

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

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 AND SUMPS AND OTHER ALTERNATIVE METHODS RELATED TO THE FOREGOING AND AMENDING OTHER RULES TO CONFORMING CHANGES, STATEWIDE.

CASE NO. 14784

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.

CASE NO. 14785

FINDINGS OF FACT AND CONCLUSIONS OF LAW OF JALAPENO CORPORATION

The Findings of Fact and Conclusions of Law of Jalapeno Corporation are as follows:

Findings of Fact

1. Jalapeno Corporation adopts and incorporates by reference all of the Findings of Fact of the Independent Petroleum Association of New Mexico (IPANM) filed in Case No. 14785, which was consolidated with Case No. 14784.
2. Jalapeno Corporation adopts and incorporates by reference all of the Findings of Fact of the New Mexico Oil and Gas Association (NMOGA) filed in the Case No. 14784, which was consolidated with Case No. 14785, except for those Findings of Fact that would not support:
 - (a) the phrase "If unconfined ground water is 100 feet or less from the base of the disposal pit or trench," in 19.15.17.13.B (5) NMAC of Exhibit A and Exhibit B of the Notice of Applicant IPANM's Modifications to Their Petition for Rulemaking Title 19, Chapter 15, Part 17, dated April 27, 2012 and posted on NM OCD's web site on April 30, 2012, which is as follows:

“(5) If unconfined ground water is 100 feet or less from the base of the disposal pit or trench, the operator shall collect, at a minimum, a five point composite of the contents of the temporary pit or drying pad/tank associated with a closed loop system to demonstrate that, after the waste is solidified or stabilized with soil or other non-waste material at a ratio of no more than 3:1 soil or other non-waste material to waste, the stabilized waste does not exceed the criteria in Table II of 19.15.17.13 NMAC or a division approved alternative concentration limit.”;

(b) the phrase “or if the depth of [sic] to unconfined ground water is greater than 100 feet from the base of the disposal pit or trench,” in 19.15.17.13.B (6) NMAC of Exhibit A and Exhibit B of the Notice of Applicant IPANM’s Modifications to Their Petition for Rulemaking Title 19, Chapter 15, Part 17, dated April 27, 2012 and posted on NM OCD’s web site on April 30, 2012, which is as follows:

“(6) If the contents from a temporary pit or drying pad and tank associated with a closed loop system do not exceed any of the constituent concentrations shown in Table II of 19.15.17.13 NMAC, or if the depth of [sic] to unconfined ground water is greater than 100 feet from the base of the disposal pit or trench, the operator can either proceed to dispose of wastes in an existing temporary pit or construct a burial trench for disposal of these wastes. Both the temporary pit and the burial trench must be designed and constructed in accordance with the requirements specified in Subsections F and K of 19.15.17.11 NMAC.”;

(c) the phrase “and depth to unconfined ground water is 100 feet or less from the base of the disposal pit or trench,” in 19.15.17.13.B (8) NMAC of Exhibit A and Exhibit B of the Notice of Applicant IPANM’s Modifications to Their Petition for Rulemaking Title 19, Chapter 15, Part 17, dated April 27, 2012 and posted on NM OCD’s web site on April 30, 2012, which is as follows:

“(8) If the contents, after mixing with soil or non-waste material to a maximum ratio of 3:1, from a temporary pit or drying pad/tank associated with a closed-loop system exceed any of the constituent concentrations shown in Table II of 19.15.17.13 NMAC, and depth to unconfined ground water is 100 feet or less from the base of the disposal pit or trench, then closure must proceed in accordance with subsection A of 19.15.17.13. NMAC.”; and/or

(d) the range of “50 but < 100 feet below trench/ pit” in the first column, third row of Table II, 19.15.17.13 NMAC, Closure Criteria for Wastes Left in Place in Temporary Pits & Burial Trenches, of Exhibit A and Exhibit B of the Notice of Applicant IPANM’s Modifications to Their Petition for Rulemaking Title 19, Chapter 15, Part 17, dated April 27, 2012 and posted on NM OCD’s web site on April 30, 2012.

Conclusions of Law

1. Jalapeno Corporation adopts and incorporates by reference all of the Conclusions of Law of the Independent Petroleum Association of New Mexico (IPANM) filed in Case No. 14785, which was consolidated with Case No. 14784.

2. Jalapeno Corporation adopts and incorporates by reference all of the Conclusions of Law of the New Mexico Oil and Gas Association (NMOGA) filed in the Case No. 14784, which was consolidated with Case No. 14785, except for those Conclusions of Law that would not support:

(a) the phrase “If unconfined ground water is 100 feet or less from the base of the disposal pit or trench,” in 19.15.17.13.B (5) NMAC of Exhibit A and Exhibit B of the Notice of Applicant IPANM’s Modifications to Their Petition for Rulemaking Title 19, Chapter 15, Part 17, dated April 27, 2012 and posted on NM OCD’s web site on April 30, 2012, which is as follows:

“(5) If unconfined ground water is 100 feet or less from the base of the disposal pit or trench, the operator shall collect, at a minimum, a five point composite of the contents of the temporary pit or drying pad/tank associated with a closed loop system to demonstrate that, after the waste is solidified or stabilized with soil or other non-waste material at a ratio of no more than 3:1 soil or other non-waste material to waste, the stabilized waste does not exceed the criteria in Table II of 19.15.17.13 NMAC or a division approved alternative concentration limit.”;

(b) the phrase “or if the depth of [sic] to unconfined ground water is greater than 100 feet from the base of the disposal pit or trench,” in 19.15.17.13.B (6) NMAC of Exhibit A and Exhibit B of the Notice of Applicant IPANM’s Modifications to Their Petition for Rulemaking Title 19, Chapter 15, Part 17, dated April 27, 2012 and posted on NM OCD’s web site on April 30, 2012, which is as follows:


“(6) If the contents from a temporary pit or drying pad and tank associated with a closed loop system do not exceed any of the constituent concentrations shown in Table II of 19.15.17.13 NMAC, or if the depth of [sic] to unconfined ground water is greater than 100 feet from the base of the disposal pit or trench, the operator can either proceed to dispose of wastes in an existing temporary pit or construct a burial trench for disposal of these wastes. Both the temporary pit and the burial trench must be designed and constructed in accordance with the requirements specified in Subsections F and K of 19.15.17.11 NMAC.”;

(c) the phrase “and depth to unconfined ground water is 100 feet or less from the base of the disposal pit or trench,” in 19.15.17.13.B (8) NMAC of Exhibit A and Exhibit B of the Notice of Applicant IPANM’s Modifications to Their Petition for Rulemaking Title 19, Chapter 15, Part 17, dated April 27, 2012 and posted on NM OCD’s web site on April 30, 2012, which is as follows:

“(8) If the contents, after mixing with soil or non-waste material to a maximum ratio of 3:1, from a temporary pit or drying pad/tank associated with a closed-loop system exceed any of the constituent concentrations shown in Table II of 19.15.17.13 NMAC, and depth to unconfined ground water is 100 feet or less from the base of the disposal pit or trench, then closure must proceed in accordance with subsection A of 19.15.17.13. NMAC.”; and/or

(d) the range of “50 but < 100 feet below trench/ pit” in the first column, third row of Table II, 19.15.17.13 NMAC, Closure Criteria for Wastes Left in Place in Temporary Pits & Burial Trenches, of Exhibit A and Exhibit B of the Notice of Applicant IPANM’s Modifications to Their Petition for Rulemaking Title 19, Chapter 15, Part 17, dated April 27, 2012 and posted on NM OCD’s web site on April 30, 2012.

Respectfully submitted,



Patrick A. Fort

Attorney for Jalapeno Corporation

P.O. Box 1608

Albuquerque, NM 87103-1608

(505) 242-2050

Email: patrickfort@msn.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was filed with the Oil Conservation Commission and served upon the following parties on September 17, 2012 by email:

Florene Davidson
Oil Conservation Commission
1220 S. St. Francis Drive
Santa Fe, NM 87505
Email: Florene.Davidson@state.nm.us

William F. Carr
Michael H. Feldewert
Adam G. Rankin
Holland & Hart LLP
P.O. Box 2208
Santa Fe, NM 87504-2208
Phone: (505) 988-4421
Fax: (505) 983-6043
Email: wcarr@hollandhart.com
Email: mfeldewert@hollandhart.com
Email: agrarkin@hollandhart.com
Attorneys for New Mexico Oil & Gas Association

Karin V. Foster
5805 Mariola Place, NE
Albuquerque, NM 87111
Telephone: (505) 238-8385
Email: Fosterassociates2005@yahoo.com
and
Earl E. DeBrine, Jr.
Modrall, Sperling, Roehl, Harris, & Sisk, P.A.
Post Office Box 2168
Albuquerque, New Mexico 87103-2168
Telephone: (505) 848-1800
Facsimile: (505) 848-9710
Email: edebrine@modrall.com
Attorneys for Independent Petroleum Association of New Mexico

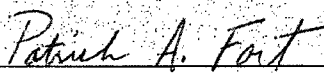
Judith Calman
142 Truman Street N.E., Suite B-1
Albuquerque, NM 87108-1371
Email: judy@nmwild.org
Attorney for New Mexico Wilderness Alliance

Gabrielle A. Gerholt
Assistant General Counsel
Energy, Minerals and Natural Resources Department
1220 S. St. Francis Drive
Santa Fe, NM 87505
(505)-476-3451
Email: Gabrielle.gerholt@state.nm.us
Attorney for the New Mexico Oil Conservation Division

Eric D. Jantz
R. Bruce Frederick
New Mexico Environmental Law Center
1405 Luisa Street, Suite 5
Santa Fe, New Mexico 87505
(505) 989-9022
Email: ejantz@nmelc.org
Email: bfrederick@nmelc.org
Attorney for Oil and Gas Accountability Project

James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043
Email: jamesbruc@aol.com
Attorney for Nearburg Producing Company

Dr. Donald A. Neeper
PO Box 5
Los Alamos, NM 87544
Email: dneeper@earthlink.net
Authorized Representative for New Mexico Citizens for Clean Air & Water


Patrick A. Fort