MINUTES OF THE MEETING
OF THE OIL CONSERVATION COMMISSION
HELD ON MAY 14-18, 2012

The Oil Conservation Commission met at 9 o'clock a.m. on May 14, 2012, in Porter Hall, Wendell Chino Building, 1220 S. St. Francis Drive, Santa Fe, New Mexico.

PRESENT: **GREG BLOOM, Commissioner**
ROBERT BALCH, Commissioner
JAMI BAILEY, Chair

Mark Smith served as the Commission counsel.

The meeting was called to order by Chairman Bailey. The minutes of the April 19, 2012 Commission meeting were approved and adopted.

The Motion for Leave to File Application for Hearing De Novo in Case 14752 was called for final action. Order No. R-13494-B denying the motion was signed and adopted by the Commission.

Case 14784, 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 pits, closed-loop systems, below grade tanks, sumps and other alternative methods related to the foregoing and amending other rules to conforming changes, and Case 14785, the 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 other rules to conforming changes were called and consolidated for purposes of testimony. Appearances were made by William F. Carr in association with Eric Hiser and Michael Feldewert for the New Mexico Oil and Gas Association (NMOGA); Karin Foster for the Independent Petroleum Association of New Mexico (IPANM); Gabrielle Gerholt for the Oil Conservation Division (OCD); Eric Jantz for Earthworks' Oil and Gas Accountability Project (OGAP); Jim Bruce for Nearburg Exploration Company, LLC; Judith Calman for the New Mexico Wilderness Alliance; Hugh Dangler for State Land Commissioner Ray Powell and the State Land Office (SLO); Donald Neeper for the New Mexico Citizens for Clean Air and Water (NMCCA&W); and Patrick Fort for Jalapeno Corporation (Jalapeno).

A Motion to Disqualify and That Commission Members Fully Disclose Information Relating to Their Possible Bias and Lack of Impartiality filed by OGAP and a Motion to Recuse Commissioner Greg Bloom filed by Jalapeno were discussed. Mr. Carr pointed out that this is a rulemaking, not an adjudicatory hearing. He said that prior statements made by any commissioner do not necessarily disqualify that commissioner from sitting and making judgment. He said the hearing is too important to be changing players at this time and asked the Commission to deny the motions. Mr. Fort addressed the SLO representative on the Commission. He said the SLO is now a party of record and since Commissioner Bloom is appointed by the State Land Commissioner, it is a conflict for him to serve on the Commission. He asked that Commissioner Bloom be recused. Mr. Jantz stated that the public is entitled to an impartial Commission to judge these cases. He believes that Commissioner Balch's prior association with IPANM shows the possibility of bias. He said some meetings of the Commission chair with industry representatives indicate that there is a potential for biased decision making, but disclosure

of the substance of these meetings would satisfy OGAP. He asked that Commissioner Balch recuse himself. Ms. Gerholt stated that the decision made in this hearing will have to be based on the evidence presented and can be reviewed. Mr. Bruce supported the statements of the Division counsel and Mr. Carr. Ms. Calman supported the OGAP position. Mr. Dangler agreed with Mr. Carr's statement. Dr. Neeper made no statement. Counsel Smith said the prejudgment of an issue is something that is difficult to show. He identified five types of bias. He said the allegations in the motions do not support the type of bias that would require recusal. With respect to the request for information about the Commission Chair's meetings, the producing of various documents is an IPRA matter and should be requested under IPRA. The Commission unanimously declined to recuse themselves and unanimously voted to deny these motions.

The Chair summarized the conduct of a rulemaking hearing. She outlined the procedure for making public statements. Mr. Jantz addressed the Motion to Take Administrative Notice of the Record in Oil Conservation Commission Case No. 14015. Mr. Carr objected to the incorporation of the prior record. He said this is a new case, only proposing amendments that he believes will be easier to understand, administer and enforce. He said the new Commission must render a decision based on the record of these two cases. Ms. Foster supported NMOGA. Ms. Gerholt pointed out that if the Commission decides to take administrative notice of the previous hearings, it must only take notice of those facts which were not previously disputed. Mr. Bruce supported NMOGA. Ms. Calman supported OGAP. Mr. Dangler opposed including the previous record. Dr. Neeper supported including the previous record. Mr. Fort agreed with NMOGA's and IPANM's position. Counsel Smith said that the decision is discretionary. The Chair denied the motion which would require the other two commissioners to read over 7000 pages of testimony from the previous hearings.

An opening statement was made by Mr. Carr outlining NMOGA's case and correcting the citing of 400 cases of contamination. He said these were permanent pits and this application is only addressing temporary pits. Mr. Jantz made an opening statement summarizing some changes that have occurred since the previous pit rule hearing, and he asked to keep the pit rule intact as it is. Dr. Neeper made an opening statement pointing out some wording in the proposed amendment that he questioned. Ms. Foster, Ms. Gerholt, Ms. Calman, Mr. Dangler, Mr. Bruce and Mr. Fort made no opening statements at this time.

Mr. Carr's first witness was Bruce Gantner, an environmental consultant with ConocoPhillips in Farmington, New Mexico. He explained that NMOGA is seeking to change the areas of the rule that make it more costly to comply with and do not provide additional protection. He told of looking at files within the OCD regarding 400 cases of contamination. He said these were earthen legacy pits, not the ones that are the subject of this hearing. He discussed the definition of temporary pits and low chlorides drilling fluids, the siting criteria for temporary and multi-well fluid management pits and below grade tanks, and changes in the definitions of "continuously flowing" and "significant" watercourses. He discussed the impact to industry of changing to closed-loop systems. He told of increased costs because of current siting rules for below grade tanks, the inability to bury on site, and closed-loop systems. He reviewed the OCD's proposed modifications to NMOGA's application regarding closure and the disposal of waste, including notice and reporting. He explained the definition of "visible" with respect to oil on the surface of a pit and the definition of "floodplain". Ms. Foster, Mr. Jantz, Ms. Gerholt, Mr. Dangler, and Mr. Fort cross-examined the witness, and he was excused until the afternoon.

Public statements were made as follows:

Carl Johnson, a rancher from Tatum, New Mexico, in favor of closed-loop systems and against the proposed amendments to the Pit Rule.

The meeting was recessed for lunch at 11:47 a.m.

The meeting was reconvened for the afternoon session at 1:00 p.m.

Mr. Gantner was recalled for further cross-examination. Dr. Neeper, Commissioner Balch, Commissioner Bloom, and Chairman Bailey cross-examined the witness, and he was excused.

Mr. Feldewert's witness was Ed Hasely, Senior Environmental Manager with Energen Resources, Inc. in Farmington. He described the fluids put into a below grade tank and the lines used to tie into a below grade tank. He explained how a typical below grade tank is used in the field. He said there is confusion as to the distinction between below grade tanks, surface tanks, and sumps. He explained the proposed language change regarding below grade tanks which seeks to go through a registration process rather than a permit process. He said that the proposed rule amendments would standardize the closure plan and provide a new process for siting requirements for all below grade tanks. He explained the addition of an alarm provision. He said that NMOGA is proposing to allow operators to leave a below grade tank in place if it can demonstrate integrity. He said that NMOGA has proposed additional language concerning the transfer of ownership of below grade tanks. He discussed the time frame for closing below grade tanks that are no longer in use. Ms. Foster, Mr. Jantz, Ms. Gerholt, Mr. Dangler, Dr. Neeper, Mr. Fort, Commissioner Bloom, and Commissioner Balch cross-examined the witness, and he was excused.

Ms. Foster announced that the IPANM modifications are nearly the same as NMOGA's and asked that all testimony presented by NMOGA be adopted into IPANM's case. Chairman Bailey told her the cases had already been consolidated.

The next witness was Michael Lane, Senior EH&S Specialist and Environmental Engineer for San Juan Production with WPX Energy (formerly Williams Energy) in Flora Vista, New Mexico. He explained that multi-well fluid management pits would be a centralized facility to service many wells. He said the pit would remain open during the life of a development project. He advised that the constituents of the pits will be essentially water. He explained that one benefit of these pits is that they should be more effective in the way water is stored. He explained how the pits can be used in an overall development plan. He said they will be safer because there will be less trucking and less valving, among other things. He discussed how the pits would be regulated as proposed by NMOGA - like a temporary pit with the size of the pit being the only significant difference. He said they plan to use a Form C-144 for the permitting of these pits to be filed with the appropriate district office. He discussed the closure of the pits, and said that the remediation requirements will be the same as for other pits. He discussed exceptions and variances. The witness was excused for the day.

Chairman Bailey asked for public statements and there were none.

The meeting was recessed at 4:30 p.m.

The meeting was reconvened at 9:00 a.m. on Tuesday, May 15, 2012.

Mr. Lane was recalled for cross-examination. Mr. Jantz, Mr. Dangler, Dr. Neeper, Commissioner Bloom, Commissioner Balch, and Chairman Bailey cross-examined the witness, and he was excused.

Mr. Carr's witness was Jerry Fanning, Jr., Environmental Coordinator in charge of environmental issues in Texas and New Mexico with Yates Petroleum Corporation in Artesia, New Mexico. He said he served as Chair of the NMOGA pit rule committee and as a member of the combined IPANM and NMOGA rule committee. He compared the definitions of "below grade tanks" and "sumps". He recommended a new definition of below grade tanks to include a release capacity of five barrels. He talked of excluding closed loop systems from permitting, because they can be used without permitting. He said that OCD has to be notified of the intent to use a closed loop system. He talked of permitting and registration of temporary pits. He discussed the authorization of standardized plans to be submitted to the district offices. He discussed the design criteria for sumps and closed loop systems. He talked of the operational requirements for notifications of penetration or compromise to liner integrity. He said that maintaining an oil-absorbent boom on the pit is unnecessary. He recommended that inspection of temporary pits be required monthly instead of weekly and to delete the requirement to file a log with the district office when a temporary pit is closed. He said NMOGA is seeking to change the requirement to remove fluids from temporary pits from 30 days to 60 days. He discussed exception and variance provisions of the proposed rule. He reviewed the proposed changes to Division action deadlines for permit approval. The witness was excused for the morning.

The chair asked for public comments and there were none. The meeting recessed for lunch at 11:45 a.m.

The meeting was reconvened at 12:45 p.m. Mr. Fanning was recalled for cross-examination. Ms. Foster, Mr. Jantz, Ms. Gerholt, Mr. Dangler, Dr. Neeper, Commissioner Balch, Commissioner Bloom, and Chairman Bailey cross-examined the witness, and he was excused.

Mr. Hizer's witness was Benjamin Thomas, an independent consultant in Houston, Texas, and an expert in the areas of waste control, toxicology and risk assessment. He said he was asked by NMOGA to evaluate its proposed rule revisions. He discussed the risk of the chemical composition of fluids found in pits. He compared industry's sampling with OCD's sampling of chemicals from drilling and reserve pits. He discussed the various chemicals found in NMOGA's samples, including total petroleum hydrocarbons (TPH) chloride anion, arsenic, barium, and benzene. He said the constituents of concern are TPH, chloride anion, and benzene, and these are the only chemicals that need to be monitored on a routine basis. He discussed the pathways of exposure for these chemicals. He said the proposed rules are protective of human health and the environment. Mr. Jantz, Mr. Dangler, Dr. Neeper, Commissioner Balch, Commissioner Bloom, and Chairman Bailey cross-examined the witness, and he was excused.

The next witness was James Daniel Arthur, an independent consultant in Tulsa, Oklahoma, and an expert in petroleum engineering, planning/engineering analysis, and environmental issues. He said his objectives included looking at the historical pit failures, looking at the current and proposed revisions to the rule and evaluating whether they address the instances of failure, and providing his opinion on whether they are protective of human health and the environment. He presented historical pit statistics in New Mexico. He said that only a small percentage of the pits have impacted groundwater. The witness was excused for the day.

The chair asked for public comments, and there were none. The meeting was recessed at 4:50 p.m.

The meeting was reconvened at 9:00 a.m. on Wednesday, May 16.

Mr. Arthur was recalled for testimony. He explained the difference between "confined" and "unconfined" groundwater. He discussed the definitions of water courses and playa lakes. He described different methods of determining depth to groundwater. He discussed siting provisions for temporary and multi-well fluid management pits. He explained the rationale for changing the depth to groundwater from 50 feet to 25 feet below the pits. He talked of setback provisions from private domestic wells. He explained the reason for substituting tables for text in the closure standards. He discussed design and construction standards for multi-well fluid management pits. He explained the proposal to delete the provisions for a geomembrane cover in the burial of pits. He discussed repairing and replacement standards for pits. He gave reasons for not having oil-absorbent booms on site continually. He discussed integrity testing of below grade tanks. He talked of the leak detection system for multi-well fluid management pits. He outlined the proposed changes to closure provisions. He stated his opinion that the proposed revisions to the pit rule are protective of public health and the environment. He made a comparison of the proposed rule to six other states' rules. Mr. Jantz cross-examined the witness, and he was excused for the morning.

Chairman Bailey asked for public comments, and there were none. The meeting was recessed at 11:55 a.m.

The meeting was reconvened at 12:55 p.m.

Mr. Arthur was recalled for cross-examination. Mr. Dangler, Dr. Neeper, Commissioner Bloom, Commissioner Balch, and Chairman Bailey cross-examined the witness, and he was excused.

The Commission counsel announced that the Commission has taken steps today to properly notice the possible continuance of this hearing to June 20, 2012. He said that the Commission does not take the position that the notice is legally required, only that it is a cautionary measure.

Public sworn statements were accepted as follows:

Robb Hirsch works in the wind and solar energy business, volunteers and is the Executive Director of the New Mexico Climate Change Leadership Institute. He said he believes oil and natural gas can be developed in a more clean and safe manner and is against the proposed revisions to the pit rule.

The meeting was recessed at 5:05 p.m.

The meeting was reconvened at 9:00 a.m. on Thursday, October 17.

Mr. Hiser's witness was Bruce Buchanan, Consultant and Soil Expert in Soil Sciences, in Farmington, New Mexico. He stated that his objective was to show that soils do not migrate to the surface when the site is properly reclaimed. He discussed the makeup of soil. He described saturated and unsaturated flow. He explained that salt moves with water into plants. He discussed a typical semi-arid soil. He talked of diffusion and electrical conductivity in the flow of salts. He said that without an upper liner, nothing in the electrical conductivity would limit the roots of some plants to grow into the pit

contents. He discussed reclamation and its components – topography, topsoil, and vegetation. He summarized the critical elements for success in reclamation: stable topography, cover depth, compaction management, seed mix, and favorable growing season. He addressed the changes being proposed to the rules regarding reclamation. Mr. Jantz cross-examined the witness, and he was excused for the morning.

The Chairman asked for public comments and sworn statements were received as follows:

Mike Sauck, Vice President of West Largo Corp., a small independent oil and gas company in Aztec, New Mexico, stated that the current pit rule has had a negative economic impact on drillers in the San Juan Basin, and he is for the proposed rule changes. Commissioner Bloom cross-examined.

Bill Humphries of Tucumcari, New Mexico, for the existing pit rule.

Phil Bidegan, a rancher from Montoya, New Mexico, against the proposed rule changes. Mr. Jantz and Ms. Foster cross-examined.

James Strickler, State Representative and small independent producer in San Juan County. He said he has experienced no problems with drilling pits contaminating groundwater. Costs of drilling have been increased under the current pit rule, and he is in favor of the proposed rule changes. Dr. Neeper, Mr. Jantz, and Commissioner Bloom cross-examined.

The meeting was recessed at 12:00 p.m.

The meeting was reconvened at 1:00 p.m. Dr. Buchanan was recalled for further cross-examination. Mr. Dangler, Dr. Neeper, Commissioner Bloom, Commissioner Balch, and Chairman Bailey cross-examined the witness, and he was excused.

Mr. Jantz' witness was Mary Ellen Denomy, Certified Public Accountant, Accredited Petroleum Accountant, and Certified Mineral Manager in Parachute, Colorado. She stated she is a consultant for four different oil and gas companies and represents various mineral owners. She testified on the nattional rig count and gave rig statistics for New Mexico and Colorado. She discussed natural gas prices during the years covered in the rig count. She presented natural gas and oil production data from 2007 to current. She discussed the number of wells spudded and permits to drill issued since 2007. She discussed the average well income and costs. She discussed the use of closed loop systems in other states. She talked of EPA regulations regarding green completions. She gave a cost comparison of different waste disposal methods. She discussed earthen pits and the cost of clean-up. Mr. Feldewert and Ms. Foster cross-examined the witness, and she was excused for the day.

Public comments were taken in sworn statements as follows:

Caren Cowan, Executive Director of the New Mexico Cattle Growers' Association in Albuquerque, New Mexico, said the Association has problems with the siting and reclamation requirements, and the use of multi-well fluid management pits, and is against the proposed rule changes. Commissioner Bloom cross-examined.

Sally Ko, a student at St. John's College in Santa Fe, against the proposed rule amendments.

Sophia Pinkens, a student at St. John's College in Santa Fe, against the proposed rule amendments. Commissioner Bloom cross-examined.

Robb Hirsch, Executive Director of the New Mexico Climate Change Leadership Institute, continued his public statement against the proposed rule amendments.

The meeting was recessed at 5:40 p.m.

The meeting was reconvened at 9:00 a.m. on Friday, May 18. Ms. Denomy was recalled for further cross-examination. Commissioner Balch and Commissioner Bloom cross-examined the witness, and she was excused.

Counsel Smith requested that, at the end of this hearing when the record is closed, the Commission Chair request all parties to submit a document that supports with the citation to the record or by argument why each of the proposed modifications should or should not be made, including a closing argument. Parties can cite to various testimony and exhibits that support the changes. He said this will help the Commission in their deliberations and produce a better and more timely order. The Commission will decide on a due date for these documents at a later time.

Dr. Donald Neeper, representing and appearing as a witness for the New Mexico Citizens for Clean Air and Water, in Los Alamos, New Mexico, was called to testify. He stated that New Mexico should not be guided by regulations of other states. He explained his testimony will focus on chlorides because they are probably the best tracer for monitoring the possible transport of other chemicals. He stated his concern is that the proposed rule amendments eliminate some of the chloride limits. He discussed the results of industry and OCD sampling of pits in the NW and SE. He explained osmotic pressure and discussed the chemical effects of salt on plants and soils. He discussed the electrical conductivity of salt solutions and explained the diffusion process. He said that movement of chlorides can be upward, downward, or horizontal. He talked of subsurface sampling to track the vertical movement of chlorides. He presented numerical simulations he used to investigate the transport of chlorides. Dr. Neeper was excused for the morning.

The Chair asked for public comments, and the following sworn statements were accepted:

Irvin Boyd, a ranch owner from Eunice, New Mexico, who makes his living working for a pipeline company, against the proposed rule amendments. Mr. Jantz, Mr. Hiser, Dr. Neeper, Commissioner Bloom, and Commissioner Balch cross-examined.

The meeting was recessed at 12:00 p.m.

The meeting was reconvened at 1:00 p.m. Dr. Neeper was recalled to finish his testimony. He discussed the protection offered by pit liners. He talked of pit slopes and stated that the objective of the current pit rule is to protect the environment. He discussed setbacks and the depth to groundwater provisions. He discussed the definition of a 'confined aquifer." He listed the problems he has with the evaluation and limits sections of the proposed rule changes. Mr. Hiser, Ms. Foster, Mr. Jantz, Ms. Gerholt, Mr. Dangler, Commissioner Balch, Commissioner Bloom, and Chairman Bailey cross-examined the witness, and he was excused.

Public comments were requested and sworn statements were accepted as follows:

Kim Sorvig, a research professor at New Mexico State University in Cerrillos, New Mexico, for keeping the current rule.

Cases 14784 and 14785 were continued to a Commission meeting scheduled for June 20, 2012. Counsel Smith advised that, by rule, the written comment period is five days before the hearing but can be extended by the Commission Chair or the Commission. The Commission unanimously agreed to extend the comment period to June 15, 2012.

The meeting was adjourned at 4:10 p.m.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

JAMI BAILEY, Chair