

CRI
CONTROLLED RECOVERY INC.

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June 6, 2005

Mr. Will Jones
Hearing Examiner
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

RE: Gandy-Marley Permit application.

Dear Mr. Jones,

Enclosed please find additional information about EPA guidance to solid waste disposal.

Respectfully submitted,


Ken Marsh

cc:
Ed Martin

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**PROPOSED REGULATORY FRAMEWORK
FOR PERMITTING OIL AND GAS WASTE DISPOSAL FACILITIES**

In October 2002, the U.S. EPA published an update to guidance regarding the exemption of oil and gas exploration and production wastes from federal hazardous waste regulations. The document indicates that many otherwise hazardous constituents generated by E&P activities are exempt from RCRA Subtitle C regulations on the basis of their origin but not their hazardous or toxic characteristics. In describing the scope of the exemption, EPA indicates that although for practical purposes E&P wastes are exempt from Subtitle C, the wastes still require careful management in order to protect the public health and environment. To that end the document states, "The RCRA Subtitle C exemption, however, did not preclude these wastes from control under state regulations, under the less stringent RCRA Subtitle D Solid Waste Regulations, or under other federal regulations."

Examination of the OCD interpretation of its own rule (711) and the Water Quality Control Commissions Regulations indicates that the agency does not fully appreciate the implications of EPA's guidance regarding E&P solid waste disposal activities. Given the obvious similarities between the requirements to properly dispose of large volumes of ordinary solid wastes under Subtitle D, and the disposal of large volumes of "special wastes" generated in the E&P operations, it is only logical to conclude that future E&P disposal in New Mexico should be treated in exactly the same manner that NMED currently handles solid waste facility permit applications under 20 NMAC 9.1.

See attached: EPA Scope of the Exemption Summary



Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations



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Scope of the Exemption

In December 1978, EPA proposed hazardous waste management standards that included reduced requirements for several types of large volume wastes. Generally, EPA believed these large volume "special wastes" are lower in toxicity than other wastes being regulated as hazardous waste under RCRA. Subsequently, Congress exempted these wastes from the RCRA Subtitle C hazardous waste regulations pending a study and regulatory determination by EPA. In 1988, EPA issued a regulatory determination stating that control of E&P wastes under RCRA Subtitle C regulations is not warranted. Hence, E&P wastes have remained exempt from Subtitle C regulations. The RCRA Subtitle C exemption, however, did not preclude these wastes from control under state regulations, under the less stringent RCRA Subtitle D solid waste regulations, or under other federal regulations. In addition, although they are relieved from regulation as hazardous wastes, the exemption does not mean these wastes could not present a hazard to human health and the environment if improperly managed.