

NMAC Transmittal Form



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Volume: XXXI	Issue: 19	Publication date:	October 13, 2	2020 Number or	pages: 5	Sequence No.		
Issuing agency nam	ne and addres	is:					Agency DFA code:	
Oil Conservatio	n Commiss	ion, 1220 S. St. Fra	ıncis Drive, S	anta Fe, New	Mexico 87505		521	
Contact person's name: Phone number:					E-mail address	5:		
			(505) 476-3	458	florene.davidson@state.nm.us			
Type of rule action:							Use Only)	
New Amend	ment 🗸 F	Repeal Emergence	y Ren	umber		Most red	cent filing date:	
Title number:	Title name:							
19	Natural Re	sources and Wildlife			· multiple magnetic medical property and the control of the contro			
Chapter number: Chapter name:								
15	Oil and Gas							
Part number:	Part name:				,	4-2-MINISTRANCE		
Produced Water, Drilling Fluids and Liquid Oil Field Waste								
Amendment descr	iption (If filin	g an amendment):		Amendmen	L's NMAC citation	n (If filing an am	endment):	
Amending ni	ne section	s		Sections 2, 3 19.15.34 NM	. —	9, 13, 14, aı	nd 18 of	
Are there any mate	erials incomo	ated by reference?	Please list at	tachments or Int	ternet sites if ap	plicable.	Account to the second s	
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If materials are at	tached, has o	opyright permission be	een received?	Yes	No _	Public do	main	
Specific stat	tutory or	other authority	y authorizi	ing rulemak	king:			
Sections 70-	2-11, 70-2	2-12, and 70-2-12	2.2 NMSA	1978.				
Notice date(s):		Hearing date(s):		Rule adoption	date:		ctive date:	
June 9, 2020		July 30 and 31, 2	2020	September	24, 2020	Octobe	r 13, 2020	

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Concise Explanatory Statement For Rulemaking Adoption:

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Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

See attached 11 page document titled Oil Conservation Commission O the Commission.	rder No. R-21343-A Order of
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to 4.44 months and file outside 84 553.	
Issuing authority (If delegated, authority letter must be on file with ALD): Name:	Check if authority has been delegated
Adrienne Sandoval	
Title:	
Oil Conservation Commission Chair	Pata diagodi
Signature: (BLACK ink only)	Date signed:
M'XNX	9/24/20

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2020 SEP 29 AM 11: 55 STATE OF NEW MEXICO DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES 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 ORDER NO. R-21343-A

ORDER OF THE COMMISSION

THIS MATTER came before the New Mexico Oil Conservation Commission ("Commission") on the application of the Oil Conservation Division of the Energy, Minerals and Natural Resources Department ("Division") to amend Rules 19.15.2, 19.15.16, and 19.15.34 NMAC. The Commission conducted a hearing in this matter on July 30 and 31, 2020, and deliberated in open session following the hearing and also during the September 3, 2020 meeting. The Commission, having considered the testimony, the record, and the arguments of the parties, and being otherwise fully advised, enters the following findings, conclusions, and order.

THE COMMISSION FINDS THAT:

- 1. <u>Statutory Authority</u>. The Commission is authorized to adopt rules, after a hearing, under the Oil and Gas Act, NMSA 1978, Sections 70-2-1 to -38 ("Act"). NMSA 1978, § 70-2-12.2. The Commission and the Division are given the duty 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 in a manner that protects public health, the environment, and fresh water resources. NMSA 1978, § 70-2-12(B)(15).
- In 2019, the New Mexico Legislature passed House Bill 546 ("HB 546)" which 2. specified, among other things, the jurisdictional limits of the Division and Commission as it relates to the regulation of produced water. NMSA 1978, §§ 70-13-1 through -5. HB 546 limits the Division and Commission's regulatory authority over produced water to the "exploration, drilling, production, treatment or refinement of oil or gas, including disposal by injection." NMSA 1978, § 70-2-12(B)(15). It also transfers to the Water Quality Control Commission ("WQCC") and the Department of the Environment ("NMED") the authority to regulate produced water outside of the oil and gas industry to include produced water used in road construction or maintenance or other construction, in the generation of electricity or in other industrial processes. NMSA 1978, § 74-6-4(P). Prior to the 2019 amendments, the Division and Commission had concurrent authority to regulate the use of produced water in road construction or maintenance or other construction, in the generation of electricity or in other industrial processes. Additionally, HB 546 provides a consistent definition of "produced water" within the Oil and Gas and Water Quality Acts. NMSA 1978, § 70-2-33(K). It also promotes the reuse of produced water within the oil and gas industry. See NMSA 1978, § 70-13-4.



2020 SEP 29 AM [1: 56 This is an amendment to 19.15.34 NMAC, Sections 2, 3, 6 through 9, 13, 14, and 18, effective 10/13/2020.

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 NMAC does not authorize any transportation, disposal, recycling, re-use or disposition of produced water that is not directly within the jurisdiction of the division. [19.15.34.2 NMAC - Rp, 19.15.34.2 NMAC, 3/31/2015; A, 10/13/2020]

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 re-use in, the exploration, drilling, production, treatment or refinement of oil or gas in a manner that protects public health, the environment and fresh water resources [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.

[19.15.34.3 NMAC - Rp, 19.15.34.3 NMAC, 3/31/2015; A, 10/13/2020]

19.15.34.6 OBJECTIVE: To encourage the recycling [5] 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 within the jurisdiction of the division.

[19.15.34.6 NMAC - Rp, 19.15.34.6 NMAC, 3/31/2015; A, 10/13/2020]

- **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.
- **B.** "Recycling containment" is a storage containment which incorporates a synthetic liner as the primary and secondary containment device and is used solely in conjunction with a recycling facility for the storage, treatment or recycling of produced water only for the purpose of drilling, completion, production or plugging of wells used in connection with the development of oil or gas or both.
- **C.** "Treatment" refers to the reconditioning of produced water to a reusable form and may include mechanical and chemical processes.

[19.15.34.7 NMAC - N, 3/31/2015; A, 10/13/2020]

19.15.34.8 REQUIREMENTS FOR [DISPOSITION BY USE] RE-USE, RECYCLING [FACILITIES] OR DISPOSAL OF PRODUCED WATER:

- **A.** Recycling or [disposition by use] <u>re-use</u> of produced water.
- (1) No permit or registration is required from the division for the [disposition by use] <u>re-use</u> of produced water for drilling, completion, [producing, secondary] <u>production</u>, pressure maintenance, secondary <u>recovery or enhanced</u> recovery [, pressure maintenance] <u>of oil or natural gas</u> or plugging of wells pursuant to 19.15.34 NMAC.
- (2) Any other [disposition by use] re-use of produced water within the jurisdiction of the division requires prior approval by the [appropriate division district office] division on form C-147. Approval requirements will be determined by the [district office] division based upon the proposed use.
- (3) Research using produced water is to be encouraged through pilot projects approved by the [appropriate division district office] division.
- (4) All produced water for recycling or [disposition by use] re-use 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 within the jurisdiction of the division shall be handled in accordance with 19.15.29 NMAC. If the release is detrimental to ground or surface waters, the responsible party must send a copy of the form C-141 to the New Mexico environment department, as applicable, in accordance with 19.15.29 NMAC.

(7) Any release, 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.

(8) Surface application of produced water or recycled produced water is prohibited on any facility within the jurisdiction of the division.

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] <u>recycling or re-use</u> in accordance with 19.15.34 NMAC; or [other authorization from the division.]

Act, a person shall obtain a permit from the New Mexico environment department before using the produced water, recycled or treated water or treated product or any byproduct of the produced water.

[19.15.34.8 NMAC - Rp, 19.15.34.12 NMAC, 3/31/2015; A, 10/13/2020]

19.15.34.9 RECYCLING FACILITIES:

A. Except where recycling facilities are part of a permitted operation for the drilling, completing, producing or plugging of oil and gas wells, all recycling facilities shall be permitted or registered with the division district office. Division form C-147 shall be used for registration, financial assurance or for a permit if not associated with the drilling, completing, producing and plugging of oil and gas wells. All operators or owners of the facility shall be named in the form C-147.

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

(1) when the recycling facility is an addition to a surface waste management facility permitted under 19.15.36 NMAC;

when the recycling facility is an addition to the secondary recovery of oil and gas, enhanced oil recovery of oil and gas or pressure maintenance projects permitted under 19.15.26 NMAC;

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

(4) when the recycling facility is an addition to pits permitted or below-grade tanks registered in accordance with 19.15.17 NMAC;

(5) when the recycling facility is used with a closed loop system that only delivers fluid for drilling or completion purposes;

(6) when the recycling facility is used with dedicated above ground, unlined, hard-sided tanks used in accordance with the manufacturer's standards that are externally visually inspected weekly when holding fluids and a log is kept of the inspections made available to the division upon request; or

when the recycling facility is used with a recycling containment registered in accordance with 19.15.34 NMAC.

C. Recycling facilities not identified in Subsection B of 19.15.34.9 NMAC are required to be permitted. The appropriate division district office will determine approval requirements based upon the proposed use.

D. Recycling facilities may be located either onsite or offsite of a well drilling location and may serve a number of wells.



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 The operator of a recycling facility shall keep accurate records and shall report monthly to the E. division the total volume of water received for recycling, with the amount of fresh water received listed separately, and the total volume of water leaving the facility for disposition by use on form C-148.
- The operator of a recycling facility shall maintain accurate records that identify the sources and disposition of all recycled water that shall be made available for review by the division upon request.
 - Recycling facilities may not be used for the disposal of produced water. G.
- The operator shall remove all fluids within 60 days from the date the operator ceases operations. H. The division district office may grant an extension for the removal of all fluids not to exceed two months. [19.15.34.9 NMAC - N, 3/31/2015; A, 10/13/2020]

OPERATIONAL REQUIREMENTS FOR RECYCLING CONTAINMENTS: 19.15.34.13

- The operator shall inspect the recycling containment and associated leak detection systems weekly while it contains fluids. The operator shall maintain a current log of such inspections and make the log available for review by the division upon request.
- The operator shall maintain and operate a recycling containment in accordance with the following requirements.
- The operator shall remove any visible layer of oil from the surface of the recycling **(1)** containment.
 - The operator shall maintain at least three feet of freeboard at each containment. **(2)**
- The injection or withdrawal of fluids from the containment shall be accomplished (3) through a header, diverter or other hardware that prevents damage to the liner by erosion, fluid jets or impact from installation and removal of hoses or pipes.
- If the containment's primary liner is compromised above the fluid's surface, the operator shall repair the damage or initiate replacement of the primary liner within 48 hours of discovery or seek an extension of time from the division district office.
- If the primary liner is compromised below the fluid's surface, the operator shall remove all fluid above the damage or leak within 48 hours of discovery, notify the division district office and repair the damage or replace the primary liner.
 - The containment shall be operated to prevent the collection of surface water run-on.
- The operator shall install, or maintain on site, an oil absorbent boom or other device to **(7)** contain an unanticipated release.
- 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] division. The [appropriate division district office] division may grant an extension to this determination of cessation of operations not to exceed six months.

[19.15.34.13 NMAC - N, 3/31/2015; A, 10/13/2020]

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

- Once the operator has ceased operations, the operator shall remove all fluids within 60 days and close the containment within six months from the date the operator ceases operations from the containment for use. The division district office may grant an extension for the removal of all fluids not to exceed two months. The division district office may grant an extension to close the containment not to exceed six months. If the operator wants to use the containment for a purpose other than recycling then the operator must have that use approved or permitted by the division in accordance with the appropriate rules.
- The operator shall close a recycling containment by first removing all fluids, contents and synthetic liners and transferring these materials to a division approved facility.
- The operator shall test the soils beneath the containment for contamination with a five-point composite sample which includes stained or wet soils, if any, and that sample shall be analyzed for the constituents listed in Table I below.
- If any contaminant concentration is higher than the parameters listed in Table I, the division may require additional delineation upon review of the results and the operator must receive approval before proceeding with closure.
- If all contaminant concentrations are less than or equal to the parameters listed in Table I, then the operator can proceed to backfill with non-waste containing, uncontaminated, earthen material.

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- **D.** Within 60 days of closure completion, the operator shall submit a closure report on form C-147, including required attachments, to document all closure activities including sampling results and the details on any backfilling, capping or covering, where applicable. The closure report shall certify that all information in the report and attachments is correct and that the operator has complied with all applicable closure requirements and conditions specified in division rules or directives.
- E. Once the operator has closed the recycling containment, the operator shall reclaim the containment's location to a safe and stable condition that blends with the surrounding undisturbed area. Topsoils and subsoils shall be replaced to their original relative positions and contoured so as to achieve erosion control, long-term stability and preservation of surface water flow patterns. The disturbed area shall then be reseeded in the first favorable growing season following closure of a recycling containment. The operator shall substantially restore the impacted surface area to the condition that existed prior to the construction of the recycling containment.
- 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.
- **G.** The re-vegetation and reclamation obligations imposed by federal, state trust land or tribal agencies on lands managed by those agencies shall supersede these provisions and govern the obligations of any operator subject to those provisions, provided that the other requirements provide equal or better protection of fresh water, human health and the environment.
 - H. The operator shall notify the division when reclamation and re-vegetation are complete.

	Ta	able I	
Closure Criteria for Recy	ycling Containments		
Depth below bottom of containment to groundwater less than 10,000 mg/l TDS	Constituent	Method*	Limit**
51 feet - 100 feet	Chloride	EPA 300.0	10,000 mg/kg
	TPH (GRO+DRO+MRO)	EPA SW-846 Method 8015M	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B	10 mg/kg
> 100 feet	Chloride	EPA 300.0	20,000 mg/kg
	TPH (GRO+DRO+MRO)	EPA SW-846 Method 8015M	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B	10 mg/kg

^{*} Or other test methods approved by the division.

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

^{**} Numerical limits or natural background level, whichever is greater. [19.15.34.14 NMAC - N, 3/31/2015; A, 10/13/2020]



- $2020\,$ SEP 29 $\,$ AM 11: 57 the applicant is a corporation or limited liability company, and is not registered with the secretary A. of state to do business in New Mexico;
- the applicant is a limited partnership, and is not registered with the New Mexico secretary of state to do business in New Mexico;
- the applicant does not possess a warrant for transportation under the state registration system the public regulation commission administers, if it is required to have such a permit under the applicable statutes or rules; or
- 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.

[19.15.34.18 NMAC - Rp, 19.15.34.9 NMAC, 3/31/2015; A, 10/13/2020]