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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

REGIONAL HEARING CLERK
EPA REGION VI

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-06-2019-0904

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, New Mexico 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, and this CAFO shall not be used as evidence of any legal or factual admission by Respondent. This CAFO states claims upon which relief may be granted.
4. The Respondent explicitly waives any right to contest the allegations and its right to

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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"), 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.
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

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Mexico Hazardous Waste Act, [40 C.F.R. § 260.10].

11. Respondent is a subsidiary of Marathon Petroleum Corporation ("Marathon"). Western Refining Southwest, Inc., a wholly-owned subsidiary of Marathon, owns and operates the Gallup Refinery.
12. On February 20, 2018, Western Refining Southwest, Inc. (Western Refining) sent correspondence to the New Mexico Oil Conservation Division (NMOCD) and disclosed that between August 26, 2013 and February 18, 2014, the Gallup Refinery shipped approximately thirty-nine (39) roll-off bins containing filter cake to the Gandy Marley, Inc. disposal landfill located in Chavez County, New Mexico.
13. Western Refining stated that the filter cake originated from the dissolved gas floatation (DGF) portion of the wastewater treatment system, a petroleum refinery secondary (emulsified) oil/water/solids separation sludge.
14. Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters from petroleum refineries is a listed hazardous waste with the EPA hazardous waste number of F038, as described at 74-4-3 of the New Mexico Hazardous Waste Act [40 C.F.R. § 261.31].
15. Gandy Marley, Inc. is a landfill that is permitted by the NMOCD to accept drilling mud, petroleum hydrocarbon contaminated soils, and oil field sludge, among other oilfield wastes. Gandy Marley, Inc. does not have a RCRA Permit, is not a "designated facility," as that term is defined in 74-4-3 of the New Mexico Hazardous Waste Act [40 C.F.R. § 260.10], and cannot accept RCRA hazardous wastes.

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16. 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].
17. 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].
18. As a generator of hazardous waste, Gallup Refinery is subject to Sections 3002 and 3010 of 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 260, 261, 262, 265, 268, and/or 270].

IV. VIOLATIONS

Claim 1. Hazardous Waste Determination

19. The allegations in Paragraphs 1-18 are re-alleged and incorporated herein by reference.
20. Pursuant to 40 C.F.R. § 262.11, a person who generates a solid waste, as defined at 40 C.F.R. § 260.10, must determine if that waste is a hazardous waste using the methods described in 40 C.F.R. § 262.11(a) through (d).
21. Petroleum refinery secondary (emulsified) oil/water/solids separation sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters from petroleum refineries, which are disposed, is a "solid waste" as that term is defined at 40 C.F.R. § 260.10.
22. Petroleum refinery secondary (emulsified) oil/water/solids separation sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process

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wastewaters from petroleum refineries, which are disposed, is also a "hazardous waste" as that term is defined at 40 C.F.R. § 260.10 and is listed in 40 C.F.R. § 261.31 as a hazardous waste from non-specific sources, with the EPA hazardous waste number of F038.

23. In its correspondence to NMOCD, Western Refining stated that the filter cake was incorrectly profiled and shipped as non-hazardous wastes to Gandy Marley, Inc.
24. Therefore, Western Refining failed to make a hazardous waste determination as required by 40 C.F.R. § 262.11.

Claim 2. Sending Hazardous Waste to an Un-Permitted Facility

25. The allegations in Paragraphs 1-18 are re-alleged and incorporated herein by reference.
26. Pursuant to 40 C.F.R. § 262.12(c), a generator must not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.
27. The Gandy Marley, Inc. disposal facility in Chavez County New Mexico, to which the Gallup Refinery sent filter cake, does not have an EPA identification number.
28. Therefore, Western Refining failed to comply with § 262.12(c), by sending hazardous waste to a facility that does not have an EPA identification number.

Claim 3. Hazardous Waste Manifest

29. The allegations in Paragraphs 1-18 are re-alleged and incorporated herein by reference.
30. Pursuant to 40 C.F.R. § 262.20, a generator who transports, or offers for transportation, hazardous waste for offsite treatment, storage, or disposal must prepare a Manifest (OMB

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Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions included in the appendix to this part.

31. Western Refining did not prepare hazardous waste manifests for the disclosed shipments and is therefore in violation of 40 C.F.R. § 262.20.

V. COMPLIANCE ORDER

32. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and Respondent shall provide in writing the following to the EPA:

- A. Within forty-five (45) calendar days of the effective date of this CAFO, Respondent shall certify that it has developed and implemented a standard operating procedure ("SOP") for conducting hazardous waste determinations on all solid wastes generated at the facility. The SOP must be compliant with 40 C.F.R. § 261 and 40 C.F.R. § 268. For a period of one year from the effective date of this CAFO the Health, Environmental and Safety Manager of the facility must review and sign-off on every solid and hazardous waste determination made at the facility.
- B. Within six (6) months of the effective date of this CAFO, Respondent shall certify that it has developed and is implementing a training program, for both current employees and new hires, compliant with 40 C.F.R. § 265.16.
- C. Within forty-five (45) calendar days of the effective date of this CAFO, Respondent shall certify that it has established a system of management review of solid and hazardous waste determinations at the facility. This management oversight system

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shall be sufficient to provide adequate oversight of waste determinations and ensure that hazardous wastes are managed appropriately.

D. Within forty-five (45) calendar days of the effective date of this CAFO, Respondent shall provide a detailed narrative description explaining changes made at the facility to ensure the proper handling and disposition of hazardous wastes at the facility since the February 20, 2018 disclosure of improper shipments of hazardous wastes to the Gandy-Marley, Inc. landfill. This narrative description shall explain the steps taken to prevent a recurrence of improper disposal of hazardous wastes generated at the facility.

E. Within six (6) months of the effective date of this CAFO, Respondent shall provide, with its certifications, copies of the SOPs, training program description and implementation documentation, and the management review program documentation, as described above.

33. 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 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."

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

Chief
Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-273

VI. TERMS OF SETTLEMENT

A. Penalty Provisions

34. 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 \$148,303.
35. 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.
36. The following are Respondent's options for transmitting the penalties:
- 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:

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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-06-2019-0904**) 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

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

Your adherence to this request will ensure proper credit is given when penalties are

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received by EPA.

37. 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 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.

B. Costs

38. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically

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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.

C. Termination and Satisfaction

39. 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 V (Compliance Order), Paragraph 33. 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.

D. Effective Date of Settlement

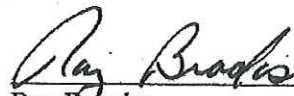
40. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

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**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT:

Date: 3/26/2019



Ray Brooks
Vice President
Western Refining Southwest, Inc.



FOR THE COMPLAINANT:

Date: 3-29-19



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: _____

4/1/19



Thomas Rucki
Regional Judicial Officer

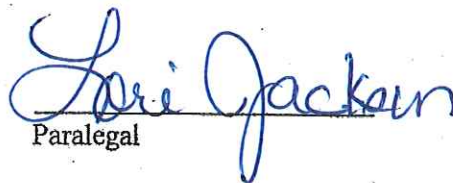
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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of April, 2019, 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 70151520000340728326


Paralegal