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**APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION FOR
ADOPTION OF AMENDMENTS TO RULE 19.15.17 (THE "PIT RULE"),
STATEWIDE.**

CASE NO. 14292

Ms. Florene Davidson
Oil conservation Division
New Mexico Energy, Minerals and
Natural Resources Department
1220 South Saint Francis Drive
Santa Fe, NM 87505

Re: Pre-hearing comments

**Case No. 14292 Application of the New Mexico Oil Conservation Division for
adoption of amendments to Rule 19.15.17 (The Pit Rule), Statewide.**

Dear Ms. Davidson;

Pursuant to Oil Conservation Division Rule 19.15.14.1203 NMAC, the member companies of the Independent Petroleum Association of New Mexico (IPANM) file these comments concerning the proposed adoption of amendments to Rule 19.15.17, the Pit Rule.

Thank you for taking the time to collect input from the Independent Petroleum Association of New Mexico on this very important issue. We are very appreciative of Governor Richardson's concerns on the impact of the current Pit Rule (Rule 17) on our industry. However, we are apprehensive that several proposed changes offered by OCD staff fall short of what is really needed to bring operations costs in New Mexico back in

line with other states.. We are hopeful that the inconsistencies in the proposed rule which results in little if any improvements for industry are just an oversight by OCD staff and this issue will be resolved by the April 2 hearing date, or in the alternative, will be part of an ongoing dialog and effort to improve the rule for industry that will not end after this April 2nd hearing.

Technical proposed changes:

1. Changes in the Chloride levels for closure of a pit without changes to the 3103 standards offer no relief to our Southeast producers. – Deletion of the 3103 testing requirement is requested.

- Testing of a pit prior to closure requires meeting standards for TPH, Chloride concentrations and the ground water standards established by the Water Quality Control Commission under 3103.
- The closure of a pit location is no different than a small landfarm which is regulated under 19.15.36 *which does not require any 3103 testing for closure*. A landfarm has hydrocarbons on the surface with no liners, a pit has drilling material encapsulated in 20 mil liner in a secondary liner with 4 foot of top soil.
- By agreement of the OCC Commissioners on or about February 27, 2008, after the closure of testimony on the Pit hearing, onsite burial would be allowed where the waste meets the applicable small landfarm closure standards for disposal in place. The Commissioners also agreed that in circumstances where the stabilized waste meets the small landfarm and landfarm criteria for disposal in place, on-site deep trench burial of waste would be allowed. (p. 3(f)). There was no subsequent testimony or evidence added to the record after the Points of Understanding document was released to the public.

Requested change: “19.15.17.13.F(3)(c) The operator shall collect at a minimum a 5 point, composite sample of the contents of the drying pad associated

with the closed loop system or of the temporary pit to demonstrate that the TPH concentration ... does not exceed 2500 mg/kg. ... the operator shall demonstrate that the chloride concentration ... does not exceed 3000 mg/l or the background concentration whichever is greater ~~and that the concentrations of the water contaminants specified in Subsection A of 20.6.2.3103 ... do not exceed the standards specified in Subsection A of 20.6.2.3103 NMAC~~”

2. Changes to the Exceptions process are needed to allow operators to cooperatively work with the experts at the District offices of the Oil Conservation Division

- Section 19.15.17.15 is the Exceptions Section of the Pit Rule. The rule allows for the application of an exception in limited circumstances. The Rule 17 Pit Rule exceptions application must be made to the environmental bureau of the OCD’s Santa Fe office with the proof that the exception provides equivalent or better protection of fresh water, public health and the environment. Public notice must be given, and written notice must be delivered to various parties. A 30 day comment period is required for any member of the public to oppose the application. The OCD Director may administratively approve, set a hearing upon his own discretion or if requested by the public order a hearing.
- The process required to file for an exception under the current Pit Rule creates additional cost and adds significant uncertainty to the drilling process. Rather than force operators to face the political process, applications for an exception should be administratively reviewed at the local district office. The district office staff has the knowledge for the geographic area in the application for exception and would be able to make a decision based on science.

Requested change: “**19.15.17.15 A.(1)** The ~~environmental bureau in the division’s Santa Fe office~~ local district office of the division may grant an exception from a requirement or provision of 19.15.17 NMAC, if the operator

demonstrates to the satisfaction of the ~~environmental bureau in the division's Santa Fe office~~ district office that the granting of the exception provides equivalent or ~~better~~ protection of fresh water, public health and the environment. In the event that the district officer fails to contact the operator by mail of a granting or denial of the exception request within 30 days of the filing of the exception request, the exception is automatically administratively granted. Any exception which is granted administratively may not be revoked except in the event of an emergency involving imminent danger to public health or the environment. If the district office denies the application for an exception, the district office shall notify the operator of its determination by certified mail, and the operator may request a hearing within 10 days of receipt of such notice.

Delete (2) – (5)

3. No siting requirements for new below grade tanks should be needed if the tanks meet the specified construction and design criteria.

- Due to a possible oversight in Rule 17, it was unclear whether an existing belowgrade tank that met the construction and design criteria had to be moved to meet the new siting requirements. On October 16, 2008, the OCD issued an industry-wide electronic communication on the issue of siting existing below grade tanks. In the email, Mr. Wayne Price stated, “Existing below-grade tanks do not have to be relocated to meet the siting criteria in 19.15.17.10 NMAC, but must meet the design and construction requirements in 19.15.17.11 NMAC.
- At a minimum, the new rule must take up all changes made by guideline after the release of the Pit Rule.

Requested change: “19.15.17.12(D)(5) [new material] The operator or a below grade tank constructed or installed prior to June 16, 2008 that does not meet the requirements of Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC who discovers that the below-grade tank does not demonstrate integrity or that the

below-grade tank develops any of the conditions identified in paragraph (5) of Subsection A of 19.15.17.12 NMAC shall close the existing below-grade tank pursuant to the closure requirements of Section 13 of 19.15.17.NMAC and install a below-grade tank that complies with the requirements of Paragraphs (1) through (4) of Subsection 1 of 19.15.17.11 NMAC. *Tanks installed to remedy an integrity question or tanks installed after June 16, 2008 do not need to meet the siting criteria in 19.15.17.10 NMAC provided the below-grade tanks meets the requirements of Paragraphs (1) through (4) of Subsection I or 19.15.17.11 NMAC. Italicized matter is requested.*

Respectfully submitted,
CHATHAM PARTNERS, INC.

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