

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

**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 PITS, CLOSED-LOOP SYSTEMS, BELOW GRADE TANKS, SUMPS AND OTHER ALTERNATIVE METHODS RELATED TO THE FOREGOING AND AMENDING OTHER RULES TO CONFORMING CHANGES, STATEWIDE.**

CASE NO. 14784

**PRE-HEARING STATEMENT  
of  
The New Mexico Citizens for Clean Air & Water**

**NMCCA&W'S REPRESENTATION:**

This prehearing statement is submitted by the New Mexico Citizens for Clean Air & Water, Inc. (NMCCA&W), pursuant to Oil Conservation Division Rule 19.15.3 NMAC.

NMCCA&W intends to offer technical testimony by Dr. Neeper and by Dr. Bartlit, and to cross-examine witnesses at the hearing in this matter.

NMCCA&W will appear pro se. NMCCA&W will be represented by Dr. Donald Neeper and by Dr. John Bartlit, who have been duly authorized by NMCCA&W to act as the organization's representatives in this proceeding. See Exhibit 1 attached hereto. Cross-examination for NMCCA&W may be conducted by either Dr. Bartlit or Dr. Neeper, depending on the circumstances.

**NMCCA&W'S TESTIMONY:**

**WITNESS**

**ESTIMATED TIME OF DIRECT TESTIMONY**

John R. Bartlit  
Donald A. Neeper

45 minutes  
2 1/2 hours

Dr. Bartlit's qualifications are attached hereto as Exhibit 2.  
Dr. Neeper's qualifications are attached hereto as Exhibit 5.

## SYNOPSIS OF TESTIMONY:

### SCIENCE UNDERLYING THE PIT RULE

Donald A. Neeper

This testimony will review portions of the data obtained by OCD and by the industry when sampling pits prior to closure, and by the witness when sampling surface and subsurface soils at closed pits. Particular attention will be paid to chloride concentrations, which can be damaging to biota, and sometimes damaging to the soil structure itself. Data will be presented regarding the salt tolerance of plants, and the effects of salt-induced osmotic pressure.

Testimony will include a description of unsaturated hydrology as it applies to the movement of water and soluble contaminants through the soil. Both the chemical nature of chloride and the osmotic pressure of dissolved salt affect plants. It is therefore expected that salts remaining under pits and drying pads, and salts buried drilling wastes will harm the environment if the proposed concentrations are approved. Both experimental and analytical evidence will be provided to illustrate that chloride can move over distances exceeding ten meters in the soil.

Testimony will oppose most proposed changes to the rule. NMCCA&W will suggest that applications for exceptions and variances should have full and convenient public notice, and that any person should be allowed to fully participate in any relevant proceedings.

### ECONOMICS FOR RULE-MAKING FOR DRILLING PITS

John R. Bartlit

The testimony will present readily available data that describe the economic health of the oil and gas industry in New Mexico and other states at the time of the 2007 hearings on the pit rule, as well as the industry's present economic health. Attention will be given to major factors incorporated in the data and in the industry's economic health. Testimony will include the importance of these data in specific rule-making and in regulatory campaigning generally.

Testimony will describe the distinction between isolated pieces of data and economic data having sufficient context to guide rule-making that is protective of all economic interests. The costs of meeting pit rules will be shown in the context of additional New Mexico business interests.

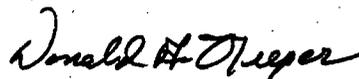
Attention will be given to the hearing protocol for gathering economic data sufficient to protect NM business interests to the greatest extent practicable. Large amounts of requisite data exist, but are not produced, even under cross-examination, in the lengthy hearing process.

Evidence will show that gathering the best, most complete economic data has the same importance to rule-making as having the best, most complete scientific data. Hearing protocol and hearing records reveal vastly more complete scientific data are gathered than economic data. The inevitable effect is rule-making that cannot efficiently protect the oil and gas and all other business interests of the state.

NMCCA&W'S EXHIBITS:

1. NMCCA&W authorization for Dr. John R. Bartlit and Dr. Donald A. Neeper to act as its representatives in this proceeding
2. Resume of Dr. John R. Bartlit
3. Dr. Bartlit's Powerpoint presentation, including three illustrations
4. Resume of Dr. Donald A. Neeper
5. Dr. Neeper's Powerpoint presentation (including approximately 75 illustrations)

Respectfully submitted,



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Donald A. Neeper  
Authorized representative  
New Mexico Citizens for  
Clean Air & Water  
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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 2012, I have caused a copy of this pre-hearing statement in Case 14784 to be delivered to the following persons, by U.S. Mail, by hand delivery, or by electronic means.

Oil Conservation Commission (6 copies)  
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Donald A. Neeper