

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

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

CASE NO. 13586

APPLICANT'S PRE-HEARING STATEMENT

The New Mexico Oil Conservation Division, the applicant in this case hereby files its pre-hearing statement.

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I. Name of the Person or Entity and the Person or Entity's Attorney:

Oil Conservation Division
Environmental Bureau

David K. Brooks

II. Concise Statement of the Case:

The Oil Conservation Division has proposed that the Commission amend Rule 7 (Definitions); repeal Rules 709 (Removal of Produced Water from Leases and Field Facilities), 710 (Disposition of Transported Produced Water) and 711 (Applicable to Surface Waste Management Facilities Only) and adopt the Division's proposed new Rules 51 (Transportation of Produced Water, Drilling Fluids and Other Liquid Oil Field Waste), 52 (Disposition of Produced Water and Other Oil Field Waste) and 53 (Surface Waste Management Facilities).

III. Witnesses:

1. **Wayne Price**, Chief of the Environmental Bureau of the Division

Mr. Price will testify that the Division determined to propose a comprehensive revision of its waste management rules because the existing rules have not met the needs of the public or industry. The rules concerning transportation and disposal of produced water are vague and confusing, and there are no rules that specifically spell out transportation and disposal requirements for other oilfield wastes. The existing surface waste management facility rules are not adequate to regulate the proper operation of landfarms, and do not optimally regulate other facilities.

Mr. Price will describe the procedure by which the proposed rules were formulated, including the various meetings the Bureau conducted with the public and stakeholders, and comments received. He will then go through the rules, call attention to the major substantive changes the Division proposes, and discuss, in general terms, the policy reasons for each of the major proposals. Without limiting the generality of the foregoing, Mr. Price will specifically discuss the proposed definition of "surface waste management facility" (proposed Rule 7.S(10), what will and will not constitute a "surface waste management facility" and why. Mr. Price will also discuss the categorical definitions of various types of facilities found in proposed Rule 53.A(1) and the roll of each of these types of facilities in proper waster management. He will also specifically discuss the siting requirements for surface waste management facilities [proposed Rule 53.E(2)], and the reasons for those requirements. He will describe the provisions for exceptions and waivers (proposed Rule 53.K) and will explain the philosophy underlying this proposal.

Mr. Price will also testify in detail about the reasons for the requirement of proposed Rule 53.G(1) limiting the chloride content of wastes accepted for treatment at landfarms. Mr. Price will describe the modeling procedure by which the Division arrived at its recommendation in this regard.

Finally Mr. Price will discuss whether or not the proposed rule will have an adverse effect of "small business," as defined in NMSA 1978 Section 14-14A-3.E, as amended.

Mr. Price's qualifications, education and experience are described on Attachment A hereto.

2. **Edwin E. Martin**, Environmental Engineer, employed by the Division

Mr. Martin will testify concerning the permitting process for surface waste management facilities, as it has existed in the past, as it exists now, and as it will exist under the proposed rule. He will discuss the three-phase procedure for permit approval provided in proposed Rule 53.C and 53.D, including the models on which this procedure is based and the reasons for adopting it. He will also discuss the content required in the application, correlation of the proposed application requirements with existing guidelines and the reasons for any departures from existing guidelines.

Mr. Martin will discuss the proposed definition of "major modification" [proposed Rule 53.B(2)(i)] and the reasons for each included and excluded type of modification.

Mr. Martin will also discuss the financial assurance requirements of proposed Rule 53.C(5) and (6), describe how these requirements differ from existing rules and why.

Mr. Martin will discuss the general waste acceptance and operational requirements for all surface waste management facilities set forth in proposed Rule 53.E (except for siting and those requirements specifically applicable to landfills). Mr. Martin will also describe the general procedures for closure (as distinguished from the specific closure requirements applicable to particular types of facilities), including forfeiture of financial assurance where applicable, set forth in proposed Rule 53.J(1), (2) and (3).

Finally, Mr. Martin will discuss the transitional provisions (proposed Rule 53.L). He will explain why the Division proposes that existing, permitted facilities not be subject to the proposed siting and construction requirements, and which requirements will and will not apply to such facilities.

Mr. Martin's qualifications, education and experience are described on Attachment B hereto.

3. **Carl J. Chavez**, Environmental Engineer, employed by the Division

Mr. Chavez will discuss in detail the proposed requirements for oil field waste landfills, including the specific requirements for landfills in proposed Rule 53.F and those provisions of Rule 53.E, and of the definitions in Rule 53.A(2), that are specifically applicable to landfills. Mr. Chavez will also explain the closure and post-closure requirements applicable to landfills [proposed Rule 53.J(4)(b) and (c)].

Mr. Chavez will discuss the types of wastes likely to be placed in oil field waste landfills and will compare and contrast these with municipal solid waste landfills operating under federal Resource Recovery and Conservation Act (RCRA) subtitle D and with hazardous waste landfills operating under RCRA subtitle C.

Mr. Chavez will describe in detail the design requirements set forth for landfills in proposed Rule 53.F, and will describe the function, necessity and specifications for each element in the design. He will compare and contrast the design requirements in the proposed rule with requirements applicable to municipal solid waste landfills and hazardous waste landfills. Mr. Chavez will point out that the rule allows operators to propose alternative designs and will discuss the sources for design criteria and the performance standards by which the Division will evaluate alternative designs.

Mr. Chavez's qualifications, education and experience are described on Attachment C hereto.

4. **Glenn Von Gonten**, Senior Hydrologist, employed by the Division

Mr. Von Gonten will discuss in detail the requirements for landfarms (proposed Rule 53.G), small landfarms (proposed Rule 53.H) and ponds (proposed Rule 53.I). Mr. Von Gonten will discuss the waste treatment function of a landfarm and the proper operation of such a facility, and will describe the types of wastes that are, and those that are not, suitable for treatment in a landfarm.

Mr. Von Gonten will explain the Division's proposals for benchmark requirements for remaining hydrocarbon contamination at the time of adding a new lift at a landfarm, and at the time of landfarm closure. He will explain the sources of the Division's proposed benchmark requirements and the reasons for proposing benchmark requirements.

Mr. Von Gonten will also describe the hydrocarbon sampling that the Division has conducted at operating landfarms in New Mexico, and discuss the implications of this sampling for establishing hydrocarbon remediation benchmarks for New Mexico landfarms.

Mr. Von Gonten will describe constituents (other than hydrocarbons and chlorides) that ought not to be allowed to accumulate in landfarms and the reasons why these constituents should not be allowed to accumulate. He will then explain the sources of the constituent list and screening levels for various constituents that are incorporated in proposed Rule 53.G(6)(e).

Mr. Von Gonten will describe the "environmentally acceptable bioremediation endpoint approach" to land farm management, as set forth in proposed Rule 53.G(8), and will explain the reasons behind each of the applicable requirements and standards.

Finally, Mr. Von Gonten will explain the closure and post-closure requirements applicable to specific facilities other than landfills [proposed Rule 53.J(4)(a), (d) and (e) and 53.J(5)].

Mr. Von Gonten's qualifications, education and experience are described on Attachment D hereto.

5. **Theresa Duran-Saenz**, Legal Assistant employed by the Division, may testify concerning notices.

IV. Approximate Time the Person or Entity Will Need to Present its Testimony:

4 hours (direct examination only).

V. Procedural Matters: None

VI. Exhibits (Attachment E):

1. Proposed Rules (as proposed by the Division on February 27, 2006)
2. Proposed Changes to Proposed Rules
3. Notice sent by e-mail to distribution list on March 15,2005

4. NMSA 1978 Section 70-2-12.B(21) and (22), as amended
5. NMSA 1978 Sections 14-4A-3 through 14-4A-4, as amended
6. Notice in the Albuquerque Journal (Affidavit of Publication will be substitute when received).
7. Copy of notice sent by e-mail to distribution list on March 28, 2006
8. Affidavit of Publication and Notice published in the New Mexico Register
9. Technical Presentation - Wayne Price
10. Technical Presentation - Carl Chavez
11. Technical Presentation - Glenn Von Gonten

RESPECTFULLY SUBMITTED,



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