



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



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GOVERNOR

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CABINET SECRETARY

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Case 11143

MEMORANDUM

**TO: ANITA LOCKWOOD, Secretary
Energy, Minerals & Natural Resources Department**

**FROM: WILLIAM J. LEMAY, Director *WJL*
Oil Conservation Division**

**SUBJECT: REVISIONS TO RULE 711 AND NEW MEXICO STATE REVIEW
IMPLEMENTATION PLAN**

DATE: SEPTEMBER 30, 1994

As per your September 9, 1994 memorandum, enclosed is our most recent draft of the Rule 711 surface waste disposal facility changes. This draft will be released on October 25th for notice to the industry explaining that it will be heard at the Oil Conservation Commission hearing on November 17, 1994. I have told industry that the Commission will not receive testimony on that date but will be given copies of the OCD proposed rule changes and a committee will be appointed to make recommendations concerning these proposed changes. Changes are highlighted on the enclosed copy.

Also, enclosed is the action plan for the New Mexico State Review Implementation. There are a total of 74 recommendations. We plan to respond to all recommendations except where noted on the enclosed action plan. If you have any questions or need additional information, give me a call.

RULE 711 - ~~COMMERCIAL~~ SURFACE WASTE DISPOSAL FACILITIES

(as of)

A. A commercial surface waste disposal facility is defined as any facility that receives compensation for collection, disposal, evaporation, remediation or storage of produced water, drilling fluids, drill cuttings, completion fluids, contaminated soils and/or, upon written approval by the Division, other approved oil field related waste in surface pits, ponds, or below grade tanks, or on the ground surface. ~~Such facility will not be allowed to operate unless it has been permitted in conformity with the following provisions:~~

B. A centralized surface waste disposal facility is defined as any facility that:

1. provides for collection, disposal, remediation, evaporation or storage of produced water, drilling fluids, drill cuttings, completion fluids, contaminated soils, and/or other approved oilfield related wastes in surface pits, ponds, below grade tanks or on the ground surface, and;
2. is owned by a single company/proprietor and receives wastes from two or more sites owned by that same company/proprietor, and;
3. receives in excess of ten (10) barrels/day or five (5) cubic yards/day of waste or has a capacity to hold five hundred (500) barrels or more or one hundred (100) cubic yards or more.

C. Surface waste disposal facilities that receive wastes from a single well or are smaller than the size limitations of B.3. above will be permitted by the appropriate OCD District office. These facilities will be permitted through the Application to Drill (APD) process or supplemental District permitting.

D. Commercial and centralized surface disposal facilities will not be allowed construct, reconstruct, enlarge, modify or operate unless they have been permitted in conformity with the following provisions:

1. ~~Prior to the construction, reconstruction or enlargement of a commercial surface waste disposal facility,~~ An application, Form C- , for a permit to construct and operate a new facility or a to modify ~~ication~~ to an existing permit shall be filed in DUPLICATE with the Santa Fe Office of the Division and ONE COPY ~~te~~ with the appropriate district office. The application shall be submitted pursuant to Division guidelines and shall be accompanied by:

- a. The names and addresses of all corporate officers;
- b.a A plat and topographic map showing the location of the facility in relation to governmental surveys (1/4 1/4 section, township, and range), highways or roads giving access to the facility site, and watercourses, fresh water sources wells, and dwellings within one (1) mile of the site;
- c.b The names and addresses of the landowners of the real property on which the disposal facility is sited and landowners of the real property of record within one-half (1) mile of the site;
- d.e A description of the facility with a diagram indicating location of fences and cattle guards, and detailed engineering construction/installation diagrams of any pits, liners, dikes, piping, sprayers, and tanks on the facility, prepared in accordance with Division guidelines; ~~"Guidelines for Permit Application, Design and Construction of Waste Storage/Disposal Pits,"~~
- e.d A plan for disposal of approved waste solids or liquids in accordance with Division rules, regulations and guidelines;
- f.e A contingency plan for reporting and cleanup of spills or releases;
- g.f A routine inspection and maintenance plan to ensure permit compliance;
- h.g A closure plan and a closure cost estimate. The cost estimate will be secured from a disinterested third party and certified by a registered professional engineer. The estimate must be deemed by the Director to be adequate to conduct and complete the closure plan if such closure had to be done by the Division. The estimate will include at a minimum the disposition of all fluids, removal/remediation of all contaminated solids if necessary, removal of all facilities and recontouring and reseedling of the surface based on approved post-disposal land use or other surface reclamation as may be approved by the surface landowner and the Division;
- i.h Geological/hydrological evidence, including

depth to and quality of groundwater beneath the site, demonstrating that disposal of oil field wastes will not adversely impact fresh water;

- j.† Proof that the notice requirements of this Rule have been met;
- k.‡ Certification by an authorized representative of the applicant that information submitted in the application is true, accurate, and complete to the best of the applicant's knowledge; and
- l.* Such other information as is necessary to demonstrate that the operation of the facility will not impact surface water, groundwater, public health or the environment and that the facility will be in compliance with OCD rules and/or orders.

2. The applicant shall give written notice of application for construction and operation of a commercial surface waste disposal facility to the ~~owners of surface landowners lands~~ and occupants thereof within one-half (1/2) mile, the county clerk and county commission where the facility is located or is proposed to be located, and the city clerk or other appropriate city official(s) if the facility is located or proposed to be located within city limits or within one (1) mile of the city limits. The distance requirements for notice may be extended by the Director if the Director determines the proposed site is in an environmentally sensitive area or the proposed facility has the potential to impact public health at a distance greater than one (1) mile. ~~and a~~ A copy and proof of such notice will be furnished to the Division. The Division will issue public notice ~~by advertisement~~ in a paper of general circulation ~~published~~ in the county in which the disposal facility is to be located. For permit modifications, the Division may issue public notice and may require the applicant to give written notice as above. ~~Any person seeking to comment on such application must file comments with the Division within 30 days of the date of public notice. If there is objection by owners or occupants of adjacent lands, the Director of the Division may set any application for a surface waste disposal permit for public hearing.~~ Following public notice and prior to ruling on any proposed disposal facility, its modification or renewal, the Director shall allow a period of at least thirty (30) days during which comments may be submitted to the Director and a public hearing may be requested by any interested person. Requests for a public hearing must be in writing to the Director and shall set forth the reasons why a hearing should be held. A public hearing shall be held if the director determines there is significant public interest.

3. Upon determination by the Division that the permit

is administratively approvable ~~Before commencing construction~~ all commercial surface waste disposal facilities shall have a surety or cash bond in the amount of \$25,000, in a form approved by the Division⁷. Before the end of the first year of operations, all commercial surface waste disposal facilities will have a surety or cash bond in the amount estimated in item 1.h. above according to the following schedule:

- within three months of commencing operations or when the facility is filled to 25% of the permitted capacity, which ever comes first, the bond amount must be increased to 25% of the estimated closure cost;
- within six months of commencing operations or when the facility is filled to 50% of the permitted capacity, which ever comes first, the bond amount must be increased to 50% of the estimated closure cost;
- within nine (9) months of commencing operations or when the facility is filled to 75% of the permitted capacity, which ever comes first, the bond amount must be increased to 75% of the estimated closure cost;
- within twelve (12) months of commencing operations or when the facility is filled to 100% of the permitted capacity, which ever comes first, the bond amount must be increased to the estimated closure cost.

The bond shall be payable to the State of New Mexico and shall be conditioned upon compliance with statutes of the State of New Mexico and rules of the Division, and satisfactory cleanup of the site upon cessation of operation, in accordance with Part (1016) of this Rule. ~~If a bond has been secured for a treating plant permit at the location, that bond shall be sufficient for the surface waste disposal portion of the facility, providing they are contiguous.~~ If an adequate bond is posted by the applicant with a federal or state agency and the bond otherwise fulfills the requirements of this rule, the Division may consider the bond as satisfying the requirement of this rule. The applicant must notify the Division of any material change affecting the bond filed for the site and must, in any case, report the status of their bond annually to the Division;

4. The Director of the Division may administratively issue a permit upon a finding that a complete and proper application has been filed and that the conditions of part 2 and 3 above have been met ~~no significant objections have been filed within 30 days following public notice.~~ All permits shall be ~~are~~ revocable, after notice and hearing, upon showing of good cause ~~and are transferable only upon written approval of the Division~~

~~Director~~. The permit shall be consistent with the application and appropriate requirements of Division Rules and The Oil and Gas Act. Commercial surface waste disposal facility permits shall be issued for a period not to exceed five (5) years and, prior to expiration, may be renewed for periods not to exceed five (5) years at a time. The conditions of an expired permit may be continued in force until the effective date of approval of a permit renewal if a timely and complete application for renewal of the permit has been submitted and the Division, through no fault of the applicant, does not approve the renewal on or before the expiration date of the previous permit. A permit continued under this provision remains fully effective and enforceable. An application shall be deemed to be timely for the purposes of this section if the renewal application is submitted at least 120 days before the expiration of the permit.

5. A commercial surface waste disposal facility permit may not be transferred without the prior written approval of the Director. Until such transfer is approved by the Director and the required bond is in place, the transferor's bond will not be released and the proposed transferee may not conduct any activities otherwise authorized by the permit.

6.5 All surface waste disposal facility permittees shall file forms C-117-A, C-118, and/or C-120-A as required by OCD rules.

7. The permittee shall require the following documentation prior to accepting wastes at commercial disposal facilities and shall submit such documentation and a "Request For Approval To Accept Solid Waste", OCD Form C- , to the appropriate District:

- a. Exempt Oilfield Wastes: A "Certification of Waste Status" signed by an authorized representative of the generator certifying that the wastes are generated from oil and gas exploration and production operations, are exempt from Resource Conservation and Recovery Act (RCRA) Subtitle C regulations and that no non-exempt wastes are mixed with the wastes. Acceptance will be only after approval from the appropriate OCD District office.
- b. Non-exempt, Non-hazardous Oilfield Wastes: Wastes generated at facilities under the jurisdiction of the OCD shall have the analytical results for hazardous waste characterization and must be determined to be non-hazardous. Acceptance will be on a case-by-case basis after approval from OCD Santa Fe and the appropriate OCD district office.

8. At no time will wastes which are determined to be RCRA Subtitle C hazardous wastes by either listing or testing be

accepted at an OCD permitted disposal facility.

9. All facilities shall physically segregate exempt and non-exempt wastes.

10.6 Each permittee of a commercial surface disposal facility shall keep and make available for inspection records for each calendar month on the source, location, volume and type of waste (produced water, acids, completion fluids, drilling mud, etc.), date of disposal, and hauling company that disposes of fluids or material in their facility. Such records shall be maintained for a period of ~~two (2)~~ five (5) years from the date of disposal.

11.7 Disposal at a surface facility shall occur only when an attendant is on duty. The facility shall be secured to prevent unauthorized disposal when no attendant is present. When loads can be monitored or otherwise isolated for inspection before disposal, no attendant need be present ~~is required~~.

12.8 No produced water shall be received at the facility from motor vehicles unless the transporter has a valid Form C-133, Authorization to Move Produced Water, on file with the Division.

13. To protect public health all commercial disposal facilities shall develop and comply with a Hydrogen Sulfide (H₂S) Prevention and Contingency Plan prepared in accordance with Division Guidelines.

14.9 To protect migratory birds, all tanks exceeding 16 feet in diameter, and exposed pits and ponds shall be screened, netted or covered. Upon written application by the permittee, an exception to screening, netting or covering of a facility may be granted by the district supervisor upon a showing that an alternative method will protect migratory birds or that the facility is not hazardous to migratory birds.

15.10 Additional requirements or restrictions may be imposed by a written finding by the Division, including but not limited to the following:

- a. An permittee with a history of failure to comply with Division rules, regulations, and orders, or
- b. Site suitability limitations.

16.11 The permittee shall notify the Division of cessation of operations within 30 days of cessation. Upon cessation of disposal operations for six (6) consecutive months, the permittee will complete cleanup of constructed facilities and restoration of the facility site within the following six (6)

months, unless an extension of time is granted by the Director of the Division. Such closure shall be in accordance with the approved closure plan and any modifications or additional requirements imposed by the Division for the protection of surface water, groundwater, public health and the environment ~~approved by the Division Director~~ and may include removal or demolition of buildings, removal of all tanks, vessels, equipment or hardware, containment and removal of fluids and chemicals, backfilling and grading of pits, removal of contaminated soil, aquifer restoration (if necessary) and reclamation of the ~~general~~ facility site. Prior to release of the bond covering the facility, ~~a representative of~~ the Division will inspect the site to determine that closure is ~~complete restoration is adequate~~.

17. If a permittee refuses or is unable to conduct operations at the facility in a manner that is protective of public health or the environmental or refuses or is unable to conduct or complete the closure plan to the satisfaction of the Director, if the terms of the permit are not met, or if the permittee defaults on the conditions under which the bond was accepted, the director shall take the following actions to forfeit all or part of the bond:

- a. Send written notice by certified mail, return receipt requested, to the permittee and the surety informing them of the determination to close the facility and to forfeit all or part of the bond, including the reasons for the forfeiture and the amount to be forfeited. The amount shall be based on the estimated total cost of achieving closure.
- b. Advise the permittee and surety of the conditions under which the forfeiture may be avoided. Such conditions may include but are not limited to:
 - (1) An agreement by the permittee or another party to perform closure operations in accordance with the conditions of the permit, the closure plan, the Act and these Rules, and that such party has the ability to satisfy the conditions:
 - (2) The Director may allow a surety to complete closure if the surety can demonstrate an ability to complete the closure in accordance with the approved plan. No surety liability shall be released until successful completion of closure under the terms of the permit.

18. In the event forfeiture of the bond is required by this rule, the Director shall:

- a. Proceed to collect the forfeited amount if actions to avoid forfeiture have not been taken.
 - b. Use the funds collected from the forfeiture to complete the closure of the facility to which the bond coverage applies.
 - c. In the event the estimated amount forfeited is insufficient to pay for the full cost of closure, the permittee shall be liable for the remaining costs. The Director may complete or authorize completion of closure of the facility in accordance with the permit terms and may recover from the permittee all reasonably incurred costs of closure and forfeiture in excess of the amount forfeited.
19. In the event the amount of the bond forfeited was more than the amount necessary to complete closure and all costs of forfeiture, the excess funds shall be returned by the Director to the party from whom they were collected.

20. Upon showing of proper cause, the Director of the Division may order immediate cessation or closure of any surface waste disposal operation. The ~~cessation~~ order will remain in effect until withdrawn, or until an order is issued after notice and hearing, when it appears that such cessation or closure is necessary to prevent waste, to protect fresh water, ~~to protect~~ public health safety and the environment, or to assure compliance with the Oil and Gas Act and Division rules ~~or~~ and orders.

21. The State of New Mexico, its agencies, officers, employees, agents, contractors and other entities designated by the State shall have all rights of entry into, over and upon the facility property, including all necessary and convenient rights of ingress, egress and regress with all materials and equipment to conduct operation, termination and closure of the facility, including but not limited to the temporary storage of equipment and materials, the right to borrow or dispose of materials, and all other rights necessary for operation, termination and closure of the facility in accordance with the standards set forth in the permit of the facility in the event the permittee cannot fulfill the conditions and obligations of the permit.

New Mexico State Review Implementation

Review Book Reference	Activity	Respondent	Comments	Due Date
I.3	Goals & Objectives	Bill		12/15/94
I.4	Review delegation of authority	Roger		6/30/95
I.6	Prioritize Discharge Plans	Roger		12/15/94
I.7	Pipeline Spills - Memo describing procedure	Roger		12/1/94
I.9	S.E. New Mexico low volume exemption	Willie		10/11/96
	1. Register all pits			
	2. Sample groundwater impact			
	3. Study results by justifying technical basis-publish			
I.10	Criteria used to rank contamination responses	Willie		5/15/95
I.11	Publish policy document of unwritten policies	Staff		6/1/1995
I.12	Number memos	Florene		6/15/95
I.13	Cite legal authority on future memo - notices	Bill		12/15/94
I.14	JPA with BLM on pit closure	Roger	In works	11/1/95
I.15	Work with Indians	Bill, Rand, Frank		6/1/95
	1. Policy formulation -			
	2. Jicarilla contact & meeting	Carol, Bill, Anita		
	3. Help tribes	Frank		
I.16	Work with Indians and others agencies	Staff		
		Bill	IOGCC/BLM Farmington Lab	6/1/95
I.18	Environment Bureau workload analysis	Roger		11/1/94
I.20	OCC legal counsel	Bill	Separate when OCD involved	11/1/94
I.21	Formalize in-state travel training budget with discharge plan money	Roger		1/15/95
I.22	We are working with Environment Department and industry on NORMS			Done
I.23	OCD - Environment Department NORM disposal agreement after EIB Order	Rand		No Action
I.24	Abandoned sites - compile district lists	Davis		7/1/95
I.25	Study air quality from E&P facilities	Bill, Roger		6/1/95
I.26	No. 13 of Rule 711 Revisions	Roger		11/17/94
I.27	Disregard - OCD has no authority or expertise over air quality			Done

II.1	APD should include "drilling pit" approval - rule change	Rand, Jerry	3/15/95
II.2	Centralized facilities included in 711 changes - need volume threshold definition	Roger	11/17/95
II.3	Draft rule for land spreading with district approval - New rule	Staff	6/1/95
II.4	OCD consideration of operator compliance history	Staff	Done
II.5	Bonding addressed in 711 changes	Roger	11/17/94
II.6	Bonding addressed in Rule 312	Roger	7/1/95
II.7	Centralized facilities bonds included in 711 changes	Roger	11/17/94
II.8	Put P&A contract procurement on fast track (not 21 steps)	Lingo, Rand	1/1/95
II.9	Abandoned facility fund not necessary if bonds increased - Explore issue & report	Davis	3/30/95
II.10	Orphaned well Com has legislative recommendations for site remediation	Bill	4/15/95
III.1	Rule change - time limits for pit closures - Appoint Industry Committee	Davis	6/1/95
III.2	Identify wetlands and floodplains in NM oil patch	Davis	5/1/95
III.3	711 changes - Site suitability for other facilities	Davis	9/1/95
IV.1	711 Rule changes - OCD requires notification of applications to local governments	Roger	11/17/94
IV.2	Interested parties to be included in Rule change Committees - Compile interested parties list	Davis	7/1/95
IV.3	Centralized facilities noticing included in 711 changes	Davis	11/17/94
IV.4	Advisory group for E&P Waste Management Program feedback	Davis	10/1/95
V.1	(1) OCC State of Industry February Meeting Public Information Program	Davis	2/1/95
V.2	Contingency plans needed at facilities for spill abatement	Davis	6/1/95
V.3	Draft new Rule with Industry Committee	Davis	9/1/95
V.4	New Rule 116 revisions - Rule change	Roger	6/1/95
	Disregard - Current rules address "reportable quantities" as any volume		Done
	Rule 116 revisions - "corrective action plan" approval	Roger	6/1/95

V.5	Redundant - Same as V-1	Davis	9/1/95
V.6	Reference VI requires reference to Rule 116 for SPCC plans	Davis	
V.7	Need internal OCD Emergency Response Plan	Davis	Coordinate with districts
V.8	Disseminate "Aging Infrastructure Report" for comment	Bill	12/1/94
VI.1	Cross reference rules and guidelines	Roger	On-going
VI.2	No action - Unlined skimming pits prohibited	Done	3/15/95
VI.3	Rule change - Add "all pits are to be closed in accordance with OCD guidelines" - to all rules authorizing pits - Rule 105	Staff	
VI.4	Section II.1 activity	Jerry, Rand	3/15/95
VI.5	Rule 312 A.13 already requires closure plans	Done	
VI.7	Technical requirements needed for "burial" and "landspreading"	Roger	10/1/95
VI.8	Use IOGCC definitions in VI-7 - part of VI-7	Roger	10/1/95
VI.9	Part of VI-7	Roger	10/1/95
VI.10	Roadspreading included above	Roger	10/1/95
VI.11	Pit approval should be part of UIC approvals	Catanach	6/1/95
VI.12	Annular injection - not needed yet	Bill	Monitor
VI.13	Waste segregation required in 711 revisions	Roger	11/17/95
VI.14	Rule change - "Non oil field waste disposal prohibited in OCD facilities except in emergency"	Rand	10/1/95
VI.15	Continue to test water streams	Done	
VI.16	No action - waste generation inspections are being conducted	Done	
V.17	See I-3 - waste hierarchy flow chart in Environmental Rules	Davis	6/1/95
VII.1	Waste Tracking Committee to submit recommendations	Roger	6/1/95
VII.1	Data management expansion - as time and money permit	Mark	10/1/95
VII.2	Request data entry person in next budget	Roger	9/1/95
IX.1	Assess field rep adequacy	D. Supervisors	6/1/95
IX.2	Inspection prioritizations	D. Supervisors	6/1/95
IX.3	Written procedures for operator reports	Staff	10/1/95
IX.4	Monthly training expanded to include tracking complaints, spill collection, chain of custody, enforcement procedures	Roger	7/1/95
			Current training to be expanded

IX.5	Information - Complaint confidentiality	Rand	6/1/95
X.1	Voluntary compliance policy evaluation	By legislature	Done
X.2	Trip reports changed to track problems, notice and compliance documentation	Rand, Districts	7/1/95
X.3	Civil penalties	Rand	7/1/95
X.5	Enforcement options reevaluated for effectiveness and consistency	Rand, Davis	7/1/95