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

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

CASE NO. 14732
ORDER NO. R-13489

APPLICATION OF SOUTHWEST ROYALTIES, INC. FOR APPROVAL OF A REMEDIATION PLAN PURSUANT TO 19.15.29.11 NMAC FOR THE ARCO FEDERAL WELL NO. 1 TANK BATTERY, EDDY COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on September 29, 2011, at Santa Fe, New Mexico, before Examiner David K. Brooks.

NOW, on this 7th day of December, 2011, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due notice has been given, and the Division has jurisdiction of the subject matter of this case.

(2) Southwest Royalties, Inc. [OGRID 21355] (Applicant) seeks approval of its plan to dispose of salt contaminated soils excavated from the site of a minor produced water spill and earlier legacy site in an unlined trench, to be covered with a top liner and at least four feet of topsoil and re-vegetated.

(3) Applicant appeared at the hearing through counsel and presented the testimony of its environmental consultant as follows:

(a) In September of 2010, a small release of produced water occurred at Applicant's Arco Federal No. 1 tank battery (API No. 30-015-20631) in Eddy County, New Mexico.

(b) The United States of America is the owner of the surface and mineral estate at this site, and the United States Bureau of Land Management (BLM) is the responsible land management agency.

(c) The September, 2010 release impacted an area already chloride impacted as a result of a pit that was abandoned at the site in the 1970-80 time frame. Due to the earlier impact, there existed an area devoid of vegetation at the site.

(d) The BLM required Applicant to submit a plan to remedy the surface contamination resulting from the September, 2010 release and the earlier legacy.

(e) Applicant submitted its plan to re-vegetate the site to BLM on June 11, 2011. The plan provided for excavating chloride impacted soil, digging a new trench, burying the chloride impacted soil in the trench, and covering with a liner and at least four feet of clean topsoil.

(f) BLM approved Applicant's plan, but required Applicant to secure the Division's approval of its proposal to bury the contaminated soil in a trench on site, or otherwise to remove the contaminated soil for disposal if required by the Division.

(g) There is no protectable ground water at the site.

(h) By letter dated June 17, 2011, the Division advised Applicant that on-site burial of the contaminated soil violated Division Rule 19.15.34.11 NMAC and would not be allowed.

(i) On June 20, 2011, Applicant re-submitted its proposal to the Division's Environmental Bureau as a corrective action plan pursuant to 19.15.29.11 NMAC.

(j) On June 25, 2011, the Division denied Applicant's request for approval of its proposal as a corrective action plan, noting that the September, 2010 spill consisted of less than five barrels and, in view of the absence of protectable ground water, did not constitute a threat to the environment. Accordingly, a Division-approved corrective action plan was not required. The Division, however, reiterated that on-site burial of contaminated soil would not be allowed.

(k) Applicant has proceeded with the excavation contemplated by the BLM-approved proposal, but has deferred disposal of the contaminated soils pending disposition of this Application.

(4) The Division appeared at the hearing through counsel and presented the testimony of the acting Chief of the Division's Environmental Bureau, as follows:

(a) The Division did not require Applicant to undertake any corrective action by reason of the September, 2010 release because the amount of fluid released consisted of less than five barrels, and the Division determined that the spill would not adversely impact ground water or public health.

(b) Division rules do not require corrective action for legacy contamination such as the 1970s pit at this site.

(c) Both the soil contaminated by the September, 2010 spill and that contaminated as a result of an earlier oil and gas operation constitute "oil field waste" as defined by Division Rules, which prohibit disposal of oil field waste in pits not approved as surface waste management facilities.

(d) The Division's Environmental Bureau does not contest Applicant's determination that no protectable ground water exists as this site.

The Division concludes as follows:

(5) Division Rule 19.15.34.11 NMAC provides (in relevant part):

> Except as authorized by 19.15.30 NMAC, 19.15.17 NMAC, 19.15.29 NMAC or 19.15.26.8 NMAC, persons, including transporters, shall not dispose of produced water or other oil field waste:
> (1) on or below the surface of the ground; in a pit; or in a pond, lake, depression or watercourse;

(6) There is no contention that Rule 19.15.30 (regarding abatement of water pollution), 19.15.17 (the pit rule), or 19.15.26.8 (regarding injection of fluids into reservoirs) apply to this case.

(7) There is no evidence that the September, 2010 spill consisted of more than five barrels, will reach a watercourse, or may with reasonable probability endanger public health or be detrimental to water. Accordingly, the September, 2010 spill did not constitute either a "major release" or a "minor release" as those terms are defined in Rule 19.15.29.8 NMAC, and the Division's Environmental Bureau correctly denied approval of Applicant's proposal as a corrective action plan under 19.15.29.11 NMAC.

(8) The BLM, although indicating its approval of on-site disposal, expressly deferred to the Division on the issue of on-site disposal or removal of the contaminated soils. Hence there is no issue of federal pre-emption in this case.

(9) Rule 19.15.34.11 does not specifically authorize exceptions other than pursuant to the rules therein cited, none of which applies to Applicant's proposal. However, neither does it expressly preclude exceptions.

(10) The Division Director has authority, through the Division's hearing process, to make exceptions to rules in particular cases by Order. NMSA 1978 Section 70-2-23; Rule 19.15.2.9 NMAC.

(11) In this case there is no issue of waste of hydrocarbons or of correlative rights. There is no protectable surface or ground water in the vicinity, and the BLM has approved Applicant's plan for surface remediation. The protections against further surface contamination from Applicant's proposed on-site disposition of the contaminated soil comply with the requirements the Division imposes where on-site waste burial is authorized by Rule 19.15.17.13.G NMAC.

(12) Accordingly, enforcement of Rule 19.15.34.11 in this particular case is not necessary for the protection of water, public health or the environment, and Applicant's request for an exception thereto should be granted.

IT IS THEREFORE ORDERED THAT:

(1) The application of Southwest Royalties, Inc. for approval of the remediation plan described in Southwest Exhibit 5 admitted in this case, is approved, including the on-site burial of chloride contaminated soil beneath a membrane cover and at least four feet of topsoil, and re-vegetation of the topsoil in accordance with United States Bureau of Land Management requirements.

(2) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

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

SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

JAMI BAILEY
Director