

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 11635
Order No. R-10767

APPLICATION OF THE NEW MEXICO
OIL CONSERVATION DIVISION TO
ENACT A NEW RULE ESTABLISHING
METHODS AND STANDARDS FOR THE
PREVENTION AND ABATEMENT OF
WATER POLLUTION ASSOCIATED
WITH OPERATIONS IN THE OIL AND
GAS INDUSTRY.

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Oil Conservation Division

**MOTION FOR CORRECTION OF FINDINGS AND, IN
THE ALTERNATIVE, APPLICATION FOR REHEARING**

El Paso Natural Gas Company, Giant Industries Arizona, Inc., Marathon Oil Company and PNM Gas Services ("Movants"), each a party of record adversely affected by the Order of the Oil Conservation Commission ("Commission") herein, hereby move the Commission to correct certain findings in the Order and, in the alternative, apply for a rehearing before the Commission, pursuant to N.M. Stat. Ann. § 70-2-25 (1995 Repl.). In support of their motion and alternative application for rehearing, Movants state:

1. On August 25, 1995, the Commission appointed a Rule 116 Committee ("Committee") to consider revisions to current Oil Conservation Division ("Division") Rule 116 and to consider additional requirements for the abatement of water pollution.
2. On February 1, 1996, the Committee filed Progress Report Number One with the Commission. Included in the Progress Report at page 8 was a proposed new "Corrective

Action" section D to be added to Rule 116. At pages 9 and 10 of the Progress Report, the Committee listed 8 objectives that would be achieved by this new section.

3. On October 29, 1996, at the hearing in this matter, the Committee submitted for the record its Report dated October 21, 1996 as Committee Exhibit 1. At pages 9 and 10, the Report presented the same draft language for section 116.D, identified as a January 12, 1996 draft, that appeared in the February 1, 1996 Progress Report. In addition, the October 21, 1996 Report recited the identical 8 objectives to be achieved by that January 12, 1996 language that were recited in the February 1, 1996 Report.

4. The Order in this matter adopted by the Commission on February 13, 1997 includes a Finding 8 that recites recommendations of the Committee. This finding lists 8 objectives (a. through h.) that are substantially equivalent to the 8 objectives set forth in the Committee's February 1, 1996 Progress Report and October 21, 1996 Report. The objectives in both Committee Reports were linked to the January 12, 1996 Committee draft.

5. Commission Finding 8 states that the Committee draws a distinction between the applicability of Rule 19 to certain upstream activities in the oil and gas industry described at Section 70-2-12.B (21) NMSA and certain downstream activities described at Section 70-2-12.B (22) NMSA.

6. The Committee presented testimony at the hearing emphasizing the Committee recommendation that Rule 19 should apply equally to B (21) and B (22) activities in the oil and gas industry. The testimony of Tom Kellahin, Chairman of the Committee, at the hearing in this matter on October 29, 1996 includes the following statements:

The Committee spent a lot of effort trying to decide if we should recommend to you a different way to handle the upstream versus the downstream activities. Ultimately, we decided to have the same system for both, [the] same system of rules and notices and regulations, if you will.

So despite the fact the committee spent an awful lot of time working its way through this maze of jurisdictional and regulatory issues, we have ultimately come to the conclusion that in a comprehensive solution, the best solution that we can think of for you is to treat those [B (21) and B (22) activities] as one group. Transcript at pages 13, 14.

* * *

But at this point, we find no useful purpose served by trying to create any kind of differences between B.(21) and B.(22) regulations, if you will, insofar as it deals with water pollution. Transcript at page 38.

7. Commission Finding 8 should be amended to indicate that the 8 objectives listed in that finding reflect the thinking of the Committee at the time of its Progress Report Number One dated February 1, 1996.

8. An additional finding should be inserted as Finding 9 (with subsequent findings re-numbered). New Finding 9 should state that the Committee recommended at the hearing that B (21) and B (22) activities in the oil and gas industry should be treated equally and that Rule 19 should apply to both sets of activities.

WHEREFORE, Movants request that the Commission modify its Finding 8 by adding the underlined words as follows:

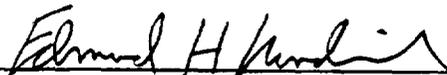
(8) In a Progress Report dated February 1, 1996, the Committee recommended that the Commission adopt Rule 19 that addresses methods and standards for the prevention and abatement of water pollution associated with operations in the oil and gas industry by incorporating the same provisions as those in relevant portions of the WQCC Regulations to accomplish the following: . . .

Movants further request that the Commission insert an additional Finding 9 (with subsequent findings re-numbered) as follows:

(9) At the public hearing, the Committee recommends that no distinction be made between oil and gas industry activities described at Section 70-2-12.B (21) NMSA, as amended, and oil and gas industry activities described at Section 70-2-12.B (22) NMSA, as amended. The Committee recommends that the Commission adopt Rule 19 and that Rule 19 apply equally to both B (21) and B (22) activities.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

by: 
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Giant Industries Arizona, Inc., Marathon Oil
Company and PNM Gas Services

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion For Correction Of Findings And, In The Alternative, Application For Rehearing was sent by first class mail on this 5th day of March, 1997 to each of the following persons:

Rand L. Carroll, Esq.
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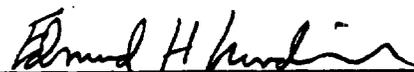
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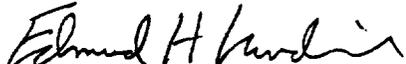
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EDMUND H. KENDRICK

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APPLICATION FOR REHEARING

El Paso Natural Gas Company, Giant Industries Arizona, Inc., Marathon Oil Company and PNM Gas Services ("Applicants"), each a party of record adversely affected by the Order of the Oil Conservation Commission ("Commission") herein, hereby apply for a rehearing before the Commission, pursuant to N.M. Stat. Ann. § 70-2-25 (1995 Repl.), and in support of their Application state:

1. As recommended by the Rule 116 Committee and adopted by the Commission, Rule 19 addresses the abatement of water pollution associated with the oil and gas industry and is almost identical to Water Quality Control Commission Water Pollution Abatement Regulations ("WQCC Abatement Regulations") at 20 NMAC 6.2, Subpart IV.
2. Any differences between Rule 19 and the WQCC Abatement Regulations should reflect an intentional choice by the Commission.

3. Section 19.M.(1) identifies actions of the Oil Conservation Division Director ("Director") that are appealable. However, the section does not identify as appealable those determinations by the Director pursuant to Section 19.D.(2) that a responsible person's abatement actions no longer qualify for an exemption.

4. Section 4114.A of the WQCC Abatement Regulations, which is equivalent to Section 19.M.(1), identifies determinations by the Secretary of the New Mexico Environment Department at Section 4105.B concerning the termination of an exemption as appealable.

5. The hearing record does not reflect any testimony as to why Rule 19 should differ from the WQCC Abatement Regulations concerning the identification of appealable actions.

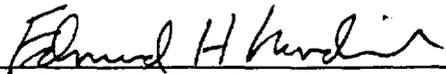
6. Section 19.M.(1), as adopted by the Commission, should be amended to conform to Section 4114.A of the WQCC Abatement Regulations.

WHEREFORE, the Applicants request that the Commission add the following underlined language to Section 19.M(1):

If the Director determines that (i) an abatement plan is required pursuant to 19 NMAC 15.C.116.D or 19 NMAC 15.A.19.D.(2), . . . [such determinations are appealable.]

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

by: 
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(505) 982-3873

Attorneys for El Paso Natural Gas Company,
Giant Industries Arizona, Inc., Marathon Oil
Company and PNM Gas Services

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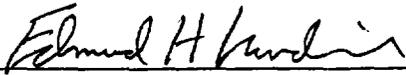
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NEW MEXICO ENERGY, MINERALS
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2040 South Pacheco Street
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March 10, 1997

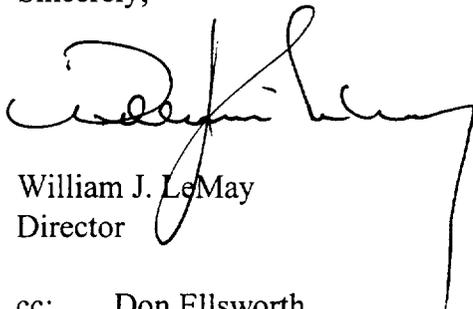
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RE: *Application for Rehearing*
Motion for Correction of Findings and, in the Alternative, Application for Rehearing

Dear Mr. Kendrick:

I have reviewed your requests for rehearing related to portions of OCD Rule 19 NMAC 15.A.9. The Oil Conservation Commission will rehear these matters as per your request at its April 10, 1997 hearing. The rehearing will be limited to written comments and testimony as to the findings of Order No. R-10767 and to Subpart 19.M(1) of OCD Rule 19 NMAC 15.A.

Sincerely,



William J. LeMay
Director

cc: Don Ellsworth
W. Thomas Kellahin
Donald Neeper
Chris Shuey
Sam Small