



MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

CERTIFIED MAIL - RETURN RECEIPT REQUIRED

September 11, 2023

Timothy J. Aydt
President
Western Refining Southwest, LLC
92 Giant Crossing Road
Gallup, NM 87301

**RE: RESOLUTION OF NOTICE OF VIOLATION
WESTERN REFINING SW, INC-GALLUP REFINERY
EPA ID# NMD000333211**

Dear Timothy Aydt:

Beginning on March 23, 2021, the New Mexico Environment Department ("NMED") conducted a hazardous waste Compliance Evaluation Inspection ("Inspection") at Western Refining SW, Inc-Gallup Refinery ("Western Refining"), located at Interstate 40 Exit 39, Jamestown, New Mexico ("Facility"). Based on that Inspection and review of information obtained NMED issued a Notice of Violation ("NOV") dated December 16, 2022.

Enclosed is a copy of the signed Stipulated Final Order to resolve claims of the NMED for civil penalties and other relief for violations specified in the NOV. As of the date September 6, 2023, all civil penalty payments have been received and all corrective actions required to bring Western Refining into compliance have been met. Any action taken in response to this letter does not relieve your facility of its obligation to comply with any and all other applicable laws and regulations.

If you have any questions regarding this letter, please contact Aaron Coffman of my staff at 505-670-5211 or by email at aaron.coffman@env.nm.gov.

Sincerely,

Ricardo Maestas Digitally signed by Ricardo Maestas
Date: 2023.09.11 13:35:26 -06'00'

Ricardo Maestas
Acting Chief
Hazardous Waste Bureau

SCIENCE | INNOVATION | COLLABORATION | COMPLIANCE

Hazardous Waste Bureau - 2905 Rodeo Park Drive East, Building 1 Santa Fe, New Mexico 87505-6313
Telephone (505) 476-6000 - www.env.nm.gov

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

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| NEW MEXICO ENVIRONMENT |) |
| DEPARTMENT, |) |
| Complainant, |) |
| |) |
| v. |) |
| |) |
| WESTERN REFINING SOUTHWEST LLC, |) |
| GALLUP REFINERY, |) |
| EPA I.D. NMD000333211, |) |
| Respondent |) |
| _____ |) |

STIPULATED FINAL ORDER

The New Mexico Environment Department (“Department”) and Western Refining, Southwest LLC, Gallup Refinery (“Western Refining”), (“Party” or “Respondent”), pursuant to 20.1.5.600.B(2) NMAC, stipulate to resolve the alleged violations specified in the Notice of Violation (“NOV”) issued by the Department to the Respondents on December 16, 2022. The Parties have agreed on the terms and conditions specified in this Stipulated Final Order (“Order”).

BACKGROUND

1. The Department is an agency of the executive branch of the State of New Mexico pursuant to NMSA 1978, § 9-7A-4. The Department is authorized to administer and enforce the New Mexico Hazardous Waste Act (“HWA”), NMSA 1978, §§ 74-1-1 to -14, and the Hazardous Waste Management Regulations (“HWMR”), 20.4.1 NMAC, including assessing administrative civil penalties for violations thereof.

2. The Respondent operates a petroleum refining Facility registered as a Large Quantity Generator of Hazardous Waste ("LQG"), EPA I.D. Number NMD000333211, located at Interstate Highway 40 Exit 39, Jamestown, New Mexico ("Facility").

3. On March 23, 2021, NMED conducted a hazardous waste compliance evaluation inspection ("Inspection") at the Facility. During the Inspection, the Department observed potential violations of the HWA and the HWMR.

4. As a result of the Inspection and in consideration of the documentation and information provided, the Department issued a Notice of Violation ("NOV") to the Respondent on December 16, 2022. On February 2, 2023 the Respondent submitted the Department correspondence that responded to the NOV, provided additional information, and detailed the corrective actions taken by Western Refining to address the alleged violations.

ALLEGED VIOLATIONS

5. The Department alleged the following violations in the NOV:

a) Failure to label containers of hazardous waste with the words "hazardous waste", which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.17(a)(5)(i)(A).

b) Failure to label containers of hazardous waste with an indication of the relevant hazard(s), which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.17(a)(5)(i)(B).

c) Failure to mark containers of hazardous waste with the date upon which accumulation began, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.17(a)(5)(i)(C).

d) Storage of hazardous waste for greater than 90 days without a permit, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.17(a); and 20.4.1.900 NMAC, incorporating 40 CFR § 270.1(c).

- e) Storage of hazardous waste in a satellite accumulation area without an active process, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.15(a).
- f) Failure to keep satellite containers of hazardous waste closed, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.15(a)(4).
- g) Failure to label satellite containers of hazardous waste with the words “hazardous waste”, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.15(a)(5)(i).
- h) Failure to label satellite containers of hazardous waste with an indication of the relevant hazard(s), which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.15(a)(5)(ii).
- i) Failure to submit an exception report to the NMED for hazardous waste manifests not received within 45 days, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.42(a).
- j) Failure to properly complete hazardous waste manifests, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.20(a).

COMPROMISE AND SETTLEMENT

- 6. All actions required to maintain or restore Respondent’s compliance have been completed.
- 7. The Respondent does not admit to any of the allegations in the NOV. To avoid further legal proceedings, the Department and the Respondent agree to the terms and conditions in this Order to resolve the alleged violations in the NOV.
- 8. The Respondent admits to the jurisdictional allegations of this Order and consents to the relief specified in the Order including the civil penalty. Entry into this Order shall not constitute

an admission or waiver of federal immunity on the part of Respondent or any instrumentality of the United States.

9. In compromise and settlement of the alleged violations in the NOV, the Parties agree that the Respondent shall owe a civil penalty of \$84,345.00 which shall be paid in a lump sum. Respondent shall pay the civil penalty to the State of New Mexico within 60 days after the effective date of this Stipulated Final Order. Payment shall be made by certified check or other guaranteed negotiable instrument, payable to the "State of New Mexico-Hazardous Waste Emergency Fund," and shall be delivered to the Department at the following address by either hand delivery or U.S. Postal Service:

Bureau Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505

10. Payments of the civil penalty shall be accompanied by a transmittal letter referencing this Order.

11. If the Respondent fails to make timely and complete payments of the civil penalty, the Respondent shall pay interest on the outstanding balance at the rate established for judgements and decrees under NMSA 1978, § 56-8-4.

OTHER TERMS AND CONDITIONS

ENFORCEMENT

12. Except as provided in Paragraph 15 (Covenants Not to Sue), the Department reserves all of the powers, authorities, rights, and remedies, whether administrative or judicial, civil or criminal, legal or equitable, to enforce the requirements of the HWA, HWMR, or Permit, for any

past, present or future violations not addressed in the NOV. In any such action, the Respondent reserves the right to assert any defenses that it may have.

13. The Department retains its right to enforce this Order by administrative or judicial action, and the Respondent reserves the right to assert any defenses that they may have.

14. In the event that the Department elects to file a judicial action to enforce this Order, the Department shall file such action in the First Judicial District Court of Santa Fe County, New Mexico. The Respondent will not challenge that jurisdiction or that the venue lies with the First Judicial Court of Santa Fe County, New Mexico.

COVENANTS NOT TO SUE

15. The Department covenants not to sue or take any administrative or civil action against the Respondent under the HWA, HWMR, and Agreement for any of the facts or violations alleged in the NOV or this Order. This covenant not to sue extends to the Respondents and their respective officers, directors, agents, employees, successors, and assigns and does not extend to any other person. This Covenant does not extend to future violations of the same HWA or HWMR requirements or violations of this Order.

16. Respondent covenants not to sue the State of New Mexico for any claims deriving from the NOV.

EFFECTIVE DATE

17. This Order shall become effective on the date it is approved and signed by the Department Secretary.

INTEGRATION

18. This Order merges all prior written and oral communications between the Department and the Respondent concerning the subject matter of the Order and contains the entire agreement between the Department and the Respondent.

BINDING EFFECT

19. This Order shall be binding upon the Department and its successor agencies and shall be binding upon the Respondent and on its successors.

AUTHORITY OF SIGNATORIES

20. The persons executing this Order represent that they have the requisite authority to bind either the Department or the Respondents, as appropriate, to this Order, and that their representation shall be legally sufficient evidence of actual or apparent authority to bind the Department or the Respondents to this Order. The Hazardous Waste Bureau Chief signs pursuant to the authority granted by the March 24, 2023 Delegation Order and with concurrence of the Resource Protection Division Director.

For: **NEW MEXICO ENVIRONMENT DEPARTMENT**

By: Ricardo Maestas Digitally signed by Ricardo Maestas
Date: 2023.08.16 10:58:35 -06'00' Date: 08/16/2023
RICARDO MAESTAS
ACTING CHIEF
HAZARDOUS WASTE BUREAU
NEW MEXICO ENVIRONMENT DEPARTMENT

For: **WESTERN REFINING**

By: Timothy J. Aydt Date: 8/22/2023
TIMOTHY J. AYDT
PRESIDENT
WESTERN REFINING SOUTHWEST LLC



APPROVAL OF STIPULATED FINAL ORDER

Pursuant to 20.1.5.600.B(2) NMAC, this Order, agreed to by the Department and Respondent, is hereby APPROVED as a FINAL ORDER.

DocuSigned by:

James Kenney

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JAMES C. KENNEY
SECRETARY OF ENVIRONMENT

Date: August 24, 2023