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28 December 2005

VIA HAND DELIVERY

Ms. Florene Davidson
EMNRD Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

RE: Case 13586: Application for the New Mexico Oil Conservation Division for Repeal of Existing Rule 709, 710 and 711 Concerning Surface Waste Management and Adoption of New Rules Governing Surface Waste Management:

NMOGA's Notice of Recommended Modifications

Dear Ms. Davidson:

The following comments are provided on behalf of the New Mexico Oil and Gas Association on the draft of the Oil Conservation Division's Surface Waste Management Rules that will be considered at the January 12th, 2006 Oil Conservation Commission meeting. Individual member companies have also submitted comments on these proposed rules and will be in attendance at the January 12th, 2006 meeting to provide further comment on the current proposal. It is our understanding that following this meeting a revised draft will be prepared by the Division and additional comments will be received by the Commission following the release of the revised proposal.

We support regulation by formal rule, not by guideline, and believe the development of appropriate rules for surface waste management and disposal are in the best interest of both the Oil Conservation Division and Commission and the oil and gas industry. Furthermore, we believe that the extension of the hearing schedule on these rules and the resulting additional comment period provides much needed time to work on the proposed rules.

The members of the New Mexico Oil and Gas Association support rules and regulations that protect the water resources of this state and encourage the development of our resources in a way that protects

human health and the environment. However, we are concerned that the proposed rules may unnecessarily limit disposal options and will encourage unscrupulous operators to dispose of wastes in ways that will violate the Oil Conservation Division's rules and orders. We also believe that certain provisions in the proposed Surface Waste Management Rules overlap with the provisions of the pending pit rules and that these provisions should be incorporated into and reviewed in the meetings and hearings on those rules.

SPECIFIC COMMENTS:

RULE 51 (19.15.2.51 NMAC): TRANSPORTATION OF PRODUCED WATER, DRILLING FLUIDS AND OTHER OILFIELD WASTE:

Proposed Rule 51.A

This rule provides that any transporters (both operators and non-operators) shall obtain a C-133 to be authorized to move all oil field waste.

- NMOGA objects to expanded language that includes all oil field wastes as requiring C-133 authorization rather than the current rule which only requires a C-133 authorization of produced water.
- NMOGA would like to point out that from our own internal review of industry records and from the lack of any problems that have been identified by NMOCD there is no evidence that existing waste management practices have caused problems that adversely impact public health and the environment.
- NMOGA can see no benefit to the environment or public health as a result of adopting these proposed surface management rule changes. During the most recent public meeting on Wednesday, December 8, 2005, the discussion of potential benefits included the issue leaky trucks, which implies that the rules would directly improve this alleged problem. NMOGA would question the effectiveness of these rules improving the frequency of leaky truck issues as it would only require the haulers to register with NMOCD. Neither NMOCD nor industry has the resources to be present as each waste load leaves a location to police the integrity of the tanks and valve seals. The NM Department of Transportation has jurisdiction over all transportation of hazardous materials, including solid and liquid wastes, and the proper authority to enforce this issue is already vested in their rules. During this same public meeting the discussion also raised the issue of illegal dumping. NMOGA again questions the effectiveness of these rules in preventing illegal dumping, other than the language making it more clear on what is disallowed. NMOGA and its member companies are in full support of reasonable measures that will prevent this practice but we do not believe that requiring this additional licensing will be effective. From our perspective, the most effective measure would be to catch

- such illegal activity (irrespective of an approved C-133) and allow our internal contracting to “ban” these offenders from further work. This does not preclude the NMOCD from taking civil and criminal action against these offenders but the key is to catch this illegal activity and to take appropriate action as noted above.
- NMOGA believes that operator owned equipment should be exempted from any requirement to have a C-133, even for produced water hauled from that operator wells.
- As provided by the verbal testimony of Ken Marsh at the December 8, 2005 public meeting, NMOGA agrees with his comments that the requirement for a C-133 to haul impacted soils from cleanups has the potential affect of delaying these vital actions. Although most cleanup actions can utilize a single contractor to complete the excavation and hauling of impacted soils, some projects result in much larger quantities than originally anticipated and the use of independent trucking outfits, under the direction of the primary contractor, makes both economic and environmental sense to cleanup the site in a timely fashion. By requiring the C-133 of these small, independent contractors, NMOGA envisions this as a potential impediment and would recommend that the NMOCD allow such small, independent haulers to work under the C-133 of a larger company.

NMOGA Recommended Language

19.15.2.51 TRANSPORTATION OF PRODUCED WATER

A. No person shall transport any produced waste, except for small samples removed for analysis, by motor vehicle from any lease, central tank battery, or central facility without an approved form C-133. The transporter shall maintain a photocopy of the approved C-133 in any transporting vehicle.

Proposed Rule 51.C

This rule requires an approved Form C-133 (authorization to remove all oil field waste) anytime any water, other fluid or all oil field waste is moved. Under the proposed rule, operators would need an approved C-133 to move water from one well site to another.

Currently OCD approval is not required to move produced water from one site to another and in the San Juan Basin where operators regularly recycle produced water. NMOGA recommends that if an operator is recycling produced water for drilling, this water should not be classified as waste and thereby not be subject to the provisions of this rule.

Under this rule it would be the operator's duty to assure that any water hauler it uses is in good standing with the Oil Conservation Division. Since the proposed rule places responsibility on the operator to determine if the water haulers they use are in good standing, the division should provide notice of the revocation of forms C-133 and

thereby provide the information needed by operators to assure they only use water haulers who are in good standing.

To address this problem, NMOGA adopts Yates Petroleum Corporation's comments dated October 13, 2005 that recommend that proposed 19.15.2.51 (C) and (E) be amended to read:

C. No owner or Operator shall permit produced water or other oil field waste to be removed from its leases or field facilities by motor vehicle except by a person possessing an approved form C-133 (where required), except that an owner or operator that has (1) verified that a person has an approved C-133; and (2) requested notice from the division of any revocations of forms C-133, may permit produced water or other oil field waste to be removed by that person until ten days after receiving notice from the division's Santa Fe office that the person's form C-133 has been suspended or revoked pursuant to Paragraph (E) of this Rule.

E. Cancellation or suspension of authorization to move produced water and oil field wastes. Vehicular movement or disposition of produced water or oilfield wastes in any manner contrary to division rules shall be cause, after notice and opportunity for hearing, for cancellation or suspension of a transporter's **form C-133**. The division shall provide written notice of any such cancellation or suspension to owners or operators requesting notice of such actions.

RULE 52 (19.15.2.52 NMAC): DISPOSITION OF PRODUCED WATER AND OTHER OIL FIELD WASTES:

Proposed Rule 52.A(1)

NMOGA would recommend adding clarifying language that prohibited dispositions include any discharge that is not authorized by the operator and that authorized dispositions must obtain the prior authorization of the operator. This is important to preclude illegal dumping activity.

NMOGA Recommended Language

DISPOSITION OF PRODUCED WATER AND OTHER OIL FIELD WASTES
[19.15.2.52]

- A. Prohibited dispositions. Except as authorized by 19.15.2.50 NMAC or 19.15.2.53 NMAC, no person, including any transporter, shall dispose of produced water or other oil field wastes:

- (1) on the surface of the ground, in any pit not authorized by the operator, or in any pond, lake, depression or watercourse; or
 - (2) in any other place or in any manner that may constitute a hazard to fresh water, public health, or the environment.
- B. Authorized disposition of produced water. The following methods of disposition of produced water are authorized:
 - (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 that is authorized by the operator in a manner that does not constitute a hazard to fresh water, public health or the environment; or
 - (2) use in accordance with any division-issued use permit.
- C. Authorized disposition of recovered drilling fluids and other oil field waste. Other oil field waste shall be disposed of by transfer to an appropriate surface waste management facility or injection facility that is authorized by the operator or as otherwise authorized by the division. Recovered drilling fluids may be transported to other drill sites authorized by the operator for reuse provided that such fluids are transported and stored in a manner that does not constitute a hazard to fresh water, public health, or the environment

RULE 53 (19.15.2.53 NMAC): SURFACE WASTE MANAGEMENT FACILITIES:

Proposed Rule 53

Sections A and B should be reversed so the definitions appear first.

Proposed Rule 53.A.(2)(b)

This rule should be amended to eliminate the “less than 50 barrels of liquid per day” requirement to be exempt from the permitting provisions of Rule 53 (19.15.2.53 NMAC). Some operators remove water other than at daily intervals therefore making this provision inappropriate.

Proposed Rule 53.B (5) (Definition of “centralized facility”)

The focus of the proposed rule on a single “entity” is inconsistent with industry practice. Operating entities are sometimes made up of complex mixtures of subsidiaries and affiliated companies that cooperate to produce oil and gas. The proposed rule will

cause extreme hardship and operational dislocation. The current definition is preferable to the definition now being proposed by the Oil Conservation Division.

NMOGA Recommended Language

(2) A centralized facility is defined as a surface waste management facility that accepts only waste generated in New Mexico and that:

- (a) does not receive compensation for waste management;**
- (b) is used exclusively by one generator subject to New Mexico's "Oil and Gas Conservation Tax Act" Section 7-30-1 NMSA-1978 as amended; or**
- (c) is used by more than one generator subject to New Mexico's "Oil and Gas Conservation Tax Act" Section 7-30-1 NMSA-1978 as amended under an operating agreement and which receives wastes that are generated from two or more production units or areas or from a set of jointly owned or operated leases.**

Proposed Rule 53.B(6)

The definition of a "major modification" as is vague and broad. We object to any language that gives the Division discretionary authority to require public notice for any modification other what is required by the rule.

NMOGA Recommended Language

(6) A major modification is a modification of a facility that meets the following criteria:

- An increase expenditure that results in an increased capital value of 50% above the existing facility; or**
- The plan to receive different types of waste and/or increased volumes of existing waste that have a reasonable probability to adversely affect public health and the environment.**

Proposed Rule 53.C(1)(I)(v)(vi)(vii)

NMOGA recommends that the provisions of the proposed rule related to the level of geological/hydrological data required be amended to limit this data to the shallowest fresh water aquifer or 100 feet below the surface of the ground water, whichever is less, as contained in the amendments to the proposed rule recommended by Yates dated 10/13/05.

The data required by the proposed rule would be expensive and difficult to obtain. This proposed amendment will still provide the data needed for proper permitting of the facility and is consistent with the pit guidelines. If additional data is needed, the division has authority to require it under proposed 19.15.2.53(C) (1)(I).

NMOGA Recommended Language

(v) soil types beneath the facility, including a lithologic description of all soil and rock members from ground surface to the shallowest fresh water or 100 feet below ground surface, whichever is less;

(vi) geologic cross-section to the shallowest fresh water aquifer or 100 feet below ground surface, whichever is less;

(vii) if the depth to groundwater is 100 feet or less, potentiometric maps for the shallowest fresh water aquifer;

Proposed Rule 53. (D)(1)(a)

This rule should be amended to provide that the division **shall** issue a permit when the conditions of this rule are met by the applicant.

Proposed Rule 53.D(2) (Denial of application for permit or modification of facility).

Again, the proposed language is vague. The language that the Division may deny an application for a permit or modification of a permit if it finds the proposed facility or modification "may endanger fresh water or may be detrimental to public health or the environment" should be amended to provide that a permit may be denied if the proposed facility **"endangers fresh water or is detrimental to public health or the environment."**

Proposed Rule 53.(D)(3) (Imposition of additional permit requirements)

This provision should be amended to provide an opportunity to appeal additional permit conditions or requirements.

Proposed Rule 53.(E)

This rule should be amended to require the listed Operational Requirements only **for Permitted Facilities** and not for temporary or exempted landfarms which do not require a permit. NMOGA believes temporary landfarms (i.e. remediation of spills) do not need to follow such stringent requirements.

Proposed Rule 53.(E)(5)

As indicated by David Brooks during the December 8, 2005 public meeting, NMOCD announced their intent to add language that would prohibit the disposal of regulated

NORM wastes within either a landfill or landfarm cell. NMOGA agrees that oil field waste that contains NORM above regulated limits should not be accepted but that oil field waste containing NORM below regulated limits is acceptable and should be allowed.

Proposed Rule 53.(E)(2) (Location of facilities in a watercourse or lakebed)

What is the OCD's authority for promulgating this rule? Although NMOGA appreciates the improved language change in defining this term, we believe that it still allows the misinterpretation of some man-made and natural water conveyances as "watercourses". The terms "Watercourse" and "Storm Water Plan" should be defined in the rule.

Furthermore, existing facilities should be grandfathered under this rule unless a major modification has been made and it should be amended to provide that 'No new waste management facility shall be located in the areas stated (i.e., water course, lake bed, etc.).

NMOGA Recommended Language

A watercourse is defined as "Watercourse shall mean any lake bed or gully, draw, stream bed, wash, arroyo or channel that is delineated on a USGS Quadrangle map having a scale factor of 1:24,000 or which clearly has a hydraulic connection to rivers, streams, or lakes. Watercourses under this definition do not include human-made channels, ephemeral washes, or arroyos which are not delineated on a USGS Quadrangle map having a scale factor of 1:24,000 or which clearly are not connected hydraulically to rivers, streams, or lakes." ..."

Proposed Rule 53.(F)

This rule should be amended to require the listed operational Requirements only– **for Permitted** landfills. This would make it clear that this rule does not apply to exempt facilities. Otherwise this rule is arbitrary. Objective standards are needed.

Proposed Rule 53.(G)

This rule should be amended to provide operational requirements – **for Permitted** landfarms. It should be made clear that this rule does not apply to exempt facilities.

Proposed Rule 53.(G)(6)

This rule addresses treatment zones for permitted landfarms. It requires that four samples be taken from soils no deeper than 3 feet below the surface of the cell. However, the required sampling will violate the integrity of the cell.

This rule adds TPH as a regulated constituent in soil for the first time. Its inclusion violates common sense and solid science and it should be removed. Furthermore, the inclusion of TPH in this rule could lead to unnecessary litigation. The analysis of benzene, toluene, ethylbenzene and xylenes as required by this rule captures the concerns of the division significantly better than the nonspecific TPH analysis.

Proposed Rule 53.G(9)

This rule should be amended to require soils shall be disked **quarterly**, not “biweekly.” Experience shows good results are obtained with quarterly disking. The rule should also authorize “other acceptable operational practices” approved by the division.

Proposed Rule 53.G(12)

This rule should be amended to provide that an operator must provide **notification to the division prior** to adding microbes instead of requiring the operator obtain “prior division approval.”

Proposed Rule 53.H

This rule establishes operational requirements for evaporation ponds.

The provisions of this rule may conflict with the division’s proposed Pit Rule. This provision should be eliminated from the Surface Waste Management Rules and replaced with a reference to Rule 50.

Proposed Rule 53.I (3)(a) (ii)

This rule sets facility closure standards. TPH should be deleted from this rule. See comment on Rule 53.F (4). The rule should also be amended to identify whether “composite samples” or “discreet samples” are required.

Proposed Rule 53.I (3)(d) (iii)

NMOGA recommends that NMOCD adopt language consistent with the federal storm water regulations that call for achieving a 70% of native density of prevailing native grasses. This rule would only apply to non-Federal owned or controlled surfaces since those government agencies prescribe the type and density of coverage under their regulations.

Specifically, the proposed wording is as follows.

NMOGA Recommended Language

(iii) landfarmed soils that have not been or cannot be remediated through the above standards or removed, and the cell filled with native soil and revegetated. Re-vegetated shall mean seeding or planting a site with perennial vegetative cover that achieves a 70% density of that occurring naturally in the surrounding terrain.

Proposed Rule 53.I (3)(F)

This rule addresses closure standards for evaporation ponds. This provision should be moved to the proposed pit rule.

CONCLUSION

The New Mexico Oil and Gas Association appreciates this opportunity to comment on the Oil Conservation Division's proposed Surface Waste Management Rules. NMOGA will provide additional comments on the rules once amended by the division and will participate in the January 12th, 2006 hearing on these proposals.

If you have questions, or require additional information, please feel free to contact myself, Bill Carr, Holland & Hart, co-chair, NMOGA Regulatory Practices Committee or Bruce Ganter, Burlington, Chairman, NMOGA Environmental Affairs Committee.

Sincerely,



Deborah Seligman
Director Governmental Affairs

cc: Bob Gallagher, NMOGA President