

October 29, 2007

Via Facsimile – 505-476-3462

Florene Davidson, Division Administrator
Oil Conservation Division
New Mexico Energy, Minerals And Natural Resources Department
1220 South St. Francis Drive
Santa Fe, NM 87505

Re: Comments on Proposed Section 19.15.17 NMAC
New rules concerning pits and below-grade tanks

Dear Ms. Davidson:

On behalf of the undersigned, we are providing written comments on the new rules proposed by the Oil Conservation Division (OCD) to govern pits and below-ground tanks. Please accept these comments for consideration as part of the record for the rulemaking.

Use of pits can lead to contamination.

The use of pits, and especially un-lined pits, can lead to contamination of both soils and water, which is potentially harmful to the public, as well as to plant and animal species. Leaking or overflow from pits can result in the release of contaminants from oil and gas operations (such as volatile organic compounds, hydrocarbons and heavy metals found in produced water, production fluids and other associated wastes). Liquids in pits pose a fatal risk to both wildlife and livestock. These risks are present even for pits used on a temporary basis. In addition, wastes stored in improperly closed pits can migrate through the vadose zone (the unsaturated zone between the ground surface and the top of the groundwater) and kill vegetation.

In October 2005 the OCD issued a report on groundwater contamination from leaks, spills and releases resulting from oil and gas operations, although this data does not include all such impacts or all sources. Of the approximately 1400 groundwater contamination instances in the database that are attributed to oil and gas, more than 400 come from pits, highlighting the risks of using pits in by oil and gas operations. For example, the Lattion Pit is one of four contaminated pits controlled by Yates Petroleum and located nine miles south of Artesia in Eddy County. Contamination levels were hundreds of times higher than contamination standards: chloride levels were 81,535 ppm versus the contamination standard of 250 ppm and background rates for chlorides in the area is 400-600 ppm. While this contamination was detected in October 2000, an abatement plan was not submitted until August 2005. The additional information compiled by the OCD regarding the contents of the pits further supports the risks to water and soil from if these contents escape the pits.

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Use of un-lined pits should be prohibited.

Based on the documented risks of leaks, overflows and other releases from pits, we support a prohibition on un-lined pits.

Some places are too vulnerable for pits.

The hundreds of cases of contamination from pits catalogued by OCD and the additional details on the contents of pits show that places with vulnerable water supplies, such as the Salt Basin under Otero Mesa, are not safe places for the use of pits. OCD has prohibited the use of pits in the Chihuahuan Desert Area in Section 19.15.1.21 NMAC. The OCD should define other areas that require use of a closed loop system, such as places where water sources, potential wilderness or important wildlife habitat are present, or places in close proximity to homes and schools.

Methods of enforcement should be highlighted and include fines.

The new rules should explicitly discuss methods for enforcement and actions that can be taken for violation. Although Section 19.15.17.16 includes revocation, suspension and modification of permits for breach of conditions, OCD should have administrative fine capability incorporated into all aspects of regulation and enforcement. Due to OCD's limited staff and the many aspects of permits that must be enforced, it is important that OCD have the ability to impose fines – this will also serve as an additional deterrent.

On-site disposal should be prohibited.

Despite the many risks to water, soil, people, wildlife and plants from the compounds contained in pits, Proposed Section 19.15.17 contemplates permitting on-site disposal for contents of pits. The proposed rules include standards for on-site deep trench burial, but compliance would ultimately be left to oil and gas companies, and regulation and enforcement would require significant resources from the OCD. A more reliable and responsible approach would be to prohibit on-site disposal altogether.

Qualified personnel for seaming of pit liners should be clearly defined.

In the context of both temporary and permanent pits, the proposed rules require that "qualified personnel" perform field seaming of liners. However, this term is not defined. Because the qualifications of these personnel are vital to the protection of the soil and water beneath the pits, the results should include a definition of qualified personnel, which incorporates specific requirements for experience in seaming liners.

Notification of damage and repair of pit liner should be completed more swiftly.

Proposed Section 19.15.17.12 provides for notification if the integrity of the pit liner is compromised within 48 hours of discovery. This notice should be immediate and within no more than 24 hours of discovery. This section also provides for repair or replacement of the

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liner, but does not provide any additional details. The rules should require repair or replacement to occur in accordance with the direction of the OCD, subject to inspection and approval of the OCD, and completed as soon as possible.

We appreciate the opportunity to comment on the proposed rules, as well as the OCD's recognition of the risks to natural resources from pits.

Sincerely,

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