MACK ENERGY CORPORATION

Post Office Box 960
Artesia, New Mexico 88211-0960
(505) 748-1288 / FAX (505) 746-2362

Friday, October 25, 1996

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OIL CONSERVATION DIVISION

Oil Conservation Division
2040 S. Pacheco
Santa Fe, NM 87105

Re: Case 11352 Rule 116
Case 11635 Rule 19

Dear Roger,

The Committee working on amendments to Rules 116 and 19 have worked hard and produced a commendable product. We appreciate the opportunity to provide some additional comments and insight on the proposed Rules.

The first sentence of Proposed Rule 116, under A. NOTIFICATION, it should be changed to read, "The District Office of the Division shall..." This keeps the notification consistent throughout the proposed rules. It is appropriate for the District to be the primary party since they are close to the area impacted and know the environment in the District.

Still in A. the language calls for notification of a spill in the State of New Mexico. This would require dual notification since the Bureau of Land Management requires notification of spills on federal lands. We do not have dual reporting now and this wording will double the reporting burden on federal lands. You should consider either making the Rule apply only to state lands or accepting a copy of the federal notification and remediation. The appropriate wording to this effect should be added to the proposed rule.

In D. CORRECTIVE ACTION:, the words "District Office of the Division..." should be added to the first sentence. The second sentence should be removed entirely. We are not in the planning business. Writing a remediation plan would just add time to the actual remediation process. The event is not that serious or it would call for action under Rule 19 so it will be much more efficient to discuss the problem with the District Office and fix it.

The Purpose statement in Rule 19 is so broad as to be unworkable. There is no way we can purport to abate pollution in all ground water and surface water in the State of New Mexico. Nor should the oil and gas industry be expected to clean up all pollution to the ground and surface water in the state, regardless of source. 19.A.(1) (a) should read,

"Abate pollution of subsurface water caused by the responsible party so that the affected ground water of the..." The same should be made to (b).

In 19.A. (2), the wording is too broad. It may require the impossible. If the background of a contaminant exceeds the standard, the wording seems to say we must abate even if background naturally has more concentrations. So if produced water is spilled into a playa, and the produced water is better than the natural water in the playa, what do we clean up? The first half of the sentence says if a contaminate is higher than the standard, we must abate. Are we expected to make the water better than it was naturally? Why is this even here?

Wording should be changed to indicate the water standards are targets only. EID and WQCC use the standards as preventative in the permitting process. In the remedial process, numerical standards are considered targets, According to Bohannon in "New Mexico Environmental Law" at page 66, " The numerical standards are preventive in the permitting process. In the remedial action process, the numerical standards are considered simply targets. Therefore, in negotiating cleanups with the groundwater bureau, the "how clean is clean" question is subject to negotiation". The oil and gas industry cannot agree to be held to a different standard than all other industries in the state.

Under the provisions of 19.G we may never get a plan approved. The list of those to be notified and who could comment on the plan includes too broad a spectrum. The goal is to remediate a problem and not to write a plan. While pollution continues, the rule would allow time for county commissions, city commissions, the Natural Resource Trustee and anyone else who asks to be included, to comment on the plan. If some notification is deemed necessary, then only those directly affected should be notified and given the opportunity to comment.

19.N is repetitive and should be removed. Both Rule 116 and 19 have already provided for notification. This is adequate and there is no reason industry should be required to notify another party in the same Division. On federal land now we would be making three notifications and this is unreasonable. Delete section 19.N.

Abatement generally means a reduction in degree or intensity of pollution. The word investigation should be removed from the definition of abate. If we are in the abatement mode, then the investigation is over.

Everything after the first sentence in the definition of "background" should be removed. This is just gratuitous wording and has nothing to add to the definition.

All after "transmission line," in the definition of "facility" should be removed. A facility cannot be an activity, motor vehicle or rolling stock. A facility does not move around.

In the second sentence of the definition of a remediation plan, the word "affected" must be removed. Everything and anything can have an affect on ground water. This is so broad that it has no limits. Contaminated or polluted would be a better word.

Words need to added to the definition of a responsible person to conform to the rest of the rules. "District Office of the Division" should be added.

Water contaminant should not mean any substance that may "alter" the quality of water. Water could be altered but not harmed, damaged, polluted or contaminated in any way. The word "alter" should be removed and replaced.

The Committee has done an excellent job drafting these very extensive rules, but we need the changes outlined above. Thank you for the opportunity to comment. If you have any questions, do not hesitate to contact me.

Sincerely,

Dan Girand

sh/DG