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December 13, 2007

VIA HAND DELIVERY

Ms. Florene Davidson
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

RECEIVED
2007 DEC 13 PM 4:38

**Re: Case 14015: Application of the New Mexico Oil Conservation Division for
Repeal of Existing Rule 50 Concerning Pits, etc.**

Controlled Recovery Inc.'s Redline and Reasons Therefore

Dear Ms. Davidson:

Controlled Recovery, Inc. (CRI) attaches hereto its recommendations for changes to the draft Rule, which are listed in the order in which they first appear in the draft Rule. CRI's conforming redline of the draft Rule is also attached.

Respectfully submitted,

HUFFAKER & MOFFETT LLC



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Attorneys for Controlled Recovery, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December, 2007, a copy of Controlled Recovery Inc.'s Redline and Reasons Therefore in the above-captioned case were delivered to the following:

By Hand Delivery:

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Energy, Minerals and Natural Resources Department
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By U.S. Mail:

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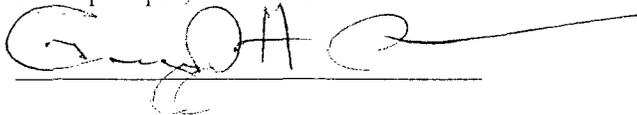
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CRI Recommendation No. 1

DELETE ON-SITE CLOSURE AS AN "OPTION"

First comes up at Page 3, Section 9.C.(1)

Major changes at: Page 4, §10.C.

Page 8, §11.J.

Page 12, §13.F.

Minor conforming changes at:

Page 10, §13.B.(2)

Page 11, §13.D.(2)

Page 13, §13.G.(2)

Page 13, §13.I.(1) and (2)

Page 14, §15.A.(1)

Page 15, §15.B.

Reasons for the recommendation:

1. There is a long term risk to soil and groundwater from leaving drilling waste on-site.
2. No engineering evidence supports the long term integrity of a burrito as a permanent waste disposal facility.
3. Harmful gases may be produced in a burrito.
4. Permanent waste dumps should not be allowed anywhere unless they can be rigorously regulated in a manner consistent with the precise and demanding requirements applied to other types of permanent waste sites and mine reclamation sites by the OCC, NMED, EMNRD, EPA and other state and federal agencies.
5. Permanent on-site disposal violates the principles of waste minimization and centralization. This Rule should encourage waste minimization and centralization, not an untold number of permanent, unmonitored waste dumps.
6. Testing showed chloride, sodium, TDS, TPH, benzene, BTEX, DRO/GRO, barium, chromium, fluoride, mercury, and lead. The draft Rule does not require more than minimal testing of pit contents before burial on-site. In particular, there is no requirement for testing for §3103 constituents, PAHs, VOCs, etc., found in workover pits.
7. The draft Rule would not require any post-burial monitoring of any kind where there would be as much as 100,000 mg/kg chloride as close as 50 feet above groundwater.
8. The burrito "option" is inconsistent with other parts of the proposed Rule -- an application for a "permanent pit" is subject to stringent requirements for the foundation,

for grades and slopes, for double liners with leak detection, etc. See Section 11.G. No such rigor or requirements apply to permanent on-site burial burritos.

9. The burrito option is inconsistent with the OCC's own 2007 revisions to Rule 36 -- small landfarms may only be established where testing shows chloride concentrations of the contents are 500 mg/kg or less.

10. There is no prohibition against the discharge of contaminants to the groundwater. The operator is allowed to place his waste and walk away forever.

11. There is testimony in the record that virutally every drilling and workover pit leaks. Lined pits, be they lined with 12 mil, 20 mil, or even thicker liners, that are designed without rigorous engineering standards and constructed without precision and care to ensure they will not leak, will also leak.

12. According to evidence in the record, the added initial cost of drilling, digging and hauling under the proposed Rule will be significantly less than 8 to 10%.

13. There is no evidence in the record to show that the increase in truck traffic attendant to the draft Rule would significantly increase the amount of existing traffic already incident to drilling and maintaining wells and the marketing of oil and gas.

14. The establishment of a permanent waste dump on property owned by another, where the oil and gas lessee's right of entry ceases when operations cease, is not "reasonably necessary for operations" or permitted by law.

CRI Recommendation No. 2

REPLACE 50 FEET TO GROUNDWATER MINIMUM WITH 100 FEET

First comes up at Page 3, §10.A.(1)(a)

Also at Page 4, §10.A.(2)(a)

Reasons for the recommendation:

1. A 50 foot minimum creates an undue risk of groundwater contamination given the incidence of focused recharge through preferential pathways to groundwater in New Mexico.
2. A 50 foot minimum is inconsistent with this Commission's Rule 36 and with the Solid Waste regulations of the New Mexico Environment Department. No landfill and no landfarm that accepts drill cuttings with a chloride concentration that exceeds 1,000 mg/kg may be located where ground water is less than 100 feet below the lowest elevation at which the operator will place oil field waste.
3. NMED Solid Waste regulations provide that no municipal or special waste landfill shall be located where depth to seasonal high water table will be closer than 100 feet to the bottom of the fill.
4. 91% of the 400-odd historic groundwater contamination events within the Division's jurisdiction have occurred at sites where the depth to groundwater is less than 100 feet.

CRI Recommendation No. 3

RETAIN AUTHORITY TO APPROVE EXCEPTIONS IN THE ENVIRONMENT
BUREAU

First comes up at Page 3, 10.A.(1)(b),

Also at Page 3, 10.A.(1)(g)

Page 4, §10.A.(1)(h)

Page 5, §11.F.(2)

Page 5, §11.F.(3)

Page 10, §13.B.

Reasons for the recommendation:

- 1. The Environmental Bureau in Santa Fe is the proper place for these exceptions to be considered. Division offices do not have sufficient staff or expertise to evaluate applications for exceptions that depend on, among other things, evaluating geology, geohydrology, and plastic liner technology.**
- 2. The draft Rule would put utterly standardless discretion in the hands of those who have limited education, training, or experience upon which to base an exercise of that discretion.**
- 3. There is a grave risk of inconsistent standards arising between different districts in the state. Inconsistent administrative decisionmaking is arbitrary administrative action.**
- 4. The draft is inconsistent with other OCC Rules. The OCC's recently adopted Rule 36 for surface waste facilities, such as landfills and landfarms, requires all applications for permits, for major modifications to permits, and even for minor modifications to permits, be submitted to the OCD Environmental Bureau in Santa Fe.**

CRI Recommendation No. 4

PROVIDE FOR THE DISPOSITION OF ALL DRILLING FLUIDS IN DIVISION
APPROVED FACILITIES

Page 8, §12.A.(2)

Reason for the recommendation:

1. During the hearing this omission to provide for the disposition of all drilling fluids at division approved facilities was recognized as an oversight. CRI's recommendation conforms to the Division's intent in drafting the Rule.

CRI Recommendation No. 5

PROVIDE FOR EFFECTIVE PUBLIC NOTICE, PUBLIC PARTICIPATION AND
PUBLIC HEARINGS

First comes up at Pages 14-15, §15 passim

See also at Page 16, §16.E.

Reasons for the recommendation:

1. New Mexico's Executive Order for Environmental Justice requires state agencies to provide meaningful opportunities for public involvement.
2. The proposed Rule does not provide for any public notice other than a one-time newspaper publication. Newspaper notices are a notoriously ineffective means of giving public notice.
3. Lessees of the surface, subsurface owners, neighbors, water rights owners and users of water resources, local and tribal governments, and persons who have requested OCD to give them notice of significant environmental decisions should all be entitled to actual notice.
4. There is no opportunity for anyone to comment on proposed exceptions or modifications in the draft Rule.
5. There is virtually no opportunity for a hearing -- hearings should be mandatory ("shall schedule"), not optional ("may schedule"), where there are expressions of significant public interest or technical merit.
6. Modifications to permits that amount, in fact, to requests for exceptions should be treated like exceptions for the purposes of public notice and public participation.
7. Notice, comment and hearing provisions similar to those in the Division's Surface Waste Rule for landfills and landfarms should be substantially replicated in the Pit Rule in order to comply with Environmental Justice and due process mandates.

Controlled Recovery Inc.'s Recommended Revisions

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:

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.

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.

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.

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.

[19.15.17.7 NMAC - Rp, 19.15.2.7 NMAC, //07]

Controlled Recovery Inc.'s Recommended Revisions

19.15.17.8 PERMIT REQUIRED:

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

B. The permit application shall include a detailed 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 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 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.

Controlled Recovery Inc.'s Recommended Revisions

(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 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~~100 feet below the bottom of the temporary pit or below-grade tank;

(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 ~~appropriate division district office~~ 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 300 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 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 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 ~~appropriate division district office~~ specifically approves the proposed location based upon the operator's demonstration that subsurface integrity will not be compromised;

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(h) within an unstable area, unless the operator demonstrates to the environmental bureau in the division's Santa Fe office 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~~100 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:~~

~~(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]

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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 sump 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.

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 ~~environmental bureau in the division's Santa Fe office~~ 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 ~~environmental bureau in the division's Santa Fe office~~ 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.

(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.

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(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.

(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) liner 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

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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.

(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.

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(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.

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

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

(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.

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 tank 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]

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.

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(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 environmental bureau in the division's Santa Fe office ~~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 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.

(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.

~~(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 temporary pit involves on-site deep trench burial.~~

(23) 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.

(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.

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(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, 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.

(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.

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.~~

~~(23)~~ 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.

(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

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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 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.~~

~~(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.~~

~~(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 method shall optimize waste minimization and reduce contaminant concentrations in order to protect 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.~~

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~~_____ (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 approves, 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.

~~_____ (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.~~

~~(23) 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 substantially 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 alternative effectively prevents erosion, and protects fresh water, human health 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, or 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~~

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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 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:

A. General exceptions.

(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 better protection of fresh water, 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 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.

(2) The operator shall give written notice by certified mail, return receipt requested, to the surface and subsurface owners and lessees of record where the pit, closed-loop system, below-grade tank or other proposed alternative is, or will be, located, to surface and subsurface owners and lessees of record within one-half mile of such location, to the county commission of the county where the pit, system or tank is, or will be, located, to the appropriate city officials if the pit, system or tank is, or will be, located within city limits, within one-half mile of the

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city limits, or within the city's zoning and planning jurisdiction, to affected federal, tribal or pueblo governmental agencies, 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 division shall distribute notice of the application to persons who have requested notification and shall post notice of the application on the environmental bureau's web pages.

(3) Any person wishing to comment on an application may file comments or request a hearing within 30 days after the later of the date when the applicant mails the notice required by Subsection A (2) of 19.15.17.15 NMAC or when the division distributes or posts the notice provided in Subsection A (2) of 19.15.17.15 NMAC. A request for hearing must set forth the reasons why a hearing should be held.

(4) 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~~ comments or requests for hearing within 30 days of the time the applicant gives notice ~~notice~~ the time for commenting established in Subsection A (3) of 19.15.17.15 NMAC. If the environmental bureau in the division's Santa Fe office receives an ~~objection~~ comment or request for hearing and the director determines that the ~~objection~~ comment or request presents issues that have ~~has~~ technical merit or that there is significant public interest, then the director ~~may~~ shall 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 hearing shall be conducted according to the procedures in 19.15.14.1206 through 19.15.14.1215 NMAC.

~~(35)~~ If the director does not determine that a hearing is necessary due to ~~an~~ comment or request's ~~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~~ a comment or request for a hearing. 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 notice shall set the matter for hearing, with notice to the operator and to any party who has filed a comment or requested a hearing ~~an objection to the proposed exception.~~

B. Alternative closure methods. 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 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 of satisfaction 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.

(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, / /07]

19.15.17.16 PERMIT APPROVALS, CONDITIONS, DENIALS, REVOCATIONS, SUSPENSIONS, MODIFICATIONS OR TRANSFERS:

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

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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 provisions of Subsection A of 19.15.17.15 NMAC shall apply to applications for modifications of a permit that propose an exception to a requirement or provision 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, 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, / /07]

19.15.17.17 TRANSITIONAL PROVISIONS:

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.

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(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.

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]