

## DRAFT OF PROPOSED RULE

### RULE 711-Commercial Surface Waste Disposal Facilities

A commercial surface waste disposal facility is defined as any facility that receives compensation for collection, disposal, evaporation or storage of produced water, drilling fluids, drill cuttings, completion fluids, and/or any other related waste in surface pits, ponds, or below grade tanks. Such facility will not be allowed to operate unless it has been permitted in conformity with the following provisions:

The procedures for obtaining a commercial surface waste disposal permit contained in Rule 711 are the exclusive procedures for obtaining such permits. To the extent these procedures conflict with the provisions of Oil Conservation Commission Orders R-3221, as amended, or R-7940-A, such orders are superceded.

- A. Prior to the construction, reconstruction or enlargement of a commercial surface waste disposal facility, application for a permit shall be filed in duplicate with the Santa Fe office of the Division and one copy to the appropriate district office. The application shall be accompanied by:
1. A plat and topographic map showing the location of the facility in relation to governmental surveys (1/4 1/4 section, township, and range), highways or roads giving access to the facility site, and watercourses, water wells, and dwellings;
  2. The names and addresses of the landowner of the disposal facility site and landowners within one-half mile of the site;
  3. A description of the facility with a diagram indicating location of fences and cattleguards, and detailed engineering construction/installation diagrams of any pits, liners, dikes, piping, sprayers, and tanks on the facility, prepared in accordance with Division "Guidelines for Permit Application, Design and Construction of Waste Storage/Disposal Pits;"
  4. A plan for disposal of any waste solids or liquids in accordance with Division rules, regulations and guidelines;
  5. A contingency plan for reporting and cleanup of spills or releases;
  6. A routine inspection and maintenance plan to ensure permit compliance;
  7. A closure plan;
  8. Geological/hydrological evidence demonstrating that disposal of oil field wastes will not adversely impact fresh water;
  9. Proof that the notice requirements of this Rule have been met;

10. Certification by an authorized representative of the applicant that information submitted in the application is true, accurate, and complete to the best of the applicant's knowledge; and
  11. Such other information as is necessary to demonstrate compliance with OCD rules and/or orders.
- B. The applicant shall give written notice to the owners of surface lands and occupants thereof within one-half ( $\frac{1}{2}$ ) mile and a copy and proof of such notice will be furnished to the Division. The Division will issue public notice by advertisement in a paper of general circulation published in the county in which the disposal facility is to be located. Any person seeking to comment on such application must file comments with the Division within 30 days of the date of public notice. If there is significant objection by owners or occupants of adjacent lands, the Director of the Division may set any application for a surface waste disposal permit for public hearing.
  - C. All commercial surface waste disposal facilities shall have a surety or cash bond in the amount of \$25,000, in a form approved by the Division, conditioned upon compliance with statutes of the State of New Mexico and rules of the Division, and satisfactory cleanup of the site upon cessation of operation, in accordance with Part J of this Rule. If a bond has been secured for a treating plant permit at the location, that bond shall be sufficient for the surface waste disposal portion of the facility, providing they are contiguous. If an adequate bond is posted by the applicant with a federal or state agency and the bond otherwise fulfills the requirements of this rule, the Division may consider the bond as satisfying the requirement of this rule. The applicant must notify the Division of any material change affecting the bond filed for the site and must, in any case, report the status of their bond annually to the Division;
  - D. The Director of the Division may administratively issue a permit upon a finding that a complete and proper application has been filed and that no party has objected within 30 days following public notice. All permits shall be revocable, after notice and hearing, upon showing of good cause and are transferable only upon written approval of the Division Director. The permit shall be consistent with the application and appropriate requirements of Division rules and The Oil and Gas Act.
  - E. All surface waste disposal facility operators shall file forms C-117-A, C-118, and C-120-A as required by OCD rules.
  - F. Each operator of a commercial surface disposal facility shall keep and make available for inspection records for each calendar month on the source, location, volume and type of waste (produced water, acids, completion fluids, drilling mud, etc.), date of disposal, and hauling company that disposes of fluids or material in their facility. Such records shall be maintained for a period of two (2) years from the date of disposal.

- G. Disposal at a surface facility shall occur only when an attendant is on duty or when loads can be monitored or otherwise isolated for inspection before disposal; the facility shall be secured when no attendant is present.
- H. No produced water shall be received at the facility from motor vehicles unless the transporter has a valid Form C-133, Authorization to Move Produced Water, on file with the Division.
- I. Additional requirements or restrictions may be imposed upon a written finding by the Division, including but not limited to the following:
  - 1. An operator with a history of failure to comply with Division rules, regulations, and orders, or
  - 2. Site suitability limitations.
- J. The operator shall notify the Division of cessation of operations. Upon cessation of disposal operations for six (6) consecutive months, the operator will complete cleanup and restoration of the facility site within the following six (6) months, unless an extension of time is granted by the Director of the Division. Such cleanup shall be in accordance with the closure plan and any modifications approved by the Division Director and may include removal or demolition of buildings, removal of all tanks, vessels, equipment or hardware, containment and removal of fluids and chemicals, backfilling and grading of pits, removal of contaminated soil, aquifer restoration, if necessary, and reclamation of the general facility site. Prior to release of the bond covering the facility, a representative of the Division will inspect the site to determine that restoration is adequate.
- K. The Director of the Division may order immediate cessation of any surface waste disposal operation. The cessation will remain in effect until withdrawn or until an order is issued after notice and hearing when it appears that such cessation is necessary to prevent waste, to protect fresh water, to protect public safety, or to assure compliance with Division rules or orders.



3. As the Division knows, and the records will reflect, Parabo, Inc., was one of the first, if not the first, engineered surface waste disposal facility for oilfield fluids in the state of New Mexico. It was created in and as a result of a peculiar geological formation in Lea County, New Mexico, known as the "triasic redbed" which was overburdened in the area of the Parabo operation by sand and gravel which was mined for many years by Wallach Concrete, Inc., and its predecessors.

The technical and engineering data giving rise to Parabo is well documented in the proceedings whereby the original exception to Oil Conservation Commission Order R-3221 was permitted.

4. On the other hand, the South Eddy County facility is located in Southern Eddy County, New Mexico and is near the so-called Salt Lake in the Laguna Tres area. This is made up, essentially, of totally dissolved salts without the ability to support vegetation. This facility, like Parabo, is permitted under the Order noted above as an exception to Order R-3221.

5. With specific reference to proposed Rule 711, I expressed very few major concerns with the Rule, but rather generally feel that it was and did represent a very organized and programmed approach to the permitting of

additional facilities and to the operation of existing facilities.

6. The areas of my general concern have to do with what we call "grandfather rights" and the apparent reference within the proposed Rule to other as yet undefined or undetermined and potentially unidentified areas of concern in future regulation.

I certainly urge, on behalf of my clients and others similarly situated, that no new permit application be required, but that only after review of the existing orders should any request for further data be made such as reporting and containment plans on spills and possible closure plans. In regard to closure plans, please see my comments under paragraph 9.

7. In regard to the provisions of paragraph A, it would appear to me that based upon my knowledge of the filings on behalf of my clients in regard to the two above described facilities, that the only possible omission from the material already on file are subparagraphs 5 through 7 with particular emphasis on subparagraphs 5 and 7. With regard to subparagraph 5, I believe that specifically in regard to Parabo, the early orders with their monitoring requirements and notice requirements do meet any rules, regulations or guidelines which this Commission has in the past, or should in the future, promulgate.

8. I have some question, under subparagraph 6, as to what a routine inspection and maintenance plan is which would insure permit compliance. I would only respectfully suggest that some tightening of the language and more specificity be included so that my clients and others would know the desires of the Division.

9. Obviously, as operators of a surface evaporation disposal facilities such as my clients have, there is no plan of closure, nor is there any intent to close under subparagraph 7. The nature of the operations at Parabo, given the fact that there are solids building up at a very small, and possibly not even measureable rate, there will come a time when the solids come to the maximum level permitted for input and thus a pond or ponds may no longer be useable as an evaporation pond. We all know that when we say solids, we are at best and for many years after fluid has ceased to be added are sluggy semi-solids and do not permit traffic which would be necessary to replace with overburden, etc. In the case of the Eddy County facility, this is an area, which by the evidence in that case, is shown to be contributed to by multiple operators and to be designed to accummulate trash/junk water. The whole area is not under control of Unichem and cannot be closed by Unichem.

If the Division's thinking is that there should be some specific closure plan regarding the removal and clean-up of adjacent surface facility, my client would certainly endorse such a program. In some discussion with the staff it did become obvious to me that some provisions would have to be made for abandonment and closure. I do respectfully suggest that more detail be given to the closure plan at its inception, least there be a vast divergence in plans with some being inordinately expensive or difficult to execute and others being inordinately simple, which I believe would operate as an unfair treatment of various operators.

10. In relation to paragraph F of the proposed Rule, I would, personally and do on behalf of my clients, endorse such a record keeping requirement. I might, as a matter of simplicity, suggest that the Commission promulgate the form or forms with specific regard to their format so that when they are inspected in the field, it could be done in an expeditious manner because of the uniformity of the presentation.

11. With regard to paragraph I of the proposed Rule, I am perplexed by the provisions of subparagraph #2 relating to "site suitability limitations". I think that such term or terms is inordinately ambiguous and could be cleaned up somewhat.

12. Further Affiant sayeth not.

  
R. E. RICHARDS

R. E. RICHARDS, being first duly sworn on oath,  
deposes and states:

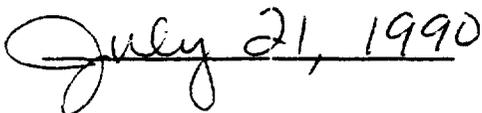
That he is the person named in the above and  
foregoing Testimony and Statement of R. E. Richards; that  
he has read the same, knows and understands the contents  
thereof, and that the matters and things therein stated are  
true and correct to the best of his knowledge, information  
and belief.

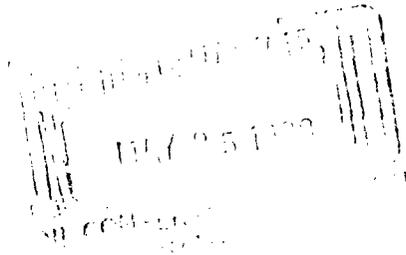
  
R. E. RICHARDS

SUBSCRIBED AND SWORN TO before me this 17th day  
of May, 1988, by R. E. RICHARDS.

  
NOTARY PUBLIC

MY COMMISSION EXPIRES:





Home Office 707 N. Leech, P.O. Box 1499 / Hobbs, NM 88240 / Ph. 505/393-7751, TWX 910/986-0010

May 24, 1988

VIA CERTIFIED MAIL: P 713 502 754

Mr. Bill LeMay, Director  
New Mexico Oil Conservation Division  
Land Office Building  
P.O. Box 2088  
Santa Fe, NM 87504-2088

SUBJECT: Draft of Proposed Rule 711 -  
"Commercial Surface Waste Disposal Facilities"

Dear Mr. LeMay:

As owner and operator of two surface disposal facilities located within the state of New Mexico (i.e., Parabo Disposal Facility in Eunice, and South Eddy County Disposal Facility near Carlsbad), Unichem International Inc. respectfully requests that certain wording in Section C of the above-listed proposed ruling be revised to include alternative methods by which the discharger may demonstrate the ability to undertake these measures.

Specifically, with respect to the issue of financial assurances, we are suggesting that a provision be included to indicate that financial statements, letters of credit, and/or any other viable means of equivalent, approved assurances be acceptable for the discharge permitting procedure.

For reference purposes, other regulatory agencies within the state of New Mexico presently accept these various alternatives for financial assurances; in particular, this includes the New Mexico EID (Water Quality Control Commission Regulations) as well as the Federal EPA (Hazardous Waste Regulations).

Because we have experienced difficulty in obtaining the specified surety bonds when dealing with environmental matters, we respect-

UNICHEM INTERNATIONAL INC.

Mr. Bill LeMay  
Page Two  
May 24, 1988

fully request that consideration be given to incorporating the alternative provisions into the final Rule.

Sincerely,

UNICHEM INTERNATIONAL INC.



Wayne Price  
Staff Engineer

LWP:mms

cc: Jerry Sexton, District I Supervisor, New Mexico OCD  
Jim Britton, President - Unichem International Inc.  
Richard Brakey, Vice President - Rowland Trucking



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MAY 25 1988

Home Office 707 N. Leech, P.O. Box 1499 / Hobbs, NM 88240 / Ph. 505/393-7751, TWX 910/986-0010

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*I am sympathetic but  
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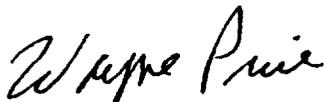
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*Long Survey*  
*2/1/11*  
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