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**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS**

IN THE MATTER OF:

**Western Refining Southwest, Inc.
Gallup, New Mexico**

**RESPONDENT
EPA ID NMD000333211**

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Consent Agreement and Final Order

USEPA Docket No. RCRA-06-2017-0929

CONSENT AGREEMENT AND FINAL ORDER

**I.
PRELIMINARY STATEMENT**

1. This Consent Agreement and Final Order ("CAFO") is entered into by the United States Environmental Protection Agency, Region 6 ("EPA" or "Complainant") and Respondent, Western Refining Southwest, Inc. ("Western" or "Respondent"), and concerns the facility located at 92 Giant Crossing Road, Gallup, NM 87301 (the "Facility" or "Gallup Refinery").
2. Notice of this action has been given to the State of New Mexico, under Section 3008(a)(2) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(2).
3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted.

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4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.
5. The CAFO resolves only Respondent's federal civil monetary liability for those violations and facts specifically alleged herein.
6. The Respondent consents to the issuance of the CAFO hereinafter recited, consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO, and consents to the specific stated compliance order.

II.
JURISDICTION

7. This CAFO is issued by the EPA pursuant to § 3008(a) of RCRA, 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), and is simultaneously commenced and concluded through the issuance of this CAFO under 40 Code of Federal Regulations ("C.F.R.") §§ 22.13(b) and 22.18(b)(2) and (3).
8. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by the EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of the EPA to issue or enforce this CAFO, and agrees not to contest the validity of this CAFO or its terms or conditions.

III.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Respondent is a corporation in the State of Arizona.

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10. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), which includes corporations; and within the meaning of 74-4-3 of the New Mexico Hazardous Waste Act, [40 C.F.R. § 260.10].
11. Respondent owns and operates the Gallup Refinery.
12. On August 12-14, 2014, EPA conducted an on-site Compliance Evaluation Inspection as well as a Corrective Action Inspection at the Gallup Refinery, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.
13. During the Inspections, EPA inspectors identified the following violations within the less than 90-day hazardous waste storage area:
 - a. Hazardous waste was stored longer than 90 days;
 - b. Contents of a leaking container of hazardous waste had not been transferred to a container that is in good condition;
 - c. Required aisle spacing was not maintained.
14. Gallup Refinery is a "generator" of "hazardous wastes" at the Facility, as those terms are defined in 74-4-3 of the New Mexico Hazardous Waste Act, [40 C.F.R. § 260.10].
15. The exemption of 40 C.F.R. § 262.34 does not apply to Gallup Refinery due to the Facility storing hazardous waste for more than 90 days.
16. The Facility is a "solid waste management facility" within the meaning of Section 1004(29) of RCRA, 42 U.S.C. § 6903(29); and a "facility" within the meaning of 74-4-3 of the New Mexico Hazardous Waste Act, [40 C.F.R. § 260.10].
17. As a generator of hazardous waste, Gallup is subject to Sections 3002 and 3010 of

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RCRA,

42 U.S.C. §§ 6922 and 6930, and the regulations set forth at Chapter 74 of the New Mexico Hazardous Waste Act, [40 C.F.R. Parts 262 and/or 270].

Claim i. Notification Requirements

18. The allegations in Paragraphs 1-17 are re-alleged and incorporated herein by reference.
19. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed hazardous waste shall file with the Administrator or authorized State a notification stating the location and general description of such activity and the identified characteristic or listed hazardous wastes handled by such person.
20. At the time of the Inspection, Gallup Refinery had not filed with the Administrator or with the authorized State an adequate and subsequent notification of hazardous waste activities in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim ii. Permit Requirements

21. The allegations in Paragraphs 1-17 are re-alleged and incorporated herein by reference.
22. During the Inspection, EPA determined the Facility stored hazardous waste for more than 90 days.
23. Pursuant to 40 C.F.R. § 270, RCRA requires a permit for the storage of hazardous waste.
24. The Facility stored hazardous waste for more than 90 days and therefore the exemption of 40 C.F.R. § 262.34 does not apply and the facility is subject to the permit requirements of 40 C.F.R. § 270.
25. At the time of the inspection, the Facility was operating as a hazardous waste storage

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facility without a permit.

Claim iii. Storage Requirements

26. Pursuant to 40 C.F.R. § 265.171 an owner or operator of a hazardous waste storage facility must transfer the hazardous waste from a leaking container into a container that is in good condition.
27. During the Inspection, EPA inspectors found drums of hazardous waste that were leaking and the hazardous waste had not been transferred into containers that are in good condition.

Claim iv. Storage Requirements

28. Pursuant to 40 C.F.R. § 265.35 an owner or operator of a hazardous waste storage facility must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment to any area of facility operation in an emergency.
29. During the Inspection, EPA inspectors found that aisle spacing in the less than 90-day hazardous waste storage area was inadequate.

**IV.
COMPLIANCE ORDER**

30. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within One Hundred and Eighty (180) calendar days of the effective date of this CAFO, Respondent shall provide in writing the following to the EPA:

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A. Respondent shall certify that it has developed and implemented standard operating procedures ("SOP") addressing compliance at the Gallup Refinery with:

- i. the 90-day limit for accumulation of hazardous waste in 40 C.F.R. § 262.34(a);
- ii. the provisions of 40 C.F.R. § 265.171 relating to leaking containers; and
- iii. the provisions of 40 C.F.R. § 265.35 relating to adequate aisle space in a hazardous waste accumulation area.;

B. Respondent shall certify that, to the best of its knowledge and belief, it has accurately and adequately complied with its RCRA Section 3010 Notification;

C. Respondent shall certify that it has assessed the applicability of the requirements of 40 CFR Part 265, Subpart CC ("Subpart CC") to the containers in the less than 90-day hazardous waste storage area referenced in paragraphs 13 and 29 of this Consent Agreement and, to the extent Subpart CC requirements are applicable to such containers, Respondent shall develop and implement a SOP addressing compliance with Subpart CC for such containers,

D. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraphs A and, if applicable, C above.

31. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of Respondent and shall include the following certification:

"I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to

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assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Copies of all documents required by this CAFO shall be sent to the following:

U.S. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Waste Enforcement Branch
Waste Compliance 3 Section (6EN-H3)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Bill Mansfield

V.

TERMS OF SETTLEMENT

i. Penalty Provisions

32. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of \$106,260.
33. The penalty shall be paid within sixty (60) days of the effective date of this CAFO, made payable to the Treasurer of the United States, and in the manner and prescribed time period set forth below.
34. The following are Respondent's options for transmitting the penalties:

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**Regular Mail, U.S. Postal Mail (including certified mail) or U.S. Postal Service Express,
the check should be remitted to:**

**U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000**

Overnight Mail (non-U.S. Postal Service), the check should be remitted to:

**U.S. Bank
Government Lockbox 979077
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028**

Wire Transfer:

**Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045**

**The case name and docket number (In the Matter of Western Refining Southwest, Inc.,
Docket No. RCRA-06-2017-0929) shall be clearly documented on or within your chosen
method of payment to ensure proper credit.**

The Respondent shall send a simultaneous notice of such payment to the following:

**Lorena S. Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733**

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Mark Potts, Branch Chief
Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Attention: Bill Mansfield

Your adherence to this request will ensure proper credit is given when penalties are received by EPA.

35. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of process and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b). EPA will also assess a Fifteen Dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional Fifteen Dollar (\$15.00) for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which

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remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

ii. Costs

36. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

iii. Termination and Satisfaction

37. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall so certify in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 30. Unless the EPA, Region 6, objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

iv. Effective Date of Settlement

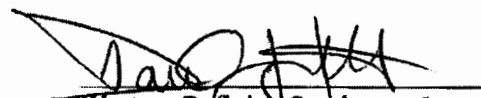
38. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

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**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
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FOR THE RESPONDENT:

Date: 7/6/17



Western Refining Southwest, Inc.



FOR THE COMPLAINANT:

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Date: 7/11/17



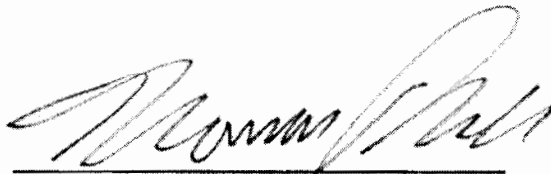
Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

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FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR Part 22, the foregoing CAFO is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 CFR § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 7-19-17



Regional Judicial Officer

Thomas Rucki

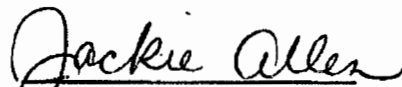
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CERTIFICATE OF SERVICE

I hereby certify that on the 19 day of July, 2017, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method identified below:

Jean M. Flores
Guida, Slavich & Flores, P.C.
5956 Sherry Lane, Suite 1000
Dallas, Texas 75225

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7015 1520 0003 3990 6056


Paralegal