

**MINUTES OF THE MEETING
OF THE OIL CONSERVATION COMMISSION
HELD ON FEBRUARY 13, 2015**

The Oil Conservation Commission met at 9 o'clock a.m. on February 13, 2015, in Porter Hall, Wendell Chino Building, 1220 S. St. Francis Drive, Santa Fe, New Mexico.

PRESENT: **ROBERT BALCH, Member**
 AUBREY DUNN, Member
 DAVID R. CATANACH, Acting Chair

Bill Brancard served as the Commission counsel.

The meeting was called to order by Acting Chair David Catanach. Commissioner Bob Balch, designee of the Cabinet Secretary of the New Mexico Energy, Minerals and Natural Resources Department, and Commissioner Aubrey Dunn, New Mexico Commissioner of Public Lands, introduced themselves. Commissioner Balch made a motion to adopt the agenda for this meeting, Commissioner Dunn seconded the motion, and the agenda was unanimously adopted.

After a motion by Commissioner Dunn and a second to the motion by Commissioner Balch, the minutes of the November 19, 2014 meeting were unanimously approved and adopted by the Commission.

Counsel Brancard explained that the Open Meetings Resolution was modified to fit with the model required by the Attorney General's office, including listing specific meeting dates and the circumstances under which a special meeting can be called. He said that in the future the docket for Commission meetings will look more like an agenda. Upon a motion by Commissioner Dunn and a second to the motion by Commissioner Balch, the Commission unanimously approved and adopted the Open Meetings Resolution for 2015. The Resolution is attached to these minutes.

Case 15239, the application of the New Mexico Oil and Gas Association to repeal and replace Title 19, Chapter 15, Part 34 of the New Mexico Administrative Code addressing produced water, drilling fluids and other liquid oil field waste; and to amend the definition of produced water in Title 19, Chapter 15, Part 2 of the New Mexico Administrative Code, was called. Chair Catanach explained the procedure for presenting testimony in this rulemaking hearing. He said that documents including modifications to the proposed rule and comments were received from the New Mexico Oil and Gas Association, Earthworks' Oil and Gas Accountability Project (Earthworks) and Environmental Defense Fund, Earthworks in conjunction with San Juan Citizens Alliance, New Mexico Interfaith Power and Light, and Sierra Club Rio Grande Chapter, and Environmental Standards, Inc.; pre-hearing statements were received from the New Mexico Oil and Gas Association, the Independent Petroleum Association of New Mexico, and the Oil Conservation Division; and an entry of appearance was received from Earthworks' Oil and Gas Accountability Project. He said that non-technical testimony will be taken each day of the hearing at set times. Counsel Brancard presented the Oil Conservation Division's affidavit of notice of the hearing, including documentation of publication in the Albuquerque Journal and the New Mexico Register, to the Commission.

Appearances were made by Michael Feldewert for the New Mexico Oil and Gas Association (NMOGA), Gabriel Wade for the Oil Conservation Division (OCD), and

Karin Foster for the Independent Petroleum Association of New Mexico (IPANM). Michael Newell, representing Lea County landowners, Pete Dronkers, representing Earthworks, and Brent Halldorson, representing the Texas Water Recycling Association, said they would provide comments.

Mr. Feldewert, on behalf of the Petitioner, NMOGA, made an opening statement explaining the reasons for the proposed rule. He told of the committee formed to develop a rule that will address the impediments of the produced water rule as it stands now. Mr. Wade made an opening statement explaining that the OCD supports the proposed rule. Ms. Foster stated that the IPANM was not included in the task force but supports the proposed rule.

The Petitioner made the first presentation. Mr. Feldewert's first witness was James Paul Welch, Global Business Development Manager with Halliburton in Houston, Texas. He said he served on the work group that formulated the proposed rule. He stated that there is uncertainty about the recycling facilities or containment in the current rule. He described problems with using a permanent pit for recycling of produced water. He explained that temporary pits must be closed in six months. He said there is need for a more versatile recycling containment, and the proposed rule provides that. He explained the difference between recycling facilities and recycling containment. He discussed treatment of produced water. He advised when facilities will have to be registered under the proposed rule. He talked about operational requirements for recycling facilities. He discussed the provisions of the proposed rule pertaining to a five-year term for facilities. He discussed and compared the siting, design and construction provisions of Rule 17 with the proposed Rule 34. He proposed taking the spill provisions out of the proposed rule because it provides for capture, not for a spill. He discussed changes to Table I which was created from Rule 17. He discussed bonding requirements for containments. He explained that if there is a request for hearing, the applicant must provide notice to the surface owner. Commissioner Balch, Commissioner Dunn, and Chair Catanach cross-examined the witness, and he was excused.

The next witness for NMOGA was Charles Fiedler, Professional Engineer with Gordon Environmental, Inc. He discussed materials used in liners and the installation standards. He told of the components of 30-mil liners, including seams and larger panels. He talked about primary and secondary liners and listed the reasons the proposed liner is preferable for produced water containments. He discussed the life expectancy of the proposed liner and explained the proposed leak detection system. Commissioner Balch, Commissioner Dunn, and Chair Catanach cross-examined the witness, and he was excused.

Public statements were taken as follows:

Brent Halldorson, Chairman of the Texas Water Recycling Association spoke in support of the proposed rule. He said permit by rule has done well in Texas.

Pete Dronkers with Earthworks requested that the OCD and NMOGA do what is necessary to ensure that the benefits of the proposed rule can be understood by the general public. Data on the volumes of water should be collected and made available to the public. He stated that evaporation should be considered disposal, not recycling.

Michael Newell stated that he represented landowners who may be impacted by these rules and was concerned about the "disposition by use" language and requested that a notice provision to the impacted landowners be included in the rule. He does not believe \$25,000 is sufficient for a bond; and requested that it be made clear that the distance to ground water is from the bottom of the containment and not from the surface.

The meeting was recessed for lunch at 12:00 p.m. The meeting reconvened at 1:20 p.m.

The next witness for NMOGA was Clay Robinson, Soil Scientist with Agronomy and Soil Science Education in Albuquerque, New Mexico. He discussed changes in measuring TPH. He explained that the accepted method of measuring regulated waste uses Freon so this method is no longer encouraged. He explained that the method being recommended to replace EPA Method 418.1 is 8015M, which allows for determination of organics. He stated that in 2013 composite samples were collected from pits and evaluated using both methods; the results were compared and it was found that 418.1 overestimated hydrocarbons. He said that EPA Method 8015M is the preferred method for measuring petroleum hydrocarbons and 8260B is the appropriate method for testing BTEX and benzene. Ms. Foster, Commissioner Balch, Commissioner Dunn, and Chair Catanach cross-examined the witness, and he was excused.

OCD's witness was Brandon Powell, Inspection and Enforcement Supervisor with the OCD's District III office in Aztec, New Mexico. He stated that, based on his experience, the 8015M method is a more consistent method. He discussed the permit by rule concept in Rule 34 which is similar to the registration process for below-grade tanks in Rule 36. He said he has no issue or objection with adding the State Land Office to notice provisions. He explained that the operator is required to track sources of all recycled water and keep them available for review by the OCD upon request. He said that a form will be proposed to track volumes in and out of the facility. He told of ways currently being used to keep containments from becoming disposal operations. Ms. Foster, Commissioner Balch, Commissioner Dunn, Chair Catanach, and Mr. Feldewert cross-examined the witness, and he was excused.

Mr. Feldewert made a closing statement in which he addressed the modifications submitted by the Environmental Defense Fund. Ms. Foster and Mr. Wade made closing statements.

Mr. Powell was recalled by Commissioner Balch to address the length of time for permits to be approved as opposed to permit by rule. The witness was excused.

Mr. Welch was recalled by Commissioner Balch to address the change from permit to registration and permit by rule. Mr. Feldewert redirected and Mr. Wade cross-examined the witness, and he was excused.

The record was closed and deliberations begun.

Counsel Brancard explained that there were two proposed rules before the Commission: (1) repeal and replace Rule 34 and (2) change the definition of produced water. After a motion by Commissioner Balch and a second to the motion by Chair Catanach, the change in definition of produced water was voted on and unanimously adopted by the Commission.

Commissioner Dunn said that state trust lands should have the same consideration as tribal lands and federal lands in the proposed rule. Commissioner Balch said he believes the primary components of this rule are as protective as those in Rule 17. Chair Catanach stated that generally it is a good rule, but he has some concerns about construction of pits without inspection and concerns about notice to landowners and other parties. He asked that all citations in the proposed rule be checked for accuracy. The Commission reviewed the evidence presented at the hearing, considered all proposed modifications in its deliberations and approved or made certain changes to the following sections in the proposed rule:

Sections 1-6

Section 7 – Definitions

Section 8 – Requirements for Disposition by Use, Recycling Facilities or Disposal of Produced Water

Section 9 - Recycling Facilities

Section 10 – Recycling Containments

Section 11 – Siting Requirements for Recycling Containments

Section 12 – Design and Construction Specifications for a Recycling Containment

Section 13 – Operational Requirements for Recycling Containments

Section 14 – Closure and Site Reclamation Requirements for Recycling Containments

Section 15 – Financial Assurance Requirements for Recycling Containments

Section 16 – Variances

Section 21 – Enforcement

The following sections are incorporated from the current Rule 34 and were not discussed in detail:

Section 17 – Transportation of Produced Water, Drilling Fluids and Liquid Oil Field Waste

Section 18 – Denial of Form C-133

Section 19 – Cancellation or Suspension of Authorization to Move Liquid Wastes

Section 20 – Disposition of Produced Water and Other Oil Field Waste

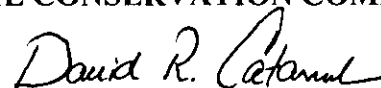
The Commission discussed in significant detail the issues surrounding the permit by rule concept and the requirement for notice. The Commission voted two to one (Commissioner Dunn dissenting) to approve the registration requirement in Section 9.B(7) which establishes the permit by rule.

Commissioner Balch made a motion to adopt the rule with the modifications presented by NMOGA and the Commission's changes during deliberations, and Chair Catanach seconded the motion. A quorum of the Commission voted to adopt the rule with changes with Chair Catanach and Commissioner Balch voting for adoption and Commissioner Dunn voting against adoption. In explaining his vote, Commissioner Dunn noted his concerns with the notice provisions.

Counsel Brancard asked Mr. Feldewert to prepare a draft order. The Commission requested they be presented with the final Rule with all changes, the proposed Order and the forms required by the Rule at the next meeting of the Commission on March 12.

After a motion by Commissioner Dunn and a second to the motion by Commissioner Balch, the meeting was adjourned at 5:25 p.m.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION



DAVID R. CATANACH, Chair

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**

**A RESOLUTION ESTABLISHING PROCEDURES
FOR GIVING NOTICE OF MEETINGS**

WHEREAS, the New Mexico Open Meetings Act, NMSA 1978, § 10-15-1 *et seq.* (as amended), declares each meeting of a quorum of members of any board, council, commission, administrative adjudicatory body or other policy-making body of any state or local public agency which is held for the purpose of formulating public policy, discussing public business or taking any action within the authority of or the delegated authority of such body to be a public meeting, except as otherwise provided in the New Mexico Constitution or the Open Meetings Act;

WHEREAS, the Open Meetings Act requires that each public body determine, at least annually, in a public meeting, what notice is reasonable when applied to public meetings of the public body; and

WHEREAS, the New Mexico Oil Conservation Commission, a policy-making and administrative adjudicatory body of the State of New Mexico with delegated authority under the New Mexico Oil and Gas Act, NMSA 1978, §§ 70-2-1 *et seq.* (as amended), desires to establish herein an open meetings policy consistent with the Open Meetings Act and specify herein what notice is reasonable when applied to its activities throughout the year.

NOW, THEREFORE, BE IT RESOLVED that the New Mexico Oil Conservation Commission does formally adopt the following open meetings policy for calendar year 2015, as follows:

1. Unless specified otherwise in the meeting notice, each public meeting of the New Mexico Oil Conservation Commission (hereinafter referred to as "the Commission") shall be held in Porter Hall, 1st Floor, Wendell Chino Building, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505.
2. Unless specified otherwise in the notice, a regular meeting of the Commission shall be held on February 13, March 12, April 9, May 7, June 4, July 16, August 13, September 10, October 8, November 5, and December 10, 2015. Each regular meeting shall commence at 9 a.m. Mountain Time. Any meeting not concluded at the end of the specified day may be continued to the next business day or as otherwise provided by the Commission.
3. A special meeting of the Commission may be called by the Chair or a majority of members of the Commission as needed, and seventy-two (72) hours advance notice of such a meeting shall be given.
4. An emergency meeting of the Commission may be called by the Chair or a

majority of members of the Commission, with as much advance notice as the emergency permits. An "emergency" refers to unforeseen circumstances that, if not addressed immediately by the Commission, will likely result in injury or damages to persons or property or substantial financial loss to the agency. Within 10 days of taking action on an emergency matter, the Commission shall report to the Attorney General's Office the action taken and the circumstances creating the emergency, provided that the requirement to report to the Attorney General is waived upon the declaration of a state or national emergency.

5. A closed meeting may be held only if the subject matter of the closed meeting is excepted from the open meeting requirement under Section 10-15-1(H) and in the following manner:

(a) If the Commission is in an open meeting and desires to close the meeting, a motion to close the meeting shall be approved by a majority of the members, and the authority for the closure shall be stated in the motion. The votes of the members on the motion shall be recorded in the minutes. Only those matters specified in the motion to close the meeting may be discussed during the closed meeting.

(b) If the Commission is not in a public meeting and a closed meeting is desired and authorized, the meeting shall be publicly advertised in the same manner as special or emergency meetings, with a statement in the notice that the meeting will be closed, and the authority for closure.

(c) Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state that the matters discussed in the closed meeting were limited to those specified in the motion for closure or in the notice of the separate closed meeting.

(d) Except as provided in Section 10-15-1(H) of the Open Meetings Act, any action taken as a result of discussions in a closed meeting shall be made by vote of the Commission in an open public meeting.

6. Notice of each meeting shall be posted on the door of Porter Hall, 1st Floor, 1220 S. St. Francis Drive, Santa Fe, New Mexico, and shall also be posted on the Internet web site of the Oil Conservation Division, <http://www.emnrd.state.nm.us/ocd>. Notice of each regular meeting shall also be published in a newspaper of general circulation in the counties that are affected by the applications before the Commission, except that when an application affects the entire state, notice may be published in one newspaper of general circulation in the state. Where a written request has been received, notice shall also be provided to broadcast stations licensed by the federal communications commission and newspapers of general circulation. Notice of each regular meeting shall be delivered by ordinary first class United States mail or electronic mail to each person who has requested in writing to be notified of such meetings.

7. The notice shall include an agenda for the meeting or information on how members of the public may obtain a copy of the agenda.

8. A preliminary agenda for each regular meeting shall be prepared, posted and distributed (if applicable) no later than two weeks prior to the meeting. A final agenda for each regular and special meeting shall be prepared, posted and distributed (if applicable) no later than seventy-two (72) hours preceding the meeting. The final agenda shall be posted on the Oil Conservation Division's web site. A final agenda for each emergency meeting shall be prepared, posted and distributed (if applicable) as much in advance of the meeting as the emergency permits.


9. Each notice shall include the following statement:

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the New Mexico Oil Conservation Division at 1220 S. St. Francis Drive, Santa Fe, New Mexico 87505, telephone number 476-3460 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the New Mexico Oil Conservation Division if a summary or other type of accessible format is needed.

10. Members of the Commission may participate in a meeting by means of conference telephone or other similar communications equipment which allows the member or members so participating to hear the proceedings and to be heard by one another and by persons attending the meeting. A member participating by telephone shall be included in ascertaining the presence of a quorum.

ADOPTED THIS 13TH DAY OF FEBRUARY, 2015.

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**


AUBREY DUNN


ROBERT BALCH


DAVID R. CATANACH