

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

**IN THE MATTER OF PROPOSED
AMENDMENTS TO THE COMMISSION'S
RULES ON PRODUCED WATER,
19.15.2, 19.15.16, AND 19.15.34 NMAC**

CASE NO. 21281

NMOGA's PRE-HEARING STATEMENT

This Pre-Hearing Statement is submitted on behalf of the New Mexico Oil and Gas Association ("NMOGA"), through undersigned counsel, as required by NMAC 19.15.3.11.B.

NMOGA's PROPOSED MODIFICATIONS

NMOGA's members have reviewed the changes proposed by the Division under its Application filed in this matter. NMOGA submits the modifications in redline/strikeout format highlighted in yellow on NMOGA Exhibit 1 (entitled "NMOGA's Proposed Modifications") attached hereto. The reasons for NMOGA's modifications are:

1. NMOGA's modification to the opening sentence of **19.15.16.21 Water Use Report** is necessary to ensure that operators report the reuse of water as either produced water, nonpotable water, or potable water – each of which are defined terms. Removal of the phrase "types of water including" will avoid operators reporting and characterizing reuse water in some other undefined fashion.

2. NMOGA's modifications to **19.15.34.8.A(1)** are necessary to ensure that the reuse of produced water for pressure maintenance and secondary recovery operations remain permitted by rule. The term "enhanced recovery" appears limited by Division definitions to operations for the "displacement of oil" and does not clearly encompass operations to enhance the recovery of natural gas. *See* NMAC 19.15.2.7.E(2) and (3). Moreover, the Division's injection rules utilize

the phrase “pressure maintenance, secondary recovery and enhanced oil recovery injection projects.” *See* NMAC 19.1526.8.F. Retention of the terms “pressure maintenance” and “secondary recovery” in 19.15.34.8.A(1) are necessary to ensure that this provision remains applicable to natural gas operations. *See* NMAC 19.15.2.7 (defining both terms).

3. NMOGA’s modifications to **19.15.34.8.A(2)** will avoid confusion over what operations are permitted by rule and what operations require prior approval, yet maintain the jurisdictional distinction between the Division and the Water Quality Control Commission referenced in subpart 8.A(7). The Division’s proposed language results in the terms “drilling” and “production” appearing in both subpart 8.A(1) [authorizing certain reuse activities by rule] and subpart 8.A(2) [requiring prior approval from the division’s district office for all other reuse activities]. This duplication inadvertently occurs from inserting in subpart 8.A(2) the statutory language identifying the jurisdiction of the Division and the Water Quality Control Commission. *See* NMSA §70-2-12(B)(15) (division regulation of produced water). *See also* NMSA §70-13-3 (noting the jurisdiction of the Division and the WQCC). Insertion of the phrase “within the jurisdiction of the division” instead of the statutory language avoids this duplication of activities in subparts 8.A(1) and 8.A(2).

NMOGA’S PROPOSED EVIDENCE

Since NMOGA’s proposed modifications are not technical in nature, NMOGA does not anticipate the need to present witnesses or evidence in support of its proposed modifications but reserves the right to call rebuttal witnesses as necessary.

PROCEDURAL MATTERS

None at this time.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2020, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

Cheryl Bada
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Michael H. Feldewert

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NMOGA'S PROPOSED MODIFICATIONS
NMOGA Exhibit 1

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 2 GENERAL PROVISIONS FOR OIL AND GAS OPERATIONS

19.15.2.7 DEFINITIONS: These definitions apply to 19.15.2 NMAC through 19.15.39 NMAC.
 P. Definitions beginning with the letter "P".
 (10) "Produced water" means ~~water~~ a fluid that is an incidental byproduct from drilling for or the production of oil and gas.

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 16 DRILLING AND PRODUCTION

19.15.16.21 WATER USE REPORT: For a hydraulically fractured well, an operator shall report, on form C-103 or C-105, the amount of water reported on the disclosure required by Subsection B of 19.15.16.19 NMAC and the breakdown of that amount by types of water including produced water, nonpotable water and potable water. As used in 19.15.16.21 NMAC

A. "nonpotable water" means water, other than produced water, which contains 1,000 mg/l or more of TDS; and

B. "potable water" means water, other than produced water, which contains less than 1,000 mg/l of TDS.

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 34 PRODUCED WATER, DRILLING FLUIDS AND LIQUID OIL FIELD WASTE

19.15.34.2 SCOPE: 19.15.34 NMAC applies to the transportation, disposal, recycling, re-use or the direct surface or subsurface disposition ~~[by use]~~ of produced water ~~[produced or used]~~ in connection with the development or production of oil or gas or both ~~[; in road construction or maintenance, or other construction; in the generation of electricity or in other industrial processes]~~. 19.15.34 NMAC also applies to the transportation of drilling fluids and liquid oil field waste.

19.15.34.3 STATUTORY AUTHORITY: 19.15.34 NMAC is adopted pursuant to the Oil and Gas Act, Paragraph (15) of Subsection B of Section [70-2-12(B)] 70-2-12 NMSA 1978, which authorizes the division to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas ~~[of water produced or used in connection with the drilling for or producing of oil and gas or both]~~ and Paragraph (21) of Subsection B of Section [70-2-12(B)] 70-2-12 NMSA 1978 which authorizes the regulation of the disposition of nondomestic wastes from the exploration, development, production or storage of crude oil or natural gas.

19.15.34.6 OBJECTIVE: To encourage the recycling ~~[;]~~ or re-use ~~[or disposition]~~ of produced water ~~[by use]~~ in a manner that ~~[will afford reasonable protection against contamination of fresh water]~~ protects public health, the environment and fresh water resources and establish procedures by which persons may transport, recycle, reuse and dispose ~~[of]~~ produced water, drilling fluids and other liquid oil

field waste in activities related to the exploration, drilling, production, treatment or refinement of oil or gas.

19.15.34.7 DEFINITIONS: These definitions apply to 19.15.34.2 NMAC through 19.15.34.21 NMAC. See 19.15.2.7 NMAC for additional definitions.

A. “Recycling facility” is a stationary or portable facility used exclusively for the treatment, re-use or recycling of produced water [~~intended for disposition by use~~]. A recycling facility does not include oilfield equipment such as separators, heater treaters and scrubbers in which produced water may be used.

19.15.34.8 REQUIREMENTS FOR ~~[DISPOSITION BY USE]~~ REUSE, RECYCLING [FACILITIES] OR DISPOSAL OF PRODUCED WATER:

A. Recycling or [~~disposition by use~~] reuse of produced water.

(1) No permit or registration is required from the division for the [~~disposition by use~~] reuse of produced water for drilling, completion, productioning, pressure maintenance, secondary recovery [~~secondary~~] or enhanced recovery [~~pressure maintenance~~] of oil or natural gas or plugging of wells pursuant to 19.15.34 NMAC.

(2) Any other [~~disposition by use~~] reuse of produced water within the jurisdiction of the division in the exploration, drilling, production, treatment or refinement of oil or gas requires prior approval by the appropriate division district office on form C-147. Approval requirements will be determined by the district office based upon the proposed use.

(3) Research using produced water is to be encouraged through pilot projects approved by the appropriate division district office.

(4) All produced water for recycling or [~~disposition by use~~] reuse shall be handled and stored in a manner that [~~will afford reasonable protection against contamination of fresh water~~] protects public health, the environment and fresh water resources.

(5) All operations in which produced water is used shall be conducted in a manner consistent with hydrogen sulfide gas provisions in 19.15.11 NMAC or NORM provisions in 19.15.35 NMAC, as applicable.

(6) All releases from the recycling and re-use of produced water shall be handled in accordance with 19.15.29 NMAC.

(7) Any discharge, handling, transport, storage, recycling or treatment for the disposition of treated produced water, including disposition in road construction maintenance, roadway ice or dust control or other construction, or in the application of treated produced water to land, for activities unrelated to the exploration, drilling, production, treatment or refinement of oil or gas is subject to rules adopted by the water quality control commission.

B. Disposal of produced water. Persons disposing of produced water shall use one of the following disposition methods:

(1) [~~disposition in a manner that does not constitute a hazard to fresh water, public health, or the environment;~~] delivery to a [~~permitted salt~~] produced water disposal well [~~or facility~~] permitted pursuant to 19.15.26 NMAC, a surface waste management facility permitted pursuant to 19.15.36 NMAC or a permanent pit permitted pursuant to 19.15.17 NMAC; [~~or to a drill site for use in drilling fluid; or~~]

(2) [~~use~~] recycling or reuse in accordance with 19.15.34 NMAC; [~~or other authorization from the division.~~]

(3) for uses regulated by the water quality control commission pursuant to the Water Quality Act, a person shall obtain a permit from the department of environment before using the produced water, recycled or treated water or treated product or any byproduct of the produced water.

19.15.34.9 RECYCLING FACILITIES:

B. In addition to the other applicable rule requirements, registration of a recycling facility is required in the following circumstances:

(3) when the recycling facility is an addition to a ~~[salt]~~ produced water disposal well permitted under 19.15.26 NMAC;

19.15.34.13 OPERATIONAL REQUIREMENTS FOR RECYCLING CONTAINMENTS:

C. A recycling containment shall be deemed to have ceased operations if less than ~~[20%]~~ twenty percent of the total fluid capacity is used every six months following the first withdrawal of produced water for use. The operator must report cessation of operations to the appropriate division district office. The appropriate division district office may grant an extension to this determination of cessation of operations not to exceed six months.

19.15.34.14 CLOSURE AND SITE RECLAMATION REQUIREMENTS FOR RECYCLING CONTAINMENTS:

F. Reclamation of all disturbed areas no longer in use shall be considered complete when all ground surface disturbing activities at the site have been completed, and a uniform vegetative cover has been established that reflects a life-form ratio of plus or minus fifty percent ~~[(50%)]~~ of pre-disturbance levels and a total percent plant cover of at least seventy percent ~~[(70%)]~~ of pre-disturbance levels, excluding noxious weeds.

19.15.34.18 DENIAL OF FORM C-133: The division may deny approval of a form C-133 if:

D. the applicant or officer, director or partner in the applicant, or a person with an interest in the applicant exceeding twenty-five percent ~~[(25%)]~~, is or was within the past five years an officer, director or partner in the applicant, or a person with an interest in the applicant exceeding twenty-five percent ~~[(25%)]~~ in another entity that possesses or has possessed an approved form C-133 that has been cancelled or suspended, has a history of violating division or other state or federal environmental laws; is subject to a commission or division order, issued after notice and hearing, finding such entity to be in violation of an order requiring corrective action; or has a penalty assessment for violation of division or commission rules or orders that is unpaid more than 70 days after issuance of the order assessing the penalty.

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