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Bill LeMay
State of New Mexico
Oil Conservation Commission
2040 S. Pacheco
Santa Fe, New Mexico 87105

Dear Bill,

Thank you for the opportunity to revise and extend our comments of October 25, 1996 in light of additional comments made at the November 14 meeting of the Oil Conservation Commission.

These comments are made from the original draft and the revision received by Committee Members on about November 12. I also have the comments of Marathon and PNM which were available at the hearing on November 14. There is a new draft out which apparently is not the same as the draft published in the New Mexico Register.

OCD Hearings are at least quasi-legal events where decisions are made on objective evidence presented by all the parties. The record in this case contains no evidence to support issuance of amended Rule 116 and new Rule 19. On the contrary, there is evidence of an adequate Rule, now in existence, which meets the needs of the state.

Comments made by Mr. Shuey and Dr. Neeper are not acceptable. Mr. Shuey was provided with a copy of comments by Marathon and PNM prior to the hearing, and of course had a copy of the Committee's draft, but Mr. Shuey did not provide fellow Committee members with advance copies of his comments. Dr. Neeper was brought into the process by Mr. Shuey. Although they did not have time to provide copies of their comments to other interested parties before the hearing, they had time to do extensive preparation, including exhibits. In light of this obvious tactic, the comments of both Mr. Shuey and Dr. Neeper should be stricken from the record.

Comments introduced by Mr. Shuey and Dr. Neeper went beyond anything the Committee recommended or was suggested by commenters at the hearing. Other commentors kept their comments directed to the committee draft. If these comments are left in the record, then anything in the Committee's draft proposed rules must be fair game.

The IOGCC/EPA New Mexico State Review of oil and gas regulations is not justification for new rules. The purpose of the review was to determine the extent to which New Mexico regulations match IOGCC Guidelines. The Peer review process was designed to demonstrate to EPA that the states were regulating themselves in the oil and gas area. Peer Review recommendations were never intended to pressure regulators or legislators to change New Mexico rules. New Mexico has substantially all the rules recommended by IOGCC. The Review Team found rules in place to cover reporting of spill and leaks. The recommendations were to extend and strengthen reporting rules. One Team member was not convinced any changes were necessary. Recommending whether to strengthen existing regulations is a subjective call. The Peer Review process was not intended to be binding on states and certainly not intended to support changing existing regulations.

Is there objective evidence indicating a need to change Rule 116 and add Rule 19? None has been entered in the record. No evidence was introduced indicating the public health or environment has been harmed by oil field spills or leaks. The Committee was provided a list of all reported spill and leaks. How many spills occurred in areas where there is no water? There was testimony about 105 contamination cases. Are these cases of underground storage leaks? No documentation was offered and no evidence of the cause of any contamination was submitted. Even accepting 105 cases of contamination, the number is meaningless unless put in context with something. According to ONGARD statistics, there are about 47,700 active wells in the state. Not all wells produce every day, but if we can say those wells produced 250 days a year, the exposure units would be 11,925,000. The ratio of contamination to producing wells over a year is .0000088. This number is for only one year and there is no evidence the 105 contamination cases occurred in only one year. It probably occurred over several years so the ratio would be even more minuscule. This is a good record and does not justify changing rules or requiring the industry to expend any resources.

According to OCD statistics, published by NMOGA, there are some 600 independent producers in New Mexico. Independents produce about 50% of the oil and 62% of the gas and additional planning and reporting requirements fall heaviest on them. Independents are not in a position to take on unnecessary regulatory requirements because funds will have to be diverted from some other source. That means drilling and production. According to testimony by Virginia Lazenby, an independent producer, before the House Ways and Means subcommittee of Select Revenue Measures, 78% of the nation's oil comes from marginal wells. These wells average 2.2 barrels a day and provide 20% of the production in the lower 48 states. High cost marginal wells produce more oil than we import from Saudi Arabia. When marginal wells are plugged prematurely, the state loses revenues and it is the marginal wells that cannot bear the cost of unnecessary planning and reporting requirements. It is inappropriate for the Oil Conservation Commission to place such requirements on its industry without solid, scientific evidence in the record indicating a need for compelling problem exists.

It is on this foundation of sand that we discuss changes in Rule 116 and adoption of Rule 19. Heroics are not justified by the facts.

All references to reporting and notifications such as the first sentence of Rule 116 at A should be consistent and provide for communication with the "The District Office of the Division...". Notifications and approvals should be local because the Districts know the area and local environment. They can react faster and operators will be able to negotiate remediation on a timely basis.

The OCD cannot authorize contamination of ground water. So there should be no confusion over Rule 116 reporting and Rule 19 reporting. Testimony at the Hearing seemed to complicate the issue by suggesting that Rule 19 paragraph 19 .N was necessary for those authorized releases that end up contaminating water. An authorized release becomes unauthorized when it contaminates. At that time Rule 116 notification will become effective and thus paragraph 19.N is duplicative. No loophole is created for authorized releases that subsequently pollute by removing 19.N. If the latest amended draft does in fact combine paragraph 19.N into Rule 116 we can support that concept.

There is no need or justification for mentioning gas releases in these two rules. The purpose of the rules is to abate pollution of subsurface water and to notify the OCD of any unauthorized releases. There is no practical method of determining when a small amount of gas has been released. Charts from the well site have to be sent to a company for integration before exact numbers are available. A pumper reading the chart in the field cannot provide more than an estimate of volumes. As a rule, a release of natural gas is gone with the wind to west Texas and poses no hazard to the environment. When there was no market for natural gas, it was flared or vented and there is no evidence of any harm. OCD still allows venting of some gas under its rules. The gas dissipates quickly into the atmosphere.

As I suggested in my October 25th comments, all references to WQCC standards should be revised to indicate they are targets only. The standards used in the draft rule are used by WQCC for permitting only. Bohannon in "New Mexico Environmental Law" says"The numerical standards are preventive in the permitting process. In the remedial action process, the numerical standards are considered simply targets. Therefore, in negotiation cleanups with the groundwater bureau, the 'how clean is clean' question is subject to negotiation."

There is no need for the extensive planning and public notification in the proposed rule. The majority of spills or leaks are small and a real disaster is rare. Even a spill of 100 or 200 barrels does not require extensive planning to remediate. There are many areas of southeastern New Mexico where there is no water and a spill will never reach anything. Wells are located in remote sites. Due to these conditions there is no need or justification for

planning or public notification. Remediation should be complete before notice can be written and published. Operators cannot proceed with remediation when there is a possibility they may have to go back and take some other measures. Is it better to remediate or wait around while we plan? Smaller operators are not staffed to write plans, but they can and do remediate spills and leaks on a timely basis.

The oil and gas industry has operated in New Mexico for some 70 years and under the current Rule 116 for several years. The record in this case contains no objective, direct evidence of pollution of ground or surface waters by this industry. In spite of allegations to the contrary, there have been no proven instances of water pollution. Lee Acres which was mentioned at the hearing was not an oil and gas production site. There have been spills and leaks, but these have been remediated under the current Rule and there has been no damage to people or the environment.

A minimum of five barrels to trigger reporting requirements is too small. While I do not suggest following the BLM in all matters, they at least require a 10 barrel loss before reporting is required. In light of a 70 year old oil field, remote sites, and minimal exposure, the public health and environment will be adequately protected by a higher reporting trigger. The trigger point for a major category is too low since 100 to 200 barrels of oil or produced water spilled will be located right away and can be cleaned up in a day or two. The major reporting and planning requirements of a 25 barrel spill will only turn a job that should take an hour or maybe a half day into a project of weeks or months.

Comment were made relating to planning for the use of the environment 100 years into the future. This is ludicrous. No one can or has successfully planned that far in the future. At the rate technology changes, we cannot plan 25 years into the future. We have just been wrong in trying to plan far into the future.

Rule 19 and the amendments to Rule 116 should be quashed. Current OCD Rule 116 is adequate to protect the health and environment in New Mexico and should be retained, unchanged. In the alternative, any changes must conform to the recommendations of the oil and gas industry.

Dan Girand