

September 6, 2006

Ms. Florence Davidson  
Oil Conservation Division  
1220 S. Saint Francis Drive  
Santa Fe, NM 87505

SENT VIA FAX (505) 476-3471  
AND ELECTRONIC MAIL

Re: Case 13586 - Oil Conservation Division revision to Rules 19.15.2.51 – 53,  
(Surface Waste Management Rules), OGAP final written comments.

Dear Oil Conservation Commission,

The Oil & Gas Accountability Project (“OGAP”) would like to submit the following written comments on the above referenced proposed rule changes. OGAP is largely in support of the proposed changes and believe that the proposed rule changes reflect a balanced and science-based set of rules relating to the transportation and disposal of produced water and other oilfield wastes and the regulation of surface waste management facilities. Therefore, OGAP strongly urges the Commission to move forward and adopt the revised rules at its September 21, 2006 hearing.

The process for reaching this point has been long, arduous and convoluted for all participants, extending over a twelve month period. All participants have had a full and complete opportunity to present evidence, examine witnesses and make arguments. This Commission, at the direction of the Governor’s office, has gone so far as to hold open the proceedings for 3 additional months to allow a task force of irregular nature to make a written report regarding further possible changes to the rules. OGAP believes that now the time has come for this Commission to fulfill its responsibilities by making a decision regarding the proposed changes without further delay.

OGAP has reviewed the recommended changes proposed by the “stakeholder task force”. We have the following comments regarding the proposed recommendations contained in the Final Report of that group.

1. We believe that this Commission should disregard the General Comment regarding ‘natural soil concentrations’ as being unsupported by any testimony or evidence in the record. Secretary Prukop’s June 23, 2006 terms of reference for the ‘task force’ were that it “address issues based on evidence already in the record”. Having sat

through the days of testimony by industry, OCD and citizen experts, we heard no mention of this issue in any of the testimony. Therefore, the Commission should not consider this recommendation, as it is not based upon evidence already before the Commission.

2. We believe that recommended changes 1, 2, 3, 4, 5, 6, 7, 9, 10 and 12 in the Final Report were the subject of extensive testimony and exhibits during the hearing, and that these recommended changes would be protective of groundwater, public health and the environment. Therefore, we urge the Commission to incorporate these proposed amendments into the final rules.

3. We urge the Commission not to adopt recommended change 13, regarding a proposed amendment to the Transitional Provisions of the rules. There was no testimony regarding this provision during the hearing and no evidence submitted that OGAP is aware of that addressed the question of the number of existing landfarm cells that might be affected by the rule. If the industry believed that it needed ten years to close or bring existing cells into compliance with the rule, it could have presented such testimony during the hearing. In short, the issue was never raised by the industry prior to the task force proceedings. Therefore, this Commission should not adopt this proposed amendment in the absence of compelling evidence already in the record, given the almost certain elevated risk of contamination these 'grandfathered' landfarm cells would pose to the environment.

Respectfully submitted,

Bruce Baizel  
Staff Attorney  
Oil & Gas Accountability Project