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Devon Energy Corporation
20 North Broadway
Oklahoma City, Oklahoma 73102-8260

October 27, 2005

Mr. Mark E. Fesmire, P.E., Director
Oil Conservation Division
New Mexico Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Re: Comments
Proposed Surface Waste Management Facility Rule
Sections 19.15.2.51, 19.15.2.52 and 19.15.2.53

Dear Mr. Fesmire:

Devon Energy Corporation (Devon) appreciates the opportunity to submit the attached comments on the proposed Surface Waste Management Facility Rule (Sections 19.15.2.51, 19.15.2.52 and 19.15.2.53 of the New Mexico Administrative Code). Our comments primarily focus on the fact that transporters should be responsible for their own compliance activities and on items that should be clarified prior to the rule being finalized. We appreciate your consideration of our comments.

Additionally, Devon understands that the New Mexico Oil and Gas Association (NMOGA) is submitting comments on the proposed rules. Devon supports the NMOGA comments.

Should you have any questions, please call me at (405) 552-4516.

Sincerely,

Ronald D. Truelove
Western Division EHS Manager

cc: Bob Gallagher, NMOGA
Linda Guthrie, Randy Maxey – Devon
John Prather – Devon
Mike Myers – Devon
Ray Payne – Devon
Rich McClanahan – Devon
Sam Sitton – Devon
Don DeCarlo - Devon
File

COMMENTS
PROPOSED SURFACE WASTE MANAGEMENT FACILITY RULES
DEVON ENERGY CORPORATION

Devon Energy Corporation (Devon) is pleased to submit the following comments regarding the proposed Surface Waste Management Facility Rules to be located at Sections 19.15.2.51, 19.15.2.52 and 19.15.2.53 of the New Mexico Administrative Code (NMAC).

1. Section 19.15.2.51 A, B and C:

   Devon does not object to transporters being required to have an approved form C-133 with the Oil Conservation Division (OCD) to be allowed to transport produced water or other oilfield waste. However, the final rule should provide an effective date that is at least 60 days from the promulgation date of the final rule for transporters to file the form C-133. Also transporters should be allowed to continue to transport produced water and other oilfield wastes while they await approval of their form C-133.

2. Section 19.15.2.51.C:

   According to Section C, no owner or operator may allow fluids to be removed from their location unless the transporter has an approved C-133. Devon strongly believes that owners and operators should not be responsible for transporter compliance. We do not mind requiring compliance with applicable laws and regulations in our contracts with transporters. However, the transporters themselves should be responsible for their own compliance activities. This section should be removed from the final regulations.

3. Section 19.15.2.51.D:

   Section D discusses the reasons a transporter may not receive approval of their submitted form C-133. This section should be re-written to be consistent with the recently proposed enforcement rules.

4. Section 19.15.2.52.A:

   Section A states that except as authorized in the pit rule, no person, including a transporter, may dispose of oil field waste in any pond, lake, depression, draw, pit or watercourse or in any manner that may constitute a hazard to fresh water, public health or the environment. The words "depression or draw" are so broad that a leak or spill could be interpreted as disposal. Leaks and spills should be explicitly excluded from the definition of disposal in the final rule. Additionally, the rule should state that no person may willfully or knowingly dispose of oil field waste in any pond, lake, drainage, or watercourse or in any manner that may constitute a hazard to fresh water, public health, or the environment. Using the term "drainage" may be a little more specific to indicate the OCD's intent to prevent disposal in areas where rain water could transport the material to ponds, lakes, or other watercourses.

5. Section 19.15.2.53.A:

   Section A requires a permit to operate a surface waste management facility, but also provides certain exceptions that relate to oil and gas operators. Centralized facilities that only take waste from one well and centralized facilities that only receive wastes that are RCRA exempt, receiving less than 50 bbls/day of liquids and have a capacity to hold 500 bbls or less or 1400 cubic yards of solids and are permitted under the pit rule are specifically excluded from the need for a permit. Generally, the oil and gas

industry refers to a centralized facility as a facility that receives oil, gas, or produced water from multiple wells, not a single well. Therefore, the exemption for centralized facilities is not really an exemption from a practical matter. The exemption should be extended to centralized facilities that only receive wastes not subject to the Resource Conservation and Recovery Act (RCRA) from wells operated by the same company, no matter how many wells. By making this change, Section 19.15.2.53.A.2.b can be deleted.

Additionally, this section should be modified to explicitly state that it applies to new and modified facility as per Section 19.15.2.53.C.

6. Section 19.15.2.53.B.:

The definition of a surface waste management facility should explicitly exclude drilling reserve pits.

In the definition of a surface waste management facility, three exemptions are listed. Specifically, facilities that utilize permitted Safe Drinking Water Act (SDWA) Underground Injection Control (UIC) wells and do not use below ground tanks, land application units, pits, or ponds; temporary storage of oil field wastes in above ground tanks; and facilities permitted under the water quality control commission are exempted. Devon reads this part of the rule to mean that above ground produced water storage tanks and associated UIC wells permitted under the SDWA are not considered to be surface waste management facilities. As such, above ground produced water storage tanks and associated UIC wells are not subject to the permitting required by Section 19.15.2.53.A. Because of the confusing nature of the draft language and the deductive reasoning necessary to draw the above conclusion, Devon suggests that the rule explicitly exempt above ground produced water storage tanks and associated UIC wells from surface waste management facility permitting.

The term "temporary storage" needs to be defined to eliminate confusion. Devon suggests that storage less than 12 months be considered temporary.

This section includes a definition of a major modification that includes "an increase in the land area occupied by the permitted facility, a change in the nature of the permitted waste stream or addition of a new treatment process." Any increase in the land area, nature of the permitting waste stream, or addition of a new treatment process is overly restrictive. These types of changes are clearly modifications to facilities. However, they should not be considered "major modifications."

Air quality rules developed by U.S. EPA and many states provide a good example of a way to more clearly define the term "major modification." Generally, these air quality rules rely on a capital expenditure of 50 percent of building a new facility for the change to be considered major enough to be a modification, resulting in treating the facility as if it is "new" from a regulatory perspective (see New Source Performance Standards 40 CFR Part 60 Subpart A). Devon suggests using a 50 percent capital expenditure percentage on the facility as a simple way to define a major modification. Utilizing this approach, a "major modification" would be defined as "a change to the facility that results from a capital expenditure greater than or equal to 50 percent the cost of completely rebuilding the facility."

Additionally, use of the phrase "change in the nature of the permitted waste stream" is too broad. The OCD's concerns are toxicity and potential risk to soils and groundwater. Therefore, the owner or operator of a facility should not be penalized with the need for a permit when a waste stream's nature changes for the better. This phrase needs to be reworded to only require a permit when changes in the nature of the permitted waste stream increase its potential impacts on the environment or its permitted characteristics.

7. Section 19.15.2.53.C:

The wording in this section provides for interpretive confusion. The terms "commercial or centralized facilities" are not required in this section. This section should be interpreted that permits are required for new and modified centralized facilities unless they are specifically exempted in Section 19.15.2.53.A. This section should just reference that permits are required for all new and modified surface waste management facilities. With the definition that exists for surface waste management facility, this would alleviate confusion.