

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

RECEIVED  
2007 OCT 29 PM 3:15

**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  
PRE-HEARING STATEMENT**

1. This Pre-Hearing Statement is filed by the New Mexico Oil Conservation Division (the Division).
2. The Division's attorney is:

David K. Brooks  
Energy, Minerals and  
Natural Resources Department  
1120 S. St. Francis Dr.  
Santa Fe, NM 87505  
Phone (505)-476-3450  
FAX (505)-476-3462  
david.brooks@state.nm.us

3. Witnesses:

The names of the witnesses that the Division expects to call at the hearing, a concise statement of each witness's testimony, and the estimated time needed for each witness's direct testimony are listed on Exhibit A hereto. The estimated time for the Division's presentation is as follows:

Direct Testimony	19 hrs
Cross Examination	<u>10 hrs</u>
Total	<u>29 hrs</u>

4. Expert Witnesses' Qualifications are shown in the following exhibits which are being filed herewith:

<u>Witness</u>	<u>Exhibit</u>
Wayne Price	4
Glenn vonGonten	11
Edward J. Hansen	19
Brad Jones	22
Carl Chavez	28

RESPECTFULLY SUBMITTED,




---

David K. Brooks  
Assistant General Counsel  
Energy, Minerals and Natural Resources  
Department of the State of New Mexico  
1220 S. St. Francis Drive  
Santa Fe, NM 87505  
david.brooks@state.nm.us  
Phone: (505)-476-3450  
FAX: (505)-476-3462

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.:

Ms. Karin V. Foster  
Independent Petroleum Ass'n of New Mexico  
P.O. Box 462  
Placitas, NM 87403



Mr. William F. Carr  
Holland & Hart  
P.O.Box 2208  
Santa Fe, NM 87504-2208  
wcarr@hollandhart.com

Mr. Eric Hiser  
Jorden, Bischoff & Hiser, PLC  
7272 E Indian School Re, Suite 360  
Scottsdale, AZ 85251

Mr. Gregory D. Huffaker  
Huffaker & Moffett, LLC  
P.O. Box 1868  
Santa Fe, NM 87504  
huffaker@handmlc.com

Mr. Eric D. Jantz  
New Mexico Environmental Law Center  
1405 Luisa St, Suite 5  
Santa Fe, NM  
ejantz@nmelc.org

Letty Belin  
Belin & Sugarman  
618 Paseo de Peralta  
Santa Fe, NM 87505  
belin@bs-law.com

## EXHIBIT A TO PRE-HEARING STATEMENT

### Pit Rule Hearing Presentation Schedule

#### Wayne Price, Environmental Bureau Chief, engineer

- (60 minutes) Overview –Mr. Price will provide the main reasons for the rule changes and provide an overview of the new proposed rule with emphasis being placed on the highlights of each sub-section of the rule. In addition, Mr. Price will provide the commission the presentation that was given at the four outreach meetings. Mr. Price will also discuss the topic of proper waste management and cumulative effects of contamination.
- (90 minutes) Unlined Pit Prohibition –Mr. Price will provide evidence that unlined pits have caused contamination and that, even though the commission has a long history in protecting groundwater, there are grandfather clauses that still allow unlined pits. Mr. Price will present real data and modeling in support of its request to ban all unlined permanent pits in New Mexico. Mr. VonGonten will assist in this testimony in providing expert testimony on the hydrology of the exempt and non-vulnerable areas showing there is protect able groundwater in these areas.

Total time: 1 hr, 30 min.

#### Glenn von Gonten, Senior Hydorogist, geologist

#### SUMMARY OF TESTIMONY FOR GLENN VON GONTEN

- **EXHIBIT 11** (1 minute): Resume of GvG
- **PRESENTATION: HYDROGEOLOGY OF THE “VULNERABLE/NON-VULNERABLE AREAS” OF SAN JUAN BASIN & HYDROGEOLOGY OF THE “EXEMPTED AREA” OF SOUTHEAST NEW MEXICIO**
- **EXHIBIT 12** (45 minutes): Testimony will demonstrate that there is no hydrogeologic justification for the present exemptions in the NW and SE which allow unlined pits,because the State Engineer has designated both areas as Declared Ground Water Basins, and protectable ground water exists in close proximity to O&G operations.
- **PRESENTATION: SUMMARY OF OCD'S PROPOSED RULEMAKING PROCESS AND PUBLIC INPUT ON THE PIT**
- **EXHIBIT 13** (30 Minutes): Testimony will objectively describe OCD’s Public Outreach Meetings, Pit Rule Task Force, Task Force Report, and OCD’s Proposed Pit Rule.
- Testimony will present overview of key waste management concepts mandated by RCRA, including the prohibition of open dumps and EPA’s exemption of oil field wastes from strict Hazardous Waste regulatory requirements. Testimony will present Oil and Gas Act mandate that OCD should regulate oil field wastes properly.
- **EXHIBITS 13A, 13B, 13C** (12 minutes): Testimony will present approximately 150 photos of problems with pits due to lack of enforceable technical standards.
- **EXHIBIT 14** (1 minute): CD of Pit Rule Task Force Correspondence with 1 paper copy.
- **PRESENTATION: OCD’S PIT SAMPLING PROGRAM**
- Testimony will discuss OCD’s pit sampling program and present analytical data. Testimony will discuss and compare Industry Committee’s analytical data and compare

other sources of data that have documented the chemicals commonly found in oil field waste that may be managed in pits.

- **Exhibit 15** (45 Minutes): Powerpoint presentation of sampling program
- **Exhibit 16** (included A/A): Excel spreadsheet of analytical data
- **Exhibit 17** (1 minute): CD of Data Compendium and 1 paper copy
  
- **PRESENTATION: EXPLORATION AND PRODUCTION WASTE MANAGEMENT**
- Testimony will discuss proper waste management of oil field waste that is handled in pits, present justification for 100 mile radius provision, and TPH closure standard for deep trench burial.
- **Exhibit 18** (30 Minutes): Powerpoint presentation of proper Waste Management for E&P Wastes

Total Time: 2hrs, 45 min.

Wayne Price (continued)

- (30 minutes) 50 Foot Separation (bottom of design to ground water) Justification- Mr. Price will present technical testimony to the commission that justifies the new siting requirement of requiring a ban on pits or waste disposal where groundwater is less than 50 feet.
- (15 minutes) Infiltration- This testimony is an iteration of that given in the surface waste management facility, Part 36, hearing, basically showing there is recharge that occurs in New Mexico. The industry has on occasions tried to imply that in New Mexico there is no recharge therefore no groundwater contamination from buried material.
- (30 minutes) Chloride delineation- This will be technical testimony describing a case study done by Rice Engineering Company in conjunction with the OCD to determine how to interpret soil samples to determine the probability of groundwater contamination. Mr. Price's testimony will focus on specific levels i.e. 250 mg/kg as a proper delineation level. The industry has proposed using a higher level which in effect would tie the agency's hand in determining if groundwater has been contaminated.

Total Time: 1hr, 15 min.

Edward J. Hansen, engineer

- (60 minutes) Modeling
- (30 minutes) On-site Deep Trench Burial Constituent Concentration Justification
- Mr. Hansen will present the results of computer based modeling of releases from pits in the Permian Basin and the San Juan Basin. The modeling demonstrates that at 50 feet to groundwater, releases from unlined pits will contaminate groundwater much sooner and at much higher concentrations than releases from lined, on-site deep trench burials. Also, the modeling demonstrates that the constituent concentrations proposed for testing of the contents of on-site deep trench burials will ensure protection of groundwater resources. In addition, the modeling demonstrates that liners must be properly installed to prevent failures of the on-site deep trench burials.

Total Time: 1 hr, 30 Min.

Brad Jones, engineer

- (8 hours) Rule (Line-by-line) – Intent for each regulatory provision  
Task Force Consensus  
Task Force Comments to Draft

Mr. Jones' testimony will be a line-by-line discussion of the proposed pit rule. It will identify concepts and ideas (consensus and non-consensus) recommended by the Pit Rule Task Force, language from the existing Rule 50, and new language proposed by OCD. Mr. Jones will address comments from Task Force members regarding their review of an earlier draft version of the proposed rule, by providing an explanation of OCD's considerations and will indicate if the comment initiated a change in the proposed rule or not. In addition, Mr. Jones will address proposals and recommendations from parties in interest that have submitted requested changes to the proposed rule. Mr. Jones will comment on the recommendations and their impacts on the proposed rule.

Total Time: 8 hrs

Carl Chavez, engineer

- (90 minutes) Pit Liner Specifications and Requirements –Mr. Chavez will provide the Part 36 and Part 2 (Rule 50) historical basis for new temporary drilling/workover pit and permanent pit requirements. Mr. Chavez will present liner definitions, common liner performance standards, types & comparisons; liner seam types; tensile liner behavior; and Part 17 design and construction specifications for temporary pits, permanent pits and on-site deep trench disposal systems; general pit berms, temporary pits, and permanent pits w/ leak detection construction; and on-site deep trench burial systems construction specifications, with estimated land disturbance projections; common pit liner problems; and conclusions.
- (45 minutes) Pollution Prevention (P2) Overview –Mr. Chavez will discuss the Pollution Prevention (P2) initiative; history; national P2 framework; OCD's initiative and role based on IOGCC and EPA pit audits, pit wastes and concerns; closed-loop systems vs. pits; suggested waste management practices consistent w/ P2; and general pit and on-site deep trench disposal conformance to P2 with P2 conclusions.

Total Time: 2 hrs, 15 min.

District Staff

Brandon Powell, field representative

- (30 minutes) Field Pit Observations Overview –Mr. Powell will discuss pit cases with field observations of pits that caused contamination in District 3.

Total Time: 30 min

Mike Bratcher, field representative

(30 minutes) Field Pit Observations Overview – Mr. Bratcher will discuss pit cases with field observations of pits that caused contamination in District 2.

Total Time: 30 min

OCD EXHIBIT	EXHIBITS
	<b>David (3)</b>
	<b>Theresa</b>
1	Notice and Proof of Publication with New Mexico Register
2	Public Notices and Proof of Publication
3	Pit Rule (already filed)
X	Hard copy of pit rule for general public (16 pages)
	<b>Wayne (6)</b>
4	Resume
5	Overview
6	Unlined Pit Prohibition
7	Unlined pit modeling output files
8	LFC economic assessment
9	50 Foot Demo
10	Infiltration
10A	Delineation
	<b>Glenn (8)</b>
11	Resume
12	Hydrogeology of Exempted and Vulnerable Areas
13	Regulatory History/Rule Making Process + Carl's 3 Slide Show
14	Task Force List & Notes (CD)
15	Pit Sampling
16	Excel
17	Sampling Compendium (CD)
18	Oil field waste management (TPH limit of 2500 ppm, 100 Mile Provision)
	<b>Edward J. (3)</b>
19	Resume
20	Modeling Results (printouts)
21	Modeling PPT
	<b>Brad (6)</b>
22	Resume
23	Proposed Pit Rule (Colored) with footnotes
24	Task Force Report & Matrix
25	Pit and Below-Grade Tank Guidelines
26	3-27-3 NMSA
27	City of Aztec City Code
	<b>Carl (3)</b>
28	Resume
29	Pollution Prevention
30	Technical Specification – Liners

