

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

In the matter of the 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
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)

**POST-HEARING COMMENTS OF
THE NEW MEXICO CITIZENS FOR CLEAN AIR & WATER
September 6, 2006**

1. Comments regarding the Secretary's Task Force.

We appreciate the opportunity to have worked with the Task Force that will separately submit its comments. Nonetheless, we want the Commission to understand that participation in such a group, occurring after presentation of testimony in the hearing, is not entirely voluntary, but forced by the uncertain influence of the group and by the implications that might be made if an invited party elected not to participate. Because the Task Force participants agreed upon some suggested improvements to the proposed rule and disagreed upon others, it may be argued that the proposed rule has not yet received sufficient technical review and comment. This is not true. There were several stakeholder meetings prior to the hearing. All persons had opportunity to participate in those meetings, and that all persons had opportunity to present their arguments during the hearing. We therefore urge that the Commission not continue this hearing or postpone its decision in response to any argument that additional technical review is necessary.

Some of the rule modifications encouraged by the Task Force point in the directions of specific changes that we had proposed in our testimony and in our formal findings submitted on May 18. The numerical values proposed by the Task Force may differ from our recommendations, however. We are pleased with the general thrust of the Task Force recommendations that advocate:

- a limit on the area of small landfarms;
- a definition of the maximum cell size of any landfarm'
- public notification of exceptions and waivers being considered for new facilities and major modifications of existing facilities;
- increased review of the financial assurance for landfarms; and
- more precise specifications of soil sampling protocols.

2. Comments regarding numerical standards.

We expect that other participants will offer comments regarding numerical standards for the concentrations of TPH and the so-called "3103" constituents. We urge the Commission to establish its standards based on what is needed for environmental protection, rather than to set

numerical closure limits based on the anticipated content of the wastes or the anticipated hydrocarbon concentration that may be reached by landfarming. In other terms, the closure standards for landfarms should not be established according to the expected concentrations of metals or unremediable heavy hydrocarbons in the wastes. The purpose of a closure standard is to prevent contamination, not to accommodate disposal of contaminants.

3. Depth to groundwater.

As proposed, Rule 53 generally requires at least a 50 foot depth to ground water beneath a surface waste facility. This proposed limit was supported by testimony based on models that employ a presumed rate of transport, presumed flow rate in the aquifer, and the presumption that a single facility by itself should be allowed to contaminate the ground water to the WQCC standard. We continue to urge that the required depth to ground water be 100 feet, simply to reduce the opportunity for rapid transmission via fast pathways, as might occur subsequent to a heavy rainfall.

4. The chloride closure standard.

The proposed landfarm closure standard for chloride is 1000 mg/kg. Our testimony established that this value is not protective of vegetation. Furthermore, we remind the Commission that the cited vegetation studies were conducted with well-watered specimens, not with the more realistic conditions of arid climates in which the soil moisture potential is low, even without excess chloride. The standard for chloride should be 500 mg/kg, or an approximately equivalent specification that the EC not exceed 4micromho/cm.

5. Availability of water for bioremediation landfarms.

Expert testimony established that irrigation will be necessary for bioremediation landfarms. Although we regard attempts to operate bioremediation landfarms in New Mexico as a valid experiment, we also note that the only practical way to enforce the required application of water is to require that the applicant demonstrate physical and legal access to water when applying for the permit. We have heard arguments to the effect that the OCD has no authority to enforce a requirement for water. We do not find such arguments valid. The OCD has authority to enforce all of the requirements that it applies to a permit, including plans to control run-on and run-off water, acquisition of hydrologic data, and " **any other information that the division may require to demonstrate that the facility's operation ... will comply with division rules and orders.**"[19.15.2.53 C(1)(q)] One of those proposed division rules for bioremediation landfarms includes "...**procedures to monitor, apply, and maintain moisture ...** ." [19.15.2.53 G(8)(c)(iii)] Obviously, it will be impossible to apply moisture unless the applicant has access to the necessary amount of water. OCD is not required to enforce water law. However, there is no reason why OCD cannot examine the capability of an operator to meet the conditions necessary for proper operation.