

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

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

CASE NO. 15959

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 participated in the technical work group created by the Division for developing proposed amendments to Rule 19.15.29. Most of the recommendations of this technical group have been incorporated into the rule proposed by the New Mexico Oil Conservation Division ("Division"). Having now reviewed in detail the rule filed by the Division under its Amended Application, NMOGA submits the modifications noted in redline/strikeout format and highlighted in yellow on NMOGA Ex. A (entitled "NMOGA's Proposed Modifications"). The reasons for each proposed modifications are as follows:

1. The modification to **19.15.29.7.A(2)(a)** clarifies that this provision applies whether the releases results in a fire or "is the result of" a fire.
2. The modifications to **19.15.29.7.C** are necessary to conform the language to the definition of "responsible person" in 19.15.2.7.R(6) and avoid confusion by creating a similar term. Responsible "party" is subsequently changed to responsible "person" throughout the proposed Rule.
3. The language added to the opening clause of **19.15.29.11** is necessary to clarify that under normal circumstance soil assessment and characterization requirements only apply

when there is a “major or minor” release “of liquids” and are generally not required when there is a gas releases or volumes of liquids falling below the “minor release” threshold.

4. The modifications to **19.15.29.11.A(3)** are necessary to conform the language to the existing definition of “wellhead protection area” in 19.15.2.7.W(8).

5. The Division’s proposed language in **19.15.29.11.A(4)** contains no distance limitation and therefore requires identification of the “nearest significant watercourse” even if it is miles from the release site. Adding “within 300 feet” provides a distance limitation that is consistent with the stringent siting requirements adopted by the Commission in 2013 for temporary pits containing high chloride fluids. *See* NMAC 19.15.17.10.A(3).

6. The language “or other constituents as appropriate for the type of the release” in **19.15.29.11.A(5)(b)** is removed because it is vague, confusing and inconsistent with Subpart 11.A(5)(e), which addresses releases containing constituents not listed in Table I.

7. The term “conditions” in the last sentence of **19.15.29.11.C** is replaced with “request for additional information” to conform with the subject of that sentence and the paragraph.

8. Removal of the language in **19.15.29.12.B** ensures that all releases are addressed within 90 days of the division approval of a remediation plan, where applicable.

9. The addition of a **new paragraph C** and proposed opening clause in **19.15.29.12** clarify that absent unusual circumstances, the detailed remediation and reclamation requirements in subparts (1) through (5) apply when there is a “major or minor” release “of liquids” and do not apply to gas releases or volumes of liquids falling below the “minor release” threshold.

10. The modifications to **reformatted 19.15.29.12.C(2) and (3)** direct the reader to the restoration and reclamation requirements in 19.15.29.13 and place all restoration and reclamation requirements in one section, thereby avoiding confusion and inconsistency. The

removed restoration and reclamation provisions not already duplicated in 19.15.29.13 have been placed in a new subsection, 19.15.29.13.D(1).

11. With the exceptions noted herein, the location descriptions in **reformatted 19.15.29.12.C(4)** follow the stringent siting requirements adopted by the Commission in 2013 for temporary pits containing high chloride fluids. *See* NMAC 19.15.17.10.A(3). Removal of Subpart (4)(c)(ii) avoids inconsistency with subpart (i), and modifying “100 feet” to “300 feet” for wetlands in Subpart (4)(e) conforms with the siting requirements for temporary pits containing high chloride fluids. *See* NMAC 19.15.17.10.A(3)(f).

12. The addition of the opening clause to **reformatted 19.15.29.12.D** is necessary to clarify that absent unusual circumstances, the Table I sampling and testing requirements in subparts (1) through (2) apply when there is a “major or minor” release “of liquids” and do not apply to gas releases or volumes of liquids falling below the “minor release” threshold.

13. The modification to **reformatted 19.15.29.12.D(1)(b)** removes an arbitrary “must not be representative of more than 200 ft²” requirement for all sampling required by the proposed Rule and replaces it with “wet or discolored areas,” which is also used in the opening sentence of reformatted 19.15.29.12.D(1). This proposed modification brings the proposed Rule in conformity with the similar Table I closure sampling requirements adopted by the Commission in Rules 17 and 34. *See, e.g.,* NMAC 19.15.17.13(C)(3)(a) (“sample to include any obvious stained or wet soils”); NMAC 19.15.34.14(C) (“sample which includes stained or wet soils”). A mandatory “200 ft²” requirement for all releases is unnecessary since the Division has discretion under the last sentence of reformatted Subpart 12.D(1)(b) to “add additional sampling requirements dependent on the material released....”.

14. The addition of the opening clause to **reformatted 19.15.29.12.E** is necessary to clarify that absent unusual circumstances, the closure reporting and division-approval

requirements in subparts (1) through (2) apply when there is a “major or minor” release “of liquids” and do not apply to gas releases or volumes of liquids falling below the “minor release” threshold.

15. The addition of the second sentence to **reformatted 19.15.29.12.E(2)** is necessary to establish what occurs if the Division does not act within the 60 day period. This change conforms with the similar provision contained in reformatted 19.15.29.12.C(5).

16. Replacement of the word “bottom” with “source” in **Table I** is necessary to provide clear closure standards at the outset of the remediation. Measurement from the “source” of the release is also consistent with the criteria used for pipelines, pits, tanks and other release sources.

17. Replacement of “8015M” with “8280B” as the testing method for benzene in **Table I** conforms with the testing method in Table I for “51 feet–100 feet” and the testing method in the Table I adopted by the Commission in March of 2015 for Rule 34 (Produced Water Rule). *See* NMAC 19.15.34.14 (Table I).

18. The addition of “(GRO+DRO+MRO)” under TPH in **Table I** is necessary to define the range of carbons examined. This modification conforms with the description in Table I adopted by the Commission in March of 2015 for Rule 34 (Produced Water Rule). *See* NMAC 19.15.34.14 (Table I).

19. The reclamation language added under **reformatted 19.15.29.13.D(1)** is the language removed from 19.15.29.12.A(2) and (3). The purpose of this change is to place all the restoration and reclamation requirements in one section and thereby avoid any confusion or inconsistency. *See also* Modification 10; *supra*. The phrase “or other test methods approved by the division” was added at the end of the first sentence to afford flexibility in the testing methods for chlorides in various earthen materials.

20. The language added under **reformatted 19.15.29.13.D(4)** is necessary to clarify that reporting to the Division on reclamation and re-vegetation is required when there is a “major or minor” release “of liquids” and is not necessary when the release volume is below the “minor release” threshold.

NMOGA will demonstrate that the Rule proposed by the Division, with the above modifications, will protect the public health and the environment; update and streamline the provisions governing releases using the evidence and science obtained from the extensive Commission hearings addressing Rules 19.15.17 and 19.15.34; provide consistency in the treatment of the subject constituents; and require operators and the Division to address unauthorized releases in a timely, efficient and effective manner.

NMOGA’S PROPOSED EVIDENCE

WITNESS:

ESTIMATED TIME

James McDaniel, C.S.P. and C.H.M.M.
HSE Coordinator
Enduring Resources, LLC

2.0 Hours

Mr. McDaniel is a Certified Safety Professional and a Certified Hazardous Materials Manager with extensive experience managing releases from oil and gas production activities in New Mexico and Colorado for companies such as Enduring Resources, XTO Energy and Envirotech, Inc. He holds a B.S. Degree in Environmental Science and is engaged in obtaining a Master of Science in Industrial Hygiene. Mr. McDaniel participated in the technical committee created by the Division to develop the proposed Rule. Mr. McDaniel will discuss the participants and expertise of the workgroup that developed the proposed Rule, will provide the Commission with a review of the proposed Rule, offer facts and expert opinions supporting the proposed Rule and NMOGA’s modifications, and will be available to address any additional issues that arise during the hearing.

WITNESS:**ESTIMATED TIME**

Brett Fulks
EHS Representative
Devon Energy Company

1.0 Hour

Mr. Fulks holds a B.S. in Bioenvironmental Science from Texas A&M University and is trained in soil science and soil/water microbiology. Mr. Fulks has extensive experience coordinating the notifications, response, sampling, testing and remediation of oil and gas production related releases in New Mexico, including the implementation of the Table I standards adopted by the Commission under Rules 19.15.17 and 19.15.34. Mr. Fulks participated in the technical committee created by the Division to develop the proposed Rule. He will discuss the Table I standards proposed by the Division and how they compare with those adopted by the Commission in the prior hearings. He will also address the soil sampling methods proposed in Table I and Part 29.11.A(5) of the proposed rule, the purpose of the “wellstream” definition in Part 29.7.D, and how this definition relates to Part 29.11.A(5)(e) addressing constituents not addressed by Table I in the proposed Rule. Mr. Fulks will offer facts and expert opinions supporting the proposed Rule and NMOGA’s modifications, and will be available to address any additional issues that arise during the hearing.

NMOGA’S HEARING EXHIBITS

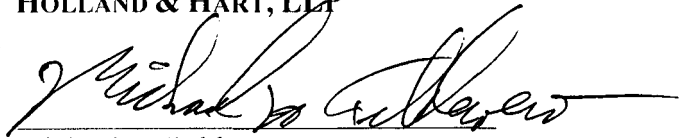
NMOGA anticipates entering into evidence NMOGA Exhibits A through C, which contain numbered pages, provided with this prehearing statement.

PROCEDURAL MATTERS

None at this time.

Respectfully submitted:

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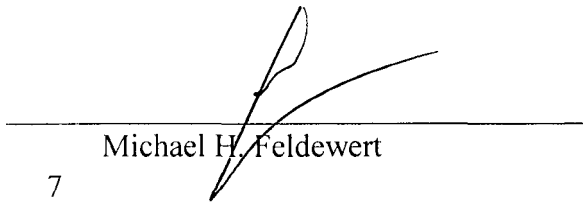
CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2018, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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NMOGA
Exhibit A

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 29 RELEASES

19.15.29.1 ISSUING AGENCY: Oil Conservation Commission.
[19.15.29.1 NMAC – Rp, 19.15.29.1 NMAC, XX/XX/201?]

19.15.29.2 SCOPE: 19.15.29 NMAC applies to persons engaged in oil and gas development and production within New Mexico.
[19.15.29.2 NMAC – Rp, 19.15.29.2 NMAC, XX/XX/201?]

19.15.29.3 STATUTORY AUTHORITY: 19.15.29 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-11 NMSA 1978 (1977) and Section 70-2-12 NMSA 1978 (2004).
[19.15.29.3 NMAC – Rp, 19.15.29.3 NMAC, XX/XX/201?]

19.15.29.4 DURATION: Permanent.
[19.15.29.4 NMAC - Rp, 19.15.29.4 NMAC, XX/XX/201?]

19.15.29.5 EFFECTIVE DATE: _____, unless a later date is cited at the end of a section.
[19.15.29.5 NMAC – Rp, 19.15.29.5 NMAC, XX/XX/201?]

19.15.29.6 OBJECTIVE: To require persons who operate or control the release or the location of the release to report the unauthorized release 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.
[19.15.29.6 NMAC – Rp, 19.15.29.6 NMAC, XX/XX/201?]

19.15.29.7 DEFINITIONS:

- A. “Major release” means:**
- (1) an unauthorized release of a volume, excluding gases, of 25 barrels or more;
 - (2) an unauthorized release of a volume that:
 - (a) results in a fire or **is the result of a fire causes;**
 - (b) may with reasonable probability reach a watercourse;
 - (c) may with reasonable probability endanger public health; or
 - (d) substantially damages property or the environment;
 - (3) an unauthorized release of gases exceeding 500 MCF; or
 - (4) a release of a volume that may with reasonable probability be detrimental to fresh water.
- B. “Minor release” means** an unauthorized release, which is not a major release and is a volume greater than five barrels but less than 25 barrels; or for gases, greater than 50 MCF but less than 500 MCF.
- C. “Responsible Person Party” means** the **owner or operator, as defined in 19.15.2 NMAC, who shall complete a division-approved corrective action for pollution from releases.** Notwithstanding the foregoing, the division, in its sole discretion, may also consider a person causing the release, or controlling the location of the release as the responsible **party** ~~person~~.
- D. “Wellstream” means** the gas, oil, water, suspended constituents, or any combination thereof which comes from the wellbore.
- [19.15.29.7 NMAC – Rp, 19.15.29.7 NMAC, XX/XX/201?]

19.15.29.8 RELEASE NOTIFICATION:

- A. The responsible **party** ~~person~~ must** notify the division on form C-141 of a major or minor release occurring during the drilling, producing, storing, disposing, injecting, transporting, servicing or processing of oil, gases, produced water, condensate or oil field waste including regulated NORM, or other oil field related chemicals, contaminants or mixture of the chemicals or contaminants, in accordance with the requirements of 19.15.29 NMAC.
- B. If** state, federal or tribal lands are involved, the responsible **party** ~~person~~ must send a copy of the form C-141 to the appropriate land managing agency including the State Land Office, the Bureau of Land Management or tribal authority, as applicable.

19.15.29.9 RELEASE NOTIFICATION REPORTING REQUIREMENTS: The responsible partyperson must notify the division of releases in 19.15.29.8 NMAC as follows.

A. Reporting a Major Release.

(1) The responsible partyperson must notify the division's environmental bureau chief and the appropriate division district office verbally or by e-mail within 24 hours of discovery of the release. The notification must provide the information required on form C-141.

(2) The responsible partyperson must also notify the appropriate division district office in writing within 15 days of discovering the release by completing and filing form C-141. The written notification must verify the prior verbal or e-mail notification and include additions or corrections to the information contained in the prior verbal or e-mail notification.

B. Reporting a Minor Release. The responsible partyperson must notify the appropriate division district office in writing within 15 days of discovery of the release by completing and filing form C-141.

[19.15.29.9 NMAC – Rp, 19.15.29.9 NMAC, XX/XX/201?]

19.15.29.10 INITIAL RESPONSE: The responsible partyperson must take the following immediate actions unless the actions could create a safety hazard that would result in injury.

A. Source Elimination and Site Security. The responsible partyperson must take appropriate measures to stop the source of the release and limit access to the site as necessary to protect human health and the environment.

B. Containment. Once the site is secure, the responsible partyperson must contain the materials released by construction of berms or dikes, the use of absorbent pads or other containment actions to limit the area affected by the release and prevent potential fresh water contaminants from migrating to watercourses or areas which could pose a threat to public health and environment. The responsible partyperson must monitor the containment to ensure that it is effectively containing the material and not being degraded by weather or onsite activity.

C. Site Stabilization. After containment, the responsible partyperson must recover any free liquids and recoverable product that can be physically removed from the surface within the containment area. The responsible partyperson must deliver material removed from the site to a division-approved facility.

[19.15.29.10 NMAC – Rp, 19.15.29.10 NMAC, XX/XX/201?]

19.15.29.11 SITE ASSESSMENT/CHARACTERIZATION: After the responsible partyperson has removed all free liquids and recoverable products, the responsible partyperson must assess soils both vertically and horizontally for potential environmental impacts from the any major or minor release of liquids.

A. Characterization Requirements: The responsible partyperson must submit information characterizing the release to the appropriate division district office within 90 days of discovery of the release or characterize the site by submitting a final closure report within 90 days of discovery of the release in accordance with 19.15.29 NMAC. The responsible partyperson may seek an extension of time to submit characterization information for good cause as determined by the division. The responsible partyperson must submit the following information to the division.

(1) **Site Map.** The responsible partyperson must provide a scaled diagram that shows the potentially impacted area, significant surface features including roads and site infrastructure, location of borings, sample points, monitoring wells and subsurface features such as known pipelines to the extent known at the time of submittal including the source of information regarding subsurface features.

(2) **Depth to Ground Water.** The responsible partyperson must determine the depth to ground water where the release occurred. If the exact depth to ground water is unknown, the responsible partyperson must provide a reasonable determination of probable ground water depth using data generated by numeric models, cathodic well lithology, water well data, published information or other tools as approved by the appropriate division district office. If the responsible partyperson uses water well data, the responsible partyperson must provide all pertinent well information.

(3) **Wellhead Protection Area.** The responsible partyperson must determine the horizontal distance from all known fresh water sources within 200 horizontal feet of a private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes or within 1000 horizontal feet of any other fresh water well or spring. a half mile of the release including private and domestic water sources. Water

sources are wells, springs or other sources of fresh water extraction. Private and domestic water sources are those water sources used by less than five households for domestic or stock purposes.

(4) **Distance to Nearest Significant Watercourse.** The responsible **party** must determine the horizontal distance to **the nearest any** significant watercourse as defined in Subsection P of 19.15.17.7 NMAC **within 300 feet**.

(5) **Soil/Waste Characteristics.** The responsible **party** must determine the lateral and vertical extents of soil contamination, as follows.

(a) If the release occurred within a lined containment area, the responsible **party** must demonstrate liner integrity after affected material is removed and the affected area of the liner is exposed and provide:

(i) certification on form C-141 that the responsible **party** has visually inspected the liner where the release occurred and the liner remains intact and had the ability to contain the leak in question; and

(ii) at least two business days' notice to the appropriate division district office before conducting the liner inspection.

(b) If the responsible **party** is unable to demonstrate liner integrity or the release occurred outside of a lined containment area, the responsible **party** must delineate the release horizontally and vertically using Table I constituents **or other constituents as appropriate for the type of the release**. The operator may use the following soil sampling methods for characterization:

- (i) NRCS Field Guide;
- (ii) EPA SW-846;
- (iii) ASTM Method 4547;
- (iv) EPA 600; or
- (v) or other division-approved methods.

(c) In addition to Subparagraph (b) of Paragraph (5) of Subsection A of 19.15.29.11 NMAC, if the release occurred outside of a lined containment area and is in an area where depth to ground water is greater than 50 feet and less than or equal to 100 feet, the responsible **party** must delineate the vertical extent of the release to the greater of 600 mg/kg chloride or background chloride level, if:

(i) the release contains produced water that exceeds 10,000 mg/l of chloride (if the responsible **party** contends the fluid is less than 10,000 mg/l, the responsible **party** must provide current sample results to the division); and

(ii) the release is of an unknown quantity or results in greater than 200 barrels of unrecovered produced water.

(d) If the conditions are met in Subparagraph (c) of Paragraph (5) of Subsection A of 19.15.29.11 NMAC, the responsible **party** must submit at least two soil samples for laboratory analysis from each borehole or sample point (highest observed contamination and deepest depth investigated). Field screening and assessment techniques are acceptable (headspace, titration, electrical conductivity [include algorithm for validation purposes], electromagnetics, etc.), but the sampling procedures must be clearly defined. The responsible **party** must submit copies of field notes attributable to field sampling and provide copies of the actual laboratory results including chain of custody documentation.

(e) If a known release of other oil field related chemicals occurs that is not included in Table I of 19.15.29.12 NMAC, and does not include oil, gas, produced water or other fluids from the Wellstream, the standards for remediation shall be as follows:

(i) If the constituent appears on Table I of 40 C.F.R. § 261.24(b), then that constituent shall be remediated according to 40 C.F.R. § 261.24;

(ii) If the constituent is not identified in Table I of 40 C.F.R. § 261.24(b), but is identified in the New Mexico Environment Department's Risk Assessment Guidance for Site Investigations and Remediation Volumes I and II (Assessment), the Division will determine the appropriate Assessment Volume and remediation shall occur pursuant to the Assessment;

(iii) If the constituent is not identified in subsection (i) or (ii) above, the Division shall consult with the responsible **party** to determine appropriate remediation of the release.

B. Unless the site characterization report includes completed efforts at remediation, the report must include a proposed remediation plan in accordance with 19.15.29.12 NMAC, which includes the anticipated timelines for beginning and completing the remediation.

C. If the division determines that more information is needed to understand the character of the release and its potential impact on fresh water, public health and the environment, the division may request the

responsible **party** submit additional information. Should the division request additional information, it must do so in writing to the responsible **party** within 30 days from receipt of the characterization report or remediation plan with what specific information the division is requesting and reasons why the additional information is needed. The responsible **party** has 14 days to respond to a written request for additional information. If the responsible **party** disagrees with the request for additional information, it may consult with the division, or file an application for hearing pursuant to 19.15.4 NMAC within 30 days of the issuance of the request for additional information conditions.

19.15.29.12 REMEDIATION AND CLOSURE:

A. The responsible **party** must remediate all releases regardless of volume.

B. The responsible party must complete division-approved remediation for releases that endanger public health or the environment within 90 days of division approval of a remediation plan or with an abatement plan the responsible **party** submitted to the division in accordance with 19.15.30 NMAC. The responsible **party** may request an extension of time to remediate upon a showing of good cause as determined by the division. If the director determines that the release has caused water pollution in excess of the standards and requirements of 19.15.30 NMAC, the director may notify the responsible **party** that an abatement plan may be required pursuant to 19.15.30 NMAC.

C. **Remediation Plan Requirements.** The responsible person must take the following action for any major or minor release of liquids.

(1) **Remediation Plan Requirements.** The responsible **party** must submit a detailed description of proposed remediation measures in accordance with the findings of the site assessment/characterization plan that includes:

(a) delineation results, including laboratory analysis;
(b) a scaled sitemap showing release area with horizontal and vertical delineation points;

(c) estimated volume of impacted material to be remediated;
(d) proposed remediation technique; and
(e) proposed timeline for remediation activities.

(2) The responsible **party** shall restore the impacted surface area of a release occurring on a developed well pad, central tank battery, drilling site, compressor site or other exploration, development, production or storage sites to meet the standards of Table I of 19.15.29.12 NMAC and reclaim the area pursuant to 19.15.29.13 NMAC. If contamination is located in areas immediately under or around production equipment such as production tanks, wellheads and pipelines where remediation could cause safety issues or cause a major facility deconstruction, the remediation and reclamation may be deferred until the equipment is removed during other operations, or when the well or facility is plugged or abandoned, whichever comes first. The deferral may be granted so long as the contamination is fully delineated and does not cause an imminent risk to human health, the environment, or groundwater. Restoration of the site must include, but is not limited to, removal of materials the release contaminated and replacement with clean, uncontaminated materials. The responsible party must place the replacement materials to the near original relative positions and contour the replacement materials to achieve erosion control, long-term stability and preservation of surface water. Final remediation and reclamation shall take place in accordance with 19.15.29.12 and 19.15.29.13 NMAC once the site is no longer being used for oil and gas operations.

(3) The responsible **party** shall remediate the impacted surface area of a release not occurring on a lined, bermed or otherwise contained exploration, development, production or storage site to meet the standards of Table I of 19.15.29.12 NMAC and reclaim the area pursuant to 19.15.29.13 NMAC contain a minimum of four feet of non-waste material containing, uncontaminated, earthen material with chloride concentrations less than 600 mg/kg as analyzed by EPA Method 300.0. The soil cover must include a top layer which is either the background thickness of topsoil or one foot of suitable material to establish vegetation at the site, whichever is greater.

(4) If a release occurs within the following areas, the responsible **party** must treat the release as if it occurred less than 50 feet to ground water in Table I of 19.15.29.12 NMAC:

(a) within
(i) 300 feet of any continuously flowing watercourse or any other significant watercourse, or
(ii) 200 feet of any lakebed, sinkhole or playa lake (measured from the ordinary high-water mark);

- institution or church;
- (b) within 300 feet from an occupied permanent residence, school, hospital,
 - (c) within
 - (i) 500 feet of a spring or a private, domestic fresh water well used by less than five households for domestic or stock watering purposes, ~~or~~
 - (ii) ~~1000 feet of any fresh water well or spring;~~
 - (d) within incorporated municipal boundaries or within a defined municipal fresh water well field covered under a municipal ordinance adopted pursuant to Section 3-27-3 NMSA 1978 as amended, unless the municipality specifically approves;
 - (e) within ~~100~~ 300 feet of a wetland;
 - (f) within the area overlying a subsurface mine;
 - (g) within an unstable area; or
 - (h) within a 100-year floodplain.

(5) The division has 60 days from receipt of the proposed remediation plan to review and approve, approve with conditions or deny the remediation plan. If 60 days have lapsed without response from the division, then the plan is deemed denied. If the plan is approved with conditions or affirmatively denied, the division shall provide a written summary of deficiencies on which the decision is based. If the responsible ~~partyperson~~ disagrees with any conditions of approval or denial of the plan, it shall consult with the division or file an application for hearing pursuant to 19.15.4 NMAC within 30 days of the denial or issuance of the conditions.

~~D. C.~~ Closure Requirements. ~~The responsible person must take the following action for any major or minor release of liquids.~~

(1) The responsible ~~partyperson~~ must test the remediated areas for contamination with representative five-point composite samples and individual grab samples from any wet or discolored areas. The samples must be analyzed for the constituents listed in Table I of 19.15.29.12 NMAC.

(a) The responsible ~~partyperson~~ must verbally notify the appropriate division district office two business days prior to conducting final sampling. If the division district office does not respond to the notice within the two business days, the responsible ~~partyperson~~ may proceed with final sampling. The responsible ~~partyperson~~ may request a variance from this requirement upon a showing of good cause as determined by the division.

(b) There must be separate representative wall and base 5-point composite samples, ~~which must include any wet or discolored areas,~~ to show horizontal and vertical remediation. ~~Each composite sample must not be representative of more than 200 ft².~~ The division may add additional sampling requirements dependent on the material released and any risks to human health or the environment.

(c) The responsible ~~partyperson~~ may submit an alternative sampling plan for the division's review and approval. If a division inspector is witnessing the samples, the division inspector is authorized to verbally approve an alternative sampling plan based on site observations.

(2) If all composite and grab sample concentrations are less than or equal to the parameters listed in Table I or any conditions of approval, then the responsible ~~partyperson~~ may proceed to backfill any excavated areas.

~~E. D.~~ Closure Reporting. ~~The responsible person must take the following action for any major or minor release of liquids.~~

(1) The responsible ~~partyperson~~ must submit to the division a closure report on form C-141, including required attachments, to document all closure activities including sampling results and the details on any backfilling, capping or covering, where applicable. The responsible ~~partyperson~~ must certify that all information in the closure report and attachments is correct and that the responsible ~~partyperson~~ has complied with all applicable closure requirements and conditions specified in division rules or directives. The responsible ~~partyperson~~ must submit closure report along with form C-141 to the division within 90 days of the remediation plan approval. The responsible ~~partyperson~~ may apply for additional time to submit the final closure report upon a showing of good cause as determined by the division. The final report must include:

- (a) a scaled site and sampling diagram;
- (b) photographs of the remediated site prior to backfill;
- (c) laboratory analyses of final sampling; and
- (d) a description of all remedial activities.

(2) The division district office has 60 days to review and approve or deny the closure report. ~~If 60 days have lapsed without response from the division, then the report is deemed denied.~~ If the responsible

party person disagrees with denial of the closure report, it may consult with the division or file an application for hearing pursuant to 19.15.4 NMAC within 30 days of the denial.

Table I Closure Criteria for Soils Impacted by a Release			
Depth below <u>bottom source</u> of release to ground water less than 10,000 mg/l TDS	Constituent	Method*	Limit**
≤ 50 feet	Chloride***	EPA 300.0	600 mg/kg
	TPH (GRO+DRO+MRO)	EPA SW-846 Method 8015M	100 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B 8015M	10 mg/kg
51 feet-100 feet	Chloride***	EPA 300.0	10,000 mg/kg
	TPH (GRO+DRO+MRO)	EPA SW-846 Method 8015M	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B	10 mg/kg
➤ 100 feet	Chloride***	EPA 300.0	20,000 mg/kg
	TPH (GRO+DRO+MRO)	EPA SW-846 Method 8015M	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B 8015M	10 mg/kg

*Or other test methods approved by the division.

**Numerical limits or natural background level, whichever is greater.

***This applies to releases of produced water or other fluids which may contain chloride.

[19.15.29.12 NMAC – N, XX/XX/201?]

19.15.29.13 RESTORATION, RECLAMATION AND RE-VEGETATION:

A. The responsible party person must substantially restore the impacted surface areas to the condition that existed prior to the release. Restoration of the site must include the replacement of removed material and must be replaced to the near original relative positions and contoured to achieve erosion control, long-term stability and preservation of surface water flow patterns.

B. Areas reasonably needed for production operations or for subsequent drilling operations must be compacted, covered, paved or otherwise stabilized and maintained in such a way as to minimize dust and erosion to the extent practical.

C. The responsible party person must construct the soil cover to the site's existing grade and prevent ponding of water and erosion of the cover material.

D. **Reclamation of Areas No Longer in Use.** The responsible party person shall reclaim all areas disturbed by the remediation and closure, except areas reasonably needed for production operations or for

subsequent drilling operations, as early and as nearly as practical to their original condition or their final land use and maintain those areas to control dust and minimize erosion to the extent practical.

(1) The reclamation must contain a minimum of four feet of non-waste material containing uncontaminated, earthen material with chloride concentrations less than 600 mg/kg as analyzed by EPA Method 300.0, or other test methods approved by the division. The soil cover must include a top layer which is either the background thickness of topsoil or one foot of suitable material to establish vegetation at the site, whichever is greater.

(2) The responsible party person must reseed disturbed area in the first favorable growing season following closure of the site.

(3) The division will consider reclamation of all disturbed areas complete when uniform vegetative cover has been established that reflects a life-form ratio of plus or minus fifty percent of pre-disturbance levels and a total percent plant cover of at least seventy percent of pre-disturbance levels, excluding noxious weeds.

(4) For any major or minor release of liquids, the responsible party person must notify the division when reclamation and re-vegetation are complete.

E. The surface restoration, reclamation and re-vegetation obligations imposed by federal, state agencies or tribes on lands managed or owned by those agencies supersede these provisions and govern the obligations of any responsible party person subject to those provisions, provided that the other requirements provide equal or better protection of fresh water, human health and the environment.

[19.15.29.13 NMAC – N, XX/XX/201?]

19.15.29.14 VARIANCES:

A. A responsible party person may file a written request for a variance from any requirement of 19.15.29 NMAC with the appropriate division district office. The variance request must include:

- (1) a detailed statement explaining the need for a variance; and
- (2) a detailed written demonstration that the variance will provide equal or better protection of fresh water, public health and the environment.

B. The division district office must approve or deny the variance in writing within 60 days of receipt. If the division district office denies the variance, it must provide the responsible party person with the reasons for denial.

C. If the division district office does not approve or deny a request for variance from the requirements of this rule within 60 days, of the date of the request for variance is received by the division district office, then the plan is deemed denied and the responsible party person may file an application for a hearing pursuant to 19.15.4 NMAC within 30 days of the denial.

D. If the responsible party requests a hearing pursuant to 19.15.4 NMAC within 30 days after receipt of notice, the division must set the matter for hearing with notice to the responsible and appropriate division district office.

E. In addition to the notice provisions in 19.15.4 NMAC, the responsible party person must provide notice of the hearing on the request for variance to the surface owner of the site by certified mail, return receipt requested, at least 20 days prior to the date of the hearing.

F. Variances must receive division approval prior to implementation.

[19.15.29.14 NMAC – N, XX/XX/201?]

19.15.29.15 ENFORCEMENT:

A. The responsible party person must comply with all the requirements of 19.15.29 NMAC. The division may take enforcement action against any responsible party person who does not comply with 19.15.29 NMAC.

B. A responsible party person may enter an agreed compliance order with the division for any violation of 19.15.29 NMAC, except for 19.15.29.9 NMAC. An agreed compliance order may be entered prior to or after the filing of an application by the division or any other party for an administrative compliance proceeding. Any administrative compliance order will have the same force and effect as a compliance order issued after an adjudicatory hearing.

C. The director or the director's designee may deny a permit to drill, deepen or plug back any application if the responsible party person is not in compliance with a court order, agreed compliance order or administrative compliance order arising from 19.15.29 NMAC.

D. If the division or other party files an administrative enforcement application, the provisions of 19.15.4 NMAC apply to the enforcement proceeding, unless altered or amended by 19.15.5.10 NMAC or 19.15.29 NMAC.
[19.15.29.15 NMAC – N, XX/XX/201?]

19.15.29.16 TRANSITIONAL PROVISIONS:

A. Responsible parties with current ongoing corrective actions/remediation with approved plans and timelines as of _____ (effective date of rule) do not have to submit revised plans.

B. Responsible parties with ongoing corrective actions/remediation without approved timelines or plans as of _____ (effective date of rule) must submit a characterization plan or corrective action/remediation plan with proposed timeframes within 90 days of ____ (effective date of rule).
[19.15.29.16 NMAC – N, XX/XX/201?]

NMOGA

Exhibit B

Committee Goals

- Create consistency in reporting, delineation and remediation.
- Codify rules and move away from 1993 guidelines.
- Create clear timelines/deadlines for action and accountability for both operators and Division.
- Protect public health and environment.
- Create consistency with other OCD rules (pit rule, produced water rule, etc.)
- Provide enforcement ability for the Division.



Section 29.7 (Definitions)

- Definitions, notification and reporting procedures generally remain the same.
 - Minor = spill equal to 5 bbls up to 25 bbls
 - Major = spill equal to 25 bbls or more
- Changed “will reach a watercourse” to “may with reasonable probability reach a watercourse.”
- Revised language to include all releases that could impact fresh water.
 - Removed confusing reference to 19.15.30.9.
- “Wellstream” added to clarify when standards other than Table I may apply.

Section 29.7 (Definitions) cont.

NMOGA Change: Added “or is the result of a fire” to clarify Rule addresses releases that cause a fire or results from a fire.

NMOGA Change: “Responsible Party” to “Responsible Person” to conform with existing definition.

“Responsible person” means the owner or operator who shall complete a division-approved corrective action for pollution from releases.

19.15.2.7 (R)(6)



Section 29.8 (Notification)

- Merged existing subparts A and B to clearly place reporting obligation on the Responsible Person and to confirm applies to major or minor releases.
- Added language that form C-141 to be used for reporting releases.
- Requires copy of notice to BLM, SLO or tribal authorities, as applicable.



Section 29.9 (Reporting)

- Merged existing 29.9 and 29.10 to clarify reporting requirements for major and minor releases.
 - Type: Verbal and written
 - Who: district office or Santa Fe
 - When: 24 hours and 15 days
 - How: C-141, verbal and e-mail



Section 29.10 (Initial Response)

- Applies to ALL RELEASES no matter the substance or volume
- Requires:
 - Immediate elimination of release source and measures to limit access to release site
 - Containment of materials released and monitoring of site
 - Recovery of released substances and delivery to approved facility.



Section 29.11 (Site Assessment/ Characterization)

- Additional requirements to those in 29.10
- Details characterization and documentation required for review/approval by Division:
 - Must create site map
 - Must determine depth to groundwater
 - Must determine distance to wellhead protection area
 - Must determine distance to nearest significant watercourse
 - Must demonstrate liner integrity or delineate release horizontally and vertically
 - Must develop remediation plan.

NMOGA Change: Applies to “major or minor” releases “of liquids.”

- Absent unusual circumstance, extensive requirements of this subsection should not apply to “gas” releases or volumes below the level of “minor” release.

Note additional NMOGA changes in 29.11.



“Wellhead protection area” means the area within 200 horizontal feet of a private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes or within 1000 horizontal feet of any other fresh water well or spring. Wellhead protection areas does not include areas around water wells drilled after an existing oil or gas waste storage, treatment or disposal site was established.

19.15.2.7(W)(8)



An operator shall not locate a temporary pit containing fluids that are not low chloride fluids:

- (a) where ground water is less than 50 feet below the bottom of the pit; a variance may be granted for a pit used solely to cavitate a coal bed methane well and where the operator demonstrated that the proposed operation will protect groundwater during the temporary pit's use;
- (b) within (i) 300 feet of any continuously flowing watercourse or any other significant watercourse or (ii) 200 feet of any lakebed, sinkhole or playa lake (measured from the ordinary high-water mark);
- (c) within 300 feet from an occupied permanent residence, school, hospital, institution or church in existence at the time of initial application;
- (d) within (i) 500 feet of a spring or a private, domestic fresh water well used by less than five households for domestic or stock watering purposes, or (ii) 1,000 feet of any other fresh water well or spring, in existence at the time of the initial application;
- (e) within incorporated municipal boundaries or within a defined municipal fresh water well field covered under a municipal ordinance adopted pursuant to NMSA 1978, Section 3-27-3, as amended, unless the municipality specifically approves;
- (f) within 300 feet of a wetland;
- (g) within the area overlying a subsurface mine, unless a variance is granted that approves the proposed location based upon the operator's demonstration that the temporary pit's construction and use will not compromise the subsurface integrity;
- (h) within an unstable area, unless a variance is granted upon a demonstration that the operator has incorporated engineering measures into the design to ensure that the temporary pit's integrity is not compromised; or
- (i) within a 100-year floodplain.

19.15.17.10(A)(3)



Section 29.12 (Remediation and Closure)

- Affirms requirement to undertake remediation measures regardless of volume
- Requires a division-approved remediation plan to be completed within 90-days.
- Requirements for a Division-approved remediation plan:
 - Documentation and submission requirements.
 - Remediation and reclamation requirements
 - Division action within 60-days or deemed denied.

Section 29.12 (Remediation and Closure) con't

- Closure and Reporting requirements.
 - Testing obligations, standards and protocols
 - Documentation and timelines
 - Division action within 60-days or deemed denied.

NMOGA Change: Extensive remediation plan, closure and reporting requirements apply only to “major or minor” releases “of liquids.”

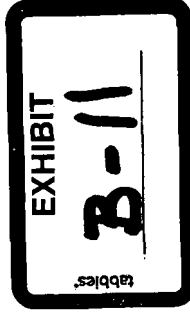
- Absent unusual circumstances, extensive requirements should not apply to “gas” releases or volumes below level of “minor” release.

Note additional NMOGA changes.

Section 29.13 (Restoration, Reclamation and Re-Vegetation)

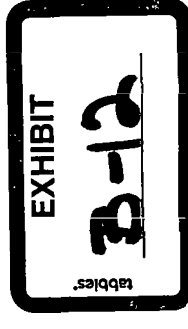
- Requires surface returned to condition that existed prior to release of any volume of liquids.
- Follows standards adopted by the Commission for Rule 19.15.17
- Obligations imposed by federal, state or tribal agencies still control.

NMOGA Change (29.13.D(4): Only file a report with Division if there is a “major or minor” releases “of liquids.”



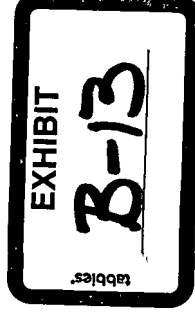
Section 29.14 (Variances)

- Follows provisions adopted by Commission for Rule 19.15.17
- Provides streamlined and detailed process for requesting variance.
- Outlines information to be submitted and imposes timelines for administrative decision.
- Operators can request a hearing if necessary.



Sections 29.15 and 29.16 (Enforcement and Transitional Provisions)

- Section 29.15 provides Division with clear enforcement authority.
- Section 29.16 allows operators with approved remediation plans and timelines to continue, but requires operators without approved plans or timelines to submit remediation plan within 90 days of the effective date of the rule.



NMOGA

Exhibit C

Table I From 19.15.17

Table I Closure Criteria for Soils Beneath Below-Grade Tanks, Drying Pads Associated with Closed-Loop Systems and Pits where Contents are Removed			
Depth below bottom of pit to groundwater less than 10,000 mg/l TDS	Constituent	Method*	Limit**
≤50 feet	Chloride	EPA 300.0	600 mg/kg
	TPH	EPA SW-846 Method 418.1	100 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method	10 mg/kg

51 feet-100 feet		8021B or 8015M	
	Chloride	EPA 300.0	10,000 mg/kg
	TPH	EPA SW-846 Method 418.1	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
> 100 feet	Benzene	EPA SW-846 Method 8021B or 8015M	10 mg/kg
	Chloride	EPA 300.0	20,000 mg/kg
	TPH	EPA SW-846 Method 418.1	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8015M	10 mg/kg

*Or other test methods approved by the division

**Numerical limits or natural background level, whichever is greater

EXHIBIT

C-1

Table I From 19.15.34

Table I Closure Criteria for Recycling Containments			
Depth below bottom of containment to groundwater less than 10,000 mg/l TDS	Constituent	Method*	Limit**
51 feet - 100 feet	Chloride	EPA 300.0	10,000 mg/kg
	TPH (GRO+DRO+MRO)	EPA SW-846 Method 8015M	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B	10 mg/kg
> 100 feet	Chloride	EPA 300.0	20,000 mg/kg
	TPH (GRO+DRO+MRO)	EPA SW-846 Method 8015M	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B	10 mg/kg

* Or other test methods approved by the division.

** Numerical limits or natural background level, whichever is greater.

[19.15.34.14 NMAC - N. 3/31/15]



Table I From Proposed Rule 19.15.29

Table I Closure Criteria for Soils Impacted by a Release			
Depth below bottom of release to ground water less than 10,000 mg/l TDS	Constituent	Method*	Limit**
≤ 50 feet	Chloride***	EPA 300.0	600 mg/kg
	TPH	EPA SW-846 Method 8015M	100 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8015M	10 mg/kg
51 feet-100 feet	Chloride***	EPA 300.0	10,000 mg/kg
	TPH	EPA SW-846 Method 8015M	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B	10 mg/kg
> 100 feet	Chloride***	EPA 300.0	20,000 mg/kg
	TPH	EPA SW-846 Method 8015M	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8015M	10 mg/kg

*Or other test methods approved by the division.

**Numerical limits or natural background level, whichever is greater.

***This applies to releases of produced water or other fluids which may contain chloride.

[19.15.29.12 NMAC – N, XX/XX/201?]

