May 5, 2006

New Mexico Oil Conservation Commission
c/o Ms. Florene Davidson, Hearing Clerk
1220 S. St .Francis Dr,
Santa Fe, NM 87505

Re: Proposed Surface Waste Management Rule
Areas of Agreement between Industry Committee and New Mexico Citizens for Clean Air & Water

Dear Members of the Oil Conservation Commission:

Members of the Industry Committee and New Mexico Citizens for Clean Air & Water have met to discuss the proposed Surface Waste Management Rule in an effort to reach agreement on a rule that is both environmentally protective and workable as a practical matter. As a result of those discussions, both the Industry Committee and New Mexico Citizens for Clean Air & Water reached agreement on the following conceptual issues in the proposed rule and respectfully request that the Commission give these areas of conceptual agreement careful consideration in its deliberations on the proposed Surface Waste Management Rule, so that an environmentally protective and workable rule will result.

Closure standards
Closure standards for permitted landfarms using a bioremediation endpoint, accepting only crude oil- and condensate-impacted soils, are agreed to in the bulleted list below. We suggest that small registered landfarms might also employ a bioremediation endpoint operation and the listed closure standards, if compliance can be assured. In addition to the bulleted list we recognize that additional closure standards may apply.

- < 1% total extractable petroleum hydrocarbons as determined by EPA 418.1 or an EPA-approved equivalent method, EC_s < 4 mmhos/cm (dS/m) and SAR < 13 or background
- < 1% surface coverage of solid phase hydrocarbon and particles sizes < ½ inch
- Two years of unattended, sustained vegetation
  - Lands under state primacy:
    - Three native species (from the same climatic zone) including one grass; and with 70% coverage or coverage equivalent to background native vegetation on land unimpacted by overgrazing, fire, or other intrusion damaging to native vegetation.
    - Alternatively to meet landowner requirements.

- Lands under federal primacy: Meet requirements of the appropriate federal or tribal agency

80 % reduction requirement
The requirement for a minimum reduction of 80% in the TPH concentration when using the bioremediation endpoint option for permitted landfarms should be replaced with a maximum residual TPH concentration at the bioremediation endpoint. An appropriate maximum residual TPH concentration is < 1% total extractable petroleum hydrocarbons as determined by EPA 418.1 or and EPA approved equivalent method.

Landfarm sampling
Documenting the bioremediation endpoint:

- Two sets of three composite samples (20 random discrete samples per composite) separated in time by at least two treatment months
    - After a minimum of 6 treatment months for condensate treatment and 12 treatment months for crude oil treatment
        - Treatment month = 30 consecutive days with a maximum 4 inch bare soil temperature above 50 °F
    - Sample unit: one acre for commercial landfarms; two acres for centralized landfarms
    - Sample means shown to be statistically equivalent using a Student's t test with $\alpha = 0.1$

Documenting TPH closure standard:

- One set of three composite samples (20 random discrete samples per composite)
    - Sample unit: one acre for commercial landfarms; two acres for centralized landfarms
    - Mean shown to be statistically equivalent to 1% total extractable petroleum hydrocarbons using a Student's t test with $\alpha = 0.1$

Bioremediation in small registered landfarms
Bioremediation and the bioremediation endpoint approach should be encouraged as a treatment option for small, registered landfarms. Regulations for small, registered landfarms should be technically sound but minimize adverse effects on small businesses.

Compliance assurance with small landfarms
We propose the establishment of a working group consisting of oil and gas operators (including small producers), the OCD, and representatives of the environmental community to address issues regarding compliance assurance relative to small landfarms.

Water quality for irrigation of landfarms
Water used for irrigation of landfarms must have an $EC_w < 1.25$ mmhos/cm (dS/m) at 25 °C, an SAR < 4.5, and a pH between 5.5 and 7.5.

Financial assurance for landfarms
The landfarm permitting process should include sufficient financial assurance to ensure closure. This financial assurance should be equivalent to the cost of using 3rd party dig-and-haul and disposal in an appropriate landfill based on the active area of the landfarm. We understand that there are statutory and other limits on the total financial assurance that may apply.

Water availability for landfarming
The landfarm permitting process must include a demonstration of access to sufficient water to support the proposed landfarm operations program.

The Industry Committee and New Mexico Citizens for Clean Air & Water support all of these concepts and note that they are interlinked as an integral whole, and hope that the Commission will consider these comments in that light.

Respectfully submitted,

Industry Committee

By: William F. Carr
Joint Counsel to the Industry Committee

By: Dennis L. Newman
SWM Technical Chair, Industry Committee

New Mexico Citizens for Clean Air & Water

Donald A. Neeper