

Permian Basin Petroleum Association

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November 6, 2007

The Honorable Bill Richardson
Office of the Governor
State of New Mexico
490 Old Santa Fe Trail, Rm. 400
Santa Fe, NM 87501

RE: Comments regarded recommended modifications to proposed rule change
Case No. 14015 (19.15.17 NMAC, Pit Rule Amendments)

Dear Governor Richardson:

The Permian Basin Petroleum Association (PBPA) is an oil and gas trade association which has represented the interests of the industry and its employees in southeast New Mexico and west Texas since 1961. Approximately 400 of PBPA's 600 member companies are domiciled in New Mexico or have employees and operations in the state.

The Permian Basin Petroleum Association supports the New Mexico Industry Committee's position and recommended modifications to the New Mexico Oil Conservation Division (OCD) September 21, 2007 draft of a new rule governing pits, below grade tanks, closed loop systems and other alternative disposal methods (Pit Rule). It is our hope that you will consider these comments as constructive when evaluating the merits of the OCD proposal.

The PBPA believes that the OCD's proposed amendments to the existing Pit Rule are unnecessary, arbitrary and capricious. Although the OCD may intend for these proposed rule modifications to be helpful to their efforts to protect the environment, we contend that environmental protection efforts will not be appreciably improved and will cause great economic hardship to our industry and those we employ.

In addition to the Industry Committee recommendations, PBPA specifically believes that pit permit applications should be retained at the district office level and not transferred to Santa Fe. Local district offices are better equipped and better staffed with environmental and inspector personnel and should be more familiar with proposed pit locations and surface conditions.

We further believe that the Surface Owner's Protection Act and private surface damage agreements provide the appropriate legal framework for the relationship between operators and surface owners. The proposed rule provides the surface owner with veto power over certain operator activities and provides no recourse for the operator in the event of a veto.


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Additionally, PBPA supports the Industry Committee recommendation that OCD remove the language of section 19.15.17.13.F.1.a NMAC, language that limits the use of on-site closure methods to those situations in which the location of the proposed pit outside of a 100 miles of a division approved facility or an out-of-state waste management facility. The 100 mile limit is without any environmental or other justification and, as a flow control measure, is in violation of the Commerce Clause of the United States Constitution and hence beyond the power of the Commission to adopt. PBPA also proposes that OCD eliminate 19.15.17.13.F.1.a NMAC in its entirety.

Implementation of the proposed Pit Rule will cause dramatic and swift negative economic reactions from New Mexican and Texas operators alike. I have heard from many operators who contribute millions of dollars in taxes to the state of New Mexico annually and have millions of dollars of planned activities on the books who claim with certainty that they will significantly reduce their operations in New Mexico or cease operations outright. These operators will also reduce their staffing levels, further adding to the negative consequences implementation of this ill-conceived rulemaking will cause.

I urge you to consider intervening in this rulemaking process and allow stakeholders to revisit these issues so that important, meaningful consensus can be reached.

Sincerely,



Ben Shepperd
Executive Vice President