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January 4, 2012

Florene Davidson, Administrator
EMNRD Oil Conservation Division
1220 South St. Francis Drive
Santa Fe NM 87505

Re: Oil Conservation Commission Cases No. 14784 and 14785, Proposed Amendments to Title 19, Chapter 15, Parts 17 and 39.8 (B) NMAC; NMDGF Project No. 14808

Dear Ms. Davidson:

In response to your notice of public hearing and opportunity to provide public comments, the New Mexico Department of Game and Fish (Department) has reviewed the proposed rule amendments referenced above. The New Mexico Oil and Gas Association has applied for amendments to certain provisions of 19.15.17 NMAC, the New Mexico EMNRD Oil Conservation Division (OCD) "Pit Rule". The Independent Petroleum Association of New Mexico (IPA) has applied for identical amendments to the Pit Rule. In addition, the IPA has applied for amendment of 19.15.17.39.8 (B), Special Rules for Selected Areas of Sierra and Otero Counties.

The Department does not object to amendments authorizing standardized plans for pit construction, closure, and other matters provided they are only applied to sufficiently similar projects and locations. Neither do we object to including amendments regarding permits for multi-well fluid management pits. However, many of the other proposed changes would substantially weaken environmental protection, including wildlife habitats, from potential harmful effects of oilfield pits. It would be preferable to retain the rules in their present form rather than accept the amendments in total.

We offer the following comments on particular elements of the proposal:

- Retain siting requirements for protection of constructed wetlands, lakebeds, playa lakes and all springs (definition of "Wetlands", and 19.15.17.10.A and C). Retain the buffer zone distances as specified in the existing Pit Rule.
- Do not adopt relaxed rules for "Low Chloride drilling fluids". Chloride ions are present in produced oilfield water, primarily in the form of sodium chloride. Fluids containing the proposed limit of 15,000 mg/liter chloride will almost certainly exceed the recommended chronic exposure level of 1000 mg/liter sodium (Raisbeck et al, Water Quality for


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Wyoming Livestock and Wildlife) and be toxic to wildlife. In terms of habitat protection, there is significant potential for soil contamination that would inhibit plant growth if a large enough volume was spilled. Fluids, low in chloride, may still contain other contaminants that can damage surface water, ground water, or the soil vadose zone.

- Require wildlife protection netting on all pits, including temporary pits when workers are not present on site. Require wildlife escape ramps for all pits which are steep-sided and/or lined with smooth, slick materials (19.15.17.11 E, F, G, and J).
- Retain the requirements to file a pit inspection log with OCD, and to remove free liquids within 30 days (19.15.17.12 B(3) and (4)).
- Retain the stronger and more specific language in the existing Pit Rule in regards to site reclamation and revegetation (19.15.17.13 F).
- The Department believes that it is an unrealistic burden to require OCD to approve all variance requests unless they can "determine by scientific proof" that each variance does not adequately protect fresh water, public health and the environment (19.15.17.15 A(1)).
- Retain the ban on oilfield pits on Otero Mesa. This prohibition was intended to protect groundwater in an area of poorly understood, fractured subsurface geology. Otero Mesa also merits the additional protection of ephemeral waters and, in particular, soil and vegetative reclamation potential, that is provided by limiting oil and gas operations to the use of closed loop systems.

Thank you for the opportunity to provide written pre-hearing comment on these proposed rule amendments. In summary, we recommend the Commission retain both rules in their current form, or approve only those amendments that facilitate the permitting process without compromising protection of the environment. If there are any questions, please contact Rachel Jankowitz at 505-476-8159 or rjankowitz@state.nm.us.

Sincerely,



Matt Wunder, Ph.D.
Chief, Conservation Services Division

MW/rj

xc: USFWS NMES Field Office
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