

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

OIL CONSERVATION DIVISION

**ADJUDICATORY APPEAL OF NMOCD DISTRICT II
REJECTION OF "APPLICATION FOR ADMINISTRATIVE
APPROVAL OF A RELEASE NOTIFICATION
AND CORRECTIVE ACTION (C-141)
FOR INCIDENT ID #NAPP2206346222"
Application ID: 114703**

REQUEST FOR HEARING

CASE NO. 23646

SUPPLEMENTAL FILING TO THE APPEAL BY LONGFELLOW ENERGY, LP

This Supplemental filing to the Adjudicatory Appeal of a decision by the New Mexico Oil Conservation Division (NMOCD) is submitted on behalf of Longfellow Energy LP/Riata Corporate Group, LLC (Longfellow) through its counsel, Jerry D. Worsham II of Clark Hill PLC, as required by NMAC 19.15.4.14(c). Longfellow has requested an Adjudicatory Hearing before a Division Examiner and approval of the Variance Application and revised C-141 submitted and dated January 13, 2023. The Adjudicatory Hearing has been set for August 3, 2023.

I. INTRODUCTION

On May 15, 2023, the NMOCD rejected this Application for Administrative Approval of a Release Notification (C-141) submitted by Longfellow with the following comment:

"The Remediation Plan is denied. This release is within 300 feet of a designated wetland area and will need to be remediated to the strictest closure criteria from Table 1 of the OCD Spill Rule. There is a specific process to have FGDC change a wetland designation. The FGDC puts together and updates the wetland maps. If a site shows a designated wetland under the current map, that is what we use. You would need to call the FGDC and find out who oversees the maps. Ideally, you would need to send your wetland study to the FGDC and try to get the wetland designation changed in this particular area. **If they do make changes to the map, let us know and we will honor their decision. Please let us know the FGDC's decision if you petition to have the wetland designation changed.** The OCD has nothing to do with the wetland maps, we only enforce the designation if a release is within 300 feet of a release."

(See **Exhibit 1**)

Attached is a response to a "Request for Correction of Information" submitted by Longfellow to the USFWS for the spill area:

"Thank you for submitting your Correction of Information Request dated 6/1/2023. I have reviewed the wetland determination and examined the wetland polygon in question and am pleased to inform you that your request has been approved.

I have attached a map depicting the edited wetland polygon reflecting the on-site information you provided. This correction has been made in our local database. The public facing data seen on the Wetlands Mapper is updated bi-annually with the next update scheduled for October 1, 2023. On or about that date the edits to this particular wetland will be visible and active on the public mapper. If you need the actual data, I can provide a shapefile or geodatabase."

(See **Exhibit 2**)

II. CONCLUSION/REQUEST FOR DECISION

The attached information from the USFWS has determined that the entire spill profile for Incident ID #NAPP2206346222 in the C-141 is outside the 300 feet profile of a designated wetland. The strictest closure criteria no longer apply. The applicable NMOCD regulation that governs the Longfellow C-141 is NMAC 19.15.29.12(D) Closure Requirements and Table 1 - 50-100 feet/10,000 mg/kg Chloride limitation. This applies to the entire release.

(See **Exhibit 3**) **Longfellow requests that the revised C-141 be approved by NMOCD.**

Respectfully submitted,

By:  6/14/2023
Jerry D. Worsham II, Esq. (Bar #682)
Attorneys for Longfellow Energy LP/Riata Corporate
Group, LLC
Clark Hill PLC
3200 N. Central Avenue, Suite 1600
Phoenix, Arizona 85012
Email: jworsham@clarkhill.com
Ph: (602) 440-4808
Fax: (602) 257-9582

EXHIBIT “1”

Worsham II, Jerry

From: David Cain <david.cain@longfellowenergy.com>
Sent: Monday, May 15, 2023 12:31 PM
To: Michael Haynes; Worsham II, Jerry
Cc: Javier Gonzalez; David Mitchell
Subject: FW: The Oil Conservation Division (OCD) has rejected the application, Application ID: 175985

[External Message]

Hi all,

The NMOCD has rejected our updated remediation proposal for the Turkey Tract release.

Thanks,
DC

From: OCDOnline@state.nm.us <OCDOnline@state.nm.us>
Sent: Monday, May 15, 2023 2:26 PM
To: David Cain <david.cain@longfellowenergy.com>
Subject: The Oil Conservation Division (OCD) has rejected the application, Application ID: 175985

To whom it may concern (c/o David Cain for LONGFELLOW ENERGY, LP),

The OCD has rejected the submitted *Application for administrative approval of a release notification and corrective action* (C-141), for incident ID (n#) nAPP2206346222, for the following reasons:

- **The Remediation Plan is denied. This release is within 300 feet of a designated wetland area and will need to be remediated to the strictest closure criteria from Table 1 of the OCD Spill Rule. There is a specific process to have FGDC change a wetland designation. The FGDC puts together and updates the wetland maps. If a site shows a designated wetland under the current map, that is what we use. You would need to call the FGDC and find out who oversees the maps. Ideally, you would need to send your wetland study to the FGDC and try to get the wetland designation changed in this particular area. If they do make changes to the map, let us know and we will honor their decision. Please let us know the FGDC's decision if you petition to have the wetland designation changed. The OCD has nothing to do with the wetland maps, we only enforce the designation if a release is within 300 feet of a release.**

The rejected C-141 can be found in the OCD Online: Permitting - Action Status, under the Application ID: 175985.

Please review and make the required correction(s) prior to resubmitting.

If you have any questions why this application was rejected or believe it was rejected in error, please contact me prior to submitting an additional C-141.

Thank you,
Robert Hamlet

575-748-1283

Robert.Hamlet@emnrd.nm.gov

New Mexico Energy, Minerals and Natural Resources Department

1220 South St. Francis Drive

Santa Fe, NM 87505

EXHIBIT “2”

Worsham II, Jerry

From: Griffin, Rusty <rusty_griffin@fws.gov>
Sent: Wednesday, June 14, 2023 8:36 AM
To: Worsham II, Jerry; michael.haynes@riatacg.com
Cc: dan@trinityoilfieldservices.com
Subject: Correction of Information Request
Attachments: Correction of Information.pdf

[External Message]

Jerry,

Thank you for submitting your *Correction of Information Request* dated 6/1/2023. I have reviewed the wetland determination and examined the wetland polygon in question and am pleased to inform you that your request has been approved.

I have attached a map depicting the edited wetland polygon reflecting the on-site information you provided. This correction has been made in our local database. The public facing data seen on the Wetlands Mapper is updated bi-annually with the next update scheduled for October 1, 2023. On or about that date the edits to this particular wetland will be visible and active on the public mapper. If you need the actual data, I can provide a shapefile or geodatabase. Just let me know.

Please let me know if you need anything else from me or my office. I appreciate your patience with this process. Mapping wetlands from aerial imagery has inherent limitations, so it is always helpful to get better information from on the ground sources.

Thank you,

Rusty

Rusty Griffin, PWS

U.S. Fish and Wildlife Service, National Wetlands Inventory | 505 Science Drive, Suite A, Madison, WI 53711 | 608-238-9333 x31005

<http://www.fws.gov/wetlands/index.html>



Request for Correction of Information

This document is required by the Department of the Interior, U.S. Fish and Wildlife Service Information Quality Guidelines.

Requesting a Correction of Information: Any affected person or organization may request a correction of information from the Service pursuant to the Information Quality Guidelines. The Branch of Geospatial Mapping and Technical Services will consider requests for corrections of information for the National Wetlands Geospatial Data Layer if such a request is submitted in compliance with DOI/Service Information Quality Guidelines. Requests must be routed through the appropriate Service Region for technical evaluation. Regional requests for entry of corrected map data will be made by submitting a completed "Request for Correction of Information" form to the Branch's Geodatabase Manager. This form is part of the MGD Technical Attachments of Forms and Documentation. It certifies the corrected information submitted has been approved by all appropriate technical quality control personnel and meets all data standards and requirements as outlined on the Contributed Data webpage. This complies with the requirements of Section 515 of the Treasury and General Government Appropriations Act of 2001 (Public Law 106-554) that requires Federal agencies to provide administrative mechanisms allowing the public to seek and obtain correction of information maintained and disseminated by the agency.

Requester Contact Information:

Requestor Name: Jerry D. Worsham II	Date: 6/1/2023	Email Address: jworsham@clarkhill.com
Address: 3200 N. Central Ave., Ste. 1600, Phx, AZ 85012	Phone Number: 602-440-4808	Organization(if any): Clark Hill/Longfellow Energy, LP
Description of Requested Area for Correction(location/coordinates/attribute): The polygon is currently defined as a PEM1A (Palustrine Emergent) wetland. Approximate latitude 32.848478 deg. N, -104.141243 deg. W., Eddy County, New Mexico		
Effect of the Alleged Error: The designation of a "wetland" by the USFWS "Wetland Mapper" is used by the New Mexico Oil Conservation Division (NMOCD) to determine the applicable remediation regulation and ultimate cost of the Remediation Plan. A wetland determination drastically increases the amount of soil to be removed and associated cost for remediated soil disposal. See attached Jurisdictional Delineation by Jesse Shuck from Grouse Mountain Environmental Consultants to support a correction of the Wetland Mapper.		

FWS Evaluation Information:

FWS Personnel: Rusty Griffin	Approved or Denied: Approved	Date: 6/13/2023
Justification for Correction Approval/Denial: Wetland determination data submitted and a re-examination of higher resolution imagery determined the wetland polygon boundary to be larger than the wetland was on the ground.		

The information submitted has been approved by all appropriate quality control personnel.

An updated metadata file is attached that reflects this revised information.
Metadata update is not necessary for such a small revision.

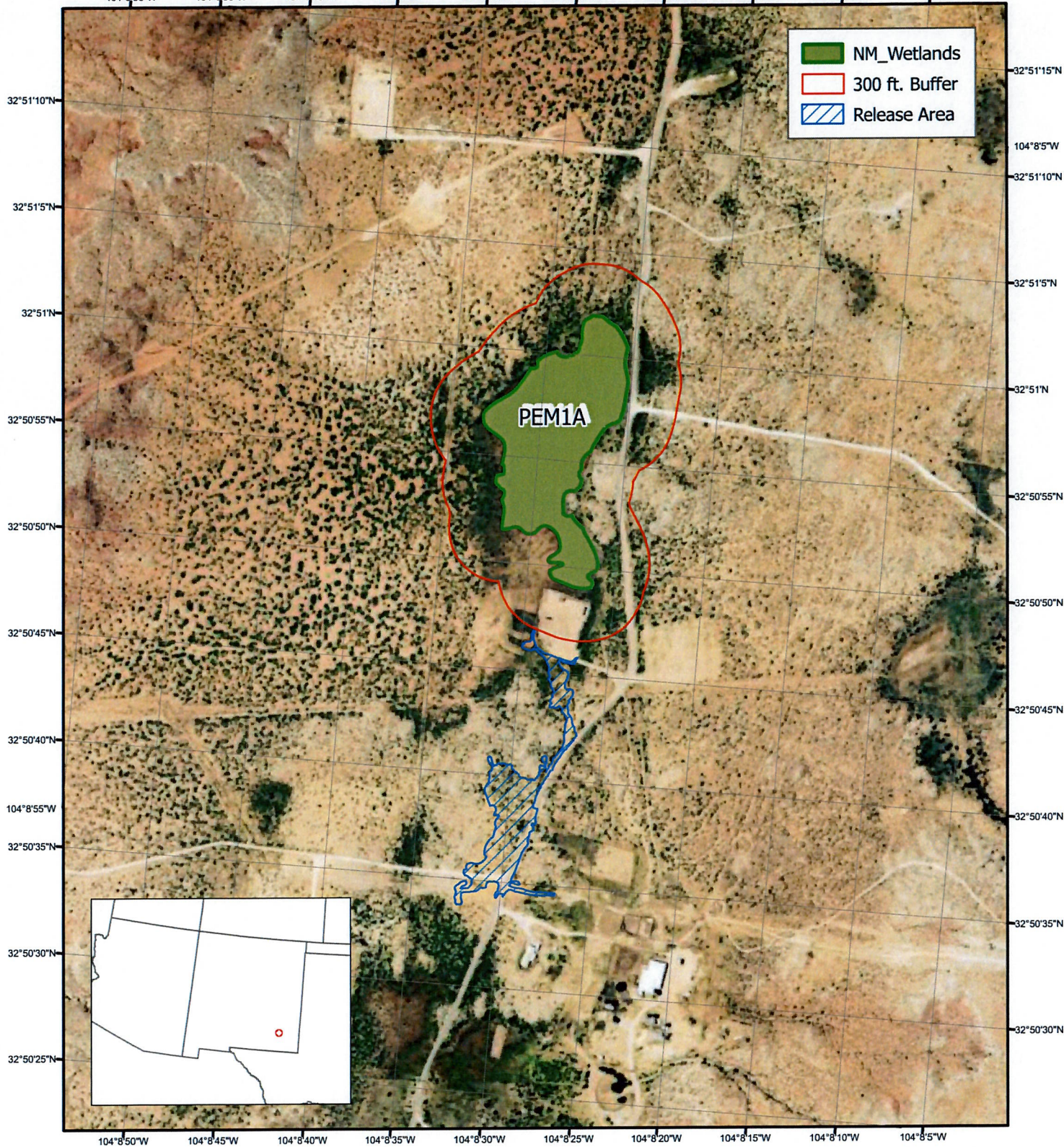


U.S. Fish & Wildlife Service

Correction of Information Request by Jerry D. Worsham

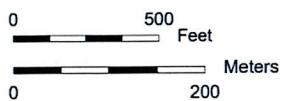
PEM1A: Lat. 32.848478 , Long. -104.141243, Eddy Co., NM

104°8'55"W 104°8'50"W 104°8'45"W 104°8'40"W 104°8'35"W 104°8'30"W 104°8'25"W 104°8'20"W 104°8'15"W 104°8'10"W



- NM_Wetlands
- 300 ft. Buffer
- Release Area

Produced by the National Wetlands Inventory, Madison WI
Produced: June 13, 2023
Basemap: USDA NAIP Imagery



The USFWS makes no warranty for use of this map and cannot be held liable for actions or decisions based on map content. This map template is intended as a general guide for the creation of U.S. Fish and Wildlife maps at a small scale. The information correction request was granted and the data depicted herein are the results of the correction requested. Map image is the intellectual property of Esri and is used herein under license. Copyright © 2019 Esri and its licensors. All rights reserved.

EXHIBIT “3”

Incident ID	NAPP2206346222
District RP	
Facility ID	
Application ID	

Site Assessment/Characterization

This information must be provided to the appropriate district office no later than 90 days after the release discovery date.

What is the shallowest depth to groundwater beneath the area affected by the release?	<u>58</u> (ft bgs)
Did this release impact groundwater or surface water?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are the lateral extents of the release within 300 feet of a continuously flowing watercourse or any other significant watercourse?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are the lateral extents of the release within 200 feet of any lakebed, sinkhole, or playa lake (measured from the ordinary high-water mark)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are the lateral extents of the release within 300 feet of an occupied permanent residence, school, hospital, institution, or church?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are the lateral extents of the release within 500 horizontal feet of a spring or a private domestic fresh water well used by less than five households for domestic or stock watering purposes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are the lateral extents of the release within 1000 feet of any other fresh water well or spring?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are the lateral extents of the release within incorporated municipal boundaries or within a defined municipal fresh water well field?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are the lateral extents of the release within 300 feet of a wetland?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are the lateral extents of the release overlying a subsurface mine?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are the lateral extents of the release overlying an unstable area such as karst geology?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are the lateral extents of the release within a 100-year floodplain?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Did the release impact areas not on an exploration, development, production, or storage site?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Attach a comprehensive report (electronic submittals in .pdf format are preferred) demonstrating the lateral and vertical extents of soil contamination associated with the release have been determined. Refer to 19.15.29.11 NMAC for specifics.

Characterization Report Checklist: *Each of the following items must be included in the report.*

- Scaled site map showing impacted area, surface features, subsurface features, delineation points, and monitoring wells.
- Field data
- Data table of soil contaminant concentration data
- Depth to water determination
- Determination of water sources and significant watercourses within 1/2-mile of the lateral extents of the release
- Boring or excavation logs
- Photographs including date and GIS information
- Topographic/Aerial maps
- Laboratory data including chain of custody

If the site characterization report does not include completed efforts at remediation of the release, the report must include a proposed remediation plan. That plan must include the estimated volume of material to be remediated, the proposed remediation technique, proposed sampling plan and methods, anticipated timelines for beginning and completing the remediation. The closure criteria for a release are contained in Table 1 of 19.15.29.12 NMAC, however, use of the table is modified by site- and release-specific parameters.

State of New Mexico
Oil Conservation Division

Incident ID	NAPP2206346222
District RP	
Facility ID	
Application ID	

I hereby certify that the information given above is true and complete to the best of my knowledge and understand that pursuant to OCD rules and regulations all operators are required to report and/or file certain release notifications and perform corrective actions for releases which may endanger public health or the environment. The acceptance of a C-141 report by the OCD does not relieve the operator of liability should their operations have failed to adequately investigate and remediate contamination that pose a threat to groundwater, surface water, human health or the environment. In addition, OCD acceptance of a C-141 report does not relieve the operator of responsibility for compliance with any other federal, state, or local laws and/or regulations.

Printed Name: DAVID CAIN

Title: Engineering technologist & Regulatory Specialist

Signature: David C

Date: ~~6-3-23~~ 6-14-2023

email: david.cain@longfellowenergy.com

Telephone: 972-590-9918

OCD Only

Received by: _____

Date: _____