

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO**

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| IN THE MATTER OF CHANGES TO THE |) | CAUSE NO. 1R |
| RULES AND REGULATIONS OF THE OIL |) | |
| AND GAS CONSERVATION COMMISSION |) | DOCKET NO. 0803-RM-02 |
| OF THE STATE OF COLORADO |) | |

COLORADO OIL & GAS ASSOCIATION

MOTION TO DEFER DELIBERATION ON 900 SERIES OF RULES

COMES NOW, the Colorado Oil & Gas Association and enters its motion that the Commission defer final deliberation on the 900 Series of Rules pending further discussions and revisions by staff and the stakeholders to this proceeding. As grounds in support of its motion, COGA states:

1. This Commission has already decided to defer deliberation on several matters in the proposed rules, and, instead, form stakeholder work groups to convene in January, 2009. Additional revisions to the reclamation rules, in particular, will impact and affect how the 900 Series Rules are implemented by operators. Further, within the proposed 900 Series Rules themselves, there is a staff recommendation to delay the applicability of Rule 904 to production pits in Washington, Yuma, Logan, Morgan and Las Animas Counties (this list should also include Huerfano County) until January 1, 2011. This delayed applicability apparently recognizes the considerable operational and technical compliance challenges facing operators in those counties. But operators throughout Colorado face similar challenges with other of the 900 Series proposed rules that may be addressed and clarified through additional stakeholder discussions.
2. As with the other deferred matters, the issues in the proposed 900 Series of Rules relating to pits and management of E&P wastes are equally complicated, and equally deserving of more careful rule development than can be achieved by Commission deliberation on the current staff recommendation and party alternatives. COGA notes that the scheduled deliberations on the 900 Series will be the first opportunity for the parties and staff to even hear what questions, concerns and issues the Commissioners have with respect to these highly technical and important rules, and any such input is absent in the staff recommendation.
3. The Commission's rulemaking history relevant to pits demonstrates the need for a considered and unhurried approach. The Commission adopted pit (and other 900 Series) rules in 1993, and then made comprehensive revisions to the pit rules in 1995, following the adoption of SB 94-177. Within two years, the Commission needed to revisit the pit rules, adopting "emergency pit rules" in 1997. The Commission further refined the 900 Series in 2000, 2001 and 2004. This experience speaks to the need for full understanding of the historical development of the 900 Series, and evolutionary, not revolutionary, rule revisions, in order to promulgate reasonable, cost-effective and stable regulatory requirements. (This Regulatory History, taken from the COGCC website, was appended to COGA's rebuttal statement at Exhibit 4).

4. As the Commission heard in testimony during this hearing, New Mexico took 18 months to promulgate new rules on *pits alone*, including 17 days of testimonial hearing, no page limits or restrictions on party filings, and several days of deliberations. Following the promulgation of the New Mexico pit rules, such confusion resulted (among both the staff and the operators) that the Oil Conservation Division was forced to give a 146-page PowerPoint training presentation to operators at multiple locations throughout New Mexico. Despite this training, the New Mexico pit rules remain so confusing as to be nearly unworkable. Recent news reports¹ indicate that the Farmington BLM Office has experienced a 30% drop in APD filings, based on operators' professed inability to even comprehend, much less comply with, the revised pit rules. Colorado should strenuously seek to avoid a similar outcome by adopting a more careful approach to this complicated subject area.

5. Nothing in the hearing record "demonstrates the need" for drastic and immediate revisions to Colorado's existing pit rules. Indeed, recent examples of compliance concerns cited in staff testimony involve violations of an *existing rule*. On the other hand, the prehearing statement of Diamond Operating at Exhibit C demonstrates that decades of produced water disposal into unlined pits in the study area have not had a detrimental impact on groundwater resources.

6. Despite the good-faith effort that has gone into the 900 Series revisions to date, which COGA recognizes and acknowledges, the staff recommendations still contain confusing and contradictory provisions and requirements as well as major unresolved issues. These issues include:

- There is considerable confusion and inconsistency in the meaning and operation of the terms "multi-well pits," "multi-well drilling and completion pits" and "centralized E&P waste management facilities." The regulatory requirements applicable to a "multi-well pit" as opposed to a "multi-well drilling and completion pit" or a "centralized E&P waste management facility" are unclear. "Multi-well pits" appear to simply be a subset of "multi-well drilling and completion pits." Further, a "multi-well drilling and completion pit" and "multi-well pit" should cover wastes generated from more than one "well site" rather than one "well." Is a "production area" the same as a "drilling and spacing unit?" The 3-year cut-off whereby multi-well pits transform into a "centralized E&P waste management facilities" will have severe and unreasonable impacts on small operators, particularly in NE Colorado, with no showing of a positive cost benefit.
- The ability of operators in NE Colorado and the Raton Basin to continue to dispose of produced water into pits is unaddressed and unresolved in the staff recommendation.

¹ "BLM, private companies see big decline in drilling permits; The state will feel the effects deep in its pocketbooks, said Rep. James Strickler, R-San Juan County". By Cornelia de Bruin — The Daily Times Article Launched: 09/14/2008

- The unnecessary and unsupported pit lining requirements for most, if not all, pits, threaten to cause unintended consequences. This includes a disincentive for using centralized facilities, resulting in *increased surface disturbance and traffic*.
- The unnecessary synthetic pit liner removal requirement fails to recognize that a regulatory pit lining requirement is intrinsic to the use of many pits unique to oil and gas operations. Reasonable resolution should be explored with relevant stakeholders, including representatives of the Colorado Department of Public Health and Environment. As written, operators would be required to remove E&P wastes stored in pits, including cuttings, remove the pit liner and then re-dispose of the pit contents.
- The thickness requirements for secondary synthetic liners in Rule 904.c.(3) is excessive at 24 mils, when a primary liner is also required to be at least 24 mils. Similarly, the alternative soil foundation requirements in Rule 904.c.(2) impose compaction and hydraulic conductivity requirements that are impracticable and virtually unworkable in most of Colorado.
- Rule 904.d. lining requirements for “centralized E&P waste management facilities” does not provide operators with the option of employing commonly used and proven secondary synthetic liners. The soil foundation requirements for “centralized E&P waste management facilities” only allows the use of “geosynthetic clay liners” supported by “geotextiles and/or geomembranes, which are held together by needling, stitching, or chemical adhesives.” These systems are largely unused by and unknown to Colorado operators, and more acceptable and sufficiently protective synthetic liner alternatives exist.
- The revised definition of “oily waste” in Rule 907.e. contains two references to “hydrocarbons” (at least one of which appears superfluous) and no cross-reference to Table 910-1 standards for applicable hydrocarbon concentration levels.
- There are multiple places in the 900 Series Rules, such as Rules 905.d., 908.g.(1).A, 908.g.(2), where operators are required to ensure that “groundwater” meets the concentration levels in Table 910-1 regardless of whether or not testing of the overlying soils or other evidence demonstrates a need for groundwater testing.
- The proposal to replace the well-understood and successfully-implemented “Sensitive Area Decision Tree” as an initial screening tool creates an impossible burden to “prove the negative,” and will have an especially harsh impact on small operators.
- COGA’s pit fluids and solids sampling project, and the associated pathway analysis and risk assessment (“PARA”) indicate that the existing standards of Table 910-1 are protective of public health. (Sampling project and PARA are found at Exhibits 9 & 10 of COGA’s rebuttal statement.) Further, the standards set in Table 910-1 are more restrictive than CDPHE’s standards for Underground Storage Tanks, which present a greater risk to public health and the environment. This Table is highly technical and the impacts of the staff recommendation are deserving of more analysis.

7. Fundamentally, if the 900 Series were enacted as currently proposed, both staff and industry would find themselves – like their counterparts in New Mexico – stymied by regulations that defy reasonable implementation due to internal contradictions and defects. COGA believes that with additional discussions among the stakeholders concerning these and other outstanding issues associated with the proposed revisions to the 900 Series, the chances of achieving resolution and regulatory clarity in these complex and challenging rules will be greatly increased.

Accordingly, COGA, and the joining parties, urge this Commission to grant its motion.

RESPECTFULLY SUBMITTED THIS 17TH DAY OF SEPTEMBER, 2008:

/s/ KENNETH A. WONSTOLEN

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of September, 2008, of true and correct copies of the foregoing Motion to Defer Deliberation on 900 Series of Rules, of the Colorado Oil & Gas Association were served on the following, by the method indicated below:

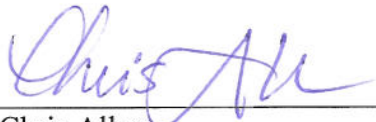
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