

**STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION**

**APPLICATION OF GANDY MARLEY, INC.  
TO MODIFY THEIR EXISTING NMOC  
RULE 711 PERMIT NO. NM-01-019**

**CASE NO. 13480**

**GANDY MARLEY INC.'S PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

**COMES NOW** Gandy Marley Inc., by and through undersigned counsel of record, and submit the following Proposed Findings of Fact and Conclusions of Law in the above-captioned matter.

**PROPOSED FINDINGS OF FACT**

**A. Procedural and Administrative History**

1. Gandy Marley Inc. (GMI) is the operator of record and surface owner of a commercial landfarm located in Sections 4, 5, 8 and 9, Township 11 South, Range 31 East, in Chaves County, New Mexico. The landfarm is permitted pursuant to 19.15.9.711 NMAC (Rule 711) under Oil and Conservation Division (OCD or Division) permit number NM-01-0019.
2. GMI applied for a landfarm permit in October, 1994 and received the original permit for the landfarm on January 27, 1995. (GMI Exhibits 1, 4). The application was prepared by the S.M. Stoller Corporation and included a description of the geology and hydrology of the area (Exhibit 1, Section XI), a topographic map (Exhibit 1, Figure 2), a site diagram (Figure 3) and well information (Figure 4 and Attachment A) that were accepted by the Division.
3. On April 4, 1996, GMI applied for a permit modification to allow for the construction and use of a solidification facility to allow the landfarm to accept tank bottoms and pit sludge. (GMI Exhibit 10). The application included the same geology and hydrology information, and

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the same topographic map and site diagram as the original application. (Section XI, Figures 2, 3, and 4, Attachment A, ). The application also included drawings of the proposed solidification facility that were accepted by the Division. (Figures 3a and 3b). The permit modification was granted on June 14, 1996. (GMI Exhibit 11).

4. GMI applied for a permit renewal under the new Rule 711 on December 9, 1997. (GMI Exhibit 12). The application included the same figures that were submitted as part of the original permit application and the solidification facility modification request. (Figures 1 through 3a). The permit renewal also included a closure cost estimate of \$48,650.00. (Attachment A). The landfarm permit was renewed on October 22, 1999 and GMI was required to provide financial assurance in the amount of \$82,917.00. (GMI Exhibit 13).

5. On March 4, 2005, Division Director Mark Fesmire notified GMI that the Division had determined that it was necessary to modify GMI's landfarm permit to add the following conditions: "Effective immediately, the NMOCD permitted landfarm...is prohibited from accepting oilfield waste contaminated with salts." (CRI Exhibit 2, Order of the Division, Case No. 13454, Order No. 12306-A, Findings at ¶9.g). The modification was based on the Division's determination that, because salt contaminated waste decreases the biodegradation capacity of a landfarm and because salts leach more easily than hydrocarbons, a landfarm accepting salt-contaminated oilfield waste could pose a threat to groundwater. (*Id.* at ¶9.e). The March 4, 2005 letter stated that for a landfarm to accept salts, the operator was required to apply for a permit modification pursuant to Rule 711(B)(1) and follow the notice requirements of Rule 711(B)(2). (*Id.* at ¶9.g).

6. On March 10, 2005, GMI applied for an emergency order allowing it to accept salt-contaminated oilfield waste pending a decision on its application for a permit modification. (*Id.*

at ¶9.i.). By Emergency Order R-12306, issued March 11, 2005, the Division granted GMI temporary authorization to accept salt-contaminated oilfield waste pending a decision on GMI's request for a permit modification. (*Id.* at ¶9.m). The Emergency Order expired on March 26, 2005. (*Id.* at ¶9.q).

7. A hearing was held on March 25, 2005 and, following the hearing, the Division issued Order No. 12306-A, extending Emergency Order R-12306 to allow GMI to operate under its current permit without being subject to the Division's March 4, 2005 letter until the Division makes a determination on GMI's permit modification request. (*Id.* at Order ¶2).

8. Following receipt of the March 4, 2004 letter, GMI submitted a permit modification application. By letter dated March 29, 2005, the Division requested additional information from GMI. (GMI Exhibit 6).

9. On April 8, 2005, GMI submitted a revised modification Application for Waste Management Facility. (GMI Exhibit 5). The application included information specifically related to the permit modification request. The application included the same geological and hydrological information that was included in the original permit application and the subsequent permit modifications. (Section XI). The application also included a cell design diagram, topographic maps and the same well information that was submitted as part of the original permit application.

10. The hearing date was set for May 19, 2005 and was subsequently changed to May 23, 2005.

#### **B. Public Notice and the Public Hearing**

11. GMI seeks an order modifying its landfarm permit to allow it to use landfill-type cells for disposal of oilfield waste classified as non-hazardous by RCRA Subtitle C exemption or by

characteristic testing, including petroleum and chloride impacted debris, mud, soils, sludges, tankbottoms and filters associated with the drilling, operating and maintenance of oil and gas wells and related operations of the oil and gas industry. (GMI Exhibit 5).

12. Rule 711(B) and the Division's "Guidelines for Permit Application, Design, and Construction of Surface Waste Management Facilities" (Rule 711 Guidelines) (GMI Exhibit 21) govern the permit modification application submitted by GMI.

13. Rule 711(B)(1)(a) through (m) and the Rule 711 Guidelines specifically identify the information that an applicant for a permit modification is required to submit to the Division. Rule 711(B)(2) sets forth the requirements for public notice. Rule 711(B)(3) sets forth the financial assurance requirements.

14. Oilfield waste is not hazardous waste and is exempt from the requirements of the Resource Conservation and Recovery Act (RCRA). 40 CFR 261.4(b)(5). The requirements of RCRA and the New Mexico Hazardous Waste Act, which implements RCRA in New Mexico, do not apply to the GMI facility.

15. The requirements of the New Mexico Solid Waste Act and associated regulations do not apply to the GMI facility. NMSA 1978, §74-9-3.N(1).

16. The Division gave notice of the May 19, 2005 hearing to GMI and other interested parties. Notice of the hearing was published in the Roswell Daily Record on April 15, 2005 and in the Lovington Daily Leader on April 14, 2005. GMI provided notice to the Chaves County Board of Commissioners, the New Mexico Commissioner of Public Lands and the United States Bureau of Land Management on April 25, 2005 and provided a correction of public notice to the same entities on May 6, 2005. Notice was also posted on the Division's website. (GMI Exhibit 16). The Division and GMI complied with the public notice requirements of Rule 711(B)(2).

17. GMI was present at the hearing and represented by counsel. GMI presented testimony from 4 witnesses.

18. Controlled Recovery, Inc. (CRI) was represented by counsel and appeared at the hearing in opposition to GMI's permit modification request. CRI presented testimony from 4 witnesses.

19. Dr. Don Neeper appeared and provided testimony at the hearing.

20. The Division was represented by counsel. Ed Martin of the Division was called by GMI and presented testimony on behalf of the Division.

21. In the April 8, 2005 permit modification application, GMI provided the information requested in the March 29, 2005 letter from the Division and did not receive any additional requests for information from the Division. (GMI Exhibit 5; Hearing Transcript (TR) 51/lns19-25 to 53/lns1-4).

22. Ed Martin, of the Division, testified that it is the usual practice of the Division to consider supplemental information and hearing testimony as part of the review process for a permit modification application. (TR 324/lns17-24; 325/lns11-17; 327/lns12-25 to 329/lns1-17; TR 336/lns12-25 to 337/lns1-6). Mr. Martin testified that Rule 711 does not require that all of the information identified in Rule 711(B)(1) be submitted before public notice is given. (TR 336/lns21-25 to 337/lns1-6).

23. Ed Martin testified that the GMI application for a permit modification was administratively complete. (TR 317/lns7-23; TR 323 12-25 to 324/lns1-16).

24. Keith Gordon testified on behalf of CRI and offered his opinion that the GMI application was deficient. (TR 526/lns 10-13). Mr. Gordon's experience is primarily with the permitting requirements of the New Mexico Environment Department (NMED) for solid waste

and hazardous waste facilities. (TR 601/lns6-11). Mr. Gordon did not distinguish between the Division regulations and guidelines and those of NMED. (*Id.*). Mr. Gordon testified that he did not review any other Division files or records to determine how the Division implements Rule 711 and the Rule 711 Guidelines. (TR 613/lns9-25).

25. Ed Martin testified that the Division does not rely on NMED regulations or requirements in making permit decisions. Ed Martin testified that the Division evaluates applications under Rule 711 on a site-specific basis. (TR 299/lns20-23). Mr. Martin testified that the purpose of Rule 711(B)(1)(m) is to allow the applicant to submit as much information as the applicant thinks is required and to allow the Division to request additional information as needed. (TR 301/lns10-16).

26. Ed Martin testified that the Division has not investigated GMI's compliance with the reporting requirements in the current permit. (TR 308/lns8-13).

27. Ed Martin testified that he would consider including conditions on reporting and monitoring as part of proposed permit conditions. (TR 321/lns7-17). The proposed permit conditions submitted by Mr. Martin after the hearing include additional conditions on reporting and monitoring. (Witness Proposed Permit, submitted by Ed Martin, OCD, June 14, 2005, Landfarm Operation, ¶16).

28. On February 14, 2005, the Division conducted an inspection at the facility and did not find any problems associated with the facility. (GMI Exhibit 18).

29. There is no evidence in the record that the Division has ever taken any enforcement action against the facility. GMI had not received any notices of violation from the Division. (TR 117/lns17-18).

30. At the end of the hearing, the Hearing Examiner stated that the record would remain open until June 24, 2005 in order for the parties to submit additional information. (TR 687/lns3-4).

31. On June 14, 2005, Ed Martin submitted a proposed permit to the record.

32. On June 23, 2005, GMI submitted its comments to Ed Martin's proposed permit. On June 24, 2005, GMI submitted additional comments to the record.

33. On June 21, 2005, Don Neeper submitted his comments to Ed Martin's proposed permit.

34. On June 6, 2005, Keith Gordon, on behalf of CRI, submitted additional comments to the record.

### **C. General Facility Information**

35. The permit application identified the facility as a soil remediation, recycling and landfarm facility. GMI was identified as the applicant and operator, as required by Rule 711(B)(1)(a) and the Rule 711 Guidelines, ¶¶1, 2. (GMI Exhibit 5).

36. GMI provided the legal description of the location of the facility and submitted topographic maps showing the location of the facility and the ownership of real property of record within one (1) mile of the facility, as required by Rule 711(B)(1)(b) and (c) and Rule 711 Guidelines, ¶3. (GMI Exhibits 5 and 7; Exhibits 1 and 2 to GMI's Pre-Hearing Statement).

37. GMI provided the names and addresses of the surface owners of the real property on which the facility is sited and identified surface owners of real property within one (1) mile of the facility, as required by Rule 711(B)(1)(c) and Rule 711 Guidelines, ¶5. (GMI Exhibit 5, ¶V; Exhibit 1 to GMI's Pre-Hearing Statement).

38. The permit application provided a facility description that included a description of the types of liquids, solids, and/or soils that will be accepted for management in the landfill-type cells, as required by Rule 711 Guidelines, ¶6.A. (GMI Exhibit 5, ¶VI). The application included a diagram showing the location of the facility and the existing configuration of the facility, as required by Rule 711(B)(1)(d) and Rule 711 Guidelines, ¶6.B and C. (GMI Exhibit 7).

39. The only changes requested in the permit modification request are those directly related to the use of landfill-type cells. The application provides information related to the requested modification. All other provisions of the existing permit will remain the same.

40. Bill Marley of GMI testified that the existing configuration of the facility, including the current dimension and size of the facility, the location of the perimeter fence, the buffer zone, the three-foot high berm and access, will not be changed by the requested permit modification. (TR 44/Ins6-16; TR 45/Ins2-14).

41. The existing permit contains a plan for the management of approved waste, a contingency plan for reporting and cleanup of spills or releases, a routine inspection and maintenance plan to ensure permit compliance, and a Hydrogen Sulfide Prevention and Contingency Plan, as required by Rule 711(B)(1)(e) through (g). (GMI Exhibit 13; *see also* Witness Proposed Permit, submitted by Ed Martin, OCD, June 14, 2005). The requested permit modification will not change these existing permit requirements.

42. Keith Gordon, testifying on behalf of CRI, offered his opinion that GMI's application was deficient. (TR 526/Ins10-13; CRI Exhibit 11). Based on CRI Exhibit 11, many of his alleged deficiencies address permit requirements and facility configurations that are not being modified. Keith Gordon testified that he did not distinguish between those portions of the facility that were being modified and those that are remaining unchanged. (TR 621/Ins11-25 to



624/Ins1-21). Testimony addressing alleged inadequacies for facility and permit conditions that are not being modified are irrelevant.

43. The permit conditions proposed by Ed Martin on June 14, 2005 include requirements for landfill construction, landfill operation, landfarm operation, tank bottom acceptance, overall facility operation, reporting and record keeping, waste acceptance criteria, financial assurance, NMOCD inspection, and closure. (Witness Proposed Permit, submitted by Ed Martin, OCD, June 14, 2005).

44. The permit condition proposed by Ed Martin require that any liquids collected in the landfill cells and landfarm cells be removed within 24 hours. (Witness Proposed Permit, submitted by Ed Martin, OCD, June 14, 2005, Landfill Operation, ¶6; Landfarm Operation, 7).

45. GMI has requested that the permit require liquids to be removed within 72 hours rather than 24 in order to account for weekends and days on which the facility is closed. (Second Notice of Filing, Comment of MWH).

46. The permit modification application provided the information applicable to the requested modification as required by Rule 711(B)(1)(a) through (g) and the Rule 711 Guidelines.

**D. Landfill Cell design**

47. Rule 711(B)(1)(d) and Rule 711 Guidelines, ¶7.A require the applicant to provide technical data on the design elements of each proposed disposal method.

48. The permit application included the proposed cell design for the landfill cells, as required by Rule 711(B)(1)(d). (GMI Exhibit 5, GMI Cell Design; TR 151/Ins5-19).

49. GMI submitted additional cell design diagrams to the record on June 23, 2005. (GMI Second Notice of Filing; *see also* Witness Proposed Permit, submitted by Ed Martin, OCD, June 14, 2005).

50. The landfill cells will be designed with a 1 foot thick clay liner that will be compacted to 90 percent of standard density. (GMI Exhibit 5; TR 177/13-21).

51. Bill Marley testified that, based on his experience, the diagram attached to the application would be sufficient to construct the proposed landfarm cell. (TR 46/ln25 to 47/lns1-2).

52. Pat Corser offered expert testimony as a geotechnical engineer. (TR 138/ln21-22).

53. Mr. Corser testified that, in his opinion, the cell design submitted as part of the GMI application met the requirements of Rule 711 and the Rule 711 guidance. (TR 194-3-25 to 195/lns1-6).

54. Keith Gordon testified that the cell design submitted by GMI did not meet engineering requirements for construction of the landfill cell. Mr. Gordon offered an example of the type of drawing that he alleges GMI should have provided. (CRI Exhibit 16).

55. Pat Corser testified that the type of construction drawings identified in CRI Exhibit 16 would usually be submitted for approval after a permit application is approved. (TR 645/lns15-25 to TR 646/lns1-10).

56. Keith Gordon testified that GMI did not provide any information on the waste to be accepted at the facility. The GMI permit modification application specifically states that the landfill cells will be used for the disposal of oilfield waste classified as non-hazardous by RCRA Subtitle C exemption or by characteristic testing including petroleum and chloride impacted debris, mud, soils, sludges tankbottoms and filters associated with the drilling, operating and

maintenance of oil and gas wells and related operations of the oil and gas industry. (GMI Exhibit 5, ¶IV).

57. Rule 711(B)(1) and the Rule 711 Guidelines do not require the submission of information on the specific constituents of the waste to be accepted at that the permitted facility.

58. Keith Gordon testified that the oilfield waste is the same as hazardous waste regulated by the Resource Conservation and Recovery Act (RCRA) and therefore any liner system should meet the RCRA regulations. (TR 544/lns11-25 to 545/lns1-11).

59. Mr. Gordon prepared CRI Exhibit 12, Table 1.2 and relied on the information in Table 1.2 to conclude that oilfield waste is hazardous waste. As pointed out in GMI's Third Notice of Filing, Table 1.2 contains a number of mistakes or misrepresentations. Table 1.2 is inaccurate as to the contaminant levels found in oilfield waste and does not contain information on the type of oilfield waste that will be accepted at the GMI facility. (Notice of Errors in CRI Exhibit 12).

60. Following the hearing, in response to Mr. Gordon's testimony, GMI ordered a laboratory analysis of the drilling mud that is accepted at the facility. The purpose of the sample was to obtain chemical characterization and analysis of the oil well drilling mud. All drilling mud sample chemical concentrations were below RCRA universal treatment standards. (GMI Second Notice of Filing, MWH Comment, Attachment A).

61. Ed Martin testified that, based on the testimony presented at the hearing, he would possibly propose additional conditions on the design of the landfill cells. (TR 317/lns24-25 to 318/lns1-8).

62. Ed Martin has proposed a permit condition requiring GMI to construct the landfill cells in accordance with the Facility Design and Construction drawings attached to the proposed

permit conditions. Witness Proposed Permit, submitted by Ed Martin, OCD, June 14, 2005, Landfill Construction, ¶4). The Facility Design and Construction Drawings have also been submitted to the record by GMI. (Second Notice of Filing).

63. Ed Martin has proposed a permit condition requiring GMI to implement quality control measures, consistent with industry standards, to ensure the uniform construction of the clay liner. (Witness Proposed Permit, submitted by Ed Martin, OCD, June 14, 2005, Landfill Construction, ¶5).

64. GMI does not object to the permit conditions for Landfill Construction proposed by Ed Martin. (Second Notice of Filing, Comment of MWH).

65. The technical information provided by GMI meets the requirements of Rule 711(B)(1)(d) and Rule 711 Guidelines ¶7.A.

**E. Closure Plan and Financial Assurance**

66. The existing permit contains a closure plan for the facility, as required by Rule 711(B)(1)(i). The permit modification will not change the general closure requirements currently in the permit. (TR 43/lns5-14; TR 45/lns21-23).

67. The closure plan will be modified to include closure of the landfill cells. GMI proposes to close the landfill cells as they are filled. In the application and at the hearing, GMI proposed to place a 2 foot cover of clean excavated soil on top of the filled portion of the landfill cell. The cover would be sloped to promote drainage but to prevent erosion and would be reseeded with native vegetation. The closure would be ongoing during operations. (GMI Exhibit 5; TR 153/lns4-25 to 154/lns1-5; TR 165/lns4-19).

68. Pat Corser testified that the proposed cover is an evapotranspiration cover that is superior to a clay cover. He testified that, in an arid climate, a clay cover may dry out and crack.

He further testified that the use of excavated soil would provide a better evapotranspiration cover than a clay cover. Mr. Corser concluded that the proposed closure would be protective of public health and the environment. (TR 154/lns6-23; TR 185/lns23-25 to 186/lns1-20; TR642/lns7-25 to 644/lns1-16).

69. When questioned about the use of a clay cap covered by native soil, Mr. Corser testified that, if the native soil is sufficient to act as a water balance to minimize or prevent wicking or evaporation of moisture from the clay, there would be no need for the clay because the soil will provide the necessary evapotranspiration. (TR186/lns21-25 to 187/lns1-7).

70. Ed Martin has proposed a permit condition requiring GMI to cover the landfill cells with a 1 foot thick clay cap covered with 2 feet of clean soil. (Witness Proposed Permit, submitted by Ed Martin, OCD, June 14, 2005, Landfill Operation, ¶2).

71. In response to Mr. Martin's proposal, GMI has stated that it is opposed to the use of a clay cap. GMI has proposed a 3 foot thick evapotranspiration cover of clean soil without a clay cap. (Second Notice of Filing, Comment from MWH, Section 1, Item 2).

72. Pursuant to the current permit, GMI has financial assurance in place in the amount of \$82,917.00. (GMI Exhibit 13; TR 65/lns6-13).

73. Ed Martin has proposed that the financial assurance be increased to \$102,917.00. The increase is based on the OCD's determination that post-closure monitoring for the landfill portion of the facility will be necessary for 40 years after closure of the site. OCD's estimates that annual post-closure costs will be approximately \$500 per year. (Witness Proposed Permit, submitted by Ed Martin, OCD, June 14, 2005, Financial Assurance).

74. GMI does not object to the increase in the financial assurance requirement. (Second Notice of Filing, Comment from MWH).

## **F. Geology and Hydrology**

75. Rule 711(B)(1)(j) requires the submission of geological and hydrological evidence, including depth to and quality of groundwater beneath the site, demonstrating that disposal of oilfield wastes will not adversely impact fresh water.

76. The area in which the facility is located was included in a geologic and hydrologic investigation undertaken by GMI in 1993 and 1994. (GMI Exhibits 2 and 3; TR 142/2-13). The original landfarm permit application, and subsequent modifications, including the modification request at issue, relied on the information obtained from the investigation. (GMI Exhibits 1, 5, and 10; TR 36/lns7-25 to 37/lns1-10).

77. Two additional monitoring wells, MW1 and MW2, were drilled at the facility in May, 2005. (GMI Exhibits 15, 24-26; TR 53/lns9-12). One purpose of the additional wells was to confirm the existing hydrogeologic information for the site. (TR 53/lns13-18).

78. Pat Corser testified that the subsurface geology under the facility is part of the upper Dockum group and consists of interbedded layers of clays and silts, which form a low-permeability unit. (TR 142/lns14-23; 144/lns16-17; 152/lns3-5; 169/lns3-10).

79. Dr. Bill Mansker offered expert testimony on the upper Dockum unit. Dr. Mansker testified that the upper Dockum group consists of impermeable clays mixed with silts that provide a barrier to any downward movement of liquids. (TR 209/lns21-25 to 210/lns1-6; 227/lns4-16, 245/lns9-10; 638/lns10-16).

80. James A. Bonner testified as an expert on behalf of CRI. Mr. Bonner agreed that the clay layers in the upper Dockum are of low permeability. Mr. Bonner testified that the upper Dockum consists of "interbedded sands, silts and mudstones." Mr. Bonner also testified that the

sands or silts in the upper Dockum "are not real high-permeability." (TR 458/lns19-25 to 459/lns1-5, 465/lns14-17, TR 467/lns3-10; 472/lns11-18).

81. The upper Dockum underlying the facility consists of clays, silts and sands that form a low-permeability unit.

82. The OCD define protectable freshwater as water that is below 10,000 milligrams per liter for total dissolved solids (TDS) "except for which...it is found that there is no present or reasonably foreseeable beneficial use which would be impaired by contamination of such waters." NMAC 19.15.1.7(F)(3).

83. The only water identified under the landfarm is perched water located at approximately 130 feet below the surface. (GMI Exhibit 15; TR 216/lns12-17; TR 482/lns1-5).

84. The evidence is undisputed that the water located at approximately 130 feet below the surface is perched water, that it is not flowing and that it is not connected to other bodies of water. (Testimony of Pat Corser, TR 146/lns24-25 to 151/lns1; Testimony of Bill Mansker, TR 217/lns12-25 to 218/lns1-2; Testimony of James Bonner, TR 449/lns5-9).

85. Total dissolved solids (TDS) well MW1 were 8970 mg/l and TDS in well MW 2 were 8930 mg/l. (GMI Exhibit 15, Summary Report). The quantity of water in both wells was very low. (GMI Exhibit 15, Conclusions; TR 228/lns8-15).

86. Dr. Bill Mansker testified that, based on his experience and the results from the two monitor wells, the perched water underlying the facility is not useable groundwater and would not qualify as fresh water. (TR 230/lns21-25 to 232/lns1-13; 243/lns3-25 to 244/lns1-2).

87. Bill Marley, surface owner of the adjacent property, testified that the only use of the property adjacent to the facility is for cattle ranching. He testified that the water underlying the

facility is not of sufficient quantity or quality for livestock purposes. (TR 55/lns13-25 to 61/lns1-15).

88. The only evidence presented that the perched water underlying the facility had a reasonably foreseeable use was offered by Keith Gordon. Mr. Gordon testified that the perched water would provide a sufficient yield to be beneficial. His testimony was based solely on an unwritten policy of the New Mexico Environment Department Water Quality Control Commission (WQCC). (TR 597/lns18-25 to 598/lns1-12; 602/lns21-25 to 603/lns1-10).

89. Keith Gordon did not dispute Mr. Marley's testimony that the water produced from a well in the perched water would not be usable for livestock. (TR 626/lns23-25 to TR 627/lns1-2).

90. Mr. Bonner testified that an engineered barrier is not required to protect the fresh water found in the Santa Rosa formation, which is the next level of water identified below the perched water under the facility. (TR 452/lns 15-25 to 453/lns1).

91. Keith Gordon testified that, although he couldn't make the same conclusion as Mr. Bonner regarding the Santa Rosa formation, he "would lean in that direction." (TR 626/lns17-22).

92. Pat Corser, testifying as an expert, concluded that the proposed landfill design will not adversely impact fresh water. (TR 151/lns20-25 to 152/lns1-8).

93. Dr. Bill Mansker, testifying as an expert, concluded that the proposed landfill design will not adversely impact fresh water. (TR 234/lns5-16).

94. Jim Bonner, testifying as an expert on behalf of CRI, concluded that, with the addition of an "engineered barrier," the GMI site is appropriate for the construction of landfill cells for the disposal of oilfield wastes. (TR 450/lns10-13).



95. The perched water underlying the facility is not protectable groundwater as defined by the OCD regulations.

96. Even if the perched water is protectable groundwater as defined by the OCD regulations, the geology of the site and the proposed cell design, which includes an engineered barrier in the form of a clay liner, will be protective of the perched water.

97. GMI has provided the necessary geological and hydrological information to demonstrate that the landfill cells will not adversely impact fresh water, as required by Rule 711(B)(1)(j).

### **CONCLUSIONS OF LAW**

1. The Oil Conservation Division has jurisdiction over this case and its subject matter.
2. The requirements of Rule 711(B) apply to the GMI facility and permit modification application.
3. The requirements of RCRA, the New Mexico Solid Waste Act and the New Mexico Hazardous Waste Act do not apply to the GMI facility and permit modification application.
4. The Hearing Examiner was correct to deny the admission of evidence as to the requirements of RCRA, the New Mexico Solid Waste Act and the New Mexico Hazardous Waste Act.
5. The Director of the Division may issue a permit upon finding that an acceptable application has been filed, and that the provisions for public notice and financial assurances have been met. Rule 711(B)(7).
6. Due public notice was given as required by Rule 711(B)(2).
7. Financial assurance in the amount of \$102,917 meets the requirements of Rule 711(B)(3) and is sufficient to close the facility to protect public health and the environment.

8. GMI has an acceptable application for the requested permit modification, as required by Rule 711(B)(1).

9. GMI has satisfied the requirements of Rule 711 and the Rule 711 Guidance.

10. The geological and hydrological evidence demonstrates that disposal of salt-contaminated oilfield wastes in landfill cells will not adversely impact fresh water.

11. The acceptance and disposal of salt-contaminated oilfield waste in landfill cells at the GMI facility will not pose a danger to fresh water, human health, or the environment.

12. The permit conditions proposed by Ed Martin meet the requirements of Rule 711 and will be adopted as the GMI permit, with the exception of the following:

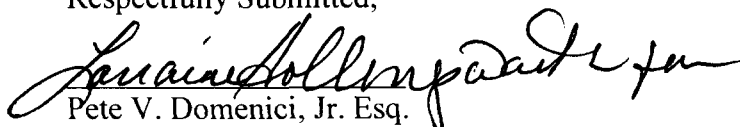
A. The landfill cells will be closed with a 3 foot layer of clean soil and no clay cap will be required.

B. GMI will be required to remove any precipitation that accumulates in the landfill and landfarm cells within 72 hours.

13. No party has provided a basis for denial of the permit modification request.

14. The Division may not deny the permit modification request based on the fact that GMI has not met all of its reporting requirements under its existing permit. A permit may be denied or revoked only upon a written finding by the Director that a permittee has a history of failure to comply with Division rules and orders. Rule 711(B)(5). There is no evidence of such a written directive in this matter. A denial of the permit modification on such a basis would be a clear departure from the Division's usual practice and precedent, would be arbitrary and capricious and would deny GMI equal protection of the law.

Respectfully Submitted,



Pete V. Domenici, Jr. Esq.

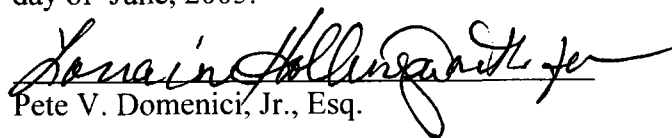
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I hereby certify that a true and  
correct copy of the foregoing was  
on all parties of record on the 21<sup>st</sup>  
day of June, 2005.



Pete V. Domenici, Jr., Esq.