

MEMORANDUM

TO: New Mexico Oil Conservation Commission

FROM: Intrepid Potash-New Mexico, LLC

DATE: June 8, 2021

RE: Case No. 21834: Comments of Intrepid Potash-New Mexico, LLC Regarding the Application of Wild Earth Guardians and the New Mexico Oil Conservation Division to Amend the Commission's Rules for Releases in 19.15.29.6, 19.15.29.8, and 19.15.29.15 NMAC

Intrepid Potash-New Mexico, LLC ("Intrepid") submits comments on the referenced proposed rule changes, as directed by the Notice of Public Meeting and Public Hearing. Intrepid submits that the proposed rule changes are unduly punitive because any operator, regardless of the exercise of due care and responsible remedial measures, would be deemed in violation of 19.15.29 NMAC for any *di minimus* release of oil, gasses, produced water, condensate or oil field waste, regardless of the operator's efforts to take appropriate measures to eliminate the sources of the release, to contain the release, to stabilize the site, and to engage in and complete remedial efforts. Because the *di minimus* release would establish a violation of 19.15.19 NMAC under the proposed rule change, the Oil Conservation Division ("OCD") would be allowed to take enforcement action under 19.15.5.10 NMAC. This enforcement action could include, but is not limited to, the issuance of a notice of violation assessing civil penalties up to \$2,500 per day for *di minimus* releases, or, in the discretion of the OCD, penalties of up to \$10,000 per day in situations where the OCD considers the risk to be adverse to the health and/or safety of the public. In total, the potential penalties assessed for a *di minimus* release could reach \$200,000.

This problem is exacerbated for Intrepid because of its unique position as a water recycler and potential user of produced water in its mining processes. Under the Produced Water Act, NMSA 1978, §§ 70-13-1 *et seq.*, the New Mexico legislature expressed an unambiguous policy preference for the use and re-use of produced water to promote fresh water conservation and to protect the environment. Intrepid has committed extensive resources to implementing this legislative policy and seeks to be a leader in facilitating the use of produced and treated water. However, the proposed amendment to the rules governing releases would unduly penalize Intrepid and others for minor releases resulting from implementing the legislative directive to re-use produced water instead of fresh water resources. The proposed amendment therefore creates a disincentive to implement the legislature's stated policy preference.

While unilateral action by the OCD to assess penalties could be appropriate for releases which present a measurable threat to public health and the environment, such unilateral action is not appropriate in response to *di minimus* releases, especially those resulting from the re-use of produced water in furtherance of the public policy underlying the Produced Water Act. For these reasons, Intrepid respectfully requests that the Commission not adopt the proposed rule changes authorizing the significant imposition of penalties for minor releases.

TMH:sm