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NMED Hazardous Waste Bureau

Western Refining Southwest LLC

A subsidiary of Marathon Petroleum Corporation

212 N. Clark St.
El Paso, TX 79905

October 5, 2023

RETURN RECEIPT REQUESTED

Mr. Ricardo Maestas, Acting Chief
New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505

 **ENTERED**

**RE: Solid Waste Management Unit 1
Western Refining Southwest LLC - d/b/a Marathon Gallup Refinery
EPA ID #NMD000333211**

Dear Mr. Maestas:

Western Refining Southwest LLC (f/k/a Western Refining Southwest, Inc.) appreciates the opportunity to submit supporting information regarding the regulatory status and closure of the former wastewater aeration lagoons (AL-1 and AL-2) and one evaporation pond (EP-1), collectively known as Solid Waste Management Unit 1 (SWMU 1) at the Marathon Gallup Refinery (Refinery). The Refinery is owned and operated by Western Refining Southwest LLC, D/B/A Marathon Gallup Refinery (Western) and has been indefinitely idled since 2020. The primary purpose of this letter is to convey that closure of SWMU 1 can be achieved under existing applicable authorities in a manner that meets the closure and post closure objectives of New Mexico Environment Department (NMED) and the Refinery without creating delay in the remedy process. Western is ready to mobilize to begin excavation of SWMU-1 this Fall. Changing the formal status of SWMU 1 to an HWMU will build significant delay into the Closure Plan approval process and the remedy itself, and is unnecessary for a unit that will never be operated and is destined only for final closure.

Because the history of SWMU 1 spans more than three decades, and to further our discussion on this topic during the meeting scheduled for October 11, 2023, we will first include in this letter some of the relevant historical events.

Summary of SWMU 1's Regulatory and Remedy History

AL-1 and AL-2 were constructed in 1987 in a portion of EP-1 as Aggressive Biological Treatment (ABT) units for treatment of wastewater. AL-1, AL-2 and EP-1 are sometimes collectively referred to as the Aeration Basin, Lagoons, or the Aeration Pond. This area subsequently was identified as SWMU 1 in the RCRA Hazardous and Solid Waste Amendments (HSWA) Operating Permit for the Land Treatment Unit (LTU) and the August 2000 RCRA LTU Facility Post-Closure Care Permit (PCCP). As a reference, Attachment 1 is an excerpt from a map that appears in the PCCP showing the boundaries of the SWMU 1.

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Since 2000, the PCCP has contained Tables that identify the SWMUs at the Refinery that will be addressed by Corrective Action. That is a defined term in the PCCP that incorporates 40 CFR Section 264.101 corrective action standards. The PCCP also contains a Table identifying any hazardous waste management unit (HWMU). For the life of the PCCP, the only HWMU subject to the closure standards applicable to interim status and permitted hazardous waste facilities has been the Land Treatment Unit. However, the Refinery's obligation to close SWMU 1 under NMED jurisdiction, oversight, and approval has long been established by the corrective action obligations under the PCCP.

We would like to clarify some of the context surrounding a now-terminated Consent Agreement and Final Order (CAFO). In 2009, EPA brought a RCRA enforcement action against the previous owners of the Refinery alleging that characteristic benzene waste had entered AL-1. EPA indicated in settlement negotiations that it would require corrective action at AL-1 and AL-2. Because the Refinery already had an independent and preexisting corrective action obligation for SWMU 1, which included AL-1 and AL-2, the Refinery requested that NMED be added as a Plaintiff-Intervenor in the enforcement action to ensure that the corrective action referenced in resolution of the enforcement action would be consistent and align with the PCCP requirements.

The end result essentially was an incorporation of the PCCP requirement under NMED's jurisdiction into a CAFO resolving the enforcement action. The CAFO to which NMED was a party made no effort to require SWMU 1 to be addressed as a HWMU. Although EPA used the term HWMU in its legal allegations relating to AL-1 and AL-2, there was no admission by the Refinery and the corrective action resolution – submittal of a Lagoon Corrective Measures Implementation Work Plan - was consistent with a SWMU rather than a HWMU. No RCRA permit application was required. Ultimately, in recognition that the CAFO was not the driver for corrective action at SWMU 1, EPA and NMED ultimately severed the corrective action obligation and terminated the CAFO in May 2022.

In the preceding years through today, the Refinery and NMED have had regular correspondence and communications, including meetings, on the remedy for SWMU 1. The Refinery ultimately proposed to NMED a "Dig and Haul" remedy for SWMU 1 that the Refinery contemplated commencing in 2019 on approval. In a January 16, 2019 meeting in Santa Fe between NMED and the Refinery, NMED was receptive to the proposed remedy that would consist of a work plan and the excavation work. Since that time, the Refinery and NMED have worked closely on the investigation report and closure plan submittals for SWMU 1.

On November 29, 2022, NMED approved with modifications the Refinery's request for a No Longer Contained In determination for disposal of investigation derived waste that will be generated as part of the planned corrective action. The Refinery understood that this determination would facilitate the implementation of the Dig and Haul remedy described in a March 15, 2023 SWMU-1 Closure Plan submission to NMED.

Achieving NMED and Refinery Objectives

Considering all of the above, we firmly believe that NMED and the Refinery can achieve mutual closure/post-closure objectives under existing legal authorities. It seems clear that NMED already has sufficient authority to accomplish closure and post-closure care under RCRA and the existing PCCP without making any changes to the PCCP. As we discussed above, the Refinery's obligation to close SWMU 1 under NMED jurisdiction, oversight, and approval has long been established by the corrective action obligations under the PCCP. Those existing PCCP obligations support a remedy that we believe will satisfy NMED's goals and Refinery's readiness to close SWMU-1. Moving forward without a reclassification of SWMU 1 will address the goal of both parties not to delay the corrective action at SWMU 1.

SWMU 1 Historical Determinations

Below are a few of the directives from NMED that provide some context for the Refinery's long understanding that NMED considers SWMU 1 to be a SWMU and not a HWMU. The surrounding circumstances supporting NMED's historical determinations, which we believe to be legally supported by RCRA authorities, have not changed since these communications.

In May 2009, during the CAFO negotiations, the Refinery submitted to NMED a workplan entitled Closure Plan Aeration Lagoons that was disapproved by NMED for the stated reason that the term closure plan:

applies to permitted units or interim status units as referenced in NMED's fee regulations (20.4.2 NMAC). ***NMED does not consider Aeration Lagoon 1 and Aeration Lagoon 2 (AL-1 and AL-2) to be interim status units.*** NMED has determined this document to be a Corrective Measures Implementation (CMI) Work Plan for a Solid Waste Management Unit (SWMU) listed in Appendix A of the Post-Closure Care Permit. (emphasis added)

There are other specific determinations by NMED throughout the years that SWMU 1 is a SWMU, not a HWMU. For example, in a January 18, 2011 letter commenting on the Refinery's submittal of a Corrective Measures Evaluation Report as part of a CMI Workplan for SWMU 1, NMED stated:

The Aeration Lagoons are a Solid Waste Management Unit (SWMU) and are therefore subject to corrective action under 40 CFR 264.101 not closure under 40 CFR 264 Subpart G. Corrective action will be complete when the remedy is implemented, and any long-term monitoring and maintenance is in place. Revise all references to closure throughout the CME Report (see also Section 3, Section 4, Section 5) to reflect the proper terminology for the regulatory framework. (emphasis added)

NMED also provided a consistent position to the Refinery in a January 23, 2012 letter. Responding to an April 2011 inquiry by the Refinery where it stated that it did not want to be in the position of

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pursuing corrective action under 40 CFR 262.101, as had been contemplated by the Post-Closure Care Permit, only to have future EPA or NMED staff unexpectedly assert that the unit should be "closed" under regulations applicable to HWMUs, NMED replied: "**Corrective action complete status is equivalent to closure in this case.**" (emphasis added)

We believe that a departure from NMED's consistently stated position is unnecessary to achieve the remedy goals and will cause further delay in the closure process. We look forward to talking with you about these points as we all work toward commencing the final remedy for SWMU 1.

If you have any questions or comments regarding the information contained herein, please do not hesitate to contact Mr. John Moore at (505) 879-7643. We look forward to further discussing the SWMU 1 milestones on October 11, 2023.

Sincerely,



Timothy J. Peterkoski, Director
Environmental Auditing & Processes
Marathon Petroleum Corporation

Attachment

cc: N. Dhawan, NMED HWB
M. Suzuki, NMED HWB
L. King, EPA Region 6
M. Bracey, MPC
J. Moore, MPC

L. Andress, NMED HWB
L. Barr, NMOCD
K. Luka, MPC
H. Jones, Trihydro Corporation