

OCD Exhibit 3: OCD Proposed Modifications

This is the proposed replacement of 19.15.29 NMAC, repealing existing Sections 1 through 11, effective XX/XX/XXXX

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 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 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 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 Bureau of Land Management or tribal authority, as applicable.
[19.15.29.8 NMAC – Rp, 19.15.29.8 NMAC, XX/XX/201?]

19.15.29.9 RELEASE NOTIFICATION REPORTING REQUIREMENTS: The responsible party must notify the division of releases in 19.15.29.8 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.
[19.15.29.9 NMAC – Rp, 19.15.29.9 NMAC, XX/XX/201?]

19.15.29.10 INITIAL RESPONSE: The responsible party 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 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.

B. 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 which 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.

C. Site Stabilization. After containment, the responsible party must recover any free liquids and recoverable product 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.
[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 products, the responsible party must assess soils both vertically and horizontally for potential environmental impacts from the release.

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 site by submitting a final closure report within 90 days of discovery of the release in accordance with 19.15.29 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.

(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~~ or as required by 19.15.29.12(A)(5)(e) NMAC based on 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 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.

(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. 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 may be deferred with division 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 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 shall take place in accordance with 19.15.29.12 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 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);
(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 100 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.

C. Closure Requirements.

(1) The responsible party 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 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) There must be separate representative wall and base 5-point composite samples 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 party 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 party may proceed to backfill any excavated areas.

D. Closure Reporting.

(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 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			
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 (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 8260BM	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 8260BM	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. 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 responsible party must reseed disturbed area in the first favorable growing season following closure of the site.

(2) 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.

(3) 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, 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 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 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 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.
- 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 a permit to drill, deepen or plug back any application 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?]