



# THE PIT RULE – What it is, and Why We Need it

January, 2011

Keep New Mexico's Common Sense Safeguards

**The big picture:** The Pit Rule protects New Mexico's working farms, ranches, neighborhoods and public lands from being exposed to oil and gas wastes. It also provides the oil and gas industry with reasonable safeguards to follow when drilling and fracking wells, and helps prevent contamination that could leave the industry or taxpayers with hefty clean-up costs. Finally, the Pit Rule levels the playing field for oil and gas companies by requiring they contain and clean up their waste – regardless of whether they are large or small companies, responsible companies or ones that are known for cutting corners.

## What specifically does the Pit Rule require of industry?

The new rule<sup>1</sup> addresses contamination problems by banning unlined pits, requiring a buffer zone between pits and sensitive areas, and requiring thicker liners to help reduce the likelihood of torn liners. Oil and gas operators must obtain a pit permit, which enables the operator and New Mexico Oil Conservation Division (OCD) to assess potential concerns before any damage is done. In cases where groundwater is less than 50 feet below the surface, pits are not allowed, but closed-loop systems (steel tanks) can be used. In other cases, wastes can be buried on site, but that waste must not exceed a certain levels of contaminants. If the waste is too toxic, it must be excavated and hauled to a certified landfill, and sampling must be done to ensure that the soil and groundwater beneath the pit location have not been contaminated.

## What's the problem with pits?

State records show that before implementation of the Pit Rule there were more than 400 known cases of groundwater contamination that could be linked directly to poorly maintained oil and gas industry waste pits.<sup>2</sup> Most of the known contamination cases were self-reported by the industry. It's likely there were more cases of contamination, but until the new Pit Rule was implemented, most pit wastes were buried in place and testing was not required to determine if they had leached contaminants. In addition to the known cases, there were more than 100 cases that were under investigation at the time of the Pit Rule Hearing.

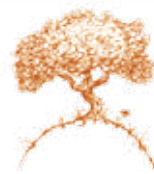
OCD has hundreds of photos documenting torn and breached pit liners,<sup>3</sup> and inspectors from the southeast part of the state observed that soil underneath lined pits was contaminated in more than 80 percent of the pits that were inspected upon closure.<sup>4</sup> OCD staff testified that in New Mexico a house built on top of buried pit wastes near Hobbs had to be torn down because the site was so highly contaminated.<sup>5</sup> Clearly, the old rules were not working.



**History of the pit rule:** industry, government and citizens participated in developing the Pit Rule in 2007-08 after the New Mexico Oil Conservation Division (OCD) determined that the existing pit rule lacked enforceable technical standards and was not adequately protective of human health or the land and water.

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## History of the Pit Rule –

### INDUSTRY, GOVERNMENT AND CITIZENS PARTICIPATED IN THE PROCESS

In 2007, the New Mexico OCD proposed a new rule to replace the existing pit rule, which generally lacked enforceable technical standards and as a result was not adequately protective of water, soil or public health.

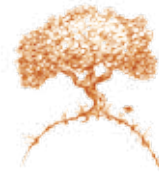
A Pit Rule Task Force, made up of 14 members who represented the OCD, the oil and gas industry, the cattle growing industry, the cities of Bloomfield and Lovington, environmental groups and other citizens, was formed to consider various pit waste issues. After four months the Task Force submitted a report to OCD, whose staff then prepared a Draft Pit Rule and submitted it to the Oil Conservation Commission (OCC) as part of a formal rule making process. The rule making hearing took place in the fall of 2007, lasted for 18 days, and involved testimony from dozens of scientific and technical experts on the perceived merits and/or shortcomings of the proposed rule.

The OCC Commissioners deliberated on the testimony over the course of several months, and in the late spring of 2008, after refining numerous aspects of the proposed rule, the Commission issued a final rule. The Pit Rule became law on June 16, 2008.



## Sources

- 1 New Mexico Energy, Minerals and Natural Resources Department. May 15, 2009. *Highlights of the "Pit Rule"* – 19.15.17 NMAC. [http://www.emnrd.state.nm.us/ocd/documents/PitRuleHighlights\\_001.pdf](http://www.emnrd.state.nm.us/ocd/documents/PitRuleHighlights_001.pdf)
- 2 Testimony of Wayne Price, OCD Environmental Bureau Chief. OCD Pit Hearing Document 14015\_486\_CF, pp. 351 and 352. [http://ocdimage.emnrd.state.nm.us/Imaging/FileStore/SantaFeAdmin/CF/61671/14015\\_486\\_CF.tif](http://ocdimage.emnrd.state.nm.us/Imaging/FileStore/SantaFeAdmin/CF/61671/14015_486_CF.tif)
- 3 OCD Exhibits 13A, 13B, 13C (OCD Pit Hearing Documents 14015\_530\_CF, 14015\_531\_CF and 14015\_532\_CF).
- 4 Testimony of Mike Bratcher, OCD Supervisor, Artesia District. OCD Pit Hearing Document 14015\_492\_CF, p. 2157. [http://ocdimage.emnrd.state.nm.us/Imaging/FileStore/SantaFeAdmin/CF/61671/14015\\_492\\_CF.tif](http://ocdimage.emnrd.state.nm.us/Imaging/FileStore/SantaFeAdmin/CF/61671/14015_492_CF.tif)
- 5 Testimony of Glenn Von Gonten, Senior Hydrologist, OCD. OCD Pit Hearing Document 14015\_486\_CF, p. 494. [http://ocdimage.emnrd.state.nm.us/Imaging/FileStore/SantaFeAdmin/CF/61671/14015\\_492\\_CF.tif](http://ocdimage.emnrd.state.nm.us/Imaging/FileStore/SantaFeAdmin/CF/61671/14015_492_CF.tif)



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OGAP was founded in 1999 to work with communities to prevent and minimize the impacts caused by energy development. OGAP and Earthworks joined forces in 2005 to support communities around the world facing mining, digging and drilling. Together, we have 28,000 active members with offices in California, Colorado, Montana, New Mexico, New York, Texas and Washington, D.C.