

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

**IN THE MATTER OF THE APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION FOR REPEAL OF EXISTING RULE 709, 710 AND 711
CONCERNING SURFACE WASTE MANAGEMENT AND ADOPTION OF NEW
RULES GOVERNING SURFACE WASTE MANAGEMENT.**

CASE NO. 13586

PRE-HEARING STATEMENT

This Pre-Hearing Statement is submitted by Holland & Hart LLP as required by Oil
Conservation Division Rule 19.15.14.1204.B NMAC.

APPEARANCES OF PARTIES

APPLICANT

New Mexico Oil Conservation Division

ATTORNEY

David K. Brooks, Esq.
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

OTHER PARTIES

New Mexico Oil and Gas Association

ATTORNEY

William F. Carr, Esq.
Holland & Hart LLP
Post Office Box 2208
Santa Fe, NM 87504-2208
(505) 988-4421

STATEMENT OF CASE

APPLICANT OIL CONSERVATION DIVISION:

The hearing concerns the repeal of Oil Conservation Division Rules 709, 710 and 711 [Sections 709, 710 and 711 of 19.15.9 NMAC] that presently govern transportation and disposition of produced water and surface waste management facilities, and the adoption of new rules to govern the transportation and surface disposition of produced water and other oilfield wastes, and the permitting and operation of surface waste management facilities. The proposed amendments, if adopted, would extend permitting requirements for carriers of produced water and rules concerning surface disposition of produced water so that they will apply to all oilfield

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wastes, change the procedures for permitting new surface waste management facilities or modifications of existing facilities, prohibit disposal of salt-contaminated wastes in landfarms, and adopt other detailed regulations concerning surface waste management facilities.

THE NEW MEXICO OIL AND GAS ASSOCIATION:

On April 6, 2006, the New Mexico Oil and Gas Association ("NMOGA") filed with the Commission Clerk comments and specific modifications to the proposed rules. Copies of these comments and proposed amendments are attached to this pre-hearing statement. NMOGA will present testimony and call witnesses to review the proposed rules and to present testimony in support of their comments and recommended modifications. The testimony will also address the impact of the proposed rules on oil and gas operators in New Mexico.

WITNESSES AND PROPOSED EVIDENCE

NMOGA filed comments and recommended modifications to the proposed Surface Waste Management Rules on April 6, 2006. At the hearing, NMOGA will call a witness to present evidence, in support of these comments and proposed modifications. Among other matters set out in the April 6th Comments. Ms. Skelton or Ms. Perez will testify about NMOGA's concern that while Proposed Rule 51.C puts the burden on the operator to determine if water haulers are in good standing, the rules to not provide the operator with the information needed to meet this responsibility. NMOGA will testify against the inclusion of the "bad actor" provisions of proposed Rule 51.D(4) and the use of the Reclamation Fund for forfeited funds from surface waste management facilities. NMOGA will testify in support the recommendations of the Industry Committee's for small landfarm registration and its recommended alternative language concerning re-vegetation of sites.

<u>WITNESSES:</u>	<u>ESTIMATED TIME</u>	<u>NUMBER OF EXHIBITS</u>
<u>Kellie J. Skelton</u> Health, Safety Environmental (May Call)	30 Minutes	Approximately 3
Yolanda Perez Regulatory Specialist (May Call)	30 Minutes	Approximately 3

Exhibit 1 to this Pre-hearing Statement is a description of Ms. Skelton's education and experience.

Exhibit 2 to this Pre-hearing Statement is a description of Ms. Perez' education and experience.

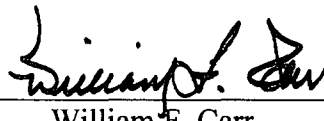
Exhibit 3 is NMOGA's April 6 comments to the proposed rules.

NMOGA may also present testimony on the comments and proposed modifications filed by the Industry Committee April 6, 2006.

PROCEDURAL MATTERS

None.

Respectfully submitted,
Holland & Hart, LLP

By: 
William F. Carr
110 North Guadalupe
Santa Fe, New Mexico 87501
(505) 988-4421

ATTORNEYS FOR THE NEW MEXICO OIL
AND GAS ASSOCIATION

CERTIFICATE OF SERVICE

I certify that on April 13, 2006 I served copies of the foregoing Pre-hearing Statement by U. S. Mail, postage prepaid, or Hand Delivery to the following:

Oil Conservation Commission (BY HAND DELIVERY)
Florene Davidson, Clerk
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Alletta Belin, Esq.
Belin & Sugarman
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Santa Fe, New Mexico 87501
Attorney for the New Mexico Citizens for Clean Air & Water, Inc.

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Ponderosa, New Mexico 87404

A handwritten signature in black ink, appearing to read "William F. Carr", is written over a horizontal line.

William F. Carr

KELLIE J. SKELTON

SUMMARY OF QUALIFICATIONS

1991 - 2005

Health, Safety and Environment

Over 14 years of professional experience managing multi-faceted environmental health and safety programs. Such endeavors have been highly successful due to versatility, talent, and experience, driven by an optimistic attitude. Such achievements have included exceptional regulatory relationships, reduced incident rates, contractor conformity, enhanced employee morale and improved regulatory compliance.

PROFESSIONAL EXPERIENCE

Energen Resources, Inc. September 2004-Current

Environmental & Safety Coordinator San Juan Region
Farmington, NM

- Environmental Compliance-responsible for all environmental compliance for the San Juan Region including air quality compliance, drilling pits, and remediation efforts to assure full compliance with environmental procedures and regulations for all Federal, State, Fee and Tribal lands.
- Safety Compliance-responsible for coordinating the safety policies, procedures, and regulations for the San Juan Region
- Training/Public Relations-researches and recommends to operations personnel appropriate vendors and consultants to assist with training and specialized studies. Coordinate environmental site assessments on all new acquisitions and review reports for deficiencies. Responsible for representing Energen Resources through various Environmental, Safety, and professional organizations
- Regulatory Compliance- Responsible for preparing, reviewing, and updating SPCC, Emergency response, and all other documents to meet regulatory requirements for the San Juan Region. Review and make comments to regulatory agencies on environmental impact studies, resource management plans and other special management areas that may have an impact on the regions operations.
- Project Safety-Promote on the job safety and training to achieve the Project safety goals as set forth in the yearly objectives

Halliburton Energy Services, August 1998 – 2004

Health Safety and Environmental Technical Professional-Rockies NWA
Farmington, NM, Nov. 2000-Present

Transferred to Farmington to lead the implementation of the Halliburton HSE program and facilitate the process in Farmington, and throughout the Rockies NWA.

- Performed audits to improve regulatory compliance at the Barite mine.
- Serve as a liaison with MSHA, State of Nevada, State of New Mexico, OCD, DEQ, EPA, OMI, GSA, Fish and Wildlife, Bureau of Land Management, and others.
- Lead the Farmington facilities to a reduction of incidents resulting in incident rates that were reduced in excess of 90 % to 1.85 (2003) from an original 14.44 and maintaining low incident rates.
- Implemented programs to achieve a reduced incident rate for an overall rate reduction of 87% over a three year period.
- Increased hazard identification 93% in 2001. Increased closure rate from 6 % to 92 %.
- Assisted in the closure of internal and external audits, all were closed by projected completion dates.
- Assisted many employees after initial training to successfully complete Taproot investigations, follow-through with appropriate corrective actions and improve on the incident investigation technique.
- Re-organized the HSE Team and assisted in the creation of HERT (Halliburton Emergency Response Team.)
- Waste Reduction: Participated on PII teams and represented the Rockies NWA as the HSE Radiation Specialist. Arranged the sampling and preparation of the documentation of frac fluid analysis for disposal and implementation of several recycle programs and product research to improve future waste reduction.

Health Safety and Environmental Technical Professional
Heavy Construction Specialist
Rocky Mountain Arsenal, August 1998-2000

Lead multiple sub-contractors with an excess of 200 employees and 50 permanent project employees with Brown and Root through 500,000 man-hours incident free.

- Developed and implemented safety, industrial hygiene, and environmental programs for this superfund site.
- Oversaw the development of subcontractor safety programs and performed evaluations for bid submittals.
- Coordinated between construction, US Army, Program Management Contractor, UXO (unexploded ordnance) personnel and safety departments in implementation of high-risk activities to completion in an accident free manner.
- Assisted in the OSHA VPP submittals which were approved and the site was declared an OSHA VPP Star Location.

- Assisted in the submittal for the ISO 14001 certification and continuing compliance.
- Hazardous waste characterization.
- Over site of Title C landfill construction.

Health Safety and Environmental Consultant-Owner

Fourjay Environmental Services

Denver, CO, August 1994 - August 1998

Owner Operator of Fourjay Environmental Services.

- Accomplishments included employee exposure assessments.
 - Including but not limited to personal air monitoring, area monitoring, sound level monitoring, and respiratory requirements.
- Development and implementation of medical monitoring programs for CERCLA, RCRA, and superfund sites.
- Development of customer safety programs.
- Oversight of large scale projects such as the Leadville, CO Mine stabilization and containment, Denver Pavilions, Burlington Hotel, North Washington Park, assessment, remediation, demolition, and construction.
- Over 2 million man-hours were accumulated incident free.

PROFESSIONAL MEMBERSHIPS

American Society of Safety Engineers

AWARDS RECEIVED

2004-Halliburton MVP Award

2000-Halliburton-Brown and Root safety award for leading B&R to one year incident free.

2003-Achievement for leading Shared Services to 18 months incident free and reducing the TRIR for the Farmington camp by nearly 90%.

1999-Halliburton MVP Award

1999-Achievement Award-issued by U.S. Army

CERTIFICATIONS

Certified Environmental Compliance Manager

2003-2004 Columbia Southern University

- Certification #14133. Recertification due January 30, 2007

MSHA 5000-23

2003-2004 MBA

ADDITIONAL PROJECTS

2003-2004-San Juan County Clean Up and Prevention of Illegal Dumping (SJC CUPID)

2002-2003-San Juan County Clean Up and Prevention of Illegal Dumping (SJC CUPID)

Currently serving as the Environmental committee chairman of the SJC CUPID. This is a voluntary project that has been a successful endeavor personally and professionally.

2004 – current: NMOGA Regulatory Practices Committee and NMOGA Environmental Affairs Committee.

MISCELLANEOUS SKILLS

- Extensive knowledge of federal reporting including Form R, Tier II, hazardous waste, DOT, OSHA, MSHA, LEPC, Title V, and local reporting requirements.
- Air monitoring specialist
- Knowledge and implementation history of ISO 14001, 9001, OSHA 18000 and OSHA VPP.
- Internal auditor certification for ISO 14001 Environmental Management Systems
- Additional training and certifications are available upon request.

Yolanda Perez

P.O. Box 323
East Bernard, TX 77435
Work: (832) 486-2329
Home: (979) 335-6189
Cell: (281) 744-6714

PROFESSIONAL EXPERIENCE

ConocoPhillips Company

Sr. Regulatory Specialist

(1999 – present)

- Tactical (permitting) for New Mexico and Colorado operations.
- Work with Management, Business Unit Teams, outside members of industry, and Trade Organizations to develop company and industry positions regarding regulatory and Legislative issues. (Co-Chair for New Mexico Oil & Gas Association's Regulatory Practices Committee)
- Strategic Regulatory - Monitor regulatory developments, interpret impact, provide guidance on strategic direction and develop plans for implementation of existing and emerging State, Federal, Tribal, and Local regulations.
- Develop Regulatory processes (cradle to grave) to ensure compliance and provide training on same to all affected entities, i.e. Business Unit teams, field operations, production accounting, etc..
- Lead the Lower 48 Regulatory Knowledge Network for ConocoPhillips.
- Develop and maintain working relationships with governmental agencies to maintain ConocoPhillips' excellent reputation as a prudent operator.

Regulatory Analyst

(1998 – 1999)

- Prepared the Texas Regulatory permitting for Lobo (South Texas) Business Unit.

Unocal

E&P Specialist – Unocal

(1993 – 1998)

- E&P Specialist for 5 years. Responsibilities included: Regulatory permitting for Texas and Louisiana, maintaining production data base, maintained well work records, input AFE Data, prepared field expense and capital budgets, and maintained run tickets and meter maintenance records.

Field Operator II – Unocal

(1980-1993)

- Unocal Field Operator for 13 years. Responsibilities included: gauging tanks, reading meters, well testing, preparing daily production reports, maintaining emergency shutdown systems, assisted with compressor and pump repairs, maintained separators and heater treaters, and maintained chemical inventory records.

Field Clerk – Unocal

(1976-1979)

- Unocal Field Clerk for 3 years. Responsibilities included: Daily and monthly production reports, Texas Railroad Commission correspondence, processed invoices and delivery tickets, and maintained run ticket records.

06 April 2006

Florene Davidson, Commission Secretary
New Mexico Oil Conservation Commission
1220 St. Francis Drive
Santa Fe, NM. 87505

**RE: Comments of the New Mexico Oil Gas Association on the
Oil Conservation Division's Proposed Modifications of the
Surface Waste Management Rules**

GENERAL COMMENTS:

The New Mexico Oil and Gas Association (NMOGA) represents 300 member companies, ranging from independent to major producers, which produce 98% of all the oil and gas production in the state, pipeline companies, well servicing and field services companies, refineries and processing plants. NMOGA promotes the welfare of the oil and gas industry and the conservation and orderly development of the oil and gas resources within the state of New Mexico.

The following comments are provided on behalf of the NMOGA member companies on the draft of the Oil Conservation Division's (Division) Surface Waste Management Rules that will be considered at the April 20, 2006 Oil Conservation Commission (Commission) hearing. Individual member companies have also submitted comments on these proposed rules and will be in attendance at the April 20, 2006 hearing to provide further comment on the current proposal.

We support regulation by formal rule, not by guideline, and believe the development of appropriate rules for surface waste management and disposal are in the best interest of the Division and Commission as well as the oil and gas industry. Furthermore, we appreciate the extension of the hearing schedule on these rules that allowed much needed time to prepare additional comments.

The members of NMOGA support rules and regulations that protect the fresh water resources of this state and encourage the development of our mineral resources in a way that protects human health and the environment. However, we are concerned that the proposed rules: a) do not allow flexibility and risk management, b) may unnecessarily limit disposal options, and c) require additional costs for waste management with little to no additional environmental protection. We also believe that certain provisions in the proposed Surface Waste Management Rules overlap with the provisions of the pending pit rules and that these provisions should be incorporated into and reviewed in the meetings and hearings on those rules.

NMOGA is in full support of the attached proposed alternative language, comments and science-based approach recommended by the *Industry Committee*. The make-up of the *Industry Committee* are all NMOGA members who have extensive oil and gas operations within the state of New Mexico and represent major and independent producers that operate in both the northwest and southeast. It is the intent of the *Industry Committee* to incorporate current science and operation flexibility into the Division's proposed surface waste management rules. Additionally, NMOGA supports the *Industry Committee* technical witnesses who are experts in the fields of hydrocarbon remediation, soil science, hydrocarbon toxicology and risk assessments, vados zone hydrogeology and groundwater quality issues as well as their expert in landfill permitting, design and operations.

SPECIFIC COMMENTS:

RULE 51 (19.15.2.51 NMAC): TRANSPORTATION OF PRODUCED WATER, DRILLING FLUIDS AND OTHER OILFIELD WASTE:

Proposed Rule 51.A

NMOGA supports the *Industry Committee* amended language that allows the transportation of liquid waste by the operator to another lease, tank battery or facility owned or operated by the same operator of the lease or producing property. (see attached)

Proposed Rule 51.C

Under this section of the rule it would be the operator's duty to assure that any water hauler it uses is in good standing with the Division. Since the proposed language

seemingly abrogates OCD's responsibility to enforce their rules and places the enforcement responsibility on the operator to determine if the water haulers they use are in good standing, the division should provide notice of the revocation of forms C-133 and thereby provide the information needed by operators to assure they only use water haulers who are in good standing.

NMOGA supports the *Industry Committee* language that requires the OCD to post monthly an approved list of transporters on its website, as well as a list of transporters who have had their C-133s suspended or canceled. (see attached)

Proposed Rule 51.D (4)

NMOGA is unaware of a "bad actor" provision being adopted in Rule without specific mandate by statute. The Solid Waste Act, Hazardous Waste Act and Water Quality Act have provisions which are intended to give the regulatory agency authority to keep criminal organizations from participating in businesses regulated under the authority of these laws. There is no evidence that adding this provision to proposed Rule 51 is necessary for such purpose.

NMOGA supports the *Industry Committee* deletion of the language. (see attached)

RULE 53 (19.15.2.53 NMAC): SURFACE WASTE MANAGEMENT FACILITIES:

Proposed Rule 53.H

NMOGA supports the language deletions and suggestions by the *Industry Committee* for small landfarm registration and general operating rules. We strongly feel that the amended language sets perimeters that ease administrative burden for the Division as well as industry while protecting fresh water, public health and the environment.

Proposed Rule 53.H(2)(a)

(2) General operating rules. An operator shall:

"(a) operate only one active small land farm per lease at any time:"

NMOGA members have commented that because multiple wells may exist on a lease, and a lease can often encompass several sections, NMOGA members feel that a small land farm should not be limited to an entire lease so that small remediations may occur on the location as needed. This would allow operators to conduct "small land farms" on site at the well pad and not physically remove the contaminated soil over many miles to a central site on lease, which only increases the potential environmental impact through

transportation and secondary environmental issues associated with dust, truck emissions, and waste consolidation.

NMOGA supports the deletion of: ~~(a) operate only one active small land farm per lease at any time~~; in its entirety. (see attached)

Proposed Rule 53.J (3)(d)

(3) Facility closure initiated by the division. Forfeiture of financial assurance.

"All amounts collected as a result of forfeiture of any financial assurance shall be deposited in the Oil and Gas Reclamation Fund."

The Oil and Gas Reclamation Fund is a statutory fund set up to receive funding from the Oil and Gas Conservation Tax for the sole purpose of:

- (1) employing the necessary personnel to survey abandoned wells, well sites and associated production facilities and preparing plans for the plugging of abandoned wells that have not been plugged or that have been improperly plugged and for the restoration and remediation of abandoned well sites and associated production facilities that have not been properly restored and remediated; and
- (2) supporting energy education throughout the state in an amount not to exceed one hundred fifty thousand dollars (\$150,000) annually.

NMOGA members do not feel that the Reclamation Fund is the correct mechanism for the purpose of receiving forfeited funds from Surface Waste Management Facilities. As you are aware, the Reclamation Fund is capped at \$1.5 million and any amount over the \$1.5 million flows to the General Fund, which the Division does not have access to.

NMOGA is opposed to the forfeited (dedicated) Surface Waste Financial Assurance being deposited in the Oil and Gas Reclamation Fund as the monies dedicated to the fund are paid by the oil and gas industry for a specific reason.

NMOGA members recommend that the Division set up a separate account to be used for the forfeited monies intended only for the specific purpose of surface waste facilities closures.

Proposed Rule 53.J (2) and J(5)

(2) Release of financial assurance.

"In any event, the division will not finally release the financial assurance until it determines that the operator has successfully re-vegetated the site, or, if the division

has approved an alternative site use plan, or until the land owner ~~or tenant~~ has obtained necessary regulatory approvals and begun implementation of such use."

(5) Alternatives to re-vegetation.

"If the operator or owner ~~or tenant~~ of the land contemplates use of the land where a cell or facility is located for purposes inconsistent with re-vegetation, the operator or owner ~~or tenant~~ may, with division approval, implement an alternative surface treatment appropriate for the contemplated use, provided that the alternative treatment will effectively prevent erosion. If the division approves an alternative to re-vegetation, it shall not release the portion of the operator's financial assurance reserved for post-closure until the land owner ~~or tenant~~ has obtained necessary regulatory approvals and begun implementation of such alternative use."

NMOGA has no knowledge, nor can we find in state statutes, a situation where tenants are automatically deemed to have "property rights" and are allowed to make what should be a surface owner decisions on leased surface.

On state and federal owned surface, it is the surface management agency that makes the decisions, and not the surface lessee. Unless the surface owner has abrogated their property rights to the tenant, the tenants do not have the privilege or the right to approve or dictate closure alternatives, or re-vegetation alternatives, unless agreed upon in the original lease contract between the owner and the tenant.

NMOGA recommends that "tenant" be deleted from Rule 53.

Proposed Rule 53.I

This section of the rule addresses evaporation ponds and should be moved to the proposed pit rule.

CONCLUSION

On behalf of the member companies of the New Mexico Oil and Gas Association, we appreciate the opportunity to comment on the Division's proposed Surface Waste Management Rules. NMOGA remains committed to working with the Division to protect New Mexico's fresh water, the environment, and wildlife resources while developing the State's vital energy resources.