

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

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION OF NEW MEXICO FOR  
THE PURPOSE OF CONSIDERING:

CASE NO. 9672  
ORDER NO. R-8952

APPLICATION OF THE OIL CONSERVATION DIVISION TO CONSIDER  
AMENDMENTS TO DIVISION RULES 8, 105, 312, 313, AND 711 TO REQUIRE  
APPROPRIATE MEASURES BE TAKEN TO PREVENT LOSS OF MIGRATORY  
WATERFOWL RESULTING FROM CONTACT WITH OILY WASTE IN OIL FIELD  
OPERATIONS.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 A.M. on June 15, 1989,  
at Santa Fe, New Mexico, before the Oil Conservation Commission of  
New Mexico, hereinafter referred to as the "Commission."

NOW, on this 20th day of June, 1989, 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:

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

(2) In the fall of 1988, the United States Fish and Wildlife  
Service informed the New Mexico Oil Conservation Division (OCD)  
that significant loss of migratory waterfowl has occurred and is  
occurring due to contact with oily waste in pools, tanks and ponds  
in the oil fields of New Mexico.

(3) The OCD Director convened an industry meeting on  
December 15, 1988, to determine if action by the OCD was  
necessary. As a result of that meeting, a Committee was appointed  
to review the matter, and that Committee submitted proposed rules  
to be considered for adoption by the Commission.

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(4) The Committee's recommended proposed rules were submitted to industry, the public, and to government agencies for comment and comments have been received.

(5) On May 18, 1989, the Commission held a hearing and took testimony, written evidence and comments regarding the problem and proposed rules to address the problem. The Commission accepted for record the Committee minutes, report and comments, and other correspondence and documents related to the problem and alternative solutions.

(6) The U.S. Fish and Wildlife Special Agent with Law Enforcement testified that he collected 694 dead birds or bird parts from 10 to 12 field trips made to Southeastern New Mexico between May 1988 and April 1989. An additional 100 to 150 dead birds were observed but not collected. On a one-day trip to Northwest New Mexico, one dead duck was found in a water disposal site.

(7) Open pits, ponds and large tanks used in conjunction with oil field operations present a potential hazard to migratory waterfowl, and protective measures should be required to prevent significant loss of birds.

(8) Pits used in conjunction with drilling and workover activities are non-hazardous during such operations and afterwards, provided oil is removed therefrom or the pits are netted immediately following the cessation of operations.

(9) 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, operators, the OCD and Fish and Wildlife should continue to gather and examine data to determine whether protective measures should be required.

(10) OCD rules prohibit the storage or retention of oil in earthen reservoirs, but occasional small accumulations of oil on pits, ponds or tanks can occur during normal operations, and any reference in the rules adopted hereby to keeping such facilities free of oil is likely to be difficult to monitor and enforce.

(11) Because of the diverse nature of sites, pits and ponds in the oil field, exceptions to statewide rules should be available to operators who can show either that there are alternative methods of protecting migratory birds or that their facility is not hazardous to migratory birds.

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(12) Operators should consider taking additional precautions to render their facilities non-hazardous to migratory birds because the federal Migratory Bird Treaty Act prohibits unauthorized bird kills and federal law authorizes criminal penalties of up to \$10,000 per bird.

(13) Cooperative efforts should be established and maintained between industry and state and federal government agencies to further quantify migratory bird losses, where they are taking place, and to work together to develop economical means to prevent such future losses.

IT IS THEREFORE ORDERED THAT:

(1) Division Rule 8 is hereby amended to read in its entirety as shown on Exhibit "A" attached to and made a part of this order.

(2) Division Rule 105 is hereby amended to read in its entirety as shown on Exhibit "B" attached to and made a part of this order.

(3) Division Rule 312 is hereby amended to add a new Paragraph (h) and re-number the existing Paragraphs (h) and (i) as shown on Exhibit "C" attached to and made a part of this order.

(4) Division Rule 313 is hereby amended to read in its entirety as shown on Exhibit "D" attached to and made a part of this order.

(5) Division Rule 711 is hereby amended to add a new Paragraph I and re-number Paragraphs I, J and K as shown on Exhibit "E" attached to and made a part of this order.

(6) The effective date of this order and amended Rules 8, 105, 312, 313 and 711 shall be September 1, 1989.

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

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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

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RULE 8. EXPOSED PITS/LINED PITS/BELOW GRADE TANKS

- (a) After January 1, 1986, lined pits and below grade tanks may be used to contain produced water, sediment oil, tank bottoms, miscellaneous hydrocarbons, or other fluids subject to the jurisdiction of the Division under the Oil and Gas Act only upon prior approval of the Division. Applications for approval of lined pits or below grade tanks should be made in accordance with applicable special rules or, in the absence of special rules, in accordance with Division "Guidelines".
- (b) To protect migratory birds, all tanks exceeding 16 feet in diameter, exposed pits and ponds shall be screened, netted or covered. Upon written application by the operator, 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.

EXHIBIT "A"  
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RULE 105. PIT FOR CLAY, SHALE, DRILL FLUID, AND DRILL CUTTINGS.

- a. In order to assure a supply of proper material for mud-laden fluid to confine oil, gas, or water to their native strata during the drilling of any well, operators shall provide before drilling is commenced an adequate pit for the accumulation of drill cuttings. Drilling fluids and drill cuttings must be disposed of at the well site in a manner to prevent contamination to surface or subsurface waters. Removal of drilling fluids or drill cuttings for offsite disposal will be permitted only by approval of the appropriate Division district supervisor.
- b. To protect migratory birds, pits used for drilling, completion, blowdown, workover or an emergency immediately after cessation of the activity must have oil removed from their surface or be screened, netted or covered.

EXHIBIT "B"  
CASE NO. 9672  
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RULE 312. TREATING PLANTS

(h) 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 operator, 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.

(h) (i)

(i) (j)

EXHIBIT "C"  
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RULE 313. EMULSION, BASIC SEDIMENTS, AND TANK BOTTOMS

Wells producing oil shall be operated in such a manner as will reduce as much as practicable the formation of emulsion and basic sediments. These substances and tank bottoms shall not be allowed to pollute fresh waters or cause surface damage. If tank bottoms are removed to surface pits, the pits shall be fenced and the fence shall be kept in good repair. 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 operator, 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.

EXHIBIT "D"  
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RULE 711. COMMERCIAL SURFACE WASTE DISPOSAL FACILITIES

I. 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 operator, 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.

I. J.

J. K.

K. L.

EXHIBIT "E"  
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