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VIA HAND DELIVERY

Ms. Florene Davidson
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

Re: Case 13586: Application of the New Mexico Oil Conservation Division for Adoption of New Rules Governing Surface Waste Management.

CRI's proposed modifications to the Division's February 27, 2006 Draft Surface Waste Management Rules.

Dear Ms. Davidson:

Controlled Recovery Inc. ("CRI") hereby submits its proposed modifications to the Division's February 27, 2006 draft of the Surface Waste Management Rules in Case 13586, for consideration by the Oil Conservation Commission at its March 23, 2006 hearing.

A. The proper waste streams for landfarms to ensure remediation and re-vegetation:
Proposed Rules 53.A(1)(c), 53.A(2)(f), 53.G(1), 53.H(2)(c) and 53.J(1).

For many years, the public notices provided for landfarm applications have historically stated that these facilities are for "remediation of non-hazardous hydrocarbon contaminated soils." See Attached Notices of Publication. Landfarms were not noticed to the public nor expected to accept other types of oil field wastes that cannot be remediated in a landfarm environment. Indeed, as evident from these historical public notices and the definition of "landfarm" in proposed Rule 53.A(1)(c), landfarms are *not* intended to be permanent disposal sites for non-remediable materials. To the contrary, they are declared to be facilities that promote the bioremediation of hydrocarbon contaminated soils such that they can eventually be "re-vegetated." Proposed Rules 53.J(4)(d)(ii) and (iv) and J(4)(f). Thus, re-vegetation is, and should be, a major goal for landfarm remediation and closure.

CRI believes that parts of the proposed Rule depart from these established principles and present a potential to impede the twin goals of remediation and re-vegetation, and risk harm to wildlife and groundwater.

First, a new term has been added to the February 27th version of the draft Rules – “predominately [or ‘predominantly’] contaminated by petroleum hydrocarbons.” See proposed Rules 53.A(2)(f)(definition of “lift”), G(1)(waste acceptance criteria for landfarms) and H(2)(c)(small landfarm waste acceptance). The term is undefined. There is a risk that it might be interpreted to allow an exception to the landfarm acceptance limitations in a case where unacceptable soil contaminants were present in substantial amounts, but nevertheless did not “predominate” over hydrocarbon contaminants of a soil. If this were allowed to occur, then the carefully crafted limitations on the types of acceptable substances for placement in landfarms could be ignored. CRI believes the term “predominately contaminated by petroleum hydrocarbons” should be deleted from the proposed Rules, or, that the term should be defined to make it clear that the characterization of “hydrocarbon contaminated soils” is not compromised by the risk of acceptance of soils that are also highly contaminated by other substances.

Second, The February 27th proposed Rules contain a definition of re-vegetation in the last two sentences of section 53.J(1) that is appropriate to ensure re-vegetation actually occurs. But the current proposed Pit Rules contain a definition of re-vegetation that only refers to seeding and planting, not to *establishment* of actual plants, see proposed Rule 19.15.1.7R.(6) in Case No. 13590. In order to ensure the Rules require that actual re-vegetation occurs, rather than is just attempted, the J(1) definition should be explicitly referenced in these rules at 53.C(1)(i), H(5)(b)(i), J(1), J(2) and J(4)(d) and (f).

Finally, it appears that chloride levels have been set throughout the February 27th draft with a view to protecting groundwater. But chloride levels – salt levels - should also be set with re-vegetation in mind. The best measures for ensuring success of re-vegetation are sodium absorption ratio (SAR) and electrical conductivity (EC), and other commenters, we believe, will address that point. Here, we show that the chloride concentration in the waste acceptance criteria for landfarms, to the extent it serves as a rough indicator of re-vegetation success, is set too high. It should be set at 500 mg/kg, instead of 1,000 mg/kg, *before* chloride contaminated soils and drill cuttings are spread on unlined ground and left there at closure. Proposed Rule 53.G(1).

Suggested modifications: Proposed Rules 53.A(2)(f) and G(1) should be modified to delete the term “predominately [or ‘predominantly’] contaminated by petroleum hydrocarbons,” and replace it with the term “petroleum hydrocarbons. Proposed Rule 53.H(2)(c) should be modified to delete the phrase “that are predominantly contaminated by petroleum hydrocarbons”:

For instance, 53.A(2)(f) should be modified as follows: “A lift is an accumulation of soil or drill cuttings ~~predominately~~ contaminated by petroleum hydrocarbons which is placed into a landfarm cell for treatment.”

All references to re-vegetation in Rules 53.C(1)(i), H(5)(b)(i), J(2) and J(4)(d) and (f) should be explicitly tied to the 53.J(1) definition of re-vegetation by adding the words “to the standard in Paragraph (1) of Subsection J of 19.15.2.53 NMAC” after the word “re-vegetation” or “re-vegetate” in those Rules.

B. Gas safety management plans: Proposed Rules 53.C(1)(m), 53.E(15) and 53.F(5) and (6).

The Division has advanced the idea of a gas safety management plan as a requirement for *all* landfills. This attempts to address a problem that does not exist. CRI believes this new requirement, which has never been discussed with stakeholders or explained by the Division, is unnecessary.

We believe it is undisputed that oil field waste facilities are less likely than municipal solid waste facilities to generate dangerous gases. But the New Mexico Environment Department requires gas safety management plans only for the two largest landfills in the state. NMED does not require gas safety management plans for landfills with a design capacity less than about 3 ¼ million cubic yards of about 2 ¾ million tons. No current or proposed OCD-permitted landfills approach this size.

Unless the Division has identified some gas danger that escapes the notice of NMED, this requirement should be eliminated; or, if not eliminated, confined to those facilities whose design calls for the large capacities used by NMED as a threshold.

Suggested modification: CRI suggests that proposed Rules 53.C(1)(m), 53.E(15) and 53.F(5) and (6) be deleted.

C. Allowable groundwater depth for all facilities: Proposed Rule 53.E(1).

The potential for and avoidance of groundwater contamination should be a major concern in the drafting of these Rules. The New Mexico Environment Department prohibits any landfill in areas where the depth to groundwater is less than 100 feet. 20.9.1.300(1)(b) NMAC. According to the OCD's recently published Generalized Record of Ground Water Impact Sites, approximately 28% of the groundwater contamination events recorded by the oil and gas industry occur at depths between 50 and 100 feet below ground surface.¹

Suggested modification: CRI suggests proposed Rule 53.E(1) be changed to read: "No surface waste management facility shall be located where ground water is less than 100 feet below the surface."

D. Mixing exempt and non-exempt oil field wastes; and records retention: Proposed Rules 53.E(6)(a) and 53.E(7).

1. Mixed wastes. CRI questions the need for the language "and are not mixed with non-exempt waste" in 53.E(6)(a). This phrase has the effect of prohibiting generator-producers, and landfill operators, from disposing of mixed wastes. CRI understands the Division was concerned whether this language is necessary to maintain the RCRA exemption for oil field wastes.

We understand that the Division relies on the EPA guidance contained in publication "Crude Oil and Natural Gas Exploration and Production Wastes: Exemption from RCRA Subtitle C Regulation" (EPA530-K-95-003)(updated October 2002). That EPA guidance clearly disposes of any concern about mixing exempt oil field wastes with non-hazardous, non-exempt wastes: "Mixing a non-hazardous waste (exempt or non-exempt) with an exempt waste results in

¹ Approximately 63% occur at depths of less than 50 feet, and approximately 8% at depths of greater than 100 feet.

a mixture that is also exempt.” Id., p. 14.

No such prohibition on mixing exempt and non-exempt and/or non-hazardous wastes exists in the Division’s proposed Pit rule. See proposed Pit Rule 19.15.2.50(c)(2)(f). Deleting the prohibition that exists in the current draft of the proposed Rules will increase the efficiency of waste disposal operations for all parties concerned – generators, transporters, and landfill operators - *without* posing any additional risk to the environment.

2. Records retention. CRI also questions the apparent requirement in proposed Rule 53.E(6)(a) that both generators and operators *indefinitely* maintain copies of Form C-138. This provision effects a marked change to the existing rule which requires records to be maintained for a period of five years, only. Rule 711.C(5).

In addition, proposed Rule 53.E(7) states that disposal records be “maintained for a period of five years after facility closure, subject to Division inspection.”

CRI has no objection to the existing five year retention period combined with a new requirement that the *last* five years of records be maintained for an additional five year period after the beginning of closure. CRI strongly objects to a modification of the rules to require it to maintain *all* its disposal records created from its first day of business for as long as it remains in business (nor could it comply, since it has already destroyed records more than five years old).

Suggested modifications: CRI suggests proposed Rule 53.E(6)(a) be modified to delete the prohibition on mixing with non-hazardous wastes, and to delete the requirement of indefinite record retention, as follows:

“Exempt oil field wastes. The operator shall require a certification on a form of its choice, signed by the generator or its authorized agent, that represents and warrants that the wastes are generated from oil and gas exploration and production operations, are exempt waste, ~~and are not mixed with non-exempt waste~~. The operator shall have the option to accept such certifications on a monthly, weekly or per load basis. The operator shall maintain and shall make said certificates available for the Division’s inspection for a period of five years.”

Proposed Rule 53.E(7) should be modified to delete the requirement for perpetual record retention, as follows:

“The operator of a commercial facility shall maintain records reflecting the generator, the location of origin, the location of disposal within the facility, the volume and type of waste, the date of disposal and the hauling company for each load or category of waste accepted at the facility for a period of five years. The operator shall continue to maintain such records for a period of not less than five years after facility closure, subject to Division inspection.”

E. Proposed repeal of authority for landfills to accept non-hazardous, non-oil field wastes: Proposed Rule 53.E(6)(c).

Historically, CRI has accepted, in its landfill, non-hazardous, non-oil field wastes that are

similar in physical and chemical composition to oil field wastes, in each case with the prior approval of the Division. It has done this under the explicit authority in existing Rule 711(C)(4)(c). The counterpart to the existing rule in the proposed Rules, Rules 53(E)(6)(c), does away with this authority.

It is important to understand that CRI does not seek authority to accept hazardous wastes, and CRI does not seek authority to accept non-oil field wastes without the prior approval of the Division. CRI seeks only to continue a practice that has been explicitly allowed by the existing rules. The Division has not supplied a reason or rationale why this practice should be eliminated.

The continuation of the practice is in the best interests of efficient environmental management of waste practices for the State of New Mexico and is consistent with the environmental policy of the State.

Flexibility is needed. Needless rigidity is inconsistent with the State's environmental goals. For instance, CRI recently received a request from a New Mexico ethanol producer to dispose of mole sieve (a catalyst used in processing natural gas *and* in processing ethanol). The ethanol plant is not an oil and gas operation, however it is an energy fuel refining operation that uses mole sieve for the same purpose natural gas operations use it: to produce fuel, in this case an alternative, non-petroleum fuel.

Further, the Division itself already approves of the kind of cross-jurisdictional disposal practices CRI currently employs in other circumstances. For instance, in current OCD Proceeding No. BW-031 the Division is preparing to allow the injection of treated effluent from the City of Hobbs wastewater treatment plant into an OCD-regulated brine extraction well in Lea County. This effluent is treated domestic waste, see 20.6.2.3105.B. NMAC, disposal of which is ordinarily a NMED concern.

The cross-jurisdictional benefits afforded by existing Rule 711(C)(4)(c) are mirrored in OCD Rule 712, which allows *New Mexico Environment Department* permitted landfills to accept oil field wastes under certain conditions. The conditions are the same as those CRI seeks in this proceeding: that the waste be non-hazardous under RCRA, that the waste be similar in physical and chemical composition to oil field wastes, and that the prior approval of the OCD be secured in each instance. There is no apparent jurisdictional bar to allowing the reverse – OCD permitted landfills accepting non-oil field wastes under certain conditions.

There is no RCRA problem with the Division authorizing the acceptance of non-exempt, non-hazardous, non-oil field wastes. EPA publication "Crude Oil and Natural Gas Exploration and Production Wastes: Exemption from RCRA Subtitle C Regulation" (EPA530-K-95-003)(updated October 2002) makes it clear that accepting *non-hazardous* non-oil field waste would not endanger the RCRA exemption for exploration and production wastes.

Forbidding landfills from accepting non-oil field waste similar to ethanol refining-related waste such as mole sieves would be contrary to the State's, and the Energy and Minerals Department's policy of encouraging the production and use of alternative fuels. The policy of the State is to encourage the development of clean energy industry and provide jobs. For

instance, the Governor sponsored legislation (HB188) in the 2006 legislative session that would provide funds from the Oil and Gas Conservation Tax to make grants and loans for projects employing clean energy projects, such as ethanol production and biomass projects to convert wastes into energy.

Indeed, if, as proposed Rule 53.E(6)(c) still allows, the Department of Public Safety is to have authority to allow non-oil field wastes to be deposited in Division-approved landfills, *without* OCD approval, and *without* any characterization of the wastes as “similar in physical and chemical composition to the oil field wastes authorized for disposal at that facility,” then why shouldn’t the Division have the same authority itself?

For the Division to now change this status quo raises due process concerns, regulatory takings issues, and other legal concerns without any apparent benefit to the public health or the environment.

CRI suggests that the more reasoned approach is to address any concerns the Division may have with the acceptance of non-hazardous, non-oil field wastes on a pre-approved case by case basis, as is the present situation under Rule 711(C)(4)(c), rather than suddenly prohibiting this practice.

Suggested modification: CRI therefore suggests that the Commission retain in proposed Rule 53.E(6)(c) the above italicized language from Rule 711(C)(4)(c), as follows:

“An operator may accept non-hazardous, non oil-field wastes in an emergency if ordered by the department of public safety. The operator shall complete a form C-138, oil field waste document, describing the waste, and maintain the same, accompanied by the department of public safety order, subject to Division inspection. With prior approval from the Division, other non-hazardous, non-oil field waste may be accepted into a permitted surface waste management facility if the waste is similar in physical and chemical composition to the oil field wastes authorized for disposal at that facility and is either: (1) exempt from the ‘hazardous waste’ provisions of Subtitle C of the federal Resource Conservation and Recovery Act; or (2) has tested non-hazardous and is not listed as hazardous. Prior to acceptance, a Form C-138 oil field waste document, accompanied by acceptable documentation to characterize the waste, shall be submitted to and approved by the division’s Santa Fe office.”

F. Training support: Proposed Rule 53.E(16).

The proposed rule provides CRI with an opportunity to ask again for two things CRI has been asking for for years. Training is undeniably a good idea, but the Rule needs to be augmented to provide for some direction from the Division providing for a curriculum, a syllabus, and training by the Division for the operator’s trainers. The section of the proposed rule on Transportation of Produced Water, Drilling Fluids and Other Liquid Oil field Waste, Rule 51, should have a training component as well.

Suggested modification: CRI suggests proposed Rule 53.E(16) be modified as follows, and that a similarly worded rule be added to proposed Rule 51:

“Training program. Each operator shall conduct an annual training program for key personnel that includes general operations, permit conditions, emergencies, proper sampling methods, and identification of exempt and non-exempt waste, and hazardous waste. The Division will provide operator training, and a syllabus and curriculum, for operators to use in conducting annual training. The operator shall maintain records of such training, subject to Division inspection, for five years.”

G. Landfill odor control: Proposed Rule 53.F(1)(d).

Proposed Rule 53 imposes an odor control requirement on Division approved landfills that has not been discussed with the stakeholders. The Division has not provided any reason or rationale for this revision. CRI has a number of concerns with this new provision, and believes it should be deleted.

The regulation is standardless. There is no way to measure odor. There is no way for CRI to know whether it has an odor problem based on the single word “odor” in the proposed Rule.

No other type of facility regulated by the Division is regulated for odor, including refineries and gas facilities dealing with mercaptan. Nor are industries regulated by other Divisions of State government, such as dairy farms and feedlots, regulated for odor.

The proposed rule subjects landfills, and landfills alone, to purely subjective regulation. It is arbitrary and capricious on its face.

Suggested modification: The proposed Rule should be modified to read: “The operator shall control litter ~~and odors.~~”

H. Conditions for additional lifts in landfarms: Proposed Rule 53.G(4).

This section would allow a landfarm operator to add an additional lift if the prior lifts do not exceed a chloride concentration of 1,000 mg/kg. This creates potential problems for landfarms because it risks making it impossible to meet even the proposed closure requirement of 1,000 mg/kg for chlorides. 53.G(6)(d). CRI continues to assert that the chances of successful re-vegetation will not be achieved without SAR and EC monitoring, and that, in any event, if only chlorides are measured, then 500 mg/kg chloride is the maximum that will allow for successful re-vegetation to the standard in 53.J(1). The proposed Rules provide no rationale for this high, 1,000 mg/kg, chloride level.

Suggested modifications: Proposed Rule 53.G(4) should be modified as follows:

“Treatment zone monitoring. The operator shall spread contaminated soils on the surface in six-inch or less lifts. The operator shall conduct treatment zone monitoring to ensure that the TPH concentration of each lift, as determined by EPA SW-846 Method 8015M or EPA Method 418.1, does not exceed 2500 mg/kg and that the chloride concentration, as determined by EPA Method

300.1, does not exceed ~~500~~ 1000 mg/kg, prior to adding an additional lift. The maximum thickness of treated soils in any landfarm cell shall not exceed two feet. When that thickness is reached, the operator shall not place additional oil field waste in the landfarm cell until it has demonstrated by monitoring the treatment zone at least semi-annually that the contaminated soil has been treated to the standards specified in Paragraph 6 of Subsection G of 19.15.1.53 NMAC or the contaminated soils have been removed to a Division approved waste disposal facility.

Similarly, later references in the proposed Rules to 1,000 mg/kg chlorides should be changed to 500 mg/kg. 53.G(6)(d) and (e); 53.H(2)(c), H(3) and 53.H(5)(a)(iv).

I. Allowance of “oil field waste” in landfarms: Proposed Rules 53.G(4) and 53.H(3).

In an apparent oversight, the proposed Rules are drafted to allow the placement of *any* “oil field waste” in landfarms after placement of the initial lift. See last sentence of section 53.G(4) and 4th sentence of H(3). “Oil field waste” is too broad. See definition section 7.O(3). It includes *all* types of oil field wastes. The subset of oil field waste that is allowed in landfarms is appropriately limited elsewhere in the proposed Rules. See sections 53.A(1)(d) and (e) and A(2)(f)(definition of “lift”).

Suggested modification: Rules 53.G(4) and 53.H(3) should be modified to replace the term “additional oil field waste” with “an additional lift.”

J. Exceptions to closure standards: Proposed Rule 53.G(7)(b).

As drafted proposed Rule 53.G(7)(b) allows a landfarm operator to request approval of an alternative soil closure standard that would be less protective of the environment than the standards in section 53.G(6). No rationale has been provided for this exception. It could be construed to allow an operator to leave untreated, unremediated waste in place. It is not limited in a way that is protective of human health, wildlife and the environment. It should be deleted.

Even if the section were to be retained for the purpose of, and in a manner strictly limited to, allowing *de minimus* exceedances of the closure standards, the provision for notice of an application to exceed soil closure standards is flawed. It requires only that the *operator* give notice under Rule 53.C(4). But, under that Rule, the Division, not the operator, is the entity that gives notice to "all persons who have requested notification of Division and commission hearing dockets." Rule 53.C(4)(c).

Suggested modification: Rule 53.G(7)(b) should be deleted, or, in not deleted, modified to provide application for only *de minimus* exceedances of the closure standards. If the section is not deleted, then the proposed Rule should also be modified to explicitly incorporate the Division’s (as well as the operator/applicant’s) responsibility to give notice to interested parties and post information on its website, pursuant to section 53.C(4).

K. Bioremediation endpoint: Proposed Rule 53.G(8).

The February 27th draft Rules adds a new section entitled “environmentally acceptable

bioremediation endpoint approach.” 53.G(8). The first sentence of the new section does away with the treatment zone closure performance standards otherwise applicable to landfarms (section 53.G(6)). It substitutes a regime based on *modeling* of treatment, utilizing a measure of total petroleum hydrocarbons (TPH), only, rather than an actual treatment standard itself, utilizing all of the parameters in section G(6).

Thus, a landfarm operator using the endpoint approach would be relieved of any obligation to continue treatment until he or she achieves the concentrations of BTEX, chlorides, and 39 metals and other organics deemed necessary in proposed Rule G(6) to protect human health, safety, wildlife, groundwater and the environment. This would allow a landfarm operator to leave otherwise environmentally harmful elements in place because a model predicted they would *not* be remediated – that is, *not* to treat them.

The result would be a *disposal* site, not a treatment method. This is contrary to the idea and rationale for landfarms. Of particular concern is the failure of the endpoint regime to provide any standards for chlorides – salt – that is critical to achieving the paramount landfarm goal of re-vegetation. Ignoring chloride contamination could lead to the closure of a landfarm that would meet a modeling standard related only to TPH, but leaving chlorides that could make re-vegetation impossible. The result – a barren waste site.

This is not sound environmental science. CRI is not aware of any jurisdiction that allows such an approach. It would result in wastes *not* being treated to any standard but TPH.

Suggested modification: The entire section should be deleted.

L. Disposal of contaminated soils after removal from landfarms: Proposed Rules 53.G(4), 53.H.5(b)(ii) and 53.J(4)(d)(iii).

The proposed Rules do not provide for the proper disposal of contaminated soils that are removed from a landfarm. If the last sentence of proposed Rule 53.G(4) operates to require removal of soil that does not meet standards, then contaminated soils will be “removed” from an active landfarm without any limitation on where they may be removed to. Similarly, under proposed Rule 53.J(4)(d)(iii), at the time of closure of a landfarm, soils that have not been or cannot be remediated must be “removed.” Neither provision, nor any other part of the proposed Rules, makes clear how these contaminated soils are to be disposed of.

Suggested modifications: CRI suggests proposed Rule 53.G(4) be modified as follows:

“Treatment zone monitoring. The operator shall spread contaminated soils on the surface in six-inch or less lifts. The operator shall conduct treatment zone monitoring to ensure that the TPH concentration of each lift, as determined by EPA SW-846 Method 8015M or EPA Method 418.1, does not exceed 500 mg/kg and that the chloride concentration, as determined by EPA Method 300.1, does not exceed 500 mg/kg, prior to adding an additional lift. The maximum thickness of treated soils in any landfarm cell shall not exceed two feet. When that thickness is reached, the operator shall not place additional oil field waste in the landfarm cell until it has demonstrated by monitoring the treatment zone at least semi -annually that the contaminated soil has been treated

to the standards specified in Paragraph 6 of Subsection G of 19.15.1.53 NMAC or the contaminated soils have been removed to a Division - approved disposal site.”

Proposed Rule 53.J(4)(d)(iii) should be modified to read:

“landfarmed soils that have not been or cannot be remediated to the above standards are removed to a Division - approved disposal site, and the landfarm remediation area is filled in with native soil and re-vegetated in accordance with subparagraph (1) of section J., 19.15.2.53;”

Proposed Rule 53.H(5)(b)(ii) should be modified as shown in the next section of this letter.

M. Proposed Rule H re: small landfarms.

The apparent idea behind the new, small landfarms section, 53.H, is to relieve small landfarm operators who are working to clean up accidental releases of hydrocarbons that contaminate soils, from the detailed permitting requirements in the proposed Rule, substituting a registration regime in proposed Rule H(1). CRI has no problem with that aspect of the small landfarm section.

What is troubling is that the small landfarm operator is relieved of some of the closure standards that apply to other landfarms, particularly the requirements of sampling and testing in 53.E(6)(e). Why should small landfarms be allowed to leave in place untreated, unsampled and unknown metals and inorganics that large landfarms must remediate? This could result in environmentally harmful concentrations of elements such as lead and mercury being left in place, neither treated nor properly disposed of. The proposed Rule should be modified to make small landfarms subject to the same closure standards as other landfarms.

Suggested modification: Delete section H, or, if not deleted, change as follows:

“(5)(a) Closure performance standards and disposition of soils. If the operator achieves the closure performance standards specified below, then the operator may return the soil to the original site of generation, leave the treated soil in place at the small landfarm or, with prior Division approval, dispose or reuse the treated soil in an alternative manner. If the operator cannot achieve the closure performance standards within three years from the date of registration, then the operator shall remove all contaminated soil from the landfarm and properly dispose of it at a permitted landfill, unless the Division authorizes a specific alternative disposition. The closure performance standards of paragraph (6) of Subsection E of 19.15.2.53 following standards shall apply.

~~(i) Benzene, as determined by EPA SW 846 method 8021B, shall not exceed 0.2 mg/kg.~~

~~(ii) Total BTEX, as determined by EPA SW 846 method 8021B, shall not exceed 50 mg/kg.~~

~~(iii) TPH, as determined by EPA SW 846 method 418.1, shall not exceed 1000 mg/kg. The GRO and DRO combined fraction, as determined by EPA SW 846 Method 8015M, shall not~~

exceed 500 mg/kg.

(iv) Chlorides, as determined by EPA method 300.1, shall not exceed 1000 mg/kg.

(b) Closure Requirements. The operator shall:

(i) re-vegetate soils remediated to the closure performance standards if left in place;

(ii) remove to a Division-approved landfill landfarmed soils that have not been or cannot be remediated to the closure performance standards (~~or that the operator determines to return to the original site, or, with Division permission, re-cycle~~), and re-vegetate the cell filled in with native soil;

(iii) remove all berms on the facility and any buildings, fences, roads and equipment.

(iv) Clean-up the site and collect one vadose zone soil sample from three to five feet below the middle of the treatment zone, or in an area where liquids may have collected due to rainfall events. The vadose zone soil sample shall be collected and analyzed for the constituents, and using the methods, specified in paragraph (6) of Subsection E of 19.15.2.53 above, for TPH, BTEX and chlorides."

N. **Administrative grant of exceptions:** Proposed Rule 53.K(2).

This proposed Rule, as written, allows that a proposed change to *any* operations, closure or post-closure standards may be "granted administratively, *without public notice or hearing.*" If allowed to stand, this loophole would swallow all the other Rules requiring notice and hearings before variances are granted. See, for instance, Rule 53.K(3).

Suggested modification: Delete section 53.K(2), or, if not deleted, modify it to provide for public notice pursuant to section 53.C(4), and a public hearing if the public notice results in a protest of the variance sought.

Respectfully submitted,

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