



GARY E. JOHNSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502
OFFICE OF GENERAL COUNSEL
PHONE: 505-827-2990
FAX: 505-827-1628

Barbara
X
Best to let me know what is our exit plan.
MARK E. WEIDLER
SECRETARY
EDGAR T. THORNTON, III
DEPUTY SECRETARY

August 9, 1996

RECEIVED

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Joe Hulscher, Vice President
Transwestern Pipeline Company
4001 Indian School Rd. N.E.
Albuquerque, New Mexico 87110

NM ENVIRONMENT DEPARTMENT
OFFICE OF THE SECRETARY

RE: PROPOSED SETTLEMENT AGREEMENT AND ALTERNATE CLOSURE PLAN

Dear Mr. Hulscher:

This letter is in response to your letter and proposed settlement agreement date June 28, 1996. Following our March meeting, I requested in writing that Transwestern Pipeline Company (TPC) submit the technical closure plan which our staff had approved or an acceptable alternate to that closure plan as required by law. Upon request from TPC, I provided TPC with an extension to submit entitled "Settlement Agreement and Alternative Closure Plan." We cannot recall any discussion authorizing TPC to undertake the drafting of a "settlement agreement." Further, we do not believe the Texas Risk Reduction Standard referred to in the proposal is appropriate under the circumstances.

Nevertheless, our staff has reviewed your proposal and regrettably, has concluded that it is completely unacceptable and not in compliance with the regulatory requirements under either the New Mexico Hazardous Waste Act (HWA) or the Resource Conservation and Recovery Act (RCRA). We fully expected a technical closure plan substantially similar to the plan which NMED approved pursuant to the HWA. To the extent that TPC has chosen to apply for approval of closure and remediation with the Oil Conservation Division (OCD), we would like to clarify that OCD has neither authority nor jurisdiction to approve closure or cleanup of hazardous waste disposal sites. Our conclusion that TPC must close and remediate under the HWA and RCRA is based upon our environmental expertise and fully supported by the United States Environmental Protection Agency (see attached letter).

For these reasons, we would hope that TPC determines to avoid unnecessary future delay and costs by coming into compliance with the law as soon as possible. We hereby request that TPC resubmit the previously developed closure plan that was proposed for

Joe Hulscher, Vice President
August 9, 1996
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approval and public comment which was withdrawn by TPC on January 19, 1996. This letter also serves to notify TPC that it may be liable for civil penalties under the HWA and RCRA for each day that it determines to fail to comply with the requirements to submit a closure plan. If we do not receive the submittal of the previously withdrawn closure plan prior to September 3, 1996, we will take appropriate actions.

If you wish to discuss this matter in more detail, please contact either me or Ed Kelley to arrange a meeting. We look forward to hearing from you.

Sincerely,



MARK E. WEIDLER

cc: Robert E. Hanneschlager, USEPA
Jennifer Salisbury, Secretary, Energy & Minerals
Richard Virtue, Esq.
Lou Soldano, Esq.
Bill Kendrick, Enron Operations Corp.
Ed Kelley, NMED
Benito Garcia, NMED
Susan McMichael, OGC NMED



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

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JUN 21 1996

Mr. Ed Kelley, Director
Water and Waste Management Division
New Mexico Environment Department
P.O. Box 26110
Santa Fe, NM 87502

NM ENVIRONMENT DEPARTMENT
OFFICE OF THE SECRETARY

Dear Mr. Kelley:

As discussed in the April meeting between Mark Weidler and Allyn M. Davis, the Environmental Protection Agency (EPA) has reviewed the circumstances concerning Transwestern Pipeline Company's (TPC) allegation that it does not need to comply with the requirements for closure or permitting under the Resource Conservation and Recovery Act (RCRA).

The EPA fully supports the position of the New Mexico Environment Department (NMED) and its analysis that RCRA is applicable to TPC. This decision is based on our review of the situation and a letter dated February 1, 1996, from NMED's Susan McMichael to Richard Virtue of TPC's legal counsel, which addresses each of TPC's assertions. Also, I have enclosed some guidance from the RCRA permit compendium pertaining to the petroleum waste exclusion.

Please keep us informed of the regulatory status in this matter. If you have any further questions, do not hesitate to call Mr. David Neleigh at (214) 665-6785.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Robert E. Hanneschlager".

Robert E. Hanneschlager, P.E.
Acting Division Director
Multimedia Planning
and Permitting Division

Enclosure