

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

**IN THE MATTER OF THE APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION FOR REPEAL OF EXISTING RULES 709, 710 AND 711
CONCERNING SURFACE WASTE MANAGEMENT AND ADOPTION OF NEW
RULES GOVERNING SURFACE WASTE MANAGEMENT.**

CASE NO. 13586

PRE-HEARING STATEMENT

This Pre-Hearing Statement is submitted by Holland & Hart LLP as required by Oil
Conservation Division Rule 19.15.14.1204.B NMAC.

APPEARANCES OF PARTIES

APPLICANT

New Mexico Oil Conservation Division

ATTORNEY

David K. Brooks, Esq.
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

OTHER PARTIES

Burlington Resources Oil & Gas Company
BP America Production Company, Inc.
Chesapeake Operating, Inc.
Chevron Texaco
Conoco Phillips
Devon Energy Corporation
Dugan Production Corporation
Energen Resources Corporation
Marathon Oil Company
Marbob Energy Corporation
OXY USA, INC.
Occidental Permian, LTD
OXY USA WTP Limited Partnership
D. J. Simmons, Inc.
Williams Production Company
XTO Energy, Inc.
Yates Petroleum Corporation
Hereinafter referred to as the "Industry
Committee"

ATTORNEY

William F. Carr, Esq.
Holland & Hart LLP
Post Office Box 2208
Santa Fe, NM 87504-2208
(505) 988-4421

Eric L. Hiser, Esq.
Jorden Bischoff & Hiser, P. L. C.
7272 East Indian School Road
Suite 205
Scottsdale, Arizona 85251
(480) 505-3900

STATEMENT OF CASE

APPLICANT OIL CONSERVATION DIVISION:

The hearing concerns the repeal of Oil Conservation Division Rules 709, 710 and 711 [Sections 709, 710 and 711 of 19.15.9 NMAC] that presently govern transportation and disposition of produced water and surface waste management facilities, and the adoption of new rules to govern the transportation and surface disposition of produced water and other oilfield wastes, and the permitting and operation of surface waste management facilities. The proposed amendments, if adopted, would extend permitting requirements for carriers of produced water and rules concerning surface disposition of produced water so that they will apply to all oilfield wastes, change the procedures for permitting new surface waste management facilities or modifications of existing facilities, prohibit disposal of salt-contaminated wastes in landfarms, and adopt other detailed regulations concerning surface waste management facilities.

THE INDUSTRY COMMITTEE:

On April 6, 2006, the Industry Committee filed with the Commission Clerk specific modifications to the proposed rules. Copies of these proposed amendments are attached to this pre-hearing statement. The Industry Committee will present testimony and call expert witnesses to review the proposed rules and to present testimony in support of their amendments. The testimony will also address the impact of these rules on oil and gas operators in New Mexico.

WITNESSES AND PROPOSED EVIDENCE

The Industry Committee proposed modifications to the proposed Surface Waste Management Rules on April 6, 2006. At the hearing, the following witnesses will present evidence, including modeling result, in support of these proposed modifications:

WITNESSES:

ESTIMATED TIME

NUMBER OF EXHIBITS

Kerry L. Sublette
(Chemical Engineer /
Environmental Engineer)

2 Hours

3 Exhibits
One exhibit consists of
approximately 85 power-
point slides

As the Industry Committee's first witness, Dr. Sublette will provide general background information and define the terms and concepts employed in the Industry Committee's

recommendations to the Commission. Dr. Sublette will show that landfarming and bioremediation is a well established approach for remediation of oil field wastes. He will review the mechanics of bioremediation and present recommended practices for permitted and small non-permitted landfarms. Dr. Sublette will assess chloride concentration in landfarms with emphasis on the effect, if any, on bioremediation of hydrocarbon constituents. He will conclude his testimony with a review of recommended closure standards. Dr. Sublette's testimony will show that the current standards and limitations in the proposed OCD rules are not supported by science and, if adopted, will result ineffective and inappropriate regulatory requirements that will limit the production of hydrocarbons without corresponding public health and environmental benefits.

Exhibit 1 to this Pre-hearing Statement is a description of Dr. Sublette's education and experience.

Exhibit 2 contains copies of each exhibit Dr. Sublette plans to offer as evidence in this hearing.

Exhibit 3 is summary of Dr. Sublette's testimony.

Daniel B. Stephens
(Hydrogeologist)

2 Hours

3 Exhibits
(One Exhibit consists of
approximately 70 power
point slides)

Dr. Stephens will address the fate and transport of any chloride mass from land farms and landfills to groundwater. He will testify that the natural vadose zone processes at likely waste management sites in New Mexico will have a very low diffuse recharge rate and at some sites there will be no recharge. He will review the impact of vegetation on recharge and chloride transfer. In particular, Dr Stephen's testimony will show (1) that vadose zone and groundwater modeling using site specific data, shows that concentrations of chloride in excess of 1000mg/kg, as proposed by the OCD, are protective of groundwater and will show that, with small land farms, higher chloride limits are protective (3000mg/kg – 5000mg/kg); (2) that the OCD monitoring strategy is excessive and the treatment zone monitoring requirements should be eliminated; and (3) that the proposed corrective action trigger as any detection above background in the vadose zone is unreasonable, precedent setting and inconsistent with proposed treatment zone closure criteria. He will also show how the recommended treatment closure criteria are also unreasonable.

Exhibit 4 to this Pre-hearing Statement is a description of Dr. Stephens' education and experience.

Exhibit 5 contains copies of each exhibit Dr. Stephens plans to offer as evidence in this hearing.

Exhibit 6 is summary of Dr. Stephens' testimony.

Forrest B. (Ben) Thomas
(Toxicologist)

2 Hours

3 Exhibits
(one exhibit consists of
approximately 45 power point
slides)

Dr. Ben Thomas will address the chemistry and toxicology of the materials that are treated by landfarming. He will provide an overview of the risk assessment process. He will discuss the benefits to OCD of using a Risk-Based Decision Making (RBDM) approach in developing regulatory policies, standards and guidelines that achieve the Commission's statutory charge. He will discuss the OCD's proposed Surface Waste Management Rules and the Industry Committee's recommendations. He will explain how RBDM provides a conceptual framework from which OCD can evaluate what controls are necessary at a landfarm, and whether the specific conditions and operations there warrant full adoption of the Best Demonstrated Available Technology (BDAT). As examples, he will discuss specific questions, concerns and omissions in the proposed Rule that arise because of the lack of an underlying RBDM framework

Exhibit 7 to this Pre-hearing Statement is a description of Dr. Thomas's education and experience.

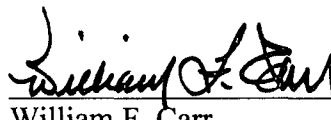
Exhibit 8 contains copies of each exhibit Dr. Thomas plans to offer as evidence in this hearing.

Exhibit 9 is summary of Dr. Thomas's testimony.

PROCEDURAL MATTERS

None

Respectfully submitted,



William F. Carr
Holland & Hart, LLP
110 North Guadalupe
Santa Fe, New Mexico 87501
(505) 988-4421

Eric L. Hiser
Jorden Bischoff & Hiser, P. L. C.
7272 East Indian School Road
Suite 205
Scottsdale, Arizona 85251

Attorneys for BP America Production Company, Inc., Burlington Resources Oil & Gas Company, Chesapeake Operating, Inc., Chevron Texaco, Conoco Phillips, Devon Energy Corporation, Dugan Production Corporation, Energen Resources Corporation, Marathon Oil Company, Marbob Energy Corporation, OXY USA, INC., Occidental Permian, LTD, OXY USA WTP Limited Partnership, D. J. Simmons, Inc., Williams Production Company, XTO Energy, Inc., Yates Petroleum Corporation.

CERTIFICATE OF SERVICE

I certify that on April 13, 2006 I served copies of the foregoing Pre-hearing Statement by U. S. Mail, postage prepaid, or Hand Delivery to the following:

Oil Conservation Commission (BY HAND DELIVERY)
Florene Davidson, Clerk
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Alletta Belin, Esq.
Belin & Sugarman
618 Paseo de Peralta
Santa Fe, New Mexico 87501
Attorney for the New Mexico Citizens for Clean Air & Water, Inc.

David K. Brooks, Esq. (BY HAND DELIVERY)
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
Attorney for the Oil Conservation Commission

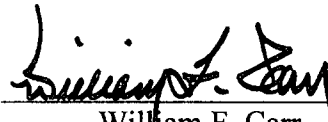
Pete V. Domenici Jr.
Domenici Law Firm
320 Gold Ave SW Suite 1000
Albuquerque, New Mexico 87102
Attorney for Gandy Marley, Inc.

Gregory D. Huffaker Jr.
Huffaker & Moffatt LLC
Post Office Box 1868
Santa Fe, New Mexico 87504-1868
Attorney for Controlled Recovery, Inc.

Carolyn Lamb, Esq.
Post Office Box 1102
Durango, Colorado 81302
Attorney for the Oil and Gas Accountability Project

Donald A. Neeper, Ph.D
New Mexico Citizens for Clean Air & Water, Inc.
2708 B. Walnut St.
Los Alamos, New Mexico 87544-2050

Rebecca G. Percy-Pipin
135 Rincon Valverde
Ponderosa, New Mexico 87404



William F. Carr