

**STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT**

**ENVIRONMENTAL PROTECTION DIVISION  
OF THE NEW MEXICO ENVIRONMENT DEPARTMENT,  
Complainant,**

**NO. AQB WES-1156-1101-R1 (NOV)**

**WESTERN REFINING SOUTHWEST, INC.  
Respondent.**

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**SETTLEMENT AGREEMENT AND STIPULATED FINAL COMPLIANCE ORDER**

This Settlement Agreement and Stipulated Final Compliance Order (“Final Order”) is entered into between the Environmental Protection Division (“Division”) of the New Mexico Environment Department (the “Department”) and the Respondent, Western Refining Southwest, Inc. (“Respondent”) (collectively, the “Parties”) to resolve alleged statutory and regulatory violations by the Respondent. The Department alleges a violation of the New Mexico Air Quality Control Act (“AQCA”), NMSA 1978, § 74-2-1 to 74-2-17, the Air Quality Control Regulations (“AQCR”), and 20.2. NMAC (“Regulations”).

**I. BACKGROUND**

**A. PARTIES**

1. The Department is an agency of the executive branch of the State of New Mexico, created pursuant to NMSA 1978, § 9-7A-4. The Division is an organizational unit of the Department. The Secretary of the Department has delegated to the Director of the Division the authority to seek administrative enforcement of the AQCA and the Regulations, including assessing civil penalties for violations thereof. NMSA 1978, § 74-2-12. The Air Quality Bureau (“Bureau”) is an organizational unit of the Division.

2. Respondent is an independent oil refiner which owns and operates the Bloomfield Refinery (“Refinery”), which is located approximately 0.3 miles south of Bloomfield in San Juan County, New Mexico.

**B. HISTORY AND ALLEGED VIOLATION**

3. 20.2.72.213 NMAC states in relevant part, “...A written report of the results of the test shall be submitted to the Department by the owner or operator within thirty (30) days from the test date....”

4. A complete test report for initial stack test conducted on September 3, 2009 on Unit B-502 at the Refinery was not submitted to the Department until March 9, 2012. In accordance with 20.2.72.213 NMAC, the test report was submitted 890 days after it was required to be submitted.

5. On March 22, 2012, the Bureau issued to Respondent Notice of Violation WES-1156-1101-R1 (“NOV”), alleging a violation of the AQCA and the AQCR, and the Regulations. The alleged violation was the failure to submit a written report of the results of the initial stack test conducted on Unit B-502 at the Refinery within thirty (30) days from the test date.

6. On March 22, 2012, the Bureau issued to Respondent a proposal of a civil penalty for the alleged violations at the Facility.

7. The parties have engaged in settlement discussion to resolve the NOV without further proceedings.

**II. COMPROMISE AND SETTLEMENT OF NOTICE OF VIOLATION**

**A. GENERAL**

8. To avoid further legal proceedings, the Division and Respondent agree to terms and conditions in this Final Order to resolve the alleged violation described in Section I.B.

9. The Parties enter into this Agreement for the sole purpose of resolving the alleged violation described in Section I.B. This Agreement does not cover any other violations, whether

such violations occurred before or after the violations alleged in the Assessment of Penalties, whether such violations occurred before or after the effective date of this Agreement.

10. Respondent does not admit any liability, fact, or legal conclusion by entering into this Agreement.

11. The Parties admit jurisdiction and consent to the relief specified herein.

## **B. CIVIL PENALTY**

12. In compromise and settlement of the alleged violation and upon consideration of the seriousness of the violation and good faith efforts to comply, the Parties agree that Respondent shall pay a civil penalty of \$6,000.00 to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

13. Payment shall be made to the *State of New Mexico General Fund* by certified or corporate check and sent to the following address:

New Mexico Environment Department  
Air Quality Bureau  
c/o Compliance and Enforcement Manager  
1301 Siler Rd., Building B  
Santa Fe, New Mexico 87507-3113

14. If Respondent fails to make timely and complete payment of the civil penalty, Respondent shall pay interest on the outstanding balance at the rate established for judgments and decrees under NMSA 1978, § 56-8-4.

## **III. OTHER TERMS AND CONDITIONS**

### **A. RESERVATION OF RIGHTS AND DEFENSES**

15. This Final Order shall not be construed to prohibit or limit in any way the Department from requiring Respondent to comply with any applicable state or federal requirement. This Final Order shall not be construed to prohibit or limit in any way the Department from seeking any relief authorized by the AQCA for violations of any state or federal requirement applicable to Respondent

not resolved herein. This Final Order shall not be construed to prohibit or limit in any way Respondent from raising any defense to a Department action seeking such relief.

**B. MUTUAL RELEASE**

16. The Parties mutually release each other from all claims that each Party raised or could have raised against the other regarding the facts and violation alleged in the NOV. Such release applies only to civil liability.

**C. WAIVER OF STATE LIABILITY**

17. Respondent shall assume all costs and liabilities incurred in performing all obligations under this Final Order. The Department, on its own behalf and on behalf of the State of New Mexico, does not assume any liability for Respondent's performance of any obligation under this Final Order.

**D. EFFECTIVE DATE AND TERMINATION DATES**

18. This Final Order shall become effective on the date it has been signed by the Department Secretary.

19. Except as otherwise provided in this Paragraph, the terms of this Final Order shall terminate when Respondent has fulfilled the requirements of this Final Order. The reservations of rights and defenses and the mutual release in Paragraphs 15 and 16 shall not terminate, and shall remain in effect as an agreement between the Parties.

**E. INTEGRATION**

20. This Final Order merges all prior written and oral communications between the Parties concerning the subject matter of this Final Order, contains the entire agreement between the Parties, and shall not be modified without the express written agreement of the Parties.

**F. BINDING EFFECT**

21. This Final Order shall be binding on the Parties and their officers, directors, employees, agents, subsidiaries, successors, assigns, trustees, or receivers.

**G. AUTHORITY OF SIGNATORIES**

22. The persons executing this Final Order on behalf of Respondent and Complainant, respectively, represent that he or she has the authority to execute this Final Order on behalf of Respondent and Complainant.

**ENVIRONMENTAL PROTECTION DIVISION  
NEW MEXICO ENVIRONMENT DEPARTMENT**

By: Mary Rose  
MARY ROSE  
ACTING DIRECTOR

Date: 6/15/12

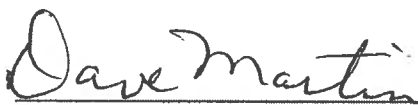
**WESTERN REFINING SOUTHWEST, INC.**

By: Emmett Reagan  
Name: Emmett Reagan  
Title: SRVP Refining

Date: 6/15/12

**SETTLEMENT AGREEMENT STIPULATED FINAL COMPLIANCE ORDER**

This Settlement Agreement and Stipulated Final Compliance Order, agreed to by the Division and the Respondent Western Refining Southwest, Inc. is hereby incorporated herein and **APPROVED AS A FINAL COMPLIANCE ORDER** issued pursuant to NMSA 1978, §74-2-12.



**DAVE MARTIN**  
**SECRETARY OF ENVIRONMENT**

Date: 6-25-12