

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, BELOW GRADE TANKS, CLOSED LOOP SYSTEMS AND OTHER
ALTERNATIVE METHODS TO THE FOREGOING, AND AMENDING OTHER
RULES TO CONFORMING CHANGES STATEWIDE.

CASE NO. 14784
CASE NO. 14785

MOTION TO TAKE ADMINISTRATIVE NOTICE OF THE RECORD IN OIL
CONSERVATION COMMISSION CASE NO. 14015

Earthworks' Oil & Gas Accountability Project ("OGAP") respectfully moves the Oil
Conservation Commission ("Commission") to take administrative notice of the entire record in
Commission Case No. 14015 and admit that record into evidence in the above matter.

OGAP states the following grounds for this motion

1. The purpose of the hearing in this matter is to assure that the Commission receives relevant data, information and evidence to support any changes to the Pit Rule. § 19.15.3.12.B.2 NMAC ("The Commission shall admit relevant evidence ..."). The Oil Conservation Division ("Division") and OGAP persuaded the Commission to adopt the Pit Rule by submitting the sworn testimony and exhibits of several experts in Case No. 14015. *See generally*, Order No. R-12939. In considering the New Mexico Oil & Gas Association's ("NMOGA") and the Independent Petroleum Association of New Mexico's ("IPANM") petitions to amend the Pit Rule in the above-captioned matter, the Commission cannot rationally disregard this substantial evidence, which it admitted in the prior proceedings and relied upon to adopt the Pit Rule in 2008. *See, In re: Application of Timberon Water Co.*, 114 N.M. 154, 156, 836 P.2d

73,75 (1992) (“For administrative agencies, arbitrary and capricious action has been defined ‘as willful and unreasonable action, without consideration and in disregard of facts or circumstances’”) (internal citation omitted).

2. The Rules of Evidence do not apply to this proceeding and therefore do not bar admission of relevant evidence. § 19.15.3.12.A.1 NMAC. The administrative record of the Pit Rule, which the Commission has already determined is competent, is directly relevant to the issues in the above-captioned matter. The petitioners in the current matter seek to radically diminish the public health and environmental protections in the Pit Rule and seek to re-interpret evidence presented in that proceeding to support their petition. *See, e.g.*, NMOGA Petition, generally; IPANM Prehearing Statement at 4 (“Mr. Mullins has also completed extensive modeling which expands on the NMOCD modeling of the 2007 and 2009 hearings which will give scientific support to his position”). Moreover, as the foundation upon which the current Pit Rule amendments are premised, the Pit Rule record is clearly relevant. Finally, OGAP intends to use prior sworn testimony and exhibits to demonstrate inconsistencies in the testimony of witnesses for NMOGA and IPANM in the current matter and the inconsistency in the Division’s position in this matter as compared to its position in 2007.

3. However, even if the Rules of Evidence applied, the record from the Pit Rule would be admissible because the “records, reports, statements or data compilations, in any form, or public offices or agencies” are admissible in a court of law under NMRE 11-803(H). The Pit Rule record is clearly a “record” and a compilation of “statements” and “data.” Therefore, taking administrative notice of and moving the Pit Rule record into evidence in this matter is appropriate.

4. Finally, taking administrative notice of the Pit Rule record is consistent with the Commission's past practice. When the Commission amended the Pit Rule's chloride standard in 2008, it took administrative notice of the entire Pit Rule record and relied upon various portions of that record to support its decision. *See, OGAP v. NM Oil Conservation Comm'n*, No. D101-CV-2009-002473, New Mexico Oil Conservation Commission's Response to Appellant's Statement of Appellate Issues at 4. The Commission should do the same in this case.

WHEREFORE, OGAP respectfully requests that the Commission take administrative notice of the entire Pit Rule record in Case No. 14015, including all testimony, pre and post hearing statements, exhibits, briefs, arguments, transcripts and final decisions and admit that record into evidence in the above-captioned matters.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2012, I have delivered a copy of the foregoing pleading in the above-captioned case via electronic mail and/or US Mail, First Class to the following:

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