

Jennifer Goldman
Highlights for Verbal Comments
OCC Pit Hearing: November 13, 2003

Thank you for accepting my comments today. My name is Jennifer Goldman, and I'm the Associate Director for the Oil & Gas Accountability Project, or OGAP. OGAP is a nonprofit organization dedicated to working with residents of oil and gas-field communities to reduce and prevent the damaging impacts of irresponsible oil and gas development. OGAP has worked extensively with residents of the San Juan, Permian and Raton Basins. I have submitted written comments that address the specifics provisions of this pit rule. As is detailed in those written comments, we are generally supportive of the Division's effort to consolidate regulation of pits and tanks and to create permitting framework for these components of oil and gas development. This is, in general, a step forward in getting a handle on the many dirty pits and hazardous byproducts of this industry that are being left behind to contaminate New Mexico's water and soil resources. It is also OGAP's opinion that this rule is a pretty a small step given the problems that exist in oil and gas-field communities across the state, and the problems that exist with the Division's practices and culture.

Several months ago, I was at a public meeting in Farmington where I heard an industry representative (John Zent from Burlington) talk about drilling the first two thousand wells of the more than 10 thousand wells that industry plans to drill in the San Juan Basin. I find it somewhat funny that I'm finding an occasion to quote industry in making my point, but what this industry person said was that "if industry didn't drill the first two thousand wells differently than they have been, they will never drill the next 8 thousand." Now, I happen to think this comment was designed to make industry look persecuted, but I also think this remark reflects an important reality. That reality is that there is a growing concern amongst not just environmentalists or a few property owners, but of New Mexico residents and now municipalities like Lovington that oil and gas development in this state is being carried out in a manner that is needlessly and unreasonably putting our ground water, air, public health and natural resources at risk.

And, I believe LIKE this industry representative claimed to believe that we there is a pressing imperative for all of our futures in this state to drill each of our next wells differently.

I'd like to highlight two topics that I believe are at the root of whether or not the Division's current proposal will assist in bringing about this DIFFERENT, more responsible level of oil and gas development, and the need to develop our resources in a different manner that better protects New Mexicans' rights to a clean, safe environment and protects New Mexico's private and public property owners.

The two topics I want to address today are general enforcement practices of the Division and the manner that the Division proposes to handle exemptions in this rule.

First, general enforcement practices: You have already heard from people like, Ms. Blancett, Mr. Johnson, Ms. Rees, and the City of Lovington that the Division's track record on enforcement is in question by people living in the field. I'd like to underscore for the record that this rule will mean nothing to those living in oil and gas producing communities if provisions for leak detection of disposal or storage pits are not consistently enforced to protect our soil and groundwater. Or, if the proposal to prohibit discharge of liquids greater than two-tenths of one percent free of hydrocarbons into disposal or storage pit is weakened by the Commission and then consistently disregarded in day to day operations by operators, and the Division doesn't make it their own problem to make operators toe the line.

This is also true of provisions for surface restoration and the closure of existing pits. If this provision that mandates contouring the land is not enforced, ranchers like Mr. Johnson and Mr. Valasquez will go on battling erosion and noxious weeds and this rule that is on paper will mean very little on the ground. I know that Mr. V (some ranchers and property owners have) suggested this restoration be required immediately after companies start production, OGAP in our written comments recommended that the Commission look at six months rather than the Division's recommendation of 1 year. If

the Division is going to live up to serving New Mexicans' well they ought to set the bar higher for industry and enforce this higher standard. In 2002, industry sent over \$4 billion dollars to ~~Washington, D.C~~ in revenues from San Juan County, a county that is about the size of the state of CT. If they can send that to ~~DC~~ ^{back to headquarters} that can spend whatever money it's going to take to close and clean up a pit sooner rather than later.

The same (setting the bar higher/financial considerations for industry) is true for putting a deadline on phasing out existing pits. The Division says a year and a half. OGAP, I ³ thought very judiciously, recommended a year in our written comments, although the idea is that we support phasing out existing pits sooner rather than later. A year is plenty of time for companies to phase out unlined pits. If they have to throw a little money at the situation to make it logistically feasible, I don't think that is unreasonable given the amount of money that they are extracting from this State and the kind of problems that exist on the ground, like (example from speakers. Mr. Newall with the City of Lovington).

Since submitting our written comments, we have actually had the opportunity to tour the City of Lovington's waterfield and to review the proposed ordinance that Lovington is considering. THIS IS OUTSIDE the topic of enforcement -- but I submit to you all today that bringing about a more responsible level of oil and gas development in the state goes beyond enforcement and actually means following suit with a State like Michigan and the City of Lovington by requiring closed systems for wastes associated with drilling pits, not just requiring plastic liners that we all know become wind torn and are intentionally ripped and scatter around when industry goes in to close the site.

The second topic I wanted to address are exceptions or discretions that too broadly favor industry: People like Mr. V or Mr. C or the city manager in Lovington are experts in the consequences of oil and gas development and how regulation works on the ground. I mention this because I often hear from industry and regulators that one must be an expert to understand how to regulate or assess risk to the public when it comes to oil and gas development. Residents of the San Juan and Permian basins continue to indicate to me

that the Division too easily applies exemptions to its rules or doesn't shoot high enough in establishing regulations. I don't think you need to be a petroleum engineer to know carelessness when you see it and a lot of the things you've heard today, and certainly what Ms. Wrotenbery , many others in the Division, and I saw on a tour of Lovington's waterfield, indicate that industry is careless in the field because they can be. The Division isn't looking over their shoulder enough.

As the rule is written the Division retains a broad amount of discretion to grant exemptions and operators are not required to prove that they need an exemption. Exemptions should require the applicant demonstrate a need for exemption so that exceptions don't overwhelm the rule. As it is written, the rule actually puts the burden on adjacent landowners or the public when they object to an exemption. The proposal allows the division Director to determine whether "the objection has technical merit." This wrongly puts the burden on the surface owner or resident to show why the exemption should not be granted. Again, it is not unreasonable that the burden for an exemption be born by the industry that is extracting resource from this State. Let them spend time and money to prove why they need an exemption, and I will bet that we will all start seeing companies happily accomplishing what they need to accomplish to meet the regulation.

Again, I appreciate the opportunity to comment on this rule. Thank you.