

**MINUTES OF THE MEETING
OF THE OIL CONSERVATION COMMISSION
HELD ON AUGUST 28-29, 2012**

The Oil Conservation Commission met at 9 o'clock a.m. on August 28, 2012, in Porter Hall, Wendell Chino Building, 1220 S. St. Francis Drive, Santa Fe, New Mexico.

PRESENT: **GREG BLOOM, Commissioner**
 ROBERT BALCH, Commissioner
 JAMI BAILEY, Chair

Mark Smith served as the Commission counsel.

The meeting was called to order by Chair Bailey. The minutes of the July 18, 2012 Commission meeting were unanimously approved and adopted by the Commission.

Affidavits of notice for the June 20 and August 28, 2012 Commission meetings were accepted as part of the record.

Case 14784, 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, and Case 14785, the application of the Independent Petroleum Association of New Mexico 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, were called. Appearances were made by William F. Carr and Eric Hiser for the New Mexico Oil and Gas Association (NMOGA); Karin Foster for the Independent Petroleum Association of New Mexico (IPANM); Eric Jantz for Earthworks' Oil and Gas Accountability Project (OGAP); Gabrielle Gerholt for the Oil Conservation Division (OCD); Patrick Fort for Jalapeno Corporation; Hugh Dangler for the State Land Office (SLO); and Donald Neepner for the New Mexico Citizens for Clean Air & Water (NMCCA&W). Chair Bailey announced that public comments will be accepted before lunch and before the end of the day each day of the meeting.

Mr. Jantz called Kathy Martin, a Professional Engineer in Civil Engineering in Norman, Oklahoma, as a rebuttal witness. Ms. Foster objected to this witness on the grounds that she is not a proper rebuttal witness, because Ms. Foster believes that what the witness will be testifying to could have been presented as part of OGAP's regular case. Mr. Fort joined in the objection because he believes the areas Ms. Martin is to testify in, including multi-well management pits, leak detection, and pit liners, should have been presented as direct testimony. Mr. Carr stated that OGAP should be required to prove that the testimony it is submitting today is indeed rebuttal. Mr. Jantz responded that the District Court has ruled that this hearing is an informal rulemaking proceeding, and the Commission should take into account whether there is any prejudice to any parties if the testimony is not allowed. He pointed out that each party has had one month to consider the rebuttal testimony to be presented at this hearing. Counsel Smith said that, regardless of whether Ms. Martin's testimony was characterized as rebuttal or other testimony, the real issue seemed to be one of the admissibility of the testimony of a surprise witness. He said that even in trial settings surprise witnesses may be allowed to testify if prejudice to the other side may be ameliorated. Here, proponents of the amendments to the rule had two months' notice of this witness, and no one pointed out any prejudice. Mr. Smith

recommended that since the aim of rulemaking hearings is to inform the Commission, the witness should be allowed to testify and be cross-examined by all parties. Upon a motion by Commissioner Bloom and a second by Commissioner Balch, the Commission voted unanimously to allow the witness to testify. Chair Bailey said that any objections to the relevance of the testimony should be brought up during the testimony.

Mr. Jantz moved to qualify Ms. Martin as an expert in civil and environmental engineering. Ms. Foster and Mr. Fort objected to this qualification. After questioning the witness, the Commission ruled to accept Ms. Martin as OGAP's witness. Ms. Martin presented rebuttal testimony on seven drilling pits found in her search of OCD's records for pits causing groundwater contamination. She discussed the lack of size and volume limitations for multi-well fluid management pits in the proposed rule. Mr. Fort made a standing objection to any testimony regarding pit engineering. Ms. Foster made a standing objection to any testimony regarding something that is not within the witness' expertise. Ms. Martin discussed leak detection systems, angle of repose and friction angles, input assumptions made in the modeling presented by Tom Mullins, restrictions on liners, and transport of hydrocarbons. After an objection to the admittance of Exhibit 5, which was the list of groundwater contamination cases compiled by Ms. Martin, Mr. Jantz questioned the witness further on this matter, and she was requested to compile a summary of the cases for the Commission. Mr. Hiser, Ms. Foster, Dr. Neeper, Mr. Fort, Commissioner Bloom, Commissioner Balch, and Chair Bailey cross-examined the witness, and she was excused.

Ms. Foster informed the Commission that IPANM's original application in Case 14785 contained a request seeking amendments to Rule 39 in Sierra and Otero Counties, New Mexico. This portion of the application was severed from Case 14785 by Order No. R-13506 entered on January 19, 2012, with the provision that the Rule 39 hearing be scheduled after the completion and deliberations of this hearing. Ms. Foster made a motion to dismiss that portion of the case requesting Rule 39 amendments. Counsel Smith requested Ms. Foster to draft a dismissal order to be presented to the Commission Clerk.

Ms. Foster's rebuttal witness was Tom Mullins, Engineering Manager for Synergy Operating and President of Mullins Energy, Inc. in Farmington, New Mexico. He testified that all of the alleged groundwater contamination cases deal with earthen pits or blow pits, not drilling pits. He stated that the modeling he presented related to drilling pits only. He discussed infiltration rates and liner thickness issues. Mr. Fort, Mr. Dangler, Dr. Neeper, and Chair Bailey cross-examined the witness, and he was excused.

Public statements were requested before lunch and at the end of the day, and there was no response.

The meeting was recessed at 3:55 p.m.

The meeting reconvened at 9:00 a.m. on August 29, 2012.

Mr. Jantz introduced the summary of Ms. Martin's review of OCD documents regarding groundwater contamination cases along with the actual documents.

Mr. Carr's rebuttal witness was Dr. Bruce Buchanan, a consultant in Farmington, New Mexico, who was qualified as an expert in soil science. He stated that the purpose of his testimony is to clarify some of Dr. Neeper's statements. He told of a pit study site where the salts were measured after different periods of time, and it was demonstrated that salts migrate upward, even with a layer of cover soils. He talked of electrical conductivity and

the toxicity of sodium and salt accumulation. Ms. Foster, Mr. Dangler, Dr. Neeper, Commissioner Bloom, Commissioner Balch, and Chair Bailey cross-examined the witness, and he was excused. Dr. Neeper asked if exhibits that have been pre-filed but not admitted into evidence will be considered by the Commission and, if so, could he provide rebuttal testimony. Counsel Smith informed him that the Commission will ignore all exhibits not admitted. The Chair asked all counsel to ensure that all exhibits that have been admitted be provided to the court reporter.

Mr. Carr announced that NMOGA is withdrawing all of its pre-filed exhibits that were not admitted as evidence. All parties agreed to provide a written stipulation in one week as to what exhibits were admitted at this hearing.

The Chair announced that closing statements, findings of facts, conclusions of law, and draft orders with citations to the record will be due on September 17, 2012. The Commission will begin its deliberations of Cases 14784 and 14785 on September 24, 2012.

Public comments were requested, and there was no response.

The meeting was adjourned at 11:55 a.m.

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**



JAMI BAILEY, Chair