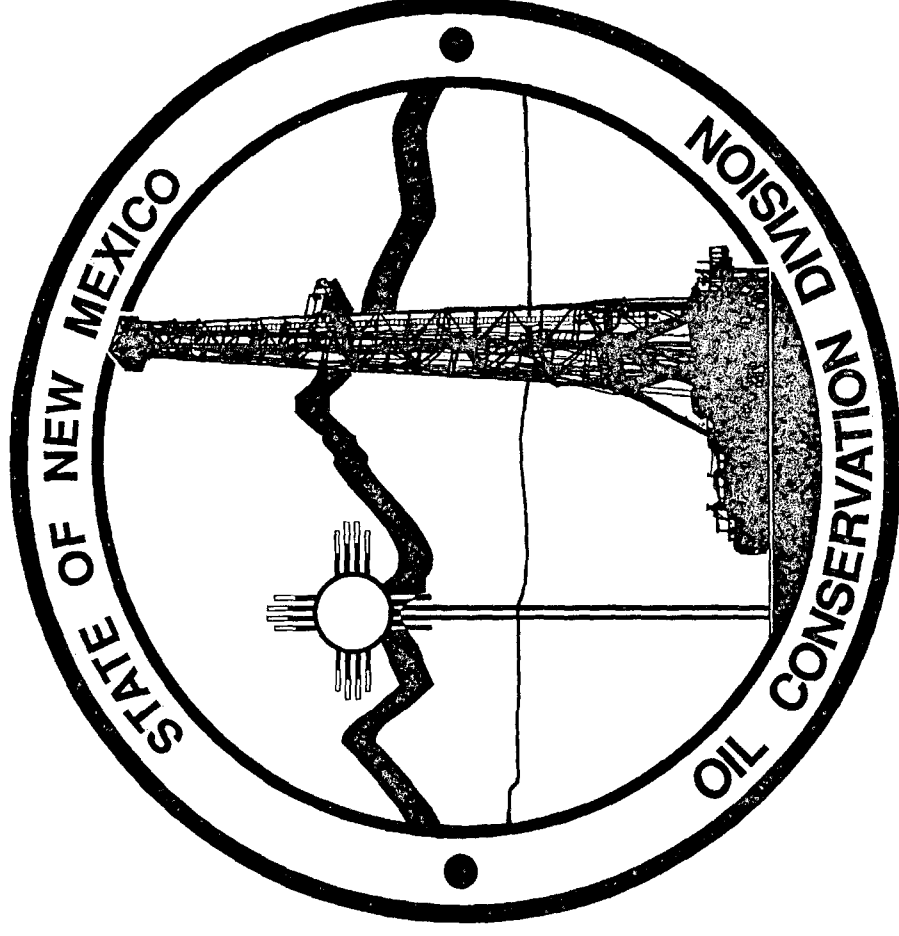


CASE NO. 14015
OCD EXHIBIT 23



TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 17 PITS, CLOSED-LOOP SYSTEMS, BELOW-GRADE TANKS AND SUMPS

19.15.17.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.17.1 NMAC - N, / /07]

19.15.17.2 SCOPE: 19.15.17 NMAC applies to persons engaged in oil and gas development and production within New Mexico.

[19.15.17.2 NMAC - N, / /07]

19.15.17.3 STATUTORY AUTHORITY: 19.15.17 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.

[19.15.17.3 NMAC - N, / /07]

19.15.17.4 DURATION: Permanent.

[19.15.17.4 NMAC - N, / /07]

19.15.17.5 EFFECTIVE DATE: _____, 2007, unless a later date is cited at the end of a section.

[19.15.17.5 NMAC - N, / /07]

19.15.17.6 OBJECTIVE: To regulate pits, closed-loop systems, below-grade tanks and sumps used in connection with oil and gas operations for the protection of public health, welfare and the environment.

[19.15.17.6 NMAC - N, / /07]

19.15.17.7 DEFINITIONS:^{1,2,3}

A. "Alluvium" means detrital material that water or other erosional forces have transported and deposited at points along a watercourse's flood plain. It typically is composed of sands, silts and gravels; exhibits high porosity and permeability; and generally carries fresh water.

B. "Closed-loop system" means a system that uses above ground steel tanks for the management of drilling or workover fluids without using below-grade tanks or pits.⁴

C. "Division-approved facility" means a division-permitted surface waste management or injection facility, a facility permitted pursuant to 20.6.2 NMAC, a facility approved pursuant to 19.15.9.712 NMAC or other facility that the division specifically approves for the particular purpose. The division shall not approve any facility not otherwise permitted unless it finds that the facility's use for the specified purpose will protect fresh water, public health and the environment and comply with other applicable federal or state statutes, federal regulations, state rules and local ordinances.

¹ **MARBOB** REFERENCES ARE NEEDED FOR DEFINITIONS OF HAZARDOUS WASTES.

² **OXY** PLEASE INSERT THE NM AND EPA REFERENCES FOR DEFINITION OF HAZARDOUS WASTES.

³ **NMCCA&W** THE DISTINCTION BETWEEN "UPSTREAM" AND "DOWNSTREAM" FACILITIES APPEARS ONLY ONCE IN THE RULE, IN 19.15.17L9 A, UNDER WHICH AN OPERATOR OF AN UPSTREAM FACILITY MAY SUBMIT EITHER A C-144 OR AN ATTACHMENT TO AN APPLICATION FOR A WELL PERMIT. IS A DEFINITION TRULY NEEDED FOR THIS ONE MINOR DISTINCTION, PARTICULARLY WHEN OCD SUGGESTED IT WANTED ALL PIT NOTIFICATIONS TO APPEAR ON C-144S? ACCORDING TO THE DEFINITION, A "DOWNSTREAM" FACILITY WOULD BE ANYTHING NOT AT THE WELL, INCLUDING A GATHERING LINE OR TANK BATTERY

⁴ **OXY** A "CLOSED LOOP SYSTEM" MEANS THE USE OF PORTABLE TANKS AND MECHANICAL AND/OR CHEMICAL SYSTEMS FOR MANAGING DRILLING/COMPLETION FLUIDS AND SOLIDS WHICH ALLOWS AN OPERATOR TO DRILL A WELL WITHOUT USING AN ONSITE EARTH PIT.

D. "Emergency pit" means a pit that is constructed as a precautionary matter to contain a spill in the event of a release.

E. "Permanent pit" means a pit, including a pit used for collection, retention or storage of produced water or brine that is constructed with the conditions and for the duration provided in its permit, and is not a temporary pit.

F. "Restore" means to return a site to its former condition, in the manner and to the extent required by applicable provisions of 19.15.17 NMAC.⁵

G. "Re-vegetate" means to seed or plant a site with plant species that are predominantly native in a quantity that controls erosion.

H. "Sump" means an impermeable vessel, or a collection device incorporated within a secondary containment system, with a capacity less than 500 gallons, which remains predominantly empty, serves as a drain or receptacle for de minimis releases on an intermittent basis and is not used to store, treat, dispose of or evaporate products or wastes.

I. "Temporary pit" means a pit, including a drilling or workover pit, which is constructed with the intent that the pit will hold liquids for less than six months and will be closed in less than one year.⁶
[19.15.17.7 NMAC - Rp, 19.15.2.7 NMAC, / /07]

19.15.17.8 PERMIT REQUIRED:⁷

A. A person shall not construct or use a pit or below-grade tank except in accordance with a division-issued permit. Only an operator may apply for a division-issued permit. Facilities permitted pursuant to 19.15.36 NMAC or WQCC rules are exempt from 19.15.17 NMAC. After _____, 200_ [effective date], an unlined permanent pit is prohibited and the division shall not issue a permit for an unlined permanent pit.

B. In lieu of using a pit or below-grade tank in accordance with 19.15.17 NMAC, an operator may use a closed-loop system or other division-approved alternative method. However, an operator may not conduct operations using a closed-loop system or other proposed alternative method except in accordance with a division-issued permit. An operator requesting a permit for a closed-loop system that uses a temporary pit shall comply with the requirements for temporary pits specified in 19.15.17 NMAC.⁸
[19.15.17.8 NMAC - Rp, 19.15.2.50 NMAC, / /07]

19.15.17.9 PERMIT APPLICATION:

A. An operator shall apply to the division for a permit to construct or use a pit, closed-loop system, below-grade tank or other proposed alternative method to which 19.15.17 NMAC applies, using form C-144, submitted either separately or as an attachment to a permit application for a facility with which the pit, closed-loop system, below-grade tank or other proposed alternative method will be associated. For upstream facilities, the

⁵ OXY CHANGE "RESTORE" TO "SITE RESTORATION".

⁶ OXY CHANGE "LIQUIDS" TO "FLUIDS".

⁷ OXY 19.15.17.8 PERMIT REQUIRED...GENERAL: IN THIS SECTION, A PERMIT IS REQUIRED TO CONSTRUCT OR USE A PIT (EITHER TEMPORARY OR PERMANENT) AND A BELOW-GRADE TANK. IN LIEU OF A PIT OR BELOW-GRADE TANK, AN OPERATOR MAY USE A CLOSED-LOOP SYSTEM OR "OTHER DIVISION-APPROVED ALTERNATIVE METHOD" IF THE OPERATOR RECEIVES A PERMIT TO DO SO (19.15.17.8.B). THE PERMIT APPLICATION REGULATIONS STATE THAT AN OPERATOR APPLYING FOR A PERMIT TO CONSTRUCT OR USE A "PROPOSED ALTERNATIVE METHOD" MUST DO SO USING FORM C-144. 19.15.17.9.A. THE REMAINDER OF THE PIT RULE IS SILENT REGARDING THE "OTHER DIVISION-APPROVED ALTERNATIVE METHOD" OPTION. IF THE PIT RULE IS TO PROVIDE OPERATORS WITH THE OPTION OF USING AN ALTERNATIVE METHOD, IT SHOULD PROVIDE REGULATORY STANDARDS UPON WHICH AN OPERATOR MAY PROPOSE AND COMPLY WITH A STANDARD.

⁸ OXY B. THROUGHOUT THE DRAFT RULE THE REQUIREMENTS OF A CLOSED-LOOP SYSTEM IS CONFUSING. WHY IS A PERMIT NEEDED TO USE TANKS? GENERAL OPERATION AND ONSITE CLOSURE REQUIREMENTS MAY BE SUFFICIENT.

operator may submit form C-144 separately or as an attachment to an application for a well permit (form C-101 or C-103).⁹

B. The permit application shall include a detailed¹⁰ engineering design plan.

(1) Permanent pits. A registered professional engineer shall certify engineering design plans for permanent pits. The engineering design plan shall include:

- (a) a quality control/quality assurance construction and installation plan;
- (b) operating and maintenance procedures;
- (c) a closure plan;
- (d) a hydrogeologic report that provides sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the environmental bureau in the division's Santa Fe office to evaluate the actual and potential effects on soils, surface water and ground water;
- (e) detailed information on dike protection and structural integrity; and leak detection, including an adequate fluid collection and removal system;
- (f) liner specifications and compatibility;
- (g) freeboard and overtopping prevention;
- (h) prevention of nuisance or hazardous odors, including H₂S;
- (i) an emergency response plan, unless the permanent pit is part of a facility that has an integrated contingency plan;
- (j) type of oil field waste stream;
- (k) climatological factors, including freeze-thaw cycles;
- (l) a monitoring and inspection plan;
- (m) erosion control; and
- (n) other pertinent information the environmental bureau in the division's Santa Fe office requests.

(2) Temporary pits. An engineering design plan for a temporary pit shall use appropriate engineering principles and practices and follow applicable manufacturers' recommendations. The engineering design plan shall include operating and maintenance procedures, a closure plan and a hydrogeologic report¹¹ that provides sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the appropriate division district office to evaluate the actual and potential effects on soils, surface water and ground water. An engineering design plan for a temporary pit may incorporate by reference a standard design for multiple temporary pits that the operator files with the application or has previously filed with the appropriate division district office.

(3) Closed-loop systems. An engineering design plan for a closed-loop system shall use appropriate engineering principles and practices and follow applicable manufacturers' recommendations. The engineering design plan shall include operating and maintenance procedures and a closure plan. An engineering design plan for a closed-loop system may incorporate by reference a standard design for multiple projects that the operator files with the application or has previously filed with the appropriate division district office.

(4) Below-grade tanks. An engineering design plan for a below-grade tank shall use appropriate engineering principles and practices and follow applicable manufacturers' recommendations. The engineering design plan shall include operating and maintenance procedures, a closure plan and a hydrogeologic report that provides sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the appropriate division district office to evaluate the actual and potential effects on soils, surface water and ground water. An engineering design plan for a below-grade tank may incorporate by reference a

⁹ **OXY** A. 3RD LINE, INSERT "OR TANK" BETWEEN "PIT" AND "WILL". I BELIEVE THAT THE SURFACE OWNER PROTECTION ACT SHOULD BE REVIEWED TO DETERMINE IF A CERTIFICATION OF COMPLIANCE IS NEEDED, OR JUST A BOX CHECKED ON THE C-144 FORM INDICATING THAT THE REQUIRED NOTIFICATIONS, ETC. ARE COMPLETED.

¹⁰ **OXY** B. DELETE "DETAILED" AND REPLACE "A" WITH "AN"; THE DETAILS OF THE ENGINEERING DESIGN PLAN ARE PROVIDED IN (1) AND (2).

¹¹ **D.J. SIMMONS** 9.B.(2). "...CLOSURE PLAN AND A HYDROGEOLOGIC REPORT". WE NEED TO KEEP THIS SIMPLE. WHAT DO YOU MEAN BY "HYDROGEOLOGIC REPORT"? WHAT ARE YOUR EXPECTATIONS BEYOND JUST DEPTH TO GROUNDWATER.

standard design for multiple below-grade tanks that the operator files with the application or has previously filed with the appropriate division district office.

C. Closure plans. A closure plan that an operator submits in an engineering design plan, or any other closure plan required pursuant to 19.15.17 NMAC, shall describe the proposed closure method and the proposed procedures and protocols to implement and complete the closure.

(1) If the operator proposes an on-site closure method, the operator shall also propose other methods to be used if the initial method does not satisfy the on-site closure standards specified in Subparagraph (d) of Paragraph (2) of Subsection F of 19.15.17.13 NMAC or, if applicable, other on-site closure standards that the environmental bureau in the division's Santa Fe office approves.

(2) An operator of an existing unlined, permitted or registered permanent pit, or an existing lined or unlined, permanent pit not permitted or registered, identified under Paragraphs (1) or (2) of Subsection A of 19.15.17.13 NMAC, shall submit the respective closure plan required under the transitional provisions of Subsection B of 19.15.17.17 NMAC to the environmental bureau in the division's Santa Fe office.

(3) An operator of an existing unlined, temporary pit or an existing below-grade tank, identified under Paragraphs (3) or (4) of Subsection A of 19.15.17.13 NMAC, shall submit the respective closure plan required under the transitional provisions of Subsection B of 19.15.17.17 NMAC to the appropriate division district office.

(4) An operator shall include in the permit application an engineering design plan with an attached closure plan.

D. Filing of permit application.

(1) Permanent pits and exceptions requested pursuant to 19.15.17.15 NMAC. An operator shall file an application, form C-144, and all required attachments with the environmental bureau in the division's Santa Fe office to request approval to use or construct a permanent pit or request an exception pursuant to 19.15.17.15 NMAC and shall provide a copy to the appropriate division district office.

(2) Temporary pits, closed-loop systems and below-grade tanks. To request approval to use or construct a temporary pit, closed-loop system or below-grade tank, an operator shall file an application, form C-144, and all required attachments with the appropriate division district office.

[19.15.17.9 NMAC - Rp, 19.15.2.50 NMAC, / /07]

19.15.17.10 SITING REQUIREMENTS:

A. Except as otherwise provided in 19.15.17 NMAC.

(1) An operator shall not locate a temporary pit or below-grade tank:

(a) where ground water is less than 50^{12,13} feet below the bottom of the temporary pit or below-grade tank;

(b) within 300 feet of a continuously flowing watercourse, or 200¹⁴ feet of any other watercourse, lakebed, sinkhole or playa lake (measured from the ordinary high-water mark), unless the appropriate division district office approves an alternative distance based upon the operator's demonstration that surface and ground water will be protected;

(c) within 300¹⁵ feet from a permanent residence, school, hospital, institution or church in existence at the time of initial application;

¹² **OXY** 19.15.17.10 SITING REQUIREMENTS...A. (1)(A). WHAT IS THE SCIENCE/RATIONALE THAT SUPPORTS THE 50' TO GROUNDWATER?

¹³ **NMCGA** SECTION 19.15.17.10 SITING... A.(1)(A) WE CONTINUE TO BELIEVE THAT THE DEPTH TO GROUND WATER SHOULD BE 100 FEET, NOT 50 BELOW THE BOTTOM OF THE PIT.

¹⁴ **OXY** A. (3)(A). WHAT IS THE RATIONALE FOR THE 200 FEET? THE 200 FEET DISTANCE IS CONSIDERABLY GREATER THAN THE 30 FOOT DISTANCE PRESENTED IN THE PIT RULE TASK FORCE REPORT CONSENSUS SUMMARY DATED JULY 10, 2007. WHILE A 200 FOOT DISTANCE MAY BE APPROPRIATE FOR PERMANENT PITS, FOR TEMPORARY PITS OR BELOW-GRADE TANKS, IT IS FAR GREATER THAN NECESSARY TO PROTECT PUBLIC HEALTH AND THE ENVIRONMENT. THE 30 FOOT DISTANCE SHOULD BE ADEQUATE FOR TEMPORARY PITS.

¹⁵ **D.J. SIMMONS** 10.A.(1)(C) - "WITHIN 300 FEET FROM A PERMANENT RESIDENCE, SCHOOL, HOSPITAL, INSTITUTION OR CHURCH IN EXISTENCE AT THE TIME OF INITIAL APPLICATION". I STILL DON'T GET THIS. CITY REGULATIONS REQUIRE --SET BACKS FOR THE WELL ITSELF. WHY DO WE NEED

(d) within 500 horizontal feet of a private, domestic fresh water well or spring that less than five households use for domestic or stock watering purposes, or within 1000 horizontal feet of any other fresh water well or spring, in existence at the time of initial application;

(e) within incorporated municipal boundaries or within a defined municipal fresh water well field¹⁶ covered under a municipal ordinance adopted pursuant to NMSA 1978, Section 3-27-3, as amended, unless the municipality specifically approves;

(f) within 500 feet of a wetland;

(g) within the area overlying a subsurface mine, unless the appropriate division district office specifically approves the proposed location based upon the operator's demonstration that subsurface integrity will not be compromised;

(h) within an unstable area, unless the operator demonstrates that it has incorporated engineering measures into the design to ensure that the temporary pit's or below-grade tank's integrity is not compromised; or

(i) within a 100-year floodplain.

(2) An operator shall not locate a permanent pit:

(a) where ground water is less than 50 feet below the bottom of the permanent pit;

(b) within 300 feet of a continuously flowing watercourse, or 200 feet of any other watercourse, lakebed, sinkhole or playa lake (measured from the ordinary high-water mark), unless the environmental bureau in the division's Santa Fe office approves an alternative distance based upon the operator's demonstration that surface and ground water will be protected;

(c) within 1000 feet from a permanent residence, school, hospital, institution or church in existence at the time of initial application;

(d) within 500 horizontal feet of a private, domestic fresh water well or spring less than five households use for domestic or stock watering purposes, or within 1000 horizontal feet of any other fresh water well or spring, in existence at the time of 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 500 feet of a wetland;

(g) within the area overlying a subsurface mine, unless the environmental bureau in the division's Santa Fe office specifically approves the proposed location based upon the operator's demonstration that subsurface integrity will not be compromised;

(h) within an unstable area, unless the operator demonstrates that it has incorporated engineering measures into the design to ensure that the permanent pit's integrity is not compromised; or

(i) within a 100-year floodplain.

(3) An operator shall not locate material excavated from the construction of the pit:

(a) within 300 feet of a continuously flowing watercourse, or 200 feet of any other watercourse, lakebed, sinkhole or playa lake (measured from the ordinary high-water mark), unless the division approves an alternative distance based upon the operator's demonstration that surface and ground water will be protected;

(b) within 500 feet of a wetland; or

(c) within a 100-year floodplain.

B. An emergency pit is exempt from the siting criteria of 19.15.17 NMAC.

C. An operator shall not implement an on-site closure method:¹⁷

SETBACKS FOR THE PIT TOO? WHAT DIFFERENCE DOES A PIT MAKE ON A LOCATION WHEN THE ENTIRE LOCATION IS FENCED, OR, AS A MINIMUM, THE PIT WILL HAVE THE 6' FENCE SPECIFIED BELOW?

¹⁶ **THE CITY OF LOVINGTON IS PLEASED TO SEE THAT THE OCD HAS PROPOSED LANGUAGE IN 19.15.17.10(A)(1)(E) PROTECTING MUNICIPAL WELL FIELDS DESPITE INDUSTRY'S OBJECTION.**

¹⁷ **NMCCA&W IT SEEMS STRANGE THAT A RULE WOULD NEED TO FORBID ABANDONMENT OF WASTES ON SITE WHERE PITS ARE NOT ALLOWED. ALTHOUGH THIS SUB-PARAGRAPH MAY BE INTENDED TO APPLY ONLY TO CLOSED-LOOP SYSTEMS, THE REST OF THIS SECTION OF THE RULE APPEARS TO BE WRITTEN IN TERMS OF PITS.**

- (1) where ground water is less than 50 feet below the bottom of the waste;
 - (2) within 300 feet of a continuously flowing watercourse, or 200 feet of any other watercourse, lakebed, sinkhole or playa lake (measured from the ordinary high-water mark), unless the division approves an alternative distance based upon the operator's demonstration that surface and ground water will be protected;
 - (3) within 300 feet from a permanent residence, school, hospital, institution or church in existence at the time of initial application;
 - (4) within 500 horizontal feet of a private, domestic fresh water well or spring less than five households use for domestic or stock watering purposes or within 1000 horizontal feet of any other fresh water well or spring, existing at the time the operator files the application for exception;
 - (5) 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;
 - (6) within 500 feet of a wetland;
 - (7) within the area overlying a subsurface mine, unless the division specifically approves the proposed location based upon the operator's demonstration that subsurface integrity will not be compromised;
 - (8) within an unstable area, unless the operator demonstrates that it has incorporated engineering measures into the design to ensure that the on-site closure method will prevent contamination of fresh water and protect public health and the environment; or
 - (9) within a 100-year floodplain.
- [19.15.17.10 NMAC - Rp, 19.15.2.50 NMAC, / /07]

19.15.17.11 DESIGN AND CONSTRUCTION SPECIFICATIONS:

- A. General specifications. An operator shall design and construct a pit, closed-loop system, below-grade tank or sump¹⁸ to contain liquids and solids and prevent contamination of fresh water and protect public health and the environment.
- B. Stockpiling of topsoil. Prior to constructing a pit or closed-looped system, except a pit constructed in an emergency, the operator shall strip and stockpile the topsoil for use as the final cover or fill at the time of closure.
- C. Signs. The operator shall post an upright sign not less than 12 inches by 24 inches with lettering not less than two inches in height in a conspicuous place on the fence surrounding the pit, closed-loop system or below-grade tank, unless the pit, closed-loop system or below-grade tank is located on a well site that the operator controls. The operator shall post the sign in a manner and location such that a person can easily read the legend. The sign shall provide the following information: the operator's name; the location of the site by quarter-quarter or unit letter, section, township and range; and emergency telephone numbers.
- D. Fencing.
 - (1) The operator shall fence or enclose a pit or below-grade tank in a manner that prevents unauthorized access and shall maintain the fences in good repair. Fences are not required if there is an adequate surrounding perimeter fence that prevents unauthorized access to the well site or facility, including the pit or below-grade tank. During drilling operations, the operator is not required to fence the edge of the pit adjacent to the drilling rig.
 - (2) The operator shall fence or enclose a pit or below-grade tank located within 1000 feet of a permanent residence, school, hospital, institution or church with a chain link security fence, at least six feet in height with at least two strands of barbed wire at the top. The operator shall ensure that all gates associated with the fence are closed and locked when responsible personnel are not on-site. During drilling operations, the operator is not required to fence the edge of the temporary pit adjacent to the drilling rig.
 - (3) The operator shall fence any other pit or below-grade tank to exclude wildlife and livestock, with at least four strands of barbed wire in the interval between one foot and five feet above ground level. The appropriate division district office may approve an alternative to this requirement if the operator demonstrates that an alternative provides equivalent or better protection. The appropriate division district office may impose additional fencing requirements for protection of wildlife in particular areas.

¹⁸ *OXY A. THIS IS THE FIRST TIME THAT ANY REQUIREMENTS FOR "SUMPS" ARE ADDRESSED. WHAT ABOUT A DEFINITION AND IS A PERMIT NEEDED?*

E. Netting. The operator shall ensure that a permanent pit or a permanent open top tank is screened, netted or otherwise rendered non-hazardous to wildlife, including migratory birds. Where netting is not feasible, the operator shall routinely inspect for and report discovery of dead migratory birds or other wildlife to the appropriate wildlife agency and to the appropriate division district office in order to facilitate assessment and implementation of measures to prevent incidents from reoccurring.

F. Temporary pits. The operator shall design and construct a temporary pit in accordance with the following requirements.

(1) The operator shall design and construct a temporary pit to ensure the confinement of oil, gas or water to prevent uncontrolled releases.

(2) A temporary pit shall have a properly constructed foundation and interior slopes consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities to prevent the liner's rupture or tear. The operator shall construct a temporary pit so that the slopes are no steeper than two horizontal feet to one vertical foot (2H:1V). The appropriate division district office may approve an alternative to the slope requirement if the operator demonstrates that it can construct and operate the temporary pit in safe manner to prevent contamination of fresh water and protect public health and the environment.

(3) The operator shall design and construct a temporary pit with a geomembrane liner. The geomembrane liner shall consist of 20-mil string reinforced LLDPE or equivalent liner material that the appropriate division district office approves. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. The liner material shall be resistant to ultraviolet light. Liner compatibility shall comply with EPA SW-846 method 9090A.^{19,20}

(4) The operator shall minimize liner seams and orient them up and down, not across a slope. The operator shall use factory seams where possible. The operator shall overlap liners four to six inches before seaming, and orient seams parallel to the line of maximum slope, *i.e.*, oriented along, not across, the slope. The operator shall minimize the number of field seams in corners and irregularly shaped areas. Qualified personnel shall perform field seaming.

(5) Construction shall avoid excessive stress-strain on the liner.

(6) Geotextile is required under the liner where needed to reduce localized stress-strain or protuberances that may otherwise compromise the liner's integrity.

(7) The operator shall anchor the edges of all liners in the bottom of a compacted earth-filled trench. The anchor trench shall be at least 18 inches deep.

(8) The operator shall ensure that the liner is protected from any fluid force or mechanical damage at any point of discharge into or suction from the lined temporary pit.

(9) The operator shall design and construct a temporary pit to prevent run-on of surface water. A berm, ditch or other diversion shall surround a temporary pit to prevent run-on of surface water. During drilling operations, the edge of the temporary pit adjacent to the drilling rig is not required to have run-on protection if the operator is using the temporary pit to collect liquids escaping from the rig.

(10) The size of a temporary pit shall not exceed 10 acre-feet, including freeboard.

(11) The part of a temporary pit used to vent or flare gas during a drilling or workover operation that is designed to allow liquids to drain to a separate temporary pit does not require a liner, unless the appropriate division district office requires an alternative design in order to protect surface water, ground water and the environment.

G. Permanent pits. The operator shall design and construct a permanent pit in accordance with the following requirements.²¹

¹⁹ **OXY** (3). *WHAT IS THE SCIENTIFIC RATIONALE FOR THE 20-MIL LLDPE? WITH THE NEW SITING, DESIGN, AND OPERATIONAL REQUIREMENTS THAT THE TASKFORCE DISCUSSED, THE 12-MIL LLDPE APPEARED ADEQUATE. WHAT ABOUT THE BENEFIT OF "WATER/FLUIDS" MANAGEMENT DISCUSSIONS DURING THE TASKFORCE MEETINGS?*

²⁰ **NMCGA** IN SECTION 19.15.17.11 CONSTRUCTION....(3) *WE SUPPORT THE LANGUAGE REQUIRING ALL TEMPORARY PITS TO BE CONSTRUCTED WITH A GEOMEMBRANE LINER.*

²¹ **D.J. SIMMONS** *THERE ARE MANY DETAILED SPECIFICATIONS IN THIS SECTION THAT I DO NOT REMEMBER DISCUSSING. I WOULD PREFER THOSE SPECIFICS BE CHANGED TO BLACK SO THERE IS NO MISUNDERSTANDING THAT WE ALL AGREED TO THEM, SUCH AS THE HYDRAULIC CONDUCTIVITY*

(1) Each permanent pit shall have a properly constructed foundation consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities to prevent the liner's rupture or tear. The operator shall construct a permanent pit so that the inside grade of the levee is no steeper than two horizontal feet to one vertical foot (2H:1V). The levee shall have an outside grade no steeper than three horizontal feet to one vertical foot (3H:1V). The levee's top shall be wide enough to install an anchor trench and provide adequate room for inspection and maintenance.

(2) Each permanent pit shall contain, at a minimum, a primary (upper) liner and a secondary (lower) liner with a leak detection system appropriate to the site's conditions. The edges of all liners shall be anchored in the bottom of a compacted earth-filled trench. The anchor trench shall be at least 18 inches deep.

(3) The primary (upper) liner and secondary (lower) liner²² shall be geomembrane liners. The geomembrane liner shall consist of 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner material the environmental bureau in the division's Santa Fe office approves. The geomembrane liner shall have a hydraulic conductivity no greater than 1×10^{-9} cm/sec. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. The liner material shall be resistant to ultraviolet light. Liner compatibility shall comply with EPA SW-846 method 9090A.

(4) The environmental bureau in the division's Santa Fe office may approve other liner media if the operator demonstrates to the satisfaction of the environmental bureau in the division's Santa Fe office that the alternative liner protects fresh water, public health, safety and the environment as effectively as the specified media.

(5) The operator shall minimize liner seams and orient them up and down, not across a slope. The operator shall use factory seams where possible. The operator shall ensure field seams in geosynthetic material are thermally seamed (hot wedge) with a double track weld to create an air pocket for non-destructive air channel testing. A stabilized air pressure of 35 psi, plus or minus one percent, shall be maintained for at least five minutes. The operator shall overlap liners four to six inches before seaming, and orient seams parallel to the line of maximum slope, *i.e.*, oriented along, not across, the slope. The operator shall minimize the number of field seams in corners and irregularly shaped areas. There shall be no horizontal seams within five feet of the slope's toe. Qualified personnel shall perform field seaming.

(6) At a point of discharge into or suction from the lined permanent pit, the operator shall ensure that the liner is protected from excessive hydrostatic force or mechanical damage. External discharge or suction lines shall not penetrate the liner.

(7) The operator shall place a leak detection system between the lower and upper geomembrane liners that consists of two feet of compacted soil with a saturated hydraulic conductivity of 1×10^{-5} cm/sec or greater to facilitate drainage. The leak detection system shall consist of a properly designed drainage and collection and removal system placed above the lower geomembrane liner in depressions and sloped to facilitate the earliest possible leak detection. Piping used shall be designed to withstand chemical attack from oil field waste or leachate; structural loading from stresses and disturbances from overlying oil field waste, cover materials, equipment operation or expansion or contraction; and to facilitate clean-out maintenance. The material the operator places between the pipes and laterals shall be sufficiently permeable to allow the transport of fluids to the drainage pipe. The slope of the interior sub-grade and of drainage lines and laterals shall be at least a two percent grade, *i.e.*, two feet vertical drop per 100 horizontal feet. The piping collection system shall be comprised of solid and perforated pipe having a minimum diameter of four inches and a minimum wall thickness of schedule 80. The operator shall seal a solid sidewall riser pipe to convey collected fluids to a collection, observation and disposal system located outside the permanent pit's perimeter. The operator may install alternative methods that the environmental bureau in the division's Santa Fe office approves.

(8) The operator shall notify the environmental bureau in the division's Santa Fe office at least 72 hours prior to the primary liner's installation so that a representative of the environmental bureau in the division's Santa Fe office may inspect the leak detection system before it is covered.

(9) The operator shall construct a permanent pit in a manner that prevents overtopping due to wave action or rainfall and maintain a three foot freeboard at all times.

NUMBERS, AIR PRESSURE TESTS FOR LINER SEAMS AND REFERENCES TO EPA METHODS. THEY MAY BE OK, BUT I DON'T KNOW ENOUGH ABOUT THEM TO MAKE THAT JUDGMENT.

²² *NMCCA&W E(8) ALLOWS A CLAY SECONDARY LINER. E(9) REQUIRES TWO FEET OF COMPACTED SOIL AND DRAIN PIPING BETWEEN PRIMARY AND SECONDARY GEOMEMBRANE LINERS. THERE IS APPARENTLY NO COMPARABLE LEAK COLLECTION REQUIREMENT IF THE SECONDARY LINER IS CLAY.*

(10) The size of a permanent pit shall not exceed 10 acre-feet, including freeboard.

(11) The operator shall maintain a permanent pit to prevent run-on of surface water. A permanent pit shall be surrounded by a berm, ditch or other diversion to prevent run-on of surface water.

H. Closed-loop systems.

(1) The operator shall design and construct a closed-loop system to ensure the confinement of oil, gas or water to prevent uncontrolled releases.

(2) An operator of a closed-loop system that uses temporary pits shall comply with the requirements for temporary pits specified in 19.15.17 NMAC.

(3) An operator of a closed-loop system with drying pads shall design and construct the drying pads so as to include the following:

(a) appropriate liners that prevent the contamination of fresh water and protect public health and the environment;

(b) sumps to facilitate the collection of liquids derived from drill cuttings; and

(c) berms that prevent run-on of surface water.

I. Below-grade tanks. The operator shall design and construct a below-grade tank in accordance with the following requirements.

(1) The below-grade tank's side walls, where the tank's bottom is below-grade, shall be open for visual inspection for leaks. The below-grade tank's bottom shall be equipped with an underlying mechanism to divert leaked liquid to a location that can be visually inspected. A below-grade tank not meeting these conditions shall be in a vault or have a double wall that will contain any leaked liquids.

(2) A below-grade tank shall have secondary containment and leak detection.

(3) The operator of a below-grade tank constructed prior to _____, 200_ [effective date] that does not have secondary containment and leak detection shall test its integrity annually. If the existing below-grade tank does not demonstrate integrity, the operator shall promptly install a below-grade tank that complies with Paragraph (2) of Subsection I of 19.15.17.11 NMAC. In any event, the operator shall equip or retrofit such below-grade tank with secondary containment and leak detection, or close it, within five years after _____, 200_ [effective date].

(4) The operator shall ensure that a below-grade tank is constructed of materials resistant to the below-grade tank's particular contents and resistant to damage from sunlight.

(5) A below-grade tank system shall have a properly constructed foundation consisting of a level base free of rocks, debris, sharp edges or irregularities to prevent punctures, cracks or indentations of the liner or tank bottom.

(6) A below-grade tank system shall consist of either a double wall system with the capability to detect leaks or a tank placed within a geomembrane lined collection system, or an alternative system that the appropriate division district office approves based upon the operator's demonstration that an alternative provides equivalent or better protection.

(7) The operator shall design and construct a below-grade tank system in accordance with the following requirements, if the below-grade tank system consists of a tank placed within a geomembrane lined collection system.

(a) The operator shall install a geomembrane liner upon the constructed foundation, specified in Paragraph (5) of Subsection I of 19.15.17.11 NMAC, prior to the placement of the collection system and tank. The installed geomembrane liner shall extend above the existing grade. The liner shall consist of 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner material that the appropriate division district office approves. The geomembrane liner shall have a hydraulic conductivity no greater than 1×10^{-9} cm/sec. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. The liner material shall be resistant to ultraviolet light. Liner compatibility shall comply with EPA SW-846 method 9090A.

(b) The operator shall install slotted or perforated drainage pipe (lateral) on the geomembrane liner with the drainage pipe sloped at least one inch per 10 feet towards the collection system. The drainage pipe shall be at least one inch in diameter.

(c) The operator shall cover the drainage pipe with sand, gravel or other material with sufficient permeability to convey fluids to the drainage pipe.

(d) The operator shall install the tank upon the lined collection system and connect a riser pipe to the collection system. The riser pipe shall be at least two inches in diameter.

(e) The operator shall secure the secondary liner to the tank above the ground surface in a manner that prevents rainwater from entering the space between the tank and liner.

(8) The operator shall construct a below-grade tank to prevent overflow and the collection of surface water run-on.

J. On-site deep trenches for closure. The operator shall design and construct an on-site deep trench for closure, specified in Paragraph (2) of Subsection B of 19.15.17.13 NMAC or Paragraph (2) of Subsection D of 19.15.17.13 NMAC, in accordance with the following requirements.

(1) The operator shall locate the trench to satisfy the siting criteria specified in Subsection C of 19.15.17.10 NMAC and Subparagraph (e) of Paragraph (2) of Subsection F of 19.15.17.13 NMAC and excavate to an appropriate depth that allows for the installation of the geomembrane bottom liner, geomembrane liner cover and the division-prescribed soil cover required pursuant to Paragraphs (2) and (3) of Subsection G of 19.15.17.13 NMAC.

(2) An on-site deep trench shall have a properly constructed foundation and side walls consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities to prevent the liner's rupture or tear.

(3) Geotextile is required under the liner where needed to reduce localized stress-strain or protuberances that may otherwise compromise the liner's integrity.

(4) An on-site deep trench shall be constructed with a geomembrane liner. The geomembrane shall consist of a 20-mil string reinforced LLDPE liner or equivalent liner that the appropriate division district office approves. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. The liner material shall be resistant to ultraviolet light. Liner compatibility shall comply with EPA SW-846 method 9090A.

(5) The operator shall minimize liner seams and orient them up and down, not across a slope. The operator shall use factory seams where possible. The operator shall overlap liners four to six inches before seaming, and orient seams parallel to the line of maximum slope, *i.e.*, oriented along, not across, the slope. The operator shall minimize the number of field seams in corners and irregularly shaped areas. Qualified personnel shall perform field seaming.

(6) The operator shall install sufficient liner material to reduce stress-strain on the liner.

(7) The operator shall ensure that the outer edges of all liners are secured for the placement of the excavated waste material into the trench.

(8) The operator shall fold the outer edges of the trench liner to overlap the waste material in the trench prior to the installation of the geomembrane cover.

(9) The operator shall install a geomembrane cover over the excavated material in the lined trench. The operator shall install the geomembrane cover in a manner that prevents the collection of infiltration water in the lined trench and on the geomembrane cover after the soil cover is in place.

(10) The geomembrane cover shall consist of a 20-mil string reinforced LLDPE liner or equivalent cover that the appropriate division district office approves. The geomembrane cover shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. Cover compatibility shall comply with EPA SW-846 method 9090A.

[19.15.17.11 NMAC - Rp, 19.15.2.50 NMAC, / /07]

19.15.17.12 OPERATIONAL REQUIREMENTS:

A. General specifications. An operator shall maintain and operate a pit, closed-loop system, below-grade tank or sump in accordance with the following requirements.

(1) The operator shall operate and maintain a pit, closed-loop system, below-grade tank or sump to contain liquids and solids and maintain the integrity of the liner, liner system or secondary containment system, prevent contamination of fresh water and protect public health and the environment.²³

(2) The operator shall recycle, reuse or reclaim all drilling fluids in a manner that prevents the contamination of fresh water and protects public health and the environment.

(3) The operator shall not discharge into or store any hazardous waste in a pit, closed-loop system, below-grade tank or sump.

²³ *OXY 19.15.17.12 OPERATIONAL REQUIREMENTS...A.(1) DELETE "MAINTAIN THE INTEGRITY OF THE LINER OR LINER SYSTEM". THERE ARE NO "LINERS" FOR CLOSED-LOOP SYSTEMS, THIS IS ADDRESSED IN OPERATIONS.*

(4) If the integrity of the pit liner is compromised, or if any penetration of the liner occurs above the liquid's surface, then the operator shall notify the appropriate division district office within 48 hours of the discovery and repair the damage or replace the liner.

(5) If a lined pit develops a leak, or if any penetration of the liner occurs below the liquid's surface, then the operator shall remove all liquid above the damage or leak line from the pit within 48 hours and repair the damage or replace the liner.

(6) The operator shall install a level measuring device in a lined pit containing fluids to monitor the level of the fluid surface, so that the operator may recognize unanticipated change in volume of fluids.

(7) The injection or withdrawal of liquids from a lined pit shall be accomplished through a header, diverter or other hardware that prevents damage to the liner by erosion, fluid jets or impact from installation and removal of hoses or pipes.

(8) The operator shall operate and install a pit, below-grade tank or sump to prevent the collection of surface water run-on.

(9) The operator shall install, or maintain on site, an oil absorbent boom or other device to contain and remove oil from a pit's surface.²⁴

B. Temporary pits. An operator shall maintain and operate a temporary pit in accordance with the following additional requirements.

(1) Only fluids used or generated during the drilling or workover process may be discharged into a temporary pit. The operator shall maintain a temporary pit free of miscellaneous solid waste or debris. The operator shall use a tank²⁵ made of steel or other material to contain hydrocarbon-based drilling fluids that the appropriate division district office approves. Immediately after cessation of a drilling or workover operation, the operator shall remove any visible or measurable layer of oil from the surface of a drilling or workover pit.

(2) The operator shall maintain at least two feet of freeboard for a temporary pit.

(3) The operator shall inspect a temporary pit containing drilling fluids at least daily while the drilling or workover rig is on-site. Thereafter, the operator shall inspect the temporary pit weekly so long as liquids remain in the temporary pit. The operator shall maintain a log of such inspections and make the log available for the appropriate division district office's review upon request. The operator shall file a copy of the log with the appropriate division district office when the operator closes the temporary pit.

(4) The operator shall remove all free liquids from a drilling pit within 30 days from the date that the operator releases the drilling rig. The appropriate division district office may grant an extension of up to three months.

(5) The operator shall remove all free liquids from a workover pit within 15 days from the date that the operator releases the workover rig. The appropriate division district office may grant an extension of up to three months.

C. Permanent pits. An operator shall maintain and operate a permanent pit in accordance with the following requirements.

(1) The operator shall maintain at least three feet of freeboard for a permanent pit.

(2) No oil or floating hydrocarbon shall be present in a permanent pit.

D. Below-grade tanks. The operator shall not allow a below-grade tank to overflow or allow surface water run-on to enter the below-grade tank.

E. Sumps. The operator shall maintain and operate a sump in accordance with the following requirements.

(1) The operator shall test a sump's integrity annually and promptly repair or replace a sump that fails the integrity test.

(2) An operator shall test a sump that can be removed from its emplacement by visual inspection. The operator shall test other sumps by appropriate mechanical means.

(3) The operator shall maintain records of sump inspection and testing and make the records available for the appropriate division district office's review upon request.

[19.15.17.12 NMAC - Rp, 19.15.2.50 NMAC, / /07]

²⁴ **OXY A.(8).** *WHAT IS THE RATIONALE FOR THE OIL ABSORBENT REQUIREMENTS FOR A TEMPORARY PIT? SHOULD THESE MATERIALS JUST BE "AVAILABLE"?*

²⁵ **OXY B. (1).** *RELOCATE THE HYDROCARBON BASED DRILLING FLUIDS REQUIREMENTS TO 19.15.17.11. D.*

19.15.17.13 CLOSURE REQUIREMENTS:

A. Time requirements for closure. An operator shall close a pit, closed-loop system or below-grade tank within the time periods provided in 19.15.17.13 NMAC, or by an earlier date that the division requires because of imminent danger to fresh water, public health or the environment.²⁶

(1) An existing unlined, permitted or registered permanent pit shall be closed within two years after _____ [the effective date of 19.15.17 NMAC].

(2) An existing lined or unlined, permanent pit not permitted or registered shall be closed within 60 days after _____, 200_ [effective date].

(3) An existing unlined, temporary pit shall be closed within three months after _____, 200_ [effective date].

(4) An existing below-grade tank that is not equipped with secondary containment and leak detection shall be closed within five years after _____, 200_ [effective date], if not retrofitted with secondary containment and leak detection in accordance with Subsection I of 19.15.17.11 NMAC.

(5) Any other permitted permanent pit shall be closed within 60 days of cessation of operation of the permanent pit in accordance with a closure plan that the environmental bureau in the division's Santa Fe office approves.

(6) Any other permitted temporary pit shall be closed within six months from the date the operator releases the rig. The appropriate division district office may grant an extension not to exceed three months.

(7) A closed-loop system permitted under 19.15.17 NMAC or in operation on _____, 200_ [effective date], shall be closed within six months from the date the operator releases the rig. The appropriate division district office may grant an extension not to exceed six months.

(8) A permitted below-grade tank shall be closed within 60 days of cessation of the below-grade tank's operation or as required by the transitional provisions of Subsection B of 19.15.17.17 NMAC in accordance with a closure plan that the appropriate division district office approves.

B. Closure methods for temporary pits. The operator of a temporary pit shall remove all liquids from the temporary pit prior to implementing a closure method and dispose of the liquids in a division-approved facility or recycle, reuse or reclaim the liquids in a manner that the appropriate division district office approves. The operator shall close the temporary pit by one of the following methods.

(1) Waste excavation and removal.

(a) The operator shall close the temporary pit by excavating all contents and, if applicable, synthetic pit liners and transferring those materials to a division-approved facility.

(b) The operator shall test the soils beneath the temporary pit to determine whether a release has occurred. The operator shall collect, at a minimum, a five point, composite sample; collect individual grab samples from any hot spot²⁷; and analyze for BTEX, TPH and chlorides to demonstrate that the benzene concentration, as determined by EPA SW-846 methods 8021B or 8260B or other EPA method that the division approves²⁸, does not

²⁶ *NMCCA&W THE CONDITIONS REQUIRING CLOSURE FOR EXISTING PITS ARE SPECIFIED HERE, AND ADDITIONAL CONDITIONS ARE SPECIFIED IN 19.15.17.17 C. THE RULE WOULD BE MORE EASILY INTERPRETED IF ALL TRANSITION CONDITIONS APPEARED IN ONE SECTION, WITH EACH SUB-PARAGRAPH PRESENTING ALL REQUIREMENTS FOR A PARTICULAR SITUATION.*

²⁷ *NMCCA&W B(1)(B): A 5-POINT COMPOSITE SAMPLE IS REQUIRED. OFTEN, A RELEASE OCCURS DUE TO A PERFORATION OR TEAR OF THE LINER. SUCH PLACES SHOULD NOT BE SAMPLED (OR AVOIDED) AS PART OF A BROADER COMPOSITE SAMPLE. RATHER, EFFORT SHOULD BE MADE SPECIFICALLY TO SAMPLE ANY AREA OF STAIN, WETNESS, OR APPARENT RELEASE. IF THE DRILLING FLUID IS BRINE, EXTENSIVE POINT SAMPLING CAN EASILY BE DONE, TESTING FOR CHLORIDES IN THE FIELD WITHOUT NEED TO TEST FOR OTHER CONSTITUENTS. WHEN BRINE FLUIDS ARE USED, WE SUGGEST FIELD-TESTING MULTIPLE POINT SAMPLES FOR CHLORIDE. IF THE CHLORIDE SCREENING IS DONE WELL, ONE MIGHT QUESTION WHETHER SUBSEQUENT HYDROCARBON SAMPLING IS NECESSARY.*

²⁸ *OXY 19.15.17.13.B(1)(B): CLOSURE METHODS FOR TEMPORARY PITS EACH OF THESE SECTIONS SPECIFIES THE EPA TEST METHODS THAT MUST BE USED TO TEST FOR CONSTITUENTS IN PIT CONTENTS OR SOILS. WHILE THESE TEST METHODS ARE ACCURATE NOW, EPA MAY LATER REVISE OR SUPPLANT THEM. FOR THIS REASON, WE RECOMMEND THAT OCD INCLUDE A SENTENCE AT THE END*

exceed 0.2 mg/kg; total BTEX concentration, as determined by EPA SW-846 methods 8021B or 8260B or other EPA method that the division approves, does not exceed 50 mg/kg; the TPH concentration, as determined by EPA method 418.1 or other EPA method that the division approves, does not exceed 100 mg/kg; and the chloride concentration, as determined by EPA method 300.1 or other EPA method that the division approves, does not exceed 250 mg/kg, or the background concentration, whichever is greater. The operator shall notify the division of its results on form C-141. The division may require additional delineation upon review of the results.^{29,30,31,32}

(c) If the operator or the division determines that a release has occurred, then the operator shall comply with 19.15.3.116 NMAC and 19.15.1.19 NMAC, as appropriate.

(d) If the sampling program demonstrates that a release has not occurred or that any release does not exceed the concentrations specified in Subparagraph (b) of Paragraph (1) of Subsection B of 19.15.17.13 NMAC, then the operator shall backfill the temporary pit excavation with compacted, non-waste containing, earthen material; construct a division-prescribed soil cover; and re-vegetate the site. The division-prescribed soil cover and re-vegetation requirements shall comply with Paragraphs (1) and (3) of Subsection G of 19.15.17.13 NMAC and Subsection H of 19.15.17.13 NMAC.³³

(2) On-site deep trench burial.^{34,35} The operator shall demonstrate and comply with the closure requirements and standards of Subsection F of 19.15.17.13 NMAC if the proposed closure method of a temporary pit involves on-site deep trench burial.

(3) Alternative closure methods. If the environmental bureau in the division's Santa Fe office grants an exception approving a closure method for a specific temporary pit other than as specified in Paragraphs (1) or (2) of Subsection B of 19.15.17.13 NMAC, then the operator shall close that temporary pit by the method that the environmental bureau in the division's Santa Fe office approves.

C. Closure method for permanent pits.

OF EACH OF THESE SECTIONS THAT READS: THE DIVISION MAY APPROVE AN OPERATOR'S USE OF AN ALTERNATE EPA-APPROVED METHOD TO DEMONSTRATE COMPLIANCE WITH THIS PARAGRAPH.

²⁹ *NMCGA IN SECTION 19.15.17.13 CLOSURE... B.(1)(A) AND C(3) AND SECTION 19.15.17.15 EXCEPTIONS... B.(4)(A) AND (D) WE SUPPORT THE LANGUAGE REQUIRING THE TESTING OF THE SOILS BENEATH THE PIT TO DETERMINE WHETHER A RELEASE HAS OCCURRED.*

³⁰ *OXY B.(1)(B). IF THE SITING, DESIGN, CONSTRUCTION, AND OPERATION REQUIREMENTS ARE FOLLOWED AND THE LIMITED TIME FLUIDS ARE IN THE PIT, VISUAL OBSERVATIONS SHOULD BE ADEQUATE VERSES SAMPLING AND ANALYSIS. NOTE THE ORGANIC CONSTITUENT CONCENTRATION STANDARDS ARE LOWER THAN THE NMED SSLs. THERE SHOULD BE CONSISTENCY BETWEEN NM AGENCIES.*

³¹ *MARBOB B.(1)(B). THE INTEGRITY OF PIT LINERS WILL BE MAINTAINED, IF THE SITING, DESIGN, CONSTRUCTION, AND OPERATION REQUIREMENTS ARE FOLLOWED, ALONG WITH THE REMOVAL OF FLUIDS. EXTENSIVE SAMPLING IS NOT NECESSARY UNLESS A RELEASE OCCURS.*

³² *MARBOB CONCENTRATION STANDARDS SHOULD BE CONSISTENT STATE AGENCY APPLICATIONS*

³³ *D.J. SIMMONS 13.B.1.(D). AND 13.C.5 I DON'T REMEMBER AGREEING TO THIS. SHOULD PUT THIS IN BLACK ALSO.*

³⁴ *OXY GENERAL COMMENT: THERE APPEARS TO BE NO CONSIDERATION BETWEEN THE PROPOSED PIT CONTENTS CONSTITUENT CONCENTRATIONS AT CLOSURE (UNDER EXCEPTIONS) AND DEPTH TO GROUND WATER. BASED ON SCIENCE, OTHER PIT CLOSURE APPROACHES REQUIREMENTS IN 19.15.17.15.B. SHOULD BE MOVED TO THIS SECTION 19.15.17.13.*

³⁵ *NMCCA&W B(1) REQUIRES WASTE REMOVAL. B(2) OFFERS AN EXCEPTION TO WASTE REMOVAL, CITING 19.15.17.15. IT WOULD BE SIMPLER TO LIST CLOSURE REQUIREMENTS IN ONE PLACE, PARTICULARLY BECAUSE THE "EXCEPTION" CONDITIONS OF 19.15.17.15 WILL BECOME THE DE-FACTO PRACTICE. SEE DISCUSSION OF 19.15.17.15 BELOW.*

(1) The operator shall remove all liquids and BS&W from the permanent pit prior to implementing a closure method and shall dispose of the liquids and BS&W in a division-approved facility.

(2) The operator shall remove the pit liner system, if applicable, and dispose of it in a division-approved facility. If there is on-site equipment associated with permanent pit, the operator shall remove the equipment, unless the equipment is required for some other purpose.

(3) The operator shall test the soils beneath the permanent pit to determine whether a release has occurred. The operator shall collect, at a minimum, a five point, composite sample; collect individual grab samples from any hot spot; and analyze for BTEX, TPH and chlorides to demonstrate that the benzene concentration, as determined by EPA SW-846 methods 8021B or 8260B or other EPA method that the division approves,³⁶ does not exceed 0.2 mg/kg; total BTEX concentration, as determined by EPA SW-846 methods 8021B or 8260B or other EPA method that the division approves, does not exceed 50 mg/kg; the TPH concentration, as determined by EPA method 418.1 or other EPA method that the division approves, does not exceed 100 mg/kg; and the chloride concentration, as determined by EPA method 300.1 or other EPA method that the division approves, does not exceed 250 mg/kg, or the background concentration, whichever is greater. The operator shall notify the division of its results on form C-141. The division may require additional delineation upon review of the results.³⁷

(4) If the operator or the division determines that a release has occurred, then the operator shall comply with 19.15.3.116 NMAC and 19.15.1.19 NMAC, as appropriate.

(5) If the sampling program demonstrates that a release has not occurred or that any release does not exceed the concentrations specified in Paragraph (3) of Subsection C of 19.15.17.13 NMAC, then the operator shall backfill the excavation with compacted, non-waste containing, earthen material; construct a division-prescribed soil cover; and re-vegetate the site. The division-prescribed soil cover and re-vegetation requirements shall comply with Paragraphs (1) and (3) of Subsection G of 19.15.17.13 NMAC and Subsection H of 19.15.17.13 NMAC.³⁸

D. Closure methods for closed-loop systems. An operator of a closed-loop system that uses a temporary pit, in lieu of a drying pad, shall comply with the closure requirements for temporary pits specified in Subsection B of 19.15.17.13 NMAC. The operator of a closed-loop system shall close the system by one of the following methods.

(1) Waste removal.

(a) The operator shall transfer the waste and the drying pad liner to a division-approved facility.

(b) The operator shall substantially restore and re-vegetate the impacted area's surface.

(2) On-site deep trench burial. The operator shall demonstrate and comply with the closure requirements and standards of Subsection F of 19.15.17.13 NMAC if the proposed closure method of a drying pad associated with a closed-loop system involves on-site deep trench burial.

(3) Alternative closure methods. If the environmental bureau in the division's Santa Fe office grants an exception approving a closure method for a specific closed-loop system other than as specified in Paragraphs (1) or (2) of Subsection D of 19.15.17.13 NMAC, then the operator shall close that drying pad associated with a closed-loop system by the method the environmental bureau in the division's Santa Fe office approves.

E. Closure method for below-grade tanks.

(1) The operator shall remove all liquids and sludge from a below-grade tank prior to implementing a closure method and shall dispose of the liquids and sludge in a division-approved facility.

³⁶ **OXY** 19.15.17.13.C(3): CLOSURE METHODS FOR PERMANENT PITS EACH OF THESE SECTIONS SPECIFIES THE EPA TEST METHODS THAT MUST BE USED TO TEST FOR CONSTITUENTS IN PIT CONTENTS OR SOILS. WHILE THESE TEST METHODS ARE ACCURATE NOW, EPA MAY LATER REVISE OR SUPPLANT THEM. FOR THIS REASON, WE RECOMMEND THAT OCD INCLUDE A SENTENCE AT THE END OF EACH OF THESE SECTIONS THAT READS: THE DIVISION MAY APPROVE AN OPERATOR'S USE OF AN ALTERNATE EPA-APPROVED METHOD TO DEMONSTRATE COMPLIANCE WITH THIS PARAGRAPH.

³⁷ **NMCGA** IN SECTION 19.15.17.13 CLOSURE... B.(1)(A) AND C(3) AND SECTION 19.15.17.15 EXCEPTIONS... B.(4)(A) AND (D) WE SUPPORT THE LANGUAGE REQUIRING THE TESTING OF THE SOILS BENEATH THE PIT TO DETERMINE WHETHER A RELEASE HAS OCCURRED.

³⁸ **D.J. SIMMONS** 13.B.1.(D). AND 13.C.5 I DON'T REMEMBER AGREEING TO THIS. SHOULD PUT THIS IN BLACK ALSO.

(2) The operator shall remove the below-grade tank and dispose of it in a division-approved facility or recycle, reuse, or reclaim it in a manner that the appropriate division district office approves.

(3) If there is any on-site equipment associated with a below-grade tank, then the operator shall remove the equipment, unless the equipment is required for some other purpose.

(4) The operator shall test the soils beneath the below-grade tank to determine whether a release has occurred. The operator shall collect, at a minimum, a five point, composite sample; collect individual grab samples from any hot spot; and analyze for BTEX, TPH and chlorides to demonstrate that the benzene concentration, as determined by EPA SW-846 methods 8021B or 8260B or other EPA method that the division approves, does not exceed 0.2 mg/kg; total BTEX concentration, as determined by EPA SW-846 methods 8021B or 8260B or other EPA method that the division approves, does not exceed 50 mg/kg; the TPH concentration, as determined by EPA method 418.1 or other EPA method that the division approves, does not exceed 100 mg/kg; and the chloride concentration, as determined by EPA method 300.1 or other EPA method that the division approves, does not exceed 250 mg/kg, or the background concentration, whichever is greater. The operator shall notify the division of its results on form C-141. The division may require additional delineation upon review of the results.

(5) If the operator or the division determines that a release has occurred, then the operator shall comply with 19.15.3.116 NMAC and 19.15.1.19 NMAC, as appropriate.

(6) If the sampling program demonstrates that a release has not occurred or that any release does not exceed the concentrations specified in Paragraph (4) of Subsection E of 19.15.17.13 NMAC, then the operator shall backfill the excavation with compacted, non-waste containing, earthen material; construct a division-prescribed soil cover; and re-vegetate the site. The division-prescribed soil cover and re-vegetation requirements shall comply with Paragraphs (1) and (3) of Subsection G of 19.15.17.13 NMAC and Subsection H of 19.15.17.13 NMAC.

F. On-site closure methods. The following closure requirements and standards apply if the operator proposes a closure method for a drying pad associated with a closed-loop system or a temporary pit pursuant to Paragraph (2) of Subsection D of 19.15.17.13 NMAC or Paragraph (2) of Subsection B of 19.15.17.13 NMAC that involves on-site deep trench burial, or an alternative closure method pursuant to Paragraph (3) of Subsection D of 19.15.17.13 NMAC or Paragraph (3) of Subsection B of 19.15.17.13 NMAC and Subsection B of 19.15.17.15 NMAC.

(1) General requirements.

(a) The operator shall demonstrate, at the time of initial application for the permit, that the site where the operator proposes to implement an on-site closure method is not located within a 100 mile radius of a division-approved facility or an out-of-state waste management facility. If the operator demonstrates that neither a division-approved facility nor an out-of-state waste management facility is available within the prescribed distance, then the operator may pursue the on-site closure method.

(b) Any proposed on-site closure method shall comply with the siting criteria specified in Subsection C of 19.15.17.10 NMAC.

(c) The operator shall obtain the surface owner's written consent to the operator's proposal of an on-site closure method. The operator shall attach the original, signed consent to the permit application.

(d) The operator shall comply with the closure requirements and standards of Paragraph (2) of Subsection F of 19.15.17.13 NMAC if the proposed closure method for a drying pad associated with a closed-loop system or a temporary pit pursuant to Paragraph (2) of Subsection D of 19.15.17.13 NMAC or Paragraph (2) of Subsection B of 19.15.17.13 NMAC involves on-site deep trench burial, or an alternative closure method pursuant to Paragraph (3) of Subsection D of 19.15.17.13 NMAC or Paragraph (3) of Subsection B of 19.15.17.13 NMAC and Subsection B of 19.15.17.15 NMAC.

(e) The operator shall test the soils beneath the drying pad associated with a closed-loop system or temporary pit after excavation to determine whether a release has occurred. The operator shall collect, at a minimum, a five point, composite sample; collect individual grab samples from any hot spot; and analyze for BTEX, TPH and chlorides to demonstrate that the benzene concentration, as determined by EPA SW-846 methods 8021B or 8260B or other EPA method that the division approves³⁹, does not exceed 0.2 mg/kg; total BTEX concentration, as

³⁹ ***OXY 19.15.17.15.B(4)(D): CLOSURE EXCEPTIONS: TESTING OF SOIL BENEATH PIT EACH OF THESE SECTIONS SPECIFIES THE EPA TEST METHODS THAT MUST BE USED TO TEST FOR CONSTITUENTS IN PIT CONTENTS OR SOILS. WHILE THESE TEST METHODS ARE ACCURATE NOW, EPA MAY LATER REVISE OR SUPPLANT THEM. FOR THIS REASON, WE RECOMMEND THAT OCD INCLUDE A SENTENCE AT THE END OF EACH OF THESE SECTIONS THAT READS: THE DIVISION MAY APPROVE AN OPERATOR'S USE OF AN ALTERNATE EPA-APPROVED METHOD TO DEMONSTRATE COMPLIANCE WITH THIS PARAGRAPH.***

determined by EPA SW-846 methods 8021B or 8260B or other EPA method that the division approves, does not exceed 50 mg/kg; the TPH concentration, as determined by EPA method 418.1 or other EPA method that the division approves, does not exceed 100 mg/kg; and the chloride concentration, as determined by EPA method 300.1 or other EPA method that the division approves, does not exceed 250 mg/kg, or the background concentration, whichever is greater. The operator shall notify the division of its results on form C-141. The division may require additional delineation upon review of the results.⁴⁰

(f) If the sampling program demonstrates that a release has not occurred or that any release does not exceed the concentrations specified in Subparagraph (e) of Paragraph (1) of Subsection F of 19.15.17.13 NMAC, then the operator shall backfill the excavation with compacted, non-waste containing earthen material; construct a division-prescribed soil cover; and re-vegetate the site. The division-prescribed soil cover and re-vegetation shall comply with Paragraphs (1) and (3) of Subsection G of 19.15.17.13 NMAC and Subsection H of 19.15.17.13 NMAC.

(g) If the operator or the division determines that a release has occurred, then the operator shall comply with 19.15.3.116 NMAC and 19.15.1.19 NMAC, as appropriate.

(2) On-site deep trench burial.⁴¹

(a) The operator shall demonstrate and comply with the provisions of Paragraph (1) of Subsection F of 19.15.17.13 NMAC.

(b) The operator shall use a separate on-site deep trench for closure of each drying pad associated with a closed-loop system or temporary pit.

(c) Unless the contents of the drying pad associated with a closed-loop system or temporary pit and associated waste meet the closure standards of Subparagraph (d) of Paragraph (2) of Subsection F of 19.15.17.13 NMAC, the operator shall propose a method to treat the contents and associated waste. Any proposed treatment method⁴² shall optimize waste minimization⁴³ and reduce contaminant concentrations in order to protect

⁴⁰ **NMCGA** IN SECTION 19.15.17.13 CLOSURE... B.(1)(A) AND C(3) AND SECTION 19.15.17.15 EXCEPTIONS... B.(4)(A) AND (D) WE SUPPORT THE LANGUAGE REQUIRING THE TESTING OF THE SOILS BENEATH THE PIT TO DETERMINE WHETHER A RELEASE HAS OCCURRED.

⁴¹ **NMCCA&W** THE PROPOSED EXCEPTION TO THE NO-BURIAL RULE IS REMINISCENT OF THE EXCEPTIONS TO THE REQUIREMENTS FOR LINES IN RULE 50, ADOPTED JUST FOUR YEARS AGO. BLANKET EXEMPTIONS, BASED ON UNCLEAR OR UNJUSTIFIED CONDITIONS, EVENTUALLY CAUSE TROUBLES FOR ALL PARTIES CONCERNED. EITHER THE RULE ALLOWS ON SITE BURIAL, OR IT DOESN'T. A PROHIBITION WITH AN ILL-DEFINED EXCEPTION MAY APPEAR ATTRACTIVE IN THE SHORT TERM, BUT WE SUGGEST A STRAIGHTFORWARD RULE WOULD NOT NEED WHOLESALE REVISION AT FOUR-YEAR INTERVALS, AND WOULD BE BETTER FOR BOTH INDUSTRY AND THE CITIZENS.

⁴² **NMCCA&W** THE PROPOSED "EXCEPTION" SPECIFIES IN DETAIL THAT THE OPERATOR MAY DILUTE THE WASTES BY DOUBLING THE VOLUME TO MEET A SPECIFIED CLOSURE STANDARD. WE SUGGEST INSTEAD THAT THE RULE STRAIGHTFORWARDLY SPECIFY IN 19.15.17.13 THAT WASTES NOT BE BURIED ON SITE UNLESS THE WASTES WITHOUT DILUTION MEET A PARTICULAR STANDARD. FOR EXAMPLE, IT MIGHT BE APPROPRIATE TO CONSIDER THAT THE PIT CONTENTS MEET THE LANDFARM STANDARD OR SOME OTHER STANDARD. WASTES NOT MEETING THE STANDARD COULD NOT BE ABANDONED. PITS WITH CONTENTS MEETING THE STANDARD PRESUMABLY MIGHT NOT EVEN NEED A LINER. THE RULE SHOULD SPECIFY WHAT CAN BE LEFT IN THE GROUND, AND WHAT CAN'T, ACCORDING TO THE PROPERTIES OF THE MATERIAL ITSELF, NOT THE OPPORTUNITIES FOR OTHER DISPOSAL OR THE OPERATOR'S SENSE OF ECONOMICS.

⁴³ **OGAP** 5. THE LANGUAGE IN 15.B.3 REGARDING NO INCREASE OF MORE THAN 100% OF ORIGINAL WASTE VOLUME WAS NOT SOMETHING THAT WAS SPECIFICALLY DISCUSSED DURING THE TASK FORCE MEETINGS. SOME OPERATORS APPARENTLY DO ADD SOIL, CURRENTLY, FOR THEIR EXPERIMENTAL ON-SITE BURIALS AND SURFACE WASTE FACILITIES ALSO MIX SOIL IN WITH THE WASTE MATERIALS. HOWEVER, I CAN RECALL LITTLE DATA BEING PRESENTED AS TO WHAT THE PRACTICAL EFFECT OF THIS ALLOWANCE WOULD-BE, OR HOW IT WOULD BE JUSTIFIED. IF THE OCD BELIEVES THAT, AS A PRACTICAL MATTER, ALLOWING FOR SOIL DILUTION IS NECESSARY, AND THEN

fresh water, public health and the environment. Proposed treatment methods shall stabilize or solidify the contents to a bearing capacity sufficient to support the final cover.^{44,45}

(d) The operator shall collect at a minimum, a five point, composite sample of the contents of the drying pad associated with a closed-loop system or temporary pit after treatment, if treatment is required, to demonstrate that the TPH concentration, as determined by EPA method 418.1 or other EPA method that the division approves⁴⁶, does not exceed 2500 mg/kg. Using EPA SW-846 method 1312 or other EPA leaching procedure that the division approves, the operator shall demonstrate that the chloride concentration, as determined by EPA method 300.1 or other EPA method that the division approves, does not exceed 5,000 mg/l and that the concentrations of the water contaminants specified in Subsections A and B of 20.6.2.3103 NMAC as determined by appropriate EPA methods do not exceed the standards specified in Subsections A and B of 20.6.2.3103 NMAC, unless otherwise specified above.^{47,48,49}

WE URGE THAT THE RULE BE STRUCTURED TO REWARD WASTE MINIMIZATION AND PENALIZE INCREASES IN WASTE VOLUME. PERHAPS TEEING THE SOIL VOLUME TO CONTENT, WITH MORE VOLUME ALLOWED FOR CLEANER CONTENT, FOR EXAMPLE, WOULD BE AN OPTION. REGARDLESS, THE CURRENT WORDING SEEMS TO INVITE A 100% INCREASE IN VOLUME OF WASTE AND SHOULD BE REWORKED TO AVOID THAT RESULT.

⁴⁴ **OXY** B.(3). *PROPOSED TREATMENT METHOD MAY NEED A DEFINITION. NOTE THAT THE PRIMARY PURPOSE OF MIXING EXCAVATED SOIL (OR OTHER MATERIALS) WITH THE PIT MATERIALS IS TO PROVIDE A GEOTECHNICAL STABLE BASE MATERIAL, SO THERE IS MINIMAL SETTLEMENT, WATER PONDING, AND EROSION OF THE PIT COVER. LIMITING THE "TREATMENT" TO 100% OF THE PIT CONTENTS MAY NOT BE THE BEST CLOSURE SOLUTION.*

⁴⁵ **MARBOB** B.(3). *PROPOSED TREATMENT METHOD MAY NEED A DEFINITION. NOTE THAT THE PRIMARY PURPOSE OF MIXING EXCAVATED SOIL (OR OTHER MATERIALS) WITH THE PIT MATERIALS IS TO PROVIDE A GEOTECHNICAL STABLE BASE MATERIAL, SO THERE IS MINIMAL SETTLEMENT, WATER PONDING, AND EROSION OF THE PIT COVER. LIMITING THE "TREATMENT" TO 100% OF THE PIT CONTENTS MAY NOT BE THE BEST CLOSURE SOLUTION.*

⁴⁶ **OXY** 19.15.17.15.B(4)(A): *CLOSURE EXCEPTIONS: TESTING OF PIT CONTENTS EACH OF THESE SECTIONS SPECIFIES THE EPA TEST METHODS THAT MUST BE USED TO TEST FOR CONSTITUENTS IN PIT CONTENTS OR SOILS. WHILE THESE TEST METHODS ARE ACCURATE NOW, EPA MAY LATER REVISE OR SUPPLANT THEM. FOR THIS REASON, WE RECOMMEND THAT OCD INCLUDE A SENTENCE AT THE END OF EACH OF THESE SECTIONS THAT READS: THE DIVISION MAY APPROVE AN OPERATOR'S USE OF AN ALTERNATE EPA-APPROVED METHOD TO DEMONSTRATE COMPLIANCE WITH THIS PARAGRAPH.*

⁴⁷ **OXY** B.(4)(A). *IT APPEARS THAT FOR CLOSURE IN PLACE CONSTITUENT CONCENTRATIONS FOR PIT CONTENTS ARE FROM THE SURFACE WASTE MANAGEMENT RULE - LANDFARMS. THE CLOSURE APPROACHES FOR LANDFARMS AND PITS ARE VERY DISSIMILAR. PIT CLOSURES INCLUDE LINERS AND 4 FEET OF VEGETATED TOPSOIL. LANDFARMS DO NOT HAVE LINERS AND DO INCLUDE A VEGETATED SURFACE. THE SCIENCE FOR THE LANDFARMS CAN BE EXTRAPOLATED FOR PIT CLOSURES TO DEVELOP REASONABLE CONSTITUENT CONCENTRATIONS THAT ARE PROTECTIVE OF PUBLIC HEALTH AND THE ENVIRONMENT.*

⁴⁸ **OXY** B.(4)(A)., LAST 3 LINES. *IT APPEARS THERE IS CONFUSION BETWEEN EPA ANALYTICAL METHODS FOR TOTAL ANALYSIS AND LEACHABLE ANALYSIS. UNITS FOR TOTAL ANALYSIS IS IN MG/KG AND FOR LEACHABLE ANALYSIS IS IN MG/L. ALSO, ON THE 3RD TO LAST LINE, INSERT A COMMA AFTER "1000 MG/KG" AND BEFORE THE "AND THAT THE WQCC...". NOTE THE WQCC STANDARDS ARE IN GROUND WATER, NOT IN PORE WATER IN THE VADOSE ZONE BENEATH THE PIT. THIS ANALYSIS CAN BE EXTRAPOLATED TO DEVELOP REASONABLE CONSTITUENT CONCENTRATIONS THAT ARE PROTECTIVE OF PUBLIC HEALTH AND THE ENVIRONMENT.*

⁴⁹ **MARBOB** B.(4)(A). *IT APPEARS THAT FOR CLOSURE IN PLACE CONSTITUENT CONCENTRATIONS FOR PIT CONTENTS ARE FROM THE SURFACE WASTE MANAGEMENT RULE - LANDFARMS. THE*

(e) The operator shall construct a trench lined with a geomembrane liner located within 100 feet of the drying pad associated with a closed-loop system or temporary pit, unless the appropriate division district office approves an alternative distance and location. The operator shall design and construct the lined trench in accordance with the design and construction requirements specified in Paragraphs (1) through (8) of Subsection J of 19.15.17.11 NMAC.

(f) The operator shall close each drying pad associated with a closed-loop system or temporary pit by excavating and transferring all contents and synthetic pit liners or liner material associated with a closed-loop system or temporary pit to a lined trench. The excavated materials shall pass the paint filter liquids test (EPA SW-846, method 9095) and the closure standards specified in Subparagraph (d) of Paragraph (2) of Subsection F of 19.15.17.13 NMAC.

(g) If the operator or the division determines that a release has occurred, then the operator shall comply with 19.15.3.116 NMAC and 19.15.1.19 NMAC, as appropriate. The operator may propose to transfer the excavated, contaminated soil into the lined trench.

(h) The operator shall install a geomembrane cover over the excavated material in the lined trench. The operator shall design and construct the geomembrane cover in accordance with the requirements specified in Paragraphs (9) and (10) of Subsection J of 19.15.17.11 NMAC.

(i) The operator shall cover the geomembrane lined and covered, filled, deep trench with compacted, non-waste containing, earthen material; construct a division-prescribed soil cover; and re-vegetate the site. The division-prescribed soil cover and re-vegetation shall comply with Paragraphs (2) and (3) of Subsection G of 19.15.17.13 NMAC and Subsection H of 19.15.17.13 NMAC.

G. Soil cover designs.

(1) The soil cover for closures where the operator has removed or remediated the contaminated soil to the division's satisfaction shall consist of the background thickness of topsoil or one foot of suitable material to establish vegetation at the site, whichever is greater.

(2) The soil cover for on-site deep trench burial shall consist of a minimum of four feet of compacted, non-waste containing, earthen material. The soil cover shall include either the background thickness of topsoil or one foot of suitable material to establish vegetation at the site, whichever is greater.

(3) The operator shall construct the soil cover to the site's existing grade and prevent ponding of water and erosion of the cover material.

H. Re-vegetation requirements:

(1) Upon completion of closure, the operator shall substantially⁵⁰ restore the impacted surface area to the condition that existed prior to oil and gas operations, by placement of the soil cover and re-vegetation of the site, and maintain the cover established by re-vegetation, which shall not include noxious weeds, through two successive growing seasons.

(2) The operator may propose an alternative to the re-vegetation requirement if the operator demonstrates that the proposed alternative⁵¹ effectively prevents⁵² erosion, and protects fresh water, human health

CLOSURE APPROACHES FOR LANDFARMS AND PITS ARE VERY DISSIMILAR. PIT CLOSURES INCLUDE LINERS AND 4 FEET OF VEGETATED TOPSOIL. LANDFARMS DO NOT HAVE LINERS AND DO INCLUDE A VEGETATED SURFACE. THE SCIENCE FOR THE LANDFARMS CAN BE EXTRAPOLATED FOR PIT CLOSURES TO DEVELOP REASONABLE CONSTITUENT CONCENTRATIONS THAT ARE PROTECTIVE OF PUBLIC HEALTH AND THE ENVIRONMENT.

⁵⁰ *NMCCA&W THIS REQUIRES THAT THE OPERATOR "SHALL SUBSTANTIALLY RESTORE THE IMPACTED SURFACE ...". THE TERM "SUBSTANTIALLY" MAY BE INTERPRETED IN A VARIETY OF WAYS, INCLUDING THE IMPLICATION OF LESS THAN A COMPLETE RESTORATION. THE USE OF UNCERTAIN TERMS SHOULD BE AVOIDED. WEASEL-WORDS IN RULES MAY AVOID CONFLICTS NOW, BUT CERTAINLY WILL CAUSE TROUBLES LATER.*

⁵¹ *OXY THIS SECTION PROVIDES OPERATORS A MECHANISM TO PROPOSE AN ALTERNATIVE TO THE "GENERAL" REVEGETATION REQUIREMENT, IF THE OPERATOR DEMONSTRATES THAT THE PROPOSED ALTERNATIVE EFFECTIVELY PREVENTS EROSION, PROTECTS FRESH WATER, PUBLIC HEALTH AND THE ENVIRONMENT. AS WRITTEN, HOWEVER, THE REGULATION PROVIDES THE SURFACE OWNER WITH VETO POWER OVER THE PROPOSED ALTERNATIVE AND OPERATORS ARE PROVIDED NO RECOURSE IN THE EVENT OF A VETO. THE REGULATION SHOULD INCLUDE A MECHANISM FOR APPROVAL OF A PROPOSED ALTERNATIVE EVEN IF THE SURFACE OWNER OBJECTS*

and the environment. The proposed alternative shall be agreed upon by the surface owner. The operator shall submit the proposed alternative, with written documentation that the surface owner agrees to the alternative, to the division for approval.

I. Closure notice.

(1) The operator shall notify the surface owner by certified mail, return receipt requested, that the operator plans to close a temporary pit, a permanent pit, a below-grade tank or where the operator has approval for on-site closure. Evidence of mailing of the notice to the address of the surface owner shown in the county tax records is sufficient to demonstrate compliance with this requirement.

(2) The operator of a temporary pit or below-grade tank or an operator who is approved for on-site closure shall notify the appropriate division district office verbally or by other means at least 72 hours, but not more than one week, prior to any closure operation. The notice shall include the operator's name and the location to be closed by unit letter, section, township and range. If the closure is associated with a particular well, then the notice shall also include the well's name, number and API number.

(3) An operator of a permanent pit shall notify the environmental bureau in the division's Santa Fe office at least 60 days prior to cessation of operations and provide a proposed schedule for closure. If there is no closure plan on file with the environmental bureau in the division's Santa Fe office applicable to the permanent pit, the operator shall provide a closure plan with this notice. Upon receipt of the notice and proposed schedule, the environmental bureau in the division's Santa Fe office shall review the current closure plan for adequacy and inspect the site.

J. Closure report. Within 60 days of closure completion, the operator shall submit a closure report on form C-144, with necessary attachments to document all closure activities including sampling results; information required by 19.15.17 NMAC; a plot plan; and details on back-filling, capping and covering, where applicable. In the closure report, the operator shall certify that all information in the report and attachments is correct and that the operator has complied with all applicable closure requirements and conditions specified in the approved closure plan.

[19.15.17.13 NMAC - Rp, 19.15.2.50 NMAC, / /07]

19.15.17.14 EMERGENCY ACTIONS:

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

B. Construction standards. The operator shall construct a pit during an emergency, to the extent possible given the emergency, in a manner that is consistent with the requirements for a temporary pit specified in 19.15.17 NMAC and that prevents the contamination of fresh water and protect public health and the environment.

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

D. Use and duration. A pit constructed in an emergency may be used only for the emergency's duration. If the emergency lasts more than 48 hours, then the operator shall seek the appropriate division district office's approval for the pit's continued use. The operator shall remove all fluids, solids or wastes within 48 hours after cessation of use unless the appropriate division district office extends that time period.

E. Emergency pits. 19.15.17.14 NMAC does not authorize construction or use of a so-called "emergency pit". Construction or use of any such pit requires a permit issued pursuant to 19.15.17 NMAC, unless

TO THE ALTERNATIVE. THE OCD SHOULD REVISE THIS SECTION AS FOLLOWS: "(2) The operator may propose an alternative to the re-vegetation requirement if the operator demonstrates that the proposed alternative shall effectively prevent erosion, and protect fresh water, public health and the environment. The operator shall seek the surface owner's agreement of the proposed alternative. If the surface owner agrees, the operator shall submit the proposed alternative, with evidence that the surface owner agrees to the alternative, to the appropriate division district office for approval. If the surface owner does not agree to the alternative, the operator may submit the alternative to the appropriate district office for approval. The submission must include evidence demonstrating the proposed alternative effectively prevents erosion, and protects fresh water, public health and the environment. The surface owner may submit written objections to the alternative method to the appropriate division district office."

⁵² NMCCA&W G(2) LIKEWISE, "EFFECTIVELY PREVENT EROSION" IS LESS CLEAR THAN "PREVENT EROSION."

the pit is described in a spill prevention, control and countermeasure plan the EPA requires, the operator removes all fluids from the pit within 48 hours and the operator has filed a notice of the pit's location with the appropriate division district office.

[19.15.17.14 NMAC - Rp, 19.15.2.50 NMAC, / /07]

19.15.17.15 EXCEPTIONS:⁵³

A. General exceptions.^{54,55}

(1) The operator may apply to the environmental bureau in the division's Santa Fe office for an exception to a requirement or provision of 19.15.17 NMAC other than the permit requirements of 19.15.17.8 NMAC; the closure requirement of Subparagraph (c) of Paragraph (1) of Subsection F of 19.15.17.13 NMAC; the exception requirements of 19.15.17.15 NMAC; or the permit approval, condition, denial, revocation, suspension, modification or transfer requirements of 19.15.17.16 NMAC. The environmental bureau in the division's Santa Fe office may grant an exception from a requirement or provision of 19.15.17 NMAC, if the operator demonstrates to the satisfaction of the environmental bureau in the division's Santa Fe office that the granting of the exception provides equivalent or better⁵⁶ protection of fresh water^{57,58}, public health and the environment. The environmental bureau in the division's Santa Fe office may revoke an exception after notice to the operator of the pit, closed-loop system, below-grade tank or other proposed alternative and to the surface owner, and opportunity for a hearing, or without notice and hearing in event of an emergency involving imminent danger to fresh water, public health or the environment, subject to the provisions of NMSA 1978, Section 70-2-23, if the environmental bureau in the

⁵³ **OXY** 19.15.17.15 EXCEPTIONS...GENERAL COMMENT: MOST OF THIS SHOULD BE MOVED TO 19.15.17.13.

⁵⁴ **OXY** THE "EXCEPTIONS" SECTION APPEARS TO BE DIVIDED INTO "GENERAL" EXCEPTIONS IN SUBSECTION A AND "CLOSURE" EXCEPTIONS IN SUBSECTION B. THE INITIAL SENTENCE OF THE GENERAL EXCEPTION REGULATION, HOWEVER, MAY BE READ AS PROHIBITING ANY EXCEPTION TO THE CLOSURE REQUIREMENTS IN 19.15.17.13. FOR THIS REASON, THE INITIAL SENTENCE OF 19.15.17.15.A(1) SHOULD BE REVISED AS FOLLOWS: (1) THE OPERATOR MAY APPLY FOR AN EXCEPTION TO ANY REQUIREMENT OR PROVISION OF 19.15.17 NMAC, OTHER THAN THE REQUIREMENTS OF 19.15.17.8 NMAC, 19.15.17.13 NMAC, 19.15.17.15 NMAC OR 19.15.17.16 NMAC, THROUGH THE GENERAL EXCEPTIONS PROVISIONS OF 19.15.17.15.A(1). AN OPERATOR MAY APPLY FOR AN EXCEPTION TO THE APPLICABLE REQUIREMENTS OF 19.15.17.13 NMAC THROUGH THE CLOSURE EXCEPTIONS PROVISIONS OF 19.15.17.15.B NMAC. THE DIVISION MAY GRANT AN EXCEPTION FROM A REQUIREMENT OR PROVISION OF 19.15.17 NMAC, IF THE OPERATOR DEMONSTRATES

⁵⁵ **MARBOB** MOST EXCEPTIONS SHOULD BE REVIEWED AT THE LOCAL DISTRICT OFFICE. THIS WILL ALLOW THE STAFF WITH THE KNOWLEDGE FOR THAT SPECIFIC AREA TO MAKE A SOUND MANAGEMENT DECISION. FLEXIBILITY NEEDS TO BE BUILT INTO THE PROCESS. IF THE DISTRICT IS NOT COMFORTABLE WITH A PROPOSED EXCEPTION THEN IT COULD BE SENT TO THE DIVISION.

⁵⁶ **NMCCA&W** (1) THE EXCEPTION TO 19.15.17 (TRANSITIONAL PROVISIONS) IS BASED ON PROVIDING "EQUIVALENT" PROTECTION "FOR THE FORESEEABLE FUTURE." THE EXCEPTED METHODS SHOULD PROVIDE EQUAL OR BETTER PROTECTION, WITHOUT LIMITS AS TO HOW FAR SOME UNSPECIFIED PERSON CAN FORESEE. THIS, AGAIN, IS A WEASEL-WORD THAT INVITES ABUSE THROUGH ITS LACK OF CLARITY.

⁵⁷ **OXY** A.(1). GENERAL EXCEPTIONS, 5TH LINE. WHAT IS MEANT BY "FOR THE FORESEEABLE FUTURE"? BASED ON USE? WHAT IS REASONABLE?

⁵⁸ **MARBOB** A.(1). GENERAL EXCEPTIONS, 5TH LINE. DEFINE FORESEEABLE FUTURE AND USE AND. WHAT IS REASONABLE?

division's Santa Fe office determines that such action is necessary to prevent the contamination of fresh water, or to protect public health or the environment.⁵⁹

(2) The operator shall give written notice by certified mail, return receipt requested, to the surface owner of record where the pit, closed-loop system, below-grade tank or other proposed alternative is, or will be, located, and to such other persons as the environmental bureau in the division's Santa Fe office may direct by certified mail, return receipt requested, and issue public notice. The operator shall issue public notice by publication one time in a newspaper of general circulation in the county where the pit, closed-loop system, below-grade tank or other proposed alternative will be located. Required written and public notices require the environmental bureau in the division's Santa Fe office's approval. The environmental bureau in the division's Santa Fe office may grant the exception administratively if either the operator files with the environmental bureau in the division's Santa Fe office written waivers from all persons to whom notice is required or the environmental bureau in the division's Santa Fe office receives no objection within 30 days of the time the applicant gives notice. If the environmental bureau in the division's Santa Fe office receives an objection and the director determines that the objection has technical merit or that there is significant public interest, then the director may set the application for hearing. The director, however, may set any application for hearing. If the environmental bureau in the division's Santa Fe office schedules a hearing on an application, the hearing⁶⁰ shall be conducted according to 19.15.14.1206 through 19.15.14.1215 NMAC.^{61,62}

(3) If the director does not determine that a hearing is necessary due to an objection's technical merit, significant public interest or otherwise, then the environmental bureau in the division's Santa Fe office may grant the exception without a hearing notwithstanding the filing of an objection. If, however, the environmental bureau in the division's Santa Fe office determines to deny the exception, then it shall notify the operator of its determination by certified mail, return receipt requested, and if the operator requests a hearing within 10 days after receipt of such

⁵⁹ **OGAP** 1. IN 19.15.17.15, EXCEPTIONS, SUBSECTION A, PARAGRAPH (1), IT WOULD BE HELPFUL TO QUALIFY THE LANGUAGE, BY SPECIFYING THAT THE "OPERATOR MAY APPLY FOR A GENERAL EXCEPTION", AND THAT THE "DIVISION MAY GRANT SUCH AN EXCEPTION". THIS WOULD MAKE CLEAR THAT SUBSECTION A DEALS WITH GENERAL EXCEPTIONS, WHILE SUBSECTION B DEALS ONLY WITH CLOSURE EXCEPTIONS.

⁶⁰ **OXY** 19.15.17.16. ADDITION OF A SECTION CONCERNING HEARINGS. WHILE THIS SECTION PROVIDES THAT AN OPERATOR MAY REQUEST A HEARING IF ITS APPLICATION FOR A PERMIT IS DENIED OR APPROVED WITH CONDITIONS NOT EXPRESSLY PROVIDED BY THE OIL AND GAS ACT OR IN 19.15 NMAC, THERE ARE NO SECTIONS CONCERNING HEARING PROCEDURES. OCD SHOULD INCLUDE A SECTION, H, THAT READS: H. IF THE DIVISION SCHEDULES A HEARING ON AN APPLICATION, THE HEARING SHALL BE CONDUCTED ACCORDING TO 19.15.14.1206 THROUGH 19.15.14.1215 NMAC.

⁶¹ **OGAP** 2. THE WAY THE EXCEPTION SECTION IS CURRENTLY STRUCTURED, IT ALLOWS AN OPERATOR TO PROPOSE AN EXCEPTION TO THE STANDARD CLOSURE METHOD AT THE TIME OF FILING FOR A WELL PERMIT. THIS IS DONE WITH NOTICE TO THE SURFACE OWNER OF RECORD, WHICH WE BELIEVE IS CONSISTENT WITH THE SURFACE OWNER PROTECTION ACT, AND NEW MEXICO COMMON LAW, I.E., THAT BURIAL OF WASTE WITHIN THE SURFACE ESTATE WOULD REQUIRE SURFACE OWNER CONSENT. HOWEVER, THE RULE GOES ON TO STATE THAT UNLESS THE PIT CONTENTS MEET THE STANDARDS LISTED, A TREATMENT METHOD MUST BE PROPOSED, PRESUMABLY AS PART OF THE OVERALL PERMIT FILING. THIS RAISES SOME PRACTICAL DIFFICULTIES. FOR EXAMPLE, IF AN OPERATOR APPLIES FOR AN EXCEPTION ON CLOSURE METHODS, AND ASSERTS THAT THE PIT CONTENTS WILL MEET THE STANDARDS SPECIFIED IN THE RULE, WHAT HAPPENS IF THE CONTENTS LATER ARE FOUND NOT TO MEET THOSE STANDARDS? DOES THE OPERATOR HAVE TO RE NOTICE THE SURFACE OWNER ON A REVISED PIT PERMIT IN ORDER TO BURY THAT WASTE?

⁶² **OGAP** 2. FROM THE STANDPOINT OF GOOD OPERATIONAL PLANNING, THE RULE SHOULD PERHAPS REWARD AN OPERATOR WHEN THE PIT CONTENTS ARE 'CLEANER' THAN ANTICIPATED, I.E., ALLOWING MODIFICATION TO THE PIT PERMIT, WHILE REQUIRING FURTHER JUSTIFICATION AND NOTICE WHEN THE PIT CONTENTS ARE 'DIRTIER' THAN STATED IN THE PERMIT APPLICATION.

notice shall set the matter for hearing, with notice to the operator and to any party who has filed an objection to the proposed exception.

B. Alternative closure methods.^{63,64,65,66,67,68} The operator of a temporary pit or a closed-loop system may apply to the environmental bureau in the division's Santa Fe office for an exception to the closure methods

⁶³ **OXY** *B.(1) CLOSURE EXCEPTIONS. WELL ECONOMICS ARE TYPICALLY "COMPANY CONFIDENTIAL INFORMATION". HOW IS THIS DECIDED?*

⁶⁴ **NMCCA&W** *(1) EXCEPTION TO THE PROHIBITION OF ON-SITE WASTE BURIAL IS OFFERED FOR REASONS OF COST, IF THE OPERATOR DEMONSTRATES "EQUIVALENT PROTECTION" FOR THE "FORESEEABLE FUTURE." THE COST OF WASTE REMOVAL NEED ONLY EXCEED THE COST OF BURIAL BY ENOUGH TO BE "UNECONOMIC." THIS IS A CONJUNCTURE OF WEASEL-WORDS THAT NULLIFIES ALMOST ANY RESTRICTION OF ON-SITE BURIAL. WHO WILL ARGUE WHETHER A PROCESS IS "UNECONOMIC?" ONLY THE OPERATOR AND OCD ARE INVOLVED IN THE CONVERSATION. IF THE EXCEPTION IS GRANTED TO ONE OPERATOR, IT MUST NECESSARILY BE GRANTED TO ALL OPERATORS, UNLESS ONE CAN DETERMINE, FOR EXAMPLE, THAT A HAUL DISTANCE OF 50 MILES TO A DISPOSAL SITE IS UNECONOMIC FOR ONE OPERATOR, WHILE A DISTANCE OF 49 MILES IS ECONOMIC FOR ANOTHER OPERATOR. THE TERM "UNECONOMIC" IS MEANINGLESS. COST CAN BE ASSESSED ONLY IN TERMS OF THE COST OF THE ENTIRE DRILLING AND PRODUCTION PROCESS, THAT IS, THE EFFECT OF THE WASTE DISPOSAL ON THE PRICE OF THE PRODUCT. IF WASTES CAN BE TRANSPORTED FROM OFF-SHORE PLATFORMS, IT IS POSSIBLE, BUT UNLIKELY, THAT ROAD-HAULING IS TOO EXPENSIVE FOR THE SAME INDUSTRY SELLING THE SAME PRODUCT IN THE SAME MARKET.*

⁶⁵ **NMCCA&W** *MAINTAINS THAT IT IS APPROPRIATE TO CONSIDER THE COSTS IMPOSED BY ENVIRONMENTAL REQUIREMENTS. HOWEVER, THE COSTS MUST BE EXPRESSED IN TERMS OF THE PRICE OF THE PRODUCT. TO GAIN AN EXCEPTION, THE OPERATOR SHOULD BE REQUIRED TO SHOW WHY HIS WELL, UNIQUELY, SHOULD BE ALLOWED TO EXTERNALIZE ITS COSTS IN COMPARISON WITH ALL OTHER WELLS. IF ECONOMICS IS THE ARGUMENT FOR EXTERNALIZING THE TRUE COST OF PRODUCTION, THEN THE OPERATOR'S COMPLETE BOOKS SHOULD BE OPEN AND THE PUBLIC SHOULD BE ALLOWED TO EXAMINE THE ARGUMENTS. A PUBLIC SUBSIDY REQUIRES OPEN INFORMATION AND PUBLIC PARTICIPATION.*

⁶⁶ **OGAP** *3. TO RECEIVE A CLOSURE METHOD EXCEPTION, THE RULE REQUIRES THE OPERATOR TO "DEMONSTRATE" THROUGH A COMPARISON OF STANDARD CLOSURE COSTS WITH THE COST OF THE PROPOSED ALTERNATIVE METHOD, THAT THE STANDARD COSTS ARE EXCESSIVE. THIS EXCESS COST THEN MUST BE SHOWN BY THE OPERATOR TO "RENDER THE COSTS OF THE OPERATIONS UNECONOMIC." WE SUGGEST THAT, AT MINIMUM, THE LANGUAGE BE CLARIFIED TO TIE THE ECONOMICS DEMONSTRATION TO AVERAGE REVENUE PER WELL FIGURE FOR THE STATE AS A WHOLE. FOR EXAMPLE, THE INDEPENDENT PETROLEUM PRODUCERS MAINTAIN A WEBSITE THAT LISTS, BY STATE, AVERAGE COSTS PER OIL OR GAS WELL AND AVERAGE REVENUES PER WELL, BY YEAR. OCD PROBABLY COULD ALSO GENERATE SUCH A STATEWIDE AVERAGE. WHAT WE BELIEVE THIS RULE LANGUAGE IS TRYING TO DO IS TO ASSESS THE DIFFERENCE IN COST OF THE CLOSURE METHODS RELATIVE TO THE OVERALL COST AND REVENUES OF THE WELL. IF THE ADDED CLOSURE COSTS MAKE THE WELL COSTS MORE THAN THE EXPECTED REVENUE, THEN AN EXCEPTION COULD BE MADE IN ORDER TO ALLOW THE WELL TO PRODUCE. HOWEVER, IF THE ADDED COST DOES NOT EXCEED THE REVENUES, THE EXCEPTION WOULD NOT BE GRANTED. TEEING THE ECONOMIC DEMONSTRATION TO STATEWIDE AVERAGE COST AND REVENUE FIGURES WOULD ELIMINATE WELL BY WELL DETERMINATIONS ON ECONOMIC MATTERS THAT ARE OUTSIDE OF OCD'S MAIN AREAS OF EXPERTISE.*

⁶⁷ **OGAP** *4. IN LIGHT OF THE NOTICE, ECONOMIC DEMONSTRATION AND TESTING REQUIRED FOR CLOSURE METHOD EXCEPTIONS, WE SUGGEST THAT 19.15.17.15.B BE CHANGED TO STATE "THE OPERATOR OF TEMPORARY PIT OR CLOSED-LOOP SYSTEM MAY APPLY TO THE ENVIRONMENTAL BUREAU IN THE DIVISION'S SANTA FE OFFICE, WITH A COPY TO THE APPROPRIATE DIVISION DISTRICT OFFICE, FOR AN EXCEPTION TO THE CLOSURE REQUIREMENTS SPECIFIED IN"*

specified in Paragraphs (1) and (2) of Subsection B of 19.15.17.13 NMAC or Paragraphs (1) and (2) of Subsection D of 19.15.17.13 NMAC. The environmental bureau in the division's Santa Fe office may grant the proposed exception if all of the following requirements are met.

(1) The operator demonstrates that the proposed alternative method provides equivalent or better protection of fresh water, public health and the environment.

(2) The operator shall remove all liquids prior to implementing a closure method and dispose of the liquids in a division-approved facility or recycle or reuse the liquids in a manner that the environmental bureau in the division's Santa Fe office approves.

(3) The operator demonstrates to the satisfaction of the environmental bureau in the division's Santa Fe office that any proposed alternative closure method will implement one or more of the following practices as approved by the environmental bureau in the division's Santa Fe office: waste minimization; treatment using best demonstrated available technology; reclamation; reuse; recycling; or reduction in available contaminant concentration; and such conditions as the environmental bureau in the division's Santa Fe office deems relevant in order to protect fresh water, public health and the environment.⁶⁹

(4) The provisions of Subsection A of 19.15.17.15 NMAC shall apply to applications for exceptions pursuant to Subsection B of 19.15.17.15 NMAC.

[19.15.17.15 NMAC - Rp, 19.15.2.50 NMAC, 1/07]

19.15.17.16 PERMIT APPROVALS, CONDITIONS, DENIALS, REVOCATIONS, SUSPENSIONS, MODIFICATIONS OR TRANSFERS.⁷⁰

A. The division shall review all applications to permit facilities subject to 19.15.17 NMAC, and may approve, deny or approve an application with conditions. If the division denies an application or approves the application subject to conditions not expressly provided by the Oil and Gas Act or in 19.15 NMAC, then the division shall notify the applicant by certified mail, return receipt requested, and shall set the matter for hearing if the applicant so requests within 10 days after receipt of such notification.

B. Granting of permit. The division shall issue a permit upon finding that an operator has filed an acceptable application and that the proposed construction, operation and closure of a pit, closed-loop system, below-grade tank or other proposed alternative will comply with applicable statutes and rules and will not endanger fresh water, public health, safety or the environment.

C. Conditions. The division may impose conditions or requirements that it determines are necessary and proper for the protection of fresh water, public health, safety or the environment. The division shall incorporate such additional conditions or requirements into the permit.

D. Denial of application. The division may deny an application for a permit if it finds that the application and materials that the operator submitted for consideration with the application do not sufficiently demonstrate that the operator can construct, operate and close the proposed pit, closed-loop system, below-grade tank or other proposed alternative without detriment to fresh water, public health, safety or the environment.

E. Revocation, suspension or modification of a permit. The operator may apply to the division for a modification of the permit pursuant 19.15.17 NMAC. The operator shall demonstrate that the proposed modification complies with the applicable provisions of 19.15.17 NMAC. The division may revoke, suspend or impose additional operating conditions or limitations on a permit at any time, after notice and opportunity for a hearing, if the division determines that the operator or the permitted facility is in material breach of any applicable statutes or rules, or that such action is necessary for the protection of fresh water, public health or the environment. The division shall notify the operator by certified mail, return receipt requested, of any intended revocation,

⁶⁸ **MARBOB** B.(1) CLOSURE EXCEPTIONS. WHAT WILL DETERMINE OR HOW IS "FAR EXCEED" DEFINED? THE RULE SHOULD ADDRESS ECONOMIC IMPACTS. THIS WILL HAVE A SUBSTANTIAL EFFECT ON SMALL BUSINESSES AND THE NUMBER OF WELLS THAT WILL BE DRILLED IN NM>

⁶⁹ **OXY** B.(5) ALTERNATIVE CLOSURE METHODS. THE ONLY FACTORS FOR PROPOSING AN ALTERNATIVE CLOSURE METHOD SHOULD BE PROTECTION OF THE PUBLIC AND ENVIRONMENT. THESE OTHER FACTORS WILL CREATE AN UNKNOWN AMOUNT OF WORK AND CONFUSION.

⁷⁰ **OXY** 19.15.17.16 APPROVALS, CONDITIONS...A. IT IS RECOMMENDED THAT TIME LIMITS FOR REVIEW AND APPROVAL OR DENIAL OF PERMIT APPLICATIONS TO PROVIDE COMMUNICATION AND CERTAINTY TO THE OPERATOR.

suspension or imposition of addition conditions, and the operator shall have 10 days after receipt of notification to request a hearing. The division may suspend a permit or impose additional conditions or limitations without hearing in an emergency to forestall an imminent threat to fresh water, public health, safety or the environment, subject to the provisions of NMSA 1978, Section 70-2-23, as amended.

F. Transfer of a permit. The operator shall not transfer a permit without the division's prior written approval. The division's approval of an application to transfer a well or other facility with which a permitted pit, below-grade tank or closed-loop system is associated shall constitute approval of the transfer of the permit for the pit, below-grade tank or closed-loop system. In all other cases, the operator and the transferee shall apply for approval to transfer the permit to the division office to which permit applications for the type of facility involved are directed.

G. Division approvals. The division shall grant or confirm any division approval authorized by a provision of 19.15.17 NMAC by written statement.
[19.15.17.16 NMAC - Rp, 19.15.2.50 NMAC, 1/07]

19.15.17.17 TRANSITIONAL PROVISIONS:⁷¹

A. After _____, 200_ [effective date], unlined temporary pits are prohibited.

B. An operator of an existing operation that is required to close pursuant to Paragraphs (1), (2), (3) or (4) of Subsection A of 19.15.17.13 NMAC shall submit a closure plan pursuant to Subsection C of 19.15.17.9 NMAC to the division not later than 30 days after _____, 200_ [effective date].

C. An operator of an existing lined, permitted or registered, permanent pit shall comply with the construction requirements of 19.15.17 NMAC within two years after _____, 200_ [effective date]. Prior to complying with the construction requirements of 19.15.17 NMAC, an operator of an existing lined, permitted, permanent pit shall request a modification pursuant to Subsection E of 19.15.17.16 NMAC; and an operator of an existing lined, registered, permanent pit shall apply to the division for a permit pursuant to 19.15.17 NMAC.

D. An operator of an existing below-grade tank shall comply with the permitting requirements of 19.15.17 NMAC within 90 days after _____, 200_ [effective date]. Prior to complying with the construction requirements of 19.15.17 NMAC, an operator of an existing below-grade tank shall request a permit modification pursuant to Subsection E of 19.15.17.16 NMAC.

E. An operator of an existing pit or below-grade tank permitted prior to _____, 200_, [effective date of 19.15.17 NMAC] may continue to operate in accordance with such permits or orders, subject to the following provisions.

(1) An operator of an existing lined, permitted or registered, permanent pit shall comply with the operational and closure requirements of 19.15.17 NMAC.

(2) An operator of an existing permitted or registered, temporary pit shall comply with the operational and closure requirements of 19.15.17 NMAC.

(3) An operator of an existing below-grade tank shall comply with the operational and closure requirements of 19.15.17 NMAC.

(4) The operator shall bring an existing below-grade tank that does not comply with the design and construction requirements of 19.15.17 NMAC into compliance with those requirements or close it within five years after _____, 200_ [effective date].

F. The operator may continue to operate an existing closed-loop system without applying for a permit, but the operator shall close such system in accordance with the closure requirements of 19.15.17.13 NMAC.

⁷¹ **OGAP** 6. IN LIGHT OF THE CURRENT ABSENCE OF SUFFICIENT PERMITTED SURFACE WASTE FACILITIES IN THE NORTHWESTERN PART OF THE STATE, AS INDICATED BY THE OCD'S INTERIM ORDER ALLOWING DISPOSAL AT NMED APPROVED FACILITIES, OCD.MIGHT WANT TO ADD A TRANSITIONAL PROVISION TO 19.15.17.17 THAT WOULD PHASE IN THE CLOSURE METHOD REQUIREMENTS. IN THE ABSENCE OF ANY INFORMATION AS TO HOW LONG IT WILL BE BEFORE SUCH A FACILITY IS OPENED, WE SUGGEST UP TO ALONE YEAR PHASE-IN ONLY FOR THE CLOSURE METHOD REQUIREMENTS. THIS COULD BE ACCOMPLISHED, FOR EXAMPLE, BY WAIVING THE REQUIRED "UNECONOMIC DEMONSTRATION" FOR ONE YEAR. THAT SHOULD BE SUFFICIENT TIME FOR A SURFACE WASTE FACILITY TO BE PERMITTED AND FOR OPERATORS TO BEGIN ADJUSTING THEIR OPERATIONS TO REDUCE THE AMOUNT OF WASTE THEY PRODUCE, IN LIGHT OF THE PIT RULE CLOSURE REQUIREMENTS.

G. An operator of an existing sump shall comply with the operational requirements of 19.15.17 NMAC.
[19.15.17.17 NMAC - Rp, 19.15.2.50 NMAC, / /07]