

TWP 96

Clarify my reading file
~~to~~ *EDC* *Baird*

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January 19, 1996

VIA FEDERAL EXPRESS

Mr. Mark E. Weidler
Cabinet Secretary
New Mexico Environment Department
Harold Runnels Bldg.
P. O. Box 26110
Santa Fe, NM 87502

Transwestern Pipeline Company-
Roswell Compressor Station - Notice
of Withdrawal of RCA Part A
Application and Closure Plans

Dear Mr. Weidler:

In January, 1993, Transwestern Pipeline Company ("Transwestern") filed a RCRA Part A permit application with the State of New Mexico Environment Department ("NMED") Hazardous and Radioactive Materials Bureau ("HRMB") at the request of the HRMB. After extensive investigation and analysis, Transwestern has recently concluded that much of the information included on the RCRA Part A Permit application form was incorrect. Furthermore, Transwestern has determined that the underlying factual and legal assumptions upon which the application was submitted were also incorrect.

By this letter, Transwestern is formally notifying the NMED that the RCRA Part A permit application submitted for the Roswell Compressor Station is withdrawn. In addition, Transwestern is formally notifying the NMED that all closure plans submitted to the NMED HRMB for this facility are withdrawn, because the Roswell Compressor Station is not subject to RCRA closure requirements and will be remediated under the regulatory authority of the New Mexico Oil Conservation Division ("OCD").

Attached to this letter is a brief description of why the RCRA Part A permit application was originally submitted and why the application form contained incorrect information. Also included is a detailed description of the inaccuracies included in the application form and the reasons for the withdrawal.

The following summary of the history of this matter will be of additional assistance in understanding the basis for Transwestern's decision to withdraw the RCRA Part A application and closure plans.

During the latter half of 1991, Transwestern implemented a purely voluntary, self-directed subsurface investigation in the vicinity of a former surface impoundment at the Roswell Compressor Station. In the course of this investigation, Transwestern discovered the presence of certain organic compounds contained in soil and ground water which potentially could have originated from an F-listed RCRA regulated waste. In February 1992, Transwestern brought the results of the initial investigation to the attention of the NMED HRMB and the OCD in an effort to insure that New Mexico regulatory authorities were apprised of the situation and to initiate the proper regulatory process for the continued assessment and remediation of affected soil and ground water. A number of meetings were held between the concerned parties. Subsequently, the NMED HRMB requested that Transwestern file a RCRA Part A permit application as the initial step toward a RCRA closure. That application was submitted in January, 1993. Since then, Transwestern has worked diligently to proceed with the assessment and remediation of the site within the RCRA framework at considerable cost. Unfortunately, until recently, Transwestern's efforts have been entirely focused on closure rather than on whether or not closure under both OCD and RCRA framework was appropriate.

Early last year Transwestern engaged the services of local counsel to analyze the regulatory path that Transwestern had been following. An initial review indicated that Transwestern had made several erroneous assumptions concerning both the operational history at the site and the applicability of RCRA regulations that have been adopted by the New Mexico Environmental Improvement Board pursuant to the New Mexico Hazardous Waste Act. After consulting with the NMED HRMB and apprising them of the situation, Transwestern conducted a complete review of the matter. The review confirmed the inaccuracy of many of Transwestern's underlying assumptions and verified the lack of any evidence that "hazardous waste" within the meaning of the New Mexico Hazardous Waste Act Regulations was disposed of at the Roswell Compressor Station.

At the completion of the review, Transwestern submitted a detailed letter and considerable supporting documentation to the NMED Office of General Counsel presenting Transwestern's position on the matter. All available evidence indicates that for legal, technical, and practical reasons, the proper regulatory avenue for the closure of this site is through the OCD rather than the NMED HRMB.

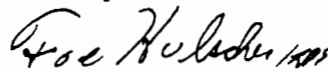
On December 21, 1995 the NMED Office of General Counsel responded to our October 11, 1995 letter. The response did not present any additional facts or legal analysis that would change the results of Transwestern's extensive factual investigation and legal review. Further, the response highlighted a persistent trend of disproportionate concern over the potential threat posed by conditions at the site. After reviewing the response, it became clear that the only appropriate action was to withdraw the RCRA Part A application and closure plan.

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Transwestern requests that you and your staff meet with representatives of Transwestern at your earliest convenience for the purpose of answering any questions you or your staff may have. Transwestern has previously suggested that, at the OCD's discretion, the NMED could be allowed limited oversight of the closure in order that any NMED concerns can be satisfied. Although these suggestions have been rejected by the NMED, Transwestern is still willing to consider approaching the OCD in this manner.

If you have any questions or comments, please contact Lou Soldano, ENRON Operations Corp. Legal, at (713) 853-7237.

Sincerely,



Joe Hulscher
Vice President, Operations
Transwestern Pipeline Company

xc:	Lou Soldano, Esq.	ENRON Operations Corp. Legal
	Frank Smith, Esq.	ENRON Corp. Legal
	Dave Nutt, Esq.	ENRON Corp. Legal
	Bill Kendrick	ENRON Operations Corp. Environmental Affairs
	Roger Anderson	New Mexico Oil Conservation Division
	Ed Kelley	NMED Hazardous and Radioactive Materials Bureau
	Susan McMichaels, Esq.	NMED (Via Hand Delivery)
	Richard L. C. Virtue, Esq.	

**Attachment - Withdrawal of Part A Permit Application
Transwestern Pipeline Company, Roswell Compressor Station**

Why the Part A Permit Application was Submitted

During the latter half of 1991, Transwestern implemented a purely voluntary, self-directed subsurface investigation in the vicinity of a former surface impoundment at the Roswell Station. In the course of this investigation, Transwestern discovered the presence of certain organic compounds contained in soil and ground water which potentially could have originated from an F-listed RCRA regulated waste. In February 1992, Transwestern brought the situation at the Roswell Station to the attention of the NMED HRMB and the New Mexico Oil Conservation Division (OCD), in an effort to insure that the New Mexico authorities were apprised of the situation and initiate/establish the proper regulatory process for the continued assessment and remediation of affected soil and ground water. A number of meetings were held between the concerned parties. Subsequently, the NMED HRMB requested that Transwestern file a RCRA Part A permit application as the initial step toward a RCRA closure. This application was submitted in January, 1993.

Why the Part A Permit Application Contained Incorrect Information

The RCRA Part A application form was originally designed as a mechanism for facilities which treat, store, and/or dispose (TSD) of hazardous waste to enter into the RCRA facility permitting process via interim status. The Roswell Station functions as a natural gas compressor station and has not, nor is ever intended to, operate as anything resembling a TSD facility. Not surprisingly, the information required to complete a RCRA Part A application form was either not applicable or totally inappropriate for the actual facility function and operations. However, in a cooperative effort to fulfill the NMED's request for a completed Part A application, Transwestern completed the application form with information which was intended to present a worst case description of the potential condition of affected soil and ground water at the site.

Information Included in the Part A Permit Application Which is Incorrect

Based upon a recent detailed review of the facility's operational history, nearly all of the information presented on the original application form was erroneous with the exception of the facility name, address, location, facility contact, and EPA ID number. The following items identify and describe the incorrect information submitted in the Part A permit application.

1. The "Treatment Process Design Capacity" indicated on the Part A application is 3,061,487 gallons. This figure was not based on the design capacity of the surface impoundment but rather on an inaccurate estimate of the volume of shallow ground water impacted by waste constituents. The estimated capacity of the surface impoundment now referred to as "Pit 1" (the only surface impoundment at the facility operated after November 19, 1980) is only 202,000 gallons. This revised estimate is based on dimensions obtained from historic air photos of the facility.
2. Five waste codes were listed in the application. None of the five waste codes should have been listed for the following reasons:
 - a. F001 (halogenated solvents) - This waste code was originally included in the Part A application form because compounds included in the F001 list (most notably 1,1,1-trichloroethane) were present in soil and ground water samples collected from the former impoundment area. However, merely the presence of these compounds in environmental media (soil and ground water) do not justify the conclusion that these compounds originated from an F001 listed waste. Prior to November 19, 1980, there was no such listing of wastes or the associated regulatory requirements for management of such wastes. Furthermore, prior to the solvent mixture rule which was finalized December 31, 1985, the F001 listing applied only to commercially pure grades of spent halogenated solvents used

in degreasing (e.g. 100% 1,1,1-trichloroethane). The 1985 solvent mixture rule modified this definition to include spent solvent mixtures containing 10% or greater by volume of one or more of those solvents listed in F001, F002, F004, and F005. The last remaining surface impoundment was taken out of service prior to the 1985 rule change. Furthermore, there is no information available to TW to indicate that a commercially pure grade spent halogenated solvent was either used at this facility during the timeframe the impoundment was in use or disposed of in the impoundment. Therefore, the F001 waste code should not have been included on the Part A application form.

b. F005 (non-halogenated solvents) - This waste code was originally included in the Part A application form because compounds included in the F005 list (most notably toluene and benzene) were present in soil and ground water samples collected from the former impoundment area. As previously described, merely the presence of these compounds in environmental media (soil and ground water) do not justify the conclusion that these compounds originated from an F005 listed waste. In regard to toluene and benzene, these compounds are present at the site almost entirely as the result of a discharge of natural gas liquids, not as the result of a discharge of waste solvents. In regard to any other F005 listed compounds that may be present in environmental media at the site, prior to the solvent mixture rule which was finalized December 31, 1985, the F005 listing applied only to commercially pure grades of spent non-halogenated solvents (e.g. 100% methyl ethyl ketone). Again, TW has no information that these solvents, or their associated wastes, were used, stored, and/or disposed of at the Roswell Station. Therefore, the F005 waste code should not have been included on the Part A application.

c. D004 (arsenic) - A small concentration of arsenic (as trimethylarsine) is produced with natural gas from the Abo formation located just north of the Roswell Station. As a result, a small concentration of arsenic is occasionally present in pipeline liquid samples collected at the Roswell Station. For this reason, the D004 waste code was included on the Part A application. Although production from this formation began in 1979, arsenic was not identified as a natural contaminant of the gas until 1987. The pipeline liquids tank was installed at the Roswell Station in 1983, therefore, the duration in which pipeline liquids potentially containing arsenic were placed in the former surface impoundment was very limited (approximately four years). The duration in which pipeline liquids may have been subject to evaluation by the EP Toxicity procedure for arsenic was even shorter, less than three years. During this timeframe, the potential for arsenic to accumulate in pipeline liquids was not known. Furthermore, pipeline liquids were generally considered RCRA exempt. To Transwestern's current knowledge, the EP Toxicity procedure was never used to assess the toxicity characteristic of the pipeline liquids placed in the former impoundment for arsenic. Regardless, the concentrations currently measured are well below those levels which one might expect the waste stream to fail the former EP Toxicity procedure which was in use at the time in question. Based on this information, TW has no knowledge that wastes placed in the former surface impoundment at the Roswell Station were characteristically hazardous due to arsenic, therefore, the D004 waste code should not have been included on the Part A application.

d. D005 (barium) - The D005 waste code was listed primarily because barium is present in small concentrations in used engine oil collected at the Station. The concentration present is well below those levels where one might expect the waste stream to fail the former EP Toxicity procedure. Furthermore, TW has no knowledge that wastes placed in the former surface impoundment at the Roswell Station would have failed the EP Toxicity procedure for barium. Therefore, the D005 waste code should not have been included on the Part A application.

e. D018 (benzene) - The D018 waste code was listed because benzene is a natural constituent of the natural gas liquids which were placed in the former impoundment. However, prior to the TC Rule effective September 25, 1990, benzene was not listed as a "Characteristic of EP Toxicity" contaminant. Therefore, during the time frame that the surface impoundment was in use, there was no such thing as a D018 waste, and thus, this waste code should not have been listed on the Part A application.