

NMOGA/IPANM Consensus Pit Rule

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 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. 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 January 15, 2004 ~~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 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..

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 Pits. ~~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. 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 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. 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 ~~othersiwe~~ 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 ~~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.

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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