

PIT RULE - SUBSTANTIVE CHANGES FROM DIVISION DRAFT

1. C.2(a) The exception that would have allowed drilling and workover pits in watercourses, lakebeds, sinkholes or playat lakes is deleted.
2. C.2(a) The provision authorizing the Division to require "additional protective measures" in groundwater sensitive areas is expanded to specifically include wellhead protection areas. (1,000 feet around public wells, 200 feet around private wells).
3. C.2(e) The prohibition of discharge into a pit of liquids containing greater than 2/10ths percent hydrocarbons is changed to read:

No measureable or vvisible layer of oil may be allowed to accumulate or remain anywhere on the surface of any pit.

4. C.2(f) The provision requiring fencing to prevent access "by livestock or wildlife," is amended to delete "wildlife." A new provision authorizes the Division to impose wildlife protection conditions in permits on a case-by-case basis.
5. C.2(f) The netting requirement for drilling and workover pits is amended to make clear that netting is not required during operations in any event, and is not required after operations if oil is removed.
6. C.2(g) The definition of "wellhead protection area" is kept as at present - 1,000 feet around public wells and 200 feet around private wells - in lieu of the Division's recommendation - 1,000 feet around all wells.
7. C.4 The definition of sump is changed from the Division's recommendation of a maximum of 110 gallons to a maximum of 500 gallons.
8. D.5 SPCC pits are excluded from the definition of "emergency pits" that require permitting, but notice of their location must be filed with the Division.
9. F. The requirement for a detailed pit closure plan is limited to those cases where it is required in the permit.
10. G.2 The exemption provision is reworded to make clear that the operator requesting an exemption has the burden of proof.

19.15.2 ___ Pits and Below-Grade Tanks.

A. Permit Required. Discharge into, or construction of, any pit or below-grade tank is prohibited absent possession of a permit issued by the division, unless otherwise herein provided or unless the division grants an exemption pursuant to Subsection G of 19.15.2.53 NMAC. Facilities permitted by the division pursuant to Section 711 of 19.15.9 NMAC or Water Quality Control Commission regulations are exempt from Section 53 of 19.15.2 NMAC.

B. Application.

1. Where Filed; Application Form.

(a) Downstream Facilities. An operator shall apply to the division's environmental bureau for a permit to construct or use a pit or below-grade tank at a downstream facility such as a refinery, gas plant, compressor station, brine facility, service company, or surface waste management facility that is not permitted pursuant to Section 711 of 19.15.9 NMAC or Water Quality Control Commission regulations. The operator shall use a Form C-144, Application to Discharge Into A Pit or Below-Grade Tank. The operator may submit the form separately or as an attachment to an application for a discharge permit, best management practices permit, surface waste management facility permit, or other permit.

(b) Drilling or Production. An operator shall apply to the appropriate district office for a permit for use of a pit or below-grade tank in drilling, production, or operations not otherwise identified in Subparagraph (a) of 19.15.2.53.B.1 NMAC. The operator shall apply for the permit on the Application for Permit to Drill (form C-101) or on the Sundry Notices and Reports on Wells (form C-103), or electronically as otherwise provided in this Chapter. Approval of such form constitutes a permit for all pits and below-grade tanks annotated on the form. A separate form C-144 is not required.

2. General Permit; Individual Permit. An operator may apply for a permit to use an individual pit or below-grade tank, or may apply for a general permit applicable to a class of like facilities.

3. When Filed.

(a) New Pits or New Below-Grade Tanks. After ~~(effective date of rule)~~ April 15, 2004, operators shall obtain a permit before constructing a pit or below-grade tank.

(b) Existing Pits or Below-Grade Tanks. For each pits or below-grade tanks in existence ~~prior to (effective date of rule) on April 15, 2004~~ that have not received an exemption after hearing as allowed by OCC Order R-3221 through R-3221D inclusive, the operator shall submit a notice ~~by January~~ not later than April 15, 2004 indicating ~~whether either that~~ use of these pits or below-grade tanks will continue or that such pit or below grade tank will be closed. If use of a pit or below-grade tank is to be discontinued, discharge into the pit or use of the below-grade tank shall cease ~~by~~ not later than June 30, 2005. If use of a pit or below-grade tank will continue, the operator shall file a permit application ~~by not later than September June 30, 2004~~. If an operator files a timely, administratively complete application for continued use, use of the pit or below-grade tank may continue until the division acts upon the permit application.

C. Design, Construction, and Operational Standards.

1. In General. Pits, sumps and below-grade tanks shall be designed, constructed and operated so as to contain liquids and solids to prevent contamination of fresh water and protect public health and the environment.

2. Special Requirements for Pits.

(a) Location. 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 a workover.~~ Pits adjacent to any such watercourse or depression shall be located safely above the ordinary high-water mark of such watercourse or depression. No pit shall be located in any wetland. The division may require additional protective measures for pits located in groundwater sensitive areas or wellhead protection areas.

(b) Liners.

(i) Drilling Pits, Workover Pits. Each drilling pit or workover pit shall contain, at a minimum, a single liner appropriate for conditions at the site. The liner shall be designed, constructed, and maintained so as to prevent the contamination of fresh waters, and protect public health and the environment. Pits used to vent or flare gas during drilling or workover operations that are designed to allow liquids to drain to a separate pit do not require a liner.

(ii) Disposal or Storage Pits. Each disposal pit (including, but not limited to, any separator pit, tank drain pit, evaporation pit, blowdown pit used in production activities, pipeline drip pit, or production pit) and each storage pit (including any brine pit, salt water pit, fluid storage pit for an LPG system, or production pit) shall contain, at a minimum, a primary and a secondary liner appropriate to the conditions at the site. Liners shall be designed, constructed, and maintained so as to prevent the contamination of fresh waters, and protect public health and the environment.

(iii) Alternative Liner Media. The division may approve liners that are not constructed in accordance with division guidelines only if the operator demonstrates to the division's satisfaction that the alternative liner protects fresh water, public health, and the environment as effectively as those prescribed in division guidelines.

(c) Leak Detection. A leak detection system shall be installed between the primary and secondary liner in each disposal or storage pit. The leak detection system shall be designed, installed, and operated so as to prevent the contamination of fresh waters, and protect public health and the environment. The operator shall notify the division at least twenty-four hours prior to installation of the primary liner so a division representative may inspect the leak detection system before it is covered.

(d) Drilling and Workover Pits. Each drilling or workover pit shall be of an adequate size to assure that a supply of ~~mud-laden~~ fluid is available and sufficient to confine oil, natural gas, or water within its native strata. Hydrocarbon-based drilling fluids shall be contained in tanks made of steel or other division-approved material.

(e) Disposal or Storage Pits. ~~Liquids with greater than two tenths of one percent free hydrocarbon shall not be discharged to a pit.~~ No measurable or visible layer of oil may be allowed to accumulate or remain anywhere on the surface of any pit. Spray evaporation systems shall be operated such that all spray-borne suspended or dissolved solids remain within the perimeter of the pond's lined portion.

(f) Fencing and Netting. All pits shall be fenced or enclosed to prevent access by livestock or wildlife, and fences shall be maintained in good repair. Active drilling or workover pits may have a portion of the pit unfenced to facilitate operations. In issuing a permit, the division may impose additional fencing requirements for protection of wildlife in particular areas. All tanks exceeding 16 feet in diameter, exposed pits, and ponds shall be screened, netted, covered, or otherwise rendered non-hazardous to migratory birds. Drilling and workover pits are exempt from the netting requirement during drilling or workover operations if the pits are kept reasonably free of oil, provided that immediately after cessation of these operations such pits shall have any visible or measurable layer of oil removed from the surface. Upon written application, the division may grant an exception to screening, netting, or covering requirements upon a showing that an alternative method will adequately protect migratory birds or that the tank or pit is not hazardous to migratory birds.

(g) Unlined Pits.

(i) General Prohibition. After June 30, 2005 use of, or discharge into, any unlined pit that has not been previously permitted pursuant to Section 711 of 19.15.9 NMAC or Water Quality Control Commission regulations is prohibited, except as otherwise provided in Section 53 of 19.15.2 NMAC. ~~After (effective date of rule) April 15, 2004,~~ construction of unlined pits is prohibited unless otherwise provided in Section 53 of 19.15.2 NMAC.

~~(ii) Exemptions for Good Cause. The division may grant an exemption to the prohibition set out in Subsubparagraph (i) of 19.15.2.53(C)(2)(g) only if the operator demonstrates to the division's satisfaction that the unlined pit will not contaminate fresh water and that public health and the environment are protected.~~

(iii) Unlined Pits Exempted By Previous Order. An operator of an unlined pit existing on ~~(effective date of rule) April 15, 2004~~ for which a previous exemption was received after hearing as allowed pursuant to Commission Orders No. R-3221 through R-3221D inclusive, shall not be required to reapply for an exemption pursuant to Subparagraph (g) of 19.15.2.53(C)2 NMAC provided the operator notifies the division, no later than ~~January~~ April 15, 2004, of the existence of each unlined pit it believes is exempted by ~~Order~~, the location of the pit, and the nature and amount of any discharge into the pit. Such order shall constitute a permit for the purpose of Subparagraph (g) of 19.15.2.53(C)2 NMAC. The division may terminate any such permit in accordance with paragraph (2) of 19.15.2.53(G) NMAC. Any pit constructed after ~~(effective date of this rule) April 15, 2004~~ shall comply with the permitting, lining and other ~~standards~~ requirements of Section 53 of 19.15.2 NMAC, notwithstanding any previous ~~Order~~ to the contrary.

(iiiiv) Unlined pits shall be allowed in the following areas provided that the operator has submitted, and the division has approved, an application for permit as provided in Subsection 53 of 19.15.2 NMAC:

TOWNSHIP 19 SOUTH, RANGE 30 EAST, NMPM Sections 8 through 36;
TOWNSHIP 20 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36;
TOWNSHIP 20 SOUTH, RANGE 31 EAST, NMPM Sections 1 through 36;
TOWNSHIP 20 SOUTH, RANGE 32 EAST, NMPM Sections 4 through 9,
Sections 16 through 21; and Sections 28 through 33;
TOWNSHIP 21 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 36;
TOWNSHIP 21 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36;
TOWNSHIP 21 SOUTH, RANGE 31 EAST, NMPM Sections 1 through 36;
TOWNSHIP 22 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 36;
TOWNSHIP 22 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36;

TOWNSHIP 23 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 3,
Sections 10 through 15, Sections 22 through 27, and Sections 34 through 36;
TOWNSHIP 23 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 19;

that area within San Juan, Rio Arriba, Sandoval, and McKinley Counties that is ~~defined as being outside~~ the valleys of the San Juan, Animas, Rio Grande, and La Plata Rivers, which ~~are~~ is bounded by the topographic lines on either side of the rivers that ~~are~~ is 100 vertical feet above the river channels, measured perpendicularly to the river channels, and ~~which is outside those areas that lie within 50~~ vertical feet, measured perpendicularly to the drainage channel, of all perennial and ephemeral creeks, canyons, washes, arroyos, and draws, ~~located within the oil and gas producing areas of the San Juan Basin in northwestern New Mexico, provided that and is outside the areas do not lie between the above-named~~ rivers and the Highland Park Ditch, Hillside Thomas Ditch, Cunningham Ditch, Farmers Ditch, Halford Independent Ditch, Citizens Ditch, or Hammond Ditch, ~~and provided that the pit site is not located in~~ water bearing alluvium or within a wellhead protection area and; no protectable ground water is present or if present, will not be adversely affected by the discharge, ~~and the discharge is not located within a~~ Wellhead Protection Area; or

any area where the discharge quality into the pit meets New Mexico Water Quality Control Commission ground water standards.

3. Special Requirements for Below-grade Tanks. All below-grade tanks constructed after April 15, 2004 shall be constructed with secondary containment and leak detection. The operator of any below-grade tank constructed prior to ~~(effective date of this rule)~~ April 15, 2004 shall ~~demonstrate~~ test its integrity annually and shall promptly repair or replace any below-grade tank that does not demonstrate integrity. Any such below-grade tank shall be remove it or equipped it with leak detection at the time of any major repairs.

4. Sumps. Operators shall test the integrity of all sumps shall be demonstrated annually, and shall promptly repair or replace any sump that does not demonstrate integrity. Sumps that can be removed from their emplacements may be tested by visual inspection. Other sumps shall be tested by appropriate mechanical means.

D. Emergency Actions.

1. Permit Not Required. In an emergency an operator may construct a pit without a permit to contain fluids, solids, or wastes if an immediate danger to fresh water, public health, or the environment exists.

2. Construction Standards. A pit constructed in an emergency shall be constructed, to the extent possible given the emergency, in a manner that is consistent with the requirements of Section 53 of 19.15.2 NMAC and that prevents the contamination of fresh waters, and protects public health and the environment.

3. Notice. The operator shall notify the appropriate district office as soon as possible (if possible before construction begins) of the need for construction of such a pit.

4. Use and Duration. The pit may be used only for the duration of the emergency. If the emergency lasts more than forty-eight (48) hours, the operator must seek approval from the division for continued use of the pit. All fluids, ~~and solids or wastes~~ must be removed within 24 hours after cessation of use unless the division extends that time period.

5. "Emergency Pits." Subsection (D) of 19.15.2.53 NMAC shall not be construed to allow construction or use of so-called "emergency pits," which are pits constructed as a precautionary matter to contain a spill in the event of a release. Construction or use of any such pit shall require a permit issued pursuant to Subsection 53 of 19.15.2 NMAC unless the pit is described in a Spill Prevention, Control and Countermeasure (SPCC) plan required by the United States Environmental Protection Agency, all fluids are removed from the pit within 24 hours, and the operator has filed a notice of the location of the pit with the division.

E. Drilling Fluids and Drill Cuttings. Drilling fluids and drill cuttings ~~contained in any pit or below-grade tank shall either be recycled or dried and be disposed of in a manner as approved by the division and in such a manner as to prevent the contamination of fresh water, or danger and protect to public health or and the environment.~~ The operator shall describe the proposed disposal method in the Application for Permit to Drill (form C-101) or the Sundry Notices and Reports on Wells (form C-103).

F. Closure and Restoration.

1. Closure. Except as otherwise specified in Subsection 53 of 19.15.2 NMAC, a pit or below-grade tank shall be properly closed within six months after cessation of use. ~~In appropriate cases~~ As a condition of a permit, the division may require the operator to file a detailed closure plan before closure may commence. The division for good cause shown may grant a six-month extension of time to accomplish closure. Upon completion of closure a Closure Report, (Form C-144), or Sundry Notices and Reports on Wells (form C-103) shall be submitted to the division. Where the pit's contents will likely migrate and cause ground water or surface water to exceed Water Quality Control Commission standards, the pit's contents and the liner shall be removed and disposed of in a manner approved by the division.

2. Surface Restoration. Within one year of the completion of closure of a pit, the operator shall contour the surface where the pit was located ~~to prevent erosion and ponding of rainwater.~~

G. Exemptions; Additional Conditions.

1. The division may attach additional conditions to any permit upon a finding that such conditions are necessary to prevent the contamination of protect fresh waters, or to protect public health, or the environment.

2. The division may grant an exemptions from any requirement upon a finding if the operator demonstrates that the granting of such exemption will not endanger fresh waters, public health, or the environment. The division may revoke any such exemption after notice to the owner or operator of the pit and opportunity for a hearing if the Division determines that such action is necessary to prevent the contamination of fresh water, or to protect public health or the environment.

3. Exemptions may be granted administratively without hearing provided that the operator gives notice to the surface owner of record where the pit is to be located and to such other persons as the division may direct and (a) written waivers are obtained from all persons to whom notice is required, or (b) no objection is received by the division within 30 days of the time notice is given. If any objection is received and the director determines that the objection has technical merit or that there is significant public interest the director shall set the application for hearing. The director, however, may set any application for hearing.