

MONTGOMERY & ANDREWS

OF COUNSEL
William R. Federici
Seth D. Montgomery

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

Post Office Box 2307
Santa Fe, New Mexico 87504-2307

J.O. Seth (1883-1983)
A.K. Montgomery (1903-1987)
Frank Andrews (1914-1981)

November 27, 1996

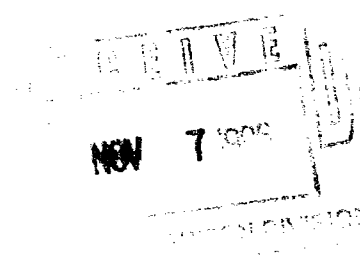
Hand-Delivered

325 Paseo de Peralta
Santa Fe, New Mexico 87501

Telephone (505) 982-3873
Fax (505) 982-4289

Victor R. Ortega
Gary Kilpatric
Thomas W. Olson
Walter J. Melendres
Bruce Herr
John B. Draper
Nancy M. King
Sarah M. Singleton
Stephen S. Hamilton
Galen M. Buller
Edmund H. Kendrick
Paula G. Maynes

R. Michael Shickich
Louis W. Rose
David Carroll Johnson
Paul S. Grand
Grace Phillips
R. Bruce Frederick
Carolyn A. Wolf
Andrew S. Montgomery
Alexandra Corwin
Monica R. Garcia
Jeffery L. Martin



William J. LeMay, Chairman
Oil Conservation Commission
2040 S. Pacheco
Santa Fe, New Mexico 87505

Re: Oil Conservation Commission Case Nos. 11,352 and 11,635

Dear Chairman LeMay:

On behalf of Giant Industries Arizona, Inc., I am submitting the following post-hearing comments on proposed revisions to OCD Rule 116 concerning release notification and corrective action and Rule 7 concerning definitions and proposed new Rule 19 concerning prevention and abatement of water pollution:

1. Rule 116 - Reporting releases that may with reasonable probability cause an exceedance of standards.

Giant supports deletion of § 19.N proposed in the Rule 116 Committee ("Committee") draft and the inclusion of any necessary parts of that provision in Rule 116. Consequently, Giant supports the Oil Conservation Division's attempt to do so in OCD Exhibit No. 2. However, Giant suggests that two revisions to OCD Exhibit No. 2 are necessary to effectively add this reporting requirement to Rule 116.

First, Giant suggests that § 116.A(2) proposed by OCD should be deleted. Releases that may with reasonable probability cause an exceedance of standards are included in OCD's proposed definition of "Major Release." Consequently, § 116.A(2) appears to duplicate § 116.B(1)(d). Since § 116.A(2) does not add anything to the rule, Giant proposes that it be deleted.

Second, Giant believes that the phrase "detrimental to water" should be deleted from

§ 116.B(1)(d). The concept of "detrimental to water" is, by its nature, vague. Further, releases that are detrimental to water should be covered by "exceedance of the standards in 19 NMAC 15.A.19. B(1), B(2) or B(3)." The referenced standards provide comprehensive and detailed numeric and descriptive criteria for the protection of water quality. It is hard to imagine how a release could be "detrimental to water" and not violate the referenced standards.

2. Rule 116 - Liquids subject to reporting requirements.

Revisions to Rule 116 proposed by the Committee and by the OCD in its Exhibit No. 2 refer to releases of "volumes," as measured in barrels, which trigger reporting and corrective action requirements. These references to barrel volumes are in § 116.B(1)(a) for a Major Release and in 116.B(2) for a Minor Release. The proposed language does not indicate clearly what kinds of liquids are covered by the reporting requirements. The Report from the Committee submitted at the October 29, 1996 hearing before the Oil Conservation Commission contains references to oil and produced water in discussions of reporting thresholds. See, e.g., Report from the Chairman of the Rule 116 Committee to the Oil Conservation Commission, pages 13-15. A later reference on page 16 of the Report to "any volume, excluding natural gas" (emphasis in original) appears to refer to only oil or produced water.

Giant suggests that the words "of oil or produced water" be inserted after "volume" in § 116.B(1)(a) for a Major Release and in § 116.B(2) for a Minor Release. The additional language would reflect the understanding in Committee deliberations and in hearing testimony before the Commission that only oil and produced water is covered by these reporting thresholds expressed in barrel volumes.

Giant does not suggest that "any volume" be restricted to oil or produced water in § 116.B(1)(b) or § 116.B(1)(d). Those releases, which are described in terms of their impacts to the environment rather than in terms of their volumes, should not be limited to oil or produced water. Releases of any volume of any liquid having the specified impacts should be reported.

3. Rule 7 - Definition of "hazard to public health".

Giant suggests that the term "hazard to public health" be triggered by an exceedance of one or more of the numerical standards of 20 NMAC 6.2.3103.A rather than 20 NMAC 6.2.3103. Only sub-section A of 3103 contains human health standards. In contrast, sub-section B contains aesthetic standards, and sub-section C contains standards for irrigation use. Furthermore, the definition of "hazard to public health" in the WQCC regulations, which is nearly identical to the definition proposed by the Committee, refers to 3103.A rather than to 3103.

4. Rule 19 - Discharge plan exemption from abatement plan requirement.

The exemptions from abatement plan requirements that are set out in 19.D(1) include an exemption for abatement actions taken under the authority of a ground-water discharge plan. The exemption, however, only applies if the abatement is consistent with the requirements and provisions of certain specified provisions of Rule 19. Since OCD's discharge plan requirements do not mirror the specified requirements and provisions of proposed Rule 19, it is inevitable that a discharge plan will not be identical to an abatement plan. Accordingly, the language in § 19.D(1)(e) requiring consistency could lead to confusion. Consequently, Giant recommends that the Commission delete the portion of this exemption that refers to consistency

with the specified requirements and provisions, making it clear that abatement under an approved discharge plan is exempt from abatement plan requirements. The exemption, of course, would be subject to the Director's power to require an abatement plan if the Director determines, pursuant to 19.D(2), that the abatement action does not meet the standards of Paragraph B(2) and B(3), or that additional action is necessary to protect health, welfare, environment, or property.

5. Rule 19 - Appeals from Director's decisions

Section 19.D(2) proposed by the Committee provides that the Director may notify a responsible person to submit an abatement plan, even though the responsible person's abatement action is exempt from the abatement plan requirement under § 19.D(1). Section 19.D(2) also states that in any appeal of the Director's determination, the Director shall have the burden of proof.

However, § 19.M(1), which specifies the actions of the Director that are appealable, does not refer to a determination of the Director pursuant to § 19.D(2). The parallel section of the WQCC abatement regulations, § 4114.A, includes this type of determination by the secretary as appealable. Consequently, Giant believes that the following underlined language should be added to § 19.M(1):

If the Director determines that (i)
an abatement plan is required
pursuant to 19 NMAC 15.C.116.D or
19 NMAC 15.A.19.D.(2), (ii) . .

6. Rule 19 - Marathon Oil Company's Comments

Giant supports many of amendments to the Committee's proposed Rule 19 recommended by Marathon Oil Company in its comments submitted to the Commission on November 8, 1996. In particular, Giant would like to

emphasize its support of the following amendments recommended by Marathon:

- (A) Point-of-use treatment - Giant agrees that an analysis of the feasibility of point-of-use treatment is most appropriately included in the rule as an optional element of a petition seeking approval of alternative abatement standards. However, Giant suggests that the language proposed by Marathon, as an optional element of a petition, be placed at the end of § 19.B(6)(b) rather than at the beginning of § 19.B(6)(b) between mandatory elements of a petition.
- (B) Modification of abatement standards Giant believes that abatement standards applicable to an abatement action previously approved by OCD should be modified only in extraordinary circumstances. Marathon's proposed revision to § 19.B(7) appropriately clarifies the circumstances and applicable standard for such a modification.
- (C) Stage 1 abatement plan proposal - Rule 116 proposed by the Committee inappropriately applies the same public participation requirements to a Stage 1 abatement plan proposal as to a Stage 2 abatement plan. Giant supports Marathon's revisions to § 19.G, which clarify that the OCD Environmental Bureau Chief issues a news release for a Stage 1 abatement plan proposal in lieu of notice requirements imposed on the applicant. The Marathon revisions are consistent with the public notice requirements of the WQCC abatement regulations.
- (D) Fact sheet requirement - Section 19.H(2) refers to receipt of a

William J. LeMay, Chairman
November 27, 1996
Page 6

"fact sheet" by the Director.
Since there is no other mention of
a fact sheet in the Committee's
proposed Rule 19, Giant supports
Marathon's proposed deletion of §
19.H(2). Further, Giant believes
that the public participation
requirements in the Committee's
proposed Rule 19 give the public
sufficient opportunity to be heard
in the absence of a fact sheet
requirement.

In conclusion, Giant requests that the Commission adopt
these proposed amendments to Rules 116 and 7 and new Rule 19.
Giant appreciates the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Edmund H. Kendrick", with a stylized, flowing script.

Edmund H. Kendrick

EHK:dlo
8361-9602