

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

WHIPTAIL MIDSTREAM LLC

**Application ID No. 61609
Incident ID No. nAPP2125652492**

**WHIPTAIL MIDSTREAM LLC'S APPLICATION FOR A
HEARING AND REQUEST TO STAY THE HEARING DATE
TO ALLOW FOR FURTHER DISCUSSION**

Pursuant to 19.15.29.12(B)(5) NMAC and 19.15.29.12(E)(2), Whiptail Midstream LLC, (“Whiptail”), OGRID No. 373240, submits to the New Mexico Oil Conservation Division (“OCD” or “Division”) its Application for a Hearing and Request to Stay the Hearing Date to Allow for Further Discussion (“Application”).

I. Introduction:

1. While Whiptail is submitting this Application to preserve its right to a hearing prior to the deadline under 19.15.29.12(B)(5) NMAC and 19.15.29.12(E)(2), Whiptail, as part of the Application, is requesting a stay of the hearing date to facilitate discussions to reach a satisfactory resolution in the above-referenced matters in lieu of the hearing to the extent available.

II. Factual and Procedural Background:

2. Whiptail discovered a release of produced water on September 10, 2021, at the MC COM #160, a mistream pad site located in Section 7, Township 24 North, Range 7 West, Rio Arriba County, New Mexico. The release consisted of a volume of approximately 210 bbls of produced water released into the lined containment area, classifying it as a major release.

3. On the same day as the discovery, September 10, 2021, Whiptail reported the release to the Division both by phone call to Cory Smith, OCD Environmental Specialist

Supervisor, and by Form C-141 dated September 10, 2021, received by the OCD on September 13, 2021. Application ID No. 48186 was initially assigned to the incident.

4. Whiptail promptly removed all the standing liquids, consisting of approximately 210 bbls, via vac truck and pulled back the liner to examine certain places of the liner believed to be compromised. A third party, WSP USA Inc. (“WSP”), was hired to conduct remediation of the release. The spill was contained within “areas reasonably needed for production operations” and did not extend beyond the operational site of the established pad. *See* 19.15.29.13B and D.

5. Upon completion of remediation, including sampling and testing of designated compounds, which measured below the concentration levels in Table I of 19.15.29.12 NMAC, Whiptail submitted an updated Form C-141 dated November 12, 2021, detailing the remediation report and requesting closure. This Form C-141 was assigned Action ID No. 61609 and the closure request was denied, based on the following: (1) Sample depth not recorded; and (2) Chlorides &/or Total Petroleum Hydrocarbons not fully delineated based on closure standards established for 0 to 4 feet below grade, with references to 19.15.29.12C(2) NMAC and 19.15.29.13D NMAC.

III. Whiptail’s Review of 19.15.29.12C(3) NMAC, 19.15.29.13D NMAC, and Related Rules:

6. After receipt of the OCD’s denial of its closure request, Whiptail reviewed the relevant Rules and respectfully requests opportunity for a reconsideration of the denial prior to the hearing requested herein. Rule 19.15.29.12C(2) states that “[t]he responsible party shall restore the impacted surface area of a release occurring on a developed well pad, central tank battery, drilling site, compressor site or other exploration, development, production, or storage sites to meet the standards of Table I of 19.15.29.12 NMAC or other applicable remediation standards and restore and reclaim the area pursuant to 19.15.29.13 NMAC.” It should be noted that Whiptail has

satisfied the requirement for remediation in this Rule by providing samples with concentrations below the measurements in Table I.

7. Furthermore, the Rule references the restoration and reclamation provisions under Rule 19.15.29.13. The subject spill within the containment area, and any small amounts that leaked from the containment area, all remained within the operational site of the established pad, as confirmed by the descriptions and photos included in the Form C-141 dated November 12, 2021. Rule 19.15.29.13B states: “Areas reasonably needed for production operations or for subsequent drilling must be compacted, covered, paved or otherwise stabilized and maintained in such a way as to minimize dust and erosion to the extent practical.” Accordingly, Whiptail has stabilized and maintained the operational site to minimize dust and erosion and will continue to maintain the prescribed area in such a manner.

8. Rule 19.15.29.13D states: “The responsible party shall reclaim all areas disturbed by the remediation and closure, except areas reasonably needed for production operations, as early and as nearly as practical to their original condition or their final land use and maintain those areas to control dust and minimize erosion to the extent practical.” Consequently, it should be noted that the “areas reasonably needed for production operations,” which are the areas to which Whiptail’s spill was limited, are excepted, and excluded from the restoration, reclamation, and re-vegetation requirements under Rule 19.15.29.13. The Rule is precisely crafted to reclaim and promote vegetation in areas outside the active operational areas if spills or contamination should extend to such areas, which is not applicable to the facts and circumstances of the present case. In consideration of the Rules, Whiptail respectfully requests that the Division review the remediation and closure plans submitted, giving additional consideration to the regulatory carve-out for the “areas reasonably needed for production.”

9. Finally, to address the OCD's concern that sample depths were not recorded, Whiptail followed the closure requirements of Rule 19.15.29.12D(1), which requires composite samples from the walls and base and individual grab samples from any wet or discolored area and described the method it used in executing its remediation plan. As described in its WSP report, Whiptail immediately removed the top two to four inches of impacted material to identify any remaining wet or discolored area. WSP then collected one composite sample from every approximately 200 sq. ft. of the impacted area, totaling 33 soil samples that covered the full extent, and potential extent, of the spill. There does not appear to be specific depth requirements stated in Rule 19.15.29.12D, but in good faith Whiptail collected samples below the removed impacted area corresponding to its identification of the full extent of the spill, which was the basis of its "composite and grab sample plan" pursuant to Rule 19.15.29.12D(1)(b).

IV. Request for a Hearing:

10. Wherefore, Whiptail requests a public hearing before the Division pursuant to 19.15.29.12(B)(5) NMAC and 19.15.29.12(E)(2) NMAC in order to address its Remediation and Closure Plan included in Form C-141, dated November 12, 2021, but denied by the OCD March 23, 2022. As such, Whiptail requests that this Application be set for hearing on June 2, 2022, or other date the OCD deems appropriate, subject to notice requirements and other applicable provisions required by law pursuant to 19.15.4 NMAC.

V. Request for a Stay of the Hearing Date:

11. Whiptail's request for a hearing and hearing date is made to preserve its right to a hearing under the prescribed deadline for its application. Upon the Division granting a hearing and hearing date, Whiptail respectfully requests that the Division stay the hearing date in order to afford Whiptail the opportunity to enter into good-faith discussions with the OCD for consideration

of its Remediation and Closure Plans as submitted and to determine the best approach for resolving the issues impeding their approval to the extent available outside of a hearing.

Respectfully Submitted,

ABADIE & SCHILL, PC

/s/ Darin C. Savage

Darin C. Savage

William E. Zimsky
Luke Kittinger
Andrew D. Schill
214 McKenzie Street
Santa Fe, New Mexico 87501
Telephone: 970.385.4401
Facsimile: 970.385.4901
darin@abadieschill.com
bill@abadieschill.com
luke@abadieschill.com
andrew@abadieschill.com

Attorneys for Whiptail Midstream LLC

Application of Whiptail Midstream LLC, (“Midstream”) for a Hearing on Midstream’s Remediation and Closure Plans and Stay of Hearing Date, Application ID No. 61609, Incident ID No. nAPP2125652492. Applicant seeks a hearing to address matters of approval of Applicant’s Remediation and Closure Plans for the MC COM #160, a pad site located in Section 7, Township 24 North, Range 7 West, Rio Arriba County, New Mexico, as described in Application ID No. 61609, Incident ID No. nAPP2125652492, and seeks a stay of the hearing date for said hearing. MC COM #160 is located approximately 25 miles southeast of Bloomfield, New Mexico.