

Comments of the
New Mexico Oil Gas Association on the
Oil Conservation Division's Proposed
Surface Waste Management Rules
November 10, 2005.

GENERAL COMMENTS:

The following comments are provided on behalf of the New Mexico Oil and Gas Association on the draft of the Oil Conservation Division's Surface Waste Management Rules that will be considered at the November 10th Oil Conservation Commission meeting. Individual member companies have also submitted comments on these proposed rules and will be in attendance at the November 10, 2005 meeting to provide further comment on the current proposal. It is our understanding that following this meeting a revised draft will be prepared by the Division and that additional comments will be received by the Commission following the release of the revised proposal.

We support regulation by formal rule, not by guideline, and believe the development of appropriate rules for surface waste management and disposal are in the best interest of both the Oil Conservation Division and Commission and the oil and gas industry. Furthermore, we believe that the extension of the hearing schedule on these rules and the resulting additional comment period provides much needed time to work on the proposed rules.

The members of the New Mexico Oil and Gas Association support rules and regulations that protect the water resources of this state and encourage the development of our resources in a way that protects human health and the environment. However, we are concerned that the proposed rules may unnecessarily limit disposal options and will encourage unscrupulous operators to dispose of wastes in ways that will violate the Oil Conservation Division's rules and orders. We also believe that certain provisions in the proposed Surface Waste Management Rules overlap with the provisions of the pending pit rules and that these provisions should be incorporated into and reviewed in the meetings and hearings on those rules.

SPECIFIC COMMENTS:

**RULE 51 (19.15.2.51 NMAC): TRANSPORTATION OF PRODUCED WATER,
DRILLING FLUIDS AND OTHER OILFIELD WASTE:**

Proposed Rule 51.A

This rule provides that non-operators shall obtain a C-133 to be authorized to move liquid waste.

NMOGA recommends that this provision be amended to provide an exception for removal of small samples (less than one barrel) for sample analysis etc.

Proposed Rule 51.C

This rule requires an approved Form C-133 (authorization to remove liquid waste) anytime any water, other fluid or waste is moved. Under the proposed rule, operators would need an approved C-133 to move water from one well site to another.

Currently OCD approval is not required to move produced water from one site to another and in the San Juan Basin where operators regularly recycle produced water. NMOGA recommends that if an operator is recycling produced water for drilling, this water should not be classified as waste and thereby not be subject to the provisions of this rule.

Under this rule it would be the operator's duty to assure that any water hauler it uses is in good standing with the Oil Conservation Division. Since the proposed rule places responsibility on the operator to determine if the water haulers they use are in good standing, the division should provide notice of the revocation of forms C-133 and thereby provide the information needed by operators to assure they only use water haulers who are in good standing.

To address this problem, NMOGA adopts Yates Petroleum Corporation's comments dated October 13, 2005 that recommend that proposed 19.15.2.51 (C) and (E) be amended to read:

C. No owner or Operator shall permit produced water or other oil field waste to be removed from its leases or field facilities by motor vehicle except by a person possessing an approved form C-133, **except that an owner or operator that has (1) verified that a person has an approved C-133; and (2) requested notice from the division of any revocations of forms C-133, may permit produced water or other oil field waste to be removed by that person until ten days after receiving notice from the division's Santa Fe office that the person's form C-133 has been suspended or revoked pursuant to Paragraph (E) of this Rule.**

E. Cancellation or suspension of authorization to move produced water and oil field wastes. Vehicular movement or disposition of produced water or oilfield wastes in any manner contrary to division rules shall be cause , after notice and opportunity for hearing, for cancellation or suspension of a transporter's **form C-133. The division shall provide written notice of any such cancellation or suspension to owners or operators requesting notice of such actions.**

Proposed Rule 51.D

This rule should be revised to provide that “The division may deny approval of a form C-133 if an officer, director, partner in the applicant or person with an interest in the applicant exceeding 25% is or was within the past five years an officer, director, partner or person with an interest exceeding 25% in another entity . . .” that has had a form C-133 cancelled or suspended or a history of failure to comply with division rules.

The reference to “other state or federal environmental laws” in this rule is too broad. NMOGA recommends that this provision be limited to OCD rules and statutes.

RULE 52 (19.15.2.52 NMAC): DISPOSITION OF PRODUCED WATER AND OTHER OIL FIELD WASTES:

Proposed Rule 52.A(1)

This rule needs clarification. It should be amended to prohibit disposal in “**unauthorized**” pits. For the purposes of this rule, pits should be defined as they are defined in Rule 50. The term “depression” should also be defined and should not be so broad as to include a mere “boot print in the ground.”

RULE 53 (19.15.2.53 NMAC): SURFACE WASTE MANAGEMENT FACILITIES:

Proposed Rule 53

Sections A and B should be reversed so the definitions appear first.

Proposed Rule 53.A.(2)(b)

This rule should be amended to eliminate the “less than 50 barrels of liquid per day” requirement to be exempt from the permitting provisions of Rule 53 (19.15.2.53 NMAC). Some operators remove water other than at daily intervals therefore making this provision inappropriate.

Proposed Rule 53.B (5) (Definition of “centralized facility”)

What is the reason behind the proposed amendment to this rule? The focus of the proposed rule on a single “entity” is inconsistent with industry practice. Operating entities are sometimes made up of complex mixtures of subsidiaries and affiliated companies that cooperate to produce oil and gas. The proposed rule will cause extreme hardship and operational dislocation. The current definition is preferable to the definition now being proposed by the Oil Conservation Division.

Proposed Rule 53.B(6)

The definition of a “major modification” as it relates to a new treatment process is vague. It should be amended as recommended by Yates comments to read as follows:

(6) A major modification is a modification of a facility that involves an increase in the total **permitted** operational capacity for treatment or storage of waste or the addition of a new treatment **unit or units of a type not previously permitted by the Division for that facility.**

Proposed Rule 53.C(1)(i)

NMOGA recommends that the provisions of the proposed rule related to the level of geological/hydrological data required be amended to limit this data to the shallowest fresh water aquifer or 100 feet below the surface of the ground ~~water~~, whichever is ~~greater~~, as contained in the amendments to the proposed rule recommended by Yates.

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The data required by the proposed rule would be expensive and difficult to obtain. This proposed amendment will still provide the data needed for proper permitting of the facility and is consistent with the pit guidelines. If additional data is needed, the division has authority to require it under proposed 19.15.2.53(C) (1)(I).

Proposed Rule 53.C (7) (Denial of application for permit or modification of facility).

Again, the proposed language is vague. The language that the Division may deny an application for a permit or modification of a permit if it finds the proposed facility or modification “may endanger fresh water or may be detrimental to public health or the environment” should be amended to provide that a permit may be denied if the proposed facility “endangers fresh water or is detrimental to public health or the environment.”

The rules should be revised like the Division’s proposed enforcement rules to provide that an application for permit can be denied if “an owner of a 25% or greater interest in the applicant ... has a history of failure to comply with division rules. . .”

Proposed Rule 53.C (8) (Imposition of additional permit requirements)

This provision should be amended to provide an opportunity to appeal additional permit conditions or requirements.

Proposed Rule 53. C (9) Granting a Permit:

This rule should be amended to provide that the division **shall** issue a permit when the conditions of this rule are met by the applicant.

Proposed Rule 53.D

This rule should be amended to provide Operational Requirements **for Permitted Facilities**.

Proposed Rule 53.D (7) (Location of facilities in a watercourse or lakebed)

What is the OCD's authority for promulgating this rule? The terms "Watercourse" and "Storm Water Plan" should be defined in the rule. Furthermore, existing facilities should be grandfathered under this rule and it should be amended to provide that 'No **new** waste management facility shall be located ..."

Proposed Rule 53.D (8) (Permit transfers)

This rule should be revised like the Division's proposed enforcement rules to provide that a request for transfer of a permit shall identify all officers, directors and owners of **twenty-five percent** or greater interest in the transferee."

Proposed Rule 53.D (9)

The cite in this rule should be corrected to **19.15.3.116 NMAC**

Proposed Rule 53.E

This rule should be amended to provide Operational Requirements – **for Permitted** landfills. This would make it clear that this rule does not apply to exempt facilities. Otherwise this rule is arbitrary. **Objective standards are needed.**

Proposed Rule 53.F

This rule should be amended to provide operational requirements – **for Permitted** landfarms. It should be made clear that this rule does not apply to exempt facilities.

Proposed Rule 53.F (4)

This rule addresses treatment zones for landfarms. It requires that four samples be taken from soils no deeper than 3 feet below the surface of the cell. However, the required sampling will violate the integrity of the cell.

This rule adds TPH as a regulated constituent in soil for the first time. Its inclusion violates common sense and solid science and it should be removed. Furthermore, the inclusion of TPH in this rule could lead to unnecessary litigation. The analysis of benzene, toluene, ethylbenzene and xylenes as required by this rule captures the concerns of the division significantly better than the nonspecific TPH analysis.

Proposed Rule 53.F (7)

This rule should be amended to require soils shall be disked **quarterly**, not “biweekly.” Experience shows good results are obtained with quarterly disking. The rule should also authorize “other acceptable operational practices” approved by the division.

Proposed Rule 53.F (10)

This rule should be amended to provide that an operator must provide **notification to the division prior** to adding microbes instead of requiring the operator obtain “prior division approval.”

Proposed Rule 53.F (12)

This rule provides that “Wastes shall be considered salt-contaminated if chloride concentration exceeds 2,000 parts per million.” This provision has a profound impact on landfarms using produced water. The rule should provide that the Division shall allow the placement of salt contaminated wastes in a landfarm cell if it is demonstrated that fresh water, human health and the environment will be protected. Experience clearly shows that some saline wastes can be appropriately land farmed.

Proposed Rule 53.G

This rule establishes operational requirements for evaporation ponds.

The provisions of this rule may conflict with the division’s proposed Pit Rule. This provision should be eliminated from the Surface Waste Management Rules and replaced with a reference to Rule 50.

Proposed Rule 53.H (3)(a) (ii)

This rule sets facility closure standards. TPH should be deleted from this rule. See comment on Rule 53.F (4). The rule should also be amended to identify whether “composite samples” or “discreet samples” are required.

Proposed Rule 53.H (3)(D)

This rule addresses closure standards for evaporation ponds. This provision should be moved to the proposed pit rule.

CONCLUSION

The New Mexico Oil and Gas Association appreciates this opportunity to comment on the Oil Conservation Division’s proposed Surface Waste Management Rules. NMOGA will provide additional comments on the rules once amended by the division and will participate in the December 8, 2005 hearing on these proposals.