



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**Region 6**  
**1445 Ross Avenue, Suite 1200**  
**Dallas, Texas 75202 - 2733**

JUN 23 2015

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7014 0150 0000 2454 9888

Forrest Lauher  
Vice President Refining  
Western Refining Inc.  
212 N. Clark Street  
El Paso, TX 79905

Re: Administrative Compliance Order on Consent *In the Matter of Western Refining Company, L. P.*,  
Docket No. CAA-06-2015-3327

Dear Mr. Lauher:

Enclosed is the fully executed Administrative Compliance Order on Consent (ACO) in the matter referenced above for Western Refining Company, L. P.

As provided in the ACO, Western Refining Company, L. P. will have 6 months from the effective date of the ACO to preform internal inspections on the four pressure vessels identified as overdue for internal inspections during the EPA inspection on the week of February 2, 2015.

If you have any questions regarding this ACO, please contact Jeffrey Clay, Assistant Regional Counsel, at (214) 665-7297.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins", written over a horizontal dotted line.

John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED  
2015 JUN -1 PM 3:03  
EPA REGION 6 OFFICE  
2100 W. HARRIS BLVD  
DALLAS, TEXAS 75201

**In the Matter of:**

**Western Refining Company, L.P.,  
El Paso, Texas**

**Respondent.**

**Administrative  
Compliance Order on Consent  
Docket Number: CAA-06-2015-3327**

**ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT**

**A. PRELIMINARY STATEMENT**

1. This Administrative Compliance Order on Consent ("Order") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 113(a) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7413(a)(3) and (4).
2. On the EPA's behalf, the Director of the Region 6 Compliance Assurance and Enforcement Division is delegated the authority to issue this Order under Section 113(a) of the Act.
3. Respondent is a corporation doing business in the state of Texas. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
4. Respondent signs this Administrative Compliance Order on Consent and agrees to the terms and conditions contained herein.
5. A copy of this Order will be provided to the Texas Commission for Environmental Quality.

## B. STATUTORY AND REGULATORY BACKGROUND

6. The primary purpose of the CAA is to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of the population.” 42 U.S.C. § 7401(b)(1).
7. The purpose of CAA Section 112(r) is to provide requirements and standards to help prevent and minimize accidental releases of air pollutants: “It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance.” 42 U.S.C. § 7412(r)(1).
8. CAA Section 112(r)(7), 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 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. ...
  - (B) (iii) The owner or operator of each stationary source covered by clause (ii) shall register a risk management plan prepared under this subparagraph with the Administrator before the effective date of regulations under clause (i) in such form and manner as the Administrator shall, by rule, require.
9. In 1994, EPA promulgated the Risk Management Program (“RMP”) regulations in accordance with CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7). See 40 C.F.R. Part 68, Chemical Accident Prevention Provisions.

10. Pursuant to CAA Section 112(r)(2)(B), 42 U.S.C. § 7412(r)(2)(B), a “regulated substance” includes any substance listed by EPA pursuant to CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3). Lists of regulated substances and threshold quantities are provided in tables located at 40 C.F.R. § 68.130.
11. Pursuant to 40 C.F.R. § 68.10, the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the RMP regulations.
12. A “process” is defined broadly to mean “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities” and includes “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.” 40 C.F.R. § 68.3.
13. Pursuant to 40 C.F.R. § 68.12, the owner or operator of a stationary source with a process subject to the “Program 3” requirements of the RMP regulations must, among other things, comply with the prevention requirements of 40 C.F.R. §§ 68.65 – 68.87.
14. Pursuant CAA Section 112(r)(7)(E), 42 U.S.C. § 7412(r)(7)(E), it is unlawful for any person to operate any stationary source subject to the RMP requirements and regulations in violation of such requirements and regulations.
15. Pursuant to CAA Section 113(a)(3), 42 U.S.C. § 7413(a)(3), whenever the Administrator finds that any person has violated or is in violation of the RMP regulations, the Administrator may issue an order requiring such person to comply with such requirements.

### C. FINDINGS

16. Respondent is a corporation.
17. Respondent owns a petroleum refinery located at 6501 Trowbridge Drive, El Paso, Texas (“Facility”).
18. Respondent’s petroleum refinery is subject to the general requirements of 40 C.F.R. Part 68.
19. Additionally, Respondent’s petroleum refinery is subject to the specific requirements of “Program 3” of the Part 68 requirements.
20. On February 2, 2015, EPA Region 6’s Compliance Assurance and Enforcement Division (“CAED”) conducted an inspection at Respondent’s facility.
21. Specifically, Dave Hensley, a trained and experienced CAED employee who is fully qualified to conduct inspections pursuant to the CAA, performed a compliance audit at respondent’s facility to ascertain Respondent’s compliance with applicable Part 68 requirements.
22. The equipment at Respondent’s facility includes four process vessels.
23. Pursuant to 40 C.F.R. Section 68.74(d)(3) Respondent is required to inspect and test process equipment.
24. The frequency of inspection and testing of process equipment is determined by the manufacturers’ recommendations and good engineering practices.
25. The interval of inspection is mandated by American Petroleum Institute Standard 510 (“API 510”).
26. API 510 states:
  - a. “6.5.1.1 Unless justified by a RBI [risk-based inspection] assessment, the period between internal or on-stream inspections shall not exceed one half the remaining

life of the vessel or 10 years, whichever is less. Whenever the remaining life is less than four years, the inspection interval may be the full remaining life: up to a maximum of two years. The interval is established by the inspector or engineer in accordance with the owner"/user's quality assurance system."

27. Western did not use RBI prior to the February 2, to February 5, 2015, inspection.
28. Four pressure vessels were identified by the inspector as being deficient in meeting the requirements of Part 68 and API 510, including: T-87, TK-4052, TK-4055, and TK-4054.
29. According to records provided by the Respondent at the time of the inspection, the four vessels were last inspected on January 7, 2003, January 29, 2004, November 6, 2004, and October 21, 2004, respectively.
30. During the inspection the inspector requested a list of overdue inspections. According to that list provided by Western, the four vessels should have been inspected on or before January 7, 2013, January 29, 2014, November 6, 2014, and October 21, 2014.
31. However, subsequent to the inspection and before entry of this Administrative Order on Consent, Respondent immediately commenced review of, and where appropriate, undertook corrective action for, the API 510 inspections and inspection intervals for the four vessels. Those actions included:
  - a. Scheduling of inspections of TK-4055 and TK-4054;
  - b. Taking T-87 out of service and completing the internal inspection of T-87 in March 2015; and
  - c. Engaging a third-party consultant to conduct a RBI assessment under API 510 of T-87 and TK-4052. That assessment was completed and a report issued on May 6, 2015. The report, which was provided to EPA by Respondent, concluded that inspection interval of longer than 10 years was appropriate for T-87 and TK-4052.

32. Accordingly, EPA alleges that TK-4055 and TK-4054 were inspected 3 to 25 months late, at the time of the February 2, 2015, RMP, EPA inspection.

#### **D. ORDER**

33. Respondent is ordered to conduct the program described in this section of this Order.

Respondent is ordered to complete the corrective actions already underway, namely to perform the inspections required by 40 C.F.R. Part 68 and American Petroleum Institute Standard 510 (“API 510”) on TK-4055 and TK-4054. Respondent will perform these two inspections as expeditiously as practicable but in no event later than six months after the effective date of this Order.

34. Not later than 30 days after each inspection has been completed, Respondent shall notify EPA that the inspection has been completed, of the findings of the inspection, and of any actions taken based on those findings.

#### **E. OTHER TERMS AND CONDITIONS**

35. Respondent admits the jurisdictional allegations contained in this Order.

36. Respondent neither admits nor denies the findings in Section C (Findings) of this Order.

#### **F. GENERAL PROVISIONS**

37. Any violation of this Order may result in a civil administrative or judicial action for an injunction or civil penalties of up to \$37,500 per day per violation, or both, as provided in Sections 113(b)(2) and 113(d)(1) of the Act, 42 U.S.C. §§ 7413(b)(2) and 7413(d)(1), as well as criminal sanctions as provided in Section 113(e) of the Act, 42 U.S.C. § 7413(e). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

38. Nothing in this Order shall relieve Respondent of the duty to comply with all applicable provisions of the Act or other federal, state or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
39. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
40. The provisions of this Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Order until the Termination Date as set out in paragraph 54 below, Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the El Paso facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless the EPA has provided written approval of the release of said obligations or liabilities.
41. Unless this Order states otherwise, whenever, under the terms of this Order, written notice or other document is required to be given, it shall be directed to the individuals specified at the addresses below unless those individuals or their successors give notice of a change of address to the other party in writing:

Mr. Dave Hensley  
EPA – Region 6

Mail Code: 6RC-EW  
1445 Ross Avenue  
Dallas, Texas 75202

Mr. Hensley may also be reached at [Hensley.dave@epa.gov](mailto:Hensley.dave@epa.gov).

All notices and submissions shall be considered effective upon receipt.

42. To the extent this Order requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. Part 2, Subpart B. The EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.
43. Each undersigned representative of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Order to execute and bind legally the Parties to this document.
44. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to the Respondent's failure to comply with any of the requirements of this Order. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which EPA has under any statutory, regulatory, or common law authority of the United States.
45. This Order does not resolve any civil or criminal claims of the United States for the violations alleged in this Order, nor does it limit the rights of the United States to obtain penalties or injunctive relief under the CAA or other applicable federal law or regulation.

46. This Order is not intended to be, nor shall it be construed to be, a permit. Further, the Parties acknowledge and agree that EPA's approval of this Order does not constitute a warranty or representation that requirements provided hereunder will meet the requirements of Section 112(r) of the CAA. Compliance by the Respondent with the terms of this Order shall not relieve the Respondent of its obligations to comply with the CAA or any other applicable local, state, or Federal laws and regulations.
47. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of a regulated substance, extremely hazardous substance, or other substance on, at, or from the Facility. This Order shall not constitute or be construed as a release of any liability that the Respondent or any other person has under the CAA or any other law.
48. Nothing herein shall be construed as an extension of time for complying with any statutory or regulatory requirement under the CAA or any other law.
49. In any subsequent administrative or judicial proceeding initiated by EPA or the United States for injunctive or other appropriate relief relating to the Facility, the Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA or the United States in the subsequent proceeding were or should have been raised in the present matter.
50. Neither EPA, nor the United States, by issuance of this Order, assumes any liability for any acts or omissions by Respondent or its employees, agents, contractors, or consultants engaged to carry out any action or activity pursuant to this Order. Nor shall EPA or the

United States be held as a party to any contract entered into by Respondent or by its employees, agents, contractors, or consultants.

#### **G. EFFECTIVE DATE AND OPPORTUNITY FOR A CONFERENCE**

51. Pursuant to Section 113(a)(4) of the Act, an Order does not take effect until the person to whom it has been issued has had an opportunity to confer with the EPA concerning the alleged violations. By signing this Order, Respondent acknowledges and agrees that it has been provided an opportunity to confer with the EPA prior to issuance of this Order. Accordingly, this Order will take effect immediately upon signature by the latter of Respondent or the EPA.

#### **H. JUDICIAL REVIEW**

52. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1).

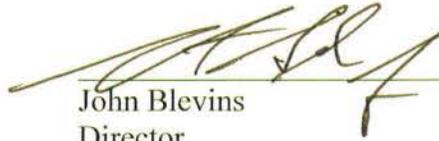
#### **I. TERMINATION**

53. This Order shall terminate on the earlier of the following (the "Termination Date") at which point Respondent shall operate in compliance with the Act:

- a. One year after the Effective Date of this Order; or
- b. The effective date of any determination by the EPA that Respondent has achieved compliance with all terms of this Order; or
- c. Immediately upon receipt by Respondent of notice from the EPA finding that an imminent and substantial endangerment to public health, welfare, or the environment has occurred.

For United States Environmental Protection Agency, Region 6:

Date: JUN 23 2015



John Blevins  
Director  
Compliance Assurance and  
Enforcement Division  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, Texas 75202

For Respondent:



Signature

5/27/15  
Date

Printed Name: Forrest B. Lauher

Title: Vice President Refining

Address: 212 N. Clark St., El Paso, TX. 79905

**CERTIFICATE OF SERVICE**

I certify that the foregoing "Administrative Compliance Order on Consent" in the Matter of Western Refining, Inc., Order CAA-06-2015-3327, was filed and copies of the same were mailed to the parties as indicated below.

CERTIFIED MAIL, RETURN RECEIPT REQUESTED: # 70140150000024549888

Forrest Lauher  
Vice President Refining  
Western Refining Company, L. P.  
212 N. Clark Street  
El Paso, TX 79905

C T Corporation System  
350 N. St. Paul St.  
Ste. 2900  
Dallas, TX, USA 75201-4234

7-1-2015  
Date

Sandra Hardy  
Name  
Title Paralegal Specialist