NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

BILL RICHARDSON
Governor
Joanna Prukop
Cabinet Secretary

Lori Wrotenbery
Director
Oil Conservation Division

December 2, 2003

Mr. David K. Brooks
Assistant General Counsel
Counsel for the Oil Conservation Commission
1220 South St. Francis Dr.
Santa Fe, NM 87505

Re: Case No. 12969; Pit Rule

Dear Mr. Brooks:

The Oil Conservation Division provides the following responses to the questions set out in your letter of November 18, 2003.

1. Netting

The Division agrees with your reading of sub-paragraph C.2.(f) of the proposed rule: drilling and workover pits are exempt from the netting requirement only during operations, and only if the pits are kept "reasonably free of oil" during those operations. Once operations cease, the pits must be netted even if they are kept "reasonably free of oil."

The Division originally intended to propose that drilling and workover pits be exempt from the netting requirement during operations if the pits are kept "free of oil." The Division changed the language to "reasonably free of oil" to address industry concerns that minute but detectable amounts of oil in a pit would subject the pit to netting requirements. During the course of testimony, however, it became apparent that the term "reasonably free of oil" is subject to many interpretations, including interpretations that would allow un-netted pits containing much more oil than originally contemplated by the Division. The Division recommends deleting the word "reasonably" from the relevant sentence in sub-paragraph C.2.(f) of the proposed rule. Alternatively, the Division recommends removing the phrase "reasonably free of oil" and substituting the following language:

> Drilling and workover pits are exempt from the netting requirement during drilling or workover operations if the pits are kept ~~reasonably free of oil~~ free of floating hyrdrocarbons anywhere on the surface of the pit.

If the word "reasonably" is deleted from sub-paragraph C.2.(f) of the proposed rule, or if the alternative language is adopted, the Division believes it is appropriate to exempt the pit from the netting requirement "during drilling or workover operations" even if active operations are interrupted for a relatively long period of time.

2. SPCC Exemption

The Division agrees with NMOGA/IPANM that impoundments installed pursuant to federal SPCC requirements should not require permitting under the proposed rule. The Division proposes the following amendment to sub-paragraph D.5:

> 5. "Emergency Pits." Subsection (D) of 19.15.2.53 NMAC shall not be construed to allow construction of so-called "emergency pits," which are pits constructed as a precautionary measure to contain a spill in the event of a release. Construction or use of ~~any such~~ "emergency pits" shall require a permit issued pursuant to Subsection 53 of 19.15.2 NMAC unless the pit is described in a required SPCC plan submitted to the Environmental Protection Agency, all fluids are removed from the pit within 24 hours of use, and the operator has filed the location of the pit with the division.

The Division's proposed amendment applies an objective standard: the pit must be described in a required SPCC plan submitted to the EPA. In contrast, the language proposed by NMOGA/IPANM requires only that the pit be constructed with the intent to comply with SPCC requirements.

3. Soil Sampling

The Division had intended to address the soil sampling issue in its closure guidelines. If the Commission prefers to address the issue in the rule itself, the Division suggests the following amendments to Subsection F of the proposed rule:

> F. Closure and Restoration.
>
> 1. General Closure Requirements. Except as otherwise specified in Subsection 53 of 19.15.2 NMAC, a pit or below-grade tank shall be properly closed within six months after cessation of use. ~~In appropriate cases, the division may require the operator to file a detailed closure plan before closure may commence.~~ The division for good cause shown may grant a six-month extension of time to accomplish closure. ~~Upon completion of closure a Closure Report, Form C-144, or Sundry Notice shall be submitted to the division.~~ Where the pit's contents will likely migrate and cause ground water or surface water to exceed Water Quality Control Commission standards, the pit's contents and ~~the~~ any liner shall be removed and disposed of in a manner approved by the division.
>
> 2. Closure of Unlined Pits. In appropriate cases, the division may require the operator to file a detailed closure plan before commencing closure. Upon completion of closure the operator shall submit a Closure Report, Form C-144, or Sundry Notice to the division.
>
> 3. Closure of Lined Pits and Below-Grade Tanks. If the operator demonstrates that the liner or tank has integrity and that the soil has not been impacted, soil samples and closure reports are not required. In the absence of such a demonstration, the operator must submit a Closure Report, Form C-144 or Sundry Notice to the division.

~~24~~. Surface Restoration. Within one year of the completion of closure of a pit, the operator shall contour the surface where the pit was located to prevent erosion and ponding of rainwater.

The primary substantive difference between NMOGA/IPANM's suggested amendment and the Division's suggested amendment appears in the section on the closure of lined pits and below-grade tanks. Under NMOGA/IPANM's suggested amendment, soil samples and closure reports are not necessary "unless there is evidence that the liner or tank does not have integrity and that the soils have been impacted." NMOGA/IPANM's use of the passive voice leaves open the question of who is responsible for determining whether such evidence exists. As a practical matter, the burden will be on the Division to find evidence that the liner or tank does not have integrity and that soils have been impacted before the Division can require soil samples and closure reports. The Division's version of the amendment puts the burden on the operator, and requires two showings: that the liner or tank has integrity and that the soil has not been impacted.

The Division also wishes to address the following NMOGA/IPANM comments:

1. Filing Requirements for Existing Pits or Below-Grade Tanks.

NMOGA/IPANM proposes to change the last sentence of subsection B.3.(b) as follows:

> If an operator files a timely, administratively complete application for continued use, use of the pit or below-grade tank may continue ~~until the division acts upon the application~~ as long as integrity of the pit or below grade tank is demonstrated and until such time as a facility upgrade occurs.

The Division opposes this change, which would allow continued use of existing pits and below-grade tanks without Division approval until both of two conditions occurred: failure of integrity and a facility upgrade. Presumably, Division approval would not be required for an existing pit or tank demonstrating lack of integrity until a facility upgrade occurs. Even if the "and" is changed to an "or," the conditions are not acceptable to the Division. There is no such thing as an integrity test for unlined pits, so presumably all unlined pits would be "grandfathered" in under this amendment. If an integrity test is to be applied to lined pits, the Division recommends that the test include removal of the pit's contents and liner to inspect the pit – a visual inspection of a pit would be insufficient. The Division objects to any change that would exempt existing pits and below-grade tanks from the permitting process.

The Division does propose the following clarification:

> If an operator files a timely, administratively complete application for continued use, use of the pit or below-grade tank may continue until the division acts upon the permit application.

2. Disposal or Storage Pits.

The Division opposes the following amendment to subsection B.3.(e) suggested by NMOGA/IPANM:

~~Liquids with greater than two tenths of one percent free hydrocarbon shall not be discharged to a pit~~. Liquids discharged to a pit shall be kept reasonably free of oil.

The Division proposed the "two tenths of one percent free hydrocarbon" language to provide a clear, objective standard. The suggested replacement language, "reasonably free of oil," is subjective and ambiguous. The Division recommends keeping the language set out in the original proposal. Alternatively, the Division would accept the following language:

~~Liquids with greater than two tenths of one percent free hydrocarbon shall not be discharged to a pit~~. Disposal or storage pits shall be kept free of floating hydrocarbons anywhere on the surface of the pit.

3. Permit by Rule.

The Division does not oppose a "permit by rule" system for drilling and workover pits if the operators meet specific requirements for construction, operation and closure of the pits, and provide the Division with notice of the pit's location and notice of construction and closure. If the Oil Conservation Commission is considering adoption of a "permit by rule" system, the Division submits the attached draft amendment for consideration. Please note that the draft amendment only addresses the "permit by rule" issue; it does not include the other changes suggested in this letter.

Sincerely,

Gail MacQuesten
Attorney for the Oil Conservation Division

OCD Draft of "Permit by Rule" Amendment, 12-2-03.

19.15.2 ___ Pits and Below-Grade Tanks.

A. Permit Required. Discharge into, or construction of, any pit or below-grade tank is prohibited absent possession of a permit issued by the division, unless otherwise herein provided or unless the division grants an exemption pursuant to Subsection G of 19.15.2.53 NMAC. Facilities permitted by the division pursuant to Section 711 of 19.15.9 NMAC or Water Quality Control Commission regulations are exempt from Section 53 of 19.15.2 NMAC.

B. Permit by Rule. Drilling and workover pits constructed after [the effective date of this rule] are exempt from the formal permit application process set out in Subsection C of this rule if all of the following requirements are met, unless the Division determines that formal permitting is necessary to protect fresh waters, public health or the environment. Pits that are exempted from the formal permit application process set out in Subsection C of this rule remain subject to those portions of Subsections D, F and G of this rule that apply to drilling and workover pits.

1. The operator shall report the location of the pit on the Application for Permit to Drill or on the Sundry Notices and Reports on Wells, or electronically as otherwise provided in this Chapter. The report shall describe the location of the pit by footage within the Section, Township, Range and latitude and longitude.

2. Prior to construction of the pit, the operator shall notify the appropriate district office, verbally or in writing, of the start date for construction.

3. Prior to closure of the pit, the operator shall notify the appropriate district office, verbally or in writing, of the anticipated closure date. On-site disposal of pit contents shall require division approval.

4. Drilling and workover operations located in a watercourse, lakebed, sinkhole, playa lake or groundwater sensitive area shall use steel tanks and closed loop systems.

5. Pits used in drilling and workover operations not located in a watercourse, lakebed, sinkhole, playa lake or groundwater sensitive area shall meet the following design, construction and operational requirements:

(a) The pit shall be constructed so that the inside grade of the levee is no steeper than 2:1. Levees shall have an outside grade no steeper than 3:1.

(b) The pit shall be lined with synthetic materials at least 20 mil thick. The material used for the liner shall have good resistance to tears and punctures, shall be resistant to hydrocarbons, salts, and acidic or alkaline solutions, and shall be resistant to ultraviolet light or provision shall be made to protect the material from the sun.

(c) The bed of the pit and inside grade of the levee shall be smooth and compacted, free of holes, rocks, stumps, clods or any other debris that may rupture the liner.

(d) The pit shall be designed so that no fluid force at any point of discharge is directed toward the liner.

(e) The pit shall contain only drilling fluids and completion fluids.

~~B.~~C. Application.

1. Where Filed; Application Form.

(a) Downstream Facilities. An operator shall apply to the division's environmental bureau for a permit to construct or use a pit or below-grade tank at a downstream facility such as a refinery, gas plant, compressor station, brine facility, service company, or surface waste management facility that is not permitted pursuant to Section 711 of 19.15.9 NMAC or Water Quality Control Commission regulations. The operator shall use a Form C-144, Application to Discharge Into A Pit or Below-Grade Tank. The operator may submit the form separately or as an attachment to an application for a discharge permit, best management practices permit, surface waste management facility permit, or other permit.

(b) Drilling or Production. An operator shall apply to the appropriate district office for a permit for use of a pit or below-grade tank in drilling, production, or operations not otherwise identified in Subparagraph (a) of 19.15.2.53.~~B~~C.1 NMAC. The operator shall apply for the permit on the Application for Permit to Drill or on the Sundry Notices and Reports on Wells, or electronically as otherwise provided in this Chapter. Approval of such form constitutes a permit for all pits and below-grade tanks annotated on the form. A separate form C-144 is not required.

2. General Permit; Individual Permit. An operator may apply for a permit to use an individual pit or below-grade tank, or may apply for a general permit applicable to a class of like facilities.

3. When Filed.

(a) New Pits or New Below-Grade Tanks. After (effective date of rule), operators shall obtain a permit before constructing a pit or below-grade tank.

(b) Existing Pits or Below-Grade Tanks. For pits or below-grade tanks in existence prior to (effective date of rule) that have not received an exemption after hearing as allowed by OCC Order R-3221 through R-3221D inclusive, the operator shall submit a notice by January 15, 2004 indicating whether use of those pits or below-grade tanks will continue. If use of a pit or below-grade tank is to be discontinued, discharge into the pit or use of the below-grade tank shall cease by June 30, 2005. If use of a pit or below-grade tank will continue, the operator shall file a permit application by June 30, 2004. If an operator files a timely, administratively complete application for continued use, use of the pit or below-grade tank may continue until the division acts upon the application.

~~C.~~D. Design, Construction, and Operational Standards.

1. In General. Pits, sumps and below-grade tanks shall be designed, constructed and operated so as to contain liquids and solids to prevent contamination of fresh water and protect public health and the environment.

2. Special Requirements for Pits.

(a) Location. No pit shall be located in any watercourse, lakebed, sinkhole, wetland or playa lake. ~~except where the pit is to be temporarily used in a transient operation such as drilling or a~~

~~workover.~~ Pits adjacent to any such watercourse or depression shall be located safely above the ordinary high-water mark of such watercourse or depression. ~~No pit shall be located in any wetland.~~ The division may require additional protective measures for pits located in groundwater sensitive areas.

(b) Liners.

(i) Drilling Pits, Workover Pits. Each drilling pit or workover pit shall contain, at a minimum, a single liner appropriate for conditions at the site. The liner shall be designed, constructed, and maintained so as to prevent the contamination of fresh waters, and protect public health and the environment. Pits used to vent or flare gas during drilling or workover operations that are designed to allow liquids to drain to a separate pit do not require a liner.

(ii) Disposal or Storage Pits. Each disposal pit (including, but not limited to, any separator pit, tank drain pit, evaporation pit, blowdown pit used in production activities, pipeline drip pit, or production pit) and each storage pit (including any brine pit, salt water pit, fluid storage pit for an LPG system, or production pit) shall contain, at a minimum, a primary and a secondary liner appropriate to the conditions at the site. Liners shall be designed, constructed, and maintained so as to prevent the contamination of fresh waters, and protect public health and the environment.

(iii) Alternative Liner Media. The division may approve liners that are not constructed in accordance with division guidelines only if the operator demonstrates to the division's satisfaction that the alternative liner protects fresh water, public health, and the environment as effectively as those prescribed in division guidelines.

(c) Leak Detection. A leak detection system shall be installed between the primary and secondary liner in each disposal or storage pit. The leak detection system shall be designed, installed, and operated so as to prevent the contamination of fresh waters, and protect public health and the environment. The operator shall notify the division at least twenty-four hours prior to installation of the primary liner so a division representative may inspect the leak detection system before it is covered.

(d) Drilling and Workover Pits. Each drilling or workover pit shall be of an adequate size to assure that a supply of mud-laden fluid is available and sufficient to confine oil, natural gas, or water within its native strata. Hydrocarbon-based drilling fluids shall be contained in tanks made of steel or other division approved material.

(e) Disposal or Storage Pits. Liquids with greater than two-tenths of one percent free hydrocarbon shall not be discharged to a pit. Spray evaporation systems shall be operated such that all spray-borne solids remain within the perimeter of the pond's lined portion.

(f) Fencing and Netting. All pits shall be fenced or enclosed to prevent access by livestock or wildlife. Active drilling or workover pits may have a portion of the pit unfenced to facilitate operations. All tanks exceeding 16 feet in diameter, exposed pits, and ponds shall be screened, netted, covered, or otherwise rendered non-hazardous to migratory birds. Drilling and workover pits are exempt from the netting requirement during drilling or workover operations if the pits are kept reasonably free of oil. Upon written application, the division may grant an exception to screening, netting, or covering requirements upon a showing that an alternative method will adequately protect migratory birds or that the tank or pit is not hazardous to migratory birds.

(g) Unlined Pits.

(i) General Prohibition. After June 30, 2005 use of, or discharge into, any unlined pit that has not been previously permitted pursuant to Section 711 of 19.15.9 NMAC or Water Quality Control Commission regulations is prohibited, except as otherwise provided in Section 53 of 19.15.2 NMAC. After (effective date of rule), construction of unlined pits is prohibited unless otherwise provided in Section 53 of 19.15.2 NMAC.

(ii) Exemptions for Good Cause. The division may grant an exemption to the prohibition set out in Subsubparagraph (i) of 19.15.2.53(~~C~~D)(2)(g) only if the operator demonstrates to the division's satisfaction that the unlined pit will not contaminate fresh water and that public health and the environment are protected.

(iii) Unlined Pits Exempted By Previous Order. An operator of an unlined pit existing on (effective date of rule) for which a previous exemption was received after hearing as allowed pursuant to Commission Orders No. R-3221 through R-3221D inclusive, shall not be required to reapply for an exemption pursuant to Subparagraph (g) of 19.15.2.53(~~C~~D)2 NMAC provided the operator notifies the division, no later than January 15, 2004, of the existence of each unlined pit it believes is exempted by Order, the location of the pit, and the nature and amount of any discharge into the pit. Such order shall constitute a permit for the purpose of Subparagraph (g) of 19.15.2.53(~~C~~D)2 NMAC . The division may terminate any such permit in accordance with paragraph (2) of 19.15.2.53(~~G~~H) NMAC. Any pit constructed after (effective date of this rule) shall comply with the permitting/lining and other standards of Section 53 of 19.15.2 NMAC, notwithstanding any previous Order to the contrary.

(iv) Unlined pits shall be allowed in the following areas provided that the operator has submitted, and the division has approved, an application for permit as provided in Subsection 53 of 19.15.2 NMAC:

TOWNSHIP 19 SOUTH, RANGE 30 EAST, NMPM Sections 8 through 36;
TOWNSHIP 20 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36;
TOWNSHIP 20 SOUTH, RANGE 31 EAST, NMPM Sections 1 through 36;
TOWNSHIP 20 SOUTH, RANGE 32 EAST, NMPM Sections 4 through 9,
Sections 16 through 21; and Sections 28 through 33;
TOWNSHIP 21 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 36;
TOWNSHIP 21 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36;
TOWNSHIP 21 SOUTH, RANGE 31 EAST, NMPM Sections 1 through 36;
TOWNSHIP 22 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 36;
TOWNSHIP 22 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36;
TOWNSHIP 23 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 3,
Sections 10 through 15, Sections 22 through 27, and Sections 34 through 36;
TOWNSHIP 23 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 19;

that area within San Juan, Rio Arriba, Sandoval, and McKinley Counties that is defined as being outside the valleys of the San Juan, Animas, Rio Grande, and La Plata Rivers, which is bounded by the topographic line on either side of the river that is 100 vertical feet above the river channel measured perpendicularly to the river channel, and which is outside those areas that lie within 50 vertical feet, measured perpendicularly to the drainage channel, of all perennial and ephemeral creeks, canyons, washes, arroyos, and draws located within the oil and gas producing areas of the San Juan Basin in northwestern New Mexico, provided that the areas do not lie between the above-named rivers and the Highland Park Ditch, Hillside Thomas Ditch, Cunningham Ditch, Farmers Ditch, Halford Independent Ditch, Citizens Ditch, or Hammond Ditch and the pit site is not located in water bearing alluvium, no protectable ground water is present or if present, will not be adversely affected by the discharge, and the discharge is not located within a Wellhead Protection Area; or

any area where the discharge quality meets New Mexico Water Quality Control Commission ground water standards.

3. Special Requirements for Below-grade Tanks. All below-grade tanks shall be constructed with secondary containment and leak detection. The operator of any below-grade tank constructed prior to (effective date of this rule) shall demonstrate its integrity annually and shall remove it or equip it with leak detection at the time of any major repairs.

4. Sumps. Integrity of all sumps shall be demonstrated annually.

~~D.~~E. Emergency Actions.

1. Permit Not Required. In an emergency an operator may construct a pit without a permit to contain fluids, solids, or wastes if an immediate danger to fresh water, public health, or the environment exists.

2. Construction Standards. A pit constructed in an emergency shall be constructed, to the extent possible given the emergency, in a manner consistent with the requirements of Section 53 of 19.15.2 NMAC and that prevents the contamination of fresh waters, and protects public health and the environment.

3. Notice. The operator shall notify the appropriate district office as soon as possible (if possible before construction begins) of the need for construction of such a pit.

4. Use and Duration. The pit may be used only for the duration of the emergency. If the emergency lasts more than forty-eight (48) hours, the operator must seek approval from the division for continued use of the pit. All fluids and solids must be removed within 24 hours after cessation of use unless the division extends that time period.

5. "Emergency Pits." Subsection (~~D~~E) of 19.15.2.53 NMAC shall not be construed to allow construction of so-called "emergency pits," which are pits constructed as a precautionary matter to contain a spill in the event of a release. Construction or use of any such pit shall require a permit issued pursuant to Subsection 53 of 19.15.2 NMAC.

~~E.~~F. Drilling Fluids and Cuttings. Drilling fluids and drill cuttings contained in any pit or below-grade tank shall be recycled or dried and disposed of in a manner approved by the division and in such a manner as to prevent contamination of fresh water, or danger to public health or the environment. The operator shall describe the proposed disposal method in the Application for Permit to Drill or the Sundry Notice.

~~F.~~G. Closure and Restoration.

1. Closure. Except as otherwise specified in Subsection 53 of 19.15.2 NMAC, a pit or below-grade tank shall be properly closed within six months after cessation of use. In appropriate cases, the division may require the operator to file a detailed closure plan before closure may commence. The division for good cause shown may grant a six-month extension of time to accomplish closure. Upon completion of closure a Closure Report, Form C- 144, or Sundry Notice shall be submitted to the division. Where the pit's contents will likely migrate and cause ground water or surface water to exceed Water Quality Control Commission standards, the pit's contents and the liner shall be removed and disposed of in a manner approved by the division.

2. Surface Restoration. Within one year of the completion of closure of a pit, the operator shall contour the surface where the pit was located to prevent erosion and ponding of rainwater.

~~G.~~H. Exemptions; Additional Conditions.

1. The division may attach additional conditions to any permit upon a finding that such conditions are necessary to protect fresh waters, public health, or the environment.

2. The division may grant exemptions from any requirement upon a finding that the granting of such exemption will not endanger fresh waters, public health, or the environment. The division may revoke any such exemption after notice to the owner or operator of the pit and opportunity for a hearing.

3. Exemptions may be granted administratively without hearing provided that the operator gives notice to the surface owner of record where the pit is to be located and to such other persons as the division may direct and (a) written waivers are obtained from all persons to whom notice is required, or (b) no objection is received by the division within 30 days of the time notice is given. If any objection is received and the director determines the objection has technical merit or that there is significant public interest the director shall set the application for hearing. The director, however, may set any application for hearing.

New Mexico Oil & Gas Association (NMOGA)
and Independent Petroleum Association of New Mexico (IPANM)
Consensus *Post Hearing Comments* on Proposed Pit Rule Revision
December 2, 2003

NMOGA/IPANM wishes to reiterate our testimony given at the November Hearing and offer the following comments and clarification to the Commission for its consideration of the proposed pit rule revision.

First, we would like to point out that testimony from both the OCD and the expert witness of IPANM indicates pits do not pose a significant threat to groundwater in the State of New Mexico under current regulations. It was shown that even though there was a number of cases in the OCD files of groundwater "impact", most of these involved the closure of unlined pits in river basins that have since been replaced with lined pits according to the existing rule. Moreover, only a small number of those "impact" cases actually exceeded State WQCC standards for groundwater "contamination" as it is defined in these standards. Only one case has been clearly linked to a temporary reserve pit, and this was one that was built right next to a river using construction standards no longer allowed. Finally, Mr. Hick's testimony showed that except in very specific cases, such as the one mentioned above, contamination from a temporary pit would not reach groundwater given our soil conditions and arid climate.

Given this fact, "authorized by rule" should be a sufficient means to control the review process of those certain workover pits that are constructed in instances where current regulations do not require any pre-work APD or sundry notice approval. The "authorized by rule" is a valid alternative as listed by the OCD in its testimony of the Stronger Report "5.2.2 Permitting" recommendations. As long as the pits are constructed in compliance with this rule, no permitting or closure paperwork would be required. These pits are of minimal volume used for minimal time periods and should not need to be tracked as such. Pits constructed for major workovers and drilling could easily be pre-approved and tracked under the existing pre-work sundry notice and APD requirements.

NMOGA/IPANM appreciates the effort by the OCD to define a quantitative threshold for oil in disposal or storage pits (Part C.2.(e)). As per our testimony, industry is concerned with having to implement complicated testing methods to continuously ensure compliance with this limit, when "reasonably free of oil" would suffice.

As stated in our testimony, we see sumps as secondary containment themselves. Therefore, to categorize these vessels as below grade tanks that under this rule require secondary containment is redundant and unnecessary. The rule as proposed by NMOGA/IPANM would require all sumps greater than 30 gallons to be annually integrity tested. The concern voiced in the hearing that some sumps are kept full of oil for long periods of time is not a valid statement. The definition of sump requires the vessel "...remains predominantly empty....; and not used to store, treat, dispose of, or evaporate products or wastes." We submit that any sump that does not serve as a

"...drain or receptacle for spilled or leaked liquids on an intermittent basis", is not a sump at all, and should be categorized as a below grade tank. However, one that does meet the definition is a sump no matter its size and should be treated as such.

Comments from various land owners and ranchers during the hearing indicated that in some instances high salt content from buried pits can result in surface contamination such that native plants could be stressed, or in extreme cases can not grow. The testimony of IPANM's' expert witness showed how high salt concentrations in the buried reserve pits might migrate back to the surface. However, based on what has actually occurred in the field, this is a very rare occurrence. Of the hundreds of wells drilled per year and the tens of thousands of wells that have been drilled in the State of New Mexico, there have been very few instances where surface contamination has caused loss of vegetation. Given this, we would suggest that the current OCD proposed language (Part E.) be left as is since it requires a method of disposal as to "prevent contamination of fresh water, or danger to public health or the environment." This will allow continuing research in this area to proceed, and the best solution or solutions to be found that will address any particular problems.

Finally, we would like to emphasize that NMOGA/IPANM vigorously disagree with the original draft where NMOCD should have unrestricted discretion as to who is notified, require the operator to obtain a release from those entities, and then further, allow such entities a 30 day notice period to comment. We believe that the surface owner should have that right along with OCD oversight to protect public health and the environment.

These comments are supplemental to the joint NMOGA/IPANM proposed rule revision provided during our testimony attached hereto for your reference. NMOGA/IPANM continue to support these rule revisions and request that they be included in the final rule.

Thank you for allowing us to present these post-hearing comments.

Attachments:
November 12 NMOGA/IPANM Consensus Pit Rule Revisions and Definitions

NMOGA/IPANM
Consensus Proposed Pit Rule Revisions
12 November 2003

19.15.2 ___ Pits and Below-Grade Tanks.

A. Permit Required. Discharge into, or construction of, any pit or below-grade tank is prohibited absent possession of a permit issued by the division, unless otherwise herein provided or unless the division grants an exemption pursuant to Subsection G of 19.15.2.53 NMAC. Facilities permitted by the division pursuant to Section 711 of 19.15.9 NMAC or Water Quality Control Commission regulations are exempt from Section 53 of 19.15.2 NMAC.

B. Application.

1. Where Filed; Application Form.

(a) Downstream Facilities. An operator shall apply to the division's environmental bureau for a permit to construct or use a pit or below-grade tank at a downstream facility such as a refinery, gas plant, compressor station, brine facility, service company, or surface waste management facility that is not permitted pursuant to Section 711 of 19.15.9 NMAC or Water Quality Control Commission regulations. The operator shall use a Form C-144, Application to Discharge Into A Pit or Below-Grade Tank. The operator may submit the form separately or as an attachment to an application for a discharge permit, best management practices permit, surface waste management facility permit, or other permit.

(b) Drilling or Production. Drilling, workover, and completions pits and below-grade tanks are specifically authorized by this rule provided that they are designed and constructed in accordance with the requirements of this rule. Otherwise, an operator shall apply to the appropriate district office for a permit for use of a pit or below-grade tank in drilling, production, or operations not otherwise identified in Subparagraph (a) of 19.15.2.53.B.1 NMAC. The operator shall apply for the permit on the Application for Permit to Drill or on the Sundry Notices and Reports on Wells, or electronically as otherwise provided in this Chapter. Submittal of such form constitutes a permit for all pits and below-grade tanks annotated on the form. A separate form C-144 is not required. Exempt from permitting are temporary pits needed for minor workovers or well repairs that fall outside of the requirements for submitting a sundry notice.

It is NMOGA/IPANM's position that there is no need for formal permitting of temporary pits such as drilling, workover, or completions pits provided that the operator designs and installs these pits in accordance with the requirements of this rule. This " permit by rule" approach makes even more sense given the OCD's limited budget and staffing which is better utilized on production and disposal pits that have a longer life. Also, the

exemption for " minor workover and well repair pits" seems self evident that small pits installed for short term events do not require permitting.

2. General Permit; Individual Permit. An operator may apply for a permit to use an individual pit or below-grade tank, or may apply for a general permit applicable to a class of like facilities.

3. When Filed.

(a) New Pits or New Below-Grade Tanks. After (effective date of rule), operators shall obtain a permit before constructing a pit or below-grade tank.

(b) Existing Pits or Below-Grade Tanks. For pits or below-grade tanks in existence prior to (effective date of rule) that have not received an exemption after hearing as allowed by OCC Order R-3221 through R-3221D inclusive, the operator shall submit a notice by six months from the effective date of this rule indicating whether use of those pits or below-grade tanks will continue. If use of a pit or below-grade tank is to be discontinued, discharge into the pit or use of the below-grade tank shall cease by June 30, 2005. If use of a pit or below-grade tank will continue, the operator shall file a permit application by June 30, 2004. If an operator files a timely, administratively complete application for continued use, use of the pit or below-grade tank may continue as long as integrity of the pit or below grade tank is demonstrated and until such time as a facility upgrade occurs..

For pits and below grade tanks in existence prior to the rule that have not been exempted through hearing under OCC Order R-3221 through R-3221D inclusive, NMOGA/IPANM believe that six (6) months from the effective date of the rule is more reasonable than January 15, 2004 as a deadline. We also believe that as long as integrity of such pits or below grade tanks are demonstrated, that continued use these facilities should be approved and authorized.

C. Design, Construction, and Operational Standards.

1. In General. Pits, sumps and below-grade tanks shall be designed, constructed and operated so as to contain liquids and solids to prevent contamination of fresh water and protect public health and the environment.

2. Special Requirements for Pits.

(a) Location. No pit shall be located in any watercourse, lakebed, sinkhole, or playa lake except where the pit is to be temporarily used in a transient operation such as drilling or a workover. Pits adjacent to any such watercourse or depression shall be located safely above the ordinary high-water mark of such watercourse or depression. No pit shall be located in any wetland. The division may require additional protective measures for pits located in groundwater sensitive areas.

(b) Liners.

(i) Drilling Pits, Workover Pits. Each drilling pit or workover pit shall contain, at a minimum, a single liner appropriate for conditions at the site. The liner shall be designed, constructed, and maintained so as to prevent the contamination of fresh waters, and protect public health and the environment. Pits used to vent or flare gas during drilling or workover operations that are designed to allow liquids to drain to a separate pit do not require a liner.

(ii) Disposal or Storage Pits. Each disposal pit (including, but not limited to, any separator pit, tank drain pit, evaporation pit, blowdown pit used in production activities, pipeline drip pit, or production pit) and each storage pit (including any brine pit, salt water pit, fluid storage pit for an LPG system, or production pit) shall contain, at a minimum, a primary and a secondary liner appropriate to the conditions at the site. Liners shall be designed, constructed, and maintained so as to prevent the contamination of fresh waters, and protect public health and the environment.

(iii) Alternative Liner Media. The division may approve liners that are not constructed in accordance with division guidelines only if the operator demonstrates to the division's satisfaction that the alternative liner protects fresh water, public health, and the environment as effectively as those prescribed in division guidelines.

(c) Leak Detection. A leak detection system shall be installed between the primary and secondary liner in each disposal or storage pit. The leak detection system shall be designed, installed, and operated so as to prevent the contamination of fresh waters, and protect public health and the environment. The operator shall notify the division at least twenty-four hours prior to installation of the primary liner so a division representative may inspect the leak detection system before it is covered.

(d) Drilling and Workover Pits. Each drilling or workover pit shall be of an adequate size to assure that a supply of mud-laden fluid is available and sufficient to confine oil, natural gas, or water within its native strata. Hydrocarbon-based drilling fluids shall be contained in tanks made of steel or other division approved material.

(e) Disposal or Storage <u>Pits Liquids discharged to a pit shall be kept reasonably free of oil</u>. Spray evaporation systems shall be operated such that all spray-borne solids remain within the perimeter of the pond's lined portion.

NMOGA/IPANM believe that it is unnecessary to stipulate a 0.2% hydrocarbon content limitation to protect human health or the environment and it is impractical for our field lease operators to determine compliance. Operators typically have separation equipment in place where there are economically recoverable quantities of liquid hydrocarbon so this should not be an issue in 99.9% of typical field operations. Where field lease operators discover a case of a measurable oil layer on the surface of these pits, they can take appropriate measures to remove the hydrocarbon from the surface and correct any operational problems that caused this situation. The term " reasonably

free" seems sufficient to NMOGA/IPANM to implement on an operational basis, is enforceable by NMOCD, and is protective of the environment.

(f) Fencing and Netting. All pits shall be fenced or enclosed to prevent access by livestock or wildlife. Active drilling or workover pits may have a portion of the pit unfenced to facilitate operations. All tanks exceeding 16 feet in diameter, exposed pits, and ponds shall be screened, netted, covered, or otherwise rendered non-hazardous to migratory birds. Drilling and workover pits are exempt from the netting requirement during drilling or workover operations and subsequent to drilling and workover operations if the pits are kept reasonably free of oil. Upon written application, the division may grant an exception to screening, netting, or covering requirements upon a showing that an alternative method will adequately protect migratory birds or that the tank or pit is not hazardous to migratory birds.

NMOGA/IPANM believe that drilling and workover pits should not require netting at any time as long as the pits are kept reasonably free of oil.

(g) Unlined Pits.

(i) General Prohibition. After June 30, 2005 use of, or discharge into, any unlined pit that has not been previously permitted pursuant to Section 711 of 19.15.9 NMAC or Water Quality Control Commission regulations is prohibited, except as otherwise provided in Section 53 of 19.15.2 NMAC. After (effective date of rule), construction of unlined pits is prohibited unless otherwise provided in Section 53 of 19.15.2 NMAC.

(ii) Exemptions for Good Cause. The division may grant an exemption to the prohibition set out in Subsubparagraph (i) of 19.15.2.53(C)(2)(g) only if the operator demonstrates to the division's satisfaction that the unlined pit will not contaminate fresh water and that public health and the environment are protected.

(iii) Unlined Pits Exempted By Previous Order. An operator of an unlined pit existing on (effective date of rule) for which a previous exemption was received after hearing as allowed pursuant to Commission Orders No. R-3221 through R-3221D inclusive, shall not be required to reapply for an exemption pursuant to Subparagraph (g) of 19.15.2.53(C)2 NMAC provided the operator notifies the division, no later than January 15, 2004, of the existence of each unlined pit it believes is exempted by Order, the location of the pit, and the nature and amount of any discharge into the pit. Such order shall constitute a permit for the purpose of Subparagraph (g) of 19.15.2.53(C)2 NMAC . The division may terminate any such permit in accordance with paragraph (2) of 19.15.2.53(G) NMAC. Any pit constructed after (effective date of this rule) shall comply with the permitting/lining and other standards of Section 53 of 19.15.2 NMAC, notwithstanding any previous Order to the contrary.

(iv) Unlined pits shall be allowed in the following areas provided that the operator has submitted, and the division has approved, an application for permit as provided in Subsection 53 of 19.15.2 NMAC:

TOWNSHIP 19 SOUTH, RANGE 30 EAST, NMPM Sections 8 through 36;
TOWNSHIP 20 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36;
TOWNSHIP 20 SOUTH, RANGE 31 EAST, NMPM Sections 1 through 36;
TOWNSHIP 20 SOUTH, RANGE 32 EAST, NMPM Sections 4 through 9, Sections 16 through 21; and Sections 28 through 33;
TOWNSHIP 21 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 36;
TOWNSHIP 21 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36;
TOWNSHIP 21 SOUTH, RANGE 31 EAST, NMPM Sections 1 through 36;
TOWNSHIP 22 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 36;
TOWNSHIP 22 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36;
TOWNSHIP 23 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 3, Sections 10 through 15, Sections 22 through 27, and Sections 34 through 36;
TOWNSHIP 23 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 19;

that area within San Juan, Rio Arriba, Sandoval, and McKinley Counties that is defined as being outside the valleys of the San Juan, Animas, Rio Grande, and La Plata Rivers, which is bounded by the topographic line on either side of the river that is 100 vertical feet above the river channel measured perpendicularly to the river channel, and which is outside those areas that lie within 50 vertical feet, measured perpendicularly to the drainage channel, of all perennial and ephemeral creeks, canyons, washes, arroyos, and draws located within the oil and gas producing areas of the San Juan Basin in northwestern New Mexico, provided that the areas do not lie between the above-named rivers and the Highland Park Ditch, Hillside Thomas Ditch, Cunningham Ditch, Farmers Ditch, Halford Independent Ditch, Citizens Ditch, or Hammond Ditch and the pit site is not located in water bearing alluvium, no protectable ground water is present or if present, will not be adversely affected by the discharge, and the discharge is not located within a Wellhead Protection Area; or

any area where the discharge quality meets New Mexico Water Quality Control Commission ground water standards.

3. Special Requirements for Below-grade Tanks. All below-grade tanks shall be constructed with secondary containment and leak detection. The operator of any below-grade tank constructed prior to (effective date of this rule) shall demonstrate its integrity annually and shall remove it or equip it with leak detection at the time of any major repairs.

4. Sumps. Visual or other means of integrity of all sumps exceeding 30 gallons in capacity shall be demonstrated annually.

NMOGA/IPANM believe that visual inspections of sumps are sufficient means of demonstrating integrity but other alternative should be allowed as well. Contingent with NMOGA/IPANM acceptance of this language is our definition of sumps.

D. Emergency Actions.

1. Permit Not Required. In an emergency an operator may construct a pit without a permit to contain fluids, solids, or wastes if an immediate danger to fresh

water, public health, or the environment exists or if granted verbal approval by the division.

An emergency pit may be necessary where there is no immediate danger to fresh water, public health, or the environment so NMOGA/IPANM believe that it is appropriate to allow for verbal division approval as another viable reason to allow a pit.

2. Construction Standards. A pit constructed in an emergency shall be constructed, to the extent possible given the emergency, in a manner consistent with the requirements of Section 53 of 19.15.2 NMAC and that prevents the contamination of fresh waters, and protects public health and the environment.

3. Notice. The operator shall notify the appropriate district office as soon as possible (if possible before construction begins) of the need for construction of such a pit.

4. Use and Duration. The pit may be used only for the duration of the emergency. If the emergency lasts more than forty-eight (48) hours, the operator must seek approval from the division for continued use of the pit. All fluids and solids must be removed within 24 hours after cessation of use unless the division extends that time period.

5. "Emergency Pits." Subsection (D) of 19.15.2.53 NMAC shall not be construed to allow construction of so-called "emergency pits," which are pits constructed as a precautionary matter to contain a spill in the event of a release. Impoundments constructed to comply with federal SPCC requirements are not "emergency pits" and shall not require a permit issued pursuant to this section provided that all fluids are removed from the impounded area within 24 hours of use. Construction or use of any such emergency pits" shall require a permit issued pursuant to Subsection 53 of 19.15.2 NMAC.

The specific pits that NMOCD appears to refer to as "emergency pits" are pits designed to contain produced water associated with salt water disposal wells for which NMOGA/IPANM agree. However, the unintentional result of NMOCD's wording is to call impoundments installed pursuant to federal SPCC requirements under 40 CFR 132 could be construed as " emergency pits" require permitting. In NMOGA/IPANM's opinion, such impoundments are not " emergency pits" and should be clearly stated as exempt from this rule. These impoundments are typically unlined as their purpose is short-term containment of crude oil in the event of a catastrophic release.

E. Drilling Fluids and Cuttings. Drilling fluids and drill cuttings contained in any pit or below-grade tank shall be recycled or dried and disposed of in a manner approved by the division and in such a manner as to prevent contamination of fresh water, or danger to public health or the environment. The operator shall describe the proposed disposal method in the Application for Permit to Drill or the Sundry Notice.

F. Closure and Restoration.

1. Unlined Pit Closure. Except as otherwise specified in Subsection 53 of 19.15.2 NMAC, an unlined pit shall be properly closed within six months after cessation of use. In appropriate cases, the division may require the operator to file a detailed closure plan before closure may commence. The division for good cause shown may grant a six-month extension of time to accomplish closure. Upon completion of closure a Closure Report, Form C- 144, or Sundry Notice shall be submitted to the division. Where the pit's contents will likely migrate and cause ground water or surface water to exceed Water Quality Control Commission standards, the pit's contents shall be removed and disposed of in a manner approved by the division. Drilling and workover pits are specifically exempted from filing a detailed closure plan, a formal closure report, or sundry notice of pit closures.

2. Lined Pit and Below-Grade Tank Closure. Except as otherwise specified in this Section, a lined pit of below-grade tank shall be properly closed within six (6) months after cessation of use. Unless there is evidence that the liner or tank does not have integrity and that the soils have been impacted, no soil samples or closure reports are necessary. If evidence shows that soils have been impacted, then a Closure Report, Form C-144 or Sundry Notice shall be submitted to the division. Where the pit contents will likely migrate and cause ground water or surface water to exceed Water Quality Control Commission standards, the pit's contents and the liner shall be removed and disposed in a manner approved by the division.

1) NMOGA/IPANM advocate that closure of drilling and workover pits should not have to follow the same formal closure requirements or submit formal closure reports as unlined production pits or below grade tanks. Item 1 should only address unlined pits.
2) This section added to address lined pits and below grade tanks. If the liner or below-grade tanks demonstrates integrity and there is no evidence of impacted soils (e.g., visual, PID, etc.) then there is no need to sample soils and file a formal closure report. Where there is evidence of lack of integrity or soil impacts, then formal closure is appropriate.

2. Surface Restoration. Within one year of the completion of closure of a pit, the operator shall contour the surface where the pit was located to prevent erosion and extended ponding of rainwater.

The obvious issue is to prevent erosion so there is not need to arbitrarily prohibit pools of water on a closed pit area as this could be misconstrued as to prevent small pools of water which inevitably occur. If erosion is prevented, then the objective is met.

G. Exemptions; Additional Conditions.

1. The division may attach additional conditions to any permit upon a finding that such conditions are necessary to protect fresh waters, public health, or the environment.

2. The division may grant exemptions from any requirement upon a finding that the granting of such exemption will not endanger fresh waters, public health, or the environment. The division may revoke any such exemption after notice to the owner or operator of the pit and opportunity for a hearing.

3. Exemptions may be granted administratively without hearing provided that the operator gives notice to the surface owner of record where the pit is to be located a and (a) written waivers are obtained from all persons to whom notice is required, or (b) no objection is received by the division within 30 days of the time notice is given. If any objection is received and the director determines the objection has technical merit or that there is significant public interest the director shall set the application for hearing. The director, however, may set any application for hearing.

NMOGA/IPANM vigorously disagree with the original draft that NMOCD should have unrestricted discretion as to who is notified, require the operator to obtain a release from those entities, and then further, allow such entities a 30 day of time of notice to comment. We believe that the surface owner should have that right along with OCD oversight to protect public health and the environment.

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NMOGA/IPANM
Consensus Proposed Definitions

12 November 2003

Division guidelines referred to in this Section are, by design, tools for use by industry and OCD to expedite the proper design, installation, and closure of pits. These guidelines are not formal rulemaking and as such to not supplant the requirements of the rule.

* Pit means any surface or sub-surface impoundment, man-made or natural depression, or diked area on the surface. Excepted from this definition are berms constructed around tanks or other facilities solely for the purpose of safety and secondary containment. This definition does not include sumps

* Berm means an embankment or ridge constructed for the purpose of preventing the movement of liquids, sludges, solids, or other materials.

* Playa Lake means a level or nearly level area that occupies the lowest part of a completely closed basin and that is covered with water at irregular intervals, forming a temporary lake.

* Below-grade Tank means a vessel, excluding sumps *and pressurized pipeline drip tanks*, used to store, treat or evaporate products or wastes under the jurisdiction of the Division where any portion of the sidewalls of the tank is below the surface of the ground and not visible.

* Sump means any below-grade impermeable single wall reservoir *where any portion of the sidewalls of the tank is below the surface of the ground and not visible, that remains predominantly empty,* and serves as a drain or receptacle for spilled or leaked liquids on an intermittent basis and is not used to store, treat, dispose or evaporate products or wastes. The annular space between a double walled tank or between secondary containment and a pit are not a sump..

NMOGA/IPANM believes that the sump definition is best described without volumes and should reflect that it is below-grade. The volume issue is dealt with in the rule itself by requiring inspections on sumps only greater than 110 gallons. Above ground drip or leak catch units are not sumps and should not be regulated as such as long as the sidewalls are visible. NMOGA/IPANM also believes that it is important to clarify that the annular space between double walled tanks or secondary containment and a pit does not meet the definition of a sump.

* Wellhead Protection Area means any radius of 1000 horizontal feet from any springs or fresh water well. Wellhead protection areas shall not include areas around water wells drilled within 1000 feet of an existing oil, natural gas, waste storage, treatment or disposal site after such site was establishedor wells drilled specifically to supply water for oil and gas related operations.

NMOGA strongly believes that the wellhead protection area definition should not apply to water wells drilled by an operator to support oil and gas related operations.

* Alluvium means detrital materials which have been transported by water or other erosional forces and deposited at points along the flood plain of a watercourse. It is typically composed of sands, silts and gravels, exhibits high porosity and permeability and generally carries fresh water.

* Ground Water Sensitive Area means an area where ground water exists that would likely exceed standards if contaminants were introduced into the environment, which is specifically so designated by the division after evaluation of technical evidence.

*

NMOGA believes that there is sufficient case history to define what is a wetland without the NMOCD defining a new definition that is inconsistent what already exists in case law.

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DAVID SANDOVAL
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VIA HAND DELIVERY

Oil Conservation Commission
1220 S. St. Francis
Santa Fe, NM 87501

Dear Chairperson and Commissioners:

I.
INTRODUCTION

This law firm represents several landowners in Lea County. We and they appreciate the opportunity given us at the November rulemaking hearing to question witnesses and provide oral comments. We now provide our written comments as was requested by this Commission.

We also attach several photographs which depict pits at various stages of operation and abandonment. The photographs have been numbered as exhibits and a narrative description of each is attached as Addendum 1 to these Comments. As can be readily ascertained, the presence of pits and their inadequate remediation and closure can certainly scar a landscape and threaten the environment.

II.
COMMENTS

A. Notice

Many of the oil and gas operations take place in remote areas of this state. In light of this and the limited number of OCD investigatory staff, the surface owners are the most regularly proximate to these sites. They can be the "eyes and ears" of the OCD and should

be given the opportunity to so participate.

In order to fully allow the surface owners to properly protect their property and advise the OCD of any potential threat to the environment, they must be formally apprised of the operator's intended actions related to the pits. The proposed regulations are completely inadequate in that regard. The single time that the regulations call for notice to the surface owner is when the operator seeks an exemption from the new requirements.

We propose that notice provisions be inserted in the following sections of the proposed regulations:

Sections 19.15.2 A & B. Permit Required. The notice requirement should apply for all applications for permits under Sections A and B. This should include a requirement that a land owner be given notice of whether an operator intends to continue using "existing pits and below-grade tanks" referenced in Section 19.15.2 B.3(b).

Section 19.15. C.2.(g)(iii). Exemptions for Good Cause. This sections allows the OCD to grant an exemption to the prohibition against unlined pits. There should be a specific notice to the surface owner requirement in this section such as that which appears at Section 19.15.2 G. which deals generally with exemptions. Mr. Anderson of the OCD testified that this was consistent with the intent of the proposed regulations.

Section 19.15.2 D. Emergency Actions. This section allows an operator to construct a pit without a permit in the event of an emergency. Subsection 3 of this Section requires that the operator give notice of such an emergent situation to the "appropriate district office." Notice should also be given to the surface owner. Certainly an emergency situation on his property is a matter that he should be made aware of.

Section 19.15.2 F. Closure and Restoration. The proposed regulations do not contain any requirement that the surface owner be given notice of closure. NMOGA's own witness, Bruce Gantner, testified that a landowner should have the right to test a pit at any time and certainly before closure and restoration. Mr. Gantner acknowledged, however, that a surface owner would not know when to do such testing, since an operator was free to close the pit without informing him. Closure in secret abrogates the surface owners' rights to protect their property.

Closure is thus a critical time. A surface owner must be given sufficient advance notice of a proposed closure as soon as possible. This will allow him to visually survey the pit and to make an assessment as to whether more detailed investigations are needed to

determine whether it presents any threat or harm to his property and groundwater. This would also allow the surface owner an opportunity to advise the OCD of any concerns. In the event that independent testing was deemed necessary, early notice would allow the surface owner to do it in a less expensive and intrusive manner than if he were forced to do it after closure.

B. Location

Section 19.15.2 C.2(a) Location. The proposed rule allows pits to be located in any watercourse, flood plain, lakebed, sinkhole, or playa lake "where the pit is to be temporarily used in a transient operation such as drilling or workover." We propose that the prohibition against such locations be absolute. The temporary clause should be deleted. In addition the following language should be inserted:

> ***No pit shall be located within 1000 feet of a public water supply well or private well that pumps more than 100 gallons per minute. No pit shall be located within 350 feet of a public water supply well or private well that pumps more than 100 gallons per minute. No pit shall be located within 500 feet of livestock or wildlife water supplies.***

C. Liners

Section 19.15.2 C.2(b) deals with liners and is in need of some reworking. The proposed regulations allow liners that are "appropriate for conditions at the site." This notion wrongfully emphasizes site conditions and should be more appropriately focused on what is being placed in the pits regardless of what is around it. The key to the regulation should be to ensure that the liners hold back the contaminants regardless of the soils and conditions that are lines. The regulations should contain liner specifications to accomplish such purpose.

D. Closure

Section 19.15.2 F.1. The proposed regulations refer to, but do not expressly adopt, the WQCC standards. Mr. Olsen testified that it was certainly the OCD's intent to rely on those standards and they served to define what was meant by the oft-repeated phrase in the regulations; "to prevent contamination of fresh water and protect public health and the environment." Mr. Gantner, a NMOGA witness, testified that the industry understood this to be the case as well. As such, we propose that the regulations include a statement that

expressly adopts the WQCC standards as for contamination of water to govern pit operation and closure. As for soil and surface contamination, the closure regulations should expressly set forth that the remediation must be "consistent with the levels found in the WQCC standards."

The following language is also proposed:

Pits will be excavated to remove all contaminates, tested for compliance with the attached standards and filled with clean soil. No synthetic liners may be buried on site.

Drilling pits must be closed within 30 days after drilling operation's cease, and tested to ensure that the remediation is accomplished to the levels sets forth in the WQCC standards. No contents may be left on site unless operator has demonstrated that the contents will not endanger fresh water, surface water, public health or the environment, including surface damage, and storm water runoff. Liquids will be removed 10 days after drilling operations cease. No work over pits are allowed.

Further, the proposed regulations require detailed closure plan only "in appropriate cases." This quoted term is not defined. We propose that detailed closure plans be submitted for every pit closure. In the alternative, we propose that the quoted term be defined, perhaps with the inclusion of a non-exclusive list of examples of what would constitute an appropriate case.

Section 19.15.2 F.2. Surface Restoration. The following language is proposed in substitution for proposed rule.

Within 90 days of the completion of closure of a pit the pit shall be capped with 12" of uncontaminated material approved by the division and contoured to prevent erosion and ponding of rainwater. The site will be re-vegetated within 1 year.

E. **Exemptions**

Section 19.15.2 G.3. We propose that the required notice here be a 30 day notice, and that in addition to the surface owners, that mineral owners, towns, villages, cities and counties within a (2) two mile radius of the site also be provided notice. Exemptions without a hearing should be given only in the event that none of the noticed parties requests a hearing.

III.
RESPONSE TO NMOGA's PROPOSALS

NMOGA/IPANM (collectively NMOGA) had representatives in the Working Group that wrote the proposed regulations. Apparently unsatisfied with its ability to completely influence the Working Group, NMOGA offered some changes to the proposed regulations at the November hearing and presented the testimony of several witnesses in an attempt to support them.

Needless to say, the proposals constitute an industry's attempt to emasculate the impact of new regulation. NMOGA's tact in this regard was to include as much undefined language in the regulations as possible. For example, NMOGA proposed the following:

> "Reasonably free of oil" was suggested in place of "liquids with greater than two-tenths of one percent free hydrocarbon" as the acceptable limitations on liquids discharged into the pits. Section 19.15.2 C.2(e).

These proposals were roundly criticized, challenged, and to a large extent exposed as improper by the numerous other participants. It is likely that a similar response was had at the Work Group given that the offered changes did not make it into the proposed regulations.

Rather than the loose and undefined language proposed by NMOGA, specificity is what should govern this Commission's efforts in rulemaking. As has been observed by several Federal Courts of Appeal, the "failure to define certain key terms" in regulations is "problematic." *Kansas Health Care Assoc. Inc. v. Kansas Dept. Of Social and Rehabilitation Services*, 31 F.3d 1536, 1540, fn6 (10th Cir. 1994). In the foregoing case, the Tenth Circuit was concerned about the presence of such nebulous terms as "reasonable and adequate" and "efficiently operated facilities" and noted "that this definitional abyss has spawned considerable litigation." Id.

IV.
CONCLUSION

These comments were opened by referring to the surface owners as the "eyes and ears" of the OCD. Just as critically, the surface owners should also be viewed as the "canaries in the coal mine" acting for the benefit of the general public. It is they that are on-site, it is they that see the first signs of contamination and suffer the its initial consequences.

That is why notice to them is so important. In that regard, we ask that the surface owners' concerns be noted, taken seriously, and acted upon.

Sincerely,

David Sandoval

DS/jlr

Enclosure

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F.L. HEIDEL
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December 1, 2003

Florence Davidson
State of New Mexico/OCD
1220 S. St. Francis Drive
Santa Fe, NM 87505

Dear Ms. Davidson,

This firm represents Darr Angell of Lovington, New Mexico. Please accept this letter as Mr. Angell's written comments on the adoption of a new rule regarding pits and below grade tanks (hereinafter referred to as "the Rule").

The Rule is deficient in that it fails to provide specific rules for enforcement. The OCD has stated that it has a policy of "voluntary compliance" regarding whether an operator follows the state's laws, rules, regulations and guidelines. STRONGER, Inc. (the State Review of Oil and Natural Gas Environmental Regulations, Inc.), of which Lori Wrotenbery is a board member, has criticized the OCD and questioned whether its "voluntary compliance" policy is effective. STRONGER, Inc. has also questioned whether the "OCD enforcement guidelines" are being appropriately used to achieve compliance by operators.

The OCD has taken the position that the "voluntary compliance" policy is a state policy mandated by legislative act, specifically Section 74-6-9.D, (N.M.S.A. [Repl. Pamph 2000]) (a copy of which is attached hereto as Exhibit "A"). The OCD's position on the "voluntary compliance" policy is incorrect. First, Section 74-6-9.D only applies to water quality. It does not apply to soils, etc. Second, and most important, Section 74-6-9.D is not mandatory. "Each constituent agency *may*...D. make every reasonable effort to obtain voluntary cooperation in the prevention or abatement of water pollution;..." ***Id***.

The OCD's policy of "voluntary compliance" is based upon mistaken belief and it has been detrimental to the protection of human health and the environment. Consequently, the Rule should set forth specifics, not "Guidelines" for its enforcement. These specifics should include:

1. The person or persons responsible for enforcing the Rule,

2. the means by which enforcement is to take place, and

3. the authority to issue civil and/or criminal penalties for non-compliance.

The Rule is also deficient because it fails to provide a means by which the OCD can assess whether the Rule is meeting the goals for which it was created, including, but not limited to, the protection of public health, safety and the environment. STRONGER, Inc. has criticized the OCD for failure to have mechanisms in place for assessing progress in remediation. Despite its mandate to protect human health and the environment, "...the Division appears unable to say whether the known extent of contamination is increasing or decreasing." (STRONGER, Inc.'s New Mexico Follow-Up and Supplemental Review, Section 8: Performance Measures, p.53, August, 2001).

The Rules should set forth a mechanism by which the OCD can assess whether or not the goals of the Rule, including protection of public health, safety and the environment, are being met.

If you have any questions, please do not hesitate to call.

Sincerely,

HEIDEL, SAMBERSON, NEWELL, COX & MCMAHON

By: Patrick B. McMahon

Patrick B. McMahon

PBM:cd
Enclosure
pc: Darr Angell

Citation/Title
NM ST Sec. 74-6-9, Powers of constituent agencies

27943 N.M. Stat. § 74-6-9

WEST'S NEW MEXICO STATUTES
CHAPTER 74. ENVIRONMENTAL IMPROVEMENT
ARTICLE 6. WATER QUALITY

Current through the November 5, 2002 General Election

74-6-9. Powers of constituent agencies

Each constituent agency may:

A. receive and expend funds appropriated, donated or allocated to the constituent agency for purposes consistent with the Water Quality Act [this article];

B. develop facts and make studies and investigations and require the production of documents necessary to carry out the responsibilities assigned to the constituent agency. The result of any investigation shall be reduced to writing and a copy furnished to the commission and to the owner or occupant of the premises investigated;

C. report to the commission and to other constituent agencies water pollution conditions that are believed to require action where the circumstances are such that the responsibility appears to be outside the responsibility assigned to the agency making the report;

D. make every reasonable effort to obtain voluntary cooperation in the prevention or abatement of water pollution;

E. upon presentation of proper credentials, enter at reasonable times upon or through any premises in which a water contaminant source is located or in which are located any records required to be maintained by regulations of the federal government or the commission; provided that entry into any private residence without the permission of the owner shall be only by order of the district court for the county in which the residence is located and that, in connection with any entry provided for in this subsection, the constituent agency may:

(1) have access to and reproduce for their use any copy of the records;

(2) inspect any treatment works, monitoring equipment or methods required to be installed by regulations of the federal government or the commission; and

(3) sample any effluents, water contaminant or receiving waters;

F. on the same basis as any other person, recommend and propose regulations and standards for promulgation by the commission; and

G. on the same basis as any other person, present data, views or arguments and examine witnesses and otherwise participate at all hearings conducted by the commission or any other administrative agency with responsibility in the areas of environmental management, public health or consumer protection, but shall not be given any special status over any other party; provided that the participation by a constituent agency in a hearing shall not require the recusal or disqualification of the commissioner representing that constituent agency.

Search this disc for cases citing this section.

GOVERNOR
[redacted] Richardson

STATE OF NEW MEXICO
DEPARTMENT OF GAME & FISH

One Wildlife Way
PO Box 25112
Santa Fe, NM 87504

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DIRECTOR AND SECRETARY
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STATE GAME COMMISSION
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Albuquerque, NM

Alfredo Montoya, Vice-Chairman
Alcalde, NM

David Henderson
Santa Fe, NM

Jennifer Atchley Montoya
Las Cruces, NM

Peter Pino
Zia Pueblo, NM

Guy Riordan
Albuquerque, NM

Leo Sims
Hobbs, NM

November 25, 2003

Florene Davidson, Division Administrator
Oil & Gas Conservation Division, EMNRD
1220 South St. Francis Drive
Santa Fe NM 87505

Re: Post-hearing comments on proposed OCD rule 19.15.2.53 NMAC, Pits and Below-Grade Tanks, NMGF Project No. 9050

Dear Ms. Davidson:

A representative of our department attended the Oil Conservation Commission rulemaking hearing that took place November 13 and 14, 2003. We are also in receipt of the letter dated November 18, 2003, from Mr. David Brooks to Ms. Gail MacQuesten. In light of apparent uncertainty regarding the intent of the proposed rule paragraph C.2.(f), we would like to clarify our position on that issue. We also take this opportunity to submit additional comments.

The language of the above-referenced paragraph seems clearly to exempt drilling and work-over pits from netting only during active operations, and then only if kept reasonably free from oil. Extensive discussion at the hearing demonstrated the practical difficulties involved in objectively measuring either "reasonable freedom" from oil, or the more precise < 0.2% hydrocarbon requirement for discharge to disposal or storage pits. In light of those difficulties, the variable toxicity of hydrocarbon compounds discussed in our previous letter, and the likely presence of potentially toxic non-hydrocarbon contaminants, we reiterate our recommendation that pits which are not in process of active operations should not be exempted from netting, regardless of perceived water quality. We also recommend that the rule define the maximum allowable interruption of active operations during which the exemption could be in effect.

In addition to our endorsement of the US Fish and Wildlife Service guidelines for oilfield pond netting specifications, we suggest that the base of the netting at ground level should consist of a fine mesh, such as silt fence. This suggested modification is for the purpose of protecting small animals, especially reptiles and amphibians, which are attracted to open surface water. Amphibians in particular are susceptible to toxic effects from compromised water quality.

The Department of Game and Fish would like to add our objection to the language in proposed rule paragraph C.2(a) which allows drilling or workover pits to be located in a watercourse. According to the closure requirements in paragraph F.1, such pits may be open for a year or more. Although the duration is short relative to disposal or storage pits, there will cumulatively be a large number of temporary pits open at any given time, exposed to the possibility of a release due to inadequate capacity for floodwater or failure of the pit walls or liner. There should be a prohibition on the construction of any pits at all in watercourses.

We also object to paragraph C.2(g), allowing unlined ponds over large areas of the southeast and northwest oilfields. Our objection is primarily based on the likelihood of contaminant migration in soil and vadose zone waters, and the subsequent effects on surface ecological communities. This is the issue that was raised in Dr. Neeper's testimony at the November 13 hearing. We also believe that hydrologic conditions outside the designated "vulnerable" zones are sufficiently variable to warrant case-by-case evaluation of the potential for contamination of groundwater and surface water.

Thank you for the extended opportunity to comment on this proposed OCD Rule. Please contact our office if you require clarification on these comments or if we can be of further assistance.

Sincerely,

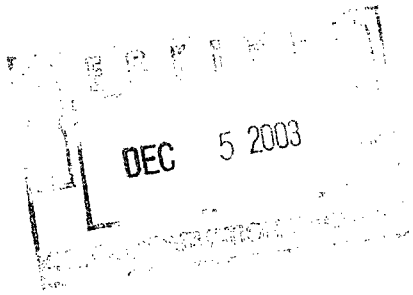
Lisa Kirkpatrick

Lisa Kirkpatrick, Chief
Conservation Services Division

LK/rjj

cc: Tod Stevenson, Deputy Director, NMGF
Joy Nicholopolous, New Mexico Ecological Services, USFWS
Steve Anderson, Northwest Area Habitat Specialist
Clint Henson, Northeast Area Habitat Specialist
Alexa Sandoval, Southeast Area Habitat Specialist
Pat Mathis, Southwest Area Habitat Specialist

November 24, 2003



Mr. David K Brooks
Assistant General Counsel
Oil Conservation Division
1220 South Saint Francis Dr.
Santa Fe, NM 87505

Re: Case No. 12969; Pit Rule

Dear Mr. Brooks:

As evidenced by photographs I submitted at the OCD pit hearing, it will not make any difference whether there is a pit netting ruling or not. I make this statement because the oil companies are not going to adhere to it, nor is OCD going to enforce it.

I recommend a closed pit (loop) system for all drilling and all work overs. However, it must be understood by all parties involved and affected by the oil/gas industry's exploration and production exactly what is to be done and exactly how to do it, with absolutely no exceptions or exemptions, and appropriate penalties automatically affixed and enacted if a closed pit system is not used.

This would eliminate: 1). initial damage to the soil, 2). contamination of water, 3). death to livestock, 4). death to all types of wildlife, 5). the liability of oil/gas companies, both in the present, and years into the future, 6). additional water erosion and wind erosion to the surface, which goes on for years after the pit closure, 7). the need for fencing (which is not consistently followed or enforced), 8). netting, and 9). soil sampling, rules that are rarely adhered to and enforced; and, importantly, 10). it would remove the state's taxpayers' obligation to clean up the site contamination after the oil/gas companies are defunct or bankrupt.

Under the jurisdiction of the OCD, SLO, and the BLM, with their pages and pages of rules and regulations to stop the blatant pollution and contamination caused by the oil/gas industry, there remains a tremendous amount of destruction and sterilization caused by the industry, especially water contamination! It is evident to me that what has been done up to this point, is not working, and will not work, in the future. Therefore, prohibit one of the most serious causes of destruction at the outset, no more open, lined or unlined, earthen drilling or work over pits.

Sincerely yours,

Carl L. Johnson

Carl L. Johnson
A rancher in Lea County with over 40 years involvement with the Oil/Gas industry, the SLO, OCD and BLM

Cc: Heidel, Samberson, Newell, Cox & McMahon
OGAP
SLO
BLM
NMCGA

OCD case 12969, Pit Rule
Post-hearing submittal.
Donald A. Neeper
Private citizen
2708 B. Walnut St.
Los Alamos, NM 87544

The following comments are submitted in clarification of two issues: A) burial of wastes, and B) the term "reasonable" as a standard.

A) **Burial of Wastes**

In my verbal testimony, I indicated that on-site burial of harmless mineral wastes is acceptable. I recognize that "harmless" is not technically defined. Legally, either a contaminant is present in excess of a standard, or it is considered inconsequential. **My statement is meant to suggest that the concentrations of any contaminants *in the buried substance itself* shall not be of a harmful concentration**. For example, if the concentrations of chemicals in a drilling mud were toxic, that mud should not be buried on site.

B) **"Reasonable" as a standard or guideline**

In response to testimony supporting the term "reasonable" rather than a numerical standard, I queried the witness regarding how he could guarantee that "reasonable" would not be interpreted in such a way as to negate the intent of the regulation. As an example, I cited the WQCC regulation that states: "Non-aqueous phase liquid shall not be present floating atop of or immersed within ground water, as can be *reasonably measured*." (emphasis mine). I asserted that the original intent of "reasonably measured" was to mean a sheen on the water, and that this intent had been negated by an OCD interpretation of one-eighth inch. In fact, it is the regulation of the Petroleum Storage Tank Bureau (PSTB) that provides the one-eighth inch interpretation of a "reasonably" allowable thickness of floating petroleum product. The PSTB rule [**20.5.12.1207 A NMAC**] says,

> **"Owners and operators shall assess the potential for remediation of non-aqueous phase liquid (NAPL) where there is a thickness of greater than one-eighth inch of NAPL on surface water, in any excavation pit, or in any well."**

Although OCD personnel denied using such a gross guideline, the example provided by my inquiry remains: the "reasonable" WQCC standard has been weakened in practice. **This example demonstrates that the term "reasonable" provides an unreliable standard and therefore is unacceptable to citizens.**

NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

BILL RICHARDSON
Governor
Joanna Prukop
Cabinet Secretary

Lori Wrotenbery
Director
Oil Conservation Division

November 21, 2003

Mr. Carl L. Johnson
FAX No. 505-398-6549

Re: Case No. 12969; Proposed Pit Rule

Dear Mr. Johnson:

The Commission appreciates your interest in the proposed rule and the effort you made to prepare your comments and attend the hearing on November 13 and 14. Contrary to the information you apparently received, your statements dated September 11 and October 29, together with the accompanying pictures, were received by the Commission and made a part of the record. These statements and pictures are now posted on the Division's website along with the other exhibits received at the hearing.

The Commission has extended the time for submission of written comments through December 2, 2003. Accordingly, your letters of November 15 and November 18 will also be made a part of the record, and you may submit further comments so long as they are received in Santa Fe no later than December 2.

I sincerely apologize for any disrespect or lack of consideration that the Commission or I may have shown you. However, I believe the record will reflect that on several occasions during the hearing I asked if persons wishing to speak had schedule constraints that needed to be accommodated. I do not recall that you rose on those occasions to advise the Commission of your scheduling needs.

If you have other concerns about matters pending with the Division, please feel free to call them to my attention.

Very truly yours,

Lori Wrotenbery
Director

November 15, 2003

To all interested parties:

Enclosed please find a copy of two statements that I had wished to give at the pit hearing in Santa Fe on November 13, 2003. The opportunity to speak was not given to me after attending the 6 and ½ hour hearing on Thursday and another 3 hours on Friday morning, the 14th of November. I finally gave up waiting to be called upon as I had to return to the ranch to tend to business; and this after three days wasted. By noon on the second day of the hearing, there were only four of us (Mr. And Mrs. Irvin Boyd and my wife, Barbara, and myself) left who were having to pay our own way to the hearing and be absent from our businesses. The rest in attendance were on someone else's payroll or on government payroll. By noon on the 14th there were very few people left in the meeting room.

This total disrespect and lack of consideration for the average citizen was uncalled for. It was obvious to those of us who came to the hearing to voice our grievances against the oil companies' destructive behavior toward the land, that we were being manipulated by the procedures used by the chairman, Lori Wrotenbery. At 5:00 PM on Thursday, after announcing that the meeting was to be adjourned and continued the next day, several people in my situation (having to foot our own expenses to attend) asked to say a few words so that they would not have to return. Their prepared statements were shortened to just a very few minutes. A totally different method of handling such open meetings needs to be implemented. The private citizen who has paid their own way to attend the meeting should be given priority to voice their statements. Limits should be enforced as to the time each individual or company can speak; plus, an agenda as to who is going to speak, and at what time would be helpful to all in attendance. This could easily have been accomplished; as we signed in upon arriving at the hearing and stated our desire to make a statement and how much time we needed. At this hearing the New Mexico Oil and Gas Association lawyer took about half of the entire hearing proceedings to speak—on the 13th he used up about 1/3 to 1/2 of the 61/2 hours of the hearing; and on the 14th he spoke all 3 hours from 9:00 to 12:00 AM.

I listened to witnesses called by the NMOGA lawyer give false testimony, under oath, over and over again. These were representatives of the oil and gas interests. I do not know how this blatant defiance of the truth can be stopped, but nothing will be resolved until this behavior is not allowed.

I am about as angry as I have been in a good while. I have seen how the OCD operates over and over again. This hearing is a prime example of the OCD being a lackey organization for oil and gas interests.

Carl L. Johnson

Carl L. Johnson
Cc: State Land Office
BLM
OGAP
Heidel, Samberson, Newell, Cox Law Firm

Written after receiving copy of pit change which had many rules & Original regs unenforced & not adhered to Aug

Statement to Oil Conservation Commission
Santa Fe, New Mexico

~~September 11~~, 2003

My name is Carl Johnson, a 3rd generation rancher in Lea County since my family's move to New Mexico in 1914. I have ranched in the Jal, Ocho, Antelope Hills area and the Tatum, Crossroads, Caprock country.

I have dealt with the OCD since the Pete Porter days (1962). (Is there anyone else here who has been in the field with the OCD since 1962?) Never have I, as a deeded landowner, State lessee, or BLM permittee ever received fair and impartial treatment from the OCD. In fact, it has been quite the contrary. All my dealings with the OCD have been severely in favor of the oil companies and with little, to no concern, about the well being of our water, air and soil natural resources; nor were my private property rights given any consideration.

Except recently with Wayne Price

We have shown the OCD non-producing, abandoned wells, along with tank battery sites, that have been deserted for 10 to 30 years. Nothing has been done or resolved with these sites.

We have shown the OCD abandoned wells that they did not even know existed!!! In addition we have shown the OCD various sheds, water flood pumps and apparatus that have been abandoned for many, many years. The trash and debris in these oil fields are beyond comprehension.

We have shown the OCD lakes of salt water that were never cleaned up. No fines were imposed, nor penalties, nor any system improvements made. In fact, absolutely nothing was ever done to make the oil companies conform to proper environmental procedures so that the water and soil contamination would be stopped.

We have shown the OCD roads that were not maintained and that were allowed to grow to unbelievable widths of up to 45 feet wide; and again nothing was done to improve the situation.

The OCD has been shown old reserve pits that are growing by 2 feet – 10 feet per year, spreading their sterilized and destructive soils due to the

movement of those pollutants that are left behind by wind and water. We are losing our ranches several yards a year, year after year. Again, nothing was or has been done.

This is standard operating procedure for the OCD on all lands---BLM, State, and deeded, not the exception.

Those of us out on the land, the ranchers who face these situations on a daily basis, have no faith or confidence in the OCD as far as any protection for our personal business, our environment, our well being, or more importantly our private property rights.

In fact, the OCD is so one sided in favor of the oil industry, it has been suggested that they, the OCD, are bought and paid for by the oil companies.

Something needs to be done before all of our water is polluted in SE New Mexico. As most of those in this room know, there is a very substantial amount of our underground, non-rechargeable aquifer, from one end of Lea County to the other, that is polluted, ruined, and no longer useable. My family has lost 2 water wells and has many more that are in potential danger of being contaminated.

The ranchers in Lea County think the OCD is useless, worthless, and not a viable agency. We recommend that the present organization be sunsetted, demolished, and done away with. A new agency needs to be introduced that can be in tune with today's times and concerns, rather than the old "Oil is King" way of doing business. "Water is at the top of the pile now" and should be of primary importance. Maybe we should put all of OCD's duties into the State Environmental Dept?
Things have changed and the oil industry, along with the agencies involved with it---the OCD, SLO, BLM, and EPA, etc. need to work towards saving the land, water, and air resources rather than causing a detriment to other resource users and destroying these natural resources for the sake of dollars.

We are of the opinion that no matter what the pit ruling will be, it will only remain "business as usual" with the present OCD.

In closing, I wish to present 2 photos of a 5-6 year old reserve pit along with the liner left behind which recently killed one of my cows. She choked and died from chewing a piece of the pit liner. You will also see other trash and

debris in the pit area. This is an example of OCD oversight!! This pit and others throughout the numerous oil fields are a disgrace and something has to be done now!! The other pictures are of old sterilized, growing reserve pits.

Perhaps the State should consider that all pits, leaks, spills be hauled to approved, regulated sites and disposed of in an approved safe manner. Our mandated landfills for the municipalities are a very good example as to what might be done with oil field wastes.

If you have any questions I shall try to answer them. Thank you for your time.

Carl T. Johnson

Statement written since my original statement of Aug along with pictures of present pit situation

From: Carl L.Johnson
Date: October 29, 2003

Re: Mandatory closed system or "pitless" drilling

The enclosed pictures are a prime example of a practice that must be stopped. The best method to stop this kind of devastation would be to employ both legislative and administrative procedures.

These pictures show vividly the standard operating procedure used in drilling oil and gas wells in the Permian Basin and elsewhere. The dimensions are 220 feet by 180 feet, or 73 yards by 60 yards of destroyed, damaged, polluted and ruined surface; not even taking into consideration the loss of wildlife and livestock and, more important than all of the above, potential pollution of groundwater. Notice no netting and torn liner which was probably torn at installation, winds, Crew Etc.

These pictures depict the normal practice used for drilling in the Lea County area. As can be seen, there is trash and debris, oil, brine and oil and gas-field wastes that one must reasonably assume include hazardous materials such as benzene, hydrocarbons, volatile organic compounds, heavy metals and hydraulic fracturing fluids. The pit will typically be allowed to dry for one to three years surrounded by a one to three wire fence draped loosely on steel posts, with no netting; and thus allows deadly access to both wildlife and livestock. Then, a track hoe or Caterpillar tractor will enter the pit area to scatter the contents, stirring and tearing the lining to pieces thereby allowing all the pollutants to simmer, blow, and seep into the surrounding surface area, evaporate into the air or contaminate the Ogallala water formation. This will go on indefinitely and the area will be destroyed forever. The result is the cluster-bombed appearance of the rangeland seen from the air.

The Ogallala ground water is pumped from 27 feet to 80 feet beneath the surface in this particular area, with a hand dug well within a mile to the northeast and old spring sites approximately one and a half to two miles to the southwest.

Lovington's proposed ordinance 449 seeks to resolve this issue by mandating a closed system for all wells drilled in its water field in article 8.30.390. The Oil Conservation Division's own records suggests that there is a definite need for some additional precautions in protecting groundwater due to known (6,748 documented) and unknown instances of contamination resulting from open, lined and unlined pits. The Vermejo Park Ranch in the Raton Basin has also addressed this issue in its Joint Groundwater Monitoring Program. I therefore suggest a closed system to be mandatory for all drilling in New Mexico, on all lands—BLM, State, Indian, and deeded---; and any company in violation be prosecuted to the fullest extent.

November 18, 2003

Lori Wrotenbery, and members of the Commission
Wayne Price

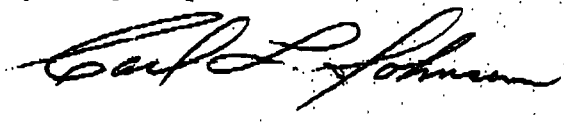
It was brought to my attention last night, Nov 17, that the statements I had prepared to present, along with several graphic photos, failed to be presented and were not a part of the pit hearing.

To say I am disappointed is a gross understatement, but as stated in my previous letter, I should not be surprised. Of all the people in attendance, I have seen the OCD in action the longest and in greater detail. It has been Standard Operating Procedure for the OCD to NOT deliver to those of us citizens they are mandated BY LAW to protect.

I request that the pictures I submitted be shown to all members of the commission, and, I request that the copies of the sworn testimony of the NMOGA witnesses be compared to the photos. After which I would like to have all the photographs returned to me intact. This pit deal is a no brainer; just have all drilling and work over pits comply with a closed loop system!! You wouldn't have as many people interested. You wouldn't have as many people making false statements under oath. You wouldn't have the many, many, photos from everywhere around this state as proof of the destruction brought to the land, destruction to the water beneath the land and, as was pointed out by Mr. Neeper, the destruction by the present pit systems to the soils between the topsoil and the water that lies beneath. How could Mr. Hicks indicate that the contamination just happened naturally to a water well and that the oil/gas industry is completely innocent!! We are ranchers and stewards of the land. We are living out here in the midst of the oil fields. We are aware of what happens when there is disregard for the proper procedures in drilling. This kind of ridiculous manipulation of the facts by the oil/gas industry is absolutely ludicrous. As was stated during the hearing, the rancher is aware of the need for energy and the need for drilling for oil and gas. All we wish for is respect towards the environment and private property rights of others.

It always amazes me that the oil and gas industry feels it has the right to make its money at the expense of other individuals and resource users and with complete disdain for the environment. This mentality is beyond my comprehension.

Carl L. Johnson



Cc: State Land Office
BLM
OGAP
Heidel, Samberson, Newell, Cox Law Firm