

**MINUTES OF THE MEETING  
OF THE OIL CONSERVATION COMMISSION  
HELD ON JANUARY 9-11, 2013**

The Oil Conservation Commission met at 9 o'clock a.m. on January 9, 2013, in Porter Hall, Wendell Chino Building, 1220 S. St. Francis Drive, Santa Fe, New Mexico.

**PRESENT:**                **ROBERT BALCH, Member**  
                              **GREG BLOOM, Member**  
                              **JAMI BAILEY, Chair**

Mark Smith served as the Commission counsel.

The meeting was called to order by Chair Bailey. After a motion by Commissioner Balch and a second by Chair Bailey, the minutes of the December 20-21 Commission meeting were approved and adopted by the majority of the Commission.

Case 14784, the application of the New Mexico Oil and Gas Association, and Case 14785, the application of the Independent Petroleum Association of New Mexico, both 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, were called. Appearances were made by Michael Feldewert for the New Mexico Oil and Gas Association (NMOGA), Karin Foster for the Independent Petroleum Association of New Mexico (IPANM), Eric Jantz for Earthworks' Oil and Gas Accountability Project (OGAP), Donald Neeper and John Bartlit for the New Mexico Citizens for Clean Air and Water (NMCCA&W), Gabrielle Gerholt for the Oil Conservation Division (OCD), Patrick Fort for Jalapeno Corporation, James Bruce for Nearburg Producing Company, and Hugh Dangler for the New Mexico State Land Office (SLO).

Chair Bailey announced that on November 15, 2012, the Commission entered an oral order requiring the applicants in the subject cases to submit a revised set of tables using a consistent method of reporting measurements for each value provided in the tables, a final version of the rule-making proposal using the current rule, and reopened the hearing for the limited purpose of receiving testimony on the revised tables. Chair Bailey said that the following motions had been received and will be argued by counsel:

Motion filed by NMOGA to Exclude Witnesses Identified in OGAP's Notice of Intent to Present Testimony and a Response to the Motion filed by OGAP; and

Motion filed by NMOGA to Exclude Portion of Exhibit 6 and Related Testimony Identified in NMCCA&W's Prehearing Statement for the January 9<sup>th</sup> Hearing.

NMOGA's Motion to Exclude Witnesses was taken up first. Mr. Feldewert and Mr. Jantz argued the motion. The Commission agreed that the hearing should go forward with testimony limited to those specific areas listed in the notice but not excluding witnesses if they are qualified to testify on these issues.

Chair Bailey announced that the decision in the first motion will also apply to the other motion before the Commission. Dr. Neeper and Mr. Feldewert argued the motion. After a motion by Commissioner Balch and a second by Commissioner Bloom, the

Commission voted unanimously to deny both the motions and limit the testimony to what was noticed for today's hearing.

Mr. Feldewert made an opening statement outlining the presentation of his case. Ms. Foster made an opening statement advising that she will not introduce a witness but supports NMOGA's witness. Dr. Neeper made an opening statement describing the presentation of his case.

Mr. Feldewert's witness was Dr. Clay Robinson, Senior Soil Scientist with Stetson Engineers, Inc. in Albuquerque, New Mexico. He discussed EPA testing methods, 300.0 and 1312, used for testing of chlorides in both tables. He explained why different measurements should be used for each table. The witness was excused.

Chair Bailey asked for public comments, and there were none. The meeting was recessed for lunch.

The meeting reconvened, and Dr. Robinson was recalled for cross-examination. Dr. Neeper, Mr. Jantz, Ms. Gerholt, Mr. Dangler, Commissioner Balch, Commissioner Bloom, and Chair Bailey cross-examined the witness, and he was excused.

Dr. Donald Neeper, Retired Soil Scientist in Los Alamos, New Mexico, testified on behalf of the NMCCA&W. He discussed the mg/kg issue which the Commission asked to be presented at this hearing and the EPA 300.0 method. Mr. Feldewert cross-examined the witness, and he was excused.

Chair Bailey asked for public comments, and there were none. The meeting was recessed at 4:45 p.m.

The meeting reconvened at 9 o'clock a.m. on January 10, 2013.

Dr. Neeper was recalled for cross-examination. Mr. Jantz, Ms. Gerholt, Mr. Dangler, Commissioner Bloom, Commissioner Balch, and Chair Bailey cross-examined the witness, and he was excused.

Dr. John Bartlit, Economic Engineer in Los Alamos, appeared on behalf of the NMCCA&W. He testified on the need for efficiency in extraction processes as well as in the regulatory processes. Ms. Foster and Commissioner Balch cross-examined the witness, and he was excused.

Mr. Jantz disclosed the identity of his witness, Dr. Tom Myers, and the testimony that he proposed to offer. Objections were made by Mr. Feldewert and Ms. Foster that this testimony is beyond the scope of this hearing. Chair Bailey stated that the witness could not be heard on the points Mr. Jantz had outlined. No witnesses were called by OGAP.

Dr. Neeper presented rebuttal testimony on Dr. Robinson's comments in his direct testimony regarding modeling. He was excused.

A discussion was held on the submittal of findings of fact and conclusions of law, and it was decided that they would be due by 5:00 p.m. on Wednesday, January 16. The record was closed.

Chair Bailey announced that deliberations would begin but not be held on any issues raised in the hearing that was just finished. She advised that comments from the audience will not be allowed during the deliberations.

Clarification and formatting of certain sections of the draft rule that had already been deliberated on by the Commission was made to the following:

Definitions of Multi-Well Fluid Management Pit, Measurable, Low and High Chloride Fluids, and Onsite  
Permit or Registration Requirements  
Siting Requirements  
Exceptions and Variances; Below Grade Tanks; and Closure Methods  
Design and Construction Specifications – General Specifications, Netting, Temporary Pits  
Operational Requirements

The Commission discussed how best to reconcile the first set of amendments with the second set of amendments. They agreed that the final documents showing all the changes agreed upon by the Commission should reflect the current rule.

The meeting was recessed at 4:00 p.m.

The meeting reconvened at 9:00 a.m. on January 11, 2013.

Deliberations were held on the following sections: 19.15.17.9, 19.15.17.10, 19.15.17.12, and 19.15.17.13.


The Commission accepted the language in temporary pits, standardized plans, and the registration of below grade tanks and burial trenches for closure. They voted on deleting the sentence in 17.12.B.(1) that reads “The operator shall use a tank made of steel or other material which the appropriate division district office approves to contain hydrocarbon-based drilling fluids” as follows: Commissioner Balch and Chair Bailey voted aye; Commissioner Bloom voted nay; the majority approved. All Commissioners agreed to delete the words “or measurable” from the same paragraph. They voted and agreed to retain the language concerning whether a geomembrane cover is required over a lined trench.

A consensus of the Commission was reached on certain changes to 19.15.17 as follows:

Effective Date; Objective; Definitions of - below grade tank, continuously flowing watercourse, exception, floodplain, measurable, multi-well fluid management pit, significant watercourse, sump, temporary pit, variance, and visible; Permit or Registration Required; Permit Application and Registration - filing of permit application, temporary pits and multi-well fluid management pits; Design and Construction Specifications – fencing, netting, temporary pits, single- and double-walled below grade tanks, multi-well fluid management pits; Operational Requirements - pit liner, oil absorbent boom, temporary pits, freeboard, permanent pits, below grade tanks, sumps, multi-well management pits; Closure and Site Reclamation Requirements - closure plans, closure at offsite facilities, closure notice, closure report and burial identification, timing requirements for closure, site contouring, reclamation and revegetation; Emergency Actions - construction standards; Exceptions and Variances – exceptions; Permit Approvals, Conditions, Denials, Revocations, Suspensions, Modifications or Transfers.

Cases 14784 and 14785 were continued until Thursday, January 17, to debate the portions that the Commission was unable to work with so far. After a motion by Commissioner Balch and a second by Commissioner Bloom, the meeting was adjourned at 3:45 p.m.

**STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION**



**JAMI BAILEY, Chair**