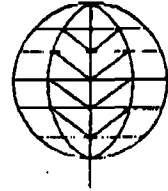




Oil & Gas Accountability Project

a program of EARTHWORKS



December 28, 2005

Ms. Florence Davidson
Oil Conservation Division
1220 S. Saint Francis Drive
Santa Fe, NM 87505

SENT VIA FAX (505) 476-3462
AND US MAIL

Re: OGAP proposed amendments to the NM Oil Conservation Division revision to Rules 19.15.2.51 – 53, (Surface Waste Management Rules) dated November 14, 2005.

Dear Oil Conservation Division,

The Oil & Gas Accountability Project ("OGAP") would like to commend the Oil Conservation Division for revising the draft amendments to Rules 19.15.2.51 – 53. As was the case with our comments on the first published draft version of these rules, OGAP is largely in support of the proposed changes and believe that the OCD's efforts reflect a strong interest in adopting comprehensive and protective rules relating to the transportation and disposal of produced water and other oilfield wastes and the regulation of surface waste management facilities.

I have reviewed several sets of comments submitted by other stakeholders for suggested amendments to Rules 51 through 53. Some of OGAP's comments are in support of language proposed by other stakeholders, as has been noted below. Our recommended amendments to the revised draft rules follow herein. It is our intent to supplement these proposed changes with additional comments by the January 5th submission deadline, if through our research, we come across additional information we believe would be relevant to our support of this revised draft. We are aware that recommendations have been made to establish a tiered regulatory approach to landfarming practices for temporary or short term landfarming *and* permanent landfarming with different regulatory standards and classifications. We are opposed to the establishment of a tiered regulatory approach to landfarming and will submit additional comments reflecting our position on this subject. In the event that another revision to these rules is prepared and released by the OCD before the January 12th hearing, OGAP will submit comments and recommended amendments if necessary on those revisions.

OGAP proposed amendments to the OCD revision to Rules 19.15.2.51 – 53, dated 11/14/05.

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Rule 52 A. (1)

OGAP recommends that this section be amended to be consistent with and as equally comprehensive as, language in the previous draft (earlier language reinserted and identified by underline)

(1) on the surface of the ground, in any pit, or in any pond, lake, depression, draw, streambed arroyo or watercourse,

Rule 53 E (8)

OGAP supports the following proposed amendments (deletions identified with strikethrough and additions identified by underline) recommended by New Mexico Citizens for Clean Air & Water, Inc.

To protect migratory birds, ~~all tanks exceeding eight feet in diameter, and exposed pits and ponds shall be screened, netted or covered~~ livestock and wildlife, all ponds, tanks, and other containers of liquid wastes shall be covered, netted, or enclosed in such a manner as to prohibit entry of birds or mammals. Upon the operator's written application, the division may grant an exception to ~~screening, netting or covering of a facility~~ this requirement, upon the operator's showing that an alternative method will protect migratory birds provide equivalent protection or that the facility is not hazardous to ~~migratory mammals or birds~~. All waste management facilities shall be fenced in a manner approved by the division.

Rule 53 F

OGAP believes 53F(1) needs to be clarified to reflect whether the 5 acre limit includes closed portions of a landfill or only the open portion of a landfill.

Rule 53 F (2)

OGAP supports the following proposed amendments (deletions identified with strikethrough and additions identified by underline) recommended by New Mexico Citizens for Clean Air & Water, Inc.

Landfills shall be constructed using 40 mil high density polyethylene (HDPE) or equivalent double liners with leak detection systems as described in Paragraph (5) of Subsection II of 19.15.3.53 NMAC incorporated into the design, unless the operator shows to the division's satisfaction that fresh water will not be adversely impacted. Landfills shall be located in geologic strata or constructed with floor and walls of geologic material, such that vapors and waste materials will not migrate beyond the facility to protectable water or to the environment.

Rule 53 F(10)

OGAP supports the recommended changes to 53 F(10) submitted by Controlled Recovery, Inc. through its attorney, Huffaker & Moffet. The utilization of dedicated cells appears to be a common industry practice that should be permitted to continue as it

provides a certain level of economic and environmental assurance to companies and does not appear to pose any additional environmental or public health risk.

Rule 53 G (6) &(8) and Rule 53 I (3)

OGAP strongly supports the numerical measurement standards for TPH and salinity content as currently written in Rule 53. We understand that New Mexico Citizens for Clean Air & Water, Inc. has proposed slightly higher (or less stringent) numerical standards modeled in part after the New Mexico Environmental Department screening standards for TPH. At this time, we have not sufficiently researched these alternative standards to determine whether they represent an appropriate alternative and therefore maintain our support of Rule 53 as currently written. What is most crucial in OGAP's opinion is the inclusion of a TPH testing program with maximum allowables set at a level that insure the highest level of environmental and public health protection.. Likewise, OGAP strongly supports the salinity content allowables as currently written and will be submitting supplemental comments in support of Rule 53 before the formal January 12th Hearing.

Rule 53 I (4)

OGAP supports the following proposed amendments (deletions identified with strikethrough and additions identified by underline) recommended by New Mexico Citizens for Clean Air & Water, Inc.

Alternatives to re-vegetation. If the operator or owner of the land contemplates use of the land where a cell or facility is located for purposes inconsistent with re-vegetation, the operator may, with division approval, implement an alternative surface treatment appropriate for the contemplated use, provided that the alternative treatment will effectively prevent erosion. The portion of the financial assurance applicable to re-vegetation shall be retained until the contemplated use is in effect.

Respectfully submitted,

Carolyn Lamb
Staff Attorney
The Oil & Gas Accountability Project