



SIERRA
CLUB

FOUNDED 1892

Santa Fe Group - Rio Grande Chapter

621 Old Santa Fe Trail, Suite 10, Santa Fe, NM 87501 (505) 983-2703

November 13, 2003

Re: Case 12969, Pits and Below-Grade Tanks

This is to provide comment on the proposed rules on behalf of the Rio Grande Chapter of the Sierra Club.

With two exceptions we support the draft as it has been presented. We oppose entirely the recommendations that were presented by NMOGA/IPANM on non-consensus language. We have expanded the reasons for this opposition in the items listed below. In order to be enforced, quantitative standards should replace such words as "generally", "reasonably" and "predominantly". Such words render enforcement open to argument and litigation.

There are six areas of particular concern.

1. C2(a) Location:

Firstly, the rule as written would permit a drilling or workover pit be located in the middle of a river. We recommend that the first sentence read "*No pit shall be located in any watercourse, lakebed, sinkhole, or playa lake except where the pit is to be temporarily used in a transient operation such as drilling or workover.*"

Secondly, as we cannot anticipate all conditions that might be encountered, it is important to require the Division to increase environmental protection if such a need can be demonstrated. The examples cited during negotiations were high ground water tables and karst regions. It is clear that in such circumstances, closed systems might be necessary. The sentence in question does not mandate such protections, it simply permits them. We recommend that the last sentence of this section be altered to read "*The division shall require additional protective measures for pits located in groundwater sensitive areas.*"

2. C2(e) Disposal or Storage Pits: While the intent of this sentence is to allow no discharge of hydrocarbons into a pit, analytical chemistry could create an unintended burden. The amount of "two-tenths of one percent" captures the essence of the intent without creating a potentially abusive requirement.

3. C2(f) Netting:

Firstly, the intent is to protect water fowl. A compromise was made to provide relief to this requirement when there is active human presence. An alternative would be to simply require netting of all ponds greater than 16' in diameter AT ALL TIMES. This intent has been obscured in testimony. Netting should be required at all times there is no human presence. Evidence has been presented that drilling/workover pits are often both unnetted and toxic.

Secondly, the "two-tenths of one percent" should replace the language "reasonably free of oil" in this paragraph. The technology exists to remove hydrocarbons easily. A field operator can use visual inspection of a pond to insure that separators are working properly but this would be a highly subjective standard upon which to apply an enforcement standard.

4. C4 Sumps: The industry negotiators moved the size of sumps from the original 21 gallons (1/2 of an oil barrel) to 110 gallons (2 drums). This change has given sumps a greater potential for environmental damage due to leakage. While the intent is that sumps will generally be free of hydrocarbons, hydrocarbons will be present in all of the sumps some of the time and some of the sumps all of the time. A sump constructed of a half-barrel, half drum, full barrel or full drum fits operational reality. Anything else would be a manufactured tank. Visual inspection of a sump is not possible without removing the sump from the ground. We propose that a sump be limited to a 55-gallon drum and that all sumps be tested. If an operator regards integrity testing to be a burden, the sump simply has to be placed ON the ground instead of IN the ground.
5. F2 Surface Restoration: The prevention of ponding is not an erosion issue; it is a percolation issue. The NMOGA comment misses the point.
6. G3 Exemptions: The intent of the rule is prevent "stealth" operations. The Division needs to maintain control of the communication process. Environmental contamination, particularly of an aquifer, has impacts well beyond a surface owner.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Clifford Larsen', written in a cursive style.

Clifford Larsen, Mining Co-Chair
Rio Grande Chapter of the Sierra Club