

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

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**IN THE MATTER OF THE APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION FOR REPEAL OF EXISTING RULE 709, 710 AND 711
CONCERNING SURFACE WASTE MANAGEMENT AND ADOPTION OF NEW
RULES GOVERNING SURFACE WASTE MANAGEMENT.**

CASE NO. 13586

MOTION FOR CONTINUANCE

COME NOW the New Mexico Oil & Gas Association, the Independent Petroleum Association of New Mexico, Burlington Resources Oil & Gas Company, BP America Production Company, Inc., Chesapeake Operating, Inc., ChevronTexaco, Conoco Phillips, Devon Energy Corporation, Dugan Production Corporation, Mack Energy Corporation, Marathon Oil Company, Marbob Energy Corporation, OXY USA, Inc., Occidental Permian, Ltd, OXY USA WTP Limited Partnership, D. J. Simmons, Inc., Williams Production Company, XTO Energy, Inc. and Yates Petroleum Corporation, parties of record in this case, hereinafter collectively referred to as "the Industry Group" and pursuant to Division Rule 19.15.14.1211.C NMAC, request that the hearing on this application scheduled for December 8, 2005 be continued to the Oil Conservation Commission hearing scheduled for January 12, 2006 and in support of this Motion, state:

1. On September 28, 2005, the New Mexico Oil Conservation Division filed an Application for Rulemaking seeking an order repealing Rules 709, 710 and 711 of the General Rules and Regulations of the Division and adopting proposed new Rules 51, 52 and 53 governing surface waste management. An amended application was filed shortly thereafter by the Division. In this case, the Division seeks the repeal of the Oil Conservation Division Rules that presently govern transportation and disposition of produced water and surface waste management facilities, and the adoption of new rules to govern the transportation and surface disposition of produced water and other oilfield wastes and the permitting and operation of surface waste management facilities. The proposed amendments, if adopted, would extend permitting requirements for carriers of produced water and rules concerning surface disposition of produced water so that they will apply to all oilfield wastes, change the procedures for permitting new surface waste management facilities or modifications of existing facilities, prohibit disposal of salt-contaminated wastes in landfarms, and adopt other detailed regulations concerning surface waste management facilities.
2. The Oil Conservation Commission hearing on the Surface Waste Management Rules was scheduled for November 10, 2005, and a stakeholders meeting on the proposed rules was held on October 11, 2005 to discuss the Division's original proposal.
3. On October 31, 2005, the Oil Conservation Division announced that: (a) it had determined that the proposed rules needed revision; (2) that the proposed rules were being amended; and (c) a new draft of these rules would be released as soon as they were prepared. The Commission also announced that the Hearing on the Waste Management Rules would be

convened on November 10th for the purpose of receiving opening statements and that the Commission would then receive general comments on the proposed rules.

4. This case was called at the Oil Conservation Commission hearing on November 10th. Opening statements were made and the comments that had been received on the initial draft of the rules was reviewed by the Division's attorney. No testimony was presented at this hearing and it was continued to the December 8, 2005 Oil Conservation Commission hearing docket.

5. On November 11, 2005, industry representatives met in Santa Fe to prepare their presentation of evidence for the December 8th, 2005 Oil Conservation Commission hearing.

6. Several days later, the Oil Conservation Division filed a Second Amended Application for Rulemaking. Attached to this amended application were revised rules. These rules appeared on the Division's web page on November 14, 2005, four days after the hearing on the proposed rules commenced. The rules were further revised on November 15, 2005.

7. The November 14, 2005, draft of the proposed rules contain substantial changes that will have a significant impact on the oil and gas industry in New Mexico. The extent of these changes is shown on Exhibit A to this Motion. Changes from the original proposed rules that were before the Commission on November 10th are shown in blue. Amendments to those rules that were released by the Division on November 14th are shown in red. While some of the changes are not significant, many are and require an industry response. Furthermore, we believe the revisions to the proposed Surface Waste Management Rules also raise issues that will be before the Commission when it reviews the revisions to the pit rules in March 2006 and should be deferred until that time.

8. Due to the scope of the revisions to the proposed rules and the impact that they will have on the oil and gas industry in New Mexico and also because of the overlap between these proposed rules and the pit rules, the Industry Group determined that it needed to retain experts to present testimony on several issues raised by the new draft of the rules. The Industry Group again met in Santa Fe on November 18, 2005 and thereafter retained expert witnesses to prepare and present testimony on the technical issues presented by the Division's new proposal.

9. Technical experts retained by Holland & Hart, LLP are developing proposed amendments to the rules that contrast with the chloride concentration limits in the proposed rules governing landfarms. These experts all believe that these chloride concentration limits for landfarms will not provide a material environmental or public health benefit for many locations in New Mexico. Instead these experts will provide alternative language on how to manage chlorides for landfarms that are workable for the industry throughout New Mexico, are based upon sound science and are protective of fresh water, public health and the environment. We are also very concerned about the use of TPH in the proposed rule and will present expert testimony on the toxicity and chemistry of TPH. We believe that these experts will show that TPH monitoring is not only unworkable but that other types of monitoring protocols are more effective. With respect to location, design and closure of landfills and landfarms, the experts will introduce risk-based protocols for determining hydrocarbon and chloride limits that are similar to the protocol used by New Mexico Environment Department and at Underground Storage Tank sites. In sum,

the Industry Group has retained and will call expert witnesses to provide the science needed to make the proper determination on how to best manage these issues.

10. Pursuant to the Division/Commission's newly adopted procedural rules, modifications to the proposed rules must be filed 10 days prior to the hearing date and comments on the proposed rules must be filed 5 days prior to the hearing. A pre-hearing statement, with copies of all technical exhibits attached, must be filed by December 1, 2005.

11. The time constraints posed by the schedule imposed by the Oil Conservation Commission make it impossible for the Industry Group to properly prepare a meaningful case for presentation to the Commission on December 8, 2005. The group had only 15 days to retain experts, have the experts prepare their testimony and exhibits, and develop amendments to the proposed rules. This short time period extended across the Thanksgiving weekend which further complicated the efforts of the Industry Group to prepare for the December hearing. The Division had months to prepare and revise its proposed rules, whereas those most impacted by the rules have had only days to respond. The time frame allowed by the Commission to respond to the November 14, 2005 proposed rule changes is just too short to provide the Industry a reasonable opportunity to prepare and present its case.

12. Root principles of fairness dictate that procedural due process be afforded whenever a government decision threatens to deprive an individual of a fundamental liberty or property interest. *State of New Mexico, ex rel. Children, Youth & Families Department v. Maria C.*, 136 N.M. 53, (N.M. Ct. App. 2004).

13. The essence of procedural due process is notice and an "opportunity to be heard at a meaningful time and in a meaningful manner." *State ex rel. Children, Youth & Families Dep't v. Mafin M.*, 133 N.M. 827, 70 P.3d 1266. (Emphasis added). Due process does not require the same form of notice in all contexts; instead, the notice "should be appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 313, (1950). Notice must be "reasonably calculated under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* at 314 (Emphasis added); see also *City of Albuquerque v Juarez*, 93 N.M. 188, 190, 598 P.2d 650, 652 (Ct. App. 1979).

14. Due process is a flexible right. The opportunity to be heard in a meaningful manner requires time to prepare. Due process standards cannot be met if the time provided for preparation is so unreasonable that it has the effect of denying a party a reasonable opportunity to prepare its case. *Maria C.*, 94 P.3d 796 (N. M. Ct. App. 2004).

15. The confusing history of how these proposed rule revisions have been drafted underscores the hurried and ineffective way the current proposal has been developed. The Division developed these proposed rules amendments under no time constraints. When the revisions were ready, the Division proposed them with their September 28, 2005 Application for Rulemaking. Because of problems the Division discovered with these rules after they were proposed, the Division itself required significant additional time to revise its proposal and prepare the draft of these rules now under consideration. It did not present the proposed rules at

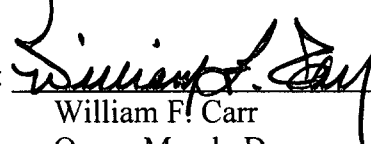
the November 10, 2005 hearing but, instead, reviewed comments that had been submitted on the first and second drafts of the rules that were soon to be amended again. Four days after the November 10th hearing on these rules began, the Division produced a new draft that contained many changes that will have a serious impact on the business of oil and gas industry and related industries in New Mexico. The Industry Group has been trying to prepare for the December 8th hearing, however, much of this effort was rendered meaningless by the fact that four days after the hearing began, the Division changed its proposal.

16. Furthermore, there has been no stakeholders meeting on the current proposal where industry can discuss these proposals with the Division. If further changes are needed, the current procedure will make it difficult to make further revisions in the rules unless they are again published and advertised.

WHEREFORE, the Industry Group moves the Oil Conservation Commission for an Order:

- A. continuing the hearing on the proposed Surface Waste Management Rules now scheduled for December 8, 2005 to the Oil Conservation Commission hearing scheduled for January 12, 2006, and
- B. scheduling an additional stakeholders meeting on the proposals currently before the Division.

Respectfully submitted,
Holland & Hart, LLP

By: 
William F. Carr
Ocean Munds-Dry

ATTORNEYS FOR THE NEW MEXICO OIL
AND GAS ASSOCIATION, THE
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SIMMONS, INC., WILLIAMS PRODUCTION
COMPANY, XTO ENERGY, INC., and
YATES PETROLEUM CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of November 2005, I have caused a copy of the Industry Group's Motion for Continuance in the above-captioned case to be delivered to the following:

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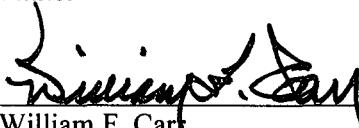
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William F. Carr

EXHIBIT A to Application

Proposed Surface Waste Management Rules

~~19.15.2.51 TRANSPORTATION OF PRODUCED WATER, DRILLING FLUIDS AND OTHER LIQUID OILFIELD WASTE~~

~~A. No person other than the operator shall transport any produced water, drilling fluids or other liquid oilfield waste, including but not limited to drilling fluids and residual liquids in oilfield equipment, by motor vehicle from any lease, central tank battery, or other facility, without an approved form C-133 (authorization to move liquid waste). The transporter shall maintain a photo copy of the approved C-133 in any transporting vehicle.~~

~~B. A person may apply for authorization to move liquid waste by filing a complete form C-133 with the division's Santa Fe office. Authorization is granted upon approval of form C-133 by~~Draft 11/14/05

19.15.1.7 DEFINITIONS:

B. Definitions beginning with the letter "B".

(1) Back allowable shall mean the authorization for production of any shortage or underproduction resulting from pipeline proration.

(2) Background shall mean, for purposes of ground[-]water abatement plans only, the amount of ground[-]water contaminants naturally occurring from undisturbed geologic sources or water contaminants occurring from a source other than the responsible person's facility. This definition shall not prevent the director from requiring abatement of commingled plumes of pollution, shall not prevent responsible persons from seeking

contribution or other legal or equitable relief from other persons[,], and shall not preclude the division-

~~C. No owner or operator shall permit produced water, drilling fluids or other liquid oilfield waste to be removed from its leases or field facilities by motor vehicle except by a person possessing an approved form C-133.~~

~~D. The division may deny approval of a form C-133 if an officer, director, partner in the applicant, or person with an interest in the applicant exceeding 5%, is or was within the past five years an officer, director, partner or person with an interest from exceeding five percent in another entity that possesses or has possessed an approved form C-133 that has been cancelled or suspended, has a history of violating the division's rules or other state or federal environmental laws or rules, is subject to an order of the division or commission, issued after notice and hearing, finding such entity to be in violation of an order requiring corrective action, or has a penalty assessment for violation of division or commission rules or orders that is unpaid more than 70 days after issuance of the order assessing the penalty.~~

~~E. Cancellation or suspension of authorization to move liquid waste.~~

~~Vehicular movement or disposition of produced water or other liquid oilfield wastes in any manner contrary to division rules shall be cause, after notice and opportunity for hearing, for cancellation or suspension of a transporter's authorization to move liquid wastes.~~

~~19.15.2.52 DISPOSITION OF PRODUCED WATER AND OTHER OILFIELD WASTES:~~

~~A. Prohibited dispositions. Except as authorized by 19.15.2.50 NMAC or 19.15.2.53 NMAC, no person, including any transporter, shall dispose of produced water or other oilfield wastes:~~

~~(1) on the surface of the ground, in any pit, or in any pond, lake, depression,~~

~~draw, streambed arroyo or other watercourse, or~~

~~(2) in any other place or in any manner that may constitute a hazard to fresh water, public health or the environment.~~

~~B. Authorized dispositions of produced water. The following methods of disposition of produced water are authorized:~~

~~(1) delivery to a permitted salt water disposal well or facility, secondary recovery or pressure maintenance injection facility, surface waste management facility or to a drill site for use in drilling fluid in a exercising enforcement authority under any applicable statute, regulation or common law.~~

~~(3) Barrel shall mean 42 United States gallons measured at 60 degrees fahrenheit and atmospheric pressure at the sea level.~~

~~(4) Barrel of oil shall mean 42 United States gallons of oil, after deductions for the full amount of basic sediment, water and other impurities present, ascertained by centrifugal or other recognized and customary test.~~

~~(5) Below-grade tank shall mean a vessel, excluding sumps and pressurized pipeline drip traps, where any portion of the sidewalls of the tank is below the surface of the ground and not visible.~~

~~(6) Berm shall mean an embankment or ridge constructed for the purpose of preventing the movement of liquids, sludge, solids[,] or other materials.~~

~~(7) Biopile, also known as biocell, bioheap, biomound and compost pile, shall mean a pile of contaminated soils used to reduce concentrations of petroleum constituents in excavated soils through the use of~~

~~biodegradation. This technology involves heaping contaminated soils into piles or "cells" and stimulating aerobic~~

~~microbial activity within the soils through the aeration or addition of minerals, nutrients and moisture.~~

~~[(7)](8) Bottom hole or subsurface pressure shall mean the gauge pressure in pounds per square inch under conditions existing at or near the producing horizon.~~

~~[(8)](9) Braden head gas well shall mean any well producing gas through wellhead connections from a gas reservoir [which]that has been successfully cased off from an underlying oil or gas reservoir.~~

~~O. Definitions beginning with the letter "O".~~

~~(1) Official gas-oil ratio test shall mean the periodic gas-oil ratio test made by order of the division by such method and means and in such manner as prescribed by the division.~~

~~(2) Oil, crude oil[,] or crude petroleum oil shall mean any petroleum hydrocarbon produced from a well in the liquid phase and [which]that existed in a liquid phase in the reservoir.~~

~~(3) Oil field wastes shall mean those wastes [produced]generated in conjunction with the exploration, production, refining, processing, gathering and transportation of crude oil [and/]or natural gas [and commonly~~

~~collected at field storage, processing, disposal, or service facilities, and waste collected at gas processing plants,~~

~~refineries and other processing or transportation facilities]or generated from oil field service company operations.~~

~~Oil field waste does not include domestic waste such as tires, appliances, paper trash, ordinary garbage and refuse,~~

~~sewage, sludge from a waste treatment plant or waste of a character not generally associated with oil and gas~~

~~industry operations.~~

~~(4) Oil well shall mean any well capable of producing oil and [which]that is not a gas well as defined herein.~~

~~(5) Operator shall mean any person who, duly authorized, is in charge of the development of a lease or the operation of a producing property, or who is in charge of the operation or management of a facility.~~

~~(6) Overage or overproduction shall mean the amount of oil or the amount of natural gas produced during a proration period in excess of the amount authorized on the proration schedule.~~

~~(7) Owner means the person who has the right to drill into and to produce from any pool, and to appropriate the production either for himself or for himself and another.~~

S. Definitions beginning with the letter "S".

(1) Secondary recovery shall mean a method of recovering quantities of oil or gas from a reservoir which quantities would not be recoverable by ordinary primary depletion methods.

(2) Shallow pool shall mean a pool which has a depth range from [0]zero to 5000 feet.

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(3) Shortage or underproduction shall mean the amount of oil or the amount of natural gas during a proration period by which a given proration unit failed to produce an amount equal to that authorized in the proration schedule.

(4) Shut-in shall be the status of a production well or an injection well which is temporarily closed down, whether by closing a valve or disconnection or other physical means.

(5) Shut-in pressure shall mean the gauge pressure noted at the wellhead when the well is completely shut in, not to be confused with bottom hole pressure.

(6) Significant modification of an abatement plan shall mean a change in the abatement technology used excluding design and operational parameters, or relocation of 25[%]percent or more of the compliance sampling stations, for any single medium, as designated pursuant to [Subsection E, Paragraph (4), Subparagraph (b),

Subsubparagraph (iv) of Section]Subsubparagraph (iv) of Subparagraph (b) of Paragraph (4) of Subsection E of

19.15.5.19 NMAC.

(7) Soil shall mean:

(a) unconsolidated rock material over bedrock; or

(b) freely divided rock-derived material containing an admixture of organic material that may be capable of supporting vegetation.

[(7)] (8) Spacing unit is the area allocated to a well under a well spacing order or rule. Under the Oil [&] and Gas Act, NMSA 1978, Section 70-2-12.B(10), the commission has the power to fix spacing units without

first creating proration units. See *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 87 NM 286 (1975). This

is the area designated on division form C-102.

[(8)] (9) Subsurface water shall mean ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or may be utilized by vegetation.

(10) Surface waste management facility shall mean any facility that receives for collection, disposal, evaporation, remediation, reclamation, treatment or storage any produced water, drilling fluids, drill cuttings,

completion fluids, contaminated soils, basic sediment and water (BS&W), tank bottoms or other oil field related

waste, except:

(a) a facility that utilizes underground injection wells subject to regulation by the division pursuant to the federal Safe Drinking Water Act, and does not manage oil field wastes on the ground in pits,

ponds, below-grade tanks or land application units;

(b) a facility for temporary storage of oil field wastes in above-ground tanks; or

(c) a facility permitted pursuant to environmental improvement board rules or water quality control commission rules.

19.15.2.51 TRANSPORTATION OF PRODUCED WATER, DRILLING FLUIDS AND OTHER LIQUID OIL FIELD WASTE:

A. No person shall transport any produced water, drilling fluids or other liquid oil field waste, including but not limited to drilling fluids and residual liquids in oil field equipment, except for small samples removed for analysis, by motor vehicle from any lease, central tank battery or other facility without an approved

form C-133, authorization to move liquid waste. The transporter shall maintain a photocopy of the approved C-133

in any transporting vehicle.

B. A person may apply for authorization to move liquid waste by filing a complete form C-133 with the division's Santa Fe office. Authorization is granted upon the division's approval of form C-133.

C. No owner or operator shall permit produced water, drilling fluids or other liquid oil field waste to be removed from its leases or field facilities by motor vehicle except by a person possessing an approved form C-

133. The division shall post a list of currently approved C-133s, authorization to move liquid waste, on its website.

D. The division may deny approval of a form C-133 if an officer, director or partner in the applicant, or a person with an interest in the applicant exceeding 25 percent, is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that possesses or has possessed an approved form C-133 that has been cancelled or suspended, has a history of violating division rules or other state or federal environmental laws or rules; is subject to a commission or division order, issued after notice and hearing, finding such entity to be in violation of an order requiring corrective action; or has a penalty assessment for violation of division or commission rules or orders that is unpaid more than 70 days after issuance of the order assessing the penalty.

E. Cancellation or suspension of authorization to move liquid wastes. Vehicular movement or disposition of produced water or other liquid oil field wastes in any manner contrary to division rules shall be cause.

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after notice and opportunity for hearing, for cancellation or suspension of a transporter's authorization to move liquid wastes.

19.15.2.52 DISPOSITION OF PRODUCED WATER AND OTHER OIL FIELD WASTES:

A. Prohibited dispositions. Except as authorized by 19.15.2.50 NMAC or 19.15.2.53 NMAC, no person, including any transporter, shall dispose of produced water or other oil field wastes:

- (1) on the surface of the ground; in any pit; or in any pond, lake, depression or watercourse; or
- (2) in any other place or in any manner that may constitute a hazard to fresh water, public health or the environment.

B. Authorized disposition of produced water. The following methods of disposition of produced water are authorized:

- (1) delivery to a permitted salt water disposal well or facility, secondary recovery or pressure maintenance injection facility, surface waste management facility or to a drill site for use in drilling fluid in a manner that does not constitute a hazard to fresh water, public health or the environment; or
- (2) use in accordance with any division-issued use permit.

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EXHIBIT A to Application

Proposed Surface Waste Management Rules

C. Authorized dispositions of other oil field waste. Other oil field waste shall be disposed of by

transfer to an appropriate surface waste management facility or injection

facility or as otherwise authorized by the

division. Recovered drilling fluids may be transported to other drill sites for reuse provided that such fluids are

transported and stored in a manner that does not constitute a hazard to fresh water, public health or the environment.

19.15.2.53 SURFACE WASTE MANAGEMENT FACILITIES:

A. Permit required.

- (1) No person shall operate a surface waste management facility except pursuant to and in accordance

with the terms and conditions of a division-issued surface waste management facility permit; unless such facility is exempt from permitting

pursuant to ~~paragraph~~ Paragraph (2) of ~~subsection~~ Subsection A of 19.15.2.53 NMAC.

(2) The following facilities are exempt from the permitting requirements of

19.15.2.53 NMAC, but

not from the requirements of 19.15.2.50 NMAC regarding pits:

(a) centralized facilities that receive wastes from a single well; regardless of capacity or volume of waste received;

(b) centralized facilities that receive only waste exempt from the provisions of the federal

Resource Conservation and Recovery Act (RCRA), receive less

than 50 barrels of liquid waste per day (averaged

over a 30-day period), have a capacity to hold 500 barrels of liquids or

less or 1400 cubic yards of solids or less and

are permitted pursuant to 19.15.2.50

NMAC; and

(c) emergency pits authorized by ~~subsection~~ Subsection D of 19.15.2.50

NMAC;

B. Definitions applicable to this section: 19.15.2.53 NMAC only.

(1) ~~A surface waste management facility is any facility that receives for collection, disposal, evaporation, remediation, reclamation, treatment or storage any produced water, drilling fluids, drill cuttings, completion fluids, contaminated soils, basic sediment and water (BS&W), tank bottoms or other oilfield related waste, except:~~

(a) ~~a facility that utilizes underground injection wells subject to~~

~~regulation by the division pursuant to the federal Safe Drinking Water Act, and does not manage oilfield wastes on the ground in pits, ponds, below grade tanks or land application units;~~

(b) ~~a facility for temporary storage of oilfield wastes in above ground tanks; or~~

(c) ~~a facility permitted pursuant to the rules of the water quality control commission.~~

(2) ~~A landfarm is a discrete area of land or an excavation designed for the remediation of hydrocarbon contaminated soils. A landfarm may accept only oilfield soil wastes that are exempt from RCRA Subtitle C or non-exempt soil wastes that are accompanied by acceptable documentation to determine that the waste is non-hazardous pursuant to RCRA Subtitle C.~~

(3) ~~A landfill is a discrete area of land or an excavation designed for permanent disposition of oilfield wastes that are exempt from RCRA Subtitle C or are not hazardous by listing or characteristic.~~ (1) A landfarm is a discrete area of land designed and used for

the remediation of hydrocarbon contaminated

soils and soil like materials such as drill cuttings or tank bottoms that do not exceed the chloride standard contained in Paragraph (1) of Subsection G of 19.15.2.53 NMAC.

(2) A landfill is a discrete area of land or an excavation designed for permanent disposition of oil field wastes that are exempt from RCRA subtitle C or are not hazardous by listing or characteristic.

(3) A cell is a confined area engineered for the disposal of solid waste.

(4) A commercial facility is a surface waste management facility that is not a centralized facility.

(5) A centralized facility is a surface waste management facility that:

(a) does not receive compensation for waste management;

EXHIBIT A to Application**Proposed Surface Waste Management Rules**

(b) is used exclusively by one generator subject to New Mexico's "Oil and Gas Conservation Tax Act", Section 7-30-1 NMSA-1978 as amended; and

(c) receives exclusively wastes that are generated from production units or leases

operated by such generator:

~~(6) A major modification is a modification of a facility that involves an increase in the land area occupied~~, or by an affiliate of such generator. For this provision's purposes, an affiliate of a

generator is a person who controls, is controlled by or is under common control with the generator.

(6) A major modification is a modification of a facility that involves an increase in the land area that the permitted facility occupies, a change in the nature of the permitted waste stream or addition of a new treatment process.

(7) A minor modification is a modification of a facility that is not a major modification.

(8) Operator means the operator of a surface waste management facility.

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C. Permitting requirements. Unless exempt from 19.15.2.53 NMAC, all new commercial or

centralized facilities prior to commencement of construction, and all existing commercial or centralized facilities

prior to major modification, shall be permitted by the division in accordance with the applicable requirements of Subsection C of

19.15.2.53 NMAC.

(1) Application requirements for new facilities ~~and~~ major modifications ~~and renewals~~. An application,

form C-137, for a permit for a new facility ~~or~~ to modify an existing facility or for renewal of a permit shall be filed ~~with~~

with the environmental bureau in the division's Santa Fe office. The application shall include:

(a) the names and addresses of the applicant and all principal officers and owners of ~~five~~²⁵ percent

or more of the applicant;

(b) a plat and topographic map showing the facility's location in relation to governmental

surveys (quarter-quarter section, township, and range),

highways or roads giving access to the facility site, watercourses, water sources and

inhabited buildings within one mile of the site's perimeter ~~of the site~~;

(c) the names and addresses of the surface owners of the real property on which the facility is

sited and surface owners of the real property within one mile of the site's perimeter ~~of the site~~;

(d) a description of the facility with a diagram indicating the location of fences and cattle

guards, and detailed construction/installation diagrams of any pits, liners, dikes, piping, sprayers, tanks, roads,

fences, gates, berms, pipelines

crossing the facility, buildings and chemical storage areas;

(e) engineering designs, certified by a registered professional

engineer, including technical data
on the design elements of each applicable disposal
method and detailed designs of surface impoundments;
(f) a plan for management of approved wastes, ~~including, but not~~ that complies with the operational
requirements
~~limited to, a description of the methods and locations for management of particular~~
~~categories of waste;~~
contained in Subsections E, F, G and H of 19.15.2.53 NMAC;
(g) an inspection and maintenance plan ~~to ensure permit~~ that complies with the requirements contained
in
compliance;
Paragraph (12) of Subsection E of 19.15.2.53 NMAC;
(h) a hydrogen sulfide prevention and contingency plan ~~to protect~~ that complies with those provisions of
public health;
19.15.3.118 NMAC that apply to surface waste management facilities;
(i) a closure and post closure plan, including a cost estimate, sufficient to close the facility to
facility to ~~protect~~ protect fresh water, public health and the environment; said estimate to be based upon
the
use of equipment
normally available to a third party contractor, and including costs as
necessary for removal of all fluids and wastes;
back-filling, grading and mounding of

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pits; cleanup of contaminated soils; and ~~effective~~ re-vegetation of the surface, or other
restoration sufficient to protect fresh water, public health and the environment; and post closure
monitoring. The
closure and post closure plan shall comply with the requirements contained in Paragraph (3) of Subsection I
of
19.15.2.53 NMAC;
(j) a contingency plan that complies with the requirements of Paragraph (14) of Subsection E
of 19.15.2.53 NMAC;
(k) a plan to control run-on water onto the site and run-off water from the site that complies
with the requirements of Paragraph (13) of Subsection E of 19.15.2.53 NMAC;
(l) geological/hydrological data, ~~certified by a registered~~ including:
~~professional engineer or a certified professional geologist, including:~~
(i) depth to and quality of ~~ground~~ ground water beneath the site;
(ii) a map showing names and locations of streams or other
water-courses within one mile
of the site;
(iii) laboratory analyses, performed by an independent
commercial laboratory, for major
cations and anions, RCRA metals and total dissolved
solids (TDS) of ~~ground~~ ground water samples of the shallowest fresh
water aquifer beneath the
proposed site;
(iv) depth to, name of, and thickness of the shallowest fresh
water aquifer;
(v) soil types beneath the proposed facility, including a
lithologic description of all soil
and rock members from ground surface down to the

shallowest fresh water aquifer;
(vi) geologic cross-sections;
(vii) potentiometric maps for the shallowest fresh water aquifer;
(viii) porosity, permeability, conductivity, compaction ratios and swelling characteristics
for the sediments on which the contaminated soils will be placed;
(~~km~~) certification by a registered professional engineer that
information submitted in the
application is true, accurate, and complete to the best of ~~the~~
his or her knowledge; and
(~~ln~~) any other information that the division may require to
demonstrate that the facility's
operation ~~of the facility~~ will not adversely impact fresh water, public
health or the environment and that the facility will comply
with division rules and orders.

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(2) Application requirements for minor modifications. An existing facility
applying for a minor
modification shall file a form C-137 with the environmental bureau in the division's Santa Fe office ~~of the~~
~~division~~ describing the
proposed change and identifying any information that has
changed from its last ~~previous~~ C-137 filing.

(3) Determination that an application is administratively complete. Upon
receipt of an application for
a surface waste management facility permit or ~~for~~
modification or renewal of an existing permit, the division shall
review the application for
administrative completeness. To be deemed administratively complete, the application
~~must~~ shall provide all information required by Paragraph (1) or (2) (as applicable) of
~~Subsection~~ Section C of 19.15.2.53 NMAC.

The division shall notify the applicant in writing
when it deems the application ~~is deemed~~ administratively complete. If the
division determines
that the application is not administratively complete, the division shall notify the
applicant of the
deficiencies in writing within 30 days of receipt of the application and
state what additional information is
necessary.

(4) Notice requirements for new facilities ~~or~~, major modifications ~~or~~ renewals.

(a) Upon receipt of notification of the division's determination that
the application is
administratively complete, the applicant for a new permit, permit renewal or major
modification shall give written
notice of the application, by certified mail, return receipt
requested, to the surface owners of record within one mile
of the facility, the county

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commission of the county where the facility site is located-, the appropriate city
official(s) ~~officials~~ if
the facility site is within city limits or within one mile of the city limits, and
any affected federal, tribal or pueblo

governmental agency. The division may extend the
distance requirements for notice if the division determines that
the proposed facility has
the potential to adversely impact fresh water, public health or the environment at a distance
greater

than one mile. The applicant shall furnish proof that it has given the required notices.

(b) Following mailing of notice as provided in Subparagraph (b) of
Paragraph (2) of

Subsection C of 19.15.2.53 NMAC, the applicant shall publish notice,
in a form approved by the division, in a
newspaper of general circulation in the county of

~~the facility's~~ the facility's location or proposed location, and in a newspaper of ~~general circulation in~~
general circulation in the state.

(c) The division shall distribute notice of its determination that an
application for a new facility

or for a renewal or major modification of an existing facility is
administratively complete to all persons who have
requested notification of division and

commission hearing dockets within 30 days following the date that the ~~division~~
division determines the application to be administratively complete.

(d) Any person wishing to comment on an application prior to the
~~division's~~ division's preliminary

consideration ~~thereof~~ of the application may file comments within 30 days, or as
extended by the division director, after the
date of publication of notice of the application in the
newspaper.

(e) Within 60 days after the end of the public comment period
provided in Subparagraph (d) of

Paragraph (4) of Subsection C of 19.15.2.53 NMAC, the
division shall issue a tentative decision concerning the
application, renewal or modification,

including ~~therein~~ proposed conditions for approval or reasons for disapproval, as
applicable. The division shall mail notice of the tentative decision, together with a copy
~~thereof~~ of the decision, by certified

mail, return receipt requested, to the applicant; and shall ~~give public~~
~~notice thereof by:~~

(i) ~~posting~~ post notice on the ~~division's~~ division's website, together with a
copy

of the tentative decision;

(~~if~~) Within 30 days after receiving the division's tentative decision, the applicant shall provide
notice of the tentative decision by:

(i) publishing notice, in a form approved by the division, in a newspaper of ~~general circulation in~~
circulation in this state and in a newspaper of general circulation in the county where the facility is or
will be
located;

(~~iii~~) mailing notice by first class mail or e-mail to, all persons as identified to the applicant
by the division, who have requested notification of applications generally, or of the particular application,
including

all persons who have filed comments on the particular application during the
initial public comment period, and who
have included in such comments a legible return
address or e-mail address; and

(~~iv~~) mailing notice by first class ~~mail~~ or e-mail to any affected

local, state, federal or tribal governmental agency, as determined and identified to the applicant by the division.

~~(f) The~~(g) This notice issued pursuant to Subparagraph ~~(ef)~~ of Paragraph (4) of Subsection C of ~~of Subsection C of~~ 19.15.2.53 NMAC shall include:

(i) the applicant's name and address ~~of the applicant;~~;

(ii) the facility's location ~~of the facility~~, including a street address if available, and sufficient information to locate the facility with reference to surrounding roads and landmarks;

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(iii) a brief description of the proposed facility;

(iv) the depth to, and TDS concentration of, the ground water in the shallowest aquifer beneath the facility site;

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(v) a statement that the ~~division's~~division's tentative decision is available on the ~~division's~~division's website, or, upon request, from the division clerk, including the ~~division clerk's~~ name, address and telephone number ~~of the division clerk;~~;

(vi) a statement of the comment period and of the procedures for requesting a hearing on the application; and

(vii) a brief statement of the procedures to be ~~followed~~following by the division in making a final decision.

~~(gh)~~ Any person, whether or not such person has previously submitted comments, may file comments ~~and/~~or request a hearing on the application by filing their comments or hearing request with the division clerk

~~division clerk~~ within 30 days after the date that the ~~division~~applicant issued public notice of ~~its~~ the division's tentative decision. Any request for a hearing shall be in writing and shall state specifically the reasons why a hearing should be held. The division shall schedule a

public hearing on the applications if:

(i) the division has proposed to deny the application or grant it subject to conditions not

expressly required by rule, and the applicant requests a hearing;

(ii) the division director determines that there is ~~substantial~~ significant public interest in the application;

(iii) the division director determines that comments have raised objections that have

probable technical merit; or

(iv) determination of the application requires that the division make a finding, pursuant to Paragraph (3) of Subsection G of 19.15.1.7 NMAC, whether any water source has a reasonably foreseeable beneficial use.

(i) If a hearing is scheduled, the division schedules a hearing on an application, it shall give notice of the hearing's

date, time and place of the hearing by certified mail, return receipt requested, to the applicant and to each person who has specifically requested a hearing in writing, and by first class or electronic mail to all other persons parties who have filed written comments; or

(iv) ~~determination of~~ and provided a current address on the application ~~requires that the division make a finding, pursuant to Paragraph (3) of Subsection F of 19.15.1.7 NMAC, whether any water source has a reasonably foreseeable beneficial use.~~

(5) Financial Assurance Requirements: assurance requirements.

(a) Centralized facilities. Upon notification of a determination by the division that a permit has been approved a permit but prior to the division issuing the permit, an applicant for a new centralized facility permit shall submit acceptable

financial assurance in the amount of ~~twenty-five thousand dollars (\$25,000)~~ per facility, or a statewide "blanket" financial assurance in the amount of ~~fifty thousand dollars (\$50,000)~~ to cover all of that applicant's applicant's centralized facilities, unless such applicant has previously posted a blanket financial assurance for centralized facilities.

(b) New commercial facilities or major modifications of existing facilities. Upon notification of a determination by the division that it has approved a permit for a new commercial facility or a major modification of an existing commercial facility has been approved but prior to the division issuing the permit, the applicant shall submit acceptable financial assurance in the amount of the facility's estimated closure and post closure cost of the facility. The facility's estimated closure and post closure cost of the facility shall be the amount provided in the closure plan the applicant submitted by the applicant unless the division determines that such estimate does not reflect a reasonable and probable closure and post closure cost, in which event, the division shall determine the estimated closure and post closure cost and shall include

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such determination in its tentative decision. If the applicant disagrees with the division's determination of estimated closure and post closure cost, the applicant may request a hearing as provided in Subparagraph (c) of Paragraph (4) of Subsection C of 19.15.50.2 NMAC. If the

applicant so requests, and no other persons files a request for a hearing regarding the application, the hearing shall be limited to determination of estimated closure and post closure cost.

(c) The financial assurance shall be on forms prescribed by the division, payable to the State state of

New Mexico and conditioned upon the proper operation of the facility and closure of the site and post closure monitoring in compliance with statutes of the State state of New

Mexico, division rules of the division and the and the permit terms of the permit. The applicant shall notify the

Division division of any material change affecting the financial assurance within 30 days of

discovery of such change.

(6) Forms of financial assurance. The division may accept the following forms of financial assurance:

(a) Surety bonds. A surety bond shall be executed by the applicant and by a corporate surety licensed to do business in the state, and shall be non-cancelable.

(b) Letters of credit. A letter of credit shall be issued by a bank organized or authorized to do commercial banking business in the United States, shall be irrevocable for a term of not less than five years and shall provide for automatic renewal for successive, like terms upon expiration, unless the issuer has notified the division in writing of non-renewal at least 90 days before its expiration date. The letter of credit shall be payable to the ~~State~~ state

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of New Mexico in part or in full upon receipt from the division director or his authorized representative of demand for payment accompanied by a notice of forfeiture.

(c) Cash accounts. An applicant may provide financial assurance in the form of a federally insured or equivalently protected cash account or accounts ~~of accounts~~ in a financial institution, provided that the permittee operator and the financial institution shall execute as to each such account a collateral assignment ~~thereof~~ of the account to the division, which shall provide that only the division may authorize withdrawals ~~therefrom~~ from the account, and the division may, at any time and from time to time, direct payment of all or any part of the balance of such account (excluding interest accrued ~~thereon~~ on the account) to itself or its designee.

(d) Replacement of financial assurance.

(i) The division may allow a ~~permittee~~ an operator to replace existing forms of financial assurance with other forms of financial assurance that provide equivalent coverage.

(ii) The division shall not release any existing financial assurance until the permittee operator has submitted, and the division has approved, an acceptable replacement.

(e) Review of adequacy of financial assurance. The division may at any time not less ~~than~~ that five years after acceptance of financial assurance for a commercial facility, initiate a review of ~~the adequacy of~~ such financial assurance's adequacy. Upon determination, after notice to the permittee operator and opportunity for a hearing, that the financial assurance is not adequate to cover the reasonable and probable cost of closure of such facility and post closure monitoring, the division may require the permittee operator to furnish additional financial assurance sufficient to cover such

reasonable and probable cost, provided that the

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financial assurance required of a facility permitted prior to the effective date of

19.15.2.53 NMAC shall not exceed ~~two hundred fifty thousand dollars (\$250,000)~~ except

in the event of a major modification of such

facility. If such a facility applies for a major

modification, the division shall determine the applicable financial assurance requirement

based on the total estimated closure and post closure cost of the facility as modified, without regard to the

\$250,000 limit.

~~(7) Denial~~D. Permit approval, denial, revocation, suspension or modification.

~~(1) Granting of permit. The division may deny an application for a permit or modification of a permit if it finds that the proposed facility or modification may endanger fresh water or may be detrimental to public health or the environment. The division may also deny an application for a permit if the applicant, an owner of 5 % or greater interest in the applicant, or an affiliate of the applicant, has a history of failure to comply with division rules and orders or state or federal environmental laws, is subject to an order of the division or commission, issued after notice and hearing, finding such entity to be in violation of an order requiring corrective action, or has a penalty assessment for violation of division or commission rules or orders that is unpaid more than 70 days after issuance of the order assessing the penalty. An affiliate of an applicant, for purposes of paragraph (7)(a) The division may issue a permit for an new facility or major modification upon finding that an acceptable application has been filed, that the conditions of Paragraphs (4) and (5) of Subsection C of 19.15.2.53~~

NMAC have been met and that the facility or modification can be constructed and operated in compliance with

applicable statutes and rules and without endangering fresh water, public health or the environment.

~~(b) Each permit issued for a new surface waste management facility shall remain in effect for 10 years from the date of its issuance. If the division grants a permit for a major modification of any facility, the~~

permit for that facility shall remain in effect for 10 years from the date the division approves the major modification.

~~Any permit may be renewed for successive 10-year terms. If the holder of a surface waste management facility~~

permit submits an application for permit renewal at least 120 days before the permit expires, and the operator is not

in violation of the permit on the date of its expiration, then the existing permit for the same activity shall not expire

until the division has approved or denied an application for renewal. A surface waste management facility permit

continued under this provision remains fully effective and enforceable. An application for permit renewal shall

include and adequately address all of the information necessary for evaluation of a new permit as provided in

Paragraph (1) of ~~subsection~~Subsection C of 19.15.2.53 NMAC, ~~shall~~. Previously submitted materials may be ~~included~~ by reference

person who controls, is controlled by, or under common control with, the applicant or a

~~five percent or greater owner of the applicant.~~

~~(8) Additional requirements. The division may impose additional conditions or requirements, in addition to the operational requirements set forth in 19.15.2.53 NMAC, that it determines are necessary and proper for the protection of fresh water provided they are current, readily available to the division and sufficiently identified so that the division may retrieve them. At the time of the renewal there shall be public notice in the manner prescribed by Paragraph (4) of Subsection C of 19.15.2.53 NMAC. The division shall grant an application for renewal if the division finds that an acceptable application has been filed, that the conditions of Paragraphs (4) and (5) of Subsection C of 19.15.2.53 NMAC have been met, and that the facility can be operated in compliance with applicable statutes and rules and without endangering fresh water, public health or the environment.~~

~~(c) The division shall review each permit at least once during the ten-year term, and shall review permits to which Subparagraph (b) of Paragraph (1) of Subsection D of 19.15.2.53 NMAC does not apply at list every five years. The review shall address the operation, compliance history, financial assurance and technical requirements for the surface waste management facility. The division, after notice to the operator and opportunity for a hearing, may require appropriate modifications of the permit, including modifications necessary to make the permit terms and conditions consistent with statutes, rules or judicial decisions.~~

~~(2) Denial of permit. The division may deny an application for a permit or modification of a permit if it finds that the proposed facility or modification may endanger fresh water or may be detrimental to public health or the environment. The division may also deny an application for a permit if the applicant, an owner of 25 percent or greater interest in the applicant, or an affiliate of the applicant, has a history of failure to comply with division rules and orders or state or federal environmental laws, is subject to a division or commission order, issued after notice 19.15.2 NMAC 7~~

~~and hearing, finding such entity to be in violation of an order requiring corrective action, or has a penalty assessment for violation of division or commission rules or orders that is unpaid more than 70 days after issuance of the order assessing the penalty. An affiliate of an applicant, for purposes of Paragraph (2) of Subsection D of 19.15.2.53 NMAC, shall be a person who controls, is controlled by, or under common control with, the applicant or a 25 percent or greater owner of the applicant.~~

~~(3) Additional requirements. The division may impose additional conditions or requirements, in addition to the operational requirements set forth in 19.15.2.53 NMAC that it determines are necessary and proper for the protection of fresh water, public health or the environment. Any such additional conditions or requirements shall be incorporated into the permit.~~

~~(9) Granting (4) Revocation, suspension or modification of a permit. The division may issue a permit for a new facility revoke, suspend or impose of major modification upon finding that an acceptable application has been filed, that the conditions of paragraphs (4) and (5) of subsection C of 19.15.2.53 have been met, and~~

~~that the facility or modification can be constructed and operated without endangering fresh water, public health or~~ additional operating conditions or limitations on a permit at any time, for good cause, after notice to the operator and opportunity for a hearing. Suspension of a permit may be for a fixed period of time or until the operator remedies the environment.

~~(10) Revocation, suspension or limitation of a permit. Any permit may be revoked or suspended, or additional operating conditions or limitations imposed thereon, at any time, for good cause, after notice to the permittee and opportunity for a hearing. Suspension of a permit may be for a fixed period of time or until a violation or potential violation is remedied.~~ If a facility's permit is suspended, such facility shall not accept new waste during the ~~period of suspension~~ period.

D.E. Operational Requirements—General requirements applicable to all facilities.

~~(1) No wastes transported by motor vehicle shall be accepted at the facility unless the transporter has an approved~~ (1) No surface waste management facility shall be located where ground water is less than 50 feet below the surface.

(2) No surface waste management facility shall be located in any watercourse or lakebed. Facilities located adjacent to any watercourse or lakebed shall have a division-approved plan for handling storm water runoff.

(3) No surface waste management facility shall exceed 500 acres.

(4) No wastes transported by motor vehicle shall be accepted at the facility unless the transporter has a form C-133, authorization to move liquid waste, approved with by the Division division.

~~(25) Facilities shall accept only oil field related wastes, except as provided in subparagraph in Subparagraph (c) of paragraph (3)~~

Paragraph (5) of Subsection DE of 19.15.2.53 NMAC. No non-exempt wastes, which are RCRA Subtitle subtitle C hazardous wastes by either listing or

characteristic testing shall be accepted at a permitted facility. The operator shall require the following documentation for accepting wastes:

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(a) Exempt oil field wastes: A generator, or his authorized agent, shall provide a certification which

that represents and warrants that the wastes are generated from oil and gas exploration and production operations;

exempt from RCRA Subtitle subtitle C

regulations; and not mixed with non-exempt wastes. The operator shall have the option to

accept certifications, on forms C-142 (~~certificate, certification~~ of waste status), on a monthly, weekly, or per load basis.

Both the generator and the operator shall maintain and shall make said certificates available for inspection by the division's

(b) Non-exempt, non-hazardous oilfield wastes: The operator shall complete, and maintain, subject to division inspection, a "Request For Approval To Accept Solid Waste," form C-138, accompanied by acceptable documentation to determine that the waste is non-hazardous.

~~(c) Non-oilfield wastes: Non-hazardous, non-oilfield wastes may be accepted in an emergency if ordered by the Department of Public Safety. The operator shall complete a "Request To Accept Solid Waste," form C-138, and maintain the same, accompanied by the Department of Public Safety order, subject to division inspection. With prior approval from the division, a permitted facility may accept other nonhazardous, non-oilfield waste if the waste is similar in physical and chemical composition to the oilfield wastes authorized for disposal at that facility and is either exempt from the "hazardous waste" provisions of RCRA Subtitle C; or is accompanied by acceptable documentation to determine that the waste is non-hazardous. Prior to acceptance, the operator shall complete and submit to the Santa Fe office of the division a "Request For Approval to Accept Solid Waste," form C-138, accompanied by acceptable documentation to characterize the waste.~~

~~(3) The operator of a commercial facility shall maintain records reflecting, for each calendar month, the generator, the location of origin and of disposal, 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. Such records shall be maintained in appropriate books and records for a period of not less than five years, subject to division inspection.~~

~~(4) Disposal at a facility shall occur only when an attendant is on duty unless loads can be monitored or otherwise isolated for inspection before disposal.~~ (b) Non-exempt, non-hazardous, oil field wastes. The

~~facility shall be secured to prevent unauthorized disposal when no attendant is present.~~

~~(5) To protect migratory birds, all tanks exceeding eight feet in diameter, operator shall complete and exposed pits and ponds shall be screened, netted or covered.~~

~~Upon written~~ maintain,

~~application by the operator, an exception to screening, netting or covering of a facility may be granted by the district supervisor upon a showing that an alternative method will protect migratory birds or that the facility is not hazardous to migratory birds. All waste management facilities shall be fenced in a manner approved by the division.~~

~~(6) All waste management facilities will shall have a sign, readable from a distance of 50 feet and containing the operator's name, facility location by unit letter, section, township and range, and emergency telephone numbers.~~

~~(7) No waste management facility shall be located in any watercourse, or lakebed. Facilities located adjacent to any such watercourse or lakebed shall have a division approved storm water plan.~~

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~~(8) A permit may not be transferred~~ subject to division inspection, a form C-138, request for approval to accept solid waste, accompanied by acceptable documentation to determine that the waste is non-hazardous.

(c) Emergency non-oil field wastes. Non-hazardous, non-oil field wastes may be accepted in an emergency if ordered by the department of public safety. The operator shall complete a form C-138, request to accept solid wastes, and maintain the same, accompanied by the department of public safety order, subject to division inspection.

(6) The operator of a commercial facility shall maintain records reflecting, for each calendar month, the generator, the location of origin, the location of disposal based on exempt and non-exempt categories, 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. Such records shall be maintained in appropriate books and records for a period of not less than five years after facility closure, subject to division inspection.

(7) Disposal at a facility shall occur only when an attendant is on duty unless loads can be monitored or otherwise isolated for inspection before disposal. The facility shall be secured to prevent unauthorized disposal

when no attendant is present.

(8) To protect migratory birds, all tanks exceeding eight feet in diameter, and exposed pits and ponds shall be screened, netted or covered. Upon the operator's written application, the division may grant an exception to

screening, netting or covering of a facility upon the operator's showing that an alternative method will protect

migratory birds or that the facility is not hazardous to migratory birds. All waste management facilities shall be

fenced in a manner approved by the division.

(9) All waste management facilities shall have a sign, readable from a distance of 50 feet and containing the operator's name, facility location by unit letter, section, township and range and emergency telephone numbers.

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(10) An operator shall not transfer a permit without the division's prior written approval of the division. A request for transfer of a permit shall identify all officers, directors and

owners of five percent or greater interest in the

transferee. No public notice or hearing

shall be required for approval of such a request unless the director otherwise orders.

Until the division approves the transfer and the required financial assurance is in place, the division shall not

release the transferor's financial assurance-shall not be released.

(9) Waste management facility operators (11) Operators shall comply with the provisions of 19.16.15.3.116 NMAC.

(12) Each operator shall have an inspection and maintenance plan that includes the following:

(a) weekly inspection of all leak detection sumps including sampling if fluids are present with analyses of any fluid samples furnished to the division; and maintenance of records of inspection dates, the inspector

and the status of the leak detection system;

(b) monthly inspection and sampling of all monitor wells as required for landfills and that may be required for other facilities where ground water has been contaminated with analyses of ground water furnished

to the division; and maintenance of records of inspection dates, the inspector and the status of ground water monitoring wells;

(c) inspections of the berms after any rainfall or windstorm, and maintenance of berms in such a manner as to prevent erosion; and

(d) inspections of the outside walls of all pond levees after any rainfall, and maintenance of outside walls of all levees in such a manner as to prevent erosion.

(13) Each operator shall have a plan to control run-on water onto the site and run-off water from the site, such that:

(a) the run-on control system shall prevent flow onto the facility's active portion during the peak discharge from a 100-year storm;

(b) the run-off control system from the facility's active portion collects and controls at least the

water volume resulting from a 24-hour, 100-year storm; and

(c) run-off from the facility's active portion shall not be allowed to discharge any pollutant to the waters of the state or United States that violates any state water quality standards.

(14) Contingency plan. Each operator shall have a contingency plan. The operator shall provide the division's environmental bureau with a copy of any amendment to the contingency plan, including amendments

required by Subparagraph (h) of Paragraph (14) of Subsection E. ~~Operational requirements—~~

~~landfills. Landfills shall be constructed using~~ of 19.15.2.53 NMAC; and promptly notify the ~~40 mil hdpe or equivalent double liners with leak detection systems incorporated into the design unless it can be shown~~

division's environmental bureau of any changes in the emergency

coordinator or in the emergency coordinator's
contact information. The contingency plan shall be designed to minimize hazards to public health, welfare

or the
environment from fires, explosions or any unplanned sudden or non-sudden release of contaminants or

waste to air,
soil, surface water or ground water. The operator shall carry out the plan's provisions immediately

whenever there
is a fire, explosion or release of contaminants or hazardous waste constituents that could threaten public

health,
welfare or the environment. The contingency plan for emergencies shall:

(a) describe the actions facility personnel must take in response to fires, explosions or releases
of contaminants or hazardous waste constituents to air, soil, surface water or ground water;

(b) describe arrangements with local police departments, fire departments, hospitals,
contractors and state and local emergency response teams to coordinate emergency services;

(c) list the emergency coordinator's name, address and phone numbers (office and home).

Where more than one person is listed, one must be named as the primary emergency coordinator;

(d) include a list of all emergency equipment at the facility (such as fire extinguishing systems,
spill control equipment, communications and alarm systems and decontamination equipment). This list
must be kept

up to date. In addition, the plan shall include the location and a physical description of each item on the list
and a

brief outline of its capabilities;

(e) include an evacuation plan for facility personnel. The plan must describe signals to be
used to begin evacuation, evacuation routes and alternate evacuation routes in cases where fire or releases
of

hazardous wastes could block the primary routes;

(f) include an evaluation of expected contaminants, expected media contaminated and
procedures for investigation, containment and correction or remediation;

(g) list where copies of the contingency plan will be kept, which shall include the facility; all
local police departments, fire departments and hospitals; and state and local emergency response teams;

(h) indicate when the contingency plan will be amended, which shall be immediately if
necessary, whenever:

(i) the facility permit is revised or modified;

(ii) the plan fails in an emergency;

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(iii) the facility changes design, construction, operation, maintenance or other
circumstances in a way that increases the potential for fires, explosions or releases of hazardous waste
constituents,

or change the response necessary in an emergency;

(iv) the list of emergency coordinators or their contact information changes; or

(v) the list of emergency equipment changes;

(i) describe how the emergency coordinator or his designee, whenever there is an imminent or
actual emergency situation, will immediately;

(i) activate internal facility alarms or communication systems, where applicable, to notify
all facility personnel; and

(ii) notify appropriate state and local agencies with designated response roles if their assistance is needed;

(i) describe how the emergency coordinator, whenever there is a release, fire or explosion, will immediately identify the character, exact source, amount and extent of any release materials (The emergency coordinator may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.) and describe how the emergency coordinator will concurrently assess possible hazards to public health.

welfare or the environment that may result from the release, fire or explosion (This assessment shall consider both

the direct and indirect hazard of the release, fire or explosion.);

(k) describe how if the facility stops operations in response to fire, explosion or release, the emergency coordinator will monitor for leaks, pressure buildup, gas generation or rupture in valves, pipes or the equipment, wherever this is appropriate;

(l) describe how the emergency coordinator, immediately after an emergency, will provide for treating, storing or disposing of recovered waste, or any other material that results from a release, fire or explosion at a facility; and

(m) describe how the emergency coordinator will ensure that no waste, which may be incompatible with the released material, is treated, stored or disposed of until cleanup procedures are complete.

F. Operational requirements – landfills.

(1) No landfill cell shall exceed five acres in size.

(2) Landfills shall be constructed using 40 mil high density polyethylene (HDPE) or equivalent double liners with leak detection systems as described in Paragraph (5) of Subsection H of 19.15.3.53 NMAC

incorporated into the design, unless the operator shows to the division's satisfaction that fresh water will not be adversely impacted.

F. Operational requirements—landfarms. The following operational requirements shall apply to all landfarms:

~~(1) No contaminated soils shall be placed within 100 feet of the boundary of the facility.~~

~~(2) No contaminated soils shall be placed within 20 feet of any pipeline crossing the landfarm.~~

~~(3) The portions of the facility containing contaminated soils shall be bermed to prevent run-on and run-off of rainwater.~~

~~(4) A treatment zone in each landfarm cell shall be monitored to ensure that contaminants are not transferred to the underlying native soil or to the groundwater. Such treatment zone shall not exceed three feet in depth. A minimum of four representative samples shall be taken from each landfill cell six months after the first contaminated soils are received and then semi-annually thereafter. The samples shall be taken from soils no deeper than three feet below the surface of the cell. The soil samples shall be analyzed, using methods approved the United States Environmental Protection Agency (EPA) methods, for total petroleum hydrocarbons (TPH) and benzene, toluene, ethylbenzene and xylenes (BTEX), semi-annually. The soil samples shall be analyzed, using approved EPA methods, for major cations and anions and RCRA metals, annually. Reports showing the results of the analyses shall be submitted to the division's Santa Fe office no later than 45 days after completion of the sampling.~~

~~(5) All contaminated soils shall be either biopiled or spread and disked~~

~~within 72 hours of receipt. Other remediation procedures may be approved by the division. The operator shall maintain records of the facility's remediation activity schedule in a form readily accessible for division inspection.~~

~~(6) Contaminated soils that are to be land spread shall be spread on the surface in six inch, or less, lifts.~~

~~(7) Soils shall be disked biweekly or biopiles shall be turned monthly.~~

~~(8) Exempt and non exempt contaminated soils shall be segregated.~~

~~(9) Moisture shall be added, as necessary, to control blowing dust.~~

~~(10) The application of microbes for the purposes of enhancing bioremediation requires prior division approval.~~

~~(11) No free liquids shall be placed in the landfarm cells.~~

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EXHIBIT A to Application

Proposed Surface Waste Management Rules

~~(12) No drill cuttings or soils contaminated with produced water generated within the division's districts I and II, or other salt contaminated wastes, shall be placed in a landfarm cell. Wastes shall be considered salt contaminated if chloride concentration exceeds 2,000 parts per million. The person tendering waste for treatment at a landfarm shall certify that representative samples of the waste have been tested for chloride content and found to conform to this requirement, and the operator of the landfarm will not accept waste for landfarm treatment unless accompanied by such a certification.~~

~~(13) Pooling of liquids in the landfarm is prohibited. Free standing water shall be removed.~~

(3) The operator shall confine the landfill's working face to the smallest practical area and compact the solid waste to the smallest practical volume.

(4) The operator shall prevent unauthorized access by the public and entry by large animals to the landfill's active portion through the use of fences, gates, locks or other means that attain equal protection.

(5) The surface waste management facility operator shall provide adequate means to prevent and extinguish fires.

(6) The operator shall control litter and odors.

(7) The operator shall not excavate a closed cell or allow others to excavate a closed cell except as approved by the division.

(8) The operator shall cover the landfill's active face with a six-inch layer of earth or approved alternate daily cover at the conclusion of each day's operation or more often as conditions may dictate.

(9) The operator shall provide intermediate cover that shall be:

(a) one foot thick;

(b) placed on all areas of the landfill that will not receive further waste for one month or greater, but have not reached final elevation;

(c) stabilized with vegetation on any areas that will be inactive for more than two years; and

(d) inspected and maintained to prevent erosion and infiltration.

(10) Once a landfill cell has been filled it shall be closed pursuant to the conditions contained in the surface waste management facility permit and the requirements of Subsubparagraph (i) of Subparagraph (b) of

Paragraph (3) of Subsection I of 19.15.2.53 NMAC. No more than two landfill cells may be open at a facility at the same time. The operator shall notify the division's environmental bureau 72 hours prior to closure of a landfill cell.

(11) Ground water monitoring - A ground water monitoring system, approved by the division's

environmental bureau, shall be installed at each landfill and consist of a sufficient number of wells, installed at appropriate locations and depths, to yield ground water samples from the uppermost aquifer that:

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(a) represent the quality of background ground water that has not been affected by leakage from a landfill; and

(b) represent the quality of ground water passing beneath the surface waste management facility.

(12) Monitoring wells shall be constructed in such a manner that the integrity of the borehole and well is maintained and is in accordance with ASTM method 5092.

G. Operational requirements – ~~evaporation ponds~~ landfills. The following operational requirements shall apply to all

(1) ~~Evaporation ponds shall be constructed in such a manner as to prevent overtopping due to wave action or rainfall.~~

(2) ~~Evaporation ponds shall be constructed so that the inside grade of the levee is no steeper than 2:1. Levees shall have an outside grade no steeper than 3:1. The tops of the levees shall be at least 18 inches wide.~~

(3) ~~Synthetic materials used for lining evaporation ponds shall be impermeable.~~

(4) ~~Evaporation ponds shall be double lined with a leak detection system incorporated into the design. Such leak detection systems shall be monitored monthly. A monitoring record shall be maintained and shall be readily accessible for division inspection. The discovery of any liquids in the leak detection system shall be reported to the division within 24 hours.~~

(5) ~~Thickness of flexible membrane liners shall be at least 40 mil.~~

(6) ~~All materials used for lining evaporation ponds shall be resistant to hydrocarbons, salts and acidic and alkaline solutions. The liners shall also be resistant to ultraviolet light.~~

(7) ~~Spray systems may be approved by the division to enhance natural evaporation. Engineering designs for such systems shall be submitted for division approval prior to installation. Spray systems shall be operated such that spray borne salt does not leave the pond area.~~

(8) ~~A skimmer pond or tank shall be used to separate any oil from produced water prior to water discharge into the pond.~~

(9) ~~Design of a skimmer pond shall conform to the same design criteria as those for an evaporation pond.~~

H. Facility Closure.

(1) ~~Closure by permittee. The permittee shall notify the division at least 30 days prior to cessation of operations at the facility and provide a proposed schedule for closure. Upon receipt of such notice and proposed schedule, the division shall inspect the facility and review the closure plan for adequacy. The division shall notify the permittee when it has completed its review and inspection and shall specify in such notice any modifications of the closure plan and proposed schedule or additional requirements that it determines are necessary for the protection of fresh water, public health or the environment. Closure shall proceed in accordance with the approved closure plan and schedule and any modifications or additional requirements imposed by the division.~~

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EXHIBIT A to Application

Proposed Surface Waste Management Rules

~~During closure operations the permittee shall maintain the facility to protect fresh water, public health~~ landfarms.

(1) Only soils and soil like material such as drill cuttings or tank bottoms that do not have a chloride concentration exceeding 1000 mg/kg shall be placed in landfarm. The person tendering waste for treatment at a landfarm shall certify that representative samples of the waste have been tested for chloride content and found to conform to this requirement, and the landfarm's operator shall not accept waste for landfarm treatment unless accompanied by such certification.

(2) No landfarm cell shall exceed five acres in size.

(3) No contaminated soils shall be placed within 100 feet of a boundary of the facility.

(4) No contaminated soils shall be placed within 20 feet of any pipeline crossing the landfarm.

(5) The portions of the facility containing contaminated soils shall be bermed to prevent run-on and run-off of rainwater.

(6) A treatment zone in each landfarm cell shall be monitored to ensure that contaminants are not transferred to the underlying native soil or to the ground water. Such treatment zone shall not exceed three feet in depth from the ground surface to the bottom of the treatment zone. One background soil sample shall be taken from the center of each landfarm cell two feet below the native ground surface prior to operation. The sample shall be analyzed for total petroleum hydrocarbons (TPH), major cations/anions, volatile aromatic organics (BTEX), and

heavy metals using approved United States environmental protection agency (EPA) methods. Thereafter, a minimum of four representative samples shall be taken from each landfarm cell six months after the first contaminated soils are received and then semi-annually thereafter. The samples shall be taken from soils no deeper than three feet below the cell's original surface. The soil samples shall be analyzed, using EPA approved methods,

for total petroleum hydrocarbons (TPH) and benzene, toluene, ethyl benzene and xylenes (BTEX). The soil samples shall be analyzed, using approved EPA methods, for major cations and anions and RCRA metals, annually. Reports

showing the results of the analyses shall be submitted to the environmental bureau in division's Santa Fe office no

later than 45 days after completion of the sampling. If the semi-annual or annual sampling results show concentrations of TPH, major cations/anions, BTEX or heavy metals that exceed the concentrations from the results

of the background sampling a remediation plan shall be required.

(7) All contaminated soils shall be either biopiled or spread and disked within 72 hours of receipt. The division's environmental bureau may approve other remediation procedures if they provide equivalent protection for fresh water, public health and the environment. ~~Prior to release of the financial~~

~~assurance covering~~ The operator shall maintain records of the facility's the facility, the division will inspect the site to determine that closure is complete.

~~(2) Closure initiated by the division. Forfeiture of financial assurance.~~

~~(a) For good cause, the division may, after notice to the operator and opportunity for a hearing, order immediate cessation of operation of a facility when it appears that such cessation is necessary to protect fresh water, public health or the environment, or to assure compliance with statutes or division rules and orders. The division may order closure without notice and opportunity for hearing in event of emergency, subject to Section 70-2-23 NMSA 1978, as amended.~~

(b) If a permittee refuses or is unable to conduct operations at a facility in a manner that protects public health, fresh water and the environment, refuses or is unable to conduct or complete an approved closure plan, is in material breach of the terms and conditions of its permit, or the permittee defaults on the conditions under which the financial assurance was accepted, or if disposal operations have ceased and there has been no significant activity at the facility for six months, the division may take the following actions to forfeit all or part of the financial assurance:

(i) send written notice by certified mail, return receipt

requested, to the permittee and the surety, if any, informing them of the decision to close the facility and to forfeit the financial assurance, including the reasons for the forfeiture and the amount to be forfeited, and notifying the permittee and surety that a hearing request or other response must be made within 10 days of receipt of the notice; and

(ii) advise the permittee and surety of the conditions

under which the forfeiture may be avoided. Such conditions may include but are not limited to an agreement by the permittee or another party to perform closure operations in accordance with the conditions of the permit, the closure plan (including any modifications or additional requirements imposed by the division) and division rules, and satisfactory demonstration that such party has the ability to perform such agreement.

(c) The division may allow a surety to perform closure if the surety can demonstrate an ability to complete the closure in accordance with the approved plan.

(d) If the permittee and the surety do not respond to a notice of proposed forfeiture within the time provided, or fail to satisfy the specified conditions for non-forfeiture, the division shall proceed, after hearing if a hearing has been timely requested, to declare forfeiture of the financial assurance. The division may then proceed to collect the forfeited amount and use the funds to complete the closure, or, at the division's election, to close the facility and collect the forfeited amount as reimbursement. All amounts collected as a result of forfeiture of any financial assurance shall be deposited in the Oil and Gas Reclamation Fund. In the event the amount forfeited and collected is insufficient for closure, the permittee shall be liable for the deficiency. The division may complete or authorize completion of closure and may recover from the permittee all reasonably incurred costs of closure and forfeiture in excess of the amount collected pursuant to the forfeiture. In the event the amount collected pursuant to the forfeiture was more than the amount necessary to complete closure and all costs of forfeiture, the excess shall be returned to the applicant or surety, as applicable.

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(e) If the permittee abandons the facility or cannot fulfill the conditions and obligations of the permit or division rules, the State of New Mexico, its agencies, officers, employees, agents, contractors and other entities designated by the State shall have all rights of entry into, over and upon the facility property, including all necessary and convenient rights of ingress and egress with all materials and equipment to conduct operation, termination and closure of the facility, including but not limited to the temporary storage of equipment and materials, the right to borrow or dispose of materials, and all other rights necessary for operation, termination and closure of the facility in accordance with the permit.

(3) Closure standards. The following minimum standards shall apply to

closure of the facilities indicated:

~~(a) Oil Treating Plants.~~

~~(i) All tanks and equipment used for oil treatment shall be removed from the site and recycled or properly disposed of in accordance with division rules.~~

~~(ii) The site shall be sampled for TPH, BTEX, major cations and anions and RCRA metals, in accordance with a gridded plat of the site that has been approved by the division.~~

~~(iii) Sample results shall be submitted to the division's Santa Fe office.~~

~~(b) Landfills.~~

~~(i) All landfill cells shall be properly closed, covering the cell with a 40 mil thick liner, or division approved evapo-transpiration cap, and covered with at least three feet of uncontaminated native soil contoured to promote drainage of precipitation.~~

~~(ii) The area shall be effectively re-vegetated or otherwise restored in a manner approved by the division.~~

~~(iii) Existing groundwater monitoring wells shall be monitored for a period of 20 years after closure is approved by the division.~~

~~(c) Landfarms.~~

~~(i) Disking and addition of bioremediation enhancing materials shall continue until soils within the cells are remediated to levels acceptable to the division.~~

~~(ii) Periodic reports of treatment zone sampling will be submitted to the division's Santa Fe office until the division has approved final closure of the facility.~~

~~(d) Evaporation Ponds.~~

~~(i) All liquids in the ponds shall be removed and disposed of in a manner approved by the division.~~

~~(ii) All liners shall be disposed of in a manner approved by the division.~~

~~(iii) All equipment associated with the facility shall be removed.~~

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Proposed Surface Waste Management Rules

~~(iv) The site shall be sampled for TPH, BTEX, major cations and anions and RCRA metals, in accordance with a gridded plat of the site that has been approved by the division.~~

~~(v) Sample results must be submitted to the division's Santa Fe office.~~

I. Transitional provisions.

~~(1) Existing facilities. Surface waste management facilities in operation prior to the effective date of 19.15.2.53 shall comply with all provisions of 19.15.2.53; provided that all permits heretofore issued to surface waste management~~

~~facilities and any specific exceptions or waivers heretofore granted to any such facility in writing by the division, either in its permit or otherwise, shall continue in effect unless modified or withdrawn for good cause after notice and opportunity for hearing.~~

~~(2) Pending applications. Any application for a permit under 19.15.9.711~~

~~NMAC filed prior to the effective date of~~ remediation activity schedule in a form readily accessible for division inspection.

(8) Contaminated soils that are to be land-spread shall be spread on the surface in six-inch, or less, lifts. The TPH concentration of each lift shall be reduced to 100 mg/kg prior to adding an additional lift.

The maximum thickness of land-spread soils in any cell shall not exceed two feet, at which time the soils shall be removed prior to adding additional lifts.

(9) Soils shall be disked biweekly or biopiles shall be turned at least monthly.

(10) Exempt and non-exempt contaminated soils shall be physically separated so that the division can visually identify whether the waste is exempt or non-exempt.

(11) Moisture shall be added, as necessary, to control blowing dust.

(12) The application of microbes for the purposes of enhancing bioremediation requires prior division approval.

(13) No free liquids shall be placed in the landfarm cells.

(14) No drill cuttings or soils contaminated with produced water generated within the division's districts I and II, or other salt-contaminated wastes, shall be placed in a landfarm cell. Wastes shall be considered salt-contaminated if the chloride concentration exceeds 2,000 parts per million. The person tendering waste for treatment at a landfarm shall certify that representative samples of the waste have been tested for chloride content and found to conform to this requirement, and the landfarm's operator shall not accept waste for landfarm treatment unless accompanied by such a certification.

(15) Pooling of liquids in the landfarm is prohibited. Freestanding water shall be removed.

H. Operational requirements – evaporation ponds.

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(1) Evaporation ponds shall be constructed in such a manner as to prevent overtopping due to wave action or rainfall.

(2) Evaporation ponds shall be constructed so that the inside grade of the levee is no steeper than 2:1. Levees shall have an outside grade no steeper than 3:1. The tops of the levees shall be at least 18 inches wide.

(3) Synthetic materials used for lining evaporation ponds shall be impermeable.

(4) Evaporation ponds shall be double-lined with a leak detection system incorporated into the design. Such leak detection systems shall be monitored monthly. A monitoring record shall be maintained and shall be readily accessible for division inspection. The discovery of any liquids in the leak detection system shall be reported to the division within 24 hours.

(5) Leak detection system specifications:

(a) The operator shall install a leak detection system of an approved design between the primary and secondary liner, and notify the appropriate division district office at least 72 hours in advance of the primary liner's scheduled installation to afford the opportunity for a division representative to inspect the leak detection system.

(b) Leak detection systems may consist of, but are not necessarily limited to, approved fail-safe electric detection systems or drainage and sump systems.

(c) If an electric grid detection system is used, it shall be monitored to ensure that all components of the system remain functional.

(d) If a drainage and sump system is used, the operator shall install a network of slotted or perforated drainage pipes between the primary and secondary liners. The network shall be of sufficient density so that no point in the pond bed is more than 20 feet from such drainage pipe or lateral thereof. The material placed between the pipes and laterals shall be sufficiently permeable to allow the transport of the fluids to the drainage pipe. The slope for all drainage lines and laterals shall be at least six inches per 50 feet. The slope of the pond bed shall also conform to these values to assure fluid flow towards the leak detection system. The drainage pipe shall convey any fluids to a corrosion-proof sump located outside the pond's perimeter.

(6) Thickness of flexible membrane liners shall be at least 40 mil.

(7) All materials used for lining evaporation ponds shall be resistant to hydrocarbons, salts and acidic and alkaline solutions. The liners shall also be resistant to ultraviolet light.

(8) The division may approve spray systems to enhance natural evaporation. Engineering designs for such systems shall be submitted to the division's environmental bureau for approval prior to installation.

Spray

systems shall be operated such that spray-borne salt does not leave the pond area.

(9) A skimmer pond or tank shall be used to separate any oil from produced water prior to water discharge into the pond.

(10) Design of a skimmer pond shall conform to the same design criteria as those for an evaporation pond.

I. Closure and post closure.

(1) Facility closure by operator. The operator shall notify the division's environmental bureau at least 30 days prior to cessation of operations at the facility and provide a proposed schedule for closure.

Upon

receipt of such notice and proposed schedule, the division shall inspect the facility and review the current closure

plan for adequacy. The division shall notify the operator when it has completed its review and inspection and shall

specify in such notice any modifications of the closure plan and proposed schedule or additional requirements that it

determines are necessary for the protection of fresh water, public health or the environment. The operator shall be

entitled to a hearing concerning any modification or additional requirement the division seeks to impose if it files an

application for a hearing within 10 days after receipt of written notice of the proposed modifications or additional

requirements. Closure shall proceed in accordance with the approved closure plan and schedule and any modifications or additional requirements imposed by the division. During closure operations the operator shall

maintain the facility to protect fresh water, public health and the environment. If it is determined that closure is

complete the division shall release the financial assurance, except for the amount needed to maintain monitoring

wells for 30 years, semi-annual analysis of such monitoring wells and to re-vegetate the site. Prior to the partial

release of the financial assurance covering the facility, the division will inspect the site to determine that closure is

complete. After the 30 years following closure have expired, the division shall release the remainder of the financial

assurance if the monitoring wells show no contamination and the re-vegetation is successful. If monitoring wells or

other monitoring or leak detection systems reveal contamination during the facility's operation or in the 30 years

following the facility's closure the division shall not release the financial assurance.

(2) Facility closure initiated by the division. Forfeiture of financial assurance.

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(a) For good cause, the division may, after notice to the operator and opportunity for a hearing, order immediate cessation of a facility's operation when it appears that such cessation is necessary to protect fresh

water, public health or the environment, or to assure compliance with statutes or division rules and orders. The

division may order closure without notice and opportunity for hearing in the event of an emergency, subject to

Section 70-2-23 NMSA 1978, as amended.

(b) If an operator refuses or is unable to conduct operations at a facility in a manner that protects public health, fresh water and the environment, refuses or is unable to conduct or complete an approved

closure plan, is in material breach of the terms and conditions of its permit, or the operator defaults on the conditions

under which the financial assurance was accepted, or if disposal operations have ceased and there has been no

significant activity at the facility for six months, the division may take the following actions to forfeit all or part of

the financial assurance:

(i) send written notice by certified mail, return receipt requested, to the surface waste management facility operator and the surety, if any, informing them of the decision to close the facility and to forfeit

the financial assurance, including the reasons for the forfeiture and the amount to be forfeited, and notifying the

operator and surety that a hearing request or other response must be made within 10 days of receipt of the notice;

and

(ii) advise the operator and surety of the conditions under which the forfeiture may be avoided. Such conditions may include but are not limited to an agreement by the operator or another party to

perform closure and post closure operations in accordance with the permit conditions, the closure plan (including

any modifications or additional requirements imposed by the division) and division rules, and satisfactory demonstration that such party has the ability to perform such agreement.

(c) The division may allow a surety to perform closure if the surety can demonstrate an ability to timely complete the closure and post closure in accordance with the approved plan.

(d) If the operator and the surety do not respond to a notice of proposed forfeiture within the time provided, or fail to satisfy the specified conditions for non-forfeiture, the division shall proceed, after hearing if

a hearing has been timely requested, to declare forfeiture of the financial assurance. The division may then proceed

to collect the forfeited amount and use the funds to complete the closure, or, at the division's election, to close the

facility and collect the forfeited amount as reimbursement. All amounts collected as a result of forfeiture of any

financial assurance shall be deposited in the Oil and Gas Reclamation Fund. In the event the amount forfeited and

collected is insufficient for closure, the operator shall be liable for the deficiency. The division may complete or

authorize completion of closure and post closure and may recover from the operator all reasonably incurred costs of

closure and forfeiture in excess of the amount collected pursuant to the forfeiture. In the event the amount collected

pursuant to the forfeiture was more than the amount necessary to complete closure and all costs of forfeiture, the excess shall be returned to the operator or surety, as applicable.

(e) If the operator abandons the facility or cannot fulfill the conditions and obligations of the permit or division rules, the state of New Mexico, its agencies, officers, employees, agents, contractors and other

entities designated by the state shall have all rights of entry into, over and upon the facility property, including all

necessary and convenient rights of ingress and egress with all materials and equipment to conduct operation,

termination and closure of the facility, including but not limited to the temporary storage of equipment and materials, the right to borrow or dispose of materials and all other rights necessary for operation, termination and

closure of the facility in accordance with the permit and to conduct post closure monitoring.

(3) Facility and cell closure and post closure standards. The following minimum standards shall apply to closure and post closure of the installations indicated, whether the entire surface waste management facility

is being closed or only a part of the facility.

(a) Oil treating plant closure. The operator shall ensure that:

(i) all tanks and equipment used for oil treatment are removed from the site and recycled or properly disposed of in accordance with division rules;

(ii) the site is sampled, in accordance with the procedures specified in chapter nine of EPA publication SW-846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, for TPH, BTEX,

major cations and anions and RCRA metals, in accordance with a gridded plat of the site containing at least four

equal sections that the division has approved; and

(iii) sample results are submitted to the environmental bureau in the division's Santa Fe office.

(b) Landfill cell closure. The operator shall ensure that:

(i) all landfill cells are properly closed, covering the cell with a 40-mil thick liner, or division-approved evapo-transpiration cap, and at least three feet of uncontaminated native soil contoured to

19.15.2.53 NMAC shall be determined under

the procedural and substantive rules in force on such date, without regard to any changes made by the repeal of 19.15.9.711 NMAC and the adoption of 19.15.2.53 NMAC.¹³

promote drainage of precipitation; side slopes shall not exceed a 25 percent grade (four feet horizontal to one foot

vertical), such that the final cover of the landfill's top portion has a gradient of two percent to five percent, and the

slope are sufficient to prevent the ponding of water and erosion of the cover material; and

(ii) the area is re-vegetated or otherwise restored in a manner that is capable of sustaining native plant growth.

(c) Landfill post closure. Following facility closure, the post closure care period for a landfill shall be 30 years.

(i) A post closure care and monitoring plan shall include maintenance of cover integrity, maintenance and operation of a leak detection system and operation of methane and ground water monitoring systems.

(ii) The operator or other responsible entity shall sample existing ground water monitoring wells annually and submit reports of monitoring performance and data collected within 45 days from the end of each calendar year.

(d) Landfarm closure. The operator shall ensure that

(i) diskings and addition of bioremediation enhancing materials continues until soils

within the cells are remediated to a TPH concentration of 100 mg/kg, a benzene concentration of 0.2 mg/kg and a

BTEX concentration of 50 mg/kg;

(ii) soil remediated to the foregoing standards are re-vegetated;

(iii) landfarmed soils that have not been or cannot be remediated to the above standards are removed, and the cell filled in with native soil and re-vegetated;

(iv) all berms on the compost facility are removed;

(v) buildings, fences, roads and equipment are removed, the site cleaned-up and tests conducted on the soils for contamination; and

(vi) annual reports of treatment zone sampling are submitted to the division's Santa Fe office until the division has approved final closure of the facility.

(e) Landfarm post closure. The post-closure care period for a landfarm shall be five years. The operator or other responsible entity shall ensure that:

(i) ground water monitoring, if required because of ground water contamination, is maintained to detect possible migration of contaminants; and

(ii) any cover material is inspected and maintained.

(f) Evaporation pond closure. The operator shall ensure that:

(i) all liquids in the ponds are removed and disposed of in a division-approved surface waste management facility;

(ii) all liners are disposed of division-approved surface waste disposal facility permit;

(iii) all equipment associated with the facility is removed;

(iv) the site shall be sampled, in accordance with the procedures specified in chapter nine of EPA publication SW-846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods for TPH,

BTEX, major cations and anions and RCRA metals, in accordance with a gridded plat of the site containing at least

four equal sections that the division has approved; and

(v) sample results are submitted to the environmental bureau in the division's Santa Fe office.

(4) Alternatives to re-vegetation. If the operator or owner of the land contemplates use of the land where a cell or facility is located for purposes inconsistent with re-vegetation, the operator may, with division approval, implement an alternative surface treatment appropriate for the contemplated use, provided that

the alternative treatment will effectively prevent erosion.

J. Transitional provisions. Existing facilities. Surface waste management facilities in operation prior to the effective date of 19.15.2.53 NMAC pursuant to permits or orders of the division may continue to operate

in accordance with such permits or orders, subject to the following provisions.

(1) All existing facilities shall comply with the operational, waste acceptance and closure requirements provided in 19.15.2.53 NMAC, except as otherwise specifically provided in the applicable permit or order, or in any specific waiver, exception or agreement that the division has granted in writing to the particular facility.

(2) Any major modification of an existing facility, and any new cells constructed an existing facility shall conform to the design and construction specifications provided in 19.15.2.53 NMAC.

(3) Operators of existing facilities that were permitted under the 19.15.9.711 NMAC shall, not later than April 1, 2007, either bring all existing cells into compliance with the design and construction specifications

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provided in 19.15.2.53 NMAC, or close any cells that do not conform to those requirements; provided that the

division may grant waivers to allow continued operation of existing cells not conforming to such requirements on a

case-by-case basis as long as the existing design and construction specifications adequately protect fresh water, public health and the environment. If an operator applies for a waiver of this requirement, the operator shall give notice of the application in the manner provided in Subparagraphs (a) and (b) of Paragraph (4) of Subsection C of 19.15.2.53 NMAC. The division may grant such a waiver administratively if it receives no objection within 30 days after the notice's publication.
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