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William LeMay, Chairman
Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87502

**Re: Marathon Oil Company's Post-Hearing Comments on Proposed
Amendments to OCD Rules 7 and 116, and Proposed New OCD Rule 19
(OCC Case Nos. 11352 & 11635)**

Dear Chairman LeMay:

Enclosed for filing, pursuant to the Commission's order leaving the record open, are the original and four copies of Marathon Oil Company's Post-Hearing comments on the Rule 116 Committee's proposed amendments to OCD Rules 7, 19 & 116. Three of the copies are for the Commissioners; the fourth copy should be conformed and returned to me.

If you have any questions, please contact me.

Sincerely,



Louis W. Rose

LWR

#9755-96-01

Enclosures

cc: Marilyn S. Hebert, Esq. (by hand delivery)
Rand L. Carroll, Esq. (by hand delivery)
Thomas C. Lowry, Esq.
W. Thomas Kellahin, Esq.
Sam Small
Chuck Moran
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Toni Ristau
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Roger Anderson (by hand delivery)
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BEFORE THE OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARINGS
CALLED BY THE OIL CONSERVATION
DIVISION TO CONSIDER:

REVISING RULE 116 CONCERNING
RELEASE NOTIFICATION AND
CORRECTIVE ACTION

CASE NO. 11,352

ENACTING A NEW RULE 19 CONCERNING
PREVENTION AND ABATEMENT OF WATER
POLLUTION

CASE NO. 11,635

MARATHON OIL COMPANY'S POST-HEARING COMMENTS ON
PROPOSED AMENDMENTS TO OCD RULES 7 AND 116 AND NEW RULE 19

Marathon Oil Company hereby submits its post-hearing comments on the proposed amendments to OCD Rules 7 and 116 and proposed new Rule 19. Attached to these comments as Attachment A is Marathon's consolidated proposed Rules 7, 19, and 116. The consolidated proposal includes Marathon's proposed changes and those changes submitted at the hearings by other parties with which Marathon agrees.

COMMENTS ON PROPOSED CHANGES TO COMMITTEE PROPOSAL

1. Rule 7.

a. PNM Exhibit 1.

i. Page 6, addition of a definition of "Director"--Marathon supports the proposed change.

ii. Page 6, amendment to the definition of "Hazard to Public Health"--Marathon supports the addition of "A" to the reference to 20 NMAC 6.2.3103. The change will bring the proposed definition into conformance with the WQCC's definition of the term.

In addition, Marathon takes no position on PNM's proposal to include language to specifically require the Director to consider the "feasibility of treatment of the water to drinking water standards at the time and place of such use." Marathon believes that the definition already allows so-called point-of-use treatment to be considered in determining whether a hazard to public health exists. Under the definition, a "hazard to public health" exists when water expected to be used as a human drinking water supply exceeds human health standards "at the time and place of such use." (Emphasis added.) Therefore, any treatment which occurs before the water is used must be considered.

iii. Page 7, amendment to the definition of Remediation Plan--Marathon supports the proposed amendments; however, Marathon does not believe that the addition of "which endanger public health or the environment" is necessary. That qualifier is already built into proposed Rule 116.D. Under that subsection, corrective action must be taken only for releases which endanger public health or the environment.

b. Neeper Exhibit 2.

Page 2, amendment to the definition of Remediation Plan--Marathon objects to the first sentence in the proposed amended definition. Marathon does not believe that the use of a remediation plan should be limited to remedial actions that will be completed within one year after notice is required to be given. Rather, Marathon believes that a remediation plan should be available for all remedial actions, unless the Division

determines that an abatement plan would be more appropriate, i.e., long-term, complicated ground and surface water and vadose zone remediations.

Marathon does not object to the second sentence in the proposed amended definition, but believes that health risk demonstrations should be allowed to be included in the plan, as proposed by the Rule 116 Committee's proposal. In addition, Marathon objects to the proposed amended definition's deletion the Rule 116 Committee's allowance for "an alternative proposing no action beyond the submittal of a spill report" to be included in the plan. Marathon believes that there may be situations where no active remediation will be necessary and that the most appropriate corrective action consists solely of monitoring the site.

2. Rule 19.

a. PNM Exhibit 1.

i. Page 8, amendment to 19.B(6)(a)--Marathon supports the proposed change; however, Marathon believes that the additional language is more appropriately inserted in 19.B(6)(b).

ii. Page 9, amendment to 19.B(7)--Marathon supports the proposed change; however, Marathon believes that the language in Marathon's Revised Recommended Changes, Rule 19, No. 5 is more appropriate.

iii. Pages 10-11, amendment to 19.D(1)(f) & (g)--Marathon supports the proposed changes.

iv. Page 12, amendment to 19.G--Marathon supports the proposed changes.

v. Page 14, deletion of 19.H(2)--Marathon supports the proposed change.

vi. Page 15, deletion of 19.N--Marathon supports the proposed change.

b. Neeper Exhibit 2.

i. Page 2, amendment to 19.D(1)(g)--Marathon supports the proposed change.

ii. Page 3, amendment to 19.G(2) (introductory paragraph)--Marathon supports the proposed changes.

iii. Page 3, amendment to 19.G(2)(c)--Marathon opposes the proposed change. Marathon believes that inclusion of this information in the public notice is unnecessary. The notice, as proposed by the Committee, sufficiently informs the public of the contamination and proposed actions. If anyone wants additional information, the notice directs them to OCD, where the public file can be reviewed.

iv. Page 3, deletion of 19.G(2)(e)--Marathon supports the proposed change.

v. Page 3, amendment to 19.G(2)(f)--Marathon supports the proposed change.

vi. Page 3, amendment to 19.G(2)(g)--Marathon supports the proposed change.

vii. Page 4, amendment to 19.G(3)--Marathon supports the insertion of "on a Stage 1 abatement plan or to

comment" after "comment" in the first line. The insertion will clarify that comments will be received on both a Stage 1 and Stage 2 abatement plan, but a public hearing may only be requested on a Stage 2 plan.

viii. Page 4, amendment to 19.H(1)--Marathon takes no position on the proposed change.

ix. Page 4, amendment to 19.L--Marathon supports the proposed change.

x. Page 4, deletion of 19.N--Marathon supports the proposed change.

3. Rule 116.

a. OCD Exhibit 2.

i. Page 1, deletion of "unauthorized" in the section title--Marathon supports the proposed change.

ii. Page 1, amendment to 116.A--Marathon supports the insertion of "natural gases" in the list of substances that, if released, could require notification of OCD.

iii. Page 1, insertion of new 116.A(2)--Marathon supports the proposed change, except the language concerning "be detrimental to water." As explained below, Marathon does not believe that "detrimental to water" is an appropriate standards here. In addition, Marathon believes that the OCD's proposed 116.A.1 and A.2 should be combined. This will make the requirements more easily understood. Marathon proposes that the combination be accomplished by replacing "unauthorized release" in the Committee proposal with "major release or minor release."

The definitions of "major release" and "minor release" identify specifically the types of releases that must be reported to OCD.

iv. Page 1, amendment to 116.B (introductory paragraph)--Marathon does not oppose these changes; however, Marathon believes that it is appropriate to replace "above releases" in the OCD proposal with "a major release or a minor release." The substitution clarifies the intent of this paragraph.

v. Page 1, amendment to 116.B(1)--Marathon supports this proposed change. However, Marathon believes that the definition of "major release" should be moved from B(1) to a new 116.E. This should make the rule more readable.

vi. Page 1, amendment to 116.B(1)(a)--Marathon supports this proposed change.

vii. Page 1, amendment to 116.B(1)(b)--Marathon supports this proposed change.

viii. Page 1, insertion of new 116.B(1)(c)--Marathon opposes this proposed change. Marathon understands that current Rule 116 requires verbal reporting of natural gas releases in excess of 1000 mcf. Marathon believes that the Commission should retain the current Rule 116 because of the great disparity between the Committee's proposed natural gas release reporting requirements and those proposed by OCD in OCD Exhibit 2. The change proposed by OCD was not addressed by the Committee.

Moreover, the OCD's proposal was justified as merely adopting the BLM reporting requirements. Marathon disagrees with the assertion that the OCD proposal adopts the BLM requirements. Clearly, proposed Rule 116 applies to many more facilities than does BLM NTL 3A. Therefore, Marathon believes that more review of the impact of the OCD's proposal is necessary and appropriate before the Commission acts on the request.

ix. Page 1, insertion of new 116.B(1)(d)-- Marathon supports the insertion of "cause an exceedance of the standards in 19 NMAC 15.A.19.B(1), B(2), or B(3)", but opposes insertion of "be detrimental to water." Marathon believes that "detrimental to water" is vague and provides no guidance to the regulated community on the types of releases that must be reported. Adoption of this vague standard will engender disputes between OCD and the regulated community over whether releases must be reported. Marathon further believes that only those releases that may cause an exceedance of the standards in Rule 19.B(1), B(2) and B(3) should be reported to OCD.

x. Page 2, deletion of 116.B(2)--Marathon supports this proposed change.

xi. Page 2, amendment to 116.B(3)--Marathon supports this proposed change, but opposes making natural gas releases of 50 mcf to 500 mcf reportable as minor releases. See Marathon's discussion of OCD proposed 116.B(1)(c).

xii. Page 2, amendment to 116.C(1)--Marathon supports the proposed change.

xiii. Page 2, amendment to 116.C(2)--Marathon supports the proposed change.

xiv. Page 2, amendment to 116.D--Marathon supports the proposed change, but believes that the reference to "releases" should be amended to "any major release or minor release."

b. Neeper Exhibit 2.

i. Page 1, amendment to 116.B (introductory paragraph)--Marathon supports the proposed change; however, Marathon believes that the sentence should be rewritten if "facility" is substituted for "location." The sentence should be rewritten to read as follows:

Notification of [a Major Release or a Minor Release] shall be made by the person operating or controlling either the release or the facility where the release occurred in accordance with the following requirements:

ii. Page 1, amendment to 116.B(1)(b)(ii)--Marathon opposes the proposed change. Marathon believes that insertion of the language would effectively negate any reporting threshold in the regulation. Marathon further believes that reporting of releases that could reach surface or ground waters should be linked to whether those releases could cause surface or ground water standards to be exceeded.

iii. Page 1, amendment to 116.B(1)(b)(iii)--See Marathon's comment on OCD's proposed change.

iv. Page 1, renumbering 116.C(1) as B(2) and amendments to the section--Marathon supports the proposed amendment, but takes no position on moving the section to 116.B.

v. Page 1, amendment to 116.B(2) (renumbered B(3))--Marathon opposes the proposed changes. See Marathon's comment on OCD's proposed inclusion of requirements for reporting natural gas releases greater than 500 mcf. In addition, Marathon believes that inclusion of a cumulative release rule is unnecessary. Under the Committee's proposal, any release which may endanger public health or which results in substantial damage to property or the environment must be reported. If non-reportable releases, in the aggregate, could endanger public health or result in substantial damage to property or the environment, the Committee's proposal requires that they be reported to OCD. Moreover, the proposed change lacks any time limitation; thus, making it virtually unenforceable.

vi. Page 2, renumbering 116.C(2) as B(4) and amendments to the section--Marathon supports the proposed amendment (as modified at the public hearing), but takes no position on moving the section to 116.B.

vii. Page 2, deletion of 116.C and renumbering 116.D as 116.C--Marathon takes no position on this change.

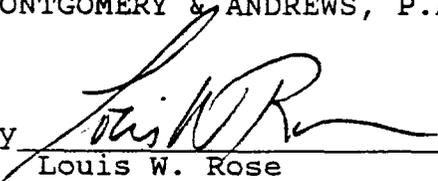
CONCLUSION

For the foregoing reasons, Marathon requests the Commission adopt the amendments to Rules 7 and 19, and new Rule 116, as proposed by the Rule 116 Committee, and as modified by Attachment A.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By



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ATTACHMENT A

7 DEFINITIONS

ABATE or ABATEMENT . . .

DIRECTOR shall mean the Director of the Oil Conservation Division of the New Mexico Energy, Minerals and Natural Resources Department.¹

FACILITY . . .

HAZARD TO PUBLIC HEALTH exists when water which is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of such use, one or more of the numerical standards of 20 NMAC 6.2.3103.A,² or the naturally occurring concentrations, whichever is higher, or if any toxic pollutant as defined at 20 NMAC 6.2.1101 affecting human health is present in the water. In determining whether a release would cause a hazard to public health to exist, the Director shall investigate and consider the purification and dilution reasonably expected to occur from the time and place of release to the time and place of withdrawal for use as human drinking water.

NON-AQUEOUS PHASE LIQUID . . .

REMEDIATION PLAN shall mean a written ~~document~~ description of a program to address ~~reportable~~ unauthorized releases ~~that will not with reasonable probability reach ground water or surface water, and that will likely be remedied within one (1) year. When ground water is affected, a remediation plan may be required for releases that will be remedied within one (1) year.~~³ The plan may include appropriate information, including assessment data, health risk demonstrations, and corrective action(s). The plan may also include an alternative proposing no action beyond the submittal of a spill report.

¹Marathon's Revised Recommended Changes, Rule 7, No. 1; PNM Exhibit 1, at 6.

²Marathon's Revised Recommended Changes, Rule 7, No. 2.

³Marathon's Revised Recommended Changes, Rule 7, No. 3.

19 PREVENTION AND ABATEMENT OF WATER POLLUTION.

19.A. PURPOSE

No changes from Committee proposal.

19.B. ABATEMENT STANDARDS AND REQUIREMENTS

(1) No changes from Committee proposal.

(2) No changes from Committee proposal.

(3) No changes from Committee proposal.

(4) No changes from Committee proposal.

(5) No changes from Committee proposal.

(6) Alternative Abatement Standards:

(a) At any time during or after the submission of a Stage 2 abatement plan, the responsible person may file a petition seeking approval of alternative abatement standard(s) for the standards set forth in Paragraphs (1) and (2) above. The Division may approve alternative abatement standard(s) if the petitioner demonstrates that:

(i) either:

1. compliance with the abatement standard(s) is/are not feasible, by the maximum use of technology within the economic capability of the responsible person; or

2. there is no reasonable relationship between the economic and social costs and benefits (including attainment of the standard(s) set forth in this Paragraph B)⁴ to be obtained, and

(ii) the proposed alternative abatement standard(s) is/are technically achievable and cost-benefit justifiable; and

(iii) ~~the potential for point-of-use treatment versus in-situ remediation of ground water to standards has been evaluated and will be employed if technically feasible and cost-benefit justifiable; and~~

⁴Marathon's Revised Recommended Changes, Rule 19, No. 1.

(iv)⁵ compliance with the proposed alternative abatement standard(s) will not create a present or future hazard to public health or undue damage to property.

(b) The petition shall be in writing, filed with the Division Environmental Bureau Chief. The petition may include an analysis of the feasibility of point-of-use treatment, a transport, fate and risk assessment in accordance with accepted methods, and other information as the petitioner deems necessary to support the petition.⁶ The petition shall:

(i) . . .

~~(xi) Include a demonstration of the feasibility of point-of-use treatment, if applicable;~~

~~(xii)⁷ State the extent to which the abatement standard(s) set forth in Paragraph B is/are now, and will in the future be, violated.~~

~~(xiii) The petition may include a transport, fate and risk assessment in accordance with accepted methods, and other information as the petitioner deems necessary to support the petition.~~⁸

(c) . . .

(7) Modification of Abatement Standards. If applicable abatement standards are modified after abatement measures are approved, the abatement standards that are in effect at the time that the Stage 2 abatement plan is abatement measures are approved shall be the abatement standards for the duration of the abatement plan action, unless the Director determines that additional action is necessary to protect public health and the environment compliance with those standards may with reasonable probability create a present or future hazard to public health or the environment.⁹ In any appeal of the Director's determination that additional actions are necessary, the Director shall have the burden of proof.

19.C. ABATEMENT PLAN REQUIRED.

⁵Marathon's Revised Recommended Changes, Rule 19, No. 2.

⁶Marathon's Revised Recommended Changes, Rule 19, No. 3.

⁷Marathon's Revised Recommended Changes, Rule 19, No. 3.

⁸Marathon's Revised Recommended Changes, Rule 19, No. 3.

⁹Marathon's Revised Recommended Changes, Rule 19, No. 5.

No changes from Committee proposal.

19.D EXEMPTIONS FROM ABATEMENT PLAN REQUIREMENT.

(1) Except as provided in Subparagraph (2) below, Paragraphs C and E do not apply to a person who is abating water pollution:

(a) . . .

(e) under the authority of a ground-water discharge plan approved by the Director, provided that such abatement is consistent with the requirements and ~~provision~~ provisions of Paragraphs A, B, ~~(3)~~ E(3), E(4), F, and K of this Rule.¹⁰

(f) under the authority of a Letter of Understanding, Settlement Agreement or Administrative Order on Consent or other agreement signed by the Director or his designee prior to (insert effective date of rule), 1996, provided that abatement is being performed in full compliance with the terms of the Letter of Understanding, Settlement Agreement or Administrative Order on Consent or other agreement;¹¹ and

(g) on an emergency basis, or while abatement plan approval is pending, or in a manner that will likely¹² result in compliance with the standards and requirements set forth in ~~Paragraph B~~ Paragraphs B(1), B(2), and B(3)¹³ within one year after notice is required to be given pursuant to 19 NMAC 15.C.116.B provided that the Division does not object to the abatement action.

(2) . . .

19.E. ABATEMENT PLAN PROPOSAL.

No changes from Committee proposal.

19.F. OTHER REQUIREMENTS.

No changes from Committee proposal.

¹⁰Marathon's Revised Recommended Changes, Rule 19, No. 6.

¹¹Marathon's Revised Recommended Changes, Rule 19, First No. 7; PNM Exhibit 1, at 11.

¹²Marathon's Revised Recommended Changes, Rule 19, Second No. 7; PNM Exhibit 1, at 11.

¹³Neeper Exhibit 2.

19.G. PUBLIC NOTICE AND PARTICIPATION.

(1) Within thirty (30) days of filing of a Stage 1 abatement plan proposal, the Division Environmental Bureau Chief shall issue a news release summarizing:

(a) the source, extent, magnitude and significance of water pollution, as known at that time;

(b) the proposed Stage 1 abatement plan investigation;
and

(c) the name and telephone number of Division contact who can provide additional information.¹⁴

(2) Prior to public notice, the applicant shall give written notice, as approved by the Division, of ~~Stage 1 and the~~ Stage 2 abatement plans ~~plan~~¹⁵ (or Stage 1 and Stage 2 abatement plans, if submitted together)¹⁶ to the following persons:

(a) . . .

~~(2) (3) Within fifteen (15) days after the~~ Division determines that the ~~Stage 1 and~~ Stage 2 abatement plans ~~plan~~¹⁷ (or Stage 1 and Stage 2 abatement plans, if submitted together)¹⁸ are ~~is~~¹⁹ administratively complete, the applicant will issue public notice in a newspaper of general circulation in the county in which ~~the facility is to be located~~ the release occurred, and in a newspaper of general circulation in the State.²⁰ For purposes of this paragraph, an administratively complete Stage 1 abatement plan is a document that satisfies the requirements of Paragraph E(3); an administratively complete Stage 2 abatement plan is a document that satisfies the

¹⁴Marathon's Revised Recommended Changes, Rule 19, No. 8; PNM Exhibit 1, at 12.

¹⁵Marathon's Revised Recommended Changes, Rule 19, No. 9.

¹⁶PNM Exhibit 1 at 13.

¹⁷Marathon's Revised Recommended Changes, Rule 19, No. 10.

¹⁸PNM Exhibit 1 at 13.

¹⁹Marathon's Revised Recommended Changes, Rule 19, No. 11.

²⁰Nepper Exhibit 2, at 3.

requirements of Paragraph E(4)(b).²¹ The public notice shall include, as approved in advance by the Director:

(a) . . .

(e) ~~statement on the comment period;~~

~~(f)~~²² statement that a copy of the abatement plan can be viewed by the public at the Division's main office or at the Division's District office for the area in which the release occurred, and a statement describing how the abatement plan can be accessed by the public electronically from a Division-maintained site, if such access is available;²³

~~(g) (f) statement that written comments on the abatement plan, and requests for a public hearing that include the reasons why a hearing should be held, will be accepted for consideration if sent to the Director within thirty (30) days after the determination of administrative completeness~~ the following comments and requests will be accepted for consideration if received by the Director within thirty (30) days after the date of publication of public notice:

(i) written comments on the abatement plan; and

(ii) for a Stage 2 abatement plan, written requests for a public hearing that include the reasons why a hearing should be held;²⁴ and

~~(h) (g)~~ address and phone number at which interested persons may obtain further information.

(3)

19.H. DIRECTOR APPROVAL OR NOTICE OF DEFICIENCY OF SUBMITTALS.

(1) . . .

(2) ~~The Director shall, within thirty (30) days of receiving a fact sheet, approve or notify the responsible~~

²¹Neeper Exhibit 2, at 3.

²²Neeper Exhibit 2, at 3.

²³Neeper Exhibit 2, at 3.

²⁴Neeper Exhibit 2, at 3.

~~person of the document's deficiency, based upon the information available.~~

~~(3)~~²⁵ If no public hearing is held pursuant to Subparagraph G(3), then the Director shall, within ninety (90) days of receiving a Stage 2 abatement plan proposal, approve the plan, or notify the responsible person of the plan's deficiency, based upon the information available.

~~(4)~~ (3) . . .

~~(5)~~ (4) . . .

~~(6)~~ (5)

19.I. INVESTIGATION AND ABATEMENT.

No changes from Committee proposal.

19.J. ABATEMENT PLAN MODIFICATION.

No changes from Committee proposal.

19.K. COMPLETION AND TERMINATION.

No changes from Committee proposal.

19.L. DISPUTE RESOLUTION.

In the event of any technical dispute regarding the requirements of B, D, E, J, or K or ~~Section 116.E~~ Section 116.D,²⁶ including notices of deficiency, the responsible person may notify the Director by certified mail that a dispute has arisen, and desires to invoke the dispute resolution provisions of this Paragraph, provided that such notification must be made within thirty (30) days after receipt by the responsible person of the decision of the Director that causes the dispute. . . .

19.M. APPEALS FROM DIRECTOR'S AND DIVISION'S DECISIONS.

No changes from Committee proposal.

~~19.N. NOTIFICATION.~~

~~(1) With respect to any release from any facility of oil or other water contaminant, in such quantity as may with~~

²⁵Marathon's Revised Recommended Changes, Rule 19, No. 12; PNM Exhibit 1, at 14.

²⁶Marathon's Revised Recommended Changes, Rule 19, No. 13.

~~reasonable probability be detrimental to water or cause an exceedance of the standards in 20 NMAC 15.A.19.B(1), B(2), or B(3), and as soon as possible after learning of such a release, but in no event more than twenty-four (24) hours thereafter, any person in charge of the facility shall orally notify the Division's Environmental Bureau Chief of the occurrence. To the best of that person's knowledge, the following items of information shall be provided:~~

~~(a)~~

~~(b)~~

~~(c)~~

~~(d)~~

~~(e)~~

~~(f)~~

~~(g)~~

~~(h)~~

~~(2)²⁷~~

²⁷Marathon's Revised Recommended Changes, Rule 19, No. 14; PNM Exhibit 1, at 15.

116 UNAUTHORIZED²⁸ RELEASE NOTIFICATION AND CORRECTIVE ACTION

116.A. NOTIFICATION: The Division shall be notified of any ~~unauthorized release~~ major release or minor release²⁹ occurring during the drilling, producing, storing, disposing, injecting, transporting, servicing or processing of crude oil, natural gases,³⁰ produced water, condensate or oil field waste including regulated NORM, or other oil field related chemicals, contaminants or mixture thereof, in the State of New Mexico in accordance with the requirements of this rule.

116.B. REPORTING REQUIREMENTS: Notification of an ~~unauthorized release as defined in Rule A.7~~ a major release or a minor release³¹ shall be made by the person operating or controlling either the release or the ~~location of facility where the release occurred~~³² in accordance with the following requirements:

(1) A ~~Category I release~~ major release³³ shall be reported by giving both immediate verbal notice and timely written notice pursuant to Subsection C(1) and C(2) of this Rule. ~~For purpose of this Rule, a Category I Release is either:~~

~~(a) a release of a volume in excess of 25 barrels; or~~

~~(b) a release of any volume, excluding natural gas, which:~~

~~(i) results in a fire;~~

~~(ii) will reach a water course;~~

²⁸OCD Exhibit 2.

²⁹This change clarifies that only Major Releases and Minor Releases, as defined by the Rule, must be reported.

³⁰OCD Exhibits 1 & 2.

³¹This change clarifies that only Major and Minor releases, as defined by the Rule, must be reported. The change is consistent with OCD Exhibit 2.

³²The deletion of "location" and insertion of "facility" is from Neeper Exhibit 2. The remainder of the change clarifies the language.

³³OCD Exhibits 1 and 2; Neeper Exhibit 2.

~~(iii) may with reasonable probability endanger public health; or~~

~~(iv) results in substantial damage to property or the environment.~~

~~(2) A Category II Release shall be reported by giving immediate verbal notice pursuant to Subsection C(1) of this Rule. For purpose of this Rule, a Category II Release is a release of any volume of natural gas, which:~~

~~(a) results in a fire;~~

~~(b) may with reasonable probability endanger public health; or~~

~~(c) result in substantial damage to property or the environment.~~

~~(3)³⁴ A Category III release minor release shall be reported by giving timely written notice pursuant to Subsection C(2) of this Rule. For the purpose of this Rule, a Category III Release is a release of a volume, excluding natural gas, greater than 5 barrels but not more than 25 barrels.~~

116.C. CONTENTS OF NOTIFICATION:

~~(1) Immediate verbal notification is required to be reported pursuant to Subsection B of Rule 116 shall be reported within twenty-four (24) hours of discovery to the Division District Office of the Division for the area within which this where the release takes place occurs. For a major release, as defined in Subsection E(1)(d), immediate verbal notification shall also be made to the Division's Environmental Bureau Chief. This notification shall include the identification of the location of the release by quarter quarter section, township and range; by distance and direction from the nearest town or landmark; the nature and estimated quantity of the loss and general conditions prevailing in the area; and any mitigation or corrective action being taken provide, to the best of that person's knowledge, the information required on Division Form C-141.~~

~~(2) Timely written notification is required to be reported pursuant to Subsection B of Rule 116 within fifteen (15) days to the Division District Office of the Division for the area within which this where the release takes place occurs by~~

³⁴This change combines proposed Category I and Category II releases into one category, Major Releases, and deletes the definitions and moves them to a new Rule 116.E.

completing and filing Division Form C-141. For major release, as defined in Subsection E(1)(d), timely written notification shall also be made to the Division's Environmental Bureau Chief. The written notification shall verify the prior verbal notification and provide any appropriate additions or corrections to the information contained in the prior verbal notifications.³⁵

116.D. CORRECTIVE ACTION: The responsible person must complete Division approved corrective action for unauthorized release any major release or minor release which endanger endangers public health or the environment. Releases will be addressed in accordance with a remediation plan submitted to and approved by the Division or with an abatement plan submitted in accordance with Rule 19 (19 NMAC 15.A.19).³⁶

116.E. DEFINITIONS: For purpose of this Rule:

(1) "major release" means either:

(a) an unauthorized release of a volume, excluding natural gases, in excess of 25 barrels;

(b) an unauthorized release of any volume which:

(i) results in a fire;

(ii) will reach a water course;

(iii) may with reasonable probability endanger public health; or

(iv) results in substantial damage to property or the environment; or

(c) a release of any volume which may with reasonable probability cause an exceedance of the standards in 19 NMAC 15.A.19.B(1), B(2), or B(3);³⁷ and

³⁵This language is taken from OCD Exhibit 2 with appropriate changes to accommodate moving the definition of "Major Release" to new Rule 116.E.

³⁶These changes link the requirement to take corrective action to the reporting requirements.

³⁷This definition is taken from OCD Exhibit 2, Subsection B(1), but does not include the language in B(1)(d) concerning releases that may with reasonable probability "be detrimental to water."

(2) "minor release" means either an unauthorized release of a volume, excluding natural gas, greater than 5 barrels but not more than 25 barrels or an unauthorized release of natural gas in excess of 1000 mcf.³⁸

³⁸This definition is taken from OCD Exhibit 2, Subsection B(2), but does not include natural gas releases of greater than 50 mcf but less than 500 mcf, as proposed by OCD. In addition, the definition includes natural gas releases in excess of 1000 mcf. This change is meant to maintain the natural gas release reporting requirements of the current regulation.



Texaco Exploration
and Production Inc

November 27, 1996

Mr. Bill LeMay
State of New Mexico
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87501

RE: **GOV - STATE & LOCAL**
PROPOSED OCD RULE 116 AND PROPOSED RULE 19

Dear Mr. LeMay,

Texaco Exploration and Production Inc. has reviewed the proposed Rules 116 and 19, and would like to provide several comments and suggestions. First of all, it was confusing to be working on a draft rule that was published by the OCD in the October 31, 1996 New Mexico Register and then find that a different version was submitted by the OCD at the November 14, 1996 hearing. It is our understanding that the rule that is to be considered for adoption must be published in the New Mexico register with a period of comments and final hearing to follow that publication. It is therefore requested that the draft to be proposed by the OCD be published in the New Mexico register and that the public have additional time to comment.

The proposed Rule 116 requires the reporting of a **minor** natural gas release of 50 mcf. It is essential that the OCD realize that the release of natural gas does not normally occur where there is a meter to determine the volume. Since it dissipates so quickly, unlike liquids, it is impossible to determine the volume of the release. Gas releases; therefore, when reported, will just be guesses. It is therefore recommended that the reporting requirements for natural gas be removed from the rule. Some situations require the release of natural gas to facilitate production improvement such as drill stem testing, blowdown before well workover operations, etc.; however, these are done under controlled situations. Even these situations cannot measure the gas volume for reporting purposes. If the concern is for royalty payment, which Rule 116 is not to address, you can be assured that the industry does not vent gas to waste money since we get 7/8ths of the revenue where the royalty owner gets 1/8th.

It seems inappropriate to establish reporting volumes at such low levels. There is no evidence that spills of 5, 10, or even 25 barrels of produced water or oil have had a lasting negative impact on groundwater. When scientific evidence indicates that there is no lasting impact, then we should relax the reporting levels to those that have meaning. The reporting of these small volumes will serve mainly to fill the files with paper and provide little to protect the groundwater. There is no reason to set the reporting limit lower than the previous established reporting level by

the various agencies. Since the BLM level is 10 barrels, that should be the reporting level. It would be more realistic to raise both agency levels to a more reasonable volume.

The use of Form C-141 by both the NMOCD and the BLM is a good move to improve the process. This will assist in paperwork reduction and simplify the process. It will avoid confusion that often exists when agencies require different forms for the same incident.

It is felt that Paragraph 19.N should be deleted in its entirety, since it mandates duplicate reporting and notification with Rule 116. The deletion of this section and the maintaining of Rule 116 as reporting of unauthorized releases is the preferable program for handling the two rules. If Paragraph 19.N is to be kept, it should be exempt from reporting those items previously reported under Rule 116.

It is desirable to have the NMOCD have its own set of groundwater pollution abatement rules to handle oil and gas situations. It is, however, very important to have a clear cut separation from duplication of authority or intervention by other agencies. The WQCC must not be involved if NMOCD is handling the abatement program.

That concludes comments on the proposed Rules 116 and 19. At this time I want to state that even though this particular committee did not successfully complete the project of preparation of a consensus draft rule, it should **not** be concluded that the committee process of regulatory reform and rule preparation is not successful. The evidence shows that several committees have been able to very successfully arrive at rules that were accepted by industry, citizen groups, and the regulatory agencies. This process of involving the regulated community in the process of rule preparation should be continued.

Yours respectfully,



R. F. Gray
Regulatory Compliance Manager

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WATER QUALITY CONTROL COMMISSION

DELEGATION OF RESPONSIBILITIES TO ENVIRONMENTAL IMPROVEMENT DIVISION AND OIL CONSERVATION DIVISION

In an effort to prevent duplication of effort and to clarify the division of responsibilities pursuant to the provisions of the Water Quality Act, NMSA Sections 74-6-1 et seq. (1978), as administered and enforced by the Water Quality Control Commission, the Commission hereby approves the following list of delegated duties and responsibilities for two of the agencies that are constituent agencies to which authority can be delegated, the Environmental Improvement Division ("EID") and the Oil Conservation Division ("OCD"). The Commission is specifically authorized to take this action by NMSA Section 74-6-4E (1978) and by other general provisions of the Water Quality Act. The Commission notes that pursuant to NMSA Section 74-6-9C (1978), constituent agencies may "report to the Commission and to other constituent agencies water pollution conditions that are believed to require action where the circumstances are such that the responsibility appears to be outside the responsibility assigned to the agency making the report." The Commission encourages OCD and EID to continue close communication and cooperation where responsibility is unclear, to ensure that water pollution is prevented or abated quickly, efficiently and consistently. In situations involving discharges or facilities under the jurisdiction of both agencies, the agencies shall mutually agree which shall be the lead agency and shall determine the method by which the discharge plan shall be evaluated and approved. In preparing this delegation statement, the Commission is cognizant of the limitations imposed on its authority by the Water Quality Act, especially NMSA Section 74-6-12G (1978) which prohibits it from taking any action which would "interfere with the exclusive authority of the Oil Conservation Commission over all persons and things necessary to prevent water pollution as a result of oil or gas operations...."

This delegation shall supersede all previous delegations to EID and OCD; reference to the dates and minutes of Commission meetings in which previous delegations were made are in parentheses and the minutes are attached. The specific grants of authority are not intended to be comprehensive. When a question of authority and jurisdiction arises, which is not specifically delegated, the general provisions below shall control.

1. General Provisions

As a general rule, OCD will administer and enforce applicable Commission regulations pertaining to surface and ground water discharges at oil and natural gas production sites, oil refineries, natural gas processing plants, geothermal installations, carbon dioxide facilities, natural gas transmission lines, and discharges

associated with activities of the oil field service industry. The Commission recognizes that OCD also administers regulations under both the Oil and Gas Act and the Geothermal Resources Act, and that OCD shall have discretion as to which regulations to enforce in any given situation. OCD shall have jurisdiction over all activities associated with exploration for or development, production, transportation before refinement, refinement, storage or treatment of unrefined oil and natural gas, or oil or gas products on refinery premises.

EID will administer and enforce Commission regulations regarding discharges from transmission, transportation and storage facilities for oil or oil by-products after refinement (including but not limited to gasoline stations), except those within refinery premises. EID will administer and enforce all Commission regulations pertaining to all other discharges to surface and ground water which are not specifically delegated to other departments and agencies. (Source: 1/13/69 and 5/8/84 Commission minutes)

2. Specific Grants of Authority

A. EID shall certify Section 404 dredge and fill material permits under the Clean Water Act ("CWA"). (Source: 1/13/76 and 6/14/83 Commission minutes)

B. EID shall administer the Wastewater Construction Grants program pursuant to Section 205 of the CWA. (Source: 6/14/83 Commission minutes)

C. EID shall certify NPDES permits pursuant to Title IV of the Federal Water Pollution Control Act Amendments of 1972 and S402 of the CWA. (Source: 10/1/74 and 8/14/84 Commission minutes)

D. EID shall certify hydropower licenses issued by the Federal Energy Regulatory Commission. (Source: 8/14/84 Commission minutes)

E. EID shall administer and enforce Commission regulations pertaining to the disposal of human excrement and bath water at oil and natural gas production sites, oil refineries, natural gas processing plants, geothermal installations, carbon dioxide facilities and natural gas transmission lines when the treatment facilities for the sewage are a separate and isolated discharge unmixed with any produced water, oil field waste or oil field service waste. (Such an isolated discharge would include: a small sewage treatment plant, package plant, or septic tank and drainfield.) If, on the other hand, sewage is in a discharge combined or mixed with produced water, oil field waste or oil field service waste, OCD shall have jurisdiction. (Source: 5/8/84 Commission minutes)

F. OCD shall administer and enforce Commission regulations at brine manufacturing operations and concerning discharges to ground or surface water at brine manufacturing operations, including all brine production wells, holding ponds and tanks. OCD shall have jurisdiction over all manufactured brine once it is transported, used or disposed of off brine plant premises for use in or directly related to oil and gas operations regulated by OCD. OCD shall regulate brine injection through its Class II Underground Injection control (UIC) Program if the brine is used in the drilling for or production of oil and gas. EID shall regulate brine injection through its UIC Program if the brine is used for other purposes. (Source: 6/13/89 Commission minutes)

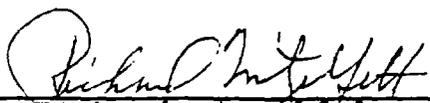
G. EID shall administer and enforce all programs implemented by the state under PL 92-500 (The Federal Water Pollution Control Act) and its Amendments, unless directed otherwise by the Commission. (Source: 7/8/75 Commission minutes)

H. OCD shall have general jurisdiction over the oil field service industry. Many activities that would ordinarily be regulated by EID are regulated by OCD when those activities occur in the oil field service industry. The following list, which is not intended to be inclusive, serves to help clarify this delegation:

OCD	EID
waste oil handled or processed by oil field service companies or treating plants	used motor oil handlers
all underground and above-ground tanks on refinery premises, unless the tanks contain unmixed sewage; all underground and above-ground tanks not on refinery premises which contain crude petroleum, produced water or oil field service chemicals	all underground and above-ground tanks not on refinery premises, unless the tanks contain crude petroleum, produced water or oil field service chemicals
tanker trucks hauling, spilling or disposing of well-service chemicals, kill water, produced water, crude oil, tank bottom sludge and other oil field wastes and oil field service materials	tanker trucks spilling or disposing of non-oil and gas production wastes, non-oil and gas service materials, or refined petroleum products
washings from trucks and other equipment used in the transport, production or refining of oil and gas crude products, production wastes or service materials	washings from trucks and other equipment not used for oil and gas production related purposes

Both EID and OCD are authorized to continue to take appropriate legal action in their respective areas of delegation (including initiating proceedings in court) on behalf of the Commission on a finding of good cause to believe any person is violating or is threatening to violate a Commission regulation or the Water Quality Act. The agencies shall send a copy of each Complaint, Settlement Agreement and Judgment to the Commission Secretary for distribution to Commission members. (Source: NMSA Section 74-1-8.2(B) (1978), 2/8/71 and 1/11/83 Commission minutes)

WATER QUALITY CONTROL COMMISSION



By: Richard Mitzelfelt, Chairman

Date

July 21, 1989