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Attorney at Law**FACSIMILE COVER SHEET****TO:** Florene Davidson**FAX NO.:** 476-3462**DATE:** October 5, 2007**FROM:** Letty Belin**NUMBER OF PAGES:** 5

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**MESSAGE:**

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**BELIN  
SUGARMAN****Alletta Belin**  
Attorney at Law

October 5, 2007

Florene Davidson  
Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

Re: Pit Rule, Case. No. 14015

Dear Ms. Davidson:

Enclosed is a copy of alternative language proposed by New Mexico Citizens for Clean Air & Water, Inc., for the Pit Rule proposed in Case No. 14015. Although we have just received an Order from the Commission postponing the due date for this language for two weeks, we are submitting it at this time anyway since we had prepared the proposed language already.

Thank you very much for your assistance in this matter. Please call if you have any questions.

Very truly yours,

  
ALLETTA BELIN

cc: Don Neeper

NEW MEXICO CITIZENS FOR CLEAN AIR & WATER  
October 5, 2007

Suggested alternatives for proposed rule, Part 17:  
PITS, CLOSED-LOOP SYSTEMS, BELOW-GRADE TANKS AND SUMPS

19.15.17.11 C.

The second sentence contains the words, "**person can**" twice. One of the duplications should be removed.

19.15.17.11 G(5).

As written, the proposed rule would require that an operator establish a pressure within 1% of 35 psi, that is, a pressure between 34.65 and 35.35 psi. However, the essence of the test is to assure that a pressure near 35 psi, once established, does not change by more than 1%, thereby assuring that any leak is small. We suggest it would be suitable to allow an operator to use an instrument that has 6% accuracy and 1% precision. We suggest that the third sentence be replaced by the following:

**The operator shall test a seam by establishing an air pressure between 33 and 37 psi in the pocket, and monitoring that the pressure does not change by more than one percent during five minutes after the pressure source is shut off from the pocket.**

19.15.17.12 A(4).

In the case of a permanent pit, this sub-paragraph is not entirely clear whether the term "the pit liner" refers to the primary or secondary liner. We suggest that the phrase "If the integrity of the pit liner is compromised ..." be replaced by:

**If the integrity of any pit liner is compromised ...**

19.15.17.12 A(5).

As in A(4) above, the language can be clarified by replacing the words, "If a lined pit develops a leak ..." with the words:

**If any liner of a pit develops a leak ...**

19.15.17.12 C.

The leading sentence of this paragraph might be interpreted as representing closure requirements for all permanent pits. For clarity, we recommend replacing the term "the following requirements." with:

the following **additional** requirements.

19.15.17.13 B(1)(b), .13C((3), .13E(4), .13F(1)(e).

We suggest replacing the undefined term "hot spot," with the following:

**...area that is wet, discolored, or showing other evidence of a release, ...**

19.15.17.13 B(1)(b) .13C(3), .13E(4), .13F(1)(e).

The proposed rule would require that chloride concentration not exceed 250 mg/kg or background concentration, whichever is greater. To avoid statistical uncertainties and interpretations of nondegradation, we suggest the rule allow a small increase above background, which will not significantly add to the environmental threat but which will allow the operator a very small seepage or leak. We suggest the phrase "or the background concentration," be replaced by:

**...or the background concentration plus 50 mg/kg, ...**

19.15.17.15 A(2).

The proposed rule would require a written notice to particular persons and a public notice by publication. Because concerned persons might not see the publication, we suggest that applications for exception be announced more widely, but in a way that does not place a burden of additional mailing upon the operator. We suggest that the following sentence, which is similar to wording in Rule 36, be inserted after the end of the third sentence.

**On the day the division issues approval of the notice, the division shall place the notice of the application on its web site, and shall distribute an announcement of the application to persons who have requested notification of division and commission hearing dockets.**

19.15.17.15 B(3).

Sub-paragraph B of section 15 provides that an operator may apply for an exception to the closure conditions if that operator offers equivalent environmental protection, removal of liquids, and at least one of several listed practices. One of those practices is treatment using best demonstrated available technology. In some industries, such as the electric power industry, "best technology" is a commercially proven practice with quantified benefits. However, at present that is not true for treatment of drilling wastes. Although we encourage development of treatment methods, we note that, at present, the "best demonstrated available technology" may offer marginal or no reduction in the undesirable properties of a waste. If the technology to be used has indeed been demonstrated to provide improved environmental protection, that technology can be

approved under at least one of the other practices listed in (3). The criterion "**best demonstrated available technology**" is therefore not necessary, and might even be detrimental to the intent of the rule. We suggest that this phrase be deleted from the rule.