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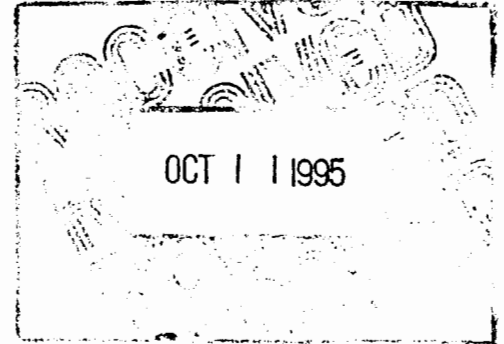
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October 11, 1995

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Transwestern Pipeline Company  
("TW"), Roswell Compressor Station  
("Roswell Station")

Dear Ms. Hughes:

This letter follows the August, 1995 meeting between representatives of TW and representatives of the New Mexico Environment Department ("NMED") concerning TW's Roswell Compressor Station. This confirms the information provided orally by TW to NMED at the meeting, and provides additional information as requested by the NMED.

Summary of TW's Analysis

For legal, technical and policy reasons, the proper regulatory path for the closure of this site is through the New Mexico Oil Conservation Division ("OCD") rather than NMED. TW remains committed to remedial goals that are fully protective of human health and the environment. Closure under the OCD authority will expedite the remediation and avoid the difficulties inherent under a RCRA Subtitle C closure, which is ill-suited for this type of facility. Moreover, closure under the OCD will not only achieve the same remediation goals as those prescribed under RCRA, but also place oversight authority with the state agency that has primary authority and expertise over remediation of soil and groundwater contaminated with petroleum hydrocarbons which comprise nearly all of the contaminants at the Roswell Station.

Since the meeting held between TW and NMED in March, 1995, TW has conducted a comprehensive review and analysis of the status of

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the Roswell Station and the regulatory approach imposed upon this facility. The results of TW's analysis show that the Part A application filed by TW in 1993 at the request of NMED contained fundamentally erroneous information and should be withdrawn. TW's investigation of its past practices at both the Roswell Station and other sites indicates that the wastes generated at the Roswell Station were never "hazardous" waste within the meaning of RCRA for a number of reasons. First, the wastes were in insufficient amounts or concentrations to qualify as hazardous under the regulations then in effect. Second, some of the materials released were not even classified as hazardous wastes under the then existing regulations. Finally, the application assumed the presence of certain wastes for which no evidence has been found to exist. Moreover, facility wastes were released during the time period prior to clarification of the "petroleum" exemption and were generally considered to be exempt pursuant to the petroleum exemption at the time of disposal.

Although the OCD is the appropriate oversight authority, TW can provide NMED with copies of documentation related to the OCD remediation process so that NMED may assure itself that the process is adequate to protect human health and the environment.

#### General Description of Roswell Station Operations and Potential Waste Streams

The Roswell Station is located on approximately 80 acres of land just north of the City of Roswell. The natural gas compressor station has been in operation since 1960, and the station operates subject to a discharge plan issued by the OCD. TW filed a RCRA Part A application in January, 1993, at the request of NMED for the purpose of gathering information concerning closure of former surface impoundments at the facility.

TW's investigation indicates that two surface impoundments were used at the facility from 1960 through 1983. One of these surface impoundments was backfilled before February, 1977, and the second was closed in 1983 and backfilled in June, 1986. These surface impoundments were used by TW to contain pipeline condensate. The surface impoundments have been replaced by above-ground storage tanks. All wastes generated from operations are now stored in the surface tanks and then removed from the site and handled in such a manner so that no treatment, storage or disposal facility ("TSDF") status is triggered. Thus, the surface impoundments that are the subject of the Part A application and subsequent negotiations with NMED have not been in use since at least 1983 and have been replaced by above-ground storage facilities.

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TW's Roswell Station, like hundreds of similar facilities located within the State of New Mexico, serves the function of compressing natural gas for transportation through a pipeline. A secondary function of the Roswell Station is to serve as a location where pipeline liquids are removed from the pipeline. These liquids collect in low spots in the pipeline or in flow-through vessels designed to knock out the liquids ("scrubbers"). Liquids are also periodically removed from the pipeline during "pigging" operations. During pigging operations, plugs or "pigs" are shoved through the pipeline to push out the liquids. The liquids collected at a compressor station from "pigging" operations and the scrubbers are called pipeline liquids or "condensate".

In general, pipeline liquids are a mixture of produced water and petroleum hydrocarbons. The petroleum hydrocarbons are a mixture of predominantly aliphatic hydrocarbon compounds in the C6 to C14 range and a much smaller fraction (on the order of 10%) of aromatic hydrocarbon compounds. Historically, pipeline liquids were either placed in surface impoundments where the water and petroleum hydrocarbons presumably would evaporate, or the liquids were sold as a product where they would be blended with crude oil or fuel oil. Today, pipeline liquids are almost exclusively sold as a product and therefore are not classified as a waste.

In general, the only other potential waste streams which are of any significance at natural gas compressor stations are those generally associated with the operation and maintenance of internal combustion engines: used lube oil, oil filters, and wash water. The management of wastes produced at these facilities is regulated by the OCD, with the exception of hazardous wastes which are regulated by NMED. However, very little hazardous wastes, if any, are produced at natural gas compressor stations and therefore most compressor stations qualify as conditionally exempt small quantity generators under 40 C.F.R. §261.5.

#### Description of Contaminants Used in the Past at the Roswell Station

The vast majority of the contaminants (greater than 99.9%) present at the former Roswell Station surface impoundments are petroleum hydrocarbons. For example, the attached lab data shows chlorinated compounds to be present in concentrations that total less than 20 mg/kg (ppm). See Laboratory Analysis and Summary (Attachment A). In the past, these contaminants were inadvertently released into soil and groundwater as a result of waste management practices for pipeline liquids which were common at the time. However, the contaminants which have confused the issue of regulatory oversight at this site are the cleaning solutions (chlorinated solvent compounds) which were once used

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during maintenance activities but are no longer used at the Roswell Station. These compounds represent a small fraction of the contaminants present in soil and groundwater. The use of these small amounts of diluted chlorinated solvents prior to the present solvent rule which was adopted on December 31, 1985 does not give rise to RCRA jurisdiction.

Prior to the adoption of the present solvent rule in 1985, the waste generated by chlorinated solvent products containing less than 100% of a specific listed solvent were not "hazardous" within the meaning of RCRA. See 50 Fed. Reg. 53315. Solutions containing 100% solvent concentrations were not used at the Roswell Facility prior to the adoption of the solvent rule, so the rule does not apply to the generation of those wastes. After the adoption of the present solvent rule, there were no releases to the surface impoundments.

In a recent sample collected from the recovered hydrocarbon liquids tank, the concentration of chlorinated compounds was not even above laboratory detection levels. See Attachment A. In order to put this into perspective, if we were to assume that all potentially identifiable chlorinated volatile organic compounds were present at their respective detection levels, then the total concentration of these compounds in the recovered hydrocarbon liquid would be less than 0.00000023% of the liquid sample. Furthermore, during prior investigation activities conducted at the site, the highest concentration measured of 1,1,1-trichloroethane, the most prevalent solvent detected at the site, was just 19.0 mg/kg (or ppm). See Attachment A. This concentration is far below the RCRA 40 C.F.R 264 proposed Subpart S action level of 7000 mg/kg. 55 Fed. Reg. 30867

Thus, remediation efforts at this site will focus almost exclusively on the reduction of hydrocarbons in the form of total petroleum hydrocarbon ("TPH") concentrations in soil, the removal of phase separated hydrocarbon from above the uppermost aquifer, and a reduction in the concentration of BTEX compounds (benzene, toluene, ethylbenzene, and xylenes) present in groundwater. These objectives are typical of other oil and gas related remediation activities which the OCD staff work with on a daily basis. As NMED has no action level or cleanup criteria for TPH, NMED has already indicated to TW that the establishment of this criteria would be coordinated with the OCD.

#### Analysis of Applicability of RCRA to TW's Roswell Station

When TW originally submitted its RCRA Part A application at the request of NMED, both TW and NMED were under a series of erroneous assumptions with regard to the use of the former surface impoundments and the applicability of RCRA regulations.

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First, it was assumed that F-listed and D-listed wastes were placed in the surface impoundment. (These are wastes listed as hazardous under 40 C.F.R. §§261.24 and 261.31(a)).

There were five F-listed and D-listed waste codes listed in the RCRA Part A application. The inapplicability of RCRA regulations to each of these wastes is discussed below.

1. F001 (halogenated solvents) - Prior to the solvent 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% trichloroethane). The 1985 solvent 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 at the Roswell Station was taken out of service well before the 1985 solvent rule. See attached aerial photo dated June 19, 1983 showing surface impoundments no longer in use and storage tanks in place (Attachment B). Once storage tanks were placed into service, the surface impoundments were no longer used.

Furthermore, TW has conducted an investigation of past practices at the Roswell Station and similar facilities and has found no indication that a commercially pure grade spent halogenated solvent was either used at this facility during the applicable time frame or released to the impoundment, nor is it even likely that a commercially pure grade spent halogenated solvent would have been in use at the facility due to cost. A mixture of chlorinated solvents and non-chlorinated solvents (e.g., mineral spirits) is equally effective and much less costly. Laboratory reports of liquid solvent samples collected at other TW stations in 1989 show chlorinated solution concentrations of less than 100%. See the attached laboratory results (Attachment C). All available information shows no F001 wastes were ever disposed of at the Roswell Station.

TW has identified only two past uses of halogenated solvents at the Roswell Station. The first involved placing the solvents on rags for cleaning parts where the solvents were completely used or the unused portion(s) were allowed to evaporate. The second identified use was for cleaning compressor engine crankcases during oil changes. In this case, some residual solvent may have remained in the crankcase

entrained in residual lube oil (it is generally accepted that one can not remove 100% of the lube oil within an engine during an oil change). When new lube oil would be added to the crankcase, a solvent/oil mixture should result. Therefore, during subsequent oil changes the lube oil removed from the engine would contain very low concentrations of solvents. This is the likely mechanism by which solvent compounds were released to the former surface impoundments. Because the surface impoundments were removed from service prior to adoption of the present solvent rule, the pre-1985 releases of the solvents to these surface impoundments are not subject to RCRA jurisdiction.

2. F005 (non-halogenated solvents) - Prior to the December 31, 1985 solvent rule, the F005 listing applied only to commercially pure grades of spent non-halogenated solvents (e.g., 100% toluene, methyl ethyl ketone, benzene, etc.). Again, TW's investigation of past practices found no information that these solvents, or their associated wastes, were used, stored, or disposed of at the Roswell Station. The available evidence suggests that the source of most of these types of compounds is the petroleum substances in the pipeline. Therefore, the F005 waste code should not have been included in the Part A application.
  
3. D004 (arsenic) - A small amount 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. Although production from this formation began in 1979, arsenic was not identified as a natural contaminant of the gas until 1987. Nor would TW or any other pipeline have any reason to suspect arsenic might be present in the gas since this is a very rare occurrence. The pipeline liquids tank was installed at the Roswell Station in 1983, therefore, the duration in which pipeline liquids potentially containing arsenic were released to the former surface impoundment was 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 3 years. Therefore, the evidence available to TW indicates that the EP Toxicity procedure was never used to assess the toxicity characteristic of the waste for arsenic since the presence of arsenic was unknown to TW. Even if the EP toxicity test had been conducted

for arsenic, the results would most certainly have been below threshold levels.

Moreover, the concentrations currently measured are well below those levels at which the waste stream might fail the former EP Toxicity procedure used at the time in question. See Attachment A. Based on this information, TW has no information that wastes placed in the former surface impoundment at the Roswell Station were characteristically hazardous due to arsenic. Therefore, RCRA does not apply and the D004 waste code should not have been included on the Part A application.

4. D005 (barium) - Although a small concentration of barium can be present in used engine oil collected at the Roswell Station, the concentration present is well below those levels where one might expect the waste stream to fail the former EP Toxicity procedure. 40 C.F.R. §261.24. Furthermore, TW has no information that wastes placed in the former surface impoundment at the Roswell Station would have failed the EP Toxicity procedure for barium. Therefore, RCRA does not apply and the D005 waste code should not have been included on the Part A application. Finally, the level of barium at the surface impoundments is within the range of background levels.
5. D018 (benzene) - Prior to the TC Rule effective March 29, 1990, benzene was not listed as a "Characteristic of EP Toxicity" contaminant. 55 Fed. Reg. 11798. Therefore, during the time frame that the surface impoundment was in use, there was no such thing as a D018 waste, and thus, RCRA does not apply and this waste code should not have been listed on the Part A application. Based upon all available evidence, the source of benzene was the petroleum substances in the pipeline.

The Part A Application and associated information also omitted information critical to a correct analysis of RCRA jurisdiction. For example, 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 potentially affected groundwater. 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 more accurate information: dimensions obtained from historic air

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photos of the facility.

Information submitted with the application indicated that only a single surface impoundment was in use from August 1960 through June 1986. Information obtained from historic air photos and facility diagrams indicates that two impoundments were used at the facility between mid-1960 and December 1983. From a closer review of the information, it appears that the first impoundment at the facility was replaced by the second impoundment sometime prior to October 1972. Therefore, only the second impoundment was operated post RCRA. Furthermore, although the second impoundment was not back-filled until June 1986, wastes were not received by this impoundment after November 1983 when the final above ground storage tanks ("ASTs") were placed in service to collect the station's waste streams. See the attached chronology of events for a more detailed description of the time frame for installation of ASTs. (Attachment D). Completion reports dated June 25, 1982, November 18, 1983 and January 25, 1984 show that the final storage tank was installed and operational by November 11, 1983. See Attachment E. Aerial photos dated June 19, 1983 show surface impoundments and in-place storage tanks. See Attachment B.

#### RCRA Does Not Apply Retroactively to Newly Classified Hazardous Wastes

As discussed above, the type of wastes found at the Roswell Station are almost solely petroleum hydrocarbons which do not fall under the definition of "hazardous" so as to invoke RCRA. All of the wastes listed on TW's RCRA Part A application should never have been listed: they were insufficient amounts or concentrations (e.g. arsenic, barium), the solvent products used were in diluted solutions of much less than 100% concentration, (e.g. F001 and F005 wastes), the waste category did not exist at the time the wastes were released, or they were not classified as wastes under RCRA at the time they were released (e.g., Benzene).

Any wastes that were not defined as hazardous when released do not fall under RCRA, unless characteristically hazardous and actively managed after the date the rule changed to classifying the waste as hazardous. See 54 Fed. Reg. 36592, 36597 (in narrowing the exemption for mineral processing wastes, the EPA stated that the new, narrower, definition would "not impose Subtitle C requirements on . . . wastes that were released prior to the effective date of today's rule, unless they are actively managed after the effective date"). EPA has a longstanding policy of not regulating wastes under RCRA that were released prior to the effective date of the rule governing those wastes. Id. EPA took the same position in 1992 when it added new wastes



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to the hazardous list. 57 Fed. Reg. 37284<sup>1</sup>.

Inapplicability of RCRA Closure Requirements to Natural Gas Compressor Stations

Finally, TW and the NMED have also seen several examples which indicate the RCRA closure process simply does not apply to this type of location. One example is the provisions for "waste characterization" and volume estimates of remaining waste. 40 C.F.R. §264.552(e)(4)(iii). Because the last remaining surface impoundment was backfilled nearly ten years ago, there is no "waste" remaining to characterize.

Another example is that NMED required TW to analyze impacted soil samples for constituents listed under the "petroleum refining" category found within the RCRA Facility Investigation guidance documents. This list was selected for identifying potential waste constituents of concern because, of all the categories contained within the guidance, "petroleum refining" was the only category that was even remotely related to the operations at a natural gas compressor station. However, the operations at a natural gas compressor station, in particular a mainline transmission station such as the Roswell Station, are completely different from the operations at a petroleum refinery in both the types of activities involved and the materials utilized. In petroleum refining, crude oil is refined into various fractions of petroleum, including gasoline, through the use of chemical and physical processes. By contrast, the operation of a natural gas compressor station is simple. At a compressor station, the pressure within a natural gas pipeline is increased so that natural gas may move through the pipeline. No chemical reactions are involved in the process, and far fewer waste streams are generated than at petroleum refineries. Most natural gas compressor stations are classified as either small quantity generators or conditionally exempt small quantity generators of hazardous waste.

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<sup>1</sup>Much of TW's waste was also exempt from RCRA under the exemption for oil and gas set forth in 42 U.S.C. §6921(b)(2)(A) (1983) (wastes associated with the exploration, development, or production of crude oil or natural gas). Before July 6, 1988, the scope of this exemption was unclear. At that point, the EPA finally issued guidelines for the exemption. 53 Fed. Reg. 25446. As TW used its last surface impoundment in 1983, the waste should fall under the exemption for oil and gas wastes. Any narrowing of that exemption as set forth on July 6, 1988, would not be retroactively applied to wastes deposited before that date unless they were actively managed. 54 Fed. Reg. at 36597.

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OCD Oversight is Fully Protective of NMED and New Mexico Standards

Remediation activities at the Roswell Station can proceed much more rapidly and cost effectively for the state and TW with oversight authority by the OCD. This is true primarily because the OCD is not bound by the lengthy procedural requirements typical of RCRA closures. Attached to this letter are flow charts which depict two process scenarios for assessment and cleanup at the Roswell Station. See Attachment F. The first chart was prepared by NMED Hazardous Radioactive Materials Bureau ("HRMB") and presented to TW during a March, 1995 meeting with TW. The second chart illustrates the process TW has undergone for assessment and clean-up under the OCD oversight. The charts demonstrate the efficiency and relative straight forwardness of a clean-up plan pursuant to the OCD system as compared to the NMED system.

As the NMED has no action level or clean up criteria for total petroleum hydrocarbons (nearly 100% of the contaminants of concern) and is establishing this criteria in coordination with the OCD, there will be no difference between clean up criteria for soil established by NMED versus that under the OCD oversight. With respect to groundwater contamination, the OCD enforces the New Mexico Water Quality Control Commission ("NMWQCC") standards. The NMED HRMB uses the lower of the NMWQCC standards, the federal Safe Drinking Water Act MCLS, or the RCRA action level. The NMWQCC standards are as a rule the lowest, so cleanup under the OCD should satisfy NMED. The SDWA MCL standard for benzene is 5ug/l which is lower than that used by the OCD. The NMWQCC standard is 10ug/l but, considering the limited potential use of affected groundwater at the Roswell Station, from a practical standpoint, clean up to either standard is equally protective of human health and the environment.

Clean Up Under OCD Authority is Consistent With Proposed EPA Regulations

There is new proposed authority for allowing remediation activities to proceed under the authority and oversight of the OCD. The EPA drafted new proposed regulations entitled the Hazardous Waste Identification Rule-Media ("the Proposed Rule") to be published in the Federal Register later this year. The Proposed Rule addresses the need to focus on results instead of inflexible compliance with rules. The Proposed Rule recognizes that one-time cleanup of contaminated media is best accomplished with a plan tailored to cleanup. Under the Proposed Rule, a Remediation Management Plan ("RMP") will take the place of the current post-closure permitting requirements. See Proposed Rule at 63 et. seq. It will achieve closure in a much shorter time

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frame and avoid difficulties that arise in attempting to work within the framework of RCRA Subtitle C closure.

The closure requirements contained in 40 C.F.R. Part 265 Subpart G were developed with the clear intention that they would apply to closure of waste management units of operational TSDFs where hazardous wastes were intentionally treated, stored, or disposed (not a site such as Roswell which was never operated as a TSDF). This problem is well recognized by EPA as evidenced by their recent efforts to create a distinction between management of contaminated media during remediation activities and "as generated" hazardous wastes. Proposed Rule at 7. In the proposed rule, the EPA recognizes that current regulations are not tailored toward purely remedial activity which is what is involved at the Roswell Station. Proposed Rule at 7. The EPA recognizes that there are fundamental differences in the objectives and incentives of prevention oriented programs like RCRA and remediation oriented programs like the proposed rule. Proposed Rule at 6. Remediation activity is highly site-specific and not as amenable to stringent, inflexible standards. *Id.* at 8.

#### TW's Proposed Regulatory Path

Although it is obvious that a compressor station was never intended nor contemplated to be a TSDF, much time and energy has been spent in an attempt to apply TSDF standards to the Roswell Station. It is unfortunate that both TW and NMED have devoted almost all of their efforts to the closure of the location rather than scrutinizing the circumstances under which these substances of concern were released and the regulatory framework that was in effect at the time of the releases. The Proposed Rule provides a solution, and should be used by NMED as a guide to resolving the regulatory issues presented in this situation.

Remediation activities at the Roswell Station must proceed under the authority of the OCD for three reasons. First and most significantly, the waste should never have been classified as hazardous under RCRA; therefore, RCRA simply does not apply. Second, the OCD is experienced in overseeing the cleanup of sites with similar petroleum hydrocarbon contamination and the OCD and TW have a proven history of cooperation in accomplishing efficient, timely cleanup. Third, allowing remediation activities to proceed under the authority of the OCD is the best regulatory policy because RCRA is prevention oriented not remediation oriented.

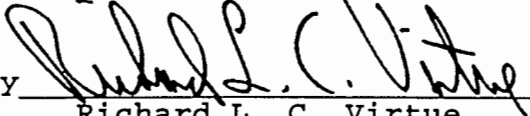
Within this framework, TW proposes to withdraw its Part A application, and negotiate an appropriate procedure with NMED and the OCD to keep NMED informed about the OCD remediation.

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If you have any questions or need additional information, please contact me at (505) 983-6101.

Very truly yours,

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