

PROPOSED DRAFT PIT RULE 07/18/03

19.15.2.53 Pits and Below-Grade Tanks.

A. Permit Required. Discharge into, or construction of, any pit or below-grade tank is prohibited absent possession of a permit issued by the division, unless otherwise herein provided or unless an exemption is granted pursuant to this Section. Facilities permitted by the division pursuant to 19.15.9.711 or Water Quality Control Commission Regulations are exempt from this section. **Consensus.**

B. Application.

1. Where Filed, Application Form.

(a) Downstream Facilities. An application for use of a pit or below grade tank at a downstream facility such as a refinery, gas plant, compressor station, brine facility, service company or surface waste management facility that is not permitted pursuant to section 19.15.9.711 NMAC or WQCC regulations shall be made to the environmental bureau of the division on an Application to Discharge Into A Pit or Below-Grade Tank, Form C-144. The application may be submitted separately or as an attachment to an application for a discharge permit, best management practices permit, surface waste management facility permit or other permit. **Consensus.**

(b) Drilling or Production. *An application for a permit for use of a pit or below-grade tank in drilling, production or operations not otherwise identified in this paragraph shall be made to the appropriate District office, either on the Application for Permit to Drill or on the Sundry Notices and Reports on Wells or electronically as otherwise provided in this Chapter. An approved Application for Permit to Drill form or the Sundry Notices and Reports on Wells form will constitute a permit for all pits and below grade tanks annotated on those approved forms. A separate form C-144 will not be required.* **Consensus except for NMOGA (Bob Manthei) who wants to discuss with other members.**

2. General Permit; Individual Permit. An application for use of a pit or below-grade tank may be made for an individual pit or tank or for a general permit for a class of like facilities. **Consensus.**

3. When Filed.

(a) New Pits or New Below Grade Tanks. Pits or below-grade tanks constructed after (effective date of rule) shall require an approved permit before construction begins. **Consensus.**

(b) Existing Pits. Pits that existed before (effective date of rule) and not previously exempted by order pursuant to OCC Order R-3221 through R-3221D inclusive, and that will continue to be used must submit a permit application by January 15, 2004. If a timely, administratively complete application for continued use is filed, use of the pit may continue until the division acts upon the application. For pits that existed before (effective date of rule) and the use of which is intended to be discontinued, intention to close the pit must be reported to the division by January 15, 2004 and discharge into such pits must cease by June 30, 2005. **Consensus.**

(c) Existing Below-Grade Tanks. Below-grade tanks that existed before (effective date of rule) and that will continue to be used must submit a permit application by January 15, 2004. If a timely, administratively complete application for continued use is filed, use of the below-grade tank may continue until the division acts upon the application. For below-grade tanks that existed before (effective date of rule) and the use of which is intended to be discontinued, intention to close the pit must be

reported to the division by January 15, 2004 and use of such tanks must cease by June 30, 2005.
Consensus.

C. Design, Construction and Operational Standards.

1. In General. Pits, sumps and below-grade tanks shall be designed, constructed and operated according to division guidelines so as to contain liquids and solids preventing contamination of fresh water and protecting public health and the environment. **Consensus.**

2. Special Requirements for Pits.

(a) *Location.* No pit shall be located in any watercourse, lakebed, sinkhole, or playa lake except where the pit is to be temporarily used in a transient operation such as drilling or a workover. Pits adjacent to any such watercourse or depression shall be located safely above the ordinary high-water mark of such watercourse or depression. No pit shall be located in any wetland. Additional protective measures may be required for pits located in groundwater sensitive areas. (No consensus on this.)

(b) Liners.

(i) Drilling Pits, Workover Pits. Each drilling pit or workover pit shall contain, at a minimum, a single liner designed, constructed and maintained in accordance with division guidelines and that is appropriate for the conditions at the site. Pits used to vent or flare gas during drilling or workover operations that are designed to allow liquids to drain to a separate pit do not require a liner. **Consensus.**

(ii) Disposal or Storage Pits. Each disposal pit (including, but not limited to, any separator pit, tank drain pit, evaporation pit, blowdown pit used in production activities, pipeline drip pit or production pit) and each storage pit (including any brine pit, salt water pit, fluid storage pit for an LPG system, or production pit) shall contain, at a minimum, a primary and a secondary liner appropriate to the conditions at the site. Liners shall be designed, constructed and maintained in accordance with division guidelines. **Consensus.**

(iii) Alternative Liner Media. Liners that are not constructed in accordance with division guidelines will be approved for use only if the operator demonstrates to the satisfaction of the division that the alternative liner protects fresh water, public health and the environment as effectively as those prescribed in such guidelines. **Consensus.**

(c) Leak Detection. A leak detection system shall be installed between the primary and secondary liner in each disposal or storage pit. The leak detection system shall be designed, installed and operated according to division guidelines. Alternative methods of leak detection may be used if the operator demonstrates to the satisfaction of the division that the alternative methods protect fresh water, public health and the environment as effectively as those prescribed in such guidelines. The division shall be notified at least twenty-four hours prior to installation of the primary liner to afford the opportunity for a division representative to inspect the leak detection system before it is covered. **Consensus.**

(d) Drilling Pit, Workover Pits. Each drilling pit or workover pit shall be of an adequate size to assure that a supply of mud-laden fluid is available and sufficient to confine oil, natural gas or water within its native strata. Hydrocarbon-based drilling fluids shall be contained in tanks made of steel or other division approved materials. **Consensus.**

(e) Disposal or Storage Pits. Liquids with greater than *two-tenth of one percent* free hydrocarbon shall not be discharged to a pit. Spray evaporation systems will be operated such that all spray-borne solids remain within the perimeter of the lined portion of the pond. **No consensus, see italicized words.**

(f) Fencing and Netting. All pits shall be fenced or enclosed to prevent access by livestock. Active drilling or workover pits may have a portion of the pit unfenced to facilitate operations. All tanks exceeding 16 feet in diameter, exposed pits and ponds shall be screened, netted, covered or otherwise rendered non-hazardous to migratory birds. *Drilling and workover pits are exempt from the netting requirement during drilling or workover operations if the pits are kept reasonably free of oil.* Upon written application, the Division may grant an exception to screening, netting or covering requirement upon a showing that an alternative method will adequately protect migratory birds or that the tank or pit is not hazardous to migratory birds. **No consensus, see italics.**

(g) Unlined Pits.

(i) General Prohibition. After June 30, 2005, use of, or discharge into any unlined pit that has not been previously permitted pursuant to Section 19.15.9.711 NMAC or WQCC regulations is prohibited, except as otherwise provided in this Section. After (effective date of rule), construction of unlined pits is prohibited unless otherwise provided in this Section. **Consensus.**

(ii) Exemptions.

aa. Good Cause. An exemption to the prohibition set forth in this Subparagraph may be granted only if the applicant demonstrates to the satisfaction of the division that the unlined pit will not contaminate fresh water and that public health and the environment are protected. **Consensus.**

bb. Unlined Pits Exempted By Previous Order. An operator of an unlined pit existing on (effective date of rule) for which a previous exemption was granted by Order pursuant to Commission Orders No. R-3221 through R-3221D inclusive, shall not be required to reapply for an exemption pursuant to this Subparagraph provided the operator notifies the division, no later than **January 15, 2004**, of the existence of each unlined pit it believes is exempted by Order, the location of the pit, and the nature and amount of any discharge into the pit. Such order shall constitute a permit for the purpose of this Section. The division may terminate any such permit in accordance with paragraph G (2). Any pit constructed after (effective date of this rule) shall be required to comply with the permitting/lining and other standards of this Section, notwithstanding any previous Order to the contrary. **Consensus.**

cc. Unlined pits shall be allowed in the following areas provided that an application for permit as provided in this section has been submitted and approved:

TOWNSHIP 19 SOUTH, RANGE 30 EAST, NMPM Sections 8 through 36
TOWNSHIP 20 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36
TOWNSHIP 20 SOUTH, RANGE 31 EAST, NMPM Sections 1 through 36
TOWNSHIP 20 SOUTH, RANGE 32 EAST, NMPM Sections 4 through 9;
Sections 16 through 21; and Sections 28 through 33
TOWNSHIP 21 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 36
TOWNSHIP 21 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36
TOWNSHIP 21 SOUTH, RANGE 31 EAST, NMPM Sections 1 through 36
TOWNSHIP 22 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 36
TOWNSHIP 22 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36

TOWNSHIP 23 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 3;
Sections 10 through 15; Sections 22 through 27; and Sections 34 through 36
TOWNSHIP 23 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 19

That area within San Juan, Rio Arriba, Sandoval and McKinley Counties which is defined as being outside the valleys of the San Juan, Animas, Rio Grande, and La Plata Rivers, which is bounded by the topographic line on either side of the river that is 100 vertical feet above the river channel measured perpendicularly to the river channel, and which is outside those areas which lie within 50 vertical feet, measured perpendicularly to the drainage channel, of all perennial and ephemeral creeks, canyons, washes, arroyos and draws located within the oil and gas producing areas of the San Juan Basin in northwestern New Mexico, provided that the areas do not lie between the above-named rivers and the Highland Park Ditch, Hillside Thomas Ditch, Cunningham Ditch, Farmers Ditch, Halford Independent Ditch, Citizens Ditch, or Hammond Ditch and the pit site is not located in water bearing alluvium, no protectable ground water is present or if present, will not be adversely affected by the discharge and the discharge is not located within a Wellhead Protection Area. **Consensus.**

Any area where the discharge quality meets New Mexico Water Quality Control Commission ground water standards.

3. Special Requirements for Below-grade Tanks. All below-grade tanks shall be constructed with secondary containment and leak detection. The operator of any below grade tank constructed prior to (effective date of this rule) shall demonstrate its integrity annually and shall remove it or equip it with leak detection at the time of any major repairs. **Consensus.**

4. Sumps. *Integrity of all sumps shall be demonstrated annually.* **No consensus.**

D. Emergency Actions.

1. Permit Not Required. A pit may be constructed in an emergency without a permit to contain fluids, solids or wastes if an immediate danger to fresh water, public health or the environment exists. **No consensus. See NMOGA comments concerning verbal approval for pits.**

2. Construction Standards. A pit constructed in an emergency shall be constructed, to the extent possible given the emergency, in a manner consistent with the requirements of this Section and division guidelines. **Consensus.**

3. Notice. The appropriate district office shall be notified as soon as possible (if possible before construction begins) of the need for construction of such a pit. **Consensus.**

4. Use, Duration. The pit may be used only for the duration of the emergency, but shall not be used for more than forty-eight (48) hours unless extended by the division. All fluids and solids must be removed within 24 hours after cessation of use unless extended by the division. **Consensus.**

5. "Emergency Pits." This subsection shall not be construed to exempt construction of so-called "emergency pits," which are pits, constructed as a precautionary matter to contain a spill in the event of a release. Construction or use of any such pit shall not require a permit issued pursuant to this Section provided that all fluids are removed from the pit within 24 hours of use. All "emergency pits" shall remain predominantly empty. **Consensus with the reservation from Bob Manthei that he cannot speak for the others. He, personally, has no objection.**

E. *Drilling Fluids and Cuttings.* Drilling fluids and drill cuttings contained in any pit or below-grade tank shall be recycled or dried and disposed of in a manner approved by the division and in such a manner as to prevent contamination of fresh water, or danger to public health or the environment. The operator shall describe the proposed disposal method in the Application for Permit to Drill or the Sundry Notice. Irvin Boyd and Andy Swarthout are dead set against anything being buried on site. No consensus.

F. Closure and Restoration.

1. *Closure.* Except as otherwise specified in this Section, a pit or below-grade tank shall be properly closed according to division guidelines within six (6) months after cessation of use. In appropriate cases, a detailed closure plan may be required before closure may commence. The division for good cause shown may grant a six-month extension of time to accomplish closure. Upon completion of closure a Closure Report, Form C-____, or Sundry Notice shall be submitted to the division. Where the contents of pits will likely migrate and cause ground water or surface water to exceed WQCC standards, the contents of the pit and the liner shall be removed and disposed of in a manner approved by the division. The division will make changes to the closure guidelines to exempt below-grade tank removal, where there is no evidence of leakage, from the necessity of taking soil samples. No consensus.

2. *Surface Restoration.* Within one year of the completion of closure of a pit, the surface where the pit was located shall be contoured to prevent erosion and ponding of rainwater. No consensus. See NMOGA comments.

G. Exemptions, Additional Conditions.

1. The division may attach additional conditions upon any permit upon a finding that such conditions are necessary to protect fresh waters, public health or the environment. Consensus.

2. The division may grant exemptions from any requirement upon a finding that the granting of such exemption will not endanger fresh waters, public health or the environment. Any exemption granted by the division may be subsequently revoked after notice to the owner or operator of the pit and opportunity for a hearing. Consensus.

3. Exemptions may be granted administratively without hearing provided that the applicant shall give notice to the surface owner of record where the pit is to be located and to such other persons as the division may direct and (a) written waivers are obtained from all persons to whom notice is required, or (b) no objection is received by the division within 30 days of the time notice is given. If any objection is received and the Director determines the objection has technical merit or that there is significant public interest the application will be set for hearing. The Director, however, may set any application for hearing. No consensus; see NMOGA comments.