



NEW MEXICO CATTLE GROWERS' ASSOCIATION  
P.O. Box 7517  
ALBUQUERQUE, NM 87194  
PHONE: 505/247-0584 FAX: 505/842-1766

FAX

Fax to: 505-476-3462

Attention: Florene Davidson

Date: May 4, 2012

From: Caren Cowan

Number of pages: 5 including cover

MESSAGE:

Please find attached the written comments, Pre-Hearing Statement, technical testimony & modifications for New Mexico Cattle Growers' Assoc and Caren Cowan.

Original will be mailed.

Thank you

RECEIVED OGD  
2012 MAY-4 P 11:52

**CONFIDENTIALITY NOTICE:** The documents accompanying this facsimile message contains confidential information expressly intended to be legally privileged, and is intended to be legally privileged, and is intended for the exclusive review of the recipient named herein. If you have received this facsimile in error, do not review such contents. Please contact this office immediately at the number indicated above to arrange for the return of the original. You are hereby notified that any unauthorized review, disclosure, copying or use in any manner of the contents hereof is strictly prohibited.

**STATE OF NEW MEXICO  
BEFORE THE  
ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF  
APPLICATION OF THE NEW MEXICO OIL AND GAS ASSOCIATION FOR  
AMENDMENT OF CERTAIN PROVISION OF TITLE 19, CHAPTER 15 OF THE NEW  
MEXICO ADMINISTRATIVE CODE CONCERNING PITS, CLOSED-LOOP  
SYSTEMS, BELOW GRADE TANKS AND SUMPS AND OTHER ALTERNATIVE  
METHODS RELATED TO THE FOREGOING MATTERS, STATEWIDE.**

**CASE NO. 14784**

---

**NEW MEXICO CATTLE GROWERS' ASSOCIATION  
NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY**

---

The New Mexico Cattle Growers' Association (NMCGA) files this Notice of Intent to Present Technical Testimony at the public hearing in this matter schedule to commence on May 14, 2012.

**1. Person filing the statement**

New Mexico Cattle Growers' Association

**2. Witness**

Caren Cowan, Ms. Cowan is executive director for the NMCGA and the New Mexico Wool Growers, Inc. She has worked with regulatory agencies in New Mexico and at the federal level for more than 20 years. She has provided expert testimony on a wide variety of issues affecting agriculture and livestock production before these agencies. She has testified before Congress and the New Mexico State Legislature. Ms. Cowan was a member of the Pit Rule Task Force in 2007.

**3. Testimony and Exhibits**

The direct testimony of Caren Cowan has been attached. During the hearing the Oil Conservation Division's (OCD) Modifications of NMOGA's Modifications was posted on the website on April 30, 2012 will be utilized as an exhibit. The NMCGA anticipates that it can summarize its' written testimony and respond to other parties in approximately 20 minutes.

### Testimony of Caren Cowan

The New Mexico Cattle Growers' Association (NMCGA) has members in all counties in New Mexico and also 14 other states. NMCGA appreciates this opportunity to present testimony before the Oil Conservation Commission (OCC) on the subject of pits, below grade tanks, sumps and other alternative methods related to this matter statewide. NMCGA had three members on the 2007 Pit Rule Task Force who, along with other interested parties, devoted many, many days in researching and developing the rule that was then presented to the OCC in an effort to protect New Mexico's valuable land and water resources while recognizing that oil and gas production is not only vital to our state's economy, but to agricultural and national security as a whole. NMCGA provided technical testimony during that hearing process as well.

The OCC did not adopt every recommendation of the Task Force. There were compromises within the Task Force before a recommendation was presented, but NMCGA and its' members were satisfied with the outcome of that rule-making process and believe this additional exercise is not necessary.

With that said NMCGA has conferred with some of the parties in this matter and appreciates the consideration that the New Mexico Oil and Gas Association (NMOGA) have given our organization's concerns. The testimony and suggested amendments that follow are based upon the Oil Conservation Division's (OCD) Modifications of NMOGA's Modifications was posted on the website on April 30, 2012.

In NMAC Section 19.15.17.7 **DEFINITIONS** there are a few items of concern.

Part I. "Low Chloride fluids" takes the content of chlorides from 3,000 mg/liter to 15,000 mg/liter. Increasing chloride by 200 percent is excessive, particularly in light of the shortening of setbacks in virtually every instance throughout the proposed modification. This level of chlorides is half as saline as seawater (30,000 mg/liter) and three to five times higher than "low chlorides" fluid as defined in other states. A level of 9,000 mg/liter would be a safer concentration.

Part F. "Restore" has been completely omitted. That leaves the impression that restoration or reclamation is not addressed within the proposed new rule. NMCGA respectfully requests this definition be retained or one be substituted that notes this rule does not relieve the duty to restore as contained in the Surface Owner Protection Act. The NMCGA propose the

following language: "Reclamation" means to return a site to former condition pursuant to 70-12-3(C) NMSA 1978.

In NMAC Section **19.15.17.9 PERMIT APPLICATION AND REGISTRATION** there are serious concerns regarding baseline ground water data. Parts A. (2), A. (3) and A. (4) remove any requirement for site specific data. Therefore, companies can rely upon "*a reasonable determination of probable ground water depth using data generated by models...*" Virtually every setback has been reduced. Therefore, the hazard to ground water will be extreme at a depth as shallow as 25 feet. While the section does provide for "*other tools as approved by the appropriate division district office*" there is little protection to water, New Mexico's most precious and life-giving resource.

NMCGA respectfully requests that site specific baseline data be gathered prior to any activity that may impact ground water.

In NMAC Section **19.15.17.10 SITING REQUIRMENTS** there are serious concerns regarding depths and setbacks for the siting of pits of all kind (e.g. temporary). These concerns are multiplied by the fact that in Section 19.15.17.7 Part K "Multi-well fluid management pit... may be located either onsite or offsite of a well drilling location..." NMCGA has been told that siting concerns are addressed in the siting of the well itself rather than the siting of the pit. This is untrue if multi-well fluid management pits may be located offsite from the well drilling location.

Further this entire Section uses the "low chloride fluid" standard of 15,000 mg/liter. By both increasing the chlorides AND reducing depths and setbacks, the water is put in jeopardy. Pits may be sited within 100 feet of "*private, domestic fresh water well or spring used for domestic or stock watering...*" A mere 30 yards between a pit and a livestock water facility, whether an earthen tank or a water trough is catastrophe for livestock owners.

NMCGA respectfully requests that the setback and depths in the current rule be maintained.

In Part K. Burial trenches for closure, Parts (1) and the omitted (9) and (10) appear to eliminate the requirement for a geomcmbrane liner cover. If private property owners are forced

to have waste that could be toxic buried on their property, at a minimum it must be covered to prevent as much potential contamination as possible.

NMCGA respectfully requests that any material buried be required to have both a geomembrane bottom liner and a cover.

In NMAC Section **19.15.17.12 OPERATIONAL REQUIREMENTS** Part B. (2) refers to "*normal operating circumstances...*" but does not appear to address abnormal circumstances in maintaining "at least two feet of freeboard for a temporary pit."

Part (3) changes pit inspection from weekly to monthly "as long as liquids remain in the temporary pit." NMCGA respectfully requests the weekly inspection be left in place. Too much can happen with the time span of a month with a non-inspected pit.

In part F. (4) operators are required to inspect the pit weekly while the pit has fluids, but are only required to document that inspection monthly. Each inspection should be documented.

NMCGA has grave concern of the removal of notice to surface owners in all sections. Current proposed rule has one citation in the Exceptions and Variance sections. NMCGA requests that OCD re-insert notice to surface owners in all sections.

Thank you for your time and attention. I stand ready for questions.