

**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. 13586

SECOND AMENDED 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) amending existing Rules 709 [19.15.9.709 NMAC], 710 [19.15.9.710 NMAC] and 711 [19.15.9.711 NMAC] concerning surface waste management;
- (b) re-codifying Rules 709, 710 and 711, as amended, as Rules 51, 52 and 53 [19.15.2.51 through 53].

The text of proposed Rules 51, 52 and 53, including the amendments the division now proposes for adoption, is attached hereto as Exhibit A to this Second Amended Application. This proposal supersedes the proposal attached as Exhibit A to the original application and Exhibit A to the previously filed amended application.

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

2005 NOV 19 PM 11 09

A. amending Rules 709 through 711, and re-designating the rules so amended as Rules 51 through 53.

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

RESPECTFULLY SUBMITTED,



David K. Brooks
Assistant General Counsel
Energy, Minerals and Natural
Resources Department of the State of
New Mexico
1220 S. St. Francis Drive
Santa Fe, NM 87505
(505)-476-3450

Attorney for The New Mexico Oil
Conservation Division

EXHIBIT A to Second Amended Application

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 and 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.

~~(7)~~(8) Bottom hole or subsurface pressure shall mean the gauge pressure in pounds per square inch under conditions existing at or near the producing horizon.

~~(8)~~(9) Braden head gas well shall mean any well producing gas through wellhead connections from a gas reservoir [~~which~~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 [~~which~~that existed in a liquid phase in the reservoir.

(3) Oil field wastes shall mean those wastes [~~produced~~generated in conjunction with the exploration, production, refining, processing, gathering and transportation of crude oil [~~and~~]or natural gas [~~and commonly collected at field storage, processing, disposal, or service facilities, and waste collected at gas processing plants, refineries and other processing or transportation facilities~~]or generated from oil field service company operations. Oil field waste does not include domestic waste such as tires, appliances, paper trash, ordinary garbage and refuse, sewage, sludge from a waste treatment plant or waste of a character not generally associated with oil and gas industry operations.

(4) Oil well shall mean any well capable of producing oil and [~~which~~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 [0]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[0]percent or more of the compliance sampling stations, for any single medium, as designated pursuant to [~~Subsection E, Paragraph (4), Subparagraph (b), Subsubparagraph (iv) of Section~~]Subsubparagraph (iv) of Subparagraph (b) of Paragraph (4) of Subsection E of 19.15.5.19 NMAC.

(7) Soil shall mean:

- (a) unconsolidated rock material over bedrock; or
- (b) freely divided rock-derived material containing an admixture of organic material that may be capable of supporting vegetation.

~~{(7)}~~(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.

~~{(8)}~~(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 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 oil field 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 oil field wastes on the ground in pits, ponds, below-grade tanks or land application units;
- (b) a facility for temporary storage of oil field wastes in above-ground tanks; or
- (c) a facility permitted pursuant to environmental improvement board rules or water quality control commission rules.

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. 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 by motor vehicle except by a person possessing an approved form C-133. The division shall post a list of currently approved C-133s, authorization to move liquid waste, on its website.

D. The division may deny approval of a form C-133 if 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 wastes. Vehicular movement or disposition of produced water or other liquid oil field 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 liquid wastes.

19.15.2.52 DISPOSITION OF PRODUCED WATER AND OTHER OIL FIELD 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 oil field wastes:

- (1) on the surface of the ground; in any 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 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 to a drill site for use in drilling fluid in a manner that does not constitute a hazard to fresh water, public health or the environment; or
- (2) use in accordance with any division-issued use permit.

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

19.15.2.53 SURFACE WASTE MANAGEMENT FACILITIES:

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 division-issued surface waste management facility permit 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, regardless of capacity or volume of waste received;

(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 (averaged over a 30-day period), 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 19.15.2.53 NMAC only.

(1) A landfarm is a discrete area of land designed and used for the remediation of hydrocarbon-contaminated soils and soil like materials such as drill cuttings or tank bottoms that do not exceed the chloride standard contained in Paragraph (1) of Subsection G of 19.15.2.53 NMAC.

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

(3) A cell is a confined area engineered for the disposal of solid waste.

(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, 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.

(6) A major modification is a modification of a facility that involves an increase in the land area that the permitted facility occupies, a change in the nature of the permitted waste stream or addition of a new treatment process.

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

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

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 major 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. 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 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 that complies with the operational requirements contained in Subsections E, F, G and H 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;

(i) a closure and post closure plan, including a cost estimate, sufficient to close the facility to protect fresh water, 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-vegetation of the surface, or other restoration sufficient to protect fresh water, public health and the environment; and post closure monitoring. The closure and post closure plan shall comply with the requirements contained in Paragraph (3) of Subsection I of 19.15.2.53 NMAC;

(j) a contingency plan that complies with the requirements of Paragraph (14) of Subsection E of 19.15.2.53 NMAC;

(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) geological/hydrological data including:

(i) depth to and quality of ground water beneath the site;

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

(iii) laboratory analyses, performed by an independent commercial laboratory, for major cations and anions, RCRA metals and total dissolved solids (TDS) of ground water 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;

(m) certification by a registered professional engineer that information submitted in the application is true, accurate, and complete to the best of his or her knowledge; and

(n) any other information that the division may require to demonstrate that the facility's operation 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 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. 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 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 (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 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) This 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 following 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 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 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 G 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 parties 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. 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 (c) of Paragraph (4) of Subsection C of 19.15.50.2 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) 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.

(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, 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.

(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 or modification.

(1) Granting of permit.

(a) The division may issue a permit for a new facility or 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 NMAC have been met and that the facility or modification can be constructed and operated in compliance with applicable statutes and rules and without endangering fresh water, public health or the environment.

(b) 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. 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. At the time of the renewal there shall be public notice 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 or the environment.

(c) 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 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 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 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. 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.

E. Operational requirements applicable to all facilities.

(1) No surface waste management facility shall be located where ground water is less than 50 feet below the surface.

(2) No surface waste management facility shall be located in any watercourse or lakebed. Facilities located adjacent to any watercourse or lakebed shall have a division-approved plan for handling storm water runoff.

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

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

(5) Facilities shall accept only oil field related wastes, except as provided in Subparagraph (c) of Paragraph (5) of Subsection E 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 oil field wastes. A generator, or his authorized agent, shall provide a certification that 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 form C-142, certification of waste status, on a monthly, weekly or per load basis. Both the generator and the operator shall maintain and shall make said certificates available for the division's inspection.

(b) Non-exempt, non-hazardous, oil field wastes. The operator shall complete and maintain, subject to division inspection, a form C-138, request for approval to accept solid waste, accompanied by acceptable documentation to determine that the waste is non-hazardous.

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

(6) The operator of a commercial facility shall maintain records reflecting, for each calendar month, the generator, the location of origin, the location of disposal based on exempt and non-exempt categories, 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 after facility closure, subject to division inspection.

(7) 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.

(8) 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.

(9) All waste management facilities 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.

(10) 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. Until the division approves the transfer and the required financial assurance is in place, the division shall not release the transferor's financial assurance.

(11) Operators shall comply with the provisions of 19.15.3.116 NMAC.

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

(a) weekly inspection of all leak detection sumps 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) monthly inspection and sampling of all monitor wells as required for landfills and that may be required for other facilities where ground water has been contaminated 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 after any rainfall or windstorm, and maintenance of berms in such a manner as to prevent erosion; and

(d) inspections of the outside walls of all pond levees after any rainfall, and maintenance of outside walls of all levees 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 control system shall prevent flow onto the facility's active portion during the peak discharge from a 100-year storm;

(b) the run-off control system from the facility's active portion collects and controls at least the water volume resulting from a 24-hour, 100-year storm; and

(c) 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. 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 public health, welfare 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 hazardous waste constituents that could threaten public health, welfare or the environment. The contingency plan for emergencies shall:

(a) describe the actions facility personnel must take in response to fires, explosions or releases of contaminants or hazardous waste constituents to air, soil, surface water or ground water;

(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 phone numbers (office and home). Where more than one person is listed, one must be named as the primary emergency coordinator;

(d) include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems and decontamination equipment). This list must be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list and a brief outline of its capabilities;

(e) include an evacuation plan for facility personnel. The plan must describe signals to be used to begin evacuation, evacuation routes and alternate evacuation routes in cases where fire or releases of hazardous 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 teams;

- (h) indicate when the contingency plan will be amended, which shall be immediately if necessary, whenever:
 - (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 hazardous waste constituents, or change 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 release 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 public health, welfare or the environment that may result from the release, fire or explosion (This assessment shall consider both the direct and indirect hazard of 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, which may be incompatible with the released material, is treated, stored or disposed of until cleanup procedures are complete.

F. Operational requirements – landfills.

- (1) No landfill cell shall exceed five acres in size.
- (2) Landfills shall be constructed using 40 mil high density polyethylene (HDPE) or equivalent double liners with leak detection systems as described in Paragraph (5) of Subsection H of 19.15.3.53 NMAC incorporated into the design, unless the operator shows to the division's satisfaction that fresh water will not be adversely impacted.
- (3) The operator shall confine the landfill's working face to the smallest practical area and compact the solid waste to the smallest practical volume.
- (4) 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 equal protection.
- (5) The surface waste management facility operator shall provide adequate means to prevent and extinguish fires.
- (6) The operator shall control litter and odors.
- (7) The operator shall not excavate a closed cell or allow others to excavate a closed cell except as approved by the division.
- (8) The operator shall cover the landfill's active face with a six-inch layer of earth or approved alternate daily cover at the conclusion of each day's operation or more often as conditions may dictate.
- (9) The operator shall provide intermediate cover that shall be:
 - (a) one foot thick;
 - (b) placed on all areas of the landfill that will not receive further waste for one month or greater, but have not reached final elevation;
 - (c) stabilized with vegetation on any areas that will be inactive for more than two years; and
 - (d) inspected and maintained to prevent erosion and infiltration.
- (10) Once 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 Subsubparagraph (i) of Subparagraph (b) of Paragraph (3) of Subsection I of 19.15.2.53 NMAC. No more than two landfill cells may be open at a facility at the same time. The operator shall notify the division's environmental bureau 72 hours prior to closure of a landfill cell.

(11) Ground water monitoring - A ground water monitoring system, approved by the division's environmental bureau, shall be installed at each landfill and 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 the surface waste management facility.

(12) Monitoring wells shall be constructed in such a manner that the integrity of the borehole and well is maintained and is in accordance with ASTM method 5092.

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

(1) Only soils and soil like material such as drill cuttings or tank bottoms that do not have a chloride concentration exceeding 1000 mg/kg shall be placed in landfarm. The person tendering waste for treatment at a landfarm shall certify that representative samples of the waste have been tested for chloride content and found to conform to this requirement, and the landfarm's operator shall not accept waste for landfarm treatment unless accompanied by such certification.

(2) No landfarm cell shall exceed five acres in size.

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

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

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

(6) 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 ground water. Such treatment zone shall not exceed three feet in depth from the ground surface to the bottom of the treatment zone. One background soil sample shall be taken from the center of each landfarm cell two feet below the native ground surface prior to operation. The sample shall be analyzed for total petroleum hydrocarbons (TPH), major cations/anions, volatile aromatic organics (BTEX), and heavy metals using approved United States environmental protection agency (EPA) methods. Thereafter, a minimum of four representative samples shall be taken from each landfarm 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 three feet below the cell's original surface. The soil samples shall be analyzed, using EPA approved methods, for total petroleum hydrocarbons (TPH) and benzene, toluene, ethyl benzene and xylenes (BTEX). 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 environmental bureau in division's Santa Fe office no later than 45 days after completion of the sampling. If the semi-annual or annual sampling results show concentrations of TPH, major cations/anions, BTEX or heavy metals that exceed the concentrations from the results of the background sampling a remediation plan shall be required.

(7) All contaminated soils shall be either biopiled or spread and disked within 72 hours of receipt. The division's environmental bureau may approve other remediation procedures if they provide equivalent protection for fresh water, public health and the environment. The operator shall maintain records of the facility's remediation activity schedule in a form readily accessible for division inspection.

(8) Contaminated soils that are to be land-spread shall be spread on the surface in six-inch, or less, lifts. The TPH concentration of each lift shall be reduced to 100 mg/kg prior to adding an additional lift. The maximum thickness of land-spread soils in any cell shall not exceed two feet, at which time the soils shall be removed prior to adding additional lifts.

(9) Soils shall be disked biweekly or biopiles shall be turned at least monthly.

(10) Exempt and non-exempt contaminated soils shall be physically separated so that the division can visually identify whether the waste is exempt or non-exempt.

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

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

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

(14) Pooling of liquids in the landfarm is prohibited. Freestanding water shall be removed.

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 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) Leak detection system specifications:

(a) The operator shall install a leak detection system of an approved design between the primary and secondary liner, and notify the appropriate division district office at least 72 hours in advance of the primary liner's scheduled installation to afford the opportunity for a division representative to inspect the leak detection system.

(b) Leak detection systems may consist of, but are not necessarily limited to, approved fail-safe electric detection systems or drainage and sump systems.

(c) If an electric grid detection system is used, it shall be monitored to ensure that all components of the system remain functional.

(d) If a drainage and sump system is used, the operator shall install a network of slotted or perforated drainage pipes between the primary and secondary liners. The network shall be of sufficient density so that no point in the pond bed is more than 20 feet from such drainage pipe or lateral thereof. 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 for all drainage lines and laterals shall be at least six inches per 50 feet. The slope of the pond bed shall also conform to these values to assure fluid flow towards the leak detection system. The drainage pipe shall convey any fluids to a corrosion-proof sump located outside the pond's perimeter.

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

(7) 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.

(8) 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.

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

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

I. Closure and post closure.

(1) Facility closure by operator. The operator shall notify the division's environmental bureau 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 current closure plan for adequacy. The division shall notify the operator 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. The operator shall be entitled to a hearing concerning any modification or additional requirement 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. During closure operations the operator shall maintain the facility to protect fresh water, public health and the environment. If it is determined that closure is complete the division shall release the financial assurance, except for the amount needed to maintain monitoring wells for 30 years, semi-annual analysis 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 30 years following closure have expired, the division shall release the remainder of the financial assurance if the monitoring wells show no contamination and the re-vegetation is successful. If monitoring wells or other monitoring or leak detection systems reveal contamination during the facility's operation or in the 30 years following the facility's closure the division shall not release the financial assurance.

(2) 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 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 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 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 surface waste management facility 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 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 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 and all costs of forfeiture, the excess shall be returned to the operator or surety, as applicable.

(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.

(3) 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. The operator shall ensure that:

(i) all tanks and equipment used for oil treatment are removed from the site and recycled or properly disposed of in accordance with division rules;

(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. The operator shall ensure that:

(i) all landfill cells are properly closed, covering the cell with a 40-mil thick liner, or division-approved evapo-transpiration cap, and at least three feet of uncontaminated native soil contoured to promote drainage of precipitation; side slopes shall not exceed a 25 percent grade (four feet horizontal to one foot vertical), such that the final cover of the landfill's top portion has a gradient of two percent to five percent, and the slope are sufficient to prevent the ponding of water and erosion of the cover material; and

(ii) the area is re-vegetated or otherwise restored in a manner that is capable of sustaining native plant growth.

(c) Landfill post closure. Following facility closure, the post closure care period for a landfill shall be 30 years.

(i) A post closure care and monitoring plan shall include maintenance of cover integrity, maintenance and operation of a leak detection system and operation of methane 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 from 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 a TPH concentration of 100 mg/kg, a benzene concentration of 0.2 mg/kg and a BTEX concentration of 50 mg/kg;

(ii) soil remediated to the foregoing standards are re-vegetated;

(iii) landfarmed soils that have not been or cannot be remediated to the above standards are removed, and the cell filled in with native soil and re-vegetated;

(iv) all berms on the compost facility are removed;

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

(vi) annual reports of treatment zone sampling are submitted to the division's Santa Fe office until the division has approved final closure of the facility.

(e) Landfarm post closure. The post-closure care period for a landfarm shall be five years. The operator or other responsible entity shall ensure that:

(i) ground water monitoring, if required because of ground water contamination, is maintained to detect possible migration of contaminants; and

(ii) any cover material is inspected and maintained.

(f) 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 division-approved surface waste disposal facility permit;

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

(iv) the site shall be 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

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

(4) Alternatives to re-vegetation. If the operator or owner of the land contemplates use of the land where a cell or facility if located for purposes inconsistent with re-vegetation, the operator may, with division approval, implement, implement an alternative surface treatment appropriate for the contemplated use, provided that the alternative treatment will effectively prevent erosion.

J. Transitional provisions. Existing 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 cells constructed an existing facility shall conform to the design and construction specifications provided in 19.15.2.53 NMAC.

(3) Operators of existing facilities that were permitted under 19.15.9.711 NMAC shall, not later than April 1, 2007, either bring all existing cells into compliance with the design and construction specifications provided in 19.15.2.53 NMAC, or close any cells that do not conform to those requirements; provided that the division may grant waivers to allow continued operation of existing cells not conforming to such requirements on a case-by-case basis as long as the existing design and construction specifications adequately protect fresh water, public health and

the environment. If an operator applies for a waiver of this requirement, the operator shall give notice of the application in the manner provided in Subparagraphs (a) and (b) of Paragraph (4) of Subsection C of 19.15.2.53 NMAC. The division may grant such a waiver administratively if it receives no objection within 30 days after the notice's publication.

**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. 13586

SECOND AMENDED 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) amending existing Rules 709 [19.15.9.709 NMAC], 710 [19.15.9.710 NMAC] and 711 [19.15.9.711 NMAC] concerning surface waste management;
- (b) re-codifying Rules 709, 710 and 711, as amended, as Rules 51, 52 and 53 [19.15.2.51 through 53].

The text of proposed Rules 51, 52 and 53, including the amendments the division now proposes for adoption, is attached hereto as Exhibit A to this Second Amended Application. This proposal supersedes the proposal attached as Exhibit A to the original application and Exhibit A to the previously filed amended application.

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

A. amending Rules 709 through 711, and re-designating the rules so amended as Rules 51 through 53.

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

RESPECTFULLY SUBMITTED,

David K. Brooks
Assistant General Counsel
Energy, Minerals and Natural
Resources Department of the State of
New Mexico
1220 S. St. Francis Drive
Santa Fe, NM 87505
(505)-476-3450

Attorney for The New Mexico Oil
Conservation Division