

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

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

**CASE NO. 14521
Order No. R-13312**

**THE APPLICATION OF WILLIAMS PRODUCTION CO., LLC
FOR APPROVAL OF A CLOSED LOOP SYSTEM FOR
THE ROSA SWD WELL NO. 2 AND FOR IN-PLACE
BURIAL OF DRILLING WASTES AT ANOTHER
WELL LOCATION, RIO ARriba COUNTY, NEW MEXICO**

ORDER OF THE COMMISSION

BY THE COMMISSION:

THIS MATTER having come before the New Mexico Oil Conservation Commission ("Commission") on July 29, 2010, at Santa Fe, New Mexico, on Williams Production Company, LLC's ("Williams") June 25, 2010 Application for an order from the Commission; and the Commission, having carefully considered the evidence and other materials submitted by the parties, now,

FINDS THAT:

1. The Rosa Unit is an approximately 54,209-acre oil and gas unit, located in the counties of San Juan and Rio Arriba, New Mexico. (Transcr. Vol. 1, p. 18 [M. Vern Hansen]; Transcr. Vol. 1, p. 141 [Michael Lane]).
2. Williams is the operator of the Rosa Unit. (OCD. Ex. 8).

3. In November 2009, in order to facilitate the drilling of a salt water disposal well ("Rosa SWD No. 2") located in Section 25, Township 31 North, Range 5 West, NMPM, Rio Arriba County, New Mexico, Williams submitted to the Aztec office of the Oil Conservation Division ("Division") a Form C-144 application, seeking authority to construct a temporary pit for the drilling of, and at the site of, the Rosa SWD No. 2. (Transcr. Vol.1, p. 39 [Michael Lane])¹; (OCD Ex. 3).²

4. During the November 2009 C-144 application process, it was determined that groundwater was less than 50 feet below the bottom of the proposed pit. Under the rule this was insufficient separation between the bottom of the pit and groundwater to allow siting a temporary pit at the Rosa SWD No. 2 well location. Williams withdrew the November 2009 C-144 application. (Transcr. Vol. 1, p. 39-41 [Michael Lane]).

5. On January 28, 2010, Williams submitted a Form C-144 for the Rosa SWD No. 2, this time seeking to site the temporary pit in proximity of the Rosa Unit No. 394 ("Rosa No. 394"), a well that Williams was then intending to drill approximately one mile north of the Rosa SWD No. 2. (W. Ex. 5).

6. On March 11, 2010, the Division denied Williams' January 28, 2010 C-144 application because 19.15.17.13(D) and (F) NMAC contemplate in-place burial only for on-site temporary pits, and the proposed pit was not "on-site." (W. Ex. 5; OCD Ex. 3).

7. In the time intervening between Williams' January 28, 2010 application and the Division's March 11, 2010, denial of it, Williams determined that the Rosa Unit 394 well would not be drilled; and on March 9, 2010, Williams submitted to the Division a C-144 application for the Rosa Unit No. 634B. Use of the temporary pit at the Rosa Unit No. 634B for waste from the Rosa SWD No. 2 was not discussed in the application. (Transcr. Vol. 1, pp. 46-47 [Michael Lane]; OCD Ex. 10).

8. On March 16, 2010, Williams requested a hearing with the Division. The case number for that hearing was 14463. Case No. 14463 did not involve the Division's March 11, 2010 denial of Williams' January 28, 2010 application. Instead, in Case No. 14463, Williams asked the Division to approve Williams' proposal that it be allowed to site a temporary pit at Rosa Unit No. 634C or Rosa Unit 635B for disposal of waste from the drilling of Rosa SWD No. 2. Williams had not filed, however, a C-144 application for either Rosa Unit No. 634C or Rosa Unit 635B, and the appropriate Division office, in this case, the Aztec Office, had neither approved nor denied such a proposal. (Transcr. Vol. 1, p. 46 [Michael Lane]; Transcr. Vol. 2, pp. 281-82 [Brad Jones]; OCD Ex. 3; OCD Ex. 15).

¹ In this Order, references to the transcript of the hearing of this matter on July 29 and 30, 2010, will be designated by "Transcr." followed by a volume number and page number. If the reference is to witness testimony, the witness' name will be contained in brackets.

² In this Order, Exhibits submitted by the Division will be designated as "OCD Ex.," followed by the exhibit number. Similarly, Exhibits submitted by Williams will be designated as "W. Ex.," followed by the exhibit number.

9. On March 23, 2010 Williams filed another C-144 for a closed loop system in the drilling of Rosa SWD No. 2, stating that Williams would not use a temporary pit for the Rosa SWD No. 2, but that it would haul the waste to a Division-approved facility. (OCD Ex. 3; OCD Ex. 14).

10. On April 20, 2010, Williams filed with the Division another C-144 application ("April 2010 Application") for a temporary pit for Rosa SWD No. 2 sited at Unit No. 634B, approximately 10 miles west of Rosa SWD No. 2. (OCD Ex. 8; OCD Ex. 9).

11. During Case No. 14463, the Division filed a motion to dismiss, which was denied by the hearing officer. The Division filed a motion to reconsider ("Motion to Reconsider"), which was heard by the Acting Division Director. (OCD Ex. 3; Record Proper, Case No. 14463, April 30, 2010 "Order of the Commission").³

12. As a result of the Motion to Reconsider, on April 30, 2010, the Commission assumed jurisdiction over Case No. 14463. (Record 14463, April 30, 2010 "Order of the Commission").

13. On June 3, 2010, the Chair of the Commission held a pre-hearing conference in Case No. 14463. (Record 14463, June 1, 2010 2:53P.M. email from Mark Fesmire to Sonny Swazo, Ocean Munds-Dry and others).

14. As a result of the June 3, 2010 prehearing conference, Williams requested a dismissal of Case No. 14463, and asked the Division for an immediate review of Williams' April 20, 2010 Application. On June 16, 2010 the Commission dismissed Case No. 14463. (OCD Ex. 3; Record 14463, June 15, 2010 letter from Ocean Munds-Dry to Mark E. Fesmire; OCD Ex. 13; Record 14463, June 16, 2010 "Order of the Commission.").

15. Pursuant to Williams' request, the Division undertook a review of the April 20, 2010 Application. On June 9, 2010 the Division denied Williams' April 20, 2010 Application for several reasons, one of which was that "[t]he disposal of oil field waste at an off-site location is only allowable with a permit in compliance with the surface waste management facility provisions of 19.15.36 NMAC." (OCD Ex. 9).

16. On June 25, 2010, Williams filed an appeal of the Division's June 9, 2010 denial. (June 25, 2010 Application, Record Proper).⁴

17. Because 19.15.4.9(B) NMAC requires the giving of twenty (20) days notice for an adjudicatory hearing, Williams' June 25, 2010 appeal filing was not timely to be

³ The Commission takes administrative notice of Case No. 14463 and the filings, correspondence and transcript of that case. Citations to same will be denoted by "Record 14463."

⁴ Citations to pleadings and other papers filed with the Commission in this case will be referred to as "Record Proper" or "RP."

placed on the hearing docket for the regularly scheduled July 15, 2010, meeting of the Commission.

18. At Williams' request, the Commission convened a special meeting to hear Williams' appeal of the Division's June 8, 2010 denial. The hearing was held on July 29 and 30, 2010. (OCD Ex. 13; Transcr. Vol. 1, pp. 3, 7).

19. The Commission announced its decision in this cause on August 2, 2010. (August 2, 2010 Transcr. Vol. 3, pp. 2-3).

20. It is the April 20, 2010 Application, the June 9, 2010 denial of it, and the July 29 and 30, 2010 appeal of that denial that are the subject of this Order.

21. While the Division denied the April 2010 Application for several reasons, Williams believes that it has addressed or could address to the Division's satisfaction all the grounds for denial save one: the Division's characterization of the pit at Unit No. 634B as "off-site." (Transcr. Vol. 1, pp. 54-68 [Michael Lane]).

22. The Rosa SWD No. 1 currently is the only salt water disposal well for the 54,209 acre Rosa Unit. (Transcr. Vol. 1, p. 16, 24 [M. Vern Hansen]; Transcr. Vol. 1, p. 141 [Michael Lane]).

23. The Rosa SWD No. 1 has been the only salt water disposal well for the Rosa Unit for approximately the last 2 years. (Transcr. Vol. 2, pp. 12, 72-73 [Ken McQueen]).

24. Williams intends to use the Rosa SWD No. 2 as a back-up disposal well for the Rosa SWD No. 1. (Transcr. Vol. 1, pp. 148-49 [Michael Lane]).

25. Denial of the April 20, 2010 Application will not prevent Williams from drilling the Rosa SWD No. 2. (Transcr. Vol. 1, p.90 [Michael Lane]).

26. Burying the waste from the Rosa SWD No. 2 in a temporary pit located at Unit No. 634B would save Williams approximately \$200,000 in the cost of drilling the Rosa SWD No. 2. (Transcr. Vol. 2, pp. 23-24 [Ken McQueen]).

27. Williams did not seek approval of an exception or of an alternative closure method under 19.15.17.15 NMAC because the process for obtaining such an approval is new. (Transcr. Vol.2, pp. 84-85 [Ken McQueen]).

28. The Rosa SWD No. 2 is located on public lands managed by the United States Forest Service ("Forest Service"). (Transcript Vol. 1, p. 17 [M. Vern Hansen]).

29. The temporary pit that is proposed by Williams is located on public lands managed by the United States Bureau of Land Management ("BLM") Transcript Vol. 1, p. 17-18 [M. Vern Hansen]..

30. While both the Forest Service and BLM have written favorably regarding Williams' proposal for off-site burial, BLM also reported to the Director of the Division (i) that Williams had not yet applied to BLM for approval of the proposal now before the Commission, (ii) that Williams' proposal had not yet been approved by BLM, (iii) that Williams would have to submit a written variation request to BLM, and (iv) that BLM would then evaluate whether existing information is adequate to support the requested variance or whether additional environmental analysis is required. (W. Exs. 19 – 21).

31. Brad Jones, an environmental engineer with the Division testified that he did not believe that Williams' proposal to construct a temporary pit to hold waste from the drilling of Rosa SWD No. 2, where the temporary pit is located approximately 10 miles away and at the site of the Unit No. 634B, could be approved under 19.15.17.15 NMAC as an exception or as an alternative closure method because off-site disposal must be permitted under 19.15.36 NMAC, which governs "Surface Waste Management Facilities." (Transcr. Vol. 2, pp. 303-07 [Brad Jones]).

And the Commission **CONCLUDES THAT:**

A. The primary issue in this appeal is whether a temporary pit to hold waste from the drilling of Rosa SWD No. 2, where the temporary pit is located approximately 10 miles away from the site of the Rosa SWD No. 2 and at the site of the Unit No. 634B, is "on-site" as that term is used in 19.15.17 NMAC, particularly 19.15.17.13(B)(2) NMAC and 19.15.17.13(F) NMAC, which contemplate the possibility of "in-place" burial of "on-site," temporary pits. (Transcr. Vol. 1, pp. 7-8).

B. The canons of statutory construction are used when interpreting regulations. Johnson v. N.M. Oil & Conservation Comm'n, 127 N.M. 120, 126 (1999); see also New Mexico Mun. League, Inc. v. New Mexico Env'tl. Improvement Bd., 88 N.M. 201, 208 (N.M. Ct. App. 1975) (applying rules of statutory construction to determine intended meaning of regulation).

C. When construing statutes, the guiding principle is to determine and give effect to legislative intent. New Mexico Indus. Energy Consumers v. PRC, 142 N.M. 533, 540 (2007).

D. In the instant case, the meaning of "on-site" that was intended by the Commission, at least when referring to closure methods in 19.15.17 NMAC, is set forth at paragraph 68 of the May 9, 2008 "Order of the Oil Conservation Commission," the Order that adopts 19.15.17 NMAC, commonly known as the pit rule. In the May 9, 2008 Order the Commission provides that on-site closure methods are "where the waste that is generated from the drilling or workover of the well is buried on or near the well pad." May 9, 2008 Order of the Oil Conservation Commission ¶ 68, OCD Ex. 18.

E. The temporary pit for the Rosa SWD No. 2, proposed to be located approximately 10 miles from the Rosa SWD No. 2, at Unit No. 634B, is not "on-site" within the meaning of 19.15.17.13(B)(2) NMAC and 19.15.17.13(F) NMAC.

F. "Temporary pit," is defined in 19.15.17.7(I) as "a pit, including a drilling or workover pit, which is constructed with the intent that the pit will hold liquids for less than six months and will be closed in less than one year.

G. The pit that is proposed by Williams in this cause is a temporary pit.

H. Temporary pits are specifically excepted from the definition of "surface waste management facility" at 19.15.2.7(S)(11)(c) NMAC.

I. The temporary pit that is proposed by Williams in this cause is governed by 19.15.17 NMAC, including 19.15.17.15, which contemplates the possibility of exceptions and alternative closure methods. The fact that the proposed temporary pit is to be "off-site" does not, in and of itself, either (i) preclude issues related to that pit from being considered under 19.15.17.15 NMAC or (ii) require that the proposed pit be governed by 19.15.17.36 NMAC.

J. In addition to the other considerations or demonstrations that are required under 19.15.17.15 NMAC, if the temporary pit proposed by Williams in the instant case were to warrant treatment under 19.15.17.15 NMAC, Williams would have to demonstrate to the satisfaction of the environmental bureau in the Division's Santa Fe office that Williams' proposal provides equivalent or better protection of fresh water, public health and the environment than the methods otherwise required by 19.15.17 NMAC, pursuant to 19.15.17.15(A) NMAC, or that it protects fresh water, public health and the environment, pursuant to 19.15.17.15(B) NMAC.

K. The environmental bureau in the Division's Santa Fe office has the discretion and authority to determine whether a proposal made under 19.15.17.15 NMAC warrants treatment under 19.15.17.15, as an exception or an alternative closure method or not at all.

NOW THEREFORE IT IS ORDERED THAT:

I. To the extent that the Division's June 9, 2010 denial of Williams' April 20, 2010 C-144 Application is based on the Division's determination that the proposed temporary pit is not "on-site," the Division's denial is affirmed.

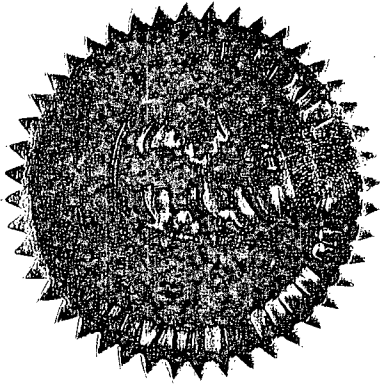
II. Having resolved the primary issue in this cause in favor of the Division, the Commission need not, and does not, reach the other grounds for the Division's denial of Williams' April 20, 2010 C-144 Application.

DONE at Santa Fe, New Mexico on the 9th day of September 2010.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION



MARK E. FESMIRE, P.E., CHAIR



JAMI BAILEY, CPG, MEMBER



WILLIAM OLSON, MEMBER

SEAL