

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:**

**CASE 11143 - (REHEARING)
ORDER NO. R-10411-A**

**APPLICATION OF THE OIL CONSERVATION
DIVISION FOR AN ORDER AMENDING RULE
711 OF ITS GENERAL RULES AND REGULATIONS
PERTAINING TO THE PERMITTING OF SURFACE
WASTE DISPOSAL FACILITIES.**

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 o'clock a.m. on September 28, 1995, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission".

NOW, on this 9th day of November, 1995, the Commission, a quorum being present, having considered the record and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) On July 10, 1995, the Commission entered Order R-10411 adopting a "Revised Rule 711" which substantially revised Oil Conservation Division General Rule 711.

(3) On July 10, 1995, two of the interested parties of record in this case, the New Mexico Oil & Gas Association ("NMOGA") and Controlled Recovery, Incorporated ("CRI") filed an application for rehearing asking the Commission to reconsider Revised Rule 711 as to ten substantive issues and two procedural issues.

(4) On August 10, 1995, the Commission granted this application for rehearing and on September 28, 1995, held a public hearing to consider the issues raised in the application for rehearing at which time additional evidence and arguments were presented by NMOGA, CRI, the Oil Conservation Division and others.

(5) Based upon the evidence and record presented at the rehearing of this matter, the Commission finds that Revised Rule 711 as adopted by Order R-10411 should be withdrawn and replaced by Replacement Rule 711 as adopted by this order.

(6) Substantive Findings.

The ten substantive issues raised in the application for rehearing can be consolidated into five major issues for which the Commission finds:

(A) Commercial and Centralized Facilities

1. Surface waste management facilities pose different degrees of risk to public health and the environment which can be divided into two categories: "commercial facilities" which have a higher degree of risk and "centralized facilities" which have a lesser degree of risk;

2. While the Commission concludes that a commercial facility has a higher degree of environmental and public health risk associated with its operations because it receives large volumes of waste material from unrelated parties for compensation, the definition of commercial facility adopted by the Commission in Order R-10411 is ambiguous.

3. While the Commission concludes that a centralized facility has a lesser degree of environmental and public health risk associated with its operations because waste materials it receives are generally smaller in volume from fewer unrelated sources and are generated by the same or related generators from commonly or jointly owned operations, the definition of centralized facility adopted by the Commission in Order R-10411 is ambiguous.

4. The Commission recognizes that a surface waste management facility should still be a centralized facility even if the costs of disposal were allocated to different wells under conventional Joint Operating Agreements even if that results in payment from some companies to others--i.e. "compensation"--for what should in all other respects be a centralized facility.

5. The Commission intends that centralized facility be defined as either: (a) receiving no compensation, (b) used exclusively by one generator even for compensation provided the generator was subject to the Oil & Gas Conservation Tax; or (c) used by multiple generators under an operating agreement and which receives waste from two or more production units from a set of commonly owned or operated leases.

6. The Commission further intends that a "commercial facility" be defined as any surface waste management facility which does not satisfy the definition of a "centralized facility".

7. The definitions of centralized and commercial as set forth in Replacement Rule 711, attached to this order, adequately express the intent of the Commission and should be adopted.

(B) Underground Injection Control Facilities and WQCC Regulated Facilities

1. Rule 711 as adopted by Order R-10411 contains a definition for commercial facility which unless amended classifies (a) all above grade tank waste facilities; (b) all salt water disposal ("SWD") wells with related above grade surface facilities and (c) facilities subject to the Water Quality Control Commission Regulations as "commercial facilities". The Commission intends to exclude these three types of facilities from Rule 711.

2. The Commission finds that Order R-10411 incorrectly included types of waste disposal facilities that are adequately regulated either under NMOCD rules or regulations of the WQCC, and that Replacement Rule 711 adequately corrects Rule 711 to properly indicate the intentions of the Commission.

(C) Exemptions of Certain Types of Centralized Facilities Rule 711.A.3. (exemptions)

1. The Commission finds that there are certain types of centralized facilities which should be exempt from permitting because such facilities pose little risk to public health or the environment. The following centralized facilities exempt from permitting should be: (a) facilities that receive wastes from a single well; (b) emergency pits that are designed to capture fluids during an emergency upset period, provided such fluids are removed from the pit within 24 hours from introduction; (c) such other facilities that are demonstrated to present little risk to public health and the environment, and (d) centralized facilities exempt from notice and financial assurance requirements are facilities that receive less than 50 barrels of RCRA exempt liquid wastes per day and have a capacity to hold 500 barrels of liquids or less or 1400 cubic yards of solids or less and can make a showing to the satisfaction of the Division that no harm to fresh water, public health or the environment will occur.

2. Replacement Rule 711 properly defines centralized facilities that should be exempt from permitting requirements of Rule 711.

(D) Financial Assurance and Implementation Schedule

1. The Commission finds that because of the different degrees of risk and costs of closure associated with centralized facilities, existing commercial facilities and future commercial facilities, each should be subject to different financial assurance rules and implementation schedules.

2. Revised Rule 711.B.3 as adopted in Order R-10411 requires all commercial and all centralized facilities to have financial assurances (cash, letters of credit or bonds) in an amount equal to the estimated costs to have a third party close the facility. There is a four year phasing in of the financial assurance in increments of twenty-five (25%) percent regardless of the type of facility.

3. Order R-10411 adopted a cost of closure criteria for financial assurances and an implementation schedule which would significantly increase the bonding amounts and correspondingly make the costs of obtaining and paying premiums onerous for that coverage to a portion of the oil and gas industry in excess of the levels necessary for the protection of public health and the environment.

4. The Commission finds that adequate financial assurance can be established which will not cause an onerous burden on the regulated industry and still protect public health and the environment as follows:

(a) That financial assurance on centralized facilities be a flat \$25,000 for an individual facility or a \$50,000 statewide bond and that the financial assurance for a existing commercial facility be capped at actual closure costs or \$250,000 whichever is less; and

(b) That new commercial waste management facilities or major modifications or major expansions of existing commercial facilities will require financial assurances based upon actual closure costs and are not eligible for the \$250,000 maximum limit.

5. The Commission finds that an implementation schedule for each type of facility as set forth in Replacement Rule 711 will provide for an orderly and timely means of implementation which is adequate assurance for the protection of public health and the environment while preventing waste and protecting correlative rights.

(E) Reporting of Exempt E&P Wastes

1. The New Mexico oil and gas industry has already voluntarily adopted adequate methods for documenting oil & gas exempt wastes which are effectively and efficiently protecting public health, safety and the environment.

2. The adoption of rules and regulations mandating "waste tracking" for E&P exempt wastes in New Mexico are not necessary at this time.

3. The Division is now using Form C-138 which can be interpreted to require Division approval prior to or after receipt by the facility of waste materials.

4. The Commission does not intend by Rule 711 to require the Division to issue Form C-138 for exempt waste or make approval a requirement.

5. Rule 711 C 4 a. adopted by Order R-10411 needs to be clarified and should be amended as set forth in Replacement Rule 711.

(7) Procedural Findings.

As to the two procedural issues raised in the application for rehearing, the Commission finds:

(a) the adoption of Replacement Rule 711 will adequately protect public health and the environment while correspondingly not impose an undue regulatory burden upon the regulated parties thereby protecting correlative rights;

(b) the Commission's ultimate findings set forth in this order summarizes its reasons for its adoption of Replacement Rule 711;

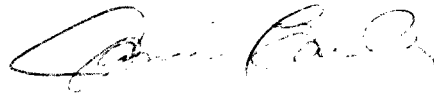
(c) the withdrawal of Revised Rule 711 and the adoption of Replacement Rule 711 will provide for workable, fair and efficient regulation of surface waste management facilities while protecting public health and the environment and preventing waste of valuable hydrocarbons and the protection of the correlative rights of the owners of that production.

IT IS THEREFORE ORDERED THAT:

- (1) Division Revised Rule 711 as adopted by Order R-10411 is hereby withdrawn.
- (2) Division Rule 711 is hereby amended by what has been described herein as "Replacement Rule 711" as set forth on Exhibit "A" attached hereto and made part of this order.
- (3) Replacement Rule 711 shall be effective as of the date of this order.
- (4) Jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinafter designated.

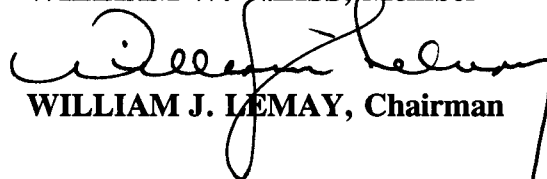
**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**



JAMI BAILEY, Member



WILLIAM W. WEISS, Member



WILLIAM J. LEMAY, Chairman

EXHIBIT "A"
CASE NO. 11143
ORDER NO. R-10411-A

RULE 711 - APPLICABLE TO SURFACE WASTE MANAGEMENT
FACILITIES ONLY

A. A surface waste management facility is defined as any facility that receives for collection, disposal, evaporation, remediation, reclamation, treatment or storage any produced water, drilling fluids, drill cuttings, completion fluids, contaminated soils, bottom sediment & water (BS&W), tank bottoms, waste oil or, upon written approval by the Division, other oil field related waste. Provided, however, if (a) a facility performing these functions utilizes underground injection wells subject to regulation by the Division pursuant to the federal Safe Drinking Water Act, and does not manage oil-field wastes on the ground in pits, ponds, below grade tanks or land application units, (b) if a facility, such as a tank facility, does not manage oil-field wastes on the ground in pits, ponds below grade tanks or land application units or (c) if a facility performing these functions is subject to Water Quality Control Commission Regulations, then the facility shall not be subject to this rule.

1. A commercial facility is defined as any surface waste management facility that does not meet the definition of centralized facility.

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 7-30-01 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.

3. Centralized facilities exempt from permitting requirements are:

- a. facilities that receive wastes from a single well;
- b. emergency pits that are designed to capture fluids during an emergency upset period only and provided such fluids will be removed from the pit within twenty-four (24) hours from introduction;
- c. facilities that do not meet the requirements of the foregoing exemptions in Section A.3, but that are shown by the facility operator to the satisfaction of the Division to not present a risk to public health and the environment.

d. centralized facilities exempt from notice and financial assurance requirements are facilities that receive less than 50 barrels of RCRA exempt liquid waste per day and have a capacity to hold 500 barrels of liquids or less or 1400 cubic yards of solids or less and when a showing can be made to the satisfaction of the Division that the facility will not harm fresh water, public health or the environment;

B. Unless exempt from this Rule, all commercial and centralized facilities including facilities in operation on the effective date of this rule, new facilities prior to construction and all existing facilities prior to major modification or major expansion shall be permitted by the Division in accordance with the following requirement:

1. Application Requirements:

An application, Form C-137, for a permit for a new facility or to modify an existing facility shall be filed in DUPLICATE with the Santa Fe Office of the Division and ONE COPY with the appropriate Division district office. The application shall comply with Division guidelines and shall include:

a. The names and addresses of the applicant and all principal officers of the business if different from the applicant;

b. A plat and topographic map showing the location of the facility in relation to governmental surveys (1/4 1/4 section, township, and range), highways or roads giving access to the facility site, watercourses, water sources, and dwellings within one (1) mile of the site;

c. The names and addresses of the surface owners of the real property on which the management facility is sited and surface owners of the real property of record within one (1) mile of the site;

d. A description of the facility with a diagram indicating location of fences and cattle guards, and detailed construction/installation diagrams of any pits, liners, dikes, piping, sprayers, and tanks on the facility;

e. A plan for management of approved wastes.

f. A contingency plan for reporting and cleanup of spills or releases;

g. A routine inspection and maintenance plan to ensure permit compliance;

h. A Hydrogen Sulfide (H₂S) Prevention and Contingency Plan to protect public health;

i. A closure plan including a cost estimate sufficient to close the facility to protect public health and the environment; said estimate to be based upon the use of equipment normally available to a third party contractor;

j. Geological/hydrological evidence, including depth to and quality of groundwater beneath the site, demonstrating that disposal of oil field wastes will not adversely impact fresh water;

k. Proof that the notice requirements of this Rule have been met;

l. Certification by an authorized representative of the applicant that information submitted in the application is true, accurate, and complete to the best of the applicant's knowledge.

m. Such other information as is necessary to demonstrate that the operation of the facility will not adversely impact public health of the environment and that the facility will be in compliance with OCD rules and orders.

2. Notice Requirements:

a. Prior to public notice, the applicant shall give written notice of application to the surface owners of record within one (1) mile of the facility, the county commission where the facility is located or is proposed to be located, and the appropriate city official(s) if the facility is located or proposed to be located within city limits or within one (1) mile of the city limits. The distance requirements for notice may be extended by the Director if the Director determines the proposed facility has the potential to adversely impact public health or the environment at a distance greater than one (1) mile. The Director may require additional notice as needed. A copy and proof of such notice will be furnished to the Division.

b. The applicant will issue public notice in a form approved by the Division in a newspaper of general circulation in the county in which the facility is to be located. For permit modifications, the Division may require the applicant to issue public notice and give written notice as above.

c. Any person seeking to comment or request a public hearing on such application must file comments or hearing requests with the Division within 30 days of the date of public notice. Requests for a public hearing must be in writing to the Director and shall set forth the reasons why a hearing should be held. A public hearing shall be held if the Director determines there is significant public interest.

d. The Division will distribute notice of the filing of an application for a new facility or major modifications with the next OCD and OCC hearing docket following receipt of the application.

3. Financial Assurance Requirements:

a. Existing Centralized Facilities: Upon determination by the Director that the permit can be approved, any applicant of a centralized facility existing on the effective date of the rule shall submit acceptable financial assurance in the amount of \$25,000 per facility or a statewide "blanket" financial assurance in the amount of \$50,000 to cover all of that applicant's

- within one (1) year of commencing operations or when the facility is filled to 25% of the permitted capacity, whichever comes first, the financial assurance must be increased to 25% of the estimated closure costs.

The financial assurance shall be payable to the State of New Mexico and conditioned upon compliance with statutes of the State of New Mexico and rules of the Division, and acceptable closure of the site upon cessation of operation, in accordance with Part B.1.i. of this Rule. If adequate financial assurance is posted by the applicant with a federal or state agency and the financial assurance otherwise fulfills the requirements of this rule, the Division may consider the financial assurance as satisfying the requirement of this rule. The applicant must notify the Division of any material change affecting the financial assurance within 30 days of discovery of such change.

4. The Director may accept the following forms of financial assurance:

a. Surety Bonds

(1) A surety bond shall be executed by the operator and a corporate surety licensed to do business in the State.

(2) Surety bonds shall be noncancellable during their terms.

b. Letter of Credit

(1) Letter of credit shall be subject to the following conditions:

(a) The letter may be issued only by a bank organized or authorized to do business in the United States;

(b) Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous financial assurance coverage shall be forfeited and shall be collected by the State of New Mexico if not replaced by other suitable financial assurance or letter of credit at least 30 days before its expiration date.

(c) The letter of credit shall be payable to the State of New Mexico upon demand, in part or in full, upon receipt from the Director of a notice of forfeiture.

c. Cash Accounts

(1) Cash accounts shall be subject to the following conditions:

(a) The Director may authorize the operator to supplement the financial assurance through the establishment of a cash account in one or more federally insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the State of New Mexico.

(b) Any interest paid on a cash account shall not be retained in the account and applied to the account unless the Director has required such action as a permit requirement.

(c) Certificates of deposit may be substituted for a cash account with the approval of the Director.

d. Replacement of Financial Assurances

(1) The Director may allow a permittee to replace existing financial assurances with other financial assurances that provide equivalent coverage.

(2) The Director shall not release existing financial assurances until the permittee has submitted, and the Director has approved, acceptable replacements.

5. A permit may be denied, revoked or additional requirements imposed by a written finding by the Director that a permittee has a history of failure to comply with Division rules and orders and state or federal environmental laws.

6. The Director may, for protection of public health and the environment, impose additional requirements such as setbacks from an existing occupied structure.

7. The Director may issue a permit upon a finding that an acceptable application has been filed and that the conditions of part 2 and 3 above have been met. All permits are revocable upon showing of good cause after notice and, if requested, hearing. Permits shall be reviewed a minimum of once every five (5) years for compliance with state statutes, Division rules and permit requirements and conditions.

C. Operational Requirements

1. All surface waste management facility permittees shall file forms C-117-A, C-118, and C-120-A as required by OCD rules.

2. Facilities permitted as treating plants will not accept sediment oil, tank bottoms and other miscellaneous hydrocarbons for processing unless accompanied by an approved Form C-117A or C-138.

3. Facilities will only accept oil-field related wastes except as provided in C.4.c. below. Wastes which are determined to be RCRA Subtitle C hazardous wastes by either listing or characteristic testing will not be accepted at a permitted facility.

4. The permittee shall require the following documentation for accepting wastes, other than wastes returned from the wellbore in the normal course of well operations such as produced water and spent treating fluids, at commercial waste management facilities:

a. Exempt Oilfield Wastes: As a condition to acceptance to the materials shipped operator/shippers represents and warrants in written form that the wastes are: generated from oil and gas exploration and production operations; exempt from Resource Conservation and Recovery Act (RCRA) Subtitle C regulations; and not mixed with non-exempt wastes.

b. Non-exempt, Non-hazardous Oilfield Wastes: Prior to acceptance, a "Request For Approval To Accept Solid Waste", OCD Form C-138, accompanied by acceptable documentation to determine that the waste is non-hazardous shall be submitted to the appropriate District office. Acceptance will be on a case-by-case basis after approval from the Division's Santa Fe office.

c. Non-oilfield Wastes: Non-oilfield wastes may be accepted in an emergency if ordered by the Department of Public Safety. Prior to acceptance, a "Request To Accept Solid Waste", OCD Form C-138 accompanied by the Department of Public Safety order will be submitted to the appropriate District office and the Division's Santa Fe office.

5. The permittee of a commercial facility shall maintain for inspection the records for each calendar month on the generator, location, volume and type of waste, date of disposal, and hauling company that disposes of fluids or material in the facility. Records shall be maintained in appropriate books and records for a period of not less than five years, covering their operations in New Mexico.

6. Disposal at a facility shall occur only when an attendant is on duty unless loads can be monitored or otherwise isolated for inspection before disposal. The facility shall be secured to prevent unauthorized disposal when no attendant is present.

7. No produced water shall be received at the facility from motor vehicles unless the transporter has a valid Form C-133, Authorization to Move Produced Water, on file with the Division.

8. To protect migratory birds, all tanks exceeding 16 feet in diameter, and exposed pits and ponds shall be screened, netted or covered. Upon written application by the permittee, an exception to screening, netting or covering of a facility may be granted by the district supervisor upon a showing that an alternative method will protect migratory birds or that the facility is not hazardous to migratory birds.

9. All facilities will be fenced in a manner approved by the Director.

10. A permit may not be transferred without the prior written approval of the Director. Until such transfer is approved by the Director and the required financial assurance is in place, the transferor's financial assurance will not be released.

D. Facility Closure

1. The permittee shall notify the Division thirty (30) days prior to its intent to cease accepting wastes and close the facility. The permittee shall then begin closure operations unless an extension of time is granted by the Director. If disposal operations have ceased and there has been no significant activity at the facility for six (6) months and the permittee has not responded to written notice as defined in D.2a., then the facility shall be considered abandoned and shall be closed utilizing the financial assurance pledged to the facility. Closure shall be in accordance with the approved closure plan and any modifications or additional requirements imposed by the Director to protect public health and the environment. At all times the permittee must maintain the facility to protect public health and the environment. Prior to release of the financial assurance covering the facility, the Division will inspect the site to determine that closure is complete.

2. If a permittee refuses or is unable to conduct operations at the facility in a manner that protects public health or the environment or refuses or is unable to conduct or complete the closure plan, the terms of the permit are not met, or the permittee defaults on the conditions under which the financial assurance was accepted, the Director shall take the following actions to forfeit all or part of the financial assurance:

a. Send written notice by certified mail, return receipt requested, to the permittee and the surety informing them of the decision to close the facility and to forfeit all or part of the financial assurance, including the reasons for the forfeiture and the amount to be forfeited and notifying the permittee and surety that a hearing request must be made within ten (10) days of receipt of the notice.

b. Advise the permittee and surety of the conditions under which the forfeiture may be avoided. Such conditions may include but are not limited to:

(1) An agreement by the permittee or another party to perform closure operations in accordance with the conditions of the permit, the closure plan and these Rules, and that such party has the ability to satisfy the conditions.

(2) The Director may allow a surety to complete closure if the surety can demonstrate an ability to complete the closure in accordance with the approved plan. No surety liability shall be released until successful completion of closure.

c. In the event forfeiture of the financial assurance is required by this rule, the Director shall proceed to collect the forfeited amount and use the funds collected from the forfeiture to complete the closure. In the event the amount forfeited is insufficient for closure, the permittee shall be liable for the deficiency. The Director may complete or authorize completion of closure and may recover from the permittee all reasonably incurred costs of closure and forfeiture in excess of the amount forfeited. In the event the amount forfeited was more than the amount necessary to complete closure and all costs of forfeiture, the excess shall be returned to the party from whom it was collected.

d. Upon showing of good cause, the Director may order immediate cessation of operations of the facility when it appears that such cessation is necessary to protect public health or the environment, or to assure compliance with Division rules and orders.

e. In the event the permittee cannot fulfill the conditions and obligations of the permit, the State of New Mexico, its agencies, officers, employees, agents, contractors and other entities designated by the State shall have all rights of entry into, over and upon the facility property, including all necessary and convenient rights of ingress and egress with all materials and equipment to conduct operation, termination and closure of the facility, including but not limited to the temporary storage of equipment and materials, the right to borrow or dispose of materials, and all other rights necessary for operation, termination and closure of the facility in accordance with the permit.

E. Waste management facilities in operation at the time this rule becomes effective shall:

1. within one (1) year after the effective date permitted facilities submit the information required in B.1.a, h, i and l not already on file with the Division;

2. within one (1) year after the effective date unpermitted facilities submit the information required in B.1.a through j and B.1.l;

3. comply with sections C and D unless the Director grants an exemption for a requirement in these actions based upon a demonstration by the operator that such requirement is not necessary to protect public health and the environment; and

4. provide financial assurance required in the amount of the closure cost estimated in B.1.i. according to the following schedule unless the terms of the current permit require a different schedule:

- within one (1) year of the effective date the financial assurance amount must be increased to 25 % of the estimated closure cost;
- within two (2) years of the effective date the financial assurance amount must be increased to 50 % of the estimated closure cost;
- within three (3) years of the effective date the financial assurance amount must be increased to 75 % of the estimated closure cost;
- within four (4) years of the effective date the financial assurance amount must be increased to the estimated closure cost.