



NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

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M E M O R A N D U M

TO: William J. LeMay, Chairman
Oil Conservation Commission

FROM: ROGER C. ANDERSON, Bureau Chief *[Signature]*
Environmental Bureau
Oil Conservation Division

SUBJECT: Oil Conservation Division Comments
Case 11352 and Case 11635

DATE: November 29, 1996

The Oil Conservation Division (OCD) appreciates the opportunity to comment on the testimony presented at the November 14, 1996 Commission hearing concerning the revision of Rule 116 for release notification and corrective action, and the adoption of a new Rule 19 for prevention and abatement of water pollution. Attached are the OCD comments that discuss, point by point, the written proposed changes submitted by Marathon Oil, Mack Energy, PNM, and NM Citizens for Clean Air and Water.

OCD COMMENTS
ON
MARATHON'S RULE 116, RULE 19, RULE 7 CHANGES
(NOVEMBER 29, 1996)

The OCD agrees with the following changes to proposed Rule 7, Rule 116 and Rule 19 as contained in Marathon Oil Company's November 8, 1996 "PROPOSED AMENDMENTS TO OCD RULES 7 AND 116, AND PROPOSED NEW OCD RULE 19 (OCC CASE NOS. 11352 & 11635).

General: - change #1

Rule 7: - changes #1, #2, #3 ✓

Rule 19: - changes #1, #2, #4, #5, #6, #7, #7(second one listed), #12, #13 ✓

The OCD disagrees with the remainder of the changes proposed in Marathon's November 8, 1996 document for the following reasons.

RULE 19.B.(6)(b) - Marathon Rule 19: change #3

The "feasibility of point-of-use treatment should not be included in the language. The November 14, 1996 cross examination of Ms. Toni Ristau (PNM testimony) by OCD and Donald Neeper regarding PNM exhibit 1, page 7 on Water Quality Act 74-6-4(D)(5) shows that there is no statutory support for the point-of-use treatment language. The statutory language in Water Quality Act 74-6-4(D)(5) states that the WQCC give weight to "feasibility of a user or a subsequent user treating the water before a subsequent use". This language was intended to allow the WQCC to consider beneficial reuses of effluent at waste water treatment facilities and was not intended to allow a responsible person who pollutes fresh waters to defer remediation of polluted waters until the waters are put to use. This proposed language would be a major departure from the WQCC abatement regulations and would set a different abatement standard for the oilfield industry than for other non-oilfield industries in the state. The OCD would agree to Marathon's proposed change and the placement of the change between the first and second sentence of 19.B.(6)(b) if the language "an analysis of the feasibility of the point of use treatment" is stricken from their proposal.

** OCD proposed 19.B.(6)(b) -- Between the first and second sentences, insert the following sentence: "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." ✓

RULE 19.G.(1) and RULE 19.G.(2) - Marathon Rule 19: changes #8, #9, #10, #11

The OCD agrees with Marathon that a notification provision is necessary but that a public hearing is not necessary during the Stage 1 abatement plan process. However, the OCD recommends that the OCC not adopt Marathon's proposed language for the following reasons:

- Public comment is a common participatory element when abating water pollution at large scale ground water contamination sites such as those which would be abated under Rule 19. These types of sites have a high potential for public impacts and therefore public input is necessary.
- Public comments which are addressed during the Stage 1 process could eliminate requests for public hearings during the Stage 2 abatement plan process.
- The OCD believes that the language proposed by Mr. Donald Neeper (New Mexico Citizens for Clean Air and Water) on November 14, 1996 in D. Neeper exhibit 2, page 3 of 4, 19.G.2. and page 4 of 4 19.G.3. is much clearer and more comprehensively sets out a public comment process consistent with OCD's existing policies.

Therefore, OCD recommends that the OCC not adopt Marathon's proposed language for 19.G.1. and 19.G.2 and instead adopt the November 14, 1996 proposed Rule 19.G.2. and Rule 19.G.3. language of D. Neeper on page 3 and page 4 of Neeper exhibit 2.

Rule 19.N. - Marathon Rule 19: change #14

The OCD strongly disagrees with Marathon's proposal to eliminate Rule 19.N. This section is not repetitive of the reporting requirements of Rule 116. Rule 116 applies only to reporting and remediation of unintentional spills. Rule 116, as drafted by the committee, does not address notification of water pollution that may result from a permitted discharge. Rule 19.N. requires notification of the discovery of water pollution to the OCD Environmental Bureau Chief regardless of whether the cause is a spill or a permitted discharge. The committee unanimously agreed to the need for the Rule 19.N. provisions to eliminate this loophole in Rule 116. However, the OCD understands that it may be confusing to not have reporting requirements consolidated in one location. Consequently, the OCD introduced a proposed replacement Rule 116 (OCD exhibit 2) at the November 14, 1996 OCC hearing that preserves the intent of section 19.N. as approved by the committee and consolidates all reporting requirements in one location (ie. - Rule 116). The OCD recommends that the OCC adopt OCD proposed replacement Rule 116 as set out in OCD exhibit 2.

OCD NOVEMBER 29, 1996 COMMENTS
ON
MACK ENERGY CORPORATION OCTOBER 25, 1996
PROPOSED RULE CHANGES

The comments submitted by Mack Energy Corporation (MEC) on October 25, 1996 were thoroughly discussed during the Rule 116 Committee meetings during the past year. The committee draft that was prepared for the OCC is the culmination of these discussions and already reflects the issues that MEC has recently brought up. Below is the OCD's response to MEC's comments as previously discussed at the Rule 116 Committee meetings.

NOTIFICATION

Notification to the "District Office of the Division" is already covered under the OCD's language as proposed in Rule 116.C. (OCD exhibits 1 & 2). All spills would be required to be reported to the district office.

Spill reporting and remediation on federal lands is an important part of OCD's statutory authority. All ground water within the state of New Mexico belongs to the state of New Mexico not the federal government. The authority to require remediation of spills for the protection of ground water clearly resides with the OCD since spills on federal lands have the potential to impact the states ground water resources. The issue of a burden on industry for dual reporting appears to be a moot point based on the BLM's statements at the November 14, 1996 OCC hearing that the BLM has agreed to accept the OCD's proposed spill report form (C-141) for federal spill reporting purposes.

CORRECTIVE ACTIONS

The lack of a requirement for remediation of spills is the main reason that the OCD proposed revisions to current rule 116. The committee unanimously agreed on the language requiring that a remediation plan or abatement plan be submitted to the division for approval.

RULE 19

The OCD would like to note that the Rule 116 Committee with industry support unanimously agreed upon the language contained in the Committee's proposed Rule 19. to which MEC objects.

Rule 19.A.(1).a. and Rule 19.A.(1).b.

MEC's proposal to add "responsible person" to the purpose to the regulations is unnecessary and an inappropriate location for this reference. The abatement plan requirements in Rule 19.C. already

defines who is required to submit an abatement plan.

Rule 19.A.(2).

MEC appears to be misinterpreting the language in this section. Nowhere in this regulation is there a requirement to remediate ground water or surface water to concentrations less than the background conditions. Rule 19.A.(2) clearly states that if the background conditions of the water currently exceed the standards then the responsible person must only remediate water pollution to the background conditions.

The OCD and the committee overwhelmingly agreed with MEC's contention that the oil and gas industry not be held to a different standard than other industries in the state when remediating water pollution. This reasoning led to the committee agreeing to adopt the WQCC Abatement Regulations for upstream E & P activities with only minor changes. However, the OCD strongly disagrees with MEC's assertion that the standards are only targets. The standards have never been used by the OCD or the WQCC as targets for remediation. In fact prior to the WQCC abatement regulations there was no flexibility in remedial actions. Under prior regulations if waters were contaminated they were required by regulation to be remediated to the standards or background conditions. Proposed rule 19, as does existing WQCC regulations, allows more flexibility for companies to apply for technical infeasibility or alternate standards and therefore provides companies with more remedial options than prior regulations.

Rule 19.G.

MEC appears to be under the impression that all future remedial actions will require compliance with the public notification provisions in this section. The public notification provisions only apply to those sites that are required to submit abatement plans. As the OCD testified at the OCC hearings the abatement plan provisions are reserved for those sites that have extensive ground water or surface water contamination that will take many years to clean up. In these cases there is a high likelihood of impacts on the public and therefore a need for public notification and the potential for a hearing. Under proposed Rule 116 simple remedial actions from spills will be remediated under "remediation plans" which are handled administratively by the OCD and do not require public notice and potential hearings.

Rule 19.N.

This section is not repetitive of the reporting requirements of Rule 116. Rule 116 applies only to unintentional spills. This section requires notification of the discovery of water pollution to the OCD Environmental Bureau Chief regardless of whether the cause is a spill or a permitted discharge. The committee unanimously agreed to the need for this provision to eliminate a loophole in Rule 116. However, the OCD understands that it may be

confusing to not have reporting requirements consolidated in one location. Consequently, the OCD introduced a proposed replacement Rule 116 (OCD exhibit 2) at the November 14, 1996 OCC hearing that preserves the intent of section 19.N. as approved by the committee and consolidates all reporting requirements in one location (ie. - Rule 116).

DEFINITIONS

Abatement Plan

The word "investigation" should not be removed from the definition. Investigation is an integral component of the abatement of water pollution and is commonly determined while remedial actions are ongoing.

Background

This definition is taken directly from the WQCC regulations so as to not set a different background standard for the oil field industry than applies to non-oilfield industries.

Facility

The inclusion of "motor vehicle, rolling stock, or activity of any kind whether stationary or mobile" in the definition is important for the OCD to be able to protect public health and the environment during routine accidents such as truck rollovers. The OCD has had many such accidents that have caused immediate public health threats. Without the inclusion of this language, there would be no requirement to report these incidents to the OCD nor to remediate the sites to protect public health.

Remediation Plan

The OCD believes that MEC's comments on this section are moot since Marathon and PNM have proposed changes to this definition and OCD agrees with Marathon's and PNM's proposed language for this definition.

Responsible Person

The OCD strongly disagrees with MEC's proposal that corrective action be approved only by the "District Office of the Division". This definition applies to the proposed regulations for abatement of water pollution. According to the policy of the Director, investigation and remedial actions for abatement of water pollution are implemented by the OCD Environmental Bureau staff due to their expertise. This would eliminate the Director's discretion to set policy.

Water Contaminant

The term "alter the quality of water" should not be deleted. As the OCD testified at the November 14, 1996 OCC hearing, there are many oil field chemicals for which there are no water standards (ie. glycol, methanol, amines, treatment chemicals, etc.). However, the presence of these chemicals in water can make the water unusable and cause public health threats and possibly death. Therefore, it is important to maintain this language. Removal of this language would also create a different standard for the oilfield industry than for other industries in the state.

OCD COMMENTS
ON
PNM'S NOVEMBER 14, 1996 RULE 116, RULE 19, RULE 7 CHANGES
(NOVEMBER 29, 1996)

The proposed changes presented by PNM at the November 14, 1996 OCC hearing are identical to those submitted by Marathon with a few exceptions. The OCD refers the OCC to the "OCD COMMENTS ON MARATHON'S RULE 116, RULE 19, RULE 7 CHANGES (DECEMBER 2, 1996) with the following exceptions which were not addressed by Marathon.

RULE 7

"Director" - PNM exhibit 1, page 6

The OCD believes the addition of a definition for the director is unnecessary but does not object to this addition.

"Hazard To Public Health" - PNM exhibit 1, page 6 & 7

The "feasibility of point-of-use treatment should not be included in the definition. A hazard to public health exists regardless of treatment. Treatment at the point-of-use only reduces the potential for the hazard to be passed on to the user. In addition, the November 14, 1996 cross examination of Ms. Toni Ristau (PNM testimony) by OCD and Donald Neeper regarding PNM exhibit 1, page 7 on Water Quality Act 74-6-4(D)(5) shows that there is no statutory support for the point-of-use treatment language. The statutory language in Water Quality Act 74-6-4(D)(5) states that the WQCC give weight to "feasibility of a user or a subsequent user treating the water before a subsequent use". This language was intended to allow the WQCC to consider beneficial reuses of effluent at waste water treatment facilities and was not intended to allow a responsible person who pollutes fresh waters to defer remediation of polluted waters until the waters are put to use. This proposed language would be a major departure from the WQCC abatement regulations and would set a different abatement standard for the oilfield industry than for other non-oilfield industries in the state. Therefore, for the above reasons the OCD recommends that the OCC not adopt this language in defining if a hazard to public health exists.

OCD COMMENTS
ON
D. NEEPER'S RULE 116, RULE 19, RULE 7 CHANGES
(NOVEMBER 29, 1996)

The OCD agrees with the following changes to the sections listed below as contained in D. Neeper's November 14, 1996 Exhibit 2 "NMCCAW CHANGES FOR RULES 116, A7 AND 19" on pages 2, 3 and 4 .

Rule 7: - change in definition of "REMEDIATION PLAN"

Rule 19.D(1)(g)

Rule 19.G.2

Rule 19.G.3

Rule 19.L.

Rule 19.H.

The OCD disagrees with the remainder of the changes proposed in Neeper's November 14, 1996 document for the following reasons.

RULE 116 - pages 1 and 2

The OCD agrees with the proposal to add reporting provisions for cumulative effects of spills as contained in Neeper Rule 116.B.3.b. However, the OCD believes that the structure of rule 116 as proposed by Neeper is confusing. The OCD recommends that the OCC adopt the OCD's proposed replacement Rule 116 (exhibit 2) with the addition of the language in Neeper Rule 116.B.3.b. for cumulative effects of spills.

Rule 19.N. - page 4

The OCD strongly disagrees with Neeper's proposal to eliminate Rule 19.N. This section is not repetitive of the reporting requirements of Rule 116. Rule 116 applies only to reporting and remediation of unintentional spills. Rule 116, as drafted by the committee, does not address notification of water pollution that may result from a permitted discharge. Rule 19.N. requires notification of the discovery of water pollution to the OCD Environmental Bureau Chief regardless of whether the cause is a spill or a permitted discharge. The committee unanimously agreed to the need for the Rule 19.N. provisions to eliminate this loophole in Rule 116. However, the OCD understands that it may be confusing to not have reporting requirements consolidated in one location. Consequently, the OCD introduced a proposed replacement Rule 116 (OCD exhibit 2) at the November 14, 1996 OCC hearing that preserves the intent of section 19.N. as approved by the committee and consolidates all reporting requirements in one location (ie. - Rule 116). The OCD

recommends that the OCC adopt OCD proposed replacement Rule 116 as set out in OCD exhibit 2.