

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION
2005 OCT 26 AM 10 07

**APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION FOR
AMENDMENT OF RULES 7.D, R and W CONCERNING DEFINITIONS; 202
CONCERNING PLUGGING AND ABANDONMENT; AND 50 CONCERNING
PITS AND BELOW GRADE TANKS.**

CASE NO. 13590

AMENDED APPLICATION FOR RULEMAKING

The New Mexico Oil Conservation Division (the Division) hereby applies to the New Mexico Oil Conservation Commission (the Commission) for an order:

- (a) amending Rule 7.D, R and W: Rule 7.D (6) to add a definition for “downstream facility” [paragraph 6 of subsection D of 19.15.1.7]; Rule 7.R (6) to add a definition for “re-vegetation” [paragraph 6 of subsection R of 19.15.1.7]; Rule 7.W (4) to change the definition of “watercourse” [paragraph 4 of subsection 7 of 19.15.1.7 NMAC]; and Rule 7.W (7) [paragraph 7 of subsection W of 19.15.1.7 NMAC] to change the definition of “wellhead protection area”;
- (b) amending Rule 202 [19.15.4.202 NMAC], concerning Plugging and Abandonment, to conform its requirements to pit closure provisions of Rule 50 and to change provisions concerning dry hole markers; and
- (c) amending Rule 50 [19.15.2.50 NMAC] concerning Pits and Below Grade Tanks, to prohibit unlined pits, require removal of pit contents and liners at the time of closure and make other changes.

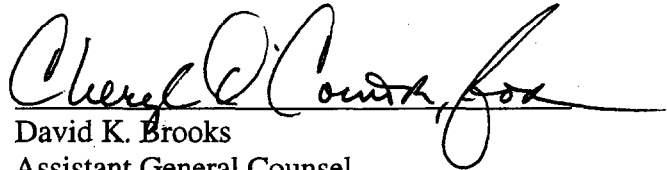
The text of the proposed amendments is attached hereto as Exhibit A.

WHEREFORE, the Division hereby applies to the Commission to enter an order:

- A. adopting the proposed rule amendments shown on Exhibit A, and
- B. certifying the new rules so adopted for publication in the New Mexico

Register, as required by statute.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "David K. Brooks", is written over a horizontal line.

David K. Brooks
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EXHIBIT A TO AMENDED APPLICATION

19.15.1.7 DEFINITIONS:

D. Definitions beginning with the letter "D".

(1) Deep pool shall mean a common source of supply ~~[which]~~that is situated 5000 feet or more below the surface.

(2) Depth bracket allowable shall mean the basic oil allowable assigned to a pool and based on its depth, unit size, or special pool rules, which, when multiplied by the market demand percentage factor in effect, will determine the top unit allowable for the pool.

(3) Director shall mean the director of the oil conservation division of the New Mexico energy, minerals and natural resources department.

(4) Division shall mean the oil conservation division of the New Mexico energy, minerals and natural resources department.

(5) Division clerk shall ~~[means]~~mean the oil conservation division employee that the division director designates to accept filings in adjudicatory cases before the division.

(6) Downstream facility shall mean a facility that transports or processes natural gas or crude oil such as a refinery, gas plant, compressor station or crude oil pump station; brine production wells and associated facilities; or service companies.

R. Definitions beginning with the letter "R".

(1) Recomplete shall mean the subsequent completion of a well in a different pool from the pool in which it was originally completed.

(2) Regulated naturally occurring radioactive material (regulated NORM) shall mean naturally occurring radioactive material (NORM) contained in any oil-field soils, equipment, sludges or any other materials related to oil-field operations or processes exceeding the radiation levels specified in 20.3.14.1403 NMAC.

(3) Release shall mean all breaks, leaks, spills, releases, fires or blowouts involving crude oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and natural gases to the environment.

(4) Remediation plan shall mean a written description of a program to address unauthorized releases. The plan may include appropriate information, including assessment data, health risk demonstrations, and corrective action(s). The plan may also include an alternative proposing no action beyond the submittal of a spill report.

(5) Responsible person shall mean the owner or operator who ~~[must]~~shall complete division approved corrective action for pollution from releases.

(6) Re-vegetate shall mean seeding or planting a site with plant species that are predominantly native and in a quantity adequate to control erosion.

~~[(6)]~~(7) Royalty interest owners are owners of an interest in the non-executive rights including lessors, royalty interest owners and overriding royalty interest owners. Royalty interests are non-cost bearing.

W. Definitions beginning with the letter "W".

(1) Waste, in addition to its ordinary meaning, shall include:

(a) underground waste as those words are generally understood in the oil and gas business, and in any event to embrace the inefficient, excessive, or improper use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating, or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool, and the use of inefficient underground storage of natural gas;

(b) surface waste as those words are generally understood in the oil and gas business, and in any event to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of natural gas of any type or in any form, or crude petroleum oil, or any product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage, or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing a well or wells, or incident to or resulting from the use of inefficient storage or from the production of crude petroleum oil or natural gas, in excess of the reasonable market demand;

(c) the production of crude petroleum oil in this state in excess of the reasonable market demand for such crude petroleum oil; such excess production causes or results in waste which is prohibited by the Oil and Gas Act; the words "reasonable market demand" as used herein with respect to crude petroleum oil, shall be construed to mean the demand for such crude petroleum oil, for reasonable current requirements for current

consumption and use within or outside of the state, together with the demand of such amounts as are reasonably necessary for building up or maintaining reasonable storage reserves of crude petroleum oil or the products thereof, or both such crude petroleum oil and products;

(d) the non-ratable purchase or taking of crude petroleum oil in this state; such non-ratable taking and purchasing causes or results in waste, as defined in Subparagraphs (a), (b), and (c) of this definition and causes waste by violating Section 70-2-16 of the Oil and Gas Act;

(e) the production in this state of natural gas from any gas well or wells, or from any gas pool, in excess of the reasonable market demand from such source for natural gas of the type produced or in excess of the capacity of gas transportation facilities for such type of natural gas; the words "reasonable market demand," as used herein with respect to natural gas, shall be construed to mean the demand for natural gas for reasonable current requirements, for current consumption and for use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of natural gas or products thereof, or both such natural gas and products.

(2) Water shall mean all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water.

(3) Water contaminant shall mean any substance that could alter if released or spilled the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

(4) Watercourse shall mean any ~~[lake bed, or gully, draw, stream bed, wash, arroyo, or natural or human made channel through which water flows or has flowed]~~ river, creek, canyon or wash or any other channel having definite banks and beds with visible evidence of the occasional flow of water.

(5) Water pollution shall mean introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property.

(6) Well blowout shall mean a loss of control over and subsequent eruption of any drilling or work over well or the rupture of the casing, casinghead, or wellhead or any oil or gas well or injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or liquids, from the well.

(7) Wellhead protection area shall mean the area within 200 horizontal feet of any private, domestic fresh water well or spring ~~[used by]~~ that less than five households use for domestic or stock watering purposes or within 1000 horizontal feet of any other fresh water well or spring. ~~[Wellhead protection areas shall not include areas around water wells drilled after an existing oil or natural gas waste storage, treatment or disposal site was established.]~~

(8) Wetlands shall mean those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. Constructed wetlands used for wastewater treatment purposes are not included in this definition.

(9) Working interest owners are the owners of the operating interest under an oil and gas lease who have the exclusive right to exploit the oil & gas minerals. Working interests are cost bearing.

19.15.4.202 PLUGGING AND PERMANENT ABANDONMENT:

A. Notice of ~~[Plugging]~~ plugging.

(1) ~~[Notice]~~ The operator shall file a notice of intention to plug ~~[must be filed]~~ with the division on ~~[Form C-103, Sundry Notices and Reports on Wells, by the operator prior to the commencement of]~~ form C-103, sundry notices and reports on wells prior to commencing plugging operations. ~~[, which notice must]~~ The notice shall provide all of the information required by [Rule 1103] 19.15.13.1103 NMAC including operator and well identification and proposed procedures for plugging said well, and in. In addition, the operator shall provide a well-bore diagram showing the proposed plugging procedure. [Twenty-four] The operator shall give 24 hours notice [shall be given] prior to commencing any plugging operations.

(2) In the case of a newly drilled dry hole, the operator may obtain verbal approval from the appropriate ~~[District Supervisor]~~ district supervisor or his representative of the plugging method ~~[of plugging]~~ and time operations are to begin. The operator shall file notice of such verbal approval on form C-103 ~~[Written notice in~~

~~accordance with this rule shall be filed~~ with the division within [ten (10)] 10 days after the district supervisor or his representative has given such verbal approval ~~[has been given]~~.

B. Plugging.

(1) Before ~~[any well is abandoned, it shall be plugged]~~ an operator abandons a well, the operator shall plug the well in a manner ~~[which] that~~ will permanently confine all oil, gas and water in the separate strata in which they are originally found. This may be accomplished by using mud-laden fluid, cement and plugs singly or in combination as approved by the division on the notice of intention to plug.

(2) The operator shall mark the ~~[exact location of]~~ plugged and abandoned ~~[wells]~~ well's exact location with a steel marker not less than four inches ~~[(4")]~~ in diameter set in cement and extending at least four feet ~~[(4')]~~ above mean ground level. The marker shall display the [operator] operator's name, lease name, [and] well number, API number and location, including unit letter, footages, section, township and range, [shall be] welded[, stamped or otherwise permanently engraved into] onto the metal ~~[of the marker]~~. No permanent structures preventing access to the wellhead shall be built over a plugged and abandoned well without the division's written approval ~~[of the OCD]~~. No plugged and abandonment marker shall be removed without the division's written permission ~~[of the OCD]~~.

(3) As soon as practical but no later than ~~[one year]~~ six months after the completion of plugging operations, the operator shall:

(a) ~~[fill]~~ close all pits in accordance with Subsection F of 19.15.2.50 NMAC;

(b) ~~[level the location];~~

~~(c) remove deadmen and all other junk; and~~

~~(d)~~ (c) take such other measures as are necessary or required by the division to remediate contamination, restore the location to a safe and clean condition, contour the surface to prevent erosion and ponding of rainwater and re-vegetate the site.

(4) Upon completion of plugging, ~~[and]~~ clean up and restoration operations as required, the operator shall contact the appropriate district office to arrange for an inspection of the well and location.

(5) ~~[Below]~~ Operators may use below-ground plugged and abandonment markers [can be used] only with the division's written permission [of the OCD] when an above-ground marker would interfere with agricultural endeavors. The below-ground marker shall have a steel plate welded onto the abandoned well's surface or conductor pipe ~~[of the abandoned well]~~ and shall be at least [3] three feet below the ground surface, ~~[and of sufficient size so that all]~~ All the information required by ~~[Section 103 of 19.15.3]~~ 19.15.3.103 NMAC ~~[can]~~ shall be [stenciled into the steel or] welded onto the steel plate's surface ~~[of the steel plate]~~. The ~~[OCD]~~ division may require a re-survey of the well location.

C. Reports.

(1) The operator shall file ~~[Form C-105, Well Completion or Recompletion Report and Log as provided in Rule 1105]~~ form C-105, well completion or recompletion report and log as provided in 19.15.13.1105 NMAC.

(2) Within ~~[thirty (30)]~~ 30 days after completing all work required ~~[restoration work]~~ by a permit or Paragraph (3) of Subsection B of 19.15.4.202 NMAC, the operator shall file with the division, in triplicate, a record of the work done on ~~[Form]~~ form C-103 as provided in [Rule 1103] 19.15.13.1103 NMAC.

(3) The division shall not approve the record of plugging or release any bonds until the operator has filed all necessary reports [have been file] and the division has inspected and approved the location ~~[has been inspected and approved by the division]~~.

[1-1-50, 7-12-90...2-1-96; A, 3-31-00; 19.15.4.202 NMAC - Rn, 19 NMAC 15.D.202, 12-14-01; A, - -0.]

19.15.2.50 PITS AND BELOW-GRADE TANKS:

A. Permit required. [Discharge into, or construction of,]

(1) No person shall construct or use any pit or below-grade tank [is prohibited absent possession] except pursuant to and in accordance with the terms and conditions of a division-issued permit [issued by the division], unless otherwise [herein] provided in 19.15.2.50 NMAC or unless the division grants an exemption pursuant to Subsection G of 19.15.2.50 NMAC. Facilities the division has permitted [by the division] pursuant to [Section 711 of 19.15.9] 19.15.2.53 NMAC or water quality control commission [regulations] rules are exempt from [Section 50 of 19.15.2] 19.15.2.50 NMAC.

(2) Closed loop systems. In lieu of using pits or below-grade tanks in accordance with 19.15.2.50 NMAC, operators may conduct operations using closed loop systems. Operators, however, shall dispose of all

wastes at a division-approved waste disposal facility or in a manner approved by the division.

B. Application.

(1) ~~[Where filed; application form.~~

~~(a)]Downstream facilities. An operator shall apply to the division's environmental bureau for a permit to construct or use a pit or below-grade tank at a downstream facility that is not permitted pursuant to water quality control commission rules[such as a refinery, gas plant, compressor station, brine facility, service company,] or at a surface waste management facility that is not permitted pursuant to [Section 711 of 19.15.9]19.15.2.53 NMAC or [water quality control commission regulations]environmental improvement board rules. The operator shall use a form C-144, application to discharge into a pit or below-grade tank. The operator may submit the form separately or as an attachment to an application for a discharge permit, [best management practices,] surface waste management facility permit[,], or other permit.~~

~~[(b)](2) Drilling [or production]and work over pits. Operators shall indicate on form C-101 the location of all drilling and work over pits or whether they will use a closed loop system. Operators, however, are not required to obtain a permit pursuant to Subsection A of 19.15.2.50 NMAC.~~

~~(3) Other pits. An operator shall apply to the appropriate district office of the division on form C-144 for a permit [for]to construct or use [of]a pit or below-grade tank in [drilling,]connection with production[,], or other operations not [otherwise identified]described in [Subparagraph (a),]Paragraph (1)[,], of Subsection B of 19.15.2.50 NMAC.[The operator shall apply for the permit on the application for permit to drill or on the sundry notices and reports on wells, or electronically as otherwise provided in this chapter. Approval of such form constitutes a permit for all pits and below grade tanks annotated on the form. A separate Form C-144 is not required.~~

~~(2) General permit; individual permit. An operator may apply for a permit to use an individual pit or below grade tank, or may apply for a general permit applicable to a class of like facilities.~~

~~(3) When filed.~~

~~(a) New pits or new below grade tanks. After April 15, 2004, operators shall obtain a permit before constructing a pit or below grade tank.~~

~~(b) Existing pits or new below grade tanks. For each pit or below grade tank in existence on April 15, 2004 that has not received an exemption after hearing as allowed by OCC Order R 3221 through R 3221D inclusive, the operator shall submit a notice not later than April 15, 2004 indicating either that use of the pit or below grade tank will continue or that such pit or below grade tank will be closed. If use of a pit or below grade tank is to be discontinued, discharge into the pit or use of the below grade tank shall cease not later than June 30, 2005. If use of a pit or below grade tank will continue, the operator shall file a permit application not later than September 30, 2004. If an operator files a timely, administratively complete application for continued use, use of the pit or below grade tank may continue until the division acts upon the permit application.]~~

~~(4) Engineering design plan. An applicant for a permit for a pit other than a drilling or work over pit shall submit with the permit application a detailed engineering design plan, including operating and maintenance procedures, a closure plan and a hydrologic report that provides sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology, to enable the division to evaluate the pit's actual and potential effects on soils, surface water and ground water. The plan shall include detailed information on dike protection and structural integrity; leak detection, including an adequate fluid collection and removal system; liner specifications and compatibility; freeboard and overtopping prevention; nuisance and hazardous odors such as H₂S; an emergency response plan, unless the pit is part of a facility that has an integrated contingency plan; type of waste stream, including chemical analysis; climatological factors, including freeze-thaw cycles; a monitoring and inspection plan; erosion control and any other pertinent information the division requests.~~

~~(5) Review and approval. The division shall review all applications and may approve, deny or approve an application with conditions. If the division denies an application, or approves the application subject to conditions not expressly provided in 19.15 NMAC, the division shall notify the applicant by certified mail, return receipt requested, and the applicant shall have 10 days after receipt of such notification to request a formal hearing.~~

C. Design, construction[,], and operational standards.

(1) In general. ~~[Pits]Operators shall design, construct and operate pits, sumps and below-grade tanks [shall be designed, constructed and operated]so as to contain liquids and solids to prevent contamination of fresh water and protect public health and the environment.~~

(2) ~~[Special requirements for pits]Pits.~~

(a) Location. No pit shall be located in any watercourse, lakebed, sinkhole, ~~[or]playa lake, wetland or wellhead protection area. [Pits adjacent to any such watercourse or depression shall be located safely above the ordinary high water mark of such watercourse or depression. No pit shall be located in any wetland.]The~~

division may require additional protective measures for pits located in ground water sensitive areas ~~or wellhead protection areas~~.

(b) Liners required.

(i) ~~Drilling [pits, workover] and work over pits.~~ Each drilling pit or work over pit shall contain, at a minimum, a single liner appropriate for the site's conditions ~~[at the site]~~. The liner shall be designed, constructed~~[;]~~ and maintained so as to prevent the contamination of fresh water, and protect public health and the environment. Pits used for air drilling operations or to vent or flare ~~[gas] gases~~ during other drilling or work over operations that are designed to allow liquids to drain to a separate lined pit do not require a liner.

(ii) ~~[Disposal or storage]~~ Other pits. Each pit other than a drilling or work over pit ~~[disposal pit (including, but not limited to, any separator pit, tank drain pit, evaporation pit, blowdown pit used in production activities, pipeline drip pit, or production pit) and each storage pit (including any brine pit, salt water pit, fluid storage pit for an LPG system, or production pit)]~~ shall contain, at a minimum, a primary and a secondary liner with leak detection appropriate to the site's conditions ~~[at the site]~~. Liners shall be designed, constructed~~[;]~~ and maintained so as to prevent the contamination of fresh water, and protect public health and the environment.

~~[(iii) Alternative liner media. The division may approve liners that are not constructed in accordance with division guidelines only if the operator demonstrates to the division's satisfaction that the alternative liner protects fresh water, public health, and the environment as effectively as those prescribed in division guidelines.]~~

(c) Liner specifications. All liners shall meet the following requirements.

(i) Liners for all drilling or work over pits shall be at least 12 mils (.012 inches or .305 millimeters) thick, and manufactured from PVC (Polyvinyl chloride), or other equivalent material that meets or exceeds the various ASTM standards for PVC. Liners for all pits other than drilling or work over pits shall be at least 30 mils (.030 inches or .762 millimeters) thick, and manufactured from PVC, or other equivalent material that meets or exceeds the various ASTM standards for PVC. All synthetic (geomembrane) liners shall have a hydraulic conductivity no greater than 1×10^{-9} centimeters per second.

(ii) Except as otherwise provided in Subparagraph (c) of Paragraph (2) of Subsection C of 19.15.2.50 NMAC, geomembrane liners shall be composed of an impervious, reinforced, synthetic material that is resistant to hydrocarbons, salts and acidic and alkaline solutions. Liner materials shall be resistant to ultraviolet light, or provisions shall be made to protect the material from the sun.

(iii) Liner compatibility shall comply with United States environmental protection agency method 9090A.

(iv) Every pit shall have a properly constructed foundation or firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities to prevent rupture or tear of the liner; an adequate anchor trench; wall slopes not exceeding 3H:1V and adequate vent design. Liner seams shall be minimized and oriented up and down, not across a slope. Factory seams should be used where possible. Qualified personnel shall perform all field seaming.

(v) At any point of discharge into or suction from the lined pit, the liner shall be protected from the fluid force or mechanical damage.

(vi) Primary liners and single liners shall, in all cases, be constructed of a synthetic material.

(vii) A secondary liner may be a synthetic liner or an alternative liner approved by the division and certified by a professional engineer. Secondary liners constructed with compacted soil membranes, i.e., natural or processed clay and other soils, shall be at least three feet thick, placed in six-inch lifts and compacted to 95 percent of the material's Standard Proctor Density per ASTM D-698. Compacted soil membranes used in a liner shall undergo permeability testing in conformity with ASTM standards and methods approved by the division before and after construction. All compacted soil membranes shall have a hydraulic conductivity non greater than 1×10^{-8} centimeters per second. The operator shall submit results of pre-construction testing to the division for approval prior to construction.

~~[(e)]~~ (d) Leak detection. [A leak detection system shall be installed between the primary and secondary liner in each disposal or storage pit. The leak] Leak detection [system] systems shall be designed, installed[;] and operated so as to prevent the contamination of fresh water, and protect public health and the environment. The operator shall notify the division at least [twenty four] 72 hours prior to the primary liner's installation [of the primary liner] so that a division representative may inspect the leak detection system before it is covered. Leak detection shall not be required for single lined pits.

~~[(d)]~~(e) Drilling and work over pits. Each drilling or work over pit shall be of an adequate size to assure that a supply of fluid is available and sufficient to confine oil, natural gas[,] or water within its native strata. Only produced fluids may be disposed of into a pit. Operators shall maintain pits free of miscellaneous solid waste or debris. Hydrocarbon-based drilling fluids shall be contained in tanks made of steel or other division-approved material. Immediately after cessation of drilling or work over operations, the operator shall remove any visible or measurable layer of oil from the surface of any drilling or work over pit.

~~[(e)]~~(f) ~~[Disposal or storage]~~Other pits. No waste other than oilfield waste exempt pursuant to subtitle C of the federal Resource Conservation and Recovery Act (RCRA) or non-hazardous oilfield waste shall be discharged into or stored in any pit. No measurable or visible layer of oil may be allowed to accumulate or remain anywhere on the surface of any pit. Spray evaporation systems shall be operated such that all spray-borne suspended or dissolved solids remain within the perimeter of the pond's lined portion.

~~[(f)]~~(g) Fencing~~[and netting]~~. ~~[All]~~Operators shall fence or enclose all pits [shall be fenced or enclosed] to prevent access by livestock, and maintain fences [shall be maintained] in good repair. Operators shall fence or enclose any pit located within a municipality's corporate limits, 500 feet of any highway or within 1000 feet of any structure used for public or private occupancy, school, school bus stop, church, hospital, place of public assembly or outdoor public recreational area to prevent access by unauthorized persons. Unless the pit is located on a well site the pit's operator controls, the operator shall post a sign not smaller than 12 inches by 24 inches with lettering not smaller than two inches in height in a conspicuous place on the fence surrounding the pit. The operator shall maintain the sign in legible condition. The sign shall identify the pit's operator and the facility's location by quarter-quarter section or unit letter, section, township and range and provide emergency telephone numbers. Active drilling or work over pits may have a portion of the pit unfenced to facilitate operations. ~~[In issuing a permit,~~
~~the]~~The division may impose additional fencing requirements for protection of wildlife in particular areas.

(h) Netting. After July 1, 2006, the operator shall screen, net, cover or otherwise render non-hazardous to migratory birds all [All] tanks exceeding [46]eight feet in diameter, exposed pits[,] and ponds[shall be screened, netted, covered, or otherwise rendered non-hazardous to migratory birds]. Drilling and work over pits are exempt from the netting requirement. ~~[Immediately after cessation of these operations such pits shall have any visible or measurable layer of oil removed from the surface.]~~ Upon written application, the division may grant an exception to screening, netting[,] or covering requirements upon ~~[a]the operator's~~ showing that an alternative method will adequately protect migratory birds or that the tank or pit is not hazardous to migratory birds.

~~[(g)]~~(i) Unlined pits.

(i) General prohibition. ~~[After June 30, 2005 use of, or discharge]~~Discharge into[,] any newly constructed, unlined pit ~~[that has not been previously permitted pursuant to Section 711 of 19.15.9 NMAC or water quality control commission regulations]~~ is prohibited. Discharge into existing, unlined pits shall cease not later than July 1, 2006. ~~[, except as otherwise provided in Section 50 of 19.15.2 NMAC. After April 15, 2004, construction of unlined pits is prohibited unless otherwise provided in Section 50 of 19.15.2 NMAC.~~

(ii) Unlined pits exempted by previous order. An operator of an unlined pit existing on April 15, 2004 for which a previous exemption was received after hearing as allowed pursuant to commission Orders No. R-3221 through R-3221D inclusive, shall not be required to reapply for an exemption pursuant to Subparagraph (g), Paragraph (2), Subsection C of 19.15.2.50 NMAC provided the operator notifies the division, no later than April 15, 2004, of the existence of each unlined pit it believes is exempted by order, the location of the pit, and the nature and amount of any discharge into the pit. Such order shall constitute a permit for the purpose of Subparagraph (g), Paragraph (2), Subsection C of 19.15.2.50 NMAC. The division may terminate any such permit in accordance with Paragraph (2), Subsection C of 19.15.2.50 NMAC. Any pit constructed after April 15, 2004 shall comply with the permitting, lining and other requirements of Section 50 of 19.15.2 NMAC, notwithstanding any previous order to the contrary.

(iii) Unlined pits shall be allowed in the following areas provided that the operator has submitted, and the division has approved, an application for permit as provided in Section 50 of 19.15.2 NMAC, and provided that the pit site is not located in fresh water bearing alluvium or in a wellhead protection area:

TOWNSHIP 19 SOUTH, RANGE 30 EAST, NMPM Sections 8 through 36;

TOWNSHIP 20 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36;

TOWNSHIP 20 SOUTH, RANGE 31 EAST, NMPM Sections 1 through 36;

TOWNSHIP 20 SOUTH, RANGE 32 EAST, NMPM Sections 4 through 9, Sections 16 through 21; and Sections 28 through 33;

TOWNSHIP 21 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 36;

TOWNSHIP 21 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36;

TOWNSHIP 21 SOUTH, RANGE 31 EAST, NMPM Sections 1 through 36;
TOWNSHIP 22 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 36;
TOWNSHIP 22 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 36;
TOWNSHIP 23 SOUTH, RANGE 29 EAST, NMPM Sections 1 through 3, Sections 10 through 15, Sections 22 through 27, and Sections 34 through 36;
TOWNSHIP 23 SOUTH, RANGE 30 EAST, NMPM Sections 1 through 19; and that area within San Juan, Rio Arriba, Sandoval, and McKinley Counties that is outside the valleys of the San Juan, Animas, Rio Grande, and La Plata Rivers, which are bounded by the topographic lines on either side of the rivers that are 100 vertical feet above the river channels, measured perpendicularly to the river channels, and is outside those areas that lie within 50 vertical feet, measured perpendicularly to the drainage channel, of all perennial and ephemeral creeks, canyons, washes, arroyos, and draws, and is outside the areas between the above named rivers and the Highland Park Ditch, Hillside Thomas Ditch, Cunningham Ditch, Farmers Ditch, Halford Independent Ditch, Citizens Ditch, or Hammond Ditch, provided that no protectable ground water is present or if present, will not be adversely affected; or any area where the discharge into the pit meets New Mexico Water Quality Control Commission ground water standards.]

(3) [Special requirements for below] Below-grade tanks.

(a) Operators shall construct all [All] below-grade tanks constructed after April 15, 2004 [shall be constructed] with secondary containment and leak detection. The operator of any below-grade tank constructed prior to April 15, 2004 that does not have secondary containment and leak detection shall test its integrity annually and shall promptly repair or replace any below-grade tank that does not demonstrate integrity. Any such below-grade tank shall be equipped with leak detection [at the time of any major repair] by December 31, 2008.

(b) Operators shall not allow below-grade tanks to overflow.

(c) Operators shall install only below-grade tanks of materials resistant to the tank's particular contents and to damage from sunlight.

(4) Sumps. Operators shall test [the] all sumps' integrity [of all sumps] annually, and shall promptly repair or replace any sump that does not demonstrate integrity. [Sumps] Operators may test sumps that can be removed from their emplacements [may be tested] by visual inspection. Other sumps shall be tested by appropriate mechanical means. The operator shall maintain records of sump inspection and testing and make such records available for division review upon request.

D. Emergency actions.

(1) Permit not required. In an emergency an operator may construct a pit without a permit to contain fluids, solids[,], or wastes if an immediate danger to fresh water, public health[,], or the environment exists.

(2) Construction standards. [A pit] Operators shall construct pits [constructed in] during an emergency [shall be constructed], to the extent possible given the emergency, in a manner that is consistent with the requirements of [Section 50 of 19.15.2] 19.15.2.50 NMAC and that prevents the contamination of fresh water, and protects public health and the environment.

(3) Notice. The operator shall notify the appropriate district office as soon as possible (if possible before construction begins) of the need for such pit's construction [of such a pit].

(4) Use and duration. The pit may be used only for the emergency's duration [of the emergency]. If the emergency lasts more than [forty-eight (48)] 48 hours, the operator [must] shall seek the division's approval [from the division] for the pit's continued use [of the pit]. [All] The operator shall remove all fluids, solids or wastes [must be removed] within 24 hours after cessation of use unless the division extends that time period.

(5) "Emergency pits[;]" Subsection D[;] of 19.15.2.50 NMAC shall not be construed to allow construction or use of so-called "emergency pits[;]" [] which are pits constructed as a precautionary matter to contain a spill in the event of a release. Construction or use of any such pit shall require a permit issued pursuant to [Section 50 of 19.15.2] 19.15.2.50 NMAC unless the pit is described in a spill prevention, control and countermeasure (SPCC) plan [required by] the United States environmental protection agency requires, the operator removes all fluids [are removed] from the pit within 24 hours[,], and the operator has filed a notice of the pit's location [of the pit] with the division.

E. Drilling fluids and drill cuttings. [Drilling] Operators shall recycle, transfer to a division-approved waste disposal facility or otherwise dispose of as approved by the division drilling fluids and drill cuttings [shall either be recycled or be disposed of as approved by the division and] in a manner to prevent the contamination of fresh water and protect public health and the environment. The operator shall describe the proposed disposal method in the application for permit to drill or the sundry notices and reports on wells.

F. Closure and restoration.

(1) Closure required. Except as otherwise specified in ~~[Section 50 of 19.15.2]~~ 19.15.2.50 NMAC, the operator shall properly close a pit or below-grade tank ~~[shall be properly closed]~~ within six months after cessation of use; provided that the required closure date for pits in existence on December 31, 2005, which are no longer in use, or for which the use ceases prior to July 1, 2007, shall be December 31, 2007, unless the division determines, after notice and opportunity for hearing, that an operator shall close a particular pit by an earlier date because of imminent danger to fresh water, public health or the environment. ~~[As a condition of a permit, the division may require the operator to file a detailed closure plan before closure may commence.]~~ The division for good cause shown may grant a six-month extension of time to accomplish a pit's closure. ~~[Upon completion of closure a closure report (form C-144), or sundry notices and reports on wells shall be submitted to the division. Where the pit's contents will likely migrate and cause ground water or surface water to exceed water quality control commission standards, the pit's contents and the liner shall be removed and disposed of in a manner approved by the division.]~~

(2) Notice of intention to commence closure. The operator, prior to pit closure operations, shall notify the surface owner that the pit is to be closed and shall furnish a copy of such notification to the division. The notice shall include the operator's name and the location of the pit to be closed by unit letter, footages, section, township and range. If the pit is associated with a particular well, the notice shall also include the well's name, number and API number. In addition, the operator shall notify the division's district office at least 72 hours, but not more than one week, before closure operations commence, so that division representatives may witness closure operations.

(3) Closure requirements.

(a) General closure performance requirements. The operator shall close each pit and below-grade tank so that fresh water, public health and the environment are protected. The operator shall initially determine whether any release from the pit or below-grade tank has contaminated soil or ground water. During closure, the operator shall remediate any soil contamination pursuant to Paragraph (3) of Subsection F of 19.15.2.50 NMAC. The division may, after notice and opportunity for hearing, require additional, appropriate remediation or closure activities at any pit or below-grade tank in order to protect fresh water, public health or the environment.

(b) Standard closure methods.

(i) The operator shall close each pit or below-grade tank by excavating all contents and synthetic pit liners and transferring them to a division-approved waste disposal facility. The operator shall breach any clay liner left in place to facilitate drainage.

(ii) After removing all pit or tank contents and liners or tank structure, the operator shall test for contamination by collecting, at a minimum, a five-point composite soil sample from the four corners and center of the pit or below-grade tank excavation and sampling any obvious soil contamination (*i.e.*, contamination that is easily discernible to the visual or olfactory senses). The operator shall submit the soil samples to an independent laboratory for analysis for benzene, toluene, ethylbenzene and xylenes (BTEX); total petroleum hydrocarbons (TPH); and chlorides. If such soil samples exceed a TPH concentration of 100 mg/kg or a chlorides concentration of 250 mg/kg or the background concentration, whichever is greater, of TPH or chlorides the operator shall notify the division on form C-144 and the division may require additional delineation. Otherwise, the operator may close a pit or below-grade tank without further requirements when the sampling result demonstrate that the soil has not been contaminated by a release of oilfield waste at concentrations that exceed the division's soil closure standards.

(iii) If contamination has occurred, the operator shall excavate and remove all oilfield waste or oilfield waste contaminated soil, unless the division authorizes on-site remediation pursuant to Paragraph (3) of Subsection G of 19.15.2.50 NMAC. If the operator is unable to excavate the oilfield waste or contaminated soil because it is technically impracticable, then with the division's prior approval, the operator may close by backfilling the excavation with clean soil and covering the clean backfill with a division-approved cap and soil cover. The operator shall bury the cap at least three feet below grade.

(iv) If the operator determines that ground water has been contaminated, then the operator shall comply with 19.15.3.116 and 19.15.1.19 NMAC.

(c) Alternative closure methods. Operators may propose an alternative closure method, including but not limited to site soil stabilization/solidification, as requests for exemption pursuant to Paragraph (3) of Subsection G of 19.15.2.50 NMAC.

(d) Closure report. Upon closure completion, the operator shall submit a closure report on form C-144, with necessary attachments to document all closure activities, including but not limited to sampling results, information required by Paragraph (3) of Subsection F of 19.15.2.50 NMAC, a plot plan and details on back-

filling, capping and covering, where applicable. In the closure report, the operator shall certify that all information in the report and attachments is correct and that the operator has complied with all closure requirements of 19.15.2.50 NMAC.

(4) Division soil closure standards.

(a) The operator shall excavate and remove contaminated soils as necessary so that soils remaining in place meet the standards provided in the table in Subparagraph (d) of Paragraph (3) of Subsection F of 19.15.2.50 NMAC.

(b) General site characteristics. The operator shall determine the following site characteristics when determining the appropriate soil closure concentration standards for pits and below-grade tanks.

(i) Depth to ground water. The operator shall determine the depth to the ground water's seasonal high water elevation beneath the pit or below-grade tank. The operator may estimate the depth to ground water using either local water well information, published regional ground water information, data on file with the office of the state engineer or the vertical distance from adjacent ground water or surface water.

(ii) Distance to wellhead protection area. The operator shall determine if the pit is within a wellhead protection area.

(iii) Distance to nearest surface water body. The operator shall determine the horizontal distance to any down-gradient surface water bodies within 1000 feet of the pit or below-grade tank. Surface water bodies are defined as flowing or perennial rivers, streams or creeks; irrigation canals and ditches; lakes; ponds; and playa lakes.

(c) Ranking criteria. The operator shall use the depth to ground water, distance to wellhead protection areas and distance to nearest surface water body to determine the soil closure standard for a pit or below-grade tank. The total ranking score is the sum of all three individual ranking criteria.

(i) Depth to ground water. If the depth to ground water is less than 50 feet below the ground surface (bgs), then a ranking score of 20 is assigned; if the depth to ground water is between 50 and 99 feet bgs, then a ranking score of 10 is assigned; if the depth to ground water is greater than 99 feet bgs, then a ranking score of zero is assigned.

(ii) Distance to a wellhead protection area. If the site is located within a wellhead protection area a ranking score of 20 is assigned; if the site is not located within a wellhead protection area then a ranking score of zero is assigned.

(iii) Distance to surface water body. If the site is located less than 200 horizontal feet from a surface water body, then a ranking score of 20 is assigned; if the site is located at least 200 horizontal feet, but no more than 1000 horizontal feet from the nearest surface water body, then a ranking score of 10 is assigned; if the site is located more than 1000 horizontal feet from the nearest surface water body, then a ranking score of zero is assigned.

(d) Soil closure concentration standard. The total ranking score determines a site's soil closure concentration standard. The table below lists the soil closure concentration standard for each appropriate total ranking score. The division, after notice to the operator and opportunity for hearing, may require closure to more stringent conditions than those specified below if warranted by site-specific conditions (i.e., native soil type, location relative to population centers or other appropriate site specific conditions). The division may specify additional constituents or requirements for soil, surface water or ground water analysis or remediation, depending on site-specific conditions. Where a closure plan is required or has been filed, any material deviations from the approved plan shall require prior division approval. The operator shall submit a closure work plan for division approval for a site that the operator contends or the division determines cannot be closed in accordance with the soil closure concentration standards specified below. The following soil closure standards apply:

<u>SOIL CLOSURE CONCENTRATION STANDARDS</u>			
<u>Constituents</u>	<u>Ranking Score < 10</u>	<u>Ranking Score 10 - 19</u>	<u>Ranking Score > 19</u>
<u>Benzene</u>	<u>0.20 mg/kg</u>	<u>0.20 mg/kg</u>	<u>0.20 mg/kg</u>
<u>BTEX</u>	<u>100 mg/kg</u>	<u>100 mg/kg</u>	<u>50 mg/kg</u>
<u>TPH</u>	<u>5000 mg/kg</u>	<u>1000 mg/kg</u>	<u>100 mg/kg</u>
<u>Chlorides - if the volume of contaminated soils is 0.5 acre feet or less</u>	<u>5000 mg/kg</u>	<u>2500 mg/kg</u>	<u>1000 mg/kg</u>

<u>SOIL CLOSURE CONCENTRATION STANDARDS</u>			
<u>Constituents</u>	<u>Ranking Score</u> <u>< 10</u>	<u>Ranking Score</u> <u>10 - 19</u>	<u>Ranking Score</u> <u>> 19</u>
<u>Chlorides - if the volume of contaminated soils is greater than 0.5 acre feet</u>	<u>250 mg/kg or site background concentration whichever is greater</u>		

~~[(2)]~~(5) Surface restoration. Within ~~[one year]~~six months of the completion of a pit's closure~~[of a pit]~~, the operator shall contour the surface where the pit was located to prevent erosion and ponding of rainwater, and re-vegetate the site.

G. Exemptions; additional conditions.

(1) The division may attach additional conditions to any permit upon a finding that such conditions are necessary to prevent the contamination of fresh water, or to protect public health or the environment.

(2) The division may grant an exemption from any requirement of 19.15.2.50 NMAC if the operator demonstrates that the granting of such exemption will not endanger fresh water, public health or the environment. The division may revoke any such exemption after notice to the pit's operator ~~[of the pit]~~ and to the surface owner, and opportunity for a hearing if the division determines that such action is necessary to prevent the contamination of fresh water, or to protect public health or the environment.

(3) The division may grant exemptions~~[Exemptions may be granted]~~ administratively without hearing provided that the operator gives notice to the surface owner of record where the pit is to be located and to such other persons as the division may direct and (a) obtains written waivers ~~[are obtained]~~ from all persons to whom notice is required, or (b) the division receives no objection ~~[is received by the division]~~ within 30 days of the time ~~[notice is given]~~the applicant gives notice. If the division receives any objection ~~[is received]~~ and the division director determines that the objection has technical merit or that there is significant public interest the division director shall set the application for hearing. The division director, however, may set any application for hearing.

[19.15.2.50 NMAC - N, 02/13/04; A, - -0_]