

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

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

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.

CASE NO. 14785

**THE OIL CONSERVATION DIVISION'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

BY THE COMMISSION:

This case came before the Oil Conservation Commission (Commission) for hearing beginning at 9:00 a.m. on January 9, 2013 and concluded on January 10, 2013 at Santa Fe, New Mexico.

Findings of Fact:

Procedural Issues:

- (1) Due public notice has been given and that the Commission has jurisdiction over this rulemaking.
- (2) The New Mexico Oil and Gas Association (NMOGA) filed Corrections to Its Proposed Amendments to Title 19, Chapter 15, Part 17 on November 28, 2012.
- (3) The Independent Petroleum Association of New Mexico (IPANM) filed its Correction to Proposed Amendments to Title 19, Chapter 15, Part 17 on November 28, 2012.
- (4) The Oil Conservation Division (OCD) timely filed its pre-hearing statement on January 2, 2013.

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Substantive Issues:

(5) There are technical reasons for having two tables. Table I applies to threats to the surface of the ground (soils) and Table II is applicable to threats to ground water (pit contents). Transcript pg. 4062, lns 1-12.

(6) Threats to the ground include immediate threats to plants and other biological material. Transcript pg. 4062, lns 10-12.

(7) Table II addresses material buried at depth (pit contents). The pit contents are a mixed phase media which include liquid and solid constituents which over time may move to ground water. Pgs. 3889 lns 23-25; 3890 lns 1-9; 4062 lns 6-15

(8) Table I constituents (soils) should be tested pursuant to EPA Method 300.0 because it measures the solubility of chloride. Pgs. 3934 lns 12-25; 3935 lns 1-6.

(9) Table II constituents (pit contents) should be tested via Method 1312 and Method 300.0. Method 1312 is a leaching procedure and can be used for a mixed phase substance such as pit contents. Pgs. 3895 lns 2-14; 3896-3901 lns 1-18.

(10) Using Method 1312 as a leaching procedure on pit contents is appropriate because it produces as much chloride out of the contents as possible, including immobile chlorides. Pg. 4062, lns 19-25.

(11) Different limits should be set for chloride in Table I and Table II because when burying at depth, the threat to biological media is delayed versus when there is a spill on the surface and the impact to biological media is immediate. Pg. 4062, lns 11-15.

(12) Soils and pit contents are inherently different. Soils are relatively undisturbed and pit contents may contain a significant amount of liquid. Pg. 3954 lns. 19-25.

(13) In addition, pit contents are contained by a liner whereas soil is uncontained. Pg. 3957 lns 7-13.

(14) Due to the fact that pit contents are lined, there is a known bottom. Pg. 3957 lns 14-15.


(15) The bottom of a spill on soil is unknown and the only way to determine it is via sampling. Pg. 3957 lns.16-25.

(16) A lower chloride concentration level should be used for soil than acceptable for pit contents because plants cannot live in 5000 mg/kg of chloride. Pg. 4067 lns 12-21.

Conclusions of Law:

1. The Commission is empowered to create rules. NMSA 1978 § 70-2-11.
2. The Commission (and the Division) has statutory duty to prevent waste and protect correlative rights. NMSA 1978 §70-2-11(A) and Continental Oil Co., 70 N.M. at 323, 373 P.2d at 817.
3. The Division (and the Commission) must 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 §70-2-12(B)21.

Respectfully Submitted,



Gabrielle A. Gerholt
Assistant General Counsel
Energy, Minerals and Natural Resources
Department
1220 S. St. Francis Drive
Santa Fe, NM 87505
(505)-476-3451

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following parties on January 16, 2013:

Michael Feldewert
Holland & Hart LLP
P.O. Box 2208
Santa Fe, NM 87504-2208
Phone: (505) 988-4421
Fax: (505) 983-6043
Email: mfeldewert@hollandhart.com
Attorney for Applicant New Mexico Oil & Gas Association.

Eric Jantz
Staff Attorney
New Mexico Environmental Law Center
1405 Luisa Street, Suite 5
Santa Fe, New Mexico 87505
(505) 989-9022
Email: ejantz@nmelc.org
Attorney for Oil and Gas Accountability Project

Karin V. Foster
5805 Mariola Place, NE
Albuquerque, NM 87111
Telephone: (505) 238-8385
Email: Fosterassociates2005@yahoo.com
Attorney for Applicant Independent Petroleum Association of New Mexico

Dr. Donald A. Neeper
PO Box 5
Los Alamos, NM 87544
dneeper@neeper.net
Authorized Representative for New Mexico Citizens for Clean Air & Water

Hugh Dangler
New Mexico State Land Office
310 Old Santa Fe Trail
Santa Fe, NM 87504
hdangler@slo.state.nm.us

A handwritten signature in cursive script, appearing to read "Gabrielle A. Gerholt", written over a horizontal line.

Gabrielle A. Gerholt