

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

IN THE MATTER OF:

THE HEARING CALLED BY THE OIL CONSERVATION DIVISION TO ENACT A NEW RULE 712 PERMITTING DISPOSAL OF CERTAIN NON-DOMESTIC WASTE ARISING FROM THE EXPLORATION, DEVELOPMENT, PRODUCTION OR STORAGE OF CRUDE OIL OR NATURAL GAS, CERTAIN NON-DOMESTIC WASTE ARISING FROM THE OIL FIELD SERVICE INDUSTRY, AND CERTAIN NON-DOMESTIC WASTE ARISING FROM THE TRANSPORTATION, TREATMENT OR REFINEMENT OF CRUDE OIL OR NATURAL GAS, AT A SOLID WASTE FACILITY REGULATED BY THE NEW MEXICO ENVIRONMENT DEPARTMENT.

**CASE NO. 12626
ORDER NO. R-11558**

ORDER OF THE COMMISSION

BY THE COMMISSION:

THIS MATTER having come before the Oil Conservation Commission (hereinafter referred to as "the Commission") pursuant to its authority under the Oil and Gas Act and House Bill 533 of the 45th Legislature, First Session 2001, concerning disposal of certain non-domestic waste at solid waste facilities, and the Commission having conducted a public hearing on March 30, 2001 and carefully considered the matter,

FINDS:

1. The Oil and Gas Act delegates to the Commission the authority to regulate nondomestic wastes resulting from the exploration, development, production, transportation, storage, treatment or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy and the disposition of nondomestic waste resulting from the oilfield service industry.

2. House Bill 533 of the 45th Legislature, First Session 2001, was signed into law by Governor Gary E. Johnson on March 16, 2001. That bill provides for disposal of certain nondomestic oil, gas and geothermal waste at solid waste facilities. Section 2 of the bill contains an emergency clause, and it became effective upon signing.

3. Certain nondomestic waste arising from the exploration, development, production or storage of crude oil or natural gas, certain nondomestic waste arising from the oil field service industry, and certain non-domestic waste arising from the transportation, treatment or refinement of crude oil or natural gas has been disposed of at solid waste facilities for several years by unwritten agreement of the Oil Conservation Division (hereinafter referred to as "the Division") and the New Mexico Environment Department (hereinafter referred to as "the Environment Department"). The practice was challenged during an administrative proceeding before the Environment Department and was discontinued in early December, 2000.

4. House Bill 533 clarifies that certain nondomestic waste associated with the exploration, development, production, transportation, storage, treatment or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy, except drilling fluids, produced water, petroleum liquids, petroleum sludges or petroleum contaminated soils (except in an emergency declared by the Director), and the disposition of nondomestic waste resulting from the oilfield service industry, may be disposed of at a solid waste facility regulated by the Environment Department pursuant to the Solid Waste Act.

5. House Bill 533 permits disposal of certain nondomestic waste only upon approval of the Division. At this time, the Commission has no rules specifying which wastes may be disposed of as permitted by House Bill 533, how approval is granted, or any required testing.

6. On March 19, 2001, the Division promulgated its Emergency Rule E-34 which enacted a temporary rule codified in the New Mexico Administrative Code as NMAC 19.15.9.712 that permitted disposal of certain waste at solid waste facilities until the Commission could meet and discuss enacting a permanent rule on the subject.

7. The Emergency Rule adopted as a rule a matrix developed over a period of several years by staff of the Division and the Solid Waste Bureau of the Environment Department. The matrix set out which wastes could be disposed of at solid waste facilities and the testing required before disposal.

8. The rule proposed for adoption is identical with the rule enacted by the Division as an emergency rule, except for correction of several typographical errors that appear in the emergency rule.

9. Since an order of the Environment Department on December 8, 2000, options for disposal of waste previously disposed of at solid waste facilities under the unwritten agreement became limited. Some nondomestic waste has been stockpiled or transported out-of-state, raising concern that some waste may be improperly disposed of or improperly stockpiled.

10. The proposed rule is intended to restore the status quo that existed before December 8, 2000.

11. Any improper disposal or stockpiling of nondomestic waste presents an imminent threat to the public health and the environment.

12. The proposed rule treats wastes differently depending on the nature of the waste. Waste that is essentially household or office waste may be disposed of at a solid waste facility without prior authorization of the Division and without testing. This waste, listed in Subsection D, Paragraph (1) of Section 19.15.9.712, poses no threat to public health or the environment when disposed of at a solid waste facility permitted by the Environment Department to accept such waste.

13. Waste which, after testing, occasionally is found to contain hazardous constituents may be disposed of at a solid waste facility only upon prior authorization of the Division and after testing detailed in the proposed Rule shows it is free of hazardous constituents. This waste, listed in Subsection D, Paragraph (2) of Section 19.15.9.712, poses no threat to public health or the environment so long as it is tested and the test results are within the limits set in Subsection E of Section 19.15.9.712 and then disposed of at a solid waste facility permitted by the Environment Department to accept such waste.

14. Waste whose characteristics are unknown to the Division may be disposed of at a solid waste facility only upon a case-by-case basis and only upon prior authorization of the Division and after testing detailed in the proposed Rule. This waste, listed in Subsection D, Paragraph (2) of Section 19.15.9.712, poses no threat to public health or the environment so long as it is tested and the test results are within the limits set in Subsection E of Section 19.15.9.712 and then disposed of at a solid waste facility permitted by the Environment Department to accept such waste.

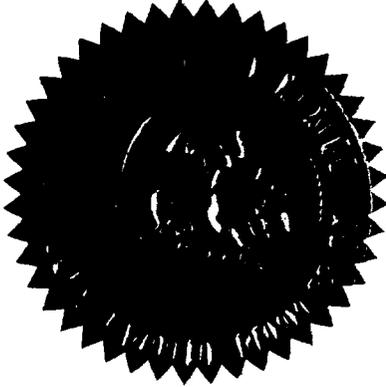
15. Because waste may be improperly stockpiled or improperly disposed of and because of the accompanying risks to human health and the environment posed by such practices, an emergency exists which justifies the proposed rule becoming effective immediately upon filing with the State Records Center.

IT IS THEREFORE ORDERED, AS FOLLOWS:

16. The attached Rule NMAC 19.15.9.712 concerning Disposal of Certain Non-domestic Waste at Solid Waste Facilities is hereby adopted.

DONE at Santa Fe, New Mexico, this 3rd day of March, 2001.

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**



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JAMI BAILEY, Member

Handwritten signature of Robert L. Lee in cursive script, ending with a long horizontal flourish.

ROBERT L. LEE, Member

Handwritten signature of Lori Wrotenbery in cursive script.

LORI WROTENBERY, Chairman

SEAL

EXPLANATORY PARAGRAPH: This rule amends NMAC 19.15.9.712 with entirely new material. This is a rule of the Oil Conservation Division, adopted pursuant to the Oil and Gas Act and House Bill 533 of the 45th Legislature, 1st Session. The Rule permits disposal of certain non-domestic waste at solid waste facilities regulated by the New Mexico Environment Department.

19.15.9.712. DISPOSAL OF CERTAIN NON-DOMESTIC WASTE AT SOLID WASTE FACILITIES.

A. General - Certain non-domestic waste arising from the exploration, development, production or storage of crude oil or natural gas, certain nondomestic waste arising from the oil field service industry, and certain non-domestic waste arising from the transportation, treatment or refinement of crude oil or natural gas, may be disposed of at a solid waste facility.

B. Definitions - The following words and phrases have particular meanings for purposes of this section:

(1) "BTEX." The acronym "BTEX" in this section refers to benzene, toluene, ethylbenzene and xylene.

(2) "Discharge Plan." A "discharge plan" is a plan submitted and approved by the Division pursuant to NMSA 1978, Section 70-2-12(B)(22) (2000 Cum.Supp.) and rules and regulations of the Water Quality Control Commission.

(3) "EPA." The acronym "EPA" refers to the United States Environmental Protection Agency.

(4) "EPA Clean." The phrase "EPA Clean" refers to cleanliness standards established by the EPA in 40 C.F.R. Part 261, Section 261.7(b).

(5) "NESHAP." The acronym "NESHAP" refers to the National Emission Standards for Hazardous Air Pollutants of the EPA, 40 C.F.R. Part 61.

(6) "NORM." The acronym "NORM" refers to naturally occurring radioactive materials regulated by 20 NMAC 3.1, Subpart 14.

(7) "Section." "Section" or "this section" refers to Section 19.15.9.712.

(8) "Solid Waste Facility." A "solid waste facility" is a facility permitted or authorized as a solid waste facility by the New Mexico Environment Department pursuant to the Solid Waste Act, NMSA 1978, Sections 74-9-1 *et seq.* and rules and regulations of the Environmental Improvement Board, to accept industrial solid waste or other special waste.

(9) "TCLP" The acronym "TCLP" in this section refers to the testing protocol established by the EPA in 40 C.F.R. Part 261, entitled "Toxicity Characteristic Leaching Procedure" or an alternative hazardous constituent analysis approved by the Division.

(10) "TPH." The acronym "TPH" in this section refers to the phrase "total petroleum hydrocarbons."

(11) "Waste." The word "waste" refers to nondomestic waste resulting from the exploration, development, production or storage of crude oil or natural gas pursuant to NMSA 1978, Section 70-2-12(B)(21) and nondomestic waste arising from the oil field service industry, and certain non-domestic waste arising from the transportation, treatment or refinement of crude oil or natural gas pursuant to NMSA 1978, Section 70-2-12(B)(22).

C. Procedure

(1) Waste Listed in Subsection D, Paragraph (1) of Section 19.15.9.712. Waste listed in Subsection D, Paragraph (1) of Section 19.15.9.712 may be disposed of at a solid waste facility without prior written authorization of the Division.

(2) Waste Listed in Subsection D, Paragraph (2) of Section 19.15.9.712. Waste listed in Subsection D, Paragraph (2) of Section 19.15.9.712 may be disposed of at a solid waste facility after testing and prior written authorization of the Division. Before authorization is granted, copies of test results must be provided to the Division and to the solid waste facility where the waste is to be disposed. Disposal may commence only after written authorization of the Division. In appropriate cases and so long as a representative sample is tested, the Division may authorize disposal of a waste stream listed in Subsection D, Paragraph (2) of Section 19.15.9.712 without individual testing of each delivery.

(3) Waste Listed in Subsection D, Paragraph (3) of Section 19.15.9.712. Waste listed in Subsection D, Paragraph (3) of Section 19.15.9.712 may be disposed of at a solid waste facility on a case-by-case basis after testing required at the discretion of the Division and after prior written authorization of the Division. Before authorization is granted, copies of test results must be provided to the Division and to the solid waste facility where the waste is to be disposed. Disposal may commence only after written authorization of the Division.

(4) Simplified Procedure for Holders of Discharge Plans. Holders of an approved discharge plan may amend the discharge plan to provide for disposal of waste listed in Waste Listed in Subsection D, Paragraph (2) of Section 19.15.9.712 and, as applicable, Subsection D, Paragraph (3) of Section 19.15.9.712. If the amendment to the Discharge Plan is approved, wastes listed in Subsection D, Paragraph (2) of Section 19.15.9.712 and Subsection D, Paragraph (3) of Section 19.15.9.712 may be disposed of at a solid waste facility without the necessity of prior written authorization of the Division.

D. Waste Governed By This Section

(1) Waste That Does Not Require Testing Before Disposal:

- (a) Barrels, drums, 5-gallon buckets, 1-gallon containers so long as empty and EPA-clean.
- (b) Uncontaminated brush and vegetation arising from clearing operations.
- (c) Uncontaminated concrete.
- (d) Uncontaminated construction debris.
- (e) Non-friable asbestos and asbestos contaminated waste material, so long as the disposal complies with all applicable federal and state regulations for nonfriable asbestos materials and so long as asbestos is removed from steel pipes and boilers and, if applicable, the steel recycled.
- (f) Detergent buckets, so long as completely empty.
- (g) Fiberglass tanks so long as the tank is empty, cut up or shredded, and EPA clean.
- (h) Grease buckets, so long as empty and EPA clean.
- (i) Uncontaminated ferrous sulfate or elemental sulfur so long as recovery and sale as a raw material is not possible.
- (j) Metal plate and metal cable.
- (k) Office trash.
- (l) Paper and paper bags, so long as empty (paper bags).
- (m) Plastic pit liners, so long as cleaned well.
- (n) Soiled rags or gloves. If wet, must pass Paint Filter Test prior to disposal.
- (o) Uncontaminated wood pallets.

(2) Waste That Must Be Tested:

- (a) Activated alumina must be tested for TPH and BTEX.
 - (b) Activated carbon must be tested for TPH and BTEX.
 - (c) Amine filters must be tested for BTEX (and air-dried for at least 48 hours before testing).
 - (d) Friable asbestos and asbestos-contaminated waste material must be tested pursuant to NESHAP (and so long as the disposal otherwise complies with all applicable federal and state regulations for friable asbestos materials, and so long as asbestos is removed from steel pipes and boilers and, if applicable, the steel should be recycled before disposal).
 - (e) Cooling tower filters must be tested for TCLP/chromium (and drained and then air-dried for at least 48 hours before testing).
 - (f) Dehydration filter media must be tested for TPH and BTEX (and drained and then air-dried for at least 48 hours before testing).
 - (g) Gas condensate filters must be tested for BTEX (and drained and then air-dried for at least 48 hours before testing).
 - (h) Glycol filters must be tested for BTEX (and drained and then air-dried for at least 48 hours before testing).
 - (i) Iron sponge must be oxidized completely and then undergo Ignitability Testing.
 - (j) Junked pipes, valves, and metal pipe must be tested for NORM.
 - (k) Molecular sieve must be tested for TPH and BTEX (and must be cooled in a non-hydrocarbon inert atmosphere and hydrated in ambient air for at least 24 hours before testing).
 - (l) Pipe scale and other deposits removed from pipeline and equipment must be tested for TPH, TCLP/metals and NORM.
 - (m) Produced water filters must be tested for Corrosivity (and drained and then air-dried for at least 48 hours before testing).
 - (n) Sandblasting sand must be tested for TCLP/metals or, at the discretion of the Division, TCLP/total metals.
 - (o) Waste oil filters must be tested for TCLP/metals (and must be drained thoroughly of oil for at least 24 hours before testing and oil and metal parts must be recycled).
- (3) Waste That May Be Disposed Of On A Case-By-Case Basis:
- (a) Sulfur contaminated soil.
 - (b) Catalysts.

- (c) Contaminated soil other than petroleum contaminated soil.
- (d) Petroleum contaminated soil in the event of an emergency declared by the director.
- (e) Contaminated concrete.
- (f) Demolition debris not otherwise specified herein.
- (g) Unused dry chemicals (in addition to any testing required by the Division, a copy of the Material Safety Data Sheet shall be forwarded to the Division and the solid waste facility on each chemical proposed for disposal).
- (h) Contaminated ferrous sulfate or elemental sulfur.
- (i) Unused pipe dope.
- (j) Support balls.
- (k) Tower packing materials.
- (l) Contaminated wood pallets.
- (m) Partial sacks of unused drilling mud (in addition to any testing required by the Division, a copy of the Material Safety Data Sheet shall be forwarded to Division and the solid waste facility at which the partial sacks will be disposed).
- (n) Other wastes as applicable.

E. Testing

- (1) General - Testing required herein shall be conducted according to the Test Methods for Evaluating Solid Waste, EPA No. SW-846. Any questions concerning the standards or a particular testing facility should be directed to the Division.
- (2) Methodology - Testing must be conducted according to the test method listed:
 - (a) TPH: EPA method 418.1 or 8015 (D-R-O and G-R-O only) or an alternative hydrocarbon analysis approved by the Division.
 - (b) TCLP: EPA Method 1311 or an alternative hazardous constituent analysis approved by the Division.
 - (c) Paint Filter Testing: EPA Method 9095A.
 - (d) Ignitability Test: EPA Method 1030.
 - (e) Corrosivity: EPA Method 1110.
 - (f) Reactivity: Test procedures and standards established on a case-by-case basis by the Division.
 - (g) NORM. 20 NMAC 3.1, Subpart 14.
- (3) Limits - To be eligible for disposal pursuant to this section, substances found during testing shall not exceed the following limits:
 - (a) Benzene: Less than 10 mg/Kg.
 - (b) BTEX: Less than 500 mg/Kg (sum of all).
 - (c) TPH: Shall not exceed 1000 mg/Kg.
 - (d) Hazardous Air Pollutants: Shall not exceed the standards set forth in NESHAP.
 - (e) TCLP: Shall not exceed the following:
 - (i) Arsenic: 5.0 mg/l
 - (ii) Barium: 100.0 mg/l
 - (iii) Cadmium: 1.0 mg/l
 - (iv) Chromium: 5.0 mg/l
 - (v) Lead: 5.0 mg/l
 - (vi) Mercury: 0.2 mg/l
 - (vii) Selenium: 1.0 mg/l
 - (viii) Silver: 5.0 mg/l