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November 27, 1996

Mr. Bill LeMay
State of New Mexico
Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87501

Re: Proposed OCD Rule 116 and Proposed Rule 119

Dear Mr. LeMay:

Yates Petroleum Corporation participated in the OCD committee process for helping draft the above proposed rules. We are disgruntled with the OCD committee process and are not convinced that the OCD Committee (Committee) served any purpose in developing draft rules for the Oil Conservation Division (OCD) to bring forth and submit to the Oil Conservation Commission (OCC) to consider for adoption. This is apparent from the last minute changes proposed by the OCD in the November 13, 1996, Draft OCD Proposed Replacement For Rule 116 submitted at the November 14, 1996, hearing. OCD's November 13th draft is an extensive departure from the version of the rule proposed by the OCD and published in the New Mexico Register on October 31, 1996, that somewhat followed the intent of the Committee. As we perceive these actions and the facts indicate, the Environmental Division of the OCD does not know what rule they want, except for a rule that provides for reporting of all discharges regardless of the threat to the public health and the environment.

We request that the OCC yield to industry on the issue of adopting a new version of Rule 116; oil and gas companies are the regulated community of concern. Conversely, we request the OCC to discount the comments of Mr. Chris Shuey and Mr. Don Neeper with New Mexico Citizens for Clean Air and Water. The oil and gas industry worked in the committee process to develop a rule, that while not liked by the oil and gas members of the Committee, presented a balanced approach to protecting the environment and public health. The comments of Mr. Shuey and Mr. Neeper address areas the environmental community wanted included in the draft rule that the Committee did not elect to include. OCD members of the Committee directed the rule in the direction they wanted the rule to go. Total agreement was not possible.

The rule presented by the Committee acknowledged the mandate to redraft Rule 116. Understanding this mandate and the source of the mandate is important. The charge to change the existing rule comes from a recommendation of the IOGCC/EPA STATE REVIEW OF OIL & GAS EXPLORATION AND PRODUCTION WASTE MANAGEMENT REGULATORY PROGRAMS, New Mexico State Review, June 1994. Starting on page 42 of the report is the discussion of Spill Reporting Requirements that recommends that "OCD should adopt revised spill reporting requirements that are protective of fresh water, public health and the environment."¹ The report also states that "(o)ne member of the Review Team finds that OCD's existing spill-reporting requirements *are adequate and need no revision*."² Many of the oil and gas Committee members agreed with the later position.

The belief by oil and gas members of the Committee that the rule needed no revision becomes important when it is realized that the Committee examined no evidence to show that the current Rule 116 was not working to protect the environment and the public health. Noticeably absent, and requested by the Committee, was any type of analysis derived from the information recovered in the San Juan Basin as a result of all the recent pit closures. This information was requested because of its relevancy to determine impacts on groundwater. No specific situations, specific information or analysis of identified failures were examined to show how the current rule has failed to protect the public health and the environment.

Remembering that the OCD rules need to be simple to promote compliance should be a main goal of OCC. The oilfield does not require rocket science to operate and does not need rules that are as equally complicated. Promulgating a complicated rule deters compliance because people, rightly or wrongly, will not understand. In the same manner, one element considered for the promotion of this rule, royalty collection, has nothing to do with the intent of the rule, protection of the public health and the environment, the most important reason for the rule. Attempting to address irrelevant points in the rule only complicates the rule. Besides, royalty is paid on oil spills and the operator has an economic incentive to recover as much as possible.

Yates Petroleum Corporation requests the OCC use their independent judgment and ask the fundamental question of how the proposed rule protects the environment and the public health when considering changes from the rule published in the New Mexico Register on October 31, 1996. First, ask this question when considering the need to include gas within in the reporting requirements of a release.³ Releases of gas dissipate quickly, with no adverse impact on the environment or endangerment of the public. Releases of natural gas do not create a danger sufficient enough to require reporting. Other reasons, such as prevention of waste or royalty collection may, but these are not the concerns of Rule 116. From industries perspective, the reporting of

¹ IOGCC/EPA STATE REVIEW OF OIL & GAS EXPLORATION AND PRODUCTION WASTE MANAGEMENT REGULATORY PROGRAMS, New Mexico State Review, June 1994, A Project of the Interstate Oil and Gas Compact Commission, Page 43.

² Ibid. 43. Emphasis added.

³ See the November 13, 1996, Draft OCD Proposed Replacement For Rule 116, Part 116.B

gas does nothing more than create unnecessary paperwork. Secondly, we ask the question of how the amount of gas released is to be measured other than by a guess. Often as a course of normal operations, gas is released to the atmosphere because work on the well needs to be accomplished. There is no means to measure this gas, creating the impossibility of measuring the gas. Operations where this can occur include, blowing a well down to begin workover operations, the completing of a well where gas is vented to clean up the well to establish production, under balance drilling, conducting drill stem testing and venting of gas for well control. All of these activities release gas in a prudent manner to promote the development of oil and gas without endangering the public. We recommend that the requirement for reporting of gas be removed from any final rule.

A second problem found in all the proposed rule versions is the low threshold limits set for requiring the reporting of a release. The proposed five barrels for a minor release is not a large number and seems to be picked out of the air by OCD. Much debate occurred in the Committee over this number and consensus was not reached. Additionally, while not a controlling factor, the number does not match the Bureau of Land Management threshold of ten barrels. We recommend that the Commission increase the minor reporting level to ten (10) barrels.

A third problem with proposed Rule 116, in all versions, is that it burdens industry by requiring us to report twice to the OCD. This is probably an unintended consequence, but points to a lack of communication within the OCD. In both the October 31st and November 13th versions of Rule 116 Part C (19 NMAC 116.C,) notification is required to be sent twice to the OCD, once to the local district office and a second time to the Division's Environmental Bureau Chief. Why should industry be responsible for the lack of communication in the OCD? Notifying the OCD twice is simply duplication of effort and redundant. We recommend that the OCC decide where industry is to contact the OCD; which we believe should be the local district office and recommend the same.

With respect to proposed Rule 19, Prevention and Abatement of Water Pollution, this rule is doing something that the Oil Conservation Commission should have done earlier. The main benefit provided by Rule 19 is that jurisdiction is exerted by the OCC to regulate the oil and gas industry in areas where other agencies are attempting to regulate oil and gas and usurp the power of the OCC. Responsibility for regulation of oil and gas rests with the OCC and the OCC should work to prevent other regulatory bodies from exerting jurisdiction over oil and gas. Industry does not need to report to multiple agencies.

Specifically, we request that the OCC to adapt for use the comments of industry before they adopt a final version of this rule. Additionally, any rule adopted by the OCC also needs to consider granting the OCD the ability to waive compliance at their discretion based on the individual facts of the case. Finally, OCD has changed their position on this rule so many times, it is important that the regulated community know what proposed version of the rule is being pursued. Attempting to understand all the versions of the rule promoted by the OCD has caused confusion on what rule is being

proposed. OCD has made more than house keeping changes to the proposed rule and we feel their comments should be discounted at this late stage of the rule making procedure. If their proposed comments are given credence, we recommend that industry be provide the opportunity to present evidence to challenge the recommendation by OCD.

Yates Petroleum Corporation respectfully submits these comments.

Very truly yours,

YATES PETROLEUM CORPORATION

A handwritten signature in cursive script, appearing to read "Chuck Moran".

Chuck Moran
Associate Landman