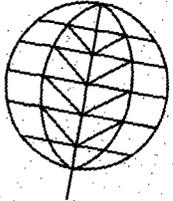




Oil & Gas Accountability Project
 a program of EARTHWORKS



October 25, 2005

Mark E. Fesmire, Esq.
 Director
 Oil Conservation Division
 1220 S. Saint Francis Drive
 Santa Fe, NM 87505

RECEIVED

OCT 28 2005

OIL CONSERVATION
 DIVISION

Re: OGAP Comments on proposed amendments to Rules 19.15.2.51 - 53

Dear Mr. Fesmire,

The Oil & Gas Accountability Project ("OGAP") would like to commend the Oil Conservation Division for drafting comprehensive and protective rules relating to the transportation and disposal of produced water and other oilfield wastes and the regulation of surface waste management facilities. The State of New Mexico is taking a proactive position in amending problematic rules throughout the OCD rulebook that have caused either confusion or misinterpretation, or have not adequately protected New Mexico's environment and its people. While the proposed surface waste management rules and the transportation and disposition rules are taken largely from existing rules, the proposed changes go a long way towards clarifying applicability and ensuring public safety and environmental health now and into New Mexico's future. OGAP would like to make the following comments to specific provisions of the proposed rules.

51 D. and 53 C. (7) OGAP believes the creation of a certain standard that allows the OCD to deny approval of Form C-133 is critical and that was lacking under Rule 710. However OGAP also is aware that industry is resistant to this provision based on the 5% interest standard. In the event this percent interest was increased to 10% in order to garner more public support, OGAP would still believe the rule to be an effective tool to address the "bad actor" problem.

51 B. (1) The proposed rule no longer contains provisions requiring that produced waters be placed in tanks or other impermeable storage at drill site facilities, as rule 710B required. The proposed rule requires water to be held in a manner that "does not constitute a hazard to freshwater," which is a higher standard than Rule 710B which stated that water "will not be constituted as a hazard to fresh water supplies provided the produced waters are placed in tanks or other impermeable storage..." But the utilization

of tanks is a necessary means of ensuring that fresh water is not put at risk and therefore the OCD should consider the following language:

(1) delivery to a permitted salt water disposal well or facility, secondary recovery or pressure maintenance injection facility, surface waste management facility or to a drill site for use in drilling fluid in a manner that does not constitute a hazard to fresh water, public health or the environment. *On drill sites specifically, the produced water shall be placed in tanks or other impermeable storage* in a manner that does not constitute a hazard to fresh water, public health or the environment; or

53 B. (6) & (7) It was clear from the public meeting on Rule 53 that there is a need to specifically identify or define major facilities and minor facilities as well as determine when a modification triggers the requirement to comply with the new rules. The criteria for determining whether a modification is major or minor may best be determined by the OCD itself, but as to when a modification must comply, OGAP wishes to comment. Under existing Rule 711B, commercial and centralized facilities, including facilities in operation on the effective date of Rule 711, new facilities, and all facilities prior to major modification or expansion, have to comply with the application requirements of Rule 711. OGAP reads this provision to require that all surface waste facilities comply with Rule 711, regardless of the stage in permit application or whether a major modification is being made. In other words, the rule applies to all facilities and OGAP believes the same standard should apply to proposed Rule 53. For facilities that are currently in the permitting stage, compliance with Rule 53 should be required.

53 C. (1) The provisions under this section are similar to the provisions of 711B.(1) however; under 711B.(1)(f) applicants must submit a contingency plan for reporting and cleanup of spills or releases. OGAP believes this should also be included in 53C.(1) unless spills and releases are adequately dealt with elsewhere.

53 C. (1)(i) While plans for the re-seeding of native grasses are important, plans for the successful germination and growth of the native grasses are more important. Therefore, OGAP would like to see language added requiring applicants to provide plans not only for re-seeding, but for maintenance until such time as the grasses have fully reclaimed a closed area and become fully stabilized and viable, sufficient to prevent erosion. Two years of survival under natural conditions after artificial irrigation has ceased would be appropriate.

53 C. (4)(g)(ii) This provision allows the director to schedule a public hearing if he or she determines that there is "substantial" public interest in the application. OGAP would like the word "Substantial" to be changed to "significant" as it was written in 711B.(20)(c)

53 H. (4) In monitoring evaporation ponds for leaks, requiring only monthly monitoring is insufficient. Weekly monitoring is more appropriate and should be required.

53 I. (3)(b)(i) While lining landfill cells is of crucial importance, we are unclear about the appropriateness of covering a cell with a 40-mil thick liner. OGAP would like to know what the scientific rationale is for covering a cell as a closure practice. We believe that it may be environmentally preferable to not use a synthetic liner as a cover, but rather to utilize a clay layer. While the objective is to prevent the entry of moisture, it is also beneficial to allow for evapotranspiration, which a synthetic liner would prevent. Synthetic liners also have the ability to tear, which could allow the entry of moisture, which a clay layer might avoid. The clay layer must be covered with a sufficient amount of soil (at least 2 feet) as well.

As we are unclear what the Division's basis for choosing synthetic liners, we request that the OCD provide such additional rationale at the formal hearing and comment on our suggestion of utilizing clay and soil for proper landfill closure.

OGAP has begun our review of the proposed changes to Rule 50, the Pit Rule, and will be making separate comments on that rule. However, as I brought up the issue of how landfarming and landfill practices are addressed at the well site in the informal meeting on October 11th, I would like to reiterate OGAP's concerns. While more stringent application and operational standards applied to commercial surface waste facilities do not have a direct impact on producers, more stringent regulations could have an effect on how centralized facilities function. Unless equally stringent standards apply to well sites for the disposal of harmful wastes, then producers will be less inclined to utilize centralized facilities. If well site discharge permits or pit standards are significantly more lenient than standards applicable to centralized facilities regarding certain wastes, then New Mexico will see an increase in waste discharge and disposal on site, creating a multitude of less-manageable small sites across the state rather than fewer more regulated and controlled centralized sites. Therefore, our support of Rule 53 comes with a caveat that we believe the OCD must ensure that equally stringent well site standards apply to produced water and oilfield waste disposal and discharge. Our comments on Rule 50 will reflect this concern.

Respectfully submitted,



Carolyn Lamb
Staff Attorney
Oil & Gas Accountability Project