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United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

November 5, 1993

Mr. H. Michael Dorsey
Assistant Chief
Compliance Monitoring/Enforcement
Office of Waste Management
Division of Environmental Protection
1356 Hansford Street
Charleston, West Virginia 25301-1401

Dear Mr. Dorsey:

I am responding to your August 30, 1993, request to clarify certain issues regarding oil and gas wastes. I understand that you have corresponded and have had extensive conversations with Mike Fitzpatrick of my staff regarding the March 22, 1993, Federal Register (FR) notice that clarifies the scope of the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste exemption for oil and gas exploration and production wastes. I further understand that, at the invitation of David Flannery (representing the Appalachian producers), Mike visited certain sites in West Virginia with you and industry representatives to gather information relative to the issues you have raised. I am responding to the issues that were raised in your letters and conversations with him. I believe that you have raised three principal issues, which I will address below.

The first issue concerns the application of the language in the March 22, 1993, FR notice that addresses gas plants to natural gas compressor stations in West Virginia. The scenario used for defining the scope of the exemption in the regulatory determination and subsequent FR clarification does not precisely correspond to the typical natural gas production process used in Appalachian States. It has been our position that, while natural gas exploration and production (E&P) occurs at the wellhead, up through the gas plant, and at natural gas storage fields, E&P does not include transportation of gas once it has left the gas plant,

compressor stations located downstream from the gas plant, or manufacturing activities. Since the Subtitle C exemption applies only to E&P activities, solid wastes generated from these transportation, compression or manufacturing activities would not be exempt from subtitle C regulation.

The FR notice did not intend to imply, however, that wastes from all compressor stations are outside the E&P exemption; only those wastes from compressor stations that are part of transportation are subject to Subtitle C. In EPA's opinion, those compressor stations on main trunk pipelines handling any natural gas produced outside the state (or produced outside of "local production", as described below) would be considered to be part of transportation and would be regulated. In Appalachia, those compressor stations handling only "local production" would qualify for the exemption as the equivalent of gas plants (see footnote 1).

As used in this letter, the term "local production" refers to gas produced from a single nearby gas field or several nearby fields, as determined by the state oil and gas regulatory agency. Once gas from outside the local production area (again, as defined by the state regulatory agency) is commingled with gas from within the local area, then the pipeline facilities and compressor stations beyond that point would no longer be E&P operations, and wastes generated are no longer considered exempt wastes (with the footnoted exception for gas storage fields) even if additional local production feeds into the system downstream from the point of commingling. Similarly, once gas leaves the gathering system for transportation or sale to a consumer, it would no longer be part of E&P and any wastes generated would be subject to Subtitle C if they exhibited one or more hazardous characteristics.

The second issue concerns exempt wastes that are mismanaged and that may pose an environmental threat. You have expressed your desire that the environmentally unsound handling or disposal of exempt wastes should result in the loss of the exemption for these wastes since there are no other regulatory schemes designed to address the hazardous nature of these wastes.

In light of Congressional intent, EPA does not classify a waste as exempt or not exempt based on the way in which that particular waste is managed (or mismanaged), nor does EPA base its definition of what constitutes an exempt waste on whether or not

the waste is managed in compliance with state regulations. As far as Federal regulations are concerned, once a particular exempt waste was generated, that waste would remain exempt regardless of the treatment or disposal method employed (unless mixed with certain regulated hazardous wastes). The mishandling of exempt wastes is a state regulatory and enforcement issue. States are free to develop regulations which are more stringent or broader in scope than Federal Subtitle C regulations. Also, state requirements may be developed to address the mismanagement of wastes which are exempt from Subtitle C -- that is, the state's solid waste or hazardous waste regulations can be used to regulate the management of federally exempt wastes, if the state's legislation provides such authority.

The third issue concerns the regulatory status of certain oil and gas wastes, including unused commercial chemical products. In the FR clarification notice, EPA stated a general "rule of thumb" that, in order for a waste to be considered exempt, it must either come from "down-hole," or come in contact with the production stream for the purpose of removing produced water or some other contaminant. (Generally, when a product is used in E&P and becomes a uniquely associated waste, it has either been sent down-hole or has come in contact with the production stream.) The Agency stopped short of saying this rule of thumb was more binding than a general guideline. However, we believed that it was useful to provide the rule of thumb as a general, easy-to-understand guideline that can be used by operators as a first step in determining if a waste is exempt or not.

The industry view is that the rule of thumb limiting exempt wastes to those that have come from down-hole is too narrow in that it does not include unused materials spilled or left as residuals on site. The Agency disagrees, however, with the view that discarded unused materials are, or should be, exempt wastes. First, EPA does not believe that placing excess and unused materials that exhibit one or more of the hazardous characteristics in a reserve pit is an environmentally sound practice. Moreover, it continues to be the Agency's position that, in general, a waste must either have come from down-hole or have otherwise come in contact with the production stream for the purpose of removing contaminants in order to be considered uniquely associated with efforts to locate or remove oil or gas from the ground. Regardless of the intent in preparing the material, only used, and therefore uniquely

associated, wastes are exempt.

Although this interpretation may cause a shift in some previous industry practices that have routinely placed some unused materials in reserve pits, it may also encourage operators to practice waste minimization and pollution prevention by planning more carefully for the volumes needed, looking for ways to conserve resources and increase recycling of unused materials, improving housekeeping procedures, and selecting less toxic ingredients for formulations whenever possible. We recognize that it will not, however, eliminate all excess materials since not all contingencies can be planned for when mixing drilling and workover fluids.

Nonetheless, the Agency continues to assert that unused chemical products, if disposed of, are not exempt from hazardous waste regulation. This position is consistent with the language of the Regulatory Determination (53 FR 25454, July 6, 1988) and subsequent clarification notice (58 FR 15286, March 22, 1993). Only a reopening of the Regulatory Determination, through a new rulemaking process, could change the Agency's position on unused material. Such an effort is not being contemplated by EPA.

To the extent that unused materials are hazardous only because of their corrosivity (e.g., completion and workover fluids), these unused acids can be treated (neutralized) by "totally enclosed treatment" (in the same tanks used to hold the workover fluids prior to use) without subjecting operators to Subtitle C jurisdiction. In that case, the neutralized waste likely would not exhibit a hazardous characteristic. There are no federal prohibitions on placing non-hazardous unused products in the reserve pit.

If you have any additional questions concerning these matters, please call Mike Fitzpatrick at (703) 308-8411.

Sincerely,
Bruce R. Weddle, Acting Director
Office of Solid Waste

1 As discussed in the FR notice, operations to recover natural gas stored in underground natural geological formations (not underground tanks) are considered part of production, not transportation. This is because these facilities are operated in the same way as if the gas were being produced for the first time.

Therefore, uniquely associated wastes from compressor stations solely to the retrieval of natural gas from underground storage facilities are exempt regardless of the origin of that gas.

cc: David M. Flannery, Robinson & McElwee; Ramona Trovato, Director, Ground Water Protection Division, Headquarters; Randy Hill, Office of General Counsel; Water Management Division Directors, Regions I - X; Hazardous Waste Management Division Directors, Regions I - X; Theodore M. Streit, Chief, Office of Oil and Gas, West Virginia Division of Environmental Protection