

FIRST JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

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EARTHWORKS' OIL & GAS ACCOUNTABILITY
PROJECT

Petitioner,

Case No. D-101-CV-2012-00106

v.

NEW MEXICO OIL CONSERVATION COMMISSION

Respondent.

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VERIFIED PETITION FOR WRIT OF PROHIBITION

Pursuant to the New Mexico Constitution, Art. IV, § 13 and New Mexico Rule of Civil Procedure 1-065, Petitioner Earthworks' Oil & Gas Accountability Project ("OGAP") respectfully petitions this Court for a Writ of Prohibition, prohibiting the Respondent, the New Mexico Oil Conservation Commission ("Commission") from proceeding with hearing the New Mexico Oil and Gas Association's ("NMOGA") and the Independent Petroleum Producers' ("Independent Producers") petition for changes to 19.15.17 NMAC concerning regulation of pits, closed loop systems, below grade tanks and sumps ("Pit Rule"), Case No. 14784, *In the Matter of the 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 Regulation of Pits, Closed Loop Systems, Below Grade Tanks and Sumps.*

Introduction and Basis for Jurisdiction

1. This original prohibition action, filed in accordance with SCRA 1-065, presents substantial questions of law regarding the limits of power of administrative agencies and the

Separation of Powers Doctrine. Petitioner seeks to prevent Respondent from interfering with the lawful process by which final administrative rules are appealed and infringing on the District Court's constitutionally defined appellate jurisdiction. The Respondent lacks jurisdiction to reconsider, modify, or otherwise amend the Pit Rule because it is currently under appeal and an *ultra vires* exercise of its rulemaking authority would impermissibly interfere with this Court's appellate jurisdiction in violation of the Separation of Powers Doctrine.

2. This Court has jurisdiction to hear this Petition pursuant to N.M. Const. Art. VI, § 13, which provides:

The district courts, or any judge thereof, shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, prohibition and all other writs, remedial or otherwise in the exercise of their jurisdiction; provided, that no such writs shall issue directed to judges or courts of equal or superior jurisdiction.

3. On September 11, 2007, the Oil Conservation Division ("Division"), submitted proposed oil and gas field waste management regulations for public comment. *In the Matter of 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*. Prior to submitting the Pit Rule for public hearing, the Commission convened a Task Force of stakeholders, including the oil and gas industry and its representatives, members of the public, and representatives of public interest organizations, which included an OGAP representative, to establish points of consensus and dispute regarding the proposed Pit Rule.

4. After the public notice of the Pit Rule rulemaking was issued, the Commission held a public hearing on the proposed rule. During that hearing, numerous oil and gas companies presented witnesses and evidence in opposition of the proposed Pit Rule. The oil and gas

industry's evidence included hydrogeological evidence, risk assessment evidence and evidence about the economic impact of the proposed Pit Rule on small petroleum producers. Both the Division and OGAP presented expert testimony in favor of the proposed Rule.

5. On May 9, 2008 the Commission issued its Final Order adopting the Pit Rule, Order of the Oil Conservation Commission, Order No. R-12939. On May 29, 2008, several oil and gas companies asked the Commission to rehear the Pit Rule and the Commission failed to act on the rehearing request within 10 days, making Order No. R-12939 final pursuant to NMSA, 1978 § 70-2-25(A). On July 10, 2008, those same oil and gas companies petitioned for a writ of certiorari, requesting that the District Court review the Final Order. Industry Committee Petition for Writ of Certiorari to the Oil Conservation Commission, No. D-0101-CV-2008-01863. The Independent Petroleum Association of New Mexico also filed a separate petition for writ of certiorari seeking review of the Final Order. Independent Petroleum Association's Petition for Writ of Certiorari to the Oil Conservation Commission, No. D-0101-CV-2008-1874. Both writs were granted and the two appeals were consolidated on August 13, 2008, under Case No. D-0101-CV-2008-1873.

6. While the oil and gas industry's consolidated appeal was pending, the Commission amended the Pit Rule to effectively rescind an important environmental standard referred to as the "chloride standard", which governed the concentrations of chlorides, or salts, in waste buried in pits. The Commission decided in its Order No. R-12939-A to radically change the chloride standard from 250 mg/l to 3000 mg/l for the express purpose of assuring that chloride levels in oil field waste would not be an obstacle to on-site trench burial. On July 7, 2009 OGAP requested a rehearing on the chloride standard amendment and the Commission failed to act within the 10 day statutory period. Order No. R-12939-A therefore became final on

July 17, 2009. OGAP petitioned the District Court for review of the chloride standard amendment on July 30, 2009, and review was granted. OGAP's appeal of the chloride standard amendment is Case No. D-0101-CV-2009-2473.

7. While the oil and gas industry's appeal of the Pit Rule and OGAP's appeal of the chloride standard were still pending, Susana Martinez was elected governor of New Mexico. In her campaign, Governor Martinez specifically promised to repeal the Pit Rule. *See, e.g.*, http://www.hs.facebook.com/note.php?note_id=234509215999&comments (last visited, Jan. 8, 2012); http://www.youtube.com/watch?v=YaoEpZeZNo0&feature=player_embedded (last visited, Jan. 8, 2012). Two of the three Commission members are appointed by the governor. NMSA, 1978 § 70-2-4.

8. On September 30, 2011, the New Mexico Oil and Gas Association ("NMOGA") submitted a petition to the Commission seeking to significantly amend the Pit Rule. The Commission exercised its discretion, and accepted NMOGA's petition for consideration. A notice of public hearing on NMOGA's petition was issued on December 16, 2011, and a public hearing is scheduled for January 23, 2012. A copy of the public notice of the hearing is attached as Exhibit 1.

Petition Grounds

9. A writ of prohibition is an extraordinary writ that is issued by a tribunal in order to prevent an inferior tribunal from acting without jurisdiction or in excess of its jurisdiction. *General Atomics Co. v. Felter*, 90 N.M. 120, 122, 560 P.2d 541, 543 (N.M. 1977) (rev'd on other grounds); *State ex rel. Harvey v. Medler*, 19 N.M. 252, 258 142 P. 376, 377-378 (N.M. 1914); *Federal Trade Comm'n v. Dean Foods Co., Inc.*, 384 U.S. 597, 604 (1966); *Madison v. Dept. of Workforce Development*, 664 N.W.2d 584, 587 (Wis. 2003). Writs of prohibition are also

appropriate to enjoin agency actions that threaten to interfere with a court's appellate jurisdiction. *Federal Trade Comm'n v. Dean Foods Co., Inc.*, 384 U.S. at 603-604. Writs of prohibition should be issued only where irreparable harm, extraordinary hardship, costly delays, or unusual burdens of expense would result. *General Atomics Co. v. Felter*, 560 P.2d at 543. Irreparable harm has been held to be inherent when an administrative agency acts beyond its jurisdiction. *State ex rel. St. Michael's Evangelical Lutheran Church v. Dept. of Administration*, 404 N.W.2d 114, 118 (Wis. Ct. App. 1987). If an inferior tribunal is acting beyond its jurisdiction, a writ of prohibition shall issue as a matter of right. *State ex rel. Transcontinental Bus Svc., Inc. v. Carmody*, 53 N.M. 367, 370, 208 P.2d 1073, 1075 (N.M. 1949).

A. The Commission Lacks Jurisdiction to Reconsider the Pit Rule After its Final Orders were Appealed.

10. When the Commission issued its final order promulgating the Pit Rule, and that final order was appealed, the Commission lost jurisdiction to reconsider, modify or amend that final order. *Loraine Education Ass'n v. Loraine City School Dist. Bd. of Education*, 544 N.E.2d 687, 689-690 (Ohio, 1989). In *Loraine*, the Ohio Supreme Court held that the State Employment Relations Board lost jurisdiction to reconsider, modify or vacate an order determining that unfair labor practices had occurred in a school district once the order became appealable. *Id.* at 689. The Court recognized that generally administrative agencies have the power to reconsider, amend or modify their decisions, since the power to make a decision in the first place carries with it the implied power to reconsider.¹ *Id.* However, once an agency decision is appealed, the agency is divested of authority to reconsider, modify, or vacate the decision that has been appealed. *Id.*; see also, *City of Philadelphia Police Dept. v. Civil Svc. Comm'n.*, 702 A.2d 878, 881 (Pa. Commw. Ct. 1997) (civil service commission lacked jurisdiction to reconsider order

¹ In this case, the power to reconsider is statutory. See, NMSA, 1978 § 70-2-25(A).

after 30 day statutory period for reconsideration passed); *Jundt v. Fuller*, 736 N.W.2d 508, 512 (S.D., 2007) (agency's authority to reverse adjudicatory decision lost after appeal is taken); *Burnet v. Lexington Ice & Coal Co.*, 62 F.2d 906, 909 (4th Cir. 1933) (Board of Tax Appeals and appellate court could not have jurisdiction over the same case at the same time). This is because once an agency decision has been appealed, the power to modify, reverse, or vacate the decision lies with the appellate court. *Cuyahoga v. Floyd*, 2003 Ohio 184 at 10 (Ohio Ct. App. 2003) (trial court is divested of jurisdiction after appeal until the case is remanded to it by the appellate court except where the retention of jurisdiction is not inconsistent with that of the appellate court to review, affirm, modify or reverse the appealed order).

11. In adopting a regulation, the Commission conducts a quasi-judicial formal rulemaking process that requires extensive public notice. 19.15.3.9 NMAC. The Commission's regulations also require submission of pre-hearing statements if a party intends to present technical testimony or to cross-examine witnesses that must include a summary of witness' testimony and any exhibits intended to be offered at hearing. 19.15.3.11 NMAC. Finally, the rulemaking process also requires taking of testimony under oath and subject to cross-examination. 19.15.3.12 NMAC. Once a rulemaking hearing has concluded and the Commission has rendered a decision, the Oil and Gas Act provides that the Commission may rehear any decision or order within 20 days of the order or decision being issued. NMSA, 1978 § 70-2-25(A). If the request for rehearing is refused or not acted upon, it becomes a final agency action. *Id.* Any party to the Commission's decision may appeal the final disposition to the District Court. *Id.* at § 70-2-25(B); SCRA, 1986 1-075. The point where the Commission's decision becomes final is the point where its jurisdiction to modify, amend, or reconsider its

decision ends. Further, pursuant to N.M. Const. Art. VI, § 13, once a petition for writ of certiorari is granted, the District Court assumes jurisdiction of the matter in its appellate capacity.

12. In this case, the oil and gas industry asked for a rehearing of the Pit Rule and OGAP asked the Commission to rehear the chloride standard amendment. In the case of the Pit Rule, the Commission's Order No. R-12939 became final on June 9, 2008. On this date, the Commission lost jurisdiction to reconsider or modify the Pit Rule. Likewise, the Commission's Order No. R-12939-A became final on July 17, 2009, and its jurisdiction to reconsider or modify that final order ended then. Moreover, in each instance, an appeal was taken and the writ of certiorari granted. At the time the District Court granted each writ, it assumed jurisdiction of the Pit Rule and chloride standard amendment. Thus, the Commission is without jurisdiction to reconsider, modify, amend or vacate either the Pit Rule or the chloride standard.

B. The Commission's Decision to Hear Industry's Petition to Repeal the Pit Rule Violates the Separation of Powers Doctrine.

13. Not only is the Commission without jurisdiction to reconsider, modify or amend the Pit Rule, its decision to hear the oil and gas industry's petition to amend the Pit Rule while the appeal of that rule is pending also intrudes upon the judiciary's appellate function in violation of the separation of powers doctrine. Because the Commission's imminent hearing violates the separation of powers doctrine, a Writ of Prohibition should issue to protect this Court's jurisdiction.

14. Under the New Mexico Constitution, state government is divided into three co-equal and separate branches. N.M. Const. Art. III, § 1; *Mowrer v. Rusk*, 95 N.M. 48, 52, 618 P.2d 886, 890 (N.M. 1980). Further, our state constitution describes the authority and function of each governmental branch. The constitution provides that this Court's authority and function consist of the following:

The district court shall have original jurisdiction in all matters and causes not excepted in this constitution, and such jurisdiction of special cases and proceedings as may be conferred by law, *and appellate jurisdiction of all cases originating in inferior courts and tribunals in their respective districts, and supervisory control over the same.* The district courts, or any judge thereof, shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, prohibition and all other writs, remedial or otherwise in the exercise of their jurisdiction; provided, that no such writs shall issue directed to judges or courts of equal or superior jurisdiction.

N.M. Const., Art. VI, § 13 (emphasis added).

15. The power of administrative agencies, on the other hand, consists of implementing legislation enacted by the legislature, including through promulgating rules and regulations, enforcing rules and regulations, and adjudicating compliance with administrative decisions. *Duke City Lumber Co. v. N.M. Envt'l Improvement Bd.*, 101 N.M. 291, 292-293, 681 P.2d 717, 718-719 (N.M. 1984).

16. Further, administrative agencies are creatures of statutes. *Public Serv. Co. v. New Mexico Envtl. Improvement Bd.*, 89 N.M. 223, 226, 549 P.2d 638, 641 (Ct. App. 1976): Administrative agencies therefore have no common law or inherent powers and can only act on matters which are within the scope of authority delegated to them by the legislature. *Id.*

17. In this tripartite framework of government, each branch of government is equal and separate. *Loving v. U.S.*, 517 U.S. 748, 757 (1996). The purpose of designing separate powers of government was to prevent governmental power from concentrating in one place. *Id.* It is a basic principle of this form of government that “one branch of government may not intrude upon the central prerogatives of another. *Id.* Thus, no branch may usurp or impair the functions of any other branch. *Id.*; *Mowrer v. Rusk*, 95 N.M. at 52, 618 P.2d at 890. Indeed, the need for the judiciary, in particular, to be free from external interference is so important, the court in *Mowrer* wrote:

It is not only [a]xiomatic, it is the genius of our government that the courts must be independent, unfettered; and free from directives, influence, or interference from any extraneous source. It is abhorrent to the principles of our legal system and to our form of government that courts being a coordinate department of government, should be compelled to depend upon the vagaries of an extrinsic will. Such would interfere with the operation of the courts, impinge upon their power and thwart the effective administration of justice.

Mowrer v. Rusk, 95 N.M. at 54, 618 P.2d at 892, *quoting Smith v. Miller*, 384 P.2d 738, 741 (Colo., 1963).

18. In this case, the Commission's *ultra vires* decision to hear the oil and gas industry's petition to dramatically modify the Pit Rule interferes with the functioning of the judiciary in two significant ways.

19. First, the Commission's action disrupts and interferes with the appellate process, which is a constitutionally mandated function of the District Court. By hearing the industry's petition to significantly amend the Pit Rule before the appellate process has concluded, the Commission is not only short-circuiting the District Court's prerogative to decide the issues raised on appeal, and to modify, reverse or vacate the final Pit Rule order, it is also touching off a potentially perpetual cycle of rulemakings, appeals, premature interruption of those appeals by subsequent rule amendments, and appeals of the amendments. This Sisyphean process is virtually assured if the appeals process is not allowed to unfold as intended. The judiciary should not be "turned on and off like a light globe to suit the whims of the agency." *U.S. v. Moore*, 427 F.2d 1020, 1024 (10th Cir. 1970) (Lewis, J. concurring). Moreover, this cycle of rule amendment and appeal places an extraordinary burden of time and expense on members of the public, such as OGAP and its members, who seek to participate in the rulemaking and judicial processes. This burden is heightened by the formal quasi-judicial nature of the Commission's rulemaking proceedings.

20. Second, the Commission's action is at odds with the orderly administration of justice as outlined by the New Mexico Supreme Court in *Smith v. City of Santa Fe*. In *Smith*, the Court held that the petitioners in that case, having invoked the administrative process, were bound to see that process through and could not invoke the District Court's jurisdiction until the administrative process was complete. *Smith v. City of Santa Fe*, 142 N.M. 786, 793, 171 P.3d 300, 307 (N.M. 2007). This case is the inverse of *Smith* because NMOGA members chose to invoke the District Court's appellate jurisdiction when it appealed the Pit Rule and now asks the Commission to reconsider and modify the rule through administrative methods.

Relief Sought

WHEREFORE, Petitioner respectfully requests that this Court issue an order prohibiting the Respondent Commission from conducting hearings on or considering amendments to the Pit Rule, 19.15.17 NMAC, or any provision thereof until such time as the appeals of the Pit Rule, Case No. D-0101-CV-2008-1863, and its constituent provisions, Case No. D-0101-CV-2009-2473, have concluded.

Respectfully submitted this 9th day of January, 2012.

/s/ Eric Jantz

Eric D. Jantz
R. Bruce Frederick
New Mexico Environmental Law Center
1405 Luisa Street, Suite 5
Santa Fe, New Mexico 87505
(505) 989-9022
ejantz@nmelc.org
bfrederick@nmelc.org

Attorneys for Oil & Gas Accountability Project

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of January, 2012, I have delivered a copy of the foregoing pleading in the above-captioned case via email, U.S. mail, fist class, and/or hand delivery to the following:

Jami Bailey
Chair
New Mexico Oil Conservation Commission
Energy Minerals and Natural Resources Department
1220 St. Francis Drive
Santa Fe, New Mexico 87505

David K. Brooks
Energy, Minerals and Natural Resources Department
1220 St. Francis Drive
Santa Fe, New Mexico 87505

Gary King
New Mexico Attorney General
408 Galisteo Street
Villagra Building
Santa Fe, New Mexico 87501

William H. Carr
Holland and Hart, LLP
PO Box 2208
Santa Fe, New Mexico 87504-2208

Eric L. Hiser
Jorden, Bischoff & Hiser, PLC
7272 Indian School Road
Suite 360
Scottsdale, Arizona 85251

Karin V. Foster
Independent Petroleum Ass'n of New Mexico
5805 Mariola Place NE
Albuquerque, New Mexico 87111

By: /s/ Eric Jantz

**STATE OF NEW MEXICO
ENERGY, MINERAL AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO**

The State of New Mexico, through its Oil Conservation Commission (Commission), hereby gives notice that the Commission will conduct a public hearing beginning at 9 a.m. on January 23, 2012 through January 27, 2012, in Porter Hall at 1220 South Saint Francis Drive, Santa Fe, New Mexico. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ms. Florene Davidson at (505) 476- 3458 or through the New Mexico Relay Network at 1-800-659-1779 as soon as possible. Public documents can be provided in various forms. Please contact Ms. Davidson if a summary or other type of form is needed. A preliminary agenda will be available to the public no later than two weeks prior to the meeting. A final Agenda will be available no later than 24 hours preceding the meeting. Members of the public may obtain copies of the agenda by contacting Ms. Davidson at the phone number indicated above. Also, the agenda will be posted on the Oil Conservation Division's website at www.emnrd.state.nm.us/ocd/.

STATE OF NEW MEXICO TO:

**All named parties and persons
having any right, title, interest
or claim in the following cases
and notice to the public.**

Exhibit 1

Case No.14784: 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. The New Mexico Oil and Gas Association requests an order amending Commission Rules concerning pits, closed-loop systems, below grade tanks, sumps and other alternative methods related to the foregoing proposed amendments, codified as Part 17 of the Rules of the Oil Conservation Division [19.15.17 NMAC]. The proposed amendments are to (i) revise the permitting and registration requirements for permanent pits, temporary pits and below grade tanks; (ii) eliminate the permitting, design, construction and operational requirements for closed-loop systems while requiring that drying pads be designed and constructed to prevent contamination of water; for sumps used to collect liquids from cuttings; and for berms constructed to prevent run-on; (iii) revise the siting, design, construction, operation, closure and site reclamation provisions for temporary pits, permanent pits, drying pads, below grade tanks and tanks associated with closed-loop systems, (iv) authorize standardized plans for pit construction, closure and other matters; (v) adopt a definition for "low chloride" drilling fluids and the establishment of siting, closure and remediation requirements for temporary pits based on the chloride concentration in the waste and the distance between the waste and ground water or a flowing

water course; (vi) authorize and adopt requirements for the permitting, siting, design, construction, operation and closure for "multi-well fluid management pits"; (vii) revise the rules governing the testing and removal of below grade tanks; (viii) revise the rules governing onsite disposal in pits and trenches; (ix) revise the rules governing releases, waste testing and excavation and the concentration of wastes disposed in temporary pits or burial trenches; (x) revise the requirements for remediation and site reclamation including contouring and re-vegetation; (xi) revise the rules governing variances and exceptions to these rules to provide for their approval by the appropriate division district office pursuant to procedures set out in the proposed amendments; (xii) revise and adopt rules and procedures set out in the proposed amendments; (xiii) revise and adopt rules and procedures governing the Oil Conservation Division's notice, processing and approval of applications filed pursuant to these rules, (xiv) revise the rules governing transfer of a permit; and (xv) otherwise change the Commission's requirements concerning permitting, design, construction, operation and closure of pits and below grade tanks, operation of sumps and other alternative methods that may be proposed for use in lieu of pits or below grade tanks used in oil and gas operations.

Copies of the text of the proposed amendments are available from the Oil Conservation Division's Administrator, Florene Davidson at (505) 476-3458 or from the Division's website at <http://www.emnrd.state.nm.us/ocd/Rules.htm>. Modifications to the proposed amendments (six copies) conforming to the requirements of 19.15.3.11 NMAC must be received by the Division no later than 5:00 p.m. on January 6, 2012. Persons intending to provide written comments on the proposed rule change must submit their written comments no later than 5:00 p.m. on January 13, 2012 to the Division's Administrator. Persons intending to offer technical testimony or cross-examine witnesses at the hearing must file a Pre-hearing statement (six copies) conforming to the requirements of 19.15.3.11 NMAC, including six copies of all exhibits the person will offer in evidence at the hearing, no later than 5:00 p.m. on January 13, 2012. Modifications, written comments and Pre-hearing statements may be hand-delivered or mailed to Ms. Davidson at 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or may be faxed to Ms. Davidson at (505) 476-3462.

Case No.14785: 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, STATEWIDE AND AMENDMENT OF TITLE 19, CHAPTER 15, PART 39.8(B) OF THE NEW MEXICO ADMINISTRATIVE CODE CONCERNING PITS AND SIERRA AND OTERO COUNTIES. The Independent Petroleum Association of New Mexico requests an order amending Commission Rules concerning pits, closed-loop systems, below grade tanks, sumps and other alternative methods related to the foregoing proposed amendments, codified as Part 17 of the Rules of the Oil Conservation Division [19.15.17 NMAC] and concerning pits in Sierra and Otero Counties, codified as Part 39.8(B) of the Rules of the Oil Conservation Division [19.15.39.8(B)]. The proposed amendments are to (i) revise the permitting and registration requirements for permanent pits, temporary pits and below grade tanks; (ii) eliminate the permitting, design, construction and operational requirements for closed-loop systems while requiring that drying pads be designed and constructed to prevent contamination of water; for sumps used to collect liquids from cuttings; and for berms constructed to prevent run-on; (iii) revise the siting, design, construction,

operation, closure and site reclamation provisions for temporary pits, permanent pits, drying pads, below grade tanks and tanks associated with closed-loop systems, (iv) authorize standardized plans for pit construction, closure and other matters; (v) adopt a definition for "low chloride" drilling fluids and the establishment of siting, closure and remediation requirements for temporary pits based on the chloride concentration in the waste and the distance between the waste and ground water or a flowing water course; (vi) authorize and adopt requirements for the permitting, siting, design, construction, operation and closure for "multi-well fluid management pits"; (vii) revise the rules governing the testing and removal of below grade tanks; (viii) revise the rules governing onsite disposal in pits and trenches; (ix) revise the rules governing releases, waste testing and excavation and the concentration of wastes disposed in temporary pits or burial trenches; (x) revise the requirements for remediation and site reclamation including contouring and re-vegetation; (xi) revise the rules governing variances and exceptions to these rules to provide for their approval by the appropriate division district office pursuant to procedures set out in the proposed amendments; (xii) revise and adopt rules and procedures set out in the proposed amendments; (xiii) revise and adopt rules and procedures governing the Oil Conservation Division's notice, processing and approval of applications filed pursuant to these rules, (xiv) revise the rules governing the transfer of a permit; (xv) otherwise change the Commission's requirements concerning permitting, design, construction, operation and closure of pits and below grade tanks, operation of sumps and other alternative methods that may be proposed for use in lieu of pits or below grade tanks used in oil and gas operations; and (xvi) to conform to the proposed amendments of Part 17 to allow pits in Sierra and Otero Counties.

Copies of the text of the proposed amendments are available from the Oil Conservation Division's Administrator, Florene Davidson at (505) 476-3458 or from the Division's website at <http://www.emnrd.state.nm.us/ocd/Rules.htm>. Modifications to the proposed amendments (six copies) conforming to the requirements of 19.15.3.11 NMAC must be received by the Division no later than 5:00 p.m. on January 6, 2012. Persons intending to provide written comments on the proposed rule change must submit their written comments no later than 5:00 p.m. on January 13, 2012 to the Division's Administrator. Persons intending to offer technical testimony or cross-examine witnesses at the hearing must file a Pre-hearing statement (six copies) conforming to the requirements of 19.15.3.11 NMAC, including six copies of all exhibits the person will offer in evidence at the hearing, no later than 5:00 p.m. on January 13, 2012. Modifications, written comments and Pre-hearing statements may be hand-delivered or mailed to Ms. Davidson at 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or may be faxed to Ms. Davidson at (505) 476-3462.

Given under the seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 16th day of December, 2011.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION



Jami Bailey
Oil Conservation Commission Chair