

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

**IN THE MATTER OF EMERGENCY  
RULEMAKING TO PERMIT  
DISPOSAL OF CERTAIN NON-DOMESTIC  
WASTE AT SOLID WASTE FACILITIES**

**EMERGENCY ORDER NO. E-34**

**ORDER OF THE DIVISION**

**BY THE DIVISION:**

**THIS MATTER** having come before the Oil Conservation Division (hereinafter referred to as "the Division") of the New Mexico Energy, Minerals and Natural Resources Department pursuant to NMSA 1978, § 70-2-23 (Repl. 1995) for emergency rulemaking concerning disposal of certain non-domestic waste at solid waste facilities, and the Division being fully informed on the issue,

**FINDS:**

1. House Bill 533 of the 45th Legislature, First Session 2001, was signed into law by Governor Gary E. Johnson on March 16, 2001. That bill provides for disposal of certain nondomestic oil, gas and geothermal waste at solid waste facilities. Section 2 of the bill contains an emergency clause, and it became effective upon signing.
2. Certain nondomestic waste has been disposed of at solid waste facilities for several years by unwritten agreement of the Division and the New Mexico Environment Department (hereinafter referred to as "the Environment Department"). The practice was challenged during an administrative proceeding before the Environment Department and was discontinued in December, 2000.
3. House Bill 533 clarifies that certain nondomestic waste associated with the exploration, development, production, transportation, storage, treatment or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy, except drilling fluids, produced water, petroleum liquids, petroleum sludges or petroleum contaminated soils (except in an emergency declared by the Director), may be disposed of at a solid waste facility regulated by the Environment Department pursuant to the Solid Waste Act.
4. House Bill 533 permits disposal of certain nondomestic waste only upon approval of the Division. At this time, the Division has no rules specifying which wastes may be disposed of as permitted by House Bill 533, how approval is granted, or any required testing.

EXHIBIT *OCD*

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5. Pursuant to authority granted in the Oil and Gas Act, NMSA 1978, § 70-2-1 *et seq.*, the Oil Conservation Commission (hereinafter referred to as "the Commission") has proposed to adopt Rule 712, governing disposal of certain non-domestic waste at solid waste facilities. The Commission will consider adoption of proposed Rule 712 during its regularly scheduled meeting of March 30, 2001.

6. Now that disposal options are limited statewide, it appears that some nondomestic waste is being stockpiled or transported out-of-state. The Division is concerned that some waste may be improperly disposed of or improperly stockpiled unless the status quo that existed before December, 2000 can be quickly restored.

7. The improper disposal or stockpiling of nondomestic waste that was previously disposed of in solid waste facilities presents an imminent threat to the public health and the environment. It is therefore imperative that an emergency rule be adopted until the Commission has had an opportunity to consider the matter and address the proposed Rule 712. Accordingly, the Division hereby declares an emergency exists with respect to this issue which requires adoption of the emergency rule without the usual due notice required by NMSA 1978, § 70-2-23.

8. Attached to this document is an Emergency Rule Concerning Disposal of Certain Non-domestic Waste at Solid Waste Facilities, which is substantially identical with the Rule 712 proposed for adoption by the Oil Conservation Commission. The Emergency Rule should be immediately adopted.

9. The Division has specific authority to adopt emergency rules pursuant to the Oil and Gas Act, NMSA 1978, § 70-2-23.

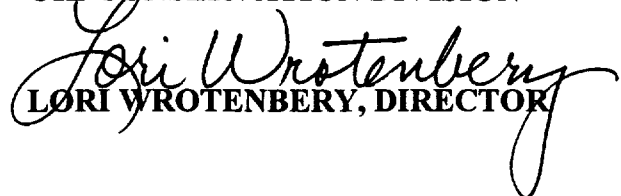
**IT IS THEREFORE ORDERED, AS FOLLOWS:**

1. The attached Emergency Rule Concerning Disposal of Certain Non-domestic Waste at Solid Waste Facilities is hereby adopted.

2. The Emergency Rule shall become effective the date of this order and shall remain effective as provided in NMSA 1978, § 70-2-23.

DONE at Santa Fe, New Mexico, this 19th day of March, 2001.

**STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION**

  
**LORI WROTENBERY, DIRECTOR**

SEAL

## EMERGENCY RULE E-34

### DISPOSAL OF CERTAIN NON-DOMESTIC WASTE AT SOLID WASTE FACILITIES.

A. General - Certain non-domestic waste arising from the exploration, development, production or storage of crude oil or natural gas, certain nondomestic waste arising from the oil field service industry, and certain non-domestic waste arising from the transportation, treatment or refinement of crude oil or natural gas, may be disposed of at a solid waste facility but only with the concurrence of the New Mexico Environment Department.

B. Definitions - The following words and phrases have particular meanings for purposes of this section:

(1) "BTEX." The acronym "BTEX" in this section refers to benzene, toluene, ethylbenzene and xylene.

(2) "Discharge Plan." A "discharge plan" is a plan submitted and approved by the Division pursuant to NMSA 1978, § 70-2-12(B)(22) (2000 Cum.Supp.) and rules and regulations of the Water Quality Control Commission.

(3) "EPA." The acronym "EPA" refers to the United States Environmental Protection Agency.

(4) "EPA Clean." The phrase "EPA Clean" refers to cleanliness standards established by the EPA in 40 C.F.R. Part 261, § 261.7(b).

(5) "NESHAP." The acronym "NESHAP" refers to the National Emission Standards for Hazardous Air Pollutants of the EPA, 40 C.F.R. Part 61.

(6) "NORM." The acronym "NORM" refers to naturally occurring radioactive materials regulated by 20 NMAC 3.1, Subpart 14.

(7) "Section." "Section" or "this section" refers to this rule.

(8) "Solid Waste Facility." A "solid waste facility" is a facility permitted or authorized as a solid waste facility by the New Mexico Environment Department pursuant to the Solid Waste Act, NMSA 1978, §§ 74-9-1 *et seq.* and rules and regulations of the Environmental Improvement Board, to accept industrial solid waste or other special waste.

(9) "TCLP" The acronym "TCLP" in this section refers to the testing protocol established by the EPA in 40 C.F.R. Part 261, entitled "Toxicity Characteristic Leaching Procedure" or an alternative hazardous constituent analysis approved by the Division.

(10) "TPH." The acronym "TPH" in this section refers to the phrase "total petroleum hydrocarbons."

(11) "Waste." The word "waste" refers to nondomestic waste resulting from the exploration, development, production or storage of crude oil or natural gas pursuant to NMSA 1978, § 70-2-12(B)(21) and nondomestic waste arising from the oil field service industry, and certain non-domestic waste arising from the transportation, treatment or refinement of crude oil or natural gas pursuant to NMSA 1978, § 70-2-12(B)(22).

#### C. Procedure

(1) Waste Listed in Subsection D, paragraph (1) of this rule. Waste listed in Subsection D, Paragraph (1) of this rule may be disposed of at a solid waste facility without prior written authorization of the Division.

(2) Waste Listed in Subsection D, Paragraph (2) of this rule. Waste listed in Subsection D, Paragraph (2) of this rule may be disposed of at a solid waste facility after testing and prior written authorization of the Division. Before authorization is granted, copies of test results must be provided to the Division and to the solid waste facility where the waste is to be disposed. Disposal may commence only after written authorization of the Division. In appropriate cases and so long as a representative sample is tested, the Division may authorize disposal of a waste stream listed in Subsection D, Paragraph (2) of this rule without individual testing of each delivery.

(3) Waste Listed in Subsection D, Paragraph (3) of this rule. Waste listed in Subsection D, Paragraph (3) of this rule may be disposed of at a solid waste facility on a case-by-case basis after testing required at the discretion of the Division and after prior written authorization of the Division. Before authorization is granted, copies of test results must be provided to the Division and to the solid waste facility where the waste is to be disposed. Disposal may commence only after written authorization of the Division.

(4) Simplified Procedure for Holders of Discharge Plans. Holders of an approved discharge plan may amend the discharge plan to provide for disposal of waste listed in Waste Listed in Subsection D, Paragraph (2) of this rule and, as applicable, Subsection D, Paragraph (3) of this rule. If the amendment to the Discharge Plan is approved, wastes listed in Subsection D, Paragraph (2) of this rule and Subsection D, Paragraph (3) of this rule may be disposed of at a solid waste facility without the necessity of prior written authorization of the Division.

D. Waste Governed By This Section

(1) Waste That Does Not Require Testing Before Disposal:

- (a) Barrels, drums, 5-gallon buckets, 1-gallon containers so long as empty and EPA-clean.
- (b) Contaminated brush and vegetation arising from clearing operations.
- (c) Uncontaminated concrete.
- (d) Uncontaminated construction debris.
- (e) Non-friable asbestos and asbestos contaminated waste material, so long as the disposal complies with all applicable federal and state regulations for friable asbestos materials and so long as asbestos is removed from steel pipes and boilers and, if applicable, the steel recycled.
- (f) Detergent buckets, so long as completely empty.
- (g) Fiberglass tanks so long as the tank is empty, cut up or shredded, and EPA clean.
- (h) Grease buckets, so long as empty and EPA clean.
- (i) Uncontaminated ferrous sulfate or elemental sulfur so long as recovery and sale as a raw material is not possible.
- (j) Metal pipe and metal cable.
- (k) Office trash.
- (l) Paper and paper bags, so long as empty (paper bags).
- (m) Plastic pit liners, so long as cleaned well.
- (n) Soiled rags or gloves. If wet, must pass Paint Filter Test prior to disposal.
- (o) Uncontaminated wood pallets.

(2) Waste That Must Be Tested:

- (a) Activated alumina must be tested for TPH and BTEX.
- (b) Activated carbon must be tested for TPH and BTEX.
- (c) Amine filters must be tested for BTEX (and air-dried for at least 48 hours before testing).
- (d) Friable asbestos and asbestos-contaminated waste material must be tested pursuant to NESHAP (and so long as the disposal otherwise complies with all applicable federal and state regulations for friable asbestos materials, and so long as asbestos is removed from steel pipes and boilers and, if applicable, the steel should be recycled before disposal).
- (e) Cooling tower filters must be tested for TCLP/total chromium (and drained and then air-dried for at least 48 hours before testing).
- (f) Dehydration filter media must be tested for TPH and BTEX (and drained and then air-dried for at least 48 hours before testing).
- (g) Gas condensate filters must be tested for BTEX (and drained and then air-dried for at least 48 hours before testing).
- (h) Glycol filters must be tested for BTEX (and drained and then air-dried for at least 48 hours before testing).
- (i) Iron sponge must be oxidized completely and then undergo Ignitability Testing.
- (j) Junked pipes, valves, and metal pipe must be tested for NORM.
- (k) Molecular sieves must be tested for TPH and BTEX (and must be cooled in a non-hydrocarbon inert atmosphere and hydrated in ambient air for at least 24 hours before testing).
- (l) Pipe scale and other deposits removed from pipeline and equipment must be tested for TPH, TCLP/metals and NORM.
- (m) Produced water filters must be tested for Corrosivity (and drained and then air-dried for at least 48 hours before testing).
- (n) Sandblasting sand must be tested for TCLP/metals or, at the discretion of the Division, TCLP/total metals.
- (o) Waste oil filters must be tested for TCLP/metals (and must be drained thoroughly of oil for at least 24 hours before testing and oil and metal parts must be recycled).

(3) Waste That May Be Disposed Of On A Case-By-Case Basis:

- (a) Sulfur contaminated soil.
- (b) Catalysts.
- (c) Contaminated soil other than petroleum contaminated soil.
- (d) Petroleum contaminated soil in the event of an emergency declared by the director.
- (e) Contaminated concrete.
- (f) Demolition debris not otherwise specified herein.
- (g) Unused dry chemicals (in addition to any testing required by the Division, a copy

of the Material Safety Data Sheet shall be forwarded to the Division and the solid waste facility on each chemical proposed for disposal).

- (h) Contaminated ferrous sulfate or elemental sulfur.
- (i) Unused pipe dope.
- (j) Support balls.
- (k) Tower packing materials.
- (l) Contaminated wood pallets.
- (m) Partial sacks of unused drilling mud (in addition to any testing required by the

Division, a copy of the Material Safety Data Sheet shall be forwarded to Division and the solid waste facility at which the partial sacks will be disposed).

- (n) Other wastes as applicable.

E. Testing

(1) General - Testing required herein shall be conducted according to the Test Methods for Evaluating Solid Waste, EPA No. SW-846. Any questions concerning the standards or a particular testing facility should be directed to the Division.

(2) Methodology - Testing for the following substances must also be conducted according to the test method listed:

- (a) TPH: EPA method 418.1 or 8015 (D-R-O and G-R-O only) or an alternative hydrocarbon analysis approved by the Division.
- (b) TCLP: EPA Method 1311 or an alternative hazardous constituent analysis approved by the Division.
- (c) Paint Filter Testing: EPA Method 9095A.
- (d) Ignitability Test: EPA Method 1030.
- (e) Corrosivity: EPA Method 1110.
- (f) Reactivity: Test procedures and standards established on a case-by-case basis by the Division.

- (g) NORM. 20 NMAC 3.1, Subpart 14.

(3) Limits - To be eligible for disposal pursuant to this section, substances found during testing shall not exceed the following limits:

- (a) Benzene: Less than 10 mg/Kg.
- (b) BTEX: Less than 500 mg/Kg (sum of all).
- (c) TPH: Shall not exceed 1000 mg/Kg.
- (d) Hazardous Air Pollutants: Shall not exceed the standards set forth in NESHAP.
- (e) TCLP: Shall not exceed the following:
  - (i) Arsenic: 5.0 mg/l
  - (ii) Barium: 100.0 mg/l
  - (iii) Cadmium: 1.0 mg/l
  - (iv) Chromium: 5.0 mg/l
  - (v) Lead: 5.0 mg/l
  - (vi) Mercury: 0.2 mg/l
  - (vii) Selenium: 1.0 mg/l
  - (viii) Silver: 5.0 mg/l