

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

IN THE MATTER OF THE APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION FOR REPEAL OF EXISTING RULE 50 CONCERNING PITS AND BELOW GRADE TANKS AND ADOPTION OF A NEW RULE GOVERNING PITS, BELOW GRADE TANKS, CLOSED LOOP SYSTEMS AND OTHER ALTERNATIVE METHODS TO THE FOREGOING, AND AMENDING OTHER RULES TO MAKE CONFORMING CHANGES; STATEWIDE.

CASE NO. 14015
Order No. R-12819-A

ORDER OF THE COMMISSION

Several parties have filed proposed modifications to the Oil Conservation Division's proposed new rule governing pits, below grade tanks, closed loop systems and other alternative methods. In their proposed modifications, Yates Petroleum Corporation and The Industry Committee raised the issue of whether the proposed Subparagraph (c) of Paragraph (1) of Subsection F of 19.15.17.13 NMAC, which provides that surface owner consent is one of the requirements for on-site closure, violates the sub-surface owners right to reasonable use of the surface and whether the Oil Conservation Commission has the authority to require surface owner consent. Because this is a legal issue rather than a matter for technical testimony or public comment, the parties are directed to file briefs addressing whether or not this provision violates the sub-surface owners right to reasonable use of the surface and whether or not the Oil Conservation Commission has authority to require surface owner consent by 5:00 p.m. on November 7, 2007.

In addition, Yates Petroleum Corporation has raised the issue of whether the proposed requirement in Subparagraph (a) of Paragraph (1) of Subsection F of 19.15.17.13 NMAC that limits use of on-site closure to those situations where the proposed pit's location is outside of a 100-mile radius of a division approved facility or an out-of-state waste management facility violates the Commerce Clause of the United States Constitution. The parties are directed to file briefs addressing whether or not this provision violates the Commerce Clause by 5:00 p.m. on November 7, 2007.

Further, except for the Oil Conservation Division that is directed to file its response by October 29, 2007, the parties shall file any responses to the Independent Petroleum Associations of New Mexico's Motion to Compel and its Request for Alternative Dispute Resolution, filed on October 22, 2007, by 5:00 p.m. on November 2, 2007.

DONE at Santa Fe, New Mexico on the 25th of October 2007.



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STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

A handwritten signature in black ink, appearing to read "Mark E. Fesmire".

MARK E. FESMIRE, P.E., CHAIR