

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**

MAY 22 2018 PM05:03

**IN THE MATTER OF THE APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION TO REPEAL AND REPLACE RULE 19.15.29 NMAC;
STATEWIDE.**

CASE NO. 15959

PRE-HEARING STATEMENT

This Pre-Hearing Statement is submitted on behalf of the Oil Conservation Division ("OCD"), by and through undersigned counsel, as required by 19.15.3.11(B) NMAC.

STATEMENT OF THE CASE

The OCD is proposing the to rename and repeal and replace 19.15.29 NMAC. The proposed name change from "Release Notification" to "Releases" and the purpose of the repealed and replaced rule is to refine existing terms, define new terms, and clarify the process for responding to releases of oil, gases, produced water, condensate, or oil field waste including regulated NORM, or other oil field related chemicals, contaminants or mixtures of those chemicals or contaminants that occur during drilling, producing, storing, disposing, injecting, transporting, servicing, or processing and to establish reporting, site assessment, remediation, closure, variance, and enforcement procedures.

OCD'S PROPOSED MODIFICATIONS

The OCD composed a technical workgroup to develop the proposed rule to replace the current version of 19.15.29 NMAC. The workgroup included representatives from the New Mexico Oil and Gas Association ("NMOGA"), the Independent Petroleum Association of New Mexico ("IPANM"), the Bureau of Land Management ("BLM"), the New Mexico State Land Office ("SLO"), independent environmental consulting firms, and an independent facilitator. The OCD proposes the following modifications, which are highlighted in Exhibit 3 (*OCD Proposed Modifications*) attached hereto and incorporated by reference to this filing.

19.15.29.11 NMAC Site Assessment/Characterization:

1. In Subsection (A)(5)(b) NMAC, remove "or other constituents as appropriate for" and replace with "or as required by 19.15.29.12(A)(5)(e) NMAC based on". The provisions of 19.15.29.12(A)(5)(e) NMAC were added to address other constituents.

19.15.29.12 NMAC Remediation and Closure:

1. In Subsection (B)(2), remove safety issues and add "with division approval". The OCD does not have authority to regulate site safety, as those are governed by other agencies.

The OCD would also require that it determine deferment of cleanup as applicable on a case by case basis.

2. In Table I, define TPH as GRO+DRO+MRO and correct the testing method for Benzene as EPA SW-846 Method 8021B or 8260BM in the entire table.

PETITIONER'S PROPOSED EVIDENCE

WITNESS:

ESTIMATED TIME:

Jim Griswold, OCD Environmental Bureau Chief 1 hour

Mr. Griswold has more than 10 years' experience at the OCD, including four years at his current position, in addition to being professionally involved in the characterization and remediation of soil and groundwater contamination since 1989, and the oil and gas industry in general since 1981.

Mr. Griswold will provide testimony relating to the existing rule, statistical data on reported releases in New Mexico for the last five years, deficiencies with the existing rule, a simple description of the corrective action process, participation in the workgroup, objectives of the rule replacement, variances, enforcement, and transitional provisions of the proposed rule.

WITNESS:

ESTIMATED TIME:

Brandon Powell, OCD District 3 Staff Manager 1 hour

Mr. Powell has been with the OCD for more than 12 years. He began his career as an environmental specialist overseeing environmental releases and their remediation. In 2011, he was promoted to inspection and enforcement supervisor for OCD's District Office in Aztec. In that position, he is involved in down-hole engineering and compliance with OCD rules. Mr. Powell has extensive experience applying OCD rules to all aspects of oil and gas development and has testified as an expert in previous rule makings including the "pit rule" (both in 2008 and 2013) along with 19.15.34 NMAC regarding the reuse of produced water.

Mr. Powell will provide testimony relating to the definitions contained in the new rule, the release notification procedure, characterization of contaminants other than oil, gas, produced water, or other well stream fluids, remediation, closure and surface restoration provisions of the proposed rule.

WITNESS:

ESTIMATED TIME:

Bradford Billings, OCD Environmental Engineer 1 hour

Mr. Billings has been with the OCD for more than three years and has more than 30 years of work in the delineation, characterization, and remediation of soil, groundwater and surface water contamination, including more than 10 years with the oil and gas industry. He is a licensed well

driller and Construction Industries Division certified contractor, and New Mexico Environment Department Certified Scientist and Corrective Action Program Manager in Texas.

Mr. Billings will provide testimony on relating to the initial response and site assessment provisions of the proposed rule.

EXHIBITS

The OCD anticipates entering three exhibits, 1 through 3. Exhibit 1 will be a power point presentation to aid its witnesses' testimony describing the proposed rule, whereas exhibits 2 and 3 will be the proposed rule previously submitted in the Amended Application for Rulemaking and the OCD Proposed Modifications as submitted today.

PROCEDURAL MATTERS

The OCD wishes to present its proposed rule with all three witnesses on a single panel. Specific witnesses will testify to specific sections of the proposed rule as identified above; however, because the testimony from our witnesses will not directly coincide with the order that the section appears in the rule we find that a panel is the most concise method to present the new rule in a logical fashion. It will also be able to better answer any questions the commission may have, by keeping all the witnesses available, should the questions exceed the presenting witness's testimony, another witness will be available to answer it immediately. This method will allow the OCD to provide proper context and present its application in the most concise manner and avoid unclear and duplicitous testimony.

NMOGA has indicated its opposition to this method, citing concerns about the ability to cross examine witnesses and the precedent that testimony by panel could create. To obviate some of these concerns the OCD has offered to pause in between witnesses to allow additional parties the opportunity to cross examine the witness at that time.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was electronically mailed to the following parties on May 22, 2018:

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