



33 I also oversaw ground water monitoring programs and investigations for those facilities.  
34 Prior to that I worked as an Environmental Specialist I in the Florida Department of  
35 Health, where I designed, permitted, inspected and approved on-site sewage systems. For  
36 a short period, I also worked as an Environmental Scientist for Redemption  
37 Environmental, Inc., a small consulting firm in Tampa, Florida where I performed site  
38 investigations, remediation programs, and cleanups of underground storage tank  
39 contamination sites. I have also worked as an Environmental Health Specialist II for the  
40 Island County Health Department in Coupeville, Washington, under a state granted  
41 funded position that involved overseeing solid waste programs, voluntary cleanup  
42 programs, investigations of contaminated sites, and the cleanup of meth lab sites. I have  
43 also worked as an Environmental Specialist I at the Florida Department of Health where I  
44 oversaw the implementation of several environmental programs.

45 I have testified before the Oil Conservation Commission (OCC) as an expert in  
46 environmental engineering and environmental regulation in Case 14015 adopting Part 17.  
47 I have testified before the New Mexico Environmental Improvement Board as a technical  
48 expert witness for the state in Case EIB 05-07 (R), Replacement to 20.9.1 NMAC, Solid  
49 Waste Management Regulations. I have also testified on the behalf of the State of New  
50 Mexico as a technical expert in two permit hearing regarding solid waste facilities; SWB  
51 05-06 (P) - In the Matter of the Application of the City of Tukumcari for a Solid Waste  
52 Management Facility Permit for the Tukumcari Landfill and SWB 02-09 (M) - In the  
53 Matter of the Application of the County of McKinley for a Modification to the Smith  
54 Lake (Thoreau) Landfill Permit.

55 My testimony will be a complete overview the proposed amendment to 19.15.39  
56 NMAC and the proposed modifications filed by the OCD on November 24, 2008. **OCD**  
57 **Exhibit 22** is a redlined version of the proposed amendment, showing the OCD's  
58 modifications. The following technical provisions in the proposed amendment will be  
59 addressed in greater detail by Division witnesses Glenn von Gonten and Will Jones:  
60 Subparagraphs 1-8 of Subsection B of 19.15.39.9 NMAC, and Subparagraphs 3-8 of  
61 Subsection B of 19.15.39.10 NMAC.

### 62 OVERVIEW OF THE PROPOSED RULES

63 The OCD proposes to amend Part 39, "Special Rules," to add two sections that  
64 will apply to Santa Fe County and the Galisteo Basin.

#### 65 Section 9: Exploration and Development Plans

66 Proposed Section 9 requires operators to obtain OCD approval of an exploration  
67 and development plan prior to applying for a permit to drill, re-enter or deepen a well  
68 within Santa Fe County or the Galisteo Basin. To apply for approval, the operator must  
69 submit a plan defining the area covered by the plan, describing the operator's proposed  
70 development of the area, and providing information that will help the OCD determine if  
71 approval of the plan will be consistent with its statutory mandates to prevent waste,  
72 protect correlative rights, and protect fresh water, human health and the environment. In  
73 addition, the operator must provide proposed drilling and mud programs, and plans for  
74 installing monitor wells, managing waste, minimizing pad size, and addressing releases.  
75 If applicable, the operator will also be required to provide its plan for mitigating its  
76 impact on cultural resources.

77           The OCD will perform a preliminary review of the application for administrative  
78   completeness to determine if it contains all of the required elements. Administratively  
79   complete plans will be set for public hearing. The operator will be required to publish a  
80   legal notice, and provide public notice to interested parties. The public will have an  
81   opportunity to submit written comments on the proposed plan and will be able to  
82   participate in the hearing process.

83           The OCD will approve an exploration and development plan only if the operator  
84   has provided the information required by the rule, satisfied the notice requirements, is in  
85   compliance with certain OCD rules, and if the OCD determines that approval of the plan  
86   will prevent waste, protect correlative rights, protect fresh water, and protect human  
87   health and the environment. The OCD may impose conditions on the plan if it  
88   determines those conditions are necessary to ensure that the plan will prevent waste,  
89   protect correlative rights, protect fresh water and protect human health and the  
90   environment. The OCD may approve a plan for a period not to exceed five years, and  
91   may renew a plan for additional periods not to exceed five years.

92           Once the operator obtains an approved plan, it may apply for permits to drill, re-  
93   enter or deepen wells covered by the plan through the established OCD permitting  
94   process. The operator will also need to follow permitting process of the applicable OCD  
95   rules for obtaining any other permits necessary for its operations, such as a permit for a  
96   closed-loop system, injection wells, and surface waste management facilities. It is  
97   important to understand that an approved plan is not a substitute for any applicable permit  
98   process.

99           If the operator wants to expand the area covered by the plan, increase the number  
100 or change the locations of wells and related facilities identified in the plan, or change the  
101 terms of the proposed plan, it must apply for an amendment. In its application, it will  
102 need to update the information it previously provided, and identify the specific changes it  
103 proposes to the plan. The operator will be required to publish a legal notice of the  
104 amendment, and provide public notice. The public will have the opportunity to give  
105 written comments on the amendment, and request a public hearing. The OCD may set  
106 the matter for public hearing. If it does so, the operator will be required to publish a legal  
107 notice and provide public notice that provides the appropriate information regarding the  
108 hearing. The application for amendment will be evaluated using the same standards  
109 applicable to an initial application.

110           Because the OCD may approve a plan for a period not to exceed five years, the  
111 operator will need to apply for renewal at least every five years. The operator may  
112 combine an application for amendment with an application for renewal. In other words,  
113 if an operator is applying for an amendment, it may at the same time request that its plan  
114 be renewed to a date no more than five years from the date of the amendment. The  
115 application process for renewal is the same as the process for an amendment: the operator  
116 must update its application information, provide legal notice, and publish public notice  
117 that provides instructions for public comment and requests for a public hearing, if  
118 applicable. The OCD may set the matter for hearing. The application will be evaluated  
119 using the same standards applicable to an initial application.

120           If the plan expires and the operator has not filed for renewal, the operator must  
121 shut in the wells covered by the plan. If the operator violates the terms of the plan, or is

122 in violation of certain other OCD rules, the OCD may – after notice and hearing – order  
123 the operator to shut in the wells covered by the plan.

124 Section 9 provides a process for replacing an exploration and development plan  
125 with a special pool order. An operator may not apply for replacement until it has  
126 operated wells under its plan for at least 5 years. It may then apply for replacement,  
127 using the same process that is used for seeking an amendment or a renewal. The OCD  
128 may set the matter for hearing. The application will be evaluated using the same  
129 standards applicable to an initial application. The OCD may impose conditions in the  
130 special pool order, to ensure that the order prevents waste, protects correlative rights,  
131 protects fresh water and protects human health and the environment. Once a plan is  
132 replaced with a special pool order, any changes to the special pool order will be handled  
133 through existing OCD processes.

134 Section 10: Additional Requirements for Applications to Drill, Re-enter or Deepen Wells  
135 Subject to an Exploration and Development Plan.

136  
137 Section 10 is a companion provision to Section 9. It imposes additional  
138 requirements on applications to drill, re-enter or deepen wells subject to an exploration  
139 and development plan.

140 When an operator applies for a permit to drill, re-enter or deepen a well under its  
141 plan, Subsection A of Section 10 will require the operator to take additional steps not  
142 required under existing OCD rules. First, the operator will have to submit its application  
143 for a permit under 19.15.17 NMAC (Part 17) to address drilling waste at the same time it  
144 submits its application for an APD, so the OCD can evaluate them together. Second, the  
145 operator will have to provide global positioning system coordinates for the location of a  
146 well to be drilled in an un-surveyed area, so the OCD can review the site. Third, the

147 operator must provide any additional information required by its exploration and  
148 development plan.

149 Subsection B of Section 10 sets out conditions that are automatically required for  
150 an APD issued for a well covered by an exploration and development plan. The  
151 conditions include a requirement that the operator use a closed-loop system rather than  
152 pits; not dispose of drilling waste on-site; run logs during the drilling process that will  
153 help identify water zones; use a casing and cementing program that will isolate fresh  
154 water zones; and place wells requiring gas pipeline connections on approved temporary  
155 abandonment status while awaiting pipeline connection. To obtain an exception to any of  
156 these conditions, the operator must seek the exception as part of its exploration and  
157 development plan.

158 **DETAILED REVIEW OF SECTION 9:**  
159 **EXPLORATION AND DEVELOPMENT PLANS**

160  
161 **Subsection A: Applicability**

162 As stated in the first paragraph of Subsection A, Section 9 requires operators to  
163 obtain OCD approval of an exploration and development plan prior to applying for a  
164 permit to drill, re-enter or deepen a well in Santa Fe County or the Galisteo Basin. The  
165 operator must renew its plan at least every five years, and must operate the wells covered  
166 by the plan in accordance with the plan's requirements until the plan is replaced by a  
167 special pool order.

168 Section 9 covers "re-entering" and "deepening," as well as drilling, so that an  
169 operator re-entering or deepening an existing well will be subject to the Section's  
170 requirements.

171 Section 9 covers all of Santa Fe County and not just the Galisteo Basin because  
172 Executive Orders 2008-004 and 2008-038 addressed both Santa Fe County and the  
173 Galisteo Basin, the public concern that prompted the executive orders extends to all of  
174 Santa Fe County, and the protections offered by the proposed rules would be beneficial  
175 throughout the county. Further, Santa Fe County has proposed a county-wide ordinance  
176 on drilling, and the OCD's adoption of county-wide rules will be consistent with that  
177 approach.

178 Most of the Galisteo Basin is located in Santa Fe County, with small portions of  
179 the basin extending into San Miguel County to the east, and Sandoval County to the west.

180 Paragraphs 1 and 2 of Subsection A identify those portions of San Miguel County  
181 and Sandoval County that are in the Galisteo Basin, and therefore covered by the rule.

182 Proposed Modifications:

183 The OCD has proposed the following modifications to the first paragraph of  
184 Subsection A:

185 **A. Applicability. The operator must obtain division**  
186 **approval for an exploration and development plan prior to applying**  
187 **for a permit pursuant to 19.15.14 NMAC to drilling, re-entering or**  
188 **deepening a well located in Santa Fe county or the Galisteo Basin, and**  
189 **must operate the wells covered by the plan in accordance with the**  
190 **plan's requirements until the plan is specifically replaced by a special**  
191 **pool order. Approval of an exploration and development plan does**  
192 **not relieve an operator from its responsibility to obtain any permit**  
193 **required pursuant to the Oil and Gas Act for its activities conducted**  
194 **under the plan. The operator must renew an approved exploration**  
195 **and development plans every five years...**

196  
197 The proposed change to the first sentence in Subsection A, highlighted in green,  
198 affects whether Section 9 will apply to pending applications. As originally drafted, an  
199 operator would have to obtain an approved exploration and development plan prior to

200 drilling, re-entering or deepening a well in Santa Fe County or the Galisteo Basin. The  
201 OCD proposed the language highlighted in green to make it clear that even though an  
202 operator obtained an approved exploration and development plan, it would still need to  
203 go through the permitting process set out in 19.15.14 NMAC prior to drilling, re-entering  
204 or deepening a well. However, this proposed change could be interpreted to make the  
205 rule inapplicable to any operator that has already applied for an APD but that has not yet  
206 started drilling, re-entering or deepening the well. For that reason, the OCD has  
207 determined not to request the modification highlighted in green.

208         The OCD has proposed the changes highlighted in red to clarify what an approved  
209 exploration and development plan represents and does not represent to an operator. An  
210 approved exploration and development plan is just that, an approved plan. Approval of a  
211 plan does not equate to approval of permits. Permits for drilling will have to be obtained  
212 through the permitting process identified in 19.15.14 NMAC and the additional  
213 provisions and conditions of 19.15.39.10 NMAC. Permits required for managing the  
214 drilling waste will have to be obtained through the permitting processes identified in  
215 19.15.17 NMAC and address the additional conditions of 19.15.39.10 NMAC.  
216 Depending on the proposals presented in the exploration and development application  
217 and the outcome of the approved plan, the operator may have to pursue a permit for a  
218 surface waste management facility pursuant to the permitting requirements of 19.15.36  
219 NMAC. OCD would also like to clarify that any exception to a standard or specific  
220 requirement identified in 19.15.17 NMAC and 19.15.36 NMAC that is proposed in the  
221 exploration and development application and approved in the plan does not grant the  
222 operator the opportunity to circumvent the exception, waiver, and administrative

223 protocols, processes, and provisions required for a permit pursuant to 19.15.17 NMAC or  
224 19.15.36 NMAC.

225 **Subsection B: Application for Exploration and Development Plan**

226 Subsection B sets out the procedure for filing the application for an exploration  
227 and development plan, and the information that must be included in the application.

228 **Filing Requirements**

229 The opening paragraph of Subsection B sets out the filing requirements. The  
230 operator must submit two copies of the application with the OCD's Santa Fe office, and  
231 submit a copy to the appropriate division district office or offices.

232 One of the two copies filed with the OCD's Santa Fe office will be provided to  
233 the state historic preservation office for its review and comment. The OCD's  
234 coordination with the state historic preservation office is discussed in more detail below.

235 The other copy filed with the OCD's Santa Fe office will be used internally. The  
236 OCD's Environmental Bureau will review the application to determine if it is  
237 administratively complete and will review the proposed legal notice for approval. An  
238 administratively complete application will go through the public notice process outlined  
239 in Subsection H and be forwarded to the Engineering Bureau for hearing or  
240 administrative action, as appropriate.

241 The affected district office or offices need a copy of the application so they can  
242 review it and determine if they will enter an appearance in the public hearing and take a  
243 position on the application. OCD's District 4 includes Santa Fe County and that portion  
244 of the Galisteo Basin that extends into San Miguel County. OCD's District 3 includes  
245 that portion of the Galisteo Basin that extends into Sandoval County.

246           Application Contents

247           The numbered paragraphs of Subsection B set out what must be included in an  
248 application. These requirements described in numbered paragraphs 1 through 8 will be  
249 discussed in more detail in the testimony of Glenn von Gonten and Will Jones.

250           To summarize, Subsection B requires the applicant to define the area to be  
251 covered by the plan and provide information about that area and for one half mile beyond  
252 the boundary of that area. The applicant must provide a topographic map and maps  
253 showing: state, federal, private or tribal surface ownership; private lands property  
254 boundaries; municipal and county boundaries; relevant surface features and existing  
255 water, oil and gas wells. In addition, the rule requires the applicant to provide a  
256 hydrogeologic and site report that provides available information and detail on the area's  
257 topography, soils, geology, surface hydrology and ground water hydrology.

258           Numbered paragraph 9 requires the operator to provide information relevant to  
259 cultural resources, known cemeteries and unmarked human burials located in the area  
260 included in the plan or within one half mile of the plan's boundaries. According to the  
261 Galisteo Basin Archaeological Sites Protection Act, PL 108-208, the Galisteo Basin and  
262 surrounding area is the location of many well preserved prehistoric and historic  
263 archaeological resources of Native American and Spanish colonial cultures, including the  
264 largest ruins of Pueblo Indian settlements in the United States. PL 108-208 is **OCD Ex.**  
265 **23.** Requiring the operator to provide information relevant to cultural resources is  
266 necessary to comply with state laws designed to protect those resources. NMSA 1978,  
267 Section 18-6-8.1 provides, in relevant part,

268           The head of any state agency or department having direct or indirect  
269 jurisdiction over any land or structure modification which may affect a

270 registered cultural property shall afford the state historic preservation  
271 officer a reasonable and timely opportunity to participate in planning such  
272 undertaking so as to preserve and protect, and to avoid or minimize  
273 adverse effects on, registered cultural properties.  
274

275 **OCD Exhibit 24** is a copy of NMSA 1978, Section 18-6-8.1. Rules issued by the  
276 Cultural Properties Review Committee interpret this statute to apply to the issuance of  
277 permits, authorizations or licenses for any land or structural modification on federal, state  
278 or private lands that may affect any registered cultural property. **OCD Exhibit 25** is a  
279 copy of the rules interpreting NMSA 1978, Section 18-6-8.1. Other statutes provide for  
280 penalties for disturbing marked and unmarked burials. **OCD Exhibits 26 and 27** are  
281 copies of NMSA 1978, Section 18-6-11.2, "Permit required for excavation of unmarked  
282 burials; penalty," and NMSA 1978, Section 30-12-12, "Disturbing a marked burial  
283 ground."

284 Subsection B also requires the applicant to describe its plan. It must identify its  
285 target zone or zones, identify the location of proposed exploratory wells and related  
286 facilities; describe its plan for developing the area if the exploratory wells are productive;  
287 and provide its drilling and mud-logging programs, its plan for managing waste, its plan  
288 for minimizing pad size and consolidating facilities, its plan for installing monitor wells,  
289 and its contingency plan for releases. The OCD will be able to review the plans to  
290 determine if they are appropriate for the site conditions, prevent waste, protect correlative  
291 rights, and are protective of fresh water, human health and the environment.

292 As discussed in more detail below, Subsection B of Section 10 sets out conditions  
293 that will apply to any permit to drill issued to wells subject to the exploration and  
294 development plan. The conditions are designed to protect fresh water, human health and  
295 the environment in situations where little is known about the geology or hydrology. An

296 operator may request an exception to any of these conditions as part of its application for  
297 an exploration and development plan. The burden is on the operator to provide evidence  
298 that operating in accordance with the proposed exception will prevent waste, protect  
299 correlative rights, and protect fresh water, human health and the environment.

300 The applicant must also submit a proposed legal notice, and must certify that the  
301 information it is providing in its application is true, accurate and complete to the best of  
302 the operator's knowledge, after reasonable inquiry.

303 The OCD may require additional information in order to determine if the plan will  
304 prevent waste, protect correlative rights, and protect fresh water, human health and the  
305 environment, and that operation of the plan will comply with division rules and orders.

306 Proposed Modifications to Subsection B

307 The OCD has proposed a number of modifications to Subsection B.

308 Numbered paragraph 5 sets out the items that must be shown on a map of the area  
309 included in the plan and a one-half mile buffer zone around that area. The OCD proposes  
310 the following changes to those items:

- 311 • The map showing state, federal, private or tribal surface ownership should also  
312 include for private lands the property boundaries and the name of the property  
313 owner at time of application. This will help the OCD determine if the operator  
314 has given notice to surface interest owners, as required by Subsection H.
- 315 • The OCD proposes to delete the requirement that a map show the location of all  
316 registered cultural properties. NMSA 1978, Section 18-6-11.1 requires that any  
317 information in the custody of a public official concerning the location of  
318 archaeological resources, the preservation of which is in the interest of the state of

319 New Mexico, shall remain confidential unless the dissemination of the  
320 information will further the purposes of the Cultural Properties Act. **OCD**  
321 **Exhibit 28** is a copy of NMSA 1978, Section 18-6-11.1

322 • The OCD proposes to describe infrastructure as including “but not limited to”  
323 certain identified structures, to clarify that the identified structures are examples  
324 of infrastructure, but that the list is not exclusive.

325 • The OCD proposes to add “watercourses” and “wellhead protection areas” to the  
326 items that must be identified on a map. “Watercourse” is defined in Paragraph 4  
327 of Subsection W of 19.15.2.7 NMAC to include a river, creek, arroyo, canyon,  
328 draw or wash or other channel having definite banks and bed with visible  
329 evidence of the occasional flow of water. “Wellhead protection areas” is defined  
330 in Paragraph 8 of Subsection W of 19.15.2.7 NMAC to include the area within  
331 200 horizontal feet of a private, domestic fresh water well or spring used by less  
332 than five households for domestic or stock watering purposes or within 1000  
333 horizontal feet of any other fresh water well or spring. Wellhead protection area  
334 does not include the area around a water well drilled after an existing oil or gas  
335 waste storage, treatment or disposal site was established. **OCD Exhibit 29** is a  
336 copy of Subsection W of 19.15.2.7 NMAC.

337 In numbered paragraph 7, the OCD proposes to correct the spelling of  
338 “parameters.”

339 In numbered paragraph 8, the OCD proposes the following change:

340 **(8) a written contingency plan for all releases, with no**  
341 **exclusion for de minimus amounts, which shall include**

342 **(a) best management practices for the prevention**  
343 **and detection of releases ~~procedures for early detection of releases;~~**

344  
345 The OCD has proposed the recommended change in order to clarify the type of  
346 information that is expected to be provided in the contingency plan. A contingency plan  
347 should identify the protocols and standards operating practices in order to minimize  
348 hazards (such as releases) to fresh water, human health and the environment. Best  
349 management practices should address preventive measures such as the installation of  
350 secondary containment (liners) for above grade tanks and detection measures such as  
351 regularly scheduled visual inspections. Note that this change is shown, and discussed, in  
352 the OCD's notice of recommended modifications, filed on November 24, 2008, but the  
353 change did not appear in the redline version of the rules attached to that filing.

354 The OCD proposes to modify numbered paragraph 9 as follows, to require the  
355 operator to provide information on known cemeteries and unmarked human burials as  
356 well as registered cultural properties, in order to comply with the statutes described  
357 above:

358 **(9) ~~if the area to be include in the proposed exploration and~~**  
359 **~~development plan includes a registered historic cultural property, the~~**  
360 **~~information required by 4.16.7.9 NMAC if cultural resources listed in~~**  
361 **~~or eligible for listing in either the national register of historic places or~~**  
362 **~~the state register of cultural properties, known cemeteries and~~**  
363 **~~unmarked human burials are located in the area included in the~~**  
364 **~~proposed exploration and development plan or within one half mile of~~**  
365 **~~the area included in the plan, the information in 4.10.7.9 NMAC~~**  
366 **~~including a description of the effects the proposed operations may~~**  
367 **~~have on these sites and proposed mitigation measures;~~**

368  
369 4.10.7.9 NMAC is contained in OCD Ex. 25.

370 The OCD proposes modification of numbered paragraph 10 as follows:

371 **(10) any proposed exceptions to the requirements set out in**  
372 **Subsection B of 19.15.39.10 NMAC and evidence that operating in**  
373 **accordance with the proposed exceptions will prevent waste, protect**

374 **correlative rights, protect fresh water and protect human health and**  
375 **the environment from oilfield waste;**  
376

377 The OCD has proposed the recommended changes in order to clarify the original intent of  
378 the first version of the proposed rule. The original intent was only to allow operators to  
379 propose exception to the specified conditions identified in Subsection B of 19.15.39.10  
380 NMAC. The original intent was not to allow operator propose exceptions such as: not  
381 having to satisfy the requirements of 19.15.14 NMAC, not submitting a permit  
382 application pursuant to 19.15.17 NMAC; not have to provide the GPS coordinates of the  
383 location; and not providing any of the additional information required by the operator's  
384 exploration and development plan. The omission of "from oilfield waste" is  
385 recommended due to the nature and variety of the conditions identified in Subsection B  
386 of 19.15.39.10 NMAC and the limitation that it establishes when proposing and assessing  
387 an exception request. The OCD is concerned that if the caveat "from oilfield waste"  
388 remains, applicants may base their assessment and evidence regarding their exception  
389 request to certain conditions identified under Subsection B of 19.15.39.10 NMAC in  
390 which the comparison of the impact "from oilfield waste" is not applicable. One such  
391 condition would be the requirement for an operator to place a well that requires gas  
392 pipeline connection on approved temporary abandonment status while awaiting pipeline  
393 connection. This condition prevents waste, as defined by the Oil and Gas Act, and  
394 protects correlative rights and would never be impacted or influenced by or from "oilfield  
395 waste." If the operator requested an exception to this condition and assessed the  
396 exception to prevent waste based upon the impact or influence by or from oilfield waste,  
397 the operator could easily demonstrate that the prevention of waste is not impacted or  
398 influenced by or from oilfield waste because the operator would not be addressing a

399 waste of a resource. Other such conditions in which the impact or influence of oilfield  
400 waste would not be applicable would include: the requirement to log the well the total  
401 depth to surface; the conditions regarding the setting of the casing in order to isolate fresh  
402 water zones and aquifers; and the running of cement bond logs after each casing string is  
403 cemented and filing the logs.

404 **Subsection C: Amendments to Exploration and Development Plans**

405 Subsection C requires an operator to obtain an approved amendment to its  
406 exploration and development plan prior to expanding the area covered by the plan,  
407 increasing the number or changing the location of proposed wells or related facilities, or  
408 changing the terms of the proposed plan.

409 To apply, the operator must file an application describing its proposed  
410 amendment(s) and update the information required by Subsection B. It will not have to  
411 re-submit information that has not changed. However, if the operator has drilled wells  
412 under its approved exploration and development plan it is likely that it can provide  
413 additional information on geology and ground water hydrology.

414 The operator also has to provide a proposed legal notice. The proposed  
415 amendment will go through the same public notice process as the original application,  
416 and the division director has the discretion to set the proposed amendment for hearing.

417 The filing requirements for an amendment are the same as the filing requirement  
418 for the initial application: two copies must be filed with the OCD's Santa Fe office and a  
419 copy must be filed with the appropriate district office or offices.

420 **Subsection D: Renewals of Exploration and Development Plans**

421 As stated in the initial paragraph of Section 9, an approved exploration and  
422 development plan must be renewed every five years. This gives the OCD and the  
423 operator an opportunity to review and update the plan to make sure it is protective of  
424 fresh water, human health and the environment. The application for renewal is subject to  
425 public notice, and the director has the discretion to set the application for public hearing.  
426 The operator may combine an application for amendment with an application for  
427 renewal.

428 The application for renewal, like the application for an amendment, must update  
429 the information required pursuant to Subsection B, and provide a proposed legal notice.

430 **Subsection E: Replacement of an Exploration and Development Plan with a Special**  
431 **Pool Order.**

432  
433 Section 9 provides extra protections to an area that has seen little oil and gas  
434 development, and that has important water resources. Section 9 requires the operator to  
435 provide public notice of its activities, and provide the OCD and the public with the best  
436 available information on the area so the OCD can make informed decisions on the  
437 conditions that may apply to the exploration and development plan in order to protect  
438 fresh water, human health and the environment. As exploration and development under  
439 the approved plan continues the OCD will gather more and more information about the  
440 geology and hydrology of the area. At some point, the OCD may have sufficient  
441 information to allow the operator to replace its plan with a special pool order. The pool  
442 order could incorporate those conditions the OCD determines are necessary to protect  
443 fresh water, human health and the environment. Changes to the special pool order would  
444 be made by application under existing OCD procedures. But the operator would no  
445 longer have to follow the processes set out in Section 9, or apply for renewal of its order

446 every five years. If the operator wanted to drill in an area outside the area covered by its  
447 former exploration and development plan, however, it would have to apply for a new plan  
448 under Section 9.

449 An operator is not eligible to replace its plan with a special pool order until it has  
450 operated wells under its approved plan for at least five years. This will give the OCD  
451 five years of operational experience under the plan to review to determine if the  
452 conditions imposed under the plan are effective in protecting fresh water, human health  
453 and the environment, and to determine what conditions should be placed on any special  
454 pool order.

455 To apply, the operator must file an application updating the information required  
456 by Subsection B and describing any conditions it proposes should be included in the  
457 special pool order. The operator has to provide a proposed legal notice. The application  
458 to replace the plan with a special pool order will go through the same public notice  
459 process as the original application, and the division director has the discretion to set the  
460 application for hearing.

461 The filing requirements for an application to replace the plan with a special pool  
462 order are the same as the filing requirement for the initial application: two copies must  
463 be filed with the OCD's Santa Fe office and a copy must be filed with the appropriate  
464 district office or offices.

465 **Subsection F: Legal Notice**

466 Subsection F sets out the requirements for the legal notice that will be used to  
467 notice the original application, any renewals or amendments, and any application to  
468 replace the plan with a special pool order.

469           The notice must provide basic contact information on the operator, and a legal and  
470 common description of the area covered by the plan or proposed plan. The notice must  
471 also provide information on what the applicant is seeking.

472           If the application is for approval of an initial exploration and development plan,  
473 the notice must summarize the proposed plan, including the number and location of  
474 proposed exploratory and development wells and related facilities. If the application is  
475 for an amendment, the notice must summarize the existing plan and the proposed  
476 amendment. If the application is for a renewal, with no amendment, it only needs to  
477 summarize the existing plan. If the application is for replacement, it must summarize the  
478 conditions the operator proposes to make part of the special pool order that will replace  
479 the plan.

480           The notice must also provide instructions for viewing the complete application on  
481 the OCD's website or at the appropriate division district office. It will also provide  
482 instructions for filing written public comments on the application.

483           The notice will also provide instructions for being placed on a contact list to  
484 receive notice of future applications to amend, renew or replace the exploration and  
485 development plan and hearings on those applications.

486           If the application is set for public hearing, the notice will contain the date, time  
487 and location of the hearing. All applications for approval of an initial exploration and  
488 development plan must be set for public hearing. For clarification proposes, an  
489 application for approval is a request for approval from the operator and not a  
490 recommendation of approval of the application from OCD. Applications for  
491 amendments, renewals and replacements may be set for public hearing at the discretion of

492 the director. If the director determines to set an application for hearing upon receipt of  
493 the application, the operator will be notified and the hearing information will be included  
494 in the notice. It is possible that the determination to set an application for public hearing  
495 will be made after the division receives public comments on the application. In that case,  
496 the operator will have to prepare a second legal notice that includes the hearing  
497 information.

498 Proposed Modifications to Subsection F

499 The OCD proposes the following modifications to Subsection F:

500 **F. Legal Notice. Legal notice of an application for a proposed**  
501 **exploration and development plan or an application to amend, renew**  
502 **or replace an existing exploration and development plan shall include**

503 ...

504 (8) instructions for filing written public comments  
505 on the application with the division clerk in ~~with the division's Santa~~  
506 ~~Fe office;~~

507 (9) instructions for requesting a public hearing on  
508 an application that has not been set for public hearing;

509 ~~(9)(10)~~ if the application ~~will be~~ has been set for hearing,  
510 the date, time and location of the public hearing; and

511 ~~(10)(11)~~ instructions for being placed on a division  
512 contact list to receive notice of future applications and hearing notices  
513 related to the ~~to amend, renew or replace the exploration and~~  
514 ~~development plan.~~

515

516 The proposed change to numbered paragraph 8 clarifies that public comments are  
517 to be filed with the division clerk. New numbered paragraph 9 provides that the legal  
518 notice will include instructions on how to request a public hearing, if the application has  
519 not yet been set for hearing. Numbered paragraph 10 clarifies that if the application has  
520 been set for public hearing, the legal notice will provide the date, time and location of the  
521 hearing. Numbered paragraph 11 clarifies that the OCD will keep the contact list, and

522 that the list will be used to provide notice of future applications and hearings related to  
523 the plan.

524 **Subsection G: Administrative Completeness**

525 The OCD will review each application for administrative completeness. An  
526 application is administratively complete if it contains the information required by Section  
527 9. A determination that an application is administratively complete is not a determination  
528 that the information provided is accurate or adequate. The OCD must notify the operator  
529 of its determination on administrative completeness within 60 days of receipt of the  
530 application.

531 If the OCD determines that the application is not administratively complete, its  
532 notice to the operator will identify the deficiencies. The operator may re-submit its  
533 application to correct deficiencies, correct errors or add information. The re-submittal  
534 triggers a new 30-day period for the OCD to make a decision on administrative  
535 completeness.

536 If the OCD determines that the application is administratively complete, it will  
537 provide the operator with an approved legal notice so the operator can proceed with  
538 public notice. The OCD will also provide the operator with the current contact list of  
539 individuals and entities requesting notice of applications related to the plan. The OCD  
540 will distribute notice of the application with its next division or commission docket, and  
541 post the notice and application on its website.

542 **Proposed Modifications to Subsection G**

543 The OCD proposes to add a new requirement under numbered paragraph 2: once  
544 the OCD has determined that an application is administratively complete, the OCD must

545 provide a copy of the complete application to the state historic preservation office with a  
546 request for review and comment. This will help satisfy the requirement of NMSA 1978,  
547 Section 18-6-8.1 that “the head of any state agency or department having direct or  
548 indirect jurisdiction over any land or structure modification which may affect a registered  
549 cultural property shall afford the state historic preservation officer a reasonable and  
550 timely opportunity to participate in planning such undertaking so as to preserve and  
551 protect, and to avoid or minimize adverse effects on, registered cultural properties. In  
552 addition, Attorney General Opinion No. 87-64 states that the historic preservation officer  
553 may participate in a state agency’s deliberations when the agency is considering the  
554 issuance of a license that would affect a registered cultural property even if that registered  
555 cultural property is on private land. **OCD Ex. 30** is a copy of Attorney General Opinion  
556 No. 87-64.

557 **Subsection H: Public Notice**

558       Once the operator receives the OCD’s written determination that the application is  
559 administratively complete, and the OCD’s approved legal notice, the operator has 20 days  
560 to issue public notice.

561       The operator must publish the notice in a newspaper of general circulation in the  
562 affected county or counties.

563       The operator must mail or e-mail notice to the individuals and entities on the  
564 OCD’s contact list for the exploration and development plan.

565       The operator must mail the notice by certified mail, return receipt requested, to  
566 the individuals and entities listed in Paragraph 2 of Subsection H. Holders of mineral  
567 interests in the area included in the plan or within one half mile of the border of the plan

568 must receive notice if they have not already agreed to participate in the plan. This  
569 ensures that affected interest owners, and potentially affected interest owners, receive  
570 notice. Similarly, surface interest owners in the area included in the plan or within one  
571 half mile of the border of the plan receive notice. Subsection H also requires the operator  
572 to notify all tribes, pueblos and nations in New Mexico, affected county and municipal  
573 governments, the state historic preservation officer, and the game and fish department.  
574 Notice to the tribes, pueblos and nations is consistent with the intent of Executive Order  
575 No. 2005-003, and State of New Mexico Executive Department Policy Regarding Tribal  
576 Consultation on the Protection of Sacred Places and Repatriation. Those documents are  
577 **OCD Exs. 31 and 32.**

578 Proposed Modifications to Subsection H

579 The OCD proposes two modifications to Subsection H.

580 First, the OCD proposes to require the operator to mail notice to the entities listed  
581 in numbered paragraph 2 by certified mail, return receipt requested, rather than by first  
582 class mail. Certified mail, return receipt requested, will help the operator show that it has  
583 provided the required notice.

584 Second, the OCD proposes to clarify that the notice should be sent to the leader of  
585 each tribe, pueblo or nation in New Mexico, to ensure that the notice reaches the  
586 appropriate individual. This change was suggested by the Indian Affairs Department,  
587 which can provide the necessary contact information to operators.

588 Subsection I: Public Hearings

589 Subsection I requires all applications for approval of an exploration and  
590 development plan to be set for public hearing; applications for amendments, renewals or  
591 replacement may be set for public hearing.

592 Paragraph 3 of Subsection I provides that if the OCD acts administratively to  
593 deny an application to amend, renew or replace a plan, or grants an application  
594 administratively with conditions, the matter will be set for public hearing at the operator's  
595 request. This provides review of the OCD's decision.

596 Paragraph 4 sets out the notice process if the OCD sets an application for  
597 amendment, renewal or replacement for hearing. The operator must submit a proposed  
598 notice of hearing to the OCD, and then provide the same type of public notice as is  
599 required for an initial application. The only difference is that the notice must be sent 30  
600 days before the hearing date, instead of 60 days before the hearing, as is required for  
601 initial applications.

602 Proposed Modifications to Subsection I

603 The OCD proposes a change to numbered paragraph 1 to clarify that the hearing  
604 on an application for approval of an exploration and development plan must be held no  
605 sooner than 60 days after the operator serves public notice. The 60-day period is not  
606 triggered by actions taken by the OCD, such as the posting of notice on the OCD website.

607 The OCD also proposes changes to numbered paragraph 4 to make clear that the  
608 hearing notices on amendments, renewals and replacements must be published or mailed  
609 at least 30 days prior to the hearing. As currently drafted, the provision does not set a  
610 time for notifying individuals and entities on the contact list. In addition, the OCD  
611 proposes a change that will require notice by certified mail, return receipt requested.

612 Subsection J: Plan Approvals, Conditions, Denials, Amendments, Revocations,  
613 Renewals and Transfers

614  
615 Subsection J addresses the OCD's actions related to exploration and development  
616 plans.

617 The OCD may approve a plan for a period not to exceed five years, and may issue  
618 renewals for additional periods not to exceed five years.

619 The OCD may approve an initial plan, or approve an application to amend, renew  
620 or replace an existing plan only if the application provides the information required by  
621 Section 9, the operator has provided the notice required by Section 9, the operator is in  
622 compliance with Subsection A of 19.15.5.9 NMAC (formerly 19.15.1.40 NMAC, or  
623 "Rule 40"), and approval of the application will prevent waste, protect correlative rights,  
624 and protect fresh water, human health and the environment. If the application fails on  
625 any of these points, it may be approved with conditions if the condition could address or  
626 satisfy the concern or it may be denied.

627 Requiring compliance with Subsection A of 19.15.5.9 NMAC means that the  
628 operator must be in compliance with financial assurance requirements, have no more than  
629 a limited number of wells out of compliance with the inactive well rule (19.15.25.8  
630 NMAC), have no unpaid penalties, and not be in violation of an order requiring  
631 corrective action.

632 The prevention of waste and the protection of correlative rights are the OCD's  
633 statutory mandates under NMSA 1978, Section 70-2-11(A). **OCD Ex. 33.** The  
634 protection of fresh water, and the protection of human health and the environment, as  
635 well as the prevention of waste and the protection of correlative rights, are the OCD's

636 statutory duties under its enumeration of powers in NMSA 1978, Section 70-2-12. **OCD**  
637 **Ex. 34.**

638 Paragraphs (3) and (4) of Subsection J allow the OCD to attach conditions to an  
639 exploration and development plan, or a special pool order that replaces an exploration  
640 and development plan. This allows the OCD to customize the plan or order to address  
641 the issues.

642 Paragraph (5) of Subsection J addresses revocation of an exploration and  
643 development plan. If the operator fails to comply with the terms of the plan, or is out of  
644 compliance with Subsection A of 19.15.5.9 NMAC, the OCD may revoke its approval of  
645 the plan and require the wells covered by the plan to be shut-in. Revocation requires  
646 notice and hearing.

647 Paragraph (6) of Subsection J addresses expiration of an exploration and  
648 development plan. If a plan expires, and the operator has not filed an application for  
649 renewal, the operator must shut-in the wells covered by the plan. If the operator filed an  
650 application to renew the plan prior to its expiration, the operator may continue to operate  
651 the wells covered by the plan until a final order is issued on its application for renewal.

652 Paragraph (7) of Subsection J provides that a plan, once approved, remains in  
653 effect until it is revoked, amended or replaced by a special pool order pursuant to Section  
654 9.

655 Paragraph (8) provides that any operator operating wells subject to an exploration  
656 and development plan or special pool order is subject to the terms of that plan or order.

657 Proposed Modifications to Subsection J

658 The OCD proposes to delete “from oilfield waste” in numbered paragraph 3, to  
659 make the description of the standard of review by the OCD consistent throughout the  
660 Section 9.

661 **DETAILED REVIEW OF 19.15.39.10 NMAC (“SECTION 10”)**

662 Section 10 sets out special requirements for applications for permits to drill,  
663 deepen or re-enter a well that is subject to an exploration and development plan.

664 **Subsection A**

665 Subsection A of Section 10 requires an operator applying for a permit to drill, re-  
666 enter or deepen a well subject to an exploration and development plan to provide  
667 additional information when filing its APD.

668 The operator must attach its Part 17 permit application, which will provide the  
669 OCD with information on the operator’s plans for disposal of drilling wastes. Under  
670 current OCD rules, a Part 17 permit application and an application for APD may be filed  
671 separately.

672 The operator must provide global positioning system (GPS) coordinates to the  
673 sixth decimal point to identify the location of a well to be drilled in an un-surveyed area.  
674 Santa Fe County includes land grant areas that have not been surveyed. Providing GPS  
675 coordinates will allow the OCD to review the drilling location.

676 The operator must also provide any additional information required by its  
677 exploration and development plan. This allows the OCD the opportunity to determine if  
678 any specific conditions should be applied or incorporated into the appropriate and  
679 applicable permits.

680 **Proposed Modifications to Subsection A**

681 The OCD proposes the following modifications to Subsection A of Section 10:

682 **A. An application for permit to drill, re-enter or deepen a well**  
683 **that requires an exploration and development plan pursuant to**  
684 **19.15.39.9 NMAC must include the following in addition to meeting**  
685 **the requirements set out in 19.15.14.10 NMAC:**

686  
687 The OCD has proposed the recommended change in order to clarify and inform  
688 applicants that they must comply with all of the provisions of 19.15.14 NMAC, which  
689 includes the requirement of a permit and permit application process. Section 10 of  
690 19.15.14 NMAC only addresses provisions regarding the approval or denial of a permit  
691 to drill, deepen or plug back.

692 (1) **a permit application pursuant to 19.15.17 NMAC ~~a form~~**  
693 **~~C-144 for the closed-loop system, or for the pit if the operator's~~**  
694 **~~approved exploration and development plan allows pits;~~**

695  
696 The OCD has proposed the recommended change in order to clarify OCD original  
697 intent, which is that the applicant must submit a complete permit application and not just  
698 the form. A permit application pursuant to 19.15.17 NMAC includes the Form C-144 as  
699 well as additional documents such as an operational and maintenance plan, a design and  
700 construction plan, a closure plan, demonstrations of compliance to the applicable siting  
701 requirements and possibly a hydrogeologic report or data, if applicable. The Form C-144  
702 is not a permit application.

703 **Subsection B**

704 Subsection B sets out conditions that apply to any APD issued for wells covered  
705 by an exploration and development plan unless the operator has requested and received  
706 an exception. These conditions are “default” conditions; the burden is on the operator to  
707 request an exception and prove that granting the exception will prevent waste, protect  
708 correlative rights and protect fresh water, human health and the environment.

709 Paragraph (1) of Subsection B requires the operator to drill using a closed-loop  
710 system. A closed-loop system uses above-ground steel tanks for managing drilling or  
711 workover fluids and does not use below-grade tanks or pits. The rule endorses the use of  
712 closed-loop systems to reduce the impact of surface disturbance, to promote the recycling  
713 of drilling fluids that results in the reduction of clean water use and allows for the reuse  
714 of such fluids at other drilling sites, and to reduce the volume solids and semi-solid drill  
715 cuttings and mud due to fluid recycling effort which reduces the risk of a potential release  
716 and results in reduced disposal costs for the operator.

717 Paragraph (2) of Subsection B requires that the operator not use any of the on-site  
718 closure methods set out in Subsection F of 19.15.17.13 NMAC. **OCD Ex. 35.** There are  
719 two on-site closure methods identified in Subsection F of 19.15.17.13 NMAC: in-place  
720 burial and on-site trench burial. Each method has its own specific siting criteria, burial  
721 standards and protocols. The rule specifies this condition in order to establish an extra  
722 level of protection due to the absence of available information and data pertaining to the  
723 region and uncertainty of the environmental issues. As more information is gathered  
724 through the exploration and development plan process and operators are able to switch  
725 over to special pool orders, conditions such as this may no longer be applicable.

726 The conditions set out in Paragraphs (3) through (8) will be addressed in the  
727 testimony of Will Jones.

728 Proposed Modifications to Subsection B

729 The OCD proposes several modifications to Subsection B.

730 **B. Unless otherwise specified in an approved exploration and**  
731 **development plan, an application for permit to drill, re-enter or**  
732 **deepen a well that requires an exploration and development plan shall**  
733 **be subject to the following conditions:**

734                   **(1) the operator shall drill the well using a closed loop**  
735 **system that uses above ground steel tanks for the management of**  
736 **drilling or workover fluids without using below-grade tanks or pits;**  
737

738                   The OCD proposes to add “re-enter” to Subsection B to clarify that the listed  
739 conditions will apply to re-entry operations in addition to drilling and deepening  
740 operations.

741                   The OCD has proposed the additional language in numbered paragraph 1 to  
742 clarify and inform the applicant that a closed-loop system identified within this provision  
743 is a closed-loop system as defined in 19.15.17 NMAC.

744                   **(2) the operator shall not use the on-site closure methods**  
745 **identified in Subsection F of 19.15.17.13 NMAC ~~dispose of waste on~~**  
746 **site;**  
747

748                   The OCD has proposed the recommended change in order to clarify OCD original  
749 intent, which is to address the proper handling and disposal of waste generated from the  
750 drilling, re-entry or well deepening activities. Subsection F of 19.15.17.13 NMAC  
751 identifies the types of activities on-site closure applies to and conditions in which such  
752 waste can be considered for burial on-site. By providing the appropriate reference, it will  
753 also prevent the misinterpretation of the original. The original language could be  
754 interpreted in a manner that would prevent the permitting of Class II disposal wells for  
755 produced water or the permitting of commercial and centralized surface waste  
756 management facilities. OCD’s intent is not to limit the ability of operators to obtain such  
757 permits, especially since there is an absence of a waste management infrastructure within  
758 the area surrounding Santa Fe County and the Galisteo Basin region.

759                   **(5) the operator shall isolate all fresh water zones and**  
760 **aquifers throughout their vertical extent with at least two cemented**  
761 **casing strings.**  
762

763 The OCD proposes this change to broaden the protection of fresh water. Aquifer  
764 is defined in Subsection A of 19.15.2.7 NMAC as "a geological formation, group of  
765 formations or a part of a formation that is capable of yielding a significant amount of  
766 water to a well or spring." **OCD Ex. 36.** "Zone" is a broader term that will include any  
767 area in which fresh water is located, without regard to the amount of fresh water.

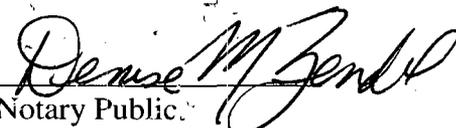
768 I, Brad A. Jones, swear that the foregoing is true and correct.

769  
770  
771  
772  
773  
774  
775  
776

  
Brad A. Jones  
Environmental Engineer  
Oil Conservation Division

777 Subscribed and sworn to before me this 3rd day of December 2008, by Brad A. Jones.

778  
779

780   
781 Notary Public

782  
783

My commission expires:

784  
785  
786

1-09-2012