

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

**APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION,
THROUGH THE ENVIRONMENTAL BUREAU CHIEF, FOR ADOPTION OF
AN AMENDMENT TO 19.15.39 NMAC ADDING NEW SECTIONS TO BE
CODIFIED AT 19.15.39.9 AND 19.15.39.10 NMAC ADDRESSING SPECIAL
PROVISIONS FOR SANTA FE COUNTY AND THE GALISTEO BASIN; SANTA
FE, SANDOVAL AND SAN MIGUEL COUNTIES.**

CASE NO. 14255

TESTIMONY OF BRAD A. JONES

My name is Brad A. Jones. I have been an environmental engineer with the Oil Conservation Division's Environmental Bureau since July 2006. My primary duties include the review of permit applications, permit modifications, and closure plans under Part 17 (the pit rule) and Part 36 (the surface waste management rule); review of ground water and hydrostatic test discharge permit applications, modifications, and renewals under the Oil and Gas Act and Water Quality Control Commission regulations; and training and outreach on Part 17, Part 36 and discharge permits. Currently, my focus has been in the creation of rules and policies and training staff, operators, consultants, and the public of the implementation of new rules.

I hold a Bachelor of Science degree in Environmental Health Science from the University of Georgia. I have over 10 years of environmental regulatory experience, mainly as a regulator but also some in industry. Prior to joining the Oil Conservation Division (OCD) I worked as an Environmental Specialist in the Solid Waste Bureau – Permit Section of the New Mexico Environment Department for approximately four years. In that capacity I was involved in the permitting of landfills, solid waste facilities.

33 I also oversaw ground water monitoring programs and investigations for those facilities.
34 Prior to that I worked as an Environmental Specialist I in the Florida Department of
35 Health, where I designed, permitted, inspected and approved on-site sewage systems. For
36 a short period, I also worked as an Environmental Scientist for Redemption
37 Environmental, Inc., a small consulting firm in Tampa, Florida where I performed site
38 investigations, remediation programs, and cleanups of underground storage tank
39 contamination sites. I have also worked as an Environmental Health Specialist II for the
40 Island County Health Department in Coupeville, Washington, under a state granted
41 funded position that involved overseeing solid waste programs, voluntary cleanup
42 programs, investigations of contaminated sites, and the cleanup of meth lab sites. I have
43 also worked as an Environmental Specialist I at the Florida Department of Health where I
44 oversaw the implementation of several environmental programs.

45 I have testified before the Oil Conservation Commission (OCC) as an expert in
46 environmental engineering and environmental regulation in Case 14015 adopting Part 17.
47 I have testified before the New Mexico Environmental Improvement Board as a technical
48 expert witness for the state in Case EIB 05-07 (R), Replacement to 20.9.1 NMAC, Solid
49 Waste Management Regulations. I have also testified on the behalf of the State of New
50 Mexico as a technical expert in two permit hearing regarding solid waste facilities; SWB
51 05-06 (P) - In the Matter of the Application of the City of Tucumcari for a Solid Waste
52 Management Facility Permit for the Tucumcari Landfill and SWB 02-09 (M) - In the
53 Matter of the Application of the County of McKinley for a Modification to the Smith
54 Lake (Thoreau) Landfill Permit.

55 My testimony will be a complete overview the proposed amendment to 19.15.39
56 NMAC and the proposed modifications filed by the OCD on November 24, 2008. **OCD**
57 **Exhibit 22** is a redlined version of the proposed amendment, showing the OCD's
58 modifications. The following technical provisions in the proposed amendment will be
59 addressed in greater detail by Division witnesses Glenn von Gonten and Will Jones:
60 Subparagraphs 1-8 of Subsection B of 19.15.39.9 NMAC, and Subparagraphs 3-8 of
61 Subsection B of 19.15.39.10 NMAC.

62 **OVERVIEW OF THE PROPOSED RULES**

63 The OCD proposes to amend Part 39, "Special Rules," to add two sections that
64 will apply to Santa Fe County and the Galisteo Basin.

65 Section 9: Exploration and Development Plans

66 Proposed Section 9 requires operators to obtain OCD approval of an exploration
67 and development plan prior to applying for a permit to drill, re-enter or deepen a well
68 within Santa Fe County or the Galisteo Basin. To apply for approval, the operator must
69 submit a plan defining the area covered by the plan, describing the operator's proposed
70 development of the area, and providing information that will help the OCD determine if
71 approval of the plan will be consistent with its statutory mandates to prevent waste,
72 protect correlative rights, and protect fresh water, human health and the environment. In
73 addition, the operator must provide proposed drilling and mud programs, and plans for
74 installing monitor wells, managing waste, minimizing pad size, and addressing releases.
75 If applicable, the operator will also be required to provide its plan for mitigating its
76 impact on cultural resources.

77 The OCD will perform a preliminary review of the application for administrative
78 completeness to determine if it contains all of the required elements. Administratively
79 complete plans will be set for public hearing. The operator will be required to publish a
80 legal notice, and provide public notice to interested parties. The public will have an
81 opportunity to submit written comments on the proposed plan and will be able to
82 participate in the hearing process.

83 The OCD will approve an exploration and development plan only if the operator
84 has provided the information required by the rule, satisfied the notice requirements, is in
85 compliance with certain OCD rules, and if the OCD determines that approval of the plan
86 will prevent waste, protect correlative rights, protect fresh water, and protect human
87 health and the environment. The OCD may impose conditions on the plan if it
88 determines those conditions are necessary to ensure that the plan will prevent waste,
89 protect correlative rights, protect fresh water and protect human health and the
90 environment. The OCD may approve a plan for a period not to exceed five years, and
91 may renew a plan for additional periods not to exceed five years.

92 Once the operator obtains an approved plan, it may apply for permits to drill, re-
93 enter or deepen wells covered by the plan through the established OCD permitting
94 process. The operator will also need to follow permitting process of the applicable OCD
95 rules for obtaining any other permits necessary for its operations, such as a permit for a
96 closed-loop system, injection wells, and surface waste management facilities. It is
97 important to understand that an approved plan is not a substitute for any applicable permit
98 process.

99 If the operator wants to expand the area covered by the plan, increase the number
100 or change the locations of wells and related facilities identified in the plan, or change the
101 terms of the proposed plan, it must apply for an amendment. In its application, it will
102 need to update the information it previously provided, and identify the specific changes it
103 proposes to the plan. The operator will be required to publish a legal notice of the
104 amendment, and provide public notice. The public will have the opportunity to give
105 written comments on the amendment, and request a public hearing. The OCD may set
106 the matter for public hearing. If it does so, the operator will be required to publish a legal
107 notice and provide public notice that provides the appropriate information regarding the
108 hearing. The application for amendment will be evaluated using the same standards
109 applicable to an initial application.

110 Because the OCD may approve a plan for a period not to exceed five years, the
111 operator will need to apply for renewal at least every five years. The operator may
112 combine an application for amendment with an application for renewal. In other words,
113 if an operator is applying for an amendment, it may at the same time request that its plan
114 be renewed to a date no more than five years from the date of the amendment. The
115 application process for renewal is the same as the process for an amendment: the operator
116 must update its application information, provide legal notice, and publish public notice
117 that provides instructions for public comment and requests for a public hearing, if
118 applicable. The OCD may set the matter for hearing. The application will be evaluated
119 using the same standards applicable to an initial application.

120 If the plan expires and the operator has not filed for renewal, the operator must
121 shut in the wells covered by the plan. If the operator violates the terms of the plan, or is

122 in violation of certain other OCD rules, the OCD may – after notice and hearing – order
123 the operator to shut in the wells covered by the plan.

124 Section 9 provides a process for replacing an exploration and development plan
125 with a special pool order. An operator may not apply for replacement until it has
126 operated wells under its plan for at least 5 years. It may then apply for replacement,
127 using the same process that is used for seeking an amendment or a renewal. The OCD
128 may set the matter for hearing. The application will be evaluated using the same
129 standards applicable to an initial application. The OCD may impose conditions in the
130 special pool order, to ensure that the order prevents waste, protects correlative rights,
131 protects fresh water and protects human health and the environment. Once a plan is
132 replaced with a special pool order, any changes to the special pool order will be handled
133 through existing OCD processes.

134 Section 10: Additional Requirements for Applications to Drill, Re-enter or Deepen Wells
135 Subject to an Exploration and Development Plan.
136

137 Section 10 is a companion provision to Section 9. It imposes additional
138 requirements on applications to drill, re-enter or deepen wells subject to an exploration
139 and development plan.

140 When an operator applies for a permit to drill, re-enter or deepen a well under its
141 plan, Subsection A of Section 10 will require the operator to take additional steps not
142 required under existing OCD rules. First, the operator will have to submit its application
143 for a permit under 19.15.17 NMAC (Part 17) to address drilling waste at the same time it
144 submits its application for an APD, so the OCD can evaluate them together. Second, the
145 operator will have to provide global positioning system coordinates for the location of a
146 well to be drilled in an un-surveyed area, so the OCD can review the site. Third, the

147 operator must provide any additional information required by its exploration and
148 development plan.

149 Subsection B of Section 10 sets out conditions that are automatically required for
150 an APD issued for a well covered by an exploration and development plan. The
151 conditions include a requirement that the operator use a closed-loop system rather than
152 pits; not dispose of drilling waste on-site; run logs during the drilling process that will
153 help identify water zones; use a casing and cementing program that will isolate fresh
154 water zones; and place wells requiring gas pipeline connections on approved temporary
155 abandonment status while awaiting pipeline connection. To obtain an exception to any of
156 these conditions, the operator must seek the exception as part of its exploration and
157 development plan.

158 **DETAILED REVIEW OF SECTION 9:**
159 **EXPLORATION AND DEVELOPMENT PLANS**

160
161 **Subsection A: Applicability**

162 As stated in the first paragraph of Subsection A, Section 9 requires operators to
163 obtain OCD approval of an exploration and development plan prior to applying for a
164 permit to drill, re-enter or deepen a well in Santa Fe County or the Galisteo Basin. The
165 operator must renew its plan at least every five years, and must operate the wells covered
166 by the plan in accordance with the plan's requirements until the plan is replaced by a
167 special pool order.

168 Section 9 covers "re-entering" and "deepening," as well as drilling, so that an
169 operator re-entering or deepening an existing well will be subject to the Section's
170 requirements.

171 Section 9 covers all of Santa Fe County and not just the Galisteo Basin because
172 Executive Orders 2008-004 and 2008-038 addressed both Santa Fe County and the
173 Galisteo Basin, the public concern that prompted the executive orders extends to all of
174 Santa Fe County, and the protections offered by the proposed rules would be beneficial
175 throughout the county. Further, Santa Fe County has proposed a county-wide ordinance
176 on drilling, and the OCD's adoption of county-wide rules will be consistent with that
177 approach.

178 Most of the Galisteo Basin is located in Santa Fe County, with small portions of
179 the basin extending into San Miguel County to the east, and Sandoval County to the west.

180 Paragraphs 1 and 2 of Subsection A identify those portions of San Miguel County
181 and Sandoval County that are in the Galisteo Basin, and therefore covered by the rule.

182 Proposed Modifications:

183 The OCD has proposed the following modifications to the first paragraph of
184 Subsection A:

185 **A. Applicability. The operator must obtain division**
186 **approval for an exploration and development plan prior to applying**
187 **for a permit pursuant to 19.15.14 NMAC to drilling, re-entering or**
188 **deepening a well located in Santa Fe county or the Galisteo Basin, and**
189 **must operate the wells covered by the plan in accordance with the**
190 **plan's requirements until the plan is specifically replaced by a special**
191 **pool order. Approval of an exploration and development plan does**
192 **not relieve an operator from its responsibility to obtain any permit**
193 **required pursuant to the Oil and Gas Act for its activities conducted**
194 **under the plan. The operator must renew an approved exploration**
195 **and development plans every five years...**

196
197 The proposed change to the first sentence in Subsection A, highlighted in green,
198 affects whether Section 9 will apply to pending applications. As originally drafted, an
199 operator would have to obtain an approved exploration and development plan prior to

200 drilling, re-entering or deepening a well in Santa Fe County or the Galisteo Basin. The
201 OCD proposed the language highlighted in green to make it clear that even though an
202 operator obtained an approved exploration and development plan, it would still need to
203 go through the permitting process set out in 19.15.14 NMAC prior to drilling, re-entering
204 or deepening a well. However, this proposed change could be interpreted to make the
205 rule inapplicable to any operator that has already applied for an APD but that has not yet
206 started drilling, re-entering or deepening the well. For that reason, the OCD has
207 determined not to request the modification highlighted in green.

208 The OCD has proposed the changes highlighted in red to clarify what an approved
209 exploration and development plan represents and does not represent to an operator. An
210 approved exploration and development plan is just that, an approved plan. Approval of a
211 plan does not equate to approval of permits. Permits for drilling will have to be obtained
212 through the permitting process identified in 19.15.14 NMAC and the additional
213 provisions and conditions of 19.15.39.10 NMAC. Permits required for managing the
214 drilling waste will have to be obtained through the permitting processes identified in
215 19.15.17 NMAC and address the additional conditions of 19.15.39.10 NMAC.
216 Depending on the proposals presented in the exploration and development application
217 and the outcome of the approved plan, the operator may have to pursue a permit for a
218 surface waste management facility pursuant to the permitting requirements of 19.15.36
219 NMAC. OCD would also like to clarify that any exception to a standard or specific
220 requirement identified in 19.15.17 NMAC and 19.15.36 NMAC that is proposed in the
221 exploration and development application and approved in the plan does not grant the
222 operator the opportunity to circumvent the exception, waiver, and administrative

223 protocols, processes, and provisions required for a permit pursuant to 19.15.17 NMAC or
224 19.15.36 NMAC.

225 **Subsection B: Application for Exploration and Development Plan**

226 Subsection B sets out the procedure for filing the application for an exploration
227 and development plan, and the information that must be included in the application.

228 **Filing Requirements**

229 The opening paragraph of Subsection B sets out the filing requirements. The
230 operator must submit two copies of the application with the OCD's Santa Fe office, and
231 submit a copy to the appropriate division district office or offices.

232 One of the two copies filed with the OCD's Santa Fe office will be provided to
233 the state historic preservation office for its review and comment. The OCD's
234 coordination with the state historic preservation office is discussed in more detail below.

235 The other copy filed with the OCD's Santa Fe office will be used internally. The
236 OCD's Environmental Bureau will review the application to determine if it is
237 administratively complete and will review the proposed legal notice for approval. An
238 administratively complete application will go through the public notice process outlined
239 in Subsection H and be forwarded to the Engineering Bureau for hearing or
240 administrative action, as appropriate.

241 The affected district office or offices need a copy of the application so they can
242 review it and determine if they will enter an appearance in the public hearing and take a
243 position on the application. OCD's District 4 includes Santa Fe County and that portion
244 of the Galisteo Basin that extends into San Miguel County. OCD's District 3 includes
245 that portion of the Galisteo Basin that extends into Sandoval County.

246 Application Contents

247 The numbered paragraphs of Subsection B set out what must be included in an
248 application. These requirements described in numbered paragraphs 1 through 8 will be
249 discussed in more detail in the testimony of Glenn von Gonten and Will Jones.

250 To summarize, Subsection B requires the applicant to define the area to be
251 covered by the plan and provide information about that area and for one half mile beyond
252 the boundary of that area. The applicant must provide a topographic map and maps
253 showing: state, federal, private or tribal surface ownership; private lands property
254 boundaries; municipal and county boundaries; relevant surface features and existing
255 water, oil and gas wells. In addition, the rule requires the applicant to provide a
256 hydrogeologic and site report that provides available information and detail on the area's
257 topography, soils, geology, surface hydrology and ground water hydrology.

258 Numbered paragraph 9 requires the operator to provide information relevant to
259 cultural resources, known cemeteries and unmarked human burials located in the area
260 included in the plan or within one half mile of the plan's boundaries. According to the
261 Galisteo Basin Archaeological Sites Protection Act, PL 108-208, the Galisteo Basin and
262 surrounding area is the location of many well preserved prehistoric and historic
263 archaeological resources of Native American and Spanish colonial cultures, including the
264 largest ruins of Pueblo Indian settlements in the United States. PL 108-208 is **OCD Ex.**
265 **23.** Requiring the operator to provide information relevant to cultural resources is
266 necessary to comply with state laws designed to protect those resources. NMSA 1978,
267 Section 18-6-8.1 provides, in relevant part,

268 The head of any state agency or department having direct or indirect
269 jurisdiction over any land or structure modification which may affect a

270 registered cultural property shall afford the state historic preservation
271 officer a reasonable and timely opportunity to participate in planning such
272 undertaking so as to preserve and protect, and to avoid or minimize
273 adverse effects on, registered cultural properties.
274

275 **OCD Exhibit 24** is a copy of NMSA 1978, Section 18-6-8.1. Rules issued by the
276 Cultural Properties Review Committee interpret this statute to apply to the issuance of
277 permits, authorizations or licenses for any land or structural modification on federal, state
278 or private lands that may affect any registered cultural property. **OCD Exhibit 25** is a
279 copy of the rules interpreting NMSA 1978, Section 18-6-8.1. Other statutes provide for
280 penalties for disturbing marked and unmarked burials. **OCD Exhibits 26 and 27** are
281 copies of NMSA 1978, Section 18-6-11.2, "Permit required for excavation of unmarked
282 burials; penalty," and NMSA 1978, Section 30-12-12, "Disturbing a marked burial
283 ground."

284 Subsection B also requires the applicant to describe its plan. It must identify its
285 target zone or zones, identify the location of proposed exploratory wells and related
286 facilities; describe its plan for developing the area if the exploratory wells are productive;
287 and provide its drilling and mud-logging programs, its plan for managing waste, its plan
288 for minimizing pad size and consolidating facilities, its plan for installing monitor wells,
289 and its contingency plan for releases. The OCD will be able to review the plans to
290 determine if they are appropriate for the site conditions, prevent waste, protect correlative
291 rights, and are protective of fresh water, human health and the environment.

292 As discussed in more detail below, Subsection B of Section 10 sets out conditions
293 that will apply to any permit to drill issued to wells subject to the exploration and
294 development plan. The conditions are designed to protect fresh water, human health and
295 the environment in situations where little is known about the geology or hydrology. An

operator may request an exception to any of these conditions as part of its application for an exploration and development plan. The burden is on the operator to provide evidence that operating in accordance with the proposed exception will prevent waste, protect correlative rights, and protect fresh water, human health and the environment.

The applicant must also submit a proposed legal notice, and must certify that the information it is providing in its application is true, accurate and complete to the best of the operator's knowledge, after reasonable inquiry.

The OCD may require additional information in order to determine if the plan will prevent waste, protect correlative rights, and protect fresh water, human health and the environment, and that operation of the plan will comply with division rules and orders.

Proposed Modifications to Subsection B

The OCD has proposed a number of modifications to Subsection B.

Numbered paragraph 5 sets out the items that must be shown on a map of the area included in the plan and a one-half mile buffer zone around that area. The OCD proposes the following changes to those items:

- The map showing state, federal, private or tribal surface ownership should also include for private lands the property boundaries and the name of the property owner at time of application. This will help the OCD determine if the operator has given notice to surface interest owners, as required by Subsection H.
- The OCD proposes to delete the requirement that a map show the location of all registered cultural properties. NMSA 1978, Section 18-6-11.1 requires that any information in the custody of a public official concerning the location of archaeological resources, the preservation of which is in the interest of the state of

319 New Mexico, shall remain confidential unless the dissemination of the
320 information will further the purposes of the Cultural Properties Act. **OCD**
321 **Exhibit 28** is a copy of NMSA 1978, Section 18-6-11.1

322 • The OCD proposes to describe infrastructure as including “but not limited to”
323 certain identified structures, to clarify that the identified structures are examples
324 of infrastructure, but that the list is not exclusive.

325 • The OCD proposes to add “watercourses” and “wellhead protection areas” to the
326 items that must be identified on a map. “Watercourse” is defined in Paragraph 4
327 of Subsection W of 19.15.2.7 NMAC to include a river, creek, arroyo, canyon,
328 draw or wash or other channel having definite banks and bed with visible
329 evidence of the occasional flow of water. “Wellhead protection areas” is defined
330 in Paragraph 8 of Subsection W of 19.15.2.7 NMAC to include the area within
331 200 horizontal feet of a private, domestic fresh water well or spring used by less
332 than five households for domestic or stock watering purposes or within 1000
333 horizontal feet of any other fresh water well or spring. Wellhead protection area
334 does not include the area around a water well drilled after an existing oil or gas
335 waste storage, treatment or disposal site was established. **OCD Exhibit 29** is a
336 copy of Subsection W of 19.15.2.7 NMAC.

337 In numbered paragraph 7, the OCD proposes to correct the spelling of
338 “parameters.”

339 In numbered paragraph 8, the OCD proposes the following change:

340 (8) a written contingency plan for all releases, with no
341 exclusion for de minimus amounts, which shall include

342 (a) best management practices for the prevention
343 and detection of releases ~~procedures for early detection of releases;~~

344
345 The OCD has proposed the recommended change in order to clarify the type of
346 information that is expected to be provided in the contingency plan. A contingency plan
347 should identify the protocols and standards operating practices in order to minimize
348 hazards (such as releases) to fresh water, human health and the environment. Best
349 management practices should address preventive measures such as the installation of
350 secondary containment (liners) for above grade tanks and detection measures such as
351 regularly scheduled visual inspections. Note that this change is shown, and discussed, in
352 the OCD's notice of recommended modifications, filed on November 24, 2008, but the
353 change did not appear in the redline version of the rules attached to that filing.

354 The OCD proposes to modify numbered paragraph 9 as follows, to require the
355 operator to provide information on known cemeteries and unmarked human burials as
356 well as registered cultural properties, in order to comply with the statutes described
357 above:

358 (9) ~~if the area to be include in the proposed exploration and~~
359 ~~development plan includes a registered historic cultural property, the~~
360 ~~information required by 4.16.7.9 NMAC if cultural resources listed in~~
361 ~~or eligible for listing in either the national register of historic places or~~
362 ~~the state register of cultural properties, known cemeteries and~~
363 ~~unmarked human burials are located in the area included in the~~
364 ~~proposed exploration and development plan or within one half mile of~~
365 ~~the area included in the plan, the information in 4.10.7.9 NMAC~~
366 ~~including a description of the effects the proposed operations may~~
367 ~~have on these sites and proposed mitigation measures;~~

368
369 4.10.7.9 NMAC is contained in OCD Ex. 25.

370 The OCD proposes modification of numbered paragraph 10 as follows:

371 (10) any proposed exceptions to the requirements set out in
372 Subsection B of 19.15.39.10 NMAC and evidence that operating in
373 accordance with the proposed exceptions will prevent waste, protect

374 **correlative rights, protect fresh water and protect human health and**
375 **the environment from oilfield waste;**
376

377 The OCD has proposed the recommended changes in order to clarify the original intent of
378 the first version of the proposed rule. The original intent was only to allow operators to
379 propose exception to the specified conditions identified in Subsection B of 19.15.39.10
380 NMAC. The original intent was not to allow operator propose exceptions such as: not
381 having to satisfy the requirements of 19.15.14 NMAC, not submitting a permit
382 application pursuant to 19.15.17 NMAC; not have to provide the GPS coordinates of the
383 location; and not providing any of the additional information required by the operator's
384 exploration and development plan. The omission of "from oilfield waste" is
385 recommended due to the nature and variety of the conditions identified in Subsection B
386 of 19.15.39.10 NMAC and the limitation that it establishes when proposing and assessing
387 an exception request. The OCD is concerned that if the caveat "from oilfield waste"
388 remains, applicants may base their assessment and evidence regarding their exception
389 request to certain conditions identified under Subsection B of 19.15.39.10 NMAC in
390 which the comparison of the impact "from oilfield waste" is not applicable. One such
391 condition would be the requirement for an operator to place a well that requires gas
392 pipeline connection on approved temporary abandonment status while awaiting pipeline
393 connection. This condition prevents waste, as defined by the Oil and Gas Act, and
394 protects correlative rights and would never be impacted or influenced by or from "oilfield
395 waste." If the operator requested an exception to this condition and assessed the
396 exception to prevent waste based upon the impact or influence by or from oilfield waste,
397 the operator could easily demonstrate that the prevention of waste is not impacted or
398 influenced by or from oilfield waste because the operator would not be addressing a

waste of a resource. Other such conditions in which the impact or influence of oilfield waste would not be applicable would include: the requirement to log the well the total depth to surface; the conditions regarding the setting of the casing in order to isolate fresh water zones and aquifers; and the running of cement bond logs after each casing string is cemented and filing the logs.

Subsection C: Amendments to Exploration and Development Plans

Subsection C requires an operator to obtain an approved amendment to its exploration and development plan prior to expanding the area covered by the plan, increasing the number or changing the location of proposed wells or related facilities, or changing the terms of the proposed plan.

To apply, the operator must file an application describing its proposed amendment(s) and update the information required by Subsection B. It will not have to re-submit information that has not changed. However, if the operator has drilled wells under its approved exploration and development plan it is likely that it can provide additional information on geology and ground water hydrology.

The operator also has to provide a proposed legal notice. The proposed amendment will go through the same public notice process as the original application, and the division director has the discretion to set the proposed amendment for hearing.

The filing requirements for an amendment are the same as the filing requirement for the initial application: two copies must be filed with the OCD's Santa Fe office and a copy must be filed with the appropriate district office or offices.

Subsection D: Renewals of Exploration and Development Plans

421 As stated in the initial paragraph of Section 9, an approved exploration and
422 development plan must be renewed every five years. This gives the OCD and the
423 operator an opportunity to review and update the plan to make sure it is protective of
424 fresh water, human health and the environment. The application for renewal is subject to
425 public notice, and the director has the discretion to set the application for public hearing.
426 The operator may combine an application for amendment with an application for
427 renewal.

428 The application for renewal, like the application for an amendment, must update
429 the information required pursuant to Subsection B, and provide a proposed legal notice.

430 **Subsection E: Replacement of an Exploration and Development Plan with a Special**
431 **Pool Order.**

432
433 Section 9 provides extra protections to an area that has seen little oil and gas
434 development, and that has important water resources. Section 9 requires the operator to
435 provide public notice of its activities, and provide the OCD and the public with the best
436 available information on the area so the OCD can make informed decisions on the
437 conditions that may apply to the exploration and development plan in order to protect
438 fresh water, human health and the environment. As exploration and development under
439 the approved plan continues the OCD will gather more and more information about the
440 geology and hydrology of the area. At some point, the OCD may have sufficient
441 information to allow the operator to replace its plan with a special pool order. The pool
442 order could incorporate those conditions the OCD determines are necessary to protect
443 fresh water, human health and the environment. Changes to the special pool order would
444 be made by application under existing OCD procedures. But the operator would no
445 longer have to follow the processes set out in Section 9, or apply for renewal of its order

every five years. If the operator wanted to drill in an area outside the area covered by its former exploration and development plan, however, it would have to apply for a new plan under Section 9.

An operator is not eligible to replace its plan with a special pool order until it has operated wells under its approved plan for at least five years. This will give the OCD five years of operational experience under the plan to review to determine if the conditions imposed under the plan are effective in protecting fresh water, human health and the environment, and to determine what conditions should be placed on any special pool order.

To apply, the operator must file an application updating the information required by Subsection B and describing any conditions it proposes should be included in the special pool order. The operator has to provide a proposed legal notice. The application to replace the plan with a special pool order will go through the same public notice process as the original application, and the division director has the discretion to set the application for hearing.

The filing requirements for an application to replace the plan with a special pool order are the same as the filing requirement for the initial application: two copies must be filed with the OCD's Santa Fe office and a copy must be filed with the appropriate district office or offices.

Subsection F: Legal Notice

Subsection F sets out the requirements for the legal notice that will be used to notice the original application, any renewals or amendments, and any application to replace the plan with a special pool order.

469 The notice must provide basic contact information on the operator, and a legal and
470 common description of the area covered by the plan or proposed plan. The notice must
471 also provide information on what the applicant is seeking.

472 If the application is for approval of an initial exploration and development plan,
473 the notice must summarize the proposed plan, including the number and location of
474 proposed exploratory and development wells and related facilities. If the application is
475 for an amendment, the notice must summarize the existing plan and the proposed
476 amendment. If the application is for a renewal, with no amendment, it only needs to
477 summarize the existing plan. If the application is for replacement, it must summarize the
478 conditions the operator proposes to make part of the special pool order that will replace
479 the plan.

480 The notice must also provide instructions for viewing the complete application on
481 the OCD's website or at the appropriate division district office. It will also provide
482 instructions for filing written public comments on the application.

483 The notice will also provide instructions for being placed on a contact list to
484 receive notice of future applications to amend, renew or replace the exploration and
485 development plan and hearings on those applications.

486 If the application is set for public hearing, the notice will contain the date, time
487 and location of the hearing. All applications for approval of an initial exploration and
488 development plan must be set for public hearing. For clarification proposes, an
489 application for approval is a request for approval from the operator and not a
490 recommendation of approval of the application from OCD. Applications for
491 amendments, renewals and replacements may be set for public hearing at the discretion of

the director. If the director determines to set an application for hearing upon receipt of the application, the operator will be notified and the hearing information will be included in the notice. It is possible that the determination to set an application for public hearing will be made after the division receives public comments on the application. In that case, the operator will have to prepare a second legal notice that includes the hearing information.

Proposed Modifications to Subsection F

The OCD proposes the following modifications to Subsection F:

F. Legal Notice. Legal notice of an application for a proposed exploration and development plan or an application to amend, renew or replace an existing exploration and development plan shall include

...

(8) instructions for filing written public comments on the application with the division clerk in ~~with the division's Santa Fe office;~~

(9) instructions for requesting a public hearing on an application that has not been set for public hearing;

~~(9)(10)~~ if the application ~~will be~~ has been set for hearing, the date, time and location of the public hearing; and

~~(10)(11)~~ instructions for being placed on a division contact list to receive notice of future applications and hearing notices related to the ~~to amend, renew or replace the exploration and development plan.~~

The proposed change to numbered paragraph 8 clarifies that public comments are to be filed with the division clerk. New numbered paragraph 9 provides that the legal notice will include instructions on how to request a public hearing, if the application has not yet been set for hearing. Numbered paragraph 10 clarifies that if the application has been set for public hearing, the legal notice will provide the date, time and location of the hearing. Numbered paragraph 11 clarifies that the OCD will keep the contact list, and

that the list will be used to provide notice of future applications and hearings related to the plan.

Subsection G: Administrative Completeness

The OCD will review each application for administrative completeness. An application is administratively complete if it contains the information required by Section 9. A determination that an application is administratively complete is not a determination that the information provided is accurate or adequate. The OCD must notify the operator of its determination on administrative completeness within 60 days of receipt of the application.

If the OCD determines that the application is not administratively complete, its notice to the operator will identify the deficiencies. The operator may re-submit its application to correct deficiencies, correct errors or add information. The re-submittal triggers a new 30-day period for the OCD to make a decision on administrative completeness.

If the OCD determines that the application is administratively complete, it will provide the operator with an approved legal notice so the operator can proceed with public notice. The OCD will also provide the operator with the current contact list of individuals and entities requesting notice of applications related to the plan. The OCD will distribute notice of the application with its next division or commission docket, and post the notice and application on its website.

Proposed Modifications to Subsection G

The OCD proposes to add a new requirement under numbered paragraph 2: once the OCD has determined that an application is administratively complete, the OCD must

545 provide a copy of the complete application to the state historic preservation office with a
546 request for review and comment. This will help satisfy the requirement of NMSA 1978,
547 Section 18-6-8.1 that "the head of any state agency or department having direct or
548 indirect jurisdiction over any land or structure modification which may affect a registered
549 cultural property shall afford the state historic preservation officer a reasonable and
550 timely opportunity to participate in planning such undertaking so as to preserve and
551 protect, and to avoid or minimize adverse effects on, registered cultural properties. In
552 addition, Attorney General Opinion No. 87-64 states that the historic preservation officer
553 may participate in a state agency's deliberations when the agency is considering the
554 issuance of a license that would affect a registered cultural property even if that registered
555 cultural property is on private land. **OCD Ex. 30** is a copy of Attorney General Opinion
556 No. 87-64.

557 **Subsection H: Public Notice**

558 Once the operator receives the OCD's written determination that the application is
559 administratively complete, and the OCD's approved legal notice, the operator has 20 days
560 to issue public notice.

561 The operator must publish the notice in a newspaper of general circulation in the
562 affected county or counties.

563 The operator must mail or e-mail notice to the individuals and entities on the
564 OCD's contact list for the exploration and development plan.

565 The operator must mail the notice by certified mail, return receipt requested, to
566 the individuals and entities listed in Paragraph 2 of Subsection H. Holders of mineral
567 interests in the area included in the plan or within one half mile of the border of the plan

must receive notice if they have not already agreed to participate in the plan. This ensures that affected interest owners, and potentially affected interest owners, receive notice. Similarly, surface interest owners in the area included in the plan or within one half mile of the border of the plan receive notice. Subsection H also requires the operator to notify all tribes, pueblos and nations in New Mexico, affected county and municipal governments, the state historic preservation officer, and the game and fish department. Notice to the tribes, pueblos and nations is consistent with the intent of Executive Order No. 2005-003, and State of New Mexico Executive Department Policy Regarding Tribal Consultation on the Protection of Sacred Places and Repatriation. Those documents are **OCD Exs. 31 and 32.**

Proposed Modifications to Subsection H

The OCD proposes two modifications to Subsection H.

First, the OCD proposes to require the operator to mail notice to the entities listed in numbered paragraph 2 by certified mail, return receipt requested, rather than by first class mail. Certified mail, return receipt requested, will help the operator show that it has provided the required notice.

Second, the OCD proposes to clarify that the notice should be sent to the leader of each tribe, pueblo or nation in New Mexico, to ensure that the notice reaches the appropriate individual. This change was suggested by the Indian Affairs Department, which can provide the necessary contact information to operators.

Subsection I: Public Hearings

Subsection I requires all applications for approval of an exploration and development plan to be set for public hearing; applications for amendments, renewals or replacement may be set for public hearing.

Paragraph 3 of Subsection I provides that if the OCD acts administratively to deny an application to amend, renew or replace a plan, or grants an application administratively with conditions, the matter will be set for public hearing at the operator's request. This provides review of the OCD's decision.

Paragraph 4 sets out the notice process if the OCD sets an application for amendment, renewal or replacement for hearing. The operator must submit a proposed notice of hearing to the OCD, and then provide the same type of public notice as is required for an initial application. The only difference is that the notice must be sent 30 days before the hearing date, instead of 60 days before the hearing, as is required for initial applications.

Proposed Modifications to Subsection I

The OCD proposes a change to numbered paragraph 1 to clarify that the hearing on an application for approval of an exploration and development plan must be held no sooner than 60 days after the operator serves public notice. The 60-day period is not triggered by actions taken by the OCD, such as the posting of notice on the OCD website.

The OCD also proposes changes to numbered paragraph 4 to make clear that the hearing notices on amendments, renewals and replacements must be published or mailed at least 30 days prior to the hearing. As currently drafted, the provision does not set a time for notifying individuals and entities on the contact list. In addition, the OCD proposes a change that will require notice by certified mail, return receipt requested.

612 **Subsection J: Plan Approvals, Conditions, Denials, Amendments, Revocations,**
613 **Renewals and Transfers**

614
615 Subsection J addresses the OCD's actions related to exploration and development
616 plans.

617 The OCD may approve a plan for a period not to exceed five years, and may issue
618 renewals for additional periods not to exceed five years.

619 The OCD may approve an initial plan, or approve an application to amend, renew
620 or replace an existing plan only if the application provides the information required by
621 Section 9, the operator has provided the notice required by Section 9, the operator is in
622 compliance with Subsection A of 19.15.5.9 NMAC (formerly 19.15.1.40 NMAC, or
623 "Rule 40"), and approval of the application will prevent waste, protect correlative rights,
624 and protect fresh water, human health and the environment. If the application fails on
625 any of these points, it may be approved with conditions if the condition could address or
626 satisfy the concern or it may be denied.

627 Requiring compliance with Subsection A of 19.15.5.9 NMAC means that the
628 operator must be in compliance with financial assurance requirements, have no more than
629 a limited number of wells out of compliance with the inactive well rule (19.15.25.8
630 NMAC), have no unpaid penalties, and not be in violation of an order requiring
631 corrective action.

632 The prevention of waste and the protection of correlative rights are the OCD's
633 statutory mandates under NMSA 1978, Section 70-2-11(A). **OCD Ex. 33.** The
634 protection of fresh water, and the protection of human health and the environment, as
635 well as the prevention of waste and the protection of correlative rights, are the OCD's

statutory duties under its enumeration of powers in NMSA 1978, Section 70-2-12. **OCD**
Ex. 34.

Paragraphs (3) and (4) of Subsection J allow the OCD to attach conditions to an exploration and development plan, or a special pool order that replaces an exploration and development plan. This allows the OCD to customize the plan or order to address the issues.

Paragraph (5) of Subsection J addresses revocation of an exploration and development plan. If the operator fails to comply with the terms of the plan, or is out of compliance with Subsection A of 19.15.5.9 NMAC, the OCD may revoke its approval of the plan and require the wells covered by the plan to be shut-in. Revocation requires notice and hearing.

Paragraph (6) of Subsection J addresses expiration of an exploration and development plan. If a plan expires, and the operator has not filed an application for renewal, the operator must shut-in the wells covered by the plan. If the operator filed an application to renew the plan prior to its expiration, the operator may continue to operate the wells covered by the plan until a final order is issued on its application for renewal.

Paragraph (7) of Subsection J provides that a plan, once approved, remains in effect until it is revoked, amended or replaced by a special pool order pursuant to Section 9.

Paragraph (8) provides that any operator operating wells subject to an exploration and development plan or special pool order is subject to the terms of that plan or order.

Proposed Modifications to Subsection J

658 The OCD proposes to delete “from oilfield waste” in numbered paragraph 3, to
659 make the description of the standard of review by the OCD consistent throughout the
660 Section 9.

661 **DETAILED REVIEW OF 19.15.39.10 NMAC (“SECTION 10”)**

662 Section 10 sets out special requirements for applications for permits to drill,
663 deepen or re-enter a well that is subject to an exploration and development plan.

664 **Subsection A**

665 Subsection A of Section 10 requires an operator applying for a permit to drill, re-
666 enter or deepen a well subject to an exploration and development plan to provide
667 additional information when filing its APD.

668 The operator must attach its Part 17 permit application, which will provide the
669 OCD with information on the operator’s plans for disposal of drilling wastes. Under
670 current OCD rules, a Part 17 permit application and an application for APD may be filed
671 separately.

672 The operator must provide global positioning system (GPS) coordinates to the
673 sixth decimal point to identify the location of a well to be drilled in an un-surveyed area.
674 Santa Fe County includes land grant areas that have not been surveyed. Providing GPS
675 coordinates will allow the OCD to review the drilling location.

676 The operator must also provide any additional information required by its
677 exploration and development plan. This allows the OCD the opportunity to determine if
678 any specific conditions should be applied or incorporated into the appropriate and
679 applicable permits.

680 **Proposed Modifications to Subsection A**

The OCD proposes the following modifications to Subsection A of Section 10:

A. An application for permit to drill, re-enter or deepen a well that requires an exploration and development plan pursuant to 19.15.39.9 NMAC must include the following in addition to meeting the requirements set out in 19.15.14.10 NMAC:

The OCD has proposed the recommended change in order to clarify and inform applicants that they must comply with all of the provisions of 19.15.14 NMAC, which includes the requirement of a permit and permit application process. Section 10 of 19.15.14 NMAC only addresses provisions regarding the approval or denial of a permit to drill, deepen or plug back.

(1) a permit application pursuant to 19.15.17 NMAC ~~a form C-144 for the closed-loop system, or for the pit if the operator's approved exploration and development plan allows pits;~~

The OCD has proposed the recommended change in order to clarify OCD original intent, which is that the applicant must submit a complete permit application and not just the form. A permit application pursuant to 19.15.17 NMAC includes the Form C-144 as well as additional documents such as an operational and maintenance plan, a design and construction plan, a closure plan, demonstrations of compliance to the applicable siting requirements and possibly a hydrogeologic report or data, if applicable. The Form C-144 is not a permit application.

Subsection B

Subsection B sets out conditions that apply to any APD issued for wells covered by an exploration and development plan unless the operator has requested and received an exception. These conditions are "default" conditions; the burden is on the operator to request an exception and prove that granting the exception will prevent waste, protect correlative rights and protect fresh water, human health and the environment.

709 Paragraph (1) of Subsection B requires the operator to drill using a closed-loop
710 system. A closed-loop system uses above-ground steel tanks for managing drilling or
711 workover fluids and does not use below-grade tanks or pits. The rule endorses the use of
712 closed-loop systems to reduce the impact of surface disturbance, to promote the recycling
713 of drilling fluids that results in the reduction of clean water use and allows for the reuse
714 of such fluids at other drilling sites, and to reduce the volume solids and semi-solid drill
715 cuttings and mud due to fluid recycling effort which reduces the risk of a potential release
716 and results in reduced disposal costs for the operator.

717 Paragraph (2) of Subsection B requires that the operator not use any of the on-site
718 closure methods set out in Subsection F of 19.15.17.13 NMAC. **OCD Ex. 35.** There are
719 two on-site closure methods identified in Subsection F of 19.15.17.13 NMAC: in-place
720 burial and on-site trench burial. Each method has its own specific siting criteria, burial
721 standards and protocols. The rule specifies this condition in order to establish an extra
722 level of protection due to the absence of available information and data pertaining to the
723 region and uncertainty of the environmental issues. As more information is gathered
724 through the exploration and development plan process and operators are able to switch
725 over to special pool orders, conditions such as this may no longer be applicable.

726 The conditions set out in Paragraphs (3) through (8) will be addressed in the
727 testimony of Will Jones.

728 Proposed Modifications to Subsection B

729 The OCD proposes several modifications to Subsection B.

730 **B. Unless otherwise specified in an approved exploration and**
731 **development plan, an application for permit to drill, re-enter or**
732 **deepen a well that requires an exploration and development plan shall**
733 **be subject to the following conditions:**

734 (1) the operator shall drill the well using a closed loop
735 system that uses above ground steel tanks for the management of
736 drilling or workover fluids without using below-grade tanks or pits;
737

738 The OCD proposes to add "re-enter" to Subsection B to clarify that the listed
739 conditions will apply to re-entry operations in addition to drilling and deepening
740 operations.

741 The OCD has proposed the additional language in numbered paragraph 1 to
742 clarify and inform the applicant that a closed-loop system identified within this provision
743 is a closed-loop system as defined in 19.15.17 NMAC.

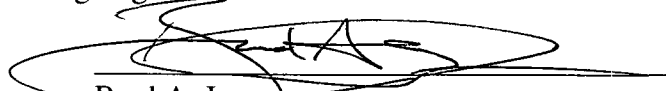
744 (2) the operator shall not use the on-site closure methods
745 identified in Subsection F of 19.15.17.13 NMAC ~~dispose of waste on~~
746 site;
747

748 The OCD has proposed the recommended change in order to clarify OCD original
749 intent, which is to address the proper handling and disposal of waste generated from the
750 drilling, re-entry or well deepening activities. Subsection F of 19.15.17.13 NMAC
751 identifies the types of activities on-site closure applies to and conditions in which such
752 waste can be considered for burial on-site. By providing the appropriate reference, it will
753 also prevent the misinterpretation of the original. The original language could be
754 interpreted in a manner that would prevent the permitting of Class II disposal wells for
755 produced water or the permitting of commercial and centralized surface waste
756 management facilities. OCD's intent is not to limit the ability of operators to obtain such
757 permits, especially since there is an absence of a waste management infrastructure within
758 the area surrounding Santa Fe County and the Galisteo Basin region.

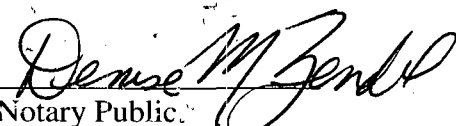
759 (5) the operator shall isolate all fresh water zones and
760 aquifers throughout their vertical extent with at least two cemented
761 casing strings.
762

763 The OCD proposes this change to broaden the protection of fresh water. Aquifer
764 is defined in Subsection A of 19.15.2.7 NMAC as "a geological formation, group of
765 formations or a part of a formation that is capable of yielding a significant amount of
766 water to a well or spring." **OCD Ex. 36.** "Zone" is a broader term that will include any
767 area in which fresh water is located, without regard to the amount of fresh water.

768 I, Brad A. Jones, swear that the foregoing is true and correct.

769
770
771 
772 Brad A. Jones
773 Environmental Engineer
774 Oil Conservation Division
775

776
777 Subscribed and sworn to before me this 3rd day of December 2008, by Brad A. Jones.
778

779
780 
781 Notary Public.
782

783 My commission expires:

784
785 1-09-2012
786