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September 17, 2012

**VIA HAND DELIVERY AND E-MAIL**

Ms. Florene Davidson  
Commission Clerk  
Oil Conservation Commission  
New Mexico Department of Energy, Minerals  
and Natural Resources  
1220 South Saint Francis Drive  
Santa Fe, New Mexico 87505

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Re: Case 14784: Application of the New Mexico Oil and Gas Association for amendment of certain provisions of Title 19, Chapter 15, of the New Mexico Administrative Code concerning pits, closed loop systems, below grade tanks, sumps and other alternative methods related to the foregoing and amending other rules to conforming changes, Statewide.

Case 14785: Application of the Independent Petroleum Association of New Mexico for amendment of certain provisions of Title 19, Chapter 15, of the New Mexico Administrative Code concerning pits, closed loop systems, below grade tanks, sumps and other alternative methods related to the foregoing and amending other rules to conforming changes, Statewide.

Dear Ms. Davidson:

Attached for filing are an original and six copies of the New Mexico Oil and Gas Association's Closing Statement and Proposed Findings of Fact in the above-referenced cases. These documents also have been sent to you by e-mail. Copies have been provided to all counsel of record as indicated on the Certificate of Service attached to the Findings of Fact.

Very truly yours,

William F. Carr

Eric L. Hiser

Attorneys for the New Mexico Oil and Gas Association

Enclosures

cc: Mr. Steve Henke, President  
New Mexico Oil and Gas Association

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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 AND GAS ASSOCIATION FOR AMENDMENT OF CERTAIN PROVISIONS OF TITLE 19, CHAPTER 15 OF THE NEW MEXICO ADMINISTRATIVE CODE CONCERNING PITS, CLOSED LOOP SYSTEMS, BELOW GRADE TANKS, SUMPS AND OTHER ALTERNATIVE METHODS RELATED TO THE FOREGOING AND AMENDING OTHER RULES TO CONFORMING CHANGES, STATEWIDE.

CASE NO. 14784

CLOSING ARGUMENT OF THE  
NEW MEXICO OIL AND GAS ASSOCIATION

“The Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it. The commission has jurisdiction over matters related to the conservation of oil and gas in New Mexico, but the basis of its powers is founded on the duty to prevent waste and to protect correlative rights.”

*Continental Oil Co. v. Oil Conservation Comm’n* 70 N.M. 310, 373 P.2d 809 (1962).

The Oil Conservation Commission’s powers are defined and limited by the Oil and Gas Act. In 2008, the Commission entered Order No. R-12939 adopting new rules governing pits. In entering this order, it ignored the law.

The Oil and Gas Act provides that this Commission is “empowered, and it is its duty, to prevent waste prohibited by this act...” [NMSA 1978, Section 70-2-11 (A)] and the Legislature clarified its charge to you by defining “waste” as the locating, spacing, drilling, equipping, operating or producing of any well or wells in a manner that reduces or tends to reduce the total quantity of crude oil or natural gas ultimately recovered from any pool.” NMSA 1978, Section 70-2-3.

The 2008 Commission order that adopted the pit rule contained 302 Findings of Fact. Not one of these findings mentions the waste of oil and gas. When the industry raised this during the appeal this order, the Commission admitted that this was true. In its Response Brief it said: “The rule now before the Court regulating pits involves only Section 70-2-12.B(21), which authorizes the OCC ‘to regulate the disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas...’ Surprisingly the Commission had just months before told the same Court that this very language was “not mandatory” but merely authorized the Commission to make rules with respect to these matters. See, *Burlington Resources Oil and Gas Co., LP, et al. v NMOCD*, D-101-CV-2006-02841, Memorandum Opinion at 16, D.J. Sanchez (February 16, 2008).

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The Legislature has assigned other duties to the Commission. You regulate the disposition of produced water to afford reasonable protect against contamination of fresh water supplies. 70-2-12 B. (15), and you regulate the disposition of nondomestic wastes resulting from the exploration, development production or storage of crude oil or natural gas to protect public health and the environment. NMSA 1978, Section 70-2-12 B. (21).

The legislative directives to the Commission are not always consistent with each other. What prevents waste may, at the same time, impair fresh water supplies. Conversely, what protects the environment may tend to reduce the total quantity of oil and gas produced from a pool. The result of these legislative charges is that the Commission is required to balance conflicting duties to meet its responsibilities – so far as it is practicable for you to do so.

How is this done? You must weight competing proposals and differing positions on the issues brought before you. You must balance the risk that a proposal which addresses one of your duties poses to other duties assigned to you by the Legislature.

The New Mexico Oil and Gas Association proposes modifications to the pit rule. We have presented a risk-based solution to the problems we have experienced during the last four years while trying to work under this rule.

What are those problems? First, the current rule increases the costs of doing business in New Mexico for large companies that have the option to spend drilling budgets in other states and it increases costs for companies like West Largo Corporation who live and work in this state. Second, the current Rule creates a regulatory maze operators have to work through to try to get applications for pits and below-grade tanks approved and this has, because of the ambiguities in the rule, resulted in confusion and inconsistent interpretations of the rule between Division district offices. The regulatory uncertainty this creates, discourages development, which reduces the ultimate recovery of oil and gas. Third, it creates regulatory delay. An agency that has thousands of pending permit applications is simply not able to administer the rule it asked the Commission to adopt. The current rule is arbitrary and unreasonable and it causes the waste of oil and gas.

You have a duty to correct this situation – unless its is shown that it is not protective of fresh water, public health and the environment – that what the legislature has directed you to do. They assigned these duties to you because they trust your special expertise in the area of oil and gas conservation. these issues are before you because you have the training and experience to evaluate evidence on petroleum and environmental engineering, toxicology, soil science, and even the accuracy of computer modeling of issues like the movement of chloride through the vadose zone.

NMOGA presented evidence based on experience dealing with these chemicals in the real world. We added to the computer modeling of Mr. Mullins, the effect of real world chemistry. Dr. Buchanan demonstrated that the de minimis impact that the modeling showed this proposal would have on groundwater was significantly less when put in the context of what really happens in the arid environment of New Mexico. Here we find the salt bulge – whether we look near a pit or elsewhere – and we have demonstrated that the salts just do not move to ground water in

any time or concentration that causes a risk that warrants the regulations we have lived under for four years.

We have also shown that what we propose is safe, will not contaminate ground water and will not pose a risk to fresh water, human health and safety, livestock, the environment – or anything else.

NMOGA submits, that based on the record made in this case, as summarized in the attached proposed Findings of Fact, the Oil Conservation Commission can approve this application assured by science and experience that, in doing so, it meets its statutory responsibilities to prevent waste and to protect fresh water, public health and the environment.

Respectfully submitted,

**HOLLAND & HART LLP**

A handwritten signature in black ink, appearing to read "William F. Carr", is written over a horizontal line.

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**Attorneys for New Mexico Oil and  
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**CERTIFICATE OF SERVICE**

I certify that on September 17, 2012, I served a copy of NMOGA's Closing Argument to the following by U.S. Mail, postage prepaid or by Hand Delivery:

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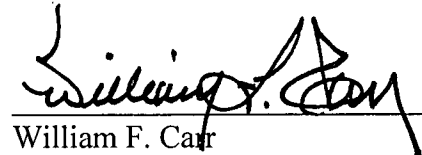
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