New York State Department of Environmental Conservation
Division of Solid & Hazardous Materials
50 Wolf Road, Albany, New York 12233-7250
(518) 457-6934 FAX (518) 457-0629

Michael D. Zagata
Commissioner

Mr. Michael Shapiro
Director
Office of Solid Waste (MC5301)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Shapiro:

Re: Proposed Project XL Initiative

The New York State Department of Environmental Conservation (DEC) hereby submits the enclosed proposal for consideration under the Project XL Program. The proposal deals with the applicability of certain RCRA-Subtitle C regulatory requirements to public utilities, including oil and gas pipelines. Although this proposal is intended for implementation in New York State by DEC, the problems that it addresses are believed to be common to utilities everywhere. The success of this initiative may be readily transferable nationwide to this industrial sector.

This proposal will lead to greater protection of human health and the environment, at considerable savings to public utilities and environmental regulatory agencies in terms of direct costs, paperwork, time (including computer time), and staff resources. Approval of the enclosed proposal by USEPA will result in a win-win situation for everybody. The public utility industry in New York State and EPA-Region II support this proposal and have been consulted in its development.

We look forward to EPA's response. Four copies of this letter and the enclosed proposal are being sent directly to the Regulatory Reinvention Pilot Projects Docket, as required. If there are any questions concerning the enclosed material, please have your staff contact Mr. Lawrence J. Nadler, of my staff, at (518) 485-8988.

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JAECKLE, FLEISCHMANN & MUGEL
ATTORNEYS AT LAW

FLEET BANK BUILDING TWELVE FOUNTAIN PLAZA BUFFALO, NEW YORK 14202-2292
TEL (716) 856-0600 FAX (716) 856-0432

DENNIS P. HARKAWIK
Partner

January 22, 1996

Via Federal Express

Keith G. Silliman, Esq.
Assistant Counsel
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233

Re: Brooklyn Union Gas - Handling of Hazardous Pipeline Liquids

Dear Keith:

As you know, Brooklyn Union has engaged in discussions with the Department regarding the handling of hazardous pipeline liquids encountered in its pipeline system. At your suggestion, this letter describes the issue and the specific assistance and regulatory relief Brooklyn Union is requesting of the Department. Please contact me after you have reviewed the letter so that a meeting can be scheduled with appropriate people at the Department.

A. Brooklyn Union's Pipeline Liquids

Brooklyn Union provides natural gas service to over 3.5 million residents of Brooklyn, Staten Island and Queens through a 3,871 mile distribution system. At various points its high pressure system, pipeline liquids are collected, which is necessary to insure the proper operation of Brooklyn Union's system and safe service to its customers. The liquids are usually found to be flammable and contain benzene. Sometimes the liquids are contaminated with greater than 50 ppm PCBs and are due to historical use of PCBs by others along the interstate pipelines that deliver natural gas into Brooklyn Union's pipeline system. The PCB contamination, when encountered, cannot be reduced in volume or concentration by Brooklyn Union since they originate from outside the Brooklyn Union pipeline system.

B. Nature of the Issue

While most hazardous pipeline liquids are collected from high pressure pipeline facilities located on Brooklyn Union properties, where secure temporary storage facilities are available,

ELLWANGER AND BARRY BUILDING 39 STATE STREET ROCHESTER, NEW YORK 14614-1310
TEL (716) 262-3640 FAX (716) 262-4133

Project XL For Public Utilities
Proposed By
The New York State Department of Environmental Conservation (DEC)
Division of Solid & Hazardous Materials
Albany, New York 12233-7250

I. Executive Summary

Public utilities in New York State have a common problem with regard to the RCRA-Subtitle C hazardous waste regulations. Utilities frequently generate hazardous wastes at "remote" locations that are along their right-of-way. These locations are not at any staffed, operating utility-owned "facility," thereby making it very difficult to secure such wastes against accidents, vandalism, etc. In order to protect public health and the environment, it is important to transport the waste to a secure location as soon as the generation "event" is ended. Utilities may also face pressures for prompt removal from municipalities, anxious to reopen traffic lanes, and property owners. Moreover, the disruption of normal traffic patterns (vehicular and pedestrian) can create an endangerment to public safety, particularly in congested, urban areas.

The present hazardous waste regulations, however, cause these wastes to be handled in a less safe and more costly manner than is necessary, and also result in unnecessary paperwork and expenditure of time (including computer time) and staff resources by both utilities and environmental regulatory agencies.

These concerns can be successfully addressed by allowing public utilities to utilize a modified definition of the term "on-site" and to apply this modified definition to site identification. Specifically, these remote locations could be considered "on-site" with respect to a utility-owned central collection facility (CCF) to which they are connected by the utility's right-of-way. Hazardous waste transferred to a CCF from a remote location would be managed under applicable RCRA rules for generators.

The need for manifesting and compliance by the transporter with 40 CFR 263 and 49 CFR will continue to be governed by the fact that hazardous wastes are being transported along public roads.

The proposed solution, if implemented, will result in safer and more cost-effective handling of hazardous wastes from remote locations and will also benefit both utilities and environmental regulatory agencies in reduced costs and staff resources.

II. Purpose, Scope, and Applicability

The purpose of this Project XL proposal is to enable safer and more cost-effective handling of hazardous waste by public utilities, with additional benefits realized in reduced paperwork and expenditure of time and staff resources. This will be accomplished by amending/modifying the 40 CFR 260 definition of "on-site," applicable only to public utilities, and with the understanding that the modified definition will apply for purposes of site identification. The need to comply with applicable manifesting or hazardous waste/hazardous materials transportation requirements would remain unaffected.

For purposes of this proposal, a "public utility" is defined as any entity regulated by New York State's Public Service Commission and also includes intrastate and interstate oil and gas pipelines, to the extent that they are located within New York State.

For purposes of this proposal, a "right-of-way" is a fixed, integrated network of conveyances, including land, structures, fixed equipment, and other appurtenances, controlled or owned by a public utility and used for the purpose of conveying its products or services to customers.

III. What is the Source of the Problem?

Public utilities maintain rights-of-way, such as oil and gas pipelines, telephone lines, and electric power distribution systems, in some cases extending hundreds of miles.

Frequently, hazardous wastes will be generated at remote locations along these rights-of-way where there are no actual or staffed utility-owned "facilities" where the wastes may be stored and otherwise managed. The generation "events" are sometimes planned in advance, but often are not, particularly in cases where there has been a sudden, unexpected loss or interruption of service.

In the case of electric power and telephone systems, the locations involved are mostly access manholes and street vaults, which are generally located in the middle of public roads. In order to access conduits and service the system, considerable amounts of drainage and infiltration water must be removed, sometimes including sediment. When sediments are included, these materials commonly fail the Toxicity Characteristic (TC) for lead, particularly in urban areas. For electric power systems, PCB contamination is also possible. At many of these locations, the quantity of hazardous waste collected will exceed 1,000 kilograms for the generation "event."

In the case of oil and gas pipelines, the waste may consist of pipeline condensate, which collects in "drip" pipes downstream of pressure regulating stations. These wastes commonly exhibit the characteristic of ignitability, fail the TC for benzene and will, at times, contain PCBs in excess of 50 ppm. The quantity collected will often qualify for a conditional exemption (i.e., less than 100 kilograms), but, on many occasions, will fall into the small quantity generator category (i.e., 100-1,000 kilograms).

Since no staffed utility-owned "facility" exists at these remote locations, it is very difficult to store hazardous wastes and secure them against accidents, vandalism, etc. Moreover, the disruption of normal traffic patterns endangers public safety by increasing the probability of vehicular collisions and vehicular/pedestrian accidents. Forced merging of high volume traffic lanes, if necessary, is extremely hazardous. Clearly, to effectively and adequately protect public health and the environment and reopen traffic lanes, it is important that these wastes be transported to a secured location as soon as possible after the generation "event" is ended. However, if arrangements must be made with a commercial transporter and a TSD facility to bring hazardous waste directly to the TSD facility, transportation may take several days to arrange, particularly if the "event" was unplanned.

IV. Consequences of the Present Hazardous Waste Regulations

Public utilities would prefer to have hazardous wastes transported from remote locations to a utility-owned CCF to which they are connected by a right-of-way that the utility controls. At such secured locations, the utilities would then manage these wastes in accordance with generator regulations. This would allow 90 days to consolidate essentially identical wastes from different remote locations to achieve important efficiencies in transportation. Given 90 days for consolidation, vehicles transporting wastes from a utility-owned CCF to a commercial TSD facility should be carrying relatively full loads. On the other hand, if hazardous wastes must be transported to a TSD facility directly from remote locations, more vehicle trips will be required, each carrying smaller loads. The same would be true if a CCF acted as a transfer facility, since storage incidental to transportation is limited by regulation to ten days at a transfer facility. This would allow very little time for effective consolidation, as compared to 90 days.

Central collection at secure facilities, with consolidation of essentially identical hazardous wastes, is clearly the common sense approach. However, present RCRA hazardous waste regulations do not allow this. The current definition of "on-site" in 40 CFR 260 states, "Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property." Since the public normally has aboveground access to utility rights-of-way, non-contiguous properties connected by a right-of-way almost never qualify as "on-site" with respect to each other.

Therefore, secure utility-owned facilities, which could serve as CCFs, are considered "off-site" under the current definition with respect to remote locations where hazardous wastes are generated. The consequences are as follows:

1. Each remote location that is not conditionally exempt must be issued an EPA identification number and a record file must be opened, both in state-only databases and in RCRIS.

2. Hazardous wastes from remote locations cannot be stored at a utility-owned CCF unless the CCF is permitted as a TSD facility. Operating as a transfer facility, only ten days are allowed for storage incidental to transportation, which is not sufficient for effective consolidation.

3. For <u>each</u> remote location that generates in excess of 1,000 kilograms during the "event," the utility must prepare and submit a Hazardous Waste Report/Biennial Report. The RCRA-authorized state must process each report and enter the data into state-only databases and also into RCRIS. This clutters both state and federal databases with information on "sites" that may represent nothing more than manholes or drip pipes.

Of course, since these hazardous wastes must travel along public roads, such shipments are subject to manifesting and 40 CFR 263 and 49 CFR, as applicable. It is not proposed to modify these requirements herein.

Thus, unless public utilities wish to have CCFs permitted as TSD facilities, the present handling of hazardous wastes from remote locations leads to unsafe storage and hazardous conditions at times, gross inefficiencies in transportation increasing direct costs, and unnecessary paperwork and expenditure of time and labor. The indirect costs also affect environmental regulatory agencies.

The attached correspondence from Brooklyn Union Gas and Consolidated Edison illustrates the problem clearly, as well as economic and regulatory consequences and the varied proposals that have been advanced to DEC to gain relief.

Available information on NYNEX illustrates most dramatically the administrative and paperwork problems that the present hazardous waste regulations create for public utilities and environmental regulatory agencies:

- The cumulative list of hazardous waste generators and handlers contains 1,132 "sites" listed under NYNEX/ New York Telephone. Each has its own separate listing and EPA identification number. Of this total, about 18 are actual operating facilities that normally or frequently qualify as fully regulated generators. There are also approximately 150 garages and vehicle maintenance facilities that generally qualify as small quantity generators. Therefore, over 900 "sites" that are currently listed actually represent nothing more than manholes. However, NYNEX had to secure EPA identification numbers for each and EPA had to issue them.

- For calendar year 1994, NYNEX had to prepare and submit 148 separate Hazardous Waste Reports. Out of this total, 130 were for manholes. Of course, not only did NYNEX have to prepare and submit these reports, but DEC had to process them and enter the information in state-only databases and in RCRIS.

The RCRA hazardous waste regulatory program was not meant to create files and gather repetitious data on drip pipes and manholes, nor should it if the same data can be reported with much less time, staff resources, and paperwork. For calendar year 1994, NYNEX could have used the Hazardous Waste Reports of actual facilities to account for the same wastes that required NYNEX to submit 130 additional reports. Utility and regulatory agency resources could have been directed toward more meaningful environmental priorities instead.

V. Proposed Solution

Regulatory agencies need to provide common sense handling standards for hazardous waste generated at remote locations by public utilities. This includes the following:

1. Allowing such wastes to be transported to utility-owned CCFs, to which remote locations are connected by a utility-controlled right-of-way, as soon as the generation "event" is ended.

2. Treating the CCF as the generating site or as an "on site" location. This would allow consolidation of essentially identical hazardous wastes and storage for up to 90 days, in compliance with the regulations for hazardous waste generators. Nothing is gained by the imposition of TSD facility requirements.

3. Not having to get a separate EPA identification number for a remote location and not having to submit a Hazardous Waste Report for one.

To accomplish this, it is proposed that, for public utilities in New York State, the last sentence of the definition of "on-site" in 40 CFR 260 be modified as follows:

"Non-contiguous properties owned by the same person but connected by a right-of-way which that person controls is also considered on-site property."

By applying this modified definition to public utilities in New York State for purposes of site identification, the indicated problems would be resolved. Remote locations will utilize the same EPA identification number as the designated utility-owned CCF to which the wastes will be brought. The CCFs will be considered generating sites for these wastes and may store hazardous waste generated "on site" for up to 90 days. Hazardous Waste Reports/Biennial Reports must only be prepared and submitted for actual operating facilities, but these reports will also account for all hazardous waste generated at remote locations.

This solution will enhance the protection of public health and the environment by facilitating the removal of hazardous wastes that cannot be properly secured at remote locations to a secured location as soon as the generation "event" is ended. Hazardous traffic conditions that endanger the public would end simultaneously. Public utilities will realize considerable savings in direct costs through efficiencies in transportation by consolidating essentially identical hazardous wastes. Reducing the number of lengthy trips by waste transporting vehicles also reduces mobile source emissions and the possibility of vehicular accidents. The regulations governing hazardous waste generators are fully adequate to provide environmental protection at CCFs, as compared to TSD facility requirements. Elimination of the need to identify remote locations as separate "sites" will bring about a very significant reduction in paperwork and savings in time and labor, both for public utilities and environmental regulatory agencies, who can then redirect such resources to high priority environmental needs.

VI. What Conditions Would Apply?

For public utilities to utilize this approach, the following conditions would apply:

1. This proposal is designed to address the handling of hazardous waste from remote locations. It cannot be used to allow hazardous waste from one staffed operating facility to be consolidated at another. All sites owned by a public utility that are actual staffed operating facilities must maintain separate EPA identification numbers.

2. Shipments of hazardous waste from a remote location to a CCF, if greater than 100 kilograms, must be accompanied by a hazardous waste manifest (New York's), even though the "generator" and the "destination facility" will have the same EPA identification number.

3. All vehicles transporting hazardous wastes from a remote location to a CCF must comply with all applicable requirements of 40 CFR 263 and 49 CFR.

4. In the case of interstate pipelines, only remote or CCF locations within New York State can qualify.

5. Hazardous Waste Reports submitted by CCFs must include all hazardous wastes received from remote locations as hazardous wastes generated "on site."

6. Consolidation of similar wastes by commingling will not be considered treatment or dilution. However:

   a. Land disposal restrictions (LDRs) on wastes believed to be hazardous, based on testing or historical data, attach at the point of generation and are not affected by subsequent commingling.

   b. Any commingled wastes composed of one or more individual waste streams that was determined to contain 50-500 ppm PCBs will be regulated under 40 CFR 761 as a waste containing 50-500 ppm PCBs. A commingled waste composed of one or more individual waste streams that was determined to contain over 500 ppm PCBs will be regulated under 40 CFR 761 as a waste containing over 500 ppm PCBs.

VII. How do we Measure Benefits/Progress?

It is recommended that each public utility which participates will submit a brief report to DEC on or before March 1, covering the previous calendar year. Aside from identifying the company, the report will include the following:

1. The number of remote locations for which hazardous wastes were handled in accordance with this project (i.e., where the EPA identification number for the CCF was also used for the remote location, and hazardous wastes were transported to the CCF).

2. The total tonnage of hazardous waste generated at such remote locations Statewide.

3. The number of remote locations that generated in excess of 1,000 kilograms of hazardous waste during a generation "event."

4. The addresses and EPA identification numbers for all sites that served as CCFs for such wastes.

VIII. Project XL Criteria Summary

1. ENVIRONMENTAL RESULTS

The implementation of this proposal will allow hazardous waste, generated by public utilities at "remote" locations where there is no staffed, utility-owned facility, to be transported to a secured location as soon as the generation event is ended. At the present time, particularly when the generation event is unplanned, it may take several days to make arrangements for removal of the material directly to a TSD facility. In the meantime, if the material remains at the "remote" location, it endangers the public because the utility has no means to provide secure storage for the material, safe from accidents, vandalism or other public exposure. Moreover, if the material is left at a street location where it continues to disrupt normal traffic patterns (vehicular and/or pedestrian), the public is endangered, even if there are no releases. Particularly in urban settings (e.g., New York City), the disruption of traffic patterns can lead to a substantial risk of vehicular collisions or vehicle/pedestrian accidents. Forced merging of high volume traffic lanes, if necessary, is extremely hazardous.

There are also environmental results to be realized from the consolidation of similar wastes at utility-owned CCF. By minimizing the number of vehicle trips that must be made to the ultimate TSD facility, emissions from mobile sources are reduced, as well as vehicular fuel consumption and the possibility of an accident involving a vehicle transporting these wastes.

Finally, there are also indirect environmental benefits from reduced need for human resources, time and paperwork. More utility and regulatory agency resources are made available to address high priority environmental issues.

2. COST SAVINGS AND PAPERWORK REDUCTION

Public utilities will realize direct cost savings and, through the need for reduced resources, time, and paperwork, indirect cost savings. DEC and USEPA will also realize indirect cost savings through reduced resource demands, time savings (including computer time), and reduced paperwork.

Public utilities will realize direct cost savings in three ways. First, utilities will not incur any expenses for having to store hazardous wastes at remote locations, even temporarily. Second, utilities will realize direct cost savings through efficiencies in transportation. By being able to consolidate wastes that are essentially identical, less vehicle trips to ultimate destination facilities will be required. Third, utilities will avoid the costs of having to secure hazardous waste facility permits for CCF that receive and store hazardous waste from what are presently considered to be "off-site" locations.

Indirect cost savings, including paperwork reduction, will be achieved in two ways. First, public utilities will not need to expend any resources, time, or paperwork to secure temporary or permanent EPA identification numbers for remote locations. Likewise, Region II of EPA will not need to issue such identification numbers and there will be no need to create a new data file on RCRIS for each new EPA identification number issued. Second, public utilities will realize indirect savings in resources, time, and reduced paperwork by not having to submit hazardous waste reports for remote locations that generated in excess of 1,000 kilograms of hazardous waste during the

generation event. Instead, the hazardous waste generated at remote locations would be included in the hazardous waste reports of the utility-owned CCF to which they are brought for secure storage and consolidation. All such hazardous wastes will still be fully accounted for without increasing the number of hazardous waste reports that the utility must prepare and submit. DEC and USEPA will also realize indirect savings in human resources, time (including computer time), and reduced paperwork. Hazardous waste reports for non-facilities would no longer need to be processed and entered in State-only databases and in RCRIS. As long as the quantities and types of hazardous waste from these locations are accounted for, these excess hazardous waste reports serve no useful purpose to environmental regulatory agencies. There are no "facilities" at these locations that are ever going to be inspected and no public utility staff at these locations to train or even contact.

3. STAKEHOLDER SUPPORT

The public utility industry in New York State and EPA-Region II have been involved in the development of this project through a two-stage review of draft proposals and both support this project. NYNEX acted as lead for the telephone industry. Consolidated Edison acted as lead for the electric power industry, with assistance from the New York State Power Pool. Brooklyn Union Gas acted as lead for the oil and gas pipeline industry (intrastate and interstate). Consolidated Edison and the New York State Power Pool solicited comments from other electric power companies in New York State which were then funneled through Consolidated Edison. Brooklyn Union Gas provided the same service to other intrastate and interstate oil and gas pipelines.

With regard to the general public, the implementation of this project by DEC would be through the adoption of an enforcement discretion policy. The procedures for adopting an enforcement discretion policy are and will be to place a draft notice in New York State's Environmental Notice Bulletin and State Register, announcing the project agreement and providing for a 30-day public comment period. At the conclusion of the comment period, following consideration of all comments received, final notices are placed in both, making the enforcement discretion policy effective.

4. INNOVATION/MULTI-MEDIA POLLUTION PREVENTION

The proposal represents an attempt to enable and establish innovative management practices to deal rationally and safely with the problem of hazardous wastes that are generated at "remote" locations at which there is no "facility" where the wastes can be securely stored until arrangements for transportation and disposal can be made.

With regard to multi-media pollution prevention, the wastes that this project deals with not do not lend themselves easily to waste reduction/pollution prevention or, in most cases, even to recycling.

Pipeline drips are generated by the natural condensation of petroleum and natural gas components "downstream" of pressure regulating stations. The generation of these drips is determined, therefore, by the pressure requirements of the distribution system. In the case of manhole and street vault wastes, these materials are generated primarily by runoff and infiltration, with aging infrastructure also a factor.

5. TRANSFERABILITY

It is believed that public utilities all over the country face similar problems to those described in this proposal. The solution described and the environmental, cost and paperwork benefits that are attainable through its application should be transferable to any part of the country.

6. FEASIBILITY

The project is technically and administratively feasible, as it simplifies both compliance and regulatory oversight. Financial capability is not an issue. Most public utilities that would be participating in this project already have permanent sites that are equipped and staffed to meet large quantity generator regulations and are, therefore, capable of serving as CCF.

7. MONITORING, REPORTING, AND EVALUATION

The proposal contains key result measurements and identifies when and how these should be reported by participants to DEC. By requiring each utility that participates to identify its CCF, RCRA inspections can be conducted at these facilities on a rotating basis by DEC's regional offices as a special component of the normal RCRA inspection program.

Of course, among the most significant results will be events that do not take place. Due to elimination of the need to secure or provide EPA identification numbers for additional remote locations and elimination of the need to have to prepare or process hazardous waste reports for a remote location whenever the generation event produces more than 1,000 kilograms of hazardous waste, certain current reporting requirements are eliminated.

8. SHIFTING OF RISK BURDEN

This project would clearly diminish risk burden, not shift it. Moreover, the greatest reduction of risk to human health and the environment would be achieved in congested urban areas where many of these remote sites are located. This will be achieved by transporting hazardous waste to a secured location as soon as the generation event is ended, thereby also restoring normal traffic patterns. The public is protected from the risk of exposure to unsecured hazardous waste, even though the danger of release or exposure may only last for a few days per event. The public is also protected from the physical dangers of extended disruption of normal traffic patterns.

Via Federal Express

Keith G. Silliman, Esq.
Assistant Counsel
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233

Re: Brooklyn Union Gas - Handling of Hazardous Pipeline Liquids

Dear Keith:

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A. Brooklyn Union's Pipeline Liquids

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B. Nature of the Issue

While most hazardous pipeline liquids are collected from high pressure pipeline facilities located on Brooklyn Union properties, where secure temporary storage facilities are available,

sometimes the liquids must be collected at urban street locations where it is impossible to provide secure storage. Most often, conditionally exempt small quantities (less than 100kg) of the liquids are collected and they are managed properly at Brooklyn Union's central collection facilities where they are stored for eventual offsite disposal. Existing RCRA regulations do not directly address the circumstances when, on occasion, Brooklyn Union unexpectedly collects greater quantities of these liquids from its high pressure pipeline system. Under the general regulatory scheme, the liquids seemingly need to be kept at the street location of collection and an individual EPA I.D. obtained at each street location. Shipment of the liquids from the point of collection would then be directed to a licensed treatment, storage and disposal facility ("TSDF").

Security of drummed hazardous pipeline liquids at urban street locations is a significant concern. Brooklyn Union believes that the drums themselves are a source of potential theft or vandalism, with spilling or emptying of the hazardous liquids by unauthorized third parties a definite threat to public health and the environment. In addition, vehicular collisions with resulting spillage or leakage is also a concern. Brooklyn Union believes that on New York City streets it is impossible to insure the security of temporary storage of hazardous pipeline liquids, and consistent with its obligations as a public utility to manage its facilities and operations in a safe and prudent manner, Brooklyn Union does not wish to temporarily store containers of pipeline liquids at urban street locations.

Brooklyn Union contracts out all hazardous waste TSDF services and does not operate a licensed TSDF. Therefore, Brooklyn Union must schedule the use of outside TSDF services in advance of field collection of hazardous pipeline liquids. However, Brooklyn Union operates secure and contained hazardous waste 90-day generator storage areas at several of its collection facilities. Brooklyn Union wishes to store hazardous pipeline liquids at these secure locations rather than at unprotected urban street locations.

In addition to greater security at its own facilities, the cost to Brooklyn Union's ratepayers of consolidating hazardous pipeline liquids at central collection facilities in a 90-day generator storage area for appropriate transport and disposal is far lower. If one or two drums are filled at a street drip location, removal by a licensed transporter may not be possible within 72 hours. Even if it is possible, the truck would have to be dedicated to the Brooklyn Union pick-up and would cost $6,300 for transportation to Deer Park, Texas, the appropriate TSDF location for the hazardous pipeline liquids. Additionally, "best effort" street security costs could include purchase of a locked box or shed. Even with these additional efforts, however, security on New York City streets would be insufficient to insure against vandalism, accidents and unintended spillage, and could become attractive nuisances that cause unnecessary dangers to the public and liability for Brooklyn Union. In contrast, when drums are picked up by the hazardous waste transporter in larger quantities after consolidation at a Brooklyn Union temporary storage area, transportation equates to approximately $72 per drum, when the truck is full (80 drums), and $82 per drum, when the truck is half full. Advance notice to the disposal vendor is usually about 10 days for scheduled hazardous waste pickups.

For the reasons discussed above, Brooklyn Union believes that consolidating, internally managing and documenting 90-day temporary storage of pipeline liquids at its collection facilities, whether less than 100kg or not, is fully protective of the environmental and public health consistent with RCRA requirements and is significantly less costly to Brooklyn Union's ratepayers.

C. Regulatory Relief Requested

1. Brooklyn Union's Proposal

There is no doubt that when the Federal RCRA "cradle to grave" regulatory scheme was put into place, the possibility of numerous generator locations at manholes in urban street locations was not considered. Brooklyn Union seeks to obtain regulatory interpretations, variances or enforcement discretion from the Department which recognize the operational facts relevant to natural gas distribution and insure that when hazardous pipeline liquids are collected in amounts greater than 100kg, they are handled in a secure and economic manner. To accomplish this, Brooklyn Union proposes that it be permitted to transport these liquids in its own properly licensed flammable liquids vehicles to its secure central collection facilities for storage up to 90 days prior to transport by a licensed hazardous waste hauler to an appropriate TSDF.

Under this proposal, Brooklyn Union would not need to obtain an individual EPA I.D. number for every urban street location from which it collects hazardous pipeline liquids from its distribution system in amounts greater than 100kg, and could treat the pipeline liquids as if they were generated at its central collection facilities. Just as for utility PCB wastes under 6 N.Y.C.R.R. §372.1(e)(9), Brooklyn Union would have 90 days to store and consolidate pipeline liquids at its central collection facilities without requiring the facility to obtain TSDF status.

2. Specific Regulatory Provisions Involved

Brooklyn Union's proposal requires a regulatory interpretation which would apply to Brooklyn Union's specific circumstances and includes two exemptions relating to the off-site transportation of hazardous waste by a generator and the temporary storage of such waste at a transfer facility, as well as a variance from the Part 373 requirement that transporters store hazardous waste at a transfer facility for no longer than ten days. The regulatory interpretation involves the Part 364 exemption for waste transported by a public utility vehicle and the Part 373 provision allowing temporary storage of manifested shipments of hazardous waste at transfer facilities.

Section 364.1(e)(2)(xvi) provides that waste transported by a public utility vehicle, where the transportation of such waste is incidental to the primary function of the vehicle, is exempt from the Part 364 requirements whenever such waste is brought to a utility-owned collection facility for storage prior to treatment or disposal. Pursuant to Section 373-1.1(d)(1)(xv), transporters are allowed to store manifested shipments of hazardous waste in containers meeting

the requirements of Section 372.2(a)(4) of Title 6 at a transfer facility for a period of ten calendar days or less without obtaining a Part 373 facility permit.

Taken together, Brooklyn Union proposes to transport pipeline liquids generated in excess of 100kg at various urban street locations along its high pressure pipeline in its own vehicles, which are not dedicated to hazardous waste transportation, to Brooklyn Union collection facilities for temporary storage without having to obtain a Part 364 transporter permit or a Part 373 facility permit. At Brooklyn Union's collection facilities, the pipeline liquids would then be stored temporarily, for up to 90 days, until sufficient amounts of hazardous materials have been accumulated to permit economical transport, at which point in time a permitted hazardous waste transporter would be hired by Brooklyn Union to remove the liquids and transport them to a TSDF.

In addition to the regulatory interpretation discussed above, Brooklyn Union's proposal involves obtaining a variance from the ten-day period for storage at a transfer facility. This is necessary because Brooklyn Union cannot accumulate a half or full truckload of pipeline liquids in such a short period of time. The cost of transporting just the few drums of liquids which would be accumulated in any ten-day period would be prohibitive when compared to the per drum cost of transporting a minimum of a half truckload of liquids. Therefore, Brooklyn Union requests a variance allowing it to store the pipeline liquids at its collection facilities, which would be viewed as transfer facilities under the requested regulatory interpretation, for a period of up to 90 days.

Pursuant to Part 373, DEC may grant a variance, upon written application of any person subject to the Part 373 regulations, if the application (1) identifies the specific provisions from which a variance is sought; (2) demonstrates that compliance with the identified provision would, on the basis of conditions unique and peculiar to the applicant's particular situation, tend to impose a substantial financial burden on the applicant; and (3) demonstrates that the proposed activity will have no significant adverse impact on the public health, safety or welfare, the environment or natural resources. 6 N.Y.C.R.R. §373-1.1(e)(1).

Upon submission of an application satisfying the referenced requirements, DEC may grant the variance applied for, unless the variance "[w]ould result in regulatory controls less stringent than those in the RCRA-delegated program." 6 N.Y.C.R.R. §373-1.1(e)(2). In granting any such variance, DEC may impose specific conditions necessary to assure that the activity will not have a significant adverse impact on the public health, safety or welfare, the environment or natural resources. 6 N.Y.C.R.R. §373-1.1(e)(3).

For the reasons stated above, Brooklyn Union believes its requests for a variance satisfies the three requirements imposed by Section 373-1.1(e)(1). Brooklyn Union also believes that DEC has full authority pursuant to its EPA-approved RCRA program, to grant the requested variance even if it changes state RCRA regulatory requirements that have federal counterparts. In fact, DEC has issued such variances in the past which have been upheld in court.

Indeed, one case specifically addresses the issue of DEC's authority to grant a variance from a regulatory RCRA requirement which has a counterpart in the federal EPA regulations. See Hameline v. New York Department of Environmental Conservation, 175 A.D.2d 206, 572 N.Y.S.2d 347 (2d Dep't 1991). This case involves situations in which DEC granted a variance from the 50-foot buffer zone requirement, which has a counterpart at Section 264.176 of Title 40 of the Code of Federal Regulations ("C.F.R.").

In Hameline, the Second Department specifically upheld DEC's decision to grant a variance from the 50-foot buffer zone requirement. In so holding, the Court noted that the expert testimony and documentary evidence presented in support of the variance established that the fire resistant construction of the facility involved, in combination with its fire detection and suppression apparatus, provided greater safety than a 50-foot buffer zone for flammable materials could provide. 572 N.Y.S.2d at 349. In essence, the Court found that having a smaller buffer zone would not be less stringent than the federal regulation imposing the 50-foot buffer zone requirement because of the added safety requirements imposed by the variance approval.

In addition to the court decision discussed above, there is a DEC administrative decision recognizing the Department's authority to grant a variance from a regulatory provision for which there is a federal counterpart. In the Matter of the Application of CECOS INTERNATIONAL, INC., for a Certificate of Environmental Safety and Public Necessity, a Permit to Construct and a Certificate to Operate an Air Contaminant Emission Source, with respect to proposed Secure Chemical Residue Facility #6, located in the Town of Niagara, Niagara County, New York, 1990 N.Y. ENV LEXIS 49 (Mar. 13, 1990), the DEC Commissioner concluded that the applicant's ability to comply with the Part 373 permeability requirement for final cover, which is identical to the federal permeability requirement set forth at 40 C.F.R. Section 264.310(a)(5), had not been demonstrated on the record. The Commissioner held that "[b]efore construction could commence, an adequate demonstration of the feasibility of achieving such a condition would be necessary or, alternatively, the Applicant could apply for a variance pursuant to the provisions of 6 N.Y.C.R.R. §373-1.1(e)." 1990 N.Y. ENV LEXIS 49, *4 (emphasis added). Therefore, the Commissioner recognized DEC's authority to grant a variance from a State hazardous waste regulation for which there is a federal counterpart.

Brooklyn Union's proposal is identical to that upheld in the Hameline decision. Allowing Brooklyn Union to store its pipeline liquids in a secure facility equipped for such storage rather than on urban street locations that cannot be kept secure will clearly provide greater safety to the public and the environment. In addition, the proposal is not less stringent than federal RCRA requirements because Brooklyn Union would be required to store the liquids in a 90-day storage area at its central collection facility. Normally, transporters are not required to comply with 90-day storage area requirements at transfer facilities. Brooklyn Union believes that there are compelling public safety reasons as well as solid legal precedent for granting its variance request.

Upon resolution of these New York hazardous waste program issues, Brooklyn Union's proposal also requires that it obtain a consistent regulatory interpretation of the

requirement to obtain individual EPA I.D. numbers for every urban street location from which hazardous pipeline liquids are collected. As you know, the purpose of an EPA I.D. number is to insure that all hazardous waste is properly identified when generated and all subsequent handling, storage, transport, treatment and disposal is documented. Brooklyn Union's internal documentation will insure that the handling of pipeline liquids is accomplished in a consistent, safe and fully documented fashion.

Brooklyn Union requests that all of its pipeline liquids be manifested from its central collection facilities and that it not be required to obtain EPA I.D. numbers at individual urban street locations. Alternatively, Brooklyn Union requests that it be permitted to obtain a single EPA I.D. number for its pipeline system.

Brooklyn Union understands that the Department may be unable to unilaterally approve its request regarding EPA I.D. numbers. Therefore, Brooklyn Union requests that the Department assist it in obtaining such approval from EPA.

* * *

Brooklyn Union believes that its proposal would significantly increase public safety and protection of the environment involving its handling of pipeline liquids, would be consistent with regulatory requirements and would save Brooklyn Union's customers significant expense. Please contact me after you have reviewed this letter to schedule a meeting between the Department and Brooklyn Union to discuss its proposal. Thank you for your assistance.

Sincerely,

Dennis P. Harkawik

DPH:wld

cc: Mr. Robert H. Preusser
193122

Con Edison
Consolidated Edison Company of New York, Inc.
4 Irving Place, New York, N.Y. 10003

February 9, 1996

Mr. Larry Nadler
Supervisor, Technical Determinations Section
Bureau of Materials Storage, Combustion & Regulation
Division of Solid & Hazardous Materials
New York State Department of Environmental Conservation
50 Wolf Road, Room 452
Albany, New York 12233-7251

Dear Mr. Nadler:

This letter is a follow-up to a conversation you had last summer with Karel Konrad about the difficulties Consolidated Edison Company of New York, Inc. (Con Edison) is having in determining how RCRA requirements apply to materials that accumulate within the access structures (manholes) of its underground utility cable systems. Con Edison is committed to manage all of these waste materials in a fully protective manner. However, the current RCRA regulations were clearly not crafted with Con Edison's service-oriented maintenance operations in mind.

Con Edison's 300,000 underground structures and unpredictable servicing patterns do not mesh well with the RCRA regulatory scheme if one assumes that the point at which hazardous waste is first generated and RCRA applies is at the manhole ("point of jurisdiction"). Under such an interpretation, each manhole is a separate RCRA facility which requires a unique RCRA generator ID number. It also requires that Con Edison's maintenance truck fleet be registered as a hazardous waste transportation fleet and that the regional accumulation facilities to which the flush trucks bring these materials have full hazardous waste permits under RCRA Subtitle C and New York State ECL Article 27, Title 9. Moreover, as the RCRA Land Disposal Restriction (LDR) regulations continue to expand, the point of jurisdiction issue becomes even more important in that stringent Universal Treatment Standards are applied separately to each batch of waste (which in this case would be the relatively small volume of solids that are in each individual structure). Dilution, by mixing, is prohibited and each batch of waste material would require individual testing to ensure LDR compliance.

This situation can create significant implementation problems for both NYSDEC and for Con Edison. Thus, NYSDEC's interpretation regarding the point at which solid and water materials in the structures are subject to RCRA critically influences resource needs for both NYSDEC and

Con Edison. It also impacts Con Edison's ability to provide safe and efficient service to its large number of customers.

Since we last spoke, Con Edison has worked to evaluate a set of legal, protective and practical alternatives for handling the waste materials that accumulate within its underground cable system manholes. It has taken longer than we had hoped in part because we needed to incorporate into our analysis the impacts of new RCRA regulations including the Phase III and IV LDR regulations and the Universal Waste Regulations. Our review convinces us that the existing regulatory framework affords NYSDEC flexibility to adopt an alternative approach on the point at which RCRA jurisdiction attaches, a point which is environmentally protective but fits better with Con Edison's maintenance operations.

We propose that under RCRA Subtitle C and ECL Article 27, Title 9, the point of jurisdiction would begin when the solid material has separated from the liquid material in the regional accumulation facility tank or container unit. At this point the container would be ready to be transported to the disposal facility. This is in clear contrast to an interpretation that would place the point of jurisdiction at the structure. Nevertheless, we are committed to modifying our regional accumulation facilities to bring them into compliance with the design requirements of 6NYCRR Part 373.

To help NYSDEC better understand the problems with specifying the point of jurisdiction at the structure and the rationale behind our proposed solution, we are enclosing a short issue paper which sets out in detail our information and thought process. It begins with a brief discussion of the historical context for our point of jurisdiction issue. We then present an overview of Con Edison's approach to servicing its underground utility cable network. Next, we present a suggested regulatory interpretation of RCRA point of jurisdiction that will be implementable and protective. We also explain why we believe NYSDEC should seriously consider adopting our proposed point of jurisdiction approach. Finally, we have provided a short discussion of other potential approaches that NYSDEC could consider if it believes it cannot authorize our suggested approach.

Because of the importance of this issue to Con Edison as we strive to operate in full compliance with all RCRA requirements, we would like to meet with NYSDEC to discuss your response as soon as practical. We would also use the meeting to describe in more detail, the operating issues and difficulties associated with point of jurisdiction at our manholes.

This issue affects a large number of other utilities, including other New York utilities. Consequently, we believe it would be very helpful to involve Mr. Norm Nosenchuck in the meeting. The issue is also one of national concern and one that our national trade association is actively working on. Thus, we know that NYSDEC's decision will be of significant interest to utilities nationwide.

We are also sending a copy of this letter to other NYSDEC staff who we have spoken with about this issue and who are monitoring the Company's effort to upgrade our facilities to meet part 373 design requirements under an administrative consent order issued by the Department.

We appreciate their help, but both we and they recognize that the precedent-setting nature of this issue makes it important to raise the issue to higher levels within NYSDEC. We look forward to a meeting and will call you shortly to schedule a mutually convenient time.

Very truly yours,

Keith Barouch.
Environmental Scientist
Environmental Affairs
Consolidated Edison Co. of New York, Inc.

/Enc

cc: Sudhir Jagirdar-NYSDEC
Samsudeen Arakhan-NYSDEC
Mike Wilcken-Con Edison
Karel Konrad-Con Edison
Terri Gerrish-CH2M HILL