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October 14, 2005

VIA EMAIL david.brooks@state.nm.us

David Brooks, Esq.
New Mexico Oil Conservation Division
1220 S. St. Francis Dr.
Santa Fe, New Mexico 87505

RE: OCD's Proposed Rules on Surface Waste Management Facilities

Dear Mr. Brooks:

On behalf of GMI, I am submitting the following additional comment to the OCD's proposed rules for Surface Waste Management Facilities.

Section I, Existing Facilities, grandfathers in facilities with existing permits and facilities with "any specific exceptions or waivers heretofore granted to any such facility in writing by the division, either in its permits or otherwise..." It is our position that the language dealing with exceptions and waivers should be qualified as follows (additional language is underlined):

I. 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 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, so long as such exceptions or waivers met the applicable public notice requirements, shall continue in effect unless modified or withdrawn for good cause after notice and opportunity for hearing.

The Division and the Commission have repeatedly emphasized the importance of public notice and public opportunity for participation in the OCD permitting process. The March 4, 2005 letter, which modified the permits of 22 facilities, was based on lack of adequate public notice, as was the Division's recent decision on the Gandy Marley application. Without the proposed qualifying language, the Division and the public may be precluded from challenging permits or permit provisions that have not been subject to the Division's public notice requirements.

Thank you for your consideration of the preceding comments.

Sincerely,

Original signed by Pete Domenici, Jr.
Pete V. Domenici, Jr., Esq.

cc: Dale Gandy
Bill Marley
File 1548