

September 12, 2014

RECEIVED

FED EX# 8010 5359 9376

SEP 15 2014

Mr. John E. Kieling, Chief
New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive East, Bldg. 1
Santa Fe, New Mexico 87505-6303

NMED
Hazardous Waste Bureau

RE: RESPONSE TO DISAPPROVAL
EVAPORATION POND 7 DIKE BREACH
WESTERN REFINING SOUTHWEST INC., GALLUP REFINERY
EPA ID # NMD000333211
HWB-WRG-14-003

Dear Mr. Kieling:

This letter provides the response of Western Refining Southwest, Inc.'s Gallup refinery ("Western") to the New Mexico Environment Department ("NMED") letter and comments of August 4, 2014 relating to a minor release of treated wastewater from Evaporation Pond 7 and unrelated seepage near the evaporation ponds that was observed during a stormwater inspection. Without making any admissions, and reserving all applicable rights and defenses, including without limitation the right to dispute whether the release is subject to corrective action under the RCRA Post Closure Care Permit (the "Permit") and to assert that 40 CFR Part 264 Subpart K is inapplicable to the evaporation ponds because such ponds are not RCRA-regulated units, Western provides below responses to each of NMED's comments following a background discussion of communications between Western and the NMED on these issues.

I. **Background**

To recap the relevant background briefly, on March 19, 2014, Western orally and by email notified the NMED of a release of treated wastewater from Evaporation Pond 7 due to a breach in the dike.¹ On March 20, 2014 Western received an email from Kristin Van Horn of NMED advising that submittal of a New Mexico Oil Conservation Division C-141 form would satisfy reporting requirements of the release under the Permit, and seeking submittal of a letter report on the release. Under a reservation of rights, Western submitted an April 16, 2014 letter report to NMED in response to its March 20, 2014 request. NMED issued an August 4, 2014 "disapproval" with comments to which this letter responds.

II. **Specific Responses**

For reading ease, we have repeated the portions of the "Comments" from NMED's letter

¹ Western also notified the New Mexico Oil Conservation Division orally and by email on March 19, 2014 of the release.

that require clarification or a response. We have not included the portions of the “Comments” that repeated statements in Western’s April 16th letter or are background discussions.

A. NMED Comment 1

The evaporation ponds are not waters of the state as defined in NMAC; however, evaporation ponds are hazardous waste surface impoundments, because hazardous waste has been discharged to the ponds in the past, and wastewater stored in the evaporation ponds remains subject to RCRA Subtitle C from its point of generation through and including its storage and treatment in the evaporation ponds. Once the wastewater left evaporation pond 7 through the breach, it became a release from a solid waste management unit (SWMU), SWMU No. 2, which the Permittee is required under 40 CFR § 264.101 and Permit Sections IV.H (Corrective Action Procedures) and IV.B.1 (Corrective Action beyond the Facility Boundary) to properly investigate and, if necessary, remediate any release. Such a release is also subject to the reporting requirements of Permit Section II.C. Additionally, screening levels indicate the potential for contamination; therefore, the screening levels used in the Facility-Wide Groundwater Monitoring Report (the Permittee compares the surface water samples collected at the evaporation ponds to: WQCC 20.6.2.3103 NMAC; 40 CFR § 141.62 MCL (Apr 2013); and EPA RSL Tap Water (Nov 2012)) are used as a screening tool to determine whether or not the wastewater held in the evaporation ponds may contaminate soil or groundwater.

Western Response to Comment 1

Setting aside for this response our respective positions on the applicability of certain legal authority to the evaporation ponds, we believe that Western and NMED share the same interest in assuring that the evaporation pond system at the Gallup refinery is well-functioning and protective of human health and the environment. As a responsible owner and operator of a wastewater treatment system that includes evaporation ponds, Western maintains, and repairs as necessary, the evaporation ponds. Additionally, Western is proactively installing a more aggressive evaporation system, has made extensive improvements to the pond dikes to ensure integrity and is implementing water conservation measures to help control freeboard levels. These measures are being successful in maintaining appropriate freeboard levels.

For example, and as Western noted in its April 16, 2014 letter to John Kieling of NMED and Carl Chavez of OCD in a section entitled “Pond Dike Improvements and Pond Management,” Western voluntarily commenced significant pond dike improvement activities in January 2014. In fact, earth moving equipment was on-site at the refinery on March 19, 2014 in connection with those activities and, as a result, dike improvements at Pond 7 were undertaken immediately following the minor breach.

To summarize the evaporation pond improvement activities described in the April 16th letter, Western’s activities included:

- Improving approximately 80% of the pond dikes by an outside contractor, Franklin Earthmoving, Inc.;
- Widening pond dikes and improving the outside slope of berms;

- Repairing water and wind erosion to the dikes caps (photos of this work were included with Western's April 16, 2014 letter); and
- Rebuilding the area impacted by the Pond 7 breach.

This work was completed in May 2014 at a cost of \$425,000. With respect to the dike improvements, and Pond 7 dike repair work, included in these activities, ninety five percent of the material used for the pond repairs was virgin soil dug from two locations on refinery property. The other five percent was primarily rip-rap material consisting of construction demolition material such as concrete. The soil was taken to the ponds with dump trucks. The unloaded soil was then moved with a front loader or in tight areas an excavator and a dozer was used to compact and contour the soil. The pond berms were widened and where room allowed the side walls were contoured to improve the outside slope of berms. Attached for your information is a figure depicting the location of Outfall 1 and the monitoring wells in the vicinity of the now-repaired Pond 7 dike breach.

Western's April 16th letter also discussed Western's intention to purchase and install additional evaporation equipment to continue maintaining adequate freeboard in the ponds. That equipment, consisting of two (2) new evaporators similar in size to the two (2) existing evaporators, has been purchased. Installation of that new equipment should be complete by mid-October 2014. The cost of purchase and installation of this new equipment is approximately \$350,000.

In addition, as noted in the April 16th letter, Western is implementing additional water conservation measures to continue maintaining adequate freeboard in the ponds. Measures already implemented which reduce the amount of process water entering the sewer system include:

- Water from the sour water stripper that has been stripped of H₂S and benzene that previously went to the sewer system is now being reused at the desalter hot well in place of fresh water. This reduces uses of fresh water and reduces the amount of process water that would enter the wastewater treatment system.
- Directed maintenance activities resulting in reduction of excess water to the sewer system.

Western continues to evaluate the ponds as well as its water management practices for opportunities to enhance the operation of the evaporation ponds, including, without limitation, exploring best management practices for contingencies and berm inspection and maintenance.

Finally, we note that Western is unaware of any discharges of hazardous waste to Pond 7.

B. NMED Comment 2

The laboratory analytical reports included with the Report indicates that the soils that were affected by the pond breach were not affected by hazardous constituents; however, the Permittee did not include any information regarding the methods and procedures used to collect the soil and water samples. Therefore, NMED is not able to fully assess the spill or cleanup information. In a letter response, include descriptions of the methods used to collect soil and water samples, and the collection depths of the soil samples. Furthermore, the soil samples

were analyzed for TCLP Metals only, for proper characterization the samples should have been analyzed for total metals. TCLP is used for waste characterization purposes, not site characterization and cleanup.

Western Response to Comment 2

The surface water samples were collected following the procedures specified in the Facility-Wide Groundwater Monitoring Work Plan (2012 Updates – submittal date February 21, 2013). The soil samples were collected as discrete grab samples from the upper six inches. A decontaminated stainless steel spoon was used to collect each soil sample, which was placed directly into 9 ounce jars and immediately placed on ice.

C. NMED Comment 3

In addition NMED does not consider the "background samples" to be appropriate background samples. If the Permittee wishes to use background samples, then the Permittee must submit a soil background study work plan for NMED review and approval following the requirements outlined in Permit Section IV.J.6 (Determination of Background) and established in EPA and NMED guidance. The chloride levels reported in the October 2013 letter report exceeded the chloride standards set by the OCD.

Western Response to Comment 3

The three background soil samples were only collected for initial comparison purposes and Western is not proposing to use these results for any further purpose or to establish site-specific background concentrations for chloride at this time.

D. NMED Comment 4

The Permittee is responsible for maintenance of the evaporation ponds. 40 CFR § 264.221(g) states that "[a] surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and wave action; rainfall; run-on; malfunctions of level controllers, alarms, and other equipment; human error." In addition, 40 CFR § 264.221(h) states, "[a] surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes." SWMU 2 is not a permitted unit; however, the standards for surface impoundments described in 40 CFR 264 Subpart K establish the design criteria applicable to this SWMU. The Permittee failed to properly maintain the facility's structures and are subject to an enforcement action in the event of additional releases from the evaporation ponds. The Permittee must demonstrate that the dikes have been repaired and are currently maintained and must ensure that the head or freeboard maintained in the ponds is sufficient enough to maintain the structural integrity of the berms. Include information regarding the methods and materials used to repair the berms. The Permittee must note that 40 CFR § 264.227(a) requires that "[a] surface impoundment must be removed from service in accordance with paragraph (b) of this section if: (1) The level of liquids in the impoundment suddenly drops and the drop is not known to be caused by changes in the flows into or out of the impoundment; or (2) The dike leaks." In the future, if additional berm failures occur, the Permittee will be subject to the requirements outlined in 40 CFR § 264.227(a) through (e). Provide a contingency plan and an inspection plan for berm

maintenance. Provide a figure depicting the location of Outfall 1 and the groundwater monitoring wells in the vicinity of the breach.

Western Response to Comment 4

As noted by NMED, the evaporation ponds (Solid Waste Management Unit No. 2) are not RCRA regulated units. Nevertheless, and as discussed in the Western Response to Comment 1 above, Western takes its responsibility to maintain its evaporation ponds seriously. We refer NMED to the Western Response to Comment 1 above which contains information requested in Comment 4.

E. NMED Comment 5

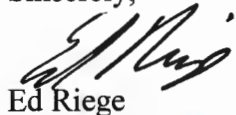
At the time of the Report, the Permittee was waiting for off-site access. In the letter response, discuss whether off-site access was granted and whether or not chloride contaminated soils have been removed. Provide confirmation sample collection methods, analytical data and a figure depicting the locations of the confirmation samples. In addition discuss whether or not the methods proposed to maintain adequate freeboard in the evaporation ponds have been successful or not.

Western Response to Comment 5

Off-site access has not been granted. Western will continue to pursue access but notes that, if reasonable access is not granted, Western will consider that to constitute a force majeure event.

If there are any questions or concerns with the preceding, then please contact me. It is our understanding that NMED has taken the position that if a dispute arises in connection with the application of the Permit, NMED will engage in informal dispute resolution despite the absence of a formal procedure for same in the Permit. Such measures may be needed in connection with this matter.

Sincerely,

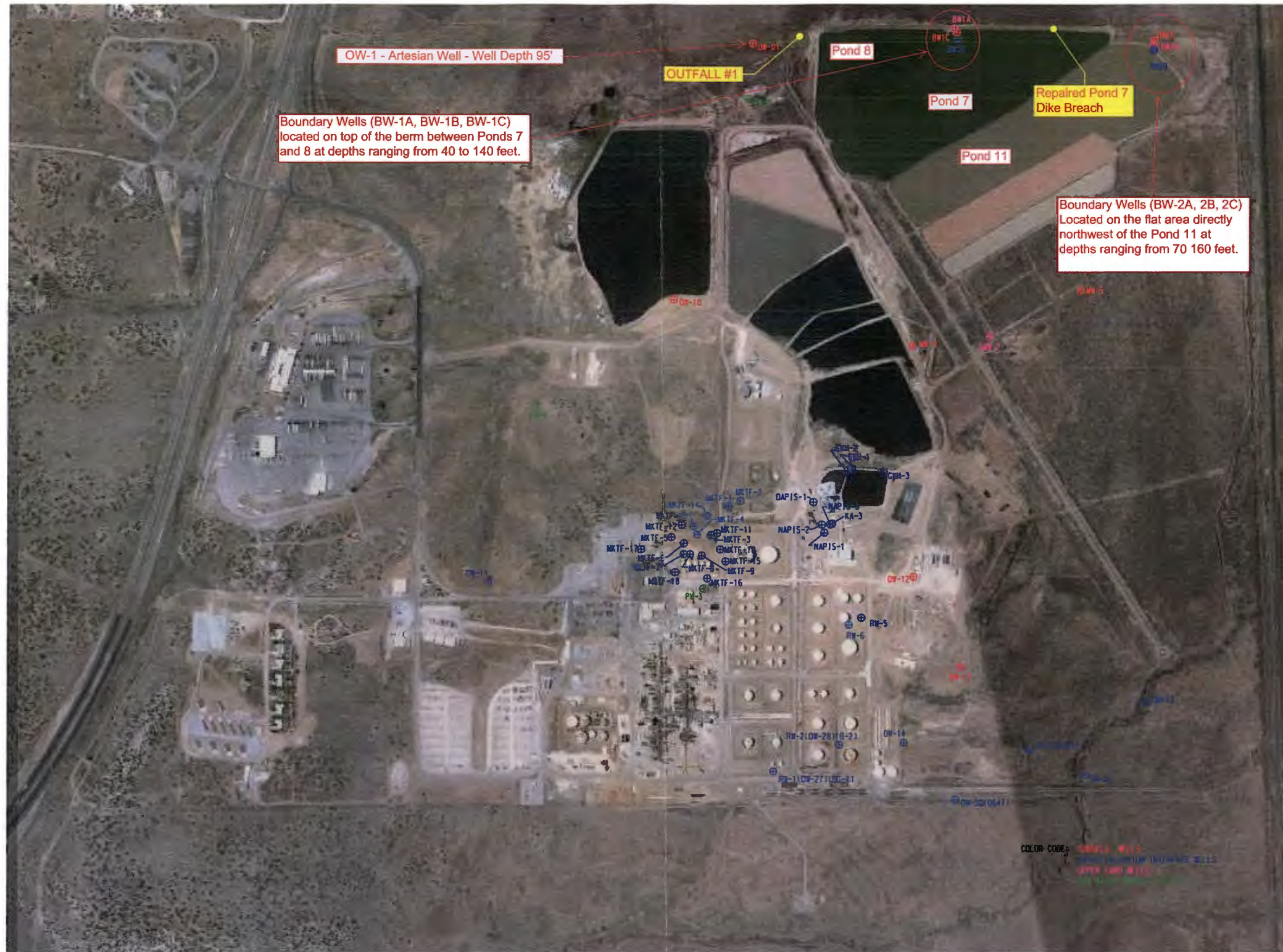


Ed Riege

Environmental Manager

Western Refining Southwest, Inc. – Gallup Refinery

cc A. Allen, Western El Paso
 Billy McClain, Jr., Western Gallup
 D. Cobrain, NMED HWB (email)
 N. Dhawan, NMED HWB (email)
 K. Van Horn, NMED HWB (email)
 C. Chavez, EMNRD OCD (email)
 S. Holcomb, NMED SWQB (email)
 L. King, EPA (email)



4601 Ripley
El Paso, Texas
79922
915-584-1317



1"=500'

Project #: 0625725

Figure 6
FACILITIES AND WELLS
WESTERN REFINING - GALLUP REFINERY

Western Refining - Gallup Refinery
Interstate 40, Exit 39
Jamestown, New Mexico 87347
Date: August 14, 2014