

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

RECEIVED

MAY 29 11 3 14

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 MAKE CONFORMING CHANGES; STATEWIDE.

CASE NO. 14015

**THE NEW MEXICO OIL CONSERVATION DIVISION'S
RESPONSE TO
REQUEST FOR ALTERNATIVE DISPUTE RESOLUTION**

1. The New Mexico Oil Conservation Division (the Division) responds to the Request for Alternative Dispute Resolution filed by IPANM as follows:
2. IPANM's motion is styled "*Request* for Alternative Dispute Resolution." [emphasis added]. However, the concluding paragraph of the motion asks for an order "*compelling* the NMOCD to *discontinue (sic?)* Case No. 14015 to conduct alternate dispute resolution pursuant to Section 12-8A NMSA 1978." [emphasis added] The Division is accordingly confused as to whether IPANM is requesting or seeking to compel alternative dispute resolution.
3. To the extent that IPANM seeks to *compel* alternative dispute resolution, the Division responds that the cited statute expressly makes participation in such activity voluntary. It says:

Alternative dispute resolution procedures are voluntary . . . Either party may decline to participate in a requested or offered alternative dispute resolution activity. NMSA 1978 Section 12-8A-3.A

This statute provides no authority for entry of an order to compel the Division to participate in any activity.

4. To the extent that IPANM *requests* further alternative dispute resolution, the Division respectfully declines to participate, as Section 12-8A-3.A expressly authorizes it to do.

5. The Division invested nine months (December 2006 through August 2007) in soliciting, receiving and evaluating public comments on its proposed pit rule, and in seeking to reach consensus among affected stakeholders through the medium of the Governor's Task Force. During this process, the parties reached consensus on an extremely large number of provisions which are incorporated in the proposed rule. The provisions of the proposed rule that do not represent task force consensus concern matters that were extensively discussed with the Task Force, and on which no consensus emerged.

6. In light of this extensive consensus building process, the Division believes that further alternative dispute resolution activities would only result in delay.

The Division accordingly asks the Commission to deny IPANM's request.

RESPECTFULLY SUBMITTED,



David K. Brooks
Assistant General Counsel
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Attorney for The New Mexico Oil
Conservation Division

Certificate of Service

I, David K. Brooks, counsel for the New Mexico Oil Conservation Division in this matter, hereby certify that a copy of the above and foregoing pleading was mailed on October 22, 2007, to each of the following counsel. Copies were additionally sent by email or FAX to the email addresses and FAX numbers shown.:



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Independent Petroleum Ass'n of New Mexico
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Mr. Eric Hiser
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Mr. Gregory D. Huffaker
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STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

RECEIVED
JUL 29 PM 3:14

**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 MAKE CONFORMING
CHANGES; STATEWIDE.**

CASE NO. 14015

**THE NEW MEXICO OIL CONSERVATION DIVISION'S
RESPONSE TO IPANM'S MOTION TO COMPEL**

1. The New Mexico Oil Conservation Division (the Division) responds to the Motion to Compel filed by IPANM as follows:

2. IPANM's motion is confusing. The Division is unsure what documents or information IPANM is seeking. The motion seems to include four different descriptions of what is sought, found respectively (a) in the introductory paragraph; (b) in Paragraph 7; (c) in Paragraph 12; and (d) in the concluding paragraph. The Division will respond to each of these requests separately.

Response to IPANM's Opening Paragraph:

3. The opening paragraphs asks that the Division produce "all documentation provided to the Small Business Advisory Commission pursuant to SBRRA [the Small Business Regulatory Relief Act]."

4. The Division does not object to this request. However, the only documents that the Division has provided to the Small Business Advisory Commission were an email notifications, copy of the public notice of hearing, and copies of the proposed new rule and of proposed

conforming amendments to other rules. Copies of the email notifications are attached to this response, as Exhibits A, B and C, respectively. We believe IPANM already has copies of the proposed new rule and proposed rule amendments.

5. By way of explanation of the attached Exhibits A, B and C, the Division states that it initially sent notifications to John Tull, former general counsel of the Economic Development Department. At the time these notices were sent, the Division was not mindful of the fact that Mr. Tull is no longer employed in that capacity. Exhibits A and B are copies of notifications sent to Mr. Tull on September 21, 2007 and October 11, 2007, respectively. Exhibit C is a copy of notification sent on October 22, 2007, to Kelly O'Donnell, who, according to the Division's understanding, is now the person authorized to receive such notices on behalf of the Small Business Advisory Commission.

Response to IPANM's Paragraph 7:

6. Paragraph 7 asks for "all documentation it [the Division] referenced to make the determination of 'no Economic impact' on small business as a result of the implementation of the proposed Pit Rule."

7. No such documentation exists for the simple reasons that the Division did not make, and is not required to make, any such determination. Indeed, by giving notice as shown by Exhibit C, the agency has acted as it is directed to act if the proposed rule "may have an adverse impact on small business."

Response to IPANM's Paragraph 12:

8. Paragraph 12 asks for "copies of all documentation, modeling and analysis used to meet all the mandates of the Small Business Regulatory Relief Act."

9. The only mandates of the Small Business Regulatory Relief Act that apply to this proceeding are those set forth in NMSA 1978 Section 14-4A-4. (See Paragraph 11 below.). Section 14-4A-4.A requires notice to the Small Business Regulatory Advisory Commission. The only documents used in complying with that requirement are Exhibits A, B and C attached hereto. Section 14-4A-4.B directs an agency to consider alternatives "prior to adoption of a proposed rule." The agency that has the power to adopt the rule proposed in this case is the Commission. Thus this mandate is addressed to the Commission, not to the Division. To the extent that IPANM seeks copies of documents that the Division will provide to the Commission to facilitate its compliance with mandates of the Small Business Regulatory Relief Act, the Division responds that such documents are included among the exhibits that the Division will offer in evidence at the hearing in this case, and that are being filed with the Pre-Hearing Statement that the Division is filing contemporaneously herewith.

Response to IPANM's Concluding Paragraph:

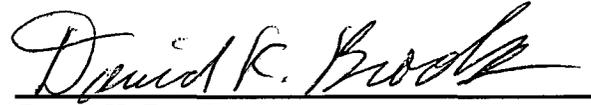
10. IPANM's concluding paragraph asks for "all documentation in support of statutory requirements of the Small Business Regulatory Relief Act." The Division does not understand this request.

Special Objection to IPANM's Paragraph 10.

11. The Division objects to IPANM's Paragraph 10 in that it seeks to focus the attention of the Commission erroneously on a statutory provision that has no application to this proceeding. The statutory language quoted in IPANM's Paragraph 10 is a part of Section 14-4A-6, a section which deals entirely and only with an agency's periodic review of its *existing* rules, and is clearly inapplicable to the rulemaking process.

The Division accordingly asks the Commission to deny IPANM's Motion to Compel.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, reading "David K. Brooks". The signature is written in a cursive style with a horizontal line underneath it.

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Attorney for The New Mexico Oil
Conservation Division

Certificate of Service

I, David K. Brooks, counsel for the New Mexico Oil Conservation Division in this matter, hereby certify that a copy of the above and foregoing pleading was mailed on October 22, 2007, to each of the following counsel. Copies were additionally sent by email or FAX to the email addresses and FAX numbers shown.:



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Mr. Eric Hiser
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Brooks, David K., EMNRD

From: Duran-Saenz, Theresa, EMNRD

Sent: Monday, September 24, 2007 1:05 PM

To: (baizelb@earthlink.net); (rrmiles@cableone.net); (read@lookingglass.net); (myoung@mewbourne.com); (land@marbob.com); (jbyrom@djsimmonsinc.com); (dgirand@mackenergycorp.com); (csecows@aol.com); (bganter@br-inc.com); (aaalexandcer@br-inc.com); (WDeedler@aol.com); (walker@kfoc.net); (sallyk@forl.com); (rhodge@northstarop.com); (namebored@aol.com); (llrwb@austin.rr.com); (lcraysf@earthlink.net); (kahlinaa@ypcnm.com); (jdewbre@swm.com); (ddrdmidland@aol.com); (ccw@spinn.net); (BRANA1223@aol.com); (ballen@sesi-nm.com); Perrin, Charlie, EMNRD; (cheryls@ypcnm.com); (chris.wyatt@bp.com); Williams, Chris, EMNRD; (ccarter@pvtnetworks.net); (dan_mccright@eogresources.com); (dboneau@pvtnetworks.net); Catanach, David, EMNRD; (seligman@nmoga.org); (dexterh@forl.com); (DonAdams@hess.com); (dneeper@earthlink.net); (ekendrick@montand.com); elizabeth_bush@oxy.com; Elizabeth Taylor (etaylor@wtmlawfirm.com); (huffaker@handmlc.com); (Shall@mstLAW.com); (hawkinj2@bp.com); (jbailey@slo.state.nm.us); (jan.wooldridge@divn.com); (jtportwood@mindspring.com); JD Steven M. Feisal (sfeisal@chkenegy.com); JD Steven M. Feisal (Business Fax); (jlevine@pnm.com); Jolene McCaleb (jmccaleb@wtmlawfirm.com); (kristen.howell@williams.com); (gandy2@leaco.net); (fieseler@pogoproducing.com); (markm@forl.com); (mjc@gallegoslawfirm.net); Altomare, Mikal, EMNRD; (omundsdry@hollandhart.com); (ppearce@br-inc.com); (rtupman@hess.com); Ezeanyim, Richard, EMNRD; (Rick_Foppiano@oxy.com); (bwatson@trailnet.com); (shane@spearbrothersgroup.com); (boyds_ern@zianet.com); Swazo, Sonny, EMNRD; (stan.phillips@apachecorp.com); (jbemis@slo.state.nm.us); Hayden, Steven, EMNRD; (syahney@heyco.org); Gum, Tim, EMNRD; (tyrafell@duganproduction.com); Barton, Van, EMNRD; (wcarr@hollandhart.com); (yolanda.perez@conocophillips.com)

Cc: Davidson, Florene, EMNRD; Brooks, David K., EMNRD

Subject: Pit Rule - Notice of Hearing

Follow Up Flag: Follow up

Flag Status: Completed

Attachments: 2007 19 15 17 Pit Rule 9-20-07.doc; 2007 9-24 Application Pit Rule 0907.doc; 2007 9-24 Notice of Hearing - Alb Journal.doc; 2007 19 15 1 Amendments for Pit Rule.doc; 2007 19 15 2 52 Pit Rule 092007.doc; 2007 19 15 3 114 Pit Rule 092007.doc; 2007 19 15 4 202 Pit Rule 092007.doc; 2007 19 15 13 1103 Pit Rule 092007.doc

Exhibit

A

Case No. 14015: 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 Make Conforming Changes, Statewide.

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the Commission will conduct a public hearing at 9:00 A.M. on Monday, October 22, 2007, in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, concerning the Oil Conservation Division's proposal to repeal Rule 50 [9.15.17.2.50 NMAC] (concerning pits and below-grade tanks) and replace it with a proposed new rule to be codified as 19.15.17 NMAC. The proposed new rule will 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, operation and closure of, closed loop systems or other 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 [19.15.4.202 NMAC] and 1103 [19.15.13.1103 NMAC]. Copies of the text of the proposed rules are available from Division Administrator Florene Davidson at (505)-476-3458 or from the Division's web site at <http://www.emnrd.state.nm.us/ocd/whatsnew.htm>. Proposals for alternatives to the proposed rule must be received by the division no later than 5:00 P.M. on Friday, October 5, 2007. Written comments on the proposed new rule must be received no later than 5:00 P.M. on Monday, October 15, 2007. Persons intending to offer technical testimony at the hearing must file a Pre-hearing Statement (six copies) conforming to the requirements of 19.15.14.1204 NMAC, including six copies of all exhibits the person will offer in evidence at the hearing, no later than Monday, October 15, 2007. Proposed alternatives and written comments may be hand-delivered or mailed to Ms. Davidson at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at (505)-476-3462. Pre-hearing statements must be hand-delivered or mailed to the Ms. Davidson at the above address. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ms. Davidson at (505)-476-3458 or through the New Mexico Relay Network (1-800-659-1779) as soon as possible.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 24 day of September, 2007.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION
Mark E. Fesmire, P.E.
Chair, Oil Conservation Commission

Brooks, David K., EMNRD

From: Duran-Saenz, Theresa, EMNRD
Sent: Thursday, October 11, 2007 1:05 PM
To: (baizelb@earthlink.net); (rrmiles@cableone.net); (read@lookingglass.net);
(myoung@mewbourne.com); (land@marbob.com); (jbyrom@djsimmonsinc.com);
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Steven, EMNRD; (syahney@heyco.org); Gum, Tim, EMNRD;
(tyrafeil@duganproduction.com); Barton, Van, EMNRD; (wcarr@hollandhart.com);
(yolanda.perez@conocophillips.com)

Cc: Brooks, David K., EMNRD; Davidson, Florene, EMNRD
Subject: November 5, 2007 Proposed Pit Rule Public Hearing Notice
Attachments: 2007 10-11 Notice of Hearing - Web.doc; 2007 10-11 Notice of Hearing - Web.pdf

Exhibit B

10/24/2007

CS-10001 # of rule: 10010

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

Case No. 14015: 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 Make Conforming Changes, Statewide.

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the Commission will conduct a public hearing concerning the Oil Conservation Division's proposal to repeal Rule 50 [9.15.17.2.50 NMAC] (concerning pits and below-grade tanks) and replace it with a proposed new rule to be codified as 19.15.17 NMAC. The hearing will commence at 9:00 A.M. on Monday, October 22, 2007, in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, at which time parties may make opening statements. The hearing will then be adjourned until Monday, November 5, 2007, at 9:00 A.M. at the same location, at which time presentation of evidence will begin. The proposed new rule will 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, operation and closure of, closed loop systems or other 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 [19.15.4.202 NMAC] and 1103 [19.15.13.1103 NMAC]. Copies of the text of the proposed rules are available from Division Administrator Florene Davidson at (505)-476-3458 or from the Division's web site at <http://www.emnrd.state.nm.us/ocd/whatsnew.htm>. Proposals for alternatives to the proposed rule must be received by the division no later than 5:00 P.M. on Monday, October 22, 2007. Written comments on the proposed new rule must be received no later than 5:00 P.M. on Monday, October 22, 2007. Persons intending to offer technical testimony at the hearing must file a Pre-hearing Statement (six copies) conforming to the requirements of 19.15.14.1204 NMAC, including six copies of all exhibits the person will offer in evidence at the hearing, no later than Monday, October 29, 2007. Proposed alternatives and written comments may be hand-delivered or mailed to Ms. Davidson at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at (505)-476-3462. Pre-hearing statements must be hand-delivered or mailed to the Ms. Davidson at the above address. Persons who file a pre-hearing statement on or before October 29 may present technical testimony at the hearing commencing on November 5, whether or not they have appeared at the October 22 hearing, and persons who appear at the November 5 hearing may make oral statements and offer non-technical testimony whether or not they have appeared at the October 22 hearing. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ms. Davidson at (505)-476-3458 or through the New Mexico Relay Network (1-800-659-1779) as soon as possible.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 11 day of October, 2007.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

Mark E. Fesmire, P.E.
Chair, Oil Conservation Commission

Brooks, David K., EMNRD

From: Brooks, David K., EMNRD
Sent: Monday, October 22, 2007 10:37 AM
To: O'Donnell, Kelly, EDD
Subject: Notice of Proposed Rulemaking - Small Business Regulatory Advisory Commission
Attachments: Notice of Hearing - paper -1105.doc; 19 15 17 Pit Rule 9-20-07.doc; 19 15 1_Amendments for Pit Rule.doc; 19 15 3 114 Pit Rule 092007.doc; 19 15 4 202 Pit Rule 092007.doc; 19 15 13 1103 Pit Rule 092007.doc

Tracking:

Recipient	Read
O'Donnell, Kelly, EDD	Read: 10/22/2007 10:42 AM

Mr. O'Donnell

The Oil Conservation Division has proposed a new rule concerning the use of pits in connection with oil and gas operations. The Oil Conservation Commission will conduct a public hearing on this proposal beginning on November 5, 2007.

The Division does not believe that the proposed rule will have a disproportionately adverse effect on small business. However, in an abundance of caution to comply with the provisions of NMSA 1978 Section 14-4A-4.A, we herewith furnish notice to the Small Business Regulatory Advisory Commission. A copy of the public notice published on the Division's website, and a copy of the proposed rule (and conforming amendments to other rules) is supplied herewith.

David K. Brooks
Assistant General Counsel
505-476-3450

10/28/2007

Exhibit C