

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

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

CASE NO. 13,013

APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION FOR AMENDMENT)
OF RULE 711 [APPLICABLE TO SURFACE)
WASTE MANAGEMENT FACILITIES ONLY])

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Oil Conservation Division

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN
JAMI BAILEY, COMMISSIONER
ROBERT LEE, COMMISSIONER

ORIGINAL

March 20th, 2003

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Thursday, March 20th, 2003, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
(505) 989-9317

I N D E X

March 20th, 2003
 Commission Hearing
 CASE NO. 13,013

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APPLICANT'S WITNESS:	
<u>ROGER C. ANDERSON</u> (Environmental Bureau Chief, New Mexico Oil Conservation Division)	
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* * *

A P P E A R A N C E S

FOR THE COMMISSION:

CAROL LEACH
General Counsel
Energy, Minerals and Natural Resources Department
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

FOR THE DIVISION:

DAVID K. BROOKS, JR.
Attorney at Law
Energy, Minerals and Natural Resources Department
Assistant General Counsel
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

* * *

ALSO PRESENT:

ROBERT M. GALLAGHER
President, New Mexico Oil and Gas Association

* * *

1 WHEREUPON, the following proceedings were had at
2 9:05 a.m.:

3 CHAIRMAN WROTENBERY: Okay, it looks like
4 everybody's here. We've got a quite a few items on the
5 agenda, and we want to try to get through as much as
6 possible today, finish up today if we can. We may continue
7 into tomorrow morning, but we'll give it a shot at
8 finishing today.

9 My name is Lori Wrotenbery, I'm Director of the
10 Oil Conservation Division. I serve as Chair of the Oil
11 Conservation Commission.

12 To my left is Dr. Robert Lee, who is Director of
13 the Petroleum Recovery Research Center at New Mexico Tech
14 and is the designee to the Commission of the Secretary of
15 Energy, Minerals and Natural Resources Department.

16 To my right is Jami Bailey, who represents Land
17 Commissioner Patrick Lyons on the Commission.

18 We have to Commissioner Bailey's right Florene
19 Davidson, the Commission Secretary.

20 We're pleased to have Carol Leach, the general
21 counsel of the Department, sitting in with us at least for
22 a portion of today. Steve Ross, the Commission's counsel
23 had to go over to the roundhouse and cover some legislative
24 matters, so thank you, Carol --

25 MS. LEACH: Sure --

1 CHAIRMAN WROTENBERY: -- for filling in.

2 MS. LEACH: -- it'll be fun.

3 CHAIRMAN WROTENBERY: And Steve Brenner will be
4 recording this session for us today.

5 It is March 20th, 2003, we are in Porter Hall,
6 for the record, just a little bit after nine o'clock a.m.

7 Let's just take care of one brief item of
8 business before we get into the pending matters.

9 We've got the minutes of the hearing of the Oil
10 Conservation Commission that was held on February 27th,
11 2003. We need to take care of those this morning.

12 Commissioners, have you had an opportunity to
13 review those minutes?

14 COMMISSIONER BAILEY: Yes, I have, and I move
15 that we adopt them.

16 COMMISSIONER LEE: Second.

17 CHAIRMAN WROTENBERY: All in favor say aye.

18 COMMISSIONER BAILEY: Aye.

19 COMMISSIONER LEE: Aye.

20 CHAIRMAN WROTENBERY: Aye. I will sign those on
21 behalf of the Commission. Thank you, Florene.

22 And then the first item that we'll take up is the
23 Application of the New Mexico Oil Conservation Division for
24 Amendment of Rule 711. This is applicable to surface waste
25 management facilities only.

1 Oh, and let me introduce Tom Mills as well, who
2 we're pleased to have attending this session. Mr. Mills is
3 the Deputy Secretary of the Energy, Minerals and Natural
4 Resources Department.

5 And our Secretary, Joanna Prukop.

6 SECRETARY PRUKOP: Very nice to meet you all.
7 Please come see me if I can help.

8 CHAIRMAN WROTENBERY: Great.

9 SECRETARY PRUKOP: Thank you, Lori.

10 CHAIRMAN WROTENBERY: Thank you.

11 Okay, I'll call for appearances in Case 13,013.

12 MR. BROOKS: Madam Chairman, honorable
13 Commissioners, I'm David Brooks, Assistant General Counsel,
14 Energy, Minerals and Natural Resources Department of the
15 State of New Mexico, appearing for the Oil Conservation
16 Division.

17 CHAIRMAN WROTENBERY: Okay, and do we have --

18 MR. BROOKS: I have one witness.

19 CHAIRMAN WROTENBERY: One witness. For the
20 record, do we have any other appearances in this matter?

21 MR. GALLAGHER: Madame Chairwoman, Bob Gallagher,
22 President, New Mexico Oil and Gas Association.

23 CHAIRMAN WROTENBERY: Thank you, Mr. Gallagher.

24 I do believe, Mr. Brooks, that you want to
25 support some testimony in support of this Rule amendment?

1 MR. BROOKS: Yes, ma'am, and I have one witness.

2 CHAIRMAN WROTENBERY: I also note that we have
3 received only one set of written comments, that I'm aware
4 of, on this Rule amendment. Is that right?

5 MR. BROOKS: I'm aware of only one written
6 comment that we have received.

7 CHAIRMAN WROTENBERY: And that was from the
8 Environment Department?

9 MR. BROOKS: That is correct.

10 CHAIRMAN WROTENBERY: And will you address those
11 comments in the course of your testimony?

12 MR. BROOKS: They will be addressed in the
13 testimony.

14 CHAIRMAN WROTENBERY: Okay. Otherwise I'll also
15 note for the record that this particular amendment does not
16 appear to be particularly controversial. I don't know, we
17 may have some questions from the Commissioners about it.
18 In view of the number of items that we have on the agenda,
19 Mr. Brooks, if you will cover the items that you need to
20 cover for the record of this rulemaking, please do so as
21 concisely as possible.

22 MR. BROOKS: Madame Chairman, that is my
23 intention.

24 CHAIRMAN WROTENBERY: Thank you. Okay, Mr.
25 Brooks, would you like to call your witness?

1 MR. BROOKS: We need to get him sworn, if it
2 please the Commission.

3 (Thereupon, the witness was sworn.)

4 MR. BROOKS: Good morning, Mr. Anderson.

5 MR. ANDERSON: Good morning.

6 ROGER C. ANDERSON,

7 the witness herein, after having been first duly sworn upon
8 his oath, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BROOKS:

11 Q. Would you state your name for the record, please?

12 A. My name is Roger C. Anderson.

13 Q. And by whom are you employed?

14 A. I am employed by the Oil Conservation Division as
15 the Environmental Bureau Chief.

16 Q. In what office?

17 A. In the Santa Fe office.

18 Q. And what are your responsibilities, generally, as
19 Environmental Bureau Chief?

20 A. To manage the environmental programs as dictated
21 by the Oil and Gas Act and the Water Quality Act and the
22 oil and gas industry.

23 Q. What is Rule 711?

24 A. Rule 711 is the rule that regulates oilfield
25 surface waste management facilities.

1 Q. And is administering Rule 711 one of the
2 responsibilities of the Environmental Bureau?

3 A. Yes, it is.

4 Q. Concerning Rule 711, does one of the things that
5 -- does it define the types of wastes that may be accepted
6 for disposal at commercial waste management facilities
7 regulated by the Division?

8 A. Yes, it does.

9 Q. And can you tell us what its parameters are as it
10 is presently written?

11 A. It only allows wastes generated in the
12 exploration, production, transportation, processing and
13 refining and servicing of oil and gas wells, except in an
14 emergency declared by the Department of Public Safety, and
15 in that case it can allow non-oilfield waste.

16 Q. But it has to be declared by the Department of
17 Public Safety; it's not up to us to make that decision,
18 right?

19 A. That's correct.

20 Q. What is the intent of this amendment that is
21 currently proposed?

22 A. The intent of this amendment is to allow certain
23 non-oilfield waste to be disposed of at a surface waste
24 facility on a case-by-case basis approved by the Division.

25 Q. Has the Division from time to time received

1 inquiries about whether or not Division-regulated
2 facilities would be available for disposal of non-oilfield
3 waste?

4 A. Yes, we have.

5 Q. Based on the inquiries that your bureau has
6 received and what you know about waste management generally
7 -- Well, first of all, let me ask you, as Environmental
8 Bureau Chief, have your credentials as an expert
9 environmental engineer been presented to and accepted by
10 the Commission previously?

11 A. Yes, they have.

12 MR. BROOKS: Okay, then I won't -- then I will
13 ask, can Mr. Anderson be accepted as an expert?

14 CHAIRMAN WROTENBERY: We accept Mr. Anderson's
15 qualifications?

16 Q. (By Mr. Brooks) In your opinion, based on the
17 inquiries you received and based on what you know about the
18 waste management market in the State of New Mexico, do you
19 have an opinion as to whether or not there is a need for
20 more capacity for the management and disposal of non-
21 oilfield wastes in the State of New Mexico?

22 A. Yes, there is.

23 Q. Are there wastes generated outside the oil and
24 gas industry that are similar in chemical composition, and
25 therefore in waste-management requirements, to oilfield-

1 generated wastes?

2 A. Yes, there are.

3 Q. Could you give us some examples?

4 A. There are salts that are mined, generated from
5 the mining operation, that are similar in characteristics
6 to the salt waters that are generated in the oilfield.
7 There are waste -- or there are contaminated soils created
8 by underground storage tanks or accident spills along
9 highways that are similar to the contaminated soils that
10 are generated in the oil and gas industry. There are
11 chemicals at service companies that are universal within
12 all other industries, contaminated soils and those kind of
13 things.

14 Q. And with regard to these particular wastes that
15 are similar in physical and chemical composition to
16 oilfield wastes, in your opinion are the facilities
17 regulated by the Division appropriate facilities to manage
18 and dispose of those wastes?

19 A. If they are permitted to accept those type of
20 wastes, then they would definitely be appropriate, yes.

21 Q. Subject, of course, to capacity limitations?

22 A. That's correct.

23 Q. Do you know of any reason -- well, first of all
24 -- Let me go into one other thing first.

25 What in the trade, environmental management --

1 what does the term, quote, hazardous waste, close quote,
2 mean?

3 A. Hazardous waste is the term that is used as
4 wastes that are defined under the 40 CFR, part -- I believe
5 it's 164 -- that it either tests characteristically for
6 hazardous constituents or it is listed in the CFR as a
7 hazardous waste.

8 Q. And those regulations in the CFR are pursuant to
9 the Resource Recovery and Conservation Act?

10 A. That's correct.

11 Q. Resource, Conservation and Recovery Act.

12 A. -- Conservation and Recovery Act, yeah.

13 Q. Yeah, sorry. And that's a federal law?

14 A. That's correct.

15 Q. Okay. Now, generally speaking, these facilities
16 -- Well, not generally speaking, it's a determination that
17 has been made that we're not asking to review, that these
18 facilities that we regulate, that the Oil Conservation
19 Division regulates, are not appropriate for the disposal
20 of, quote, hazardous waste?

21 A. That's correct.

22 Q. So what you're asking the Commission to authorize
23 is non-oilfield, non-hazardous waste, correct?

24 A. That's correct.

25 Q. Subject to that qualification, do you believe

1 that there is any environmental reason not to allow this
2 type of waste to be disposed of at Division-regulated
3 facilities once the Division has reviewed the facility's
4 capabilities and capacity limitations and determined that
5 that's appropriate in a particular case?

6 A. I see no reason to not allow it.

7 Q. Very good. Do you believe, however, that --
8 Well, first of all, there are a lot of different types of
9 facilities that are governed by Rule 711?

10 A. Yes, there are.

11 Q. And some of them would be appropriate for certain
12 types of waste, and others would be appropriate for other
13 types of waste, correct?

14 A. That's correct.

15 Q. So for that reason do you believe it would be
16 appropriate to have an across-the-board authorization of
17 disposal of non-oilfield wastes, or do you believe that it
18 would be better for the Division to consider this on a
19 case-by-case basis?

20 A. I believe it's needed to be on a case-by-case
21 approval basis from the Division.

22 Q. Now, the Environment Department raised an issue
23 in their comments about -- The Rule as originally proposed
24 said if the waste is similar in nature to oilfield wastes,
25 and the Environment Department raised a question of what

1 was meant by that. And we are now proposing the words "is
2 similar in physical and chemical composition to oilfield
3 waste." We'd like to ask a couple of questions to address
4 that.

5 What are the primary contaminants found in
6 oilfield wastes?

7 A. The Primary contaminants found in oilfield waste
8 are hydrocarbons, salts, there will be some metals.

9 Q. But those would be relatively small proportion,
10 generally, would they not?

11 A. That's correct.

12 Q. And so when you're talking about similar in
13 physical composition and chemical composition to oil and
14 gas wastes, you're talking then about wastes that are
15 contaminants primarily because they contain those
16 constituents, correct?

17 A. That's correct.

18 Q. And what kind of wastes would that exclude? What
19 would not be similar in chemical composition to oilfield
20 wastes?

21 A. It would exclude those wastes that contain
22 constituents such as dioxins, if it's below the hazardous
23 waste levels, or cyanides, those chemicals that are not
24 typically in oilfield waste.

25 Q. Now, what about physical composition? What would

1 be the --

2 A. That is meant primarily for the type of facility.
3 A land farm, pure land farm, is not allowed to accept
4 liquids, so any non-oilfield wastes that are in liquid form
5 would not be authorized at a land farm.

6 A landfill, depending on the permit conditions
7 and how it is, they may not be allowed to accept waste
8 liquids either.

9 Solids, such as contaminated soils, a landfill
10 may or may not be authorized to accept contaminated soils
11 unless they have a land farm to land-farm it or remediate
12 it.

13 Those are the type of things --

14 Q. Was there any type of waste that would be
15 excluded because -- generically, because it's not similar
16 in physical composition to oilfield waste, or would it just
17 be a question of reviewing the suitability of particular
18 facilities?

19 A. It would be a question of reviewing a specific
20 facility requested.

21 Q. But as you indicated before, there are some that
22 very definitely would be excluded because they're not
23 similar in chemical composition?

24 A. That's correct.

25 MR. BROOKS: Okay. Now, the Environment

1 Department was also concerned about the use of the word
2 "exempt wastes", and we changed that "exempt from the
3 hazardous waste provisions of Subtitle C of the Federal
4 Resource Conservation and Recovery Act".

5 And I would say that it says here on your exhibit
6 "hazard wastes". That is an error that we were very much
7 aware of, that should read "hazardous". We've tried to
8 correct it several times, and for some reason the computer
9 just does not seem to want to make that change. But we
10 will endeavor to do so before we get it into the *New Mexico*
11 *Register*. This is the third draft we've --

12 THE WITNESS: This is the third try.

13 MR. BROOKS: -- prepared and tried to correct
14 that mistake, and the computer simply will not do it. I
15 don't know what's wrong, but we will look into that.

16 Anyway --

17 CHAIRMAN WROTENBERY: Are you working on Mr.
18 Anderson's computer?

19 THE WITNESS: Yes.

20 MR. BROOKS: Yes.

21 CHAIRMAN WROTENBERY: I think that explains it.

22 MR. BROOKS: Maybe the computer does not like Mr.
23 Anderson.

24 Q. (By Mr. Brooks) Okay, does the phrase "exempt
25 waste" as used in the trade -- does that mean exempt from

1 the provisions of Subtitle C of the Resource Conservation
2 and Recovery Act?

3 A. Yes, it does.

4 Q. And does that define a specific category of waste
5 that everybody in the industry would know what it meant?

6 A. Yes.

7 MR. BROOKS: Very good, I believe I have no
8 further questions. I will offer OCD Exhibit Number 1.

9 CHAIRMAN WROTENBERY: Any objection, Mr.
10 Gallagher?

11 MR. GALLAGHER: No objection.

12 CHAIRMAN WROTENBERY: OCD Exhibit Number 1 is
13 admitted into evidence.

14 Any questions from the Commissioners?

15 EXAMINATION

16 BY COMMISSIONER BAILEY:

17 Q. Do you perceive any conflict, or potential
18 conflict, with the surface waste regulations?

19 A. No, I don't, Commissioner Bailey, I don't
20 perceive any conflict with them. We've been working with
21 the Environment Department's chief counsel, and they've
22 been sending e-mails back and forth to -- and they asked
23 for these corrections. And the Solid Waste Bureau has
24 indicated that they had no problem with this whatsoever.

25 COMMISSIONER BAILEY: Great, that's all I have.

1 CHAIRMAN WROTENBERY: Dr. Lee?

2 COMMISSIONER LEE: (Shakes head)

3 CHAIRMAN WROTENBERY: Thank you very much for
4 your testimony, Mr. Anderson.

5 Did you have anything else, Mr. Brooks?

6 MR. BROOKS: No, madame Chairman, nothing
7 further.

8 CHAIRMAN WROTENBERY: Thank you.

9 Mr. Gallagher, would you like to make a statement
10 or present some testimony?

11 MR. GALLAGHER: Madame Chairman, just a brief
12 statement. I want to open with I am not an expert witness,
13 I don't have an engineering degree, and I'd appreciate it
14 if you wouldn't check my qualifications.

15 (Laughter)

16 MR. GALLAGHER: I'm here as president of the New
17 Mexico Oil and Gas Association. We represent 300 companies
18 that participate in the oil and gas industry in New Mexico,
19 including disposal facilities, as well as E and P,
20 refineries, pipelines, gathering, marketing and so on.

21 We stand in support of this change, madame
22 Chairman and members of the Commission, because in several
23 cases we've had companies that will get into different
24 situations, whether it's in New Mexico or in other states
25 that they produce in, and actually have waste that may not

1 be oilfield waste but is very similar physically and
2 chemically in composition. In other states they've been
3 allowed to be able to dispose of that. Their concern is,
4 if it's actually in New Mexico, having to take it out of
5 New Mexico and dispose of it somewhere else. And that was
6 the reason that we were standing in support.

7 There are several examples. As the witness said,
8 you can talk about salt that's from the Salado formation,
9 which is a producing formation in southeastern New Mexico.
10 You can talk about a play right now of helium, and there
11 would be a question of if the waste came from the helium
12 play, would that actually be oilfield waste or not? And I
13 think this takes care of it.

14 In closing, madame Chairman and Commissioners, I
15 think it's very important to point out that it is very
16 strictly written, not to allow waste that doesn't have the
17 same physical and chemical composition, not to allow just
18 anything and everything but to allow the circumstances that
19 our companies are getting into now, that would allow them
20 to dispose of this waste in the same area and the same
21 state that they're actually producing in.

22 With that, madame Chairman and members of the
23 Commission, I appreciate the opportunity, and we'd be happy
24 to answer any questions.

25 CHAIRMAN WROTENBERY: Thank you. Any questions

1 for Mr. Gallagher? Okay, thank you, Mr. Gallagher.

2 Anybody else like to make a comment on this rule
3 proposal?

4 Okay. Mr. Brooks did prepare a draft order for
5 consideration by the Commission, and --

6 MR. BROOKS: Madame Chairman, I believe that the
7 Commission counsel prepared the draft order. I was
8 instrumental in the preparation of it, however he has
9 reviewed and finalized it for your Honors.

10 CHAIRMAN WROTENBERY: Okay, and I believe,
11 Commissioners, you've had a chance to review the document?
12 Do you need some more time?

13 COMMISSIONER BAILEY: If it's the same as was
14 presented in Exhibit A, yes.

15 CHAIRMAN WROTENBERY: I do believe this was
16 distributed --

17 MS. LEACH: That's my understanding.

18 CHAIRMAN WROTENBERY: -- to all three
19 Commissioners.

20 MS. LEACH: That's my understanding.

21 CHAIRMAN WROTENBERY: Yes.

22 COMMISSIONER BAILEY: Why don't we just double-
23 check?

24 CHAIRMAN WROTENBERY: Let me look here. We'll
25 proof it and see.

1 Yes, I just proofed it, and it does reflect the
2 changes in Exhibit 1, although it does say hazardous waste
3 instead of hazard waste, so that particular problem was
4 corrected.

5 MR. BROOKS: Madame Chairman, that correction was
6 made on Mr. Ross's computer.

7 CHAIRMAN WROTENBERY: Thank you.

8 MR. BROOKS: He gets along with his computer
9 better than Mr. Anderson does.

10 CHAIRMAN WROTENBERY: Thank you. So yes, it does
11 accurately reflect the language of Exhibit 1.

12 And at this point, unless the Commission has any
13 desire for further discussion, I will accept a motion to
14 adopt the Order amending Rule 711.

15 COMMISSIONER BAILEY: I so move.

16 COMMISSIONER LEE: Second.

17 CHAIRMAN WROTENBERY: All in favor say aye.

18 COMMISSIONER BAILEY: Aye.

19 COMMISSIONER LEE: Aye.

20 CHAIRMAN WROTENBERY: Aye. Okay, let me find the
21 signature page here.

22 Okay, thank you very much, Mr. Brooks, Mr.
23 Anderson, Mr. Gallagher. This Rule will become effective
24 on publication in the *New Mexico Register*. I will point
25 out that in working with the *Register* we have found that it

1 sometimes takes a matter of several weeks or more to --

2 MR. BROOKS: They've been running about three
3 months.

4 CHAIRMAN WROTENBERY: We've been having some
5 difficulty, actually, getting our rules published. I'm
6 hoping because this is a fairly simple amendment that we
7 may be able to move a little more quickly on this
8 particular publication. We'll do our best. But it will
9 become effective upon publication in the *New Mexico*
10 *Register*, and we'll certainly make an announcement on our
11 website of the effective date, when that occurs.

12 Thank you very much.

13 MR. BROOKS: Thank you.

14 MR. ANDERSON: Thank you.

15 (Thereupon, these proceedings were concluded at
16 9:30 a.m.)

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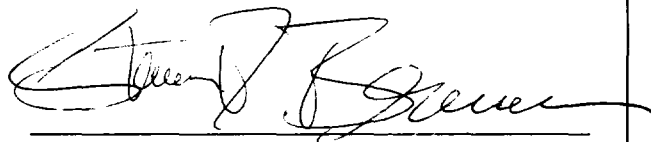
CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL March 21st, 2003.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006

19.15.9.711 APPLICABLE TO SURFACE WASTE MANAGEMENT FACILITIES ONLY

- A. A surface waste management facility is defined as any facility that receives for collection, disposal, evaporation, remediation, reclamation, treatment or storage any produced water, drilling fluids, drill cuttings, completion fluids, contaminated soils, bottom sediment and water (BS&W), tank bottoms, waste oil or, upon written approval by the Division, other oilfield related waste. Provided, however, if (a) a facility performing these functions utilizes underground injection wells subject to regulation by the Division pursuant to the federal Safe Drinking Water Act, and does not manage oilfield wastes on the ground in pits, ponds, below grade tanks or land application units, (b) if a facility, such as a tank only facility, does not manage oilfield wastes on the ground in pits, ponds below grade tanks or land application units or (c) if a facility performing these functions is subject to Water Quality Control Commission Regulations, then the facility shall not be subject to this rule.
- (1) A commercial facility is defined as any surface waste management facility that does not meet the definition of centralized facility.
 - (2) A centralized facility is defined as a surface waste management facility that accepts only waste generated in New Mexico and that:
 - (a) does not receive compensation for waste management;
 - (b) is used exclusively by one generator subject to New Mexico's "Oil and Gas Conservation Tax Act" Section 7-30-1 NMSA-1978 as amended; or
 - (c) is used by more than one generator subject to New Mexico's "Oil and Gas Conservation Tax Act" Section 7-30-1 NMSA-1978 as amended under an operating agreement and which receives wastes that are generated from two or more production units or areas or from a set of jointly owned or operated leases.
 - (3) Centralized facilities exempt from permitting requirements are:
 - (a) facilities that receive wastes from a single well;
 - (b) facilities that receive less than 50 barrels of RCRA exempt liquid waste per day and have a capacity to hold 500 barrels of liquids or less or 1400 cubic yards of solids or less and when a showing can be made to the satisfaction of the Division that the facility will not harm fresh water, public health or the environment;
 - (c) emergency pits that are designed to capture fluids during an emergency upset period only and provided such fluids will be removed from the pit within twenty-four (24) hours from introduction;
 - (d) facilities that do not meet the requirements of the foregoing exemptions in Subsection A, Paragraph (3) of 19.15.9.711 NMAC, but that are shown by the facility operator to the satisfaction of the Division to not present a risk to public health and the environment.
- B. Unless exempt from Section 19.15.9.711 NMAC, all commercial and centralized facilities including facilities in operation on the effective date of Section 19.15.9.711 NMAC, new

NEW MEXICO
WATER QUALITY CONTROL COMMISSION
OFFICE OF THE COMMISSIONER
SANTA FE, NEW MEXICO
OCD EXHIBIT No. 1
13013

facilities prior to construction and all existing facilities prior to major modification or major expansion shall be permitted by the Division in accordance with the following requirements:

- (1) **Application Requirements** - An application, Form C-137, for a permit for a new facility or to modify an existing facility shall be filed in **DUPLICATE** with the Santa Fe Office of the Division and **ONE COPY** with the appropriate Division district office. The application shall comply with Division guidelines and shall include:
 - (a) The names and addresses of the applicant and all principal officers of the business if different from the applicant;
 - (b) A plat and topographic map showing the location of the facility in relation to governmental surveys (1/4 1/4 section, township, and range), highways or roads giving access to the facility site, watercourses, water sources, and dwellings within one (1) mile of the site;
 - (c) The names and addresses of the surface owners of the real property on which the management facility is sited and surface owners of the real property of record within one (1) mile of the site;
 - (d) A description of the facility with a diagram indicating location of fences and cattle guards, and detailed construction/installation diagrams of any pits, liners, dikes, piping, sprayers, and tanks on the facility;
 - (e) A plan for management of approved wastes.
 - (f) A contingency plan for reporting and cleanup of spills or releases;
 - (g) A routine inspection and maintenance plan to ensure permit compliance;
 - (h) A Hydrogen Sulfide Prevention and Contingency Plan to protect public health;
 - (i) A closure plan including a cost estimate sufficient to close the facility to protect public health and the environment; said estimate to be based upon the use of equipment normally available to a third party contractor;
 - (j) Geological/hydrological evidence, including depth to and quality of groundwater beneath the site, demonstrating that disposal of oilfield wastes will not adversely impact fresh water;
 - (k) Proof that the notice requirements of Section 19.15.9.711 NMAC have been met;
 - (l) Certification by an authorized representative of the applicant that information submitted in the application is true, accurate, and complete to the best of the applicant's knowledge.
 - (m) Such other information as is necessary to demonstrate that the operation of the facility will not adversely impact public health or the environment and that the facility will be in compliance with OCD rules and orders.
- (2) **Notice Requirements:**

- (a) Prior to public notice, the applicant shall give written notice of application to the surface owners of record within one (1) mile of the facility, the county commission where the facility is located or is proposed to be located, and the appropriate city official(s) if the facility is located or proposed to be located within city limits or within one (1) mile of the city limits. The distance requirements for notice may be extended by the Director if the Director determines the proposed facility has the potential to adversely impact public health or the environment at a distance greater than one (1) mile. The Director may require additional notice as needed. A copy and proof of such notice will be furnished to the Division.
- (b) The applicant will issue public notice in a form approved by the Division in a newspaper of general circulation in the county in which the facility is to be located. For permit modifications, the Division may require the applicant to issue public notice and give written notice as above.
- (c) Any person seeking to comment or request a public hearing on such application must file comments or hearing requests with the Division within 30 days of the date of public notice. Requests for a public hearing must be in writing to the Director and shall set forth the reasons why a hearing should be held. A public hearing shall be held if the Director determines there is significant public interest.
- (d) The Division will distribute notice of the filing of an application for a new facility or major modifications with the next OCD and OCC hearing docket following receipt of the application.

(3) Financial Assurance Requirements:

- (a) Centralized Facilities: Upon determination by the Director that the permit can be approved, any applicant of a centralized facility shall submit acceptable financial assurance in the amount of \$25,000 per facility or a statewide "blanket" financial assurance in the amount of \$50,000 to cover all of that applicant's facilities in a form approved by the Director.
- (b) New Commercial Facilities or major expansions or major modification of Existing Facilities: Upon determination by the Director that a permit for a commercial facility to commence operation after the effective date of this rule can be approved, or upon determination by the Director that a major modification or major expansion of an existing facility can be approved, any applicant of such a commercial facility shall submit acceptable financial assurance in the amount of the closure cost estimated in Subsection B, Paragraph (1), Subparagraph (i) above of 19.15.9.711 NMAC in a form approved by the Director according to the following schedule:
 - (i) within one (1) year of commencing operations or when the facility is filled to 25% of the permitted capacity, whichever comes first, the financial assurance must be increased to 25% of the estimated closure cost;
 - (ii) within two (2) years of commencing operations or when the facility is filled to 50% of the permitted capacity, whichever comes first, the

- financial assurance must be increased to 50% of the estimated closure cost;
 - (iii) within three (3) years of commencing operations or when the facility is filled to 75% of the permitted capacity, whichever comes first, the financial assurance must be increased to 75% of the estimated closure cost;
 - (iv) within four (4) years of commencing operations or when the facility is filled to 100% of the permitted capacity, whichever comes first, the financial assurance must be increased to the estimated closure cost.
 - (c) Existing Commercial Facilities: All permittees of commercial facilities approved for operation at the time this rule becomes effective shall have submitted financial assurance in the amount of the closure cost estimated pursuant to Subsection B, Paragraph (1), Subparagraph (i) above of 19.15.9.711 NMAC but not less than \$25,000 nor more than \$250,000 per facility in a form approved by the Director.
 - (i) within one (1) year of the effective date of Section 19.15.9.711 NMAC the financial assurance amount must be increased to 25% of the estimated closure costs or \$62,500.00, whichever is less;
 - (ii) within two (2) years of the effective date of Section 19.15.9.711 NMAC the financial assurance amounts must be increased to 50% of the estimated closure costs or \$125,000.00, whichever is less;
 - (iii) within three (3) years of the effective date of Section 19.15.9.711 NMAC the financial assurance amounts must be increased to 75% of the estimated closure costs or \$187,000.00, whichever is less;
 - (iv) within four (4) years of the effective date of Section 19.15.9.711 NMAC the financial assurance amounts must be increased to the estimated closure cost or \$250,000.00, whichever is less.
 - (d) The financial assurance required in subparagraphs (a), (b), or (c), above shall be payable to the State of New Mexico and conditioned upon compliance with statutes of the State of New Mexico and rules of the Division, and acceptable closure of the site upon cessation of operation, in accordance with Subsection B, Paragraph (1), Subparagraph (i) of 19.15.9.711 NMAC. If adequate financial assurance is posted by the applicant with a federal or state agency and the financial assurance otherwise fulfills the requirements of this rule, the Division may consider the financial assurance as satisfying the requirement of Section 19.15.9.711 NMAC. The applicant must notify the Division of any material change affecting the financial assurance within 30 days of discovery of such change.
- (4) The Director may accept the following forms of financial assurance:
 - (a) Surety Bonds
 - (i) A surety bond shall be executed by the permittee and a corporate surety licensed to do business in the State.
 - (ii) Surety bonds shall be noncancellable during their terms.
 - (b) Letter of Credit - Letter of credit shall be subject to the following conditions:

- (i) The letter may be issued only by a bank organized or authorized to do business in the United States;
- (ii) Letters of credit shall be irrevocable for a term of not less than five (5) years. A letter of credit used as security in areas requiring continuous financial assurance coverage shall be forfeited and shall be collected by the State of New Mexico if not replaced by other suitable financial assurance or letter of credit at least 90 days before its expiration date;
- (iii) The letter of credit shall be payable to the State of New Mexico upon demand, in part or in full, upon receipt from the Director of a notice of forfeiture.

(c) Cash Accounts - Cash accounts shall be subject to the following conditions:

- (i) The Director may authorize the permittee to supplement the financial assurance through the establishment of a cash account in one or more federally insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the State of New Mexico.
- (ii) Any interest paid on a cash account shall not be retained in the account and applied to the account unless the Director has required such action as a permit requirement.
- (iii) Certificates of deposit may be substituted for a cash account with the approval of the Director.

(d) Replacement of Financial Assurances

- (i) The Director may allow a permittee to replace existing financial assurances with other financial assurances that provide equivalent coverage.
- (ii) The Director shall not release existing financial assurances until the permittee has submitted, and the Director has approved, acceptable replacements.

- (5) A permit may be denied, revoked or additional requirements imposed by a written finding by the Director that a permittee has a history of failure to comply with Division rules and orders and state or federal environmental laws.
- (6) The Director may, for protection of public health and the environment, impose additional requirements such as setbacks from an existing occupied structure.
- (7) The Director may issue a permit upon a finding that an acceptable application has been filed and that the conditions of paragraphs 2 and 3 above have been met. All permits are revocable upon showing of good cause after notice and, if requested, hearing. Permits shall be reviewed a minimum of once every five (5) years for compliance with state statutes, Division rules and permit requirements and conditions.

C. Operational Requirements

- (1) All surface waste management facility permittees shall file forms C-117-A, C-118, and C-120-A as required by OCD rules.

- (2) Facilities permitted as treating plants will not accept sediment oil, tank bottoms and other miscellaneous hydrocarbons for processing unless accompanied by an approved Form C-117A or C-138.
- (3) Facilities will only accept oilfield related wastes except as provided in Subsection C, Paragraph (4), Subparagraph (c) of 19.15.9.711 NMAC below. Wastes which are determined to be RCRA Subtitle C hazardous wastes by either listing or characteristic testing will not be accepted at a permitted facility.
- (4) The permittee shall require the following documentation for accepting wastes, other than wastes returned from the wellbore in the normal course of well operations such as produced water and spent treating fluids, at commercial waste management facilities:
 - (a) Exempt Oilfield Wastes: As a condition to acceptance of the materials shipped, a generator, or his authorized agent, shall sign a certificate which represents and warrants that the wastes are: generated from oil and gas exploration and production operations; exempt from Resource Conservation and Recovery Act (RCRA) Subtitle C regulations; and not mixed with non-exempt wastes. The permittee shall have the option to accept on a monthly, weekly, or per load basis a load certificate in a form of its choice. While the acceptance of such exempt oilfield waste materials does not require the prior approval of the Division, both the generator and permittee shall maintain and shall make said certificates available for inspection by the Division for compliance and enforcement purposes.
 - (b) Non-exempt, Non-hazardous Oilfield Wastes: Prior to acceptance, a "Request For Approval To Accept Solid Waste", OCD Form C-138, accompanied by acceptable documentation to determine that the waste is non-hazardous shall be submitted to the appropriate District office. Acceptance will be on a case-by-case basis after approval from the Division's Santa Fe office.
 - (c) Non-oilfield Wastes: ~~Non-hazardous. Non-oilfield~~ wastes may be accepted in an emergency if ordered by the Department of Public Safety. Prior to acceptance, a "Request To Accept Solid Waste", OCD Form C-138 accompanied by the Department of Public Safety order will be submitted to the appropriate District office and the Division's Santa Fe office. With prior approval from the Division, other non-hazardous non-oilfield waste may be accepted into a permitted surface waste management facility if the waste is similar in nature physical and chemical composition to the oilfield wastes authorized for disposal at that facility and is either: (1) -exempt from the "hazard waste" provisions of Subtitle C of the federal Resource Conservation and Recovery Act; or (2) has tested non-hazardous and is not listed as hazardous. Prior to acceptance, a "Request For Approval To Accept Solid Waste," OCD Form C-138, accompanied by acceptable documentation to characterize the waste shall be submitted to and approved by the Division's Santa Fe office.
- (5) The permittee of a commercial facility shall maintain for inspection the records for each calendar month on the generator, location, volume and type of waste, date of disposal, and hauling company that disposes of fluids or material in the facility. Records shall be maintained in appropriate books and records for a period of not less than five years, covering their operations in New Mexico.

- (6) Disposal at a facility shall occur only when an attendant is on duty unless loads can be monitored or otherwise isolated for inspection before disposal . The facility shall be secured to prevent unauthorized disposal when no attendant is present.
- (7) No produced water shall be received at the facility from motor vehicles unless the transporter has a valid Form C-133, Authorization to Move Produced Water, on file with the Division.
- (8) To protect migratory birds, all tanks exceeding 16 feet in diameter, and exposed pits and ponds shall be screened, netted or covered. Upon written application by the permittee, an exception to screening, netting or covering of a facility may be granted by the district supervisor upon a showing that an alternative method will protect migratory birds or that the facility is not hazardous to migratory birds.
- (9) All facilities will be fenced in a manner approved by the Director.
- (10) A permit may not be transferred without the prior written approval of the Director. Until such transfer is approved by the Director and the required financial assurance is in place, the transferor's financial assurance will not be released.

D. Facility Closure

- (1) The permittee shall notify the Division thirty (30) days prior to its intent to cease accepting wastes and close the facility. The permittee shall then begin closure operations unless an extension of time is granted by the Director. If disposal operations have ceased and there has been no significant activity at the facility for six (6) months and the permittee has not responded to written notice as defined in Subsection D, Paragraph (2), Subparagraph (a) of 19.15.9.711 NMAC, then the facility shall be considered abandoned and shall be closed utilizing the financial assurance pledged to the facility. Closure shall be in accordance with the approved closure plan and any modifications or additional requirements imposed by the Director to protect public health and the environment. At all times the permittee must maintain the facility to protect public health and the environment. Prior to release of the financial assurance covering the facility, the Division will inspect the site to determine that closure is complete.
- (2) If a permittee refuses or is unable to conduct operations at the facility in a manner that protects public health or the environment or refuses or is unable to conduct or complete the closure plan, the terms of the permit are not met, or the permittee defaults on the conditions under which the financial assurance was accepted, the Director shall take the following actions to forfeit all or part of the financial assurance:
 - (a) Send written notice by certified mail, return receipt requested, to the permittee and the surety informing them of the decision to close the facility and to forfeit all or part of the financial assurance, including the reasons for the forfeiture and the amount to be forfeited and notifying the permittee and surety that a hearing request must be made within ten (10) days of receipt of the notice.
 - (b) Advise the permittee and surety of the conditions under which the forfeiture may be avoided. Such conditions may include but are not limited to:

- (i) An agreement by the permittee or another party to perform closure operations in accordance with the conditions of the permit, the closure plan and these Rules, and that such party has the ability to satisfy the conditions.
 - (ii) The Director may allow a surety to complete closure if the surety can demonstrate an ability to complete the closure in accordance with the approved plan. No surety liability shall be released until successful completion of closure.
- (c) In the event forfeiture of the financial assurance is required by this rule, the Director shall proceed to collect the forfeited amount and use the funds collected from the forfeiture to complete the closure. In the event the amount forfeited is insufficient for closure, the permittee shall be liable for the deficiency. The Director may complete or authorize completion of closure and may recover from the permittee all reasonably incurred costs of closure and forfeiture in excess of the amount forfeited. In the event the amount forfeited was more than the amount necessary to complete closure and all costs of forfeiture, the excess shall be returned to the party from whom it was collected.
- (d) Upon showing of good cause, the Director may order immediate cessation of operations of the facility when it appears that such cessation is necessary to protect public health or the environment, or to assure compliance with Division rules and orders.
- (e) In the event the permittee cannot fulfill the conditions and obligations of the permit, the State of New Mexico, its agencies, officers, employees, agents, contractors and other entities designated by the State shall have all rights of entry into, over and upon the facility property, including all necessary and convenient rights of ingress and egress with all materials and equipment to conduct operation, termination and closure of the facility, including but not limited to the temporary storage of equipment and materials, the right to borrow or dispose of materials, and all other rights necessary for operation, termination and closure of the facility in accordance with the permit.

E. Waste management facilities in operation at the time Section 19.15.9.711 NMAC becomes effective shall:

- (1) within one (1) year after the effective date permitted facilities submit the information required in Subsection B, Paragraph (1), Subparagraphs (a, h, i and l) of 19.15.9.711 NMAC not already on file with the Division;
- (2) within one (1) year after the effective date unpermitted facilities submit the information required in Subsection B, Paragraph (1), Subparagraphs (a) through (j) and Subsection B, Paragraph (1), Subparagraph (l) of 19.15.9.711 NMAC;
- (3) comply with Subsections C and D of 19.15.9.711 NMAC unless the Director grants an exemption from a requirement in these sections based upon a demonstration by the operator that such requirement is not necessary to protect public health and the environment.