when the receiving Party(ies) receives the written notice of dispute from the complaining Party(ies).

III.G.2. Tier 1 Discussions

If NMED and Western are unable to resolve a dispute by informal discussions under Section III.G.1, the dispute shall be elevated to the Department's Resource Protection Division Director ("Tier 1 Official"). Within seven business days after the expiration of the informal dispute resolution period, NMED and Western shall submit a written statement of position to the Tier 1 Official. The Tier 1 Official shall review the written statements of position and shall meet and confer in an attempt to resolve the dispute. The period for Tier 1 discussions shall not exceed five business days from the date the Tier 1 Official receive the statements of position, unless the period is extended by written agreement.

III.G.3. Tier 2 Discussions

If NMED and Western are unable to resolve a dispute by Tier 1 discussions under the preceding Paragraph, the matter shall be immediately elevated to the Department's Deputy Secretary (the "Tier 2 Official"). The Tier 2 Official shall review the written statements of position and shall meet and confer in an attempt to resolve the dispute. The period for Tier 2 discussions shall not exceed three business days from the date the Tier 2 Official receives the statements, unless the period is extended by written agreement.

III.G.4. Other Remedies

If the Parties are unable to resolve a dispute by Tier 2 discussions under the preceding Paragraph, the Parties may agree to seek to resolve the dispute through non-binding mediation or another non-binding dispute resolution method, or the Parties may pursue any available legal remedy to resolve the dispute, which may include, for the Department, bringing an enforcement action or, for Western, petitioning a court to resolve the matter. The decision or other action forming the basis of the dispute shall be deemed final for purposes of judicial review once the Tier 2 discussions are complete.

III.G.5. Extension of Deadlines

The deadline for any obligation of Western under this Consent Order that is directly affected by a dispute raised pursuant to this section (III.G) shall be extended by a period of time not to exceed the actual time taken to resolve the dispute in accordance with the procedures of this section (III.G). The invocation of the dispute resolution process under this section (III.G) shall not, however, extend, postpone, or affect in any way any obligations of Western under this Consent Order not directly in dispute, unless otherwise agreed by the Department in writing.

III.H. EXTENSIONS OF TIME

Western may seek an extension of time in which to perform a requirement of this Consent Order, for good cause, by sending a written request for extension of time and proposed revised schedule to the Department. The request shall state the length of the requested extension and describe the bases for the request. The Department will respond in writing to any request for extension within ten (10) business days following receipt of the request. If the Department denies the request for extension, it will state the reasons for the denial.

III.I. COMPLIANCE WITH APPLICABLE LAWS

Western shall undertake all actions required by this Consent Order in accordance with the requirements of all applicable federal, state, and local laws and regulations. Nothing in this Consent Order shall be construed as relieving Western of its obligation to comply with applicable law.

III.J. NOTICE

Whenever under the terms of this Consent Order, notice or submittal of any plan, report, or other document called for under this Consent Order is required, such notice, plan, report or other document shall be sent or directed to the following persons. Submittals to NMED shall consist of two (2) hard copies and one (1) electronic copy.

As to the Department:

Bureau Chief, Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Dr. East, Bldg. 1
Santa Fe, New Mexico 87505-6303
Telephone: (505) 476-6000
Facsimile: (505) 476-6030

As to Western:

First Class Mail and Overnight Delivery address:

Refinery Manager
Western Refining Southwest, Inc.
92 Giant Crossing Road
Jamestown, NM 87347
Telephone: 505-722-3833
Facsimile: 505-722-0210

With a copy sent by Overnight Delivery to:

Senior Vice President, Corporate EH&S
Western Refining Southwest, Inc.
123 W. Mills Ave., Suite 200
El Paso, TX 79901
Telephone: 915-534-1480
Facsimile: 915-534-2652

Changes to the above-named recipients may be made by NMED and Western from time to time by written notice to the recipients listed in this Section III.J.

III.K. ENTRY AND INSPECTION

To ensure compliance with this Order, Western shall allow any authorized representative of the NMED to enter and inspect the Gallup Refinery under authority granted by section 74-4-4.3 of the HWA and section 3007(a) of RCRA, 42 U.S.C. 6927(a).

Western shall notify NMED in writing or by e-mail or fax of any field sampling activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of 15 days prior to the sampling being conducted as required to meet the terms of this Consent Order, and shall provide NMED the opportunity to collect split samples upon request of NMED.

Nothing in this section (III.K.) shall be construed to limit or impair in any way the inspection and entry authority of NMED under the HWA, the Hazardous Waste Regulations, RCRA, or any other applicable law or regulations.

III.L. AVAILABILITY OF INFORMATION

In accordance with section 74-4-4.3 of the HWA and section 3007(a) of RCRA, 42 U.S.C. 6927(a), Western shall, within a reasonable time after receipt of a request from

any authorized representative of the NMED, furnish information to the Department relating to hazardous wastes that are regulated under 40 CFR Part 261.

Nothing in this section (III.L.) shall be construed to limit or impair in any way the information gathering authority of the Department under the HWA, the Hazardous Waste Regulations, RCRA, or any other applicable law or regulation.

III.M. RECORD PRESERVATION

Until five (5) years after Westerns' receipt of the Department's written notice of termination of the Consent Order pursuant to Section III.D.2., Western shall maintain all records, documents, data, and other information required to be prepared under this Consent Order. If an AOC is moved back into the Permit through the Second Permit Modification, that AOC will be subject to the record retention periods in the Permit. Nothing herein shall be construed as a waiver of any attorney client, work product or other privilege that Western might otherwise possess.

III.N. COVENANT NOT TO SUE

In consideration of the actions that will be performed by Western under the terms of this Consent Order, and except as specifically provided in Section III.O. (Reservation of Rights and Obligations), the Department covenants not to sue or take administrative action against Western, its respective officers, agents, successors, or assigns, under the HWA, the New Mexico Solid Waste Act, the New Mexico Department of Environment Act, or RCRA, for matters addressed in this Consent Order. This covenant not to sue shall take effect upon the Effective Date of this Consent Order. This covenant not to sue extends only to Western and its officers, agents, successors, and assigns and does not extend to any other person. This covenant not to sue shall survive the termination of this Consent Order.

III.O. RESERVATION OF RIGHTS AND OBLIGATIONS

Nothing herein shall prevent the Department from seeking legal or equitable relief, either administratively or judicially, to enforce the requirements of this Consent Order. Moreover, nothing herein shall prevent the Department from taking administrative action to implement the requirements of this Consent Order. Finally, nothing herein shall prevent the Department from taking appropriate action to address conditions at the Facility that constitute an emergency situation or that present an immediate threat to public health or the environment.

The covenant not to sue set forth in Section III.N. does not pertain to any matters not addressed in this Consent Order. The Department reserves, and this Consent Order is without prejudice to, all rights against Western with respect to all such other matters.

Western reserves all available defenses to any action reserved by the Department under this Section (III.O.).

Nothing in this Order shall be construed to preclude or in any way limit any powers, authorities, rights, or remedies that the Department has under the HWA or any other statute or regulation or under common law. Nothing in this Order shall constitute an express or implied waiver of immunity otherwise applicable to the Department, its employees, agents, or representatives.

The Department reserves all of the powers, authorities, rights, and remedies, whether administrative or judicial, civil or criminal, legal or equitable, that the Department has for any failure of Western to comply with any of the requirements of this Order, including the right to bring any civil or administrative enforcement action for penalties or injunctive relief or both.

This Order shall not be construed to preclude or in any way limit the authority of the Department to take additional enforcement action pursuant to sections 74-4-10, 74-4-10.1, or 74-4-13 of the HWA, or other applicable legal authorities, should the Department determine that such actions are warranted.

The Department reserves all of the powers, authorities, rights, and remedies, whether administrative or judicial, civil or criminal, legal or equitable, that the Department has for any past, present, or future violations of the HWA or the Hazardous Waste Regulations, including the right to bring any civil or administrative enforcement action for penalties or injunctive relief or both.

The Department reserves the right to disapprove of work performed by Western that is not in compliance with this Order.

This Order is not a permit, and compliance by Western with the terms of this Order shall not in any way relieve Western of its obligation to comply with the HWA, the Hazardous Waste Regulations, and all other applicable State, federal, and local laws, regulations, and permits. Western is subject to the requirements included in 20.4.2 NMAC.

III.P. RELATIONSHIP TO WORK COMPLETED

This Order shall be construed to avoid duplication of work already completed in compliance with prior RCRA Permits or EPA requirements prior to delegation of the state RCRA program. Investigations and other work that have been completed under predecessor RCRA permits, or EPA requirements prior to delegation of the state RCRA program, that fulfill the substantive requirements of those permits or pre-delegation EPA requirements may be used for compliance with this Order subject to the Department's determination that the work complies with the applicable requirements in effect at the

time the work was performed. If the unit has been used subsequent to historic sampling, additional investigation may be required. This additional work must be conducted in accordance with the Order. Work that has been previously approved in writing by either the Department or EPA shall conclusively be deemed to comply with this Order, unless new information becomes available.

III.Q. SEVERABILITY

If any provision or authority of this Order is held by a court of competent jurisdiction to be invalid, the remainder of the Order shall remain in force and shall not be affected thereby.

III.R. MODIFICATIONS

The Parties may modify any of the provisions of this Consent Order. Any such modifications must be in writing and signed by all Parties.

IV. WORK TO BE PERFORMED

IV.A. PURPOSE

As indicated in Section III.A, the purpose of this Consent Order is to evaluate the AOCs listed in Attachment 1 to determine whether or not they should be restored to the Permit and subject to the corrective action requirements in the Permit. The general locations of the AOCs listed in Attachment 1 are shown on the map in Attachment 2.

IV.B. AOC ASSESSMENT REPORT

Western shall submit an Assessment Report containing the information set forth in Section IV.C. for each area listed in Attachment 1 in accordance with the schedule herein.

Western may submit to the Department a work plan for the collection of soil or groundwater data or other work to be performed for purposes of preparing and completing the Assessment Report. The Department shall (i) approve, (ii) disapprove, or (iii) disapprove in part, the proposed work plan within ninety (90) days of the Department's receipt of same. If NMED disapproves, or disapproves in part, the proposed scope of work, the Department shall provide its reasons in writing. Western shall revise the work plan and re-submit the revised work plan to the Department within ninety (90) days. If the Department disapproves the revised work plan, then Western and the Department shall discuss and resolve the issues within 30 days so that the proposed field work may commence.

If Western elects to collect soil or groundwater data without submitting a work plan for the Department's approval, then Western shall notify the Department in accordance with Section III.K. and will notify the Department a minimum of 15 days prior to the commencement of field activities. Western shall keep the Department informed of the sample collection activities or unexpected circumstances that may arise during sampling activities. Any work conducted without a Department approved work plan is subject to potential additional data requirements after receipt and evaluation by the Department. All field work must comply with Sections IV.J.1 through IV.J.6 (excluding the introductory paragraph to Section IV.J) *Methods and Procedures* and IV.K *Monitoring Well Construction Requirements* of the Permit.

Any report submitted to the Department shall be deemed approved, disapproved or disapproved in part by the Department within ninety (90) days of the Department's receipt. If the Department disapproves, or disapproves in part, the report, the Department shall provide its reasons in writing. Western shall revise the report and re-submit it to the Department within 60 days for Department review. If the revised report is disapproved in whole or in part the Department and Western shall discuss and resolve issues within 30 days and the report shall be revised to reflect the agreement.

IV.C. CONTENTS OF AOC ASSESSMENT REPORT

The Assessment Report shall contain the following sections and information:

1. Location of unit(s) of a topographic map of appropriate scale, as required under 40 CFR § 270.14(b)(19);
2. Designation of type and function of unit(s);
3. General dimensions, capacities and structural description of unit(s) (supply any available plans/drawings);
4. Dates that the unit(s) was operated;
5. All available site history information;
6. Specifications of all listed or characteristic hazardous wastes and hazardous constituents regulated under 40 CFR 261 that have been managed at/in the unit(s) to the extent available; and
7. All available information pertaining to any release of listed or characteristic hazardous wastes and hazardous constituents regulated under 40 CFR 261 from such unit(s) (to include ground water data, soil analyses, air, and surface water data).

New soil and groundwater data may also be collected by Western for an area or areas for submission with the Assessment Report. Should new soil and groundwater data be collected, Western must collect this data in accordance with Sections IV.J.1 through IV.J.6 (excluding the introductory paragraph to Section IV.J) and IV.K of the Permit. If Western has already submitted the information listed in items 1-7 above, new soil and groundwater data may also be collected for submission with the Assessment Report.

IV.D. NMED DETERMINATION OF AOC ENTRY OR ELIMINATION

Within sixty (60) days of the Department's receipt of the last Assessment Report to be submitted, NMED shall issue its determination of whether or not the areas listed in Attachment 1 should be restored to Permit Attachment G, Table G-1 or eliminated from further corrective action requirements by being placed in either Permit Attachment G, Tables G-2 (Corrective Action Complete Without Controls) or G-3 (Corrective Action Complete With Controls). A unit listed in Attachment 1 of the Consent Order shall not be restored to Permit Attachment G, Table G-1, if it can be reasonably demonstrated that (i) a particular area, or area of suspected releases (e.g., areas of loading/unloading, storage areas) has no visible contamination and Western has no known documentation of spill(s) or release(s) in that particular area of the compounds listed in 20.4.1.200 and 500 NMAC (incorporating 40 CFR 261.3, 40 CFR 261 Appendix VIII and 40 CFR 264 Appendix IX) and the NMED risk assessment guidance (as it may be updated) to soil or groundwater, or, (ii) a particular area has experienced spill(s) or release(s), and the documented spill(s) or release(s) were investigated in accordance with this Consent Order and did not contain those compounds listed in 20.4.1.200 and 500 NMAC (incorporating 40 CFR 261.3, 40 CFR 261 Appendix VIII and 40 CFR 264 Appendix IX) and the NMED risk assessment guidance (as it may be updated) that are reasonably related to the substance spilled or released, or, (iii) a particular area has experienced spill(s) or release(s), and the documented spill(s) or release(s) were remediated or, (iv) the residuals from documented spills or releases have not affected groundwater or soil based on the following criteria:

1. Soils do not exceed the Department's risk-based screening levels for non-residential land use for those exposure pathways identified in Table 1-1 of the Department's *Risk Assessment Guidance for Site Investigations and Remediation* (2015 and as updated), or
2. There is no groundwater that:
 - a. is directly and uniquely (i.e., both quantitatively and qualitatively) affected by the area; and
 - b. exceeds the lower of the New Mexico Water Quality Control Commission's (WQCC) groundwater quality standards (20.6.2.3103 NMAC) or maximum contaminant levels (MCLs) developed under the

federal Safe Drinking Water Act. If neither a WQCC groundwater quality standard nor federal MCL is available, then the most recent version of the Department's Tap Water Screening Levels listed in Table A-1 of the *Risk Assessment Guidance for Site Investigations and Remediation* shall be used. In the absence of an NMED Tap Water Screening Level for a specific chemical, the most current EPA Regional Screening Level for tap water shall be used.

IV.E. FUTURE SPILLS AT AOCs IN ATTACHMENT 1 DURING THE TERM OF THE CONSENT ORDER

In the event of a non-emergency future spill in an AOC during the time it is listed in Attachment 1 of this Consent Order, Western will report the spill if required by the Permit and will, upon conferring with NMED, select one of the following courses of action: (i) address the spill to pre-release conditions in the area; or (ii) take no action and address the spill in the final Assessment Report for the AOC in which the spill occurred.

IV.F. EXPEDITED RESTORATION OF AOC TO PERMIT

Nothing in this Section IV shall preclude Western's right at any time to consent, prior to the Second Permit Modification, to restoration of an area or areas in Attachment 1 as AOCs in the Permit without commencing or completing the work required under this Section IV. Any AOC designated pursuant to this process shall be restored to the Permit, or a subsequent renewal permit effective at the time, in the Second Permit Modification.


IV.G. HAZARDOUS WASTE CORRECTIVE ACTION FEES

Documents related to the release assessments submitted under this Consent Order will be assessed the appropriate fee under the Hazardous Waste Permit and Corrective Action Fees, 20.4.2 NMAC.

The areas listed in Attachment 1 of this Consent Order are not subject to 20.4.2.201.B NMAC, Annual Fees.

The foregoing is hereby AGREED and CONSENTED to by the Parties:

NEW MEXICO ENVIRONMENT DEPARTMENT




Butch Tongate
Secretary-Designate

1/20/17

Date

Certifying legal sufficiency:




Jennifer L. Hower
General Counsel

1/20/17

Date

WESTERN REFINING SOUTHWEST, INC.



Mark J. Smith
Executive Vice President- Operations

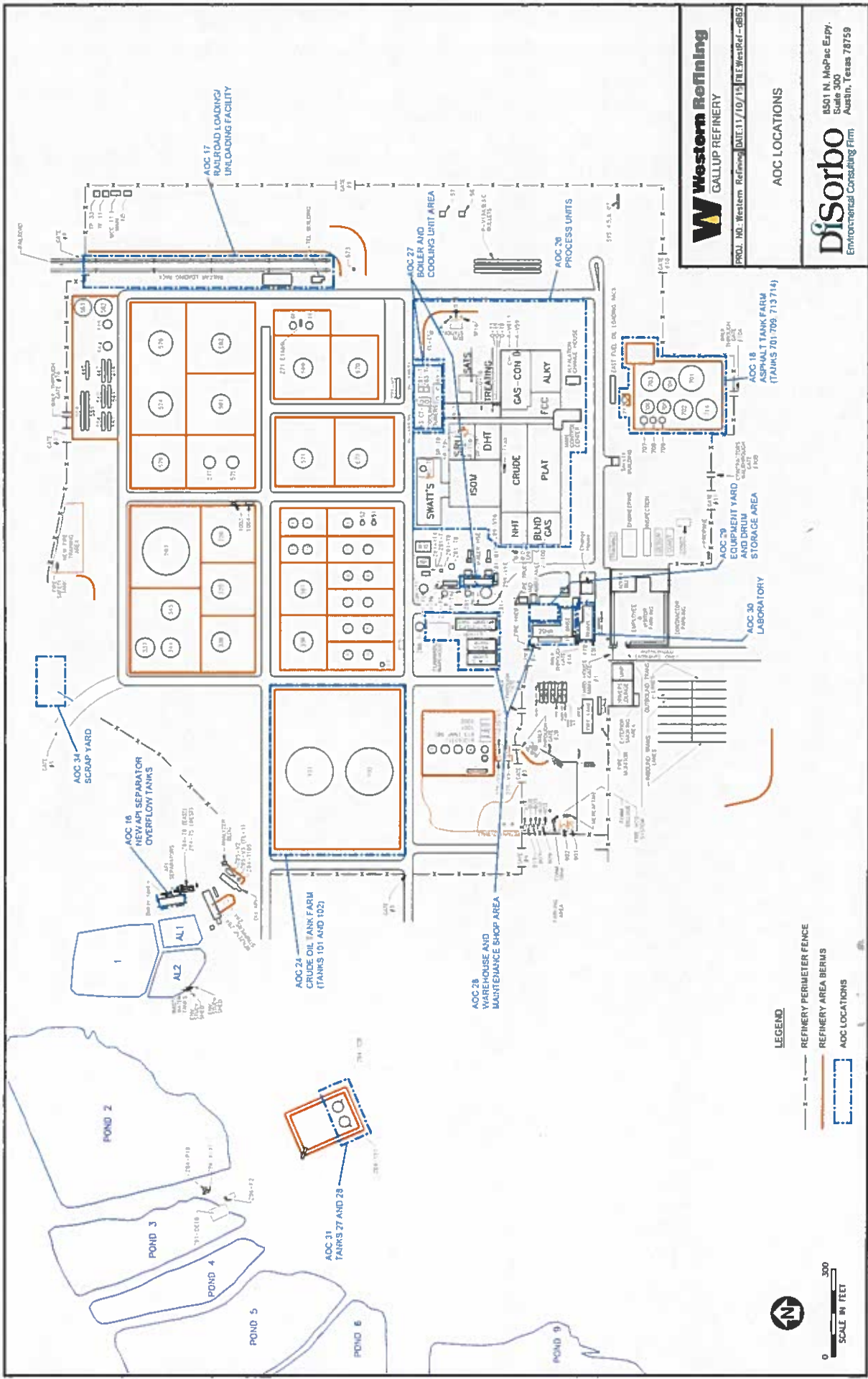
01/17/2017

Date

ATTACHMENT 1
Areas Transferred from the AOC List in the Permit to the Consent
Order by the First Permit Modification

| Unit ID Number | Unit Description | Submittal Type | Submittal Date |
|-----------------------|---|-----------------------|-----------------------|
| AOC 16 | New API Separator Overflow Tanks | AOC Assessment Report | September 30, 2018 |
| AOC 17 | Railroad Loading/Unloading Facility | AOC Assessment Report | December 31, 2018 |
| AOC 18 | Asphalt Tank Farm (tanks 701-709, 713, 714) | AOC Assessment Report | March 31, 2019 |
| AOC 24 | Crude Oil Tank Farm (tanks 101 and 102) | AOC Assessment Report | December 31, 2019 |
| AOC 26 | Process Units | AOC Assessment Report | September 30, 2020 |
| AOC 27 | Boiler and Cooling Unit Area | AOC Assessment Report | March 31, 2020 |
| AOC 28 | Warehouse and Maintenance Shop Area | AOC Assessment Report | June 30, 2020 |
| AOC 29 | Equipment Yard and Drum Storage Area | AOC Assessment Report | December 31, 2020 |
| AOC 30 | Laboratory | AOC Assessment Report | June 30, 2020 |
| AOC 31 | Tanks 27 and 28 | AOC Assessment Report | March 31, 2021 |
| AOC 34 | Scrap Yard | AOC Assessment Report | June 30, 2021 |

ATTACHMENT 2
Map Showing General Location of Areas Listed in Attachment 1



Western Refining
GALLUP REFINERY
 PROJ. NO. Western Refining DATE: 11/10/15 FILE: WestRd-4863

AOC LOCATIONS

DiSorbo
 Environmental Consulting Firm
 8501 N. MoPac Expwy.
 Suite 300
 Austin, Texas 78759

LEGEND

- REFINERY PERIMETER FENCE
- REFINERY AREA BERM
- AOC LOCATIONS

0 300
 SCALE IN FEET