

06 April 2006

Florene Davidson, Commission Secretary
New Mexico Oil Conservation Commission
1220 St. Francis Drive
Santa Fe, NM. 87505

**RE: Comments of the New Mexico Oil Gas Association on the
Oil Conservation Division's Proposed Modifications of the
Surface Waste Management Rules**

GENERAL COMMENTS:

The New Mexico Oil and Gas Association (NMOGA) represents 300 member companies, ranging from independent to major producers, which produce 98% of all the oil and gas production in the state, pipeline companies, well servicing and field services companies, refineries and processing plants. NMOGA promotes the welfare of the oil and gas industry and the conservation and orderly development of the oil and gas resources within the state of New Mexico.

The following comments are provided on behalf of the NMOGA member companies on the draft of the Oil Conservation Division's (Division) Surface Waste Management Rules that will be considered at the April 20, 2006 Oil Conservation Commission (Commission) hearing. Individual member companies have also submitted comments on these proposed rules and will be in attendance at the April 20, 2006 hearing to provide further comment on the current 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 the Division and Commission as well as the oil and gas industry. Furthermore, we appreciate the extension of the hearing schedule on these rules that allowed much needed time to prepare additional comments.

The members of NMOGA support rules and regulations that protect the fresh water resources of this state and encourage the development of our mineral resources in a way that protects human health and the environment. However, we are concerned that the proposed rules: a) do not allow flexibility and risk management, b) may unnecessarily limit disposal options, and c) require additional costs for waste management with little to no additional environmental protection. 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.

NMOGA is in full support of the attached proposed alternative language, comments and science-based approach recommended by the *Industry Committee*. The make-up of the *Industry Committee* are all NMOGA members who have extensive oil and gas operations within the state of New Mexico and represent major and independent producers that operate in both the northwest and southeast. It is the intent of the *Industry Committee* to incorporate current science and operation flexibility into the Division's proposed surface waste management rules. Additionally, NMOGA supports the *Industry Committee* technical witnesses who are experts in the fields of hydrocarbon remediation, soil science, hydrocarbon toxicology and risk assessments, vados zone hydrogeology and groundwater quality issues as well as their expert in landfill permitting, design and operations.

SPECIFIC COMMENTS:

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

Proposed Rule 51.A

NMOGA supports the *Industry Committee* amended language that allows the transportation of liquid waste by the operator to another lease, tank battery or facility owned or operated by the same operator of the lease or producing property. (see attached)

Proposed Rule 51.C

Under this section of the rule it would be the operator's duty to assure that any water hauler it uses is in good standing with the Division. Since the proposed language

seemingly abrogates OCD's responsibility to enforce their rules and places the enforcement 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.

NMOGA supports the *Industry Committee* language that requires the OCD to post monthly an approved list of transporters on its website, as well as a list of transporters who have had their C-133s suspended or canceled. (see attached)

Proposed Rule 51.D (4)

NMOGA is unaware of a "bad actor" provision being adopted in Rule without specific mandate by statute. The Solid Waste Act, Hazardous Waste Act and Water Quality Act have provisions which are intended to give the regulatory agency authority to keep criminal organizations from participating in businesses regulated under the authority of these laws. There is no evidence that adding this provision to proposed Rule 51 is necessary for such purpose.

NMOGA supports the *Industry Committee* deletion of the language. (see attached)

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

Proposed Rule 53.H

NMOGA supports the language deletions and suggestions by the *Industry Committee* for small landfarm registration and general operating rules. We strongly feel that the amended language sets perimeters that ease administrative burden for the Division as well as industry while protecting fresh water, public health and the environment.

Proposed Rule 53.H(2)(a)

(2) General operating rules: An operator shall:

"(a) operate only one active small land farm per lease at any time:"

NMOGA members have commented that because multiple wells may exist on a lease, and a lease can often encompass several sections, NMOGA members feel that a small land farm should not be limited to an entire lease so that small remediations may occur on the location as needed. This would allow operators to conduct "small land farms" on site at the well pad and not physically remove the contaminated soil over many miles to a central site on lease, which only increases the potential environmental impact through

transportation and secondary environmental issues associated with dust, truck emissions, and waste consolidation.

NMOGA supports the deletion of: ~~(a) operate only one active small land farm per lease at any time~~; in its entirety. (see attached)

Proposed Rule 53.J (3)(d)

(3) Facility closure initiated by the division. Forfeiture of financial assurance.

"All amounts collected as a result of forfeiture of any financial assurance shall be deposited in the Oil and Gas Reclamation Fund."

The Oil and Gas Reclamation Fund is a statutory fund set up to receive funding from the Oil and Gas Conservation Tax for the sole purpose of:

- (1) employing the necessary personnel to survey abandoned wells, well sites and associated production facilities and preparing plans for the plugging of abandoned wells that have not been plugged or that have been improperly plugged and for the restoration and remediation of abandoned well sites and associated production facilities that have not been properly restored and remediated; and
- (2) supporting energy education throughout the state in an amount not to exceed one hundred fifty thousand dollars (\$150,000) annually.

NMOGA members do not feel that the Reclamation Fund is the correct mechanism for the purpose of receiving forfeited funds from Surface Waste Management Facilities. As you are aware, the Reclamation Fund is capped at \$1.5 million and any amount over the \$1.5 million flows to the General Fund, which the Division does not have access to.

NMOGA is opposed to the forfeited (dedicated) Surface Waste Financial Assurance being deposited in the Oil and Gas Reclamation Fund as the monies dedicated to the fund are paid by the oil and gas industry for a specific reason.

NMOGA members recommend that the Division set up a separate account to be used for the forfeited monies intended only for the specific purpose of surface waste facilities closures.

Proposed Rule 53.J (2) and J(5)

(2) Release of financial assurance.

"In any event, the division will not finally release the financial assurance until it determines that the operator has successfully re-vegetated the site, or, if the division

has approved an alternative site use plan, or until the land owner ~~or tenant~~ has obtained necessary regulatory approvals and begun implementation of such use."

(5) Alternatives to re-vegetation.

"If the operator or owner ~~or tenant~~ of the land contemplates use of the land where a cell or facility is located for purposes inconsistent with re-vegetation, the operator or owner ~~or tenant~~ may, with division approval, implement an alternative surface treatment appropriate for the contemplated use, provided that the alternative treatment will effectively prevent erosion. If the division approves an alternative to re-vegetation, it shall not release the portion of the operator's financial assurance reserved for post-closure until the land owner ~~or tenant~~ has obtained necessary regulatory approvals and begun implementation of such alternative use."

NMOGA has no knowledge, nor can we find in state statutes, a situation where tenants are automatically deemed to have "property rights" and are allowed to make what should be a surface owner decisions on leased surface.

On state and federal owned surface, it is the surface management agency that makes the decisions, and not the surface lessee. Unless the surface owner has abrogated their property rights to the tenant, the tenants do not have the privilege or the right to approve or dictate closure alternatives, or re-vegetation alternatives, unless agreed upon in the original lease contract between the owner and the tenant.

NMOGA recommends that "tenant" be deleted from Rule 53.

Proposed Rule 53.I

This section of the rule addresses evaporation ponds and should be moved to the proposed pit rule.

CONCLUSION

On behalf of the member companies of the New Mexico Oil and Gas Association, we appreciate the opportunity to comment on the Division's proposed Surface Waste Management Rules. NMOGA remains committed to working with the Division to protect New Mexico's fresh water, the environment, and wildlife resources while developing the State's vital energy resources.