



NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

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December 27, 2005

CLARIFICATION OF STIPULATION OF OCD DISTRICT 2 REMEDIATION WORK PLAN APPROVALS

The New Mexico Oil Conservation Division District 2 Office approved the Remediation Work Plan in a letter dated December 5, 2005 for the release at the Graham AKD State No. 1 (30-015-26875).

On Friday, December 16, 2005 the Artesia District Office was notified of sampling to take place at this location on the following Monday. During our telephone conversation you stated that the work had been completed on the Graham AKD State No. 1. During a previous telephone conversation you said that the contractor would be performing the work sometime during the week and that I would be notified so that I could witness the operation of the jet/vac system on this location. No notification was received of the work until the call to set up a time and date to witness sampling after the work had been completed.

On Monday, December 22, 2005 Mr. Mike Bratcher (OCD District 2 Office) met with you on location to witness the sampling. Mr. Bratcher found that further work was necessary before sampling could be conducted.

OCD Rule 19.15.3.116.D [NMAC] requires that the responsible person for a release must complete division approved corrective action and that releases will be addressed in accordance with a remediation work plan submitted to and approved by the division. The stipulations provided in the December 5, 2005 letter for the Graham AKD State No. 1 required 24 hours notification of commencement of operations. The notification could be argued to have been given when you informed me that the cleanup would begin sometime during the week. However, it was agreed by you that I would be notified of the date and time that the operation would take place.

It is not my intent to provide an overly restrictive approval for remediation projects, however, when operations on a remediation take place and notification is assumed to have been given under the circumstances described above it is considered by me to be malicious compliance. Further, disregard for notifying the OCD of when operations commence hinders OCD personnel from performing the duties to which they are legally required to perform under the New Mexico Administrative Code.

Therefore, pursuant to OCD Rule 116, I am requiring that the OCD District 2 Office be provided with 24 hour notification of any operations performed by Yates Petroleum or their contractors or sub-contractors that is intended to excavate, wash, move or disturb (such as in tilling, blading, etc.) soils for the purpose of remediation of any location or haul any soils in or out of any location covered under any OCD District 2 approved remediation work plan. One notification covering multiple days or covering multiple types of work at one location is sufficient, however, a break of more than 5 days at one location or a significant change to work (e.g. from tilling to excavating or several days delay) requires a separate notification. Notification may be given by telephone or e-mail by you or by the person in charge of the work to be conducted. However, it is ultimately the responsible person, as defined by OCD Rule 7, that is required to ensure notification is given.

Future remediation work plan approval letters will be modified to ensure clarification of this requirement.

Artesia OCD District Office