XTO ENERGY

October 22, 2007

Ms. Florene Davidson, Commission Clerk
New Mexico Oil Conservation Commission
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

RE: Comments on Proposed Rule Changes
Case No. 14015 - Adoption of New Rule Governing Pits, Below Grade Tanks, Closed Loop Systems and Other Alternative Methods

Dear members of the Oil Conservation Commission:

XTO Energy Inc. (XTO) submits these written comments to the New Mexico Oil Conservation Commission (Commission) regarding the proposal to repeal existing Rule 50 (19.15.17.2.50 NMAC) and replace it with the new rule proposed as 19.15.17 NMAC as published on the New Mexico Oil Conservation Division's (NMOCD) website on September 21, 2007. XTO appreciates the opportunity to convey our concerns with the proposed new rule to the Commission and offer suggestions that are important to our Company.

XTO, as a member of the New Mexico Oil and Gas Association (NMOGA) and the New Mexico Industry Committee (NMIC), supports the comments submitted jointly by these groups and presents the following comments on the proposed rule individually:

1. XTO proposes alternative language to the siting requirements relating to ephemeral watercourses in 19.15.17.10A(1)(b). A watercourse in 19.15.1.7.W(8) is defined as: "Watercourse shall mean a river, creek, arroyo, canyon, draw or wash or other channel having definite banks and bed with visible evidence of the occasional flow of water." The occasional flow of water has been interpreted as anything that can, will or has flowed water and can be very restrictive.

XTO supports the NMIC proposed alternative language. XTO also proposes another alternative for the Commission to consider to the siting requirement in 19.15.17.10A(1): (b) within 300 feet of a continuously flowing watercourse or 200 feet from ~~a watercourse; a lakebed of a continuously flowing watercourse (perennial stream)~~, lakebed, sinkhole or playa lake (measured from the ordinary high water mark), unless the appropriate division district office approves an alternative distance based upon the operator's demonstration that surface and ground water will be protected.

The alternate language proposed by XTO will further define or clarify this siting requirement. In New Mexico an ephemeral drainage has often been considered a watercourse and may be observed as close as ten feet apart in some areas making this siting criterion very difficult to meet. A "watercourse" often fans out at the bottom of a slope and does not lead to a perennial stream. The US Army Corps of Engineers has excluded this type of drainage from jurisdictional determinations when the drainage does not lead to a navigable water. The alternate language proposed by XTO reduces the subjectivity and provides additional guidance to this requirement.

2. XTO would request that if revision to the siting requirements in NMAC 19.15.17.10A(1)(b) were considered, this clarification would be consistent with all siting requirements in Part 17, including but not limited to 19.15.17.10A(3)(a) associated with the siting of excavated material and 19.15.17.13F(1)(b) associated with on-site closure methods.

3. The closure requirement in 19.15.17.13F(1)(a) where the operator must demonstrate that a division approved disposal facility is not within a 100 mile radius for an on-site closure method to be considered is a great concern to XTO. This may require the operator to "dig and haul" at a great expense or may cause the economics on a drill well to drop below an acceptable level, causing drilling capital to be spent in other states. The data held by XTO on the contents of our drilling and reserve pits indicate that the pit contents would not constitute harm to human health or the environment. Once these pits are treated to allow for geotechnical stability for closure, the chloride content is typically less than 500 mg/kg and is suitable for successful revegetation. Regardless of this data and current drilling pit closure practices, the deep trench burial method provides even greater protection to the environment yet is an approach that the NMOCD seems to discourage or eliminate with the multiplicity of conditions that would have to be met for an operator to consider this method.

The US EPA granted the oil and gas industry an exemption from regulation under RCRA Subtitle C for exploration and production wastes such as drilling fluids and produced water after extensive studies and thousands of samples were analyzed. The US EPA recognized that subjecting billions of barrels of non-hazardous waste to strict hazardous waste regulations would create a severe impact on the oil and gas industry and production in the United States.

Even though these wastes are exempt from RCRA Subtitle C, they are still regulated by RCRA Subtitle D solid waste regulations and state programs. A solid waste landfill within a 100 mile radius of a drilling location in the northwest will require operators to sample, characterize and profile our pit contents then go through the approval process by the landfill management company. These

landfills do not have the capability to stabilize the waste to pass a paint filter test, which means the operator will have to perform this activity in the field, increasing the opportunity for spills and releases. If the operators continue to drill new wells given the increased "dig and haul" requirements, there will be significant volumes of mud, rock, and soil that will be disposed of in a finite cell or area intended for other use (municipal solid waste). It seems a waste of valuable landfill space to fill it with mud, rock and soil. XTO reiterates our support for the NMIC comment to remove the language associated with this condition in 19.15.17.13.F(1)(a) NMAC in its entirety.

4. XTO strongly disagrees with the closure requirement in 19.15.17.13F(2)(d) applying WQCC Section 3103 water quality standards for human health to stabilized cuttings, rock and soil contained within a linear low density polyethylene liner where groundwater is 50 feet below ground surface or greater and the other siting requirements are met.

5. The exceptions in 19.15.17.15A(1) and B(1) requiring the operator to demonstrate that on site closure (deep trench or cementacious stabilization) is equivalent or better than dig and haul is not necessary. If the siting criteria are met, the drilling pit contents demonstrate no substantiated harm to the environment, that should be sufficiently protective of human health and the environment.

6. The exceptions in 19.15.17.15A(2) requiring public notice should not be required if we have made surface owner notification(s), meet the siting requirements, and obtain division approval. The oil and gas industry in New Mexico operates in an environment where various groups perceive unproven and unsupported impacts to human health and the environment. A 30 day comment period would be fraught with objection and prevent XTO from proceeding through the permitting process.

This proposed rule will result in the loss of recoverable reserves from the State of New Mexico, which will affect royalty owners and constitute a waste in natural resources. It appears the intent of this proposed rule is to block the oil and gas industry from drilling with well designed, lined pits. Even if the operator can afford to "dig and haul" the pit, the operational and closure requirements associated with this method are so restrictive, time and labor intensive, and dependent upon factors beyond our control (profiling and approvals from disposal sites) that many wells would not be economical to drill.

The Commission has assumed that current practices associated with drilling and reserve pits are causing impacts to ground water. XTO is not aware of any drilling or reserve pits in the San Juan Basin that have impacted ground water; it

is our understanding that isolated occurrences in the Permian Basin have resulted in impacts to ground or surface waters primarily due to improper siting of the pits. There are, however, cases of groundwater impacts across New Mexico associated with historical practices where unlined earthen production pits were used. Many of these ground water cases have either been successfully remediated and closed by the NMOCD or they are being addressed and continuously monitored by operators. XTO certainly agrees that unlined, earthen production pits should no longer be used and should be closed and remediated. XTO urges the Commission to ensure our industry is not being subjected to rules with potentially devastating consequences based on historic problems that have been addressed.

Finally, in 2004 the NMOCD issued rules that eliminated tanks where all portions of the tank side walls could be visually inspected from the definition of a below grade tank. In response to that rule, XTO and many other operators in the northwest part of New Mexico built what is referred to as cellars or vaults around "pit tanks" used in natural gas production. The "pit tanks" used by XTO are set below the elevation of the well pad surface to allow for gravity flow from the production equipment. The recessed tanks also reduce freezing of the pipes and valves that occur when elbows are placed in the drain lines. The "pit tanks" are typically 12 feet in diameter, six feet in depth, and constructed with ¼ inch steel bottoms, 3/16 inch steel sides and covered with expanded metal to prevent birds from entering the tank. The tanks are placed on a gravel base and the walls surrounding the tank are reinforced with 2 by 6 inch wooden boards that create the "cellar" and allow for inspection of the tank side walls. XTO has spent more than $4,000,000 complying with the 2004 rule and strongly believes the objective is successfully being met. The new definition in NMAC 19.15.1.7B(5) will bring the "pit tanks" into this regulation as a below grade tank, subjecting these steel tanks to siting and operational requirements that will only increase the burden on the operator and not further protect human health or the environment. Again, XTO reiterates our support of the NMIC proposed alternative language defining a below grade tank as a vessel where sidewalls are covered with soil and the condition and integrity of the tank may not be inspected. We are unaware of any groundwater impacts from "pit tanks" with visible side walls to justify the addition of expensive leak detection systems. Moreover, XTO Energy, the 8th largest oil and gas operator in New Mexico in 2006, has over 1,600 of these tanks. The burden on OCD staff and operators to comply with the administrative requirements alone would be substantial for little or no additional environmental protection.

Again, XTO appreciates the opportunity to submit our concerns and comments in written format. We plead with the Commission to consider these concerns and

respond with a rule that reflects sound science, protecting the environment based on actual threat to the environment and not on emotions or perception.

Sincerely,

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