

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION
STATE OF COLORADO**

In the Matter of Changes to the)	CAUSE NO. 1R
Rules and Regulations of the Oil)	
and Gas Conservation Commission)	DOCKET NO. 0803-RM-02
of the State of Colorado)	

**THE OIL & GAS ACCOUNTABILITY PROJECT,
SAN JUAN CITIZENS ALLIANCE AND THE
NORTH FORK RANCH LANDOWNERS' ASS'N. INC.**

**RESPONSE TO COGA MOTION TO DEFER DELIBERATION ON 900 SERIES
OF RULES**

COMES NOW, the Oil & Gas Accountability Project (OGAP), San Juan Citizens Alliance (SJCA), and The North Fork Ranch Landowners' Association, Inc. (NFRLA) and enters a response to the COGA motion to defer deliberation on the 900 series of rules. OGAP is authorized to state that the Colorado Environmental Coalition and its associated parties join in this opposition to COGA's motion. As grounds in support of its response, OGAP, SJCA, and NFRLA state:

1. While this Commission has provisionally decided to defer deliberation on some other matters, this Commission has also had comprehensive and constructive discussions on many of the rules and moved forward with this process despite the need for COGCC staff clarification on some provisions that have proven to be complex. OGAP et al. support this Commission in its diligent efforts to have these comprehensive and constructive discussions and to not be distracted by the seemingly endless requests to defer and delay.
2. In COGA's motion to defer deliberation on the 900 series, counsel suggests that, because other rules have been deferred, this as a basis for deferring deliberation on the 900 series rules. However, the deliberations regarding the 300 series rules, for example, were complicated and painstaking, yet this Commission successfully worked through those changes. Moreover, OGAP et al. believe that the 900 series rules are already considerably less complicated and have actually been scaled back to a great extent from the March 31, 2008 version, largely in response to industry comments and concerns. While issues may remain regarding specific portions of the 900 series, no other area of the proposed rules will so directly protect public health and the environment. Therefore, this Commission should move forward on this series of rules without further delay.

3. Counsel for COGA further suggests that the 900 series of rules have not been fully discussed, despite the weeks of stakeholder group meetings held this past winter, the pre and post-hearing submissions regarding these rules, the many hours of formal hearing testimony, and the hours of meetings conducted in recent months. OGAP et al. believe the proposed rules for the 900 series and corresponding issues have been fully argued and represent a workable compromise between the COGCC staff and the parties. If there remains any confusion regarding these rules, this may be due to confusion on the part of industry, as many of the current changes reflect the input of industry, and is not reflective of the rule language itself.
4. Counsel for COGA asserts there is nothing in the record to demonstrate the need for the proposed revisions to the 900 series rules. This is simply inaccurate. Staff have provided extensive testimony on the need for revisions. OGAP et al. provided written evidence of need in their Rebuttal Statement and the oral testimony of Mr. Dave Thomson regarding the proven contamination of his domestic water well from a pit on his neighbor's land. OGAP et al. also provided, in their Prehearing Statement, a presentation by New Mexico's Oil Conservation Division staff regarding the potential hazardousness of waste pits and the need to handle these facilities appropriately, in order to avoid soil and water contamination. The likelihood for this type of contamination is currently facing the citizens of Mesa County in regards to the Black Mountain Disposal facility.¹ Lastly, in addition to staff's comprehensive pre-hearing submission, this Commission received a briefing from COGCC staff this summer during a regular Commission meeting regarding the potential contamination of a gentleman's domestic well by a waste pit in western Colorado, as well as the contamination of an irrigation water source from at least four pits this past winter. The need for revisions to the 900 series of the rules has been abundantly provided to this Commission and this need should be addressed now to protect the public health and environment of this state.
5. In contrast to other parties in this rulemaking, including COGA, OGAP was integrally involved with the New Mexico *pit rule* process, was present for every one of the 17 days of the formal hearing for that rule, and was a party to not only the formal hearing, but also to the initial stakeholder process conducted prior to the formal proceedings. Yet, despite its lack of involvement in that rulemaking, counsel for COGA, without any evidence for support, asserts that the *pit rule* hearing in New Mexico and its final outcome will be a disaster for the industry in that state. Perhaps counsel was unaware that COGA's New Mexico counterpart stated that while the new regulations

¹ Le Roy Standish, Black Mountain closed, gets 30 days to respond, The Daily Sentinel, September 16, 2008. Attachment #1. Available at: http://www.gisentinel.com/hp/content/news/stories/2008/09/16/091708_1a_Black_Mountain.html

(for pits) were tough, the industry could live with them.² As stated by New Mexico's Secretary of Energy, Minerals and Natural Resources Joanna Prukop, there was nearly overwhelming evidence of groundwater contamination in New Mexico attributable to pits.³

6. In support of its motion to defer the 900 series of the rules, counsel for COGA cites to a recent article in the Farmington Daily Times that attributes a decline in APD filings in New Mexico to the enactment of the New Mexico *pit rule* revisions this summer. Counsel again seems unaware of the response provided by Secretary Joanna Prukop. In her response, Secretary Prukop outlined the need for the revisions due to over 400 documented groundwater contaminations from waste pits and the fact that the *pit rule* was the result of months of collaboration among all parties, including industry. Secretary Prukop also pointed out the extensive testimony provided during the formal hearing regarding the potential cost savings as a result of the revisions to the *pit rule*.⁴
7. In fact, contrary to the assertions of counsel for COGA, OGAP staff has been informed by both the New Mexico Oil Conservation Division staff and New Mexico operators that the New Mexico *pit rule* has resulted in cost savings in many situations. Moreover, some of the companies that were most concerned about the *pit rule* in the southeast part of the state are now realizing the economic benefits of using closed loop drilling systems and decreased potential liability from pit contamination. These operators are able to recycle the fluids, generally leaving only the drill cuttings to dispose of at the end of the process. As a consequence, the use of drilling pits in southeast New Mexico has all but disappeared. Furthermore, counsel for COGA neglected to mention that more than a dozen operators have removed their names from an appeal of the New Mexico *pit rule*.

² Cornelia de Bruin, *Gallagher pulls no punches in oil and gas conference address*, The Farmington Daily Times, May 8, 2008. Attachment #2.

³ Joanna Prukop, Cabinet Secretary for the New Mexico Energy, Minerals, and Natural Resources Department, *Setting the Record Straight on the Pit Rule*, A Guest Column in the Farmington Daily Times, September 17, 2008. Attachment #3. Available at:

http://www.daily-times.com/columns/ci_10482677

⁴ *Id.*

For all of the above reasons, OGAP et al. encourages this Commission to deny COGA's motion to defer deliberation on the 900 series of the rules.

RESPECTFULLY SUBMITTED THIS 19TH DAY OF SEPTEMBER, 2008:

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September, 2008, I mailed via U.S. Mail, postage pre-paid, for overnight delivery, one original with 15 copies of a true and correct copy of the above and forgoing RESPONSE TO COGA'S MOTION TO DEFER DELIBERATION OF THE 900 SERIES OF THE RULES OF THE OIL & GAS ACCOUNTABILITY PROJECT, THE SAN JUAN CITIZENS ALLIANCE AND THE NORTH FORK RANCH LANDOWNERS' ASS'N., INC., addressed to the following:

Patricia Beaver, Hearing Manager
Docket No. 0803-RM-02
Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, CO 80203

I hereby certify that on this 19th day of September, 2008, I mailed via U.S. Mail, postage pre-paid, for overnight delivery, 2 copies of a true and correct copy of the above and forgoing RESPONSE TO COGA'S MOTION TO DEFER DELIBERATION OF THE 900 SERIES OF THE RULES OF THE OIL & GAS ACCOUNTABILITY PROJECT, THE SAN JUAN CITIZENS ALLIANCE AND THE NORTH FORK RANCH LANDOWNERS' ASS'N., INC., addressed to the following:

Kelly Rees,
Colorado Department of Law,
1525 Sherman Street, 7th Floor,
Denver, Colorado, 80203.

I hereby certify that on this 19th day of September, 2008, I e-mailed a true and correct copy of the above and forgoing RESPONSE TO COGA'S MOTION TO DEFER DELIBERATION OF THE 900 SERIES OF THE RULES OF THE OIL & GAS ACCOUNTABILITY PROJECT, THE SAN JUAN CITIZENS ALLIANCE AND THE NORTH FORK RANCH LANDOWNERS' ASS'N., INC., addressed to the following:

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