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

APPLICATION OF THE NEW MEXICO OIL AND GAS ASSOCIATION TO REPEAL AND REPLACE TITLE 19, CHAPTER 15, PART 34 OF THE NEW MEXICO ADMINISTRATIVE CODE ADDRESSING PRODUCED WATER, DRILLING FLUIDS AND OTHER LIQUID OIL FIELD WASTE; AND TO AMEND THE DEFINITION OF PRODUCED WATER IN TITLE 19, CHAPTER 15, PART 2, OF THE NEW MEXICO ADMINISTRATIVE CODE.

CASE NO. 15239

APPLICANT'S PRE-HEARING STATEMENT

This Pre-Hearing Statement is submitted on behalf of the New Mexico Oil and Gas Association by Holland & Hart LLP as required by NMAC 19.15.3.11.B NMAC.

APPEARANCES OF PARTIES

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Earthworks' Oil and Gas Accountability Project

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STATEMENT OF CASE

The New Mexico Oil and Gas Association ("NMOGA") has applied to the New Mexico Oil Conservation Commission ("Commission") for an order repealing Title 19, Chapter 15, Part 34 of the New Mexico Administrative Code ("NMAC") and replacing it with the modified proposed rule submitted herewith as NMOGA Exhibit 1.[1] NMOGA also seeks an order amending the definition of "produced water" in Title 19, Chapter 15, Part 2, NMAC, as reflected in NMOGA Exhibit 2. The intended effects of the proposed rule and amendment are to:

1. Encourage and promote the recycling or re-use of produced water in a manner that provides reasonable protection to fresh waters, the public health, and the environment;

2. Clarify and codify when the disposition by use of produced water requires prior approval by the New Mexico Oil Conservation Division and when registration is sufficient;

3. Require produced water recycling facilities subject to the proposed rule to either be permitted or registered with the Division;

4. Permit by rule produced water recycling containments for a limited period of time to store, treat and recycle produced water for use in the drilling, completion, production or plugging of oil and gas wells;

5. Prevent any use of recycling containments for the disposal of produced water or other oilfield wastes;

6. Adopt for the proposed produced water recycling containments the applicable siting, design, construction, operation, closure and site reclamation provisions recently approved by the Commission for multi-well fluid management pits in Title 19, Chapter 15, Part 17, NMAC, under Order R-13506-D, but providing that:

   a. Primary liners can be "45-mil LLDPE string reinforced;"

[1] NMOGA's initial proposed rule is attached as Exhibit A to the Application filed with the Commission. NMOGA Exhibit 1 incorporates the modifications set forth in the Notice of NMOGA's Modifications To The Proposed Rule filed contemporaneously herewith.

b. Secondary liners can be "30-mil LLDP string reinforced or equivalent;"

c. Leak detection systems can consist of "200-mil geonet;"

d. Operators must inspect recycling containments on a monthly basis for migratory birds or other wildlife even if the containment is netted; and

e. Upon closure EPA Method 8015M shall be used to test for TPH rather than Method 418.1 and EPA Method 8260B shall be used to test for Benzene rather than Method 8015M;

7. Establish when and what type of financial assurance is required for operators of produced water recycling containments and when that financial assurance can be released;

8. Adopt provisions for seeking a variance from the requirements of the proposed rule;

9. Retain the current provisions of 19.15.34.8 through 19.15.34.12 addressing and regulating the transportation of produced water, drilling fluids and other liquid oilfield wastes;

10. Adopt provisions for the immediate enforcement of the proposed rule by the New Mexico Oil Conservation Division; and

11. Modify the definition of "produced water" in Title 19, Chapter 15, Part 2, NMAC, to match the definition of "produced water" in Section 70-2-33(K) of the Oil and Gas Act.

NMOGA will demonstrate that its proposed rule promotes the recycling and reuse of produced water, and meets the statutory requirement of affording a reasonable level of protection to the fresh water supplies designated by the state engineer, the public health, and the environment.

PROPOSED EVIDENCE

WITNESS:	ESTIMATED TIME	EXHIBITS
James Paul Welch, Halliburton, Inc. Specialist in Oil and Gas Produced Water Management	2.0 Hours	25 Exhibits

Mr. Welch holds a degree in chemistry, has an extensive background in the management of produced water, and served as a member of the NMOGA committee that drafted the proposed rule. His educational background and work experience are reflected on NMOGA Exhibit 5 filed herewith. Mr. Welch will discuss the nature of produced water, the current impediments to the

recycling and reuse of produced water, and the need for the recycling containment established by the proposed rule. Mr. Welch will provide the Commission with a detailed review of the proposed rule and note how the applicable siting, design, construction, operation, closure and site reclamation provisions adopted by the Commission for multi-well fluid management pits under Order R-13506-D have been carried over into the proposed rule. Mr. Welch will testify that the proposed rule more clearly identifies the regulatory process for the recycling and reuse of produced water, will promote the recycling and reuse of produced water, and will provide a reasonable level of protection to fresh water, the public health and the environment.

WITNESS:	**ESTIMATED TIME**	**EXHIBITS**
Charles W. Fielder, Gordon Environmental, Inc. P.E., LEED, AP	1.0 Hour	10 Exhibits

Mr. Fielder is a professional engineer with extensive experience with geomembrane liners and leak detection systems for various New Mexico waste storage projects. His educational background and work experience are reflected in NMOGA Exhibit 26 filed herewith. Mr. Fielder will discuss the proposed provisions in Part 34.12 providing for the use of "45-mil LLDPE string reinforced" primary liners, "30-mil LLDP string reinforced or equivalent" secondary liners, and a leak detection system using "200-mil geonet." Mr. Fiedler will discuss the nature of these liners and leak detection systems and testify that they contain features and installation attributes that are conducive to the proposed recycling containment facility. Mr. Fielder will further testify that the proposed liners and leak detection system will provide a reasonable level of protection to fresh water, the public health and the environment for the year life expectancy of the proposed recycling containment facility.

WITNESS:	ESTIMATED TIME	EXHIBITS
Clay A. Robinson Licensed Prof. Soil Scientist PhD, CPSS, PG	1.0 Hour	10 Exhibits

Dr. Robinson holds a Ph.D in Soil Science from Iowa State University and will address the proposed changes to the testing "Method" column of Table 1 on page 8 of the proposed rule. Dr. Robinson's educational background and work experience are reflected in NMOGA Exhibit 36 filed herewith. Dr. Robinson will testify that EPA Method 8015M is a more appropriate testing method for measuring TPH in impacted soils than Method 418.1. He will further testify that the phrase "(GRO+DRO+MRO)" under TPH in the "Constituent" column of Table 1 provides operators and laboratories with an understandable and appropriate carbon range for the required testing. Dr. Robinson will similarly testify that EPA Method 8260B (adopted by the Commission under Order R-13506-D for measuring BTEX) is a more appropriate testing method for measuring Benzene in impacted soils than Method 8015M, and that the same testing method should be utilized for both BTEX and Benzene in Table 1.

EXHIBITS

NMOGA anticipates entering into evidence a total of forty five (45) exhibits that are submitted with this prehearing statement.

PROCEDURAL MATTERS

NMOGA has filed contemporaneous with this prehearing statement a Notice of NMOGA's Modifications to the Proposed Rule. These modifications have been incorporated into NMOGA Exhibit 1.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2015, I served a copy of the foregoing document to the following counsel of record via electronic mail to:

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ATTORNEYS FOR EARTHWORKS' OIL AND GAS ACCOUNTABILITY PROJECT

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