

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

**IN THE MATTER OF PROPOSED  
AMENDMENTS TO THE COMMISSION'S  
RULES ON PRODUCED WATER,  
19.15.2, 19.15.16, AND 19.15.34 NMAC**

**CASE NO. 21281**

**APPLICATION FOR RULEMAKING**

The New Mexico Energy, Minerals and Natural Resources Department, Oil Conservation Division (Division) hereby applies to the Oil Conservation Commission (Commission) to amend rules 19.15.2, 19.15.16, and 19.15.34 NMAC.

The Division states that:

- (1) The proposed rule changes:
  - (a) Amend 19.15.2.7 NMAC to conform the definition of "produced water" with the definition found in the Oil and Gas Act, NMSA 1978, §70-2-33(K) (2019).
  - (b) Amend 19.15.16 NMAC to add a section requiring the filing of a water use report for a hydraulically fractured well that provides the portion of the water used in fracturing which is potable, nonpotable or recycled produced water.
  - (c) Amend 19.15.34 NMAC to conform the language in this Part to the legislative changes in Laws 2019, chapter 197 (HB 546) concerning produced water.
- (2) A draft of the proposed rule change is attached as Exhibit A to this Application.
- (3) The applicant for this rulemaking is the Division.
- (4) The contact for the applicant shall be:

Cheryl L. Bada, Deputy General Counsel  
1220 South St. Francis Drive  
Santa Fe, NM 87505  
cheryl.bada@state.nm.us

(505) 476-3214

- (5) A proposed legal notice is attached as Exhibit B.

The Division requests that the Commission, at a meeting held no sooner than 15 days and no later than 60 days from the submittal of this Application, grant a hearing on the proposed rule changes and issue an order pursuant to 19.15.3.8(C) NMAC specifying procedures to conduct the rulemaking and hearing in a manner that addresses the current COVID-19 crisis.

Respectfully submitted,

**NEW MEXICO  
OIL CONSERVATION DIVISION**



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Cheryl L. Bada, Deputy General Counsel  
Energy, Minerals and Natural Resources  
Department

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Santa Fe, NM 87505  
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**Proposed Rule Changes for the Oil Conservation Commission**

**TITLE 19 NATURAL RESOURCES AND WILDLIFE**

**CHAPTER 15 OIL AND GAS**

**PART 2 GENERAL PROVISIONS FOR OIL AND GAS OPERATIONS**

**19.15.2.7 DEFINITIONS:** These definitions apply to 19.15.2 NMAC through 19.15.39 NMAC.

**P. Definitions beginning with the letter “P”.**

(10) **“Produced water”** means ~~[water]~~ a fluid that is an incidental byproduct from drilling for or the production of oil and gas.

**TITLE 19 NATURAL RESOURCES AND WILDLIFE**

**CHAPTER 15 OIL AND GAS**

**PART 16 DRILLING AND PRODUCTION**

**19.15.16.21 WATER USE REPORT:** For a hydraulically fractured well, an operator shall report, on form C-103 or C-105, the amount of water reported on the disclosure required by Subsection B of 19.15.16.19 NMAC and the breakdown of that amount by types of water including produced water, nonpotable water and potable water. As used in 19.15.16.21 NMAC

A. “nonpotable water” means water, other than produced water, which contains 1,000 mg/l or more of TDS; and

B. “potable water” means water, other than produced water, which contains less than 1,000 mg/l of TDS.

**TITLE 19 NATURAL RESOURCES AND WILDLIFE**

**CHAPTER 15 OIL AND GAS**

**PART 34 PRODUCED WATER, DRILLING FLUIDS AND LIQUID OIL FIELD WASTE**

**19.15.34.2 SCOPE:** 19.15.34 NMAC applies to the transportation, disposal, recycling, re-use or the direct surface or subsurface disposition ~~[by use]~~ of produced water ~~[produced or used]~~ in connection with the development or production of oil or gas or both ~~[; in road construction or maintenance, or other construction; in the generation of electricity or in other industrial processes]~~. 19.15.34 NMAC also applies to the transportation of drilling fluids and liquid oil field waste.

**19.15.34.3 STATUTORY AUTHORITY:** 19.15.34 NMAC is adopted pursuant to the Oil and Gas Act, Paragraph (15) of Subsection B of Section [70-2-12(B)] 70-2-12 NMSA 1978, which authorizes the division to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas ~~[of water produced or used in connection with the drilling for or producing of oil and gas or both]~~ and Paragraph (21) of Subsection B of Section [70-2-12(B)] 70-2-12 NMSA 1978 which authorizes the regulation of the disposition of nondomestic wastes from the exploration, development, production or storage of crude oil or natural gas.

**19.15.34.6 OBJECTIVE:** To encourage the recycling ~~[;]~~ or re-use ~~[or disposition]~~ of produced water ~~[by use]~~ in a manner that ~~[will afford reasonable protection against contamination of fresh water]~~ protects public health, the environment and fresh water resources and establish procedures by which persons may transport, recycle, reuse and dispose ~~[of]~~ produced water, drilling fluids and other liquid oil

field waste in activities related to the exploration, drilling, production, treatment or refinement of oil or gas.

**19.15.34.7 DEFINITIONS:** These definitions apply to 19.15.34.2 NMAC through 19.15.34.21 NMAC. See 19.15.2.7 NMAC for additional definitions.

**A.** “Recycling facility” is a stationary or portable facility used exclusively for the treatment, re-use or recycling of produced water [~~intended for disposition by use~~]. A recycling facility does not include oilfield equipment such as separators, heater treaters and scrubbers in which produced water may be used.

**19.15.34.8 REQUIREMENTS FOR ~~[DISPOSITION BY USE]~~ REUSE, RECYCLING ~~[FACILITIES]~~ OR DISPOSAL OF PRODUCED WATER:**

**A.** Recycling or [~~disposition by use~~] reuse of produced water.

(1) No permit or registration is required from the division for the [~~disposition by use~~] reuse of produced water for drilling, completion, producing [~~secondary~~] or enhanced recovery [~~pressure maintenance~~] of oil or natural gas or plugging of wells pursuant to 19.15.34 NMAC.

(2) Any other [~~disposition by use~~] reuse of produced water in the exploration, drilling, production, treatment or refinement of oil or gas requires prior approval by the appropriate division district office on form C-147. Approval requirements will be determined by the district office based upon the proposed use.

(3) Research using produced water is to be encouraged through pilot projects approved by the appropriate division district office.

(4) All produced water for recycling or [~~disposition by use~~] reuse shall be handled and stored in a manner that [~~will afford reasonable protection against contamination of fresh water~~] protects public health, the environment and fresh water resources.

(5) All operations in which produced water is used shall be conducted in a manner consistent with hydrogen sulfide gas provisions in 19.15.11 NMAC or NORM provisions in 19.15.35 NMAC, as applicable.

(6) All releases from the recycling and re-use of produced water shall be handled in accordance with 19.15.29 NMAC.

(7) Any discharge, handling, transport, storage, recycling or treatment for the disposition of treated produced water, including disposition in road construction maintenance, roadway ice or dust control or other construction, or in the application of treated produced water to land, for activities unrelated to the exploration, drilling, production, treatment or refinement of oil or gas is subject to rules adopted by the water quality control commission.

**B.** Disposal of produced water. Persons disposing of produced water shall use one of the following disposition methods:

(1) [~~disposition in a manner that does not constitute a hazard to fresh water, public health, or the environment;~~] delivery to a [~~permitted salt~~] produced water disposal well [~~or facility~~] permitted pursuant to 19.15.26 NMAC, a surface waste management facility permitted pursuant to 19.15.36 NMAC or a permanent pit permitted pursuant to 19.15.17 NMAC; [~~or to a drill site for use in drilling fluid; or~~]

(2) [~~use~~] recycling or reuse in accordance with 19.15.34 NMAC; or [~~other authorization from the division.~~]

(3) for uses regulated by the water quality control commission pursuant to the Water Quality Act, a person shall obtain a permit from the department of environment before using the produced water, recycled or treated water or treated product or any byproduct of the produced water.

**19.15.34.9 RECYCLING FACILITIES:**

**B.** In addition to the other applicable rule requirements, registration of a recycling facility is required in the following circumstances:

(3) when the recycling facility is an addition to a [salt] produced water disposal well permitted under 19.15.26 NMAC;

**19.15.34.13 OPERATIONAL REQUIREMENTS FOR RECYCLING CONTAINMENTS:**

C. A recycling containment shall be deemed to have ceased operations if less than [~~20%~~] twenty percent of the total fluid capacity is used every six months following the first withdrawal of produced water for use. The operator must report cessation of operations to the appropriate division district office. The appropriate division district office may grant an extension to this determination of cessation of operations not to exceed six months.

**19.15.34.14 CLOSURE AND SITE RECLAMATION REQUIREMENTS FOR RECYCLING CONTAINMENTS:**

F. Reclamation of all disturbed areas no longer in use shall be considered complete when all ground surface disturbing activities at the site have been completed, and a uniform vegetative cover has been established that reflects a life-form ratio of plus or minus fifty percent [~~(50%)~~] of pre-disturbance levels and a total percent plant cover of at least seventy percent [~~(70%)~~] of pre-disturbance levels, excluding noxious weeds.

**19.15.34.18 DENIAL OF FORM C-133:** The division may deny approval of a form C-133 if:

D. the applicant or officer, director or partner in the applicant, or a person with an interest in the applicant exceeding twenty-five percent [~~(25%)~~], is or was within the past five years an officer, director or partner in the applicant, or a person with an interest in the applicant exceeding twenty-five percent [~~(25%)~~] in another entity that possesses or has possessed an approved form C-133 that has been cancelled or suspended, has a history of violating division or other state or federal environmental laws; is subject to a commission or division order, issued after notice and hearing, finding such entity to be in violation of an order requiring corrective action; or has a penalty assessment for violation of division or commission rules or orders that is unpaid more than 70 days after issuance of the order assessing the penalty.

## NOTICE OF PUBLIC MEETING AND PUBLIC HEARING

The New Mexico Oil Conservation Commission (Commission) hereby gives notice that the Commission will hold the following public meeting and public hearing commencing at 9:00 a.m. on July 16, 2020 online and via telephone. Oral comments may be made either on-line or by telephone. The Commission shall make available to the public a preliminary agenda for the meeting no later than two weeks prior to the meeting, and a final agenda for the meeting no later than 72 hours before the meeting.

**Case No. \_\_\_\_\_ : APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION TO AMEND THE COMMISSION'S RULES FOR PRODUCED WATER IN 19.15.2, 19.15.16, AND 19.15.34 NMAC; STATEWIDE.**

The New Mexico Oil Conservation Division (OCD) proposes to (1) amend 19.15.2.7 NMAC to conform the definition of "produced water" with the definition found in the Oil and Gas Act, NMSA 1978, §70-2-33(K) (2019); (2) amend 19.15.16 NMAC to add a section requiring the filing of a water use report for a hydraulically fractured well that provides the portion of the water used in fracturing which is potable, nonpotable, or recycled produced water; and (3) amend 19.15.34 NMAC to conform the language in 19.15.34 NMAC to the legislative changes in Laws 2019, chapter 197 (HB 546) concerning produced water.

**Purpose of Proposed Rule.** The proposed rule implements the changes in produced water management and authority enacted by House Bill 546 (Laws 2019, chapter 197) in the 2019 Legislature.

**Legal Authority.** The proposed rule is authorized by the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, and specifically, Section 70-2-6 (authorizing the Commission to exercise jurisdiction, authority, and control of and over all persons, matters, and things necessary or proper to enforce the statute), Section 70-2-11 (authorizing the Commission to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), and Section 70-2-12 (enumerating the powers of the Commission and OCD). The public hearing is governed by the Commission's rule on rulemaking proceedings, 19.15.3 NMAC.

**Availability of Proposed Rule.** The full text of the proposed rule may be obtained from the Commission Clerk, Florene Davidson at [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us) or (505) 476-3458, or can be viewed on the Rules page of the OCD's website at <http://www.emnrd.state.nm.us/ocd>.

**Public Hearing.** The Commission will hold a public hearing on the proposed rule at the Commission meeting commencing at 9:00 a.m. on July 16, 2020 online and via telephone. For information on how to participate in the hearing please contact the Commission Clerk, Florene Davidson at [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us) or (505) 476-3458 or visit the OCD's website at <http://www.emnrd.state.nm.us/ocd>. The hearing may be continued to the following day(s) if not completed.

**Proposed Modifications, Technical Testimony, and Cross Examination.** Any person intending to propose a modification to the proposed rule, to present technical testimony at the hearing, or to cross-examine witnesses must file a Pre-Hearing Statement conforming to the requirements of Subsection B of 19.15.3.11 NMAC, no later than 5:00 p.m. on July 2, 2020. Filing may be accomplished by first class mail to the Commission Clerk, Florene Davidson, 3<sup>rd</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, or electronic mail to [OCD.Hearings.state.nm.us](mailto:OCD.Hearings.state.nm.us). Any person who presents technical testimony will be subject to cross-examination by the members of the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony.

**Oral Comments.** Any person who has not submitted a Pre-Hearing Statement may present non-technical testimony or make an unsworn statement at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule and do not unduly repeat the testimony. Any person who presents non-technical testimony will be subject to cross-examination by the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony.

**Written or Electronic Comments.** Any person may submit written or electronic comments on the proposed rule no later than 9:00 a.m. on July 16, 2020, unless extended by the Commission or the Chair of the

Commission, by first class or electronic mail to the Commission Clerk, Florene Davidson, 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, or [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us).

**Persons with Disabilities.** If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, including a summary or other accessible form of document, please contact the Commission Clerk, Florene Davidson, [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us) or (505) 476-3458, or through the New Mexico Relay Network at 1-800-659-1779, no later than July 2, 2020.

**Technical Information.** There is no technical information for the proposed rule.