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October 13, 2005

VIA EMAIL: ed.martin@state.nm.us

Mr. Ed Martin  
Environmental Bureau, Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

Re: Yates Petroleum Corporation comments  
Proposed Surface Waste Management Rules

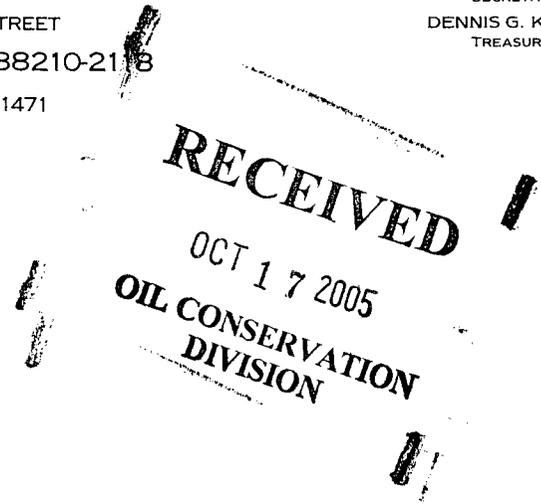
Dear Mr. Martin:

Yates Petroleum Corporation (Yates) appreciates this opportunity to provide pre-public hearing comments on the Oil Conservation Division's (OCD's) proposed Surface Waste Management Rules. Yates and its affiliated companies is a substantial producer of oil and natural gas in New Mexico. Yates operates production, treating, transportation and ancillary facilities, some of which potentially could be subject to the proposed rule.

### General Comments

Yates supports responsible regulation to ensure that all oilfield operations are conducted in a manner that protects freshwater and the environment. Yates believes that, by and large, the OCD has been successful in achieving responsible protection of the environment under its existing rules and that the Division has not demonstrated a compelling need for an additional regulatory program.

Yates objects to the proposed "good standing" requirements that the division proposes to impose in proposed 19.15.2.51(D) and 19.15.2.53(C)(7) unless the division makes the changes requested in Yates' comments on the proposed Enforcement Rules. Yates' comments on the proposed Enforcement Rules are attached and incorporated by reference. Bottom line: decisions not to grant a permit should be made after notice and an opportunity for hearing and failure to meet the conditions stated should not automatically and mandatorily disqualify an applicant from access to a form C-133 or a permit unless the division finds that the applicant cannot meet the standards and requirements of proposed 19.15.2.51 and/or 19.15.2.53.



Yates is concerned that the proposed Rules will diminish disposal options throughout New Mexico. This is a concern because as options diminish, the incentive for less scrupulous operators grows to short cut responsible disposal. Yates strongly urges the Division not to adopt rules that have the effect of substantially reducing legal, protective disposal. Any set of rules needs to leave a vibrant, multi-faceted treatment and disposal regime in place to avoid creating incentives for improper disposal.

As a general comment, the proposed Rules need to be revised to allow affiliated companies to cooperate in waste transportation, treatment and disposal. Cooperation diminishes the number of facilities, improves handling by allowing greater specialization, and reduces the burden on the complying companies and the Division. In its specific comments (detailed below), Yates has highlighted areas where the Division should allow affiliated companies to cooperate.

### Specific Comments

#### **Proposed 19.15.2.51 Transportation of Produced Water and Other Oilfield Waste**

In Paragraph (C), Yates is concerned about how it is to determine compliance with the condition that “no owner or operator shall permit produced water or other oilfield waste to be removed from its leases or field facilities ... except by a person possessing an approved form C-133.” While Yates can certainly ascertain at the time of hiring whether a contractor has an approved form C-133, there is no way to determine whether this form is subsequently revoked. The Division needs to address this problem. Yates recommends that the Division add the following language to Paragraphs (C) and (E):

C. No owner or operator shall permit produced water or other oilfield waste to be removed from its leases or field facilities by motor vehicle except by a person possessing an approved form C-133, *except that an owner or operator that has (1) verified that a person has an approved form C-133; and (2) requested notice from the division of any revocations of forms C-133, may permit produced water or other oilfield waste to be removed by that person until ten days after receiving notice from the division's Santa Fe office that the person's form C-133 has been suspended or revoked pursuant to Paragraph (E) of this Rule.*

While presumably the individual holding the form C-133 would notify the owner or operator of the form's suspension or revocation, this may not always occur and it is not possible for the owner or operator to continuously verify C-133 status. The proposed change provides a reasonable safe harbor for a diligent owner or operator while still achieving the division's enforcement goals.

Yates objects to the proposed “good standing” language in paragraph (D) for the reasons set forth in its General Comments.

Yates proposes the following conforming change to Paragraph (E):

E. Cancellation or suspension of authorization to move produced water and oilfield wastes. Vehicular movement or disposition of produced water or oilfield wastes is any manner contrary to division rules shall be cause, after notice and opportunity for hearing, for cancellation or suspension of a transporter's *form C-133*. *The division shall provide written notice of any such cancellation or suspension to owners or operators requesting notice of such actions.*

#### **Proposed 19.15.2.52 Disposition of Produced Water and Other Oilfield Wastes**

Yates proposes the following clarification to Paragraph (A):

A. Prohibited dispositions. Except as authorized *or exempted* by 19.15.2.50 NMAC or 19.15.2.53 NMAC, no person ....

The change is necessary to allow utilization of the express "exceptions" recognized by 19.15.2.53(B)(1).

#### **Proposed 19.15.2.53 Surface Waste Management Facilities**

##### **Paragraph (A)**

In paragraph (A)(2), Yates recommends that the division exempt pits regulated pursuant to 19.15.2.50 NMAC from the regulation. Otherwise, pits are subject to dual regulation by both Rule 50 and Rule 53. Yates proposes new clause (A)(2)(d), as follows:

(d) pits authorized by 19.15.2.50 NMAC.

Alternatively, proposed (A)(2)(b) through (c) could be eliminated and replaced by the proposed provision.

##### **Paragraph (B)**

In paragraph (B)(5), Yates strongly objects to the definition of "centralized facility" because it will cause extreme hardship and operational dislocation. Operating entities are sometimes made up of complex mixtures of subsidiary and affiliated entities that cooperate to produce oil and gas. The proposed rule, which focuses on a single "entity," does not reflect this reality. Therefore, Yates proposes the following revision:

- (5) A centralized facility is a surface waste management facility that:
- (a) does not receive compensation for waste management;
  - (b) is used exclusively by one generator, including its affiliates, subject to New Mexico's "Oil and Gas Conservation Tax Act" Section 7-30-1 NMSA 1978 as amended; and

- (c) receives exclusively wastes that are generated from production units, *equipment* or leases *owned or operated* by such generator *and its affiliates*.

A typical example is where the operating company has affiliated companies that hold various leases and the operating company disposes or treats the cuttings and fluids from all of the affiliated leases and a single location. Unless the division wishes to greatly increase the number of permitted disposal locations, allowance needs to be made for consolidation, which is desirable and results in better supervision, better treatment, and fewer impacted locations.

In paragraph (B)(6), the definition of “major modification” as it relates to treatment processes is too vague to provide guidance to either operators or the division. Yates proposes the following clarification:

- (6) A major modification is a modification of a facility that involves an increase in the total *permitted* operational capacity for treatment or storage of waste or the addition of a new treatment *unit or units of a type not previously permitted by the division for that facility*.

The proposed revision more clearly defines “operational capacity” by referencing an objective factor that can be included in future permits. The proposed revision further clarifies that it is the addition of a new treatment units, rather than the shuffling of existing units or minor operational adjustments to achieve better results using existing processes, that triggers the definition of “major modification.” This revision is more objective, giving greater certainty. In addition, the proposed definition is too restrictive and prevents operators from improving their treatment processes based on optimization of existing technologies, which is surely not an intended consequence of the division’s rule.

### **(C) Permitting Requirements**

In paragraph (C)(1)(d) the following phrase should be added:

- (d) a description of the facility with a diagram indicating the location of fences and cattle guards, and detailed construction/installation diagrams of any *new or modified* pits, liners, dikes, piping, sprayers, tanks, roads, fences, gates, berms, pipelines crossing the facility, buildings and chemical storage areas;

The proposed change clarifies that the diagram requirement is limited to new or modified facilities. Diagrams may not exist of existing facility and may not be reasonably practical to develop.

Similarly, in paragraph (C)(1)(e), the following phrase should be added:

- (e) engineering designs *for any new facility or modified part of an existing facility*, certified by a registered professional engineer, including technical data on the

design elements of each applicable *new or modified* disposal method and detailed designs of *new or modified* surface impoundments;

The proposed change clarifies that the engineering design requirement is limited to new or modified facilities. Engineering designs may not exist of existing facility and may not be reasonably practical to develop.

In paragraph (C)(1)(i), Yates objects to the proposed closure plan requirements to the extent that they require, without regard to circumstances, “grading and mounding of pits” and “re-seeding with native grasses.” There may be cases where these actions are not consistent with the proposed future use of the land. Yates therefore proposes to add the following phrase to the end of (C)(1)(i): “when appropriate and consistent with the intended future use.”

In paragraph (C)(1)(j), Yates believes that the level of geological/hydrological data required is unnecessary, particularly where the depth to groundwater is great. Geological and hydrological data can be extremely difficult and expensive to produce. The experience in Arizona with the aquifer protection permit program, which required similar data, ultimately proved that such detailed information was unnecessary and wasteful of both operating and division resources. Yates therefore requests that paragraph (C)(1)(j) be revised as follows:

- (i)-(ii) [No change]
- (iii) laboratory analyses for major cations and anions, RCRA metals and total dissolved solids (TDS) of groundwater samples of the shallowest freshwater aquifer *less than 100 feet* beneath the proposed site;
- (iv) [No change]
- (v) soil types beneath the facility, including a lithologic description of all soil and rock members from ground surface to the shallowest fresh water aquifer *or 100 feet below ground surface, whichever is less;*
- (vi) geologic cross-sections *to the shallowest fresh water aquifer or 100 feet below ground surface, whichever is less;*
- (vii) *if the depth to groundwater is 100 feet or less,* potentiometric maps for the shallowest fresh water aquifer;
- (viii) [No change]

These proposed revisions reasonably restrict the amount of data needed to that most important for proper permitting of the facility. The revision is consistent with the pit guidelines. Adequate authority exists under proposed 19.15.2.53(C)(1)(l) if additional information is needed.

In paragraph (C)(7), Yates objects to the proposed “good standing” requirement for the reasons set forth in its General Comments.

In paragraph (C)(8), the imposition of “additional requirements” should be subject to appeal and hearing. Yates recommends adding an additional sentence: “*An owner or operator may appeal the imposition of such additional conditions or requirements to the commission.*”

**(D) Operational Requirements**

In paragraph (D)(1), Yates recommends that form C-117-A be deleted from the list as it substantially duplicates proposed 19.15.2.53.

In paragraph (D)(8), the division will need to provide guidance on what constitutes a “watercourse” within the meaning of this rule. Existing facilities will need to be grandfathered from this requirement.

In paragraph (D)(10), the reference should be to 19.15.3.116 NMAC.

**(G) Operational requirements – landfarms**

Paragraph (G)(1) and (G)(2) need grandfathering as it relates to existing facilities. They could be reworded as follows:

- (1) *At new or modified facilities*, no contaminated soils shall be placed within 100 feet of the boundary of the facility;
- (2) *At new or modified facilities*, no contaminated soils shall be placed within 20 feet of any pipeline crossing the landfarm.

In paragraph (G)(4), Yates does not understand how it can sample *beneath* the landfarm cells without breaching cell integrity and creating a conduit for contamination to the subsurface. Yates is concerned that the proposed sampling regimen may cause the very contamination that the division is concerned about.

In paragraph (G)(12), Yates strongly objects to the limitations proposed. Yates has had extensive experience with the landfarming of some saline wastes and has found, with proper handling, that they may be appropriately landfarmed. Yates also objects to the *per se* exclusion of District I and II wastes and drill cuttings. Yates has successfully landfarmed these materials in the past. Yates proposes that the condition be revised as follows:

- (12) Salt-contaminated wastes shall not be placed in a landfarm cell *without prior division approval*. Wastes shall be considered salt-contaminated if chloride concentration exceeds 2,000 parts per million.

The proposed provision allows greater flexibility by allowing an operator to demonstrate that certain salt-contaminated materials may be landfarmed and by eliminating the presumption that some materials cannot be landfarmed. The appropriate demonstrations can be submitted to the division and the division can approve broader landfarming where there is substantial likelihood of success or a demonstrated prior history of successful landfarming.

**Second (H) Facility Closure**

Paragraph (H)(1) needs to provide for an opportunity to challenge division required modifications to the closure plan when they are not necessary to protect freshwater, public health or the environment. Yates proposes the following revision:

(1) Closure by permittee. The permittee shall notify the division at least 30 days prior to cessation of operations at the facility and provide a proposed schedule for closure. Upon receipt of such notice and proposed schedule, the division shall inspect the facility and review the closure plan for adequacy. The division shall notify the permittee when it has completed its review and inspection and *may, after notice and an opportunity for hearing*, specify modifications to the closure plan and proposed schedule or additional requirements that it determines are necessary for the protection of fresh water, public health or the environment. Closure shall proceed in accordance with the approved closure plan and schedule and any modifications or additional requirements imposed by the division *and upheld by the commission*. [rest unchanged]

The proposed conditions provide due process to a permittee in the face of potentially onerous or unnecessary modifications to the closure plan. While Yates does not anticipate that the division would knowingly impose such conditions, legitimate differences in technical opinion can exist and the rules need to provide for an impartial resolution to avoid the necessity for recourse to the court system.

A similar change should be made to paragraph (H)(2)(b)(ii), as follows:

(ii) advise the permittee and surety of the conditions under which the forfeiture may be avoided. Such conditions may include but are not limited to an agreement by the permittee or another party to perform closure operations in accordance with the conditions of the permit, the closure plan (including any modifications or additional requirements imposed by the division *and upheld by the commission if a hearing is requested by the permittee or other party performing the closure*) and division rules, and satisfactory demonstration that such party has the ability to perform such agreement.

### **(I) Existing Facilities**

Yates appreciates the division's attempt to address the transition of existing facilities to the proposed rule. Yates does not believe, however, that the proposed provision adequately addresses this complex problem. Yates proposes the following condition:

Surface waste management facilities with a pending permit application or in operation prior to the effective date of 19.15.2.53 may continue to operate after the effective date of 19.15.2.53 provided that such facilities comply with all permits, exceptions or waivers heretofore issued to such facilities, until such permits, exceptions, or waivers are modified or withdrawn for good cause after notice and opportunity for hearing. To the extent practicable, surface waste

management facilities with a pending permit application or in operation prior to the effective date of 19.15.2.53 shall comply with the requirements of subsections D through H<sup>1</sup>, except that such facilities need not comply with D(6) and (8); F; G(1), (2), (3) and (4); and H<sup>1</sup>(2), (3), (4), (5), and (6). Existing facilities that cannot comply with other requirements of subsections D through H<sup>1</sup> shall apply for a waiver from the division within 60 days of the effective date, which waiver shall be granted if the permittee can show that operation of the facility as presently configured and operated is substantially protective of freshwater, public health and the environment.

Where H<sup>1</sup> designates the first paragraph (H) and H<sup>2</sup> designates the second paragraph (H) in the proposed rule.

The proposed revision strikes a reasonable balance between the engineering requirements of the proposed rule, which cannot easily be implemented by existing facilities, and the operating requirements, which can more easily be implemented. It provides a variance procedure, after division review and approval, for those requirements that an existing facility cannot meet and it clarifies the operating approvals with which the existing facility must comply during the period after approval of the rule and when the facility enters the permitted universe.

Yates appreciates the opportunity to comment on the proposed rules. Please feel free to contact me at (505) 748-4185 or our legal counsel, Eric Hiser, at (480) 505-3927, if you have any questions or concerns about these comments.

Sincerely,



Lisa Norton  
Environmental Coordinator

Attachment

Cc: Mark E. Fesmire, Director, OCD (w/attachment)