



United States Department of the Interior

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FISH AND WILDLIFE SERVICE

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In Reply Refer To:
R2/RF

SEP 22 1992

William J. LeMay, Director
Oil Conservation Division
State Land Office Building
P.O. Box 2088
Santa Fe, New Mexico 87504

Dear Mr. LeMay:

This is for the purpose of requesting a change or an amendment to Case No. 9672, Order No. R-8952, which was established by the Oil Conservation Commission (OCD) on June 20, 1989.

The Commission found, in the above referenced case, "The evidence was incomplete and inconclusive regarding the hazard to migratory waterfowl presented by small fiberglass tanks, whether above or below ground. While no protective measures are needed at this time for such tanks, or operators, the OCD and U.S. Fish and Wildlife Service should continue to gather and examine data to determine whether protective measures should be required." As a result, only tanks exceeding 16 feet in diameter were ordered to be screened, netted, or covered.

In our contacts with the oil and gas industry and the Oil Conservation Division, we made it very clear that the exemption of tanks 16 feet and under not only excluded the vast majority of tanks from screening requirements, but it was inconsistent with the fact that the Migratory Bird Treaty Act allows no tolerance in the loss of migratory birds. Consequently, a dead bird in any tank, large or small, constitutes a violation of the Migratory Bird Treaty Act.

We remain extremely grateful for your efforts to develop and establish the "Migratory Bird Rules" in the State of New Mexico. However, evidence collected from oil fields throughout the Nation in recent years, indicates that any tanks, pits, or ponds that contain oil residue or other contaminants, need to be protected from entry by migratory birds and other wildlife. Collectively, large numbers of dead birds have been retrieved from open tanks 16 feet and under in diameter.

Mr. William J. LeMay

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We are pleased that responsible oil and gas companies generally recognized the need to cover all tanks regardless of their size in an effort to prevent wildlife mortality, even though the Commission Rule does not require it. However, it would be best for the official record and accompanying regulations to show that open pits, ponds and tanks of all sizes are hazardous to wildlife. For example, consistency in these rules and regulations were shown to be of great importance in recent meetings with the Oil Conservation Division, Bureau of Land Management, and the U.S. Fish and Wildlife Service regarding wildlife mortality in the oil fields.

We hereby request that Case No. 9672, Order No. R-8952, Exhibit "A", Rules 8, 312, 313, and 711 be changed or amended to eliminate the words "exceeding 16 feet in diameter". We will be happy to assist, at your request, in the process of changing these Rules or answering any questions that you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim G. Tegen". The signature is fluid and cursive, with a large loop at the end of the last name.

Regional Director