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Florene Davidson, Commission Secretary
New Mexico Oil Conservation Commission
1220 St. Francis Drive
Santa Fe, NM. 87505

RE: Comments of the New Mexico Oil Gas Association on the Oil Conservation Division's Proposed Modifications of the Surface Waste Management Rules

GENERAL COMMENTS:

The New Mexico Oil and Gas Association (NMOGA) represents 300 member companies, ranging from independent to major producers, which produce 98% of all the oil and gas production in the state, pipeline companies, well servicing and field services companies, refineries and processing plants. NMOGA promotes the welfare of the oil and gas industry and the conservation and orderly development of the oil and gas resources within the state of New Mexico.

The following comments are provided on behalf of the NMOGA member companies on the draft of the Oil Conservation Division's (Division) Surface Waste Management Rules that will be considered at the April 20, 2006 Oil Conservation Commission (Commission) hearing. Individual member companies have also submitted comments on these proposed rules and will be in attendance at the April 20, 2006 hearing to provide further comment on the current proposal.

We support regulation by formal rule, not by guideline, and believe the development of appropriate rules for surface waste management and disposal are in the best interest of the Division and Commission as well as the oil and gas industry. Furthermore, we appreciate the extension of the hearing schedule on these rules that allowed much needed time to prepare additional comments.

The members of NMOGA support rules and regulations that protect the fresh water resources of this state and encourage the development of our mineral resources in a way that protects human health and the environment. However, we are concerned that the proposed rules: a) do not allow flexibility and risk management, b) may unnecessarily limit disposal options, and c) require additional costs for waste management with little to no additional environmental protection. We also believe that certain provisions in the proposed Surface Waste Management Rules overlap with the provisions of the pending pit rules and that these provisions should be incorporated into and reviewed in the meetings and hearings on those rules.

NMOGA is in full support of the attached proposed alternative language, comments and science-based approach recommended by the *Industry Committee*. The make-up of the *Industry Committee* are all NMOGA members who have extensive oil and gas operations within the state of New Mexico and represent major and independent producers that operate in both the northwest and southeast. It is the intent of the *Industry Committee* to incorporate current science and operation flexibility into the Division's proposed surface waste management rules. Additionally, NMOGA supports the *Industry Committee* technical witnesses who are experts in the fields of hydrocarbon remediation, soil science, hydrocarbon toxicology and risk assessments, vados zone hydrogeology and groundwater quality issues as well as their expert in landfill permitting, design and operations.

SPECIFIC COMMENTS:

RULE 51 (19.15.2.51 NMAC): TRANSPORTATION OF PRODUCED WATER, DRILLING FLUIDS AND OTHER OILFIELD WASTE:

Proposed Rule 51.A

NMOGA supports the *Industry Committee* amended language that allows the transportation of liquid waste by the operator to another lease, tank battery or facility owned or operated by the same operator of the lease or producing property. (see attached)

Proposed Rule 51.C

Under this section of the rule it would be the operator's duty to assure that any water hauler it uses is in good standing with the Division. Since the proposed language

seemingly abrogates OCD's responsibility to enforce their rules and places the enforcement responsibility on the operator to determine if the water haulers they use are in good standing, the division should provide notice of the revocation of forms C-133 and thereby provide the information needed by operators to assure they only use water haulers who are in good standing.

NMOGA supports the *Industry Committee* language that requires the OCD to post monthly an approved list of transporters on its website, as well as a list of transporters who have had their C-133s suspended or canceled. (see attached)

Proposed Rule 51.D (4)

NMOGA is unaware of a "bad actor" provision being adopted in Rule without specific mandate by statute. The Solid Waste Act, Hazardous Waste Act and Water Quality Act have provisions which are intended to give the regulatory agency authority to keep criminal organizations from participating in businesses regulated under the authority of these laws. There is no evidence that adding this provision to proposed Rule 51 is necessary for such purpose.

NMOGA supports the *Industry Committee* deletion of the language. (see attached)

RULE 53 (19.15.2.53 NMAC): SURFACE WASTE MANAGEMENT FACILITIES:

Proposed Rule 53.H

NMOGA supports the language deletions and suggestions by the *Industry Committee* for small landfarm registration and general operating rules. We strongly feel that the amended language sets perimeters that ease administrative burden for the Division as well as industry while protecting fresh water, public health and the environment.

Proposed Rule 53.H(2)(a)

(2) General operating rules. An operator shall:
"(a) operate only one active small land farm per lease at any time:"

NMOGA members have commented that because multiple wells may exist on a lease, and a lease can often encompass several sections, NMOGA members feel that a small land farm should not be limited to an entire lease so that small remediations may occur on the location as needed. This would allow operators to conduct "small land farms" on site at the well pad and not physically remove the contaminated soil over many miles to a central site on lease, which only increases the potential environmental impact through

transportation and secondary environmental issues associated with dust, truck emissions, and waste consolidation.

NMOGA supports the deletion of: ~~(a) operate only one active small land farm per lease at any time~~ in its entirety. (see attached)

Proposed Rule 53.J (3)(d)

(3) Facility closure initiated by the division. Forfeiture of financial assurance.

"All amounts collected as a result of forfeiture of any financial assurance shall be deposited in the Oil and Gas Reclamation Fund."

The Oil and Gas Reclamation Fund is a statutory fund set up to receive funding from the Oil and Gas Conservation Tax for the sole purpose of:

- (1) employing the necessary personnel to survey abandoned wells, well sites and associated production facilities and preparing plans for the plugging of abandoned wells that have not been plugged or that have been improperly plugged and for the restoration and remediation of abandoned well sites and associated production facilities that have not been properly restored and remediated; and
- (2) supporting energy education throughout the state in an amount not to exceed one hundred fifty thousand dollars (\$150,000) annually.

NMOGA members do not feel that the Reclamation Fund is the correct mechanism for the purpose of receiving forfeited funds from Surface Waste Management Facilities. As you are aware, the Reclamation Fund is capped at \$1.5 million and any amount over the \$1.5 million flows to the General Fund, which the Division does not have access to.

NMOGA is opposed to the forfeited (dedicated) Surface Waste Financial Assurance being deposited in the Oil and Gas Reclamation Fund as the monies dedicated to the fund are paid by the oil and gas industry for a specific reason.

NMOGA members recommend that the Division set up a separate account to be used for the forfeited monies intended only for the specific purpose of surface waste facilities closures.

Proposed Rule 53.J (2) and J(5)

(2) Release of financial assurance.

"In any event, the division will not finally release the financial assurance until it determines that the operator has successfully re-vegetated the site, or, if the division

has approved an alternative site use plan, or until the land owner ~~or tenant~~ has obtained necessary regulatory approvals and begun implementation of such use."

(5) Alternatives to re-vegetation.

"If the operator or owner ~~or tenant~~ of the land contemplates use of the land where a cell or facility is located for purposes inconsistent with re-vegetation, the operator or owner ~~or tenant~~ may, with division approval, implement an alternative surface treatment appropriate for the contemplated use, provided that the alternative treatment will effectively prevent erosion. If the division approves an alternative to re-vegetation, it shall not release the portion of the operator's financial assurance reserved for post-closure until the land owner ~~or tenant~~ has obtained necessary regulatory approvals and begun implementation of such alternative use."

NMOGA has no knowledge, nor can we find in state statutes, a situation where tenants are automatically deemed to have "property rights" and are allowed to make what should be a surface owner decisions on leased surface.

On state and federal owned surface, it is the surface management agency that makes the decisions, and not the surface lessee. Unless the surface owner has abrogated their property rights to the tenant, the tenants do not have the privilege or the right to approve or dictate closure alternatives, or re-vegetation alternatives, unless agreed upon in the original lease contract between the owner and the tenant.

NMOGA recommends that "tenant" be deleted from Rule 53.

Proposed Rule 53.I

This section of the rule addresses evaporation ponds and should be moved to the proposed pit rule.

CONCLUSION

On behalf of the member companies of the New Mexico Oil and Gas Association, we appreciate the opportunity to comment on the Division's proposed Surface Waste Management Rules. NMOGA remains committed to working with the Division to protect New Mexico's fresh water, the environment, and wildlife resources while developing the State's vital energy resources.

Attachment

**Industry Committee Proposed Amendments
to the
Oil Conservation Division
Proposed Modification of the
Surface Waste Management Rules**

(Exhibit A to Notice of Filing Of Amended Proposal)

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19.15.1.7 DEFINITIONS:

B. Definitions beginning with the letter "B".

(1) Back allowable shall mean the authorization for production of any shortage or underproduction resulting from pipeline proration.

(2) Background shall mean, for purposes of ground water abatement plans only, the amount of ground water contaminants naturally occurring from undisturbed geologic sources or water contaminants occurring from a source other than the responsible person's facility. This definition shall not prevent the director from requiring abatement of commingled plumes of pollution, shall not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons and shall not preclude the division director from exercising enforcement authority under any applicable statute, regulation or common law.

(3) Barrel shall mean 42 United States gallons measured at 60 degrees Fahrenheit and atmospheric pressure at the sea level.

(4) Barrel of oil shall mean 42 United States gallons of oil, after deductions for the full amount of basic sediment, water and other impurities present, ascertained by centrifugal or other recognized and customary test.

(5) Below-grade tank shall mean a vessel, excluding sumps and pressurized pipeline drip traps, where any portion of the sidewalls of the tank is below the surface of the ground and not visible.

(6) Berm shall mean an embankment or ridge constructed for the purpose of preventing the movement of liquids, sludge, solids or other materials.

(7) Biopile, also known as biocell, bioheap, biomound or compost pile, shall mean a pile of contaminated soils used to reduce concentrations of petroleum constituents in excavated soils through the use of biodegradation. This technology involves heaping contaminated soils into piles or "cells" and stimulating aerobic microbial activity within the soils through the aeration or addition of minerals, nutrients and moisture.

(8) Bioremediation endpoint shall mean that point in time when the mean concentration of TPH-GRO or TPH-DRO does not change significantly between two successive sampling periods at least thirty (30) days apart, which indicates that biodegradation of the toxic hydrocarbon constituents has been completed, regardless of TPH-GRO or TPH-DRO level. Over the time frame in which the operator is determining the bioremediation endpoint, the maximum 4-inch bare soil temperature must be greater than fifty degrees Fahrenheit (50° F). TPH-GRO shall be used when any condensate is added to the landfarm cell, while TPH-DRO shall be used when any material other than condensate contaminated material is added to the landfarm cell.

(89) Bottom hole or subsurface pressure shall mean the gauge pressure in pounds per square inch under conditions existing at or near the producing horizon.

(910) Braden head gas well shall mean any well producing gas through wellhead connections from a gas reservoir that has been successfully cased off from an underlying oil or gas reservoir.

O. Definitions beginning with the letter "O".

(1) Official gas-oil ratio test shall mean the periodic gas-oil ratio test made by order of the division by such method and means and in such manner as prescribed by the division.

(2) Oil, crude oil or crude petroleum oil shall mean any petroleum hydrocarbon produced from a well in the liquid phase and that existed in a liquid phase in the reservoir.

(3) Oil field waste shall mean waste generated in conjunction with the exploration for, drilling, production of, refining of, processing of, gathering of or transportation of, crude oil natural gas or carbon dioxide; waste generated during oil field service company operations; and waste generated from any oil field closure, remediation or abatement activity regardless of the date of the release. Oil field waste does not include certain waste not generally associated with oil and gas industry operations such as tires, appliances or ordinary garbage or refuse unless generated at a division-regulated facility, and does not include sewage, regardless of source.

(4) Oil well shall mean any well capable of producing oil and that is not a gas well as defined herein.

(5) Operator shall mean any person who, duly authorized, is in charge of the development of a lease or the operation of a producing property, or who is in charge of the operation or management of a facility.

(6) Overage or overproduction shall mean the amount of oil or the amount of natural gas produced during a proration period in excess of the amount authorized on the proration schedule.

(7) Owner means the person who has the right to drill into and to produce from any pool, and to appropriate the production either for himself or for himself and another.

S. Definitions beginning with the letter "S".

(1) Secondary recovery shall mean a method of recovering quantities of oil or gas from a reservoir which quantities would not be recoverable by ordinary primary depletion methods.

(2) Shallow pool shall mean a pool which has a depth range from zero to 5000 feet.

(3) Shortage or underproduction shall mean the amount of oil or the amount of natural gas during a proration period by which a given proration unit failed to produce an amount equal to that authorized in the proration schedule.

(4) Shut-in shall be the status of a production well or an injection well which is temporarily closed down, whether by closing a valve or disconnection or other physical means.

(5) Shut-in pressure shall mean the gauge pressure noted at the wellhead when the well is completely shut in, not to be confused with bottom hole pressure.

(6) Significant modification of an abatement plan shall mean a change in the abatement technology used excluding design and operational parameters, or relocation of 25 percent or more of the compliance sampling stations, for any single medium, as designated pursuant to Subsubparagraph (iv) of Subparagraph (b) of Paragraph (4) of Subsection E of 19.15.5.19 NMAC.

(7) Soil shall mean earth, sediments or other unconsolidated accumulations of solid particles produced by the physical and chemical disintegration of rocks, and which may or may not contain organic matter.

(8) Spacing unit is the area allocated to a well under a well spacing order or rule. Under the Oil and Gas Act, NMSA 1978, Section 70-2-12.B(10), the commission has the power to fix spacing units without first creating proration units. See *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 87 NM 286 (1975). This is the area designated on division form C-102.

(9) Subsurface water shall mean ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or may be utilized by vegetation.

(10) Surface waste management facility shall mean any facility that receives any oil field waste for collection, disposal, evaporation, remediation, reclamation, treatment or storage, except:

(a) a facility that utilizes underground injection wells subject to regulation by the division pursuant to the federal Safe Drinking Water Act, and does not manage oil field waste on the ground in pits, ponds, below-grade tanks or land application units;

(b) a facility permitted pursuant to environmental improvement board rules or water quality control commission rules;

(c) a drilling or workover pit as defined in 19.15.2.50 NMAC;

(d) a tank or pit that receives oil field waste from a single well, regardless of capacity or volume of waste received;

(e) a facility located at an oil and gas production facility and used for temporary storage of oil field waste generated on-site from normal operations, if such facility does not pose a threat to fresh water, public health, safety or the environment;

(f) an onsite remediation conducted in accordance with a division-approved abatement plan pursuant to 19.15.1.19 NMAC or corrective action pursuant to 19.15.3.116 NMAC;

(g) a facility operating pursuant to an emergency order of the division;

(h) any site or facility where the operator is conducting emergency response operations to abate an immediate threat to fresh water, public health, safety or the environment, or as the division has specifically directed or approved; or

(i) a facility that receives only exempt oil field waste, receives less than 50 barrels of liquid waste per day (averaged over a 30-day period), has a capacity to hold 500 barrels of liquids or less and is permitted pursuant to 19.15.2.50 NMAC.

T. Definitions beginning with the letter "T".

(1) Tank bottoms shall mean that accumulation of hydrocarbon material and other substances which settles naturally below crude oil in tanks and receptacles that are used in handling and storing of crude oil, and which accumulation contains in excess of two (2%) percent of basic sediment and water; provided, however, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet thereto.

(2) Temporary abandonment shall be the status of a well which is inactive and has been approved for temporary abandonment in accordance with the provisions of these rules.

(3) Top unit allowable for gas shall mean the maximum number of cubic feet of natural gas, for the proration period, allocated to a gas producing unit in an allocated gas pool.

(4) Top unit allowable for oil shall mean the maximum number of barrels for oil daily for each calendar month allocated on a proration unit basis in a pool to non-marginal units. The top unit allowable for a pool shall be determined by multiplying the applicable depth bracket allowable by the market demand percentage factor in effect.

(5) Total Petroleum Hydrocarbons – Diesel Range Organics or "TPH-DRO" shall mean those hydrocarbons with the C10 through C28 carbon numbers.

(6) Total Petroleum Hydrocarbons – Gasoline Range Organics or "TPH-GRO" shall mean those hydrocarbons with the C6 through C10 carbon numbers.

(57) Treating plant shall mean any plant constructed for the purpose of wholly or partially or being used wholly or partially for reclaiming, treating, processing, or in any manner making tank bottoms or any other waste oil marketable.

(68) Tubingless completion shall mean a well completion in which the production string of casing has an outside diameter of 2.875 inches or less.

W. Definitions beginning with the letter "W".

(1) Waste, in addition to its ordinary meaning, shall include:

(a) underground waste as those words are generally understood in the oil and gas business, and in any event to embrace the inefficient, excessive, or improper use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating, or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool, and the use of inefficient underground storage of natural gas;

(b) surface waste as those words are generally understood in the oil and gas business, and in any event to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of natural gas of any type or in any form, or crude petroleum oil, or any product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage, or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing a well or wells, or incident to or resulting from the use of inefficient storage or from the production of crude petroleum oil or natural gas, in excess of the reasonable market demand;

(c) the production of crude petroleum oil in this state in excess of the reasonable market demand for such crude petroleum oil; such excess production causes or results in waste which is prohibited by the Oil and Gas Act; the words "reasonable market demand" as used herein with respect to crude petroleum oil, shall be construed to mean the demand for such crude petroleum oil, for reasonable current requirements for current consumption and use within or outside of the state, together with the demand of such amounts as are reasonably necessary for building up or maintaining reasonable storage reserves of crude petroleum oil or the products thereof, or both such crude petroleum oil and products;

(d) the non-ratable purchase or taking of crude petroleum oil in this state; such nonratable taking and purchasing causes or results in waste, as defined in Subparagraphs (a), (b), and (c) of this definition and causes waste by violating Section 70-2-16 of the Oil and Gas Act;

(e) the production in this state of natural gas from any gas well or wells, or from any gas pool, in excess of the reasonable market demand from such source for natural gas of the type produced or in excess of the capacity of gas transportation facilities for such type of natural gas; the words "reasonable market demand," as used herein with respect to natural gas, shall be construed to mean the demand for natural gas for reasonable current requirements, for current consumption and for use within or

outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of natural gas or products thereof, or both such natural gas and products.

(2) Waste (exempt). Exempt waste shall mean oil field waste exempted from regulation as hazardous waste pursuant to Subtitle C of the federal Resource Conservation and Recovery Act (RCRA) and applicable regulations.

(3) Waste (hazardous). Hazardous waste shall mean non-exempt waste that exceeds the minimum standards for waste hazardous by characteristics established in RCRA regulations, 40 CFR 261.21-261.24, or listed hazardous waste as defined in 40 CFR part 261, subpart D, as amended.

(4) Waste (non-exempt). Non-exempt waste shall mean oil field waste not exempted from regulation as hazardous waste pursuant to Subtitle C of RCRA and applicable regulations,

(5) Waste (non-hazardous). Non-hazardous waste means non-exempt oil field waste that is not hazardous waste.

(6) Water shall mean all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water.

(7) Water contaminant shall mean any substance that could alter if released or spilled the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

(8) Watercourse shall mean a river, creek, arroyo, canyon, draw or wash, or any other channel having definite banks and bed with visible evidence of the occasional flow of water.

(9) Water pollution shall mean introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property.

(10) Well blowout shall mean a loss of control over and subsequent eruption of any drilling or workover well or the rupture of the casing, casinghead, or wellhead or any oil or gas well or injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or liquids, from the well.

(11) Wellhead protection area shall mean the area within 200 horizontal feet of any private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes or within 1000 horizontal feet of any other fresh water well or spring. Wellhead protection areas shall not include areas around water wells drilled after an existing oil or natural gas waste storage, treatment, or disposal site was established.

(12) Wetlands shall mean those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. Constructed wetlands used for wastewater treatment purposes are not included in this definition.

(13) Working interest owners are the owners of the operating interest under an oil and gas lease who have the exclusive right to exploit the oil & gas minerals. Working interests are cost bearing.

19.15.2.51 TRANSPORTATION OF PRODUCED WATER, DRILLING FLUIDS AND OTHER LIQUID OIL FIELD WASTE:

A. No person shall transport any produced water, drilling fluids or other liquid oil field waste, including but not limited to drilling fluids and residual liquids in oil field equipment, except for small samples removed for analysis, by motor vehicle from any lease, central tank battery or other facility without an approved form C-133, authorization to move liquid waste, unless to another lease, tank battery or facility owned or operated by the same operator of the lease or producing property. The transporter shall maintain a photocopy of the approved C-133 in any transporting vehicle.

B. A person may apply for authorization to move liquid waste by filing a complete form C-133 with the division's Santa Fe office. Authorization is granted upon the division's approval of form C-133.

C. No owner or operator shall permit produced water, drilling fluids or other liquid oil field waste to be removed from its leases or field facilities to a third party facility by motor vehicle except by a person possessing an approved form C-133. On the first business day of each month, the division shall post a list of currently approved C-133s, authorization to move liquid waste, and a list of C-133s suspended

or canceled in the last three months on its website. Owners and operators are presumed aware of such suspensions or cancellations as of noon of the fourth business day of the month.

D. The division may deny approval of a form C-133 if:

- (1) the applicant is a corporation or limited liability company, and is not registered with the public regulation commission to do business in New Mexico;
- (2) the applicant is a limited partnership, and is not registered with the New Mexico secretary of state to do business in New Mexico;
- (3) the applicant does not possess a carrier permit under the single state registration system administered by the public regulation commission, if it is required to have such a permit under applicable statutes and rules; or

(4) the applicant or an officer, director or partner in the applicant, or a person with an interest in the applicant exceeding 25 percent, is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that possesses or has possessed an approved form C-133 that has been cancelled or suspended, has a history of violating division rules or other state or federal environmental laws or rules; is subject to a commission or division order, issued after notice and hearing, finding such entity to be in violation of an order requiring corrective action; or has a penalty assessment for violation of division or commission rules or orders that is unpaid more than 70 days after issuance of the order assessing the penalty.

E. Cancellation or suspension of authorization to move liquid waste. Vehicular movement or disposition of produced water or other liquid oil field waste in any manner contrary to division rules shall be cause, after notice and opportunity for hearing, for cancellation or suspension of a transporter's authorization to move liquid waste. Transporters shall give notice to their then current customers of any such cancellation or suspension within two business days of receipt of notice of division action.

19.15.2.52 DISPOSITION OF PRODUCED WATER AND OTHER OIL FIELD WASTE:

A. Prohibited dispositions. Except as authorized by 19.15.1.19 NMAC, 19.15.2.50 NMAC, 19.15.2.53 NMAC, 19.15.3.116 NMAC, or 19.15.9.701 NMAC, no person, including any transporter, shall dispose of produced water or other oil field waste:

- (1) on or below the surface of the ground; in any pit unless authorized by the operator of the pit; or in any pond, lake, depression or watercourse; or
- (2) in any other place or in any manner that may constitute a hazard to fresh water, public health, safety or the environment.

B. Authorized disposition of produced water. The following methods of disposition of produced water are authorized:

(1) delivery to a permitted salt water disposal well or facility, secondary recovery or pressure maintenance injection facility, surface waste management facility, or disposal pit permitted pursuant to 19.15.2.50 NMAC, or to a drill site for use in drilling fluid that is authorized by the operator of the drill site, in a manner that does not constitute a hazard to fresh water, public health, safety or the environment; or

(2) use in accordance with any division-issued use permit, rule or other division authorization.

C. Authorized dispositions of other oil field waste. Other oil field waste shall be disposed of by transfer to an appropriate permitted or registered surface waste management facility or injection facility or applied to a division-authorized beneficial use. Recovered drilling fluids may be transported to other drill sites authorized by the operator of such drill sites for reuse or recycle provided that such fluids are transported and stored in a manner that does not constitute a hazard to fresh water, public health, safety or the environment.

19.15.2.53 SURFACE WASTE MANAGEMENT FACILITIES:

A. Definitions applicable 19.15.2.53 NMAC only.

(1) Definitions relating to types of facilities:

(a) A centralized facility is a surface waste management facility that:

(i) ~~does not receive compensation for waste management;~~

(ii) is used exclusively by one generator subject to New Mexico's

"Oil and Gas Conservation Tax Act", Section 7-30-1 NMSA-1978 as amended; and

(iii) receives exclusively wastes that are generated from production units or leases operated by such generator, or by an affiliate of such generator. For this provision's purposes, an affiliate of a generator is a person who controls, is controlled by or is under common control with the generator.

(b) A commercial facility is a surface waste management facility that is not a centralized facility.

(c) A landfarm is a discrete area of land designated and used for the remediation of petroleum hydrocarbon-contaminated soils and drill cuttings.

(d) A landfill is a discrete area of land or an excavation designed for permanent disposal of exempt or non-hazardous oil field waste.

(e) A small landfarm is a centralized landfarm that has a total capacity of ~~1400-806400~~ cubic yards or less, ~~covers two acres or less of surface area,~~ remains active for a maximum of 3 years, and receives ~~only petroleum hydrocarbon-contaminated soils (excluding drill cuttings) that are exempt waste materials that are exempt oil field wastes exclusive of tank bottoms and drilling fluids.~~

(2) Other definitions.

(a) Active portion is that part of a surface waste management facility that has received or is receiving waste and has not been closed.

(b) A cell is a confined area engineered for the disposal or treatment of oil field waste.

(c) A composite liner is a liner that may consist of multiple layers of geosynthetics and/or low-permeability soils. The different layers of a composite liner may have different material properties and may be applied at different stages of landfill liner installation.

(d) Geosynthetic is the generic classification of all synthetic materials used in geotechnical applications, including the following classifications:

(i) geocomposite is a manufactured material using geotextiles, geogrids, geomembranes, or combinations thereof, in a laminated or composite form;

(ii) geogrid is a deformed or non-deformed, netlike polymeric material used to provide reinforcement to soil slopes;

(iii) a geomembrane is an impermeable polymeric sheet material that is impervious to liquid and gas as long as it maintains its integrity, and is used as an integral part of an engineered structure designed to limit the movement of liquid or gas in a system;

(iv) geonet is a type of geogrid that allows planar flow of liquids and serves as a drainage system;

(v) a geosynthetic clay liner (GCL) is a relatively thin layer of processed clay (typically bentonite) that is either bonded to a geomembrane or fixed between two sheets of geotextile; and

(vi) geotextile is any sheet material that is less impervious to liquid than a geomembrane but more resistant to penetration damage, and is used as part of an engineered structure or system to serve as a filter to prevent the movement of soil fines into a drainage system, to provide planar flow for drainage, to serve as a cushion to protect geomembranes or to provide structural support.

(e) Leachate is the liquid that has passed through or emerged from oil field waste and contains soluble, suspended or miscible materials.

(f) A landfarm lift is an accumulation of ~~oil field waste solids, like soil or drill cuttings,~~ predominately contaminated by petroleum hydrocarbons which is placed into a landfarm cell for treatment.

(g) A liner is a continuous, low-permeability layer constructed of natural or human made materials that restricts the migration of liquid wastes, gases or leachate.

(h) Lower explosive limit is the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees Celsius and atmospheric pressure.

(i) A major modification is a modification of a facility ~~other than a small landfarm~~ that involves an increase in the ~~permitted land area that the permitted facility occupies,~~ a change in the nature of the permitted waste stream, ~~or addition of a new treatment units or a substantial change in the type of treatment process (e.g., the addition of bioremediation or stabilization where not previously used),~~ or any other modification that the division determines is sufficiently substantial that public notice

~~and public participation in the application process are appropriate. Adjustment of existing treatment processes to account for variations in incoming materials does not constitute a major modification.~~

(j) A minor modification is a modification of a facility that is not a major modification.

(k) Operator means the operator of a surface waste management facility.

(l) Poor foundation conditions are features which indicate that a natural or human induced event may result in inadequate foundational support for the structural components of a landfill.

(m) Run-off is any rainwater, leachate or other liquid that drains over land from any part of a surface waste management facility.

(n) Run-on is any rainwater, leachate or other liquid that drains from other land on to any part of a surface waste management facility.

(o) Structural components of a landfill are liners, leachate collection and removal systems, final covers, run-on/run-off systems and any other components used in the construction or operation of a landfill that are necessary for protection of fresh water, public health, safety or the environment.

(p) An unstable area is a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the structural components of a landfill. Examples of unstable areas are areas of poor foundation conditions, areas susceptible to mass earth movements, and Karst terrain areas, where Karst topography, with its characteristic surface and subterranean features, is developed as a result of dissolution of limestone, dolomite or other soluble rock. Characteristic physiographic features of Karst terrain include, but are not limited to, sinkholes, sinking streams, caves, large springs and blind valleys.

B. Permit required. No person shall operate a surface waste management facility (other than a small landfarm registered pursuant to subsection H of 19.15.2.53 NMAC) except pursuant to and in accordance with the terms and conditions of a division-issued surface waste management facility permit.

C. Permitting requirements, application, public notice and financial assurance. Except for small landfarms registered pursuant to Subsection H of 19.15.2.53 NMAC, all new commercial or centralized facilities prior to commencement of construction, and all existing commercial or centralized facilities prior to modification, shall be permitted by the division in accordance with the applicable requirements of Subsection C of 19.15.2.53 NMAC.

(1) Application requirements for new facilities, major modifications and renewals. An application, form C-137, for a permit for a new facility, to modify an existing facility or for renewal of a permit shall be filed with the environmental bureau in the division's Santa Fe office. Except as provided in paragraph (2) and (3) of subsection C of 19.15.2.53 NMAC, the application shall include:

(a) the names and addresses of the applicant and all principal officers and owners of 25 percent or more of the applicant;

(b) a plat and topographic map showing the facility's location in relation to governmental surveys (quarter-quarter section, township and range), highways or roads giving access to the facility site, watercourses, water sources and inhabited buildings within one mile of the site's perimeter;

(c) the names and addresses of the surface owners of the real property on which the facility is sited and surface owners of the real property within one mile of the site's perimeter;

(d) a description of the facility with a diagram indicating the location of fences and cattle guards, and detailed construction/installation diagrams of any new or modified pits, liners, dikes, piping, sprayers, tanks, roads, fences, gates, berms, pipelines crossing the facility, buildings and chemical storage areas;

(e) engineering designs for any new facility or modified part of an existing facility, certified by a registered professional engineer, including technical data on the design elements of each applicable new or modified treatment, remediation and disposal method and detailed designs of new or modified surface impoundments;

(f) an operations plan that includes the following elements:

(i) management of approved wastes that complies with the applicable requirements of Subsections E, F, G and I of 19.15.2.53 NMAC;

(ii) inspection and maintenance and run-on and run-off control that complies with the requirements of 19.15.1.118 NMAC, except Subsection F and G, a plan for

management of approved wastes that complies with the applicable requirements contained in Subsections E, F, G, and I of 19.15.2.53 NMAC;

(g) an inspection and maintenance plan that complies with the requirements contained in Paragraph (12) of Subsection E of 19.15.2.53 NMAC;

(h) a hydrogen sulfide prevention and contingency plan that complies with those provisions of 19.15.3.118 NMAC that apply to surface waste management facilities;

(ig) a closure and post closure plan, including a cost estimate, sufficient to close the facility in a manner that will protect fresh water, public health, safety and the environment; said estimate to be based upon the use of equipment normally available to a third party contractor, and including costs as necessary for removal of all fluids and wastes; back-filling, grading and mounding of pits; cleanup of contaminated soils and revegetation of the surface, or other restoration sufficient to protect fresh water, public health, safety and the environment; and post closure monitoring. The closure and post closure plan shall comply with the requirements contained in Paragraph (4) ~~or (5)~~ of Subsection J of 19.15.2.53 NMAC;

(jh) a contingency plan that complies with the requirements of Paragraph (1413) of Subsection E of 19.15.2.53 NMAC and with Sections 12-12-1 through 12-12-30, NMSA 1978, as amended (the emergency management act);

(k) a plan to control run-on water onto the site and run-off water from the site that complies with the requirements of Paragraph (13) of Subsection E of 19.15.2.53 NMAC;

(l) in the case of an application to permit a new or expanded landfill, a leachate management plan that describes the anticipated amount of leachate that will be generated and the handling, storage, treatment and disposal of the leachate, including final post closure options;

(m) in the case of an application to permit a new or expanded landfill, a gas safety management plan that complies with the requirements of Paragraph (15) of Subsection E of 19.15.2.53 NMAC;

(n) a best management practice plan to ensure protection of fresh water, public health, safety and the environment;

(oi) ~~unless determined not necessary by the division permit staff to assure protection of freshwater, public health, safety or the environment, geological/hydrological data including:~~

(i) a map showing names and location of streams or other watercourses within one mile of the site;

(ii) laboratory analyses, performed by an independent commercial laboratory, for major cations and anions, BTEX, RCRA metals and total dissolved solids (TDS) of ground water samples of the shallowest ~~fresh water aquifer~~ beneath the proposed site;

(iii) depth to, formation name, type and thickness of, the shallowest fresh water aquifer, ~~unless beneath a non-fresh water aquifer;~~

(iv) soil types beneath the proposed facility, including a lithologic description of all soil and rock members from ground surface down to the shallowest fresh water aquifer;

(v) geologic cross-sections;

(vi) potentiometric maps for the shallowest fresh water aquifer;

(vii) porosity, permeability, conductivity, compaction ratios and swelling characteristics for the sediments on which the contaminated soils will be placed;

(pi) certification by the applicant that the information submitted in the application is true, accurate, and complete to the best of the applicant's knowledge, after reasonable inquiry; and

(qk) any other information that the division may require to demonstrate that the facility's operation will not adversely impact fresh water, public health, safety or the environment and that the facility will comply with division rules and orders.

(2) Application requirements for minor modifications. An existing facility applying for a minor modification shall file a form C-137 with the environmental bureau in the division's Santa Fe office describing the proposed change and identifying any information that has changed from its last C-137 filing.

(3) Determination that an application is administratively complete. Upon receipt of an application for a surface waste management facility permit or modification or renewal of an existing permit, the division shall review the application for administrative completeness. To be deemed administratively complete, the application shall provide all information required by Paragraph (1) or (2) (as applicable) of Section C of 19.15.2.53 NMAC. Previously submitted materials may be included by

reference provided they are current, readily available to the division and sufficiently identified so that the division may retrieve them. The division shall notify the applicant in writing when it deems the application administratively complete. If the division determines that the application is not administratively complete, the division shall notify the applicant of the deficiencies in writing within 30 days of receipt of the application and state what additional information is necessary.

(4) Notice requirement for new facilities, major modifications or renewals.

(a) Upon receipt of notification of the division's determination that the application is administratively complete, the applicant for a new permit, permit renewal or major modification shall give written notice of the application, by certified mail, return receipt requested, to the surface owners of record within one mile of the facility, the county commission of the county where the facility site is located, the appropriate city officials if the facility site is within city limits or within one mile of the city limits, and any affected federal, tribal or pueblo governmental agency. ~~The division may extend the distance requirements for notice if the division determines that the proposed facility has the potential to adversely impact fresh water, public health, safety or the environment at a distance greater than one mile.~~ The applicant shall furnish proof that it has given the required notices.

(b) Following mailing of notice as provided in Subparagraph (a) of Paragraph (4) of Subsection C of 19.15.2.53 NMAC, the applicant shall publish notice, in a form approved by the division, in a newspaper of general circulation in the county of the facility's location or proposed location, and in a newspaper of general circulation in the state.

(c) The division shall distribute notice of its determination that an application for a new facility or for a renewal or major modification of an existing facility is administratively complete to all persons who have requested notification of division and commission hearing dockets within 30 days following the date that the division determines the application to be administratively complete.

(d) Any person wishing to comment on an application prior to the division's preliminary consideration of the application may file comments within 30 days, or as extended by the division director, after the date of publication of notice of the application in the newspaper.

(e) Within 60 days after the end of the public comment period provided in Subparagraph (d) of Paragraph (4) of Subsection C of 19.15.2.53 NMAC, the division shall issue a tentative decision concerning the application, renewal or modification, including proposed conditions for approval or reasons for disapproval, as applicable. The division shall mail notice of the tentative decision, together with a copy of the decision, by certified mail, return receipt requested, to the applicant and shall post notice on the division's website, together with a copy of the tentative decision.

(f) Within 30 days after receiving the division's tentative decision, the applicant shall provide notice of the tentative decision by:

(i) publishing notice, in a form approved by the division, in a newspaper of general circulation in this state and in a newspaper of general circulation in the county where the facility is or will be located;

(ii) mailing notice by first class mail or e-mail to all persons, as identified to the applicant by the division, who have requested notification of applications generally, or of the particular application, including all persons who have filed comments on the particular application during the initial public comment period, and who have included in such comments a legible return address or e-mail address; and

(iii) mailing notice by first class or e-mail to any affected local, state, federal or tribal governmental agency, as determined and identified to the applicant by the division.

(g) The notice issued pursuant to Subparagraph (f) of Paragraph (4) of Subsection C of 19.15.2.53 NMAC shall include:

(i) the applicant's name and address;

(ii) the facility's location, including a street address if available, and sufficient information to locate the facility with reference to surrounding roads and landmarks;

(iii) a brief description of the proposed facility;

(iv) the depth to, and TDS concentration of, the ground water in the shallowest aquifer beneath the facility site;

(v) a statement that the division's tentative decision is available on the division's website, or, upon request, from the division clerk, including the division clerk's name, address and telephone number;

(vi) a statement of the comment period and of the procedures for requesting a hearing on the application; and

(vii) a brief statement of the procedures to be followed by the division in making a final decision.

(h) Any person, whether or not such person has previously submitted comments, may file comments or request a hearing on the application by filing their comments or hearing request with the division clerk within 30 days after the date that the applicant issued public notice of the division's tentative decision. Any request for a hearing shall be in writing and shall state specifically the reasons why a hearing should be held. The division shall schedule a public hearing on the application if:

(i) the division has proposed to deny the application or grant it subject to conditions not expressly required by rule, and the applicant requests a hearing;

(ii) the division director determines that there is significant public interest in the application;

(iii) the division director determines that comments have raised objections that have probable technical merit; or

(iv) determination of the application requires that the division make a finding, pursuant to Paragraph (3) of Subsection F of 19.15.1.7 NMAC, whether any water source has a reasonably foreseeable beneficial use.

(i) If the division schedules a hearing on an application, it shall give notice of the hearing's date, time and place by certified mail, return receipt requested, to the applicant and to each person who has specifically requested a hearing in writing, and by first class or electronic mail to all other persons who have filed written comments and provided a current address on the application.

(5) Financial assurance requirements.

(a) Centralized facilities. Upon notification by the division that it has approved a permit but prior to the division issuing the permit, an applicant for a new centralized facility permit shall submit acceptable financial assurance in the amount of \$25,000 per facility, or a statewide "blanket" financial assurance in the amount of \$50,000 to cover all of that applicant's centralized facilities, unless such applicant has previously posted a blanket financial assurance for centralized facilities.

(b) New commercial facilities or major modifications of existing facilities. Upon notification by the division that it has approved a permit for a new commercial facility or a major modification of an existing commercial facility but prior to the division issuing the permit, the applicant shall submit acceptable financial assurance in the amount of the facility's estimated closure and post closure cost, or \$25,000, whichever is greater. The facility's estimated closure and post closure cost shall be the amount provided in the closure plan the applicant submitted unless the division determines that such estimate does not reflect a reasonable and probable closure and post closure cost, in which event, the division shall determine the estimated closure and post closure cost and shall include such determination in its tentative decision. If the applicant disagrees with the division's determination of estimated closure and post closure cost, the applicant may request a hearing as provided in Subparagraph (h) of Paragraph (4) of Subsection C of 19.15.2.53 NMAC. If the applicant so requests, and no other person files a request for a hearing regarding the application, the hearing shall be limited to determination of estimated closure and post closure cost.

(c) Terms of financial assurance. The financial assurance shall be on forms prescribed by the division, payable to the state of New Mexico and conditioned upon the proper operation of the facility, closure of the site and post closure monitoring in compliance with statutes of the state of New Mexico, division rules and the permit terms. The applicant shall notify the division of any material change affecting the financial assurance within 30 days of discovery of such change.

(d) Forfeiture of financial assurance. The division shall give the operator twenty days notice and opportunity for a hearing prior to forfeiting any financial assurance.

(6) Forms of financial assurance. The division may accept the following forms of financial assurance:

(a) Surety bonds. A surety bond shall be executed by the applicant and by a corporate surety licensed to do business in the state, and shall be non-cancelable.

(b) Letters of credit. A letter of credit shall be issued by a bank organized or authorized to do commercial banking business in the United States, shall be irrevocable for a term of not less than five years and shall provide for automatic renewal for successive, like terms upon expiration, unless the issuer has notified the division in writing of non-renewal at least 90 days before its expiration

date. The letter of credit shall be payable to the state of New Mexico in part or in full upon receipt from the division director or his authorized representative of demand for payment accompanied by a notice of forfeiture.

(c) **Cash accounts.** An applicant may provide financial assurance in the form of a federally insured or equivalently protected cash account or accounts in a financial institution, provided that the operator and the financial institution shall execute as to each such account a collateral assignment of the account to the division, which shall provide that only the division may authorize withdrawals from the account. In the event of forfeiture under paragraph (3) of subsection J of 19.15.2.53 NMAC, and the division may, at any time and from time to time, direct payment of all or any part of the balance of such account (excluding interest accrued on the account) to itself or its designee for closure of the facility.

(d) **Replacement of financial assurance.**

(i) The division may allow an operator to replace existing forms of financial assurance with other forms of financial assurance that provide equivalent coverage.

(ii) The division shall not release any existing financial assurance until the operator has submitted, and the division has approved, an acceptable replacement.

(e) **Review of adequacy of financial assurance.** The division may at any time not less than five years after acceptance of financial assurance for a commercial facility, initiate a review of such financial assurance's adequacy. Upon determination, after notice to the operator and opportunity for a hearing, that the financial assurance is not adequate to cover the reasonable and probable cost of closure of such facility and post closure monitoring, the division may require the operator to furnish additional financial assurance sufficient to cover such reasonable and probable cost, provided that the financial assurance required of a facility permitted prior to the effective date of 19.15.2.53 NMAC shall not exceed \$250,000 except in the event of a major modification of such facility. If such a facility applies for a major modification, the division shall determine the applicable financial assurance requirement based on the total estimated closure and post closure cost of the facility as modified, without regard to the \$250,000 limit.

D. Permit approval, denial, revocation, suspension, modification and transfer.

(1) **Granting of permit.**

(a) New and modified facilities; renewals. The division shall issue a permit for a new facility, ~~or major modification, minor modification or permit renewal~~ upon finding that an acceptable application has been filed, that the conditions of Paragraphs (4) and (5) of Subsection C of 19.15.2.53 NMAC have been met and that the facility or modification can be constructed, if applicable, and operated in compliance with applicable statutes and rules and without endangering fresh water, public health, safety or the environment.

(b) Permit term. Each permit issued for a new surface waste management facility shall remain in effect for 10 years from the date of its issuance. If the division grants a permit for a major modification of any facility, the permit for that facility shall remain in effect for 10 years from the date the division approves the major modification. Any permit may be renewed for successive 10-year terms. If the holder of a surface waste management facility permit submits an application for permit renewal at least 120 days before the permit expires, and the operator is not in violation of the permit on the date of its expiration, then the existing permit for the same activity shall not expire until the division has approved or denied an application for renewal. If the division has not notified the operator of a violation, if the operator is diligently pursuing procedures to contest any violation, or if the operator and the division have signed an agreed compliance order providing for remedying the violation, then the permit shall continue in effect as above provided notwithstanding existence of a permit violation. A surface waste management facility permit continued under this provision remains fully effective and enforceable. An application for permit renewal shall include and adequately address all of the information necessary for evaluation of a new permit as provided in Paragraph (1) of Subsection C of 19.15.2.53 NMAC. Previously submitted materials may be included by reference provided they are current, readily available to the division and sufficiently identified so that the division may retrieve them. The operator shall give public notice of the renewal application in the manner prescribed by Paragraph (4) of Subsection C of 19.15.2.53 NMAC. The division shall grant an application for renewal if the division finds that an acceptable application has been filed, that the conditions of Paragraphs (4) and (5) of Subsection C of 19.15.2.53 NMAC have been met, and that the facility can be operated in compliance with applicable statutes and rules and without endangering fresh water, public health, safety or the environment.

(c) Permit review. The division shall review each permit at least once during the ten-year term, and shall review permits to which Subparagraph (b) of Paragraph (1) of Subsection D of 19.15.2.53 NMAC does not apply at least every five years. The review shall address the operation, compliance history, financial assurance and technical requirements for the surface waste management facility. The division, after notice to the operator and opportunity for a hearing, may require appropriate modifications of the permit, including modifications necessary to make the permit terms and conditions consistent with statutes, rules or judicial decisions.

(2) Denial of permit. The division may deny an application for a permit, or modification or renewal of a permit, if it finds that the proposed facility or modification ~~would~~ may endanger fresh water or ~~would~~ may be detrimental to fresh water, public health, safety or the environment.

~~The division may also deny an application for a permit if the applicant, an owner of 25 percent or greater interest in the applicant, or an affiliate of the applicant, has a history of failure to comply with division rules and orders or state or federal environmental laws, is subject to a division or commission order, issued after notice and hearing, finding such entity to be in violation of an order requiring corrective action, or has a penalty assessment for violation of division or commission rules or orders that is unpaid more than 70 days after issuance of the order assessing the penalty. An affiliate of an applicant, for purposes of Paragraph (2) of Subsection D of 19.15.2.53 NMAC, shall be a person who controls, is controlled by, or under common control with, the applicant or a 25 percent or greater owner of the applicant.~~

(3) Additional requirements. The division may impose additional conditions or requirements, in addition to the operational requirements set forth in 19.15.2.53 NMAC, that it determines are necessary and proper for the protection of fresh water, public health, safety or the environment. If appealed, the division has the burden to prove at hearing that the additional requirements are necessary to protect fresh water, public health or the environment. Any such additional conditions or requirements shall be incorporated into the permit.

(4) Revocation, suspension or modification of a permit. The division may revoke, suspend or impose additional operating conditions or limitations on a permit at any time, for good cause, after notice to the operator and opportunity for a hearing. The division may suspend a permit, or impose additional conditions or limitations, in an emergency to forestall an imminent threat to fresh water, public health, safety or the environment, subject to the provisions of Section 70-2-23 NMSA 1978, as amended. If the division initiates a major modification it shall provide notice in accordance with Paragraph (4) of Subsection C of 19.15.2.53 NMAC. Suspension of a permit may be for a fixed period of time or until the operator remedies the violation or potential violation. If a facility's permit is suspended, such facility shall not accept new waste during the suspension period.

(5) Permit transfer. An operator shall not transfer a permit without the division's prior written approval. A request for transfer of a permit shall identify all officers, directors and owners of 25 percent or greater interest in the transferee. No public notice or hearing shall be required for approval of such a request unless the director otherwise orders. If the division denies approval of the requested transfer, it shall notify the operator and the proposed transferee of such denial by certified mail, return receipt requested, and either the operator or the proposed transferee may request a hearing within 10 days after receipt of the notice. Until the division approves the transfer and the required financial assurance is in place, the division shall not release the transferor's financial assurance.

E. Siting and operational requirements applicable to all permitted facilities. Except as otherwise provided in 19.15.2.53 NMAC:

(1) No surface waste management facility shall be located where ground water is less than 50 feet below the lowest elevation at which waste will be placed at the facility.

(2) No surface waste management facility shall be located:

(a) within 200 feet of any ~~waterecourse, lakebed, sinkhole or playa lake; perennial or intermittent stream; or ephemeral watercourse with a width of six feet or more or less from bank to bank in the area of the proposed facility, unless the division approves engineering measures that provide an equivalent level of protection;~~

(b) within an existing wellhead protection area or 100-year floodplain;

(c) within, or within 500 feet of, any wetland;

(d) within the area overlying any subsurface mine registered with the department of energy, minerals and natural resources, as listed on the mines, mills and quarries map;

(e) within 500 feet from the nearest permanent residence, school, hospital,

institution or church in existence at the time of initial application;

(f) within any seismic impact zone, unless the operator demonstrates that all containment structures, including liners, leachate collection and removal systems and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site; or

(g) within any unstable area, unless the operator demonstrates that engineering measures have been incorporated into the facility design to ensure that the integrity of the facility will not be compromised.

(h) For purposes of this paragraph, a "lakebed" is any portion of a navigable lake.

(3) No surface waste management facility shall exceed 500 acres.

(4) No liquid wastes transported by ~~motor vehicle~~ a commercial carrier shall be accepted at the facility unless the transporter has a form C-133, authorization to move liquid waste, approved by the division.

(5) No waste containing free liquids shall be placed in any landfill or landfarm cell. Operators shall use the paint filter test, as prescribed by the federal Environmental Protection Agency (EPA SW-846, Method 9095) to determine conformance of the waste to this criterion.

(6) Facilities shall accept only exempt or non-hazardous oil field waste, except as provided in Subparagraph (c) of Paragraph (6) of Subsection E of 19.15.2.53 NMAC. No hazardous waste shall be accepted at a permitted facility. No wastes containing regulated naturally occurring radioactive material (NORM) shall be accepted at a permitted facility except as provided in Subsection C of 19.15.9.714 NMAC. The operator shall require the following documentation for accepting wastes, and both the operator and the generator shall maintain and make said documentation available for division inspection.

(a) Exempt oil field wastes. The operator shall require a certification on a form of its choice, signed by the generator or its authorized agent, that represents and warrants that the wastes are generated from oil and gas exploration and production operations, are exempt waste, and are not mixed with non-exempt waste. The operator shall have the option to accept such certifications on a monthly, weekly or per load basis. The operator shall maintain and shall make said certificates available for the division's inspection.

(b) Non-exempt, non-hazardous, oil field wastes. The operator shall require a form C-138, oil field waste document, signed by the generator or its authorized agent. This form shall be accompanied by acceptable documentation to determine that the waste is non-hazardous.

(c) Emergency non-oil-field wastes. An operator may accept non-hazardous, nonoil-field wastes in an emergency if ordered by the department of public safety. The operator shall complete a form C-138, oil field waste document, describing the waste, and maintain the same, accompanied by the department of public safety order, subject to division inspection.

(7) The operator of a commercial facility shall maintain records reflecting the generator, the location of origin, the location of disposal within the facility, the volume and type of waste, the date of disposal and the hauling company for each load or category of waste accepted at the facility. The operator shall maintain such records for a period of not less than five years after facility closure, subject to division inspection.

(8) Disposal at a facility shall occur only when an attendant is on duty unless loads can be monitored or otherwise isolated for inspection before disposal. The facility shall be secured to prevent unauthorized disposal when no attendant is present.

(9) To protect migratory birds, all tanks exceeding eight feet in diameter, and exposed pits and ponds shall be screened, netted or covered. Upon the operator's written application, the division may grant an exception to screening, netting or covering of a facility upon the operator's showing that an alternative method will protect migratory birds or that the facility is not hazardous to migratory birds. All waste management facilities shall be fenced in a manner approved by the division.

(10) All waste management facilities shall have a sign, readable from a distance of 50 feet, containing the operator's name, permit or order number, facility location by unit letter, section, township and range and emergency telephone numbers.

(11) Operators shall comply with the spill reporting and corrective action provisions of 19.15.1.19 or 19.15.3.116 NMAC.

(12) Each operator shall have an inspection and maintenance plan that includes the following:

(a) ~~for landfills,~~ monthly inspection of all leak detection sumps and systems including sampling if fluids are present, with analyses of any fluid samples furnished to the division, and maintenance of records of inspection dates, the inspector and the status of the leak detection system;

(b) ~~for landfills,~~ semi-annual inspection and sampling of all monitor wells as required, with analyses of ground water furnished to the division; and maintenance of records of inspection dates, the inspector and the status of ground water monitoring wells;

(c) inspections of the berms and the outside walls of all pond levees quarterly and after any major rainfall or windstorm, and maintenance of berms in such a manner as to prevent erosion.

(13) Each operator shall have a plan to control run-on water onto the site and run-off water from the site, such that:

(a) the run-on and run-off control system shall prevent flow onto the facility's active portion during the peak discharge from a 25-year, 24-hour storm event;

(b) run-off from the facility's active portion shall not be allowed to discharge any pollutant to the waters of the state or United States that violates any state water quality standards.

(14) Contingency plan. Each operator shall have a contingency plan. ~~unless the operator can demonstrate that a failure of the operations plan should not reasonably cause a fire, explosion, or sudden release of contaminants.~~ The operator shall provide the division's environmental bureau with a copy of any amendment to the contingency plan, including amendments required by Subparagraph (h) of Paragraph (14) of Subsection E of 19.15.2.53 NMAC; and promptly notify the division's environmental bureau of any changes in the emergency coordinator or in the emergency coordinator's contact information. The contingency plan shall be designed to minimize hazards to fresh water, public health, safety or the environment from fires, explosions or any unplanned, sudden or non-sudden, release of contaminants or waste to air, soil, surface water or ground water. The operator shall carry out the plan's provisions immediately whenever there is a fire, explosion or release of contaminants or waste containing constituents that could threaten fresh water, public health, safety or the environment; provided that the emergency coordinator may deviate from the plan as necessary in an emergency situation. The contingency plan for emergencies shall:

(a) describe the actions facility personnel must take in response to fires, explosions or releases to air, soil, surface water or ground water of contaminants or waste containing constituents that could threaten fresh water, public health, safety or the environment;

(b) describe arrangements with local police departments, fire departments, hospitals, contractors and state and local emergency response teams to coordinate emergency services;

(c) list the emergency coordinator's name, address and office, home and mobile phone numbers (Where more than one person is listed, one must be named as the primary emergency coordinator.);

(d) include a list, which shall be kept current, of all emergency equipment at the facility such as fire extinguishing systems, spill control equipment, communications and alarm systems and decontamination equipment, containing a physical description of each item on the list and a brief outline of its capabilities;

(e) include an evacuation plan for facility personnel that describes signals to be used to begin evacuation, evacuation routes and alternative evacuation routes in cases where fire or releases of wastes could block the primary routes;

(f) include an evaluation of expected contaminants, expected media contaminated and procedures for investigation, containment and correction or remediation;

(g) list where copies of the contingency plan will be kept, which shall include the facility; ~~all local police departments, fire departments and hospitals; and state and local emergency response planning committee teams;~~

(h) indicate when the contingency plan will be amended, which shall be within ~~thirty (30) working days~~ whenever of an event (i) through (v):

(i) the facility permit is revised or modified;

(ii) the plan fails in an emergency;

(iii) the facility changes design, construction, operation, maintenance or other circumstances in a way that increases the potential for fires, explosions or releases of waste constituents that could threaten freshwater, public health, safety or the environment, or changes the response necessary in an emergency;

(iv) the list of emergency coordinators or their contact information changes; or

(v) the list of emergency equipment changes;
(i) describe how the emergency coordinator or his designee, whenever there is an imminent or actual emergency situation, will immediately;

(i) activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(ii) notify appropriate state and local agencies with designated response roles if their assistance is needed;

(j) describe how the emergency coordinator, whenever there is a release, fire or explosion, will immediately identify the character, exact source, amount and extent of any released materials (The emergency coordinator may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.) and describe how the emergency coordinator will concurrently assess possible hazards to fresh water, public health, safety or the environment that may result from the release, fire or explosion (This assessment shall consider both the direct and indirect hazards associated with the release, fire or explosion.);

(k) describe how, if the facility stops operations in response to fire, explosion or release, the emergency coordinator will monitor for leaks, pressure buildup, gas generation or rupture in valves, pipes or the equipment, wherever this is appropriate;

(l) describe how the emergency coordinator, immediately after an emergency, will provide for treating, storing or disposing of recovered waste, or any other material that results from a release, fire or explosion at a facility; and

(m) describe how the emergency coordinator will ensure that no waste that may be incompatible with the released material is treated, stored or disposed of until cleanup procedures are complete.

(n) The emergency coordinator may amend the plan as necessary to protect fresh water, public health or the environment during an emergency.

(15) Gas safety management plan. Each operator of a facility that includes a landfill shall have a gas safety management plan that describes in detail procedures and methods that will be used to prevent landfill-generated gases from interfering or conflicting with the landfill's operation and protect fresh water, public health, safety and the environment. The plan shall address anticipated amounts and types of gases that may be generated, an air monitoring plan that includes the vadose zone, and measuring, sampling, analyzing, handling, control and processing methods. The plan shall also include final post closure monitoring and control options.

(16) Training program. Each operator shall conduct an annual training program for key personnel that includes general operations, permit conditions, emergencies, proper sampling methods, and identification of exempt and non-exempt waste, and hazardous waste. The operator shall maintain records of such training, subject to division inspection, for five years.

F. Specific requirements applicable to landfills.

(1) Permitting requirements

(a) in the case of an application to permit a new or expanded landfill, a leachate management plan that describes the anticipated amount of leachate that will be generated and the handling, storage, treatment and disposal of the leachate, including final post closure options;

(b) in the case of an application to permit a new or expanded landfill, a gas safety management plan that complies with the requirements of Paragraph (15) of Subsection E of 19.15.2.53 NMAC;

(12) General operating requirements.

(a) The operator shall confine the landfill's working face to the smallest practical area and compact the oil field waste to the smallest practical volume. The operator shall not use equipment that may damage the integrity of the liner system in direct contact with a geosynthetic liner.

(b) The operator shall prevent unauthorized access by the public and entry by large animals to the landfill's active portion through the use of fences, gates, locks or other means that attain equivalent protection.

(c) The operator shall prevent and extinguish fires.

(d) The operator shall control litter and odors.

(e) The operator shall not excavate a closed cell or allow others to excavate a closed cell except as approved by the division.

(f) The operator shall provide adequate cover for the landfill's active face as needed to control dust, debris, odors and other nuisances, or as otherwise required by the division.

(g) For all areas of the landfill that will not receive additional waste for one month or more, but have not reached the final waste elevation, the operator shall provide intermediate cover that shall be:

(i) approved by the division;

(ii) stabilized with vegetation ; and

(iii) inspected and maintained to prevent erosion and manage infiltration or leachate during the waste deposition process.

(h) When a landfill cell has been filled it shall be closed pursuant to the conditions contained in the surface waste management facility permit and the requirements of Subparagraph (b) of Paragraph (4) of Subsection J of 19.15.2.53 NMAC. The operator shall notify the division's environmental bureau at least three working days prior to closure of a landfill cell.

(23) Ground water monitoring program. If fresh ground water exists at the site, the operator shall, unless otherwise approved by the Division, establish a ground water monitoring program, approved by the division's environmental bureau, that shall include a ground water monitoring work plan, a sampling and analysis plan, and a ground water monitoring system. The ground water monitoring system shall consist of a sufficient number of wells, installed at appropriate locations and depths, to yield ground water samples from the uppermost aquifer that:

(a) represent the quality of background ground water that has not been affected by leakage from a landfill; and

(b) represent the quality of ground water passing beneath and down gradient of the surface waste management facility.

(34) Landfill design specifications. All new landfill and lateral expansions of existing landfill design systems shall include a base layer and a lower geomembrane liner (e.g., composite liner), a leak detection system, an upper geomembrane liner, a leachate collection and removal system, a leachate collection and removal system protective layer, an oil field waste zone and a top landfill cover.

(a) The base layer shall, at a minimum, consist of two feet of clay soil compacted to a minimum 90% Standard Proctor Density (ASTM D-698.) with a hydraulic conductivity of 1×10^{-7} cm/sec or less. In areas where depth to ground water is greater than 100 feet, or where no ground water is present, the operator may propose an alternative base layer design, subject to division approval.

(b) The lower geomembrane liner shall consist of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division.

(c) The leak detection system shall be placed between the lower and upper geomembrane liners and shall consist of two feet of compacted granular soil with a saturated hydraulic conductivity of 1×10^{-2} cm/sec or greater or a geonet drainage layer, to facilitate drainage. The leak detection system shall consist of a drainage and collection system placed no more than six inches above the lower geomembrane liner in depressions and sloped so as to facilitate earliest possible leak detection at designated collection point(s). All drainage piping shall be designed to withstand chemical attack from waste or leachate and structural loading and other stresses and disturbances from overlying waste, cover materials, equipment operation, expansion or contraction, and to facilitate clean-out maintenance. The material placed between the pipes and laterals shall be sufficiently permeable to allow the transport of fluids to the drainage pipe. The slope of the landfill sub-grade and all drainage lines and laterals shall be at least a two percent grade; i.e., two feet of vertical drop per 100 horizontal feet. The piping collection network shall be comprised of solid and perforated pipe having a minimum diameter of four inches and a minimum wall thickness of schedule 80. A solid drainage pipe shall be sealed to convey any collected fluids to a corrosion-proof sump or sumps located outside the perimeter of the landfill, for observation, storage, treatment or disposal. Alternative designs may be installed as approved by the Division.

(d) The upper geomembrane liner shall be placed over the leak detection system and shall consist of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division.

(e) The leachate collection and removal system shall be placed over the upper geomembrane liner and shall consist of at least two feet of ~~compacted-granular~~ soil with a saturated hydraulic conductivity of 1×10^{-2} cm/sec or greater, to facilitate drainage. The leachate collection and removal system shall consist of a drainage and collection and removal system placed no more than six inches above the upper geomembrane liner in depressions and sloped so as to facilitate the maximum leachate collection. All piping shall be designed to withstand chemical attack from waste or leachate and structural loading and other stresses and disturbances from overlying waste, cover materials, equipment operation, expansion or contraction, and to facilitate clean-out maintenance. The material placed between the pipes and laterals shall be sufficiently permeable to allow the transport of fluids to the drainage pipe. The slope of the upper geomembrane liner and all drainage lines and laterals shall be at least a two percent grade; i.e., two feet of vertical drop per 100 horizontal feet. The piping collection network shall be comprised of solid and perforated pipe having a minimum diameter of four inches and a minimum wall thickness of schedule 80. A solid drainage pipe shall be sealed to convey any collected fluids outside the perimeter of the landfill for storage, treatment and disposal. Alternative designs may be installed as approved by the Division.

(f) The leachate collection and removal system protective layer shall be placed over the leachate collection and removal system and shall consist of a soil layer at least one foot thick with a saturated hydraulic conductivity of 1×10^{-2} cm/sec or greater.

(g) Oil field waste shall be placed above the leachate collection and removal system protective layer.

(h) The top landfill cover design shall consist of the following layers (top to bottom): a soil erosion layer composed of fertile topsoil (at least 6 inches) re-vegetated in accordance with the post closure provisions of Paragraph ~~(44)~~ or (5) of Subsection J of 19.15.2.53 NMAC; a protection or frost protection layer composed of native soil (12 to 30 inches), a drainage layer composed of sand or gravel (at least 12 inches) with a saturated hydraulic conductivity of 1×10^{-2} cm/sec or greater and a minimum bottom slope of four percent, a hydraulic barrier-layer-geomembrane (minimum 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division), and a gas vent or foundation layer composed of sand or gravel (at least twelve inches) above waste with soils compacted to the minimum eighty percent Standard Proctor Density. The operator shall install the top landfill cover within one year of achieving the final landfill cell waste elevation. The operator shall ensure that the final landfill design elevation of the working face of waste is achieved in a timely manner with date recorded in a field construction log. The date of top landfill cover installation shall also be recorded to document the timely installation of all top landfill covers. The operator shall provide a minimum of three working days notice to the division in advance of the installation of any top landfill cover to allow the division to witness the installation of all top landfill covers.

(i) Alternatively, the operator may propose a performance-based landfill design system using geosynthetics or geocomposites, including geogrids, geonets, geosynthetic clay liners, composite liner systems, etc., when supported by EPA's "Hydrologic Evaluation of Landfill Performance" (HELP) Model or other model approved by the division. All landfills shall be designed to prevent the "bathtub effect." The bathtub effect occurs when a more permeable cover is placed over a less permeable bottom liner or natural subsoil.

(j) External piping; e.g., leachate collection, leak detection, and sump removal systems, shall be designed for the installation of a side-wall riser pipe. Pipes shall not penetrate the liner with the exception of gas vent or collection wells where the operator shall install a flexible clamped pipe riser through the top landfill cover liner that will accommodate waste settling and will prevent tears.

~~(45)~~ Liner specifications and requirements.

(a) General requirements.

(i) Geomembrane liner specifications. Geomembrane liners shall consist of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division. All geomembrane liners shall have a hydraulic conductivity no greater than 1×10^{-9} cm/sec. Geomembrane liners shall be composed of impervious, geosynthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. Liners shall also be resistant to ultraviolet light, or provisions shall

be made to protect the material from sunlight. Liner compatibility shall comply with EPA SW-846 Method 9090A.

(ii) All liners must be able to withstand projected loading stresses, settling and disturbances from overlying waste, waste cover materials and equipment operations.

(iii) All liners shall be constructed with a minimum two percent slope to promote positive drainage and to facilitate leachate collection and leak detection.

(b) Additional requirements for geomembranes:

(i) Geomembranes shall be compatible with the waste to be disposed. Geomembranes shall be resistant to chemical attack from the waste or leachate. The operator shall demonstrate this by means of the manufacturer's test reports, laboratory analyses or other division-approved method.

(ii) Any geosynthetic material installed on a slope greater than 25 percent shall be designed to withstand the calculated tensile forces acting upon the material. The design must consider the maximum friction angle of the geosynthetic with regard to any soil-geosynthetic or geosynthetic-geosynthetic interface and must ensure that overall slope stability is maintained.

(iii) Field seams in geosynthetic material shall be thermally seamed (hot wedge) with a double track weld to create an air pocket for non-destructive air channel testing. In areas where double track welding cannot be achieved, the operator may propose alternative thermal seaming methods. A stabilized air pressure of 35 psi +/- one percent, shall be maintained for at least five minutes. Liners shall be overlapped four to six inches before seaming, and seams shall be oriented parallel to the line of maximum slope; i.e., oriented along, not across, the slope. The number of field seams in corners and irregularly shaped areas shall be minimized. Factory seams shall be used where possible. There shall be no horizontal seams within five feet of the toe of the slope. Qualified personnel shall perform all field seaming.

(c) Requirements for the soil component of composite liners.

(i) The base layer shall be placed, and compacted to 90% Standard Proctor Density on a prepared subgrade.

(ii) The surface of the soil upon which a geosynthetic will be installed shall be free of stones greater than one half inch in any dimension, organic matter, local irregularities, protrusions, loose soil and any abrupt changes in grade that could damage the geosynthetic.

(iii) Any clay soil component of any composite liner shall be compacted to a minimum of 90% Standard Proctor Density and shall, unless otherwise approved by the division, have a plasticity index greater than 10%, a liquid limit between 25% and 50%, a portion of material passing the No. 200 sieve (0.074 mm and less fraction) greater than 40% by weight, and clay content greater than 18% by weight.

(d) The leachate collection and removal system protective layer and the soil component of the leak detection system shall consist of soil materials that shall be free of any organic matter, shall have a portion of material passing the No. 200 sieve no greater than five percent by weight, and shall have a uniformity coefficient (Cu) less than 6, where Cu is defined as D60/D10. Any geosynthetic materials or geocomposites including geonets and geotextiles, if used as components of the leachate collection and removal or leak detection system, shall have a hydraulic conductivity, transmissivity and chemical and physical qualities that will not be adversely affected by waste placement, equipment operation or leachate generation. These geosynthetics or geocomposites, if used in conjunction with the soil protective cover for liners, shall have a hydraulic conductivity designed to ensure that the hydraulic head on the liner never exceeds one foot.

(56) Landfill Gas Control Systems: If the gas safety management plan or requirements of other federal, state or local agencies, require the installation of a gas control system at a landfill, the operator shall submit a plan for approval by the division which shall include the following:

(a) design of the system, indicating the location and design of vents, barriers, collection piping and manifolds and other control measures that will be installed (gas vent or collection wells shall incorporate a clamped and seamed pipe riser design through the top cover liner);

(b) if gas recovery is proposed, the design of the proposed gas recovery system and the major on-site components of the system, including storage, transportation, processing, treatment or disposal measures required in the management of the generated gases, condensates or other residues;

(c) if gas processing is proposed, a processing plan designed in a manner that does not interfere or conflict with the activities on the site or required control measures, or create or cause danger to persons or property;

(d) if gas disposal is proposed, a disposal plan designed:

(i) in a manner that does not interfere or conflict with the activities on the site or with required control measures;

(ii) so as not to create or cause danger to persons or property; and

(iii) with active forced ventilation, using vents located at least one foot above the landfill surface at the location of each gas vent;

(e) physical and chemical characterization of condensates or residues which are generated and a plan for their disposal;

(f) means that will be implemented to prevent the generation and lateral migration of gas such that:

(i) the concentration of the gases generated by the facility does not exceed 25 percent of the lower explosive limit for all gases in facility structures (excluding gas control or recovery system components); and

(ii) the concentration of any gases does not exceed the lower explosive limit for all gases at the facility property boundary;

(g) a routine gas monitoring program providing for monitoring at least quarterly; the specific type and frequency of monitoring to be determined based on the following:

(i) soil conditions;

(ii) the hydrogeologic and hydraulic conditions surrounding the facility; ~~and~~

(iii) the location of facility structures and property lines.

(67) Landfill gas response. If gas levels exceed the limits specified in Subparagraph (f) of Paragraph (56) of Subsection F of 19.15.2.53 NMAC, the operator shall:

(a) immediately take all necessary steps to ensure protection of fresh water, public health, safety and the environment and notify the division;

(b) within seven days of detection, record gas levels detected and a description of the steps taken to protect fresh water, public health, safety and the environment;

(c) within 30 days of detection, submit a remediation plan for gas releases, that describes the nature and extent of the problem and the proposed remedy; and

(d) within 60 days after division approval, implement the remediation plan and notify the division that the plan has been implemented.

G. Specific requirements applicable to permitted landfarms.

(1) **Waste acceptance criteria.** ~~Except as provided in subparagraph (b), Only soils and drill cuttings predominantly contaminated by petroleum hydrocarbons may be placed in a landfarm. The division may approve placement of tank bottoms in a landfarm if the operator demonstrates that the tank bottoms do not contain economically recoverable petroleum hydrocarbons or that no treatment plant capable of extracting any recoverable petroleum hydrocarbons exists within reasonable proximity.~~

(a) **Tier 1I criteria.** ~~A tier 1 landfarm may accept only soils and drill cuttings contaminated by petroleum hydrocarbons. All soils and drill cuttings waste placed in any landfarm shall be sufficiently free of liquid content to pass the paint filter test and shall not have a chloride concentration exceeding 1000 mg/kg. The person tendering soils or drill cuttings waste for treatment at a landfarm shall certify, on form C-138, that representative samples of the material waste have been subjected to the paint filter test and tested for chloride content, and that the samples have been found to conform to these requirements. The landfarm's operator shall not accept soils and drill cuttings waste for landfarm treatment unless accompanied by this certification.~~

(b) **Tier 2H criteria.** ~~A tier 2 landfarm may accept exempt oil field waste. Using a division-recognized model and upon division approval, a landfarm operator may include in its operations plan provisions allowing specified quantities of oil field wastes exceeding the paint filter test and/or chloride concentrations exceeding 1000 mg/kg, provided that such materials will not cause an exceedance of applicable WOCC ground water standards. The division may approve placement of tank bottoms or other oil field waste in a landfarm if the operator demonstrates that the tank bottoms do not contain economically recoverable petroleum hydrocarbons or that no treatment plant capable of extracting any recoverable petroleum hydrocarbons exists within reasonable proximity and the operator agrees to Tier~~

2 background testing specified in paragraph (2) of Subsection G of 19.15.2.53 NMAC. The person tending waste for treatment at the landfarm shall certify, on form C-138, that representative samples of the waste have been tested and that the samples have been found to conform to the operations plan requirements. The landfarm's operator shall not accept waste for landfarm treatment unless accompanied by this certification.

(2) Background testing. Prior to beginning operation of a new landfarm or to opening a new cell at an existing landfarm, the operator shall take, at a minimum, four background soil samples from each landfarm cell, up to three to five ten feet below the original ground surface as specified in the operations plan, to establish background concentrations.

(a) Tier 1 criteria. The A tier 1 operator shall analyze the background soil samples for total petroleum hydrocarbons (TPH-GRO and TPH-DRO), as determined by EPA Method 418.48015M (or other EPA method approved by the division), benzene, toluene, ethyl benzene and xylenes (BTEX), as determined by EPA SW-846 Method 8021B, and chlorides, and other constituents listed in Subsections A and B of 20.6.2.3103 NMAC, using approved United States Environmental Protection Agency (EPA) methods.

(b) Tier 2 criteria. A tier 2 if the operator shall analyze the background soil samples for total petroleum hydrocarbons (TPH-GRO and TPH-DRO), as determined by EPA Method 8015M, benzene, toluene, ethyl benzene and xylenes (BTEX), as determined by EPA SW-846 Method 8021B, chlorides, and other constituents listed in Subsections A and B of 20.6.2.3103 NMAC using approved United States Environmental Protection Agency (EPA) methods.

(3) Operation and waste treatment.

(a) The operator shall berm the landfarm to prevent run-on and run-off of rainwater.

(b) The operator shall not place contaminated soils received at any landfarm after the effective date of 19.15.2.53 NMAC within 100 feet of a boundary of the facility.

(c) The operator shall not place contaminated soils received at any landfarm after the effective date of 19.15.2.53 NMAC within 20 feet of any pipeline crossing the landfarm.

(d) The operator shall biopile or spread and disk all contaminated soils in eight inch or less lifts within 72 hours of receipt.

(e) The operator shall ensure that soils are disked biweekly and biopiles are turned at least monthly.

(f) The operator shall add moisture, as necessary, to enhance bioremediation and to control blowing dust.

(g) The application of microbes for the purposes of enhancing bioremediation requires prior division approval.

(h) Pooling of liquids in the landfarm is prohibited. Freestanding water shall be removed within 24-72 hours of a precipitation event.

(i) The operator shall maintain records of the facility's remediation activities in a form readily accessible for division inspection.

(j) The maximum thickness of treated soils in any landfarm cell shall not exceed two feet. The maximum thickness of a biopile shall be specified in the operations plan. When the maximum thickness is reached, the operator shall not place additional oil field waste in the cell until it has demonstrated by monitoring at least semi-annually that the contaminated material has achieved either the standards specified in Paragraph (5) or (7)6 of Subsection G of 19.15.2.53 NMAC, unless the operator disposes of the contaminated soil in a division-approved facility.

(kj) The division's environmental bureau may approve other treatment procedures if the operator demonstrates that they provide equivalent protection for fresh water, public health, safety and the environment.

(4) Treatment zone monitoring. The operator shall spread contaminated soils on the surface in six inch or less lifts. The operator shall conduct treatment zone monitoring to ensure that the mean TPH (GRO or DRO) concentration of each lift, as determined by EPA SW-846 Method 8015M (or other EPA methods approved by the division) or EPA Method 418.1, does not exceed either (i) 2500 mg/kg TPH-GRO for condensate containing oil field wastes and 5000 mg/kg TPH-DRO for crude oil and similar hydrocarbon containing oilfield wastes or (ii) that the bioremediation endpoint has been achieved, and that the mean chloride concentration, as determined by EPA Method 300.1, does not exceed the limit for the landfarm set pursuant to paragraph 1 of Subsection G of 19.15.2.53 NMAC, 1000 mg/kg, prior to adding an additional lift. The maximum thickness of treated soils in any landfarm cell shall not exceed two feet.

~~When that thickness is reached, the operator shall not place additional oil field waste in the landfarm cell until it has demonstrated by monitoring the treatment zone at least semi-annually that the contaminated soil has achieved either been treated to the standards specified in (i) Paragraph 6 of Subsection G, or (ii) paragraph 8 of Subsection G, of 19.15.2.53 NMAC, unless the operator disposes of the contaminated soil in a division-approved facility, or the contaminated soils have been removed.~~

5 Vadose zone monitoring.

(a) Sampling. The operator shall monitor the vadose zone beneath the treatment zone in each landfarm cell to ensure that contaminants do not migrate to the underlying native soil or to ground water. The vadose zone samples shall be taken from soils ~~between three and four up to ten feet below the cell's original surface as specified in the operations plan.~~

(b) Semi-annual monitoring program. The operator shall collect and analyze a minimum of four representative, independent samples from the vadose zone at least semi-annually using the methods specified in Paragraph 5 of Subsection G of 19.15.2.53 NMAC below, for TPH, BTEX and chlorides.

~~(c) Annual monitoring program. The operator shall collect and analyze a minimum of four representative, independent samples from the vadose zone at least annually, using the methods specified below, for the metals and inorganics listed in Subsections A and B of 20.6.2.3103 NMAC.~~

(dc) Record keeping. The operator shall maintain a copy of the monitoring reports in a form readily accessible for division inspection.

(ed) Corrective action for releases. If any vadose zone sampling results show that the concentrations of TPH, BTEX or chlorides demonstrate a statistically significant increase over the background concentrations using the Student's t test with an alpha of 0.1, the operator shall notify the division's environmental bureau of the exceedance within five working days, shall sample for the constituents listed in Subsections A and B of 20.6.2.3103 NMAC, required for the landfarm pursuant to paragraph (1) of Subsection G of 19.15.2.53 NMAC, and shall submit a corrective action plan incorporating the Tier 1 or 2 approach at the operator's election, within 30 days of the initial sampling report or 15 days of receipt of any additional sampling results required by this paragraph. The corrective action plan shall address changes in the operation of the landfarm to prevent further migration of constituents and a plan for isolating or remediating any contamination resulting from landfarm operations, ~~or constituents listed in Subsections A and B of 20.6.2.3103 NMAC, exceed the background concentrations; then the operator shall notify the division's environmental bureau of the exceedance, and shall submit a corrective action plan, within 15 days. The corrective action plan shall address changes in the operation of the landfarm to prevent further contamination and a plan for isolating or remediating any existing contamination.~~

(56) Treatment zone closure performance standards. Unless the operator elects to close the landfarm cell pursuant to Paragraph 7 of Subsection G of 19.15.2.53 NMAC, ~~a~~After a landfarm cell has been filled to the maximum thickness of two feet, the operator shall continue treatment until the contaminated soil has been remediated to the higher of the background concentrations or the following closure performance standards.

(a) Tier 1 closure standards. Mean chloride concentration, as determined by EPA Method 300.1, shall not exceed 1000 mg/kg. The mean concentration of the constituents determined as applicable to the landfarm pursuant to Paragraph 1 of Subsection G of 19.15.2.53 NMAC, as determined by EPA SW-846 Methods, or other methods approved by the division, shall not exceed the higher of 95th upper confidence limit of the mean background concentration (i.e., the mean plus two standard deviations of the background concentrations), the practical quantitation limit (PQL), or the concentration specified in the then-current New Mexico Environment Department's Soil Screening Levels (SSLs) using the more stringent of "Residential Soil" or "DAF 20", both measured in mg/kg.

(b) Tier 2 closure standards. Mean chloride concentration, as determined by EPA Method 300.1, shall not exceed the level specified in Paragraph 1(b) of Subsection G of 19.15.2.53 NMAC. The mean concentration of the constituents determined as applicable to the landfarm pursuant to Paragraph 1 of Subsection G of 19.15.2.53 NMAC, as determined by EPA SW-846 Methods, or other methods approved by the division, shall not exceed the higher of the 95th upper confidence limit of the mean background concentration (i.e., the higher of the mean plus two standard deviations), PQLs or the concentrations specified in the then-current New Mexico Environment Department's Soil Screening Levels (SSLs) using the most stringent of the following SSLs in mg/kg:

(i) If a deed restriction or other equivalent measure acceptable to the division is in place that precludes future residential use, then the "Industrial/Occupational Soil" SSL may be used in lieu of the "Residential Soil" SSL.

(ii) If adequate site-specific information is available to calculate a site-specific DAF value pursuant to the then-current NMED SSL guidance, then the site-specific DAF value may be used in lieu of the "DAF 20" value.

(a) Benzene, as determined by EPA SW-846 Method 8021B, shall not exceed 0.2 mg/kg.

(b) Total BTEX, as determined by EPA SW-846 Method 8021B, shall not exceed 50 mg/kg.

(c) The gasoline range organics (GRO) and diesel range organics (DRO) combined fraction, as determined by EPA SW-846 Method 8015M, shall not exceed 500 mg/kg. The total extractable petroleum hydrocarbon fractions, as determined by EPA Method 418.1 (or other EPA method approved by the division), shall not exceed 1000 mg/kg.

(d) Chlorides, as determined by EPA Method 300.1, shall not exceed 1000 mg/kg.

(e) The concentration of the constituents listed in Subsections A and B of 20.6.2.3103 NMAC, as determined by EPA SW-846 Methods 6010B or 6020, or other methods approved by the division, shall not exceed the background soil concentration or the applicable closure concentration specified below, whichever is greater:

Landfarm Soil Closure Standards
Constituent Concentration (mg/kg)

(Except where noted)

(i) Arsenic (As) 0.0146

(ii) Barium (Ba) 106

(iii) Cadmium (Cd) 1.37

(iv) Chromium (Cr) 2.10

(v) Cyanide (CN) 7.35

(vi) Fluoride (F) 329

(vii) Lead (Pb) 400

(viii) Total Mercury (Hg) 0.105

(ix) Nitrate (NO₃-as N) 17.1

(x) Selenium (Se) 0.953

(xi) Silver (Ag) 1.57

(xii) Uranium (U) 16

(xiii) Radioactivity: Combined Radium-226 and Radium-228 30 pCi/g

(xiv) Polychlorinated biphenyls (PCBs) 0.0224

(xv) Toluene 0.347

(xvi) Carbon Tetrachloride 0.000988

(xvii) 1,2-dichloroethane (EDC) 0.000248

(xviii) 1,1-dichloroethylene (1,1-DCE) 0.133

(xix) 1,1,2,2-tetrachloroethylene (PCE) 0.00215

(xx) 1,1,2-trichloroethylene (TCE) 0.000131

(xxi) ethylbenzene 1.01

(xxii) total xylenes 0.167

(xxiii) methylene chloride 0.00853

(xxiv) chloroform 0.000414

(xxv) 1,1-dichloroethane 0.201

(xxvi) ethylene dibromide (EDB) 0.000029

(xxvii) 1,1,1-trichloroethane 1.34

(xxviii) 1,1,2-trichloroethane 0.000498

(xxix) 1,1,2,2-tetrachloroethane 0.000172

(xxx) vinyl chloride 0.000143

(xxxi) PAHs: total naphthalene plus monomethylnaphthalenes 0.0197

(xxxii) benzo-a-pyrene 0.6210

(xxxiii) Chloride (Cl) 1000

(xxxiv) Copper (Cu) 51.5
(xxxv) Iron (Fe) 277
(xxxvi) Manganese (Mn) 334
(xxxvii) Phenols 2.37
(xxxviii) Sulfate (SO4) background
(xxxix) Zinc (Zn) 0.0682

(76) Disposition of treated soils.

(a) If the operator achieves the closure performance standards specified in Paragraph (65) and or (7) of Subsection G of 19.15.1.53 NMAC, then the operator may either leave the treated soil in place, or with prior division approval, dispose or reuse the treated soil in an alternative manner.

(b) If the operator cannot achieve the closure performance standards specified in Paragraph (56) and or (7) of Subsection G of 19.15.1.53 NMAC within five years or as extended by the division, then the operator shall remove all contaminated soil from the landfarm cell and properly dispose of it at a division-approved landfill, or reuse or recycle it in a manner approved by the division. The operator may request approval of an alternative soil closure standard from the division, provided that the operator shall give public notice of an application for alternative soil closure standards in the manner provided in Paragraph (4) of Subsection C of 19.15.2.53 NMAC. The division may grant the request administratively if no person files an objection thereto within 30 days after publication of notice; otherwise the division shall set the matter for hearing.

(87) Environmentally acceptable bioremediation endpoint approach.

(a) A landfarm operator may utilize an environmentally acceptable bioremediation endpoint approach to landfarm management in lieu of compliance with the requirements of Subparagraphs (a) through (be) of Paragraph (65) of Subsection G of 19.15.2.53 NMAC. The bioremediation endpoint in soil occurs when TPH-GRO (if condensate is added) or TPH-DRO (all other materials) is reduced to the maximum extent possible as a result of bioremediation. An environmentally acceptable bioremediation endpoint occurs when the operator demonstrates that mean TPH-GRO or TPH-DRO concentrations have stabilized as indicated by consecutive measures at least 30 days apart that are statistically the same and total extractable petroleum hydrocarbon loading concentration does not exceed one 4.2-percent (1%). Over the time frame in which the operator is determining the bioremediation endpoint, the maximum 4-inch bare soil temperature must be greater than fifty degrees Fahrenheit (50° F). [5%]

(i) TPH-GRO shall be determined using EPA Method 8015M. TPH-GRO shall be used when any condensate is added to the landfarm cell.

(ii) TPH-DRO shall be determined using EPA Method 8015M, with silica gel cleanup if necessary. TPH-DRO shall be used when any material other than condensate contaminated material is added to the landfarm cell.

(iii) If both condensate contaminated and other contaminated material are added to a landfarm cell, then the bioremediation endpoint must be demonstrated for both TPH-GRO and TPH-DRO, is reduced to a minimal concentration as a result of bioremediation and is dependent upon the bioavailability of residual hydrocarbons. An environmentally acceptable bioremediation endpoint occurs when the TPH concentration has been reduced by at least 80% by a combination of physical, biological and chemical processes and the rate of reduction in TPH concentration is essentially zero. The environmentally acceptable bioremediation endpoint in soil is determined statistically by the operator's demonstration that the rate of reduction in TPH concentration is essentially zero.

(b) In addition to the requirements specified in Paragraph (1) of Subsection C of 19.15.2.53 NMAC, an operator who plans to utilize an environmentally acceptable bioremediation endpoint approach shall submit for the division's review and approval a detailed landfarm operation plan for those landfarm cells exclusively dedicated to the use of the environmentally acceptable bioremediation endpoint approach. At a minimum, the operations plan shall include detailed information on the soils, procedures to characterize each lift of contaminated soil, operating procedures and management procedures that the operator shall follow.

(c) In addition to the other operational requirements specified in Subsection G of 19.15.2.53 NMAC, the operator utilizing an environmentally acceptable bioremediation endpoint approach shall comply with the following:

(i) Soil information required. The operator shall submit detailed information on the soil conditions present for each of its landfarm cells immediately prior to the application of the petroleum hydrocarbon-contaminated soils, including: treatment cell size; soil porosity; soil bulk density; soil pH; moisture content; field capacity; organic matter concentration; soil structure; sodium adsorption ratio (SAR); electrical conductivity (EC); soil composition; soil temperature; soil nutrient (C:N:P) concentrations; and oxygen content.

(ii) Characterization of contaminated soil. The operator shall submit a description of the procedures that it will follow to characterize each lift of contaminated soil or drill cuttings, prior to treatment for the petroleum hydrocarbon loading factor: TPH-GRO and/or TPH-DRO, BTEX and chloride; and contaminated soil pH, treating each lift of contaminated soil or drill cuttings, for: petroleum hydrocarbon loading factor: TPH; BTEX; chlorides; constituents listed in Subsections A and B of 20.6.2.3-103 NMAC; contaminated soil moisture; contaminated soil pH; and API gravity of the petroleum hydrocarbons.

(iii) Operating procedures. The operator shall submit a description of the procedures, including a schedule, that it shall follow to properly monitor and amend each lift of contaminated soil in order to maximize bioremediation, including, but not limited to: tilling procedures and schedule; procedures to limit petroleum hydrocarbon loading to less than 5%; procedures to maintain pH between six and eight; procedures to monitor and apply proper nutrients; procedures to monitor, apply and maintain moisture to 60-80% of field capacity; and procedures to monitor mean TPH-GRO and/or TPH-DRO concentrations, as applicable; and procedures to monitor final petroleum hydrocarbon loading concentration, TPH concentrations.

(iii) Management procedures. The operator shall submit a description of the management procedures that it shall follow to properly schedule landfarming operations, including modifications during cold weather, record keeping, sampling and analysis, statistical procedures, routine reporting, determination and reporting of achievement of the environmentally acceptable bioremediation endpoint and closure and postclosure plans.

(d) Additional requirements for landfarm cells treating Tier 2 wastes pursuant to Paragraph 1 of Subsection G of 19.15.2.53 NMAC. If the landfarm cell will handle tank bottoms or other material pursuant to Tier 2 of Paragraph 1, then in addition to the requirements of this paragraph (7), any additional constituent identified pursuant to Paragraph (1) of Subsection H must meet the either the Tier 1 or Tier 2 closure standard, as applicable, set forth in Paragraph (5) of Subsection G of 19.15.2.53 NMAC.

H. Small landfarms. Small landfarms as defined in Subparagraph (e) of Paragraph (1) of Subsection A of 19.15.2.53 NMAC are exempt from 19.15.2.53 NMAC except for the following requirements:

(1) **Registration.** Prior to establishment of a new small landfarm, the operator shall file a form C-137 EZ (small landfarm registration) with the environmental bureau in the division's Santa Fe office. If the operator is not the owner of the surface estate at the proposed site, the operator shall furnish with its form C-137 EZ its certification it has a written agreement with the fee owner of the surface estate authorizing use of the site for the proposed facility. The division will issue the operator a registration number no more than thirty days from receipt of a properly completed form. Within 10 days of establishing a new small landfarm, the operator shall file a form C-137 EZ (small landfarm registration) with the environmental bureau in the division's Santa Fe office. If the operator wishes to landfarm material containing more than the chloride mass and concentration limits set forth below, prior to establishing the new small landfarm, the operator shall submit its proposed chloride mass and/or concentration limits and division-acceptable modeling demonstrating that the proposed chloride mass and/or concentration limit is protective of fresh water. The division will issue the operator a registration number and chloride mass and/or concentration limit no more than thirty days from receipt of the properly completed form.

Permissible Chloride Levels for Small Landfarms			
Environmental Sensitivity Parameters	Low Sensitivity	Medium Sensitivity	High Sensitivity
Allowable Chloride Concentration in Waste	5000 mg/kg	2500 mg/kg	1000 mg/kg

(2) **General operating rules.** An operator shall:

(a) — operate only one active small land farm per lease at any time;

(b) comply with the siting requirements of Paragraphs (1) and (2) of Subsection E of 19.15.2.53 NMAC;

(eb) ~~accept only exempt, hydrocarbon oilfield-contaminated soils generated as a result of production, closure or remediation operations, that are predominantly soils contaminated by petroleum hydrocarbons, do not contain free liquids, would pass the paint filter test, and do not have a chloride concentration in excess of the small landfarm's registration limit.~~ accept only exempt, oilfield-contaminated soils (excluding drill cuttings), generated as a result of accidental releases from production operations, that are predominantly contaminated by petroleum hydrocarbons, do not contain free liquids, would pass the paint filter test and do not have a chloride concentration exceeding 1000 mg/kg.

(dc) berm the landfarm to prevent run-on and run-off of rainwater; and

(ed) post a sign at the facility listing the operator's name, small landfarm registration number, location, expiration date and an emergency contact telephone number.

(3) Waste management standards. The operator shall biopile or spread and disk all contaminated soils in twelve inch or less lifts for condensate containing oilfield waste soils and six to eight inch or less lifts for crude oil containing oilfield waste contaminated soils six inch or less lifts within 72 hours of receipt. The operator shall conduct treatment zone monitoring to ensure that the TPH concentration of each lift as determined by EPA SW-846 method 8015M or EPA method 418.1 (or other EPA method approved by the division), does not exceed 2500 mg/kg and that the chloride concentration, as determined by EPA method 300.1, does not exceed 1000 mg/kg the registration limit, prior to adding an additional lift. The maximum thickness of treated soils in any landfarm cell shall not exceed two feet and 6400 cubic yards. The maximum quantity biopiled shall not exceed 6400 cubic yards. No small landfarm and/or biopile shall exceed 2 acres in area. When that thickness is reached, the operator shall not place additional oil field waste contaminated soils in the small landfarm. The operator shall treat the soils by diskings, or turning biopiles, as appropriate, at least once a month and by watering and addition of bioremediation enhancing materials when needed.

(4) Record-keeping requirements. The operator shall maintain records reflecting the generator, the location of origin, the volume and type of waste, the date of acceptance, and the hauling company for each load of oil field waste received. In addition, the operator shall maintain records of the facility's remediation activities in a form readily accessible for division inspection. The operator shall maintain all records for five years following closure of the small landfarm.

(5) Small landfarm closure:

(a) Closure performance standards and disposition of soils. If the operator achieves the closure performance standards specified below, then the operator may return the soil to the original site of generation, leave the treated soil in place at the small landfarm or, with prior division approval, dispose or reuse the treated soil in an alternative manner. If the operator cannot achieve the closure performance standards within three years from the date of registration, then the operator shall remove all contaminated soil from the landfarm and properly dispose of it at a permitted landfill, unless the division authorizes a specific alternative disposition. The following standards shall apply:

(i) A field sample of soils shall be tested using OCD approved OVM methodology to determine a total organic vapor level of less than 100 ppm or soil samples shall be collected and sent to an approved laboratory and tested for benzene and BTEX, as determined by EPA SW-846 method 8021b. Benzene must not exceed 0.2 mg/kg and BTEX must not exceed 50 mg/kg; Benzene, as determined by EPA SW-846 method 8021B, shall not exceed 0.2 mg/kg.

(ii) The TPH-GRO + TPH-DRO combined fraction, as determined by EPA SW-846 Method 8015M, shall not exceed 2500 mg/kg or else the operator shall demonstrate that the bioremediation endpoint, as defined in Subparagraph (a) of Paragraph (7) of Subsection G of 19.15.2.53 NMAC has been achieved by submittal of at least two sampling results, 30 days apart.

(iii) The total extractable petroleum hydrocarbon shall not exceed one 1/2 percent (1%). Total BTEX, as determined by EPA SW-846 method 8021B, shall not exceed 50 mg/kg.

(iii) TPH, as determined by EPA SW-846 method 418.1 (or other EPA method approved by the division), shall not exceed 1000 mg/kg. The GRO and DRO combined fraction, as determined by EPA SW-846 Method 8015M, shall not exceed 500 mg/kg.

(iv) Chlorides, as determined by EPA method 300.1, shall not exceed 1000 mg/kg.

(b) Closure Requirements. The operator shall:

(i) re-vegetate soils remediated to the closure performance standards if left in place except there is not a requirement to revegetate those soils that are located on the active portion of the well pad;

(ii) remove landfarmed soils that have not been or cannot be remediated to the closure performance standards (or that the operator determines to return to the original site, or, with division permission, re-cycle), and re-vegetate the cell filled in with native soil;

(iii) remove all berms on the facility and any buildings, fences, roads and equipment.

(iv) Clean-up the site and collect one vadose zone soil sample from up to three to fifteen feet below the middle of the treatment zone as specified in the operations plan, or in an area where liquids may have collected due to rainfall events. The vadose zone soil sample shall be collected and analyzed using the methods specified in subparagraph (5)(a) of Subsection H of 19.15.2.53 NMAC for TPH-DRO and TPH-GRO above, for TPH, BTEX and chlorides.

(6) Final report. The operator shall submit a final closure report on a Form-137 EZ, together with photographs of the closed site, to the environmental bureau in the division's Santa Fe office. The division, after notice to the operator and opportunity for a hearing if requested, may require additional information or additional investigation or clean-up activities.

I. Specific requirements applicable to evaporation, storage, treatment and skimmer ponds.

(1) Engineering design plan. An applicant for a facility permit or modification requesting inclusion of a skimmer pit, an evaporation, storage or treatment pond or a below-grade tank, shall submit with the permit application a detailed engineering design plan, certified by a registered professional engineer, including operating and maintenance procedures; a closure plan; and a hydrologic report that provides sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the division to evaluate the actual and potential effects on soils, surface water and ground water. The plan shall include detailed information on dike protection and structural integrity; leak detection, including an adequate fluid collection and removal system; liner specifications and compatibility; freeboard and overtopping prevention; prevention of nuisance and hazardous odors such as H₂S; an emergency response plan, unless the pit is part of a facility that has an integrated contingency plan; type of waste stream, including chemical analysis; climatological factors, including freeze-thaw cycles; a monitoring and inspection plan; erosion control and any other pertinent information the division requests.

(2) Construction, standards.

(a) In general. Each pit, pond and below-grade tank shall be designed, constructed and operated so as to contain liquids and solids in a manner that will prevent contamination of fresh water and protect fresh water, public health, safety and the environment.

(b) Liners required. Each pit or pond shall contain, at a minimum, a primary (upper liner) and a secondary (lower liner) with a leak detection appropriate to the site's conditions.

(c) Liner specifications. All liners shall consist of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division. Synthetic (geomembrane) liners shall have a hydraulic conductivity no greater than 1×10^{-9} centimeters per second. Geomembrane liners shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. Liner materials shall be resistant to ultraviolet light, or provisions shall be made to protect the material from sunlight. Liner compatibility shall comply with United States Environmental Protection Agency SW-846 Method 9090A.

(d) Alternative liner media. The division may approve other liner media if the operator demonstrates to the division's satisfaction that the alternative liner protects fresh water, public health, safety and the environment as effectively as the specified media.

(e) Each pit or pond shall have a properly constructed foundation or firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities, in order to prevent rupture or tear of the liner and an adequate anchor trench; and shall be constructed so that the inside grade of the levee is no steeper than 2H:1V. Levees shall have an outside grade no steeper than 3H:1V. The tops of the levees shall be wide enough to install an anchor trench and provide adequate room for inspection and maintenance. Liner seams shall be minimized and oriented up and down, not across a slope. Factory seams shall be used where possible. Field seams in geosynthetic material shall be thermally seamed (hot wedge) with a double track weld to create an air pocket for non-destructive air channel testing. A stabilized air

pressure of 35 psi, plus or minus one percent, shall be maintained for at least five minutes. Liners shall be overlapped four to six inches before seaming, and seams shall be oriented parallel to the line of maximum slope; i.e., oriented along, not across, the slope. The number of field seams in corners and irregularly shaped areas shall be minimized. There shall be no horizontal seams within five feet of the toe of the slope. Qualified personnel shall perform all field seaming.

(f) At any point of discharge into or suction from the lined pit, the liner shall be protected from excessive hydrostatic force or mechanical damage, and external discharge lines shall not penetrate the liner.

(g) Primary liners shall be constructed of a synthetic material.

(h) A secondary liner may be a synthetic liner or an alternative liner approved by the division. Secondary liners constructed with compacted soil membranes, i.e., natural or processed clay and other soils, shall be at least three feet thick, placed in six-inch lifts and compacted to 95 percent of the material's standard proctor density, or equivalent. Compacted soil membranes used in a liner shall undergo permeability testing in conformity with ASTM standards and methods approved by the division, before and after construction. All compacted soil membranes shall have a hydraulic conductivity no greater than 1×10^{-8} cm/sec. The operator shall submit results of pre-construction testing to the division for approval prior to construction.

(i) A leak detection system shall be placed between the lower and upper geomembrane liners and shall consist of two feet of compacted soil with a saturated hydraulic conductivity of 1×10^{-5} cm/sec or greater to facilitate drainage. The leak detection system shall consist of a properly designed drainage and collection and removal system placed above the lower geomembrane liner in depressions and sloped so as to facilitate earliest possible leak detection. All piping used shall be designed to withstand chemical attack from waste or leachate, structural loading from stresses and disturbances from overlying waste, waste cover materials, equipment operation, expansion or contraction, and to facilitate clean-out maintenance. The material placed between the pipes and laterals shall be sufficiently permeable to allow the transport of the fluids to the drainage pipe. The slope of the interior sub-grade and of all drainage lines and laterals shall be at least a two percent grade, i.e., two feet vertical drop per 100 horizontal feet. The piping collection network shall be comprised of solid and perforated pipe having a minimum diameter of four inches and a minimum wall thickness of schedule 80. A solid side-wall riser pipe shall be sealed to convey any collected fluids to a collection, observation and disposal system located outside the perimeter of the landfill. Alternative methods may be installed as approved by the division.

(j) The operator shall notify the division at least 72 hours prior to the primary liner's installation so that a division representative may inspect the leak detection system before it is covered.

(k) All pits and ponds shall be constructed in such a manner as to prevent overtopping due to wave action or rainfall, and a three foot freeboard shall be maintained at all times.

(l) The maximum size of any evaporation or storage pond shall not exceed 10 acre feet.

(3) Operating Standards.

(a) Only produced fluids or non-hazardous oil field waste shall be discharged into or stored in any pit or pond. No measurable or visible layer of oil may be allowed to accumulate or remain anywhere on the surface of any pit except an approved skimmer pit. Spray evaporation systems shall be operated such that all spray-borne suspended or dissolved solids remain within the perimeter of the pond's lined portion.

(b) Leak detection systems shall be monitored pursuant to the approved permit conditions. The operator shall maintain a monitoring records in a form readily accessible for division inspection, and shall report discovery of any liquids in the leak detection system to the division within 24 hours.

(c) Fencing and netting. Operators shall fence or enclose all pits or ponds to prevent unauthorized access and maintain fences in good repair. Fences are not be required if there is an adequate perimeter fence surrounding the surface waste management facility. All tanks exceeding 8 eight feet in diameter, exposed pits and ponds shall be screened, netted, covered or otherwise rendered non-hazardous to migratory birds. Upon written application, the division may grant an exception to screening, netting or covering requirements upon the operator's showing that an alternative method will adequately protect migratory birds or that the tank or pit is not hazardous to migratory birds.

(d) The division may approve spray systems to enhance natural evaporation. Engineering designs for such systems shall be submitted to the division's environmental bureau for approval prior to installation. Spray systems shall be operated such that spray-borne salt does not leave the pond area.

(e) A skimmer pond or tank shall be used to separate any oil from produced water prior to water discharge into the pond. All connected ponds shall have a trap device installed to prevent solids and oils from transferring from one pond to the other unless approved in the facility permit.

(4) Below-grade tanks and sumps:

(a) Below-grade tanks shall be constructed with secondary containment and leak detection. Operators shall not allow below grade tanks to overflow. Operators shall install only below-grade tanks of materials resistant to the tank's particular contents and to damage from sunlight.

(b) Operators shall test all sumps' integrity annually, and shall promptly repair or replace any sump that does not demonstrate integrity. Operators may test sumps that can be removed from their emplacements by visual inspection. Other sumps shall be tested by appropriate mechanical means. The operator shall maintain records of sump inspection and testing and make such records available for division inspection.

(5) Closure required. The operator shall properly close all pits, ponds and below-grade tanks within six months after cessation of use.

J. Closure and post closure.

(1) Facility closure by operator. The operator shall notify the division's environmental bureau at least 90 days prior to cessation of operations at the facility and provide a proposed schedule for closure. Upon receipt of such notice and proposed schedule, the division shall review the current closure plan for adequacy and inspect the facility. The notice is deemed received five days after postmarked by United States mail or date of actual receipt as evidence by commercial carrier or other means. Within 30 days of receipt of notice and proposed schedule ~~The division shall notify the operator when it has completed its review and inspection and shall specify in such notice within 90 days after the date of cessation of operations specified in the operator's closure notice of any modifications of the closure plan and proposed schedule or additional requirements that it determines are necessary for the protection of fresh water, public health, safety or the environment. If the division does not notify the operator of additional closure requirements within 30~~ 90 days of receipt of the notice and proposed schedule, the schedule and plan are deemed accepted as written without modifications or additional requirements as provided, the operator may proceed with closure in accordance with the approved closure plan provided that the director of the division may, for good cause, extend the time for the division's response for an additional period not to exceed 60 days by written notice to the operator. The operator shall be entitled to a hearing concerning any modifications or additional requirements the division seeks to impose if it files an application for a hearing within 10 days after receipt of written notice of the proposed modifications or additional requirements. Closure shall proceed in accordance with the approved closure plan and schedule and any modifications or additional requirements imposed by the division and upheld by the commission, if applicable. During closure operations the operator shall maintain the facility to protect fresh water, public health, safety and the environment. Upon completion of closure, the operator shall re-vegetate the site unless the division has approved an alternative site use plan as provided in paragraph (5) of Subsection J of 19.15.2.53 NMAC. Re-vegetation shall consist of establishment of a vegetative cover equal to the lesser of 730% of the percent of grass and forb cover found in undisturbed areas surrounding the facility at the time of closure or at least 70% of the site, consisting of at least two native plant species and not including noxious weeds, and maintenance of that cover through two successive growing seasons. The division may approve re-vegetation with non-native plants if seed for native plant species are not commercially available or the operator demonstrates that re-vegetation with native plant species is impracticable.

(2) Release of financial assurance. When the division determines that closure is complete it shall release the financial assurance, except for the amount needed to maintain monitoring wells for the applicable post closure care period as identified in the closure plan, to perform semi-annual analyses of such monitoring wells and to re-vegetate the site. Prior to the partial release of the financial assurance covering the facility, the division will inspect the site to determine that closure is complete. After the applicable post closure care period has expired, the division shall release the remainder of the financial assurance if the monitoring wells system shows that fresh water is protected and the no contamination and the re-vegetation is successful. If monitoring wells or other monitoring or leak detection systems reveal a

~~threat that groundwater quality control commission standards will be exceeded, to fresh water or a threat to human health or the environment during the post-closure period specified in the facility's closure plan, contamination during the facility's operation or in the applicable post closure care period following the facility's closure the division shall not release the financial assurance until all such contamination is remediated in accordance with 19.15.1.19 or 19.15.3.116 NMAC, as applicable. In any event, the division will not finally release the financial assurance until it determines that the operator has successfully re-vegetated the site, or, if the division has approved an alternative site use plan, until the land owner or tenant has obtained necessary regulatory approvals and begun implementation of such use.~~

(3) Facility closure initiated by the division. Forfeiture of financial assurance.

(a) For good cause, the division may, after notice to the operator and opportunity for a hearing, order immediate cessation of a facility's operation when it appears that such cessation is necessary to protect fresh water, public health, safety or the environment, or to assure compliance with statutes or division rules and orders. The division may order closure without notice and opportunity for hearing in the event of an emergency, subject to Section 70-2-23 NMSA 1978, as amended.

(b) If an operator refuses or is unable to conduct operations at a facility in a manner that protects fresh water, public health, safety and the environment, refuses or is unable to conduct or complete an approved closure plan, is in material breach of the terms and conditions of its permit, or the operator defaults on the conditions under which the financial assurance was accepted, ~~or if disposal operations have ceased and there has been no significant activity at the facility for six months,~~ the division may take the following actions to forfeit all or part of the financial assurance:

(i) send written notice by certified mail, return receipt requested, to the operator and the surety, if any, informing them of the decision to close the facility and to forfeit the financial assurance, including the reasons for the forfeiture and the amount to be forfeited, and notifying the operator and surety that a hearing request or other response must be made within 10 days of receipt of the notice; and

(ii) advise the operator and surety of the conditions under which the forfeiture may be avoided. Such conditions may include but are not limited to an agreement by the operator or another party ~~to resume operations in accordance with permit conditions, or to perform closure and post closure operations in accordance with the permit conditions, the closure plan (including any modifications or additional requirements imposed by the division and upheld by the commission)~~ and division rules, and satisfactory demonstration that such party has the ability to perform such agreement.

(c) The division may allow a surety to perform closure if the surety can demonstrate an ability to timely complete the closure and post closure in accordance with the approved plan.

(d) If the operator and the surety do not respond to a notice of proposed forfeiture within the time provided, or fail to satisfy the specified conditions for non-forfeiture, the division shall proceed, after hearing if a hearing has been timely requested, to declare forfeiture of the financial assurance. The division may then proceed to collect the forfeited amount and use the funds to complete the closure, or, at the division's election, to close the facility and collect the forfeited amount as reimbursement. All amounts collected as a result of forfeiture of any financial assurance shall be deposited in the Oil and Gas Reclamation Fund. In the event the amount forfeited and collected is insufficient for closure, the operator shall be liable for the deficiency. The division may complete or authorize completion of closure and post closure and may recover from the operator all reasonably incurred costs of closure and forfeiture in excess of the amount collected pursuant to the forfeiture. In the event the amount collected pursuant to the forfeiture was more than the amount necessary to complete closure, including remediation of any contamination, and all costs of forfeiture, the excess shall be returned to the operator or surety, as applicable, reserving such amount as may be reasonably necessary for post closure monitoring and re-vegetation. Any excess of the amount retained over the actual cost of post-closure monitoring and re-vegetation shall be returned to the operator or surety at the later of the conclusion of the applicable post-closure period or when the site re-vegetation is successful.

(e) If the operator abandons the facility or cannot fulfill the conditions and obligations of the permit or division rules, the state of New Mexico, its agencies, officers, employees, agents, contractors and other entities designated by the state shall have all rights of entry into, over and upon the facility property, including all necessary and convenient rights of ingress and egress with all materials and equipment to conduct operation, termination and closure of the facility, including but not limited to the temporary storage of equipment and materials, the right to borrow or dispose of materials and

all other rights necessary for operation, termination and closure of the facility in accordance with the permit and to conduct post closure monitoring.

(4) Facility and cell closure and post closure standards. The following minimum standards shall apply to closure and post closure of the installations indicated, whether the entire surface waste management facility is being closed or only a part of the facility.

(a) Oil treating plant closure. At closure, the operator shall ensure that :

(i) all tanks and equipment used for oil treatment are cleaned and all waste disposed of at a division-approved facility (The operator shall reuse, recycle or remove all tanks and equipment from the site within 90 days of closure.);

(ii) the site is sampled, in accordance with the procedures specified in chapter nine of EPA publication SW-846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, for TPH, BTEX, major cations and anions and RCRA metals, in accordance with a gridded plat of the site containing at least four equal sections that the division has approved; and

(iii) sample results are submitted to the environmental bureau in the division's Santa Fe office.

(b) Landfill cell closure.

(i) The operator shall properly close all landfill cells, covering the cell with a top cover pursuant to Subparagraph (h) of Paragraph (34) of Subsection F of 19.15.2.53 NMAC, with soil contoured to promote drainage of precipitation; side slopes shall not exceed a ~~25-33~~ percent grade (~~four~~~~three~~ feet horizontal to one foot vertical), such that the final cover of the landfill's top portion has a minimum gradient of two percent to five percent, and the slope is sufficient to prevent the ponding of water and erosion of the cover material.

(ii) The operator shall re-vegetate the area overlying the cell, pursuant to Paragraph (1) of Subsection J of 19.15.2.53 NMAC.

(c) Landfill post closure. Following facility closure, the post closure care period for a landfill shall be a period proposed by the operator up to 30 years and 30 years approved by the division.

(i) A post closure care and monitoring plan shall include maintenance of cover integrity, maintenance and operation of the leak detection system and leachate collection and removal system and operation of gas and ground water monitoring systems.

(ii) The operator or other responsible entity shall sample existing ground water monitoring wells annually and submit reports of monitoring performance and data collected within 45 days after the end of each calendar year.

(d) Landfarm closure. The operator shall ensure that:

(i) disking and addition of bioremediation-enhancing materials continues until soils within the cells are remediated to the standards provided in Paragraph (65) ~~or (7)~~ of Subsection G of 19.15.2.53 NMAC, or as otherwise approved by the division;

(ii) soils remediated to the foregoing standards and left in place are re-vegetated with a cover that is equal to 70% of the percent of grass and forb cover found in undisturbed areas surrounding the facility at the time of closure;

(iii) landfarmed soils that have not been or cannot be remediated to the above standards are amended or removed;

(iv) if treated soils are removed, the cell is filled in with native soil and re-vegetated;

(v) all berms on the facility are removed;

(vi) buildings, fences, roads and equipment are removed, the site cleaned up and tests conducted on the soils for contamination; and

(vii) annual reports of vadose zone and treatment zone sampling are submitted to the division's environmental bureau until the division has approved final closure of the facility.

(e) Evaporation pond closure. The operator shall ensure that:

(i) all liquids in the ponds are removed and disposed of in a division approved surface waste management facility;

(ii) all liners are disposed of in a division-approved surface waste management facility;

(iii) all equipment associated with the facility is removed;

(iv) the site is sampled, in accordance with the procedures specified in chapter nine of EPA publication SW-846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, for TPH, BTEX, metals and other inorganics listed in Subsections A and B of 20.69.2.3103 NMAC, in accordance with a gridded plat of the site containing at least four equal sections that the division has approved; and

(v) sample results are submitted to the environmental bureau in the division's Santa Fe office.

(f) Landfarm and evaporation pond post closure. The post-closure care period for a landfarm or evaporation pond shall be three years ~~if after the operator has completed the approved closure plan, achieved clean closure. During that period the operator or other responsible person shall regularly inspect and maintain required re-vegetation. If there has been a release to the vadose zone or to ground water, then the operator shall comply with the applicable requirements of 19.15.1.19 and 19.15.3.116 NMAC.~~

(5) Alternatives to re-vegetation. If the operator or owner ~~or tenant~~ of the land contemplates use of the land where a cell or facility is located for purposes inconsistent with re-vegetation, the operator ~~or owner or tenant~~ may, with division approval, implement an alternative surface treatment appropriate for the contemplated use, provided that the alternative treatment will effectively prevent erosion. If the division approves an alternative to revegetation, it shall not release the portion of the operator's financial assurance reserved for post-closure until the land owner ~~or tenant~~ has obtained necessary regulatory approvals and begun implementation of such alternative use.

K. Exceptions and waivers.

(1) In a permit application, the applicant may propose alternatives to any of the requirements of 19.15.2.53 NMAC, and the division may approve any such alternative if it determines that the proposed alternative will provide equivalent protection of fresh water, public health, safety and the environment.

(2) Any division approval specifically described in 19.15.2.53 NMAC that relates to a change in the operations, closure, or post-closure of a facility that is not specified in the facility's permit may be granted administratively, without public notice or hearing, unless otherwise specifically provided. If the division denies any requested approval, the operator may file an application for review of such denial through the division hearing process. In such cases, the operator shall give notice of such application in accordance with Paragraph (4) Subsection C of 19.15.2.53 NMAC.

(3) The division may grant exceptions to, or waivers of, or approve alternatives to, any requirement of 19.15.2.53 NMAC, in an emergency, or otherwise after notice and opportunity for a hearing. An operator requesting an exception or waiver pursuant to Paragraph (3) of Subsection ~~J-K~~ of 19.15.2.53 NMAC, except in an emergency, shall provide notice of such request in accordance with Paragraph (4) Subsection C of 19.15.2.53 NMAC. The division may grant the requested exception, waiver or approval administratively, without hearing, if no person files a written objection with the division within thirty days after the mailing of such notice.

L. Transitional provisions. Existing permitted facilities. Surface waste management facilities in operation prior to the effective date of 19.15.2.53 NMAC pursuant to permits or orders of the division may continue to operate in accordance with such permits or orders, subject to the following provisions.

(1) All existing facilities shall comply with the operational, waste acceptance and closure requirements provided in 19.15.2.53 NMAC, except as otherwise specifically provided in the applicable permit or order, or in any specific waiver, exception or agreement that the division has granted in writing to the particular facility.

(2) Any major modification of an existing facility, and any new landfarm cells constructed at an existing facility, shall conform to the design and construction specifications provided in 19.15.2.53 NMAC.