

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION UPON ITS OWN MOTION
TO PROMULGATE A NEW RULE 711
TO REGULATE COMMERCIAL SURFACE
WASTE DISPOSAL FACILITIES AND
TO REQUIRE A \$25,000 BOND FOR
SUCH FACILITIES:

CASE NO. 9378
Order No. R-8662

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 a.m. on May 19, 1988, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 2nd day of June, 1988, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) Pursuant to the Oil and Gas Act, NMSA 70-2-12B (15), the Division is authorized to regulate the disposal of produced water or water used in connection with the drilling for oil or gas, in order to prevent the contamination of fresh water supplies.

(3) While specific orders have been entered, no statewide rule has been promulgated for commercial surface disposal of produced water and other oil field related wastes.

(4) The requirements imposed on commercial surface waste disposal facilities need to be specifically stated in a rule so that operators, bonding companies, and other interested parties have adequate notice of the potential cost of construction, operation and reclamation of the facility site.

(5) A \$25,000 bond to provide for reclamation of the surface and proper closure of the facility site should be required, but (1) if a bond is in place for a contiguous treating plant, that bond should suffice for both facilities; or (2) if an adequate bond that satisfies the requirements of this rule is posted with another state or federal agency, no additional bond should be required.

(6) An administrative approval process should be adopted to simplify the surface waste disposal permit process; permits should be transferable only upon Division Director approval; and an order of cessation of operations should be within the authority of the Director when such cessation is necessary to prevent waste, to protect fresh water, to protect public safety, or to assure compliance with Division rules or orders.

(7) To the extent that Rule 711 conflicts with the provisions of Oil Conservation Commission Orders R-3221, as amended, or R-7940-A, such orders should be superceded.

(8) The effective date of this order should be June 2, 1988.

IT IS THEREFORE ORDERED THAT:

(1) Rule 711 of the Division's Rules and Regulations is hereby promulgated to read as follows:

RULE 711
Commercial Surface Waste Disposal Facilities

A commercial surface waste disposal facility is defined as any facility that receives compensation for collection, disposal, evaporation or storage of produced water, drilling fluids, drill cuttings, completion fluids, and/or other approved oil field related waste in surface pits, ponds, or below grade tanks. Such facility will not be allowed to operate unless it has been permitted in conformity with the following provisions:

- A. Prior to the construction, reconstruction or enlargement of a commercial surface waste disposal facility, application for a permit or a modification to an existing permit shall be filed in duplicate with the Santa Fe office of the Division and one copy to the appropriate district office. The application shall be accompanied by:
1. 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, and watercourses, water wells, and dwellings within one mile of the site;
 2. The names and addresses of the landowner of the disposal facility site and landowners of record within one-half mile of the site;
 3. A description of the facility with a diagram indicating location of fences and cattleguards, and detailed engineering construction/installation diagrams of any pits, liners, dikes, piping, sprayers, and tanks on the facility, prepared in accordance with Division "Guidelines for Permit Application, Design and Construction of Waste Storage/Disposal Pits;"
 4. A plan for disposal of approved waste solids or liquids in accordance with Division rules, regulations and guidelines;
 5. A contingency plan for reporting and cleanup of spills or releases;
 6. A routine inspection and maintenance plan to ensure permit compliance;
 7. A closure plan;
 8. Geological/hydrological evidence demonstrating that disposal of oil field wastes will not adversely impact fresh water;
 9. Proof that the notice requirements of this Rule have been met;

10. 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; and
 11. Such other information as is necessary to demonstrate compliance with OCD rules and/or orders.
- B. The applicant shall give written notice of application to the owners of surface lands and occupants thereof within one-half ($\frac{1}{2}$) mile and a copy and proof of such notice will be furnished to the Division. The Division will issue public notice by advertisement in a paper of general circulation published in the county in which the disposal facility is to be located. For permit modifications, the Division may issue public notice and may require the applicant to give written notice as above. Any person seeking to comment on such application must file comments with the Division within 30 days of the date of public notice. If there is objection by owners or occupants of adjacent lands, the Director of the Division may set any application for a surface waste disposal permit for public hearing.
- C. All commercial surface waste disposal facilities shall have a surety or cash bond in the amount of \$25,000, in a form approved by the Division, conditioned upon compliance with statutes of the State of New Mexico and rules of the Division, and satisfactory cleanup of the site upon cessation of operation, in accordance with Part J of this Rule. If a bond has been secured for a treating plant permit at the location, that bond shall be sufficient for the surface waste disposal portion of the facility, providing they are contiguous. If an adequate bond is posted by the applicant with a federal or state agency and the bond otherwise fulfills the requirements of this rule, the Division may consider the bond as satisfying the requirement of this rule. The applicant must notify the Division of any material change affecting the bond filed for the site and must, in any case, report the status of their bond annually to the Division;

- D. The Director of the Division may administratively issue a permit upon a finding that a complete and proper application has been filed and that no significant objections have been filed within 30 days following public notice. All permits shall be revocable, after notice and hearing, upon showing of good cause and are transferable only upon written approval of the Division Director. The permit shall be consistent with the application and appropriate requirements of Division rules and The Oil and Gas Act.
- E. All surface waste disposal facility operators shall file forms C-117-A, C-118, and C-120-A as required by OCD rules.
- F. Each operator of a commercial surface disposal facility shall keep and make available for inspection records for each calendar month on the source, location, volume and type of waste (produced water, acids, completion fluids, drilling mud, etc.), date of disposal, and hauling company that disposes of fluids or material in their facility. Such records shall be maintained for a period of two (2) years from the date of disposal.
- G. Disposal at a surface facility shall occur only when an attendant is on duty. The facility shall be secured when no attendant is present. When loads can be monitored or otherwise isolated for inspection before disposal, no attendant is required.
- H. 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.
- I. Additional requirements or restrictions may be imposed by a written finding by the Division, including but not limited to the following:
 - 1. An operator with a history of failure to comply with Division rules, regulations, and orders, or
 - 2. Site suitability limitations.

- J. The operator shall notify the Division of cessation of operations. Upon cessation of disposal operations for six (6) consecutive months, the operator will complete cleanup of constructed facilities and restoration of the facility site within the following six (6) months, unless an extension of time is granted by the Director of the Division. Such closure shall be in accordance with the closure plan and any modifications approved by the Division Director and may include removal or demolition of buildings, removal of all tanks, vessels, equipment or hardware, containment and removal of fluids and chemicals, backfilling and grading of pits, removal of contaminated soil, aquifer restoration (if necessary) and reclamation of the general facility site. Prior to release of the bond covering the facility, a representative of the Division will inspect the site to determine that restoration is adequate.
- K. Upon showing of proper cause, the Director of the Division may order immediate cessation of any surface waste disposal operation. The cessation will remain in effect until withdrawn, or until an order is issued after notice and hearing, when it appears that such cessation is necessary to prevent waste, to protect fresh water, to protect public safety, or to assure compliance with Division rules or orders.

(2) Existing permitted commercial surface waste disposal facilities shall be subject to Rule 711, however no new permit application will be required. After review of existing orders, requests of the facility operator will be made by the Division for additional information that fulfills the requirements of Rule 711. Such facility shall have 120-days from the date of receipt of the request to comply with these requirements. No existing facility shall be required to fulfill the bond requirement or to initiate the annual bond status report until December 30, 1988.

(3) Any existing permitted surface disposal facility not fulfilling the bond requirement by December 30, 1988 or not reporting the status of their bond annually to the Division, shall be closed until such bond is obtained or annual report made and may be required to conduct cleanup and restoration of the facility site in accordance with Division Rule 711 (J).

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(4) Commercial surface waste disposal facility bond forms, both surety and cash, are hereby adopted as set out on Exhibits "A" and "B", respectively, attached to this order.

(5) The procedures for obtaining a commercial surface waste disposal permit contained in Rule 711 are the exclusive procedures for obtaining such permits. To the extent these procedures conflict with the provisions of Oil Conservation Commission Orders R-3221, as amended, or R-7940-A, such orders are superceded.

(6) The effective date of this order, Rule 711, and the new commercial surface waste disposal facility bond forms shall be June 6th, 1988.

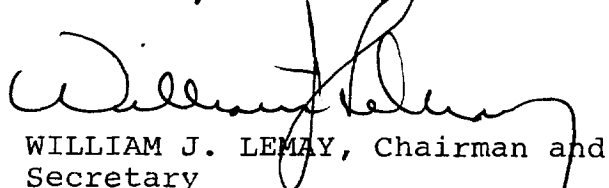
(7) Jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION


WILLIAM R. HUMPHRIES, Member


ERLING A. BROSTUEN, Member


WILLIAM J. LEMAY, Chairman and
Secretary

S E A L

EXHIBIT "A"

NEW MEXICO OIL CONSERVATION DIVISION
OF THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

\$25,000.00 BOND FOR COMMERCIAL SURFACE WASTE DISPOSAL FACILITY

BOND NO. _____
(For Use of Surety Company)

File with Oil Conservation Division, P. O. Box 2088, Santa Fe, New Mexico 87504
KNOW ALL MEN BY THESE PRESENTS:

That _____, (an individual)
(partnership) (a corporation organized in the State of _____,
with its principal office in the City of _____, State of _____,
and authorized to do business in the State of New Mexico), as
PRINCIPAL, and _____, a corporation
organized and existing under the laws of the State of _____,
and authorized to do business in the State of New Mexico with duly appointed resident
agent licensed in the State of New Mexico to execute this bond on behalf of the
surety company, as SURETY, are held firmly bound unto the State of New Mexico, for
the use and benefit of the Oil Conservation Division of the Energy, Minerals and
Natural Resources Department pursuant to Chapter 72, Laws of New Mexico, 1935, as
amended, and to the State of New Mexico in the sum of Twenty Five Thousand
(\$25,000.00) Dollars lawful money of the United States for the payment of which, well
and truly to be made, said PRINCIPAL and SURETY hereby bind themselves, their
successors and assigns, jointly and severally, firmly by these presents.

The conditions of this obligation are such that:

WHEREAS, The above principal has heretofore or may hereafter enter into the
collection, disposal or storage of produced water and/or other oil field related
waste in Section _____, Township _____ (North) (South), Range _____ (East)
(West), N.M.P.M., _____ County, New Mexico.

NOW, THEREFORE, This \$25,000 performance bond is conditioned upon substantial
compliance with all applicable statutes of the State of New Mexico and all rules,
regulations, and orders of the Oil Conservation Division of the Energy and Minerals
Department, and upon clean-up of the facility site to standards of the Oil
Conservation Division; otherwise the principal amount of the bond to be forfeited to
the State of New Mexico.

PROVIDED, HOWEVER, That sixty (60) days after receipt by the Oil Conservation
Division of written notice of cancellation from the Surety, the obligation of the
Surety shall terminate as to activities or operations conducted by PRINCIPAL after
said sixty (60) day period but shall continue in effect, notwithstanding said notice,
as to such activities or operations conducted or commenced before the expiration of
the sixty day period.

Signed and sealed this _____ day of _____, 19_____.

PRINCIPAL _____ SURETY _____

Mailing Address _____ Mailing Address _____

By _____ By _____
Signature Title Attorney-in-Fact

(Note: Principal, if corporation
Affix corporate seal here.)

(Note: Corporate surety affix corporate
seal here.)

Note: If corporate surety executes this bond by an attorney-in-fact not in New
Mexico, the resident New Mexico agent shall countersign here below.)

Countersigned by:

New Mexico Resident Agent _____ Address _____

STATE OF _____)
COUNTY OF _____) ss.

On this _____ day of _____, 19____, before me personally appeared _____, to me known to be the person (persons) described in and who executed the foregoing instrument and acknowledged that he (they) executed the same as he (their) free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year in this certificate first above written.

Notary Public

My Commission Expires: _____

ACKNOWLEDGMENT FORM FOR CORPORATION

STATE OF _____)
COUNTY OF _____) ss.

On this _____ day of _____, 19____, before me personally appeared _____, to me personally known who, being by me duly sworn, did say that he is _____ of _____ and that the foregoing instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year in this certificate first above written.

Notary Public

My Commission Expires _____

STATE OF _____)
COUNTY OF _____) ss.

On this _____ day of _____, 19____, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he is _____ of _____ and that the foregoing instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year in this certificate first above written.

Notary Public

My Commission Expires: _____
(Note: Corporate surety attach power of attorney)

APPROVED BY:
OIL CONSERVATION DIVISION

By _____

EXHIBIT "B"
NEW MEXICO OIL CONSERVATION DIVISION
OF THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

\$25,000.00 CASH BOND FOR COMMERCIAL DISPOSAL FACILITY

File with Oil Conservation Division, P. O. Box 2088, Santa Fe, New Mexico 87504

KNOW ALL MEN BY THESE PRESENTS:

That _____, (an individual)
(partnership) (a corporation organized in the State of _____,
with its principal office in the City of _____, State of _____,
and authorized to do business in the State of New Mexico), is
held firmly bound unto the State of New Mexico, for the use and benefit of the Oil
Conservation Division of the Energy, Minerals and Natural Resources Department in the
sum of Twenty Five Thousand (\$25,000.00) Dollars lawful money of the United States.

The conditions of this obligation are such that:

The above principal has heretofore or may hereafter enter into the collection,
disposal or storage of produced water and/or other oil field related wastes in Section
_____, Township _____ (North) (South), Range _____ (East) (West), N.M.P.M.,
_____ County, New Mexico.

NOW, THEREFORE, This \$25,000 performance bond is conditioned upon substantial
compliance with all applicable statutes of the State of New Mexico and all rules,
regulations, and orders of the Oil Conservation Division of the Energy, Minerals
and Natural Resources Department, and upon clean-up of the facility site to standards
of the Oil Conservation Division; otherwise the principal amount of the bond to be
forfeited to the State of New Mexico.

The applicant has deposited on behalf of the Division \$25,000 (Twenty-five
thousand dollars) in the manner indicated on the attachment to this bond, being the
principal sum intended to be secured. Applicant pledges the sum as a guarantee that
if its executors, assigns, heirs and administrators will abide by the Laws of the
State of New Mexico and the Rules and Regulations of the Oil Conservation Division in
operating the commercial surface waste disposal facility described herein, and that
it will properly reclaim the facility site upon cessation of operations. If the
applicant does not properly reclaim and restore the facility site, and otherwise
abide by the Rules and Orders of the Oil Conservation Division, this bond shall be
forfeited in full and such funds as necessary applied to the cost of reclaiming the
facility site. If the principal sum of the bond is less than the actual cost
incurred by the Division in reclaiming the plant site, the Division may institute
legal action to recover any amounts expended over and above the principal sum of the
bond.

NOW THEREFORE, if the above applicant or its successors, assigns, heirs, or
administrators or any of them shall properly reclaim and restore the above-described
collection, disposal or storage site upon cessation of operations, and otherwise
abide by the Rules and Orders of the Oil Conservation Division, then therefore, this
obligation shall be null and void and the principal sum hereof shall be paid to the
applicant, or its successors, heirs, or administrator, otherwise it shall remain in
full force and effect.

Signed and sealed this _____ day of _____, 19____.

Mailing Address

By

Signature

Title

(Note: Principal, if corporation
Affix corporate seal here.)

ACKNOWLEDGMENT FORM FOR CORPORATION

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 19____, before me personally appeared _____, to me personally known who, being by me duly sworn, did say that he is _____ of _____ and that the foregoing instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year in this certificate first above written.

Notary Public

My Commission Expires _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 19____, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he is _____ of _____ and that the foregoing instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year in this certificate first above written.

Notary Public

My Commission Expires: _____

(Note: Corporate surety attach power of attorney)

APPROVED BY:
OIL CONSERVATION DIVISION

By _____

ASSIGNMENT OF CASH COLLATERAL DEPOSIT
FOR BOND FOR COMMERCIAL SURFACE WASTE DISPOSAL FACILITY

(Must be a federally-insured bank or savings institution
within the State of New Mexico)

Date _____

Pursuant to Rule 711 of the Rules of the Oil Conservation Division, or successor provisions, _____ (hereinafter referred to as "owner") of _____ (address) has deposited with the _____ (name of state or national bank or savings association) of _____ (address) (herein termed financial institution), the sum of _____ dollars in Certificate of Deposit or savings account No. _____. Owner hereby assigns and conveys all right, title and interest in the deposited sum to the financial institution in trust for the Oil Conservation Division of the Energy and Minerals Department or successor agency of the State of New Mexico. Owner and the financial institution agree that as to the deposited sum or fund:

- The funds deposited pursuant to the terms of this Agreement are to serve as a cash bond covering a commercial surface waste disposal facility operated by owner.
- The Oil Conservation Division acquires by this assignment the entire beneficial interest in the fund, with the right to order the trustee in writing to distribute the fund to persons determined by the Division to be entitled thereto, including the Division itself, in amounts determined by the Division, or to the operator upon sale of the facility covered by this agreement.
- Owner retains no legal or beneficial interest in the fund and has only the right to interest, if any, thereon, and to return of the fund upon written order of the Division.
- The financial institution agrees that the fund may not be assigned, transferred, pledged or distributed except upon written order of the Division or a court of competent jurisdiction made in a proceeding in which the Division is a party. The financial institution waives all statutory or common law liens or rights of set-off against the fund.

Owner agrees that the financial institution may deduct from interest due owner any attorney fees incurred by the financial institution if claim or demand via writ, summons or other process arising from operator's business is made upon the financial institution.

Signature of Owner,
Personally or by Authorized Officer

Signature of Authorized Officer of
Financial Institution

Title _____

Title _____

STATE OF NEW MEXICO

)ss.

COUNTY OF _____

On this _____ day of _____, 19____, before me personally appeared _____ and _____, to me known to be the person (persons) described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year in this certificate first above written.

My Commission expires:

NOTARY PUBLIC _____