BEFORE THE OIL CONSERVATION DIVISION

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

PETITION FOR HEARING BEFORE
A DIVISION EXAMINER REGARDING
DIRECTOR'S DECISION ON ABATEMENT
OF EAST BLINEBRY DRINKARD UNIT **CASE NO. 26126**

APACHE CORPORATION'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROPOSED FINDINGS OF FACT

1. On or around April 1, 1999, Apache Corporation ("Apache") became the operator of East Blinebry Drinkard Unit #037 Well, API 30-025-06556 ("EBDU #037). Construction of that well occurred around 1963. YouTube 23:59; TR 192:6605; OCD Exhibit 1 (Spud Date shown as 8/17/1963).

2. Oil and gas operations occurred in the vicinity of the EBDU #037 well since at least the 1950s. Aerial photography shows the existence of a former disposal pit in 1955 and 1968. Testimony of John Grams, YouTube 2:50:19; TR. 179:6153-63; Apache Exhibit B-2 at 15.

3. Prior to Apache becoming operator of the EBDU #037 Well, Conoco was the operator. Apache took ownership of the lease and subject area around November 1, 1998. YouTube 23:59; TR 192:6605; OCD Exhibit 1.

4. Apache divested its interests effective December 31, 2024 to Hilcorp and thereafter had no legal interests, ownership or operational responsibility or access. YouTube 23:59; TR 192:6604-31.

5. Hilcorp became the operator of record on or about July 10, 2025. Apache Exhibit A-3.

6. In July 2019, Apache reported the release of produced water located at the East Blinebry Drinkard Unit #037 (“the Site”), arising from oil and gas operations by Apache conducted pursuant to permit API 30-025-06556. Apache Exhibit B-2 at 6 and A-5 at 1.

7. In the initial disclosure, Apache noted that it undertook all actions required to stop the release, contain the release, and secure and remediate the site as required pursuant to 19.15.29.8 (C) NMAC. Apache Exhibit A-5 at p.2, ¶4.

8. In December 2019, the Division approved Apache’s work plan for the Site, which included the installation of five (5) monitoring wells. Apache Exhibit A-5 at . 2, ¶5.

9. Apache submitted a closure report to the Division on February 9, 2021, which was for soil remediation only. Exhibit A-4. Apache noted that groundwater monitoring was ongoing. *Id*.

10. Based on subsequent soil samples from Apache showing increased chloride exceedances, in August 2021 the Division approved modification of Apache’s remediation plan, including the installation of seven (7) additional monitoring wells. Apache Exhibit A-5 at p. 4, ¶17.

11. From approximately July 2022 through May 2024 the Division and Apache proposed new scope of work plans. Apache continued to conduct and submit groundwater monitoring reports. Apache Ex. A-5 at p. 4, ¶17; YouTube 2:31:09; TR 173:5942-5961.

12. Apache submitted a Groundwater Delineation Work Plan in September 2024; however this was rejected by the Division due to not addressing the Division’s concerns. Apache Exhibit A-5 at p.4, ¶17.

13. Apache appealed the Division’s determination, resulting in a hearing before the Commission in February 2025. YouTube 1:17:40; TR 222:7641; *see also* Case No.

24912. The Commission determined that the Division could not identify the source of the release or releases or fully delineate the contamination on the Site, and Apache could not at that time explain the source of contamination causing exceedances of chloride and TDS. *See* Apache Exhibits A-4 and A-5, p. 3, ¶13; OCD Exhibit B

14. The Commission concluded that the source or sources of groundwater contamination could not be ascertained at that time, and that the information currently available did not allow a full characterization of the contamination at the Site. Apache Exhibit A-5, p. 4, ¶18. The Commission ordered that additional groundwater monitoring wells be installed, as well as sampling and analysis be conducted in the water and soil. Apache Exhibit A-5, pp. 4-5 and Ex. A thereto.

15. The Commission further stated that it did not consider whether further abatement and remediation may be required as a condition of the Permit, or whether the release would be considered major or minor as defined in 19.15.29 NMAC. Apache Exhibit A-5 at p. 5, ¶24.

16. On April 17, 2025, Apache and the Division submitted a Joint Motion to Amend the Commission's Order, with a revised proposed plan to drill a total of fifteen (15) monitoring wells and two (2) soil borings for further delineation and to ascertain the contents of the soils identified by the Division as areas of concern. Apache Exhibit A-6.

17. The Commission approved the Joint Motion on June 5, 2025, and amended the final Order. Apache Exhibit A-6.

18. Apache implemented the requirements of the Commission's Order, as amended, by constructing the required monitoring wells, conducting sampling and arranging for

laboratory analysis, and submitting reports to the Division. Apache Exhibit B-2 at pp. 6-7; OCD Exhibit F.

19. On or around July 10, 2025, Hilcorp Energy Company ("Hilcorp") became the operator of the Site. *See* Apache Exhibit A-3. The Form notes that Hilcorp agreed to be responsible for reporting and remediating releases pursuant to 19.15.29 NMAC, including releases that occurred prior to becoming operator of record. *Id*. ¶ 6.

20. In November 2025, Apache submitted a Field Activity Report for the Site. OCD Exhibit F.

21. The Field Activity Report concluded that "The presence of higher TDS/chloride concentrations away from the release area may indicate plume migration away from the source area over time; however, the groundwater gradient and the hydraulic conductivity associated with the aquifer formation type do not fully support this presumption. Thus, the occurrence of higher DS/chloride concentrations in the center of the Site compared to the source area implies the occurrence of other releases from historical operations." *Id.* at p. 23.

22. On March 12, 2026, the Oil Conservation Division ("OCD") issued a letter to Apache stating that groundwater had been impacted by Oil & Gas activity in excess of the standards outlined in 19.15.30 NMAC and that Apache must submit a complete Stage 1 Abatement Plan proposal to the OCD. Apache Exhibit A-1; OCD Exhibit A.

23. On March 31, 2026, Apache submitted a letter in response to OCD's determination, outlining the reasons Apache cannot be required to submit an abatement plan under the applicable regulations. *See* Apache Exhibit A-2, Apache Response Letter.

24. Apache filed its Petition and Application for Hearing on April 10, 2026.

25. Apache gave notice of its application to the Division, the current owner and operator Hilcorp, and the owner of the surface estate. Apache Exhibit D-1.

26. The Division gave notice that Apache's application was set for hearing on June 4, 2026 by its notice of the docket to its email ListServ on May 22, 2026.

27. This matter was heard on June 4, 2026 before the Division Hearing Examiners.

28. Apache and the Division appeared at the hearing and presented evidence consisting of live testimony and written exhibits. *See generally* Transcript of Hearing.

29. Apache presented two witnesses as identified in its Pre-Hearing Statement, John Grams and Barrett Bole. YouTube 1:59:57; TR 159:5460:5475; Apache Pre-Hearing Statement dated May 28, 2026.

30. Apache presented its Exhibits A-1 to A-9, B-1 and B-2, C-1 and D-1, which were admitted into evidence. YouTube 2:31:09; TR 170:5859-60.

31. The Division presented two witnesses as identified in its Pre-Hearing Statement, Rosa Romero and Brittany Hall. YouTube 1:59:57; TR 161:5533:5537; OCD Pre-Hearing Statement dated May 28, 2026.

32. The Division presented Exhibits A-F, which were admitted into evidence. YouTube 2:31:09; TR 171:5877.

33. It is undisputed that groundwater contamination above the allowable limits exists within the area that has been investigated by Apache. YouTube 1:04:15; TR 215:7406-26; *see generally* OCD Exhibit F and testimony of Ms. Hall on behalf of the Division.

34. Mr. Grams testified on behalf of Apache and was qualified as an expert in geology, hydrology and groundwater contaminant transport. YouTube 2:31:09; TR 172:1915-5921.

35. Mr. Grams was originally engaged in July 2024 to help Apache work with OCD to reach agreement on further investigations. YouTube 2:31:09; TR 172:5922-25.

36. Following the hearing before the Commission, Mr. Grams prepared a work plan describing the installation of wells and sampling for groundwater monitoring. The additional well installations, soil sampling, groundwater sampling and lab analysis was done under his direction. YouTube 2:31:09; TR 172:5937 to TR173:5962.

37. Mr. Grams prepared a written expert report for the hearing in which he presented conclusions as to why the 2019 produced water release is not the source of the groundwater plume identified at the Site and presented supporting data and scientific analysis. Apache Exhibit B-2; YouTube 2:31:09;TR 173-180.

38. Mr. Grams' expert report was based upon the additional investigation conducted after, and in accordance with, the Commission's Order. YouTube 2:31:09; TR 173:5960-61.

39. To prepare his report, Mr. Grams reviewed the technical information collected on the project in terms of water levels, groundwater samples, and soil data. He also reviewed peer-reviewed technical papers and publications and collectively used all of that to prepare the expert report and on which his opinions are based. YouTube 2:31:09; TR 173:5967-72.

40. Mr. Grams testified at the hearing to his conclusion that the pipeline leak reported by Apache in 2019 can be ruled out as the source of the groundwater plume and to six separate lines of evidence supporting his conclusion. YouTube 2:31:09; Tr: 173:5974 to 174:5981.

41. First, Mr. Grams testified that the July 2019 produced water release is not the source of the groundwater plume identified at the site based on flow direction because the highest

chloride and total dissolved solids concentrations are not positioned along the expected downgradient flow path from the release. YouTube 2:31:09; TR 174:5984 to 175-6039; see Apache Exhibit B-2 at p. 11-13.

42. Mr. Grahams testified that, looking at plume geometry, the groundwater plume is more consistent with historical operational practices than with the July 2019 release and identified evidence of at least one historical disposal pit that predates Apache's operations as a potential source of the observed groundwater impacts. YouTube 2:31:09; TR. 174: 5979-5988 ("In reviewing all the information…the 2019 [release] cannot be the source of the plume we observe in the groundwater at the site."); YouTube 2:50:19; TR. 175:6030-6034 ("the monitoring wells closest to the release have consistently exhibits relatively low chloride and TDS, while substantially higher concentrations are found in areas removed from the release. And it is my opinion that this pattern is not consistent with the plume migrating from a single release at the release location."). Apache Exhibit B-2 at pp. 11-13.

43. Mr. Grams also testified regarding a statistical analysis of chloride trends in the wells based on a generally accepted Mann-Kendall analysis that showed that the information is not consistent with what you would expect for a plume migrating from the release location to the area of the highest concentrations. YouTube 2:50:19; TR. 175:6040 to TR 176:6054; Apache Exhibit B-2 at p. 14.

44. Next, Mr. Grams testified regarding his analysis of groundwater transport that preclude the 2019 release as the source of the plume because, based on calculated groundwater flow velocities, the conditions observed in the groundwater plume cannot be explained by groundwater transport from the 2019 release. Consequently, there just hasn't been

enough time for migration from the 2019 release to the plume to occur. YouTube 2:50:19; TR 176: 6055-6078; See Apache Exhibit B-2 at p 14.

45. The next line of evidence is based on analysis of soil data from the time of the release demonstrating that the 2019 release did not create a sustained source of contamination to groundwater chloride concentrations. YouTube 2:50:19; TR 176:6079 to 177:6111; See Apache Exhibit B-2 at pp. 14-15.

46. The final line of evidence is based on an estimate of mass at the source area and mass in the groundwater showing that mass balance confirms that the 2019 release cannot account for the magnitude of groundwater impacts. YouTube 2:50:19; TR 177:6113 to 178:6134; see Apache Exhibit B-2 at pp. 15-16.

47. Mr. Grams testified that considering all of the lines of evidence, including plume geometry, soil chloride, flow direction, statistics, travel time and mass balance combined with a longer history, the 2019 is not the source of the groundwater plume. YouTube 2:50:19; TR178:6135-6140.

48. Mr. Grams also testified and addressed in his expert report that, based on aerial photography, there is at least one other potential source of the groundwater plume, identified as disposal pits operated at least from the period of 1955 to 1968. YouTube 2:50:19; TR 179:6153-6163; see Apache Exhibits B-2 at p. 15.

49. Mr. Barrett testified that the aerial photographs were obtained in April 2025. YouTube 45:47; TR 207:7127-7137.

50. Mr. Grams testified that, based on his expert opinions, he can rule out the 2019 release as the source of the larger area of groundwater contamination. YouTube 8:45; TR 189:6513-6515.

51. He further testified that there was insufficient information to draw that conclusion at the time of the hearing before the Commission. YouTube 8:45; TR 189:6516-6519.

52. Ms. Romero testified on behalf of the Division as the Environmental Bureau Chief for OCD. YouTube 53:06; TR 209:7190.

53. Ms. Romero testified that Part 29 and Part 30 are treated for the most part as individual rules, which Part 29 looking at primarily soil remediations, and Part 30 definitions are based on water quality standards. YouTube 56:56; TR 211:7274-7284.

54. She further testified that the Division is requiring a stage one abatement plan for further investigation and that typically a stage one and stage two plan, the latter addressing remediation of the site, often come in together. YouTube 58:36; TR 212:7293-7321. However, the March 12 letter was "purposely vague" in that regard. YouTube 1:10:08; TR 218:7507-20.

55. Ms. Romero testified that Part 2 and Part 29 have different definitions of "responsible person" and "responsible party," but asserted that there's nothing in Part 30 that says the Division cannot use a Part 29 definition. Consequently, she asserted that a "responsible person" or "responsible party" can either be the person causing the release or the person controlling the location of the release. YouTube 1:01:22; TR 213:7351 to 214:7365.

56. Ms. Romero further testified that it is "inappropriate" to allow an operator to "divest" its interest in order to remove them from an obligation, that it is appropriate to require Apache to conduct abatement due the Commission's Order, and that Apache was the operator of record for the entirety of the area around the EBDU 37 site where contamination is found. YouTube 1:05:40; TR 216:7434-7445.

57. Ms. Romero further testified that lack of ownership is not typically accepted by the department as a "permanent defense against continuing with an abatement project, and OCD would work within its legal ability to coordinate efforts between transferee and transferor." YouTube 1:07:50; TR 217:7479-84.

58. Ms. Romero testified to her belief that it would be "a very dangerous legal regulatory precedent to allow an operator to transfer away an asset for a site that is environmentally sensitive, particularly if there is an existing order, as that would be creating a large loophole for regulatory process." YouTube 1:08:49; TR 217:7487-97.

59. Ms. Romero testified that "the release was identified during Apache's tenure" and that the contamination was identified when Apache was owner and operator of the area. YouTube 1:11:25; TR 219:7535-63.

60. She further testified that "the division, in its sole discretion may consider a person either causing the release or controlling the release to [be] a responsible party." YouTube 1:11:25; TR 219:7534-35.

61. Ms. Romero further stated that "if contamination is discovered on a site while investigating something else, typically the operator of record is responsible for remediation." YouTube 1:25:22; TR 226:7796-800.

62. Ms. Romero testified that it is appropriate for the Division to require Apache to conduct abatement because of the Commission's Order. TR 216:7439-42.

PROPOSED CONCLUSIONS OF LAW

1. Apache timely commenced this proceeding pursuant to 19.15.30.21 and 19.15.4.8 NMAC by filing an application for hearing within 30 days of receipt of the Division's notification

by its Petition and Application for Hearing on Appeal received by the Division on April 10, 2026.

2. The subject of the hearing is Apache's appeal of the determination by the Division that Apache is required to submit an abatement plan pursuant to 19.15.30.11 and Subsection A of 19.15.30.14 NMAC, as stated in the "Notification of Abatement for nDHR1922141227 East Blinebry Drinkard Unit #037, Incident ID# nDHR1922141227" attached as Exhibit A to the Petition and Application.
3. Apache gave sufficient notice of the hearing to the Division, Hilcorp and the surface owner of the property pursuant to. Apache Exhibit D-1.
4. Counsel for Apache and the Division entered appearances and participated in the hearing. No other person entered an appearance or otherwise participated in the hearing.
5. The Division gave sufficient notice of the hearing by publication to its email list of the docket on May 22, 2026.
6. At the hearing, all written exhibits offered by Apache and the Division were admitted into evidence. YouTube 2:31:09; TR170:5859-60; TR 171:5877.
7. For purposes of Part 19.15.30 NMAC, the term "responsible person" is defined as "the owner or operator who shall complete a division-approved corrective action for pollution from releases." 19.15.2.7.R(6) NMAC.
8. For purposes of the definition of "responsible person," the terms "owner" and "operator" have the meanings as defined in 19.15.2.7.O(5) and (7) NMAC.
9. Apache was not the owner or operator, as defined in 19.15.2.7.O(5) and (7) when the Division issued its March 12, 2026 notification requiring Apache to submit an abatement plan.

10. Because Apache was not the owner or operator when the Division issued its March 12, 2026 notification, at that time, Apache did not meet the definition of "responsible person" as defined in 19.15.2.7.R(6) NMAC.
11. Part 19.15.30 NMAC does not authorize the Division to notify a person who is not a responsible person to submit an abatement plan.
12. Because, on March 12, 2026, Apache was not a "responsible person" as defined above and as that term is used in Part 19.15.30 NMAC, the applicable rules do not allow the Division to require Apache to submit an abatement plan under Part 19.15.30.
13. The term "release" as used in 19.15.30 NMAC is defined as "breaks, leaks, spills, releases, fires or blowouts involving oil, produced water, condensate, drilling fluids, completion fluids other chemical or contaminants or mixture thereof, including oil field wastes and gas to the environment." 19.15.2.7.R(4).
14. The pipeline leak reported by Apache and addressed under Part 19.15.2.29 NMAC was a "release" under the definition above.
15. Apache presented substantial and credible evidence through the testimony of Mr. Grams and his expert report that the groundwater contamination plume that is the subject of the Division's March 12, 2026 notification to Apache is not related to and was not caused by the pipeline leak reported by Apache in 2019 and addressed under Part 19.15.29 NMAC.
16. There is no evidence in the record of any other release, as defined above, or disposal of water contaminants that occurred during the period of Apache's operation from late 1998 to December 31, 2024, or thereafter until Hilcorp became the operator of record on or about July 10, 2025.

17. In 2025, the Legislature amended the Water Quality Act to define the term "responsible party" as provided in NMSA 1978, Section 74-6-2.T. That definition distinguishes between the current owner and operator of a facility and a former owner and operator described as "a person who, at the time of disposal of any water contaminant, owned or operator a facility at or from which such water contaminants were disposed."
18. The above definition of "responsible party" is used to describe who may be liable for the "prevention or abatement of water pollution" as set forth in Section 74-6-10.3, NMSA 1978.
19. The evidence presented at the hearing does not support a finding that, at the time of the March 12, 2026 Division notification to Apache, Apache met the definition of "responsible party" as set forth above or that Apache at that time would have liability for the prevention or abatement of water pollution under Section 74-6-10.3, NMSA 1978.
20. The Division relies upon a standard practice to assert that a person who was an operator at the time contamination was discovered remains a "responsible person" required to conduct abatement under Part 19.15.30 NMAC even after that person is no longer an owner or operator. Under the facts of this case as presented in the hearing record, and the applicable rules and statutes described above, application of such a standard practice to require Apache to submit an abatement plan is not supported by the plain language of Part 19.15.30 NMAC.
21. The Commission's Order No. R-23728-A issued to Apache was under the authority of Part 19.15.29 NMAC. In its Order, the Commission made no finding regarding Apache's liability for abatement under Part 19.15.30 NMAC. Consequently, the Commission's Order does not serve as a basis to require Apache to submit an abatement plan under Part

19.15.30 and does not authorize the Division's March 12, 2026 notification to Apache to submit an abatement plan.

22. For the reasons set forth above, the Division was not authorized to notify Apache that it was required to submit an abatement plan under Part 19.15.30 NMAC, as set forth in more detail in the March 12, 2026 notification letter.

Respectfully submitted,

GALLAGHER & KENNEDY, P.A.

___________/s/________

Dalva L. Moellenberg
Serafina I. Seluja
1239 Paseo de Peralta
Santa Fe, New Mexico 87501
(505) 982-9523
dlm@gknet.com
serafina.seluja@gknet.com

Counsel for Apache Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed electronically on [date], 2026, to the following parties:

Jesse Tremaine
Chris Moander
Michael Hall
jessek.tremaine@emnrd.nm.gov
chris.moander@emnrd.nm.gov
michael.hall@emnrd.nm.gov

Counsel for Intervenor, OCD

By: ______*/s/*_________
Dalva L. Moellenberg

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APACHE CORPORATION'S CLOSING ARGUMENT

I. INTRODUCTION AND SUMMARY

Apache Corporation ("Apache") hereby submits its written Closing Argument as directed by the Hearing Examiner at the conclusion of the hearing held on June 4, 2026. In this closing argument, Apache addresses the legal questions raised by the Hearing Examiner as set for by email sent June 5, 2026, including who is the "responsible party" under the circumstances of this case, the applicable legal definitions and rules, the extent to which the Division must identify a specific source or release causing exceedances of groundwater standards, and whether the presence of historic or legacy contamination on an oil and gas site alters the responsible party analysis under the rules.

This proceeding stems from a leak of produced water from a pipeline associated with the East Blinebry Drinkard Unit #037 well (the "2019 Incident"). The issue in this case is whether the Oil Conservation Division ("Division") may require Apache, a former operator, to prepare and submit an abatement plan under Part 19.15.30 NMAC for "groundwater [that] has been impacted by Oil & Gas Activity in excess of the standards outlined in 19.15.30.9 NMAC" when the Division has made no determination, and has presented no evidence, that the impacted groundwater resulted from a "release" for which Apache is responsible under the rules. Moreover, Apache presented convincing and unrefuted evidence that the groundwater contamination for which the Division seeks to require abatement is unrelated to the 2019 Incident or any other release that occurred while Apache was the owner and operator.

Stated plainly, the law does not permit the Division to order Apache to submit an abatement plan on these facts. Undeterred and notwithstanding that the Division clearly does have the authority to order the current "owner" or "operator" to submit an abatement plan, the Division presents various arguments for why the Hearing Examiner should ignore the plain language of the law and bestow upon the Division sweeping and unbridled authority and discretion that the legislature expressly declined to grant. The Hearing Examiner should decline the Division's invitation to disregard the guardrails of authority constructed by the legislature and require the Division to act within the letter of the law.

The Division has testified that it notified Apache to submit abatement plan as a standard practice to assert that an operator is responsible to address contamination discovered while it was an operator of record and to disregard divestment or transfers of that operator's interests. Regardless of whether this is the Division's standard practice, this practice does not comport with the applicable rules and with recent legislative changes.

In particular, Apache submits that it is not a "responsible party" under 19.15.30 NMAC with regard to the Division's March 12, 2026 determination that "groundwater has been impacted by Oil & Gas activity in excess of the standards outlined in 19.15.30.9 NMAC." First, and what should be determinative of this matter under the law, at the time of the Division's determination, Apache was not a "responsible person" for purposes of Part 19.15.30 NMAC because it was not an "owner or operator." Moreover, Apache--as a former, but not current, owner and operator—would not be a "responsible party" with regard to contamination resulting from a release that did not occur while it was an owner or operator under legislation adopted in 2025 through House Bill

21.[1] Second, and even if the foregoing issue were not determinative, Apache has satisfied its obligations under Part 19.15.29 NMAC to investigate and take corrective action for a 2019 pipeline leak that was Incident nDHR1922141227. Third, the Division's determination, based on the November 11, 2025 *Field Activity Report* that "groundwater has been impacted by Oil & Gas activity in excess of the standards outlined in 19.15.30.9 NMAC" is vague and insufficient as a basis for the Division to require Apache to abate the groundwater contaminant plume that is unrelated to the 2019 release, as shown by unrefuted evidence presented by Apache.

In sum, as explained below, a plain reading of Parts 19.15.29 and .30 NMAC limits Apache's responsibility for investigation, corrective action and abatement to the 2019 Incident constituting the release. The presence of historic or legacy contamination in the vicinity of the release does not affect the "responsible person" analysis with regard to Apache because there is unrefuted evidence that the historic or legacy contamination is not related to the 2019 Incident. Moreover, whether the current owner or operator is a "responsible person" for purposes of abatement under Part 19.15.30 NMAC is not at issue in this proceeding. Accordingly, the Hearing Examiners should conclude that the Division's March 12, 2026 Notification requiring Apache to submit a Stage 1 Abatement Plan must be vacated.

II. ARGUMENT

A. Apache Is Not a "Responsible Person" That Can Be Compelled to Submit an Abatement Plan Under Part 19.15.30 NMAC.

1. Apache Was Not a Responsible Person under Part 19.15.30 NMAC When the Division Issued Its Notification on March 12, 2026.

Only a "responsible person" can be required to submit an abatement plan following notification by the Division. The Division's notification to Apache cites sections 19.15.30.11.A,

[1] See *infra* pages 14-15.

19.15.30.13.A, and 19.15.30.14 NMAC as the grounds for the Division to require Apache to submit an abatement plan. Importantly, each of these provisions expressly includes the term "responsible person":

- "[A] responsible person shall, within 60 days of receipt of the director's written notice that the division requires an abatement plan, submit an abatement plan proposal to the director for approval." 19.15.30.13.A NMAC.
- "Responsible persons who are abating, or who are required to abate, water pollution in excess of the standards and requirements set forth in 19.15.30.9 NMAC shall be do pursuant to an abatement plan the director approves." 19.15.30.11.A NMAC.
- A "responsible person" is subject to the various requirements of 19.15.30.14 NMAC.

Various other provisions of Part 19.15.30 NMAC also use the term "responsible person." That is against whom the rule may be applied.

"Responsible person" is defined for purposes of Part 19.15.30 NMAC as "the owner or operator who shall complete a division-approved corrective action for pollution from releases." 19.15.2.7.R(6) NMAC.[2] Importantly, the terms "operator" and "owner" also are defined terms in Part 19.15.2 NMAC. "Operator" is defined as "a person who, duly authorized, manages a lease's development or a producing property's operation, or who manages a facility's operation." 19.15.2.7.O(5) NMAC. "Owner" is defined as "the person who has the right to drill into and to produce from a pool, and to appropriate the production either for the person or for the person and

[2] The term "corrective action" is not defined in part 19.15.2 NMAC, nor is it defined in Parts 19.15.29 or .30 NMAC, although the phrase is used in Part 19.15.29 but not part 19.15.30 NMAC. "Abate" and "abatement" are defined terms in 19.15.2 NMAC, but as defined those terms do not refer to "corrective action."

another." 19.15.2.7.O(7) NMAC. Because the terms "operator" and "owner" are defined in the rule, they are controlling for the purpose of the use of those terms in the definition of "responsible person," as provided by the Uniform Statute and Rule Construction Act.[3] Based on both a plain reading and for policy reasons, the definition of "responsible person" should be interpreted to mean a person who was an "owner" or "operator" at the time the Division issued the notification of the requirement to submit an abatement plan. That is the plain, natural and common sense reading of the rule, rather than what the Division lobbies for, which is to rely on standard practice that ignores clear statutory limitations and affords nearly limitless discretion—not delegated by an elected body—to the Division. In this case, Hilcorp, not Apache, fits the definition of both "owner" and "operator" at the time the Division issued the notification of the requirement to submit an abatement plan. Apache Proposed FOF ¶¶4-5.[4]

Although a plain reading of the rules limits responsibility to submit an abatement plan to the "owner or operator," if the rules are interpreted to allow the Division discretion to identify a "responsible person" who is not the "owner" or "operator" when the abatement plan notification is issued, then to avoid being arbitrary, the Division would need to justify its selection of the "responsible person" to submit an abatement plan. As discussed below, however, even if the rules are improperly interpreted to give the Division the discretion to select a "responsible person," under the circumstances of this case it would be manifestly unfair and arbitrary and contrary to the express language of the rules for the Division to identify Apache as the responsible person.

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[3] "Unless a word or phrase *is defined* in the statute or rule being construed, its meaning is determined by its context, the rules of grammar and common usage." NMSA 1978, § 12-2A-2 (emphasis added).

[4] Hereafter, Apache's Proposed Findings of Fact are cited simply as "FOF."

A separate reason to limit responsibility under Part 19.15.30 NMAC to the owner and operator is that the owner and operator have the right of legal access to carry out the obligations under an abatement plan. Apache divested all of its interests to Hilcorp as of December 31, 2024 and Hilcorp became the operator of record in July 2025. FOF ¶¶4-5. Consequently, when the Division issued the Notification on March 12, 2026, Apache was not—and had not been for nearly a year--the owner or operator of the subject property or facilities and did not manage operations at the site. At the time of the Notification, Apache no longer possessed the right to drill into or produce from the relevant pool, did not manage the lease or facility operations, did not otherwise exercise operational control over the property and otherwise lost its rights of legal access.

The Division may contend that there's nothing in 19.15.30 NMAC that says the Division cannot require a person who is a responsible party to submit an abatement plan under Part 19.15.30 NMAC. At the hearing, the Division contended that the definition of responsible person for purposes of 19.15.30 NMAC can either be the person causing the release or the person controlling the location of the release. FOF ¶55. However, that interpretation is contrary to the text of the regulations. Part 29 expressly grants the Division discretion to designate "a person causing the release, or controlling the location of the release" as the responsible party. 19.15.29.7(R)(5) NMAC. There is no similar language in Part 19.15.30 NMAC, which consistently uses the defined term "responsible person," which is limited to "the owner or operator who shall complete a division-approved corrective action for pollution from releases." 19.15.2.7(R)(6) NMAC.[5]

[5] This analysis is not affected by any determination by the Commission in ordering Apache to conduct the additional groundwater investigation under Part 19.15.29 NMAC. In its Order, the Commission expressly determined that the source or sources of groundwater contamination could not yet be ascertained and that the available information did not permit full characterization of contamination at the Site. FOF ¶14 The Commission further stated that it was not determining whether further abatement or remediation would ultimately be required. FOF ¶15.

The Division may contend that Apache remains a "responsible person" pursuant to 19.15.30.14(B) NMAC, which addresses transfers of ownership, control, or possession of a facility subject to an abatement plan. During the hearing, the Division argued that recognizing Apache's transfer of operations would create a "dangerous" regulatory loophole by allowing operators to avoid future abatement obligations through the transfer of assets. FOF ¶58.[6] The Division also asserted that it routinely coordinates abatement efforts between transferors and transferees and therefore does not view the loss of ownership or site access as a defense to continuing an abatement project. FOF ¶57. That may be a valid approach with regard to Apache's responsibility to complete corrective action for the 2019 Incident under 19.15.29 NMAC, but the plain language of the rules defeats the Division's argument with regard to the requirement to submit an abatement plan under Part 19.15.30 NMAC to abate groundwater contamination unrelated to the 2019 Incident.

Section 19.15.30.14(B) NMAC applies "[i]n the event of a transfer of the ownership, control or possession of a facility for which an abatement plan is *required or approved*." (emphasis added). The transfer of ownership to Hilcorp occurred in December 2024 and was recognized by the Division when it approved Hilcorp as the operator in July 2025. FOF ¶5. The first time an abatement plan was required under 19.15.30 NMAC was on March 12, 2026, after Hilcorp had become the owner and operator, which occurred no later than July 10, 2025. Any alleged policy concerns raised by the Division simply cannot override the plain text of the regulation. Section 19.15.30.14(B) addresses precisely this circumstance and preserves obligations only when ownership or operational control is transferred *after* an abatement plan is "required or approved."

[6] It is not at all clear what would be "dangerous" about requiring the current owner or operator of a property to submit an abatement plan rather than some other entity that the Division would—for whatever reason—prefer submit the plan. The Division's purpose and concern should be to remedy the issue at hand, rather than to be concerned with how or by whom that remedy is implemented.

Further, the Division's own historical practice undermines its position that a former operator automatically remains responsible for regulatory compliance after a transfer of operations. In *Epic Energy LLC v. Encana Oil & Gas (USA) Inc.*, Epic Energy became the operator of the facility after Encana transferred its interests, even though the release at issue had occurred before the transfer. *Epic Energy LLC v. Encana Oil & Gas (USA) Inc.*, No. 18-cv-1206, 2019 WL 4303325, at *1 (D.N.M. Sept. 11, 2019). After questions arose regarding the adequacy of remediation, the Division directed the current operator, Epic Energy, to perform the additional remediation activities required under Part 29. The resulting litigation concerned whether Epic or Encana ultimately bore the contractual responsibility for those costs, not whether the Division could compel the former operator to continue performing regulatory obligations after it ceased being the operator. *Id.*

That history is consistent with Apache's analysis of the regulatory framework at issue here. The regulations distinguish between the Division's authority to require regulatory compliance and the separate question of ultimate liability between private parties.[7] Likewise, Section 19.15.30.14(B) recognizes that transfers of ownership and operation occur and specifically addresses the circumstances under which abatement obligations continue following a transfer. Here, however, no abatement plan had been required or approved when Apache ceased operations. Accordingly, this case does not create the "loophole" envisioned by OCD. It simply gives effect to the regulations as written. Had an abatement plan been required or approved before Apache transferred operations, Section 19.15.30.14(B) would govern the parties' respective obligations.

[7] The Division should not be concerned with how liability might ultimately be established and/or allocated among parties based on contractual provisions, statutory liability or tort or other theories because the courts, not the Division, have the authority to adjudicate those issues. Instead, the Division must follow the governing rules with regard to its authority to require the submission of an abatement plan under Part 19.15.30 NMAC.

Because no such plan existed, the Division cannot rely on the transfer provision to retroactively impose Part 30 obligations that did not exist at the time of transfer.

2. Apache Is Not a "Responsible Person" under Either Part 19.15.29 or part 19.15.30 NMAC for Groundwater Pollution That Is Not Related to the 2019 Incident.

There is another important aspect of the definition of "responsible person" that also would limit Apache's responsibility in this case. That is the latter part of the definition referring to corrective action "for pollution from releases." A "release" is defined as "breaks, leaks, spills, releases, fires or blowouts involving oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and gases to the environment." 19.15.2.7.R(4) NMAC. While Apache should not be considered to be a "responsible person" at all for purposes of Part 19.15.30 NMAC because it was not an owner or operator when the Division notification was issued, if Apache were to be considered a "responsible person," Apache's responsibility for abatement should be limited to releases resulting in water pollution for which the Division can show Apache was responsible.

In this instance, Apache reported, took responsibility for, and completed soil remediation and groundwater investigations for the 2019 Incident under Part 19.15.29 NMAC. That is consistent with 19.15.29.11 NMAC, which states that "[t]he responsible person shall complete division-approved correction action for *releases* that endanger public health or the environment. The responsible person shall address *releases* in accordance with a remediation plan submitted to and approved by the division or with an abatement plan submitted in accordance with 19.15.30 NMAC." (emphasis added) This language, in combination with the definition of "responsible person," limits Apache's responsibility to *releases.* The only "release" identified in the Division Notification is Incident nDHR1922141227, the 2019 produced water pipeline leak.

Importantly, Apache could be considered to be a "responsible party" under Part 19.15.29 NMAC with regard to the 2019 Incident, yet not be a "responsible person" with regard to an abatement plan under Part 19.15.30 NMAC. Under Part 19.15.29 NMAC, the Division retains discretion to "also consider a person causing the release or controlling the location of the release as the responsible *party*." 19.15.29.7.C NMAC (emphasis added). Under this language, as to the 2019 Incident, the Division could choose to have Apache continue to carry out any remaining obligations under Part 19.15.29 with regard to the 2019 Incident following the transfer of operator status to Hilcorp. Indeed, that is consistent with Apache's actions following the transfer of operator status to carry out the groundwater monitoring requirements under Part 19.15.29 NMAC. Again, however, the plain language of 19.15.29.7.C NMAC limits the Division's discretionary authority following the transfer of operator status to responsibility for the "release," *i.e.*, the 2019 Incident. Conversely, the Division's discretionary authority under 19.15.29.7.C NMAC does not authorize the Division to impose responsibility under Part 19.15.30 NMAC to a "responsible person" as defined in the rules or to groundwater pollution not related to the 2019 Incident.

B. The Division Must at Least Identify a Sufficient Factual and Regulatory Connection or Nexus Between Groundwater Contamination and a Release Before Requiring a Person Who Is Not an Owner or Operator as a Responsible Person to Conduct Abatement.

As discussed above, in this case, Apache itself identified a particular release, the 2019 Incident and addressed that incident under Part 19.15.29 NMAC. The investigation conducted under Part 19.15.29 NMAC and the Commission's Order provided the evidence to rule out the 2019 Incident as the source of the groundwater plume.

The Division's position appears to be that an operator who discovers contamination during its period of operation will remain liable for abatement regardless whether that operator demonstrates that the contamination was the results of anything that occurred while the operator was in control of the property and that the Division has complete discretion whom it may identify as a responsible person or party. See FOF ¶59-61 As discussed in detail above, the Division's position is contrary to definitions and use of the terms "responsible person" and "release" in Part 19.15.30 NMAC and the new definition of "responsible party" and its use to define liability for abatement of groundwater pollution as discussed below. The plain language of the rule and statute[8] say that the current owner and operator is a responsible party, but a former owner or operator's responsibility for abatement is limited. Nothing in the applicable rules provides that the discovery of such conditions automatically expands the scope of the reported release or converts all historical contamination into the responsibility of the operator that happened to report the most recent incident. This distinction is reflected in Section 19.15.29.12(B)(1) NMAC.

The Division also appears to argue that Apache should remain responsible to submit an abatement plan based on the Commission's order requiring Apache to conduct additional investigation. FOF ¶56. However, the Commission relied upon Part 19.15.29 as the legal authority to require Apache to conduct additional investigation[9] and made no findings regarding Apache's responsibility for abatement. At the hearing of this matter, Apache's expert thoroughly evaluated the evidence and concluded based upon multiple lines of evidence that the groundwater plume is not related to the 2019 Incident. FOF ¶¶ 37-50. This information was not available at the time of the Commission hearing FOF ¶51. This change in circumstances means that the Division cannot rely upon the Commission's Order or findings as a basis to impose liability upon Apache for abatement of the groundwater plume. Indeed, it would be manifestly unfair to impose abatement

[8] See *infra* at 14-15.
[9] The Commission determined that the Division could not identify the source of the release or releases or fully delineate the contamination on the Site, and Apache could not at that time rule out the 2019 Incident as the source of contamination causing exceedances of chloride and TDS. *See* FOF ¶14, 51.

liability upon Apache due to its cooperation with the Division to conduct the additional groundwater investigation at substantial effort and cost.

Apache contends that, based on the plain language of the rules and their use of the defined term “release,” the Division must establish a sufficient factual and regulatory nexus between a release and the groundwater contamination for which abatement is sought under Part 19.15.30 NMAC. Here, the Division has failed to make a determination that connects any release during Apache’s period of operation to the groundwater plume. In its March 2026 Notification, the Division identified no factual basis establishing that the groundwater plume requiring abatement was caused by the 2019 Incident. Instead, the Division effectively asserts that all groundwater contamination discovered during an investigation under Part 19.15.29remains the responsibility of the operator that reported that release under Part 19.15.30 NMAC. Nothing in the rules supports that view, particularly considering the unrebutted evidence that the groundwater plume is unrelated to the 2019 Incidents. Indeed, the Division's own witness, Ms. Romero, recognized that Parts 19.15.29 and 19.15.30 are "individual rules" that are generally treated separately, while acknowledging that they are often related because they may arise from the same release. FOF ¶53.

C. The Existence of Historical Contamination Does Not Change Apache’s Analysis That It is Not a “Responsible Person,” as a Former Owner and Operator, for Legacy or Historical Contamination.

The Hearing Examiner requested briefing on whether the presence of historic or legacy contamination alters the “responsible person” analysis under 19.15.29 NMAC and 19.15.30 NMAC. As discussed above, the applicable rules identify specific persons who may be required to perform remediation or abatement based upon the applicable regulatory framework. Part 19.15.29 identifies the "responsible party" for a reported release, while Part 30 limits abatement obligations to a "responsible person," defined as the owner or operator who shall complete corrective action for pollution from releases. 19.15.2.7(R)(6) NMAC. Conversely, as discussed above, a plain reading of Part 19.15.30 NMAC along with the definition of "responsible person" in 19.15.2.7 NMAC does not establish that Apache, as a former owner and operator, is responsible to abate groundwater contamination unrelated to the 2019 Incident or otherwise shown to be the result of a release that occurred when Apache was the owner or operator.

The rules regarding abatement in Part 19.15.30 NMAC are very similar to the abatement rules adopted by the Water Quality Control Commission under the Water Quality Act at 20.6.2.4101 to .4114 NMAC, which apply to abatement required by the Environment Department. In 2025, the Legislature clarified who is responsible for abatement under the Water Quality Act by defining the term "responsible party." NMSA 1978, §74-6-2(T). If applied to the analysis of the rules supplied by Apache above, the Legislative definition of "responsible party" further supports Apache's position. In particular, the statutory definition of "responsible party" includes "the owner and operator of a facility," referring to the current owner and operator, and separately "a person who, at the time of disposal of any water contaminant, owned or operated a facility at or from which such water contaminants were disposed." Based on the evidence presented by Apache, the disposal of water contaminants resulting in the groundwater plume occurred prior to when Apache owned and operated the facility, so Apache would not meet the definition of a "responsible party" for a release other than the 2019 Incident, which did occur when Apache formerly owned and operated the facility.

Moreover, the Legislature further defined liability in NMSA 1978, Section 74-6-10.3. Subsection A of that section states that "[l]iability for the prevention or abatement of water pollution exists if there has been an actual or threatened release of a water contaminant that causes the requirement for response or remediation, or the incurrence of response or remediation costs.

Responsible parties may be liable for the release of a water contaminant that occurred prior to and since the effective date of this 2025 act." Apache has addressed its liability for the 2019 Incident under this section under Part 19.15.29 NMAC, for which it also would meet the definition of "responsible party" as discussed above. Moreover, even if Apache were a "responsible party" under this statute, Apache could qualify for a defense to liability under Subsection C of Section 74-6-10.3 if Apache could show by a preponderance of evidence presented at the hearing that the groundwater plume resulted from the actions of a third party prior to Apache becoming the owner and operator.[10] In particular, there is a defense to liability resulting from an act or omission of a third party owner operator of the property prior to Apache's acquisition in around 1999. In sum, Apache's analysis of the applicable rules in this case, Parts 19.15.29 and 19.15.30 NMAC, is consistent with the liability concepts established by the Legislature under the Water Quality Act, and even if the Water Quality Act provisions applied in this case, they would not change the outcome of Apache's analysis above.

[10] The proper analysis for this case is based on the applicable rules, which do not address affirmative defenses, so Apache is under no obligation to prove an affirmative defense in this proceeding.

III. CONCLUSION

Applying the regulations as written, Apache does not qualify as a "responsible person" under Part 19.15.30 NMAC. When the Division issued its March 12, 2026 Notice requiring submission of a Stage 1 Abatement Plan, Apache was no longer the owner or operator of the Site and no longer possessed the legal authority to manage, investigate, or implement corrective action at the facility. Although Apache is the responsible party for the 2019 release, that status did not continue indefinitely or automatically transition into responsibility under Part 19.15.30 NMAC. Because the Division sought to invoke the separate abatement provisions of Part 19.15.30 after Apache had ceased being the owner or operator, the Division was required to establish that Apache satisfied the regulatory definition of a "responsible person at that time. It has failed to do so. Accordingly, the Hearing Examiner should find that the Division exceeded its authority under Part 19.15.30 and vacate the March 12, 2026, Notice requiring Apache to prepare and submit an abatement plan.

Respectfully submitted,

GALLAGHER & KENNEDY, P.A.

/s/

Dalva L. Moellenberg
Serafina I. Seluja
1239 Paseo de Peralta
Santa Fe, New Mexico 87501
(505) 982-9523
dlm@gknet.com
serafina.seluja@gknet.com

Counsel for Apache Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed electronically on July 10, 2026, to the following parties:

Jesse Tremaine
Chris Moander
Michael Hall
jessek.tremaine@emnrd.nm.gov
chris.moander@emnrd.nm.gov
michael.hall@emnrd.nm.gov

Counsel for Intervenor, OCD

By: ______/s/_________
Dalva L. Moellenberg