

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:

APPLICATION OF HARVEY E. YATES
COMPANY FOR AN EXCEPTION FROM
OIL CONSERVATION COMMISSION
RULE 19.15.2.50(A) NMAC

CASE NO. 13817 (De Novo)
ORDER NO. R-12656-A

ORDER OF THE COMMISSION

THIS MATTER, having come before the New Mexico Oil Conservation Commission (Commission) on April 19, 2007 at Santa Fe, New Mexico, on the Oil Conservation Division's motion to dismiss the application of the Harvey E. Yates Company for an Exception from Oil Conservation Commission Rule, Subsection A of 19.15.2.50 NMAC, which is currently pending before the Commission, and the Commission, having carefully considered the parties' arguments, now, on this 17th day of May, 2007,

FINDS THAT:

1. On September 29, 2006, the Harvey E. Yates Company filed the application in Case No. 13817 seeking an exemption from Subsection A of 19.15.2.50 NMAC to allow the use of a reserve pit in the Bennett Ranch Federal Exploratory Unit as part of an under balanced (air drill) system for the proposed Bennett Ranch Federal Exploratory Unit #6 exploratory well in Section 24, Township 26 South, Range 12 East, Otero County, New Mexico.

2. The Harvey E. Yates Company's application states that the pit will comply with the design, construction, and operational requirements in 19.15.2.50 NMAC and the standards for disposal, closure, and restoration.

3. The only exemption that the Harvey E. Yates Company sought is an exemption from obtaining a permit for a reserve pit under 19.15.2.50 NMAC.

4. On October 27, 2006, the Oil Conservation Division issued Order R-12656 denying the Harvey E. Yates Company's application, finding that Subsection G of

4. On October 27, 2006, the Oil Conservation Division issued Order R-12656 denying the Harvey E. Yates Company's application, finding that Subsection G of 19.15.2.50 NMAC did not provide for an exemption from obtaining a pit permit; that 19.15.1.21 NMAC prohibited the Oil Conservation Division from issuing permits under 19.15.2.50 NMAC for pits located in Otero County; and 19.15.1.21 NMAC did not provide for the grant of an exemption to that prohibition.

5. Following the Oil Conservation Division's denial, the Harvey E. Yates Company filed an application for de novo review with the Commission.

6. 19.15.2.50 NMAC is the general section governing pits and below-grade tanks that are not covered by 19.15.9.711 NMAC (now 19.15.36 NMAC) or New Mexico Water Quality Control Commission rules.

7. Subsection A of 19.15.2.50 NMAC prohibits operators from discharging into or constructing a pit or below-grade tank covered by 19.15.2.50 NMAC "absent possession of a permit issued by the division, unless otherwise provided or unless the division grants an exemption pursuant to Subsection G of 19.15.2.50 NMAC".

8. Subsection G of 19.15.2.50 NMAC provides procedures for the Oil Conservation Division to attach additional conditions to a permit, and provides procedures for an operator to obtain an exemption from a requirement of 19.15.2.50 NMAC if the operator demonstrates that the granting of the exemption will not endanger fresh water, public health, or the environment.

9. 19.15.1.21 NMAC governs selected areas of Sierra and Otero Counties, including Section 24, Township 26 South, Range 12 East.

10. Subsection B of 19.15.1.21 NMAC provides that "[t]he division shall not issue permits under 19.15.2.50 NMAC . . . for pits located in selected areas".

11. It is a fundamental tenet of statutory interpretation that a specific statute governs over a general statute. See *Compton v. Lytle*, 2003- NMSA-031, Paragraph 16.

12. Administrative rules are to be construed in the same manner as statutes. *New Mexico Dept. of Health v. Ulibarri*, 115 N.M. 413, 416; 852 P.2d 686 (Ct. App. 1993)

13. As such 19.15.1.21 NMAC, not 19.15.2.50 NMAC, applies to the Harvey E. Yates Company's application, and 19.15.1.21 NMAC prohibits permitting of a pit in the area where the proposed Bennett Ranch Federal Exploratory Unit #6 exploratory well would be located.

14. The Harvey E. Yates Company did not seek an exemption from 19.15.1.21 NMAC itself because 19.15.1.21 NMAC does not provide for exemptions.

15. In order to avoid 19.15.1.21 NMAC's prohibition against issuing permits under 19.15.2.50 NMAC, the Harvey E. Yates Company asked the Commission to grant authority for a reserve pit in the form of an order rather than a permit.

16. However, an order issued under 19.15.2.50 NMAC exempting a pit from the permitting process and establishing the requirements by which the Harvey E. Yates Company would design and construct, operate, and close the pit is equivalent to a permit.

17. Black's Law Dictionary defines a permit as "any document which grants a person the right to do something. A license or grant of authority to do a thing. . . A written license or warrant, issued by a person in authority empowering the grantee to do some act not forbidden by law, but not allowable without such authority."

18. To grant the Harvey E. Yates Company's application would grant them a "permit" to not have to permit the pit under 19.15.2.50 NMAC. Such grant of authority would be for the sole purpose of allowing the Harvey E. Yates Company to avoid the prohibition in 19.15.1.21 NMAC.

19. The Harvey E. Yates Company cannot use the exemption provisions in 19.15.2.50 NMAC to create an exemption to 19.15.1.21 NMAC.

20. 19.15.2.50 NMAC is a separate rule from 19.15.1.21 NMAC. The exemption provision in Subsection G of 19.15.2.50 NMAC is for 19.15.2.50 NMAC only and was not intended to apply to requirements in sections contained in 19.15.1 NMAC or other Commission rules.

21. The Harvey E. Yates Company's application for an exception from Subsection A of 19.15.2.50 NMAC in order to have a reserve pit in an area covered by 19.15.1.21 NMAC seeks relief that is unavailable.

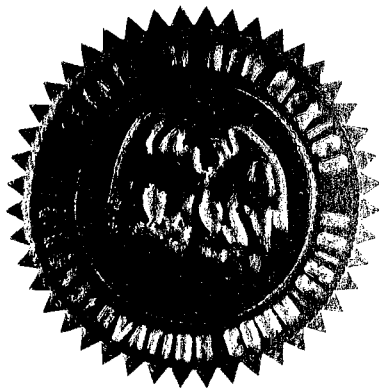
IT IS THEREFORE ORDERED THAT:

1. The Oil Conservation Division's motion to dismiss is granted and the Harvey E. Yates Company's application for an exception from Subsection A of 19.15.2.50 is dismissed.

2. The Harvey E. Yates Company may seek an exemption to 19.15.1.21 NMAC, if it can establish that the Commission has some other authority to grant an exception to the requirements of 19.15.1.21 NMAC that does not involve 19.15.2.50 NMAC.

DONE at Santa Fe, New Mexico on the 17th day of May 2007.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION



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A handwritten signature in cursive script, appearing to read "Jami Bailey".

JAMI BAILEY, CPG, Member

A handwritten signature in cursive script, appearing to read "William Olson".

WILLIAM OLSON, Member

A handwritten signature in cursive script, appearing to read "Mark E. Fesmire".

MARK E. FESMIRE, P.E., Chair