Gregory D. Huffaker, Jr.
Michael J. Moffett
♦
huffaker@handmllc.com
mmoffett@handmllc.com

HUFFAKER & MOFFETT LLC

ATTORNEYS AT LAW

155 Grant Avenue
Post Office Box 1868
Santa Fe, New Mexico
87504-1868

Telephone: (505) 988-8921
Facsimile: (505) 983-3927

January 25, 2006

2006 JAN 25 PM 5 52

VIA HAND DELIVERY

Ms. Florene Davidson
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

Re: Case 13586: Application of the New Mexico Oil Conservation Division for Adoption of New Rules Governing Surface Waste Management.

CRI's Comments to the Division's December 29, 2005 Draft Surface Waste Management Rules.

Dear Ms. Davidson:

Controlled Recovery Inc. ("CRI") hereby submits its comments to the Division's December 29, 2005 draft of the Surface Waste Management Rules in Case 13586.

A. Proposed Rule 19.15.1.7.O(3) and Rule 53.E(6)(c): Definition of "oilfield wastes" and proposed repeal of authority to take "non-hazardous, non-oilfield wastes."

Introduction.

CRI wants to continue to accept the following types of waste, as it does today:

1. Exempt oilfield wastes.
2. Non-exempt, non-hazardous, oilfield wastes.
3. Non-exempt, non-hazardous, non-domestic, non-oilfield wastes that are similar in physical and chemical composition to oilfield wastes.

CRI does not seek authority to accept:

1. Non-exempt, hazardous wastes.
2. Domestic wastes.

The current situation under the existing rules.

Rule 19.15.9.1(O)(3) currently defines "oilfield wastes" as follows:

> Oil field wastes shall mean those wastes produced in conjunction with the exploration, production, refining, processing 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.

Rule 19.15.9.711(C)(4)(c) currently provides that non-hazardous, non-oilfield wastes generated by oilfield facilities may be deposited at surface waste management facilities under certain conditions and with prior approval of the OCD:

> (c) Non-oilfield Wastes: Non-hazardous, non-oilfield wastes may be accepted in an emergency if ordered by the Department of Public Safety. Prior to acceptance, a "Request To Accept Solid Waste", OCD Form C-138 accompanied by the Department of Public Safety order will be submitted to the appropriate district office and the division's Santa Fe office. *With prior approval from the division, other non-hazardous, non-oilfield waste may be accepted into a permitted surface waste management facility if the waste is similar in physical and chemical composition to the oilfield wastes authorized for disposal at that facility and is either: (1) exempt from the "hazardous waste" provisions of Subtitle C of the federal Resource Conservation and Recovery Act; or (2) has tested non-hazardous and is not listed as hazardous. Prior to acceptance, a "Request for Approval to Accept Solid Waste," OCD Form C-138, accompanied by acceptable documentation to characterize the waste shall be submitted to and approved by the division's Santa Fe office.* [emphasis added]

Surface waste management facilities, including CRI, have been authorized on occasion under these provisions to enter into business arrangements with oilfield facilities to accept general types of wastes. Affording refineries, processing plants, and similar oilfield facilities the ability to use a single disposal site for most of their wastes offers important economic and practical benefits to the industry, without endangering the public health or the environment.

In particular, the Division has authorized CRI under the provisions of Rule 711(C)(4)(c) to enter into business arrangements to take mud sacks, plastic thread protectors, pipes, tanks, wood pallets, construction and concrete debris, packing materials, plastic wrap, binding straps, office trash, and other ordinary refuse generated by oilfield facilities. Oilfield waste generators have exclusive disposal cells dedicated to their wastes at CRI's facility. These existing business arrangements provide generators with the important economic and environmental security associated with complete control over the wastes deposited into their cells.

Further, CRI recently received a request from a New Mexico ethanol producer to dispose of mole sieve (a catalyst used in processing natural gas and in processing ethanol). The ethanol plant is not an oil and gas operation, however it is an alternative energy fuel refining operation that uses mole sieve for the same purpose natural gas operations use it. Accordingly, it is [quoting existing Rule 711(C)(4)(c)] "*similar in physical and chemical composition to the oilfield wastes authorized for disposal at that facility and is either: (1) exempt from the "hazardous waste" provisions of Subtitle C of the federal Resource Conservation and Recovery*

Act; or (2) has tested non-hazardous and is not listed as hazardous." Under current regulation, CRI can apply to the Division for permission to accept this waste.

Finally, the benefits afforded by Rule 711(C)(4)(c) are mirrored in Rule 19.15.9.712, which allows New Mexico Environment Department permitted landfills to accept oilfield wastes under certain conditions.

The proposed changes to the current situation.

The proposed new definition of oilfield wastes eliminates the phrase "*commonly collected* at field storage, processing, disposal, or service facilities, and waste collected at gas processing plants, refineries and other processing or transportation facilities;" and, substitutes the sentence "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."

Without input from or notice to the stakeholders, the December 29th draft, at 53.E(6)(c), eliminates the above-italicized portion of the current Rule 711(C)(4)(c) thereby eliminating the approval authority provided by the second sentence of Rule 711(C)(4)(c) without any corresponding change to Rule 712.

The apparent impact of the proposed changes on existing landfills.

There is no RCRA problem with the Division authorizing the acceptance of non-exempt, non-hazardous wastes in landfills. See the EPA publication "Crude Oil and Natural Gas Exploration and Production Wastes: Exemption from RCRA Subtitle C Regulation" (EPA530-K-95-003)(updated October 2002).

The new definition of oilfield wastes calls into question the existing practice of accepting general types of non-hazardous wastes generated by oilfield activities. While CRI has no wish to accept "tires and appliances" or "sewage" or "sludge from a waste treatment plant," it does want to continue to accept non-exempt, non-hazardous mud sacks, plastic thread protectors, pipes, tanks, wood pallets, construction and concrete debris, packing materials, plastic wrap, binding straps, office trash, and other ordinary refuse generated by oilfield facilities. Some of these items might be susceptible to a description of "paper trash, ordinary garbage and refuse." Indeed, if Rule 712 continues to allow exempt, and non-exempt, non-hazardous oilfield waste disposal in NMED permitted landfills on a case by case basis, why shouldn't OCD permitted facilities continue to have the ability to accept all oilfield wastes on a case by case basis, with Division approval? See Rule 712(D).

The elimination of the above-italicized section of Rule 711(C)(4)(c) calls into question the existing practice of accepting non-exempt, non-hazardous, non-oilfield wastes, waste streams that are best suited for disposal in an OCD approved and permitted facility. Forbidding landfills from accepting, for instance, ethanol refining-related waste such as mole sieve, would be contrary to the State's, and the Energy and Minerals Department's policy of encouraging the production and use of alternative fuels. Indeed, if the Department of Public Safety is to continue

to have authority to allow these kinds of wastes to be deposited in Division-approved landfills, why shouldn't the Division have the same authority itself?

Further, in other circumstances the Division already approves of the kind of cross-jurisdictional disposal practices CRI currently employs. For instance, in current OCD Proceeding No. BW-031 the Division is preparing to allow the injection of treated effluent from the City of Hobbs wastewater treatment plant into a brine extraction well in Lea County. This effluent is treated domestic waste, see 20.6.2.3105.B. NMAC, disposal of which is ordinarily a NMED concern.

For the Division to now change this status quo raises due process concerns, regulatory takings issues, and other legal concerns without any apparent benefit to the public health or the environment. CRI suggests that the more reasoned approach is to retain the current definition of oilfield waste, and continue to address any concerns the Division may have with the acceptance of non-exempt, non-hazardous, non-oilfield wastes on a pre-approved case by case basis, as is the present situation under Rule 711(C)(4)(c), rather than suddenly prohibiting this practice.

CRI therefore suggests that the Commission reject the proposed modifications to the definition of "oilfield wastes" in 19.15.1.7.O(3); and retain in proposed Rule 53.E(6)(c) the above italicized language from Rule 711(C)(4)(c), as follows:

19.15.1.7.O(3): "Oil field wastes shall mean those wastes generated in conjunction with the exploration, production, refining, processing, gathering and transportation of crude oil or natural gas or generated from oil field service company operations."

19.15.2.53.E(6)(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 Form C-138 oil field waste manifest, describing the waste, and maintain the same, accompanied by the department of public safety order, subject to division inspection. With prior approval from the division, other non-hazardous, non-oilfield waste may be accepted into a permitted surface waste management facility if the waste is similar in physical and chemical composition to the oilfield wastes authorized for disposal at that facility and is either: (1) exempt from the 'hazardous waste' provisions of Subtitle C of the federal Resource Conservation and Recovery Act; or (2) has tested non-hazardous and is not listed as hazardous. Prior to acceptance, a Form C-138 oil field waste manifest, accompanied by acceptable documentation to characterize the waste, shall be submitted to and approved by the division's Santa Fe office."

B. <u>Proposed Rule 53.A(2)(a) and (b)</u>: Exempt facilities.

The proposed Rule exempts "centralized facilities" from all regulation. CRI believes *all* surface waste facilities should be regulated. There is no reason that "centralized facilities" should be exempt, especially since they are authorized in the proposed Rule to accept *any* liquids up to 500 barrels, i.e., not limited to exempt or non-hazardous liquids, and *any* solids up to 1400 cubic yards, again without any limitation as to exempt or non-hazardous contaminants.

Under the exemption in proposed Rule 53.A(2)(a) and (b) "centralized facilities" could

be used for the unregulated disposal of RCRA hazardous wastes up to 21,000 liquid gallons and up to 1,400 solid cubic yards without any permitting, public notice, siting or operational or acceptance or closure requirements. The danger to groundwater, wildlife and the environment is manifest. Nothing approaching this unregulated dumping would be allowed under the Division's Otero Mesa guidelines, and the exemption tramples on the idea of environmental justice embodied in the Governor's Executive Order 2005-056 November 18, 2005.

CRI suggests that Rule 19.15.2.53.A.(2)(a) and (b) be deleted, along with other references to "centralized facilities" in proposed Rules 53.B(1)(a) and (b).

C. **Proposed Rules 53.B(1)(c) and 53.G(1):** The proper waste streams for landfarms to ensure remediation and re-vegetation.

For many years, the public notices provided for landfarm applications have historically stated that these facilities are for "remediation of non-hazardous hydrocarbon contaminated soils." Landfarms were not noticed to the public nor expected to accept other types of oilfield wastes that cannot be remediated in a landfarm environment. Indeed, as evident from these historical public notices and the closure provisions in proposed Rule 53.I(3)(d), landfarms are *not* intended to be permanent disposal sites for non-remediable materials. To the contrary, they are declared to be facilities that promote the bioremediation of hydrocarbon contaminated soils such that they can eventually be "re-vegetated." See proposed Rules 53.I(3)(d)(ii) and (iii).

CRI believes several parts of the proposed Rule depart from these established principles and present a potential to impede the twin goals of remediation and re-vegetation, and risk harm to wildlife and groundwater. Indeed, an arguable interpretation of the Rules would allow the spreading of the entire contents of a drilling, completion or other operations pit on adjacent ground, calling it a landfarm. Under the Rules' sampling regime, the only limitation on such spreading would be that chloride content be below 1000 ppm. 53.G(1). The risk to wildlife, groundwater and the environment from pit contaminants other than hydrocarbons would only be discovered in sampling undertaken *after* they reached the vadose zone (53.G(12)), or *years later* during closure (53.G(14)).

The first clause of proposed Rule 53.B(1)(c) - "for the remediation of hydrocarbon contaminated soils" - reflects the historical purpose of landfarms. But the second clause - "soil like materials such as drill cuttings or tanks bottoms" – does not. See, similarly, 53.G(1)("soil like materials"). "Soil-like materials" is not defined, although 53.G(10) appears to limit what is placed in lifts on landfarms to "contaminated soils." But the term "contaminated soils" is not consistent with the terms "drill cuttings and tank bottoms" in 53.B(1)(c).

Drill cuttings and tank bottoms are not soil, nor are they soil-like. They contain contaminants, including metals that may contaminate groundwater or be toxic to plants or wildlife, that are (1) concentrated by evaporation and/or sedimentation, (2) that are not remediable by biodegradation, and (3) that will not support or sustain re-vegetation or plant growth. In the words of one of the industry group's experts, Dr. Thomas, at the January 12th stakeholders meeting, "Tank bottoms? Who knows what's there?" Because these contaminants are neither biodegradable nor otherwise remediable in a landfarm, nor consistent with re-

vegetation and sustained plant growth, and because they are a potential risk to wildlife and to groundwater, they should not be layered in unlimited quantities over facilities that could be as large as 500 acres. *See* Rule 53.E(3)(500 acre facilities).

Equally problematic is the potential abuse of the definition of "lift" in 53.B.(2)(g). "Lift" is a landfarm term. See 53.G(10). But, according to this definition, a landfarm could contain *any* "accumulation of oil field waste," and the Rule's definition of "oil field wastes" is totally unlimited – it includes *any* waste from the oil and gas industry. See 19.15.1-7-O(3) (definition of "oil field wastes"). Under this definition of "lift" the only arguable limitation on what could be put in a lift is that it be "soil-like material" in 53.B(1)(c) and 53(g)(1). Under this regime, a landfarm could be established by simply spreading the partially dewatered contents of a drilling, completion or other operations pit on adjacent ground surface.

If the goal of the Division is to permit landfarms that will not end up as barren waste sites, then CRI suggests that proposed Rule 19.15.2.53(B)(1) be revised to read: "A landfarm is a discrete area of land designed and used for the remediation of non-hazardous hydrocarbon contaminated soils that do not exceed the chloride standard contained in Paragraph (1) of Subsection G of 19.15.2.53 NMAC."

And if the goal of the Division is to require remediation, not disposal, followed by re-vegetation, at landfarms, Proposed Rule 19.2.53(G)(1) should be modified to read: "Only non-hazardous hydrocarbon contaminated soils that do not have a chloride concentration exceeding 250 mg/kg shall be placed in a 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."

D. Proposed Rule 53.B(2)(c): The definition of "cell" as applied to landfarms; and the use of the defined term "cell" in **Proposed Rules 53.B (2)(g), 53.E(5), 53.G.(5), (10), (12), (14), (16), 53.I(b), (b)(i), and 53.I(d)(i) and (iii).**

The proposed Rule defines a "cell" as "a confined area engineered for the disposal of solid waste." The word "cell" is a landfill term. A landfill is for disposal of oilfield waste. See, e.g., definition of landfill at 53.B(1)(d). This definition of cell would be appropriate for landfills, but it is not appropriate for landfarms. The purpose of a landfarm is to accomplish remediation of hydrocarbon contaminated soils, only, not disposal. See, e.g., definition at 53.B(1)(c)(landfarm exists for "remediation" of "hydrocarbon-contaminated soils"). Thus, when a landfill is closed, solid oilfield waste remains in place, covered. When a landfarm is closed, there is *no* waste in place, there is only formerly hydrocarbon-contaminated soil that has been treated and *remediated.* The better term for confined areas undergoing remediation at landfarms is "landfarm remediation area."

Rule 19.15.2.53.B(2)(c) should be modified to read: "A cell is a confined area at a landfill engineered for the disposal of solid waste."

A new Rule 19.15.2.53.B(2)(e) should be added as follows: "A landfarm remediation

area is a confined area at a landfarm for the remediation of hydrocarbon contaminated soil."

In Proposed Rules 19.12.2.53.B (2)(g), 53.E(5), 53.G.(5), (10), (12), (14), (16), 53.I(b), (b)(i), and 53.I(d)(i) and (iii) the word "cell[s]" should be replaced with the words "landfarm remediation area[s]."

E. **Proposed Rule 53.B(2)(g)**: The definition of "lift."

"Lift" is a defined term in proposed Rule 53.B(2)(g). Elsewhere in the proposed Rules it is used to regulate the method of applying contaminated soils in landfarms. Proposed Rule 53.G(10). But the definition refers to a lift as "an accumulation of oil field waste." Oil field waste is not an appropriate term for landfarms. The term is overbroad. It does not reflect the limited purpose of landfarms – remediation of hydrocarbon contaminated soils. Landfarm lifts should be limited to the accumulation of hydrocarbon contaminated soils meeting the standard in Rule 53.G(1).

The proposed definition also refers to oilfield waste being "compacted into a cell," and refers to a lift as an area "over which compacted cover is placed." This is not appropriate for a landfarm. Compaction and compacted cover may be appropriate in a landfill under some circumstances. But compaction is foreign to the idea of a landfarm.

CRI proposes that 19.15.2.53.B(2)(g) be modified to read: "A lift is an accumulation of hydrocarbon contaminated soil that does not exceed the standards in Paragraph (1) of Subsection G of 19.15.2.53 NMAC, that is treated in a landfarm remediation area.[1]

F. **Proposed Rule 53.C(1)(e)**: Certified engineering designs.

Permit applications are required for various types of facilities that apply to the Division to treat, remediate and/or afford for permanent disposal of oilfield wastes. But proposed Rule 53.C(1)(e) only requires certified engineering designs to include technical data on the design elements of *disposal* methods. Proposals for *treatment* and *remediation* methods warrant the same level of professional engineering design.

Rule 19.15.2.53.C(1)(e) should be modified to read: "engineering designs, certified by a registered professional engineer registered in New Mexico, including technical data on the design elements of each applicable treatment, remediation and disposal method and detailed designs of surface impoundments;"

G. **Proposed Rules 53.C(1)(m), 53.E(15) and 53.F(12)**: Gas safety management plans.

In the Division's December 29th proposed Rules, for the first time the Division has advanced the idea of a gas safety management plan as a requirement for all facilities with landfills. CRI believes this new requirement, which has never been discussed with stakeholders

[1] The term "lift" is also used once in the construction standards section of the operational requirements for evaporation, storage, treatment and skimmer ponds. 19.15.2.53.H(2)(h). CRI suggests the term "lifts" in that section be replaced with the term "layers."

or explained by the Division, is unnecessary.

Oilfield wastes are less likely than municipal solid waste facilities to generate dangerous gases. But NMED requires gas safety management plans only for the two largest landfills in the state. NMED does not require gas safety management plans for landfills with a design capacity less than about 3 ¼ million cubic yards or about 2 ¾ million tons. No current or proposed OCD-permitted landfills approach this size.

Unless the Division has identified some gas danger that escapes the notice of NMED, this requirement should be eliminated; or, if not eliminated, confined to those facilities whose design calls for the large capacities used by NMED as a threshold.

H. Proposed Rule 53.E(1): Allowable groundwater depth for all facilities.

The New Mexico Environment Department prohibits landfills in areas where the depth to groundwater is less than 100 feet. 20.9.1.300(1)(b)NMAC. The potential for and avoidance of groundwater contamination should be a major concern in the drafting of these Rules. According to the Division's recently published Generalized Record of Ground Water Impact Sites, approximately 28% of the groundwater contamination events recorded by the oil and gas industry occur at depths between 50 and 100 feet below ground surface.[2]

CRI suggests the Division restate proposed Rule 19.15.2.53.E(1) to read: "No surface waste management facility shall be located where ground water is less than 100 feet below the surface."

I. Proposed Rules 53.E(6)(a) and 53.E(7): Exempt oilfield wastes.

First, CRI questions the need for the language "and not mixed with non-exempt waste" in 53.E(6)(a) and the new requirement in the December 29th version of the Rules at 53.E(7) that records reflect that wastes have not been mixed, due to the problems these proposals create for waste haulers and generators. CRI understands the Division was concerned whether this language is necessary to maintain the RCRA exemption for oilfield wastes.

We believe the EPA publication "Crude Oil and Natural Gas Exploration and Production Wastes: Exemption from RCRA Subtitle C Regulation" (EPA530-K-95-003)(updated October 2002) disposes of any concern about mixing exempt oilfield wastes with non-hazardous, non-exempt wastes. The EPA guidance makes it clear that "Mixing a non-hazardous waste (exempt or non-exempt) with an exempt waste results in a mixture that is also exempt." Id., p. 14.

No such prohibition on mixing exempt and non-exempt and/or non-hazardous wastes exists in the Division's proposed Pit rule. See proposed Pit Rule 19.15.2.50(c)(2)(f).

CRI also questions the apparent proposed Rule 53.E(6)(a) requirement that both generators and operators indefinitely maintain copies of Form C-138. At the December 8th stakeholders meeting the Division advanced as justification that the requirement would facilitate

[2] Approximately 63% occur at depths of less than 50 feet, and approximately 8% at depths of greater than 100 feet.

"more robust waste tracking" and "enforcement." Generators and operators expressed concern with the indefinite retention requirement as burdensome. It is not clear from the Division's "Error Corrections to 12/28/05 Draft Rules and Proposals to Address Certain Comments," which was passed out at the January 12, 2006 stakeholders meeting, whether the Division proposes to delete this provision.

CRI believes this requirement should be deleted from the proposed Rule. If the Division does propose to institute a more robust waste tracking system in the future, the issue of generators and operators maintaining copies of forms generated as part of the system should be postponed for consideration at that time, and as part of a comprehensive waste tracking system. Imposing a piecemeal requirement at this time and in this proposed Rule is premature.

Third, the December 29th version of Rule 53.E(6)(a) eliminates the words "or his authorized agent" from the section on exempt oilfield wastes, so that the section provides that only a "generator," and not the generator's agent, may provide a certification that the wastes tendered to a facility are exempt oilfield wastes. The change raises two questions. First, who is a "generator?" The term is not defined in the proposed Rule or elsewhere in OCD rules. Second, if the term "generator" is intended to be limited in some fashion, then it works a prohibition on CRI's longstanding practice of accepting certifications from the person who delivers oilfield wastes to its facility for disposal or treatment. CRI is not aware of any problems with this longstanding practice, and therefore questions the need for prohibiting its practice. Accordingly, the existing language in the rule should be retained.

Finally, proposed Rule 53.E(7) states that disposal records be "maintained for a period of five years after facility closure, subject to division inspection." Read together with the apparent indefinite retention period discussed above, this provision, as drafted, effects a marked change to the existing rule which requires records to be maintained for a period of five years, only. Rule 711(C)(5). CRI has no objection to the existing five year retention period combined with a new requirement that the *last* five years of pre-closure records be maintained for an additional five year period after the beginning of closure. CRI strongly objects to a modification of the rules to require it to maintain *all* its disposal records created from its first day of business for as long as it remains in business (nor could it comply, since it has already destroyed records more than five years old in reliance of Rule 711(C)(5)).

CRI suggests proposed Rule 19.15.2.53.E(6)(a) be modified to delete the prohibition on mixing with non-hazardous wastes, to delete the requirement of indefinite record retention, and to reinstate the phrase "or his authorized agent," as follows: "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; and exempt from RCRA subtitle C regulations. The operator shall have the option to accept such certifications, on Form C-138 or on forms of its choice, approved by the Division, on a monthly, weekly, or per load basis."

Proposed Rule 19.15.2.53.E(7) should be modified to delete the requirement that records reflect separate disposal of exempt and non-exempt wastes, and to modify the requirement for perpetual record retention, as follows: "The operator shall maintain records reflecting the

generator, the location of origin, the location of disposal within the facility, the volume and type of waste, the date of disposal and the hauling company for each load or category of waste accepted at the facility. Such records shall be maintained in appropriate books and records for a period of not less than five years, subject to division inspection. All records in existence on the date of facility closure shall be maintained for a period of five years after facility closure, subject to division inspection."

J. **Proposed Rule 53.E(16):** Training support.

The proposed Rule provides CRI with an opportunity to ask again for two things CRI has been asking for for years. Training is undeniably a good idea, but the Rule needs to be augmented to provide for some direction from the Division providing for a curriculum, a syllabus, and training by the Division for the operator's trainers. The section of the proposed Rule on Transportation of Produced Water, Drilling Fluids and Other Liquid Oilfield Waste, Rule 51, should have a training component as well.

CRI suggests the proposed Rule be modified as follows, and that a similarly worded rule be added to proposed Rule 51: "Training program. Each operator shall conduct an annual training program for key personnel that includes general operations, permit conditions, emergencies, proper sampling methods, and identification of RCRA exempt and non-exempt waste, including hazardous waste. The Division will provide operator training, and a syllabus and curriculum, for operators to use in conducting annual training. The operator shall maintain records of such training, subject to division inspection, for five years."

K. **Proposed Rule 53.F(4):** Landfill odor control.

The December 29th revised draft of proposed Rule 53 imposes an odor control requirement on Division approved landfills that has not been discussed with the stakeholders, and that was not contained in prior drafts of the Rule. The Division has not provided any reason or rationale for this revision. There are a number of concerns with this new provision.

The regulation is standardless. There is no way to measure odor. There is no way for CRI to know whether it has an odor problem based on the single word "odor."

No other type of facility regulated by the Division is regulated for odor, including refineries and gas facilities dealing with mercaptan. Nor are industries regulated by other divisions of State government, such as dairy farms and feedlots, regulated for odor.

The proposed Rule subjects landfills, and landfills alone, to purely subjective regulation. It is arbitrary and capricious on its face. Proposed Rule 19.15.2.53.F(4) should be deleted.

L. **Proposed Rule 53.I(3)(a)(i):** Equipment removal at oil treating plants.

In its present form, the proposed Rule requires removal of tanks and equipment as part of the closure process. CRI believes there will be circumstances where tanks or equipment formerly used for oil treatment could be used in subsequent operations or activities on the

property. A blanket prohibition on subsequent use, if that is the intent of this part of the proposed Rule, would increase the cost of disposal without providing any benefit to the environment. This would not be in the best interests of the oil and gas industry.

Accordingly, CRI suggests adding the following language to proposed Rule 19.15.2.53.I(3)(a)(i) to allow the equipment to remain, so long as it is properly cleaned: "All tanks and equipment used for oil treatment are cleaned or removed from the site and recycled or properly disposed of in accordance with division rules;"

M. Proposed Rules 53.G(10) and 53.I(3)(d)(iii): Disposal of contaminated soils after removal from landfarms.

The proposed Rules do not provide for the proper disposal of contaminated soils that are removed from a landfarm. If the last sentence of proposed Rule 53.G(10) operates to require removal of soil that does not meet the standard in the second sentence of 53.G(10), then contaminated soils will be "removed" from an active landfarm without any limitation on where they may be removed to. Similarly, under proposed Rule 53.I(3)(d)(iii), at the time of closure of a landfarm, soils that have not been or cannot be remediated must be "removed." Neither provision, nor any other part of the proposed Rules, makes clear how these contaminated soils are to be disposed of.

CRI suggests proposed Rule 19.15.2.53.G(10) be modified as follows: "The operator shall spread contaminated soils on the surface in six-inch or less lifts. The operator shall conduct treatment zone monitoring to ensure that the TPH concentration of each lift, as determined by EPA SW-846 Method 8015M or EPA Method 418.1, does not exceed 100 mg/kg and that the chloride concentration, as determined by EPA Method 300.1, does not exceed 250 mg/kg, prior to adding an additional lift. The maximum thickness of treated soils in any landfarm remediation area shall not exceed two feet in thickness. When that thickness is reached, the operator shall either remove the treated soils to a Division approved disposal site or close the landfarm remediation area."

Proposed Rule 19.15.2.53.I(3)(d)(iii) should be modified to read: "landfarmed soils that have not been or cannot be remediated to the above standards are removed to a Division approved disposal site, and the landfarm remediation area is filled in with native soil and re-vegetated;"

N. Proposed Rule 53.I(3)(e): Landfarm post closure to ensure re-vegetation.

One of the goals of the proposed Rules is to provide for re-vegetation of landfarms as part of their operational goals and closure requirements. 53.I(3)(d)(ii) and (iii); see 53.I(1)(financial assurance not be released at closure to the extent needed to re-vegetate the site). But the post closure section of the proposed Rule on landfarms does not include any monitoring to ensure re-vegetation is occurring and maintained.

Accordingly, CRI suggests the following addition to proposed Rule 19.15.2.53.I(3)(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;

(iii) re-vegetation is maintained by sustained plant growth."

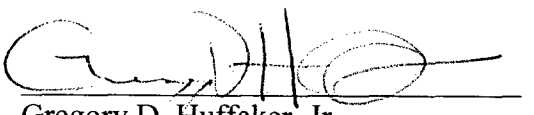
O. **Proposed Rule 53.I(4):** Alternatives to re-vegetation.

As written the proposed Rule allows a landfarm operator to merely "contemplate" some use inconsistent with re-vegetation in order to avoid closure obligations. The rules should not be an exercise in meditation. Operators should supply some specifics. Before an operator is relieved of his post closure obligations he/she should submit a plan for the "inconsistent" use, prove that the "inconsistent" use is a viable use and a superior use to re-vegetation, that it will not endanger wildlife and groundwater, and back up the plan with a financial guarantee.

CRI proposes the following modification to proposed Rule 19.15.2.53.I(4): "Alternatives to re-vegetation. If the operator or owner of the land proposes a plan for use of the land where a cell or facility is located for purposes inconsistent with re-vegetation, and that will protect wildlife and groundwater, the operator may, with division approval, implement an alternative surface treatment appropriate for the proposed use, provided that the alternative treatment will effectively prevent erosion, and provided that adequate financial assurance to ensure the proposed use is included as a post closure cost under 19.15.2.53.C(5)(b)."

Respectfully submitted,

Huffaker & Moffett LLC



Gregory D. Huffaker, Jr.
Attorneys for Controlled Recovery, Inc.