



SUSANA MARTINEZ  
Governor  
JOHN A. SANCHEZ  
Lieutenant Governor

NEW MEXICO  
ENVIRONMENT DEPARTMENT

2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico 87505-6303  
Phone (505) 476-6000 Fax (505) 476-6030  
[www.env.nm.gov](http://www.env.nm.gov)



RYAN FLYNN  
Cabinet Secretary  
BUTCH TONGATE  
Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

April 20, 2016

Mr. Ed Riege  
Environmental Manager  
Western Refining Southwest Inc., Gallup Refinery  
92 Giant Crossing Road  
Gallup, New Mexico 87301

**RE: NOTICE OF VIOLATION  
WESTERN REFINING SOUTHWEST INC., GALLUP REFINERY  
EPA ID # NMD000333211**

Dear Mr. Riege:

The New Mexico Environment Department (NMED) hereby issues this Notice of Violation (NOV) to Western Refining Southwest, Inc. (Western) for violations related to its Gallup Refinery, located at 92 Giant Crossing Road, Gallup, New Mexico (Facility). This NOV addresses several violations stemming from the failure to make a hazardous waste determination for excavated soil prior to off-site disposal. These violations are based on the *Western Refining Hydrocarbon Seep Interim Measures Report* (Report), dated July 2015, which indicated the improper disposal of soil contaminated with listed hazardous waste.

The violations are as follows:

- 1. Failure to make a proper hazardous waste determination on excavated contaminated soil. This is violation of 20.4.1.300 NMAC referencing 40 CFR § 262.11.**

Western notified NMED of a hydrocarbon seep at the Facility discovered on the ground surface approximately 280 feet west southwest of the crude oil storage tank T-102 on June 26, 2013. The Permittee identified a source of the hydrocarbon seep as the Contact Wastewater/Stormwater Collection System (Solid Waste Management Unit (SWMU) 12). Western conducted dye tests in the process sewer system which resulted in dye reaching the seep area in July and August 2013.

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A camera survey of the sewer line was conducted on August 27 and 28, 2013. A hole was identified approximately 20 feet south of the sewer box on the west side of the Heat Exchanger Bundle Cleaning Pad.

On October 23, 2013 Western excavated the wastewater pipeline and plugged the pipeline upstream of the corroded portion of the pipeline at the sewer box located west of the "I/E shop" to replace a corroded section of the line. Additional excavation of the wastewater pipeline extended approximately 140 feet south of the Heat Exchanger Bundle Cleaning Pad. The final excavation was 180 feet long, 20 feet wide, and up to 12 feet deep. NMED has determined that the excavation resulted in approximately 1,200 cubic yards (CY) of displaced soil (not accounting for dimensions of the pipe).

Western collected soil samples from the excavated soil and sent samples to an off-site laboratory for analytical testing and waste characterization. The Report did not describe the methods used to collect the soil samples and did not describe how the excavated soil was stored or managed. The soil analytical methods and results are as follows:

- A soil sample (collected June 26, 2013) related to excavation for installation of a sump west of Tanks 101 and 102 was analyzed for DRO, GRO, Toxicity Characteristic Leaching Procedure (TCLP) Metals, TCLP Semi-Volatile Organic Compounds (SVOCs), Volatile Organic Compounds (VOCs), the (ignitability, corrosivity, and reactivity) hazardous characteristics, and gasoline- and diesel- range organics (GRO and DRO respectively). DRO (9,200 mg/kg) and GRO (2,900 mg/kg) were detected in the sample.
- A soil sample (collected July 10, 2013) from the soil related to excavation for installation of a sump west of Tanks 101 and 102 was analyzed for DRO, GRO, TCLP Metals, SVOCs, VOCs and hazardous characteristics. DRO (40,000 mg/kg) and GRO at (230 mg/kg) were detected in the sample.
- A third sample (collected September 26, 2013) from the same location as specified above. DRO (1,600 mg/kg) and GRO (87 mg/kg) were detected in the sample.
- A waste characterization sample (collected November 8, 2013) from material excavated near the heat exchanger bundle cleaning pad was also analyzed for the compounds listed above with the exception of SVOCs. DRO (380 mg/kg) and GRO (640 mg/kg) were detected in the sample.
- Twelve additional waste characterization samples (collected June 26, 2014) from material excavated near the heat exchanger bundle cleaning pad were analyzed for TCLP metals TCLP for benzene. Metals and benzene were not detected in the samples.

The laboratory analytical results for soil samples of excavated soil demonstrated that the soils were not characteristic hazardous waste. However, a generator must include the process that generated the waste when making a hazardous waste determination, not just laboratory analytical results. When making a hazardous waste determination, a generator must determine if a waste is “characteristic” and/or “listed” hazardous waste 40 CFR § 262.11. A letter from NMED regarding the hydrocarbon seep, dated July 31, 2013, stated, “Western Refining must manage any gasoline-tainted soil removed from the site as hazardous waste unless and until analytical results confirm that the soil is not toxic hazardous waste for benzene (D018) or listed hazardous waste based on the source of the release.” Western failed to consider the source of the release.

One of the sources of the hydrocarbon seep is the Contact Wastewater/Stormwater Collection System, which handles process wastewater, among other types of fluid. In addition to the traditional use of the sewer system, Western uses vacuum trucks for initial cleanup of spilled material and disposes of these fluids back into the sewer system upstream from the API Separator; these fluids potentially include listed hazardous waste. Once process wastewater ceased lateral flow (for example, when process water from the Contact Wastewater/Storm water Collection System leaked from the corroded pipe and contaminated the surrounding soil), hazardous waste (F037) was generated.

While Western’s soil analytical sampling results demonstrate that the excavated soils from the pipe excavation are not characteristic hazardous waste, the soils contained listed hazardous waste (F037 at a minimum and potentially others; e.g., K049, K050, K051, K169, and K170) because of the types of waste conveyed in the sewer system. Mixtures of solid waste and listed hazardous waste must be regulated as hazardous waste. Additionally, environmental media that contain a F- or K-listed waste also must be managed as if they are F- or K-listed waste (USEPA Contained-in Policy, RO 11195, 11434, and 11593).

**2. Offering listed hazardous waste to a facility without an EPA identification number for disposal and failure to prepare a hazardous waste manifest. This is a violation of 20.4.1.300 NMAC referencing 40 CFR § 262.12 and 40 CFR § 262.20.**

The New Mexico Hazardous Waste Management Regulations at 20.4.1.300 NMAC referencing 40 CFR § 262, establishes standards for generators of hazardous waste. These standards include the hazardous waste determination, accumulation of hazardous waste, and record keeping. The Report indicates that listed hazardous waste was transported and disposed of at the Gandy Marley, Inc. land treatment facility in Chaves County, New Mexico, which is not permitted to accept hazardous waste. The Report indicates that the listed hazardous waste was transported and disposed as non-hazardous waste. This is a violation of 40 CFR § 262 Subpart A and Subpart B.

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**3. Failure to request an extension to store hazardous waste over the 90-day storage accumulation time. This is a violation of 20.4.1.300 NMAC referencing 40 CFR § 262.34(b).**

Pursuant to 20.4.1.300 NMAC, incorporating 40 CFR § 262.34(b), a generator must request an extension to store listed hazardous waste on-site for more than 90 days without a permit or without acquiring interim status. The testing schedule included in the Interim Report indicates that the waste was generated on or before June 26, 2013 (initial soil sampling), 14 soil excavation actions were conducted (dates of excavations were omitted), and on October 23, 2013 the wastewater pipeline area was excavated. Excavated waste analytical sampling was conducted as late as June 26, 2014, indicating that at least some of the generated wastes were stored for at least one year which violates the 90-day hazardous waste accumulation time limit. If the generator of 1,000 kilograms or greater of hazardous waste in a calendar month cannot dispose of wastes within the 90-day timeframe, the generator must request an extension. NMED did not receive a request for such an extension.

**4. Failure to properly dispose of listed hazardous waste is a violation of 20.4.1.800 NMAC referencing 40 CFR § 268.7(a)(1) and § 268.35.**

Given the size of the excavation, approximately 1,200 CY of listed hazardous waste would have been excavated. The methods of management for this 1,200 CY of contaminated soil was not discussed in the Report, with the exception of 278 CY sent to Gandy Marley, Inc., which is not permitted to accept hazardous waste. The transport and disposal of 278 CY of listed hazardous waste appears to have been conducted after the last soil sampling event on June 26, 2014. The exact date of disposal was not provided in the Report.

As previously stated, the Gandy Marley, Inc. land treatment facility is not permitted to accept hazardous waste. The 278 CY of listed hazardous waste was land-applied at the Gandy Marley facility; this is a violation of 20.4.1.800 NMAC incorporating 40 CFR § 268.7(a)(1). Depending on the listed hazardous wastes present, it is also a violation of 20.4.1.800 NMAC referencing 40 CFR § 268.35, Waste Prohibitions for Petroleum Refining wastes (K169, K170, K171, and K172) to land dispose these listed hazardous wastes. The management and disposal of the remaining estimated 922 cubic yards of listed hazardous wastes is not discussed in the Report.

**COMPLIANCE:**

Western must resolve these violations by completing the following actions:

- Contact the Oil Conservation Division (OCD) and Gandy Marley, Inc. within 15 days of receipt of this NOV to report that listed hazardous waste was disposed at the land farm, including the volume and proper waste designation. Provide copies of these communications (both initial contacts and responses) to NMED. The copies must include the dates of communication and the Western and Gandy Marley, Inc. personnel involved.

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- Provide NMED detailed information regarding the designation of the excavated soil, management (including sampling) of the excavated soil, types of containers utilized, the start/end dates of waste accumulation and date(s) of disposal, and the management and disposition of the removed wastewater piping. Also provide an explanation of why this listed hazardous waste was stored on-site for greater than 90 days.
- The Permittee disposed of 278 CY of excavated soil at Gandy Marley, Inc.; however based on the dimensions of the pipeline excavation a greater amount of soils were removed. Provide NMED a detailed explanation of the management and disposition of the remaining excavated soils contaminated with listed hazardous wastes.
- Provide a summary of what the "I/E shop" (Page 2, paragraph 2 of this NOV) is and its functions.

In addition to the actions listed above, NMED recommends that Western conduct integrity testing on the underground pipelines at the Facility every five years.

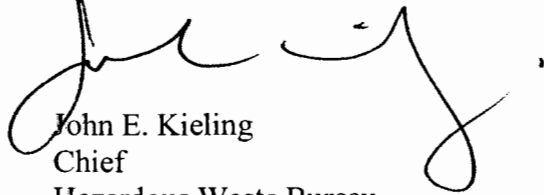
Western must complete the actions listed above no later than **June 6, 2016**. Failure to adhere to the specified actions above may result in further enforcement actions.

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If you have questions regarding this NOV, please contact Acting Compliance and Technical Assistance Program Manager Janine Kraemer at 505-476-4372 or by email at Janine.Kraemer@state.nm.us.

NMED is available to meet with Western regarding this NOV as well.

Sincerely,



John E. Kieling  
Chief  
Hazardous Waste Bureau

cc: D. Cobrain, NMED HWB  
N. Dhawan, NMED HWB  
K. Van Horn, NMED HWB  
J. Kraemer, NMED HWB  
J. Griswold, EMNRD OCD  
C. Chavez, EMNRD OCD  
A. Hains, WRG  
L. King, EPA  
G. Tidmore, EPA  
J. Dougherty, EPA

File: Reading File and WRG 2016 and File 2401