

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

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION FOR
THE PURPOSE OF CONSIDERING:

ORIGINAL

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

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, STATEWIDE

CASE NO: 14785

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSIONER HEARING

BEFORE: JAMI BAILEY, Chairman
DR. ROBERT BALCH, Commissioner
GREG BLOOM, Commissioner

November 15, 2012
Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Commission, JAMI BAILEY, Chairman, on Thursday, November 15, 2012, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South St. Francis Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: Jacqueline R. Lujan, CCR #91
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A P P E A R A N C E S

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ALSO PRESENT:

Florene Davidson

REPORTER'S CERTIFICATE

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1 CHAIRMAN BAILEY: Good morning. This is
2 the meeting of the Oil Conservation Commission on
3 Thursday, November the 15th, in Porter Hall, in Santa Fe,
4 New Mexico.

5 All three Commissioners are present: Greg
6 Bloom, representing the Commissioner of Public Lands;
7 Dr. Robert Balch, who is the designee of the Secretary of
8 the Energy, Minerals and Natural Resources Department;
9 and I'm Jami Bailey, the Director of the Oil Conservation
10 Division. We have Bill Brancard acting as Commission
11 Counsel today.

12 We are here to discuss a path forward in Cases
13 Number 14784 and 14785. We will not be deliberating
14 these cases. But at the last meeting, we discussed a few
15 concerns with the rulemaking proposal before us.

16 First, there was the concern about whether the
17 rulemaking proposal relied on an earlier version of the
18 Pit Rule. Second, there was concern about the
19 contaminant levels on the tables.

20 In the interim, I've looked through the
21 proposal and worked with Commission counsel to get a
22 sense of what actions might be necessary and reasonable
23 to address these concerns.

24 First, we determined that the inaccuracies in
25 the rule proposal were limited to language in the current

1 rule that the proposal proposes to repeal or replace. So
2 the problem doesn't go to the new language that the
3 Commission is considering and, therefore, I don't see a
4 reason to reopen the record on that account or redo the
5 hearing. But we do need to create a clean version of the
6 rule proposal, and I feel that is the responsibility of
7 the petitioners.

8 The issue with the tables is more serious, and
9 I don't see a way to solve that problem without reopening
10 the record and allowing additional testimony on that
11 point. There is not sufficient testimony in the record
12 about the measurement levels to allow us to correct the
13 problems without getting more input from the parties.

14 The Commission should have concerns about the
15 numerical limits in the tables that are part of Section
16 19.15.17.13. These tables use values that are reported
17 as either milligrams per kilogram or milligrams per
18 liter. The table should use one method of reporting for
19 all values, particularly since the Commission is leaning
20 towards use of only one table, rather than two.

21 I recommend that since the measurements are of
22 soils or wastes mixed with soils, that milligrams per
23 kilograms would be a more appropriate method of
24 calculation. However, since the record does not support
25 any conversion of values currently in the proposal, the

1 Commission cannot make such a conversion on its own.

2 Therefore, since these tables are integral to
3 the closure and reclamation requirements in 19.15.17.13,
4 and since that section is an essential part of the
5 rulemaking proposal before the Commission, the Commission
6 must require that an amended set of tables be submitted
7 and that testimony must be taken on the amended tables
8 before the Commission can complete deliberation on the
9 rulemaking proposal.

10 The Commission has also reviewed the language
11 that was submitted as part of the petition that is before
12 us, along with the electronic version of the rule changes
13 that was submitted, to aid the Commission in
14 deliberation. And the Commission finds that such
15 inconsistencies and mistakes in the transcription of
16 language from the current rule, because this has occurred
17 only in areas where the current rule language is proposed
18 to be repealed or amended, we do not find any concerns
19 with the current rulemaking process, including notice
20 provided to the public.

21 However, in the goal of having an accurate and
22 complete record, the Commission will require the
23 petitioners to file a final version of their rulemaking
24 proposal that correctly indicates the current rule
25 language that is proposed to be repealed or modified.

1 Therefore, I would like the Commission to
2 discuss and to vote on the following orders: That the
3 petitioners shall, within 15 days, which is by November
4 the 29th, provide a revised set of tables, particularly
5 Table 2, which is what we focused on in our
6 deliberations, but use a consistent method of reporting
7 measurements for each value provided in the tables.

8 I would also like for us to issue the order
9 that a final version of the rulemaking proposal that
10 correctly indicates which language in the current rule is
11 proposed to be repealed or amended, and that we shall
12 reopen the record in Cases 14784 and 14785 and schedule a
13 hearing to occur by January 10th, 2013, for the limited
14 purpose of receiving testimony on the revised set of
15 tables submitted by the petitioners.

16 The Commission shall provide public notice.
17 And after closing the record, the Commission may continue
18 deliberations and take action in these cases.

19 Commissioners, I have proposed several
20 orders -- would you care to discuss them -- concerning
21 the timeline for submittal of the revised set of tables
22 and for reopening the record for submitting a final
23 version of what is to be repealed or amended before we
24 continue our deliberations.

25 COMMISSIONER BALCH: I see no problems

1 with the schedule that you outlined. If counsel thinks
2 that that is the way to proceed, then I have no arguments
3 with that.

4 CHAIRMAN BAILEY: Commissioner Bloom?

5 COMMISSIONER BLOOM: That seems like a
6 fair and adequate timeline. I think it would give all
7 parties time to see what the new tables are, given that
8 the tables will be made available or at least given to
9 the OCC by November 29th, and then there would be a good
10 four to five weeks for people to look at that and then
11 come back and hear testimony on that. I imagine there
12 would be again opportunity for cross-examination of that
13 by the other parties that are involved. So I think that
14 would work on the issues with the tables.

15 And then with respect to some of the noticing
16 issues, I believe that having the petitioners file a full
17 and corrected version would be helpful, as well.

18 CHAIRMAN BAILEY: Shall we take a vote?
19 Do I hear a vote to --

20 COMMISSIONER BALCH: I'll make a motion to
21 adopt the orders as proposed.

22 COMMISSIONER BLOOM: I'll second that.

23 CHAIRMAN BAILEY: All those in favor?

24 Then it is so ordered that petitioners, within
25 15 days, submit a revised set of tables for Section

1 19.15.17.13 that use a consistent method of reporting
 2 measurements for each value provided in the tables, a
 3 final version of the rulemaking proposal that correctly
 4 indicates which language in the current rule is proposed
 5 to be repealed or amended, and we shall set a date for
 6 reopening the record and scheduling a hearing to occur by
 7 January 10th.

8 I happen to have my calendars.

9 COMMISSIONER BLOOM: Madam Chair, were you
 10 considering dates between January 2nd and January 10th
 11 for us to convene?

12 CHAIRMAN BAILEY: From January 3rd to the
 13 10th.

14 COMMISSIONER BALCH: How long are you
 15 anticipating that that hearing might go?

16 CHAIRMAN BAILEY: Maybe a day, maybe two.

17 COMMISSIONER BALCH: I was just wondering
 18 if it might be safer to start on the 9th, just in case.
 19 Because in these hearings, we tend to go long.

20 CHAIRMAN BAILEY: So January 9th is a
 21 Wednesday, and then we could hold our calendar open for
 22 the 9th, 10th and 11th.

23 COMMISSIONER BLOOM: Yes, that would be
 24 fine.

25 COMMISSIONER BALCH: I am clear on those

1 three days.

2 COMMISSIONER BLOOM: I am as well.

3 CHAIRMAN BAILEY: We will reconvene for
4 these cases on January 9th for the purpose of a hearing
5 on the limited testimony on the revised set of tables
6 that will be submitted.

7 COMMISSIONER BLOOM: Madam Chair, can we
8 consider the calendars of the petitioners and other
9 parties, as well?

10 CHAIRMAN BAILEY: It would probably be
11 very helpful to know if the attorneys for the petitioners
12 or for other interested parties would be available
13 January 9th, 10th and 11th, if necessary.

14 Do I hear any kind of response from --

15 MS. GERHOLT: Madam Chair, on behalf of
16 the Oil Conservation Division, I am available on those
17 dates.

18 MR. FELDEWERT: Madam Chair, on behalf of
19 the New Mexico Oil and Gas Association, those dates will
20 work for us, as well.

21 MR. BRANCARD: Is anyone here from the
22 Environmental Law Center?

23 UNIDENTIFIED FEMALE SPEAKER: He couldn't
24 come, and I don't know his schedule.

25 MR. BRANCARD: I guess let us know as soon

1 as possible if that's a real big problem, those three
2 days.

3 COMMISSIONER BLOOM: I think we also need
4 to hear from IPA and Citizens for Clean Air and Water, as
5 well.

6 CHAIRMAN BAILEY: And Hugh Dangler, with
7 the Land Office.

8 There you are, Mr. Dangler.

9 MR. DANGLER: Yes. I was keeping a low
10 profile, Madam Chair. I will be available for those
11 dates.

12 CHAIRMAN BAILEY: Thank you. So we need
13 to hear from Dr. Neeper and Dr. Bartlett and
14 Mr. Jantz and Ms. Foster.

15 Is there any other business before the
16 Commission this morning? Then do I hear a motion for us
17 to adjourn?

18 COMMISSIONER BALCH: I will motion to
19 adjourn.

20 COMMISSIONER BLOOM: Second.

21 CHAIRMAN BAILEY: All those in favor?

22 All right.

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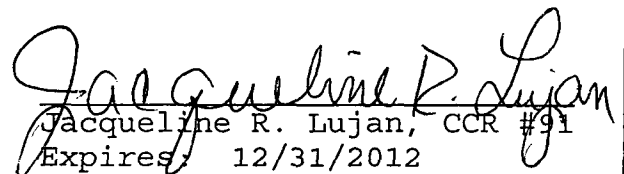
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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on November 15, 2012, proceedings in
the above captioned case were taken before me and that I
did report in stenographic shorthand the proceedings set
forth herein, and the foregoing pages are a true and
correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with any of the parties or
attorneys in this case and that I have no interest
whatsoever in the final disposition of this case in any
court.

WITNESS MY HAND this 27th day of November,
2012.


Jacqueline R. Lujan, CCR #91
Expires: 12/31/2012