

NEW MEXICO OIL CONSERVATION DIVISION

COMMISSION HEARING

SANTA FE, NEW MEXICO

Hearing Date MARCH 30, 2001 Time 9:00 A.M.

NAME	REPRESENTING	LOCATION
James B. [unclear]	Pogo Prod. Co.	SF
William [unclear]	HOWARD + HART LLP	SANTA FE
Michael H. Feldner	" " "	"
Butch Tongate	NM Env. Dept.	Santa fe
DON BRADLEY	" " "	" "
Jim Jordan	WASTE Management	Albuquerque

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

IN THE MATTER OF THE HEARING CALLED BY )  
THE OIL CONSERVATION DIVISION TO ENACT )  
A NEW RULE 712 PERMITTING DISPOSAL OF ) CASE NO. 12,626  
CERTAIN NON-DOMESTIC WASTE ARISING FROM )  
THE EXPLORATION, DEVELOPMENT, PRODUCTION )  
OR STORAGE OF CRUDE OIL OR NATURAL GAS, )  
CERTAIN NON-DOMESTIC WASTE ARISING FROM ) ORIGINAL  
THE OIL FIELD SERVICE INDUSTRY, AND )  
CERTAIN NON-DOMESTIC WASTE ARISING FROM )  
THE TRANSPORTATION, TREATMENT OR )  
REFINEMENT OF CRUDE OIL OR NATURAL GAS, )  
AT A SOLID WASTE FACILITY REGULATED BY )  
THE NEW MEXICO ENVIRONMENT DEPARTMENT, )  
WITH THE CONCURRENCE OF THE NEW MEXICO )  
ENVIRONMENT DEPARTMENT )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN  
JAMI BAILEY, COMMISSIONER  
ROBERT LEE, COMMISSIONER

March 30th, 2001

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Friday, March 30th, 2001, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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OIL CONSERVATION DIV.  
01 APR 16 PM 1:20

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March 30th, 2001  
 Commission Hearing  
 CASE NO. 12,626

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\* \* \*

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## A P P E A R A N C E S

## FOR THE COMMISSION:

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## FOR THE OIL CONSERVATION DIVISION:

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By: MICHAEL H. FELDEWERT

\* \* \*

## ALSO PRESENT:

JIM JORDAN  
Waste Management  
Albuquerque, NM

KEN MARSH  
Controlled Recovery, Inc.; KRM, Inc.  
Hobbs, New Mexico

DEBORAH SELIGMAN  
New Mexico Oil and Gas Association

BUTCH TONGATE  
New Mexico Environmental Department

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2 9:05 a.m.:

3           CHAIRMAN WROTENBERY: And that brings us to Case  
4 12,626. This is the hearing called by the Oil Conservation  
5 Division to enact a new Rule 712 permitting disposal of  
6 certain non-domestic waste generated in the oilfield at a  
7 solid waste facility regulated by the New Mexico  
8 Environment Department.

9           And we have a proposed rule before us. We will  
10 be taking public comment and testimony on this proposed  
11 rule at the hearing today.

12           Let me first call for appearances in this  
13 particular matter.

14           MR. VAN DEREN: I'm Kurt Van Deren, I'm appearing  
15 on behalf of the Oil Conservation Division.

16           MR. FELDEWERT: Members of the Commission, my  
17 name is Michael Feldewert. I'm with the law firm of  
18 Holland and Hart and Campbell and Carr, appearing on behalf  
19 of Controlled Recovery, Inc., in this case.

20           We have a proposed amendment to Rule 712, as well  
21 as a couple of comments.

22           MR. MARSH: Ken Marsh with CRI, and I have  
23 comments for the record.

24           MS. SELIGMAN: Deborah Seligman, New Mexico Oil  
25 and Gas Association. Brief comments for the record.

1 CHAIRMAN WROTENBERY: Okay, thank you.

2 MR. JORDAN: Jim Jordan, Waste Management,  
3 testify if need be for the solid waste facilities.

4 CHAIRMAN WROTENBERY: Anybody else? This will be  
5 a fairly informal proceeding today. So I thought what we  
6 would do first is, anybody who might be presenting  
7 testimony today, would you please stand and be sworn in for  
8 the record?

9 (Thereupon, the witnesses were sworn.)

10 CHAIRMAN WROTENBERY: Okay, let's get started  
11 with the presentation from the Oil Conservation Division,  
12 Mr. Van Deren.

13 MR. VAN DEREN: Thank you. And testifying on  
14 behalf of the Division is Roger Anderson, the Environmental  
15 Bureau Chief for the Division.

16 CHAIRMAN WROTENBERY: You might go ahead and sit  
17 up here. Actually, wherever you're comfortable is fine.

18 MR. VAN DEREN: And a couple of procedural  
19 matters before Mr. Anderson testifies. He's going to be  
20 referring to a number of documents during his testimony --

21 CHAIRMAN WROTENBERY: Uh-huh.

22 MR. VAN DEREN: And we've already marked those as  
23 exhibits, and if there are no objections I'd like to hand  
24 you those for the record at this time.

25 And I don't know if the Commission would like to

1 go into Mr. Anderson's qualifications to testify as an  
2 expert at this point. He has testified before as an expert  
3 before the Commission, so I don't know if we need to -- how  
4 formally we need to --

5 CHAIRMAN WROTENBERY: We know Mr. Anderson  
6 well --

7 MR. VAN DEREN: Okay.

8 CHAIRMAN WROTENBERY: And I think we accept his  
9 qualifications to testify in this matter.

10 ROGER C. ANDERSON,  
11 the witness herein, after having been first duly sworn upon  
12 his oath, testified as follows:

13 DIRECT TESTIMONY

14 BY MR. ANDERSON: Madame Chairman, Commissioners,  
15 this whole issue of solid waste disposal at solid waste  
16 facilities regulated by the Environment Department started  
17 some time ago, primarily, and came to a head just recently.

18 Back in the early 1990s, 1994 and 1995, some of  
19 the industry representatives contacted our office, and  
20 these are representatives of companies like Gary Energy,  
21 Phillips Petroleum, Burlington in the northwest, and  
22 Navajo, Enron, Halliburton, Marathon in the southeast, to  
23 find a closer environmentally sound location to dispose of  
24 wastes that are common to other industries as well as  
25 themselves, wastes such as their office trash, bags, sacks,

1 empty drums, things like this, construction debris.

2 By 1999, early 1999, the requests became more  
3 frequent, they started multiplying. So the Oil  
4 Conservation Division contacted the Environment Department  
5 in the spring of 1999 to attempt to come up with either a  
6 memorandum of agreement, a memorandum of understanding,  
7 some formal document that would allow us in the industry to  
8 dispose of their common wastes at Environment Department  
9 landfills without the overly cumbersome paperwork that they  
10 were having to go through. The paperwork was more  
11 cumbersome than disposing of it in an OCD-permitted site at  
12 that time.

13 We were negotiating back and forth with the  
14 Environment Department Solid Waste Bureau, and we came up  
15 with a list of wastes at that time, that you'll see in  
16 Exhibit 1, that is a matrix of wastes that we felt were  
17 common to multiple industries throughout the country.

18 As we were going through the formal agreement  
19 process -- and this -- Let me back up a little bit. This  
20 matrix also included the testing requirements and any  
21 approval requirements for specific wastes that may be  
22 placed on those, based on what the waste actually was.

23 Shortly after we came up with this -- and we  
24 distributed this to industry as we were working on it --  
25 there was a challenge to the statutory and permitting

1 authority of specific landfills, a solid waste landfill, to  
2 accept oilfield waste.

3           The result of that challenge -- Well, let me back  
4 up again too. Exhibit 2, if you'll look at Exhibit 2, this  
5 is a Railroad Commission document that we used some in  
6 formulating the wastes that we came up with in the matrix.

7           Okay, now back to where I was.

8           The challenge resulted -- the challenge to the  
9 landfill accepting certain oilfield wastes, resulted in the  
10 Environment Department -- resulted in a court case first.  
11 And I'm not an attorney, so I'd just as soon not address  
12 what that court case was about. But what came out of that,  
13 I believe, was a hearing where the landfill applied to  
14 modify its permit to accept nonhazardous oilfield waste.

15           And that hearing was held -- And that's Exhibit  
16 3, is the Hearing Officer's proposed findings of fact and  
17 the conclusions. And that was held in February of 19-- -- I  
18 take that back, I'm sorry -- in September 12th of 2000, in  
19 Carlsbad.

20           Based on this Hearing Officer's report, the  
21 Environment Department issued the final order, which is  
22 Exhibit 4 in your packet, that allowed -- that specifically  
23 deleted Condition 8, which prohibited the acceptance of  
24 oilfield waste at the solid waste landfill, but it denied  
25 the addition of alternate language that expressly allowed

1 it. So consequently they no longer had a prohibition of  
2 accepting it, but they couldn't -- but they didn't have  
3 anything that said they could take it.

4 Okay, based on that Hearing Officer's report and  
5 the final order, the Environment Department, on January  
6 25th, 2001, which is -- you have a copy of Exhibit 5 --  
7 sent a letter to all of their solid waste landfills that  
8 they had permitted.

9 This is a copy, an example letter, that went to  
10 one of them, and it specifically prohibits the acceptance  
11 of the solid waste landfills permitted by the Environment  
12 Department to accept certain oil and gas exploration,  
13 production, transportation and refining wastes.

14 It limited it to them -- the landfills, being  
15 allowed to take domestic waste only, which is a household-  
16 type waste, office trash, McDonald's bags, things like  
17 that.

18 This is where everything started to go downhill  
19 for the -- basically the oil and gas industry. What  
20 happened was, all their rollofs, all their dumpsters that  
21 they had in their office -- in their shop yards, service  
22 companies, compressor stations and whatever, were no longer  
23 allowed to take that waste to the municipal landfill.

24 There were a couple of options that they had.

25 We did have -- The OCD does have two permitted

1 facilities in the southeast that can accept solid waste,  
2 and they were accepting most of it.

3 The industry also shipped some of their waste out  
4 of state to dispose of it.

5 And some of them just started letting it build up  
6 in their yards. And the longer the problem went on, the  
7 more waste there was being stored at the facility yards.  
8 The storage of this massive amount of waste equated to the  
9 garbage strike in New York where garbage is piling up on  
10 the streets. It can become a health hazard, it can become  
11 an environmental hazard to have waste stored for long  
12 periods of time in an unpermitted facility or an unsafe  
13 facility.

14 Okay, the Legislature -- During this last  
15 legislative session, the Legislature passed an amendment to  
16 the Solid Waste Act that allows solid waste permitted  
17 facilities from the Environment Department to accept  
18 certain oil and gas solid wastes, or certain oil and gas  
19 wastes, and that is Exhibit 6, is a copy of the Act, the  
20 modification to the Act.

21 Okay, shortly after the Act was signed into law,  
22 the Oil Conservation Division issued an emergency order,  
23 which is Exhibit 7, which is the emergency Rule and has the  
24 procedures and the types of wastes that can be accepted at  
25 solid waste facilities.

STEVEN T. BRENNER, CCR  
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1 And I think at this time I will go through -- if

1           And I think at this time I will go through -- if  
2           it pleases the Commission, I will go through and explain in  
3           detail what the proposed rule is. And there -- Do we have  
4           the proposed rule in here?

5           CHAIRMAN WROTENBERY: It's attached to Exhibit  
6           Number 7, I believe.

7           THE WITNESS: Okay, I --

8           MR. ROSS: No, it was handed out.

9           THE WITNESS: This is the emergency order.  
10          Exhibit 7 is the emergency order.

11          To run through the rest of the exhibits, Exhibit  
12          8 is a listing of all the C-138s we have from 1998, of all  
13          the wastes and where they went, of all the wastes that are  
14          identified in the emergency Rule based on the category type  
15          of waste.

16          If you look at the emergency Rule, Exhibit 7, the  
17          emergency Rule E-34, item A -- let's see, item D (1), (2)  
18          and (3), those are the wastes that were allowed to be  
19          disposed of at solid waste facilities.

20          On the right-hand column of Exhibit 8 there are  
21          identifications of 1A, 1C, 1D. These are specific examples  
22          of those wastes, when they were disposed of, where they  
23          went, and what they were and their volume. And if you'll  
24          note, virtually all of them -- with, I guess, maybe two or  
25          three exceptions -- we have an analysis for those wastes

1 that went to those facilities.

2 So this is the basic for a two-year history of  
3 those wastes that are in this Rule and where they went.  
4 Prior to 1998, those files are in Archives at this time.  
5 And if need be, we can retrieve those from Archives and  
6 come back with the same analysis for previous waste, as far  
7 back as we have C-138s.

8 Okay, Exhibit 9, 10 and 11 will be brought up  
9 later. Those are other rules and regulations that pertain  
10 to specific wastes within the proposed rule.

11 Okay. Now, this proposed rule does not have an  
12 exhibit number, Steve.

13 MR. ROSS: No.

14 THE WITNESS: But I believe the Commission has  
15 it. It has the explanatory paragraph on the top and goes  
16 through.

17 And the general gist of this Rule is that  
18 "certain non-domestic waste arising from the exploration,  
19 development, production or storage of crude oil or natural  
20 gas and certain nondomestic waste arising" out of "the oil  
21 field service industry...certain nondomestic waste arising  
22 from the transportation, treatment...refinement of crude  
23 oil or natural gas, may be disposed of at a solid waste  
24 facility."

25 Item B is definitions that are used throughout

1 the Rule that are specific for this Rule, and I will  
2 explain some of those as we go through the individual waste  
3 streams.

4 Item C in the Rule are the procedures on how the  
5 wastes will be either approved or authorized to be  
6 transported to the solid waste facility.

7 And all the procedures refer to those wastes that  
8 are addressed in Item D of the Rule itself.

9 The first ones, the D (1) wastes, will be allowed  
10 to be disposed of at the facility without prior  
11 authorization.

12 And Item D (2) wastes are those wastes that can  
13 be disposed of after testing and with written prior  
14 authorization. The Division will have to have copies of  
15 the test results prior to granting authorization, and the  
16 solid waste facility must have a copy of the test results  
17 prior to disposal also.

18 In cases -- and as long as there is  
19 representative samples taken, we will allow the use of  
20 process knowledge, which is allowed under the Resource  
21 Conservation and Recovery Act, as long as there's  
22 certification that the process itself generating the waste  
23 has not changed since the last analysis was taken.

24 Section (3) procedures, the wastes listed in D  
25 (3) will be authorized for disposal on an individual case-

1 by-case, and at that time it will be determined based on  
2 the generation point, the process used, as to whether and  
3 what type of analysis will be required and what type of  
4 approval will be required.

5 Now, going through the individual waste streams  
6 that we propose to allow to go to solid waste disposal  
7 facilities, what we call the D (1) wastes, are those wastes  
8 that do not require prior approval. And there are some  
9 changes in here from the original -- some typographical  
10 errors that were changed from the original one that was  
11 posted on the Internet, and I will try and remember which  
12 ones those were and explain them as we go along.

13 The D (1) (a), barrels, drums, five-gallon  
14 buckets, one-gallon containers, so long as they are empty  
15 and EPA-clean. These are just steel/plastic buckets. And  
16 EPA-clean, if you look on Exhibit 11, OCD Exhibit 11, that  
17 is the definition of EPA-clean. And there are a number of  
18 different requirements in there, a number of different ways  
19 that you can certify as being EPA-clean.

20 And it also says empty, such as no more than two  
21 and a half centimeters of fluid at the bottom, I believe it  
22 is, two and a half centimeters, one inch of residue remains  
23 at the bottom of the container. That is considered EPA-  
24 empty.

25 Item D (1) (b) -- and I believe that this was

1 "contaminated brush" on the original -- Yes, it was stated  
2 as "contaminated brush" on the website, and that was a  
3 typographical error. It should have said "uncontaminated  
4 brush and vegetation arising from cleaning operations".  
5 The same thing -- That's equivalent to the tumbleweeds that  
6 we clean out of our back yard in the spring. That's what  
7 we're looking at, brush, vegetation that we clean up,  
8 uncontaminated.

9 D (1) (c), uncontaminated concrete, that's  
10 concrete that is used for pads or curbs, guttering on a  
11 location at a facility that has no contamination on it.  
12 It's just basically the same thing as D (1) (d),  
13 uncontaminated construction debris, nails, old wood, lumber  
14 that is not contaminated.

15 D (1) (e), non-friable asbestos and asbestos-  
16 contaminated waste material -- that's non-friable asbestos-  
17 contaminated waste material -- so long as the disposal  
18 complies with all applicable federal and state regulations  
19 for friable asbestos materials and so long as asbestos is  
20 removed from steel pipes and boilers and, if applicable,  
21 the steel recycled.

22 One thing to note here, that this is more  
23 stringent than federal regulations because we -- in this  
24 regulation we are requiring the non-friable asbestos to  
25 follow state and federal regulations for friable asbestos.

1 And non-friable asbestos is the asbestos that doesn't break  
2 off and you breathe in, and it's not hazardous. So that's  
3 more stringent than federal law or other state laws.

4 D (1) (f), detergent buckets, that's your typical  
5 Tide buckets, stuff like that.

6 D (1) (h), grease buckets, so long as they are  
7 empty and EPA-clean, the same type of grease buckets that  
8 they use at gas stations that get thrown in the dumpsters,  
9 and maintenance shops, things like that. And the EPA-clean  
10 and empty is in there also.

11 Uncontaminated ferrous sulfate or elemental  
12 sulfur, so long as recovery and sale as a raw material is  
13 not possible. Ferrous sulfate is a -- It's  $\text{FeO}_4\text{S}$ . It is  
14 used in the manufacture of other iron compounds. It's also  
15 used in fertilizers. It's used as a food and food  
16 supplement -- a food and feed supplement, used as reducing  
17 agents, weed killers, pesticides.

18 So it's -- The harm that ferrous sulfate would  
19 contribute to the environment is minimal, especially since  
20 they use it as a feed supplement to begin with.

21 Sulfur, used in pharmaceuticals, fertilizers,  
22 manufacture of explosives, matches, stuff like that, and  
23 it's also used as a bleaching agent.

24 Both of these materials are primarily generated  
25 at gas processing plants where they remove the hydrogen

1 sulfide and recover sulfur from it.

2 D (1) (j) --

3 CHAIRMAN WROTENBERY: Mr. Anderson, the rest of  
4 the items in D (1), I think, are pretty self-explanatory.

5 THE WITNESS: Okay.

6 CHAIRMAN WROTENBERY: I don't know if the  
7 Commissioners have any questions about these?

8 COMMISSIONER BAILEY: No, thank you.

9 COMMISSIONER LEE: No.

10 CHAIRMAN WROTENBERY: You might skip down. Was  
11 there anything special you wanted to --

12 THE WITNESS: No, no.

13 CHAIRMAN WROTENBERY: -- to tell us about the  
14 rest of those?

15 THE WITNESS: No, the rest of them that might be  
16 of a concern are generally found in D (2) or D (3), so --

17 CHAIRMAN WROTENBERY: Why don't you go on to D  
18 (2), then?

19 THE WITNESS: Okay. D (2), activated alumina,  
20 and these are the categories that must be tested and  
21 approved prior to disposal. And we can use a process  
22 knowledge to allow for testing on a periodic basis rather  
23 than each individual load basis.

24 D (2) (a), activated alumina, has to be tested  
25 for TPH and BTEX through using EPA-approved methods.

1           The activated alumina -- that's  $\text{Al}_2\text{O}_3$ , that's  
2   bauxite or bayerite. It's -- The activated alumina is  
3   suitable for chromatographic absorption, and it's primarily  
4   an absorbent, a desiccant, it can be used as abrasive in  
5   polishes and even used in dental cements. So it's widely  
6   used material, not just used in the oilfield. It's a very  
7   common material.

8           Activated carbon must also be tested for TPH and  
9   BTEX. It's a clarifying, deodorizing, decolorizing and  
10  filtering material commonly used in the oil and gas  
11  industry but also used commonly outside of the oil and gas  
12  industry: your water filter on your kitchen sink, the  
13  filter in your aquarium, if you have one, those are  
14  commonly used as activated carbon.

15          Amine filters, D (2) (c), amine filters are used  
16  primarily used in the oil and gas industry for removal of  
17   $\text{H}_2\text{S}$ . They're also emulsifiers outside of the oil and gas  
18  industry, they're fungicides. They're also used as  
19  stabilizers.

20          The friable asbestos here, the friable asbestos  
21  must receive approval, must be tested pursuant to NESHAP,  
22  and that's the only thing that -- And there was a comment I  
23  heard before that we're going to have to test everything to  
24  NESHAP requirements, but this is the only thing that has to  
25  be tested to NESHAP requirements.

1           And the friable asbestos must go to an approved  
2 asbestos landfill that is approved by the Environment  
3 Department. Friable asbestos is a special waste regulated,  
4 I believe, under the Hazardous Waste Bureau of the  
5 Environment Department.

6           Cooling tower filters, (2) (e), cooling tower  
7 filters are primarily paper filters, and they must be  
8 tested for chrome, since chrome has been used in the past  
9 in the oil and gas industry. Cooling towers are used in  
10 other industries such as the power-generation industry. A  
11 lot of cooling towers.

12           Dehydration filter media, which is just -- It's a  
13 media, and it must be tested for TPH and BTEX. A lot of  
14 other industries besides the oil and gas industry take  
15 water out of their streams.

16           Gas condensate filters tested for BTEX and  
17 drained and air-dried for 48 hours.

18           Same thing with glycol filters.

19           Gas condensate filters are primarily in the oil  
20 and gas industry; glycol filters, that's just your everyday  
21 antifreeze, used in other industries also.

22           Iron sponge is probably pretty unique to the oil  
23 and gas industry. It's iron oxide that has been converted;  
24 it removes hydrogen sulfide from gas streams, converted to  
25 iron sulfide. And then from there we require it to be

1 completely oxidized, back to iron oxide, before it -- and  
2 tested for ignitibility before disposal.

3 Junked pipe valves, metal pipe, very common waste  
4 stream. However, the used pipes we do require be tested  
5 for NORM.

6 And Exhibit 9 of your handout contains the  
7 Subpart 14 requirements from the Environment Department for  
8 NORM in the oil and gas industry, and it has the  
9 requirements that must be met to be disposed of at a solid  
10 waste landfill or, for that matter, one of our landfills,  
11 unless they get a permit specifically for naturally  
12 occurring radioactive materials.

13 Molecular sieve is generally an inert material  
14 and, you know, taken out of a column that's used with fine  
15 mesh or perforations, and it's used for separation of  
16 coarse materials from fine materials or solids from liquids  
17 as it flows through. It may pick up some of the properties  
18 of the material flowing through it, and that's why we test  
19 for TPH and BTEX, and they must be hydrated in ambient air  
20 for 15 least 24 hours.

21 Pipe scale and other deposits have to be tested  
22 for NORM prior to disposal.

23 Produced water filters we test for corrosivity  
24 prior to disposal.

25 Sandblasting sand, tested for metals, TCLP

1 metals, primarily because of the chance of having old  
2 leaded-based paint in them.

3 Waste filters, which are the engine oil filters,  
4 car filters, as used in the oil and gas industry, and those  
5 have to be tested for metals and drained.

6 D (3) wastes that are on a case-by-case basis  
7 that will not be blanket-approved individually, sulfur-  
8 contaminated soils, catalysts -- Oh, I missed one, didn't  
9 I? Mole sieves? No.

10 CHAIRMAN WROTENBERY: No, you covered that.

11 THE WITNESS: Did I cover that? Okay.

12 Okay, sulfur contaminated soils;

13 Catalysts used in the -- many catalysts used in  
14 the refining industry, same things as they use in the  
15 chemical industry;

16 Other contaminated soils, contaminated with other  
17 than petroleum products;

18 And then petroleum-contaminated soils if it's an  
19 emergency declared by the Director;

20 Contaminated concrete;

21 Demolition debris not otherwise specified herein,  
22 which would indicate it would be contaminated demolition  
23 debris;

24 Unused chemicals, off-spec -- basically off-spec  
25 chemicals or chemicals that have been premixed and then not

1 used and cannot be used elsewhere;

2 Contaminated ferrous sulfate or elemental sulfur;

3 Unused pipe dope;

4 Support balls -- And for those who don't know

5 what a support ball is, that's a support ball, that's a

6 support ball, a ceramic material. That's not contaminated

7 either, by the way. However, it is a used support ball,

8 ceramic materials;

9 Tower packing materials, primarily ceramic

10 materials, that are used to divert flow within a column or

11 a tower;

12 Contaminated wood pallets;

13 Partial sacks of unused drilling mud, which is

14 generally primarily bentonite clay;

15 And other wastes as applicable.

16 The testing that's going to be required will be

17 required -- the test methods will be all EPA-approved test

18 methods as found in the *Test Methods for Evaluating Solid*

19 *Wastes*; that's EPA publication SW-846.

20 The methodologies will be the methods as

21 described within that document.

22 The limits that we will allow are -- the first

23 three are benzene, total BTEX and TPH of 10 milligrams per

24 kilogram, 500 milligrams per kilogram BTEX, and 1000

25 milligrams per kilogram, or parts per million, of TPH.

STEVEN T. BRENNER, CCR  
(505) 989-9317

1 Those are the limits required by the environment department

1 Those are the limits required by the environment department  
2 for their solid waste landfills.

3 The hazardous air pollutants for the friable  
4 asbestos are documented in NESHAP.

5 And then the metals requirements, the TCLP limits  
6 for metals, are listed under (3) (e), and those are based  
7 on 40 CFR, the Resource Conservation and Recovery Act  
8 portion of the regulations.

9 Okay, that's an explanation of what's in the Rule  
10 and what we propose to allow to be accepted by the Rule.  
11 And I believe that's enough.

12 CHAIRMAN WROTENBERY: Did you cover Exhibit  
13 Number 10? I can't -- I may have --

14 THE WITNESS: No, I didn't.

15 CHAIRMAN WROTENBERY: -- missed it if you  
16 referenced it.

17 THE WITNESS: No, I didn't cover this, because  
18 it's not mine.

19 CHAIRMAN WROTENBERY: Okay.

20 THE WITNESS: I've never seen this before. I  
21 haven't either. Oh, this is the asbestos -- okay, these  
22 are the asbestos requirements for the friable asbestos, the  
23 shipment records that have to be maintained and the federal  
24 regulations pertaining to asbestos removal and shipment and  
25 disposal. And that's primarily -- that's friable asbestos,

1 and friable asbestos is the part that's regulated.

2 Questions?

3 CHAIRMAN WROTENBERY: Questions for Mr. Anderson?

4 COMMISSIONER BAILEY: I have a couple.

5 EXAMINATION

6 BY COMMISSIONER BAILEY:

7 Q. The exhibit House Bill 533 as approved and  
8 enacted, on the second page requires that the nondomestic  
9 wastes otherwise meet the requirements of the Solid Waste  
10 Act applicable to the solid waste facilities.

11 Is this proposed rule in every way meeting no  
12 less, no more stringent than what the solid waste act  
13 requirements are?

14 A. Madame Chairman, Commissioner Bailey, the only  
15 thing in this proposed rule that I would say is more  
16 stringent is the requirement for the non-friable asbestos.  
17 Everything else is equivalent to -- I believe equivalent to  
18 the Solid Waste Act, and -- I believe it is. Yes.

19 Q. Okay, one more question then. For these  
20 requirements for testing in D (2) and D (3), if these  
21 materials come from other sources do they also need to meet  
22 this testing schedule?

23 A. Madame Chairman and Commissioner Bailey, I'm not  
24 sure what you mean by "other sources".

25 Q. If sandblasting material sand comes from a

1 contractor, a building contractor, not from the oil and gas  
2 industry, does that sand that that contractor wants to  
3 dispose at that solid waste facility also need to meet  
4 these testing requirements?

5 A. Yes, I believe they do. They have to prove that  
6 it is not hazardous, and that is what these tests are  
7 designed for, such as the sandblasting sand. They're  
8 tested for TCLP metals, and it's primarily because of the  
9 prior use of lead-based paint that they would have to prove  
10 that it is not a hazardous material that has to be disposed  
11 of at a hazardous waste disposal site.

12 Q. What I'm getting at, is the oil and gas industry  
13 in any way singled out to do additional testing that other  
14 industries or domestic wastes would have to be --

15 A. Madame Chairman and Commissioner Bailey, no they  
16 are not. These tests are equivalent to what other  
17 industries are required to do to go to this landfill, or to  
18 go to our landfill. Yes.

19 THE WITNESS: Okay, thank you. That's all I  
20 have.

21 CHAIRMAN WROTENBERY: Commissioner Lee, any  
22 questions?

23 COMMISSIONER LEE: No.

24 CHAIRMAN WROTENBERY: I don't believe I have any  
25 questions, Mr. Anderson. That was a very thorough job.

1 Thank you.

2 I might want to ask Mr. Tongate, in a moment, a  
3 question, just to clarify. But thank you.

4 Do you wish to offer the exhibits into --

5 MR. VAN DEREN: Yes, madame Chairman.

6 CHAIRMAN WROTENBERY: -- the record? You may  
7 have done that.

8 MR. VAN DEREN: I think I did, but yeah.

9 CHAIRMAN WROTENBERY: At this point we will  
10 accept Exhibits from the Oil Conservation Division Numbers  
11 1 through 11 into the record of this proceeding.

12 MR. VAN DEREN: And may I just ask him a  
13 question?

14 CHAIRMAN WROTENBERY: Oh, I'm sorry.

15 MR. VAN DEREN: I just want to make sure  
16 something is clear.

17 CHAIRMAN WROTENBERY: Certainly.

18 EXAMINATION

19 BY MR. VAN DEREN:

20 Q. With respect to the wastes in D (3), you may have  
21 covered this and I don't want to belabor it if you have,  
22 but I just want to make sure the record is clear. How  
23 would the decision be made as to what tests would have to  
24 be applied to those wastes?

25 A. Initially it would be applied to disposable waste

1 at a specific landfill. First of all, we would determine  
2 if that landfill is authorized to accept that type of  
3 waste, and I believe the Environment Department Solid Waste  
4 Bureau will be able to testify as to the different types of  
5 landfills that are available, and we would work very  
6 closely with the Environment Department on that.

7 The next would be the point of generation, the  
8 process used to generate that waste and what would likely  
9 be the contaminants of concern in that waste. And from  
10 that we would determine what would be tested for.

11 MR. VAN DEREN: That was all I had.

12 CHAIRMAN WROTENBERY: Mr. Feldewert, did you have  
13 some questions for Mr. Anderson?

14 MR. FELDEWERT: Madame Chairman, I just had two  
15 real quick questions, just to make sure I understand.

16 EXAMINATION

17 BY MR. FELDEWERT:

18 Q. Mr. Anderson, you indicated that the wastes that  
19 are listed in D (1) in this proposed Rule 712 do not  
20 require any prior written authorization or testing from the  
21 Division; is that right?

22 A. They will not, based on this Rule.

23 Q. Okay. And I'm assuming that means that this is  
24 the type of waste that someone can drive up to the landfill  
25 and dispose of without getting any prior approval from this

1 Division or any other agency; is that correct?

2 A. That is correct.

3 Q. Okay. And then the wastes that you have listed  
4 in D (2) and D (3), they require testing and prior written  
5 authorization from the Division; is that right?

6 A. That is correct.

7 Q. Now, is that prior written authorization from the  
8 Division -- is that accomplished through a Form C-138? Is  
9 that how you contemplate that being done?

10 A. It can be. It can be through a discharge plan  
11 authorization, it can take many different forms. I'm not  
12 going to limit it to through a C-138.

13 Q. Okay, but it's going to require some preapproval  
14 from the Division --

15 A. That is correct.

16 Q. -- of some sort? Okay.

17 And then I'm assuming that what you have  
18 attempted to do in this Rule is articulate for the industry  
19 the types of waste that can be accepted at a solid waste  
20 facility so that there's no ambiguity down the road as to  
21 what needs to go to -- what can go to a solid waste  
22 facility and what has to go to a Rule 711 facility; is that  
23 correct?

24 A. That is correct, that's correct.

25 MR. FELDEWERT: Okay, that's all I have. Thank

1 you, sir.

2 EXAMINATION

3 BY CHAIRMAN WROTENBERY:

4 Q. I'd just like to follow up with a question,  
5 because I think perhaps what Mr. Feldewert was getting at  
6 is, the statute does indicate that waste from oilfield  
7 facilities may go to ED-permitted facilities, with the  
8 approval of the Oil Conservation Division.

9 I'm trying to -- Yeah, "The solid waste facility  
10 may accept nondomestic waste for disposal with the approval  
11 of the oil conservation division", is the language of the  
12 statute, House Bill 533.

13 Let me ask you just to clarify about the wastes  
14 in D (1) of the proposed rule. Those particular waste  
15 streams would be authorized by the terms of this Rule to go  
16 to these facilities?

17 A. Madame Chairman, that's correct. It would be  
18 basically a permit by rule.

19 Q. A permit by rule, okay.

20 A. And if I may add -- and I believe, even though it  
21 wasn't said, that there's some concern that these wastes  
22 are required to have a C-138 going to the OCD-permitted  
23 facilities.

24 As the Chairman is aware, that I have proposed a  
25 change to Rule 711 that is still going through internal

1 review, to eliminate the C-138s altogether -- well, it  
2 would eliminate the approval of the C-138s altogether, at  
3 OCD facilities also.

4 Now, that will still have to go through review  
5 with industry and through the hearing process, but that's  
6 -- I'm proposing to do that to make it more equitable for  
7 everybody.

8 CHAIRMAN WROTENBERY: Thank you. Any other  
9 questions for Mr. Anderson?

10 Thank you very much for your testimony.

11 Mr. Tongate, would you mind answering a question  
12 or two from the Commission, if you wouldn't mind coming on  
13 up? Did you stand up when we were swearing all of the  
14 witnesses in?

15 (Thereupon, Mr. Tongate was also sworn.)

16 BUTCH TONGATE,

17 the witness herein, after having been first duly sworn upon  
18 his oath, was examined and testified as follows:

19 EXAMINATION

20 BY CHAIRMAN WROTENBERY:

21 Q. Would you mind identifying yourself for the  
22 record?

23 A. Madame Chairman, my name is Butch Tongate. I'm  
24 the Bureau Chief of the Solid Waste Bureau in the  
25 Environment Department.

1 Q. Thank you. And I just wanted to ask you to  
2 address the question that Commissioner Bailey had raised  
3 about the compliance of the wastes identified in this  
4 proposed rule with the requirements of the Environment  
5 Department under the Solid Waste Disposal Act.

6 A. Right. As I recall, the question was, is the oil  
7 and gas industry being subjected to more stringent  
8 standards for testing than other industries? The answer is  
9 no.

10 The only difference that I see in your list is  
11 for the non-friable asbestos to be treated the same as  
12 friable asbestos, which -- In our case non-friable asbestos  
13 can be taken to any landfill; friable asbestos only can go  
14 to a landfill that has a special permit to accept asbestos.  
15 So that would be the only difference that I see.

16 CHAIRMAN WROTENBERY: Thank you. Any other  
17 questions?

18 COMMISSIONER BAILEY: No.

19 CHAIRMAN WROTENBERY: Anybody have any questions  
20 for Mr. Tongate?

21 MR. FELDEWERT: No.

22 CHAIRMAN WROTENBERY: Thank you very much.

23 Mr. Feldewert, did you wish to put on a witness?

24 MR. FELDEWERT: I don't think I need to put on a  
25 witness at this time. I do have a couple of comments in

1 a -- what we have preliminarily drafted as a proposed  
2 amendment to Rule 712.

3 I think I ought to first point out that I'm here  
4 on behalf of Controlled Recovery, Inc., which is a properly  
5 permitted Rule 711 facility in the southeastern part of the  
6 state, which is also permitted to accept solid waste in  
7 addition to the special wastes that are generated by the  
8 oil and gas industry.

9 And CRI did recognize the problems that were  
10 created for the industry by the Environment Department's  
11 decision, as well as the ambiguity that was found in the  
12 Solid Waste Act, concerning where this type of waste should  
13 be going. It was a participant in the legislative  
14 proceedings that resulted in the -- changed the Solid Waste  
15 Act, which eventually resulted in the proposal of this Rule  
16 712 which is before you today.

17 CRI understands the reason for this Rule, but we  
18 are here because we believe that the Commission wants to  
19 make sure that they do not place their existing Rule 711  
20 properly permitted facilities at a competitive disadvantage  
21 by virtue of this Rule.

22 And that leads me to the first problem, which I  
23 think we've touched on briefly, and that is the -- what Mr.  
24 Anderson calls the permit by rule for the disposal of the D  
25 (1) wastes set forth in this Rule that will be allowed for

1 solid waste facilities but does not exist for your Rule 711  
2 facilities like CRI.

3 We believe that it would be inequitable for you  
4 to pass Rule 712 and in essence allow a permit by rule  
5 procedure for these D (1) wastes when the facilities like  
6 CRI, the other Rule 711 facilities that can accept solid  
7 wastes, have to still go through a C-138 process.

8 Mr. Anderson and his group do a good job of  
9 trying to get those processed, but there are inherent  
10 delays which occur as a result of staffing, et cetera, in  
11 the approval of the C-108, which in essence results in a  
12 situation where a Rule 711 facility has -- a generator who  
13 would like to dispose solid wastes at that facility has to  
14 wait for the approval process for a C-138, and the  
15 resulting delays will inevitably result in that generator  
16 considering a solid waste facility which, by virtue of this  
17 Rule, will have an automatic approval. That is going to  
18 place the Rule 711 facilities at a -- we believe, at a  
19 competitive disadvantage.

20 And I have here marked as CR-1 in this case, if I  
21 may approach --

22 CHAIRMAN WROTENBERY: Certainly.

23 MR. FELDEWERT: -- a proposed amendment to Rule  
24 712.

25 I was unaware that Mr. Anderson and his group

1 have apparently worked on a similar type of amendment for  
2 Rule 711, but what we have tried to do with this proposed  
3 amendment is eliminate this inequity by indicating as an  
4 additional Paragraph F of this Rule that your existing Rule  
5 711 facilities shall not be subject to more stringent  
6 filing, approval or testing procedures than those imposed  
7 on solid waste facilities for the disposal of the wastes  
8 listed in Subsection D of this Rule.

9 We think that if this is a tag-along to this Rule  
10 712, it will then even the playing field, this Rule can be  
11 passed without placing facilities like CRI and other 711-  
12 permitted facilities at a disadvantage by virtue of the  
13 paperwork, in essence, and the testing that has to be done  
14 for the acceptance of these types of waste.

15 The second problem that we see with this Rule as  
16 it's presently drafted is found on page 3, under Section --  
17 I think it would be -- It's Section D (3) (n), as in Nancy,  
18 right above paragraph E, testing procedures. And that's  
19 the portion of the Rule that says "Other wastes as  
20 applicable".

21 It's my understanding, and I think Mr. Anderson  
22 confirmed this, that one of the goals of this Rule is to  
23 try to articulate a list of wastes for the industry so that  
24 the generators of the industry know whether a particular  
25 type of waste can be accepted at a solid waste facility or

1 whether it must go to a Rule 711-permitted facility.

2 I think that this (n) is unnecessary, it  
3 interjects an ambiguity into this proposed rule. It really  
4 leaves things up in the air as to what can be accepted and  
5 what cannot be accepted. It's really kind of a catch-all  
6 phrase that I don't think -- the industry -- CRI doesn't  
7 think is necessary here. And I think it's contrary to the  
8 more specific articulation that is attempted with this Rule  
9 for purposes of maintaining the status quo and making it  
10 very clear what can go into a solid waste facility and what  
11 cannot.

12 Those are the two comments that I have for CRI.  
13 I think Mr. Marsh at some point would like to make a  
14 general observation about how things are working, how the  
15 C-138 process is working for the Commission that --  
16 probably present later on, after the other comments are  
17 heard.

18 If you have any questions, I'd be happy to answer  
19 them.

20 CHAIRMAN WROTENBERY: Any questions,  
21 Commissioners?

22 We don't have any questions right now, thank you.

23 MR. FELDEWERT: Thank you very much.

24 CHAIRMAN WROTENBERY: Ms. Seligman? Are you  
25 ready to comment?

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DEBORAH SELIGMAN,

the witness herein, after having been first duly sworn upon her oath, testified as follows:

DIRECT TESTIMONY

BY MS. SELIGMAN: My name is Deborah Seligman. I'm Director of Governmental Affairs for the New Mexico Oil and Gas Association, and I've provided the Commissioners with our written comments, which I'll just quickly paraphrase.

Essentially, New Mexico Oil and Gas Association only has three points that we felt we needed to make in this hearing today.

Number one is that we do support the proposed Rule 712.

The second point is that since the Environment Department came out with their interpretation of the ruling, NMOGA has worked with the Oil Conservation Division, with the Environment Department and with the New Mexico Legislature to maintain the status quo prior to the ED hearing, and we feel that on the whole, the proposed Rule 712 accomplishes the status quo.

And then our third comment would be -- is that with maintaining the status quo, we also feel that all parties involved should be able to do business on a level playing field, nice words used today. To that end we want

1 to address the wastes that are included in D (1) which have  
2 been addressed by the parties that have already given  
3 testimony today, and we do feel that many of the items that  
4 are required on the C-138 for the 711 facilities, there  
5 should be some type of -- there again, acceptance by rule  
6 so that that C-138, in like manner, would not be necessary.

7 In just hearing the proposed amendments to Rule  
8 712, we support the amendment. The only thing that I might  
9 question, of course, is just a last-minute -- if we're  
10 talking about level playing fields, and if there will be  
11 other 711 facilities involved in the future, I'm not sure  
12 personally how existing fits that. I think it should just  
13 be 711 facilities that are licensed to the Oil Conservation  
14 Division.

15 CHAIRMAN WROTENBERY: Thank you, Ms. Seligman.

16 Mr. Jordan, did you want to make any comment?

17 MR. JORDAN: Yes, I would. I do have a question.

18 CHAIRMAN WROTENBERY: Please.

19 MR. JORDAN: My name is James Jordan, I'm a  
20 registered professional engineer and I work with Waste  
21 Management. I have been in the waste industry going on 12  
22 years now. I am also the technical manager for Waste  
23 Management. I review and approve all waste streams coming  
24 into our facility.

25 The one question I do have for counsel, and

1 counsel, is the D (1) waste. When you get into the office  
2 trash and typical municipal solid waste that does come  
3 underneath a 138, will that throw the OCD facility into  
4 RCRA and the New Mexico Environment Department Rules?  
5 Because it is considered solid waste, it is a domestic  
6 waste, not a nondomestic waste.

7 CHAIRMAN WROTENBERY: Okay, could you cite again  
8 the categories of waste that you're --

9 MR. JORDAN: I'm sorry, if the --

10 CHAIRMAN WROTENBERY: -- referring to? You  
11 mentioned office trash which is --

12 MR. JORDAN: Yeah, it's --

13 CHAIRMAN WROTENBERY: -- D (1) (k) --

14 MR. JORDAN: Yeah, it's the D (1) wastes.

15 CHAIRMAN WROTENBERY: What else did you mention?

16 MR. JORDAN: The barrels, drums, uncontaminated  
17 brush, so forth. That actually comes underneath the New  
18 Mexico Environment Department's C and D rule. That's  
19 considered a construction and demolition rule, which is a  
20 municipal solid waste. Okay? Non-friable asbestos, that's  
21 an industrial waste, but it's also a municipal solid waste.  
22 The big question is, will that throw the OCD into RCRA? So  
23 there's a number of these items in D (1) which may or may  
24 not do that.

25 CHAIRMAN WROTENBERY: I think we can ask Roger to

1 address that question, or -- Mr. Ross, would you like to --

2 MR. ROSS: We could, we could ask Mr. Anderson to  
3 address the issue. I mean, in a general sense nothing we  
4 do here can affect the status of anything under federal or  
5 state legislation. I mean, it would be void if that were,  
6 in fact, you know, what we were attempting to do. We  
7 couldn't do that. I'm not sure we can --

8 CHAIRMAN WROTENBERY: Right. Although it is my  
9 understanding, though, that some of the wastes that you're  
10 talking about are not subject to regulation by the  
11 Environment Department.

12 MR. JORDAN: That is correct.

13 CHAIRMAN WROTENBERY: The barrels, if they come  
14 from the oilfields, that is an oilfield waste regulated by  
15 the Oil Conservation Division, and it is not subject to  
16 regulation by the Environment Department, except as  
17 provided by the Rule 712 that we're considering today.

18 Office trash, though, I might ask Mr. Anderson to  
19 address that particular issue.

20 MR. ANDERSON: Madame Chairman, from what I  
21 understand -- and I can only give a layman's interpretation  
22 of this -- the exemption to the Solid Waste Act exempted  
23 from the definition of solid waste all waste regulated by  
24 the Oil Conservation Division under the Oil and Gas Act,  
25 and the Oil and Gas Act gives us the authority to regulate

1 nondomestic waste generated in all that long series of  
2 different operations in the oil and gas industry.

3 Now, I guess it's a matter of terminology if you  
4 term office trash as domestic waste or nondomestic waste.  
5 when the Solid Waste Act amendments -- and I hate to get  
6 into this but you guys weren't here then -- came into  
7 effect, it made the Environment Department mad because they  
8 lost jurisdiction over some wastes and they shut off all  
9 office trash into their landfills in 1988 when the Solid  
10 Waste Act came in, because they called it oilfield waste  
11 that's regulated by us. It took two years to get that  
12 straightened out to where they were able to accept office  
13 trash.

14 CHAIRMAN WROTENBERY: Is office trash domestic  
15 waste or nondomestic waste?

16 MR. ANDERSON: I would consider office trash as  
17 domestic waste. The papers, we always -- That's how we got  
18 it back to be allowed to be -- to go into the solid waste  
19 landfills after the exemption or exclusion, whatever it is,  
20 was put in. And, you know, it's the papers. If not --

21 CHAIRMAN WROTENBERY: Is there anything else in  
22 this list that would be considered domestic waste --

23 MR. ANDERSON: I -- No, madame Chair- --

24 CHAIRMAN WROTENBERY: -- and I'm referring to D  
25 (1).

1 MR. ANDERSON: No, I don't believe there is. The  
2 office trash, I think, would be the only one that would be  
3 considered domestic waste. The rest of them are generated  
4 from the process of oil and gas exploration and production  
5 and transportation, refining, processing, service industry,  
6 as stated in the 70-2-12 B.(21) and (22).

7 CHAIRMAN WROTENBERY: Mr. Ross, did you have any  
8 questions to follow up on that particular point?

9 MR. ROSS: So, Mr. Anderson, the inclusion of  
10 office trash on the list, was that to eliminate a gray area  
11 in your mind?

12 MR. ANDERSON: Madame Chairman, Mr. Ross, I  
13 believe it was to eliminate -- to put it somewhere, because  
14 it's really not defined anywhere.

15 MR. ROSS: So if the situation you described as  
16 occurred some years ago reasserted itself where there's  
17 some question about office trash, at least there would be  
18 some --

19 MR. ANDERSON: It would be there, yes.

20 MR. ROSS: That's all I have.

21 MR. JORDAN: Madame Chair, Commissioners, I fully  
22 support CRI's proposed amendment. The reason I brought  
23 this up was more for protection for them.

24 CHAIRMAN WROTENBERY: Uh-huh.

25 MR. JORDAN: I didn't want to see the OCD

1 facilities -- in some cases they don't have liners, and I  
2 don't think they want to get into the liners. They were  
3 put there at Mr. Marsh's facility. I have been there  
4 before. I've done what I call a non-WMI review on it.

5 Geologically it's great, but I don't think he  
6 wanted to give in to RCRA or the New Mexico Environment  
7 Department Rules. We wanted to maintain status quo, and I  
8 was afraid that that would throw them into it. That was  
9 the whole purpose of the question.

10 CHAIRMAN WROTENBERY: I understand. Thank you,  
11 Mr. Jordan. And I hope we've clarified for the record  
12 that, first of all, what we do in this Rule would not  
13 affect the classification of these wastes under RCRA --

14 MR. JORDAN: Correct.

15 CHAIRMAN WROTENBERY: -- and secondly, that with  
16 the possible exception of office trash, all of these wastes  
17 in D (1) are oilfield wastes, regulated by the Oil  
18 Conservation Division, and this Rule does not have the  
19 effect of transferring jurisdiction over these types of  
20 waste from the Oil Conservation Division to the  
21 Environmental Department.

22 Any other comments you'd like to make?

23 MR. JORDAN: No, ma'am.

24 CHAIRMAN WROTENBERY: Thank you. Is there  
25 anybody else that wanted to comment? Mr. Marsh, did you

1 want to say a few words?

2 MR. MARSH: Yes, I do. But I would like to have  
3 an opportunity to review a couple of the exhibits before I  
4 do, exhibits I haven't seen.

5 CHAIRMAN WROTENBERY: Can you do that in about  
6 five minutes?

7 MR. MARSH: Sure.

8 CHAIRMAN WROTENBERY: Okay, we'll give you an  
9 opportunity to do that. Why don't we -- Do you think we  
10 should take a short break here to give him an opportunity  
11 to read that? We will adjourn for about -- Let's make it  
12 15 minutes. We will come back at what time? At 25 after.

13 (Thereupon, a recess was taken at 10:10 a.m.)

14 (The following proceedings had at 10:25 a.m.)

15 CHAIRMAN WROTENBERY: Everybody's back. Okay,  
16 we'll get started again.

17 Mr. Marsh, are you ready?

18 MR. MARSH: Yes, indeed, where would you like me?

19 CHAIRMAN WROTENBERY: Go ahead and sit up on the  
20 witness chair, please.

21 And I think you did stand during the swearing in,  
22 didn't you?

23 MR. MARSH: Yes, I did.

24 CHAIRMAN WROTENBERY: So if you'll just identify  
25 yourself for the record.

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KEN MARSH,

the witness herein, after having been first duly sworn upon his oath, testified as follows:

DIRECT TESTIMONY

BY MR. MARSH: My name is Ken Marsh, I'm associated with Controlled Recovery, Inc., in Hobbs, New Mexico, as well as KRM, Inc., in Hobbs, New Mexico. I'm here today on behalf of both of those entities. I'll deal with CRI's comments first.

First of all, CRI supports this new rule and the legislation that was introduced to accomplish this. We have a few questions about it and a few comments.

The questions about the Rule are, in past dealings with the OCD and the approval processes that we've gone through, we find that sometimes we get one or two answers, or maybe a different answer about using test results and those things, so I think that as we go through this new procedure with solid waste facilities, we need some kind of definition maybe from the Division about usage of test results.

For instance, how long is the test data good? What process knowledge can be used and for how long? What would be the NORM testing requirements? Will there be a certified NORM officer, or can a layman use a machine, or how are we going to do those things?

1           For instance, the scrap yards now that take used  
2 oilfield pipe and things, they all have NORM concerns. So  
3 they have somebody at their gate with a meter that checks.  
4 So I guess we would kind of -- It doesn't affect us so much  
5 as it does the solid waste facilities, but more importantly  
6 how it affects the generators, which are the oil industry,  
7 and what those tests might be. So we kind of need a  
8 definitive thing on that if we could.

9           And how long -- For instance, how often do you  
10 have to test amine filters, what's the useful life of the  
11 analytical data? Is it a year, or is it till process  
12 knowledge changes? Those kind of things, I think, would be  
13 very helpful if we could get some kind of definitive policy  
14 on that, just to maybe broaden the scope of this Rule. It  
15 would also be beneficial to us that are pertinent under  
16 Rule 711.

17           We've gone through the issue here of the C-138s,  
18 and the oilfield waste is listed under D (1) under this. I  
19 think that's been pretty well covered. But I would like to  
20 say that the C-138 process since its inception in 1994 has  
21 never been acceptable to the generators using this process.  
22 Unfortunately, the OCD has not had the resources to  
23 dedicate to this process to make it run as smoothly as it  
24 should have.

25           I think that with the additional approvals that's

1 going to be required now for the generators going to solid  
2 waste facilities, that you should consider dedicating some  
3 more resources to this program to keep it flowing smoothly.

4           Then my final comment will be a comment from KRM,  
5 Inc., KRM, Inc., had considerable participation in the  
6 legislative process this last session in House Bill 533.

7           I think this could have been prevented had, in  
8 1999, when this issue first started floating around about  
9 usage of these facilities and some of the waste streams  
10 going into them, that we could have received more  
11 information, that the hearing process was more defined in  
12 terms of input from all communities, including the  
13 regulative community as well as the users and the  
14 environmental groups, and that in future rule-making we  
15 would ask that you allow plenty of time for comments and  
16 that you have a forum or some mechanism so that questions  
17 that are asked will receive a definitive and timely answer  
18 on the issues.

19           And if you did that, everyone would feel better.  
20 It would lessen some of the outside involvement and make  
21 some of these things clearer as in these things that I just  
22 mentioned earlier about usage of test results and those  
23 things. A lot of those issues could be defined earlier.  
24 But we've asked a lot of questions in the past that have  
25 not received definitive answers, and we would like to see

1 that included in this participation process in the making  
2 of any new rules.

3 The concludes my comments.

4 CHAIRMAN WROTENBERY: Thank you, Mr. Marsh. Any  
5 questions? Thank you.

6 MR. MARSH: Thank you.

7 CHAIRMAN WROTENBERY: I don't believe -- did I --  
8 Oh, I'm sorry, Mr. Anderson, did you have a comment?

9 MR. ANDERSON: I wanted to make a couple  
10 comments. I don't know if it's appropriate. Can I comment  
11 on the proposed change that CRI, Mr. Feldewert, has  
12 proposed?

13 CHAIRMAN WROTENBERY: Go ahead.

14 MR. ANDERSON: Okay, and I'd like to -- I think I  
15 can clarify some of Ken's questions for the Commission, and  
16 I'd like to do that first.

17 The question on the results, the test results,  
18 the time frame for those, those are authorized by EPA under  
19 RCRA. And EPA has declined to put a time limit that those  
20 test results can be good when using process knowledge.

21 We have not put -- We started off that they were  
22 good for a year. Then we went to two years, just as a  
23 little history. Then we did it for the term of the  
24 discharge plan, which is five years, and got our hands  
25 slapped by the hazardous waste people. And so we backed

1 off to an indeterminate time based on the circumstances.

2 And it depends on the process. Each one's going  
3 to be a little different. It will depend on the process,  
4 it will depend on the location, it will depend on the  
5 constituents that are involved. And some of them have been  
6 going on for five, six years now, some of them we --  
7 because of the ability for process changing such as  
8 pipelines when they add new wells to it, we require those  
9 to be done every year.

10 So there's a bit of ambiguity just built into the  
11 system, and I don't know that there's anything we can do  
12 about that.

13 NORM testing, those are in -- and I forgot the  
14 exhibit number. That's Subpart 14 of the NORMS regs.  
15 Those are set out by the Environment Department  
16 regulations, and who has to be certified, what instruments  
17 can be used and how it can be done. When it comes to NORM  
18 surveys, we don't have any jurisdiction in that, so those  
19 are strictly the Environment Department.

20 Does that answer your concerns? And like you  
21 said, the C-138 process, we are going through proposing --  
22 I am proposing changes to that system.

23 And I think that will get into the amendment or  
24 whatever they've said -- Mr. Feldewert proposed for the  
25 Rule. I don't totally disagree with what he's proposing.

1 At the present time I don't know that it's necessary  
2 because our changes to the -- what I envision to the 711  
3 would do away with the approval paperwork in the first  
4 place that has to come to Santa Fe, and it basically goes  
5 through a self-regulatory process that is set out, and you  
6 just keep track of all this stuff yourself.

7 I think the D (1) waste -- and I have no problem  
8 with not having any testing on the D (1) waste when it goes  
9 to a disposal facility permitted under Rule 711. I believe  
10 we can do that administratively under the current Rule 711,  
11 for those wastes that are listed under D (1), and then we  
12 can do it through the 711 rule when that comes up for  
13 modification.

14 The D (2) and D (3) wastes, the problem I have  
15 with putting that in this Rule is that at the present time  
16 those wastes that are exempt from RCRA subtitle D or  
17 subtitle C regulation, if they go to a solid waste landfill  
18 they will still have to be tested for these constituents.  
19 Those that are exempt, that go to a permitted facility  
20 that's permitted under Rule 711, they do not have to be  
21 tested at all.

22 I am concerned that if we try and make everything  
23 equitable, we're going to end up with more tests. In other  
24 words, those facilities that are permitted under Rule 711  
25 are going to have to start testing the exempt wastes.

1           Now, keeping in mind, testing an exempt waste  
2 will not impact its exemption under the regulations in any  
3 matter. We can test any waste we want to and it will still  
4 be exempt. I know there was a concern that was written in  
5 a letter to the Commission on that, and that does not  
6 affect the fact that we'll retain its exemption.

7           But I fear that if we're going to be testing  
8 everything equally, then we're going to be testing exempt  
9 waste going to an exempt-type facility which we permit  
10 under Rule 711, and I really don't want to do that. I  
11 don't think that would be appropriate. I think that would  
12 be very costly for the industry, as they are being tested  
13 before they can go to a solid waste landfill, to prove that  
14 they do not have hazardous constituents. Not that they  
15 aren't hazardous, but that they don't have hazardous  
16 constituents.

17           So those are my concerns about the proposed  
18 changes.

19           CHAIRMAN WROTENBERY: Thank you, Mr. Anderson.

20           MR. MARSH: May I comment now --

21           CHAIRMAN WROTENBERY: Mr. Marsh?

22           MR. MARSH: -- since Roger did? I thought I was  
23 through.

24           CHAIRMAN WROTENBERY: Go ahead.

25           MR. MARSH: I guess first of all I would say that

1 that's not where CRI is headed, obviously, as to what  
2 Roger's alluding to about any additional testing.

3           Where we're headed, we had two requests this  
4 morning. One was for the amendment, and we would like to  
5 ask that the amendment be added to this Rule, made part of  
6 this Rule, as it's submitted.

7           The second thing we'd like to see is that our  
8 request for (n) on page 3 of the Rule under D (3), "Other  
9 wastes as applicable", Mr. Anderson has submitted, we've  
10 looked at the exhibits here, it seems to be a pretty cut-  
11 and-dried exhibit, they've done the research.

12           We don't think that catch-all clause needs to be  
13 in there. It wasn't in there in the first -- when this was  
14 first proposed in 1999. So that's another request as -- of  
15 the Commission at this time.

16           The other thing that I was asking was if we could  
17 have a little written policy that kind of says what Roger  
18 just said about how these things are. If there's ambiguity  
19 in the length of time that you can use test results, tell  
20 us. Give us a little document that explains what Roger  
21 just said there, because we have never seen this in  
22 writing. We kind of have an understanding, but it floats  
23 around from time to time.

24           So if we could get that clarified, even though  
25 you have to say, Well, this is the policy, but it's not

1 always policy. Give us something on a little piece of  
2 paper that we can call and talk to you about. That's our  
3 request about those things, about the testing results and  
4 the data and that thing.

5 CHAIRMAN WROTENBERY: Okay, thank you, Mr. Marsh.

6 And Mr. Anderson, would you have any difficulty  
7 working up a test guidance document --

8 MR. ANDERSON: No, ma'am, not at all.

9 CHAIRMAN WROTENBERY: -- that would cover the  
10 points that you've raised?

11 I believe that covers the comments from the  
12 floor.

13 Mr. Ross, we do have one letter that was  
14 submitted on the proposal. Would you like to summarize the  
15 contents of that letter?

16 MR. ROSS: Yes, thank you, madame Chairman. I'm  
17 passing down a letter that we received a few days ago.  
18 It's the only written comment we received prior to the  
19 hearing. It's from Williams -- or a representative of  
20 Williams Field Services. The gentleman's name is Mark  
21 Harvey.

22 I don't purport to read the letter into the  
23 exhibit, but I'll just go down and summarize some of the  
24 concerns he's expressed in the letter, a number of which  
25 have been discussed here today.

1 His first concern is that he'd like to see the  
2 phrase "EPA clean" defined in some manner, and I believe  
3 Mr. Anderson testified that he uses the definition from the  
4 Code of Federal Regulations.

5 Mr. Harvey proposed using as an alternative to  
6 the phrase "EPA clean" the phrase "RCRA empty". So there's  
7 -- that's his concern number one.

8 Concern number two, he discovered the  
9 typographical error in D (1) with respect to the  
10 contaminated versus uncontaminated brush. That's been  
11 corrected in the draft that's before you today.

12 His concern number three, in D (1) (m), plastic  
13 pit liners are included in the wastes that can be disposed  
14 of without testing plastic pit liners so long as "cleaned  
15 well" -- he thinks the phrase "cleaned well" needs to be  
16 further defined.

17 His fourth concern is a technical one. He wants  
18 the Division to consider the nature of chromium  
19 contamination and asks that we eliminate the chromium  
20 testing requirement or include language recognizing  
21 exclusions from 40 CFR Part 261.4. And maybe it would be  
22 best to have Mr. Anderson address that concern. I don't  
23 really know what he's talking about there.

24 Concern number five, he asks why gas condensate  
25 filters need to be tested for TPH as well as BTEX. I think

1 that was a typographical error as well, which I can explain  
2 in a minute when we talk about the Rule itself. I think  
3 his concerns in that area have been resolved.

4 Concern number six, what is meant by the term  
5 "molecular sleeves"? That once again was a typographical  
6 error, which has been corrected in the final version.

7 Concern number seven, he's unclear about the  
8 testing requirements, and this is another technical area  
9 involving the NESHAP limits, and maybe it would be best to  
10 have Mr. Anderson explain.

11 And his eighth concern has to do with the nature  
12 of the oil and gas exclusion under RCRA, and perhaps it  
13 also would be good to have Mr. Anderson discuss that  
14 particular concern in more detail. His concern essentially  
15 is that the Rule might change the status of wastes, which  
16 wouldn't be my opinion as to how the Rule operates, but  
17 maybe Mr. Anderson could address that.

18 Those are the comments of Mr. Harvey, and he asks  
19 that they be put into the record of this proceeding and  
20 discussed.

21 CHAIRMAN WROTENBERY: Okay. On concern number  
22 eight, haven't we already covered that? We had  
23 discussed --

24 MR. ROSS: We certainly touched on that.

25 CHAIRMAN WROTENBERY: -- in response to Mr.

1 Jordan's question --

2 MR. ROSS: Yes.

3 CHAIRMAN WROTENBERY: -- the effect on the RCRA  
4 status of any of the wastes listed and had, I believe,  
5 agreed that it wouldn't have any effect.

6 MR. ROSS: Yes.

7 CHAIRMAN WROTENBERY: So I'm not sure --

8 MR. ROSS: It appears he's misapprehended the  
9 purpose of the Rule, his question appears to.

10 CHAIRMAN WROTENBERY: Okay. Number three, please  
11 define the term "cleaned well" as used in connection with  
12 pit liners, would you like to comment on that, Mr.  
13 Anderson?

14 MR. ANDERSON: Madame Chairman, in all  
15 regulations there are going to be some ambiguities, there  
16 are going to be some things that are not defined well.  
17 That's like trying to -- I thought about this, trying to  
18 figure out how would you define "cleaned well"? And we  
19 don't propose to test a liner to -- and have limits for  
20 constituents that are in the testing. You know, we could  
21 sit here and use a couple hundred thousand constituents,  
22 the Skinner list and stuff like that.

23 I think trying to define "cleaned well" would  
24 like EPA trying to define "environment". I just don't  
25 think it can be. I think there's going to be some

1 subjectiveness in all rule. And it's going to be -- you  
2 know, and it's going to be left up to the -- primarily left  
3 up to the disposal operator, the company, when they see a  
4 liner come in, to say that's not cleaned well enough.  
5 Because the solid waste management facility or the 711  
6 facility is the one that's going to have to justify  
7 disposing of that and maintaining that disposal.

8 I don't know how to define "cleaned well".

9 CHAIRMAN WROTENBERY: How does a prudent operator  
10 ordinarily clean a liner for disposal?

11 MR. ANDERSON: Generally for pit liners, they'll  
12 clean them before they remove them. And from what we've  
13 experienced, the couple that I've witnessed, they put a  
14 vacuum truck at one corner, at the lowest corner where the  
15 sump is, and they get either a steam cleaner or a spray gun  
16 out there with water and spray off the loose material that  
17 can come off with high-pressure water, and then suck that  
18 up with the vacuum truck or just sweep it off.

19 That's primarily what we meant. It's hard to  
20 define. I don't know if anybody else can define it. Maybe  
21 Ken knows what "cleaned well" is. I don't know.

22 MR. MARSH: Well, I do have a comment about that,  
23 is that I'm sure that waste management in all of its  
24 operations has their own internal policies, as does CRI.  
25 So even though some of these waste streams, say that we

1 could take those, we may not take them because we don't  
2 feel like they conform to our waste standards.

3           So I think maybe that is a discretionary thing on  
4 the part of the facility. And obviously, we have not only  
5 our own standards to comply with, but we have to look out  
6 for the other people that are putting waste streams in our  
7 facility. So we have an obligation, not only us, but waste  
8 management, to the other users of those facilities. So I  
9 think that's a discretionary thing on our part, the  
10 operators.

11           And I think most operators now are prudent and  
12 can use this to -- If you put "pit liners" in there, we  
13 might have an argument. If you put "pit liners cleaned  
14 well" then we can say, This is not cleaned well, we don't  
15 accept. I think that's the discretionary part of the  
16 operator.

17           MR. ANDERSON: And I was just informed by Mr.  
18 Jordan that their policy is that they consider them the  
19 same thing as liners, drum liners --

20           MR. JORDAN: Yeah.

21           MR. ANDERSON: Which would coincide with "EPA  
22 clean" in the exhibit that's already been given to you,  
23 that the drum liners are plastic liners. And if they're  
24 clean pursuant to that, then they're clean.

25           CHAIRMAN WROTENBERY: Okay, thank you.

1           Would you also please comment on the question  
2 about the testing for chromium?

3           MR. ANDERSON: Yes, madame Chairman, the tests  
4 that they're -- it is true, the only part of the chrome  
5 that is considered a hazardous constituent is trivalent.  
6 The hexavalent is basically no problem. However, we are  
7 requiring testing for total chrome, because the breakdown  
8 test is almost cost prohibitive. It's extremely expensive  
9 to break it out to hexavalent and trivalent chrome.

10           So in order to reduce costs on the generator --  
11 or disposal facility, are the ones doing it, or whoever's  
12 doing it -- we go for a test for total chrome.

13           Then when they submit that, if that total chrome  
14 is -- or TCLP chrome, either way, and we can use the 20-  
15 fold dilution policy that EPA has set forth, total chrome,  
16 which is a lot cheaper than TCLP chrome, and I believe the  
17 Rule allows us to do that -- if it exceeds the limit, then  
18 we can go back and do further testing to determine whether  
19 it's hexavalent or trivalent chrome.

20           From what we have noticed in the past, probably  
21 less than a tenth of a percent of the time that it exceeds  
22 the chrome limits to begin with. Which means for those  
23 times that it wouldn't exceed the limits to begin with,  
24 we're spending -- requiring the expenditure of large  
25 amounts of money just to determine the different chromes,

1    whereas one time out of a thousand we may have to do that  
2    and it would cost a little bit more.

3            So that's why we didn't break it down into the  
4    trivalent and hexavalent.

5            CHAIRMAN WROTENBERY:   Okay, questions?

6            And then I think the last one we might need to  
7    ask you to address is concern number seven regarding the  
8    relationship to the NESHAP.

9            MR. ANDERSON:   I mentioned this earlier when I  
10   was going through the Rule, that the Air Quality Bureau of  
11   the Environment Department has sole jurisdiction over air  
12   quality and air pollutants.  We are putting the NESHAP in  
13   here for asbestos testing only.  We did not include NESHAP  
14   for any other constituents other than asbestos.  All the  
15   rest of the constituents would be regulated by the  
16   Environment Department.

17           CHAIRMAN WROTENBERY:   Okay, thank you.  Is there  
18   anything else you would like to have clarified?

19           MR. ROSS:   (Shakes head)

20           CHAIRMAN WROTENBERY:   So Mr. Ross, could you  
21   summarize for us where we are in the draft that we're  
22   looking at now?  What changes have been made already, and  
23   then what changes have been proposed today?

24           MR. ROSS:   Mr. Anderson may have gone over this  
25   to some extent.

1           When the Rule was originally drafted back in  
2           January it was intended to be an administrative fix to the  
3           problem which arose out of the Environment Department's  
4           case and their subsequent decision to limit acceptance of  
5           those wastes. There was a rule drafted and placed on the  
6           website at that time.

7           Subsequent to that time, of course, the  
8           Legislature enacted, and Governor Johnson signed on the  
9           16th of this month, House Bill 533 which changed the scope  
10          of the Rule. So the Rule was at that point revised to some  
11          extent to conform to House Bill 533, mainly, substantively  
12          in the area of contaminated soil.

13          And then it was issued on the 19th of this month,  
14          effective the 20th, as an emergency Rule and provision.  
15          Such emergency rules can only be effective for 15 days.  
16          And that's -- The emergency Rule is what's before you today  
17          for consideration, with the exception of the several  
18          typographical errors that we've been discussing a little  
19          bit today.

20          First of all, the typographical error in D (1)  
21          (b), which is correct in the version you have in front of  
22          you that specifies uncontaminated brush, as opposed to  
23          contaminated brush.

24          There was another typographical error in D (1)  
25          (j). It originally permitted disposal of metal pipe and

1 metal cable. That was a typographical error as well. The  
2 word should be "plate". And so in the version you have in  
3 front of you it says "metal plate and metal cable".

4 Finally, the language in E (2) under  
5 "Methodology", the testing requirements were originally at  
6 the beginning of the document and were, in some revision,  
7 moved to the bottom. So that sentence had to be corrected  
8 to reflect that.

9 I think there's another typographical error that  
10 provides in the version that you have in front of you,  
11 which was alluded to by Mr. Tongate under D (2) (d), I  
12 think the word "friable" in the third line of that section  
13 should be "non-friable".

14 Other than that, I think those are the only  
15 changes from the emergency Rule that was enacted on the  
16 19th. I think for ease and convenience, so we're all  
17 working from the same document, that that's what we worked  
18 from at this point.

19 CHAIRMAN WROTENBERY: Okay. Maybe just ask,  
20 there was a question -- there's quite a bit of discussion  
21 on the "friable" versus "non-friable", it appears.

22 MR. TONGATE: I think it was Section D (1) (e)  
23 that the question was --

24 MR. ROSS: Oh, I'm sorry, you're right. My  
25 mistake, madame Chairman, it should be D (1) (e) in the

1 second sentence, the word "friable" really should be "non-  
2 friable".

3 CHAIRMAN WROTENBERY: Okay.

4 MR. ROSS: We discussed that yesterday --

5 CHAIRMAN WROTENBERY: Uh-huh.

6 MR. ROSS: -- and did not get it in this draft.

7 CHAIRMAN WROTENBERY: Okay. And you have drafted  
8 an order, I believe, as well. Did you distribute that to  
9 the Commissioners?

10 MR. ROSS: Yeah, I have drafted an order, based  
11 on what I knew yesterday, for the Commission's  
12 consideration, were we to consider some of these changes.  
13 There may be some minor that have to be made --

14 CHAIRMAN WROTENBERY: -- made for the order.

15 MR. ROSS: For example, if you adopt Mr. Marsh's  
16 amendment, I think we probably ought to set that out in a  
17 separate paragraph of the order to make it clear --

18 CHAIRMAN WROTENBERY: Okay.

19 MR. ROSS: -- for the record. But other than  
20 that, this is my best shot as of yesterday.

21 CHAIRMAN WROTENBERY: Yesterday, okay.

22 At this point I think we really have two  
23 amendments that have been requested that we need to  
24 discuss.

25 The first one that we might take up is the

1 request in D (3) (n) that we strike the language of that  
2 particular phrase of the Rule. That is the provision that  
3 states that waste may be disposed of on a case-by-case  
4 basis. It adds a sort of a catch-all provision that other  
5 wastes that would be suitable could be approved under the  
6 terms of this Rule.

7 Mr. Feldewert and Mr. Marsh had suggested that  
8 language be deleted. I have no objection to deleting that  
9 language. I'd be interested in hearing what the other  
10 Commissioners think about it.

11 What it would mean is, if, as inevitably happens,  
12 there is some other category of waste that's identified  
13 that needs to be considered for disposal in an ED facility,  
14 we would need to come back and propose an amendment to the  
15 Rule, which we could do.

16 CHAIRMAN WROTENBERY: Which would take quite a  
17 bit of time --

18 CHAIRMAN WROTENBERY: It would take --

19 COMMISSIONER BAILEY: -- and --

20 CHAIRMAN WROTENBERY: -- some additional time and  
21 effort, right, there would be ambiguity in that period of  
22 time. I guess I feel fairly comfortable with it because we  
23 have been looking at this list for about -- almost three  
24 years now, two years, and feel pretty good that we've got a  
25 fairly comprehensive list. I wouldn't swear that it's

1 complete, but I think we've got probably 95 percent of the  
2 material that we might ever be asked about. And so --

3 COMMISSIONER BAILEY: And on the other hand, what  
4 harm is there in leaving it in, for the five percent that  
5 may have been missed? The problems with being very  
6 specific in the list is that inevitably there's something  
7 that was overlooked and they wouldn't do, and it would take  
8 a period of time and ambiguity to make a determination and  
9 a rule change.

10 CHAIRMAN WROTENBERY: Uh-huh.

11 COMMISSIONER BAILEY: I personally don't see the  
12 harm in leaving that in, so that there is a process in  
13 place to take care that one that got forgotten.

14 CHAIRMAN WROTENBERY: Uh-huh. Okay, Commissioner  
15 Lee?

16 COMMISSIONER LEE: No questions.

17 CHAIRMAN WROTENBERY: Certainly that's the way we  
18 proposed it, and the thinking was along the same lines that  
19 you're articulating here, that we do need a reasonable  
20 mechanism for providing for those.

21 COMMISSIONER BAILEY: Because it does give a  
22 process for taking care of it --

23 CHAIRMAN WROTENBERY: Uh-huh.

24 COMMISSIONER BAILEY: -- rather than just  
25 throwing it up in the air for however long it takes to

1 amend the Rule, which obviously takes quite some period of  
2 time.

3 CHAIRMAN WROTENBERY: That's true, that's true.  
4 Maybe I'd ask one clarifying question of Mr. Anderson.

5 If we did get a request to take another waste  
6 that had not been specifically identified in this  
7 particular Rule, what would be our process for considering  
8 the addition of that waste?

9 MR. ANDERSON: Well, madame Chairman, as a matter  
10 of fact I got that request yesterday.

11 CHAIRMAN WROTENBERY: Oh, you did?

12 MR. ANDERSON: It was for plastic thread  
13 protectors, uncontaminated plastic thread protectors, which  
14 are in no way covered in here. And what -- We have not yet  
15 set out a procedure for that yet. I would propose that the  
16 procedure would probably -- likely be obviously, it would  
17 take the Director's approval to do that. And we could find  
18 some mechanism to publish it on the Internet and give a  
19 certain -- you know, X number of days, five or ten days for  
20 comments or something like that, if need be.

21 CHAIRMAN WROTENBERY: And will you be requiring  
22 testing of that material?

23 MR. ANDERSON: Madame Chairman, probably. It  
24 would depend on what the material was. I would say like  
25 unused -- you know, the thread protectors as they come from

1 the factory, I'm not sure what testing we would do on that.  
2 So I don't think something like that would have testing.

3 We had a request a couple of days ago for hose,  
4 garden hose, that was used at a site. Well, if it was for  
5 water, probably not. It depends on what it was used for.  
6 If it was used to transmit some other fluid, we might have  
7 to test for something on that. That would probably be  
8 under the D (3) category, on a case-by-case basis.

9 CHAIRMAN WROTENBERY: And what kind of  
10 communication will you have with the Environment Department  
11 when you receive this type of request?

12 MR. ANDERSON: Madame Chairman, anytime we get  
13 something that's not on that list, we would communicate  
14 with the Environment Department to see if it's something  
15 that's authorized for that landfill to begin with, and  
16 they'd know what it was, and before we'd approve it we'd  
17 get their okay too, that it could go there.

18 CHAIRMAN WROTENBERY: Well, Mr. Ross, I am a  
19 little bit concerned that if we are going to leave that  
20 catch-all provision in the Rule, that we be clear about  
21 what standards apply. Is there language in the Rule right  
22 now that clarifies when this provision would be applicable?  
23 This says "Other wastes as applicable." What does that "as  
24 applicable" language refer to?

25 MR. ROSS: Well, it's intended to refer to the

1    respective jurisdictions of the agencies. I mean, "as  
2    applicable" means you couldn't -- OCD could not approve a  
3    waste that the Environment Department didn't permit in a  
4    given landfill, knowing of course that different landfills  
5    have different permitting as well.

6            So even if a waste is proposed and proposed to go  
7    to a particular landfill that doesn't have the appropriate  
8    permitting, that would not be appropriate. That's what  
9    that was intended to refer to. I certainly could work if  
10   you...

11           CHAIRMAN WROTENBERY: Do we reference in this  
12   Rule anywhere the standards that are set out in the  
13   statute?

14           MR. ROSS: Not specifically, but it's in the  
15   order.

16           CHAIRMAN WROTENBERY: It's in the order.

17           MR. ROSS: It adopts the order.

18           CHAIRMAN WROTENBERY: Okay. Then we might just  
19   consider this particular suggested amendment by means of a  
20   motion, if any.

21           Do I hear a motion to amend the proposed rule to  
22   delete Subsection D (3) (n)?

23           I don't hear any motion. Okay, so that provision  
24   will stay in.

25           The other amendment that we had proposed today

1 concerns the standards applicable to existing Rule 711  
2 facilities, and it was pointed out that maybe it should be  
3 just Rule 711 facilities in general that this language  
4 should apply to.

5 The concern here is that there needs to be some  
6 parity between the treatment of wastes that are going to  
7 the OCD-permitted facilities and the wastes that are going  
8 to the Environment Department-permitted facilities. The  
9 proposed language would amend Rule 712 to address 711  
10 facilities.

11 And I guess that would be one of my concerns  
12 about the proposed amendment. I'm thinking if we do need  
13 to address this issue -- and I am convinced after some of  
14 the discussion we've had today that we do need to make some  
15 adjustments to our C-138 process. I believe, though, that  
16 we need to address that in Rule 711 rather than in Rule  
17 712. So I've got concerns about that particular drafting  
18 issue.

19 I also am not entirely comfortable with the  
20 language that's proposed here, because I do agree we need  
21 to try to ensure that we treat the different types of  
22 facilities equitably. That doesn't necessarily mean that  
23 we have to treat them the same, because in fact the  
24 facilities aren't the same.

25 The ED-permitted facilities that we are talking

1 about, for instance, I believe, are generally double-lined  
2 with leak-protection systems, whereas the 711 facilities  
3 permitted by the Oil Conservation Division may or may not  
4 have that same liner installed.

5 So it may or may not be appropriate to use the  
6 same testing procedures for both types of facilities.  
7 Something I think we have to look at very carefully.

8 What I would suggest here is that we refer this  
9 issue to the staff. As Mr. Anderson has noted, he has been  
10 working on some amendments to the C-138 procedures, and in  
11 part recognizing the resource limitations that Mr. Marsh  
12 has commented on and he's trying to come up with some new  
13 procedures that will enable us to apply our resources where  
14 they're most needed and eliminate paperwork that is  
15 unnecessary.

16 So I would suggest that we ask the Division staff  
17 to proceed with that effort to draft up the changes to the  
18 C-138 process and address this issue in that context.

19 But I would be interested in hearing your  
20 thoughts on that particular issue.

21 COMMISSIONER BAILEY: I am comforted by the fact  
22 that Rule 711 is under review for amendment, and I trust  
23 that it will not be a very long process before it's brought  
24 to the Commission for amendment.

25 I would ask that the attorneys determine if an

1 interim Director's order could address some of the issues  
2 connected with the filing of a C-138 until the Commission  
3 has the opportunity to look at the entire Rule 711 for  
4 amendment.

5 MR. ROSS: We'd be --

6 CHAIRMAN WROTENBERY: Mr. Ross?

7 MR. ROSS: -- happy to look into that, yeah.

8 CHAIRMAN WROTENBERY: Okay.

9 COMMISSIONER BAILEY: In fact, if it's considered  
10 necessary, we could even -- No, we can't because there's  
11 been no notice or advertisement --

12 MR. ROSS: Right.

13 CHAIRMAN WROTENBERY: What we can do is take a  
14 look at it and come back to this Commission at our next  
15 meeting --

16 COMMISSIONER BAILEY: Right.

17 CHAIRMAN WROTENBERY: -- with our plan of action,  
18 and if not, a proposed rule amendment at that point.

19 COMMISSIONER BAILEY: That works for me.

20 CHAIRMAN WROTENBERY: Okay. Then I guess just  
21 for the record, let me ask, do I hear any motions in  
22 connection with this proposed amendment regarding the 711  
23 facilities?

24 I don't hear anything, so we won't make that  
25 change in the proposed Rule, but we will pursue some

1 changes to Rule 711 to address the same issues.

2 With that, Mr. Ross, do we need to discuss any  
3 further changes to the proposal, based on any of the  
4 comments that we got today? I can't think of anything, but  
5 I'm just trying to make sure --

6 MR. ROSS: I don't think so.

7 CHAIRMAN WROTENBERY: -- I'm not overlooking  
8 something.

9 MR. ROSS: Yeah, the Rule itself and the order,  
10 possibly collectively.

11 CHAIRMAN WROTENBERY: Do you need to make any  
12 adjustments to the proposed order at this point, based on  
13 the discussion that we've had today?

14 MR. ROSS: Well, as a result of the typographical  
15 error, which I didn't catch, related to the asbestos, I'd  
16 propose that Paragraph 8, which now reads that the  
17 emergency Rule as proposed for adoption, except for  
18 correction of two typographical errors, I propose that the  
19 language be amended in Paragraph 8 to provide that the rule  
20 proposed for adoption is identical with the rule enacted by  
21 the Division as emergency rule, except for correction of  
22 several typographical errors --

23 CHAIRMAN WROTENBERY: Okay.

24 MR. ROSS: -- that appear in the emergency rule.  
25 And I propose also that D (1) (e) of the Rule be changed to

1 non-friable asbestos.

2 CHAIRMAN WROTENBERY: Well, we would like to go  
3 ahead and take action on this order and the attached rule  
4 at today's meeting, but we've got that correction that  
5 needs to be made to the language of the order.

6 What we might do here -- I'm sorry, have the  
7 other Commissioners had a chance to read through the order  
8 yet? So we'll need to take some time to do that as well.

9 What I suggest we do right now is go ahead and  
10 move on to the next case on the agenda. And in the  
11 meantime, Ms. Davidson, if you would see to it that those  
12 corrections are made in the language of the order.

13 Oh, Mr. Ross, do you have that on your computer?

14 MR. ROSS: It's actually on my computer, so if we  
15 take a break at some point I can change that.

16 CHAIRMAN WROTENBERY: We'll take a break at some  
17 point, because we'll need to give the Commissioners some  
18 time to review the language of the order as well. But  
19 we'll do that after we hear the next case and then come  
20 back to the proposed Rule 712.

21 Thank you very much for your testimony, it's very  
22 helpful.

23 (Thereupon, a recess was taken at 11:13 a.m.)

24 (The following proceedings had at 12:25 p.m.)

25 CHAIRMAN WROTENBERY: Okay, then we'll get back

1 to the other case that we left pending here, and that was  
2 Case 12,626, which is the proposed rulemaking on waste  
3 management issues.

4 And Mr. Ross, I believe you've got a corrected  
5 order and rule for our consideration?

6 MR. ROSS: That's right.

7 CHAIRMAN WROTENBERY: I believe, Commissioners,  
8 you've now had a chance to review the language of the draft  
9 order?

10 COMMISSIONER BAILEY: Yes, I have.

11 CHAIRMAN WROTENBERY: I will then entertain a  
12 motion that we adopt this order of the Commission with the  
13 attached version of new Division Rule 712.

14 COMMISSIONER BAILEY: I second that -- or I so  
15 move.

16 COMMISSIONER LEE: Second. That's my line.

17 COMMISSIONER BAILEY: Sorry.

18 CHAIRMAN WROTENBERY: All in favor say "aye".

19 COMMISSIONER BAILEY: Aye.

20 COMMISSIONER LEE: Aye.

21 CHAIRMAN WROTENBERY: Aye. It's unanimous, and  
22 now we can sign this order.

23 I don't believe we need a second motion on the  
24 rule. The order itself upholds the rule, right?

25 MR. ROSS: The order itself adopts the rule, yes,

1 that's correct.

2 CHAIRMAN WROTENBERY: Commissioner Lee, I believe  
3 you've got you special pen for this purpose.

4 Commissioner Bailey.

5 And this is the 30th; is that right?

6 MR. ROSS: That's correct.

7 CHAIRMAN WROTENBERY: Thirtieth day of March,  
8 already. Okay, that concludes our action in that case.

9 Are there any other matters that need to be  
10 discussed by the Commission today? I believe we've covered  
11 our agenda, haven't we?

12 COMMISSIONER BAILEY: Yes.

13 CHAIRMAN WROTENBERY: Okay, I'll entertain a  
14 motion to adjourn.

15 COMMISSIONER BAILEY: I so move.

16 COMMISSIONER LEE: Second.

17 CHAIRMAN WROTENBERY: We got it right that time.  
18 All in favor say "aye".

19 COMMISSIONER BAILEY: Aye.

20 COMMISSIONER LEE: Aye.

21 CHAIRMAN WROTENBERY: Aye. Thank you all very  
22 much.

23 (Thereupon, these proceedings were concluded at  
24 12:30 p.m.)

25 \* \* \*

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## CERTIFICATE OF REPORTER

STATE OF NEW MEXICO    )  
                                   )    ss.  
 COUNTY OF SANTA FE    )

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL April 7th, 2001.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 14, 2002