



Michelle Lujan Grisham
Governor

Howie C. Morales
Lt. Governor

**NEW MEXICO
ENVIRONMENT DEPARTMENT**

Harold Runnels Building
1190 Saint Francis Drive, PO Box 5469
Santa Fe, NM 87502-5469
Telephone (505) 827-2855
www.env.nm.gov



James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

July 27, 2020

Ms. Florene Davidson, Commission Clerk
1220 South St. Francis Drive
Santa Fe, New Mexico, 87505
florene.davidson@state.nm.us

RE: Proposed Amendments to 19.15.2, 19.15.16, and 19.15.34 NMAC

Dear Commission Clerk Davidson,

The New Mexico Environment Department (NMED) appreciates the efforts that the Energy, Minerals, and Natural Resource Department (EMNRD) Oil Conservation Division (OCD) is taking to incorporate the Produced Water Act into their regulations under Title 19, Chapter 15 of the New Mexico Administrative Code (NMAC).

The NMED Water Protection Division (WPD) offers the following comments on the proposed amendments to the Oil Conservation Commission (OCC) rules on produced water under 19.15.16 and 19.15.34 NMAC.

1. WPD supports the amendment to 19.15.16 NMAC to add a section requiring an operator to file a water use report for a hydraulically fractured well, including the amount of recycled produced water. NMED WPD also supports additional revisions to the proposed language to remove references to potable and non-potable water and to replace these references with delineating Total Dissolved Solids (TDS) concentrations: above 1000 mg/L TDS (previously "non-potable") and below 1000 mg/L TDS (previously "potable").
2. Paragraph A.6. of 19.15.34.8 NMAC should better delineate OCD and NMED authorities. Currently, the rule reads, "All releases from the recycling and re-use of produced water shall be handled in accordance with 19.15.29 NMAC." Since "*all releases*" is too broad and could inadvertently include releases that affect waters under NMED/Water Quality Control Commission (WQCC) authority, WPD recommends the following:

"All releases from the recycling and re-use of produced water for activities related to the exploration, drilling, production, treatment or refinement of oil or gas shall be handled in accordance with 19.15.29 NMAC."

The New Mexico Oil and Gas Association proposed the phrase "within the jurisdiction of the division," which WPD finds to be an acceptable alternative to the more specific, plain language recommended above.

WPD also suggests adding NMED release notification language to Paragraph A.6. such as:

"If the release is of a volume that may with reasonable probability effect ground or surface waters regulated by the department of environment, the responsible party must send a copy of the form C-141 to the department of environment, as applicable, in accordance with 19.15.29 NMAC."

3. In addition, WPD recommends that the new language in Paragraph A.7 of 19.15.34.8 NMAC include the term "release" similar to Paragraph A.6, "Any release, discharge, handling, transport, storage, recycling or treatment for the disposition of treated produced water..." This revision will help better define OCD and NMED authority.

Thank you for the opportunity to comment.

Sincerely,

Rebecca Roose  Digitally signed by Rebecca
Roose
Date: 2020.07.27 14:56:40 -06'00'

Rebecca Roose
WPD Director

Cc: Michelle Hunter, Ground Water Quality Bureau Chief, NMED
Shelly Lemon, Surface Water Quality Bureau Chief, NMED
Annie Maxfield, Assistant General Counsel, NMED
Chris Vigil, Assistant General Counsel, NMED