



Oil Conservation Commission
1220 South St. Francis Drive
Santa Fe, 87505

Date: September 21, 2006

RE: Surface Waste Management
Comments/Hearing

Commissioner:

The following are comments that I (Raye Miller -Marbob Energy Corp.) have in regard to the proposed rule and the working group process.

Marbob Energy Corp. would like to thank OCD for taking the time and effort in conducting the stakeholder's workgroup process. The workgroup focused on many specific issues, built relationships and was able to work through many of the issues with reasonable solutions that addressed most of each party's concerns. I would like to address some specific issues still left in the proposed rule that are in my opinion unworkable or will need further attention before adoption into the rule.

It was brought to the groups attention at the tail end of the meetings that existing facilities would have to meet the new proposed standards. Late work was completed by the workgroup to give existing facilities some period of closure under the old rules. This issue became item # 11, and was not prioritized earlier but needs to be adopted. These facilities were previously allowed to accept material that would now make it impossible to comply with the new rules. I believe that existing facilities should be allowed to operate under the old rules. New material received at these facilities should comply with the new rules however closure standards should be completed according to the standards in place at the time of permit approval.

The proposed closure standards will not work for new facilities. The new standards allow for default of background as an alternative. Such that it is the higher of the standard or natural background at the site. Our company has paid for laboratory analysis of three soil samples and four oil samples. The soil samples were background at two existing land farms in Lea County and one oil and gas production site in Chaves County. The results identified some of the problems with the proposed rule. Example -

One Lea county land farm had a background Iron content of 2030 mg/kg. The other Lea county land farm had a background Iron content of 5490 and the Chaves county location had an Iron content of 6550. When oil was mixed with the soil in Chaves County as in the case of a spill it lowered the Iron content to 4720, but if this material was hauled to the first Lea county land farm which had a background of 2030, it would raise the Iron content above an acceptable closure standard. Iron will not remediate over time and as a result, this cell could never meet the proposed closure standard. The proposed closure standard for Iron is 277 or background. Obviously, by the test we ran in the southeast, background will always be the closure standard for several organic constituents. To confirm this flaw, samples were taken inside land farm cells that are ready for closure. The sample inside the first Lea County land farm had an Iron content of 4030 compared to background of 2030 or nearly double. This failure to meet closure standards is **NOT** a result of the waste but is due to the elements in native uncontaminated soils. This problem is a result of the standards being ultra conservative. The criteria used by OCD in developing the standards are the most conservative possible. OCD used a DAF factor of 1. This means that basically the material in the land farm is in direct contact with ground water. While there may be areas where ground water is very shallow, I do not believe that OCD has previously permitted or will permit any future facilities where groundwater is shallow. By using a more reasonable DAF, the closure standards would be more realistic and yet still protect human health and the environment.

To address these concerns, the Commission could omit adopting the section of the rule dealing with the 3103 constituent list and ask OCD to gather additional information and propose closure standards that would be workable to protect human health and the environment. Alternatively, the OCD could propose a change in the rule which would allow for naturally occurring levels of elements in the soils to be exempt from the closure standards. This would allow soil differences to be taken into account when looking at closure limits. Another solution would be for the OCD to prepare new language accepting the risk-based site specific approach that would propose closure standards in the permit application process based upon individual site conditions that also protects human health and the environment. There is a great potential risk if the Commission does not decide to change these closure standards. I believe no new land farms will be established under the new rules since a prudent operator can not be assured of a successful closure. With the alternative to closure being dig and haul the risk of not being allowed to close in place is too great to undertake the venture. The Commission and OCD must look closely at what is the targeted objective. Do we want material remediated and put back to a useful purpose or do we want to build large waste sites? If the answer is that we want well managed land farms then we must design the rules to work towards that end.

The workgroups proposal reduces the cost burden placed on land farms, but we need to look at the remaining cost placed on these facilities. If they serve a good purpose rather than just adding this material to perpetual disposal sites then we need to make

sure that we have not regulated them out of business. The Commission should ask OCD to identify the increased cost placed on operators by these new rules and whether that makes disposal more economic than remediation.

In the future, I would hope that the Commission would ask OCD to consider utilizing the workgroup process in any upcoming rule making. If OCD is considering review of the pit rules, I would suggest that a workgroup be formed immediately and that issues be framed, discussed, and solutions identified prior to rewriting or drafting a new rule. If all parties participate then the proposed rule will be significantly less controversial and the hearing can deal with the few unresolved issues. I know that timeliness is important but the workgroup on waste management dealt with short time frames and met its deadlines. Likewise, reasonable time frames should be established up front for any pit work group.

Again, Marbob Energy Corp. would like to thank OCC for allowing the workgroup process to be conducted and we would ask the commission to not adopt the proposed 3103 standards list which would make for "bad rule making".

Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink that reads "Raye Miller". The signature is written in a cursive style with a large, prominent "R" and "M".

Raye Miller,
Secretary Treasurer