

**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. 19.15.14.1205.A(2)(c) 2006 MAR 10 AM 11:45

RESPONSE IN OPPOSITION TO MOTION FOR CONTINUANCE

COMES NOW, Controlled Recovery, Inc. (CRI), by its attorneys, and responds to “the Industry Committee’s” March 7, 2006 Motion for Continuance.

CRI opposes any further continuance. Most of the changes in the Division’s February 27, 2006 revised proposed Surface Waste Management Rules were made at the urging of “the Industry Committee” following the grant of its previous motion for continuance, following the detailed written and oral presentations of its expert witnesses at the January 12-13th stakeholders meeting, and following its several written recommended modifications to the proposed Rules. “The Industry Committee” should not now be heard to complain that the changes it urged were not made exactly as it would wish, or that changes urged by other stakeholders in writing and at the January 12-13th stakeholders meeting were incorporated as well.

The Commission’s procedural rules afford adequate due process safeguards. The Division staff, the proponent of the proposed Rules, must present its case first. 19.15.14.1205.A(2)(c). The Division’s witnesses are then subject to cross-examination by the representatives of “the Industry Committee.” 19.15.14.1205.B(3). Thereafter,

at the close of the hearing, the commission shall determine whether to keep the record open for written submittals including arguments and proposed statements of reasons supporting the proposed commission decision. In considering whether the record will remain open, the commission shall consider the reasons why the material was not presented during the hearing, the significance of material to be submitted and the necessity for a prompt decision; if the commission keeps the record open, the commission chairman shall announce at the hearing's conclusion the subjects on which the commission will allow submittals and the deadline for filing the submittals;

19.15.14.1205.A(2)(g). And,

If, during the course of deliberations, the commission determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed rule change, the commission may reopen the hearing for additional evidence after notice pursuant to 19.15.14.1202 NMAC.

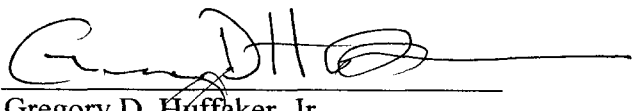
19.15.14.1205.E(2).

"The Industry Committee's" due process concerns are premature. The opportunity it seeks to learn the basis and rationale for particular choices made by the Division staff will be afforded at the hearing. If "the Industry Committee" deems it proper to thereafter seek leave to submit additional written submittals, or to present additional testimony or documentary evidence, the means to do so is in the Commission's Rules. No due process issue presently exists to require the grant of the Industry Group's Motion for Continuance .

WHEREFORE, CRI urges the Commission to deny "the Industry Committee" Motion for Continuance.

Respectfully submitted,

HUFFAKER & MOFFETT LLC

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

CERTIFICATE OF SERVICE

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

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

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

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

