

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

**IN THE MATTER OF THE HEARING
CALLED BY THE DIVISION TO
CONSIDER REVISED RULES FOR
REPORTING AND REMEDIATION OF
LEAKS SPILLS AND RELEASES
FOR THE STATE OF NEW MEXICO**

CASE NO. 11352

**PROGRESS REPORT NUMBER ONE
FROM
THE CHAIRMAN OF THE RULE 116 COMMITTEE
TO
THE CHAIRMAN OF THE OIL CONSERVATION COMMISSION**

On behalf of the Rule 116 Committee, I am pleased to notify you that the Committee has concluded Phase One of its assigned tasks and respectfully submit this Progress Report Number One to the Chairman of the New Mexico Oil Conservation Commission ("OCC"):

BACKGROUND

On August 3, 1995, the OCC commenced a public hearing to consider revisions to current Division Rule 116 which deals with spill/release reporting requirements.

On August 25, 1995, the Chairman of the OCC appointed a Rule 116 Committee to study this matter and to report to the Chairman of the OCC by February 1, 1996.

Pit Closure / Spill Remediation
Guidelines | *Alternative*
Appropriate Action

TASK OF COMMITTEE:

The task of the Committee was to consider the following:

- (1) To review Oil Conservation Division ("OCD") Rule 116 to determine if it meets the stated objective of protecting fresh water, public health and the environment and to recommend appropriate revision where necessary.
- (2) To determine the scope of Rule 116 and where appropriate consider rule changes to address:
 - (a) which spills are reportable
 - (b) determine reportable substances and reportable quantities
 - (c) initial response to a spill or release
 - (d) conducting a site assessment
 - (e) initially contain the spill/release and stabilize the site
 - (f) assess the severity of contamination
 - (g) target cleanup levels
 - (h) implement remediation measures
 - (i) report completion of cleanup.
 - (j) OCD approvals/permits
- (3) To review and revise where necessary Rule 116 so that it promulgates rules and establishes criteria for OCD reporting, corrective action and remediation standards concerning spills and releases.
- (4) To make recommendations concerning proposed OCD guidelines for reporting, corrective action and remediation which are consistent with the proposed changes to Rule 116.
- (5) To determine when and if OCD approval of proposed corrective action shall be required and to specify the process by which the OCD will approve, modify or deny a corrective action plan submitted by an operator after a spill/release.
- (6) To develop recommendations for providing for uniform regulation and standardized criteria for reporting, corrective action and remediation to be adopted by the Oil Conservation Division ("OCD"),

and for the use and possible adoption by the Bureau of Land Management ("BLM") and the Commissioner of Public Lands of the State of New Mexico ("SLO")

(7) To consider uniform (standardized) forms and procedures to be used by OCD, BLM and SLO.

MEMBERS OF THE COMMITTEE:

The Committee members are listed on Attachment (1)

COMMITTEE MEETINGS:

The Committee has held the following meetings:

- (1) September 29, 1995: one day- Albuquerque
- (2) November 9-10, 1995: two days-Farmington
- (3) January 12, 1996: one day-Albuquerque

The attendance lists are set forth on Attachment (2)

The next scheduled Committee meeting is set for Friday, February 23, 1996 at the OCD offices-Santa Fe.

COMMITTEE PROCEDURE

The Committee unanimously concurred to divide its task into two phases:

(1) **Phase One:** to prepare a proposed Revised Rule 116 concerning reportable volumes and substances; and

(2) **Phase Two:** to study remediation and abatement issues and to prepare proposed rules/guidelines for corrective action and remediation standards concerning spills and releases.

JURISDICTIONAL ISSUE

The Committee examined the authority vested in the Oil Conservation Commission by both the Oil and Gas Act (Sec. 70-2-1 etseq., NMSA-1978) and the Water Quality Act (Sec. 74-6-1 etseq., NMSA-1978) over spills and releases at oil field exploration and production facilities. Since the Committee was to consider and debate corrective action requirements, standards and guidelines for spills regulated by the OCC/OCD, the Committee felt obligated to determine whether the new "abatement" regulations, 20 NMAC 6.2, Sections 1-203.A.9, 4101-4115, adopted by the Water Quality Control Commission ("WQCC") can be applied to spills and releases currently regulated by the OCC/OCD.

Specifically, how do Water Quality Control Commission Regulations concerning the remediation of spills and releases apply to oil and gas facilities?

In response to the Committee's request for legal opinions on this topic, the Committee received one answer [see Attachment (3)] which was supplied by Ned Kendrick, an attorney specializing in such matters, who concluded that:

The Oil Conservation Commission does have the authority to adopt regulations for the prevention and abatement of water pollution associated with the oil and gas facilities specified in Section 70-2-12.B.(21) and B.(22) of "The Oil and Gas Act". WQCC Regulations do not apply to the facilities specified in B (21) which are mainly "upstream" i.e., exploration, development, production or storage facilities. The OCC, however, may have the option, ***but would not be required***, to apply WQCC Regulations on a case-by-case basis to facilities specified in B.(22), which are mainly "downstream". **(emphasis added)**

The Rule 116 Change Committee and ultimately the OCC are free to consider any requirements of the WQCC Abatement Regulations as appropriate for inclusion in OCD Rule 116. (emphasis added)

Effective June 16, 1989, the New Mexico Legislature expanded the OCD's environmental regulatory jurisdiction by adding the following two provisions of Section 70-2-12.B:

(21) to regulate the disposition of non-domestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas to protect public health and the environment; and

[Note: characterized by the Committee as "upstream E&P activities"]

(22) to regulate the disposition of non-domestic wastes resulting from the oil field services industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil to protect public health and the environment, including administering the Water Quality Act [Chapter 74, Article 6 NMSA 1978] as provided in Subsection E of Section 74-6-4 NMSA 1978.

[Note: characterized by the Committee as "downstream E&P activities"]

[Note: The B.(21) category of "upstream E&P activities" does not mention the Water Quality Act; and the B.(22) category of "downstream E&P activities" makes reference to "administering the Water Quality Act".]

Mr. Kendrick concludes that the Legislature divided the grant of rule making authority to the OCC between authority that stands alone and authority that may overlap with authority under the Water Quality Act. In addition he states:

Section 74-6-12.G of the Water Quality Act precludes application of WQCC Regulations to spills resulting from the exploration, development, production or storage of crude oil or natural gas. Section 70-2-12 NMSA-1978 and other laws confer exclusive authority with the Oil Conservation Commission to prevent water pollution resulting from oil and gas operations. Thus the Oil Conservation Commission is not required to (a) impose the WQCC Spill Regulations or the WQCC Abatement Regulations in any particular situation or (b) to adopt any provision of those WQCC Regulations.

Mr. Rand Carroll, attorney for the OCD, advises that in his opinion the OCC has the authority to:

(1) regulate the B.(21) upstream E&P activities by revising Rule 116 and adopting either (a) the same standards and corrective action procedures set forth in the WQCC abatement regulations; or (b) its own corrective action procedures, guidelines and regulations which may be different from the WQCC regulations; with all review of abatement action being taken through the OCD-examiner hearing process; and

(2) continue to enforce clean-up "abatement" of B.(22) sites under the WQCC standards and the WQCC regulations with all review of abatement action being taken through the WQCC hearing process pursuant to the Water Quality Act authority referenced in Section 70-2-12.B.(22) NMSA (1978).

COMMITTEE CONCLUSIONS AND RECOMMENDATIONS CONCERNING PHASE ONE TASKS

(1) Current Rule 116 Needs to be Revised:

The Committee unanimously agreed that Current Rule 116 should be revised because it:

- (1) does not adequately limit certain discharges to surface waters;
- (2) does not assign the correct reporting priority to the discharge of certain substances;
- (3) does not utilize a "standardized" reporting form;
- (4) does not utilize a "standardized" reporting period;
- (5) duplicates the reporting requirements for certain discharges or incidents covered by other agencies' rules; and
- (6) does not contain any requirements for corrective action

(2) Additional Definitions need to be adopted:

The Committee unanimously agreed that the OCC should adopt additional definitions for Division Rule A.7 so that terms used in Rule 116 would be properly defined. See Attachment (5).

The Committee unanimously agreed on the language for the following definitions:

Release shall mean all breaks, leaks, spills, releases, fires or blowouts involving crude oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and natural gases to the environment.

Watercourse shall mean any lake bed, or gully, draw, stream bed, wash, arroyo, or natural or human-made channel through which water flows or has flowed.

Oil Field Wastes shall mean those wastes produced in conjunction with the exploration, production, refining, processing and transportation of crude oil and/or natural gas and commonly collected at field storage, processing, disposal, or service facilities, and waste collected at gas processing plants, refineries and other processing or transportation facilities.

[note: this definition is taken from OCD Order R-7940-C Rule 2(c)]

Well Blowout shall mean a loss of control over and subsequent eruption of any drilling or workover well or the rupture of the casing, casinghead, or wellhead or any oil or gas well or injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or liquids, from the well.

(3) Proposed Revised Rule 116:

The Proposed Revised Rule 116 as set forth on Attachment (4) is based upon the following action taken by the Committee at its meeting on January 12, 1996:

(a) Title for Rule 116: The Committee unanimously agreed that Rule 116 should be titled "Release Notification and Corrective Action" instead of "Notification of Fire, Breaks, Leaks, Spills and Blowouts". The Committee concluded that the current items listed for the title are included within the defined term "release" and that the title should also place the reader on notice that it deals with corrective action.

(b) Format of Rule 116: The Committee unanimously agreed that Rule 116 should be reformatted and reorganized as set forth in Attachment (4) in order to be easier to read and understand.

(c) Notification--Section A (Revised Rule 116) The Committee unanimously recommends the adoption of Section A dealing with notification and unanimously agreed upon the language used.

(d) Contents of Notification--Section C (Revised Rule 116) The Committee unanimously recommends the adoption of a 15 day written notice requirement using a standardized form and the necessary information for an immediate verbal notice. The language proposed in Section C has the unanimous support of the Committee.

(e) Reporting Form--Section C (Revised Rule 116) The Committee unanimously recommends the adoption of the reporting form enclosed as Attachment (6).

(f) Corrective Action--Section D (Revised Rule 116) The Committee unanimously recommends the adoption of a section dealing with "corrective action".

The Committee's current draft for this section is as follows:

D. CORRECTIVE ACTION:

The owner or operator must complete Division approved corrective action for pollution from releases. Pollution of ground water or surface water will be abated and enforcement taken in accordance with the Water Quality Control Commission Regulations which the Oil Conservation Commission adopts by reference. Remediation of soil pollution, including that in the vadose zone, in accordance with Division regulations or guidelines will be approved by the Division.

This language was adopted by the Committee subject to obtaining legal opinions concerning whether it accomplishes the Committee's intended purpose.

The Committee understands that:

(a) the OCC has not in its rules adopted the numerical ground water standards of Subpart III of the WQCC regulations nor has it adopted a rule requiring corrective action involving ground water or surface water contamination at E&P sites either in the form of regulations or enforceable guidelines; and

(b) the OCD has used the WQCC numerical ground-water standards in the OCD guidelines for remediation of activities within OCD jurisdiction.

Certain members of the Committee are concerned that without formal action by the OCC, the current practice of the OCD Environmental Bureau described above is without specific authority.

The Committee intended that if the OCC adopts this provision, it would constitute formal action by the OCC to:

- (1) continue to administer the Water Quality Act as to B.(22) activities;
- (2) adopt for B.(21) activities the same water quality standards as were adopted by the WQCC for its regulated activities (being the numerical standards set forth in Part 3103 of the WCC Regs., the "toxic pollutants" definition in Subpart 1101 of the WQCC Regs. and the non-aqueous phase liquid standards) and in doing so provide for the use of consistent water quality standards throughout the State of New Mexico;
- (3) adopt for B.(21) activities a corrective action rule the same as the WQCC new "abatement" regulations **only as** to pollution of ground water and surface water caused by OCD B.(21) regulated activities and in doing so respond to the request of committee members from Amoco, Marathon and Amerada Hess that the OCC provide regulatory flexibility to the oil and gas industry so that releases which exceed the water quality standards can be abated either to those standards or to alternative abatement standards based upon risk analysis;
- (4) approve the OCD guidelines for abatement/remediation of the soils and the vadose zone caused by OCD regulated activities;
- (5) provide that appeals for B.(21) activities be processed through the OCD regulatory-hearing procedures;
- (6) provide that appeals for B.(22) activities be processed through the WQCC hearing procedures;
- (7) provide that the OCD would continue to enforce clean-up "abatement" of B.(22) activities under the "Water Quality Act" and that appeals be taken to the WQCC; and

(8) provide that public notice and participation in the process for the abatement of B.(22) activities be conducted in accordance with Subpart 4108 of the WQCC Regulations and that the OCC adopt the same process for B.(21) activities.

Certain members of the Committee are concerned that the current draft of Section D does not accomplish the Committee's intention and the Committee is pursuing obtaining legal advice of how to redraft this section.

In addition, the Division has expressed concern that the current draft of Section D does not accomplish its intended purpose. The Division will propose to the Committee at its February 23, 1996 meeting that the Committee consider editing Section D and adopting an additional section (Section E) which would adopt for the OCD a "corrective action" rule incorporating the same provisions as contained in those relevant portions of the WQCC Regulations by which items (1) through (8) can be accomplished.

(g) Reporting Requirements--Section B (Revised Rule 116) The Committee devoted a substantial amount of its time discussing the types of releases and the volumes which should be reported:

Categories of Releases

The Committee agreed that Rule 116 was a rule for the protection of ground water, surface water and public health and the environment and as such must address the potential risks associated with the various types of releases. In doing so, the Committee concluded that the category of release with the greatest risk would be one which (a) results in a fire; (b) will reach a water course; (c) may with reasonable probability endanger public health; or (d) results in substantial damage to property or the environment and should be reported if **any volume was released and regardless of whether within or off of the site of operations.**

The Committee recommends that existing Rule 116 provisions dealing with fire, blowout and releases to a watercourse be combined into a single category ("Category I Release") and that the reporting requirements be made more restrictive by requiring that the release of any volume be reported by immediate verbal notification.

With the exception of natural gas which is discussed as a separate item, any other release would be reported under what is currently shown in Proposed Revised Rule 116 as "Category III Release".

Reportable Natural Gas Releases

The Committee was unable to agree: (a) whether releases of any volumes of natural gas needed to be reportable under Rule 116; (b) if reported, what volumes should be reported; or (c) if reported, should it be by immediate verbal and/or fifteen day written notification.

Currently, the OCD and the BLM reporting requirements are as follows:

EXISTING NOTICE REQUIREMENTS FOR NATURAL GAS RELEASES

Current OCD Rule 116		Current BLM Requirements	
0-1000 mcf	No reporting	0-50 mcf	No Reporting
over 1000 mcf	Written 10 days	50-500 mcf	Written 15 days
N/A	N/A	over 500 mcf	Immed. verbal

By a vote of 3 to 2 (Shaw, Menzie, Small voting for, Anderson, Schmidt voting against and Shuey abstaining) the Committee adopted a change from the existing OCD Rule 116 to:

(1) now require an immediate verbal report of **any volume of natural gas** which: (a) results in a fire; (b) may with reasonable probability endanger public health; or (c) results in substantial damage to property or the environment, and

(2) delete written reports for the release of any volume of natural gas.

The Committee majority's proposal is set forth in Revised Rule 116. The principal argument for the majority vote was that public health threats under Rule 116 would be addressed by an immediate verbal report of any gas release without regard to volumes and a written report based upon volumes released was not necessary.

The principal argument for the minority was that Rule 116 could also be used as a "waste rule" by providing a written report so that the State Land Office would have a written report to be used to require the operator to account for gas volumes releases and for which royalties might be due. See Attachment (7).

In addition, at the time of the Committee vote of this item, the Committee was aware that all three OCD district supervisors were strongly in favor of requiring written notification of gas releases at volumes consistent with those currently required by the BLM rules.

Releases to a Watercourse

The following table sets forth the current requirements for releases of either oil and/or produced water which will reach a watercourse:

EXISTING OCD NOTICE REQUIREMENTS FOR RELEASES WHICH CAN REACH A WATERCOURSE

OIL		PRODUCED WATER	
less than 1 bbl	No reporting	less than 25 bbls	No Reporting
1 bbl or more	Immed. verbal	25 bbls or more	Immed. verbal

The Committee unanimously agreed that the potential risk to a watercourse was such that any release of any volume which can reach a watercourse must be reported both by immediate verbal notice and within 15 days by written notice; see table below:

COMMITTEE PROPOSED REVISED NOTICE REQUIREMENTS FOR RELEASES WHICH CAN REACH A WATERCOURSE

OIL		PRODUCED WATER	
any volume	immed. verbal and written w/ 15 days	any volume	Immed. verbal and written w/ 15 days

Releases which will not reach a Watercourse

Existing Rule 116 currently provides for the following reporting levels for releases of produced water to ground surface and for oil releases to ground surface:

EXISTING RULE 116

Oil to Ground		Produced Water to Ground	
0-5 bbls	No reporting	0-25 bbls	No Reporting
5-25 bbls	Written 10 days	25-100 bbls	Written 10 days
+25 bbls	Immed. verbal	+100 bbls	Immed. Verbal

While the Committee unanimously agreed that produced water and oil release should be combined under one reporting category, the Committee was divided over different minimum reporting volumes.

Mr. Shaw proposed for discussion that a volume of less than 250 bbls of produced water and of less than 25 bbls of oil should not be reported.

The Chairman suggested Proposal #1 for discussion purposes while Mr. Anderson proposed for discussion that a volume of less than 1 bbl of produced water and of less than 1 bbl of produced ~~water~~ should not be reported. See Proposal #1 and #2 below: o.i.?

PROPOSED RULE 116

PROPOSAL # 1 Oil &/or Produced Water to Ground		PROPOSAL # 2 Oil &/or Produced Water to Ground	
0-25 bbls.	No reporting	0-1 bbls	No Reporting
+25 bbls	Written 10 days	1-25 bbls	Written 10 days
+25 bbls	Immed. verbal	+25 bbls	Immed. Verbal

By a vote of 3 to 3, the Committee failed to adopt either Proposal #1 or #2.

Mr. Anderson then proposed the following compromise:

PROPOSED RULE 116

PROPOSAL # 3 Oil &/or Produced Water to Ground	
less than 5 bbls.	No reporting
5 to 25 bbls	Written w/in 15 days
more than 25 bbls	Immed. verbal and written w/in 15 days

By a vote of 5 to 1 (Anderson, Schmidt, Menzie, Small, Shuey voting for and Shaw voting against) the Committee adopted Proposal #3 above.

(4) Remaining Committee Action:

Unless otherwise directed by the Chairman-OCC, the Committee intends to:

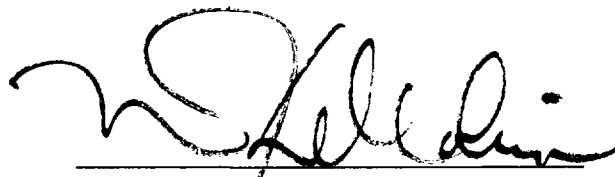
- (a) prepare guidelines for the abatement/remediation of soil pollution, including that in the vadose zone and prepare a Report to the OCC for the formal adoption of those guidelines;
- (b) consider the OCD's proposed revision to Section D and the adoption of an additional section (Section E) as described in this report;
- (c) obtain recommendations from attorneys on any proposed modifications of Section D in order to accomplish the intentions of the Committee;
- (d) discuss issues and concerns raised by Yates Petroleum Corporation in a letter dated January 29, 1996; and
- (e) consider whether the Committee's adopted definition for release in Proposed Rule 116 should be amended to include Regulated NORMs.

The next scheduled meeting of the Committee is for the Division offices, Santa Fe, New Mexico on Friday, February 23, 1996 commencing at 10:00 AM.

(5) This Progress Report:

I wish you inform you that various drafts of this Progress Report have been circulated to all members of the Committee and I have received a number of very helpful suggestions and comments. However, in order to meet the February 1, 1996 reporting deadline, this final report has not been reviewed by members of the Committee. I will distributed copies of this Progress Report to all members of the Committee and to anyone else desiring a copy and will provide you with any of their comments after our February 23, 1996 meeting.

Respectfully submitted this 1st day of February, 1996.



W. Thomas Kellahin
Chairman