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September 26, 2002

**VIA HAND DELIVERY**

Lori Wrotenbery, Director  
Oil Conservation Division  
New Mexico Energy, Minerals &  
Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

RECEIVED  
OIL CONSERVATION DIVISION  
SEP 28 10 15 AM '02

**Re: Case No. 12897: Application of the New Mexico Oil Conservation Division Through the Environmental Bureau Chief, for the Adoption of Amendments to Division Rule 118 (Hydrogen Sulfide Gas)**

Dear Ms. Wrotenbery:

At the Commission hearing on September 20, 2002, the Division submitted its Exhibit No. 1 in which it stated the following as "facts" to the Commissioners:

1. That it has been the Division's "practice" to address H<sub>2</sub>S issues for surface waste management facilities "on a *site-specific basis* through the permitting process."
2. That "waste management facilities generate H<sub>2</sub>S as wastes decompose."
3. That waste mixture and decomposition create "unpredictable changes in H<sub>2</sub>S emissions."

See Division Exhibit 1 at p. 2. Based on these "facts," the Division recommends the "more stringent requirements" in existing Rule 711 permits govern instead of the standards set forth in the Commission's draft H<sub>2</sub>S Rule. The "more stringent conditions" referenced by the Division refer to a *form* H<sub>2</sub>S Prevention & Contingency Plan that the Division has unilaterally crafted that arbitrarily imposes a 1 ppm threshold for action on surface waste management facilities. See 8/8/02 Loco Hills letter to the Commissioners, attached hereto.

In attempting to question the Division's witness about these statements and the basis for these "more stringent conditions," it was not the intent of Controlled Recovery Inc. ("CRI") to slow down the rulemaking process or unnecessarily address Rule 711 issues. Instead, CRI was merely attempting to understand the basis for the Division's

Lori Wrotenbery, Director  
Oil Conservation Division  
September 26, 2002  
Page 2

statements and its 1 ppm threshold for action. CRI assumed that when the Division provides the Commissioners certain “facts” as a basis for its recommendations, the Division is prepared to provide studies, analyses, data or other bases to support these “facts.” That was not the case at the Commission hearing. At the Commission hearing, the Division was unable to provide the Commissioners with any evidence supporting the Division’s suggestion that surface waste management facilities should be treated differently from all other regulated activities.

First, the Division presented no evidence that the Division has a “practice” of addressing H<sub>2</sub>S concerns at surface waste management facilities on a “*site specific*” basis.” The Division’s present H<sub>2</sub>S Rule (Rule 118) does not treat surface waste management facilities differently from other regulated activities. To CRI’s knowledge, the Division has not performed any “site-specific” analysis of H<sub>2</sub>S concerns at any surface waste management facility, nor has the Division developed any “site-specific” H<sub>2</sub>S plans for a surface waste management facility. Instead, what the Division has done is craft a *form* H<sub>2</sub>S Prevention & Contingency Plan that arbitrarily seeks to impose a 1 ppm threshold for action on *all* surface waste management facilities. *See* 8/8/02 Loco Hills letter to the Commissioners. Unlike the Commission’s present draft H<sub>2</sub>S Rule, the Division’s arbitrary H<sub>2</sub>S Prevention & Contingency Plan is not the product of analysis, industry input and public comment.

Second, the Division presented no evidence, studies or analysis to support a 1 ppm threshold for action. Instead, the Division presented evidence that it takes a constant H<sub>2</sub>S exposure of 50 ppm for 10 minutes before eye and throat irritation occurs. Thus, while all other regulated activities – including activities or facilities located in populated areas - are afforded a 100 ppm threshold for action, the Division suggests without any basis that surface waste management facilities in unpopulated areas take action for H<sub>2</sub>S readings as low as 1 ppm. *Id.*

Third, the Division presented no evidence on the nature of the waste decomposition referenced in its comments, the nature or level of H<sub>2</sub>S emissions – if any – from waste decomposition, the nature of the waste mixture referenced in its comments, or the basis for this concern. Indeed, the Division’s witness could only direct the Commissioners to one 1993 complaint of H<sub>2</sub>S emissions from a surface waste management facility. However, the Division’s witness could not recall the cause of the H<sub>2</sub>S emissions, the nature of the emissions, or the level of the emissions associated with this isolated incident. This isolated incident provides no justification for the Division to impose a 1 ppm threshold for action

HOLLAND & HART LLP  
ATTORNEYS AT LAW

Lori Wrotenbery, Director  
Oil Conservation Division  
September 26, 2002  
Page 3

on all surface waste management facilities. *See* 9/19/02 Jenex Operating Company letter to Ms. Wrotenbery (attached) (“We have collected readings using portable H<sub>2</sub>S equipment at the borders of our plant, and have a 100% success ratio that no measurable amounts are ever found.”). *See also* 9/17/02 Kelly Maclaskey letter to Ms. Wrotenbery (attached).

Thus, while the Division has expressed a goal of “uniformity” in the regulation of H<sub>2</sub>S, the Division’s position – and the language in Part B of the present draft – results in the absence of uniformity and arbitrarily treats surface waste management facilities differently from all other regulated activities. The Division has presented no evidence to support this disparate treatment, and this arbitrary classification is without justification. CRI therefore requests that the Commission delete the last sentence in Part B of the proposed H<sub>2</sub>S rule, and address any unique H<sub>2</sub>S circumstances on a case-by-case basis pursuant to the Commission’s authority under Part E(4)(d) of the proposed H<sub>2</sub>S Rule (“The division may impose additional requirements or modify requirements based on site specific conditions, population density or special circumstances.”)

Thank you for your attention to these matters.

Sincerely,



Michael H. Feldewert

MHF/js

cc: Robert Lee, Ph.D., Commissioner  
Jamie Bailey, Commissioner  
Steve Ross, Attorney for the Commission  
David Brooks, Attorney for the Division  
Ken Marsh, President, Controlled Recovery Inc.  
Gerald L. Jensen, Jenex Operating Company  
Kelly Maclasky, Kelly Maclaskey Oilfield Services, Inc.  
James R. Maloney, Vice President, Loco Hills Water Disposal Co.  
New Mexico Oil and Gas Association

FROM : LOCO HILLS WATER DISPOSAL

PHONE NO. : 5056772128

Aug. 08 2002 12:29PM P2

**LOCO HILLS WATER DISPOSAL CO.**  
P. O. Box 68  
Loco Hills, NM 88255

August 08, 2002

Commissioners  
State of New Mexico  
Energy, Minerals and Natural Resources Dept.  
1220 S. St. Francis Drive  
Santa Fe, New Mexico 87505

Re: Rule 19.15.2.52 Hydrogen Sulfide Gas Case No. 12897

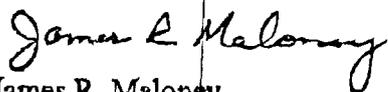
Gentlemen,

Loco Hills Water Disposal Company is taking this opportunity to strongly express disapproval of the above referenced Rule whereas surface waste management facilities are exempt pursuant to 19 NMAC 15.1.711.

Attached is a copy of the May 26, 2000 Rule 711 Permit for Loco Hills Water Disposal, No. NM-01-0004. Refer to H2S Prevention & Contingency Plan 1-a, b, c, and d. This requirement is extremely different from what you are applying to the rest of the Industry.

Loco Hills Water Disposal Company is part of the Oil and Gas Industry and should be included in all rulings that pertain to this industry. We, as part of this industry and subject to the jurisdiction of the Oil Conservation Division, should not be governed differently with Rule 711. Therefore, Loco Hills Water Disposal Company strongly urges you to re-consider. Treat the Industry as a whole and do not have separate rulings.

Sincerely,  
Loco Hills Water Disposal Company

  
James R. Maloney  
Vice-President

JRM:jb  
Attachment

Loco Hills Water Disposal, Inc.  
711 Permit NM-01-0004  
May 26, 2000  
Page 3

### H<sub>2</sub>S PREVENTION & CONTINGENCY PLAN

1. Tests of ambient H<sub>2</sub>S levels must be conducted on a weekly basis. Test results must be recorded and retained. The tests must be conducted at four (4) locations at the top of the berm around each of the evaporation ponds and the skim pits. The wind speed and direction must be recorded in conjunction with each test.
  - a. If an H<sub>2</sub>S reading of 1.0 ppm or greater is obtained:
    - i. a second reading must be taken on the downwind berm within one hour;
    - ii. the dissolved oxygen and dissolved sulfide levels of the pond must be tested immediately and the need for immediate treatment determined; and
    - iii. tests for H<sub>2</sub>S levels must be made at the fence line down wind from the problem pond.
  - b. If two (2) consecutive H<sub>2</sub>S readings of 1.0 ppm or greater are obtained:
    - i. the operator must notify the Artesia office of the OCD immediately;
    - ii. the operator must commence hourly monitoring on a 24-hour basis; and
    - iii. the operator must obtain daily analyses of dissolved sulfides in the pond.
  - c. If an H<sub>2</sub>S reading of 10.0 ppm or greater at the facility fence line is obtained:
    - i. the operator must immediately notify the Artesia office of the OCD and the following public safety agencies:

New Mexico State Police  
Eddie County Sheriff  
Eddie County Fire Marshall  
Loco Hills Fire Department; and
    - ii. the operator must notify of all persons residing within one-half (½) mile of the fence line and assist public safety officials with evacuation as requested.
  - d. At least 1000 gallons of an H<sub>2</sub>S treatment chemical or an equivalent amount of chemical in concentrate form to produce 1000 gallons of H<sub>2</sub>S treatment chemical must be stored on-site at all times. H<sub>2</sub>S treatment chemicals must not be retained for a period in excess of the manufacturer's stated shelf life. Expired H<sub>2</sub>S treatment chemicals may be disposed of in the evaporation ponds.



Jenex Operating Company  
621 17<sup>th</sup> Street, Suite 830  
Denver, Co 80293  
(303) 383-1515 Phone  
(303) 383-5018 Fax

September 19, 2002

Lori Wrotenbery, Director  
Oil Conservation Division  
New Mexico Energy, Minerals &  
Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

**RE: Case No. 12897: Application of the New Mexico Oil Conservation  
Division Through the Environmental Bureau Chief, for the Adoption  
of Amendments to Division Rule 118 (Hydrogen Sulfide Gas):  
Commission Revisions to the Proposed Rule**

Dear Ms. Wrotenbery,

Jenex Operating Company, which operates a plant near Hobbs, New Mexico, wishes to comment on the draft H<sub>2</sub>S rule, based on the Commission's letter dated August 30, 2002. We have been made aware of this proposed rule by our customers, Controlled Recovery, Inc., and Loco Hills Water Disposal Company. It appears it would also apply to our facility.

We wish to support the thoughtful changes which were suggested by Mr. Feldewert of the law firm of Holland and Hart on behalf of Controlled Recovery, Inc. We have been handling oil with hydrogen sulfide for a number of years. It is clear to all of us that while sour oil must be handled carefully, when it accumulates in the top of tanks, there is no danger of hydrogen sulfide contamination of the ambient air in our rural locations, from the disposal of oily solids of the type that any of our companies routinely handle, or any danger to the public from the venting of a tank of sour crude which releases a tiny amount of H<sub>2</sub>S into the ambient air.

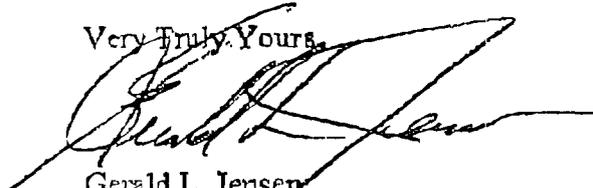
We have collected readings using portable H<sub>2</sub>S equipment at the borders of our plant, and have a 100% success ratio that no measurable amounts are ever found. This

must be common in the rural areas of New Mexico for solid disposal plants. Requiring expensive fixed equipment testing for this type of plant in a rural area is a regulation in desperate search of a problem.

What is not in question, however, is that singling out surface waste management facilities from the scope of your proposed rule is neither necessary nor wise. It will be an economic hardship with no commensurate public health value. If you have a solid waste disposal facility within an urban setting, you should make the urban setting the basis of your rule, and not enforce these requirements which are extremely difficult for small companies with limited staff to comply with, in their normal rural settings.

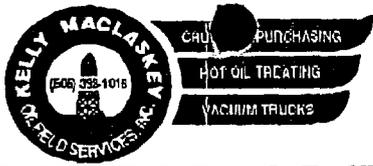
Thank you for this consideration.

Very Truly Yours,



Gerald L. Jensen  
Jenex Operating Company





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**Kelly Maclaskey Oilfield Services, Inc.**

**P.O. Box 580  
Hobbs, N.M. 88241  
(505) 393-1016**

September 17, 2002

Lori Wrotenbery, Director  
Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, NM 87505

Re: Case No. 12897  
Hydrogen Sulfide Gas Proposed Rule

Dear Ms. Wrotenbery:

In regards to the above referenced case number, we would respectfully ask your consideration. Our treating plant located in rural Lea County is operated under the jurisdiction of New Mexico Oil Conservation Division authority.

We sincerely request the omission of the last sentence in Section "B" which refers to surface waste management facilities. The sentence begins with "this section shall not act...".

The Division has not presented health studies or technical information to date on chronic exposure consequences to H<sub>2</sub>S, as related to surface waste management facilities. The intent of this rule should be to protect the public health and environment.

The exclusions and language in this section are inconsistent and only serve to confuse the intent and meaning of the rule.

The rule provides for additional requirements which give the Division sufficient authority to deviate from the proposed rule to protect the public health and the environment.

Sincerely,

  
Kelly Maclaskey