

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

**APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION FOR
ADOPTION OF AMENDMENTS TO RULE 19.15.17(THE "PIT RULE"),
STATEWIDE.**

CASE NO. 14292

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE
INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO**

The Independent Petroleum Association of New Mexico requests that the Oil Conservation Commission adopt the following Findings of Fact and Conclusions of Law in this case.

FINDINGS OF FACT

1. The Oil Conservation Commission adopted Rule 17 governing pites, belowgrade tanks, and closed loop systems (the "Pit Rule") by Order No. R-12939, effective June 16, 2008.
2. By order of the Commission, all facts and testimony of the prior Pit Rule hearing, case No. 14015, may be considered by the Commission in the adoption of findings in this case.
3. Evidence on Case No. 14015 was presented on November 5 through 9, 13 through 16, 26, 27, 30 and December 3,4,6,7.10 and 14, 2007.
4. In a press release of February 18, 2009, issued by Governor Bill Richardson directing the Division to work with industry to allow oil and gas companies to better absorb the costs association with the stronger [Pit Rule], Secretary Prukop stated "we are not doing anything to diminish the environmental protections gained by the Pit Rule, but we are going to work with industry to ease the financial burden of compliance".
5. The Oil Conservation Division filed its application for rulemaking on this matter on February 27, 2009 and set the hearing date for April 2, 2009.

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The chloride standards

6. The Division recommends amendments to the Pit Rule section 17.13.F(3)(c) to allow for closure of a deep trench if the chloride concentrations does not exceed 3000 mg/l or the background concentration whichever is greater.

7. The Division did not recommend changes to meeting standards specified in 20.6.2.3103 NMAC.

8. The evidence presented by the Division, and Conoco Phillips established:

- A. the Pit Rule allows for background testing for inplace burial but not for deep trench burial. (TR1¹. 65).
- B. 3103 standards apply to groundwater not the vadose zone for which there is no 3103 standard (TR1. 197).
- C. the 3000 mg/l standard the MUTIMED and HELP modeling suggests impact to groundwater from a lined pit to be approximately 2000 years (TR2. 2)
- D. the chloride standard in the WQCC rule is an aesthetic standard, not a human health standard (TR2 55).
- E. The Oil Conservation Division's initial proposal for the Pit Rule closure of trenches was 5000 mg/l coupled with the 100 mile radius provision (TR1. 176; TR2 50, 51)

9. In testing the location prior to closure, the Division did not change the rule to allow for field testing at any time. (TR1. 99-100)

- A. operators will be required to use a laboratory based leachate testing method on background, preferably done prior to building the location, and of the stabilized wastes in the trench (TR1. 99, 101, 102).

10. the Division's intent is to propose chloride burial standards that allow operators an opportunity to satisfy the chloride standards for on-site burial but the other 'baseline requirements' including 3103 standards may prevent onsite burial even if the chloride limits are met (TR. 65-66, 147)

¹ The transcripts are designated as TR1 and TR2. TR1 represents testimony of April 2, 2009 while TR2 contains testimony from April 3, 2009.

- A. While the 3103 ground water standards include chloride levels, only in the case of a deep trench burial will the Division allow for exceedance of the one constituent standard. (TR1. 138; TR2 19, 20).
- B. Oil field wastes contain hundreds of constituents unique to each location which may have levels that are higher than allowed under the 3103 ground water standard but are lower than naturally occurring background at the location.
- C. The Division estimates that in the Southeast Ogalla formation approximately 30% of the wells have a depth to groundwater greater than 100 feet but even with higher chloride allowances, 3103 standards must still be met to perform deep trench closure (TR2. 100)
- D. The higher chloride standard without changing other factors such as the 3103 standard will probably not change company behavior or bring a positive economic impact to the State (TR2 226, 227).

11. 'Background' is not a term that is defined in the Rule (TR1, 230) but the Division would not oppose allowing operators to apply background concentrations to naturally occurring materials to prove the standard for deep trench burial (TR1. 217).

- A. Background concentrations pertain to chloride levels only and are limited to 'natural background' which will not contain BTEX, or organics (TR1. 67, 196).
- B. Natural background may contain metals or inorganics occurring at a level higher than 3103 which under the current and proposed rules may not be used by an operator to overcome the 3103 standard (TR1. 196, 197, 217)

CONCLUSIONS OF LAW

1. The Division's proposed amendments to the Pit Rule's on-site trench burial standard to increase the chloride levels from 250 mg/l to 3000 mg/l or background concentration, whichever is greater is protective of fresh water, human health and the environment and are **approved** except that operators will be allowed to use the deep

trench burial method with administrative approval of proven background levels
exceeding 3103 standards.

Respectfully submitted,
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