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44440-0008

October 27, 2005

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VIA HAND DELIVERY

Ms. Florene Davidson
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87504

Re: Case 13586: Application for the New Mexico Oil Conservation Division for Repeal of Existing Rule 709, 710 and 711 Concerning Surface Waste Management and Adoption of New Rules Governing Surface Waste Management.

CRI's Notice of Recommended Modifications

Dear Ms. Davidson:

Pursuant to Division Rule 1204.C, Controlled Recovery Inc. ("CRI") hereby requests the following modifications to proposed rule 19.15.2.53. Where appropriate, all modifications are shown in a redline, strikeout format.

A. Proposed Rule 53(B)(2) and 53(F): Landfarm definition and operational requirements

1. Landfarming does not involve excavations, as is the case for landfills. Accordingly, CRI requests the following change to the first sentence of 53(B)(2) (the definition of landfarm):

> (2) A landfarm is a descrete area of land ~~or an excavation~~ designed for the remediation of hydrocarbon-contaminated soils.

2. In March of 2005, the Division issued a directive clarifying that landfarms are authorized and designed to accept only remediable hydrocarbon contaminated soils. Landfarms are not designed to accept other types of oilfields "wastes." The first sentence of 53(B)(2) reflects this point, but the second sentence creates ambiguity. Accordingly, CRI requests that the Division move the second sentence in 53(B)(2) to become the first operational provision under 53(F), and change the sentence to read:

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A landfarm may accept only ~~oilfield~~ hydrocarbon contaminated soils ~~wastes~~ that are exempt from RCRA Subtitle C or ~~non-exempt wastes that are~~ accompanied by acceptable documentation to determine that the hydrocarbon contaminated soils are ~~waste is~~ non-hazardous pursuant to RCRA Subtitle C.

3. Proposed Rule 53 would also benefit from a definition of "soils." In the past, some landfarms have accepted mole sieve, drill cuttings, and other oilfield wastes that are not soils in the traditional sense, and which are not remediable. Accordingly, CRI suggests adding the following definition to 53(B), which was taken from the "Interm Pit And Below-Grade Tank Guidelines"

> "Soil is defined as that earth material which as been so modified and acted upon by physical, chemical, and biological agents that it will support rooted plants."

4. As presently drafted, Rule 53(F)(12) could be read as allowing landfarms to accept drill cuttings and other oilfield "wastes" so long as the chloride concentration does not exceed 2,000 ppm. As noted above, landfarms exist to remediate hydrocarbon contaminated soils, they do not exist to store or dispose of other types of oilfield "wastes." Drill cuttings and other types of oilfield wastes cannot be remediated at landfarms. Accordingly, CRI requests the following changes to 53(F)(12):

> (12) No ~~drill cuttings or~~ soils contaminated with produced water generated within the division's districts I and II, or ~~other~~ salt-contaminated ~~wastes~~ soils, shall be placed in a landfarm cell. Soils ~~Wastes~~ shall be considered salt-contaminated if chloride concentration exceeds 2,000 parts per million. The person tendering soils ~~waste~~ for treatment at a landfarm shall certify that representative samples of the soils ~~wastes~~ have been tested for chloride content and found to conform to this requirement, and the operator of the landfarm will not accept soils ~~waste~~ for landfarm treatment unless accompanied by such certification.

5. CRI questions whether it is wise to use 2,000 ppm as the standard for accepting salt contaminated soils for remediation at landfarms. WQCC regulations use a 250 ppm standard. Using a higher chloride standard may create re-vegetation problems due to the "stacking" of contaminated soils at landfarms. CRI is not aware of any study indicating re-vegetation can occur when soils with chloride concentrations up to 2000 ppm are allowed to be stacked at landfarms. Accordingly, CRI requests that the "2000 part per million" standard in 53(F)(12) be lowered to "250 parts per million."

6. Since the stakeholder's meeting, the Division has added the term "biopiled" to 53(F)(5) and (F)(7). CRI is not familiar with the term and suggests that a definition be added to 53(B) if this term remains within the rule.

7. Landfarms should not accept any free liquids. Accordingly, CRI suggests the

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following clarification to 53(F)(11), which tracks the language on page 11 of the NMOCD "Guidelines" for surface waste management facilities:

> (11) No free liquids or soils with free liquids shall be accepted at the facility ~~placed in the landfarm cells~~.

B. Propose Rule 53(C): Permitting requirements

As written, any registered professional engineer in any field of practice (i.e. electrical engineers) could certify the design of an oilfield waste disposal facility. CRI believes engineering designs should not only be certified by an engineer, but by a certified New Mexico engineer familiar with the construction of disposal facilities. Indeed, NMED solid waste facility permits are required to be "signed and sealed by a professional engineer registered in New Mexico." *See* NMRA 20.9.1.200(A)((2)(c). Accordingly, CRI suggests the following change to 53(C)(1)(e):

> (e) engineering designs, certified by a New Mexico registered professional engineer familiar with the construction of disposal facilities, including technical data on the design elements of each applicable disposal method and detailed designs of surface impoundments;

C. Proposed Rule 53(D)(1): Motor vehicle transporters

CRI's experience indicates a mechanism needs to be in place to easily determine whether a transporter is approved by the Division, other than the use of Form C-133. For example, CRI would generally not be on notice whether an approved Form C-133 is still valid or has been revoked by the Division. Accordingly CRI suggests the following change to 53(D)(1):

> (1) No wastes transported by motor vehicle shall be accepted at the facility unless the transporter is listed as an approved transporter on the Division's website. ~~has an approved form C-133, authorization to move liquid waste, approved with the Division.~~

D. Proposed Rule 53(D)(2)(a): Exempt oilfield wastes

1. CRI questions the need for the language "and not mixed with non-exempt waste" in 53(D)(2)(a) due to the problems it creates for waste haulers. CRI understands the Division is going to examine whether this language is necessary to maintain the RCRA exemption for oilfield wastes.

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2. The Division has changed the second sentence of this provision by substituting the "forms of its choice" language in existing Rule 711(C)(4)(a) with a new form entitled C-142. This change was not presented at the October 11th stakeholder's meeting, nor was the need for a new form discussed by the Division. CRI believes the existing "forms of its choice" language is sufficient and has worked well for the Division and operators. Indeed, many operators have load tickets that meet this classification requirement. CRI does not believe a new form is necessary, and that it will place an unnecessary paperwork burden on operators, generators and the Division. Accordingly, CRI requests that the following language – which is the language presented at the stakeholders meeting - be utilized in 53(D)(2)(a):

> The operator shall have the option to accept certifications, on forms of its choice, ~~C-142 (certificate of waste status),~~ on a monthly, weekly, or per load basis. Both the generator and the operator shall maintain and shall make said certificates available for inspection by the division.

E. Proposed Rule 53(H)(3)(a)(i): Equipment removal at oil treating plants.

In its present form, the rule requires removal of tanks and equipment as part of the closure process. CRI believes there will be circumstances where tanks or equipment formerly used for oil treatment could be used in subsequent operations or activities on the property. Accordingly, CRI suggests adding the following language to allow the equipment to remain, so long as it is properly cleaned:

> (i) All tanks and equipment used for oil treatment shall be cleaned or removed from the site and recycled or properly disposed of in accordance with division rules.

F. Proposed Rule 53(I)(1) – Existing facilities

Some existing facilities operate under site specific orders issued by the Division. Accordingly, CRI suggests the following changes to this paragraph:

> Existing facilities. Surface waste management facilities in operation prior to the effective date of 19.15.2.53 shall comply with all provisions of 19.15.2.53; provided that all orders or permits heretofore issued to surface waste management facilities and any specific exceptions or waivers heretofore granted to any such facility in writing by the division, either in its permit, order or otherwise, shall continue in effect unless modified or withdrawn for good cause after notice and opportunity for hearing.

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G. The 5% provision.

Attached is CRI's October 5th comment letter discussing the "5% provision" in the context of the Division's new enforcement provisions. CRI incorporates those same comments with respect to Rule 53.

Thank you for your attention to these matters.

Sincerely,

Michael H. Feldewert

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Michael H. Feldewert
Recognized Specialist in the Area of Natural Resources -oil and gas law - New Mexico Board of Legal Specialization

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44440-0008

October 5, 2005

VIA HAND DELIVERY

Ms. Florene Davidson
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87504

Re: Case No. 13564 (Application for adoption of New Rule 19.15.3.100)

Dear Ms. Davidson:

Controlled Recovery Inc. ("CRI") operates a commercial surface waste management facility in Lea County, New Mexico, under the authority of Division Order R-9166. Accordingly, CRI wishes to raise a concern about proposed New Rule 19.15.3.100, specifically the following language in subsections (B)(2) and (3):

"person with an interest exceeding 5% in another entity"

CRI notes this same 5% provision is contained in the recently proposed surface waste management rules. *See* Proposed Rule 19.15.2.53(C)(1)(a) and (C)(7). This particular language places an undue burden on applicants, and could unnecessarily penalize "good actors."

The Division's "Brief In Support Of Application For Rule Adoption And Amendment" states that subsections (B)(2) and (B)(3) of proposed New Rule 19.15.3.100 are designed to "prevent entities from avoiding the good standing requirement by changing their name or forming a new entity." This laudable goal is met without reaching down to persons owning as little as 5% of a new or old entity. Interest owners at this level do not control the operations of the enterprise, and accordingly are not determinative as whether the enterprise is a "good" or "bad" actor. Rather, the officers, directors, and principal partners of an enterprise determine whether the enterprise remains in good standing with the Division.

Moreover in today's corporate world, the officers, directors and partners of an ongoing operation generally do not have knowledge of interest owners as small as 5%. This provision therefore places an undue burden on applicants to essentially conduct a "title opinion-type search" of every family partnership, estate, corporation, or other

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entity that may hold an interest in the ongoing concern to determine whether the 5% threshold is met. CRI suggests that no real purpose is served by penalizing the principals of a corporation in good standing because a small non-operating interest owner held a 5% interest in a "bad actor."

CRI therefore suggests that the goal expressed by the Division is met by the language "officer, director, [and] partner" in proposed New Rule 19.15.3.100(B) and that the additional language "person with an interest exceeding 5% in another entity" places an unnecessarily burden on applicants.

Sincerely,

Michael H. Feldewert

MHF

cc: Ken Marsh, President of CRI