



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS TX 75202-2733

APR 17 2019

VIA E-MAIL AND  
CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7015 1520 0003 4072 8258

Ms. Jean Flores  
Guida, Slavich, & Flores  
5956 Sherry Lane  
Suite 1000  
Dallas, TX 75225

Re: *In the Matter of Western Refining Southwest, Inc.*, Docket No. CAA-06-2019-3316

Dear Ms. Flores:

Enclosed is a fully executed Consent Agreement and Final Order (CAFO) in the matter referenced above for execution by Western Refining Southwest, Inc.

As provided in the CAFO, Western Refining Southwest, Inc., will have thirty (30) days from the effective date of the CAFO to pay the civil penalty of \$175,000.

If you have any questions regarding this CAFO, please contact Jeffrey Clay, Assistant Regional Counsel, at (214) 665-7297 or by email at [Clay.Jeffrey@epa.gov](mailto:Clay.Jeffrey@epa.gov).

Sincerely,

Cheryl T. Seager, Director  
Enforcement and  
Compliance Assurance Division

Enclosure

Ecc: Jon Lutz, Staff Manager  
Enforcement, Air Quality Bureau  
New Mexico Environment Department  
525 Camino de los Marquez, Suite 3  
Santa Fe, NM 87507  
[jon.lutz@state.nm.us](mailto:jon.lutz@state.nm.us)

ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED

2019 APR 17 PM 2:52

REGIONAL HEARING CLERK  
EPA REGION VI

**IN THE MATTER OF:**

**Western Refining Southwest, Inc.**

**Jamestown, New Mexico**

**Respondent**

**CONSENT AGREEMENT  
AND FINAL ORDER  
EPA DOCKET NO. CAA-06-2019-3316**

**CONSENT AGREEMENT**

The Director, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Western Refining Southwest, Inc. (“Respondent”), at its facility located at Interstate 40, Exit 39, Jamestown, New Mexico, have agreed to simultaneously commence and resolve this matter through the issuance of this Consent Agreement and Final Order (“CAFO”).

**I. PRELIMINARY STATEMENT**

1. This proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d), as amended, is simultaneously commenced and concluded by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).

2. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.34.

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this CAFO. However, Respondent neither admits nor denies the specific factual or legal allegations contained in this CAFO, and this CAFO shall not be used as evidence of any legal or

factual admission by Respondent.

4. Respondent waives any right to contest the allegations in the CAFO, its right to appeal the Final Order set forth herein and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Respondent consents to the issuance of this CAFO, and consents to the assessment and payment of the stated federal civil monetary penalty in the amount and by the method set out in this CAFO.

6. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for federal civil monetary penalties for the violations and facts alleged in the CAFO.

7. This CAFO may not be used in any federal or state proceeding except proceedings by EPA to enforce this CAFO.

8. Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting for violations not alleged in this CAFO.

9. Respondent represents the undersigned representative is fully authorized by the Party whom he or she represents to enter-into the terms and conditions of this CAFO, to execute this CAFO, and to legally bind the Respondent to the terms and conditions of this CAFO.

10. Respondent agrees the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

## II. STATUTORY AND REGULATORY BACKGROUND

11. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides the objective of the regulations and programs authorized under Section 112(r) shall be to prevent the accidental release of regulated substances or other extremely hazardous substances and to minimize the



consequences of any such release that does occur.

12. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), provides in pertinent part:

(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

\* \* \* \*

(B)(i) [. . .] the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operator of the sources of such releases.

\* \* \* \*

(B)(ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection.

13. On June 20, 1996, the EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

14. 40 C.F.R. Part 68 provides general requirements applicable to owners or operators of a stationary source subject to Part 68. It also establishes requirements that apply to an owner or operator based on whether the stationary source operates processes subject to one of three "Programs" -- Program 1, Program 2, and Program 3.

15. Under 40 C.F.R. § 68.10(a), an owner or operator of a stationary source that has

more than a threshold quantity of a regulated substance in a process ("Covered Process"), as determined under 40 C.F.R. § 68.115, shall comply with the requirements of 40 C.F.R. Part 68 no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under Section 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

16. Under 40 C.F.R. § 68.12(a), an owner or operator of a stationary source subject to Part 68 requirements must submit a Risk Management Plan ("RMP") as provided in 40 C.F.R. Part 68 Subpart G (§§ 68.150-68.185) that reflects all covered processes at the stationary source.

17. Under 40 C.F.R. § 68.12(d), the owner or operator of a stationary source with a process subject to the "Program 3" requirements of the Part 68 regulations, as determined pursuant to 40 C.F.R. § 68.10(d), must do the following: develop and implement a management system as provided in § 68.15; conduct a hazard assessment as provided in §§ 68.20 through 68.42; implement the prevention requirements of §§ 68.65 through 68.87; develop and implement an emergency response program as provided in §§ 68.90 to 68.95; and submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in § 68.175.

18. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

19. "Process" is defined in 40 C.F.R. § 68.3 as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated



substance could be involved in a potential release, shall be considered a single process.

20. "Covered process" is defined in 40 C.F.R. § 68.3 as a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.

21. "Regulated substance" is defined in 40 C.F.R. § 68.3 as any substance listed pursuant to Section 112(r)(3) of the CAA as amended, in § 68.130.

22. Risk Management Plan ("RMP") is defined in 40 C.F.R. § 68.3 under subpart G of 40 C.F.R. Part 68.

23. "Stationary source" is defined in Section 112(r)(2)(C) of the CAA and 40 C.F.R. § 68.3 as any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

24. "Threshold quantity" is defined in 40 C.F.R. § 68.3 as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA as amended, listed in § 68.130, and determined to be present at a stationary source as specified in § 68.115 of this part.

25. "Owner or operator" shall mean any person who owns, leases, operates, controls, or supervises a stationary source.

26. Under Sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) & 7413(d)(1)(B), whenever the Administrator finds that any person has violated or is violating a requirement of the CAA including, but not limited to, a requirement or prohibition of any rule promulgated under the CAA, other than those requirements specified in Sections 113(a)(1), 113(a)(2) or 113(d)(1)(A) of the CAA, 42 U.S.C. § 7413(a)(1), 7413(a)(2), or 7413(d)(1)(A), the Administrator may issue an order assessing a civil administrative penalty.

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

27. Respondent is a corporation and authorized to do business in the State of New Mexico.

28. Respondent is a "person" as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

29. At all times relevant to this CAFO, Respondent owned and operated a petrochemical manufacturing facility ("Facility") located at Interstate 40, Exit 39, Jamestown, New Mexico 87347.

30. The Facility operates a variety of petrochemical manufacturing processes (NAICS Code 32411-Petrochemical Refineries).

31. Respondent's RMP lists covered processes subject to Program 3 requirements.

32. The regulated substances held above the threshold quantities identified in 40 C.F.R. § 68.130 include the following: hydrogen, hydrogen fluoride, ammonia, and flammable mixtures.

33. As a facility with Program 3 program, Respondent must: develop and implement a management system as provided in § 68.15; conduct a hazard assessment as provided in §§ 68.20 through 68.42; implement the prevention requirements of §§ 68.65 through 68.87; develop and implement an emergency response program as provided in §§ 68.90 to 68.95; and submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in § 68.175.

34. On March 8, 2016, through March 10, 2016, EPA Region 6 conducted an inspection at the Facility pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the implementing regulations found at 40 C.F.R. Part 68. EPA Region 6 issued an Inspection Report

on April 7, 2016, that identified nine Areas of Concern relating to compliance with 40 C.F.R Part 68, including Sections 68.67(e), 68.69(a)(3)(iv), 68.73(d)(3), 68.77(b)(3), 68.79(d), 68.85(b), 68.95(a)(1)(ii), 68.160(b)(7), and 68.190(a). On April 19, 2018, 2018, EPA Region 6 issued an Information Request to the Facility pursuant to Section 114(a)(2) of the CAA, 42 U.S.C. § 7414(a)(2), and a supplemental Information Request on August 2, 2018. The Information Requests focused on compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the implementing regulations found at 40 C.F.R. Part 68. Respondent submitted responses to the Information Requests on June 29, 2018, and August 14, 2018, respectively.

#### IV. VIOLATIONS

##### **Count 1. Process Hazard Analysis**

35. Complainant hereby restates and incorporates by reference Paragraphs 1 through 34 above.

36. 40 C.F.R. § 68.67(e) requires an owner or operator to establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

37. At the time of the 2018 Information Request, Respondent provided documentation that 3 PHA recommendations have not been resolved. Specifically, Respondent identified three action items from a previous Process Hazard Analysis (PHA) that were not completed timely.

38. Complainant finds Respondent's failure to assure that the recommendations are resolved in a timely manner was a violation of 40 C.F.R. § 68.67(e).



**Count 2. Mechanical Integrity**

39. Complainant hereby restates and incorporates by reference Paragraphs 1 through 34 above.

40. 40 C.F.R. § 68.73(d) requires an owner or operator to conduct Inspections and test on process equipment.

41. At the time of the April 19, 2018, Information Request, Respondent provided documentation that twenty-two pieces of equipment previously identified by Respondent as overdue for Inspections were no longer overdue. Respondent also identified the following 4 additional vessels that were overdue for Inspection: P-v39; P-V41; Z-89-V3; and Z-89-V5.

42. As of the submission of the June 29, 2018, Information Request response, Respondent provided documentation that the vessels referenced in the above paragraph were no longer overdue for Inspection.

43. Respondent's failure to conduct mechanical integrity inspections as required are in violation of 40 C.F.R. § 68.73(d).

**V. TERMS OF SETTLEMENT**

**A. Penalty**

44. Section 113(d)(1) of CAA, 42 U.S.C. § 7413(d)(1), authorizes the Administrator to assess a penalty up to \$46,192 for each violation of any requirement of Section 112(r) of CAA, 42 U.S.C. § 7412(r).<sup>1</sup>

45. Upon consideration of the entire record herein, and upon consideration (in addition to such other factors as justice may require) of the size of the business, the economic

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<sup>1</sup> As adjusted by the 2018 Civil Monetary Penalty Inflation Adjustment Rule (83 Fed. Reg. 1190), 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$46,192 per day of violation for a violation occurring after November 2, 2015.

impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation, the parties agree that one hundred and seventy-five thousand dollars (\$175,000) is an appropriate penalty to resolve this matter. However, Respondent has agreed to undertake a Supplemental Environmental Project ("SEP") to mitigate the proposed penalty. Respondent will pay \$98,874 to the United States Treasury as part of a required minimum payment. Respondent will mitigate the remaining \$76,126 portion of the penalty by undertaking a SEP valued at \$91,351. Respondent shall procure at their cost first responder equipment for the McKinley County Office of Emergency Management, the McKinley County Fire and Emergency Medical Service, and the McKinley County Road Department, which shall be available for use at the facility to prevent, mitigate, or abate releases of regulated substances or other extremely hazardous substances to the air.

46. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the assessed civil penalty by cashier's check, certified check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of three (3) ways: regular U.S. Postal Service mail, to include certified mail; overnight mail; or wire transfer.

For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service), the check(s) should be remitted to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045

Note: Field Tag 4200 of the Fedwire message should read: "D 68010727  
Environmental Protection Agency" with phone number (412) 234-4381.

**PLEASE NOTE: The docket number CAA 06-2019-3316 shall be clearly typed on the check to ensure proper credit.** The payment shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following:

Marie Stucky  
Enforcement Officer (ECDAC)  
Chemical Accident Enforcement Section  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 6  
1445 Ross Ave  
Dallas, Texas 75043

Lorena Vaughn  
Regional Hearing Clerk (ORC)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733



47. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

48. 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 costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest 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 the Agency'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).

49. EPA will also assess a fifteen-dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional fifteen dollars (\$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(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

50. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any person who fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order, after the order or assessment has become final, the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to

recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621(a)(2) of title 26 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

**B. Supplemental Environmental Project ("SEP")**

51. Respondent shall complete the following SEP which the parties agree is intended to secure significant environmental or public health protection and improvements: Not more than one hundred and eighty (180 days from the effective date of this CAFO, Respondent shall purchase the equipment in the attached list (See attachment #1) for the McKinley County Office of Emergency Management, the McKinley County Fire and Emergency Medical Service, and the McKinley County Road Department.

52. Completion of the SEP must occur by no later than one hundred and eighty (180) days after the effective date of this CAFO. In its sole discretion, EPA may grant additional time to complete the SEP.

53. Respondent shall certify the truth and accuracy of each of the following:

- a. All cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$91,351;

- b. As of the date of executing this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. The SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement;
- d. Respondent has not received and will not receive credit for the SEP in any other enforcement action;
- e. Respondent will not receive reimbursement for any portion of the SEP from another person or entity; notwithstanding the foregoing sentence, Respondent may seek and receive reimbursements, offsets, or other recovery pursuant to contract, tort or equitable claims against third persons which assert that professional errors and/or omissions or other breach of duty by such persons caused Respondent to incur the costs imposed under this Agreement or otherwise incurred by Respondent;
- f. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
- g. Respondent has performed a reasonable inquiry to ensure that this SEP does not inadvertently augment federal appropriations by certifying the following:
- h. Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP, and



- i. Respondent has inquired of the SEP implementer as to whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by implementer that it is not a party to such a transaction.
54. The total expenditure for the SEP shall be no less than \$76,126. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.
55. Respondent shall submit a final SEP Completion Report to EPA within thirty (30) days of the completion of this project. The SEP Completion Report shall contain the following information:
1. A detailed description of the SEP as implemented;
  2. A description of any operating or logistical problems encountered and the solutions thereto;
  3. Itemized final costs with copies of receipts for all expenditures;
  4. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
  5. A description of the environmental, emergency preparedness, and/or public health benefits resulting from implementation of this SEP.
56. Respondent agrees that failure to submit the final SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties.
57. Respondent shall submit all notices and reports required by this CAFO to the following:

Mr. Samuel Tates  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200

Dallas, TX 75202-2733

58. After receipt of the SEP Completion Report, EPA will notify the Respondent, in writing. Any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; whether EPA concludes that the project has been completed satisfactorily; or whether EPA determines that the project has not been completed satisfactorily and seek stipulated penalties. If EPA elects to seek stipulated penalties then EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA that are necessary to comply with the terms of this CAFO or applicable law, including actions necessary to complete the SEP, to obtain the intended benefits of the SEP or which otherwise result from any failure to comply with the terms of this CAFO. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent.

59. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. Except as provided immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$76,126 (100% of the amount the penalty was mitigated).
- b. If the SEP is not completed in accordance with the terms described above, but the Complainant determines that the Respondent (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
- c. If the SEP is completed in accordance with the terms described above, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$15,225.20 (20% of the mitigated penalty).
- d. If the SEP is completed in accordance with the terms described above, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
- e. For failure to submit the SEP Completion Report, Respondent shall pay a stipulated penalty in the amount of \$500 for each day after the report was originally due, until the report is submitted.
- f. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- g. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.



h. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties.

i. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

j. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language prominently displayed:

This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Air Act.

k. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and shall provide the documentation of any such underlying research and data to EPA not more than seven days after a request for such information. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

Certifying Official

60. This CAFO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of any equipment or technology installed by the Respondent in connection with any additional settlement terms undertaken pursuant to this CAFO. Nothing in this CAFO shall be construed to prohibit or prevent the federal, state, or local government from developing, implementing, and enforcing more stringent standards through rulemaking, the permit process, or as otherwise authorized or required. This document constitutes a "Final Order" as that term is defined in the CAA Penalty Policy for the purpose of demonstrating a history of "prior such violations."

**VI. RETENTION OF ENFORCEMENT RIGHTS**

61. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of federal or state laws, regulations, statutes, or permitting programs, except for those matters resolved by this CAFO.

62. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA.

63. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, or regulated or other extremely hazardous substances at, on, or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, or criminal authorities, or that of other federal, state, or local agencies or

departments to obtain penalties or injunctive relief under other federal, state, or local laws, regulations, or subparts thereof.

64. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits. The Respondent's compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner the Respondent's compliance with any aspect of this CAFO will result in compliance with provisions of the CAA or with any other provisions of federal, state, or local laws, regulations, or permits.

#### **VII. COSTS**

65. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

#### **VIII. TERMINATION**

66. This CAFO shall terminate upon Respondent's compliance with all requirements of this CAFO. Following payment of the civil penalty, and receipt of EPA's determination that the SEP has been satisfactorily completed, Respondent may submit a written notice of compliance with the CAFO and a request for EPA's written confirmation of termination of the CAFO, which confirmation shall not be unreasonably withheld.



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

**FOR THE RESPONDENT:**

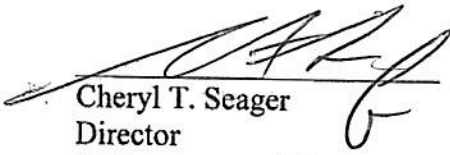
Date: 4-15-19

  
Western Refining Southwest, Inc.



**FOR THE COMPLAINANT:**

Date: 4-16-19

  
Cheryl T. Seager  
Director  
Enforcement and Compliance Assurance  
Division  
U.S. EPA Region 6

**FINAL ORDER**

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement 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 in the Consent Agreement. 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 Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

4/17/19



Thomas Rucki  
Regional Judicial Officer  
U.S. EPA, Region 6



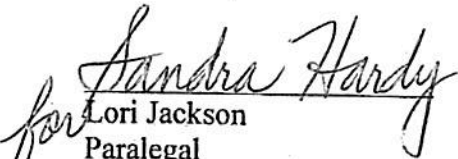


**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of April, 2019, the original and one copy of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED:**

Ms. Jean Flores, Esquire  
Guida, Savage & Flores  
5956 Sherry Lane  
Suite 1000  
Dallas, Texas 75225

*for*   
Lori Jackson  
Paralegal  
U.S. EPA Region 6, Dallas, Texas

Description	Quantity	Detail	Price/Unit	Total Price
	1	VHF, UHF, 700, and 800 with power supply to use in EOC	\$ 5,000.00	\$ 5,000.00
	12	Tourniquet, pressure bandage, etc. kits from Tactical Medical Solutions	\$ 64.00	\$ 768.00
	1	o power Comm 2	\$ 3,000.00	\$ 3,000.00
	1	4500 psi 45 minute	\$ 650.00	\$ 650.00
	10	For rehab	\$ 17.00	\$ 170.00
	4	For rehab	\$ 50.00	\$ 200.00
	1	For rehab	\$ 90.00	\$ 90.00
	2	For rehab	\$ 200.00	\$ 400.00
	2	For rehab	\$ 175.00	\$ 350.00
ith tripod	1	For rehab	\$ 70.00	\$ 70.00
	2	For rehab	\$ 110.00	\$ 220.00
k)	4	For rehab	\$ 50.00	\$ 200.00
)	5	For units, MCU, and Comm 2	\$ 160.00	\$ 800.00
	4	such as Pelican remote area light	\$ 1,000.00	\$ 4,000.00
	4	For 2 UTVs, 1 ATV, and 1 Muddtrax	\$ 80.00	\$ 320.00
m zone)	4	PFD, helmet, throwbag, knife, and whistle (for muddtrax) rescueresource.com/shop/packages/basicwater-package	\$ 65.00	\$ 260.00
	4		\$ 237.00	\$ 948.00
	1		\$ 2,460.00	\$ 2,460.00
	2		\$ 200.00	\$ 400.00
	2		\$ 78.00	\$ 156.00
	1		\$ 450.00	\$ 450.00
	1		\$ 614.00	\$ 614.00
	2		\$ 250.00	\$ 500.00
				\$ 22,026.00
	50		\$ 35.00	\$ 1,750.00
	1		\$ 2,000.00	\$ 2,000.00
	5		\$ 25.00	\$ 125.00
	3		\$ 40.00	\$ 120.00
	5		\$ 200.00	\$ 1,000.00
	9		\$ 20.00	\$ 180.00
	5		\$ 275.00	\$ 1,375.00
	5		\$ 125.00	\$ 625.00
	5		\$ 950.00	\$ 4,750.00
	1		\$ 100.00	\$ 500.00
	3		\$ 450.00	\$ 450.00
	2		\$ 20.00	\$ 60.00
ack	4		\$ 250.00	\$ 500.00
	6		\$ 500.00	\$ 2,000.00
Defense	5		\$ 150.00	\$ 900.00
m	1		\$ 50.00	\$ 250.00
			\$ 25,000.00	\$ 25,000.00
				\$ 41,585.00
	4	per recent quote from ECI	\$ 1,100.00	\$ 4,400.00
	6	KNG-P150 with clam shell, antenna, speaker mic	\$ 2,000.00	\$ 12,000.00
	25	Tourniquet, pressure bandage, etc. kits from Tactical Medical 25 Solutions	\$ 64.00	\$ 1,600.00
				\$ 18,000.00
for Ventis MX4 & Ventis Pro Series Gas monitors	1	Industrial Scientific Mfg#18109327-061	\$ 1,365.00	\$ 1,365.00
ion & bump test gas	2	58 liter, 2cu. Ft., 25ppm H2S, 100ppm CO, 25% LEL Pentane, 18% O2, Hazmat	\$ 278.00	\$ 556.00
re switch for DSX Docking Stations	1	Industrial Scientific 18105841	\$ 475.00	\$ 475.00
1232111101 Multi-gas detector, pumped	8	4-gas Model, LEL, O2, CO, H2S, Safety Orange, Desktop Charger	\$ 918.00	\$ 7,344.00
				\$ 9,740.00
				\$ 91,351.00