

2. All free liquids and non-E&P wastes have been removed from the pit or impoundment.

3. All E&P wastes remaining in the pit meet the concentration levels in Table 910-1 (see Rule 907.a.).

4. Backfilling of the pit returns the soils to their original relative positions and minimum of three (3) feet backfill cover is applied over any remaining pit contents, and the land is recontoured as close to its original contour as practicable (see Rules 1003 and 1004).

5. The pit is reclaimed so that an impermeable barrier does not persist and compacted areas are reclaimed in accordance with Rule 1003.c.

6. The pit is reclaimed and revegetated in accordance with the 1000 series Rules.

7. A notice which includes (I) a legal description of the real property where the liner is to be buried, (II) a legal description or plat showing the specific location of the buried liner, (III) the name of the current owner(s) of the surface as set forth in the county tax records, and (IV) the name of the entity that buried the liner is submitted on a Sundry Notice, Form 4. The Commission shall maintain an indexed database of all such Form 4's, which shall be open to public inspection.

4. Proposed Statement of Basis and Purpose for Rule Amendment:

CPA proposes that the Commission adopt the following statement of basis, purpose, and specific statutory authority in support of the proposed rule amendment and incorporate it in the rules adopted.

Statutory Basis: C.R.S. §§ 34-60-105(1), 106(2)(d), (10).

Purpose: Prior to the Commission's rulemaking in 2008, Rule 905.b.(3)A. allowed for onsite burial of synthetic pit liners on non-irrigated crop lands and non crop lands with the consent of the surface owner. On irrigated croplands, synthetic liner material had to be removed and disposed of in accordance with solid waste rules. In the 2008 rulemaking, the Commission amended Rule 905.b.(3)A. to require the removal and offsite disposal of all pit liners without exception.

The Commission concludes that pit liners are subject its regulatory jurisdiction when the liners are in the ground and used for primary field operations. Under C.R.S. § 30-20-101(6)(b)(VI), E&P wastes are not regulated as solid wastes unless they are deposited at a commercial solid waste facility. Because pit liners constitute E&P waste when they are used in association with primary field operations and in accordance with Commission's rules (see C.R.S. § 34-60-103(4.5)), the Commission finds that it has jurisdiction to promulgate this amendment to Rule 905.b.3. The Commission further concludes that, in specified instances, disposal of synthetic liners in place properly balances the state's interest in fostering oil and gas development

with its interest in preventing and mitigating significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources, taking into consideration cost-effectiveness and technical feasibility.

One of the duties the General Assembly has given to the Commission is the regulation of oil and gas operations so as to prevent significant environmental impacts, taking into consideration cost-effectiveness and technical feasibility. C.R.S. § 34-60-106(2)(d). In this rulemaking, the Commission received testimony from operators explaining their technical and economical difficulties in complying with the liner removal requirement of current Rule 905.b.(3)A. In some cases, the cost of pit liner removal and disposal at a commercial facility is economically impracticable, resulting in immediate and pressing remediation and reclamation issues. Regardless, the cost to remove synthetic liners and dispose of them at commercial facilities is disproportionately high when compared to the associated environmental or wildlife resources benefit(s), if any. The requirement is therefore not cost-effective, which is a factor that must be taken into consideration pursuant to the Colorado Oil and Gas Conservation Act.

Upon consideration of all of the evidence presented by the parties to this rulemaking and the relevant policy considerations, the Commission has concluded that synthetic pit liners may be left in place only in certain instances and upon the satisfaction of certain conditions. Those criteria are set forth in amended Rule 905.b.(3)A.(ii). First, the amended rule provides protection for surface owners. As provided in the rules prior to the 2008 rulemaking, liners may not be left in place on irrigated crop lands, and written surface owner approval is necessary for all other lands. Given the unique nature of lands managed by the federal government, written surface owner consent shall be deemed obtained where the permit(s) to drill associated with the pit does not require removal of the liner. The amended rule provides additional protection for surface owners and prospective purchasers of land by requiring the operator to file with the Commission a detailed notice of the precise location of the buried liner on a Sundry Notice (Form 4). Such notices will be maintained and indexed by the Commission for public inspection.

Second, amended Rule 905.b.(3)A.(ii) has been carefully crafted so as to avoid the risk of pit contents creating an unacceptable health, safety or environmental risk. Under the rule, all free liquids and non E&P wastes must be removed from the pit and disposed of under applicable law. Any E&P wastes which remain in the pit must meet the standards set forth in Table 910-1. The requirements to backfill, recountour, reclaim, and revegetate in accordance with the 1000 Series rules ensure that the surface is returned as closely as practicable to its original condition.

In carrying out its duty foster the responsible, balanced development of oil and gas resources in a manner consistent with protection of the public health, safety and welfare, including the environment, and wildlife resources, the Commission must continually seek to improve upon its rules by responding, when appropriate, to feedback provided by the regulated community. Economic factors may justify

amending existing rules in ways that result in more cost-effective, yet equally protective, implementation of the Commission's statutory directives. Upon careful consideration of the evidence in the record and the relevant public policies, the Commission concludes that Rule 905.b.(3), as revised, effectively serves the Commission's statutory directives.

5. Prayer for Relief:

CPA respectfully requests (1) that the Commission provide notice as required by law and initiate rulemaking proceedings as soon as possible upon such notice, and (2) that, after the conclusion of the hearing upon such rulemaking proceedings, Commission amend its Rules and Regulations consistent with CPA's proposals as set forth above.

Respectfully submitted this 10th day of March, 2010.

Colorado Petroleum Association

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CERTIFICATE OF SERVICE

I, hereby certify that on this 10th day of March, 2010 I served an electronic version of the foregoing APPLICATION FOR RULEMAKING, and have arranged to have an original and 13 copies hand delivered, addressed to the following:

Carol Harmon, Hearings Manager
Docket No. 0803-RM-02
Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, CO 80203

Carol.Harmon@state.co.us

-and-

I hereby certify that I caused two (2) copies of the above-referenced document to be hand-delivered, addressed to the following:

Matt Lepore
Colorado Department of Law
1525 Sherman Street, 5th Floor
Denver, CO 80203

Matt.Lepore@state.co.us

-and-

I hereby certify that I caused one (1) copy of the above-referenced document to be hand-delivered, addressed to the following:

Rob Willis, Hearing Officer
Docket No: 0803-RM-02
Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, CO 80203

Rob.Willis@state.co.us

-and-

I electronically served the above-referenced motion on the following:

Marc.fine@state.co.us

/S/ Alexandra Zvereva