

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

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

**CASE NO. 15959
ORDER NO. R-14751**

ORDER OF THE COMMISSION

THIS MATTER came before the New Mexico Oil Conservation Commission (“Commission”) on the application of the Oil Conservation Division of the Energy, Minerals and Natural Resources Department (“OCD”) to repeal and replace Rule 19.15.29 NMAC. The Commission, having conducted a hearing from June 5 to June 7, 2018 and deliberated in open session following the hearing, and having considered the testimony, the record, and the arguments of the parties, and being otherwise fully advised, enters the following findings, conclusions, and order.

THE COMMISSION FINDS THAT:

1. **Statutory Authority.** The Commission is authorized to adopt rules, after a hearing, under the Oil and Gas Act, NMSA 1978, §§ 70-2-1 to -38 (1935, as amended through 2018) (“Act”). NMSA 1978, § 70-2-12.2 (2015). The Commission and OCD are given the duty to prevent waste and protect correlative rights and to make and enforce rules to carry out the purpose of the Act, NMSA 1978, § 70-2-11, and are specifically authorized to make rules to govern the disposition of nondomestic wastes resulting from oil and gas activities. NMSA 1978, § 70-2-12(B)(21) and (22).
2. **Application and Notice.** OCD filed an Application on January 3, 2018 to repeal and replace 19.15.29 NMAC, which rule relates to releases of oil, gas, produced water and other contaminants covered under the Act (“proposed rule change”). The Application included a draft of the proposed rule change and a proposed legal notice. 19.15.3.8(A) NMAC.
3. At a public meeting on January 18, 2018, the Commission determined to hold a hearing on the proposed rule change and scheduled the hearing to begin on June 5, 2018, and continue if necessary to June 8, 2018. 19.15.3.8(C) NMAC.
4. Notice of the rulemaking and of the date, time, and place of the hearing was provided as required by NMSA 1978, § 14-4-5.2 (2017) and 19.15.3.9 NMAC, including publication in the New Mexico Register on April 24, 2018.
5. Pre-hearing statements were submitted by the following parties: OCD, New Mexico Oil and Gas Association (“NMOGA”), Independent Petroleum Association of New Mexico (“IPANM”), and Cardinal Laboratories (“Cardinal”). OCD, NMOGA, and

Cardinal proposed technical witnesses for the hearing; IPANM did not propose any technical witnesses. In their pre-hearing statements, OCD, NMOGA and Cardinal offered modifications to the proposed rule changes.

6. The Commission received 3 other written submittals from: (1) Wayne Price, (2) Earthworks' Oil & Gas Accountability Project (OGAP), and (3) Environmental Defense Fund, Natural Resources Defense Council and Earthworks (EDF). At the hearing, NMOGA objected to the portions of the written submittals which included modifications to the proposed rule change. Commission rules require that any proposed modifications be submitted at least ten business days prior to the hearing. 19.15.3.11.B NMAC. The Commission found that Mr. Price's modifications were not timely submitted but those from OGAP and EDF were. Since Mr. Price was present, the Commission indicated that he was free to present public comment during the hearing.

7. Proposed Rule Change. The applicant, OCD, proposed to repeal rule 19.15.29 NMAC ("Release Notification") and replace it with a new 19.15.29 ("Releases"). The new rule would largely retain the release definitions and release notification provisions from the current rule and add provisions for initial response, site characterization, remediation, closure, reclamation, variances, enforcement and transition. Definitions of "responsible party" and "wellstream" are added. The proposed rule change adds the following provisions:

(a) Initial Response: The responsible party for a release must take immediate actions to stop the source of the release, limit access to the site and contain the release. The responsible party must recover any free liquids or recoverable product that can be removed.

(b) Site Assessment/Characterization: Within 90 days of discovery of the release, the responsible party must assess the release and submit a site characterization report to OCD. The report includes information on the site and must characterize the extent of the contamination and may include testing of soil samples. The site characterization report is not necessary if the responsible party is able to clean up the site within 90 days.

(c) Remediation and Closure: Included with the site characterization report should be a plan for the remediation of the release. The remediation must restore the impacted areas to meet certain standards specified in this section. Once remediation is complete, the responsible party must submit a closure report documenting the cleanup activities.

(d) Restoration, Reclamation and Re-vegetation: In addition to remediating the contaminants, the responsible party must restore the surface areas of the site to achieve erosion control and long-term stability.

(e) Variances: The responsible party may request a variance from a requirement in 19.15.29 NMAC but must prove that the variance will provide equal or better protection of fresh water, public health and the environment.

(f) Enforcement: Any responsible party who fails to comply with the requirements of 19.15.29 NMAC is subject to an enforcement action, and further violations of any order is grounds for denying any permit or approval requested by the responsible party.

(g) Transitional Provisions: The new requirements will apply to any ongoing corrective action if the responsible party does not have an approved plan and timelines.

8. Public hearing. The Commission commenced a public hearing on the proposed rule changes on June 5, 2018. The hearing continued until June 7, 2018. The Commission deliberated on June 7, 2018 and completed deliberations on June 21, 2018.

9. The following technical witnesses were presented by the parties: Jim Griswold, Bradford Billings, Brandon Powell (OCD); James McDaniel, Brett Fulks (NMOGA); and Celey Keene and Jacob Miller (Cardinal). Each technical witness was subject to cross-examination by the other parties and by the Commissioners and Commission Counsel.

10. The OCD witnesses explained the purposes of the proposed rule change and then went through each of the sections in 19.15.29 to explain the changes. In each of the past 4 years, over a thousand releases have been reported to OCD. The current 19.15.29 provides little direction for either the agency or the responsible party on the steps that must be taken after release notification. The rule, which only contains 2 sentences on corrective action, provides no timelines or standards for cleanups. The rule does require remediation in accordance with a division approved plan which precludes immediate action to remediate a small release. The rule relies heavily on a form (C-141) which has severe limitations. (Griswold testimony; OCD exh. 1)

11. A technical workgroup was formed to seek consensus on a rule revision. The workgroup included representatives from OCD, the oil and gas industry, state and federal land management agencies and environmental consulting entities. The workgroup met for over a year in locations across the state and largely reached consensus on the structure of the proposed rule change. (Griswold testimony; OCD exh. 1). Further negotiations resulted in almost complete agreement on the proposed rule change. (NMOGA exh. D).

12. The proposed rule change greatly expands 19.15.29 NMAC. Among the objectives of the new rule are to (a) clarify the definition of a “responsible party” (“RP”) who must report and remediate a release; (b) allow, and provide guidance to, an RP to immediately respond to a release and begin corrective action; (c) establish standardized means for characterizing the impacts of a release; (d) provide specific and attainable standards for remediating soil contamination; (e) establish a process for deferring cleanups when warranted; (f) establish a procedure and standards for variances; and (g) providing for enforcement action when corrective action is not performed. (Griswold testimony; OCD exh. 1).

13. The proposed 19.15.29.7 NMAC is largely taken from the current rule with new definitions for “responsible party” and “wellstream”. The “responsible party” definition clarifies who must report a release and cleanup the contamination. “Major release” and “minor release” are largely unchanged from the current rule but the distinction between the two is clarified. The provisions for release notification are also largely unchanged from the current rule. A “major release” now also requires notice to the OCD environmental bureau chief. (Powell testimony).

14. A new section is added in the proposed rule change to detail the responsibilities of an RP immediately after discovery of the release. These include

stopping the source of the release and securing the site, taking measures to contain the release and removing any free liquids. These steps can be taken by an RP without any direction from OCD. (Billings testimony; OCD exh. 1).

15. A new section (19.15.29.11 NMAC) is proposed to be added to provide for the development and submittal of a site characterization report. The report, which is due within 90 days after the discovery of the release, must provide details on the location of the release and must characterize the lateral and vertical extent of any soil contamination including the use of soil sampling. The site characterization report must include a remediation plan. If the contamination includes contaminants other than those listed in Table I, this section provides for other remediation standards. (Billings, Powell testimony, OCD exh. 1).

16. A new section (19.15.29.12 NMAC) is proposed to be added to require remediation of all releases and provide for the process of remediation. This section details the contents of a remediation plan that outlines how remediation will be conducted and a timeline for the remediation. If the release causes water pollution, the cleanup will be conducted pursuant to 19.15.30 NMAC. Table I to 19.15.29.12 NMAC provides the soil cleanup levels for remediation. These standards are consistent with the cleanup standards found in other Commission rules. 19.15.17 and 19.15.34 NMAC. When remediation is complete, the RP must submit a closure report described in this section. (Powell testimony; OCD exh. 1).

17. The proposed rule change includes a new section on restoration, reclamation and re-vegetation (19.15.29.13 NMAC). This section requires the RP to restore the surface area once the soil contamination is addressed. The restoration must be conducted to achieve erosion control, avoid ponding and control dust. Any areas no longer being used must be reseeded and must contain at least 4 feet of uncontaminated material. The four foot requirement and some other restoration requirements are derived from the "pit rule". 19.15.17.13(H) NMAC. (Billings testimony; OCD exh. 1; NMOGA exh. D)).

18. The proposed rule change includes new sections covering variances (19.15.29.14 NMAC), enforcement (19.15.29.15) and transition (19.15.29.16). Variance provisions can help to adjust the requirements to handle the numerous variations on ground conditions or allow new technologies or processes. The variance can only be approved if it can be demonstrated to provide equal or better protection for the environment, fresh water and public health. Similar variance provisions are provided in other OCC rules dealing with remediation. 19.15.17.15; 19.15.34.16 NMAC. The enforcement section makes it explicit that a failure to comply with this rule can trigger an enforcement action. Any enforcement action may result in an administrative or judicial order and the failure to comply with such orders may result in the denial of any application or permit. The transition provision allows any RP that has a current approved remediation plan to follow plan, but any existing contamination that lacks an approved plan must follow the new rule. (Griswold testimony; OCD exh. 1).

19. The NMOGA witnesses discussed the OCD proposed rule change with a focus on the goals of the proposed rule changes, the modifications proposed by NMOGA in Exhibit D, the proposed closure criteria and the sampling requirements. NMOGA witnesses also responded to proposed modifications submitted by other parties, including OCD, OGAP and EDF.

20. NMOGA participated extensively in the technical workgroup and is in agreement with almost all of the proposed rule change, as further modified by NMOGA exhibit D. The proposed rule changes create consistency in reporting, delineation and remediation and create clear timelines for actions by both the operators and OCD. NMOGA testified that the proposed rules protect public health and the environment and are consistent with the remediation provisions in other OCC rules. (McDaniel testimony; NMOGA exh. B-1).

21. NMOGA supported retaining, with slight modifications, the definitions of "major release" and "minor release" and the release reporting requirements in the current rule. (McDaniel testimony; NMOGA exh. B-2 to B-5). NMOGA testified that the new sections in the proposed rule furthered the goals of this rulemaking. NMOGA offered several modifications to the proposed rule change that clarified the requirements in the proposal and made explicit which requirements applied to all releases and which applied to major and minor releases. (McDaniel testimony; NMOGA exh. B-6 to B-13; NMOGA exh. D).

22. NMOGA testified in support of adding Table I to 19.15.29.12 NMAC. Table I is necessary to provide guidance to the RPs and OCD to determine when remediation is complete. The Table follows the standards already adopted by the Commission in other rules: 19.15.17.13 and 19.15.34.14 NMAC. (NMOGA exh. C). Those tables were adopted after extensive testimony at public hearings. (NMOGA exh. G). The only changes to those tables are updates to the approved testing methods. (Fulks testimony; NMOGA exh. D).

23. The Cardinal witnesses discussed Cardinal's proposed modification to the allowable test methods for closure criteria. Cardinal proposed to add another approved method ("SM4500 Cl B") for testing chloride levels to Table I of 19.15.29.12 NMAC. The proposed rule change only designates EPA method 300.0 for chlorides. Cardinal provided testimony on both EPA 300.0 and SM4500 and how each method works and is reliable for testing chloride levels. Both methods have similar reliability but SM4500 can process samples faster and is better suited for soil samples. (Keene testimony; Miller testimony; Cardinal exh. 1 - 5 and 7). OCD has previously approved the use of SM4500 for testing chlorides under rules 19.15.17 and 19.15.36 NMAC (Cardinal exh. 6).

24. Written comments were submitted prior to the hearing by: (1) Wayne Price, (2) Earthworks' Oil & Gas Accountability Project ("OGAP"), and (3) Environmental Defense Fund, Natural Resources Defense Council and Earthworks ("EDF"). At the hearing, NMOGA objected to the portions of the written submittals which included modifications to the proposed rule change. Commission rules require that any proposed modifications be submitted at least ten business days prior to the hearing. 19.15.3.11.B NMAC. The Commission found that Mr. Price's modifications were not timely submitted but those from OGAP and EDF were. However, Mr. Price was able to explain his concerns with the proposed rule change during his public comments at the hearing.

25. Public comment was provided at the hearing by Irwin Boyd and Wayne Price. Mr. Boyd testified as a ranch owner and on behalf of the Cattle Growers Association. He raised concerns about surface reclamation, cleanup standards and unreported spills. Mr. Price was concerned that the proposed rule had a bias toward "dig and haul" cleanups and excluded other types of cleanups. He was also concerned with notice to federal and state land management agencies and the possibility of numerous hearings to resolve dispute.

26. Changes to Published Rule. During the rulemaking proceeding, several sets of further modifications to the proposed rule were offered. Several parties proposed modifications in their pre-hearing submittals: OCD, NMOGA, Cardinal, OGAP and EDF. Price submitted written modifications that were untimely under Commission rules, 19.15.3.11.B NMAC, but Price did discuss some of the modifications during his public comment. NMOGA discussed its modifications during the NMOGA witnesses' direct testimony. In response to the testimony and questions from the Commissioners, additional recommended changes were submitted by the parties present at the hearing prior to deliberation by the Commission (OCD exh. 4).

27. With the submittal of OCD exhibit 4 at the close of testimony, OCD, NMOGA and IPANM were in agreement with the proposed rule change submitted by OCD as amended by NMOGA exhibit D and OCD exhibit 4. No person at the hearing objected to Cardinal's proposed modifications. During the hearing, there was testimony in opposition to modifications submitted by OGAP, EDF and Price.

28. Deliberations and Actions. The Commission commenced deliberation on June 7. During deliberation, the Commission reviewed the proposed rule changes, the further modifications submitted by the parties, and the evidence presented during the hearing. The Commission reviewed each section of the proposed rule and made changes to the proposal. The Commission directed Commission counsel to prepare a clean version of the proposed rule changes based on the deliberation, and a draft Order. On June 21, 2018, the Commission reviewed the final draft of the proposed rule changes, completed deliberations and adopted this Order. The Commission adopted the attached rule changes which consist of the proposed rule changes with modifications, some of which were offered by the parties and some by the Commission.

29. Reasons for Adopting the Rule Changes. The Commission finds that with the evidence concerning the number of reported releases and the need to provide a consistent and effective process for the remediation of any contamination caused by the releases, the adoption of a new and more detailed rule 19.15.29 NMAC is necessary and appropriate. The Commission finds that the proposed rule change, as modified, provides a clear and detailed process for the response, delineation and proper remediation of releases. Further, the process provides necessary timelines for the completion of actions, along with needed flexibility, to provide accountability for both the RPs and the agency. In addition, the process and standards outlined in the proposed rule change are consistent with those under other Commission rules. Certain proposed changes will be discussed in greater detail below.

30. Organization. The proposed rule applies certain requirements to all releases and others to only major or minor releases. The Commission approves the NMOGA modifications which sought to clarify these distinctions and the Commission made further changes to the organization and wording. The Commission moved proposed 19.15.29.10 ("Initial Response") to 19.15.29.8 and renamed it "Releases". This section should come first because it describes actions that must be taken immediately after discovery of a release and must be undertaken at all releases. The Commission added a new 19.15.29.8.B which states which sections of the rule apply to all releases and which only apply to major and minor releases.

31. Notification. The proposed rule changes expand the release notification section to require that the RP send a copy of the form to any appropriate federal, state or

tribal land management agency. 19.15.29.9.B NMAC. The surface restoration requirements also provide for compliance with standards of federal, state or tribal land management agencies. 19.15.29.13.E NMAC. Mr. Price proposed to delete these requirements because they set a precedent and could interfere with the interaction between the agency and the RP. EDF sought to have the “landowner” notified of a release or a closure report. OGAP proposed to have the restoration also meet the requirements found in any surface use agreement with private landowners. The Commission found that the proposal to notify and coordinate with federal, state and tribal land management agencies is reasonable and supported by evidence. These agencies have separate regulatory responsibilities that may conflict with the OCC remediation requirements. NMOGA opposed the involvement of private landowners whose relationship with the operator is governed by the Surface Owners Protection Act (NMSA 1978, §§70-12-1 et seq.) which does not involve the State. The Commission found that there was not substantial evidence to further expand the notice requirements.

32. Remediation requirements. The proposed rule changes allow a RP to either follow the process of delineation and remediation plan and closure plan, or if possible complete the remediation within 90 days and file a closure plan. The Commission finds these options reasonable given the range of release scenarios. The Commission amended 19.15.29.12.B NMAC to explicitly provide for these options. Mr. Price commented that the requirement in this subsection to complete an approved remediation plan in 90 days creates a bias towards removal operations and against in situ remediation. The Commission revised this subsection to provide for remediation under a timeline approved by the agency.

33. Testing. Considerable testimony was devoted to differences over proposed soil testing requirements to demonstrate that remediation met the cleanup standards in the rule. OCD, NMOGA and IPANM submitted consensus language at the end of the hearing. (OCD exh. 4). The Commission finds that the proposed language is a reasonable approach to provide necessary verification of remediation. 19.15.29.12.D NMAC.

34. Deferral. The proposed rule change allows remediation to be deferred if the contamination is under or around production equipment and remediation would cause a major facility deconstruction. 19.15.29.12.C(2) NMAC. The Commission found the deferral option reasonable but raised concerns about proper documentation of such deferral and the need to notify any new operators about deferred remediation. The Commission modified this section to require a written approval of deferral and requested that OCD modify its Change of Operator form (C-145) to indicate whether a facility has deferred remediation.

35. Table I. The Commission finds that the use of Table I to provide soil remediation standards for common contaminants is reasonable, supported by substantial evidence and consistent with the approach the Commission has approved for other rules. 19.15.17.13 and 19.15.34.14 NMAC. If other contaminants are present in the release, the proposed rule provides for additional standards. 19.15.29.11.A(5)(e) NMAC. The Commission finds that Cardinal’s proposed addition of a test method to Table I is supported by substantial evidence and was not opposed. In its written comments, EDF proposed changes to the standards for chlorides and benzene in Table I based largely on numbers found in other states’ rules or in a former OCC rule. No technical testimony was submitted in support of these changes. Other parties opposed the changes. The Commission found a lack of substantial evidence to support these changes and did not adopt them.

36. Other comments. Mr. Boyd raised concerns about the condition of the surface after remediation is completed. These concerns are addressed in the restoration standards in 19.15.29.13 NMAC. Mr. Price raised concerns about provisions for appeals would result in numerous hearings. The proposed rule changes allow an RP to "consult with the division" (e.g., 19.15.29.11.C NMAC) which evidence showed was intended to resolve disputes short of a hearing. (McDaniel testimony). OGAP proposed to add "or TENORM" after "NORM" to 19.15.29.9.A NMAC. "NORM" is defined and used in OCC rules but "TENORM" is not. 19.15.2.7 and 19.15.35 NMAC. The change is not supported.

37. The Commission finds that the proposed rule changes, as modified by the Commission, are supported by substantial evidence in the record. The Commission reviewed the amendments to the proposed rule changes submitted by the parties. Many changes clarified the rule language and were adopted by the Commission. More significant changes were discussed above. The changes approved by the Commission are within the scope of the rulemaking as provided in the notice.

THE COMMISSION CONCLUDES THAT:

1. The Commission has jurisdiction, under the Oil and Gas Act, NMSA 1978, §§ 70-2-1 to -38, over the parties and subject matter of this case.
2. The Commission has legal authority, under the Oil and Gas Act, to enact the proposed rule changes.
3. The Commission provided due public notice and an opportunity for the public to provide comments regarding the proposed rule change. A public hearing was held and reasonable opportunity was provided for all persons present to provide testimony, evidence and exhibits.
4. All Commissioners were present at the public hearing and considered all the evidence presented during the hearing including the proposed modifications submitted by the parties. The Commission deliberated after the hearing and adopted the rule changes.
5. The amendments to the proposed rule changes adopted by the Commission were a logical outgrowth of the original proposal.
6. The Commission concludes that there is substantial evidence in the record to support the proposed rule changes, as amended by the Commission, that these rule changes are within the authority of the Commission under the Oil and Gas Act and that these rule changes are reasonable and further the goals of the Oil and Gas Act.

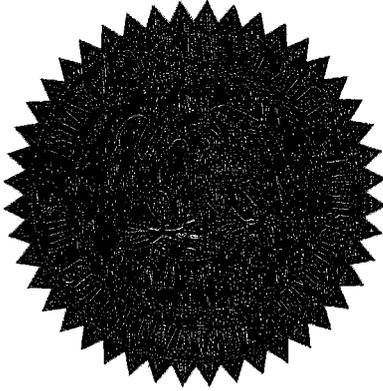
IT IS THEREFORE ORDERED THAT:

1. The proposed changes to 19.15.29 NMAC, as submitted to the Commission by the OCD and as amended by the Commission during deliberation, are hereby approved by the Commission. The adoption of the rule changes will be final upon the later of (a) the action, or deemed action, of the Commission on a rehearing application filed pursuant to NMSA 1978, § 70-2-25, or (b) 20 days from the date of this order if no rehearing application is filed. The rule change shall not be filed with the state records administrator until the rule change is adopted and then must be filed with 15 days after the adoption. If

no rehearing is required by the Commission, this Order shall serve as the "concise explanatory statement" required by NMSA 1978, § 14-4-5.5 (2017).

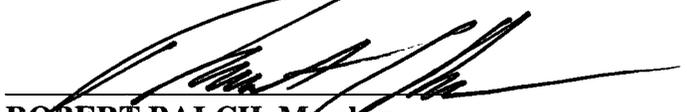
2. The OCD update any forms, specifically C-141 and C-145, to reflect the rule changes.

DONE at Santa Fe, New Mexico, on June 21, 2018.



**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**


HEATHER RILEY, Chair


ROBERT BALCH, Member


ED MARTIN, Member

SEAL

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;
 - (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 party” means the operator, as defined in 19.15.2 NMAC. 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.

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 RELEASES:

A. Requirements. For all releases regardless of volume, the responsible party shall comply with 19.15.29.8 NMAC and shall remediate the release. For major and minor releases, the responsible party shall also comply with 19.15.29.9, 19.15.29.10, 19.15.29.11, 19.15.29.12 and 19.15.29.13 NMAC.

B. Initial response. The responsible party must take the following immediate actions unless the actions could create a safety hazard that would result in injury.

(1) **Source elimination and site security.** The responsible party 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.

(2) **Containment.** Once the site is secure, the responsible party 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 that could pose a threat to public health and environment. The responsible party must monitor the containment to ensure that it is effectively containing the material and not being degraded by weather or onsite activity.

(3) **Site stabilization.** After containment, the responsible party must recover any free liquids and recoverable materials that can be physically removed from the surface within the containment area. The responsible party must deliver material removed from the site to a division-approved facility.

(4) **Remediation.** The responsible party may commence remediation immediately.
[19.15.29.8 NMAC – Rp, 19.15.29.8 NMAC, XX/XX/201?]

19.15.29.9 RELEASE NOTIFICATION:

A. The responsible party 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 must send a copy of the form C-141 to the appropriate land managing agency including the state land office, the BLM or tribal authority, as applicable.

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

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

A. **Reporting a major release.**

(1) The responsible party 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 party 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 party must notify the appropriate division district office in writing within 15 days of discovery of the release by completing and filing form C-141.

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

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

A. **Characterization requirements.** The responsible party must submit information characterizing the release to the appropriate division district office within 90 days of discovery of the release or characterize the release by submitting a final closure report within 90 days of discovery of the release in accordance with Subsection E of 19.15.29.12 NMAC. The responsible party may seek an extension of time to submit characterization information for good cause as determined by the division. The responsible party must submit the following information to the division.

(1) **Site map.** The responsible party 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 party must determine the depth to ground water where the release occurred. If the exact depth to ground water is unknown, the responsible party 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 party uses water well data, the responsible party must provide all pertinent well information.

(3) **Wellhead protection area.** The responsible party must determine the horizontal distance from all known water sources within 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 significant watercourse as defined in Subsection P of 19.15.17.7 NMAC within a half mile of any horizontal boundary of the release.

(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 of 19.15.29.12 NMAC constituents or as required by Subparagraph (e) of Paragraph (5) of Subsection A of 19.15.29.11 NMAC based on the type of release. The responsible party shall use one or more of 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 1 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 1 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 Items (i) or (ii) of Subparagraph (e) of Paragraph (5) of Subsection A of 19.15.29.11 NMAC, 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.
[19.15.29.11 NMAC – Rp, 19.15.29.11 NMAC, XX/XX/201?]

19.15.29.12 REMEDIATION AND CLOSURE:

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

B. Remediation requirements.

(1) Unless remediation is completed, and a final closure report submitted, within 90 days of discovery of the release, the responsible party must complete division-approved remediation for releases either pursuant to a remediation plan approved pursuant to 19.15.29.12 NMAC or pursuant to an abatement plan in accordance with 19.15.30 NMAC. 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.

(2) Any remediation under 19.15.29 NMAC should be completed as soon as practicable. Any remediation that exceeds 90 days must follow the division-approved timeline in the remediation plan. The responsible party may request an extension of time to remediate upon a showing of good cause as determined by the division.

C. Remediation plan requirements. The responsible party must take the following action for any major or minor release containing liquids.

(1) 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 or other applicable remediation standards and restore 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 a major facility deconstruction, the remediation, restoration and reclamation may be deferred with division written approval 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 ground 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 or other applicable remediation standards and restore and reclaim the area pursuant to 19.15.29.13 NMAC.

(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);

- (b) within 300 feet from an occupied permanent residence, school, hospital, institution or church;
- (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 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 party 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. Closure requirements. The responsible party must take the following action for any major or minor release containing liquids.

(1) The responsible party must test the remediated areas for contamination with representative five-point composite samples from the walls and base, 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 or constituents from other applicable remediation standards.

(a) The responsible party 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 party may proceed with final sampling. The responsible party may request a variance from this requirement upon a showing of good cause as determined by the division.

(b) The responsible party may submit a composite and grab sample plan for the division's review and approval separately or with the remediation plan.

(c) Alternately, without division approval, the responsible party may elect to perform a composite and grab sample plan of the remediated area where each composite sample is not representative of more than 200 ft².

(2) If all composite and grab sample concentrations are less than or equal to the parameters listed in Table I of 19.15.29.12 NMAC or any conditions of approval, then the responsible party may proceed to backfill any excavated areas.

E. Closure reporting. The responsible party must take the following action for any major or minor release containing liquids.

(1) The responsible party 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 party must certify that all information in the closure report and attachments is correct and that the responsible party has complied with all applicable closure requirements and conditions specified in division rules or directives. The responsible party must submit closure report along with form C-141 to the division within 90 days of the remediation plan approval. The responsible party 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 report is affirmatively denied, the division shall provide a written summary of deficiencies on which the decision is based. If the responsible party 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			
Minimum depth below any point within the horizontal boundary of the release to ground water less than 10,000 mg/l TDS	Constituent	Method*	Limit**
≤ 50 feet	Chloride***	EPA 300.0 or SM4500 Cl B	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	10 mg/kg
51 feet-100 feet	Chloride***	EPA 300.0 or SM4500 Cl B	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 or SM4500 Cl B	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.

***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 must substantially restore the impacted surface areas to the condition that existed prior to the release or their final land use. 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 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 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 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 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 containing liquids, the responsible party must notify the division when reclamation and re-vegetation are complete.

E. The surface restoration, reclamation and re-vegetation obligations imposed by federal or state agencies or tribes on lands managed or owned by those agencies supersede these provisions and govern the obligations of any responsible party 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 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 with the reasons for denial.

C. If the division district office does not approve or deny a request for variance from the requirements of 19.15.29 NMAC within 60 days of the date the request for variance is received by the division district office, then the plan is deemed denied and the responsible party 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 party and appropriate division district office.

E. In addition to the notice provisions in 19.15.4 NMAC, the responsible party 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 must comply with all the requirements of 19.15.29 NMAC. The division may take enforcement action against any responsible party who does not comply with 19.15.29 NMAC pursuant to 19.15.5.10 NMAC.

B. A responsible party 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 any application or permit, including but not limited to, a permit to drill, deepen or plug back a well if the responsible party 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?]

HISTORY of 19.15.29 NMAC:

History of Repealed Material:

19.15.3 NMAC, Drilling (filed 10/29/2001) repealed 12/1/08.

19.15.29 NMAC, Release Notification (filed 12/1/2008) was repealed effective XX/XX/XXXX.

NMAC History:

That applicable portion of 19.15.3 NMAC, Drilling (Section 116) (filed 10/29/2001) was replaced by 19.15.29 NMAC, Release Notification, effective 12/1/08.

19.15.29 NMAC, Release Notification (filed 12/1/2008) was repealed and replaced by 19.15.29, Releases, effective XX/XX/XXXX.