

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

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. 14-25

MOTION TO COMPEL

COME NOW the Independent Petroleum Association of New Mexico a party of record in this case, hereinafter referred to as "IPANM," and pursuant to §14-4A NMSA 1978, The Small Business Regulatory Relief Act, hereinafter referred to as "SBRRA", request that the Commission compel the New Mexico Oil Conservation Division ("Division") to immediately produce all documentation provided to the Small Business Advisory Commission pursuant to SBRRA and in support of this Motion, state:

1. On September 21 2007, the New Mexico Oil Conservation Division ("Division") filed an Application for Rulemaking seeking an order repealing Rule 50 of the General Rules and Regulations of the Division and adopting proposed new rules governing pits, below grade tanks, closed loop systems and other alternative methods to the foregoing. The proposed amendments, if adopted, would ban all unlined pits absent a special exception, adopt new requirements for the closure of pits and below-grade tanks, otherwise substantially change the Commission's existing requirements concerning the permitting, design, construction and operation of pits and below-grade tanks (and operation of sumps) used in oil and gas operations, and require the permitting of, and prescribe rules concerning design, construction and closure of closed loop systems or alternative methods that may be proposed for use in lieu of pits or below-grade tanks. In addition, the Division proposes conforming changes to rules 7[19.15.1.7 NMAC], 21[19.15.1.21 NMAC], 52 [19.15.2.52 NMAC], 114 [19.15.3.114 NMAC], 202 [19.15.4.202NMAC] and 1103 [19.15 .13.1103 NMAC]. For the purpose of this motion, these rules will hereinafter be referred

to as the “Pit Rules.”

2. The Division’s first draft of the Pit Rules was released in March 2006 after an industry presentation to the OCD and subsequently all parties to the case, including IPANM, issued comments. No action was taken on the public comments until an additional draft and stakeholder meetings were held in January 2007. In March 2007, the OCD announced that a Governor appointed taskforce was convened to advise the OCD on the complex issues involved in the Pit Rule.

3. The Task Force met during April, May and June 2007 and, on July 10, 2007 released a report in which it identified those items on which the Task Force had reached agreement and other issues where there was no consensus. At no time during the taskforce meetings, was the issue of cost or economic viability or impact on small businesses formally discussed. Further, although members of the Taskforce included OCD staff members, no comment was made on the requirements of SBRRA to create alternative regulations for small business entities affected by the proposed regulation changes.

4. On September 21, 2007, two and half months after the Taskforce convened, the Division filed its notice of rulemaking and released the draft that will be presented to the Commission when this application goes to hearing.

5. Principles of fairness dictate that procedural due process be afforded whenever a government decision threatens to deprive an individual of a fundamental liberty or property interest. *State of New Mexico, ex rel. Children, Youth & Families Department v. Maria C.*, 136 N.M. 53, (N.M. Ct. App. 2004).

6. The essence of procedural due process is notice and an “opportunity to be heard at a meaningful time and in a meaningful manner.” *State ex rel. Children, Youth & Families Dep’t v. Mafin M.*, 133 N.M. 827, 70 P.3d 1266 (N.M. 2003) (emphasis added). Due process does not require the same form of notice in all contexts; instead, the notice “should be appropriate to the

nature of the case.” *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 313 (1950). Notice must be “reasonably calculated under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Id.* at 314 (emphasis added); see also *City of Albuquerque v Juarez*, 93 N.M. 188, 190, 598 P.2d 650, 652 (Ct. App. 1979).

7. Due process principles and legislative statutory authority require that OCD promptly provide IPANM with all documentation it referenced to make the determination of “no Economic impact’ on small businesses as a result of the implementation of the proposed Pit Rule. *See, The Small Business Regulatory Relief Act 14-4A NMSA 1978.*

8. At the time of the creation of the Small business Regulatory Relief Act, the Legislature stated that “the process by which state rules are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, *to examine the effect of proposed and existing rules on such businesses* and to review the continued need for existing rule” 14-4A-2(J *emphasis added*).

9. The SBRRA mandates all state agencies to consider whether a “proposed rule has an adverse effect of small businesses” and second, to “consider regulatory methods that accomplish the objectives of the applicable law while minimizing the adverse effects on small business”. 14-4A-4(B).

10. The legislature also unequivocally stated that if an agency changed a rule, the agency **must also** consider the following in light of negative impacts on small businesses, “(1) the continued need for the rule; (2) the nature of complaints or comments received from the public concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates or conflicts with other federal, state and local government rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions or other factors have changed in the topical area affected by the rule.” 14-4A-6(C)(1-5) *emphasis added*.

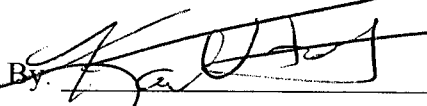
11. It has been estimated by industry watch groups that the excavation of a 'temporary' pit and transport of its contents and liners will result in approximately 25 million additional driving miles per year – at a cost of 3.5 million gallons of diesel fuel and an increase in drilling costs of more than 10% per well.¹ It is clearly evident that this proposed rule will have not only severe economic impact on small businesses but a very high environmental and societal cost to place hundreds of trucks on the roads to haul dirt and liners - all concepts which are directly contrary to Governor Richardson's strong positions on Climate Change.

12. Because of the impact that the new Pit Rules will have on the oil and gas industry in New Mexico, as the representative of small industry entities, we are making a formal request for immediate copies of all documentation, modeling and analysis used to meet all the mandates of the Small Business Regulatory Relief Act.

13. Without the requested immediate receipt the statutorily required information from the NMOCD, IPANM will be denied the opportunity to participate in the hearing on the proposed Pit rules and to present their objections to the proposal in a meaningful manner which will have a tremendous negative economic impact on the Oil and Gas Industry in New Mexico.

WHEREFORE, IPANM moves the Oil Conservation Commission for an Order compelling the NMOCD to immediately produce all documentation in support of statutory requirements of the Small Business Regulatory Relief Act §14-4A NMSAS 1978.

Respectfully submitted,
Chatham Partners, Inc.

By: 
Karin V. Foster

¹ See, Collins, G. for Citizens Alliance for Responsible Energy, "It's the pits" comments on NM proposed drilling pit closure rule, March 2006, pg. 2.

ATTORNEY FOR THE INDEPENDENT
PETROLEUM ASSOCIATION OF NEW
MEXICO

CERTIFICATE OF SERVICE

I hereby certify that on this 22ND day of October 2007, I have caused a copy of the IPANM's Motion for Continuance in the above-captioned case to be delivered to the following:

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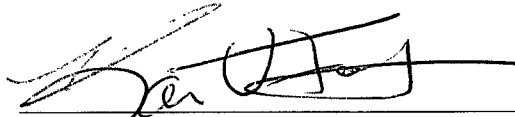
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A handwritten signature in black ink, appearing to read 'Karin V. Foster', is written over a horizontal line.

By: Karin V. Foster