



New Mexico's Pit Rule



The “Pit Rule,” or NMOCD Rule 17, has been in effect since June 2008 with minor modifications most recently approved in June 2009. The rule has been discussed in the papers and has become a political hot potato. There are many questions regarding the NMOCD’s motivation and the underlying reasons for this rule. There have been allegations of hundreds of contamination sites, political insiders getting financial benefits from the rule, and claims that industry is pulling operating budgets and moving to surrounding states. Recent regulatory policies in New Mexico, coupled with the drop in commodity prices, have significantly weakened the levels of drilling which considerably impact state revenues.

The Pit Rule requires significant changes in operations for oil and gas producers. Operators are now required to obtain a “pit permit.” Most pit applications require more than 26 pages of documentation to obtain approval under Rule 17. In the past, earthen pits were used for the temporary storage of “drill cuttings” but now would only be allowed under very limited circumstances. In the case where an operator is allowed to construct a reserve pit, the contents, depending upon soil sampling, would need to be hauled off to a centralized disposal facility rather than reclaimed on site. In cases where reserve pits are not allowed, operators must utilize “closed loop” systems. Typically these are steel storage tanks with a series of elaborate equipment installed to separate the cuttings from the drilling mud. While not new, these systems are expensive to build or obtain.

In many areas, industry drilling costs have increased by more than \$200,000 per individual well in order to comply with this rule. These rules do not exist in other oil and gas producing states, which puts independent operators at an economic disadvantage when competing for limited equipment or trying to attract investors. In Colorado drill cuttings are often sold to the transportation department as building material for roads. In Texas, the cuttings are also left in unlined earthen pits and buried on location. Both Colorado

and Texas share basins with New Mexico and therefore are direct competitors for the drilling business that is so necessary for our state.

The New Mexico Oil and Gas Division (NMOCD) routinely contends in the media that the Pit Rule was created to prevent ground water contamination, and boasts, “that there has not been a single case of ground water contamination since the passage of the rule.” The sad truth is that there was not a single case of ground water contamination due to a drilling reserve pit before the rule went into effect. In reality, Rule 17 applies to four different types of pits utilized in the oil and gas industry: Permanent Evaporative Pits and Production Pits used for long periods of time (years), and Emergency Pits and Drilling/Workover Pits used for short periods of time (days, weeks). When regulators, legislators, or lay personnel discuss “pits,” it is important to accurately reflect the different pit type, pit usage, and pit duration.

At the Oil and Gas Commission hearing for the Pit Rule, the NMOCD presented ten cases of suspected contamination--out of the 80,000 wells drilled in New Mexico. Of those ten cases, not one has been proven to show any contamination. Finally, the NMOCD’s claim that without the Pit Rule the industry would be unregulated ignores the mountain of collaborative work done under the previous NMOCD Director that was supported by both the industry and the environmental community which resulted in the creation of Rule 50 in 2005.

The Independent Petroleum Association of New Mexico (IPANM), along with other oil and gas industry associations and companies, is appealing the Pit Rule on the grounds that the NMOCD lacks the authority to regulate ground water issues and did not perform any economic analysis including how the rule would affect small businesses, in particular independent oil and gas operators. As New Mexico moves into the future with a new Administration, IPANM will be working on policies, regulations and legislation that bring a balanced science based approach to drilling and operating oil and gas wells in our state. ♦