

STATE OF NEW MEXICO
BEFORE THE OIL CONSERVATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF THE OIL CONSERVATION DIVISION
TO CONSIDER AMENDMENTS TO DIVISION
RULES 8, 312, 313 and 711 TO REQUIRE
APPROPRIATE MEASURES TO BE TAKEN
TO PREVENT LOSS OF MIGRATORY WATER
FOWL RESULTING FROM CONTACT WITH OILY
WASTE FROM OILFIELD OPERATIONS.

Case No. 9672

COMES NOW the Oil Conservation Division and requests that the Oil Conservation Commission conduct a hearing to consider whether amendments should be made to Division Rules 8, 312, 313 and 711 to require appropriate measures to be taken to prevent the loss of migratory water fowl as a result of contact with oily waste from oilfield operations. In support of this application, the Division states:

1. The United States Fish and Wildlife Service has advised the Division that they have determined that certain migratory birds protected by the Migratory

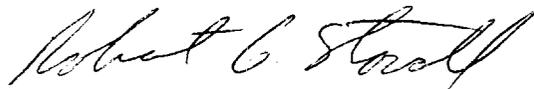
Bird Treaty Act have died due to contact with oil and gas and its by-products in Eastern New Mexico.

2. A meeting was held by the Division on December 15, 1988, at which the problem was discussed with members of industry, the Division, The State Game & Fish Department, U.S. Fish and Wildlife Service and the Bureau of Land Management.
3. As a result of the December meeting, a Committee was formed to propose solutions to the problem. The Committee has recommended certain changes to the Division rules identified above, which changes are attached hereto as Exhibit "A".
4. The proposed rule changes have been submitted to the public for comment and copies of written comments which have been received are attached hereto as Exhibit "B".
5. The rules of the Commission require that a hearing be held before rules are amended or adopted, and a hearing should be held in this matter to receive testimony and comment with respect to these proposed rule changes.

WHEREFORE, the Division requests that the Oil Conservation Commission:

1. Set this application for hearing at the next regular hearing date of the Commission to consider the proposed rule changes to Rules 8, 312, 313 and 711; and
2. That the Commission take testimony of the comments regarding the proposed rule changes or any other suggested solutions to the problem identified by the U.S. Fish and Wildlife Report; and
3. That the Commission adopt such Rules or Amendments as it sees necessary to prevent losses of migratory birds resulting from contact with oily waste from oilfield operations.

Respectfully submitted,



ROBERT G. STOVALL,

General Counsel

Oil Conservation Division

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION



GARREY CARRUTHERS
GOVERNOR

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87504
(505) 827-5800

Memo No. 2-89

M E M O R A N D U M

TO: ALL OPERATORS

FROM: WILLIAM J. LEMAY, DIVISION DIRECTOR *WJL*

SUBJECT: PROPOSED RULE REVISIONS

Attached are proposed revisions to Oil Conservation Division Rules 8, 312, 313 and 711 recommended by the Advisory Committee regarding protection of birds covered by the Migratory Bird Treaty Act. These revisions are being proposed in order to alleviate damage to bird life caused by oily waste in pits and ponds in New Mexico.

Please review the proposed rule revisions and submit any comments you may have to the Santa Fe office of the Oil Conservation Division by April 15, 1989. A hearing will be scheduled on this matter after all comments have been reviewed and evaluated.

March 3, 1989
fd/

Attachment

RULE 8. LINED PITS/BELOW GRADE TANKS

After January 1, 1986, lined pits and below grade tanks may be used to contain produced water, sediment oil, tank bottoms, miscellaneous hydrocarbons, or other fluids subject to the jurisdiction of the Division under the Oil and Gas Act only upon prior approval of the Division. To protect birds covered under the Migratory Bird Treaty Act, all exposed pits, including lined pits and below grade tanks approved under this rule, shall be either screened, netted, otherwise rendered nonhazardous, or deemed to be nonhazardous to migratory birds. Applications for approval of lined pits or below grade tanks should be made in accordance with applicable special rules or, in the absence of special rules, in accordance with Division "Guidelines".

RULE 312. TREATING PLANTS

- (4) a description of containment dikes and pits, if any, with detailed information on construction and lining;

(Note: any pits, ponds, lined pits or below grade tanks used at the site must meet Division requirements for ground water protection and shall be screened, netted or otherwise rendered nonhazardous or deemed to be nonhazardous to birds covered by the Migratory Bird Treaty Act.)

RULE 313. EMULSION, BASIC SEDIMENTS, AND TANK BOTTOMS

Wells producing oil shall be operated in such a manner as will reduce as much as practicable the formation of emulsion and basic sediments. These substances and tank bottoms shall not be allowed to pollute fresh waters or cause surface damage. If tank bottoms are removed to surface pits, the pits shall be fenced and the fence shall be kept in good repair and shall be screened, netted or otherwise rendered nonhazardous or deemed to be nonhazardous to birds covered by the Migratory Bird Treaty Act.

RULE 711. COMMERCIAL SURFACE WASTE DISPOSAL FACILITIES

- A. 3. A description of the facility with a diagram indicating location of fences and cattleguards, and detailed engineering construction/installation diagrams of any pits, liners, dikes, piping, sprayers, and tanks on the facility, prepared in accordance with Division "Guidelines for Permit Application, Design and Construction of Waste Storage/Disposal Pits;"

(Note: Any pits, ponds, lined pits or below grade tanks used at the site must meet Division requirements for groundwater protection and shall be screened, netted, or otherwise rendered nonhazardous, or deemed to be nonhazardous to birds covered by the Migratory Bird Treaty Act.)



United States Department of the Interior

IN REPLY REFER TO:

6514 (931)

BUREAU OF LAND MANAGEMENT NEW MEXICO STATE OFFICE

Post Office and Federal Building

P.O. Box 1449

Santa Fe, New Mexico 87504-1449

APR 17 1989

RECEIVED

APR 20 1989

OIL CONSERVATION DIV.
SANTA FE

Mr. William Lemay
Division Director
New Mexico Energy, Minerals, and
Natural Resources Department
Oil Conservation Division
P.O. Box 2088
Santa Fe, NM 87504

Dear Mr. Lemay:

The Bureau of Land Management applauds your efforts to address wildlife mortality resulting from liquid waste disposal pits developed in conjunction with oil and gas development activities. As you know, we have been concerned about this issue for several years and have taken a number of actions to remedy this situation on public lands under our jurisdiction.

The proposed changes to Rules 8, 312, 313, and 711 recommended by the Advisory Committee represent significant progress in resolving the issue on State and fee title lands in New Mexico. The following comments are intended for your consideration to further support remedies to the wildlife mortality issue.

o Above ground, open top tanks appear not to be addressed. If this is the case, it is recommend that these tanks be closed, since open, netted tanks are suspected of resulting in bird mortality from birds perching on the netting and being killed by toxic fumes.

* { o We recommend the words ". . . otherwise rendered nonhazardous, or deemed to be nonhazardous to migratory birds" be replaced by the words ". . . or otherwise rendered nonhazardous to wildlife."

o Federal requirements do not allow emulsions, oil, basic sediments, or tank bottoms in disposal pits; we recommend the State should follow suit.

o We recommend the Oil Conservation Division consider not allowing open disposal pits but require operators to utilize screen-wire-covered tanks for temporary disposal of fluid wastes.

Again, thank you for the opportunity to comment on these proposed rules.

Sincerely,

Leslie L. Pointer

Chief, Branch of Biological Resources

ARCO Oil and Gas Company
Central District
Post Office Box 1610
Midland, Texas 79702
Telephone 915 688 5200



April 17, 1989

RECEIVED

APR 20 1989

OIL CONSERVATION DIV.
SANTA FE

Mr. William J. LeMay
New Mexico Oil Conservation Division
P.O. Box 2088
Santa Fe, New Mexico 87504

Dear Mr. LeMay:

Subject: Comments on Regulatory Revisions
Protection of Migratory Birds

ARCO Oil and Gas Company (ARCO) supports industry and government efforts to reduce the problem of damage to migratory birds due to contact with oily waste in pits and ponds found in the oil field. If regulatory amendments are deemed necessary to address the migratory bird concern, please consider the attached changes the language proposed in your letter of March 3, 1989.

These changes are necessary to specifically address the perceived problem of oil on pits. ARCO believes if pits and ponds containing no oil, oil sheen or oil waste are otherwise not "hazardous" to birds.

Use of the undefined term "non-hazardous" and the clause "[pits]...deemed to be non-hazardous" instills vagueness into the rule.

In addition, ARCO assumes reserve and workover pits are not covered by these rules, therefore, would not be required to be netted. Due to their temporary nature, these pits should not pose any significant problem to migratory birds.

Sincerely,

C. T. Stilwell
by pjk

C. T. Stilwell
Environmental Coordinator

CTS:pjk

cc: L. L. Trout MIO 327
M. D. Schall MIO 1129
E. S. Bush MIO 219
S. D. Smith HOO
D. R. McKelvey MIO 367

RULE 8. LINED PITS/BELOW GRADE TANKS

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Similar language should be inserted in Rules 312(4), 313, and 711.

ARCO Oil and Gas Company
Central District
Post Office Box 1610
Midland, Texas 79702
Telephone 915 688 5200



April 17, 1989

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APR 20 1989

OIL CONSERVATION DIV.
SANTA FE

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New Mexico Oil Conservation Division
P.O. Box 2088
Santa Fe, New Mexico 87504

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Environmental Coordinator

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United States Department of the Interior

IN REPLY REFER TO:

6514 (931)

BUREAU OF LAND MANAGEMENT
NEW MEXICO STATE OFFICE
Post Office and Federal Building
P.O. Box 1449
Santa Fe, New Mexico 87504-1449

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APR 20 1989

OIL CONSERVATION DIV.
SANTA FE

Mr. William Lemay
Division Director
New Mexico Energy, Minerals, and
Natural Resources Department
Oil Conservation Division
P.O. Box 2088
Santa Fe, NM 87504

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The proposed changes to Rules 8, 312, 313, and 711 recommended by the Advisory Committee represent significant progress in resolving the issue on State and fee title lands in New Mexico. The following comments are intended for your consideration to further support remedies to the wildlife mortality issue.

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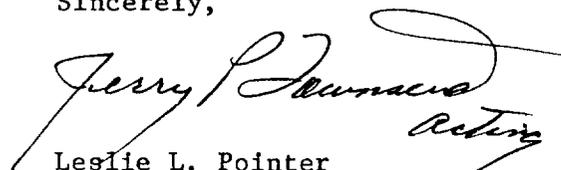
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Sincerely,


Acting

Leslie L. Pointer
Chief, Branch of Biological Resources

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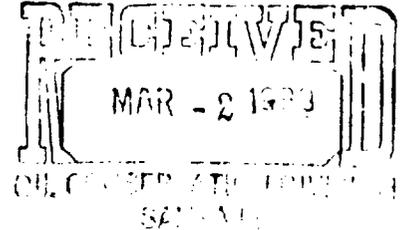
Similar language should be inserted in Rules 312(4), 313, and 711.



617 ducks

UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
Ecological Services
Suite D, 3530 Pan American Highway, NE
Albuquerque, New Mexico 87107

March 1, 1989



Mr. William J. Lemay, Director
Oil Conservation Division
State Land Office Building
P. O. Box 2088
Santa Fe, New Mexico 87504-2088

Dear Mr. ^{Bill} Lemay:

This responds to the public notice dated February 24, 1989, in which several proposed groundwater discharge plans were described. We have reviewed all of the plans and have identified resource issues of concern to our agency in the following:

- GW-47 Sunterra Gas Processing Company, Lybrook Gas Plant. John Renner, General Manager, P.O. Box 1869, Bloom Field, NM 87143.
- GW-7 El Paso Natural Gas Co., Jal #4 Gas Processing Plant, John C. Bridges Manager, Environmental Engineering Group, P.O. Box 1492 El Paso, Texas 79978.
- GW-48 Davis Gas Processing Company, Donald K. Judd, Agent., 211 N. Colorado, Midland, Texas 79971.

Our concern is that any surface water discharges resulting from these operations should not have visible traces of oil or gas. If migratory birds were to come in contact with the contaminated waters and perish, violations of the Migratory Bird Treaty Act would have occurred. The Migratory Bird Treaty Act prohibits the taking, except by permit, of individual migratory birds (16 U.S.C. 703). The Migratory Bird Treaty Act prohibits unpermitted taking "by any means or in any manner" of the protected species. Case law has found that unintentional kills of migratory birds, by poisoning or other circumstances is prohibited. Fines of up to \$10,000 have been levied against violators.

These comments represent the views of the Fish and Wildlife Service. If you have any questions concerning our comments, please contact Tom O'Brien or Richard Roy at (505) 883-7877 or FTS 474-7877.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John C. Peterson". The signature is fluid and cursive, with a large loop at the beginning and a long horizontal stroke extending to the right.

John C. Peterson
Field Supervisor

cc:

Director, New Mexico Department of Game and Fish, Santa Fe, New Mexico
Regional Administrator, Environmental Protection Agency, Attn: Kathy Hollar,
Office of Ground Water, Dallas, Texas
Regional Director, U.S. Fish and Wildlife Service, Fish and Wildlife
Enhancement and Law Enforcement, Albuquerque, New Mexico



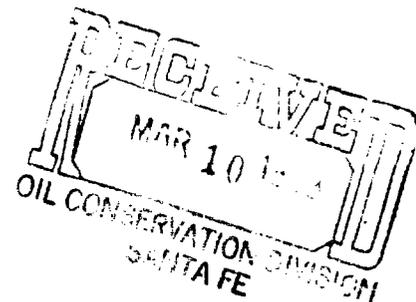
WALSH ENGINEERING & PRODUCTION CORP.

Petroleum Engineering Consulting
Lease Management
Contract Pumping

3001 Northridge Drive
P.O. Drawer 419
Farmington, New Mexico 87401
(505) 327-4892

March 6, 1989

Mr. William J. LeMay, Division Director
Energy, Minerals & Natural Resources Department
Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87504



REF: Memorandum, Memo No. 2-89

Dear Mr. LeMay:

Revising the above-referred-to rules, as indicated, would put another undue expensive restriction on the depressed Oil and Gas Industry.

There are probably some limited small size areas that contain pits, ponds or below grade tanks that might be considered hazardous to migratory birds.

Revision of the rules, as indicated, to include all pits, ponds or below grade tanks would not be deemed to be practical.

The above may be referred to in the revised portion "or deemed to be nonhazardous to migratory birds", however, no explanation is provided for review as to how some installations are to be deemed to be nonhazardous.

A meeting, for input of additional comments and/or additional comments by the Commission may be warranted prior to having a hearing.

Very truly yours,

Ewell N. Walsh, P.E.
President

ENW:rr

GOVERNOR
GARREY CARRUTHERS

State of New Mexico

STATE GAME COMMISSION

GERALD MAESTAS, CHAIRMAN
ESPANOLA

RICHARD A. ALLGOOD
SILVER CITY

CHRISTINE DIGREGORIO
GALLUP

THOMAS P. ARVAS, O.D.
ALBUQUERQUE

BOB JONES
DELL CITY, TX

DIRECTOR AND SECRETARY
TO THE COMMISSION
BILL MONTOYA



DEPARTMENT OF GAME AND FISH

VILLAGRA BUILDING
SANTA FE
87503

April 13, 1989

RE: Memo No. 2-89

*Received by
Chuck for [unclear]
April 14 at 5:45 PM*

Mr. William Lemay, Director
New Mexico Oil Conservation Division
P.O. Box 2088
Santa Fe, New Mexico 87504

Dear Mr. Lemay: *Bill*

Thank you for affording the Department of Game and Fish the opportunity to comment on the proposed revisions to the Oil Conservation Division Rules 8, 312, 313 and 711, regarding oily waste pits and ponds in New Mexico. The proposed changes address only those birds covered by the Migratory Bird Treaty Act, and therefore do not adequately protect the wildlife of the State of New Mexico. Furthermore, the phrase "deemed to be non-hazardous" is unclear because it does not specify by whom or what standards are to be used.

Unprotected pits, ponds, and tanks containing toxic substances associated with oil and gas drilling and production activities, pose a serious hazard to many species of wildlife, including non-migratory birds, small mammals and reptiles (some of which are threatened and endangered). Given this, we recommend the above mentioned rules be amended to read "... and shall be screened, netted or otherwise rendered non-hazardous to wildlife."

If you have any questions, please contact Jon Klingel (827-9912) of this department.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Montoya", written in a cursive style.

Bill Montoya
Director

BM/jtk

MERIDIAN OIL

April 12, 1989

Mr. William J. LeMay
Oil Conservation Division
State of New Mexico
Energy, Minerals and Natural
Resources Department
Post Office Box 2088
Santa Fe, New Mexico 87504

RECEIVED
APR 14 1989
OIL CONSERVATION DIVISION

Dear Mr. LeMay:

Thank you for the opportunity to comment on the proposed revisions to the Oil Conservation Division Rules 8, 312 and 313. We strongly support the Oil Conservation Division's concerns for maintaining and protecting the environment, and feel that our operations in the San Juan Basin represent conscientious efforts to produce oil and gas in the safest and most environmentally responsible manner possible.

Meridian's San Juan Basin operations currently account for more than 5,000 well locations, including production pits numbering in excess of 7,500. Drilling activities scheduled for 1989 will add an additional 300-plus pits to the operations. We are concerned about the increased costs these proposed rules will create due to initial material investment and maintenance costs.

Before these rules are promulgated, a study of the Northwest Four Corners Area should be undertaken to determine if a migratory bird killing problem exists. This particular area of the State of New Mexico is repleting with water bodies such as Navajo Reservoir, Animas, San Juan and Chaco Rivers. Production pits do not seem to be an attractive alternative (probably due to their small size) to these birds. Operators in this, the Pacific Flyway Area, have never experienced migratory bird kills in pits anywhere near equal numbers printed in your notices or displayed in the video tape shown at the December Oil Conservation Division, B.L.M., U. S. Fish and Wildlife Service and industry meeting. We are concerned that a blanket rule like this, if implemented incorrectly, will further raise production and drilling costs in this area without just cause or benefit to migratory birds or the environment.

At the meeting in December, drilling pits were exempted by the Oil Conservation Division from these proposed rules, in part, due to the noise associated with drilling operations and human presence in such close proximity. The proposed rules do not address nor exempt drilling pits; therefore, we can only assume these pits are also covered by the rules. Drilling reserve pits are quite large and would be extremely difficult to cover or net, and due to the aforementioned, should be exempt from these proposed rules.

William J. LeMay
April 12, 1989
Page Two

The proposed rules use the language "deemed nonhazardous". Operators should be allowed the option to "deem" pits as "nonhazardous" when such pits do not represent a hazard to migratory birds. However, a gradation enforcement policy should be implemented in the event that an occasional kill takes place in a pit or pond. An immediate fine of \$10,000, as stated in the Migratory Bird Treaty Act, would be harsh and unjust.

Flagging or noise guns should be alternatives to covers and/or netting. Covers become a safety concern if gases are carried over into the pit. Increased gas concentrations in these enclosed pits represent explosion and exposure problems, especially in fields where hydrogen sulfide is present. Netting could capture birds as well as keep them from entering pits.

In summary, the San Juan Basin Area has not been an area where migratory birds have been attracted to production and drilling pits. Netting and covers represent excessive costs while providing little to no protection to migratory birds and in some instances, increasing operational hazards. Final rules should be flexible enough to allow operators to choose protective measures where such measures are needed.

Again, thank you for the opportunity to comment. If you have any questions concerning these comments, please let me know.



CRO:TGM:cr

Mobil Exploration & Producing U.S. Inc.

March 23, 1989

P.O. BOX 633
MIDLAND, TEXAS 79702

MIDLAND DIVISION

William J. Lemay, Division Director
State of New Mexico
Energy, Minerals and Natural Resources Dept.
Oil Conservation Division
P. O. Box 2088
State Land Office Building
Santa Fe, New Mexico 87504

APR 11 1989

Dear Mr. Lemay:

**PROPOSED RULE REVISION
RULES 8, 312, 313, AND 711
PROTECTION OF BIRDS**

Thank you for the opportunity to provide comments on the proposed rule revisions regarding the protection of birds covered under the Migratory Bird Treaty Act. We understand and support your concerns to alleviate unnecessary damage to bird life related to oily waste in pits and ponds in New Mexico.

We would suggest however, that small diameter and emergency pits be exempted from the proposed rule revisions. Small diameter pits between 10 to 20 feet do not represent a significant danger to migratory birds. Our experiences in the San Juan basin indicate that the small diameter pits prevalent in the area demonstrate no history of a problem with bird kills. Emergency pits are used for only short duration, less than 72 hours. These pits are seldom used and do not warrant the precautions outlined in the proposed rule revisions.

Regarding the use of netting and fencing, we would suggest the use of flagging be included as an acceptable method. Flagging, which is recommended in BLM rule NTL 2B, has been shown to be an effective deterrent. In addition, flagging reduces operational problems as well as problems associated with big game becoming trapped in netting.

Your consideration of our comments is appreciated.

Sincerely,

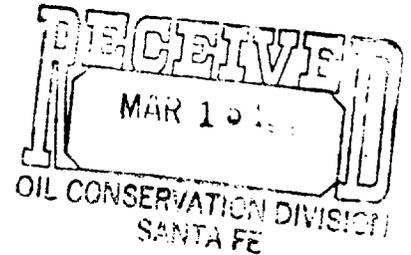


M. E. Sweeney
Environmental & Regulatory Manager

GAS COMPANY OF NEW MEXICO

March 14, 1989

Energy Minerals and Natural Resources Department
Oil Conservation Division
P.O. Box 2088
State Land Office Building
Santa Fe, New Mexico 87504



Attention: Mr. William J. LeMay
Division Director

RE: Proposed Rule Revision to Rule #8, #312, #313 and #711

Dear Mr. LeMay:

Pursuant to your letter of March 3, 1989, regarding proposed revisions to the referenced rules, please be advised that Gas Company of New Mexico opposes the proposed revisions as suggested by Advisory Committee.

As state wide operators in the producing areas where the rules are of effect, we submit as explanation of our position the following.

1. The revisions would result in higher costs for an already struggling industry.
2. The consensus of opinion of field people with many years experience in the affected areas is that few mitigatory birds frequent the ponds and pits covered by the referenced rules. Undoubtedly and regrettably some are damaged, but rivers, ranch and farm tanks along the fly-way tend to draw migratory birds.
3. The fencing recently initiated at substantial cost for pits and ponds prevents migratory birds from landing and taking off of smaller pits.
4. Many operators will discontinue installing marginal types of pits, such as separator and field dehydrator emergency overflow pits and initiate more expensive pick-up schedules for tanks or simply allow overflow to existing terrain.
5. There are many thousands of pits and ponds. Covering would require significant expense. Maintenance of vandalism and deterioration would be difficult and expensive, and many pits would not meet the needs after a few years, requiring additional standards, rules and penalties.

While it is commendable that the OCD rules reflect the concern we all feel regarding protecting a national asset represented by Migratory Birds and we are aware of many declines in the bird

Energy Minerals and Natural Resources Department
March 14, 1989
Page 2

population for failure to enact rules for industry, it is our belief that if these rules were enacted, it would be regulatory overkill as we view the problem.

Sincerely,

A handwritten signature in cursive script that reads "W.J. Orbison". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

W.J. Orbison
Director, Gas Acquisitions
(505) 888-8314

cjc

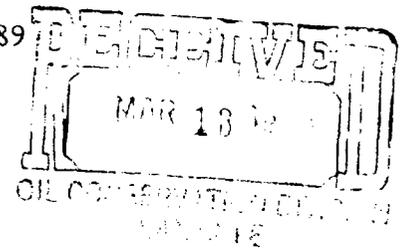
BURNETT OIL CO., INC.

801 CHERRY STREET SUITE 1500

FORT WORTH, TEXAS 76102

(817) 332-5108

March 8, 1989



State of New Mexico
Energy, Minerals & Natural Resources Department
Oil Conservation Division
P. O. Box 2088
State Land Office Building
Santa Fe, New Mexico 87504

Attention: Mr. William J. LeMay, Division Director

Re: Proposed Rule Revisions,
oily waste in pits.

Dear Mr. LeMay:

In regard to your memorandum No. 2-89 concerning the protection of migratory birds by netting all pits within the state that may or may not be hazardous to the birds' health and happiness, my first inclination was not to comment due to the fact that Burnett has only two small permanent type pits in existence, one an emergency containment pit at our waterflood station and the other an evaporation pit for one barrel of produced water per day. However, we do some occasional development drilling and some infrequent remedial work on injection wells, both of which necessitate temporary pits, so I will comment briefly on the NMOCD'S proposed rule revisions.

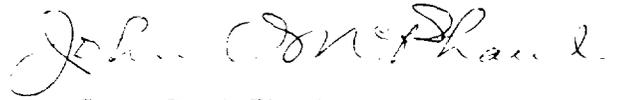
(1) In discussing the need for screening or netting with two fieldmen, it may be revealing that in all of our combined years in the oilfields of southeastern New Mexico, which total 105, we have seen two doves, one duck, and six ravens succumb to the hazard of the slush pits. Now many of these years were years when each tank battery, and each well had some type of adjacent pit. How this fact of life sets with the findings of the advisory committee remains to be seen.

(2) In this same discussion, it was reiterated several times that on almost all occasions one could observe birds and wildlife slaking their thirst by drinking rainwater from the pits, which at times was their only source of drinking water for hundreds of miles. It would be a monumental statistical nightmare to accurately weigh the benefits to all wildlife against the hazards to all wildlife as a result of open pits in southeastern New Mexico, but my estimate is that the benefits outweigh the hazards about 1,000,000 to 1.

(3) The economics for producing a barrel of oil in the old oilfields of southeastern New Mexico for less than cost is a continuing concern for all producers. The added thousands of dollars expended for netting in the hopes that one or two birds might live to fly another day is, if it were not so serious, ludicrous.

(4) Where do we draw the line? Buildings, cars, trucks, power lines, poachers... civilization? All of these are more of a threat to birds than unnetted pits.

Yours truly,

A handwritten signature in cursive script that reads "John C. McPhaul".

John C. McPhaul
PRODUCTION SUPERINTENDENT

JCM:jlh

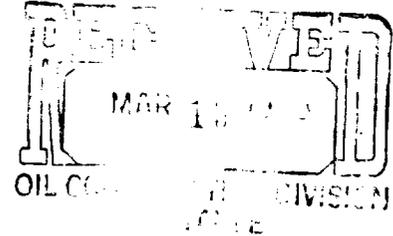


David L. Wacker
Division Manager
Production Department
Hobbs Division
North American Production

Conoco Inc.
726 East Michigan
P.O. Box 460
Hobbs, NM 88241
(505) 397-5800

March 7, 1989

Mr. William J. Lemay
New Mexico Oil Conservation Division
P. o. Box 2088
Santa Fe, New Mexico 87504



Dear Mr. Lemay:

**Proposed Rule Revisions - Protection of
Birds Covered Under the Migratory Bird
Treaty Act**

Please refer to your Memo No. 2-89 dated March 3, 1989 pertaining to the above subject. Conoco Inc. wishes to commend you for taking the lead in addressing this issue brought forth by the U.S. Fish and Wildlife Service. We also commend the Advisory Committee on the way in which they addressed the rules revisions.

Conoco would like to offer one suggestion in regard to Rule 8. It is noted that drilling pits are not specifically addressed either by inclusion or by exception. We therefore assume that they could be included under "other fluids subject to the jurisdiction of the Division", and it would be interpreted that they require covering. It is our recommendation that temporary pits such as drilling pits be (1) specifically excluded from the installation of protective screening, or (2) named under the category "deemed to be nonhazardous to migratory birds." We believe such wording would clarify the intent of the Division.

Conoco appreciates the opportunity afforded by the Division to comment on this proposal. If we can be of assistance in this matter, please let me know.

Yours very truly,

Michael L. Morrison

for
David L. Wacker
Division Manager

HAI:jd

ARCO Oil and Gas Company
Central District
Post Office Box 1610
Midland, Texas 79702
Telephone 915 688 5200



April 17, 1989

Mr. William J. LeMay
New Mexico Oil Conservation Division
P.O. Box 2088
Santa Fe, New Mexico 87504

Dear Mr. LeMay:

Subject: Comments on Regulatory Revisions
Protection of Migratory Birds

ARCO Oil and Gas Company (ARCO) supports industry and government efforts to reduce the problem of damage to migratory birds due to contact with oily waste in pits and ponds found in the oil field. If regulatory amendments are deemed necessary to address the migratory bird concern, please consider the attached changes the language proposed in your letter of March 3, 1989.

These changes are necessary to specifically address the perceived problem of oil on pits. ARCO believes if pits and ponds containing no oil, oil sheen or oil waste are otherwise not "hazardous" to birds.

Use of the undefined term "non-hazardous" and the clause "[pits]...deemed to be non-hazardous" instills vagueness into the rule.

In addition, ARCO assumes reserve and workover pits are not covered by these rules, therefore, would not be required to be netted. Due to their temporary nature, these pits should not pose any significant problem to migratory birds.

Sincerely,

C. T. Stilwell
by pjk

C. T. Stilwell
Environmental Coordinator

CTS:pjk

cc: L. L. Trout MIO 327
M. D. Schall MIO 1129
E. S. Bush MIO 219
S. D. Smith H00
D. R. McKelvey MIO 367

RULE 8. LINED PITS/BELOW GRADE TANKS

After January 1, 1986, lined pits and below grade tanks may be used to contain produced water, sediment oil, tank bottoms, miscellaneous hydrocarbons, or other fluids subject to the jurisdiction of the Division under the Oil and Gas Act only upon prior approval of the Division. To protect birds covered under the Migratory Bird Treaty Act, all exposed pits, including lined pits and below grade tanks approved under this rule, shall use netting or other devices to prevent protected birds from landing on the oily fluids in the pit. Applications for approval of lined pits or below grade tanks should be made in accordance with applicable special rules or, in the absence of special rules, in accordance with Division "Guidelines".

Similar language should be inserted in Rules 312(4), 313, and 711.



Joe E King
District Manager

Texaco USA

February 20, 1989

State of New Mexico
Energy, Minerals and Natural Resources Department
Oil Conservation Division
P.O. Box 2088
Santa Fe, NM 87504
Attention: Mr. William J. LeMay
Director

*I question our
authority to make such a
rule without a statutory
charge to protect wildlife.
Otherwise they look at
DRC*

Dear Mr. LeMay:

The Advisory Committee regarding the birds in the Migratory Bird Treaty Act is recommending revision to the OCD Rules 8, 312, 313 and 711 in order to alleviate damage to bird life from oily waste in New Mexico.

Proposed amendments are attached with the revisions underlined. In general, we are recommending that all pits and/or ponds utilized in oil production operations shall be screened, netted, or otherwise rendered nonhazardous, or deemed to be nonhazardous to migratory birds. It was the opinion of both the committee and Mr. Tom Lane with The Fish and Wildlife Service that drilling and workover pits are nonhazardous to birds in the Migratory Bird Treaty Act, and for this reason these pits were not included in our proposed rule amendments.

If our proposed revisions will in your opinion alleviate the problem, it is recommended that these draft revisions be circulated to the industry. Pending industry comments, you may either set hearings to act upon the proposed revisions to the OCD rules or refer the replies to our committee for further action.

If you feel there are other points that we should consider, I will be happy to handle the matter either through correspondence with the committee members or hold additional meetings as necessary.

Yours very truly,

JEK/pdh
Attachments

cc: Persons on the Attached List
RHK, Texaco

Copies to:
Stovall
Lyon
Boyer
Stagner
Catavach
Sexton
Chaves
Williams

*Comments to
Do you think
this will do the
job? Bill*

OIL CONSERVATION DIVISION RULES FOR REVIEW

Comments:

I question the statutory authority, if any, which gives us the power to enforce the proposed rule changes under the Migratory Bird Treaty Act.

The proposed rules are also too general for proper compliance, i.e. - who determines if a pit is rendered non-hazardous - who is qualified to make such a decision.

In Mr. King's cover letter it was stated that drilling pits and workover pits were deemed non-hazardous. If this were the case - how was this determined (procedures). It sounds as if the F&W Service should be the ones to determine if a pit is hazardous or not - since they were the ones to determine drilling pits non-hazardous. It would appear that the F&W Service is trying to pass their work off to us.

It is also my contention that the existing rules are sufficient to protect such birds.

The other way to handle this matter would be to adopt a no-pit rule with no exceptions.



Memo

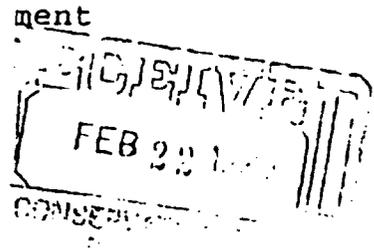
From

ROGER ANDERSON
Environmental Engineer

To Bill

My understanding of Tom Lane's major concerns included above ground open top tanks. The recommended revisions address pits, ponds and below grade tanks and omit reference to any above ground tanks.

I further interpreted Tom's comments concerning drilling and workover pits as being non hazardous during times of activity at the site or after activity has ceased and oil is not present in the pits. I recommend the revision of rule 105 to include the removal of all oil from any mudpit immediately after cessation of operations at the site.



of the birds in the revision to the OCD to alleviate damage to bird

revisions underlined. and/or ponds utilized and, netted, or otherwise nonhazardous to the committee and the Migratory Bird were not included in

opinion alleviate the revisions be circulated, you may either set to the OCD rules or for action.

should consider, I through correspondence and meetings as neces-

Oil Conservation Division Santa Fe, New Mexico 87501
(505) 827-5800

[Handwritten signature]

JEK/pdh
Attachments

cc: Persons on the Attached List
RHK, Texaco

Do you think this will do the job - Bill

- Copies to:
- Stovall
 - Lyon
 - Boyer
 - Strogan
 - Catavalla
 - Secton
 - Cham



United States Department of the Interior

FISH AND WILDLIFE SERVICE
POST OFFICE BOX 1306
ALBUQUERQUE, N.M. 87103



APR 6 1989

7. Contaminants
Oil & Gas

In Reply Refer To:
Region 2/RF/CL-3-81

Mr. William J. Lemay
Division Director
Oil Conservation Division
P.O. Box 2088
State Land Office Bldg.
Santa Fe, New Mexico 87504

Case 9672

Dear Mr. ^{Bill} Lemay:

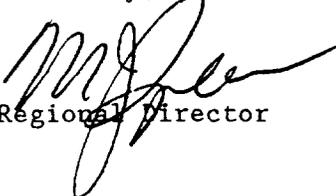
Thank you for the opportunity to review the Proposed Rule Revisions. You are to be commended for the leadership role that you are playing in this important conservation effort. Also, it has been reported to me that your field staff has been very cooperative and helpful in this endeavor.

We have made a few suggestions on the proposed revisions which are enclosed. These changes would help streamline and strengthen the rules and we request that they be adopted.

Also, we suggest that you investigate the possibilities of authorizing law enforcement officers in the New Mexico Game and Fish Department to assist with the reporting and enforcement of "screening, netting, or otherwise rendered nonhazardous to wildlife including birds" provisions in the regulations. This mutual arrangement has been very effective in some other states, such as California. This added help would effectively increase the surveillance capability of the Oil Conservation Division, a deficiency you pointed out earlier.

Thank you again, and let us know if we may be of further assistance.

Sincerely,


Regional Director

Enclosure

PITS AND TANKS

RULE 8. [REDACTED]

After January 1, 1986, lined pits and below grade tanks may be used to contain produced water, sediment oil, tank bottoms, miscellaneous hydrocarbons, or other fluids subject to the jurisdiction of the Division under the Oil and Gas Act only upon prior approval of the Division. To protect ^{wildlife resources} [REDACTED]

[REDACTED], all exposed pits, ^{with oily waste} including lined pits and [REDACTED] tanks approved under this rule, shall be either screened, netted, ^{or} otherwise rendered nonhazardous, ^{to wildlife, includ} [REDACTED] ing birds.

[REDACTED] Applications for approval of lined pits or ~~below grade~~ tanks should be made in accordance with applicable special rules or, in the absence of special rules, in accordance with Division "Guidelines".

RULE 312. TREATING PLANTS

- (4) a description of containment dikes and pits, if any, with detailed information on construction and lining;

(Note: any pits, ponds, lined pits or [REDACTED] tanks used at the site must meet Division requirements for ground water protection and shall be screened, netted or otherwise rendered nonhazardous

[REDACTED]
[REDACTED]
to wildlife including birds.

RULE 313. EMULSION, BASIC SEDIMENTS, AND TANK BOTTOMS

Wells producing oil shall be operated in such a manner as will reduce as much as practicable the formation of emulsion and basic sediments. These substances and tank bottoms shall not be allowed to pollute fresh waters or cause surface damage. If tank bottoms are removed to surface pits, the pits shall be fenced and the fence shall be kept in good repair and shall be screened, netted or otherwise rendered nonhazardous to wildlife including birds.



RULE 711. COMMERCIAL SURFACE WASTE DISPOSAL FACILITIES

- A. 3. A description of the facility with a diagram indicating location of fences and cattleguards, and detailed engineering construction/installation diagrams of any pits, liners, dikes, piping, sprayers, and tanks on the facility, prepared in accordance with Division "Guidelines for Permit Application, Design and Construction of Waste Storage/Disposal Pits;"

(Note: Any pits, ponds, lined pits or [REDACTED] tanks used at the site must meet Division requirements for groundwater protection and shall be screened, netted, or otherwise rendered nonhazardous, [REDACTED]

[REDACTED]
to wildlife, including birds.

DRAFT #1

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

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

*Bill - the Dept
looks good. See my
language on Rule 105.
Edling*

CASE NO. 9672

ORDER NO. R- 8952

APPLICATION OF THE OIL CONSERVATION DIVISION TO CONSIDER
AMENDMENTS TO DIVISION RULES 8, 105, 312, 313, AND 711 TO REQUIRE
APPROPRIATE MEASURES BE TAKEN TO PREVENT LOSS OF MIGRATORY
WATERFOWL RESULTING FROM CONTACT WITH OILY WASTE IN OIL FIELD
OPERATIONS.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 A.M. on June 15, 1989,
at Santa Fe, New Mexico, before the Oil Conservation Commission of
New Mexico, hereinafter referred to as the "Commission."

NOW, on this _____ day of June, 1989, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) In the fall of 1988, the United States Fish and Wildlife Service informed the New Mexico Oil Conservation Division (OCD) that significant loss of migratory waterfowl has occurred and is occurring due to contact with oily waste in pools, tanks and ponds in the oil fields of New Mexico.

(3) The OCD Director convened an industry meeting on December 15, 1988, to determine if action by the OCD was necessary. As a result of that meeting, a Committee was appointed to review the matter, and that Committee submitted proposed rules to be considered for adoption by the Commission.

(4) The Committee's recommended proposed rules were submitted to industry, the public, and to government agencies for comment and comments have been received.

(5) On May 18, 1989, the Commission held a hearing and took testimony, written evidence and comments regarding the problem and proposed rules to address the problem. The Commission accepted for record the Committee minutes, report and comments, and other correspondence and documents related to the problem and alternative solutions.

(6) The U.S. Fish and Wildlife Special Agent with Law Enforcement testified that he collected 694 dead birds or bird parts from 10 to 12 field trips made to Southeastern New Mexico between May 1988 and April 1989. An additional 100 to 150 ~~more~~ dead birds were observed but not collected. On a one-day trip to Northwest New Mexico, one dead duck was found in a water disposal site.

(7) Open pits, ponds and large tanks used in conjunction with oil field operations present a potential hazard to migratory waterfowl, and protective measures should be required to prevent significant loss of birds.

(8) Pits used in conjunction with drilling and workover activities are non-hazardous during such operations and afterwards, provided oil is removed therefrom ^{or the pits are netted} immediately following the cessation of operations.

(9) The evidence was incomplete and inconclusive regarding the hazard to migratory waterfowl presented by small fiber glass

?

tanks, whether above or below ground. While no protective measures are needed at this time for such tanks, operators, the OCD and Fish and Wildlife should continue to gather and examine data to determine whether protective measures should be required.

(10) OCD rules prohibit the storage or retention of oil in earthen reservoirs, but occasional small accumulations of oil on pits, ponds or tanks can occur during normal operations, and any reference in the rules adopted hereby to keeping such facilities free of oil is likely to be difficult to monitor and enforce.

(11) Because of the diverse nature of sites, pits and ponds in the oil field, exceptions to statewide rules should be available to operators who can show ^{either that there are} alternative methods of protecting migratory birds or that their facility is not hazardous to migratory birds.

(12) Operators should consider taking additional precautions to render their facilities non-hazardous to migratory birds because the federal Migratory Bird Treaty Act prohibits unauthorized bird kills and federal law authorizes criminal penalties of up to \$10,000 per bird.

~~(13) Current Division rules require that certain pits and ponds be kept free of oil accumulation so additional references to keeping facilities free of oil are not necessary.~~

(14) Cooperative efforts should be established and maintained between industry and state and federal government agencies to further quantify migratory bird losses, where they are taking place, and to work together to develop economical means to prevent such future losses.

IT IS THEREFORE ORDERED THAT:

(1) Division Rule 8 is hereby amended to read in its entirety as shown on Exhibit "A" attached to and made a part of this order.

(2) Division Rule 105 is hereby amended to read in its entirety as shown on Exhibit "B" attached to and made a part of this order.

(3) Division Rule 312 is hereby amended to add a new Paragraph (h) and re-number the existing Paragraphs (h) and (i) as shown on Exhibit "C" attached to and made a part of this order.

(4) Division Rule 313 is hereby amended to read in its entirety as shown on Exhibit "D" attached to and made a part of this order.

(5) Division Rule 711 is hereby amended to add a new Paragraph I and re-number Paragraphs I, J and K as shown on Exhibit "E" attached to and made a part of this order.

(6) The effective date of this order and amended Rules 8, 105, 312, 313 and 711 shall be September 1, 1989,

(7) Jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

WILLIAM R. HUMPHRIES, Member

ERLING A. BROSTUEN, Member

WILLIAM J. LEMAY, Chairman and
Secretary

S E A L

dr/

RULE 8. EXPOSED PITS/LINED PITS/BELOW GRADE TANKS

- (a) After January 1, 1986, lined pits and below grade tanks may be used to contain produced water, sediment oil, tank bottoms, miscellaneous hydrocarbons, or other fluids subject to the jurisdiction of the Division under the Oil and Gas Act only upon prior approval of the Division. Applications for approval of lined pits or below grade tanks should be made in accordance with applicable special rules or, in the absence of special rules, in accordance with Division "Guidelines".
- (b) 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 operator, an exception to screening, netting or covering of a facility may be granted by the district supervisor upon a showing that ~~either~~ an alternative method will protect migratory birds or ~~a showing~~ that the facility is not hazardous to migratory birds.

EXHIBIT "A"

CASE NO. 9672

Order No. R-

RULE 105. PIT FOR CLAY, SHALE, DRILL FLUID, AND DRILL CUTTINGS.

- a. In order to assure a supply of proper material for mud-laden fluid to confine oil, gas, or water to their native strata during the drilling of any well, operators shall provide before drilling is commenced an adequate pit for the accumulation of drill cuttings. Drilling fluids and drill cuttings must be disposed of at the well site in a manner to prevent contamination to surface of subsurface waters. Removal of drilling fluids or drill cuttings for offsite disposal will be permitted only by approval of the appropriate Division district supervisor.

- b. To protect migratory birds, oil must be removed from the surface of pits used for drilling, completion, blowdown, workover or an emergency immediately after the cessation of each activity. *must have oil removed from their surface or must be screened, matted or covered. immediately after cessation of the activity.*
- Over - by nothing etc.*

EXHIBIT "B"

CASE NO. 9672

Order No. R-

RULE 312. TREATING PLANTS

(h) 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 operator, an exception to screening, netting or covering of a facility may be granted by the district supervisor upon a showing that ~~either~~ an alternative method will protect migratory birds or a ~~showing~~ that the facility is not hazardous to migratory birds.

(h) (i)

(i) (j)

EXHIBIT "C"

CASE NO. 9672

Order No. R-

RULE 313. EMULSION, BASIC SEDIMENTS, AND TANK BOTTOMS

Wells producing oil shall be operated in such a manner as will reduce as much as practicable the formation of emulsion and basic sediments. These substances and tank bottoms shall not be allowed to pollute fresh waters or cause surface damage. If tank bottoms are removed to surface pits, the pits shall be fenced and the fence shall be kept in good repair. 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 operator, an exception to screening, netting or covering of a facility may be granted by the district supervisor upon a showing ^{either} that ~~either~~ an alternative method will protect migratory birds or ~~a showing~~ that the facility is not hazardous to migratory birds.

EXHIBIT "D"

CASE NO. 9672

Order No. R-

RULE 711. COMMERCIAL SURFACE WASTE DISPOSAL FACILITIES

I. 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 operator, an exception to screening, netting or covering of a facility may be granted by the district supervisor upon a showing that either an alternative method will protect migratory birds or ~~a showing~~ that the facility is not hazardous to migratory birds.

I. J.

J. K.

K. L.

EXHIBIT "E"

CASE NO. 9672

Order No. R-