

**MINUTES OF THE MEETING
OF THE OIL CONSERVATION COMMISSION
HELD ON JUNE 20-22, 2012**

The Oil Conservation Commission met at 9 o'clock a.m. on June 20, 2012, in Porter Hall, Wendell Chino Building, 1220 S. St. Francis Drive, Santa Fe, New Mexico.

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

Mark Smith served as the Commission counsel.

The meeting was called to order by Chairman Bailey. She announced that audio-visual will be available in the lobby if there is an overflow crowd. The minutes of the May 14-18 Commission meeting were approved and adopted.

Case 14784, the 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, and Case 14785, the 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, were called for the continuation of direct testimony. Chairman Bailey announced that the cases have been consolidated for the convenience of the Commission, and Order No. R-13506-B consolidating the cases was signed by the Chair. Appearances were made by William F. Carr 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 & Gas Accountability Project (OGAP); Gabrielle Gerholt for the Oil Conservation Division (OCD); Hugh Dangler for the State Land Office (SLO); Donald Neeper and John Bartlit for the New Mexico Citizens for Clean Air & Water (NMCCA&W); and Patrick Fort for Jalapeno Corporation. Chairman Bailey announced that public comment time will be scheduled before lunch and before the end of the day.

Ms. Foster made an opening statement explaining the reasons for IPANM's proposed amendments to the current rule and outlining its presentation. Her first witness was Tom Mullins, Engineering Manager for Synergy Operating, LLC and President of Mullins Energy, Inc. in Farmington, New Mexico. He discussed working with IPANM and NMOGA teams on the amendment of the current pit rule, Rule 17. He presented the modeling he had done based on the 2007 and 2009 modeling done by OCD. He said he used the same parameters used by the OCD in his modeling with minor adjustments. He identified 421 cases of soil contamination from earthen pits. He stated he is not familiar with a single case of groundwater contamination under a temporary reserve pit. He discussed salt bulges and infiltration rates. He talked of horizontal and vertical movement of contaminants. He discussed two different types of modeling, the HELP and MULTIMED models. He listed the parameters he used in his model, including depth, precipitation values, amount of soil cover, and no top liner. He presented the key results of his modeling, including infiltration rates and level of contaminant that arrives at a receptor 100 feet away. He concluded that four feet of soil cover is protective in all instances, no liner should be required on top of the pit, the 100 feet siting requirement is protective of human health and the environment, and there is negligible risk to human

health, the environment, the public or accessible groundwater from 10 percent chloride leachate. He summarized the data presented in a report for the Ground Water Protection Council regarding constituent threshold levels. He advised that industry is recommending that levels be significantly lower than these levels and soil saturation levels. He talked of the factors looked at when deciding to drill a well, such as commodity price, geologic and operational risks, and regulatory risks. He discussed the additional costs in an AFE which discourage small independents from drilling. He said other concerns are prohibitive siting requirements, changes to testing requirements, closed loop systems, air drilling and cavitation, and OCD's changes for reporting of wet or discolored soils. He said the operator should be required to notify the OCD of the use of a closed loop system, but the system itself should not be regulated by the OCD. He presented rebuttal testimony and exhibits regarding low chloride siting standards. He said he believes the chloride movement would be very slow and not damaging to human health and the environment. The witness was excused for the morning.

The Chair asked for public comments, and there were none. The meeting recessed for lunch at 12:00 p.m.

The meeting reconvened at 1:00 p.m. Ms. Foster said that at the first hearing of these cases in May, Commissioner Bloom asked Chesapeake Operating, Inc. to address a question he asked of Irvin Boyd, a public commenter, regarding the use of closed loop systems on his land. Ms. Foster asked to present the response. Mr. Jantz objected. Counsel Smith concluded that the response was a comment, and it was too late to accept comments.

Mr. Mullins was recalled. He discussed air drilling. He said that IPANM is requesting no liners on top of pits in northwest New Mexico and in certain areas of the southeast. He discussed the reporting of wet or discolored soil. Mr. Carr, Mr. Jantz, Ms. Gerholt, Mr. Dangler, and Dr. Neeper cross-examined the witness, and he was excused for the day.

Public comments were given as follows:

Sworn - Jose Lopez, Board Member of the New Mexico Federal Lands Council and a rancher in Santa Fe, New Mexico, in favor of the current pit rule.

Unsworn - Sanders Moore with Environment New Mexico in Albuquerque, New Mexico, in favor of the current pit rule.

The meeting recessed at 5:00 p.m.

The meeting reconvened at 9:00 a.m. on June 21, 2012.

Mr. Mullins was recalled and cross-examined by Dr. Neeper, Commissioner Bloom, Commissioner Balch, and Chairman Bailey. It was determined that at the conclusion of this week's meeting, the meeting will be continued to a future date for the purpose of Mr. Mullins presenting additional information requested by Chairman Bailey. The witness was excused.

The next witness was Larry Scott, President of Lynx Petroleum Consultants, Inc., an independent oil and gas producer in Southeast New Mexico located in Hobbs. He defined closed loop systems as being part of a drilling operation. He said he thinks that a closed loop system needs to be separately permitted or registered. He explained why he would prefer a reserve pit as opposed to a closed loop system under certain

circumstances. He compared the costs incurred by closed loop systems and reserve pits. He said that IPANM is proposing to take out the words “or workover” in the closed loop system language. He stated that permits are approved more quickly for closed loop systems. He discussed the drilling rig count. The witness was excused for the morning.

Public comments were requested, and there was no response. The meeting recessed at 12:00 p.m.

The meeting reconvened at 1:00 p.m.

Mr. Scott was recalled to resume his testimony. He presented rig count information for New Mexico, Colorado, Texas, and Wyoming. He stated his belief that the restrictive environment in New Mexico affected operators’ decisions to drill. He discussed oil and gas prices. He compared natural gas production in New Mexico with Texas and Colorado. He discussed multi-well fluid management pits. He described fracture stimulation in horizontal well projects. He discussed the provision for administrative approval of an APD in the proposed rule. He stated that the variance process is used by small operators in very limited circumstances. Mr. Jantz, Ms. Gerholt, Mr. Dangler, Dr. Bartlit, Dr. Neeper, Commissioner Bloom, and Commissioner Balch cross-examined the witness, and he was excused.

Dr. John Bartlit testified for the NMCCA&W. He discussed the differences in sound science and economic data that have come to pass in the last five or six years. He compared rig counts for several states. He stated his belief that economics should be considered in rulemaking and regulatory issues. Commissioner Balch cross-examined the witness, and he was excused.

The Chair asked for public comments which were presented as follows:

Sworn – Bruce Gantner on behalf of Dugan Production Corp in Farmington. He read a statement from Dugan explaining that Dugan has drilled less wells during the last three years because of regulatory constraints and is against the current pit rule and for the proposed amendments. Mr. Jantz cross-examined Mr. Gantner, and he was excused.

Sworn – Kellie Campbell, Safety and Environmental Coordinator for Energen Resources in Farmington. She read a statement from Energen comparing costs of closed loop systems and reserve pits for wells drilled in Northwest New Mexico and said that Energen is for the proposed rule amendments. She asked to present the written statement to the Commission. Counsel Smith explained the rule for accepting non-technical testimony. Mr. Jantz objected to the acceptance of the statement from Ms. Campbell, and Mr. Carr responded to the objection. The Commission voted to accept the statement. Mr. Carr, Ms. Foster, Mr. Jantz, Dr. Neeper, Mr. Dangler, and Commissioner Balch cross-examined Ms. Campbell, and she was excused.

Unsworn – Michelle Miano on behalf of New Mexico Interfaith Power and Light in Albuquerque, in support of the current pit rule.

Unsworn – Gwen Lachelt on behalf of Josh Jostwick with the San Juan Citizens Alliance in Farmington, in support of the current pit rule.

Unsworn – Kathy Martin for Jerry Niven with the Caballo Conservancy Group in Truth or Consequences, in support of the current pit rule.

The meeting recessed at 5:25 p.m.

The meeting reconvened at 9:00 a.m. on June 22, 2012.

Ms. Gerholt presented a proof of affidavit that notice was properly given of this meeting. She made an opening statement asking for an order with clarity and consistency in any rule adopted and that it can be effectively enforced. She requested that OCD's modifications to the rule be included in the final rule. Her first witness was Brandon Powell, Inspection and Enforcement Supervisor with the District III office of the OCD in Aztec, New Mexico. He told of a review group formed after NMOGA and IPANM submitted their applications in these cases. He said the group focused on the administrative feasibility and enforcement of the proposed amendments. He discussed the definitions of "below grade tanks", "playa lake", "restore", "significant water course", "sump", and "visible". He explained standardized plans for temporary pits and multi-well fluid management pits. He described the process of registering below grade tanks. He discussed striking the word "unconfined" from all siting requirements to allow for the protection of all groundwater. He talked of the addition of "continuously flowing water course" to provide for the protection of surface water. He discussed the provision requiring the repair or replacement of liners within 48 hours or seeking a variance from the district. He described the inspection of below grade tanks for signs of damage. He discussed the filing of deed notices by operators. He talked about the OCD's proposed requirement for an earlier closure date. Mr. Carr, Ms. Foster, Mr. Jantz, Mr. Dangler, Dr. Neeper, Mr. Fort, Commissioner Bloom, and Commissioner Balch cross-examined the witness, and he was excused.

The next witness was Ed Martin, District IV Supervisor with the OCD in Santa Fe. He explained the Division's reasons for requesting notification of the use of closed loop systems. He said OCD is requesting a change from permitting to notification to make it easier on the operators to notify on Form C-101 by checking a box. He discussed the request to install automatic shut-offs or a call-back system on below grade tanks. He discussed the exceptions and variances section of the proposed modifications. He explained why the OCD has requested a 60-day review period for variances and why the variance should not automatically be approved if the Division has not acted on it within 60 days. He talked of the requirement for setting a variance or exception to hearing, including notice to surface owners. He described what determines administrative completeness. He discussed IPANM's request for using the word "reasonable" instead of "equal or better". Mr. Carr, Ms. Foster, Mr. Jantz, Mr. Dangler, Dr. Neeper, Mr. Fort, Commissioner Bloom, and Commissioner Balch cross-examined the witness, and he was excused for the morning.

Public comments were requested, and there were none. The meeting recessed for lunch at 12:00 p.m.

The meeting reconvened at 1:15 p.m.

Mr. Martin was recalled and cross-examined by Chairman Bailey, and he was excused.

A discussion was held on the availability of rebuttal witnesses. Mr. Carr stated that notice of rebuttal should be given to all parties involved, but this has not been done by OGAP in these cases. Counsel Smith stated that he does not believe there was intent by OGAP to use a rebuttal witness to present something that could have been presented as direct testimony and that responding to the testimony of the other side is acceptable rebuttal. He suggested that arguments be held on the issue of what rebuttal should be after Mr. Jantz notifies everybody of what OGAP's rebuttal will consist of. It was decided that after Mr. Mullins' additional presentation, Mr. Jantz shall notify everybody of what his rebuttal will consist of in a statement of intent. Mr. Jantz stated he can

prepare a general notice of rebuttal within a week of Mr. Mullins' presentation. Chairman Bailey announced that the Commission will meet on June 27, 2012 in Morgan Hall, State Land Office Building, at 9:00 a.m. to hear the remainder of Mr. Mullins' presentation. It was decided that Mr. Mullins' exhibit will be presented on June 25, 2012, to the Commission and all counsel by e-mail. The cases will be continued after June 27 to the week of August 13-17, 2012. Counsel Smith announced that at the end of the hearing findings of fact and conclusions of law with citations to the record, legal arguments, and written closing statements will be required.

There was a discussion on when deliberations might be held. It was decided that the week of September 24 will be set aside for deliberations, and closing statements will be due on September 17, 2012.

The meeting recessed at 2:45 p.m.

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**

JAMI BAILEY, Chair