

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

IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION COMMISSION FOR  
THE PURPOSE OF CONSIDERING:

ORIGINAL

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

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, STATEWIDE

CASE NO: 14785

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
COMMISSIONER HEARING

BEFORE: JAMI BAILEY, Chairman  
DR. ROBERT BALCH, Commissioner  
GREG BLOOM, Commissioner

November 15, 2012  
Santa Fe, New Mexico

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This matter came on for hearing before the New Mexico Oil Conservation Commission, JAMI BAILEY, Chairman, on Thursday, November 15, 2012, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South St. Francis Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: Jacqueline R. Lujan, CCR #91  
Paul Baca Professional Court Reporters  
500 Fourth Street, N.W., Suite 105

A P P E A R A N C E S

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FOR THE OIL CONSERVATION COMMISSION:

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FOR THE NM STATE LAND OFFICE:

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ALSO PRESENT:

Florene Davidson

REPORTER'S CERTIFICATE

11

1                   CHAIRMAN BAILEY: Good morning. This is  
2 the meeting of the Oil Conservation Commission on  
3 Thursday, November the 15th, in Porter Hall, in Santa Fe,  
4 New Mexico.

5                   All three Commissioners are present: Greg  
6 Bloom, representing the Commissioner of Public Lands;  
7 Dr. Robert Balch, who is the designee of the Secretary of  
8 the Energy, Minerals and Natural Resources Department;  
9 and I'm Jami Bailey, the Director of the Oil Conservation  
10 Division. We have Bill Brancard acting as Commission  
11 Counsel today.

12                   We are here to discuss a path forward in Cases  
13 Number 14784 and 14785. We will not be deliberating  
14 these cases. But at the last meeting, we discussed a few  
15 concerns with the rulemaking proposal before us.

16                   First, there was the concern about whether the  
17 rulemaking proposal relied on an earlier version of the  
18 Pit Rule. Second, there was concern about the  
19 contaminant levels on the tables.

20                   In the interim, I've looked through the  
21 proposal and worked with Commission counsel to get a  
22 sense of what actions might be necessary and reasonable  
23 to address these concerns.

24                   First, we determined that the inaccuracies in  
25 the rule proposal were limited to language in the current

1 rule that the proposal proposes to repeal or replace. So  
2 the problem doesn't go to the new language that the  
3 Commission is considering and, therefore, I don't see a  
4 reason to reopen the record on that account or redo the  
5 hearing. But we do need to create a clean version of the  
6 rule proposal, and I feel that is the responsibility of  
7 the petitioners.

8           The issue with the tables is more serious, and  
9 I don't see a way to solve that problem without reopening  
10 the record and allowing additional testimony on that  
11 point. There is not sufficient testimony in the record  
12 about the measurement levels to allow us to correct the  
13 problems without getting more input from the parties.

14           The Commission should have concerns about the  
15 numerical limits in the tables that are part of Section  
16 19.15.17.13. These tables use values that are reported  
17 as either milligrams per kilogram or milligrams per  
18 liter. The table should use one method of reporting for  
19 all values, particularly since the Commission is leaning  
20 towards use of only one table, rather than two.

21           I recommend that since the measurements are of  
22 soils or wastes mixed with soils, that milligrams per  
23 kilograms would be a more appropriate method of  
24 calculation. However, since the record does not support  
25 any conversion of values currently in the proposal, the

1 Commission cannot make such a conversion on its own.

2           Therefore, since these tables are integral to  
3 the closure and reclamation requirements in 19.15.17.13,  
4 and since that section is an essential part of the  
5 rulemaking proposal before the Commission, the Commission  
6 must require that an amended set of tables be submitted  
7 and that testimony must be taken on the amended tables  
8 before the Commission can complete deliberation on the  
9 rulemaking proposal.

10           The Commission has also reviewed the language  
11 that was submitted as part of the petition that is before  
12 us, along with the electronic version of the rule changes  
13 that was submitted, to aid the Commission in  
14 deliberation. And the Commission finds that such  
15 inconsistencies and mistakes in the transcription of  
16 language from the current rule, because this has occurred  
17 only in areas where the current rule language is proposed  
18 to be repealed or amended, we do not find any concerns  
19 with the current rulemaking process, including notice  
20 provided to the public.

21           However, in the goal of having an accurate and  
22 complete record, the Commission will require the  
23 petitioners to file a final version of their rulemaking  
24 proposal that correctly indicates the current rule  
25 language that is proposed to be repealed or modified.

1                   Therefore, I would like the Commission to  
2 discuss and to vote on the following orders: That the  
3 petitioners shall, within 15 days, which is by November  
4 the 29th, provide a revised set of tables, particularly  
5 Table 2, which is what we focused on in our  
6 deliberations, but use a consistent method of reporting  
7 measurements for each value provided in the tables.

8                   I would also like for us to issue the order  
9 that a final version of the rulemaking proposal that  
10 correctly indicates which language in the current rule is  
11 proposed to be repealed or amended, and that we shall  
12 reopen the record in Cases 14784 and 14785 and schedule a  
13 hearing to occur by January 10th, 2013, for the limited  
14 purpose of receiving testimony on the revised set of  
15 tables submitted by the petitioners.

16                   The Commission shall provide public notice.  
17 And after closing the record, the Commission may continue  
18 deliberations and take action in these cases.

19                   Commissioners, I have proposed several  
20 orders -- would you care to discuss them -- concerning  
21 the timeline for submittal of the revised set of tables  
22 and for reopening the record for submitting a final  
23 version of what is to be repealed or amended before we  
24 continue our deliberations.

25                   COMMISSIONER BALCH: I see no problems

1 with the schedule that you outlined. If counsel thinks  
2 that that is the way to proceed, then I have no arguments  
3 with that.

4 CHAIRMAN BAILEY: Commissioner Bloom?

5 COMMISSIONER BLOOM: That seems like a  
6 fair and adequate timeline. I think it would give all  
7 parties time to see what the new tables are, given that  
8 the tables will be made available or at least given to  
9 the OCC by November 29th, and then there would be a good  
10 four to five weeks for people to look at that and then  
11 come back and hear testimony on that. I imagine there  
12 would be again opportunity for cross-examination of that  
13 by the other parties that are involved. So I think that  
14 would work on the issues with the tables.

15 And then with respect to some of the noticing  
16 issues, I believe that having the petitioners file a full  
17 and corrected version would be helpful, as well.

18 CHAIRMAN BAILEY: Shall we take a vote?  
19 Do I hear a vote to --

20 COMMISSIONER BALCH: I'll make a motion to  
21 adopt the orders as proposed.

22 COMMISSIONER BLOOM: I'll second that.

23 CHAIRMAN BAILEY: All those in favor?

24 Then it is so ordered that petitioners, within  
25 15 days, submit a revised set of tables for Section

1 19.15.17.13 that use a consistent method of reporting  
2 measurements for each value provided in the tables, a  
3 final version of the rulemaking proposal that correctly  
4 indicates which language in the current rule is proposed  
5 to be repealed or amended, and we shall set a date for  
6 reopening the record and scheduling a hearing to occur by  
7 January 10th.

8 I happen to have my calendars.

9 COMMISSIONER BLOOM: Madam Chair, were you  
10 considering dates between January 2nd and January 10th  
11 for us to convene?

12 CHAIRMAN BAILEY: From January 3rd to the  
13 10th.

14 COMMISSIONER BALCH: How long are you  
15 anticipating that that hearing might go?

16 CHAIRMAN BAILEY: Maybe a day, maybe two.

17 COMMISSIONER BALCH: I was just wondering  
18 if it might be safer to start on the 9th, just in case.  
19 Because in these hearings, we tend to go long.

20 CHAIRMAN BAILEY: So January 9th is a  
21 Wednesday, and then we could hold our calendar open for  
22 the 9th, 10th and 11th.

23 COMMISSIONER BLOOM: Yes, that would be  
24 fine.

25 COMMISSIONER BALCH: I am clear on those

1 three days.

2 COMMISSIONER BLOOM: I am as well.

3 CHAIRMAN BAILEY: We will reconvene for  
4 these cases on January 9th for the purpose of a hearing  
5 on the limited testimony on the revised set of tables  
6 that will be submitted.

7 COMMISSIONER BLOOM: Madam Chair, can we  
8 consider the calendars of the petitioners and other  
9 parties, as well?

10 CHAIRMAN BAILEY: It would probably be  
11 very helpful to know if the attorneys for the petitioners  
12 or for other interested parties would be available  
13 January 9th, 10th and 11th, if necessary.

14 Do I hear any kind of response from --

15 MS. GERHOLT: Madam Chair, on behalf of  
16 the Oil Conservation Division, I am available on those  
17 dates.

18 MR. FELDEWERT: Madam Chair, on behalf of  
19 the New Mexico Oil and Gas Association, those dates will  
20 work for us, as well.

21 MR. BRANCARD: Is anyone here from the  
22 Environmental Law Center?

23 UNIDENTIFIED FEMALE SPEAKER: He couldn't  
24 come, and I don't know his schedule.

25 MR. BRANCARD: I guess let us know as soon

1 as possible if that's a real big problem, those three  
2 days.

3 COMMISSIONER BLOOM: I think we also need  
4 to hear from IPA and Citizens for Clean Air and Water, as  
5 well.

6 CHAIRMAN BAILEY: And Hugh Dangler, with  
7 the Land Office.

8 There you are, Mr. Dangler.

9 MR. DANGLER: Yes. I was keeping a low  
10 profile, Madam Chair. I will be available for those  
11 dates.

12 CHAIRMAN BAILEY: Thank you. So we need  
13 to hear from Dr. Neeper and Dr. Bartlett and  
14 Mr. Jantz and Ms. Foster.

15 Is there any other business before the  
16 Commission this morning? Then do I hear a motion for us  
17 to adjourn?

18 COMMISSIONER BALCH: I will motion to  
19 adjourn.

20 COMMISSIONER BLOOM: Second.

21 CHAIRMAN BAILEY: All those in favor?

22 All right.

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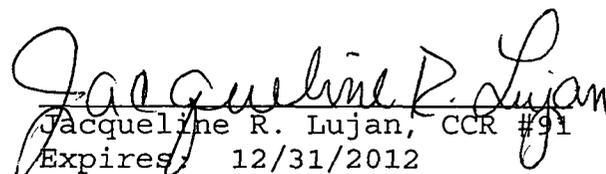
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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO  
HEREBY CERTIFY that on November 15, 2012, proceedings in  
the above captioned case were taken before me and that I  
did report in stenographic shorthand the proceedings set  
forth herein, and the foregoing pages are a true and  
correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by  
nor related to nor contracted with any of the parties or  
attorneys in this case and that I have no interest  
whatsoever in the final disposition of this case in any  
court.

WITNESS MY HAND this 27th day of November,  
2012.

  
Jacqueline R. Lujan, CCR #91  
Expires: 12/31/2012