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March 15, 2006

Mark E. Fesmire  
Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, NM 87505

David K. Brooks  
Oil Conservation Division  
1220 South St. Francis Drive  
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Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, NM 87505

**Re: Case No. 13586; proposed Surface Waste Rules; CRI Motion to  
Postpone "Outreach Meeting"**

Ladies and Gentlemen:

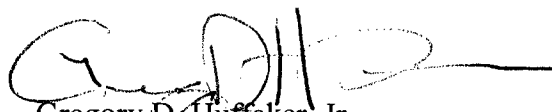
Enclosed please find Controlled Recovery, Inc.'s Motion for Continuance,  
seeking continuance of the "Outreach Meeting" scheduled for Friday, March 17, 2006.

This Motion has been drafted as a pleading in the Commission proceeding and we  
request that it be filed as such. The reason it is drafted as such is because the Notice of  
Continuance of Surface Waste Management Rules Hearing and of Public Outreach  
Meeting, which was clearly Commission action, included the scheduling of this meeting.

However, if the action requested can be taken administratively without action by  
the full Commission, that is certainly acceptable to Controlled Recovery, Inc.

I will be out of state for the rest of this week, beginning at noon today. Please  
contact my partner, Michael J. Moffett, in connection with the response to this Motion, or  
with any questions you may have.

Sincerely,

  
Gregory D. Huffaker, Jr.  
For the Firm

GDH/daw

2006 MAR 15 PM 1 18

Enclosure

cc: W. Carr  
D. Neeper  
C. Lamb  
P. Domenici  
Rebecca G. Percy-Pipin

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

**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**

COMES NOW, Controlled Recovery, Inc. (CRI), by its attorneys, and moves that the "Outreach Meeting," scheduled for Friday, March 17, 2006 in the Commission's Notice of Continuance of Surface Waste Management Rules Hearing and of Public Outreach Meeting be postponed and rescheduled to a date no sooner than April 5, 2006.

1. Pursuant to a Motion for Continuance filed by "the Industry Committee" March 7, 2006, the Commission issued its Notice of Continuance of Surface Waste Management Rules Hearing and of Public Outreach Meeting to selected parties (including CRI) on March 14, 2006, and, apparently, to the public on March 15, 2006. The Notice states that an "Outreach Meeting" will be held on March 17, 2006

"for the Division's Environmental Bureau to explain its proposals, as incorporated in the draft rules published on February 27, 2006, and the reasons for those proposals. Stakeholder input will be accepted following the Division's presentation and response to questions, as time permits."

2. The two (2) to three (3) day notice of the "Outreach Meeting" is procedurally and constitutionally inadequate. Due process of law requires that parties affected by government action receive adequate notice of proceedings relating to that action prior to

the proceedings taking place. The principle is applicable to proceedings where a governmental agency explains its actions, and the reasons therefore, and accepts comments from the public that will be considered by the agency in the formulation of its final recommended action. Two, or three, days notice of this kind of proceeding is insufficient as a matter of law. The analogous provision in the Division's Procedural Rules is 19.15.14.1202.A. NMAC, requiring twenty (20) days' notice.

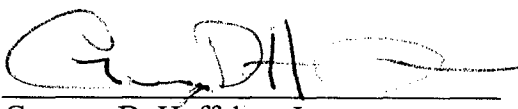
3. The notice in the Notice of Continuance of Surface Waste Management Rules Hearing and of Public Outreach Meeting is actually inadequate. For instance, in the case of CRI, neither CRI's principals, its technical advisors, nor its attorney are available to attend the Outreach Meeting on Friday, March 17, 2006. Worse, public notice has not yet been made as of the execution of this Motion on the morning of March 15, 2006. Accordingly, interested parties who have participated up until now in this same proceeding by filing comments and suggested modifications to the Proposed Rule, and by attending prior stakeholders meetings on these same proposed Rules will not be afforded adequate notice, or any *actual* notice of this important meeting where the agency proponents of the Rule will "explain [their] actions," "the reasons therefore," and accept comments that "*will be considered by the agency in the formulation of its final recommended action.*" Ranchers and other landowners, the Oil and Gas Accountability Project, other government agencies, and industry representatives *not* aligned with "the Industry Committee" are among those in addition to CRI that will not receive adequate notice to allow them to prepare for and participate in (or perhaps even know about) this important proceeding. Under these circumstances, holding the "Outreach Meeting" on March 17, 2006 would violate the most fundamental ideas of due process of law -

adequate notice, affording affected individuals and entities a meaningful opportunity to be informed of and comment upon the basis and reasons for governmental action.

4. CRI wants its position clear – CRI does not object to the holding of the “Outreach Meeting.” CRI believes the opportunity to learn, and to comment on, the Division’s reasons and explanations for its proposals is an important and valuable step in these proceedings. The problem with the Commission’s action on “the Industry Committee’s” Motion is the scheduling of the “Outreach Meeting” on such short notice that CRI, and we believe others, cannot meaningfully participate, or participate at all, due to the inadequate notice of the meeting. Accordingly, CRI respectfully requests that the “Outreach Meeting” be postponed, immediately renoticed, and rescheduled to a date after April 5, 2006.

Respectfully submitted,

HUFFAKER & MOFFETT LLC

By:   
Gregory D. Huffaker, Jr.  
Attorneys for Controlled Recovery, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of March, 2006, I have caused a copy of CRI's Motion for Continuance in the above-captioned case to be delivered to the following by U.S. Mail:

Mark E. Fesmire  
Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, NM 87505  
(By hand delivery)

David K. Brooks, Esq.  
Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, NM 87505  
(By hand delivery)

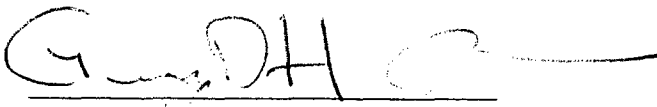
William F. Carr  
Ocean Munds-Dry  
P.O. Box 2208  
Santa Fe, NM 87504  
(Also by fax delivery)

The NM Citizens for Clean Air & Water, Inc.  
c/o Donald Neeper  
2708 B. Walnut Street  
Los Alamos, NM 87544  
(Also by fax delivery)

Oil and Gas Accountability Project  
c/o Carolyn Lamb  
P.O. Box 1102  
Durango, CO 81302

Gandy-Marley, Inc.  
c/o Pete V. Domenici, Jr.  
320 Gold Ave. SW, Suite 1000  
Albuquerque, NM 87102

Rebecca G. Percy-Pipin  
135 Rincon Valverde  
Ponderosa, NM 87404



A handwritten signature in black ink, appearing to read "G. M. H. C.", is written over a horizontal line.