

NEW MEXICO  
ENVIRONMENTAL LAW CENTER

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March 19, 2009

**VIA HAND DELIVERY**

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

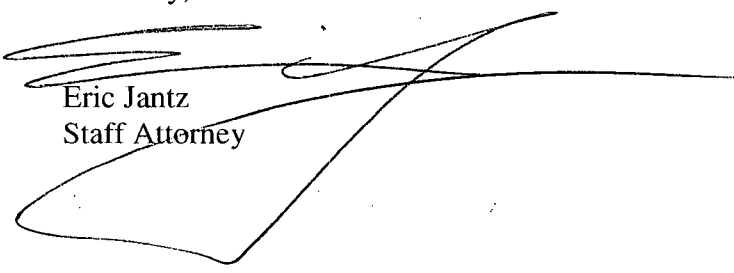
**RE: Amendments to Rule 19.17.15 (the "Pit Rule"); Case No. 14292**

Dear Ms. Davidson:

Please find enclosed the Oil & Gas Accountability Project's Pre-hearing Statement and Joint Motion for Continuance in the above matter.

If you have any questions, please feel free to contact me.

Sincerely,

  
Eric Jantz  
Staff Attorney

1405 Luisa Street, Suite 5, Santa Fe, New Mexico 87505  
Phone (505) 989-9022 Fax (505) 989-3769 nmelc@nmelc.org

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

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

CASE NO. 14292

JOINT MOTION FOR CONTINUANCE

The Oil and Gas Accountability Project, a project of Earthworks ("OGAP") and the New Mexico Citizens for Clean Air and Water ("Citizens") (collectively, "Community Groups") hereby submit their joint motion to continue the portion of the hearing dealing with chloride concentrations in on-site deep trench burial, currently scheduled for April 2, 2009, in the above-captioned matter, for 30 days. In support of their motion, the Community Groups STATE:

1. On February 18, 2009, the Office of the Governor issued a press release announcing that the Governor would direct the Energy, Minerals and Natural Resources Department to "work with industry" to develop amendments to Rule 19.15.17 (the "Pit Rule"). *Governor Bill Richardson Proposes Modifications to New Mexico's Oil Field Pit Rule: Governor Meets with Oil and Gas Industry Reps, Changes Will Moderate Fiscal Impact of Compliance* at 1, (Feb. 18, 2009) ("Press Release"). A copy of that press release is attached hereto as Exhibit A.

2. The Press Release further stated that the purpose of the proposed modifications was to save the industry from compliance costs with the Pit Rule. *Id.*

3. The Press Release also enumerated six proposals to modify the Pit Rule. *Id.* at 2.

4. Several of the six proposals required action by the Oil Conservation Commission (“Commission”), including amendments to provisions of the Pit Rule regulating chloride concentrations in on-site burial trenches. *Id.* at 3, Proposal 6.

5. On February 27, 2009, the New Mexico Oil Conservation Division (“Division”) filed a petition for regulatory change with the Commission, formally requesting that the Commission consider the Governor’s proposed changes to the Pit Rule.

6. The Commission issued public notice of the proposed Pit Rule changes and a public hearing thereon on March 2, 2009.

7. The Commission set the hearing for the proposed Pit Rule changes on April 2, 2009.

8. The proposed Pit Rule changes in the above-captioned matter had no stakeholder input other than industry input and were not subject to any meaningful public discussion.

9. In contrast, the 2007 Pit Rule adoption process involved extensive public discussion prior to a petition for regulatory change being filed (*see*, Press Release at 1 “The Pit Rule was revised last year with the input of industry, the environmental community and many other stakeholders”) as well as a substantial stakeholder process which included industry, community groups, environmental groups, ranchers, and other business groups between the time the petition to adopt the Pit Rule was filed and the hearing on the Pit Rule.

10. Moreover, the Commission granted continuances in the 2007 Pit Rule adoption process to accommodate the oil and gas industry’s needs and concerns. *See*,

e.g., October 22, 2007 Industry Committee Motion for Continuance; Commission Order No. R-12819 (Oct. 5, 2007) (Order granting partial continuance from October 22, 2007 until November 5, 2007)<sup>1</sup>. A copy of that Order is attached hereto as Exhibit B.

11. Finally, when the Commission heard the petition to adopt the Pit Rule, that hearing resulted in approximately 5400 pages of complex technical testimony and scores of exhibits.

12. The Community Groups seek a 30 day continuance of the above-captioned matter for the following reasons:

a. The proposed amendments to the Pit Rule were proposed and the petition filed during the 2009 session of the New Mexico Legislature.

b. Both OGAP and their legal counsel, the New Mexico Environmental Law Center have obligations to work in the Legislature during the session, which diverts a majority of their resources to that task.

c. Because of their legislative work, neither OGAP nor their counsel will be able to adequately prepare for the hearing scheduled for April 2, 2009, given the technical nature of the proposed Pit Rule amendments and the extensive record from the 2007 Pit Rule proceeding that must be reviewed in order to meaningfully address the proposed amendments to the Pit Rule.

d. Members of Citizens also have pre-existing personal and research obligations during the month of March which prevent them from fully addressing the issues prior to the April 2, 2009 hearing date.

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<sup>1</sup> Indeed, the Commission's Order R-12819 granted relief similar to the relief requested by the Community Groups, i.e., bifurcating the hearing so that some issues are addressed in the scheduled hearing, but others are addressed at a later date.

e. Consequently, Community Groups will effectively have only a few days to review 5400 pages of testimony, scores of exhibits, and prepare technical testimony in response to the proposed Pit Rule amendments.

f. Moreover, counsel for OGAP has a pre-existing and irreconcilable scheduling conflict on April 2<sup>nd</sup> and 3<sup>rd</sup>, and would be unable to participate on behalf of OGAP at any hearing on those dates.

13. For all of the above-cited reasons, the process by which the Division and Commission have proposed and scheduled the amendments to the Pit Rule has significant due process implications. *See, e.g., National Black Media v. FCC*, 791 F.2d 1016, 1022 (2<sup>nd</sup> Cir. 1986) (adequate notice and opportunity to be heard should achieve three goals: 1) increasing a rule's quality by exposing the rule to comment; 2) providing fairness to parties; enhancing judicial review by allowing a record to be built based on comments received.); New Mexico Oil and Gas Act, 1978, NMSA § 70-2-23 (any party with an interest in a rulemaking is entitled to be heard).


14. While the Community Groups have grave concerns with the process by which the proposed amendments to the Pit Rule were generated, their technical concerns are limited to the concentrations of chlorides permitted for on-site deep trench burial.

15. Because the Community Groups' concerns are limited to the chloride standards, the Community Groups would not object to the Commission hearing, as scheduled, the proposed changes with respect to below-grade tanks and the amount of time an operator has to request permits or permit modifications for existing lined permanent pits.

16. Counsel for OGAP contacted counsel for the Division and Division does not support this motion.


WHEREFORE, the Community Groups respectfully request that the Commission continue the hearing on the proposed amendments to the Pit Rule regarding chloride concentrations for on-site deep trench burial, NMAC 19.15.17.13.F.(3).(c), for an additional 30 days.

Respectfully submitted this 19<sup>th</sup> day of March, 2009.



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Attorney for New Mexico Citizens for Clean and Water

# **CERTIFICATE OF SERVICE**

I hereby certify that on this 19<sup>th</sup> day of March, 2009, I have delivered  
a copy of the foregoing pleading in the above-captioned case via email, facsimile, or U.S.  
mail to the following:

David K. Brooks  
Energy, Minerals and Natural Resources Department  
1220 St. Francis Drive  
Santa Fe, New Mexico 87505

By: 



For Immediate Release  
February 18, 2009

Contact: Jodi McGinnis Porter  
505.476.3226

## **Governor Bill Richardson Proposes Modifications to New Mexico's Oil Field Pit Rule**

*Governor meets with oil and gas industry reps, changes will moderate fiscal impact of compliance*

SANTA FE – Governor Bill Richardson today announced that he is directing Energy, Minerals and Natural Resources Department Secretary Joanna Prukop to work with the oil and gas industry to modify several provisions of the state's Pit Rule. The proposed changes would allow oil and gas companies to better absorb the costs associated with the stronger regulations, which were implemented last year. Governor Richardson personally met recently with leaders of the oil and gas industry as well as oil patch legislators to discuss their concerns about the financial impact of the rule.

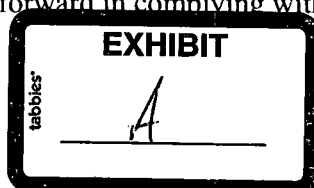
"The oil and gas industry is critical to New Mexico's economy and these changes will help producers weather the financial storm while still protecting the environment," said Governor Richardson.

The Pit Rule was revised last year with the input of industry, the environmental community and many other stakeholders. It is designed to protect the State of New Mexico and its citizens from any future ground water or other environmental contamination from oil field waste pits, and also to protect the operators from the potentially crippling liability of major environmental impacts.

"We are not doing anything to diminish the environmental protections gained by the Pit Rule, but we are going to work with industry to ease the financial burden of compliance," stated Joanna Prukop, Cabinet Secretary, New Mexico Energy, Minerals and Natural Resources Department.

Since it went into effect on June 16, 2008, oil prices hit an all time high of \$147 per barrel in July 2008 and have since dropped towards \$34 a barrel today. The oil and gas industry plays a critical role in the State of New Mexico, and it is important that government and the private sector work together during these difficult economic times.

Therefore, the Oil Conservation Division will propose six changes to the Pit Rule to support the oil and gas industry as they move forward in complying with the Pit Rule:





Proposal #1

**Below-grade tanks**

The Oil Conservation Division will propose allowing industry to use less expensive field screening techniques instead of in-laboratory testing. This proposal will save substantial operator costs and allow industry to close below-grade tanks faster. This proposal requires administrative action by the Oil Conservation Division, to establish approved alternative testing methods.

Proposal #2

**Six month extension for removal of free liquids and closure completion regarding temporary pits**

The Oil Conservation Division will propose allowing industry two (2) extensions of three months each, for a total of six months, which extends the timeframe in which free liquids must be removed from a temporary pit and the closure completion timeframe for temporary pits and drying pads for closed-loop systems. This proposal requires administrative action by the Oil Conservation Division.

Proposal #3

**Pit Rule Exceptions and Administrative Approvals**

The Oil Conservation Division will work with the oil and gas industry to grant exceptions to the Pit Rule where they are warranted. The pit rule provides for an exception to any provision except the requirement of a permit, exceptions and modification or transfer requirements. To date, there has been no application for an exception from the Pit Rule and only one application for administrative approval in a field office. In order to receive an exception to the rule, an operator must make application to the Santa Fe office, provide public notice and show that the exception will provide equivalent or better protection of fresh water, public health and the environment.

Proposal #4

**Below-grade tanks and/or lined permanent pits**

The Oil Conservation Division will propose changes to extend the application submittal dates for existing below grade tanks and lined permanent pits for two years (19.15.17.17 NMAC). This will allow operators more time to amortize the costs related to generating applications and completing associated construction modifications or retrofits. This proposal will require action by the Oil Conservation Commission.

Proposal #5

**Below-grade tanks**

The Oil Conservation Division will propose an amendment to the Pit Rule that allows most below-grade tanks that existed prior to June 2008 to be retrofitted or closed upon final closure, sale, or transfer. This proposal will require action by the Oil Conservation Commission.

Proposal #6

**Waste material burial closure standards for chloride with regard to on-site trench burial**

The Oil Conservation Division proposes to increase the content (waste) burial standard for chlorides and to also include a comparison to background concentrations at the site with regard to the implementation of on-site trench burial closure method pursuant to Paragraph (3) of Subsection F of 19.15.17.13 NMAC. This proposal will require action by the Oil Conservation Commission.

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

IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION COMMISSION  
FOR THE PURPOSE OF CONSIDERING:

APPLICATION OF THE NEW MEXICO OIL  
CONSERVATION DIVISION FOR REPEAL  
OF EXISTING RULE 50 CONCERNING PITS  
AND BELOW GRADE TANKS AND ADOPTION  
OF A NEW RULE GOVERNING PITS, BELOW  
GRADE TANKS, CLOSED LOOP SYSTEMS AND  
OTHER ALTERNATIVE METHODS TO THE  
FOREGOING, AND AMENDING OTHER RULES  
TO MAKE CONFORMING CHANGES; STATEWIDE.

CASE NO. 14015  
Order No. R-12819

ORDER

The Chair of the New Mexico Oil Conservation Commission (Commission) has received a request to continue the hearing in this matter scheduled to begin on October 22, 2007. The Chair has considered the request, finds the arguments generally unpersuasive, but recognizes that some additional time to prepare for the hearing will serve the needs of administrative efficiency and orders as follows:

The hearing will begin as scheduled on October 22, 2007 at which time the parties shall present their opening statements. The hearing will then be recessed and reconvene on November 5, 2007 at 9:00 a.m. and will continue thereafter as needed to complete the hearing.

Any person, other than the applicant or a commissioner, recommending modifications to the proposed rule change shall no later than 5:00 p.m. on Monday, October 22, 2007, file recommended modifications conforming to the requirements of Subsection C of 19.15.14.1204 NMAC with Florene Davidson, the commission clerk. Any person who intends to submit technical testimony or cross-examine witnesses at the hearing shall submit six copies of the pre-hearing statement conforming to the requirements of 19.15.14.1204 NMAC including six sets of all exhibits the person will offer in evidence at the hearing to the commission clerk by no later than 5:00 p.m. on Monday, October 29, 2007. Any person wishing to submit written comments on the proposed rule change shall submit those comments to the commission clerk by no later than 5:00 p.m. on Monday, October 29, 2007. Proposed modifications, pre-hearing statements and exhibits and written comments may be hand-delivered to Ms. Davidson at 1220 South Saint Francis

EXHIBIT

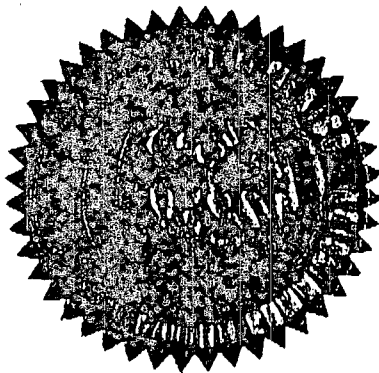
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Case No. 14015  
Order No. R-12819  
Page 2

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Drive, Santa Fe, NM 87505. Proposed alternatives or written comments may also be faxed to Ms. Davidson at (505) 476-3462.

DONE at Santa Fe, New Mexico on the 5th day of October, 2007.



SEAL

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

  
MARK E. FESMIRE, P.E., Chair