

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

**APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION
FOR REPEAL OF EXISTING RULES 709, 710 AND 711 CONCERNING
SURFACE WASTE MANAGEMENT AND ADOPTION OF NEW RULES
GOVERNING SURFACE WASTE MANAGEMENT.**

CASE NO. 135 ^{2009 SEP 28 PM 4:26}

APPLICATION FOR RULEMAKING

The New Mexico Oil Conservation Division (the Division) hereby applies to the
New Mexico Oil Conservation Commission (the Commission) for an order

- (a) repealing existing Rules 709 [19.15.9.709], 710 [19.15.9.710] and 711 [19.15.9.711] concerning surface waste management;
- (b) adopting a new rules containing revised and more comprehensive provisions with respect to the transportation and surface disposition of wastes, to be codified as Rules 51 and 52 [19.15.2.51 and 19.15.2.52 NMAC]; and
- (c) adopting a new and more detailed rule concerning the permitting and operation of surface waste management facilities, to be codified as Rule 53 [19.15.2.53].

The text of proposed new Rules 51, 52 and 53 is attached hereto as Exhibit A.

WHEREFORE, the Division hereby applies to the Commission to enter an order:

- A. repealing Rules 709, 710 and 711 and adopting proposed new Rules 51, 52 and 53.

B. certifying the new rules so adopted for publication in the New Mexico Register as required by statute.

RESPECTFULLY SUBMITTED,



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19.15.2.51 TRANSPORTATION OF PRODUCED WATER AND OTHER OILFIELD WASTE

A. No person shall transport any produced water or other oilfield waste by motor vehicle from any lease, central tank battery, or other facility, without an approved form C-133 (Authorization to Move Oilfield Waste).

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

C. No owner or operator shall permit produced water or other oilfield waste to be removed from its leases or field facilities by motor vehicle except by a person possessing an approved form C-133.

D. The division may deny approval of a form C-133 if an officer, director, partner in the applicant, or person with an interest in the applicant exceeding 5%, is or was within the past five years an officer, director, partner or person with an interest exceeding five 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 rules of the division or other state or federal environmental laws or rules, is subject to an order of the division or commission, 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 produced water and oilfield wastes. Vehicular movement or disposition of produced water or oilfield wastes 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 oilfield wastes.

19.15.2.52 DISPOSITION OF PRODUCED WATER AND OTHER OILFIELD WASTES:

A. Prohibited dispositions. Except as authorized by 19.15.2.50 NMAC or 19.15.2.53 NMAC, no person, including any transporter, shall dispose of produced water or other oilfield wastes:

(1) on the surface of the ground, in any pit, or in any pond, lake, depression, draw, streambed arroyo or other watercourse, or

(2) in any other place or in any manner that may constitute a hazard to fresh water.

B. Authorized dispositions. 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 to a drill site for use in drilling fluid in a manner that does not constitute a hazard to fresh water; or

(2) use in accordance with any use permit issued by the division.

19.15.2.53 SURFACE WASTE MANAGEMENT FACILITIES:

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A. Permit required.

(1) No person shall operate a surface waste management facility except pursuant to and in accordance with the terms and conditions of a surface waste management facility permit issued by the division, unless such facility is exempt from permitting pursuant to paragraph (2) of subsection A of 19.15.2.53 NMAC.

(2) The following facilities are exempt from the permitting requirements of 19.15.2.53 NMAC, but not from the requirements of 19.15.2.50 NMAC regarding pits:

- (a) centralized facilities that receive wastes from a single well;
- (b) centralized facilities that receive only waste exempt from the provisions of the federal Resource Conservation and Recovery Act (RCRA), receive less than 50 barrels of liquid waste per day, have a capacity to hold 500 barrels of liquids or less or 1400 cubic yards of solids or less and are permitted pursuant to 19.15.2.50 NMAC; and
- (c) emergency pits authorized by subsection D of 19.15.2.50 NMAC;

B. Definitions applicable to this section:

(1) A surface waste management facility is any facility that receives for collection, disposal, evaporation, remediation, reclamation, treatment or storage any produced water, drilling fluids, drill cuttings, completion fluids, contaminated soils, basic sediment and water (BS&W), tank bottoms or other oilfield related waste, 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 oilfield wastes on the ground in pits, ponds, below grade tanks or land application units;

(b) a facility for temporary storage of oilfield wastes in above-ground tanks; or

(c) a facility permitted pursuant to the rules of the water quality control commission.

(2) A landfarm is a discrete area of land or an excavation designed for the remediation of hydrocarbon-contaminated soils through biodegradation. A landfarm may accept only oilfield soil wastes that are exempt from RCRA Subtitle C and are not hazardous by listing or characteristic.

(3) A landfill is a discrete area of land or an excavation designed for permanent disposition of oilfield wastes that are exempt from RCRA Subtitle C or are not hazardous by listing or characteristic.

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

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

- (a) does not receive compensation for waste management;
- (b) 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
- (c) receives exclusively wastes that are generated from production units or leases operated by such generator.

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(6) A major modification is a modification of a facility that involves an increase in the total operational capacity for treatment or storage of waste or addition of a new treatment process.

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

C. Permitting requirements. Unless exempt from 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 following requirements:

(1) Application requirements for new facilities and major modifications. An application, form C-137, for a permit for a new facility or to modify an existing facility shall be filed with the Santa Fe office of the division. The application shall include:

- (a) the names and addresses of the applicant and all principal officers and owners of five percent or more of the applicant;
- (b) a plat and topographic map showing the location of the facility 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 (1) mile of the perimeter of the site;
- (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 perimeter of the site;
- (d) a description of the facility with a diagram indicating the location of fences and cattle guards, and detailed construction/installation diagrams of any pits, liners, dikes, piping, sprayers, tanks, roads, fences, gates, berms, pipelines crossing the facility, buildings and chemical storage areas;
- (e) engineering designs, certified by a registered professional engineer, including technical data on the design elements of each applicable disposal method and detailed designs of surface impoundments;
- (f) a plan for management of approved wastes, including, but not limited to, a description of the methods and locations for management of particular categories of waste;
- (g) an inspection and maintenance plan to ensure permit compliance;
- (h) a hydrogen sulfide prevention and contingency plan to protect public health;
- (i) a closure plan, including a cost estimate, sufficient to close the facility to protect public health 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 re-seeding with native grasses;
- (j) geological/hydrological data, including:
 - (i) depth to and quality of groundwater beneath the site;
 - (ii) a map showing names and locations of streams or other water courses within one mile of the site;

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- (iii) laboratory analyses for major cations and anions, RCRA metals and total dissolved solids (TDS) of groundwater samples of the shallowest fresh water aquifer beneath the proposed site;
 - (iv) depth to, name of, and thickness of the shallowest fresh water aquifer;
 - (v) 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;
 - (vi) geologic cross-sections;
 - (vii) potentiometric maps for the shallowest fresh water aquifer;
 - (viii) porosity, permeability, conductivity, compaction ratios and swelling characteristics for the sediments on which the contaminated soils will be placed;
 - (k) certification by a registered professional engineer that information submitted in the application is true, accurate, and complete to the best of the his or her knowledge; and
 - (l) any other information that the division may require to demonstrate that the operation of the facility will not adversely impact fresh water, public health 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 Santa Fe office of the division describing the proposed change and identifying any information that has changed from its last previous C-137 filing.
- (3) Determination that application is administratively complete. Upon receipt of an application for a surface waste management facility permit or for modification of an existing permit, the division shall review the application for administrative completeness. To be deemed administratively complete, the application must provide all information required by paragraph (1) or (2) (as applicable) of subsection C of 19.15.2.53 NMAC. The division shall notify the applicant in writing when the application is deemed 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 requirements for new facilities or major modifications:
- (a) Upon receipt of notification of the division's determination that the application is administratively complete, the applicant for a new permit or major modification shall give written notice of the application, by certified mail, return receipt requested, to the surface owners of record within one (1) mile of the facility, the county commission of the county where the facility site is located, the appropriate city official(s) if the facility site is within city limits or within one (1) 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 public health or the environment at a distance greater than one (1) mile. The applicant shall furnish proof that it has given the required notices.

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(b) Following mailing of notice as provided in subparagraph (b) of paragraph (2) 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 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 thereof may file comments within 30 days, or as extended by the division, 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 or modification, including therein proposed conditions for approval or reasons for disapproval, as applicable. The division shall mail notice of the tentative decision, together with a copy thereof, by certified mail, return receipt requested, to the applicant; and shall give public notice thereof by:

(i) posting notice on the division's website, together with a copy of the tentative decision;

(ii) publishing notice 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;

(iii) mailing notice by first class mail or email to all persons 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

(iv) mailing notice by first class mail or email to any affected local, state, federal or tribal governmental agency, as determined by the division.

(f) The notice issued pursuant to subparagraph (e) of paragraph (4) of subsection C of 19.15.2.53 shall include:

(i) the name and address of the applicant;

(ii) the location of the facility, 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 name, address and telephone number of the division clerk;

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(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.

(g) Any person, whether or not such person has previously submitted comments, may file comments and/or request a hearing on the application with the division clerk within 30 days after the date that the division issued public notice of its 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 applications 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 substantial public interest in the application; or

(iii) the division director determines that comments have raised objections that have probable technical merit. If a hearing is scheduled, the division shall give notice of the date, time and place of the hearing 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.

(5) Financial Assurance Requirements.

(a) Centralized facilities. Upon notification of a determination by the division that a permit has been approved, an applicant for a new centralized facility permit shall submit acceptable financial assurance in the amount of twenty-five thousand dollars (\$25,000) per facility, or a statewide "blanket" financial assurance in the amount of fifty thousand dollars (\$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 of a determination by the division that a permit for a new commercial facility or a major modification of an existing commercial facility has been approved, the applicant shall submit acceptable financial assurance in the amount of the estimated closure cost of the facility. The estimated closure cost of the facility shall be the amount provided in the closure plan submitted by the applicant unless the division determines that such estimate does not reflect reasonable and probable closure cost, in which event, the division shall determine the estimated closure cost and shall notify the applicant of such determination at the time of notification that the permit or modification has been approved. If the applicant disagrees with the division's determination of estimated closure cost, the applicant may, within 10 days of receipt of notice of such determination, request a hearing limited to that issue.

(c) The financial assurance shall be on forms prescribed by the division, payable to the State of New Mexico and conditioned upon proper operation of the facility and closure of the site in compliance with statutes of the State of New Mexico, rules of the division and the terms of the permit. The applicant shall notify the

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Division of any material change affecting the financial assurance within 30 days of discovery of such change.

(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 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 accounts or accounts in a financial institution, provided that the permittee and the financial institution shall execute as to each such account a collateral assignment thereof to the division which shall provide that only the division may authorize withdrawals therefrom, 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 thereon) to itself or its designee.

(d) Replacement of financial assurance.

(i) The division may allow a permittee 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 permittee 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 the adequacy of such financial assurance. Upon determination, after notice to the permittee and opportunity for a hearing, that the financial assurance is not adequate to cover the reasonable and probable cost of closure of such facility, the division may require the permittee 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 two hundred fifty thousand dollars (\$250,000) except in the event of a major modification of such facility.

(7) Denial of permit. The division may deny an application for a permit or modification of a permit if it finds that the proposed facility or modification may endanger fresh water or may be detrimental to public health or the environment. The division may also deny an application for a permit if the applicant, an owner of 5 % 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

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an order of the division or commission, 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 (7) of subsection C of 19.15.2.53 NMAC, shall be a person who controls, is controlled by, or under common control with, the applicant or a five percent or greater owner of the applicant.

(8) 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 or the environment. Any such additional conditions or requirements shall be incorporated into the permit.

(9) Granting of permit. The division may issue a permit for a new facility of major modification 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 have been met, and that the facility or modification can be constructed and operated without endangering fresh water, public health or the environment.

(10) Revocation, suspension or limitation of a permit. Any permit may be revoked or suspended, or additional operating conditions or limitations imposed thereon, at any time, for good cause, after notice to the permittee and opportunity for a hearing. Suspension of a permit may be for a fixed period of time or until a violation or potential violation is remedied. If a facility's permit is suspended, such facility shall not accept new waste during the period of suspension.

D. Operational Requirements – General

(1) All surface waste management facility permittees shall file forms C-117-A, C-118, and C-120-A as required.

(2) No wastes transported by motor vehicle shall be accepted at the facility unless the transporter has an approved form C-133, Authorization to Move Oilfield Wastes, approved with the Division.

(3) Facilities shall accept only oilfield related wastes, except as provided in subparagraph (c) of paragraph (3) of subsection D of 19.15.2.53 NMAC. No non-exempt wastes which are RCRA Subtitle C hazardous wastes by either listing or characteristic testing shall be accepted at a permitted facility. The operator shall require the following documentation for accepting wastes:

(a) Exempt oilfield wastes: A generator, or his authorized agent, shall provide a certification which represents and warrants that the wastes are generated from oil and gas exploration and production operations; exempt from RCRA Subtitle C regulations; and not mixed with non-exempt wastes. The operator shall have the option to accept certifications, on forms of its choice, on a monthly, weekly, or per load basis. Both the generator and the operator shall maintain and shall make said certificates available for inspection by the division.

(b) Non-exempt, non-hazardous oilfield wastes: The operator shall complete, and maintain, subject to division inspection, a "Request For Approval To Accept Solid Waste," form C-138, accompanied by acceptable documentation to determine that the waste is non-hazardous.

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(c) Non-oilfield wastes: Non-hazardous, non-oilfield wastes may be accepted in an emergency if ordered by the Department of Public Safety. The operator shall complete a "Request To Accept Solid Waste," form C-138, and maintain the same, accompanied by the Department of Public Safety order, subject to division inspection. With prior approval from the division, a permitted facility may accept other non-hazardous, non-oilfield waste if the waste is similar in physical and chemical composition to the oilfield wastes authorized for disposal at that facility and is either exempt from the "hazardous waste" provisions of RCRA Subtitle C; or has tested non-hazardous and is not listed as hazardous. Prior to acceptance, the operator shall complete and submit to the Santa Fe office of the division a "Request For Approval to Accept Solid Waste," form C-138, accompanied by acceptable documentation to characterize the waste.

(4) The operator of a commercial facility shall maintain records reflecting, for each calendar month, the generator, the location of origin and of disposal, 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. Such records shall be maintained in appropriate books and records for a period of not less than five years, subject to division inspection.

(5) 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.

(6) To protect migratory birds, all tanks exceeding 16 feet in diameter, and exposed pits and ponds shall be screened, netted or covered. Upon written application by the operator, an exception to screening, netting or covering of a facility may be granted by the district supervisor upon a 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.

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

(8) No waste management facility shall be located in any watercourse, or lakebed. Facilities located adjacent to any such watercourse or lakebed shall have a division-approved storm water plan.

(9) A permit may not be transferred without the prior written approval of the division. Until the division approves the transfer and the required financial assurance is in place, the transferor's financial assurance shall not be released.

(10) Waste management facility operators shall comply with the provisions of 19.16.3.116 NMAC.

E. Operational requirements – oil treating plants. Facilities permitted as treating plants shall not accept sediment oil, tank bottoms and other miscellaneous hydrocarbons for processing unless accompanied by approved forms C-117A and C-138.

F. Operational requirements – landfills. Landfills shall be constructed using double liners with leak detection systems incorporated into the design unless it can be shown to the division's satisfaction that fresh water will not be adversely impacted.

G. Operational requirements – landfarms. The following operational requirements shall apply to all landfarms:

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(1) No contaminated soils shall be placed within 100 feet of the boundary of the facility.

(2) No contaminated soils shall be placed within 20 feet of any pipeline crossing the landfarm.

(3) The portions of the facility containing contaminated soils shall be bermed to prevent run-on and run-off of rainwater.

(4) A treatment zone in each landfarm cell shall be monitored to ensure that contaminants are not transferred to the underlying native soil or to the groundwater. Such treatment zone shall not exceed three feet in depth. A minimum of four representative samples shall be taken from each landfill cell six months after the first contaminated soils are received and then semi-annually thereafter. The samples shall be taken from soils no deeper than one foot below the surface of the cell. The soil samples shall be analyzed, using methods approved the United States Environmental Protection Agency (EPA) methods, for total petroleum hydrocarbons (TPH) and benzene, toluene, ethylbenzene and xylenes (BTEX), semi-annually. The soil samples shall be analyzed, using approved EPA methods, for major cations and anions and RCRA metals, annually. Reports showing the results of the analyses shall be submitted to the division's Santa Fe office no later than 45 days after completion of the sampling.

(5) All contaminated soils shall be spread and disked within 72 hours of receipt. The operator shall maintain records of the facility's disking schedule in a form readily accessible for division inspection.

(6) Contaminated soils shall be spread on the surface in six-inch, or less, lifts.

(7) Soils shall be disked biweekly.

(8) Exempt and non-exempt contaminated soils shall be segregated.

(9) Moisture shall be added, as necessary, to control blowing dust.

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

(11) No free liquids shall be placed in the landfarm cells.

(12) No drill cuttings or soils contaminated with produced water generated within the division's districts I and II, or other salt-contaminated wastes, shall be placed in a landfarm cell. Wastes shall be considered salt-contaminated if chloride concentration exceeds 2,000 parts per million.

(13) Pooling of liquids in the landfarm is prohibited. Free-standing water shall be removed within 24 hours after discovery.

H. Operational requirements – evaporation ponds.

(1) Evaporation ponds shall be constructed in such a manner as to prevent overtopping due to wave action or rainfall.

(2) Evaporation ponds shall be constructed so that the inside grade of the levee is no steeper than 2:1. Levees shall have an outside grade no steeper than 3:1. The tops of the levees shall be at least 18 inches wide.

(3) Synthetic materials used for lining evaporation ponds shall be impermeable.

(4) Evaporation ponds shall be double-lined with a leak detection system incorporated into the design. Such leak detection systems shall be monitored monthly. A

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monitoring record shall be maintained and shall be readily accessible for division inspection. The discovery of any liquids in the leak detection system shall be reported to the division within 24 hours.

(5) Thickness of flexible membrane liners shall be at least 40 mil.

(6) All materials used for lining evaporation ponds shall be resistant to hydrocarbons, salts and acidic and alkaline solutions. The liners shall also be resistant to ultraviolet light.

(7) Spray systems may be approved by the division to enhance natural evaporation. Engineering designs for such systems shall be submitted for division approval prior to installation. Spray systems shall be operated such that spray-borne salt does not leave the pond area.

(8) A skimmer pond or tank shall be used to separate any oil from produced water prior to water discharge into the pond.

(9) Design of a skimmer pond shall conform to the same design criteria as those for an evaporation pond.

H. Facility Closure.

(1) Closure by permittee. The permittee shall notify the division at least 30 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 inspect the facility and review the closure plan for adequacy. The division shall notify the permittee when it has completed its review and inspection and shall specify in such notice 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 or the environment. Closure shall proceed in accordance with the approved closure plan and schedule and any modifications or additional requirements imposed by the division. During closure operations the permittee shall maintain the facility to protect fresh water, public health and the environment. Prior to release of the financial assurance covering the facility, the division will inspect the site to determine that closure is complete.

(2) 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 operation of a facility when it appears that such cessation is necessary to protect fresh water, public health 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 event of emergency, subject to Section 70-2-23 NMSA 1978, as amended.

(b) If a permittee refuses or is unable to conduct operations at a facility in a manner that protects public health, fresh water 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 permittee 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 permittee 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

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and the amount to be forfeited, and notifying the permittee and surety that a hearing request or other response must be made within 10 days of receipt of the notice; and

(ii) advise the permittee 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 permittee or another party to perform closure operations in accordance with the conditions of the permit, the closure plan (including any modifications or additional requirements imposed by the division) 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 complete the closure in accordance with the approved plan.

(d) If the permittee 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 permittee shall be liable for the deficiency. The division may complete or authorize completion of closure and may recover from the permittee 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 and all costs of forfeiture, the excess shall be returned to the applicant or surety, as applicable.

(e) If the permittee 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.

(3) Closure standards. The following minimum standards shall apply to closure of the facilities indicated:

(a) Oil Treating Plants.

(i) All tanks and equipment used for oil treatment shall be removed from the site and recycled or properly disposed of.

(ii) The site shall be sampled for TPH, BTEX, major cations and anions and RCRA metals, in accordance with a gridded plat of the site that has been approved by the division.

(iii) Sample results shall be submitted to the division's Santa Fe office.

(b) Landfills.

EXHIBIT A to Application

Proposed Surface Waste Management Rules

(i) All landfill cells shall be properly closed, covering the cell with a 40-mil thick liner, such liner to be covered with at least three feet of uncontaminated native soil contoured to promote drainage of precipitation.

(ii) The area shall be re-seeded with a native seed mix approved by the division.

(iii) Groundwater monitoring wells shall be monitored for a period of 20 years after closure is approved by the division.

(c) Landfarms.

(i) Disking and addition of bioremediation enhancing materials shall continue until soils within the cells are remediated to levels acceptable to the division.

(ii) Periodic reports of treatment zone sampling will be submitted to the division's Santa Fe office until the division has approved final closure of the facility.

(d) Evaporation Ponds.

(i) All liquids in the ponds shall be removed and disposed of in a manner approved by the division.

(ii) All liners shall be disposed of in a manner approved by the division.

(iii) All equipment associated with the facility shall be removed.

(iv) The site shall be sampled for TPH, BTEX, major cations and anions and RCRA metals, in accordance with a gridded plat of the site that has been approved by the division.

(v) Sample results must be submitted to the division's Santa Fe office .

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