

**Comments offered by
David E. Polter
ARCADIS G&M, Inc
May 10, 2005**

Good Morning. My name is Dave Polter and I am an environmental consultant with ARCADIS G&M, Inc. and I would like to offer technical comments reflecting concerns common to various oil and gas operators with whom we work here in Region 6.

1. Small Oil and Gas Construction Activities Should Remain Permanently Exempt from Storm Water Permitting. Small O&G construction activities are substantially different from other small construction activities and due to these differences, should not be subjected to the same permitting requirements. The duration of construction activities associated with installation of oil and gas wells and associated gathering lines is very short. Typically these activities are completed within 2 months of initiation. The well pad, upon installation, is typically not revegetated and serves as a platform for subsequent drilling activities, followed by equipment installation and then by well operation. For the typical small well installation project that disturbs less than 5 acres, after the pad is installed (normally completed within a few weeks of project initiation), a high percentage (greater than 50%) of the area originally disturbed is permanently stabilized. Given the typically brief nature of the soil disturbance activities and the small size of these sites, permit coverage and the associated SWPPP preparation and implementation requirements are inappropriate and unnecessary. We advocate retaining permitting requirements for those sites disturbing greater than five acres but endorse, and strongly encourage the agency to permanently extend the exemption from permitting for small oil and gas construction sites disturbing less than 5 acres.

2. Subpart 9.C.1.a.i of the CGP requiring operators in New Mexico to prepare and implement a Sediment Control Plan (SCP) as part of the SWPPP is impracticable and EPA has not appropriately accounted for the economic impact this provision will have on small construction activities. According to this provision, operators in New Mexico must prepare and implement a SCP as part of the SWPPP and use soil loss prediction models (such as SEDCAD 4.0, RUSLE, SEDIMONT II, MULTISED, etc) to demonstrate that implementation of the site-specific practices will result in sediment yields that will **not be** greater than the sediment yield levels from pre-construction, undisturbed conditions. .

Our experience with the various soil loss prediction models referenced in the CGP indicates that insuring that there is **no** increase in sediment yield and flow velocity from preconstruction, undisturbed conditions, will essentially require construction of detention basins to capture and control all run-off at every well construction site. While other erosion and sedimentation control devices and strategies may be effective at reducing sediment yield, they are not capable of preventing **any** increase in sediment yield. While the use of detention basins may be appropriate for long-term and large-scale construction

activities, they are impracticable for use in small well site construction projects. Many well locations, particularly in New Mexico & Colorado, are in upland areas or on hillsides where construction of sediment basins is physically limited by topography and may result in substantially more soil disturbance than the well site itself. Within the oil and gas construction industry, there is virtually no precedent for use of sediment basins for small oil and gas well construction sites. The economic impact of the SCP requirement, the use of soil loss prediction models and the attendant structural controls that would be required are not accounted for in EPA's economic impact analysis. The standard SWPPP and BMP requirements provide sufficient erosion and sediment controls for construction activities in New Mexico and the additional, and burdensome SCP requirements should be eliminated.

3. The requirement within Subpart 9.C.1.a.i of the CGP, to have the SCP certified by a professional engineer is impracticable and the economic impacts of this requirement are not accounted for in EPA's economic impact analysis. EPA should eliminate the PE certification requirement as being impracticable. The DOE estimated that 30,000 new O&G sites per year and EPA stated that a "significant" number would exceed 1 acre. It is not apparent that there is sufficient capacity within the professional engineering sector to accommodate the number of PE certifications that would be required by this provision. It is also not apparent that EPA has accounted for the costs of the PE's conducting site inspections at each location subject to permitting. The PE certification requirement should be eliminated for small construction sites and that for large construction sites, EPA should clarify that PE's need not individually inspect each location but may rely on their agent to conduct any required site inspections

4. Imposition of off-site vehicle tracking controls should not be required when existing access roads and public right-of-ways are unpaved.—EPA should clarify that in circumstances where access and egress from construction sites occurs via existing unpaved lease roads or unpaved right-of-ways, that off-site tracking controls may be ineffective and not required. The vast majority of access roads in oil fields are unpaved. Tracking controls from construction sites where access and egress is via unpaved roads are ineffective as any material tracked from the site would be transferred to the unpaved road and become indistinguishable from materials mobilized by traffic on the unpaved access road.

5. A “common plan of development” should not encompass construction activities conducted by completely separate operators where neither operator has any operational control over activities of the other. EPA should clarify that construction activities conducted by independent and separate operators where neither operator has any operational control or authority over the other operator's construction activities not be considered a “common plan of development” for which the aggregate area of soil disturbance must be considered when making threshold permit applicability determinations. In a fairly common scenario operator A may choose to install a well for which construction activities will not result in soil disturbance greater than the applicable permitting threshold. Operator B may choose to construct a gathering line to that well and Operator B's separate construction activities will also not result in soil

disturbance greater than the applicable permitting threshold. Both parties make separate economic and construction decisions that although related and mutually beneficial, are not activities that are under common operational control. Requiring an operator to consider the effect of a third party's project to determine whether a permit is required is inappropriate, and without precedent in environmental permitting and it is not apparent under what legal authority EPA would rely in seeking to enforce this interpretation.