

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

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION,
THROUGH THE ENVIRONMENTAL BUREAU CHIEF, FOR ADOPTION OF
AN AMENDMENT TO 19.15.39 NMAC ADDING NEW SECTIONS TO BE
CODIFIED AT 19.15.39.9 AND 19.15.39.10 NMAC ADDRESSING SPECIAL
PROVISIONS FOR SANTA FE COUNTY AND THE GALISTEO BASIN; SANTA
FE, SANDOVAL AND SAN MIGUEL COUNTIES.

CASE NO. 14225

ENTRY OF APPEARANCE AND
PRE-HEARING STATEMENT

The Oil Conservation Division submits this entry of appearance and pre-hearing statement pursuant to 19.15.3.11 NMAC.

APPEARANCES

APPLICANT

Oil Conservation Division

APPLICANT'S ATTORNEY

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RESPONDENT

Independent Petroleum Assn. Of New Mexico

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STATEMENT OF THE CASE

The Oil Conservation Division (OCD) applies for an order amending 19.15.39 NMAC to add two new Sections applicable to Santa Fe County and the Galisteo Basin.

APPLICANT'S PROPOSED TESTIMONY

WITNESS:

1. Daniel Sanchez, OCD Compliance and Enforcement Manager.

Mr. Sanchez has been the OCD's compliance and enforcement manager since November 22, 2004. In that capacity he supervises the OCD's four district offices and the OCD's Environmental Bureau, and oversees the enforcement and compliance actions of the OCD. He also is in charge of the OCD's underground injection control program. Mr. Sanchez coordinated the response of the Energy, Minerals and Natural Resources Department to Executive Orders 2008-004 and 2008-038, scheduling public meetings and working with other executive agencies.

Mr. Sanchez will be testifying as a fact witness. His testimony will address the history of oil and gas development in Santa Fe County and the Galisteo Basin, and the development of the proposed rules for Santa Fe County and the Galisteo Basin. Mr. Sanchez' pre-filed written testimony is attached as OCD Ex. 1.

The OCD estimates that Mr. Sanchez' direct examination will take 15 minutes.

2. Brad Jones, OCD Environmental Bureau.

Mr. Jones has been an environmental engineer with the OCD's Environmental Bureau since July 2006. His primary duties include the review of permit applications, permit modifications, and closure plans under Part 17 (the pit rule) and Part 36 (the surface waste management rule); review of ground water and hydrostatic test discharge permit applications, modifications, and renewals under the Oil and Gas Act and Water Quality Control Commission regulations; and training and outreach on Part 17, Part 36 and discharge permits. Mr. Jones testified before the Oil Conservation Commission (OCC) as an expert in environmental engineering and environmental regulation in Case 14015 adopting Part 17.

Mr. Jones holds a Bachelor of Science degree in Environmental Health Science from the University of Georgia. Prior to joining the OCD Mr. Jones worked as an Environmental Specialist in the Solid Waste Bureau – Permit Section of the New Mexico Environment Department; an Environmental Specialist I in the Florida Department of Health; an Environmental Scientist for Redemption Environmental, Inc. in Tampa, Florida; an Environmental Health Specialist II for the Island County Health Department in Coupeville, Washington; and as an Environmental Specialist I at the Florida Department of Health.

The OCD will ask the OCC to recognize Mr. Jones as an expert in environmental engineering and environmental regulation. His testimony will review the two proposed Sections, and the proposed modifications filed by the OCD on November 24, 2008. The following technical provisions in the proposed Sections will be addressed in greater detail by OCD witnesses Glenn von Gonten and Will Jones: Subparagraphs 1-8 of Subsection B of 19.15.39.9 NMAC, and Subparagraphs 3-8 of Subsection B of 19.15.39.10 NMAC. Mr. Jones' pre-filed written testimony is attached as OCD Ex. 2.

The OCD estimates that Mr. Jones' direct examination will take two hours.

3. Tom Morrison, P.E.

Mr. Morrison has been a private consultant on contract with the Office of the State Engineer since June 2006. His primary responsibilities include development of basin guidelines, rules and regulations, documentation of agency procedures and groundwater investigations. Mr. Morrison authored the reports on the hydrology of the Galisteo Basin submitted by the Office of the State Engineer in response to Executive Orders 2008-004 and 2008-038.

Mr. Morrison previously served as the Chief of the Hydrology Bureau and as a Water Resource Engineer in the Office of the State Engineer. He is a registered professional engineer and holds a bachelor of science in civil engineering from the University of New Mexico.

The OCD will ask the OCC to recognize Mr. Morrison as an expert in hydrogeology. Mr. Morrison's testimony will focus on the geology, ground water and surface water of Santa Fe County and the Galisteo Basin. The substance of Mr. Morrison's testimony is contained in his two reports on the hydrology of the Galisteo Basin, which are attached as OCD Exs. 39 and 40.

The OCD estimates that Mr. Morrison's direct examination will take two hours.

4. William V. Jones, OCD Engineering Bureau.

Mr. Jones has been a petroleum specialist with the OCD's Engineering Bureau for approximately seven years. His duties include the processing of administrative applications for commingling, injection and disposal, and serving as a hearing examiner.

Mr. Jones worked as an engineer for Texaco for 20 years and spent several years as a consultant. He is a registered professional petroleum engineer. He holds a Bachelor of Science in Geological Engineering and in Civil Engineering from New Mexico State University and an Information Technology degree from Denver Technical College, now called DeVry University. Mr. Jones has previously testified as an expert in petroleum engineering before the OCD and the OCC.

The OCD will ask the OCC to recognize Mr. Jones as an expert in petroleum engineering. Mr. Jones' testimony will address the following requirements for an exploration and development plan under proposed Section 9:

- The operator's proposed plan for a drilling program; and
- The operator's proposed plan for a mud-logging program.

Mr. Jones's testimony will also address the following conditions applied to drilling permits under proposed Section 10:

- Porosity and water saturation logs;
- Mud-logging;
- Cementing requirements;
- Casing requirements;
- Cement logs; and
- Temporary abandonment status for wells awaiting pipeline connection.

Mr. Jones' pre-filed written testimony is attached as OCD Ex. 3.

The OCD estimates that Mr. Jones' direct examination will take one hour.

5. Glenn von Gonten, OCD Environmental Bureau.

Mr. von Gonten has been a senior hydrologist with the OCD's Environmental Bureau since January 2005. He handles ground water and soil contamination cases, issues discharge permits and supervises two other hydrologists.

Mr. von Gonten has over 30 years experience as a geologist, both in industry and as a regulator. Prior to joining the OCD he worked for 6 years for the Department of Environmental Quality in Virginia as a senior geologist in the hazardous waste program's ground water/corrective action group, and worked for 5 years as a supervisor in the Hazardous Waste Bureau of New Mexico's Environment Department. He received a Bachelor of Science in Geology from Texas A&M University and a Masters of Science in Geology from the University of Texas at Arlington. He also has post-graduate training in hydrogeology from the University of Houston and from Oklahoma State University. Mr. von Gonten has previously testified as an expert hydrologist before the OCC.

The OCD will ask the OCC to recognize Mr. von Gonten as an expert in hydrogeology. Mr. von Gonten's testimony will address the requirements for an exploration and development plan identified in numbered paragraphs 1-8 of Subsection B of under proposed Section 9:

- Contact information;
- Legal description of the area to be covered by the plan;
- Identification of target zones;
- Topographic maps;
- Maps identifying surface features;
- Hydrogeologic and site report;
- Proposed plans for monitor wells, wastes, minimizing pad size and consolidating facilities; development, and contingency plans.

Mr. von Gonten's pre-filed written testimony is attached as OCD Ex. 4.

The OCD estimates that Mr. von Gonten's direct examination will take one hour.

6. Theresa Duran-Saenz, OCD Legal Assistant.

Ms. Duran-Saenz has been a legal assistant with the OCD for two years. She will testify as a fact witness on the service of notice and the publication of notice regarding this hearing.

The OCD will ask the OCC to accept Ms. Duran-Saenz' affidavit on these issues. Her affidavit is attached as OCD Ex. 43.

PROCEDURAL MATTERS

1. The OCD previously filed its notice of recommended modifications. The OCD's witnesses will address the proposed amendment to 19.15.39 NMAC, with the recommended modifications.

2. At the hearing, the OCD will ask the OCC to accept the written testimony of Mr. Daniel Sanchez, Mr. Brad Jones, Mr. Glenn von Gonten and Mr. Will Jones. Their written testimony is submitted with this pleading. The OCD intends to call each of these witnesses at the hearing, have them summarize the main points of their testimony, and adopt their prepared written testimony under oath, subject to cross-examination and motions to strike. The time estimates given above assume the use of pre-filed written testimony. If the witnesses are not allowed to adopt their pre-filed written testimony, the time estimates should be doubled.

3. At the hearing, the OCD will ask the OCC to accept the affidavit of Ms. Duran-Saenz regarding notice. Ms. Duran-Saenz will be present at the hearing if the OCC wants her to testify.

4. This case presents several notice issues. 19.15.3.9(A)(1) NMAC requires that notice be published one time in a newspaper of general circulation in the counties that the proposed rule change affects no less than 20 days prior to the scheduled hearing dates. The proposed rule change in Case 14255 affects Santa Fe, Sandoval and San Miguel Counties.

As detailed in the affidavit of Ms. Duran-Saenz, Division Director Mark Fesmire issued the Notice of Rulemaking in Case 14255 on November 10, 2008, setting the hearing for December 11, 2008 (original Notice). The original Notice used language from the proposed notice attached to the OCD's application.

The original Notice accurately stated:

“Any person recommending modifications to a proposed rules change shall, no later than **Monday, November 24, 2008**, file a notice of recommended modifications with Ms. Davidson including the text of the recommended modifications, and explanation of the modifications' impact, and the reasons for adopting the modifications.”

However, the original Notice also contained the following sentence:

“Written comments on the proposed amendment, pre-hearing statements and notices of recommended modifications must be received no later than 5:00 p.m. on **Wednesday, December 3, 2008**.”

To clarify the due date for recommended modifications, Division Director Mark Fesmire issued a revised Notice of Rulemaking in Case 14255 on November 17, 2008, removing “notices of recommended modifications” from the list of filings that must be received by December 3, 2008.

The Santa Fe New Mexican, a newspaper of general circulation in Santa Fe County, published the revised Notice on November 19, 2008 -- meeting the requirement of 19.15.3.9(A)(1) NMAC that notice be published no less than 20 days prior to the hearing.

The Las Vegas Optic, a newspaper of general circulation in San Miguel County, published the original Notice on November 14, 2008, before the OCD could replace the original notice with the revised Notice. The timing of the publication met the requirement of 19.15.3.9(A)(1) NMAC that notice be published no less than 20 days prior to the hearing. The OCD asks the OCC to find that the notice was sufficient, despite the inclusion of “notice or recommended modifications” in the list of filings that must be received by December 3, 2008,

because the sentence addressing the process for recommending modifications clearly stated that the deadline was November 24, 2008 and it does not appear that anyone wishing to propose modifications was denied the opportunity.

The Observer, a newspaper of general circulation in Sandoval County, received the OCD's request to publish the revised Notice on November 17, 2008. However, it did not publish the notice until six days later, on November 23, 2008. This publication did not meet the requirement of 19.15.3.9(A)(1) NMAC that notice be published no less than 20 days prior to the hearing. In the absence of objection, the OCD requests that the OCC find that publication for Sandoval County was sufficient.

Pursuant to Subsection B of 19.15.3.9 NMAC, in cases of emergency the commission chairman may shorten the time limits provided by 19.15.3.9 NMAC by written order. The OCD respectfully requests that the commission chairman shorten the 20 day time period set in Paragraph 1 of Subsection A of 19.15.3.9 NMAC for publication in a newspaper of general circulation, so that the proposed rule can be considered as to those portions of Sandoval and San Miguel Counties included in the Galisteo Basin, as well as Santa Fe County. There has been no indication that anyone has been prejudiced by the notice issues in this case, and the OCD has gone beyond the rules' requirements in its attempt to notify interested persons of this rulemaking. Leaving Sandoval County and/or San Miguel County out of the rule would limit the rule's effectiveness in protecting fresh water and the environment.

EXHIBITS

The OCD's exhibits are submitted with this pleading.

Respectfully submitted
this 3rd day of December 2008 by



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Attorney for the Oil Conservation Division

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CASE NO. 14255

CERTIFICATE OF SERVICE

On December 3, 2008, the Oil Conservation Commission (OCC) received Pre-Hearing Statements from the Independent Petroleum Association of New Mexico (IPANM) and Approach Operating LLC (Approach). The OCD has taken the following actions to serve IPANM and Approach with the OCD's Pre-Hearing Statement and its Exhibits:

1. The OCD received Approach's Pre-Hearing Statement by facsimile at 4:52 on December 3, 2008. On December 4, 2008, the OCD hand-delivered its Pre-Hearing Statement and Exhibits to the address listed on Approach's Pre-Hearing Statement for its attorney:

J. Scott Hall
Montgomery & Andrews
325 Paseo de Peralta
Santa Fe, NM 87501

2. Undersigned counsel has not been served with the Pre-Hearing Statement filed by IPANM. However, the Commission Clerk notified undersigned counsel that IPANM had entered its appearance. On December 4, 2008, the OCD mailed its Pre-Hearing Statement and Exhibits by overnight mail to the attorney for IPANM at the address listed on IPANM's Pre-Hearing Statement:

Karin V. Foster, Esq.
Chatham Partners Inc.
5805 Mariola Place, N.E.
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RESPECTFULLY SUBMITTED,



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