

Public Service Company
of New Mexico
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Albuquerque, NM 87158
Fax 241-2376

May 7, 2002

Debby Brinkerhoff, Program Manager
Compliance and Technical Assistance Program
New Mexico Environment Department
2905 Rodeo Park Drive East Building 1
Santa Fe, New Mexico 87505-66303

Subject: Request for Concurrence – TCLP Not Applicable to MGP Waste

Dear Ms. Brinkerhoff:

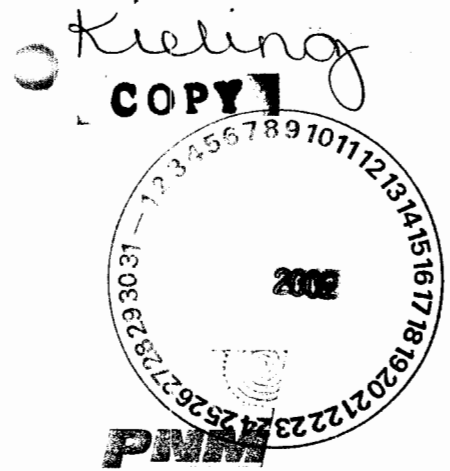
Thank you for your letter of April 23, 2002 confirming that the New Mexico Environment Department (“NMED”) has determined that the Toxicity Characteristic Leaching Procedure (“TCLP”) exemption for MGP wastes as set forth in 40 C.F.R. § 2612.4 is effective and binding in New Mexico. We understand from your letter that the NMED cannot require that the MGP remediation waste streams be tested under the TCLP procedures to determine whether MGP wastes exhibit the characteristic of toxicity.

We are, however, puzzled by the statement in your letter that “if the waste is disposed of on land at any time, including after treatment, then the MGP TCLP exemption will not apply and NMED requires that PNM determine if the waste exhibits the characteristic of toxicity under 20.4.1.200 NMAC (incorporating 40 C.F.R. § 261.24) and is therefore regulated under RCRA and the HWA.” As noted above, the MGP waste is specifically exempted from TCLP testing and is therefore, not regulated as a characteristic waste for toxicity. We do not see any legal basis for requiring that MGP waste be tested as a hazardous waste for the toxicity characteristic. If you are aware of any legal basis for such testing, please advise us as soon as possible. In addition, as we believe you are aware, MGP waste is not included as a listed waste.

With regard to PNM's future plans for the MGP wastes at the former AG&E Co. MGP facility in Albuquerque, PNM has no present intention of utilizing New Mexico land-based disposal for any contaminated MGP waste streams. The only types of wastes from the former AG&E Co. MGP site that may be disposed of in a New Mexico landfill are construction type wastes, such as cleaned concrete and piping. PNM understands that approved New Mexico landfills may have certain permit required waste stream profiling before materials are accepted at such facilities.

We hope that this letter clarifies PNM's intent with respect to any remediation disposal alternatives within the state of New Mexico for materials originating from the former AG&E Co. MGP site. Again, please advise us if the NMED disagrees with our legal assessment of MGP waste exemption from applicable hazardous waste definition and regulation.

If you have any questions, please do not hesitate to contact me at (505) 241-4871.

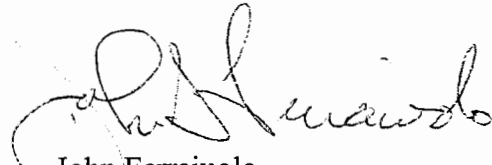


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Ms. Debby Brinkerhoff

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May 7, 2002

A handwritten signature in black ink, appearing to read "John Ferraiuolo". The signature is fluid and cursive, with a large initial "J" and "F".

John Ferraiuolo

Environmental Technical Project Manager

cc: Mr. Melvin Christopher, PNM
Ms. Maureen Gannon, PNM
Mr. Chris Hickman, PNM
Mr. Baird Swanson, NMED
Mr. Colin Adams, PNM
Mr. Richard L. Alvidrez, PNM
Mr. James Bearzi, NMED
Mr. John Kieling, NMED
Mr. David Cobrain, NMED
Mr. L. King, EPA 6PD-N