

file Transwest

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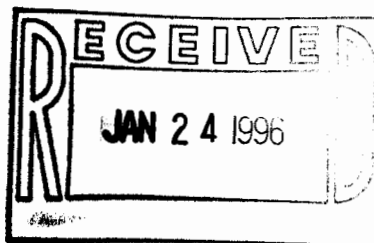
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January 22, 1996

BY FACSIMILE TO (505) 827-2836

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Transwestern Pipeline Company ("Transwestern") -
Roswell Compressor Station

Dear Ms. McMichael:

This letter responds to your letter dated December 21, 1995. Your letter concludes that a RCRA closure is required at the above-referenced site pursuant to the New Mexico Hazardous Waste Act ("HWA"), but provides no specific factual or legal analysis that would change the conclusions set forth in Transwestern's October 11, 1995 letter to the New Mexico Environment Department ("NMED"). An immediate problem has been created by the statement in your letter that NMED proposes to issue for public notice a modified RCRA closure plan for the site no later than January 31, 1996. As a result, Transwestern has decided to withdraw its Part A Application and Closure Plans. A copy of Transwestern's Notice of Withdrawal, dated January 19, 1996 is transmitted to you with this letter.

The basis for Transwestern's decision is summarized in sections I and II below. Two additional issues raised in your letter are addressed in Sections III and IV below.

I. THE PRESENCE OF HALOGENATED ORGANIC COMPOUNDS AT LOW CONCENTRATIONS DOES NOT GIVE RISE TO RCRA JURISDICTION.

Your letter does not address the results of Transwestern's

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factual investigation and legal analysis as to applicability of RCRA closure requirements to the Roswell Compressor Station. Transwestern's analysis concluded, as set forth in our October 11, 1995 letter, that RCRA jurisdiction is dependant not only upon the presence of constituents which may be a component of a "hazardous waste", but also upon the origin of the constituents, nature of their use, and the regulations in effect at the time the constituents were released to the environment.

As more fully set forth in our October 11, 1995 letter, the results of the factual investigation indicated that no evidence exists that "hazardous waste" as defined by the New Mexico Hazardous Waste Regulations was ever released at the Roswell Compressor Station. Based upon the analysis and information in the October 11, 1995 letter, no evidence exists that Transwestern was ever a hazardous waste generator. It appears to Transwestern that NMED has not undertaken a specific analysis of whether Transwestern was a RCRA waste generator, and if so, what type of RCRA waste was generated under the regulations in effect during the pertinent time period.

II. SUBSEQUENT INVESTIGATION BY TRANSWESTERN INDICATES THAT THE INFORMATION IN THE RCRA PART A APPLICATION WAS NOT ACCURATE, PARTICULARLY THE ASSUMPTIONS REGARDING THE OPERATIONAL HISTORY OF THE SITE.

As you are aware, 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.

In a cooperative effort to respond to the NMED's request for a completed Part A Application, Transwestern completed in January, 1993 an application with information intended to present a worst case description of the potential condition of affected soil and ground water at the site. Based upon the recent detailed review of the facility's operational history, Transwestern has concluded that nearly all of the information presented in the original application was erroneous, except certain background information. Transwestern's letter dated October 11, 1995, described in detail why the Part A application information was erroneous and should be withdrawn. Your letter does not address the results of Transwestern's investigation of past operations, nor does it contain any specific legal analysis of these operations which would support RCRA jurisdiction.

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III. NEW MEXICO OIL CONSERVATION DIVISION ("OCD") HAS SUFFICIENT AUTHORITY OVER THE ASSESSMENT AND REMEDIATION ACTIVITIES AT THIS SITE TO PROTECT HUMAN HEALTH AND THE ENVIRONMENT.

Your December 21, 1995 letter states that closure under the authority of the OCD will not achieve the same remediation goals or adequately protect human health and the environment. The letter does not specifically address the alleged inadequacies.

As previously stated, halogenated organic compounds are present in soil and ground water at very low concentrations. They represent a tiny fraction of the total concentration of all regulated compounds. Nearly 100% of the regulated compounds are compounds and classes of compounds (i.e., total petroleum hydrocarbons ("TPH"), benzene, toluene, ethylbenzene, and xylenes ("BTEX") common to regulation by the OCD. As a result, remediation activities will focus almost exclusively on the reduction of TPH concentrations in soil, the removal of phase separated hydrocarbons from above the perched ground water, and the remediation of shallow ground water affected by BTEX constituents. In addition, the technologies employed for the reduction of BTEX and TPH in soil and ground water will also reduce the concentration of the halogenated compounds. Due to the low initial concentrations of halogenated compounds in soil and ground water relative to the initial concentrations of BTEX and TPH, the clean up objectives for the halogenated compounds should be attained well in advance of the cleanup objectives for BTEX and TPH.

Your letter further states that "Cleanup required by the NMED under the HWA involves health based standards and other media not addressed by OCD." This statement is not supported by citation to the different standards or an explanation of the media alleged but not addressed by OCD. The State of New Mexico Water Quality Control Commission ("NMWQCC") has delegated authority to the OCD to protect ground water resources and enforce the NMWQCC ground water standards at oil and gas industry related sites. The NMWQCC standards include protection levels for the halogenated compounds in addition to the more predominant petroleum hydrocarbon compounds present at the site. Furthermore, in the course of protecting ground water resources, OCD has informed Transwestern that OCD has the authority to establish remediation criteria (health based or otherwise) for soil which will be protective of ground water.

The OCD has indicated that, as required by New Mexico law, the OCD will continue to provide an oversight function at the Roswell Station, regardless of the involvement of other State agencies. In view of the OCD's continued involvement and the slow pace of progress made over the last three years to achieve a plan

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approved by the NMED Hazardous and Radioactive Materials Bureau ("HRMB"), beginning in July 1995, Transwestern has proceeded with assessment activities with oversight provided by the OCD.

IV. THE NMED HRMB CONTINUES TO INACCURATELY STATE THE CONDITION OF AFFECTED SOIL AND GROUND WATER AT THE ROSWELL COMPRESSOR STATION AND TO PURSUE AN OUTMODED REGULATORY APPROACH TO REMEDIATION AT THE SITE

An additional issue raised by your December 21, 1995 letter is in regard to the continuing inaccurate statements by the NMED technical staff of technical data and their position that the Roswell site poses a serious threat to human health and the environment. An example is contained within the December 21, 1995 response to Transwestern. In that letter, the NMED HRMB asserted that 1,1-dichloroethane ("DCA") was detected in ground water at 22,400 times the State of New Mexico Water Quality Control Commission standard of 25 ppb. However, the maximum (and only) detected concentration of 1,1-DCA in a ground water sample collected to date was 560 ppb, 22.4 times the state standard. Certainly, this was an honest mistake, but it nonetheless was an inflated misstatement of the seriousness of the problem at this site and raises questions concerning the care that has been taken to analyze this site.

Moreover, the United States Environmental Protection Agency ("USEPA") has recognized that managing low risk wastes as hazardous waste based solely on the presence of low concentrations of a listed waste is an unnecessary and wasteful expenditure of regulatory resources. The USEPA is in the process of correcting this situation through the recently published proposed Hazardous Waste Identification Rule ("HWIR") (Fed. Reg. 12/21/95) and a draft of a related rule, the HWIR-Media Rule which was summarized in our October 11, 1995 letter. The draft rule clearly stated the problem with the regulatory approach proposed by NMED HRMB. Your December 21, 1995 letter does not address these problems or acknowledge that these problems were considered in the NMED HRMB decision-making process.

The proposed HWIR establishes levels for low risk wastes to exit RCRA Subtitle C regulation. The compound 1,1,1-trichloroethane ("TCA"), although present in soil at the Roswell site in very low concentrations, is by far the most predominate halogenated organic compound present. In order to put the issue at hand into perspective, compare the proposed HWIR exit level for 1,1,1-TCA in soil, 48,000 mg/kg, to the maximum detected concentration in soil at the site, 19 mg/kg. See 60 Fed Reg. at 66432. The HWIR exit levels were developed using risk-based methods; thus, the concentrations of 1,1,1-TCA present in soil at the Roswell Station are clearly not a risk to human health or the

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environment.

V. CONCLUSION

Transwestern continues to desire to attempt to resolve this matter in an informal setting based upon the available facts. Transwestern respectfully requests the NMED to review the available evidence and the applicable regulations and reconsider its position.

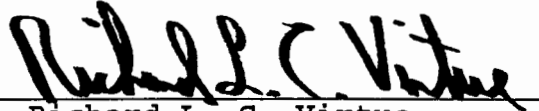
The Company has requested a meeting with the Secretary of NMED to answer any questions and revisit the NMED HRMB's prior conclusions. Transwestern has previously suggested that, at the OCD's discretion, the NMED could be allowed limited oversight of the closure in order that any NMED concerns can be satisfied. Although these suggestions have been rejected by the NMED to date, Transwestern is still willing to consider approaching the OCD in this manner.

If you have any questions concerning this matter, please contact me.

Very truly yours,

TAICHERT, WIGGINS, VIRTUE & NAJJAR

By



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Santa Fe Office

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