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May 4, 2012

**VIA HAND DELIVERY**

Ms. Florene Davidson  
Commission Clerk  
Oil Conservation Commission  
New Mexico Department of Energy,  
Minerals and Natural Resources  
1220 South Saint Francis Drive  
Santa Fe, New Mexico 87505

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Re: **PRE-HEARING STATEMENT AND EXHIBITS**

Oil Conservation Commission Case No. 14784: Application of the New Mexico Oil and Gas Association for amendment of certain provisions of Title 19, Chapter 15, of the New Mexico Administrative Code concerning pits, closed loop systems, below-grade tanks, sumps and other alternative methods related to the foregoing and amending other rules to conforming changes, Statewide.

Dear Ms. Davidson:

Pursuant to Oil Conservation Division Rule 19.15.3.11 NMAC, the New Mexico Oil and Gas Association files herewith its pre-hearing statement and six copies of the exhibits it will present at the May 14, 2012 Oil Conservation Commission hearing on the above-referenced application. By copy of this letter, I am providing this pre-hearing statement and exhibits to all parties of record in this case.

Very truly yours,

William F. Carr  
Attorney for the New Mexico Oil and Gas Association

Enclosures

cc: Parties of record

**Holland & Hart<sup>LLP</sup>**

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

**IN THE MATTER OF THE APPLICATION OF THE NEW MEXICO OIL AND GAS ASSOCIATION FOR AMENDMENT OF CERTAIN PROVISIONS OF TITLE 19, CHAPTER 15 OF THE NEW MEXICO ADMINISTRATIVE CODE CONCERNING PITS, CLOSED LOOP SYSTEMS, BELOW GRADE TANKS, SUMPS AND OTHER ALTERNATIVE METHODS RELATED TO THE FOREGOING AND AMENDING OTHER RULES TO CONFORMING CHANGES, STATEWIDE.**

**CASE NO. 14784**

**PRE-HEARING STATEMENT OF THE  
NEW MEXICO OIL & GAS ASSOCIATION**

This Pre-hearing Statement is submitted on behalf of the New Mexico Oil & Gas Association (NMOGA) as required by Oil Conservation Division Rule 19.15.3.11.B NMAC

**APPEARANCES OF PARTIES**

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**OPPOSITION**

Oil & Gas Accountability Project

**OTHER PARTIES**

Independent Petroleum Association

New Mexico Oil Conservation Division

New Mexico Wilderness Alliance

Nearburg Producing Company

New Mexico Citizens for Clean Air & Water

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## **STATEMENT OF THE CASE**

The New Mexico Oil and Gas Association seeks the amendment of certain provisions of the rules of the Oil Conservation Division [Title 19, Chapter 15 of the New Mexico Administrative Code] concerning pits, closed-loop systems, below grade tanks, sumps and other alternative methods that may be proposed for use in lieu of pits or below grade tanks and the amendment of other rules to conform to these changes. Applicant's proposed amendments will remove unnecessary impediments to the development of New Mexico's oil and gas thereby preventing waste of these resources and the impairment of the correlative rights of the owners of these minerals and will encourage production of oil and gas in New Mexico. The proposed amendments will (i) revise the permitting and registration requirements for permanent pits, temporary pits and below grade tanks, (ii) eliminate of the permitting, design, construction, and operational requirements for closed-loop systems while requiring that drying pads be designed and constructed to prevent contamination of water, that sumps be used to collect liquids from cuttings and that berms be constructed to prevent run-on, (iii) revise the siting, design, construction, operation, closure and site reclamation provisions for temporary pits, permanent pits, drying pads, below grade tanks, and tanks associated with closed loop systems, (iv) authorize standardized plans for pit construction, closure and other matters, (v) adopt a definition for "low chloride" drilling fluids and establish siting, closure and remediation requirements for temporary pits based on the chloride concentration in the waste and the distance between the waste and ground water or a flowing water course, (vi) authorize and adopt requirements for the permitting, siting, design, construction, operation and closure for "multi-well fluid

management pits,” (vii) revise the rules governing the testing and removal of below grade tanks, (viii) revise the rules governing onsite disposal in pits and trenches, (ix) revise the rules governing releases, waste testing and excavation, and the concentration of wastes disposed in temporary pits or burial trenches, (x) revise the requirements for remediation and site reclamation including contouring and re-vegetation, (xi) revise the rules governing variances and exceptions to these rules to provide for their approval by the appropriate division district office pursuant to procedures set out in the proposed amendments, (xii) revise and adopt rules and procedures governing the Oil Conservation Division’s notice, processing and approval of applications filed pursuant to these rules, (xiii) remove the regulatory obstacles to the transfer of properties that are out of compliance with Oil Conservation Division rules to new operators who are willing to assume responsibility for the properties and bring them into compliance, and (xiv) otherwise change the Commission’s requirements concerning permitting, design, construction, operation and closure of pits and below grade tanks (and operation of sumps) and other alternative methods that may be proposed for use in lieu of pits or below grade tanks used in oil and gas operations. The proposed revisions will protect fresh water, public health and the environment and prevent the waste of oil and gas and protect correlative rights pursuant to the mandates of the Oil and Gas Act.

## **PROPOSED EVIDENCE**

The New Mexico Oil & Gas Association will present the following witnesses and evidence:

<b><u>WITNESSES:</u></b>	<b><u>ESTIMATED TIME</u></b>	<b><u>EXHIBITS</u></b>
<b><u>BRUCE GANTNER</u></b> Environmental Engineer	<b>1 Hour</b>	<b>3 Exhibits</b> (One exhibit consists of a power point presentation containing approximately 20 slides)

Mr. Gantner will review the history of the development of NMOGA's proposed modifications to 19.15.17.NMAC ("the Pit Rule"). He will review NMOGA's proposed risk-based, two threshold siting criteria (based upon the chloride concentrations in the drilling fluids) which support NMOGA's reduced siting restrictions for temporary pits, multi-well fluid management pits, and below grade tanks. He will discuss the increased costs to operators that are the result from the current rules with no corresponding increase in protection of public health or the environment.

Mr. Gantner will explain NMOGA's proposed changes to the closure requirements of the Pit Rule. The original closure provisions were approximately 6 pages in length and were difficult to comprehend due to redundant references to closure criteria and numerical standards. The revised Chapter 13, entitled "Closure and Site Reclamation Requirements," is only 3 pages in length, and achieves the following objectives:

- (1) Improved clarity on closure and reclamation requirements by referring to tables of numerical standards and by combining common requirements for pits and ancillary operations where the waste is removed for offsite disposal and for pits and ancillary operations where the waste can be disposed of on or near the well site.
- (2) Adoption of standards which clearly define levels at which a leak or release from a pit or BGT occurred (i.e. those where waste is taken off-site to an approved disposal site) and whether the remaining soil/waste mixture is suitable for disposal on or near the sell site.

Mr. Gantner will testify that NMOGA's proposed changes will afford reasonable protection to public health and the environment, and allow operators to more efficiently and economically produce oil and gas in New Mexico.

**Exhibit 1** to this Pre-hearing Statement is a copy of the proposed modifications to the Pit Rule as filed by the New Mexico Oil and Gas Association on April 27, 2012.

**Exhibit 2** to this Pre-hearing Statement is a description of Mr. Gantner's education and experience.

**Exhibit 3** to this Pre-hearing Statement contains copies of each exhibit Mr. Gantner plans to offer as evidence in this hearing.

**ED HASELY**

**1 Hour**

**2 Exhibits**

(One exhibit consists of a power point presentation containing approximately 3 slides)

Mr. Hasely will explain the purpose of below grade tanks and how they differ from surface tanks and pits. Mr. Hasely will explain that the proposed changes to the definition of below grade tank are to differentiate these tanks from sumps and surface tanks. Mr. Hasely will explain that NMOGA proposes to register below grade tanks rather than permitting them like pits and that the siting requirements for below grade tanks are different from temporary pits since they pose less of a threat to public health and the environment. Mr. Hasely will explain that NMOGA's proposed changes to the design, construction and operational requirements for below grade tanks seek to:

- Eliminate the necessity of removing a below grade tank where the integrity of the tank can be observed and has not been compromised;
- Eliminate unnecessary fencing requirements;
- Clarify that an operator may remove a below grade tank and choose not to utilize a replacement tank;
- Eliminate redundant language; and
- Incorporate NMOGA's proposed Table I into the removal and closure requirements for below grade tanks.

Mr. Hasely will testify that NMOGA's proposed changes will afford reasonable protection to public health and the environment, and allow operators to more efficiently and economically produce oil and gas in New Mexico.

**Exhibit 4** to this Pre-hearing Statement is a description of Mr. Hasely's education and experience.

**Exhibit 5** to this Pre-hearing Statement contains copies of each exhibit Mr. Hasely's plans to offer as evidence in this hearing.

**MYKE LANE**

**1 Hour**

**2 Exhibits**

(One exhibit consists of a power point presentation containing approximately 3 slides)

Mr. Lane will explain the primary purpose of multi-well fluid management pits and the benefits they provide to operators and the environment. Mr. Lane will explain that multi-well fluid management pits are not for waste disposal, but rather serve as storage facilities for the use and recycling of fluids during the completion processes for multiple wells.

Mr. Lane will discuss how multi-well fluid management pits differ from temporary pits and why these are needed in New Mexico. He will explain how NMOGA proposes to regulate these pits and note that under NMOGA's proposals:

- Multi-well fluid management pits will be permitted in the same manner as temporary pits and that the proposed siting requirements are the same as temporary pits;
- Multi-well fluid management pits will have the same general design and operational requirements as temporary pits, but that leak detection devices will be required between dual liners for multi-well fluid management pits due to the larger volumes of liquids involved and the extended time frames that these types of pits will be utilized;
- Multi-well fluid management pits will have the same closure requirements as other pits, except for the fact that no liquids, liners or wastes will be left at the site due to the nature of these pits;
- Multi-well fluid management pits will be closed within 6 months after stimulation operations have ceased for the wells identified in the permit; and
- The reclamation requirements for multi-well fluid management pits are the same as for temporary pits.

Mr. Lane will testify that the permitting and use of multi-well fluid management pits as proposed by NMOGA will afford reasonable protection to public health and the environment, and allow operators to more efficiently and economically produce oil and gas in New Mexico.

**Exhibit 6** to this Pre-hearing Statement is a description of Mr. Lane's education and experience.

**Exhibit 7** to this Pre-hearing Statement contains copies of each exhibit Mr. Lane plans to offer as evidence in this hearing.

**JERRY FANNING**  
**(Environmental Coordinator)**

**45 Minutes**

**2 Exhibits**

(One exhibit consists of a power point presentation containing approximately 12 slides)

Mr. Fanning's testimony will address the following changes proposed by NMOGA to the Pit Rule:

- Revised and reduced requirements for closed-loop systems and sumps;
- Revised permitting requirements for operators that include:
  - Authorization to use division-approved alternative methods to determine the depth of ground water where site-specific data is unavailable;
  - Authorization to file standardized plans with the appropriate division district office for pit construction, pit closure and other plans and providing for these plans to



remain approved until subsequent plans are filed by the operator or required by the division district office;

- Revised design requirements for fencing and netting;
- Revised operational requirements that include:
  - Amendment of the notice provisions to be consistent with the Release Notification Section of the division's general rules (19.15.29 NMAC);
  - Authorization to dispose of solids and completion fluids in drilling pits;
  - Revised provisions for the disposal of hydrocarbon based drilling fluids;
  - Revised requirements for the inspection of pits, the filing of well inspection logs, and the and removal of free liquids from drilling and workover pits;
  - Elimination of the requirement for maintenance of an oil absorbent boom at the pit site.
  - Clarification of other terms and provisions.
- Revised closure provisions that include;
  - Filing of plans with the appropriate division district office;
  - Deletion of the requirement to file "other methods" for closure with the initial plan;
- New exception and variance rules;

Mr. Fanning will testify that NMOGA's proposed changes will afford reasonable protection to public health and the environment, and allow operators to more efficiently and economically produce oil and gas in New Mexico.

**Exhibit 8** to this Pre-hearing Statement is a description of Mr. Fanning's education and experience.

**Exhibit 9** to this Pre-hearing Statement contains copies of each exhibit Mr. Fanning's plans to offer as evidence in this hearing.

**BEN THOMAS**  
(Soil Scientist)

**2 Hours**

**3 Exhibits**  
(One exhibit consists of a power point presentation containing approximately 18 slides)

The testimony of Ben Thomas, Ph.D. will primarily examine the toxicology and risks presented to public health and the environment from materials that are likely to be found in temporary pits, below-grade tanks and similar facilities for oil and gas drilling activities. He will testify as to the probable public health impacts, and associated environmental impacts, of proposed revisions to the Rules for Pits in Title 19, Chapter 15, Part 17 of the New Mexico Administrative Code. Testimony will address the hazards of compounds likely to be present, how hazards translate, or do not translate, into actual risk to public health and the environment, how risks can be mitigated, and whether the resulting risks after mitigation by measures contained in the existing and proposed rules are acceptable under generally accepted principles of risk management in the United States. Dr. Thomas will also be available as a rebuttal witness on hazard, risk, and toxicological issues.

Dr. Thomas will testify that NMOGA's proposed changes will afford reasonable protection to public health and the environment, and allow operators to more efficiently and economically produce oil and gas in New Mexico.

**Exhibit 10** to this pre-hearing statement is a description of Dr. Thomas' education and experience.

**Exhibit 11** to this Pre-hearing Statement contains copies of each exhibit Dr. Thomas plans to offer as evidence in this hearing.

**Exhibit 12** to this Pre-hearing Statement is a summary of Dr. Thomas' testimony.

**J. DANIEL ARTHUR**  
(Soil Scientist)

**2 Hours**

**3 Exhibits**  
(One exhibit consists of a power point presentation containing approximately 26 slides)

The testimony of J. Daniel Arthur will relate his experience with the operation, use and environmental hazards of the use of temporary pits, below-grade tanks, and similar facilities for oil and gas development activities as related to the proposed revisions of rules for Pits, Closed-Loop Systems, Below-Grade Tanks & Sumps in Title 19, Chapter 15, Part 17 of the New Mexico Administrative Code. His testimony will provide discussion of the protective nature of the proposed rule, comparison of the proposed rule changes in New Mexico to similar temporary pit rules in other states with oil and gas development, discussion of various standards and practices used throughout the United States and in New Mexico, and specific discussion on the various technical aspects of the proposed rule relative to implementation and protection of public health and the environment. Analysis of how the new rules are protective of groundwater resources while also limiting impacts if an accidental discharge were to occur will also be discussed. An assessment of the proposed siting requirements will include comparison to historic incidents at pit sites with statistical analysis of the type of pit and the cause of the incident, the extent of contamination that was detected, and how the new rules provide sufficient protections to water resources that were in not place during these historic incidents.

Mr. Arthur will testify that NMOGA's proposed changes will afford reasonable protection to public health and the environment, and allow operators to more efficiently and economically produce oil and gas in New Mexico.

Mr. Arthur will also be available as a rebuttal witness on issues of groundwater hydrogeology.

**Exhibit 13** to this Pre-hearing statement is a description of Mr. Arthur's education and experience.

**Exhibit 14** to this Pre-hearing Statement contains copies of each exhibit Mr. Arthur plans to offer as evidence in this hearing

**Exhibit 15** to this Pre-hearing Statement is a summary of Mr. Arthur's testimony.

**BRUCE A. BUCHANAN**  
(Soil Scientist)

**2 hours**

**4 Exhibits**  
(One exhibit consists of a power point presentation containing approximately 45 slides)

The testimony of Bruce A. Buchanan will primarily report his experience with salt migration associated with the operation and use of temporary pits, below-grade tanks and similar facilities for oil and gas activities. His testimony is in regard to the proposed revisions of Rules for Pits in Title 19, Chapter 15, Part 17 of the New Mexico Administrative Code. In addition, description of reclamation technologies will be presented. Testimony will address the conditions necessary for upward migration of salts from salty deposits and Dr. Buchanan's knowledge and field study experiences of reclamation practices and salt migration and mitigation, both in New Mexico and elsewhere in the United States. The essentials of land reclamation will also be related. Testimony will cite the importance of seed bed preparation, seed source, seed mix, seeding rates, mycorrhizae, amendments, topsoil use and post seeding management practices. Assessment of how the new rules provide protections for the surface soils and subsequent reclamation will be included.

Mr. Buchanan will also be available as a rebuttal witness on reclamation and re-vegetation issues.

Dr. Buchanan will testify that NMOGA's proposed changes will afford reasonable protection to public health and the environment, and allow operators to more efficiently and economically produce oil and gas in New Mexico.

**Exhibit 16** to this Pre-hearing Statement is a description of Dr. Buchanan's education and experience.

**Exhibit 17** to this Pre-hearing Statement contains copies of each exhibit Dr. Buchanan plans to offer as evidence in this hearing.

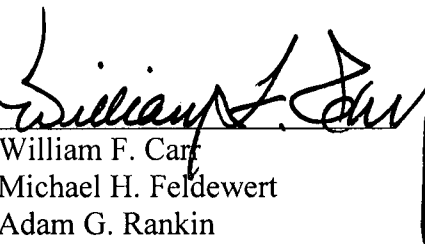
**Exhibit 18** to this Pre-hearing Statement is a summary of Dr. Buchanan's testimony.

**Exhibit 19** to this Prehearing Statement is a Migration Study dated 2007.

**PROCEDURAL MATTERS**

The New Mexico Oil and Gas Association has none at this time.

Respectfully Submitted,

By:   
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Adam G. Rankin

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**ATTORNEYS FOR  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of May 2012, I served a copy of the foregoing **Pre-Hearing Statement of the New Mexico Oil & Gas Association** upon the following counsel of record via Hand Delivery; Electronic Mail, and U.S. Mail, postage pre-paid to:

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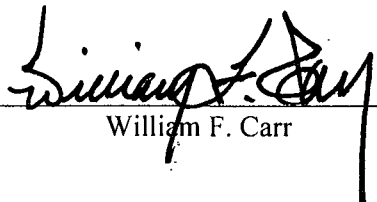
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