

Comments to the Oil Conservation Commission

RE: Case No. 12969 – State-wide Pit Rule

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I am Janet Rees, and I am a resident of Bloomfield, New Mexico. Except for one year, I've lived in San Juan County since 1967. I'm an avid birdwatcher and amateur naturalist with a passion for the protection of wildlife and habitat. I'm here today to present concerns I have with the statewide pit rule proposed by the Oil Conservation Division.

I've grown increasingly concerned about the impact of oil and gas development in the Four Corners region. As you all are aware, San Juan County has been advised that we have a ground level ozone problem that threatens to exceed federal limits set by the Environmental Protection Agency and that is putting many people at greater risk for respiratory and cardiovascular problems. The Air Quality Bureau of New Mexico Environment Department tells us that, based upon information from permitting, that the oil/gas industry is the biggest producer of Volatile Organic Compounds, one of the precursors of ozone, in San Juan County. As I talk with some of my ranching neighbors, I am appalled to hear the livestock losses they have suffered because of toxins their stock has drunk from pits.

There is ever-increasing pressure on New Mexico to help meet the nation's domestic energy needs with thousands of wells proposed for federal lands and more oil and gas development on state and private land. This development will bring a large number of new pits. Problems exist with the state and BLM's enforcement of existing regulations as seen most recently in Lovington, New Mexico. Because of the huge scope and the cumulative impacts of the impending development, it is essential to do it the best way possible. I'm told that over \$2 billion a year of federal revenues is generated from oil and gas activity in San Juan County yearly; it seems to me that the oil and gas industry can afford to pay for cleaner, more sophisticated development techniques.

Please put the welfare of all New Mexicans first and change the way the Oil Conservation Division (OCD) does business. Please move quickly at every chance to set the bar higher for industry and hold the OCD accountable for better regulations, enforced more consistently. Unless inspections are conducted and regulations are enforced, it is very likely that all the energy that went into designing a new permitting process and the changes reflected by this new rule that are meant to protect our groundwater and environment will effect no positive change.

Please consider the following issues and specific suggestions:

Concerning section 2. g. iv & section G, exemptions to pit lining should be prohibited without exception. The proposed rule grants exemptions to certain areas in the San Juan and Permian Basins. Pits typically contain toxic and hazardous materials; it would be irresponsible to allow leaching of these materials into the ground and their potential transport via water or air at later time. Why take the risk of exempting any area from a

precautionary and simple thing like lining a pit? In addition, the OCD is given a lot of leeway to grant exemptions for anything covered under this rule (netting pits, lining pits, closing pits, reclaiming sites) without requiring that an operator to prove he needs the exemption. This basically makes rules a mockery; need must be proven before a request for an exemption can even be considered, and granting exemptions should rarely occur.

Special Requirements for Pits 2. (f) under C. Design, Construction, and Operational Standards states that screening, netting, covering, etc., shall be required for all tanks exceeding 16 feet in diameter. These protective measures must be required for all tanks. While the 16 feet might exclude waterfowl, it is not a magic number for smaller bird species. I recently found what I believe bird carcasses, in a fairly advanced stage of decomposition, in tanks much smaller than 16 feet in diameter.

Regarding fencing and netting (C. 2. f.), I am concerned that the Division can grant an exemption to the screening, netting or covering requirement upon showing that an alternative method will adequately protect migratory birds or that the tank or pit is not hazardous to migratory birds. I question how industry could reasonably show the tank or pit is not hazardous to the birds unless it contained potable water. The United States Environmental Protection Agency Region VIII which includes our neighboring states, Colorado and Utah, states that improper construction or operation of pits used by the oil and gas exploration and production industries results in significant losses of mammals and birds yearly (<http://www.epa.gov/oilspill/pdfs/probpit.pdf>). The U.S. Fish & Wildlife Service describes the significant threat posed by oilfield waste to aquatic birds, small songbirds, bats, pronghorn, deer and other wildlife on their websites (<http://mountain-prairie.fws.gov/contaminants/oilpits.htm> and <http://mountain-prairie.fws.gov/contaminants/papers/pitrisk.pdf>).

Elk and deer are likely drinking toxic substances from pits and aborting or dying just like the cattle belonging to rancher, Chris Velasquez. It is important to remember that even if wildlife does not die immediately, ingested toxins can lead to deaths away from the pits, or the toxins can make them more susceptible to disease and predation.

The Migratory Bird Treaty Act prohibits the "taking" of migratory birds; "taking" includes exposed oil/gas waste pits that results in bird deaths. The Wyoming Oil and Gas Conservation Commission sets one good example of what can be done in their regulation of pits in Chapter 4 Section 1 bb. under Pollution and Surface Damage that requires that pits be completely fenced when the pits contain oil or other harmful substances. They must be netted or screened to avoid loss of wildlife, domestic animals, or migratory birds.

The U.S. Fish & Wildlife Service in their solution section found in one of the above mentioned web sites recommends closed containment systems for oil and gas field waste as their preferred system for dealing with drilling and production fluids because such systems require little or no maintenance, and they can be moved from site to site. Closed systems eliminate soil contamination and the ensuing remediation expense. They do not attract wildlife, and they serve to isolate toxins from the environment. However, if pits are used, Fish & Wildlife reports the most effective deterrent is netting. They report

deterrents that do not work are flagging, reflectors, strobe light and Zon guns. From the U.S. Fish & Wildlife accounting of this issue it seems there may be no satisfactory alternative methods, and I urge you not only to grant no exceptions to netting but to quickly move to strengthen your policy on pits by making closed systems the industry standard for all oil and gas field waste.

In a memorandum to oil and gas personnel dated July 26, 1989, regarding the implementation of Migratory Bird Protection Regulations Order No. R-8952 (available at <http://www.emnrd.state.nm.us/ocd/Orders/Hearing/pre-1995/8952.htm>) OCD in number 13 states that "Cooperative efforts should be established and maintained between industry and state and federal government agencies to further quantify migratory bird losses, where they are taking place, and to work together to develop economical means to prevent such future losses." This was a commendable requirement, but has it been carried out?

I appreciate this opportunity to air my concerns. In making your final decisions, please ask yourselves if you would want your dogs, cats, or horses drinking from these pits and how you would feel if you had a pit in your backyard. Industry has a responsibility to do the right thing by its neighbors and to help protect wildlife.