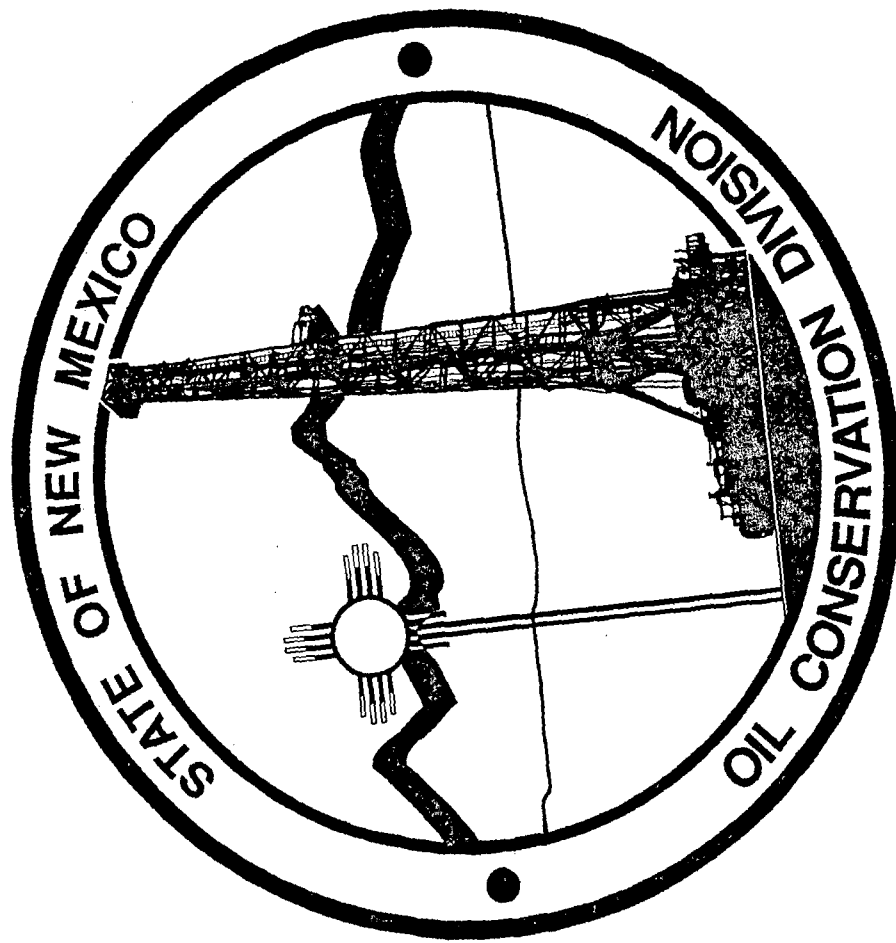


CASE NO. 14015
OCD EXHIBIT 13



SUMMARY OF OCD'S PROPOSED RULEMAKING PROCESS AND PUBLIC INPUT ON THE PIT RULE

HISTORY

- OCD held four public outreach meetings between December 2006 and January 2007
- Meetings in Farmington, Artesia, Hobbs, and Santa Fe
- Goals:
 - Identify possible deficiencies in the current pit rule
 - Explain the rulemaking process
 - Receive public input prior to beginning the process of proposing new rules from concerned citizens, landowners, other regulatory agencies, oil and gas companies, service companies, industry groups, and environmental groups

SUMMARY OF OCD'S PROPOSED RULEMAKING PROCESS AND PUBLIC INPUT ON THE PIT RULE

PIT RULE TASK FORCE

- 14 members selected by the Governor's office
 - A copy of the Letter to Task Force Members date 3/13/07 is included as an Exhibit
 - A copy of OCD's Summary of the Proposed Rulemaking Process and Public Input dated 3/29/07 is included as an Exhibit
- Facilitated by EMNRD Deputy Secretary Reese Fullerton
- Open to the public
- Met from April 16, 2007 to July 11, 2007

SUMMARY OF OCD'S PROPOSED RULEMAKING PROCESS AND PUBLIC INPUT ON THE PIT RULE

"ISSUES THAT MAY BE ADDRESSED BY THE PIT TASK FORCE"

- closure standards
- surface impacts
- siting issues
- pit contents and the composition of pit contents
- release remediation issues
- closed-loop systems
- pit liners
- fencing and netting issues
- whether to have different standards for different types of pits
- wildlife related issues
- allow or prohibit unlined pits
- OCD guidelines
- general water quality issues
- permits
- best management plans (BMPs)
- general waste management issues
- landowner issues/surface owner rights
- exemptions/waivers
- enforcement issues
- post-closure issues
- costs
- air quality issues
- regional economics
- public notice
- deed notices
- cumulative impacts
- bonding
- whether revisions to OCD Rule 50 are warranted after three years
- environmental justice issues
- inconsistency issues with OCD Rule 202
- release notification and corrective action for pits and below-grade pits
- other issues as determined by OCD or the Task Force

SUMMARY OF OCD'S PROPOSED RULEMAKING PROCESS AND PUBLIC INPUT ON THE PIT RULE

PIT RULE TASK FORCE REPORT

- Operating by consensus, the Pit Rule Task Force submitted its pit rule report to Mr. Daniel Sanchez, OCD's Compliance and Enforcement Manager, on July 11, 2007.
- OCD then drafted a new pit rule (Part 17) and submitted it to the Task Force members for review and comment on August 13, 2007.
- Task Force notes are included as an OCD exhibit.

SUMMARY OF OCD'S PROPOSED RULEMAKING PROCESS AND PUBLIC INPUT ON THE PIT RULE

FORMAL RULEMAKING PROCESS

- OCD considered the Task Force report and the Task Force member's individual comments when drafting its proposed rule for the formal rulemaking process.
- OCD then developed its final draft pit rule, filed it with the Oil Conservation Commission as part of the formal rulemaking process, and posted it on the OCD website on September 21, 2007.

OVERVIEW OF PART 17 THE NEW PIT RULE

PROBLEMS WITH RULE 50

- Since the original pit rule (Rule 50) was issued in 2004, OCD has become aware of several major deficiencies with that Rule. Although Rule 50 included general performance standards, it generally lacked enforceable technical standards. OCD's files are full of photos of pits that have been clearly compromised - general performance or narrative standards are not enough. 13a Part 1 statewide.ppt

OVERVIEW OF PART 17 THE NEW PIT RULE

PROBLEMS WITH RULE 50

- It became clear to OCD that major problems existed with the way that industry was designing, installing, and operating its pits, particularly temporary pits, such as drilling and workover pits.

REGULATORY OVERVIEW

SOLID WASTE DISPOSAL ACT

[RCRA, codified at 42 U.S.C. 6901 et seq.]

SEC. 1004. As used in this Act:

(14) The term "open dump" means any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 4004 and which is not a facility for disposal of hazardous waste.

REGULATORY OVERVIEW

SOLID WASTE DISPOSAL ACT

[RCRA, codified at 42 U.S.C. 6901 et seq.]

SEC. 1003. (a) OBJECTIVES.—*The objectives of this Act are to promote the protection of health and environment and to conserve valuable material and energy resources by—*

(3) prohibiting future open dumping on the land and requiring the conversion of existing open dumps to facilities which do not pose a danger to the environment or to health;

REGULATORY OVERVIEW

SOLID WASTE DISPOSAL ACT

[RCRA, codified at 42 U.S.C. 6901 et seq.]

SEC. 1004. As used in this Act:

(3) The term “disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of **any** solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

REGULATORY OVERVIEW

EPA 2002. *Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations.*

REGULATORY OVERVIEW

Hazardous Waste Regulations SCOPE OF THE EXEMPTION

“In December 1978, EPA proposed hazardous waste management standards that included reduced requirements for several types of large volume wastes. Generally, EPA believed these large volume “special wastes” are lower in toxicity than other wastes being regulated as hazardous waste under RCRA.”

EPA 2002. Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations.

REGULATORY OVERVIEW

“Subsequently, Congress exempted these wastes from the RCRA Subtitle C hazardous waste regulations pending a study and regulatory determination by EPA. In 1988, EPA issued a regulatory determination stating that control of E&P wastes under RCRA Subtitle C regulations is not warranted.”

EPA 2002. Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations.

REGULATORY OVERVIEW

“Hence, E&P wastes have remained exempt from Subtitle C regulations. The RCRA Subtitle C exemption, however, did not preclude these wastes from control under state regulations, under the less stringent RCRA Subtitle D solid waste regulations, or under other federal regulations.”

EPA 2002. Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations.

REGULATORY OVERVIEW

“In addition, although they are relieved from regulation as hazardous wastes, the exemption does not mean these wastes could not present a hazard to human health and the environment if improperly managed.”

EPA 2002. Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations.

REGULATORY OVERVIEW

“In general, the exempt status of an E&P waste depends on how the material was used or generated as waste, not necessarily whether the material is hazardous or toxic. For example, some exempt E&P wastes might be harmful to human health and the environment, and many non-exempt wastes might not be as harmful.

It is important to remember that all E&P wastes require proper management to ensure protection of human health and the environment.”

EPA 2002. Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations.

REGULATORY OVERVIEW

Misunderstanding: *All exempt wastes are harmless to human health and the environment.*

Fact: *Certain exempt wastes, while excluded from RCRA Subtitle C hazardous wastes control, might still be harmful to human health and the environment **if not properly managed**. The exemption relieves wastes that are uniquely associated with the exploration and production of oil and gas from regulation as hazardous wastes under RCRA Subtitle C **but does not indicate the hazard potential of the exempt waste.***

EPA 2002. Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations.

REGULATORY OVERVIEW

Fact (cont.): *Additionally, some of these wastes might still be subject to state hazardous or non-hazardous waste regulations or other federal regulations (e.g., hazardous materials transportation regulations and National Pollutants Discharge Elimination System (NPDES) or state discharge regulations) unless specifically excluded from regulation under those laws.*

EPA 2002. Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations.

REGULATORY OVERVIEW

Misunderstanding: *A waste exempt from RCRA Subtitle C regulation is also exempt from state and other federal waste management regulations.*

Fact: *The exemption applies only to the federal requirements of RCRA Subtitle C. A waste that is exempt from RCRA Subtitle C regulation might be subject to more stringent or broader state hazardous and non-hazardous waste regulations and other state and federal program regulations. For example, oil and gas exploration and production wastes are subject to regulation under the Clean Air Act (CAA), Clean Water Act (CWA), Safe Drinking Water Act (SDWA), and Oil Pollution Act of 1990 (OPA).*

EPA 2002. Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations.

REGULATORY OVERVIEW

Oil and Gas Act

Enumeration of Powers - Section 70-2-12 NMSA 1978

B. Apart from any authority, express or implied, elsewhere given to or existing in the oil conservation division by virtue of the Oil and Gas Act or the statutes of this state, the division is authorized to make rules, regulations and orders for the purposes and with respect to the subject matter stated in this subsection:

REGULATORY OVERVIEW

- (15) to regulate the disposition of water produced or used in connection with the drilling for or producing of oil or gas or both and to direct surface or subsurface disposal of the water, including disposition by use in drilling for or production of oil or gas, in road construction or maintenance or other construction, in the generation of electricity or in other industrial processes, in a manner that will afford reasonable protection against contamination of fresh water supplies designated by the state engineer;
- (21) to regulate the disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas to protect public health and the environment; and
- (22) to regulate the disposition of nondomestic wastes resulting from the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil to protect public health and the environment, including administering the Water Quality Act [74-6-1 NMSA 1978] as provided in Subsection E of Section 74-6-4 NMSA 1978.

REGULATORY OVERVIEW

Subsection O of 19.15.1.7 NMAC: (DEFINITIONS)

(3) Oil field waste shall mean waste generated in conjunction with the exploration for, drilling for, production of, refining of, processing of, gathering of or transportation of crude oil, natural gas or carbon dioxide; waste generated from oil field service company operations; and waste generated from oil field remediation or abatement activity regardless of the date of release. Oil field waste does not include waste not generally associated with oil and gas industry operations such as tires, appliances or ordinary garbage or refuse unless generated at a division-regulated facility, and does not include sewage, regardless of the source.

SUMMARY OF REGULATORY OVERVIEW

- Large volumes of RCRA-exempt oil field waste are generated during E&P operations and by service companies.
- OCD has a statutory mandate to regulate the disposal of oil field waste, *i.e.*; “disposition of nondomestic wastes.”
- The use of “open dumps” has been prohibited by federal statute. Therefore, the use of unlined pits, which meets the definition of “open dumps,” should generally be prohibited.
- Oil field waste should be disposed of in OCD approved surface waste management facilities or, in limited circumstances, in properly designed on-site “deep trench burials.”

NEW MEXICO

**FOLLOW-UP AND SUPPLEMENTAL
REVIEW**



**State Review of Oil and Natural Gas
Environmental Regulations, Inc.**

August, 2001

August, 2001

State Review of Oil and Natural Gas Environmental Regulations, Inc. (Stronger Report, August 2001)

Finding I.9: *OCD R-3221-C, the "no pit" order for southeastern New Mexico, exempts pits which receive up to 1 barrel of produced water a day from each 40-acre spacing unit not to exceed a total of 16 barrels of produced water a day.*

Recommendation I.9: *OCD should review and evaluate the technical basis for the "low-volume" exemption in Order R-3221-C to ensure that fresh groundwater in southeastern New Mexico is adequately protected. (IOGCC Guidelines, sections 5. 1. A. and 5. 1. C.)*

OCD Response: *Data obtained from OCD studies and recent pit closures have shown that very small volume discharges have resulted in ground water contamination. Rules are being drafted that will prohibit the use of pits that can adversely impact ground water.*

Follow-up Review Comments: *This recommendation has been met. OCD is commended for completing review of the low volume exemption, and is adopting rules for the protection of fresh groundwater.*