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August 30, 2011

**BY ELECTRONIC MAIL TO [Jennifer.Hower@state.nm.us](mailto:Jennifer.Hower@state.nm.us)**

Jennifer Hower, Attorney  
Office of General Counsel  
New Mexico Environment Department  
Harold S. Runnels Building  
1190 St. Francis Dr., Room N-4050  
Santa Fe, NM 87505

Re: Transwestern Pipeline Company, LLC (TW) - Roswell Compressor Station (RCS) -  
Facility Regulatory Status

Dear Ms. Hower:

This letter follows the August 9, 2011 meeting between representatives of the Hazardous Waste Bureau (HWB) of the New Mexico Environment Department (NMED) and TW concerning the regulatory status of the RCS. TW understands from that meeting and our subsequent discussions with NMED that NMED's basis for proposing further regulatory action is that, within the past two years, the U.S. Environmental Protection Agency (EPA) has preliminarily identified the RCS as a site to be removed from EPA's list of Resource Conservation and Recovery Act of 1976 (RCRA) Interim Status Facilities. At the August 9 meeting, TW made reference to resurrecting a settlement agreement that it had proposed to NMED in 1996. Since the August 9 meeting, TW has conducted an additional review of files related to this matter. As a result of that additional review and the events that have occurred since 1995, TW believes that a settlement agreement is not necessary to resolve this matter. Rather, on the basis of the documentation provided with this letter as discussed below, TW requests that NMED make a regulatory determination that the RCS is not subject to RCRA. TW believes that such a regulatory determination may eliminate the need for a settlement agreement or any other further regulatory action under RCRA.

As discussed at our meeting, TW is providing NMED with the attached requested documents and certain additional documents, all of which, unless otherwise noted below, all support TW's position concerning the inapplicability of RCRA to the RCS:

1. Letter dated October 11, 1995, from the undersigned to Tracy Hughes, then NMED General Counsel, and supporting documents, setting forth TW's position that the RCS is not subject to the RCRA. The factual basis for the position set forth in that is, in part, information obtained from RCRA Facility Assessment (RFA) for the RCS dated February 21, 1995 and, in part, on other evaluations and analysis of the RCS by TW.
2. Letter dated December 21, 1995, from Susan McMichael to the undersigned, then NMED Assistant General Counsel, stating the position of NMED concerning the applicability of RCRA to the RCS.
3. Letter dated January 19, 1996 to Mark Weidler, then Secretary of NMED, from Joe Hulscher, then Vice-President of TW withdrawing the RCRA Part A Permit Application for the RCS filed in January 1993, together with an attachment explaining the basis for the withdrawal.
4. Proposed Settlement Agreement and Alternative New Mexico Oil Conservation Division (NMOCD) Closure Plan dated June 27, 1996, submitted by TW to NMED. (Paper copies of these documents will be separately delivered to you and Mr. Cobrain due to the large size of the electronic file).
5. A copy of an Environmental Indicator Determination (EID) which was completed by NMED in May 2002, and submitted to EPA Region VI, and which appears on the EPA's website. The EID states on page 2, under the heading "REGULATED UNIT SUMMARY":

"A Work Plan for excavation of contaminated soil within and beneath the surface impoundments was prepared and approved by NMED/HWB and NMOCD, on October 18, 2001.

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"Further remedial actions and monitoring of the groundwater will be overseen by New Mexico OCD."

TW also has copies of Assessment Work Plans, Annual Reports and a final Remedial Design which have been submitted by TW to NMOCD periodically during the period of 1995 to 2010 pursuant to the Alternative NMOCD Closure Plan. We can provide those documents if you desire.

TW believes the information submitted with this letter clearly establishes that the RCS should not be classified as a RCRA Interim Status Facility. Subsequent to the filing of TW's RCRA Part A Permit Application, additional evaluations showed that the RCS is not subject to regulation pursuant to RCRA. As a result, TW withdrew the RCRA Part A Permit Application for the RCS. In an effort to resolve the matter, TW prepared and submitted to NMED a settlement agreement under which remediation at the RCS was to be conducted pursuant to an

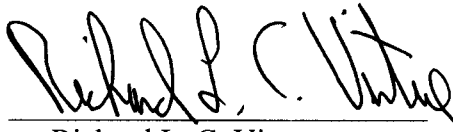
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Alternative Closure Plan under the jurisdiction of NMOCD. The settlement agreement was never signed, and TW was not contacted by NMED, although NMED was generally aware that TW was remediating the RCS pursuant to the Alternative NMOCD Closure Plan. TW has proceeded in good faith for the past fifteen years with continued remediation pursuant to the Alternative NMOCD Closure Plan, and has supplied routine reports to the NMOCD. In May 2002, EPA was notified by NMED that NMOCD was overseeing the remediation. Even in light of that notification, EPA has taken no regulatory action concerning the RCS since TW withdrew its RCRA Part A Application in January 1996, over fifteen years ago.

TW looks forward to receiving NMED's analysis of how this matter can be resolved without further regulatory action under RCRA. TW may submit additional information and documents that may become pertinent to this matter. TW representatives are available to discuss this matter further at your convenience. TW appreciates NMED's consideration of this request and shares NMED's desire to resolving this regulatory status classification matter expeditiously in a mutually satisfactory manner.

Very truly yours,

VIRTUE NAJJAR & BROWN, PC

By:   
Richard L. C. Virtue

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