CURTIS & DEAN
ATTORNEYS AT LAW
506 WEST ARRINGTON • P. O. DRAWER 1259
FARMINGTON, NEW MEXICO 87499

SCOTT M. CURTIS
JOHN A. DEAN, JR.

OFF.: (505) 327-6031
FAX: (505) 327-6034

CONFIDENTIALITY NOTE

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS LEGALLY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED BELOW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPY OF THIS TELECOPY IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TELECOPY IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY THE TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ADDRESS ABOVE VIA THE UNITED STATES POSTAL SERVICE. THANK YOU.

DATE: 1/8/97

TO: Rand Carroll

COMPANY: OCD

FAX #: 505 827 8177

FROM: John Dean

FAX #:

MESSAGE

NUMBER OF PAGES INCLUDING COVER SHEET 7

If any part of this message is missing or is received poorly, please call Curtis & Dean at (505) 327-6031 as soon as possible. Thank you.

CURTIS & DEAN
ATTORNEYS AT LAW
506 WEST ARRINGTON • P. O. DRAWER 1259
FARMINGTON, NEW MEXICO 87499

SCOTT M. CURTIS
JOHN A. DEAN, JR.

OFF.: (505) 327-6031
FAX: (505) 327-6034

January 8, 1997

Oil Conservation Division
c\o Rand Carroll
2040 South Pacheco
Santa Fe, New Mexico 87505

RE: APPLICATION OF THE NEW MEXICO CONSERVATION DIVISION (OCD) FOR A SHOW CAUSE HEARING REQUIRING SUNCO TRUCKING WATER DISPOSAL COMPANY TO APPEAR AND SHOW CAUSE WHY IT SHOULD NOT BE FINED FOR VIOLATIONS OF OCD RULE 711, SAN JUAN COUNTY NEW MEXICO CASE NO. 11604

Dear Mr. Carroll:

Pursuant to our agreement this letter is to be filed in the above referenced case prior to the filing of the Order of the Division which has been approved and signed by my client. Pursuant to your direction I am submitting our statement in letter form.

SUNCO TRUCKING WATER DISPOSAL'S STATEMENT
OF POSITION ON VIOLATIONS

Sunco Trucking Water Disposal Company (hereinafter Sunco) by and through it's attorney, John A. Dean, Jr., for it's Statement of Position on Violations states:

VIOLATION OF MARCH 3, 1993

On March 3, 1993, Sunco was issued a Notice of Violation (NOV) from the Division for the disposal of oil in the area authorized for disposal of shale solids only under its Rule permit, a violation of Division Rule 711 and Sunco's Rule 711 permit.

1. In November of 1992 Sunco initiated discussion with the OCD seeking permission to dispose of solids generated in it's disposal pond. Sunco was attempting to decrease the amount of solids being placed in the pond. Sunco's operational experience was that a reduction in the solids would further decrease the possibility of H2S buildup. Sunco had installed a shale shaker to remove the solids from the fluids received for disposal. The shaker was placed near the point of new fluid intake. Approval of a plan to dry the solids on Suncos disposal pond site was granted on February

16, 1993. A condition that no free oil was to be allowed in the drying area was imposed on the Division's approval. Free oil inadvertently accumulated in the drying area.

2. After receiving the notice of violation Sunco took steps to immediately correct the violations and notified OCD of the steps taken. (Letter from On Site Technologies, LTD, Gary L. Lee, to the director of the OCD attached hereto as Exhibit "A" and incorporated herein) Sunco ceased placing solids in the area where the free oil had accumulated.

3. Sunco does not believe that the placing of oil in the area where solids were dried out posed a threat to the environment or the public health and safety. Sunco believes that adequate steps have been taken to minimize any effect that the action complained of may have had.

VIOLATION OF FEBRUARY 2, 1996

On February 2, 1996, Sunco was issued a Notice of Violation (NOV) from the Division for accepting non-exempt waste for disposal, again a violation of Rule 711 and Sunco's permit. Sunco was informed in that NOV that future violations would subject Sunco to the penalties provided in the New Mexico Oil and Gas Act (Section 70-2-31) of $1,000 per day.

1. Giant Refining Company operates a Class One Disposal Facility at it's refinery near Bloomfield, New Mexico. In January of 1996 Giant's Class One permitted well, operated at the same location, was experiencing problems. Giant was unable to dispose of it's refinery waste water by use of the well and while working on the well water backflowed from the well to the evaporation ponds. Giant's disposal pond was reaching it's capacity and running a risk of overflowing. Giant contacted Sunco to have it haul the fluid flowing back from the well and dispose of it at their facility. Sunco did that.

2. The waste water generated by Giant consists of water separated from crude oil delivered to the refinery for refining and processing; refinery makeup water including water used for cooling in the refining process; water used as boiler feed for the production of steam and water as a by product of the refining process. The refinery makeup water comes directly from the San Juan River. Various chemicals are added to the makeup water at the refinery, but residual levels in the refinery wastewater stream are at non-hazardous levels.

The wastewater stream at the refinery is run through a separator to remove any remaining free-phase hydrocarbon; and a high rate aeration system. The wastewater stream is held in an evaporative pond and injected into the Class One well disposal well on the refinery property. The water in the evaporative ponds is typically purer than produced water. The waters main characteristic is that it generally has less than 6000 parts per million salt and less than 6000 parts per million total dissolved solids. Sea water is 120,000 parts per million salt.

3. The water hauled by Sunco from the Giant refinery to their disposal pond was the fluid flowing back from the injection well into the pond.

4. The water from the Giant Refinery is classified non-exempt because the refinery is a

processor and refiner. At the time that Sunco was called Giant Refinery was not aware of the distinction between "exempt" and "non-exempt" water for purposes of the discharge plan requirements contained in WQCC"s water quality regulations.

5. Sunco personnel observed that the water from Giant was very clean. The disposal of the Giant fluid in the pond did not change the makeup of the fluid and did not increase the potential for the release of H2S.

6. After receiving the NOV from the OCD Sunco applied for a change of classification of their Class Two well to a Class One well. That application has been approved by the OCD and Sunco has accepted the conditions imposed by the OCD and is operating their injection well as a Class One well.

7. Sunco does not believe that the hauling of the Giant Refinery water posed a threat to the environment or the public health and safety. Sunco believes that adequate steps have been taken to minimize any effect that the action complained of may have had.

VIOLATION OF MAY 1, 1996

On May 1, 1996, Sunco was issued a third NOV for failure to take Hydrogen Sulfide measurements for the three years preceding April 10, 1996, as required by Sunco's permit. In that NOV, the Division assessed a fine of $5,000.

1. Sunco is now, and has since shortly after the Notice of Violation was received, keeping records of its ambient air testing.

2. Sunco has a stationary monitor for ambient H2S installed on the tank into which the fluids are off loaded from the transport vehicle. This monitor detects ambient H2S at 1 ppm. Sunco employees use this monitor to determine if an incoming load of fluid needs to be treated prior to placement into the disposal pond. If there is any reading of ambient H2S then treatment takes place at that time and at the intake point. Each load is isolated from other fluids at the point of intake and is not mixed with other fluids until after any necessary treatment is completed.

3. Sunco does analysis of its pond water daily. Sunco checks the PH level, oxygen level, temperature, sulfides and H2S. In addition a third party tests the pond water weekly for H2S, PH, sulfides, oxygen, and chlorides and other characteristics. The operational experience of Sunco has shown that these tests will warn of the potential for an increase of H2S prior to any H2S odor being detected in the atmosphere. Sunco feels that these tests are a better operational tool to control H2S than any other method available to them including ambient air. If these test results indicate that a problem may be developing Sunco takes immediate action to try to avoid any problem. These steps include increasing aeration and the introduction of oxidizing agents.

4. Sunco's operational experience has shown that if the pond level is kept as low as possible, especially during the hot months of the year, problems with H2S levels are less likely to occur. Sunco has been able to keep the pond levels low with the use of the injection well.

5. Sunco's operational experience has shown that by keeping the amount of solids going into the pond at the lowest possible level that problems with H2S are less likely to develop. Sunco has installed a series of holding tanks between the facility intake point and the main pond in order to allow solids to settle out of the fluid prior to the fluid being placed in the pond. Sunco has recently drained the pond and removed all of the solids from the interior of the pond.

6. Sunco has had monitors in the past that would measure .1 ppm of H2S. These monitors, in the opinion of Sunco staff, were unreliable, gave false readings, and were difficult to calibrate. This monitor would give different readings depending on the amount of sunlight and the temperature. A list of other chemicals and conditions that affect the reliability of the monitor is provided by the manufacturer.

7. From the inception of the operation of the pond until April of 1996 Sunco was never asked by OCD personnel for records of H2S monitoring records. OCD personnel inspect the Sunco facility on a regular basis and have done so since it's inception of operation. Personnel of OCD and Sunco work closely together to insure that the facility operates safely. The only request for records was made after a protest to Sunco's landfarm application was filed. This protest alleged, along with other concerns, that the OCD did not adequately regulate Sunco's disposal facility.

8. Sunco does not believe that the monitoring of the ambient air around the pond for H2S changes its operational procedure or helps prevent the possibility of release of H2S into the atmosphere. The monitoring of H2S in the atmosphere does serve as a warning of H2S being released into the air. The .1 ppm level that requires action by Sunco is substantially lower than OSHA standards. While Sunco believes that a warning system is necessary it does not believe that the level of .1ppm is a necessary or reasonable threshold of action level.

9. Sunco has purchased a monitor which purports to read H2S levels at .1 ppm. This monitor is difficult to calibrate and gives different readings of H2S depending on the amount of sunlight and the temperature. A list of other chemicals and conditions that affect the reliability of the monitor is provided by the manufacturer. Sunco uses this monitor in the manner directed by the manufacturer.

10. The standard of .1 ppm set out in Sunco's permit came partially from a Judge's ruling in what is commonly known as the Basin Disposal case. (State of New Mexico ex rel Timothy Payne, et al., vs. Basin Disposal, Inc. et al., San Juan County District Court Cause No. CV-87-565-1107) The .1 ppm was a condition of the injunction issued in the Basin case. The injunction was dissolved by a Stipulated Order entered on December 28, 1996.

11. Sunco does not believe that it's failure to maintain records of monitoring for .1 ppm of H2S, or any action or nonaction of the OCD caused a threat to the environment or the public health and safety. Sunco believes that adequate steps were taken, by them and by the OCD, from the inception of the operation of the pond to minimize H2S at the facility. Sunco would state that it's actions, as outlined herein, and the actions of the OCD were more than adequate to prevent hazardous levels of H2S from being released into the atmosphere.

CONCLUSION

While Sunco has chosen to enter into a Stipulated Order to resolve the matter of the fine imposed, it does not admit that its alleged actions or inactions caused any harm to the environment or threatened the public health and safety. Sunco believes that it's disposal pond is operated in such a manner, with numerous safety procedures and redundant systems, that it poses no threat to the public health and safety.

Sincerely:

John A. Dean, Jr.

JAD\jv

xc: client

enclosure as noted

ON SITE TECHNOLOGIES, LTD.

To : William J. LeMay
Director
State of New Mexico
Energy , Minerals and Natural Resources Department
OIL Conservation Division

Dear Mr. LeMay

The Commercial Surface Disposal Facility operated by Sunco Trucking located in the SW/4 NW/4 ,Section 2 , Township 29 North Range 12 West , NMPM , San Juan County New Mexico is in the process of correcting all violations of the Order No . R-9485 -A . These violations are the result of liquids including oil that were inadvertently placed into solids store area . Sunco has and is in the process of removing all of the solids located in drying area.. All surface oil has been removed from the surface of containment area. The liquid phase has been solidified and is in the process of being transferred to a final remediation area.

Sunco has ceased all disposal of materials into bermed area and is in the process of securing other types of storage for any solids that may nave to be disposed of resulting from the Double / Double Shale Shaker .

As directed by Kathy M. Brown Sunco is placing a monitoring system into operation . This program was started March 10, 1993 and all perimeters will be