

**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. 13013

**APPLICATION OF THE OIL CONSERVATION
DIVISION TO AMEND RULE 711
(APPLICABLE TO SURFACE WASTE MANAGEMENT
FACILITIES ONLY).**

ORDER NO. R-11919

ORDER OF THE OIL CONSERVATION COMMISSION

BY THE COMMISSION:

THIS MATTER, a rulemaking proceeding, came before the Oil Conservation Commission (hereinafter referred to as "the Commission") during a public hearing on March 20, 2003, at Santa Fe, New Mexico, on application of the Oil Conservation Division (hereinafter referred to as "the Division"), and the Commission, having carefully considered the evidence, the pleadings and other materials submitted in support of the application, now, on this 20th day of March, 2003,

FINDS,

1. Notice has been given of the application and the public hearing on this matter, and the Commission has jurisdiction of the parties and the subject matter herein.
2. The Division seeks to amend Rule 711 of the rules and regulations of the Oil Conservation Division [19.15.9.711 NMAC] (hereinafter referred to as "Rule 711"). Rule 711 presently prohibits the acceptance of non-hazardous, non-oilfield wastes at surface waste management facilities permitted by the Division except in an emergency. Rule 711 in its present form was enacted in 1996.

3. During the public hearing of this matter, the Division presented the testimony of Roger Anderson. Mr. Anderson is the Bureau Chief of the Environmental Bureau of the Division.

4. Mr. Anderson testified that the Division has evaluated the nature and characteristics of non-hazardous, non-oilfield wastes that could be approved for disposal at Division-permitted facilities and has concluded that, as a general matter, there is no material difference in environmental impact between the storing, treating and disposing of these wastes and the storing, treating and disposing of oilfield wastes.

5. Mr. Anderson testified that because of differences in the nature and characteristics of non-oilfield wastes that might be presented for disposal and differences in the capabilities of particular facilities to manage these wastes properly and effectively, Division-permitted facilities should not be given blanket authority to accept non-oilfield wastes, but that particular facilities should be authorized to do so on a case-by-case basis.

6. Mr. Anderson testified that allowing disposal of non-oilfield wastes on a case-by-case basis at Division-permitted facilities will create additional environmentally safe options for disposal of wastes generated in the state and will ensure environmentally safe disposal of such wastes, and that this amendment is in the best interests, both economically and environmentally, of the State of New Mexico.

7. Mr. Anderson testified that the Division has received numerous inquiries regarding the availability of Division-permitted facilities for disposal of non-oilfield waste.

8. Mr. Robert Gallagher, President of the New Mexico Oil and Gas Association ("NMOGA") appeared at the hearing and stated that NMOGA supported the proposed amendment.

9. The New Mexico Environment Department ("NMED") filed written comments requesting clarification of the phrases "similar in nature to oilfield wastes" and "exempt waste," as used in the proposed amendment. Mr. Anderson testified that, in response to NMED's comments the Division proposed to modify the proposed amendment attached to the Division's application to substitute the expressions, "similar in physical and chemical composition," and "exempt from the 'hazardous waste' provisions of Subtitle C of the federal Resource Conservation and Recovery Act." Mr. Anderson testified that these changes more clearly state the Division's intent.

10. No one submitted comments opposing the proposed amendments or appeared at the hearing in opposition thereto.

11. Present Rule 711 allows disposal of non-oilfield waste at Division-permitted facilities only in case of emergency, and then only if ordered by the Department of Public Safety.

12. Authorizing Division-permitted waste disposal facilities to accept non-oilfield waste for management and disposal in non-emergency situations will provide needed additional options for disposal of non-hazardous, non-oilfield waste generated in the State of New Mexico.

13. There is no material difference in environmental impact between the storing, treating or disposing of non-hazardous, non-oilfield wastes and the storing, treating or disposing of oilfield wastes.

14. Rule 711 should be amended to permit Division-permitted surface waste management facilities to accept, manage and dispose of non-hazardous, non-oilfield wastes in non-emergency situations.

15. Because of differences in the nature and characteristics of non-oilfield wastes that might be presented for disposal, and differences in the capabilities of particular facilities to manage these wastes properly and effectively, Division-regulated facilities should not be given blanket authority to accept non-oilfield wastes. Instead particular facilities should be authorized to do so on a case-by-case basis.

16. The revised language proposed by the Division clarifying the meaning of "similar in nature" and "exempt waste" should be adopted.

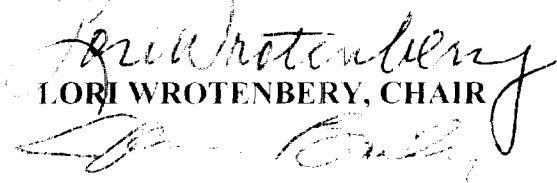
IT IS THEREFORE ORDERED, AS FOLLOWS:

1. Rule 711 of the Oil Conservation Commission, presently codified at 19.15.9.711 NMAC, shall be and hereby is amended to read as shown in Exhibit A, effective as of the date of publication of a notice of amendment in the New Mexico Register. Staff is instructed to forthwith seek publication of the rule as amended in the Register.

2. Jurisdiction of this matter is retained for entry of such further orders as may be necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**


LORI WROTENBERY, CHAIR


JAMI BAILEY, MEMBER


ROBERT LEE, MEMBER

S E A L

EXHIBIT A TO ORDER NO. R-11919

19.15.9.711 APPLICABLE TO SURFACE WASTE MANAGEMENT FACILITIES ONLY

A. A surface waste management facility is defined as any facility that receives for collection, disposal, evaporation, remediation, reclamation, treatment or storage any produced water, drilling fluids, drill cuttings, completion fluids, contaminated soils, bottom sediment and water (BS&W), tank bottoms, waste oil or, upon written approval by the Division, other oilfield related waste. Provided, however, if (a) a facility performing these functions utilizes underground injection wells subject to regulation by the Division pursuant to the federal Safe Drinking Water Act, and does not manage oilfield wastes on the ground in pits, ponds, below grade tanks or land application units, (b) if a facility, such as a tank only facility, does not manage oilfield wastes on the ground in pits, ponds below grade tanks or land application units or (c) if a facility performing these functions is subject to Water Quality Control Commission Regulations, then the facility shall not be subject to this rule.

(1) A commercial facility is defined as any surface waste management facility that does not meet the definition of centralized facility

(2) A centralized facility is defined as a surface waste management facility that accepts only waste generated in New Mexico and that:

(a) does not receive compensation for waste management;

(b) is used exclusively by one generator subject to New Mexico's "Oil and Gas Conservation Tax Act" Section 7-30-1 NMSA-1978 as amended; or

(c) is used by more than one generator subject to New Mexico's "Oil and Gas Conservation Tax Act" Section 7-30-1 NMSA-1978 as amended under an operating agreement and which receives wastes that are generated from two or more production units or areas or from a set of jointly owned or operated leases.

(3) Centralized facilities exempt from permitting requirements are:

(a) facilities that receive wastes from a single well;

(b) facilities that receive less than 50 barrels of RCRA exempt liquid waste per day and have a capacity to hold 500 barrels of liquids or less or 1400 cubic yards of solids or less and when a showing can be made to the satisfaction of the Division that the facility will not harm fresh water, public health or the environment;

(c) emergency pits that are designed to capture fluids during an emergency upset period only and provided such fluids will be removed from the pit within twenty-four (24) hours from introduction;

(d) facilities that do not meet the requirements of the foregoing exemptions in Subsection A, Paragraph (3) of 19.15.9.711 NMAC, but that are shown by the facility operator to the satisfaction of the Division to not present a risk to public health and the environment.

B. Unless exempt from Section 19.15.9.711 NMAC, all commercial and centralized facilities including facilities in operation on the effective date of Section 19.15.9.711 NMAC, new facilities prior to construction and all existing facilities prior to major modification or major expansion shall be permitted by the Division in accordance with the following requirements:

(1) Application Requirements - An application, Form C-137, for a permit for a new facility or to modify an existing facility shall be filed in DUPLICATE with the Santa Fe Office of the Division and ONE COPY with the appropriate Division district office. The application shall comply with Division guidelines and shall include:

- (a) The names and addresses of the applicant and all principal officers of the business if different from the applicant;
 - (b) A plat and topographic map showing the location of the facility in relation to governmental surveys (1/4 1/4 section, township, and range), highways or roads giving access to the facility site, watercourses, water sources, and dwellings within one (1) mile of the site;
 - (c) The names and addresses of the surface owners of the real property on which the management facility is sited and surface owners of the real property of record within one (1) mile of the site;
 - (d) A description of the facility with a diagram indicating location of fences and cattle guards, and detailed construction/installation diagrams of any pits, liners, dikes, piping, sprayers, and tanks on the facility;
 - (e) A plan for management of approved wastes.
 - (f) A contingency plan for reporting and cleanup of spills or releases;
 - (g) A routine inspection and maintenance plan to ensure permit compliance;
 - (h) A Hydrogen Sulfide Prevention and Contingency Plan to protect public health;
 - (i) A closure plan including a cost estimate sufficient to close the facility to protect public health and the environment: said estimate to be based upon the use of equipment normally available to a third party contractor;
 - (j) Geological/hydrological evidence, including depth to and quality of groundwater beneath the site, demonstrating that disposal of oilfield wastes will not adversely impact fresh water;
 - (k) Proof that the notice requirements of Section 19.15.9.711 NMAC have been met.
 - (l) Certification by an authorized representative of the applicant that information submitted in the application is true, accurate, and complete to the best of the applicant's knowledge
 - (m) Such other information as is necessary to demonstrate that the operation of the facility will not adversely impact public health or the environment and that the facility will be in compliance with OCD rules and orders.
- (2) Notice Requirements:
- (a) Prior to public notice, the applicant shall give written notice of application to the surface owners of record within one (1) mile of the facility, the county commission where the facility is located or is proposed to be located, and the appropriate city official(s) if the facility is located or proposed to be located within city limits or within one (1) mile of the city limits. The distance requirements for notice may be extended by the Director if the Director determines the proposed facility has the potential to adversely impact public health or the environment at a distance greater than one (1) mile. The Director may require additional notice as needed. A copy and proof of such notice will be furnished to the Division.
 - (b) The applicant will issue public notice in a form approved by the Division in a newspaper of general circulation in the county in which the facility is to be located. For permit modifications, the Division may require the applicant to issue public notice and give written notice as above.

(c) Any person seeking to comment or request a public hearing on such application must file comments or hearing requests with the Division within 30 days of the date of public notice. Requests for a public hearing must be in writing to the Director and shall set forth the reasons why a hearing should be held. A public hearing shall be held if the Director determines there is significant public interest.

(d) The Division will distribute notice of the filing of an application for a new facility or major modifications with the next OCD and OCC hearing docket following receipt of the application.

(3) Financial Assurance Requirements:

(a) Centralized Facilities: Upon determination by the Director that the permit can be approved, any applicant of a centralized facility shall submit acceptable financial assurance in the amount of \$25,000 per facility or a statewide "blanket" financial assurance in the amount of \$50,000 to cover all of that applicant's facilities in a form approved by the Director.

(b) New Commercial Facilities or major expansions or major modification of Existing Facilities: Upon determination by the Director that a permit for a commercial facility to commence operation after the effective date of this rule can be approved, or upon determination by the Director that a major modification or major expansion of an existing facility can be approved, any applicant of such a commercial facility shall submit acceptable financial assurance in the amount of the closure cost estimated in Subsection B, Paragraph (1), Subparagraph (i) above of 19.15.9.711 NMAC in a form approved by the Director according to the following schedule:

(i) within one (1) year of commencing operations or when the facility is filled to 25% of the permitted capacity, whichever comes first, the financial assurance must be increased to 25% of the estimated closure cost;

(ii) within two (2) years of commencing operations or when the facility is filled to 50% of the permitted capacity, whichever comes first, the financial assurance must be increased to 50% of the estimated closure cost;

(iii) within three (3) years of commencing operations or when the facility is filled to 75% of the permitted capacity, whichever comes first, the financial assurance must be increased to 75% of the estimated closure cost;

(iv) within four (4) years of commencing operations or when the facility is filled to 100% of the permitted capacity, whichever comes first, the financial assurance must be increased to the estimated closure cost.

(c) Existing Commercial Facilities: All permittees of commercial facilities approved for operation at the time this rule becomes effective shall have submitted financial assurance in the amount of the closure cost estimated pursuant to Subsection B, Paragraph (1), Subparagraph (i) above of 19.15.9.711 NMAC but not less than \$25,000 nor more than \$250,000 per facility in a form approved by the Director.

(i) within one (1) year of the effective date of Section 19.15.9.711 NMAC the financial assurance amount must be increased to 25% of the estimated closure costs or \$62,500.00, whichever is less;

(ii) within two (2) years of the effective date of Section 19.15.9.711 NMAC the financial assurance amounts must be increased to 50% of the estimated closure costs or \$125,000.00, whichever is less;

(iii) within three (3) years of the effective date of Section 19.15.9.711 NMAC the financial assurance amounts must be increased to 75% of the estimated closure costs or \$187,000.00, whichever is less;

(iv) within four (4) years of the effective date of Section 19.15.9.711 NMAC the financial assurance amounts must be increased to the estimated closure cost or \$250,000.00, whichever is less.

(d) The financial assurance required in subparagraphs (a), (b), or (c), above shall be payable to the State of New Mexico and conditioned upon compliance with statutes of the State of New Mexico and rules of the Division, and acceptable closure of the site upon cessation of operation, in accordance with Subsection B, Paragraph (1), Subparagraph (i) of 19.15.9.711 NMAC. If adequate financial assurance is posted by the applicant with a federal or state agency and the financial assurance otherwise fulfills the requirements of this rule, the Division may consider the financial assurance as satisfying the requirement of Section 19.15.9.711 NMAC. The applicant must notify the Division of any material change affecting the financial assurance within 30 days of discovery of such change.

(4) The Director may accept the following forms of financial assurance:

(a) Surety Bonds

(i) A surety bond shall be executed by the permittee and a corporate surety licensed to do business in the State.

(ii) Surety bonds shall be noncancellable during their terms.

(b) Letter of Credit - Letter of credit shall be subject to the following conditions:

(i) The letter may be issued only by a bank organized or authorized to do business in the United States;

(ii) Letters of credit shall be irrevocable for a term of not less than five (5) years. A letter of credit used as security in areas requiring continuous financial assurance coverage shall be forfeited and shall be collected by the State of New Mexico if not replaced by other suitable financial assurance or letter of credit at least 90 days before its expiration date;

(iii) The letter of credit shall be payable to the State of New Mexico upon demand, in part or in full, upon receipt from the Director of a notice of forfeiture.

(c) Cash Accounts - Cash accounts shall be subject to the following conditions:

(i) The Director may authorize the permittee to supplement the financial assurance through the establishment of a cash account in one or more federally insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the State of New Mexico.

(ii) Any interest paid on a cash account shall not be retained in the account and applied to the account unless the Director has required such action as a permit requirement.

(iii) Certificates of deposit may be substituted for a cash account with the approval of the Director.

(d) Replacement of Financial Assurances

(i) The Director may allow a permittee to replace existing financial assurances with other financial assurances that provide equivalent coverage.

(ii) The Director shall not release existing financial assurances until the permittee has submitted, and the Director has approved, acceptable replacements.

(5) A permit may be denied, revoked or additional requirements imposed by a written finding by the Director that a permittee has a history of failure to comply with Division rules and orders and state or federal environmental laws.

(6) The Director may, for protection of public health and the environment, impose additional requirements such as setbacks from an existing occupied structure.

(7) The Director may issue a permit upon a finding that an acceptable application has been filed and that the conditions of paragraphs 2 and 3 above have been met. All permits are revocable upon showing of good cause after notice and, if requested, hearing. Permits shall be reviewed a minimum of once every five (5) years for compliance with state statutes, Division rules and permit requirements and conditions.

C. Operational Requirements

(1) All surface waste management facility permittees shall file forms C-117-A, C-118, and C-120-A as required by OCD rules.

(2) Facilities permitted as treating plants will not accept sediment oil, tank bottoms and other miscellaneous hydrocarbons for processing unless accompanied by an approved Form C-117A or C-138.

(3) Facilities will only accept oilfield related wastes except as provided in Subsection C, Paragraph (4), Subparagraph (c) of 19.15.9 711 NMAC below. Wastes which are determined to be RCRA Subtitle C hazardous wastes by either listing or characteristic testing will not be accepted at a permitted facility.

(4) The permittee shall require the following documentation for accepting wastes, other than wastes returned from the wellbore in the normal course of well operations such as produced water and spent treating fluids, at commercial waste management facilities:

(a) Exempt Oilfield Wastes: As a condition to acceptance of the materials shipped, a generator, or his authorized agent, shall sign a certificate which represents and warrants that the wastes are: generated from oil and gas exploration and production operations; exempt from Resource Conservation and Recovery Act (RCRA) Subtitle C regulations; and not mixed with non-exempt wastes. The permittee shall have the option to accept on a monthly, weekly, or per load basis a load certificate in a form of its choice. While the acceptance of such exempt oilfield waste materials does not require the prior approval of the Division, both the generator and permittee shall maintain and shall make said certificates available for inspection by the Division for compliance and enforcement purposes.

(b) Non-exempt, Non-hazardous Oilfield Wastes: Prior to acceptance, a "Request For Approval To Accept Solid Waste", OCD Form C-138, accompanied by acceptable documentation to determine that the waste is non-hazardous shall be submitted to the appropriate District office. Acceptance will be on a case-by-case basis after approval from the Division's Santa Fe office.

(c) Non-oilfield Wastes: ~~Non-hazardous, Non-oilfield~~ wastes may be accepted in an emergency if ordered by the Department of Public Safety. Prior to acceptance, a "Request To Accept Solid Waste", OCD Form C-138 accompanied by the Department of Public Safety order will be submitted to the appropriate District office and the Division's Santa Fe office. With prior approval from the Division, other non-hazardous, non-oilfield waste may be accepted into a permitted surface waste management facility if the waste is similar in physical and chemical composition to the oilfield wastes authorized for disposal at that facility and is either:

(1) exempt from the "hazardous waste" provisions of Subtitle C of the federal Resource Conservation and Recovery Act; or (2) has tested non-hazardous and is not listed as hazardous. Prior to acceptance, a "Request For Approval to Accept Solid Waste," OCD Form C-138, accompanied by acceptable documentation to characterize the waste, shall be submitted to and approved by the Division's Santa Fe office.

(5) The permittee of a commercial facility shall maintain for inspection the records for each calendar month on the generator, location, volume and type of waste, date of disposal, and hauling company that disposes of fluids or material in the facility. Records shall be maintained in appropriate books and records for a period of not less than five years, covering their operations in New Mexico.

(6) Disposal at a facility shall occur only when an attendant is on duty unless loads can be monitored or otherwise isolated for inspection before disposal. The facility shall be secured to prevent unauthorized disposal when no attendant is present.

(7) No produced water shall be received at the facility from motor vehicles unless the transporter has a valid Form C-133, Authorization to Move Produced Water, on file with the Division.

(8) To protect migratory birds, all tanks exceeding 16 feet in diameter, and exposed pits and ponds shall be screened, netted or covered. Upon written application by the permittee, an exception to screening, netting or covering of a facility may be granted by the district supervisor upon a showing that an alternative method will protect migratory birds or that the facility is not hazardous to migratory birds.

(9) All facilities will be fenced in a manner approved by the Director.

(10) A permit may not be transferred without the prior written approval of the Director. Until such transfer is approved by the Director and the required financial assurance is in place, the transferor's financial assurance will not be released.

D. Facility Closure

(1) The permittee shall notify the Division thirty (30) days prior to its intent to cease accepting wastes and close the facility. The permittee shall then begin closure operations unless an extension of time is granted by the Director. If disposal operations have ceased and there has been no significant activity at the facility for six (6) months and the permittee has not responded to written notice as defined in Subsection D, Paragraph (2), Subparagraph (a) of 19.15.9.711 NMAC, then the facility shall be considered abandoned and shall be closed utilizing the financial assurance pledged to the facility. Closure shall be in accordance with the approved closure plan and any modifications or additional requirements imposed by the Director to protect public health and the environment. At all times the permittee must maintain the facility to protect public health and the environment. Prior to release of the financial assurance covering the facility, the Division will inspect the site to determine that closure is complete.

(2) If a permittee refuses or is unable to conduct operations at the facility in a manner that protects public health or the environment or refuses or is unable to conduct or complete the closure plan, the terms of the permit are not met, or the permittee defaults on the conditions under which the financial assurance was accepted, the Director shall take the following actions to forfeit all or part of the financial assurance:

(a) Send written notice by certified mail, return receipt requested, to the permittee and the surety informing them of the decision to close the facility and to forfeit all or part of the financial assurance, including the reasons for the forfeiture and the amount to be forfeited and notifying the permittee and surety that a hearing request must be made within ten (10) days of receipt of the notice.

(b) Advise the permittee and surety of the conditions under which the forfeiture may be avoided. Such conditions may include but are not limited to:

(i) An agreement by the permittee or another party to perform closure operations in accordance with the conditions of the permit, the closure plan and these Rules, and that such party has the ability to satisfy the conditions.

(ii) The Director may allow a surety to complete closure if the surety can demonstrate an ability to complete the closure in accordance with the approved plan. No surety liability shall be released until successful completion of closure.

(c) In the event forfeiture of the financial assurance is required by this rule, the Director shall proceed to collect the forfeited amount and use the funds collected from the forfeiture to complete the closure. In the event the amount forfeited is insufficient for closure, the permittee shall be liable for the deficiency. The Director may complete or authorize completion of closure and may recover from the permittee all reasonably incurred costs of closure and forfeiture in excess of the amount forfeited. In the event the amount forfeited was more than the amount necessary to complete closure and all costs of forfeiture, the excess shall be returned to the party from whom it was collected.

(d) Upon showing of good cause, the Director may order immediate cessation of operations of the facility when it appears that such cessation is necessary to protect public health or the environment, or to assure compliance with Division rules and orders.

(e) In the event the permittee cannot fulfill the conditions and obligations of the permit, the State of New Mexico, its agencies, officers, employees, agents, contractors and other entities designated by the State shall have all rights of entry into, over and upon the facility property, including all necessary and convenient rights of ingress and egress with all materials and equipment to conduct operation, termination and closure of the facility, including but not limited to the temporary storage of equipment and materials, the right to borrow or dispose of materials, and all other rights necessary for operation, termination and closure of the facility in accordance with the permit.

E. Waste management facilities in operation at the time Section 19.15.9.711 NMAC becomes effective shall:

(1) within one (1) year after the effective date permitted facilities submit the information required in Subsection B, Paragraph (1), Subparagraphs (a, h, i and l) of 19.15.9.711 NMAC not already on file with the Division;

(2) within one (1) year after the effective date unpermitted facilities submit the information required in Subsection B, Paragraph (1), Subparagraphs (a) through (j) and Subsection B, Paragraph (1), Subparagraph (l) of 19.15.9.711 NMAC;

(3) comply with Subsections C and D of 19.15.9.711 NMAC unless the Director grants an exemption from a requirement in these sections based upon a demonstration by the operator that such requirement is not necessary to protect public health and the environment.