

**AMENDED MINUTES OF THE MEETING
OF THE OIL CONSERVATION COMMISSION
HELD ON SEPTEMBER 24-27, OCTOBER 1, 4, AND 5, 2012**

The Oil Conservation Commission met at 9 o'clock a.m. on September 24, 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.

Chair Bailey called the meeting to order for the purpose of deliberating on Case 14784, the application of the New Mexico Oil and Gas Association (NMOGA), and Case 14785, the application of the Independent Petroleum Association of New Mexico (IPANM), both seeking the 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. Chair Bailey explained that the amended red-line rule submitted with the application of NMOGA had been consolidated with that submitted by IPANM and other proposed changes, and it was projected on the screen. She said that any decisions the Commission reached would be recorded on that document on the screen. She said the Commission will make its decisions in open session and will vote at the end of each section on what decisions they have made and the reasons for those decisions. She said that when an order is issued in these cases, the Commission Clerk will post it on the web site and will mail or e-mail a copy of the order to any person, or their attorney, who presented non-technical testimony at the hearing or who filed a pre-hearing statement. Counsel Smith informed the audience that the deliberations are public but may not be interrupted. He told the Commission members they could take into account their own expertise in the deliberations, if necessary, but look for substantial evidence to back up their decisions.

The Commission deliberated on the proposed amendments that had been submitted by any party in the cases and made changes by accepting, adding to, or deleting proposed language changes to the following:

19.15.17.5, the effective date of the rule. The Commission voted unanimously to adopt the proposed language.

19.15.17.7, proposed definitions for below grade tanks, closed loop system, continuously flowing watercourse, confined groundwater, emergency pit, floodplain, groundwater, life form ratio, measurable, multi-fluid well management pit, permanent pit, playa lake, significant watercourse, sump, temporary pit (agreed to come back to it), unconfined groundwater, visible, and wetlands. After a motion by Commissioner Bloom and a second by Commissioner Balch, the Commission voted unanimously to adopt the language agreed on during deliberations.

19.15.17.8, Permit or Registration Required - dealing with registration of below grade tanks.

19.15.17.9, Permit Application and Registration – concerning temporary pits, standardized plans, closed loop systems, below grade tanks, multi-well fluid management pits, and closure plans. After a motion by Commissioner Bloom and a second by Commissioner Balch, the Commission voted unanimously to adopt the language agreed on during deliberations in these sections that were discussed today.

The meeting was recessed at 4:50 p.m.

The meeting reconvened at 9:00 a.m. on September 25, 2012. Deliberations were held as follows:

19.15.17.9 .D, filing permit application for permanent pits, temporary pits, and closed loop systems. After a motion by Commissioner Balch and a second by Commissioner Bloom, the Commission voted unanimously to adopt the language agreed on during the deliberations.

19.15.17.10, Siting Requirements – references to unconfined groundwater, low chloride fluids, below-grade tanks, appropriate depth to groundwater, minor and major releases, and waste. Chair Bailey explained that if unanimous agreement cannot be reached by the Commission on any matter, the order will reflect that a majority of the Commission agreed on that matter. She addressed the differences in interpretation of testimony and exhibits by the Commissioners. Counsel Smith was asked to research the phrase “reasonable balance” in a specific case. The Commission agreed to return to this discussion at a later time.

19.15.17.11, Design and Construction Specifications – netting, closed loop systems, drying pads, below grade tanks, liners, slope requirements, angle of repose, multi-well fluid management pits and leak detection systems.

Counsel Smith informed the Commission that his research on a definition of “reasonable” found, among other things, that it is a risk/benefit analysis and that it would allow the Commission to take into account economic consequences.

19.15.17.12, Operational Requirements – closed loop systems, drying pads, pit liner integrity, and oil-absorbent booms.

The meeting was recessed at 5:15 p.m.

The meeting reconvened at 9:00 a.m. on September 26, 2012. Deliberations were held as follows:

19.15.17.12, continuance of oil-absorbent booms, closed loop systems, temporary pits, below grade tanks, onsite and offsite, visible and measurable, and deadline for removing drilling fluids. After a motion by Commissioner Bloom and a second by Commissioner Balch, the Commission voted unanimously to adopt the language agreed on during deliberations (with the exception of hydrocarbons) in Section 12.

19.15.17.14, Emergency Actions – definition of emergency pit. After a motion by Commissioner Balch and a second by Commissioner Bloom, the Commission voted unanimously to adopt the language agreed on during deliberations.

19.15.17.15, Exceptions and Variances – definitions, notice requirements, approval and denial timelines, appeal process, hearing application requirements.

The meeting was recessed at 4:25 p.m.

The meeting reconvened at 9:00 a.m. on September 27, 2012. Chair Bailey requested that some matters be addressed and cleaned up before proceeding with the deliberations, including 19.15.17.11 dealing with fencing; 19.15.17.14 dealing with emergency pits; and 19.15.17.15, exceptions and variances dealing with permitting of temporary pits. All Commissioners agreed on the adjustments.

The Commission resumed deliberations on the following:

19.15.17.15, administrative approval of exceptions by the Division Director and alternative closure methods. All Commissioners agreed on the proposed changes.

19.15.17.16, Permit Approvals – 30-day evaluation period for administrative completeness determination, timeline for denial of permits, providing written denials, and hearing process. After a motion by Commissioner Bloom and a second by Commissioner Balch, the Commission voted unanimously to adopt the language agreed on during deliberations.

19.15.17.7, Definition for low chloride fluids. Commissioner Bloom expressed his concern with the definition of low chloride fluids level at 15,000. The Chair suggested the Commission discuss 19.15.17.10 – Siting Requirements, to see if a common ground could be found. The discussion included adding multi-well fluid management pits to the requirements and removing below grade tanks, distance to groundwater from the bottom of the pit, and change of setback from a continuously flowing watercourse. After a motion by Commissioner Balch and a second by Chair Bailey, the majority of the Commission voted to adopt the proposed definition for low chloride fluids. Commissioner Bloom voted against the adoption.

The Commission resumed discussion on Siting Requirements including reduced setbacks at exception or variance levels, reduced setbacks from springs or fresh water wells for high chloride fluids, municipal wellhead protection area, distance to wetland, unstable area, 100-year floodplain, and variances and exceptions. The Commission decided to vote by paragraph on 19.15.17.10 as follows:

19.15.17.10.A.1(a) - Motion by Commissioner Balch, second by Chair Bailey – adopt proposed changes; Commissioner Bloom voted nay.

19.15.17.10.A.1(b) – Motion by Commissioner Balch, second by Chair Bailey – adopt proposed changes; Commissioner Bloom voted nay.

19.15.17.10.A.1(c) – Motion by Commissioner Bloom, second by Commissioner Balch – voted unanimously to adopt language agreed on in deliberations.

19.15.17.10.A.1(d) – Motion by Commissioner Balch, second by Chair Bailey – adopt proposed changes; Commissioner Bloom voted nay.

19.15.17.10.A.1(e) – Motion by Commissioner Bloom, second by Commissioner Balch – voted unanimously to maintain current regulation.

19.15.17.10.A.1(f) – Motion by Commissioner Balch, second by Chair Bailey – adopt proposed changes; Commissioner Bloom voted nay.

19.15.17.10.A.1(g) (h) and (i) – Motion by Commissioner Bloom, second by Commissioner Balch – voted unanimously to adopt language agreed on in deliberations.

19.15.17.10.A.1(j) – Motion by Commissioner Balch, second by Chair Bailey – voted unanimously to adopt language agreed on in deliberations.

19.15.17.10.A.2(a) through (c) – Motion by Commissioner Bloom, second by Commissioner Balch – voted unanimously to adopt language agreed on in deliberations.

19.15.17.10.A.2(d) – Motion by Commissioner Balch, second by Chair Bailey – adopt proposed changes; Commissioner Bloom voted nay.

19.15.17.10.A.2(e) through (j) – Motion by Commissioner Bloom, second by Commissioner Balch – voted unanimously to adopt language agreed on in deliberations.

19.15.17.10.A.3 – Motion by Commissioner Bloom, second by Commissioner Balch – voted unanimously to adopt language agreed on in deliberations.

19.15.17.10.A.4 – Motion by Commissioner Bloom, second by Commissioner Balch – voted unanimously to adopt language agreed on in deliberations.

The meeting was recessed at 4:30 p.m.

The meeting was reconvened at 9:00 a.m. on October 1, 2012. Chair Bailey suggested that the Commission make minor edits and corrections to the draft document based on the deliberations, including using consistent language in definitions of multi-well fluid management pits and temporary pits; definition of restore; deletion of reference to environmental bureau in Section 9; addition of language to permit application, standardized plans, multi-well fluid management pits, closure plans, Section 10, Section 11, Section 12, and Section 16. The Commission unanimously agreed to all of the editing changes.

The Commission began deliberations on:

19.15.17.13, Closure Requirements and Site Reclamation Requirements - combining Table I, closure criteria for soils beneath pits and below grade tanks, with Table II, closure criteria for wastes left in place, models used by Mr. Mullins and Dr. Neepor showing movement of chlorides, transport characteristics of volatiles, presence of benzene in the waste, soil cover designs, on-site burial, infiltration rates, and contaminants limits.

19.15.17.13.A.(1), (2) and (3), five- point composite sampling of soils under the liner.

19.15.17.13.B. (1) through (9), burial in place or into nearby Division-approved pits or trenches, closure plan, siting criteria and closure requirements, stabilization and solidification, five-point composite sampling, depth to groundwater concentrations, and pit cover.

The meeting was recessed at 4:40 p.m.

The meeting reconvened at 9:00 a.m. on October 4, 2012. Chair Bailey announced that after her review of the changes made on October 1, she thought some corrections needed to be made to certain areas, including definitions, siting requirements for springs, design and construction specifications regarding fencing, burial in place requirements, temporary pit closure timelines, alternative closure plans, and notice of sampling to district offices. The Commission unanimously agreed on all of the changes.

The Commission resumed deliberations on 19.15.17.13 as follows:

19.15.17.13.B, Closure notice to surface owner of onsite burial, closure report, and closure completion.

19.15.17.13.E, Timing Requirements for Closure – closure for permanent pits, drying pads, below grade tanks, and multiple-well fluid management pits.

19.15.17.13.F, Reclamation of Pit Locations, On-Site Burial Locations, and Drying Pad Locations - Site Contouring – definition of restore, soil cover designs, soil cover designs for reclamation of pit locations, on-site burial, revegetation, topsoils and subsoils, reclamation of areas no longer in use, and marking on-site burials with a steel marker, adding another category to Table I that would apply to all depths of groundwater and the rooting zone, and limits for chlorides, benzene, BTEX, and TPH. The Commission voted on accepting the concentration limits as follows:

25 to 50 feet

Chlorides at 2500 mg/kg: Commissioner Bloom – nay, Commissioner Balch and Chair Bailey – yea Majority

TPH at 100 mg/kg: Commissioner Bloom – nay, Commissioner Balch and Chair Bailey – yea Majority

BTEX at 50 mg/kg: Commissioner Bloom – nay, Commissioner Balch and Chair Bailey – yea Majority

Benzene at 10 mg/kg: Commissioner Bloom – nay, Commissioner Balch and Chair Bailey – yea Majority

51 to 100 feet

Chlorides at 5000 mg/kg: Commissioner Bloom – nay, Commissioner Balch and Chair Bailey – yea Majority

TPH at 1000 mg/kg: Commissioner Bloom, Commissioner Balch and Chair Bailey – yea Unanimous

BTEX at 50 mg/kg: Commissioner Bloom, Commissioner Balch and Chair Bailey – yea Unanimous

Benzene at 10 mg/kg: Commissioner Bloom – nay, Commissioner Balch and Chair Bailey – yea Majority

Greater than 100 feet

Chlorides Not Applicable: Commissioner Bloom – nay, Commissioner Balch and Chair Bailey – yea Majority

TPH at 2500 mg/kg: Commissioner Bloom, Commissioner Balch and Chair Bailey – yea Unanimous

BTEX at 50 mg/kg: Commissioner Bloom, Commissioner Balch and Chair Bailey – yea Unanimous

Benzene at 10 mg/kg: Commissioner Bloom – nay, Commissioner Balch and Chair Bailey – yea Majority

19.15.17.13, the Commission deleted all sections that had been addressed elsewhere in the proposed rule. They agreed on closure notice to surface owners and deed notices filed by operators.

The meeting was recessed at 4:50 p.m.

The meeting was reconvened at 9:50 a.m. on October 5, 2012. Chair Bailey announced that it had been discovered that Rule 17 that was presented to the Commission by NMOGA and IPANM for amendment referenced the 2007 version instead of the 2009

version. Counsel Smith informed the Commission that the application showed the changes that they wanted to make to the pit rule, but the version of the rule that they used did not include the amendments that were made in 2009. He said that what the Commission has been considering and what notice was given did not include the 2009 amendments. He advised the Commission to go through the 2009 amendments and add them to the document being reviewed. He said that since notice was not given of these amendments, the Commission should not make any changes to the 2009 version of the rule. Chair Bailey informed the Commission that she had printed off the order showing the 2009 amendments. She gave each Commissioner and the court reporter a copy of a red-lined strikeout of the pit rule indicating the changes. Counsel Smith clarified that the error dates back to the original applications submitted for this hearing. Commissioner Bloom suggested it might be fruitful to pause for a period of time in order to compare the two versions. It was agreed that the Commission would deliberate until noon and make a decision on any continuance at that time.

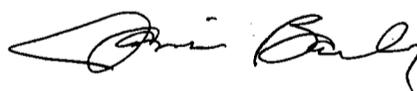
The Commission began a comparison of the 2007 and 2009 versions of the pit rule and deliberated on the following:

Design and construction specifications for a below grade tank, cross-references to citations, operational systems, closure requirements, on-site burial, and chemicals discussed in 20.6.2.3103 NMAC.

Chair Bailey announced that the Commission needs to take some time to look at the record and the working draft which needs to reflect the current Rule 17. The Commission needs to identify problems correctly and thoroughly and provide some solutions for moving forward on these cases. Counsel Smith said that the recess should be long enough to make sure that everything is put together. He said he wants to look at a couple of legal issues and make sure that the Commission proceeds in the best way. He said that when the Commission convenes again, it needs to look at the issues and how to resolve them and move forward. The cases were continued to November 15, 2012, for the purpose of meeting and developing a path forward given all issues that arose on this day.

The meeting was adjourned at 1:25 p.m.

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**



JAMI BAILEY, Chair