KOCH

KOCH EXPLORATION COMPANY LLC

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Sent Via Facsimile 505-476-3462 and
Federal Express Priority Overnight

Ms. Florene Davidson
Division Administrator
New Mexico Oil Conservation Division
1220 South St.Francis Drive
Santa Fe, New Mexico 87505

Re: Comments to Application for Rulemaking, Case No. 14015
Title 19, Chapter 15, Part 17 -
Pits, Closed-Loop Systems, Below-Grade Tanks and Sumps

Dear Ms. Davidson:

In response to the public notice of the Oil Conservation Division on the above-referenced rulemaking, relating to the New Mexico Oil Conservation Division's proposed rule on Pits, Closed-Loop Systems, Below-Grade Tanks and Sumps (the "Pit Rule"), Koch Exploration Company, LLC (KEC) is providing the following comments on specific sections of the proposed rule for your consideration.

KEC operates approximately 92 coal bed methane and 6 crude oil production wells in San Juan County, New Mexico. Koch Industries and its subsidiaries have operated oil and gas facilities for over 60 years. My role at KEC includes management of environmental, health, and safety compliance. I've served in various environmental compliance roles in the oil and gas industry for 13 years. I am a Professional Engineer with registration in four states, including New Mexico.

1) 19.15.17.10 Siting Requirements.

The proposed new siting requirements will preclude locating temporary pits or below-grade tanks within 300 feet from a flowing watercourse and 200 feet from any other watercourse unless the appropriate division district office approves an exception based on the operator's demonstration that surface and ground water will be "protected." The burden of proof is on the operator, yet the standard is unclear. What is meant by "protected"?

If this requirement is to be preserved, the rule should have a clear performance standard so that operators will know whether a lease site can be "protected" before making an investment. This is the approach that is used in the federal Spill Prevention Control and Countermeasure Plan rule at 40 CFR Part 112. Under that program, an operator makes a careful analysis of each site on a case by case basis, using specific engineering factors, taking into account local topography, soil types, and both natural and man-made conveyances.

In contrast, the proposed rule makes an arbitrary determination that linear distance to a watercourse is an appropriate measure of environmental risk, which in our experience is not a valid premise. The proposed rule should reflect sound engineering decisions, and should not impose arbitrary restrictions.

In addition, the draft regulations compound the arbitrary site distance limitations by not including a process or timeframe for obtaining an exemption from the siting requirements. As a practical matter, therefore, many operators may be forced to locate temporary pits or below-grade tanks outside of the arbitrary 300/200 foot line, or may be forced to curtail production at certain sites in order to ensure compliance with the rule, but with no real environmental benefit (or consideration for worker safety).

A second concern is the lack of technical support for what appears to be an arbitrary imposition of a 300/200 foot rule. KEC believes that any siting requirements developed by the Division for support operations should consider a relevant number of factors, including environmental impacts and worker safety, and should consider site specific feasibility. The proposed 300/200 foot rule does not take into account the practical implications of many facility locations, which often are leaseholds with very narrowly defined boundaries, and also fails to consider whether a 300/200 feet restriction provides an overall real environmental benefit.

Existing lease boundaries often dictate placement of support operations and, in many cases, an arbitrary 300 or 200 foot boundary would prevent placement of these operations within an existing lease boundary. For example, many existing facilities are located near dry washes – which would be considered a "watercourse" under the proposed rule – yet lease boundaries would make it impossible to construct a workover pit in compliance with a 200-foot restriction without an exemption from the agency. Does this mean that all such production sites will need to be abandoned if an exemption isn't authorized? While the proposed rule contains an allowance for obtaining an exemption from the Division, there is no standard provided for obtaining an exemption. This creates enormous uncertainty and operators could be placed in a situation where they would be unable to continue operations at certain sites resulting in abandoned wells and lost natural gas reserves, with no clear environmental benefit.

2) 19.15.17.11(D)(1) and (3) Fencing Requirements

19.15.17.11 (D)(1) requires fencing "that prevents unauthorized access". (D)(3) requires "for any other pit or below-grade tank at least four strands of barbed wire in the interval between one foot and five feet above ground level". It is not clear what site conditions trigger (D)(3) vs. (D)(1).

3) 19.15.17.11(I)(3) Annual Integrity Testing

19.15.17.11(I)(3) requires annual integrity testing for existing below grade tanks that don't yet have the required secondary containment and leak detection systems in place. What specific integrity testing methods does OCD intend to allow? Are the integrity testing requirements provided in existing SPCC (40 CFR 112) regulations acceptable?

4) 19.15.17.12(A)(9) Oil Sorbent Booms

A) It's not clear whether an oil boom is required for pits only, or if a boom also has to be present at facilities with a below-grade tank.

B) The use of an oil boom to remove small quantities of oil from a pit or below-grade tank surface unnecessarily creates solid waste in the form of the used oil contaminated boom. The proposed regulation should be modified to provide a performance standard but not a prescribed method of removing oil. For instance, operators should have the option to remove oil from the surface of a pit or below-grade tank using a vacuum truck and then dispose of the waste at a permitted injection facility. It isn't practical to store an oil boom at every producing facility with a below grade tank, and there is no reason that Division rules should promote the generation of unnecessary wastes.

C) Remove oil from an open-topped below-grade tank using a boom is impracticable. The Migratory Bird Act requires netting on these open top tanks to prevent birds from coming in contact with the tank contents. KEC uses welded metal mesh tops that would have to be removed causing an unnecessary safety hazard.

5) 19.15.17.12(A)(6) Level Measuring Devices

19.15.17.12(A)(6) requires the installation of a level measuring device in lined pits so that operators can recognize unanticipated changes in fluid levels. The benefit of measuring fluid levels in a temporary pit is outweighed by the risk to the pit liner integrity from the measuring device itself. There are already many protections in place to address this risk: a requirement for maintaining two feet of freeboard, construction criteria that prevents collection of surface water run-on, and requirements for regular inspections that should include confirmation of the two foot freeboard requirement. Requiring a fluid level device in a temporary pit provides little additional value and creates additional risks to liner integrity.

6) 19.15.17.12(B)(3) Daily/Weekly Inspection Logs

The rule doesn't specify what daily and weekly inspection criteria should be included in the log required for submittal with the closure report.

7) 19.15.17.13(B)(1)(b) Soil Sampling Prior to Closure

19.15.17.13(B)(1)(b) states that the "division may require additional delineation" upon review of soil sampling. How long should a temporary pit be left open after sampling results have been submitted with Form C-144? Will the division notify the applicant when the pit can be closed? If not there should be some time limit that the NMOCD must inform a company when additional sampling is required.

8) 19.15.17.13(F)(1) Offsite Disposal of Drilling Wastes

KEC recommends that NMOCD provide an alternative to offsite disposal based on drilling waste composition. Offsite disposal has inherent environmental, traffic safety, and infrastructure costs in the form of: increased air emissions from vehicle exhaust and dust and increased truck traffic on public roads. Moreover, mixing clean drilling wastes with contaminated wastes at a central landfill increases the volume of contaminated wastes. KEC agrees that there are circumstances where treatment of wastes in a centralized facility is appropriate. However, at some sites, where the wastes are more benign, on-site disposal of drilling wastes may result in fewer long term impacts then offsite disposal. NMOCD should establish a performance standard for on-site disposal that is protective of the environment but still allows operators to dispose of wastes on-site where such disposal will not cause adverse impacts.

9) General Comment on Overlap with Existing Federal Requirements

The pits and below-grade tanks used at oil and gas production sites are currently subject to a number of federal regulatory programs designed to protect the environment from adverse impacts. In many cases, the proposed rules duplicate these requirements and add layers of bureaucracy that will drive up operational costs but not provide additional environmental protection.

First, there are a number of programs under the Federal Clean Water Act that provide protections for surface waters in New Mexico.

A. Most production facilities are subject to the Spill Control and Countermeasure Plan (SPCC) requirements of the Clean Water Act, 40 CFR Part 112. These requirements are designed specifically to prevent discharges of oil and oil containing liquids into waters of the United States. The SPCC rule requires detailed spill prevention plans for facilities, most of which must be reviewed and stamped by a professional engineer, and require installation of containment and diversionary structures to prevent releases, inspections to detect problems, personnel training, security and other protections to avoid many of the same risks that the proposed NMOCD rule is intended to address. Additional requirements are imposed under the SPCC rule specifically for oil production and drilling facilities. See 40 CFR 112.9 and 112.10.

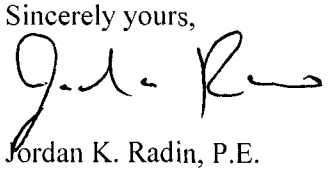
B. Under the Oil Pollution Act, facilities that store large quantities of oil and that could cause substantial harm in the event of an oil release must prepare Facility Response Plans that provide evaluations of release risks and detailed plans for responding to worst case releases. These plans add further protections for sites that pose additional risks to surface waters.

C. All production facilities are subject to the Clean Water Act oil discharge rule, which requires immediate reporting of virtually any release of oil to waters of the United States. See 40 CFR Part 110. These reporting requirements serve to ensure that releases can be promptly addressed to prevent environmental harm.

Where there is overlap between the existing, well established, federal and state programs and the proposed NMOCD rule, the provisions of the proposed rule should be deleted to reflect that the risks intended to be addressed are already adequately regulated by government programs.

Thank you for the opportunity to submit these comments on the proposed rule. If you have any questions please contact the undersigned at radinj@kochind.com or (720) 201-4941.

Sincerely yours,



Jordan K. Radin, P.E.
Compliance Manager