

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

**IN THE MATTER OF:**

**THE HEARING CALLED BY THE OIL CONSERVATION DIVISION TO ENACT A NEW RULE 712 PERMITTING DISPOSAL OF CERTAIN NON-DOMESTIC WASTE ARISING FROM THE EXPLORATION, DEVELOPMENT, PRODUCTION OR STORAGE OF CRUDE OIL OR NATURAL GAS, CERTAIN NON-DOMESTIC WASTE ARISING FROM THE OIL FIELD SERVICE INDUSTRY, AND CERTAIN NON-DOMESTIC WASTE ARISING FROM THE TRANSPORTATION, TREATMENT OR REFINEMENT OF CRUDE OIL OR NATURAL GAS, AT A SOLID WASTE FACILITY REGULATED BY THE NEW MEXICO ENVIRONMENT DEPARTMENT.**

**CASE NO. 12626  
ORDER NO. R-11558**

**ORDER OF THE COMMISSION**

**BY THE COMMISSION:**

**THIS MATTER** having come before the Oil Conservation Commission (hereinafter referred to as "the Commission") pursuant to its authority under the Oil and Gas Act and House Bill 533 of the 45th Legislature, First Session 2001, concerning disposal of certain non-domestic waste at solid waste facilities, and the Commission having conducted a public hearing on March 30, 2001 and carefully considered the matter,

**FINDS:**

1. The Oil and Gas Act delegates to the Commission the authority to regulate nondomestic wastes resulting from the exploration, development, production, transportation, storage, treatment or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy and the disposition of nondomestic waste resulting from the oilfield service industry.
2. House Bill 533 of the 45th Legislature, First Session 2001, was signed into law by Governor Gary E. Johnson on March 16, 2001. That bill provides for disposal of certain nondomestic oil, gas and geothermal waste at solid waste facilities. Section 2 of the bill contains an emergency clause, and it became effective upon signing.

3. Certain nondomestic waste arising from the exploration, development, production or storage of crude oil or natural gas, certain nondomestic waste arising from the oil field service industry, and certain non-domestic waste arising from the transportation, treatment or refinement of crude oil or natural gas has been disposed of at solid waste facilities for several years by unwritten agreement of the Oil Conservation Division (hereinafter referred to as "the Division") and the New Mexico Environment Department (hereinafter referred to as "the Environment Department"). The practice was challenged during an administrative proceeding before the Environment Department and was discontinued in early December, 2000.

4. House Bill 533 clarifies that certain nondomestic waste associated with the exploration, development, production, transportation, storage, treatment or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy, except drilling fluids, produced water, petroleum liquids, petroleum sludges or petroleum contaminated soils (except in an emergency declared by the Director), and the disposition of nondomestic waste resulting from the oilfield service industry, may be disposed of at a solid waste facility regulated by the Environment Department pursuant to the Solid Waste Act.

5. House Bill 533 permits disposal of certain nondomestic waste only upon approval of the Division. At this time, the Commission has no rules specifying which wastes may be disposed of as permitted by House Bill 533, how approval is granted, or any required testing.

6. On March 19, 2001, the Division promulgated its Emergency Rule E-34 which enacted a temporary rule codified in the New Mexico Administrative Code as NMAC 19.15.9.712 that permitted disposal of certain waste at solid waste facilities until the Commission could meet and discuss enacting a permanent rule on the subject.

7. The Emergency Rule adopted as a rule a matrix developed over a period of several years by staff of the Division and the Solid Waste Bureau of the Environment Department. The matrix set out which wastes could be disposed of at solid waste facilities and the testing required before disposal.

8. The rule proposed for adoption is identical with the rule enacted by the Division as an emergency rule, except for correction of ~~two~~ *several* typographical errors that appear in the emergency rule.

9. Since an order of the Environment Department on December 8, 2000, options for disposal of waste previously disposed of at solid waste facilities under the unwritten agreement became limited. Some nondomestic waste has been stockpiled or transported out-of-state, raising concern that some waste may be improperly disposed of or improperly stockpiled.

10. The proposed rule is intended to restore the status quo that existed before December 8, 2000.

11. Any improper disposal or stockpiling of nondomestic waste presents an imminent threat to the public health and the environment.

12. The proposed rule treats wastes differently depending on the nature of the waste. Waste that is essentially household or office waste may be disposed of at a solid waste facility without prior authorization of the Division and without testing. This waste, listed in Subsection D, Paragraph (1) of Section 19.15.9.712, poses no threat to public health or the environment when disposed of at a solid waste facility permitted by the Environment Department to accept such waste.

13. Waste which, after testing, occasionally is found to contain hazardous constituents may be disposed of at a solid waste facility only upon prior authorization of the Division and after testing detailed in the proposed Rule shows it is free of hazardous constituents. This waste, listed in Subsection D, Paragraph (2) of Section 19.15.9.712, poses no threat to public health or the environment so long as it is tested and the test results are within the limits set in Subsection E of Section 19.15.9.712 and then disposed of at a solid waste facility permitted by the Environment Department to accept such waste.

14. Waste whose characteristics are unknown to the Division may be disposed of at a solid waste facility only upon a case-by-case basis and only upon prior authorization of the Division and after testing detailed in the proposed Rule. This waste, listed in Subsection D, Paragraph (2) of Section 19.15.9.712, poses no threat to public health or the environment so long as it is tested and the test results are within the limits set in Subsection E of Section 19.15.9.712 and then disposed of at a solid waste facility permitted by the Environment Department to accept such waste.

15. Because waste may be improperly stockpiled or improperly disposed of and because of the accompanying risks to human health and the environment posed by such practices, an emergency exists which justifies the proposed rule becoming effective immediately upon filing with the State Records Center.

**IT IS THEREFORE ORDERED, AS FOLLOWS:**

16. The attached Rule NMAC 19.15.9.712 concerning Disposal of Certain Non-domestic Waste at Solid Waste Facilities is hereby adopted.

DONE at Santa Fe, New Mexico, this \_\_\_\_ day of March, 2001.

**STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION**

JAMI BAILEY, Member

ROBERT L. LEE, Member

LORI WROTENBERY, Chairman

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