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**IN THE MATTER OF THE 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 CONFORMING CHANGES STATEWIDE.**

CASE NO. 14015

RESPONSE IN SUPPORT
OF IPANM'S MOTION TO COMPEL

The Industry Committee and the New Mexico Oil and Gas Association submit this response in support of IPANM's Motion to Compel. Although the Division claims to be "confused," Division Response ¶ 2, IPANM's request to the Commission is simple: IPANM seeks proof that the Division complied with the Small Business Regulatory Relief Act in its attempt to impose new Pit Rules. Because it is not clear whether the Division performed its duties under the SBRRA, or even attempted to do so, IPANM's motion should be granted.

The Division claims "[w]hat we're basically trying to do in this proceeding is bring pits within the intention and spirit of...the Federal Resource Conservation and Recovery Act, better known as RCRA." Transcript 10/22/07, at 14:7-10. The Industry Committee and the New Mexico Oil and Gas Association submit that if it is appropriate to bring *New Mexico's* Pit Rules into the "intention and spirit" of federal law, it would also be appropriate to follow the intention and spirit of *New Mexico* Law. The New Mexico SBRRA mandates that "Prior to the adoption of a proposed rule that the agency *deems to have an adverse effect* on small business, the agency *shall* consider regulatory methods that accomplish the objectives of the applicable law while minimizing the adverse effects on small business." NMSA 1978, § 14-4A-4(B) (2005)

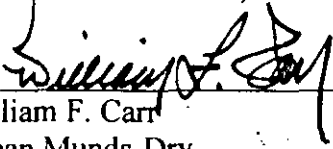
(emphasis added). This provision (1) presupposes that the Division has examined and made a determination regarding the effect of the new Pit Rules on small business, and (2) requires that the Division consider the least intrusive means of realizing the objectives of the new Pit Rules. There is no evidence the Division has satisfied either requirement.

In fact, it appears the Division ignored its duties under the SBRRA in the rulemaking process for the new Pit Rules. The Division represented to the Small Business Regulatory Advisory Commission that it “does not believe that the new rule will have a disproportionately adverse effect on small business,” Division Response, Exhibit C, but it has not provided any evidence to support that assertion. The Division admits “the only documents that the Division has provided to the Small Business Advisory Committee were an email notifications [sic], copy of the public notice of hearing, and copies of the proposed new rule and of proposed conforming amendments to other rules.” Division Response ¶ 4. It also admits it did not engage in an economic analysis of the effect the proposed amendments will have on small business. *See id.* ¶ 7. The Division cannot conclude the new Pit Rules will not adversely effect small business when it has not conducted an investigation of the effects. This a direct violation of the SBRRA.

Moreover, this demonstrates that the Division’s new Pit Rules are not within the “intention and spirit” of New Mexico law. Before the Division is permitted to change to New Mexico law to address federal concerns, it should be compelled to comply with existing New Mexico law. Therefore, IPANM’s motion to compel the Division to prove it acted in accordance with the SBRAA in proposing the new Pit Rules should be granted.

Dated November 2, 2007.

Respectfully submitted,
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CERTIFICATE OF SERVICE

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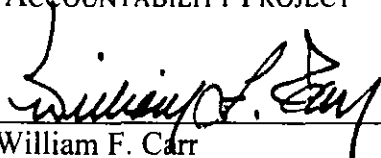
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