

**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. 13586
ORDER NO. _____**

**APPLICATION OF THE OIL CONSERVATION DIVISION FOR REPEAL OF
EXISTING RULES 709, 710 AND 711 CONCERNING SURFACE WASTE
MANAGEMENT AND THE ADOPTION OF NEW RULES GOVERNING
SURFACE WASTE MANAGEMENT.**

**THE NEW MEXICO OIL AND GAS ASSOCIATION'S
PROPOSED FINDINGS OF FACT**

BY THE COMMISSION:

THIS MATTER came before the Oil Conservation Commission (“the Commission”) for consideration at the Commission’s regular meeting on November 10, 2005, and was continued from time to time thereafter at regularly scheduled meetings of the Commission and special meetings of the Commission through May18, 2006; and the Commission, having considered the evidence, the pleadings, comments and other materials submitted in support of and in opposition to the proposal, now, on this __ day of _____, 2006,

FINDS THAT:

1. The Oil Conservation Division (“Division”) has proposed the repeal of Division Rules 709, 710 and 711 and the adoption of new rules governing the disposition of surface waste that include provisions for:

- A. revised and more comprehensive provisions with respect to the transportation and surface disposition of wastes, and
- B. the permitting and operation of surface waste management facilities.

2. During the course of the meetings and hearings on the proposed Surface Waste Management Rules, the Division revised its draft of its proposed rule on occasions and following the conclusion of the Commission hearing, the Division released a draft of the proposed rules dated June 8, 2006, entitled "FINAL DRAFT OCD PROPOSED RULEMAKING."

THE PARTIES:

3. The following parties appeared at the hearings and presented testimony in support of certain provisions in the proposed rules as well as in opposition to certain provisions in the proposed rules:

- (a) The Oil Conservation Division;
- (b) The New Mexico Oil and Gas Association,
- (c) The Industry Committee (an industry group comprised of Burlington Resources Oil & Gas Company, BP America Production Company, Inc., Chesapeake Operating, Inc., Chevron Texaco, Conoco Phillips, Devon Energy Corporation, Dugan Production Corporation, Energen Resources Corporation, Marathon Oil Company, Marbob Energy Corporation, OXY USA, INC., Occidental Permian, LTD, OXY USA WTP Limited Partnership, D. J. Simmons, Inc., Williams Production Company, XTO Energy, Inc. and Yates Petroleum Corporation.)
- (d) Yates Petroleum Corporation,
- (e) Controlled Recovery, Inc.
- (f) New Mexico Citizens for Clean Air and Water.

4. Also appearing at the hearing were the Independent Petroleum Association of New Mexico, The Oil and Gas Accountability Project and John H. Hendricks Corporation. These parties did not present testimony.

OIL CONSERVATION DIVISION PROPOSED RULE CHANGES:

5. With its proposed Surface Waste Management Rules, the Oil Conservation Division is attempting to "normalize" OCD rules with other state and federal agencies and contain a no degradation policy where no discharge is allowed and therefore there will be no degradation of ground water. Testimony of Price, Tr. at 42, 163-164; Testimony of von Gonten, Tr. at 629, 641-651.

6. The Industry Committee was formed by a number of member of the New Mexico Oil and Gas Association ("NMOGA") for the purpose of addressing the technical issues related to the proposed rules. This Committee has filed proposed findings in this case that address the technical evidence it presented at the Commission hearing.

7. At the Commission hearing on these proposed rules, NMOGA endorsed the recommendations of the Industry Committee (Perez at 1303) and hereby adopts by reference the findings filed in this case by the Industry Committee.

8. On May 6, 2006, NMOGA appeared before the Commission and presented testimony in support of non-technical modifications (NMOGA Exhibit No. 2) to the proposed Surface Waste Management Rules. It submits the following Findings in support of its proposed modifications and the testimony.

FINDINGS:

9. NMOGA testified that it supports regulation by rule not guideline. Perez at 1304. It stated that when the Division adopts policies that are going to be enforced against operators these policies should be set forth in rules that are clear and understandable and not in mere guidelines. Perez at 1304.

10. Proposed Rule 51.A addresses the transportation of liquid waste and prohibits the transportation of any water, drilling fluid or other oil field waste by motor vehicle without an approved OCD Form C-133. NMOGA recommends that this rule be modified to permit operators to transport fluids in equipment owned by them between tank batteries on a lease, or between their leases. Perez at 1306. The language to effect this modification is contained on page 4 of NMOGA Exhibit 2.

11. Pursuant to the Division's proposed Rule 51.C, an operator shall only permit produced water, drilling fluids and other liquids to be removed from its leases by persons possessing an approved Form C-133. NMOGA requested that if operators are to be required to enforce this rule that they be provided with the information necessary to determine if a transporter holds an approved Form C-133. NMOGA requested that the Division post a list of transporters whose Forms C-133 have been revoked monthly on the OCD website and that operators only be required to monitor this list on a monthly basis. Perez at 1306. The Division accepted this modification in its June 8, 2006 draft of these proposed rules.

12. Rule 53 H limited the number of landfarms to one well per lease. NMOGA presented testimony that addressed the situation where there are multiple wells on a single lease that may cover several sections of non-contiguous land and recommended that operators be allowed to seek an exception to the rule. Perez at 1307. NMOGA agreed that this situation could be addressed by providing for one landfarm per operator per section of land. Perez at 1318.

13. The Division's June 8, 2006 draft of proposed Rule 53 H provides for one landfarm per lease but does not address the situation where there are multiple operators and leases in a section. NMOGA recommends that this rule be further amended to provide for one land farm per operator, per section.

14. Proposed rule 53.J addresses forfeiture of financial assurances and provides that the amounts collected as the result of forfeiture of financial assurances under these surface waste management rules shall be deposited into the Oil and Gas Reclamation Fund. Perez at 1307.

15. The Oil and Gas Reclamation Fund is a statutory fund that is set up to receive funding for the necessary personnel to survey abandoned wells and ensure that they are properly plugged and abandoned. NMOGA testified that it did not believe that surface waste disposal facilities fall under the definition of “associated production facilities” in the Oil and Gas Reclamation Act and recommended that to assure that the monies collected from surface waste facilities are used to correct the problems related to these facilities that they be kept in a separate fund. Perez at 1308.

16. Proposed Rules 53.J (2) and (5) relate to financial assurances and re-vegetation. These rules require plans that address these issues be approved, not only by the operator and landowner, but also by the tenant. NMOGA requested that tenant approval be deleted from this Rule and it was deleted in the June 8, 2004 draft of these rules.

17. Proposed Rule 53.I addresses evaporation ponds. NMOGA recommends that this rule should be included in the Division’s Pit Rule and not the rules governing surface waste management. Perez at 1308.

18. Rule 53.L addresses transitional periods and contains provisions that authorize surface waste management facilities and operations that are in existence prior to the effective date of these rules to operate under their prior permits. NMOGA requested that these transitional provisions be expanded to apply to facilities that have completed the approval process and are only waiting on the transfer of a property interest thereby not requiring these operators to start the approval process over again. Perez at 1309.

CERTIFICATE OF SERVICE

I certify that on September 6, 2006 I served copies of the foregoing Findings of Fact by U. S. Mail, postage prepaid, or Hand Delivery to the following:

Oil Conservation Commission (BY HAND DELIVERY)
Florene Davidson, Clerk
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Alletta Belin, Esq.
Belin & Sugarman
618 Paseo de Peralta
Santa Fe, New Mexico 87501
Attorney for the New Mexico Citizens for Clean Air &
Water, Inc.

David K. Brooks, Esq. (BY HAND DELIVERY)
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
Attorney for the Oil Conservation Commission

Pete V. Domenici Jr.
Domenici Law Firm
320 Gold Ave SW Suite 1000
Albuquerque, New Mexico 87102
Attorney for Gandy Marley, Inc.

Eric L. Hiser
Jorden Bischoff & Hiser, P. L. C.
7272 East Indian School Road
Suite 205
Scottsdale, Arizona 85251

Gregory D. Huffaker Jr.
Huffaker & Moffatt LLC
Post Office Box 1868
Santa Fe, New Mexico 87504-1868
Attorney for Controlled Recovery, Inc.

Case No. 13586

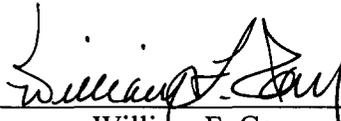
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Carolyn Lamb, Esq.
Post Office Box 1102
Durango, Colorado 81302
Attorney for the Oil and Gas Accountability Project

Donald A. Neeper, Ph.D
New Mexico Citizens for Clean Air & Water, Inc.
2708 B. Walnut St.
Los Alamos, New Mexico 87544-2050

Rebecca G. Percy-Pipin
135 Rincon Valverde
Ponderosa, New Mexico 87404



William F. Carr