

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

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION COMMISSION FOR THE)
PURPOSE OF CONSIDERING:)

CASE NO. 13,013

APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION FOR AMENDMENT)
OF RULE 711 [APPLICABLE TO SURFACE)
WASTE MANAGEMENT FACILITIES ONLY])

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Oil Conservation Division

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN
JAMI BAILEY, COMMISSIONER
ROBERT LEE, COMMISSIONER

ORIGINAL

March 20th, 2003

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Thursday, March 20th, 2003, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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March 20th, 2003
 Commission Hearing
 CASE NO. 13,013

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A P P E A R A N C E S

FOR THE COMMISSION:

CAROL LEACH
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Santa Fe, New Mexico 87505

FOR THE DIVISION:

DAVID K. BROOKS, JR.
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Energy, Minerals and Natural Resources Department
Assistant General Counsel
1220 South St. Francis Drive
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* * *

ALSO PRESENT:

ROBERT M. GALLAGHER
President, New Mexico Oil and Gas Association

* * *

1 WHEREUPON, the following proceedings were had at
2 9:05 a.m.:

3 CHAIRMAN WROTENBERY: Okay, it looks like
4 everybody's here. We've got a quite a few items on the
5 agenda, and we want to try to get through as much as
6 possible today, finish up today if we can. We may continue
7 into tomorrow morning, but we'll give it a shot at
8 finishing today.

9 My name is Lori Wrotenbery, I'm Director of the
10 Oil Conservation Division. I serve as Chair of the Oil
11 Conservation Commission.

12 To my left is Dr. Robert Lee, who is Director of
13 the Petroleum Recovery Research Center at New Mexico Tech
14 and is the designee to the Commission of the Secretary of
15 Energy, Minerals and Natural Resources Department.

16 To my right is Jami Bailey, who represents Land
17 Commissioner Patrick Lyons on the Commission.

18 We have to Commissioner Bailey's right Florene
19 Davidson, the Commission Secretary.

20 We're pleased to have Carol Leach, the general
21 counsel of the Department, sitting in with us at least for
22 a portion of today. Steve Ross, the Commission's counsel
23 had to go over to the roundhouse and cover some legislative
24 matters, so thank you, Carol --

25 MS. LEACH: Sure --

1 CHAIRMAN WROTENBERY: -- for filling in.

2 MS. LEACH: -- it'll be fun.

3 CHAIRMAN WROTENBERY: And Steve Brenner will be
4 recording this session for us today.

5 It is March 20th, 2003, we are in Porter Hall,
6 for the record, just a little bit after nine o'clock a.m.

7 Let's just take care of one brief item of
8 business before we get into the pending matters.

9 We've got the minutes of the hearing of the Oil
10 Conservation Commission that was held on February 27th,
11 2003. We need to take care of those this morning.

12 Commissioners, have you had an opportunity to
13 review those minutes?

14 COMMISSIONER BAILEY: Yes, I have, and I move
15 that we adopt them.

16 COMMISSIONER LEE: Second.

17 CHAIRMAN WROTENBERY: All in favor say aye.

18 COMMISSIONER BAILEY: Aye.

19 COMMISSIONER LEE: Aye.

20 CHAIRMAN WROTENBERY: Aye. I will sign those on
21 behalf of the Commission. Thank you, Florene.

22 And then the first item that we'll take up is the
23 Application of the New Mexico Oil Conservation Division for
24 Amendment of Rule 711. This is applicable to surface waste
25 management facilities only.

1 Oh, and let me introduce Tom Mills as well, who
2 we're pleased to have attending this session. Mr. Mills is
3 the Deputy Secretary of the Energy, Minerals and Natural
4 Resources Department.

5 And our Secretary, Joanna Prukop.

6 SECRETARY PRUKOP: Very nice to meet you all.

7 Please come see me if I can help.

8 CHAIRMAN WROTENBERY: Great.

9 SECRETARY PRUKOP: Thank you, Lori.

10 CHAIRMAN WROTENBERY: Thank you.

11 Okay, I'll call for appearances in Case 13,013.

12 MR. BROOKS: Madam Chairman, honorable
13 Commissioners, I'm David Brooks, Assistant General Counsel,
14 Energy, Minerals and Natural Resources Department of the
15 State of New Mexico, appearing for the Oil Conservation
16 Division.

17 CHAIRMAN WROTENBERY: Okay, and do we have --

18 MR. BROOKS: I have one witness.

19 CHAIRMAN WROTENBERY: One witness. For the
20 record, do we have any other appearances in this matter?

21 MR. GALLAGHER: Madame Chairwoman, Bob Gallagher,
22 President, New Mexico Oil and Gas Association.

23 CHAIRMAN WROTENBERY: Thank you, Mr. Gallagher.

24 I do believe, Mr. Brooks, that you want to
25 support some testimony in support of this Rule amendment?

1 MR. BROOKS: Yes, ma'am, and I have one witness.

2 CHAIRMAN WROTENBERY: I also note that we have
3 received only one set of written comments, that I'm aware
4 of, on this Rule amendment. Is that right?

5 MR. BROOKS: I'm aware of only one written
6 comment that we have received.

7 CHAIRMAN WROTENBERY: And that was from the
8 Environment Department?

9 MR. BROOKS: That is correct.

10 CHAIRMAN WROTENBERY: And will you address those
11 comments in the course of your testimony?

12 MR. BROOKS: They will be addressed in the
13 testimony.

14 CHAIRMAN WROTENBERY: Okay. Otherwise I'll also
15 note for the record that this particular amendment does not
16 appear to be particularly controversial. I don't know, we
17 may have some questions from the Commissioners about it.
18 In view of the number of items that we have on the agenda,
19 Mr. Brooks, if you will cover the items that you need to
20 cover for the record of this rulemaking, please do so as
21 concisely as possible.

22 MR. BROOKS: Madame Chairman, that is my
23 intention.

24 CHAIRMAN WROTENBERY: Thank you. Okay, Mr.
25 Brooks, would you like to call your witness?

1 MR. BROOKS: We need to get him sworn, if it
2 please the Commission.

3 (Thereupon, the witness was sworn.)

4 MR. BROOKS: Good morning, Mr. Anderson.

5 MR. ANDERSON: Good morning.

6 ROGER C. ANDERSON,
7 the witness herein, after having been first duly sworn upon
8 his oath, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BROOKS:

11 Q. Would you state your name for the record, please?

12 A. My name is Roger C. Anderson.

13 Q. And by whom are you employed?

14 A. I am employed by the Oil Conservation Division as
15 the Environmental Bureau Chief.

16 Q. In what office?

17 A. In the Santa Fe office.

18 Q. And what are your responsibilities, generally, as
19 Environmental Bureau Chief?

20 A. To manage the environmental programs as dictated
21 by the Oil and Gas Act and the Water Quality Act and the
22 oil and gas industry.

23 Q. What is Rule 711?

24 A. Rule 711 is the rule that regulates oilfield
25 surface waste management facilities.

1 Q. And is administering Rule 711 one of the
2 responsibilities of the Environmental Bureau?

3 A. Yes, it is.

4 Q. Concerning Rule 711, does one of the things that
5 -- does it define the types of wastes that may be accepted
6 for disposal at commercial waste management facilities
7 regulated by the Division?

8 A. Yes, it does.

9 Q. And can you tell us what its parameters are as it
10 is presently written?

11 A. It only allows wastes generated in the
12 exploration, production, transportation, processing and
13 refining and servicing of oil and gas wells, except in an
14 emergency declared by the Department of Public Safety, and
15 in that case it can allow non-oilfield waste.

16 Q. But it has to be declared by the Department of
17 Public Safety; it's not up to us to make that decision,
18 right?

19 A. That's correct.

20 Q. What is the intent of this amendment that is
21 currently proposed?

22 A. The intent of this amendment is to allow certain
23 non-oilfield waste to be disposed of at a surface waste
24 facility on a case-by-case basis approved by the Division.

25 Q. Has the Division from time to time received

1 inquiries about whether or not Division-regulated
2 facilities would be available for disposal of non-oilfield
3 waste?

4 A. Yes, we have.

5 Q. Based on the inquiries that your bureau has
6 received and what you know about waste management generally
7 -- Well, first of all, let me ask you, as Environmental
8 Bureau Chief, have your credentials as an expert
9 environmental engineer been presented to and accepted by
10 the Commission previously?

11 A. Yes, they have.

12 MR. BROOKS: Okay, then I won't -- then I will
13 ask, can Mr. Anderson be accepted as an expert?

14 CHAIRMAN WROTENBERY: We accept Mr. Anderson's
15 qualifications?

16 Q. (By Mr. Brooks) In your opinion, based on the
17 inquiries you received and based on what you know about the
18 waste management market in the State of New Mexico, do you
19 have an opinion as to whether or not there is a need for
20 more capacity for the management and disposal of non-
21 oilfield wastes in the State of New Mexico?

22 A. Yes, there is.

23 Q. Are there wastes generated outside the oil and
24 gas industry that are similar in chemical composition, and
25 therefore in waste-management requirements, to oilfield-

1 generated wastes?

2 A. Yes, there are.

3 Q. Could you give us some examples?

4 A. There are salts that are mined, generated from
5 the mining operation, that are similar in characteristics
6 to the salt waters that are generated in the oilfield.
7 There are waste -- or there are contaminated soils created
8 by underground storage tanks or accident spills along
9 highways that are similar to the contaminated soils that
10 are generated in the oil and gas industry. There are
11 chemicals at service companies that are universal within
12 all other industries, contaminated soils and those kind of
13 things.

14 Q. And with regard to these particular wastes that
15 are similar in physical and chemical composition to
16 oilfield wastes, in your opinion are the facilities
17 regulated by the Division appropriate facilities to manage
18 and dispose of those wastes?

19 A. If they are permitted to accept those type of
20 wastes, then they would definitely be appropriate, yes.

21 Q. Subject, of course, to capacity limitations?

22 A. That's correct.

23 Q. Do you know of any reason -- well, first of all
24 -- Let me go into one other thing first.

25 What in the trade, environmental management --

1 what does the term, quote, hazardous waste, close quote,
2 mean?

3 A. Hazardous waste is the term that is used as
4 wastes that are defined under the 40 CFR, part -- I believe
5 it's 164 -- that it either tests characteristically for
6 hazardous constituents or it is listed in the CFR as a
7 hazardous waste.

8 Q. And those regulations in the CFR are pursuant to
9 the Resource Recovery and Conservation Act?

10 A. That's correct.

11 Q. Resource, Conservation and Recovery Act.

12 A. -- Conservation and Recovery Act, yeah.

13 Q. Yeah, sorry. And that's a federal law?

14 A. That's correct.

15 Q. Okay. Now, generally speaking, these facilities
16 -- Well, not generally speaking, it's a determination that
17 has been made that we're not asking to review, that these
18 facilities that we regulate, that the Oil Conservation
19 Division regulates, are not appropriate for the disposal
20 of, quote, hazardous waste?

21 A. That's correct.

22 Q. So what you're asking the Commission to authorize
23 is non-oilfield, non-hazardous waste, correct?

24 A. That's correct.

25 Q. Subject to that qualification, do you believe

1 that there is any environmental reason not to allow this
2 type of waste to be disposed of at Division-regulated
3 facilities once the Division has reviewed the facility's
4 capabilities and capacity limitations and determined that
5 that's appropriate in a particular case?

6 A. I see no reason to not allow it.

7 Q. Very good. Do you believe, however, that --
8 Well, first of all, there are a lot of different types of
9 facilities that are governed by Rule 711?

10 A. Yes, there are.

11 Q. And some of them would be appropriate for certain
12 types of waste, and others would be appropriate for other
13 types of waste, correct?

14 A. That's correct.

15 Q. So for that reason do you believe it would be
16 appropriate to have an across-the-board authorization of
17 disposal of non-oilfield wastes, or do you believe that it
18 would be better for the Division to consider this on a
19 case-by-case basis?

20 A. I believe it's needed to be on a case-by-case
21 approval basis from the Division.

22 Q. Now, the Environment Department raised an issue
23 in their comments about -- The Rule as originally proposed
24 said if the waste is similar in nature to oilfield wastes,
25 and the Environment Department raised a question of what

1 was meant by that. And we are now proposing the words "is
2 similar in physical and chemical composition to oilfield
3 waste." We'd like to ask a couple of questions to address
4 that.

5 What are the primary contaminants found in
6 oilfield wastes?

7 A. The Primary contaminants found in oilfield waste
8 are hydrocarbons, salts, there will be some metals.

9 Q. But those would be relatively small proportion,
10 generally, would they not?

11 A. That's correct.

12 Q. And so when you're talking about similar in
13 physical composition and chemical composition to oil and
14 gas wastes, you're talking then about wastes that are
15 contaminants primarily because they contain those
16 constituents, correct?

17 A. That's correct.

18 Q. And what kind of wastes would that exclude? What
19 would not be similar in chemical composition to oilfield
20 wastes?

21 A. It would exclude those wastes that contain
22 constituents such as dioxins, if it's below the hazardous
23 waste levels, or cyanides, those chemicals that are not
24 typically in oilfield waste.

25 Q. Now, what about physical composition? What would

1 be the --

2 A. That is meant primarily for the type of facility.
3 A land farm, pure land farm, is not allowed to accept
4 liquids, so any non-oilfield wastes that are in liquid form
5 would not be authorized at a land farm.

6 A landfill, depending on the permit conditions
7 and how it is, they may not be allowed to accept waste
8 liquids either.

9 Solids, such as contaminated soils, a landfill
10 may or may not be authorized to accept contaminated soils
11 unless they have a land farm to land-farm it or remediate
12 it.

13 Those are the type of things --

14 Q. Was there any type of waste that would be
15 excluded because -- generically, because it's not similar
16 in physical composition to oilfield waste, or would it just
17 be a question of reviewing the suitability of particular
18 facilities?

19 A. It would be a question of reviewing a specific
20 facility requested.

21 Q. But as you indicated before, there are some that
22 very definitely would be excluded because they're not
23 similar in chemical composition?

24 A. That's correct.

25 MR. BROOKS: Okay. Now, the Environment

1 Department was also concerned about the use of the word
2 "exempt wastes", and we changed that "exempt from the
3 hazardous waste provisions of Subtitle C of the Federal
4 Resource Conservation and Recovery Act".

5 And I would say that it says here on your exhibit
6 "hazard wastes". That is an error that we were very much
7 aware of, that should read "hazardous". We've tried to
8 correct it several times, and for some reason the computer
9 just does not seem to want to make that change. But we
10 will endeavor to do so before we get it into the *New Mexico*
11 *Register*. This is the third draft we've --

12 THE WITNESS: This is the third try.

13 MR. BROOKS: -- prepared and tried to correct
14 that mistake, and the computer simply will not do it. I
15 don't know what's wrong, but we will look into that.

16 Anyway --

17 CHAIRMAN WROTENBERY: Are you working on Mr.
18 Anderson's computer?

19 THE WITNESS: Yes.

20 MR. BROOKS: Yes.

21 CHAIRMAN WROTENBERY: I think that explains it.

22 MR. BROOKS: Maybe the computer does not like Mr.
23 Anderson.

24 Q. (By Mr. Brooks) Okay, does the phrase "exempt
25 waste" as used in the trade -- does that mean exempt from

1 the provisions of Subtitle C of the Resource Conservation
2 and Recovery Act?

3 A. Yes, it does.

4 Q. And does that define a specific category of waste
5 that everybody in the industry would know what it meant?

6 A. Yes.

7 MR. BROOKS: Very good, I believe I have no
8 further questions. I will offer OCD Exhibit Number 1.

9 CHAIRMAN WROTENBERY: Any objection, Mr.
10 Gallagher?

11 MR. GALLAGHER: No objection.

12 CHAIRMAN WROTENBERY: OCD Exhibit Number 1 is
13 admitted into evidence.

14 Any questions from the Commissioners?

15 EXAMINATION

16 BY COMMISSIONER BAILEY:

17 Q. Do you perceive any conflict, or potential
18 conflict, with the surface waste regulations?

19 A. No, I don't, Commissioner Bailey, I don't
20 perceive any conflict with them. We've been working with
21 the Environment Department's chief counsel, and they've
22 been sending e-mails back and forth to -- and they asked
23 for these corrections. And the Solid Waste Bureau has
24 indicated that they had no problem with this whatsoever.

25 COMMISSIONER BAILEY: Great, that's all I have.

1 CHAIRMAN WROTENBERY: Dr. Lee?

2 COMMISSIONER LEE: (Shakes head)

3 CHAIRMAN WROTENBERY: Thank you very much for
4 your testimony, Mr. Anderson.

5 Did you have anything else, Mr. Brooks?

6 MR. BROOKS: No, madame Chairman, nothing
7 further.

8 CHAIRMAN WROTENBERY: Thank you.

9 Mr. Gallagher, would you like to make a statement
10 or present some testimony?

11 MR. GALLAGHER: Madame Chairman, just a brief
12 statement. I want to open with I am not an expert witness,
13 I don't have an engineering degree, and I'd appreciate it
14 if you wouldn't check my qualifications.

15 (Laughter)

16 MR. GALLAGHER: I'm here as president of the New
17 Mexico Oil and Gas Association. We represent 300 companies
18 that participate in the oil and gas industry in New Mexico,
19 including disposal facilities, as well as E and P,
20 refineries, pipelines, gathering, marketing and so on.

21 We stand in support of this change, madame
22 Chairman and members of the Commission, because in several
23 cases we've had companies that will get into different
24 situations, whether it's in New Mexico or in other states
25 that they produce in, and actually have waste that may not

1 be oilfield waste but is very similar physically and
2 chemically in composition. In other states they've been
3 allowed to be able to dispose of that. Their concern is,
4 if it's actually in New Mexico, having to take it out of
5 New Mexico and dispose of it somewhere else. And that was
6 the reason that we were standing in support.

7 There are several examples. As the witness said,
8 you can talk about salt that's from the Salado formation,
9 which is a producing formation in southeastern New Mexico.
10 You can talk about a play right now of helium, and there
11 would be a question of if the waste came from the helium
12 play, would that actually be oilfield waste or not? And I
13 think this takes care of it.

14 In closing, madame Chairman and Commissioners, I
15 think it's very important to point out that it is very
16 strictly written, not to allow waste that doesn't have the
17 same physical and chemical composition, not to allow just
18 anything and everything but to allow the circumstances that
19 our companies are getting into now, that would allow them
20 to dispose of this waste in the same area and the same
21 state that they're actually producing in.

22 With that, madame Chairman and members of the
23 Commission, I appreciate the opportunity, and we'd be happy
24 to answer any questions.

25 CHAIRMAN WROTENBERY: Thank you. Any questions

1 for Mr. Gallagher? Okay, thank you, Mr. Gallagher.

2 Anybody else like to make a comment on this rule
3 proposal?

4 Okay. Mr. Brooks did prepare a draft order for
5 consideration by the Commission, and --

6 MR. BROOKS: Madame Chairman, I believe that the
7 Commission counsel prepared the draft order. I was
8 instrumental in the preparation of it, however he has
9 reviewed and finalized it for your Honors.

10 CHAIRMAN WROTENBERY: Okay, and I believe,
11 Commissioners, you've had a chance to review the document?
12 Do you need some more time?

13 COMMISSIONER BAILEY: If it's the same as was
14 presented in Exhibit A, yes.

15 CHAIRMAN WROTENBERY: I do believe this was
16 distributed --

17 MS. LEACH: That's my understanding.

18 CHAIRMAN WROTENBERY: -- to all three
19 Commissioners.

20 MS. LEACH: That's my understanding.

21 CHAIRMAN WROTENBERY: Yes.

22 COMMISSIONER BAILEY: Why don't we just double-
23 check?

24 CHAIRMAN WROTENBERY: Let me look here. We'll
25 proof it and see.

1 Yes, I just proofed it, and it does reflect the
2 changes in Exhibit 1, although it does say hazardous waste
3 instead of hazard waste, so that particular problem was
4 corrected.

5 MR. BROOKS: Madame Chairman, that correction was
6 made on Mr. Ross's computer.

7 CHAIRMAN WROTENBERY: Thank you.

8 MR. BROOKS: He gets along with his computer
9 better than Mr. Anderson does.

10 CHAIRMAN WROTENBERY: Thank you. So yes, it does
11 accurately reflect the language of Exhibit 1.

12 And at this point, unless the Commission has any
13 desire for further discussion, I will accept a motion to
14 adopt the Order amending Rule 711.

15 COMMISSIONER BAILEY: I so move.

16 COMMISSIONER LEE: Second.

17 CHAIRMAN WROTENBERY: All in favor say aye.

18 COMMISSIONER BAILEY: Aye.

19 COMMISSIONER LEE: Aye.

20 CHAIRMAN WROTENBERY: Aye. Okay, let me find the
21 signature page here.

22 Okay, thank you very much, Mr. Brooks, Mr.
23 Anderson, Mr. Gallagher. This Rule will become effective
24 on publication in the *New Mexico Register*. I will point
25 out that in working with the *Register* we have found that it

1 sometimes takes a matter of several weeks or more to --

2 MR. BROOKS: They've been running about three
3 months.

4 CHAIRMAN WROTENBERY: We've been having some
5 difficulty, actually, getting our rules published. I'm
6 hoping because this is a fairly simple amendment that we
7 may be able to move a little more quickly on this
8 particular publication. We'll do our best. But it will
9 become effective upon publication in the *New Mexico*
10 *Register*, and we'll certainly make an announcement on our
11 website of the effective date, when that occurs.

12 Thank you very much.

13 MR. BROOKS: Thank you.

14 MR. ANDERSON: Thank you.

15 (Thereupon, these proceedings were concluded at
16 9:30 a.m.)

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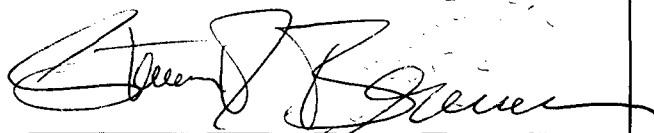
CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL March 21st, 2003.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006