

NEW MEXICO
ENVIRONMENTAL LAW CENTER

2007 NOV 1 PM 1 05

November 1, 2007

VIA HAND DELIVERY

Mr. Mark Fesmire
Chairman
Oil Conservation Commission
New Mexico Department of Energy, Minerals
and Natural Resources
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

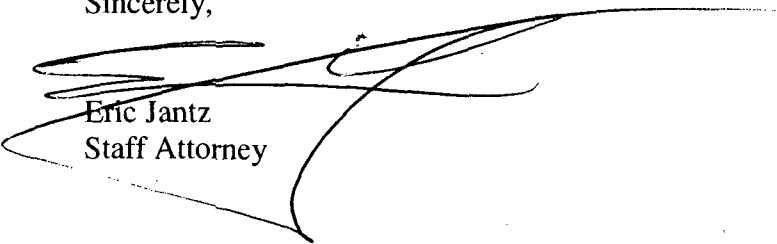
**RE: Repeal of Rule 50 and the adoption of a new rule governing regulation of pits,
below grade tanks, closed loop waste systems and alternatives to those waste
disposal methods; Case No. 14015**

Dear Mr. Chairman:

Please find enclosed the Oil & Gas Accountability Project's Motion to Set
Testimony Schedule and Reset Briefing Schedule in the above matter.

If you have any questions, please feel free to contact me.

Sincerely,


Eric Jantz
Staff Attorney

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**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 GOVENING PITS AND BELOW GRADE TANKS, CLOSED LOOP SYSTEMS AND OTHER ALTERNATIVE METHODS TO THE FOREGOING, AND AMENDING OTHER RULES TO CONFORMING CHANGES STATEWIDE.

CASE NO. 14015

Motion to Set Testimony Schedule and Reset Briefing Schedule

COMES NOW, the Oil & Gas Accountability Project (“OGAP”) and respectfully requests that the New Mexico Oil Conservation Commission (“Commission”) allow OGAP to present its technical testimony on November 13, 2007. Additionally, OGAP requests that the Commission defer briefing on all legal issues presented by the parties in the above-captioned proceeding until after the conclusion of the hearing on the repeal of Rule 50 and the adoption of a new rule governing regulation of pits, below grade tanks, closed loop waste systems and alternatives to those waste disposal methods (“Pit Rule”).

In support of its motion, OGAP STATES:

Request to Allow OGAP to Present Technical Testimony the Week of November 12, 2007.

1. The Commission has the authority to establish the order for the testimony of participants in a rulemaking hearing, such as the above-captioned matter.

19.15.14.1205.A(2)(d) NMAC.

2. However, in exercising that authority, the Commission must conduct the hearing so as to provide a reasonable opportunity for all persons to be heard.

19.15.14.1205.A(2) NMAC.

3. In this case, OGAP's technical expert, Dr. Theo Colborn, is unable to travel to Santa Fe from her home in Colorado due to unforeseeable personal circumstances, except on November 13, 2007.

4. Additionally, OGAP's technical other expert, Ms. Mary Ellen Denomy is available on November 13 and in order to provide the Commission with a comprehensive and fluid presentation, OGAP requests that Ms. Denomy also be allowed to testify on November 13, 2007 also.

5. Without the benefit of its technical witnesses, OGAP would be forced to forego its testimony.

6. Under the circumstances, the Commission should exercise its authority under 19.15.14.1205.A(2)(d) NMAC and permit OGAP to present its technical testimony on November 13, 2007.

Request to Defer Legal Briefing Until After the Hearing's Conclusion.

7. On October 25, the Commission issued an order directing the parties to submit briefs on legal issues raised by the Industry Committee and Yates Petroleum by November 7, 2007. Order of the Commission, Order No. R-12819-A (Oct. 25, 2007).

8. Since the Commission issued that order, the Independent Petroleum Association of New Mexico ("IPANM") has raised additional legal issues and has represented that it will file legal briefs on still other legal issues relevant to this proceeding. *See*, IPANM Comments at 8 (Pit Rule conflicts with Federal closure

guidelines); 15 (Pit Rule conflicts with the Small Business Regulatory Relief Act); 16 (IPANM intends to submit briefs on Constitutional takings issues and Commerce Clause issues); 16-17 (proposed Rule 17 improperly delegates Commission authority to municipalities).

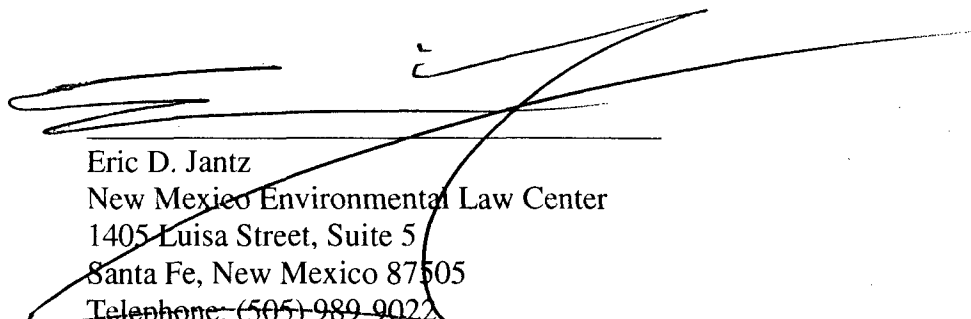
9. Because of the number and complexity of the legal arguments raised, OGAP submits that it would be infeasible to adequately address these issues while at the same time preparing witnesses for hearing, drafting direct examinations, fashioning cross-examinations and participating in the hearing itself. OGAP believes the parties and the Commission would be better served to have all the relevant legal issues, as determined by the Commission, briefed at one time after the conclusion of the hearing.

WHEREFORE, OGAP respectfully moves the Commission to:

1. Allow OGAP to present its technical testimony on November 13, 2007;
- and
2. Defer briefing on all legal issues until the conclusion of the above-captioned hearing.

Respectfully submitted this 1st day of November, 2007.

NEW MEXICO ENVIRONMENTAL LAW CENTER



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Attorneys for OGAP

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of November, 2007, I have delivered

a copy of the foregoing pleading in the above-captioned case via email, facsimile, or U.S.

mail to the following:

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