

October 25, 1995

New Mexico Oil Conservation Commission
2040 South Pacheco Street
Santa Fe NM 87505

Re: [REDACTED]

Dear Commissioners:

Two issues of great concern in the revision of Rule 711 are the liabilities to the State arising from improperly documented waste and the need for the ability to inspect solid waste streams going to commercial facilities.

If the Commission accepts the NMOGA premise that by virtue of paying taxes a permittee guarantees to pay the difference between the actual costs to close a facility and a minimal bonding requirement, then the Commission should consider some quantity of production that the permittee needs to operate in order to make this guarantee. As currently proposed by the NMOGA a permittee could conceivably need only one small producing well to qualify for a centralized facility and bring into New Mexico large amounts of solid waste. When considering how to quantify this qualification it quickly bogs down and becomes awkward. I strongly support the alternative that better defines a centralized facility as one which basically accepts only waste generated in New Mexico. This does not prevent an operator from permitting his facility or a small portion of his facility as commercial in order to take out-of-state wastes. An operator always has the opportunity of using another commercial facility, too.

Since our implementation of the directives from the Director's April, 1993, memorandum concerning permitting of waste accepted by commercial facilities, we have discovered several instances of improperly classified waste which would have otherwise been improperly documented and improperly (illegally) disposed of in a commercial facility. My recommendation to require the permitting of all waste going to a commercial facility on an 'incident' basis would help to prevent this problem. It will also decrease liability to the State because the EPA will accept the State's approval process and have little reason to inspect these facilities. Under the NMOGA proposal each facility is more subject to inspection and wastes are more subject to testing. If wastes are found which meet hazardous criteria then backtracking of those wastes will be required. If errors in waste classification occur then the EPA could reclassify the site and then the State and those operators who contributed waste to the facility will have the responsibility to clean it up. Also, requiring the permitting of all wastes going to a commercial facility is the only method that gives us the opportunity to require the approval of originating jurisdictions for wastes coming into New Mexico.

There are some who will try to convince you that such a permitting system is no less than 'waste tracking' and therefore should not be allowed. The expression "waste tracking" is like the expression "racist." Its improper use, accidentally or deliberately, can polarize, emotionalize, and distract people from real issues and adds no real meaning to a discussion.

Sincerely,

Frank Chavez
Frank T. Chavez
District Supervisor