

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

**IN THE MATTER OF THE HEARINGS  
CALLED BY THE DIVISION TO  
CONSIDER:**

**REVISING RULE 116 CONCERNING  
REPORTING FIRES, BREAKS, LEAKS,  
SPILLS AND BLOWOUTS  
FOR THE STATE OF NEW MEXICO**

**CASE NO. 11352**

**ENACTING A NEW RULE 19 FOR PREVENTION  
AND ABATEMENT OF WATER POLLUTION  
ASSOCIATED WITH OPERATIONS IN THE  
OIL & GAS INDUSTRY FOR THE STATE OF NEW MEXICO**

**CASE NO. 11635**

**REPORT  
FROM  
THE CHAIRMAN OF THE RULE 116 COMMITTEE  
TO  
THE OIL CONSERVATION COMMISSION**

On behalf of the Rule 116 Committee, I am pleased to notify you that the Committee has concluded Phase One and Phase Two of its assigned tasks and respectfully submit this Report to the New Mexico Oil Conservation Commission ("OCC"):

**BACKGROUND**

On August 3, 1995, the OCC commenced a public hearing to consider revisions to current Division Rule 116 which deals with spill/release reporting requirements.

On August 25, 1995, the Chairman of the OCC appointed a Rule 116 Committee to study this matter and to report to the Chairman of the OCC by February 1, 1996.

On February 1, 1996, the Rule 116 Committee filed its Progress Report Number One with the Chairman of the OCC.

The Chairman of the Rule 116 Committee submits this report to the Commission to aid the Commission in considering the adoption of:

Revised Rule 116 for notification of releases and for requiring corrective action,

New Rule 19 for establishing methods and adopting standard for the prevention and abatement of water pollution associated with operations in the oil and gas industry,

Adoption of additional definitions for Rule 7 which define terms used in proposed revised Rule 116 and new Rule 19

#### **TASK OF COMMITTEE:**

The task of the Committee was to consider the following:

- (1) To review Oil Conservation Division ("OCD") Rule 116 to determine if it meets the stated objective of protecting fresh water, public health and the environment and to recommend appropriate revision where necessary.
- (2) To determine the scope of Rule 116 and where appropriate consider rule changes to address:
  - (a) which spills are reportable
  - (b) determine reportable substances and reportable quantities
  - (c) initial response to a spill or release
  - (d) conducting a site assessment
  - (e) initially contain the spill/release and stabilize the site
  - (f) assess the severity of contamination

- (g) target cleanup levels
- (h) implement remediation measures
- (i) report completion of cleanup.
- (j) OCD approvals/permits

(3) To review and revise where necessary Rule 116 so that it promulgates rules and establishes criteria for OCD reporting, corrective action and remediation standards concerning spills and releases.

(4) To make recommendations concerning proposed OCD guidelines for reporting, corrective action and remediation which are consistent with the proposed changes to Rule 116.

(5) To determine when and if OCD approval of proposed corrective action shall be required and to specify the process by which the OCD will approve, modify or deny a corrective action plan submitted by an operator after a spill/release.

(6) To develop recommendations for providing for uniform regulation and standardized criteria for reporting, corrective action and remediation to be adopted by the Oil Conservation Division ("OCD"), and for the use and possible adoption by the Bureau of Land Management ("BLM") and the Commissioner of Public Lands of the State of New Mexico ("SLO")

(7) To consider uniform (standardized) forms and procedures to be used by OCD, BLM and SLO.

#### **COMMITTEE MEETINGS:**

The Committee has held the following meetings:

- |                          |                            |
|--------------------------|----------------------------|
| (1) September 29, 1995:  | one day- Albuquerque       |
| (2) November 9-10, 1995: | two days-Amoco, Farmington |
| (3) January 12, 1996:    | one day-Albuquerque        |
| (4) February 23, 1996:   | one day-OCD Santa Fe       |
| (5) March 28, 1996:      | one day-OCD Santa Fe       |
| (6) September 12, 1996:  | one day-PNM, Albuquerque   |

## **MEMBERS OF THE COMMITTEE:**

The Committee members are listed on **Exhibit 1**.

The attendance lists are set forth on **Exhibit 2**.

## **COMMITTEE PROCEDURE**

Ultimately, the Committee divided its task into three phases:

(1) **Phase One:** to prepare a proposed Revised Rule 116 concerning reportable volumes and substances;

(2) **Phase Two:** to require corrective action for pollution from releases and in so doing require compliance with a proposed new Rule 19 which adopts numerical standards for OCD regulated activities and adopts abatement regulations for OCD enforcement.

(3) **Phase Three:** to study and prepare proposed changes to the current OCD guidelines for abatement/remediation of soils and fresh water contaminated as a result of releases by the oil and gas industry and prepare a Report to the OCC for the formal adoption of those guidelines.

The Committee has completed Phase One and Phase Two.

## **JURISDICTIONAL ISSUE**

The Committee examined the authority vested in the Oil Conservation Commission by both the Oil and Gas Act (Sec. 70-2-1 etseq., NMSA-1978) and the Water Quality Act (Sec. 74-6-1 etseq., NMSA-1978) over spills and releases at oil field exploration and production facilities. Since the Committee was to consider and debate corrective action requirements, standards and guidelines for spills regulated by the OCC/OCD, the Committee felt obligated to determine whether the new "abatement" regulations, 20 NMAC 6.2, Sections 1-203.A.9, 4101-4115, adopted by the Water Quality Control Commission ("WQCC") can be applied to spills and releases currently regulated by the OCC/OCD.

Specifically, how do Water Quality Control Commission Regulations concerning the remediation of spills and releases apply to oil and gas facilities?

In response to the Committee's request for legal opinions on this topic, the Committee received one answer [see Attachment (3)] which was supplied by Ned Kendrick, an attorney specializing in such matters, who concluded that:

The Oil Conservation Commission does have the authority to adopt regulations for the prevention and abatement of water pollution associated with the oil and gas facilities specified in Section 70-2-12.B.(21) and B.(22) of "The Oil and Gas Act". WQCC Regulations do not apply to the facilities specified in B (21) which are mainly "upstream" i.e., exploration, development, production or storage facilities. The OCC, however, may have the option, ***but would not be required***, to apply WQCC Regulations on a case-by-case basis to facilities specified in B.(22), which are mainly "downstream". **(emphasis added)**

***The Rule 116 Change Committee and ultimately the OCC are free to consider any requirements of the WQCC Abatement Regulations as appropriate for inclusion in OCD Rule 116. (emphasis added)***

Effective June 16, 1989, the New Mexico Legislature expanded the OCD's environmental regulatory jurisdiction by adding the following two provisions of Section 70-2-12.B:

(21) to regulate the disposition of non-domestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas to protect public health and the environment; and  
***[Note: characterized by the Committee as "upstream E&P activities"]***

(22) to regulate the disposition of non-domestic wastes resulting from the oil field services industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil to protect public health and the environment, including administering the Water Quality Act [Chapter 74, Article 6 NMSA 1978] as provided in Subsection E of Section 74-6-4 NMSA 1978.

***[Note: characterized by the Committee as "downstream E&P activities"]***

***[Note: The B.(21) category of "upstream E&P activities" does not mention the Water Quality Act; and the B.(22) category of "downstream E&P activities" makes reference to "administering the Water Quality Act".]***

Mr. Kendrick concludes that the Legislature divided the grant of rule making authority to the OCC between authority that stands alone and authority that may overlap with authority under the Water Quality Act. In addition he states:

Section 74-6-12.G of the Water Quality Act precludes application of WQCC Regulations to spills resulting from the exploration, development, production or storage of crude oil or natural gas. Section 70-2-12 NMSA-1978 and other laws confer exclusive authority with the Oil Conservation Commission to prevent water pollution resulting from oil and gas operations. Thus the Oil Conservation Commission is not required to (a) impose the WQCC Spill Regulations or the WQCC Abatement Regulations in any particular situation or (b) to adopt any provision of those WQCC Regulations.

Mr. Rand Carroll, attorney for the OCD, advises that in his opinion the OCC has the authority to:

(1) regulate the B.(21) upstream E&P activities by revising Rule 116 and adopting either (a) the same standards and corrective action procedures set forth in the WQCC abatement regulations; or (b) its own corrective action procedures, guidelines and regulations which may be different from the WQCC regulations; with all review of abatement action being taken through the OCD-examiner hearing process; and

(2) continue to enforce clean-up "abatement" of B.(22) sites under the WQCC standards and the WQCC regulations with all review of abatement action being taken through the WQCC hearing process pursuant to the Water Quality Act authority referenced in Section 70-2-12.B.(22) NMSA (1978).

Mr. Carroll's opinion relies in part on the WQCC Delegation of Responsibilities to the EID and OCD dated July 21, 1989.

**COMMITTEE CONCLUSIONS AND RECOMMENDATIONS  
CONCERNING  
PHASE ONE TASKS**

**(1) Current Rule 116 Needs to be Revised:**

The IOGCC/EPA State Review recommended that the current Rule 116 be reviewed to determine if the OCD reporting requirements and quantities are protective of fresh water, public health and the environment. **(See Exhibit 4)**  
The Committee unanimously agreed that Current Rule 116 **(See Exhibit 3)** should be revised because it:

- (1) does not adequately limit certain discharges to surface waters;
- (2) does not assign the correct reporting priority to the discharge of certain substances;
- (3) does not utilize a "standardized" reporting form;
- (4) does not utilize a "standardized" reporting period;
- (5) duplicates the reporting requirements for certain discharges or incidents covered by other agencies' rules; and
- (6) does not contain any requirements for corrective action

**(2) Additional Definitions need to be adopted:**

The Committee unanimously agreed that the OCC should adopt additional definitions **(See Exhibit 7)** for Division Rule A.7 so that terms used in Rule 116 would be properly defined as follows:

Release shall mean all breaks, leaks, spills, releases, fires or blowouts involving crude oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and natural gases to the environment.

Watercourse shall mean any lake bed, or gully, draw, stream bed, wash, arroyo, or natural or human-made channel through which water flows or has flowed.

Oil Field Wastes shall mean those wastes produced in conjunction with the exploration, production, refining, processing and transportation of crude oil and/or natural gas and commonly collected at field storage, processing, disposal, or service facilities, and waste collected at gas processing plants, refineries and other processing or transportation facilities.

[note: this definition is taken from OCD Order R-7940-C Rule 2(c)]

Well Blowout shall mean a loss of control over and subsequent eruption of any drilling or workover well or the rupture of the casing, casinghead, or wellhead or any oil or gas well or injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or liquids, from the well.

### **(3) Proposed Revised Rule 116:**

The Proposed Revised Rule 116 (See Exhibit 5) is based upon the following action taken by the Committee at its meeting on January 12, 1996:

**(a) Title for Rule 116:** The Committee unanimously agreed that Rule 116 should be titled "Release Notification and Corrective Action" instead of "Notification of Fire, Breaks, Leaks, Spills and Blowouts". The Committee concluded that the current items listed for the title are included within the defined term "release" and that the title should also place the reader on notice that it deals with corrective action.

**(b) Format of Rule 116:** The Committee unanimously agreed that Rule 116 should be reformatted and reorganized in order to be easier to read and understand.

**(c) Notification--Section A (Revised Rule 116)** The Committee unanimously recommends the adoption of Section A dealing with notification and unanimously agreed upon the language used.

**(d) Contents of Notification--Section C (Revised Rule 116)** The Committee unanimously recommends the adoption of a 15 day written notice requirement using a standardized form and the necessary information for an immediate verbal notice. The language proposed in Section C has the unanimous support of the Committee.

**(e) Reporting Form--Section C (Revised Rule 116)** The Committee unanimously recommends the adoption of the reporting form enclosed as Attachment (6).

**(f) Corrective Action--Section D (Revised Rule 116)** The Committee unanimously recommends the adoption of a section dealing with "corrective action".

The Committee's January 12, 1996 draft for this section was as follows:

**D. CORRECTIVE ACTION:**

The owner or operator must complete Division approved corrective action for pollution from releases. Pollution of ground water or surface water will be abated and enforcement taken in accordance with the Water Quality Control Commission Regulations which the Oil Conservation Commission adopts by reference. Remediation of soil pollution, including that in the vadose zone, in accordance with Division regulations or guidelines will be approved by the Division.

This language was adopted by the Committee subject to obtaining legal opinions concerning whether it accomplished the Committee's intended purpose.

The Committee understood that:

(a) the OCC has not in its rules adopted the numerical ground water standards of Subpart III of the WQCC regulations nor has it adopted a rule requiring corrective action involving ground water or surface water contamination at E&P sites either in the form of regulations or enforceable guidelines; and

(b) the OCD has used the WQCC numerical ground-water standards in the OCD guidelines for remediation of activities within OCD jurisdiction.

Certain members of the Committee were concerned that without formal action by the OCC, the current practice of the OCD Environmental Bureau described above is without specific authority.

The Committee intends that if the OCC adopts a Corrective Action provision, it would constitute formal action by the OCC to:

(1) continue to administer the Water Quality Act as to B.(22) activities;

(2) adopt for B.(21) activities the same water quality standards as were adopted by the WQCC for its regulated activities (being the numerical standards set forth in Part 3103 of the WQCC Regs., the "toxic pollutants" definition in Subpart 1101 of the WQCC Regs. and the non-aqueous phase liquid standards) and in doing so provide for the use of consistent water quality standards throughout the State of New Mexico;

(3) adopt for B.(21) activities a corrective action rule the same as the WQCC new "abatement" regulations **only as** to pollution of ground water and surface water caused by OCD B.(21) regulated activities and in doing so respond to the request of committee members from Amoco, Marathon and Amerada Hess that the OCC provide regulatory flexibility to the oil and gas industry so that releases which exceed the water quality standards can be abated either to those standards or to alternative abatement standards based upon risk analysis;

(4) approve the OCD guidelines for abatement/remediation of the soils and the vadose zone caused by OCD regulated activities;

(5) provide that appeals for B.(21) activities be processed through the OCD regulatory-hearing procedures;

(6) provide that appeals for B.(22) activities be processed through the WQCC hearing procedures;

(7) provide that the OCD would continue to enforce clean-up "abatement" of B.(22) activities under the "Water Quality Act" and that appeals be taken to the WQCC; and

(8) provide that public notice and participation in the process for the abatement of B.(22) activities be conducted in accordance with Subpart 4108 of the WQCC Regulations and that the OCC adopt the same process for B.(21) activities.

Certain members of the Committee were concerned that the January 12, 1996 draft of Section D did not accomplish the Committee's intention and the Committee pursued obtaining legal advice of how to redraft this section.

In addition, the Division has expressed concern that the current draft of Section D does not accomplish its intended purpose.

At the Committee's February 23, 1996 meeting, the Division proposed to that the Committee consider editing Section D to require "corrective action" in accordance with a new Rule 19 which would adopt for the OCD a "methods and standards for the prevention and abatement of water pollution associated with operations in the oil and gas industry by incorporating the same provisions as contained in those relevant portions of the WQCC Regulations by which items (1) through (8) could be accomplished.

This topic was discussed extensively on February 23, March 28 and September 12, 1996 with the Committee's final draft being as follows:

**"D. CORRECTIVE ACTION:** The responsible person must complete Division approved corrective action for unauthorized releases which endanger public health or the environment. Releases will be addressed in accordance with a remediation plan submitted to and approved by the Division or with an Abatement Plan submitted in accordance with Rule 19."

**(g) Reporting Requirements--Section B (Revised Rule 116)** The Committee devoted a substantial amount of its time discussing the types of releases and the volumes which should be reported:

#### Categories of Releases

The Committee agreed that Rule 116 was a rule for the protection of ground water, surface water and public health and the environment and as such must address the potential risks associated with the various types of releases. In doing so, the Committee concluded that the category of release with the greatest risk would be one which (a) results in a fire; (b) will reach a water course; (c) may with reasonable probability endanger public health; or (d) results in substantial damage to property or the environment and should be reported if **any volume was released and regardless of whether within or off of the site of operations.**

The Committee recommends that existing Rule 116 provisions dealing with fire, blowout and releases to a watercourse be combined into a single category ("Category I Release") and that the reporting requirements be made more restrictive by requiring that the release of any volume be reported by immediate verbal notification.

With the exception of natural gas which is discussed as a separate item, any other release would be reported under what is currently shown in Proposed Revised Rule 116 as "Category III Release".

**Reportable Natural Gas Releases**

The Committee was unable to agree: (a) whether releases of any volumes of natural gas needed to be reportable under Rule 116; (b) if reported, what volumes should be reported; or (c) if reported, should it be by immediate verbal and/or fifteen day written notification.

Currently, the OCD and the BLM reporting requirements are as follows:

**EXISTING NOTICE REQUIREMENTS FOR NATURAL GAS RELEASES**

Current OCD Rule 116		Current BLM Requirements	
0-1000 mcf	No reporting	0-50 mcf	No Reporting
over 1000 mcf	Written 10 days	50-500 mcf	Written 15 days
N/A	N/A	over 500 mcf	Immed. verbal

By a vote of 3 to 2 (Shaw, Menzie, Small voting for, Anderson, Schmidt voting against and Shuey abstaining) the Committee adopted a change from the existing OCD Rule 116 to:

- (1) now require an immediate verbal report of **any volume of natural gas** which: (a) results in a fire; (b) may with reasonable probability endanger public health; or (c) results in substantial damage to property or the environment, and
- (2) delete written reports for the release of any volume of natural gas.

The Committee majority's proposal is set forth in Revised Rule 116. The principal argument for the majority vote was that public health threats under Rule 116 would be addressed by an immediate verbal report of any gas release without regard to volumes and a written report based upon volumes released was not necessary.

The principal argument for the minority was that Rule 116 could also be used as a "waste rule" by providing a written report so that the State Land Office would have a written report to be used to require the operator to account for gas volumes releases and for which royalties might be due. See Attachment (7).

In addition, at the time of the Committee vote of this item, the Committee was aware that all three OCD district supervisors were strongly in favor of requiring written notification of gas releases at volumes consistent with those currently required by the BLM rules.

**Releases to a Watercourse**

The following table sets forth the current requirements for releases of either oil and/or produced water which will reach a watercourse:

**EXISTING OCD NOTICE REQUIREMENTS  
FOR RELEASES WHICH CAN REACH A WATERCOURSE**

OIL		PRODUCED WATER	
less than 1 bbl	No reporting	less than 25 bbls	No Reporting
1 bbl or more	Immed. verbal	25 bbls or more	Immed. verbal

The Committee unanimously agreed that the potential risk to a watercourse was such that any release of any volume which can reach a watercourse must be reported both by immediate verbal notice and within 15 days by written notice; see table below:

**COMMITTEE PROPOSED REVISED NOTICE REQUIREMENTS  
FOR RELEASES WHICH CAN REACH A WATERCOURSE**

OIL		PRODUCED WATER	
any volume	immed. verbal and written w/ 15 days	any volume	Immed. verbal and written w/ 15 days

**Releases which will not reach a Watercourse**

Existing Rule 116 currently provides for the following reporting levels for releases of produced water to ground surface and for oil releases to ground surface:

**EXISTING RULE 116**

Oil to Ground		Produced Water to Ground	
0-5 bbls	No reporting	0-25 bbls	No Reporting
5-25 bbls	Written 10 days	25-100 bbls	Written 10 days
+25 bbls	Immed. verbal	+100 bbls	Immed. Verbal

While the Committee unanimously agreed that produced water and oil release should be combined under one reporting category, the Committee was divided over different minimum reporting volumes.

Mr. Shaw proposed for discussion that a volume of less than 250 bbls of produced water and of less than 25 bbls of oil should not be reported.

The Chairman suggested Proposal #1 for discussion purposes while Mr. Anderson proposed for discussion that a volume of less than 1 bbl of produced water and of less than 1 bbl of produced water should not be reported. See Proposal #1 and #2 below:

**PROPOSED RULE 116**

PROPOSAL # 1 Oil &/or Produced Water to Ground		PROPOSAL # 2 Oil &/or Produced Water to Ground	
0-25 bbls.	No reporting	0-1 bbls	No Reporting
+25 bbls	Written 10 days	1-25 bbls	Written 10 days
+25 bbls	Immed. verbal	+25 bbls	Immed. Verbal

By a vote of 3 to 3, the Committee failed to adopt either Proposal #1 or #2.

Mr. Anderson then proposed the following compromise:

PROPOSAL # 3 Oil &/or Produced Water to Ground	
less than 5 bbls.	No reporting
5 to 25 bbls	Written w/in 15 days
more than 25 bbls	Immed. verbal and written w/in 15 days

By a vote of 5 to 1 (Anderson, Schmidt, Menzie, Small, Shuey voting for and Shaw voting against) the Committee adopted Proposal #3 above.

**(4) Summary of Proposed New Reporting Requirements:**

Notification of a release as defined in Rule A.7 shall be made by the person operating or controlling either the release or the location of the release in accordance with the following requirements:

CATEGORY I RELEASE (1)		CATEGORY II RELEASE (2)		CATEGORY III RELEASE (3)	
total combined volumes	Required Notification	total combined volumes	Required Notification	total combined volumes	Required Notification
any volume	Immediate Verbal and Written within 15 days	any volume of natural gas	Immediate Verbal	less than 5 bbls.	No Reporting
N/A	N/A	N/A	N/A	5 to 25 bbls	written within 15 days
N/A	N/A	N/A	N/A	greater than 25 barrels	immediate verbal & written within 15 days

(1) A Category I Release shall be reported by giving **both** immediate verbal notice and timely written notice pursuant to Subsection C(1) and C(2) of this Rule. For purpose of this Rule, a Category I Release is a release of any volume, **excluding natural gas**, which:

- (a) results in a fire;
- (b) will reach a water course;
- (c) may with reasonable probability endanger public health; or
- (d) results in substantial damage to property or the environment

(2) A Category II Release shall be reported by giving immediate verbal notice pursuant to Subsection C (1) of this Rule. For purpose of this Rule, a Category II Release is a release of any volume of **natural gas**, which:

- (a) results in a fire;
- (b) may with reasonable probability endanger public health; or
- (c) results in substantial damage to property or the environment,

(3) A Category III Release shall be reported by giving **both** immediate verbal notice and timely written notice pursuant to Subsection C(1) and C(2) of this Rule. For the purpose of this Rule, a Category III Release is a release of a volume, **excluding natural gas**, greater than 5 barrels but not more than 25 barrels.

### **COMMITTEE CONCLUSIONS AND RECOMMENDATIONS CONCERNING PHASE TWO TASKS**

On January 12, 1996, the Committee's working draft of Section D Rule 116 attempted to have the OCC adopt the relevant portions of the WQCC abatement regulations by reference. This was suggested in order to avoid having to "edit" form than 82 pages of WQCC abatements regulations.

However, following the January 12, 1996 Committee meeting, certain members of the Committee were concerned that the January 12, 1996 draft of Section D did not accomplish the Committee's intention, that it was not possible to incorporate by reference the WQCC abatement regulations and therefore the Committee pursued obtaining legal advice of how to redraft this section.

In addition, the Division has expressed concern that the January 12, 1996 draft of Section D did not accomplish its intended purpose.

Therefore, at the Committee's February 23, 1996 meeting, the Division proposed to that the Committee consider editing Section D to require "corrective action" in accordance with a new Rule 19 which would adopt for the OCD a "methods and standards for the prevention and abatement of water pollution associated with operations in the oil and gas industry by incorporating the same provisions as contained in those relevant portions of the WQCC Regulations by which items (1) through (8) could be accomplished.

The draft of the "Proposed" new Rule 19 (See Exhibit 6) along with additional definitions (See Exhibit 7) set forth on the Commission's hearing docket on October 29, 1996 results from the Committee's action taken on March 28, 1996 and September 12, 1996 and supplemented with further editing revisions made by the Chairman after consultation with the Division.

The Committee's action on various drafts of Rule 19 are as follows:

After January 12, 1996	See Exhibit 8
After February 23, 1996	See Exhibit 9
After March 28, 1996	See Exhibit 10
After September 12, 1996	See Exhibit 11

## SUMMARY OF ISSUES FOR THE COMMISSION

In June, 1994, the IOGCC/EPA issued its Peer Review of the New Mexico Oil Conservation Division Rules and Regulations. See Exhibit 4. In doing so the Review noted that release reporting requirements differ significantly between existing Rule 116 and WQCC Re 1-203. The IOGCC/EPA State Review recommended that the current Rule 116 be reviewed to determine if the OCD reporting requirements and quantities are protective of fresh water, public health and the environment. In addition, the IOGCC/EPA State Review found that OCD corrective-action and remediation standards were contained in OCD guidelines and in references to the WQCC Regulations but none of those standards have been promulgated as rules by the OCC.

As Chairman of the Committee, I have identified the following topics and issues as the major items for your consideration in taking action upon proposed Rule 116 and Rule 19 at the Commission hearings now set for October 29, 1996 and November 14, 1996:

**(1) SCOPE OF OCC ACTION OVER UNAUTHORIZED RELEASES:**

The OCC needs to decide how it will exercise its authority and is free to consider any requirements of the WQCC Abatement Regulations as appropriate for inclusion in OCD Rule 116 and Rule 19 to:

(1) regulate the B.(21) upstream E&P activities by revising Rule 116 and adopting either (a) the same standards and corrective action procedures set forth in the WQCC abatement regulations; or (b) its own corrective action procedures, guidelines and regulations which may be different from the WQCC regulations; with all review of abatement action being taken through the OCD-examiner hearing process; and

(2) to continue to enforce clean-up "abatement" of B.(22) sites under the WQCC standards and the WQCC regulations with all review of abatement action being taken through the WQCC hearing process pursuant to the Water Quality Act authority referenced in Section 70-2-12.B.(22) NMSA (1978).

**(2) Rule 116:**

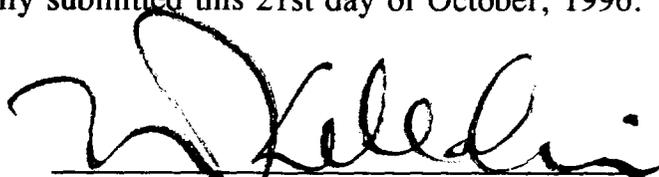
In considering Rule 116, the OCC needs to decide if the existing Rule 116 needs to be revised and if so then:

1. the type of releases to report
2. the reportable quantities
3. what, if any, gas volumes are to be reported
4. decide if this rule should require "corrective action"

**(3) Rule 19:**

If corrective action is required in Rule 116, then should the OCC adopt the Committee's draft of Rule 19 in order to establish the method and adopt the standards for that corrective action.

Respectfully submitted this 21st day of October, 1996.

A handwritten signature in black ink, appearing to read 'W. Thomas Kellahin', written over a horizontal line.

W. Thomas Kellahin  
Chairman

RULE 116 COMMITTEE

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EXHIBIT

2

RULE 116 COMMITTEE  
ATTENDANCE LIST FOR COMMITTEE MEETING

NAME	9/25/95	11/9/95	11/10/95	1/12/96	2/23/96	3/28/96	9/12/96
ROGER ANDERSON (OCD)	X	X		X	X	X	X
DARRELL ATKINS CHUCK MORAN (Yates)	X				X	X	X
DENVER BEARDON TONI RISTAU (PNM)	X	X	X		X	X	X
DON ELLSWORTH (BLM)	X	X	X		X	X	X
TOM KELLAHIN (NMOGA)	X	X	X		X	X	X
BOB MENZIE (Marathon)	X	X		X	X	X	X
MARK SCHMIDT (SLO)	X	X	X	X	X	X	X
BUDDY SHAW (Amoco)	X	X	X	X	X	X	X
CHRIS SHUEY (SWRIC)	X	X	X	X	X	X	X
SAM SMALL (Amerada Hess)	X	X		X	X	X	X
<b>GUESTS</b>							
Denny Foust	X	X	X	X	X	X	X
Ruth Andrews		✓		✓	✓		
Dick Pollard				X			
Frank Chavez	✓	✓			X	X	X
Rand Carroll				X	X	X	X
William Olson		X		X	X		X
Mark Ashley		X		X	X	X	X
Dr. Don Neeper		X	X		Tim Gum		
Ned Kendrick					X	Louis Rose	X

- 1) an "X" indicates attendance for entire meeting
- 2) a "checkmark" indicates attendance for part of the meeting
- 3) absence of any mark indicates did not attend any part of the meeting

Note: 11/10/95 was devoted to a field trip of various sites in the Farmington area with no committee action taken on that date



rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least 150 feet from the vicinity of wells and tanks. All waste shall be burned or disposed of in such manner as to avoid creating a fire hazard. [1-1-50...2-1-96]

114.B. When coming out of the hole with drill pipe, drilling fluid shall be circulated until equalized and subsequently drilling fluid level shall be maintained at a height sufficient to control subsurface pressures. During course of drilling blowout preventers shall be tested at least once each 24-hour period. [1-1-50...2-1-96]

#### 115 WELL AND LEASE EQUIPMENT

115.A. Christmas tree fittings or wellhead connections shall be installed and maintained in first class condition so that all necessary pressure tests may easily be made on flowing wells. On oil wells the Christmas tree fittings shall have a test pressure rating at least equivalent to the calculated or known pressure in the reservoir from which production is expected. On gas wells the Christmas tree fittings shall have a test pressure equivalent to at least 150 percent of the calculated or known pressure in the reservoir from which production is expected. [1-1-50...2-1-96]

115.B. Valves shall be installed and maintained in good working order to permit pressures to be obtained on both casing and tubing. Each flowing well shall be equipped to control properly the flowing of each well, and in case of an oil well, shall be produced into an oil and gas separator of a type generally used in the industry. [1-1-50...2-1-96]

#### 116 NOTIFICATION OF FIRE, BREAKS, LEAKS, SPILLS AND BLOWOUTS

116.A. The Division shall be notified of any fire, break, leak, spill, or blowout occurring at any injection or disposal facility or at any oil or gas drilling, producing, transporting, or processing facility in the State of New Mexico by the person operating or controlling such facility. [1-1-50...2-1-96]

116.B. "Facility," for the purpose of this rule, shall include any oil or gas well, any injection or disposal well, and any drilling or workover well; any pipe line through which crude oil, condensate, casinghead or natural gas, or injection or disposal fluid (gaseous or liquid) is gathered, piped, or transported (including field flow-lines and lead-lines but not including natural gas distribution systems); any receiving tank, holding tank, or storage tank, or receiving and storing receptacle into which crude oil, condensate, injection or disposal fluid, or casinghead or natural gas is produced, received, or stored; any injection or disposal pumping or compression station including related equipment; any processing or refining plant in which crude oil, condensate, or casinghead or natural gas is processed or refined; and any tank or drilling pit or slush pit associated with oil or gas well or injection or disposal well drilling operations or any tank, storage pit, or pond associated with oil or gas production or processing operations or with injection or disposal operations and containing hydrocarbons or hydrocarbon waste or residue, salt water, strong caustics or strong acids, or other deleterious chemicals or harmful contaminants. [5-22-73...2-1-96]

116.C. Notification of such fire, break, leak, spill, or blowout shall be in accordance with the provisions set forth below:

(1) Well Blowouts. Notification of well blowouts and/or fires shall be "immediate notification" described below. "Well blowout" is defined as being loss of control over and subsequent eruption of any drilling or workover well, or the rupture of the casing, casinghead, or wellhead or any oil or gas well or



injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or liquid, from the well.) [5-22-73...2-1-96]

(2) "Major" Breaks, Spills, or Leaks. Notification of breaks, spills, or leaks of 25 or more barrels of crude oil or condensate, or 100 barrels or more of salt water, none of which reaches a watercourse or enters a stream or lake; breaks, spills, or leaks in which one or more barrels of crude oil or condensate or 25 barrels or more of salt water does reach a watercourse or enters a stream or lake; and breaks, spills, or leaks of hydrocarbons or hydrocarbon waste or residue, salt water, strong caustics or strong acids, gases, or other deleterious chemicals or harmful contaminants of any magnitude which may with reasonable probability endanger human health or result in substantial damage to property, shall be "immediate notification" described below. [5-22-73...2-1-96]

(3) "Minor" Breaks, Spills, or Leaks. Notification of breaks, spills, or leaks of 5 barrels or more but less than 25 barrels of crude oil or condensate, or 25 barrels or more but less than 100 barrels of salt water, none of which reaches a watercourse or enters a stream or lake, shall be "subsequent notification" described below. [5-22-73...2-1-96]

(4) "Gas Leaks and Gas Line Breaks. Notification of gas leaks from any source or of gas pipe line breaks in which natural or casinghead gas of any quantity has escaped or is escaping which may with reasonable probability endanger human health or result in substantial damage to property shall be "immediate notification" described below. Notification of gas pipe line breaks or leaks in which the loss is estimated to be 1000 or more MCF of natural or casinghead gas but in which there is no danger to human health nor of substantial damage to property shall be "subsequent notification" described below. [5-22-73...2-1-96]

(5) Tank Fires. Notification of fires in tanks or other receptacles caused by lightning or any other cause, if the loss is, or it appears that the loss will be, 25 or more barrels of crude oil or condensate, or fires which may with reasonable probability endanger human health or result in substantial damage to property, shall be "immediate notification" as described below. If the loss is, or it appears that the loss will be at least 5 barrels but less than 25 barrels, notification shall be "subsequent notification" described below. [5-22-73...2-1-96]

(6) Drilling Pits, Slush Pits, and Storage Pits and Ponds. Notification of breaks and spills from any drilling pit, slush pit, or storage pit or pond in which any hydrocarbon or hydrocarbon waste or residue, strong caustic or strong acid, or other deleterious chemical or harmful contaminant endangers human health or does substantial surface damage, or reaches a watercourse or enters a stream or lake in such quantity as may with reasonable probability endanger human health or result in substantial damage to such watercourse, stream, or lake, or the contents thereof, shall be "immediate notification" as described below. Notification of breaks or spills of such magnitude as to not endanger human health, cause substantial surface damage, or result in substantial damage to any watercourse, stream, or lake, or the contents thereof, shall be "subsequent notification" described below, provided however, no notification shall be required where there is no threat of any damage resulting from the break or spill. [5-22-73...2-1-96]

(7) IMMEDIATE NOTIFICATION. "Immediate Notification" shall be as soon as possible after discovery and shall be either in person or by telephone to the district office of the Division district in which the incident occurs, or if the incident occurs after normal business hours, to the District Supervisor, the Oil and Gas Inspector, or the Deputy Oil and Gas Inspector. A complete written report ("Subsequent Notification") of the incident shall also be submitted in DUPLICATE to the appropriate district office of the Division within ten days after discovery of the incident. [5-22-73...2-1-96]

(8) SUBSEQUENT NOTIFICATION. "Subsequent Notification" shall be a complete written report of the incident and shall be submitted in duplicate to the

district office of the Division district in which the incident occurred within ten days after discovery of the incident. [5-22-73...2-1-96]

(9) CONTENT OF NOTIFICATION. All reports of fires, breaks, leaks, spills, or blowouts, whether verbal or written, shall identify the location of the incident by quarter-quarter, section, township, and range, and by distance and direction from the nearest town or prominent landmark so that the exact site of the incident can be readily located on the ground. The report shall specify the nature and quantity of the loss and also the general conditions prevailing in the area, including precipitation, temperature, and soil conditions. The report shall also detail the measures that have been taken and are being taken to remedy the situation reported. [5-22-73...2-1-96]

(10) WATERCOURSE, for the purpose of this rule, is defined as any lake-bed or gully, draw, stream bed, wash, arroyo, or natural or man-made channel through which water flows or has flowed. [5-22-73...2-1-96]

#### 117 WELL LOG, COMPLETION AND WORKOVER REPORTS

Within 20 days after the completion of a well drilled for oil or gas, or the recompletion of a well into a different common source of supply, a completion report shall be filed with the Division on Form C-105. For the purpose of this rule, any hole drilled or cored below fresh water or which penetrates oil- or gas-bearing formations or which is drilled by an "owner" as defined herein shall be presumed to be a well drilled for oil or gas. [1-1-50...2-1-96]

#### 118 HYDROGEN SULFIDE GAS - PUBLIC SAFETY

118.A. The intent of this rule is to provide for the protection of the public's safety in areas where hydrogen sulfide ( $H_2S$ ) gas in concentrations greater than 100 parts per million (PPM) may be encountered. [1-1-87...2-1-96]

118.B. Producing operations should be conducted with due consideration and guidance from American Petroleum Institute (API) publication "Conducting Oil and Gas Production Operations Involving Hydrogen Sulfide" (RP-55). The operator of a lease producing, or a gas processing plant handling  $H_2S$  or any other related facility where  $H_2S$  gas is present in concentrations of 100 PPM or more shall take reasonable measures to forewarn and safeguard persons having occasion to be on or near the property. In addition to training operator's employees in  $H_2S$  safety such measures may include, but are not necessarily limited to, posting of warning signs, fencing of surface installations, installation of safety devices and wind direction indicators, and maintaining tanks, thief hatches and gaskets, valves and piping in condition so as to prevent avoidable loss of vapors. Where release of hydrogen sulfide is unavoidable, the operator shall burn or vent the gas stream in such a manner as to avoid endangering human life. [1-1-87...2-1-96]

118.C. Wells drilled in known  $H_2S$  gas producing areas, or where there is substantial probability of encountering  $H_2S$  gas in concentrations of 100 PPM or more, should be planned and drilled with due regard to and guidance from API RP-49 "Recommended Practices for Safe Drilling of Wells Containing Hydrogen Sulfide", latest edition. Wells completed and serviced by well servicing units where there is substantial probability of encountering  $H_2S$  gas in concentrations of 100 PPM or more should be worked on with due regard to the latest industry accepted practices. These practices may include, but are not necessarily limited to, the proper training of personnel in  $H_2S$  safety and the use of  $H_2S$  safety equipment as listed for safe operations by the American Petroleum Institute draft report for "Land, Oil and Gas Well Servicing and Workover Operations Involving Hydrogen Sulfide."\* [1-1-87...2-1-96]

118.D. Within ninety (90) days after completion of the first well on a lease, or within ninety (90) days after  $H_2S$  is discovered in a gas stream, each operator shall submit in writing to the Division's district office having

DISTRICT I  
P.O.Box 1980, Hobbs, NM 88241-1980

DISTRICT II  
P.O. Drawer DD, Artesia, NM 88211-0719

DISTRICT III  
1000 Rio Brazos Rd, Aztec, NM 87410

State of New Mexico  
Energy, Minerals and Natural Resources Department

**OIL CONSERVATION DIVISION**  
2040 Pacheco St.  
Santa Fe, NM 87505

SUBMIT 2 COPIES TO  
APPROPRIATE DISTRICT  
OFFICE IN ACCORDANCE  
WITH RULE 116 PRINTED  
ON BACK SIDE OF FORM

**NOTIFICATION OF FIRE, BREAKS, SPILLS, LEAKS, AND BLOWOUTS**

OPERATOR					ADDRESS			TELEPHONE #	
REPORT OF	FIRE	BREAK	SPILL	LEAK	BLOWOUT	OTHER*			
TYPE OF FACILITY	DRLG WELL	PROD WELL	TANK BTRY	PIPE LINE	GASO PLNT	OIL RFY	OTHER*		
FACILITY NAME:									
LOCATION OF FACILITY Qtr/Qtr Sec. or Footage					SEC.	TWP.	RGE.	COUNTY	
DISTANCE AND DIRECTION FROM NEAREST TOWN OR PROMINENT LANDMARK									
DATE AND HOUR OF OCCURRENCE					DATE AND HOUR OF DISCOVERY				
WAS IMMEDIATE NOTICE GIVEN?		YES	NO	NOT REQUIRED	IF YES, TO WHOM				
BY WHOM					DATE AND HOUR				
TYPE OF FLUID LOST					QUANTITY OF LOSS			VOLUME RECOVERED	
DID ANY FLUIDS REACH A WATERCOURSE?		YES	NO	QUANTITY					
IF YES, DESCRIBE FULLY**									
DESCRIBE CAUSE OF PROBLEM AND REMEDIAL ACTION TAKEN**									
DESCRIBE AREA AFFECTED AND CLEANUP ACTION TAKEN**									
DESCRIPTION OF AREA	FARMING	GRAZING		URBAN		OTHER*			
SURFACE CONDITIONS	SANDY	SANDY LOAM	CLAY	ROCKY	WET	DRY	SNOW		
DESCRIBE GENERAL CONDITIONS PREVAILING (TEMPERATURE, PRECIPITATION, ETC.)**									

I HEREBY CERTIFY THAT THE INFORMATION ABOVE IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF

SIGNED \_\_\_\_\_ PRINTED NAME AND TITLE \_\_\_\_\_ DATE \_\_\_\_\_

\*SPECIFY

\*\*ATTACH ADDITIONAL SHEETS IF NECESSARY

## NOTIFICATION OF FIRE, BREAKS, SPILLS, LEAKS, AND BLOWOUTS

**DISTRICT I**  
P.O. Box 1980, Hobbs, NM 88241-1980

**DISTRICT II**  
P.O. Drawer DD, Artesia, NM 88211-0719

**DISTRICT III**  
1000 Rio Brazos Rd, Aztec, NM 87410

State of New Mexico  
Energy, Minerals and Natural Resources Department

**OIL CONSERVATION DIVISION**  
P.O. Box 2088  
Santa Fe, New Mexico 87504-2088

SUBMIT 2 COPIES TO  
APPROPRIATE DISTRICT  
OFFICE IN ACCORDANCE  
WITH RULE 116 PRINTED  
ON BACK SIDE OF FORM

### NOTIFICATION OF FIRE, BREAKS, SPILLS, LEAKS, AND BLOWOUTS

OPERATOR Maryb Oil Company					ADDRESS 706 Guadalupe, Hobbs, NM 88240			TELEPHONE # 505 555-1234	
REPORT OF	FIRE	BREAK	SPILL	LEAK X	BLOWOUT	OTHER*			
TYPE OF FACILITY	DRLG WELL	PROD WELL	TANK BTRY	PIPE LINE X	GASO PLNT	OIL RFY	OTHER*		
FACILITY NAME: Kennedy A lease gathering line									
LOCATION OF FACILITY Qtr/Qtr Sec. or Footage					NE/4 NE/4	SEC. 26	TWP. 17S	RGE. 29E	COUNTY Eddy
DISTANCE AND DIRECTION FROM NEAREST TOWN OR PROMINENT LANDMARK 3 miles southwest of Minerva, NM									
DATE AND HOUR OF OCCURRENCE March 19, 1992 early morning					DATE AND HOUR OF DISCOVERY March 19, 1992 8:05 A.M.				
WAS IMMEDIATE NOTICE GIVEN?		YES	NO	NOT RE-OUTRED X	IF YES, TO WHOM				
BY WHOM					DATE AND HOUR				
TYPE OF FLUID LOST oil and water					QUANTITY OF LOSS 20		VOLUME RE-COVERED 10		
DID ANY FLUIDS REACH A WATERCOURSE?		YES	NO X	QUANTITY					
IF YES, DESCRIBE FULLY**									
DESCRIBE CAUSE OF PROBLEM AND REMEDIAL ACTION TAKEN** Due to cold weather an ice block formed in a section of plastic flowline and caused a rupture during the early morning hours. When discovered wells were shut down and section of plastic flowline was replaced with steel line.									
DESCRIBE AREA AFFECTED AND CLEANUP ACTION TAKEN** This area is very sandy, with nothing on it but some mesquite bushes and small amount of shinnery. The oil that was left on the ground that could not be picked up was covered with sand.									
DESCRIPTION OF AREA		FARMING	GRAZING X	URBAN	OTHER*				
SURFACE CONDITIONS		SANDY X	SANDY LOAM	CLAY	ROCKY	WET	DRY	SNOW	
DESCRIBE GENERAL CONDITIONS PREVAILING (TEMPERATURE, PRECIPITATION, ETC.)** Approximately 15° clear and cold									
I HEREBY CERTIFY THAT THE INFORMATION ABOVE IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF									
SIGNED /s/ J. R. Chandler				PRINTED NAME AND TITLE J. R. Chandler District Supr.		DATE 3/19/92			

\*SPECIFY

\*\*ATTACH ADDITIONAL SHEETS IF NECESSARY

#### RULE 116. NOTIFICATION OF FIRE, BREAKS, LEAKS, SPILLS, AND BLOWOUTS

The Division shall be notified of any fire, break, leak, spill, or blowout occurring at any injection or disposal facility or at any oil or gas drilling,

producing, transporting, or processing facility in the State of New Mexico by the person operating or controlling such facility.

"Facility," for the purpose of this rule, shall include any oil or gas well, any injection or disposal well, and any drilling or workover well; any

through which crude oil, condensate, casinghead or natural gas, or injection or disposal fluid (gaseous or liquid) is gathered, piped, or transported (including field flow-lines and lead-lines but not including natural gas distribution systems); any receiving tank, holding tank, storage tank, or receiving and storing receptacle into which crude oil, condensate, injection or disposal fluid, or casinghead or natural gas is produced, received, or stored; any injection or disposal pumping or compression station including related equipment; any processing or refining plant in which crude oil, condensate, or casinghead or natural gas is processed or refined; and any tank or drilling pit or slush pit associated with oil or gas well or injection or disposal well drilling operations or any tank, storage pit, or pond associated with oil or gas production or processing operations or with injection or disposal operations and containing hydrocarbons or hydrocarbon waste or residue, salt water, strong caustics or strong acids, or other deleterious chemicals or harmful contaminants.

Notification of such fire, break, leak, spill, or blowout shall be in accordance with the provisions set forth below:

**Well Blowouts.** Notification of well blowouts and/or fires shall be "immediate notification" described below. ("Well blowout" is defined as being loss of control over and subsequent eruption of any drilling or workover well, or the rupture of the casing, casinghead, or wellhead of an oil or gas well or injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or liquid, from the well.)

**2. "Major" Breaks, Spills, or Leaks.** Notification of breaks, spills, or leaks of 25 or more barrels of crude oil or condensate, or 100 barrels or more of salt water, none of which reaches a watercourse or enters a stream or lake; breaks, spills, or leaks in which one or more barrels of crude oil or condensate or 25 barrels or more of salt water does reach a watercourse or enters a stream or lake; and breaks, spills, or leaks of hydrocarbons or hydrocarbon waste or residue, salt water, strong caustics or strong acids, gases, or other deleterious chemicals or harmful contaminants of any magnitude which may with reasonable probability endanger human health or result in substantial damage to property, shall be "immediate notification" described below.

**"Minor" Breaks, Spills, or Leaks.** Notification of breaks, spills, or leaks of 5 barrels or more but less than 25 barrels of crude oil or condensate, or 25 barrels or more but less than 100 barrels of salt water, none of which reaches a watercourse or enters a stream or lake, shall be "subsequent notification" described below.

**Gas Leaks and Gas Line Breaks.** Notification of gas leaks from any source or of gas pipe line breaks in which natural or casinghead gas of any quantity has escaped or is escaping which may with reasonable probability endanger human health or result in substantial damage to property shall be "immediate notification" described below. Notification of gas pipe line breaks or leaks in which the loss is estimated to be 1000 or more MCF of natural or casinghead gas but in which there is no danger to human health nor of substantial damage to property shall be "subsequent notification" described below.

**5. Tank Fires.** Notification of fires in tanks or other receptacles caused by lightning or any other cause, if the loss is, or it appears that the loss will be, 25 or more barrels of crude oil or condensate, or fires which may with reasonable probability endanger human health or result in substantial damage to property, shall be "immediate notification" as described below. If the loss is, or it appears that the loss will be at least 5 barrels but less than 25 barrels, notification shall be "subsequent notification" described below.

**6. Drilling Pits, Slush Pits, and Storage Pits and Ponds.** Notification of breaks and spills from any drilling pit, slush pit, or storage pit or pond in which any hydrocarbon or hydrocarbon waste or residue, strong caustic or strong acid, or other deleterious chemical or harmful contaminant endangers human health or does substantial surface damage, or reaches a watercourse or enters a stream or lake in such quantity as may with reasonable probability endanger human health or result in substantial damage to such watercourse, stream, or lake, or the contents thereof, shall be "immediate notification" as described below. Notification of breaks or spills of such magnitude as to not endanger human health, cause substantial surface damage, or result in substantial damage to any watercourse, stream, or lake, or the contents thereof, shall be "subsequent notification" described below, provided however, no notification shall be required where there is no threat of any damage resulting from the break or spill.

**IMMEDIATE NOTIFICATION.** "Immediate Notification" shall be as soon as possible after discovery and shall be either in person or by telephone to the district office of the Division district in which the incident occurs, or if the incident occurs after normal business hours, to the District Supervisor, the Oil and Gas Inspector, or the Deputy Oil and Gas Inspector. A complete written report ("Subsequent Notification") of the incident shall also be submitted in duplicate to the appropriate district office of the Division within ten days after discovery of the incident.

**SUBSEQUENT NOTIFICATION.** "Subsequent Notification" shall be a complete written report of the incident and shall be submitted in duplicate to the district office of the Division district in which the incident occurred within ten days after discovery of the incident.

**CONTENT OF NOTIFICATION.** All reports of fires, breaks, leaks, spills, or blowouts, whether verbal or written, shall identify the location of the incident by quarter-quarter, section, township, and range, and by distance and direction from the nearest town or prominent landmark so that the exact site of the incident can be readily located on the ground. The report shall specify the nature and quantity of the loss and also the general conditions prevailing in the area, including precipitation, temperature, and soil conditions. The report shall also detail the measures that have been taken and are being taken to remedy the situation reported.

**WATERCOURSE,** for the purpose of this rule, is defined as any lake, bed or gully, draw, stream bed, wash, arroyo, or natural or man-made channel through which water flows or has flowed.

## V. CONTINGENCY PLANNING

Contingency planning addresses both prevention of and response to spills, leaks and accidental releases. This section discusses OCD's requirements for spill prevention and response.

### A. Statutory and Regulatory Authorities

OCD derives authority for contingency planning from its broad mandates under the OGA to protect fresh water supplies, public health and the environment, and from its responsibilities as a constituent agency of the WQCC to implement and enforce the WQA's mandate to prevent and abate water pollution.

Under its OGA authority, OCD adopted requirements for reporting and remedying spills and releases of crude oil, condensate, salt water, hydrocarbon wastes, strong caustic or strong acid, "or other deleterious chemical or harmful contaminant" in such quantity "as may with reasonable probability endanger human health or result in substantial damage to [a] watercourse. . ." Rule 116.C. Under its WQA authority, OCD can and does implement spill reporting and corrective-action requirements of the WQCC Regulations for facilities subject to OCD's jurisdiction. WQCCR 1-203. OCD also is a participating agency in the state's emergency response plan.

OCD has taken several steps to address spill prevention and control in the context of individual facility permits, areawide groundwater monitoring, and cooperative relationships with other agencies. Examples of these steps follow:

- \* Incorporation of design features (such as berms) to prevent or control releases from surface disposal facilities permitted under Rule 711;
- \* Inclusion of federal SPCC (Spill Prevention Control and Countermeasures) plans in permits issued by OCD under Rule 711 and in discharge plans approved pursuant to Part 3 of the WQCC Regulations. This requirement is applicable only to facilities subject to the SPCC requirements of the federal Clean Water Act;
- \* Execution of a response plan when monitoring wells in the Ogallala Aquifer in southeastern New Mexico show responses to waterflooding in the underlying San Andres Formation; and
- \* Exchange of emergency phone numbers and copies of regulations between OCD and BLM for emergency responses in the Farmington area.

## **FINDING V.1.**

Despite having sufficient statutory authority under the Oil and Gas Act and the Water Quality Act to require operator compliance with a state-prepared contingency plan, OCD has no formal or comprehensive contingency planning program for preventing and abating spills and releases.

## **RECOMMENDATION V.1.**

OCD should develop a statewide contingency planning program that addresses release prevention, control and abatement. This program should require operators to prepare and maintain companywide or facility-specific contingency plans, based on general design and operational standards outlined in the state program and current OCD spill-reporting and corrective-action requirements. Information about the state program should be disseminated to the regulated community and the public in the agency's Environmental Regulations Manual. Existing spill-response guidelines could be used to aid operator compliance. (IOGCC Guidelines, section 4.2.1.)

### **B. Spill-Reporting Requirements**

Spill-reporting requirements differ significantly between WQCCR 1-203 and OCD Rule 116. WQCCR 1-203 requires the reporting of any quantity of oil or "other water contaminant" that may "injure or be detrimental to human health. . ." Verbal notification must be made within 24 hours of the discovery of the release, followed "within one week" by written notification. A corrective-action report must be filed within 15 days of the release. WQCCR 1-203.A.3. and 6.

Rule 116 defines "major" and "minor" spills and adjusts the mandatory notification requirements accordingly. A major spill is the release of 1 barrel of crude oil and/or 25 barrels of salt water to a watercourse, or the release of more than 25 barrels of oil and/or more than 100 barrels of salt water, none of which reaches a watercourse. It is also the release of any other deleterious chemical or harmful contaminant in such a quantity that may with reasonable probability damage human health and/or water bodies. "Immediate notification" by phone or in person is required for major spills, followed by the submittal of a written report within 10 days. A minor spill is the release of from 5 to 25 barrels of oil and/or from 25 to 100 barrels of salt water, none of which reaches a watercourse. It is also a release of such magnitude as not to endanger human health or water bodies. "Subsequent notification" to the local OCD district office is required in writing within 10 days of a minor spill. Rule 116.C.

One district reported it requires operators to report spills whose volumes are less than the established reportable quantities (RQs) to address potential hazards to the health and safety of people,

livestock and wildlife. The district took this action pursuant to OCD Rule 3, which requires operators to conduct their activities in a manner not to cause waste or pollution.

**FINDING V.2.**

Rule 116 is undergoing internal review by OCD to determine if its reporting requirements, including reportable quantities, are protective of public health and the environment.

**RECOMMENDATION V.2.**

OCD should adopt revised spill reporting requirements that are protective of fresh water, public health and the environment. (IOGCC Guidelines, sections 4.2.1. and 5.1.a.)

**FINDING V.3.**

There are no Reportable Quantities for "water contaminants" required to be reported under WQCC Regulations or for "deleterious chemicals" required to be reported under Rule 116.

**RECOMMENDATION V.3.**

Although the IOGCC Guidelines do not address Reportable Quantities, the Review Team recommends that OCD define Reportable Quantities for substances other than crude oil, condensate and produced water.

One member of the Review Team finds that OCD's existing spill-reporting requirements are adequate and need no revision.

**C. Corrective-Action Requirements and Standards**

Rule 116.C(9) requires operators to "detail the measures that have been taken and are being taken to remedy" damage or contamination caused by a release in the spill report they must file within 10 days of the incident. OCD does not approve the corrective actions proposed.

WQCCR 1-203.A.6. requires operators to file a written report "describing any corrective actions taken and/or to be taken" within 15 days of the release. The delegated agency, in this case the OCD, has 30 days to approve or disapprove the corrective actions proposed. If they are disapproved, the agency must allow the operator a reasonable period of time to modify the report. The agency has 15 days to act on a modified report. WQCCR 1-203.A.7. Ultimately, the agency may take appropriate enforcement action if the operator fails to remedy the spill or continues to propose remedies unsatisfactory to the agency. WQCCR 1-203.A.8.

#### **FINDING V.4.**

Rule 116 does not specify the process by which the agency will approve, modify, or deny a corrective-action plan submitted by an operator within 10 days of a spill.

#### **RECOMMENDATION V.4.**

The Oil Conservation Division should specify a process by which the Oil Conservation Division approves, modifies, or denies an operator's corrective-action plan. (IOGCC Guidelines, sections 4.2.1. and, generally, 4.1.3.1.f.)

OCD corrective-action standards are derived from at least two different sources and apply to different types of E&P waste facilities and oil and gas production facilities. Field-production facilities and off-site disposal facilities permitted under Rule 711 are subject to standards outlined in the agency's statewide pit closure guidelines. Major oil and gas facilities subject to WQCC regulation must comply with all of the 47 numerical standards of the WQCC Regulations.

OCD's pit closure guidelines include soil standards for benzene, total BTEX (benzene, toluene, ethylbenzene and xylene), and TPH (total petroleum hydrocarbons). The standards for benzene and BTEX are 10 parts per million (ppm) and 50 ppm, respectively. The standard for TPH ranges from 100 ppm to 5,000 ppm, depending on a site's hazard ranking score, which is based on three site-specific factors: depth to groundwater, distance from water-supply wells, and distance to surface water. If any of the standards are exceeded in soils, OCD requires the operator to initiate soil remediation and undertake a groundwater contamination investigation. OCD also requires that groundwater found to be contaminated in excess of any of the 47 numerical standards or any toxic pollutant in the WQCC Regulations be remedied to below standards.

The OCD/EB reviews and approves groundwater remediation projects and areawide soil remediation projects. The district offices review and approve all on-site soil remediation projects. In cases where the remediation plan calls for discharges onto or below the surface of the ground, OCD requires the operator to prepare and have approved a WQCC discharge plan.

#### **FINDING V.5.**

OCD corrective-action and remediation standards are contained in OCD guidelines and in references to WQCC Regulations. None of those standards have been promulgated as rules by OCD or OCC.

**RECOMMENDATION V.5.**

OCD should incorporate the remediation standards of its pit closure guidelines and the groundwater numerical standards and "toxic pollutant" narrative standards of the WQCC Regulations in the state contingency planning program discussed in Finding and Recommendation V.1. The standards should be applicable not only to spills and accidental releases, but also to chronic releases from E&P waste management facilities and oil and gas facilities. (IOGCC Guidelines, sections 4.2.1. and 5.1.a.)

**FINDING V.6.**

OCD district policy is to require cleanup of any volume of free-standing oil, condensate or produced water if the substance poses a safety risk to people or animals. The Review Team finds that this policy is a prudent measure to protect public safety and private property.

**RECOMMENDATION V.6.**

OCD should develop requirements for cleanup of spills with volumes below the reportable quantities of Rule 116, but which may pose an undue risk to people, animals or the environment. These requirements should be incorporated in the statewide contingency program suggested in Recommendation V.1. (IOGCC Guidelines, sections 4.2.1. and 5.1.a.)

**D. Emergency Response Issues**

As a participating agency in the state's emergency response plan, OCD assumes certain responsibilities for contributing to state-coordinated emergency responses to leaks, spills and releases, including those involving hydrogen sulfide. The agency can issue orders and make rules to address emergencies. Rule 1202. As discussed in Section I of this report, OCD has taken steps to require H<sub>2</sub>S monitoring and control at facilities subject to its jurisdiction in response to recent incidents of hydrogen sulfide poisoning of people and animals.

**FINDING V.7.**

OCD does not have a formalized plan to respond to emergencies within its jurisdiction, including those involving releases of hydrogen sulfide.

**RECOMMENDATION V.7.**

OCD should develop internal mechanisms to respond to emergencies within its jurisdiction. OCD should communicate its internal response plan to other state and federal agencies

to ensure that its responsibilities are well understood.  
(IOGCC Guidelines, section 4.2.1.)

#### **E. Aging Infrastructure and Preventive Maintenance**

In 1991, OCD determined from an analysis of spill reports that corrosion of equipment, gathering lines and other facilities was the leading cause of leaks and spills, especially in the southeast. Subsequent pollution events focused public and agency attention on the potential for leaks and spills from aging oil-field facilities and equipment. In response, OCD appointed an oil and gas industry study group to assess the problem and the need, if any, for regulations to address maintenance and replacement of such "aging infrastructure." A 1993 report by the study group found that the existing regulatory requirements of OCD, the federal Department of Transportation and the federal Occupational Safety and Health Administration were adequate to prevent spills and leaks from aging infrastructure, but that not all facilities and equipment prone to failure due to age are covered by those requirements.

#### **FINDING V.8.**

The industry's aging infrastructure report, which made recommendations for new preventive maintenance rules for certain facilities, is available to the public through OCD but has not been widely disseminated to or debated by the public.

#### **RECOMMENDATION V.8.**

OCD should seek public comment on industry's aging infrastructure report and take appropriate action, if warranted. (IOGCC Guidelines, section 4.2.2.1.)

#### **F. OTHER**

New Mexico recently created the state Office of the Natural Resource Trustee to estimate the extent of natural resource damage and monetary loss due to environmental contamination pursuant to requirements of the federal Comprehensive Environmental Response, Compensation and Liability Act. While no representative of this office participated in the review, the Review Team encourages New Mexico's efforts in this area.

**RULE 116 COMMITTEE PROPOSED REPLACEMENT RULE 116  
FOR CURRENT RULE 116**

**116 UNAUTHORIZED RELEASE NOTIFICATION AND CORRECTIVE ACTION**

116.A. NOTIFICATION: The Division shall be notified of any unauthorized release occurring during the drilling, producing, storing, disposing, injecting, transporting, servicing or processing of crude oil, produced water, condensate or oil field waste including Regulated NORM, or other oil field related chemicals, contaminants or mixture thereof, in the State of New Mexico in accordance with the requirements of this rule. [1-1-50... - 96]

116.B. REPORTING REQUIREMENTS: Notification of an unauthorized release as defined in Rule A.7 shall be made by the person operating or controlling either the release or the location of the release in accordance with the following requirements:

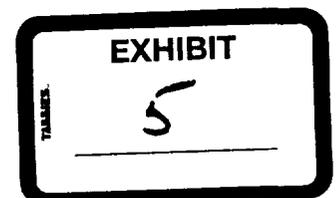
(1) A Category I release shall be reported by giving both immediate verbal notice and timely written notice pursuant to Subsection C(1) and C(2) of this Rule. For purpose of this Rule, a Category I Release is either:

- (a) a release of a volume in excess of 25 barrels; or
- (b) a release of any volume, excluding natural gas, which:
  - (i) results in a fire;
  - (ii) will reach a water course;
  - (iii) may with reasonable probability endanger public health; or
  - (iv) results in substantial damage to property or the environment. [ - 96]

(2) A Category II Release shall be reported by giving immediate verbal notice pursuant to Subsection C (1) of this Rule. For purpose of this Rule, a Category II Release is a release of any volume of natural gas, which:

- (a) results in a fire;
  - (b) may with reasonable probability endanger public health;
- or
- (c) result in substantial damage to property or the environment. [ - 96]

(3) A Category III release shall be reported by giving timely written notice pursuant to Subsection C(2) of this Rule. For the purpose of this Rule, a Category III Release is a release of a volume, excluding natural gas, greater than 5 barrels but not more than 25 barrels. [ - 96]



116.C. CONTENTS OF NOTIFICATION:

(1) Immediate verbal notification is required to be reported pursuant to Subsection B of Rule 116 shall be reported within twenty-four (24) hours of discovery to the District Office of the Division for the area within which this release takes place. This notification shall include the identification of the location of the release by quarter-quarter section, township and range; by distance and direction from the nearest town or landmark; the nature and estimated quantity of the loss and general conditions prevailing in the area; and any mitigation or corrective action being taken. [5-22-73... -96]

(2) Timely written notification is required to be reported pursuant to Subsection B of Rule 116 within fifteen (15) days to the District Office of the Division for the area within which this release takes place by completing and filing Division Form C-141. [5-22-73... -96]

116.D. CORRECTIVE ACTION: The responsible person must complete Division approved corrective action for unauthorized releases which endanger public health or the environment. Releases will be addressed in accordance with a remediation plan submitted to and approved by the Division or with an Abatement Plan submitted in accordance with Rule 19 (19 NMAC 15.A.19). [ -96].

**COMMITTEE PROPOSED NEW RULE**  
**19 NMAC 15.A.19**

**19. PREVENTION AND ABATEMENT OF WATER POLLUTION.**

**19.A. PURPOSE**

(1) The purposes of this Rule are to:

(a) Abate pollution of subsurface water so that all ground water of the State of New Mexico which has a background concentration of 10,000 mg/L or less TDS, is either remediated or protected for use as domestic, industrial and agricultural water supply, and to remediate or protect those segments of surface waters which are gaining because of subsurface-water inflow, for uses designated in the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1); and [ - - 96]

(b) Abate surface-water pollution so that all surface waters of the State of New Mexico are remediated or protected for designated or attainable uses as defined in the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1). [ - -96]

(2) If the background concentration of any water contaminant exceeds the standard or requirement of Section B(1), B(2) or B(3), pollution shall be abated by the responsible person to the background concentration. [ - -96]

(3) The standards and requirements set forth in Section B(1), B(2), or B(3) are not intended as maximum ranges and concentrations for use, and nothing herein contained shall be construed as limiting the use of waters containing higher ranges and concentrations. [ - -96]

**19.B. ABATEMENT STANDARDS AND REQUIREMENTS**

(1) The vadose zone shall be abated so that water contaminants in the vadose zone will not with reasonable probability contaminate ground water or surface water, in excess of the standards in Subparagraphs (2) and (3) below, through leaching, percolation, or other transport mechanisms, or as the water table elevation fluctuates. [ - -96]

(2) Ground-water pollution at any place of withdrawal for present or reasonably foreseeable future use, where the TDS concentration is 10,000 mg/L or less, shall be abated to conform to the following standards: [ - -96]

(a) Toxic pollutant(s) as defined in 20 NMAC 6.2.1101 shall not be present; and [ - -96]

(b) The standards of 20 NMAC 6.2.3103 shall be met. [ - -



(3) Surface-water pollution shall be abated to conform to the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1). [ - -96]

(4) Subsurface-water and surface-water abatement shall not be considered complete until eight (8) consecutive quarterly samples, or an alternate lesser number of samples approved by the Director, from all compliance sampling stations approved by the Director meet the abatement standards of Subparagraphs (1), (2), and (3) above. Abatement of water contaminants measured in solid-matrix samples of the vadose zone shall be considered complete after one-time sampling from compliance stations approved by the Director. [ - -96]

(5) Technical Infeasibility:

(a) If any responsible person is unable to fully meet the abatement standards set forth in Subparagraphs (1) and (2) above using commercially accepted abatement technology pursuant to an approved abatement plan, he may propose that abatement standards compliance is technically infeasible. Technical infeasibility proposals involving the use of experimental abatement technology shall be considered at the discretion of the Director. Technical infeasibility may be demonstrated by a statistically valid extrapolation of the decrease in concentration(s) of any water contaminant(s) over the remainder of a twenty (20) year period, such that projected future reductions during that time would be less than 20% of the concentration(s) at the time technical infeasibility is proposed. A statistically valid decrease cannot be demonstrated by fewer than eight (8) consecutive quarters. The technical infeasibility proposal shall include a substitute abatement standard(s) for those contaminants that is/are technically feasible. Abatement standards for all other water contaminants not demonstrated to be technically infeasible shall be met. [ - -96]

(b) In no event shall a proposed technical infeasibility demonstration be approved by the Director for any water contaminant if its concentration is greater than 200% of the abatement standard for that contaminant. [ - -96]

(c) If the Director cannot approve any or all portions of a proposed technical infeasibility demonstration because the water contaminant concentration(s) is/are greater than 200% of the abatement standard(s) for each contaminant, the responsible person may further pursue the issue of technical infeasibility by filing a petition with the Division seeking approval of alternate abatement standard(s) pursuant to Paragraph B(6) below. [- -96]

(6) Alternative Abatement Standards:

(a) At any time during or after the submission of a Stage 2 abatement plan, the responsible person may file a petition seeking approval of alternative abatement standard(s) for the standards set forth in Paragraphs (1) and (2) above. The Division may approve alternative abatement standard(s)

if the petitioner demonstrates that:

(i) either:

1. compliance with the abatement standard(s) is/are not feasible, by the maximum use of technology within the economic capability of the responsible person; or
2. there is no reasonable relationship between the economic and social costs and benefits (including attainment of the standard(s) set forth in this Paragraph B to be obtained, and

(ii) the proposed alternative abatement standard(s) is/are technically achievable and cost-benefit justifiable; and

(iii) the potential for point-of-use treatment versus in-situ remediation of ground water to standards has been evaluated and will be employed if technically feasible and cost-benefit justifiable; and

(iv) compliance with the proposed alternative abatement standard(s) will not create a present or future hazard to public health or undue damage to property. [ - -96]

(b) The petition shall be in writing, filed with the Division Environmental Bureau Chief. The petition shall:

(i) State the petitioner's name and address;

(ii) State the date of the petition;

(iii) Describe the facility or activity for which the alternate abatement standard(s) is sought;

(iv) State the address or description of the property upon which the facility is located;

(v) Describe the water body or watercourse affected by the release;

(vi) Identify the abatement standard from which petitioner wishes to vary;

(vii) State why the petitioner believes that

compliance with the regulation will impose an unreasonable burden upon his activity;

- (viii) Identify the water contaminant(s) for which alternative standard(s) is/are proposed;
- (ix) State the alternative standard(s) proposed;
- (x) Identify the three-dimensional body of water pollution for which approval is sought;
- (xi) Include a demonstration of the feasibility of point-of-use treatment, if applicable;
- (xii) State the extent to which the abatement standard(s) set forth in Paragraph B is/are now, and will in the future be, violated.
- (xiii) The petition may include a transport, fate and risk assessment in accordance with accepted methods, and other information as the petitioner deems necessary to support the petition. [ - -96]

(c) The Division Environmental Bureau Chief shall review the petition and, within sixty (60) days after receiving the petition, shall submit a written recommendation to the Director to approve, approve subject to conditions, or disapprove any or all of the proposed alternative abatement standard(s). The recommendation shall include the reasons for the Division Environmental Bureau Chief's recommendation. The Division Environmental Bureau Chief shall submit a copy of the recommendation to the petitioner by certified mail.

[ - -96]

(d) If the Division Environmental Bureau Chief recommends approval, or approval subject to conditions, of any or all of the proposed alternative abatement standard(s), the Division shall hold a public hearing on those standards. If the Division Environmental Bureau Chief recommends disapproval of any or all of the proposed alternative abatement standard(s), the petitioner may submit a request to the Director, within fifteen (15) days after receipt of the recommendation, for a public hearing on those standards. If a timely request for hearing is not submitted, the recommended disapproval shall become a final decision of the Director and shall not be subject to review. [ - -96]

(e) If the Director grants a public hearing, the hearing shall be conducted in accordance with Division hearing procedures. [ - -96]

(f) Based on the record of the public hearing, the Division shall approve, approve subject to condition, or disapprove any or all of the proposed alternative abatement standard(s). The Division shall notify the petitioner by certified mail of its decision and the reasons therefore. [ - -96]

(7) Modification of Abatement Standards. The abatement standards that are in effect at the time that the Stage 2 abatement plan is approved shall be the abatement standards for the duration of the abatement plan, unless the Director determines that additional action is necessary to protect public health and the environment. In any appeal of the Director's determination that additional actions are necessary, the Director shall have the burden of proof. [ - -96]

#### 19.C. ABATEMENT PLAN REQUIRED.

(1) Unless otherwise provided by this Rule, all responsible persons who are abating, or who are required to abate, water pollution in excess of the standards and requirements set forth in Paragraph B. shall do so pursuant to an abatement plan approved by the Director. When an abatement plan has been approved, all actions leading to and including abatement shall be consistent with the terms and conditions of the abatement plan. [ - -96]

(2) In the event of a transfer of the ownership, control or possession of a facility for which an abatement plan is required or approved, where the transferor is a responsible person, the transferee also shall be considered a responsible person for the duration of the abatement plan, and may jointly share the responsibility to conduct the actions required by this Rule with other responsible persons. The transferror shall notify the transferee in writing, at least thirty (30) days prior to the transfer, that an abatement plan has been required or approved for the facility, and shall deliver or send by certified mail to the Director a copy of such notification together with a certificate or other proof that such notification has in fact been received by the transferee. The transferror and transferee may agree to a designated responsible person who shall assume the responsibility to conduct the actions required by this Rule. The responsible persons shall notify the Director in writing if a designated responsible person is agreed upon. If the Director determines that the designated responsible person has failed to conduct the actions required by this Rule, the Director shall notify all responsible persons of this failure in writing and allow them thirty (30) days, or longer for good cause shown, to conduct the required actions before setting a show cause hearing requiring those responsible persons to appear and show cause why they should not be ordered to comply, a penalty should not be assessed, a civil action should not be commenced in district court or any other appropriate action should not be taken by the Division. [ - -96]

(3) If the source of the water pollution to be abated is a facility that operated under a discharge plan, the Director may require the responsible person(s) to submit a financial assurance plan which covers the estimated costs to conduct the actions required by the abatement plan. Such a financial assurance plan shall be consistent with any financial assurance requirements adopted by the Division. [ - -96]

19.D. EXEMPTIONS FROM ABATEMENT PLAN REQUIREMENT.

(1) Except as provided in Subparagraph (2) below, Paragraphs C and E do not apply to a person who is abating water pollution:

(a) from an underground storage tank, under the authority of the Underground Storage Tank Regulations (20 NMAC Part 5) adopted by the New Mexico Environmental Improvement Board, or in accordance with the New Mexico Ground Water Protection Act; [ - -96]

(b) under the authority of the U.S. Environmental Protection Agency pursuant to either the federal Comprehensive Environmental Response, Compensation and Liability Act, and amendments, or the Resource Conservation and Recovery Act; [ - -96]

(c) pursuant to the Hazardous Waste Management Regulations (20 NMAC 4.1) adopted by the New Mexico Environmental Improvement Board; [ - -96]

(d) under the authority of the U.S. Nuclear Regulatory Commission or the U.S. Department of Energy pursuant to the Atomic Energy Act; [ - -96]

(e) under the authority of a ground-water discharge plan approved by the Director, provided that such abatement is consistent with the requirements and provision of Paragraphs A, B, (3), E(4), F, and K of this Rule. [ - -96]

(f) under the authority of a Letter of Understanding, Settlement Agreement or Administrative Order on Consent or other agreement signed by the Director prior to (insert effective date of Rule), 1996, provided that abatement is being performed in full compliance with the terms of the Letter of Understanding, Settlement Agreement or Administrative Order on Consent; and [ - -96]

(g) on an emergency basis, or while abatement plan approval is pending, or in a manner that will result in compliance with the standards and requirements set forth in Paragraph B within one year after notice is required to be given pursuant to 19 NMAC 15.C.116.B provided that the Division does not object to the abatement action. [ - -96]

(2) If the Director determines that abatement of water pollution subject to Subparagraph (1) will not meet the standards of Paragraphs B(2) and B(3), or that additional action is necessary to protect health, welfare, environment or property, the Director may notify a responsible person, by certified mail, to submit an abatement plan pursuant to Paragraphs C and E(1). The notification shall state the reasons for the Director's determination. In any appeal of the Director's determination under this Paragraph, the Director shall have the burden of proof.  
[ - -96]

19.E. ABATEMENT PLAN PROPOSAL.

(1) Except as provided for in Paragraph D of this Rule, a responsible person shall, within sixty (60) days of receipt of written notice from the Director that an abatement plan is required, submit an abatement plan proposal to the Director for approval. Stage 1 and Stage 2 abatement plan proposals may be submitted together. For good cause shown, the Director may allow for a total of one hundred and twenty (120) days to prepare and submit the abatement plan proposal. [ - -96]

(2) Voluntary Abatement.

(a) any person wishing to abate water pollution in excess of the standards and requirements set forth in Paragraph B may submit a Stage 1 abatement plan proposal to the Director for approval. Following approval by the Director of a final site investigation report prepared pursuant to Stage 1 of an abatement plan, any person may submit a Stage 2 abatement plan proposal to the Director for approval. [ - -96]

(b) Following approval of a Stage 1 or Stage 2 abatement plan proposal under E(2)(a) above, the person submitting the approved plan shall be a responsible person under this Rule for the purpose of performing the approved Stage 1 or Stage 2 abatement plan. Nothing in this Rule shall preclude the Director from applying 19 NMAC 15.C.116.D to a responsible person if applicable. [ - -96]

(3) Stage 1 abatement plan. The purpose of Stage 1 of the abatement plan shall be to design and conduct a site investigation that will adequately define site conditions, and provide the data necessary to select and design an effective abatement option. Stage 1 of the abatement plan may include, but not necessarily be limited to, the following information depending on the media affected, and as needed to select and implement an expeditious abatement option: [ - -96]

(a) Descriptions of the site, including a site map, and of site history including the nature of the release that caused the water pollution, and a summary of previous investigations; [ - -96]

(b) Site investigation workplan to define:

- (i) site geology and hydrogeology, the vertical and horizontal extent and magnitude of vadose-zone and ground-water contamination, subsurface hydraulic parameters including hydraulic conductivity, transmissivity, storativity, and rate and direction of contaminant migration, inventory of water wells inside and within one (1) mile from the perimeter of the three-dimensional body where the standards set forth in Subparagraph B(2) are exceeded, and location and number of such wells actually or potentially affected by the pollution; and
- (ii) surface-water hydrology, seasonal stream flow characteristics, ground-water/surface-water

relationships, the vertical and horizontal extent and magnitude of contamination and impacts to surface water and stream sediments. The magnitude of contamination and impacts on surface water may be, in part, defined by conducting a biological assessment of fish, benthic macroinvertebrates and other wildlife populations. Seasonal variations should be accounted for when conducting these assessments. [ - -96]

(c) Monitoring program, including sampling stations and frequencies, for the duration of the abatement plan that may be modified, after approval by the Director, as additional sampling stations are created; [ - -96]

(d) Quality assurance plan, consistent with the sampling and analytical techniques listed in 20 NMAC 6.3107.B and with Section 1103 of the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1), for all work to be conducted pursuant to the abatement plan; [ - -96]

(e) A schedule for all Stage 1 abatement plan activities, including the submission of summary quarterly progress reports, and the submission, for approval by the Director, of a detailed final site investigation report; and [ - -96]

(f) Any additional information that may be required to design and perform an adequate site investigation. [ - -96]

(4) Stage 2 Abatement Plan:

(a) Any responsible person shall submit a Stage 2 abatement plan proposal to the Director for approval within sixty (60) days, or up to one hundred and twenty (120) days for good cause shown, after approval by the Director of the final site investigation report prepared pursuant to Stage 1 of the abatement plan. A stage 1 and 2 abatement plan proposal may be submitted together. The purpose of Stage 2 of the abatement plan shall be to select and design, if necessary, an abatement option that, when implemented, will result in attainment of the abatement standards and requirements set forth in Paragraph B, including post-closure maintenance activities. [ - -96]

(b) Stage 2 of the abatement plan should include, at a minimum, the following information:

- (i) Brief description of the current situation at the site;
- (ii) Development and assessment of abatement options;
- (iii) Description, justification and design, if

Page 8

- (v) Site maintenance activities, if needed, proposed to be performed after termination of abatement activities;
- (vi) A schedule for the duration of abatement activities, including the submission of summary quarterly progress reports;
- (vii) A public notification proposal designed to satisfy the requirements of Subparagraphs G(2) and (3);
- (viii) Any additional information that may be reasonably required to select, describe, justify and design an effective abatement option. [ - -96]

person through a third-party access agreement, provided that it is allowed by the agreement. [ - -96]

(2) Any responsible person shall provide the Director, or a representative of the Director, with at least four (4) working days advance notice of any sampling to be performed pursuant to an abatement plan, or any well plugging, abandonment or destruction at any facility where an abatement plan has been required. [ - -96]

(3) Any responsible person wishing to plug, abandon or destroy a monitoring or water supply well within the perimeter of the 3-dimensional body where the standards set forth in Paragraph B(2) are exceeded, at any facility where an abatement plan has been required, shall propose such action by certified mail to the Director for approval, unless such approval is required from the State Engineer. The proposed action shall be designed to prevent water pollution that could result from water contaminants migrating through the well or borehole. The proposed action shall not take place without written approval from the Director, unless written approval or disapproval is not received by the responsible person within thirty (30) days of the date of receipt of the proposal. [ - -96]

#### 19.G. PUBLIC NOTICE AND PARTICIPATION.

(1) Prior to public notice, the applicant shall give written notice, as approved by the Division, of Stage 1 and Stage 2 abatement plans to the following persons:

(a) surface owners of record within one (1) mile of the perimeter of the geographic area where the standards and requirements set forth in Paragraph B are exceeded;

(b) the county commission where the geographic area where the standards and requirements set forth in Paragraph B are exceeded is located;

(c) the appropriate city official(s) if the geographic area where the standards and requirements set forth in Paragraph B are exceeded is located or is partially located within city limits or within one (1) mile of the city limits;

(d) those persons, as identified by the Director, who have requested notification, who shall be notified by mail;

(e) the New Mexico Trustee for Natural Resources, and any other local, state or federal governmental agency affected, as identified by the Director, which shall be notified by certified mail;

(f) the appropriate Governor or President of any Indian Tribe, Pueblo or Nation if the geographic area where the standards and requirements set forth in Paragraph B are exceeded is located or is partially located within tribal boundaries or within one (1) mile of the tribal boundaries, who shall be notified by certified mail;

infeasibility demonstration, or an abatement completion report, approve the document, or notify the responsible person of the document's deficiency, based upon the information available. [ - -96]

(2) The Director shall, within thirty (30) days of receiving a fact sheet, approve or notify the responsible person of the document's deficiency, based upon the information available. [ - -96]

(3) If no public hearing is held pursuant to Subparagraph G(3), then the Director shall, within ninety (90) days of receiving a Stage 2 abatement plan proposal, approve the plan, or notify the responsible person of the plan's deficiency, based upon the information available. [ - -96]

(4) If a public hearing is held pursuant to Subparagraph G(3), then the Director shall, within sixty (60) days of receipt of all required information, approve Stage 2 of the abatement plan proposal, or notify the responsible person of the plan's deficiency, based upon the information contained in the plan and information submitted at the hearing. [ - -96]

(5) If the Director notifies a responsible person of any deficiencies in a site investigation report, or in a Stage 1 or Stage 2 abatement plan proposal, the responsible person shall submit a modified document to cure the deficiencies specified by the Director within thirty (30) days of receipt of the notice of deficiency. The responsible person shall be in violation of this Rule if he fails to submit a modified document within the required time, or if the modified document does not make a good faith effort to cure the deficiencies specified by the Director. [ - -96]

(6) Provided that the other requirements of this Rule are met and provided further that Stage 2 of the abatement plan, if implemented, will result in the standards and requirements set forth in Paragraph B being met within a schedule that is reasonable given the particular circumstances of the site, the Director shall approve the plan. [ - -96]

#### 19.I. INVESTIGATION AND ABATEMENT.

Any responsible person who receives approval for Stage 1 and/or Stage 2 of an abatement plan shall conduct all investigation, abatement, monitoring and reporting activity in full compliance with this Rule and according to the terms and schedules contained in the approved abatement plans. [ - -96]

#### 19.J. ABATEMENT PLAN MODIFICATION.

(1) Any approved abatement plan may be modified, at the written request of the responsible person, in accordance with this Rule, and with written approval of the Director. [ - -96]

(2) If data submitted pursuant to any monitoring requirements specified in the approved abatement plan or other information available to the Director indicates that the abatement action is ineffective, or is creating unreasonable injury to or interference with health, welfare, environment or property, the Director may require a responsible person to modify an abatement

Director and who is adversely affected by the action listed in Subparagraph (1) above may file a petition requesting a hearing before a Division Examiner [ - -96]

(3) The petition shall be made in writing to the Division and shall be filed with the Division within thirty (30) days after receiving notice of the Director's action. The petition shall specify the portions of the action to which the petitioner objects, certify that a copy of the petition has been mailed or hand-delivered to the Director, and to the applicant or permittee if the petitioner is not the applicant or permittee, and attach a copy of the action for which review is sought. Unless a timely petition for hearing is made, the Director's action is final. [ - -96]

(4) The hearing before the Division shall be conducted in the same manner as other Division hearings. [ - -96]

(5) The cost of the court reporter for the hearing shall be paid by the petitioner. [ - -96]

(6) Any party adversely affected by any order by the Division pursuant to any hearing held by an Examiner, shall have a right to have such matter heard de novo before the Commission. [ - -96]

(7) The appeal provisions do not relieve the owner, operator or responsible person of their obligations to comply with any federal or state laws or regulations. [ - -96]

#### 19.N. NOTIFICATION

(1) With respect to any release from any facility of oil or other water contaminant, in such quantity as may with reasonable probability be detrimental to water or cause an exceedance of the standards in 20 NMAC 15.A.19. B(1), B(2) or B(3), and as soon as possible after learning of such a release, but in no event more than twenty-four (24) hours thereafter, any person in charge of the facility shall orally notify the Division's Environmental Bureau Chief of the occurrence. To the best of that person's knowledge, the following items of information shall be provided: [- -96]

(a) The name, address, and telephone number of the person or persons in charge of the facility, as well as the owner and/or operator of the facility;

(b) Name and address of facility;

(c) Land status;

(d) The date, time, location, and duration of the release;

(e) The source and cause of the release;

(f) A description of the release, including its chemical composition;

(g) The estimated volume of the release;

(h) Any actions taken to mitigate immediate damage from

the release. [ - -96]

(2) Within fifteen (15) days after the release is discovered, the facility owner and/or operator shall send written notification to the same Division official, verifying the prior oral notification as to each of the foregoing items and providing any appropriate additions or corrections to the information contained in the prior oral notification. [ - -96]

## TO BE ADDED TO CURRENT RULE 15.A.7

**ABATE or ABATEMENT** shall mean the investigation, containment, removal or other mitigation of water pollution. [ - -96]

**ABATEMENT PLAN** shall mean a description of any operational, monitoring, contingency and closure requirements and conditions for the prevention, investigation and abatement of water pollution. [ - -96]

**BACKGROUND** shall mean, for purposes of ground-water abatement plans only, the amount of ground-water contaminants naturally occurring from undisturbed geologic sources or water contaminants occurring from a source other than the responsible person's facility. This definition shall not prevent the Director from requiring abatement of commingled plumes of pollution, shall not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons, and shall not preclude the Director from exercising enforcement authority under any applicable statute, regulation or common law. [ - -96]

**FACILITY** shall mean any structure, installation, operation, storage tank, transmission line, motor vehicle, rolling stock, or activity of any kind, whether stationary or mobile. [ - -96]

**GROUND WATER** shall mean interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply. [ - -96]

**HAZARD TO PUBLIC HEALTH** exists when water which is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of such use, one or more of the numerical standards of 20 NMAC 6.2.3103, or the naturally occurring concentrations, whichever is higher, or if any toxic pollutant as defined at 20 NMAC 6.2.1101 affecting human health is present in the water. In determining whether a release would cause a hazard to public health to exist, the Director shall investigate and consider the purification and dilution reasonably expected to occur from the time and place of release to the time and place of withdrawal for use as human drinking water. [ - -96]

**NON-AQUEOUS PHASE LIQUID** shall mean an interstitial body of liquid oil, petroleum product, petrochemical, or organic solvent, including an emulsion containing such material. [ - -96]

**OIL FIELD WASTES** shall mean those wastes produced in conjunction with the exploration, production, refining, processing and transportation of crude oil and/or natural gas and commonly collected at field storage, processing, disposal, or service facilities, and waste collected at gas processing plants, refineries and other processing or transportation facilities. [ - -96]



**PERSON** shall mean an individual or any other entity including partnerships, corporation, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees. [ - -96]

**RELEASE** shall mean all breaks, leaks, spills, releases, fires or blowouts involving crude oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and natural gases to the environment. [ - -96]

**REMEDIATION PLAN** shall mean a written document to address reportable releases that will not with reasonable probability reach ground water or surface water, and that will likely be remedied within one (1) year. When ground water is affected, a remediation plan may be required for releases that will be remedied within one (1) year. The plan may include appropriate information, including assessment data, health risk demonstrations, and corrective action(s). The plan may also include an alternative proposing no action beyond the submittal of a spill report. [ - -96]

**RESPONSIBLE PERSON** shall mean the owner or operator who must complete Division approved corrective action for pollution from releases. [ - -96]

**SIGNIFICANT MODIFICATION OF AN ABATEMENT PLAN** shall mean a change in the abatement technology used excluding design and operational parameters, or relocation of 25% or more of the compliance sampling stations, for any single medium, as designated pursuant to 19 NMAC 19.E(4)(b)(iv). [ - -96]

**SUBSURFACE WATER** shall mean ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or may be utilized by vegetation. [ - -96]

**VADOSE ZONE** shall mean unsaturated earth material below the land surface and above ground water, or in between bodies of ground water. [ - -96]

**WATER** shall mean all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water. [ - -96]

**WATER CONTAMINANT** shall mean any substance that could alter if released or spilled the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954. [ - -96]

**WATERCOURSE** shall mean any lake bed, or gully, draw, stream bed, wash, arroyo, or natural or human-made channel through which water flows or has flowed. [ - -96]

**WATER POLLUTION** shall mean introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property. [ - -96]

**WELL BLOWOUT** shall mean a loss of control over and subsequent eruption of any drilling or workover well or the rupture of the casing, casinghead, or wellhead or any oil or gas well or injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or liquids, from the well. [ - -96]

**TO BE ADDED TO 19 NMAC 15.A.7: DEFINITIONS**

**ABATE** or **ABATEMENT** shall mean the investigation, containment, removal or other mitigation of water pollution. [ - -96]

**ABATEMENT PLAN** shall mean a description of any operational, monitoring, contingency and closure requirements and conditions for the prevention, investigation and abatement of water pollution, and includes Stage 1, Stage 2, or Stage 1 and 2 of the abatement plan, as approved by the Director. [ - -96]

**BACKGROUND** shall mean, for purposes of ground-water abatement plans only, the amount of ground-water contaminants naturally occurring from undisturbed geologic sources or water contaminants which the responsible person establishes are occurring from a source other than the responsible person's facility. This definition shall not prevent the Director from requiring abatement of commingled plumes of pollution, shall not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons, and shall not preclude the Director from exercising enforcement authority under any applicable statute, regulation or common law. [ - - 96]

**GROUND WATER** shall mean interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply. [ - -96]

**HAZARD TO PUBLIC HEALTH** exists when water which is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of such use, one or more of the numerical standards of 20 NMAC 6.3103.A.; or the naturally occurring concentrations, whichever is higher, or if any toxic pollutant affecting human health is present in the water. In determining whether a discharge would cause a hazard to public health to exist, the Director shall investigate and consider the purification and dilution reasonably expected to occur from the time and place of discharge to the time and place of withdrawal for use as human drinking water. [ - -96]

**NON-AQUEOUS PHASE LIQUID** shall mean an interstitial body of liquid oil, petroleum product, petrochemical, or organic solvent, including an emulsion containing such material. [ - 96]

**PERSON** shall mean an individual or any other entity including partnerships, corporation, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees. [ - -96]



**RESPONSIBLE PERSON** shall mean a person who is required to submit an abatement plan or who submits an abatement plan pursuant to Rule 19. [ - -96]

**SIGNIFICANT MODIFICATION OF STAGE 2 OF THE ABATEMENT PLAN** shall mean a change in the abatement technology used excluding design and operational parameters, or re-location of 25% or more of the compliance sampling stations, for any single medium, as designated pursuant to 20 NMAC 6.4106.E.4. [ - -96]

**SUBSURFACE WATER** shall mean ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or may be utilized by vegetation. [ - -96]

**VADOSE ZONE** shall mean earth material below the land surface and above ground water, or in between bodies of ground water. [ - -96]

**WATER** shall mean all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water. [ - -96]

**WATER CONTAMINANT** shall mean any substance that could alter if discharged or spilled the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954. [ - -96]

**WATER POLLUTION** shall mean introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property. [ - -96]

**DISCHARGE** shall mean spilling, leaking, pumping, pouring, emitting, emptying, or dumping into water or in a location and manner where there is a reasonable probability that the discharged substance will reach surface or subsurface water. [ - -96]

**TO BE ADDED TO 19 NMAC 15.C.116**

D. The owner or operator must complete Division approved corrective action for pollution from releases. Remediation of soil pollution, including that in the vadose zone, in accordance with Division regulations or guidelines will be approved by the Division. If the Director determines that the release causes or may with reasonable probability cause water pollution in excess of the standards and requirements of Section 19.B., and the water pollution

will not be abated within one year after notice is required to be given pursuant to Section C. above, the Director may notify the facility owner/operator that he is a responsible person and that an abatement plan may be required pursuant to Sections 19.C and 19.E.(1).

(19 NMAC 15.A.19)

19 PREVENTION AND ABATEMENT OF WATER POLLUTION.

A. PURPOSE.

(1) The purposes of this Rule are to:

(a) Abate pollution of subsurface water so that all ground water of the State of New Mexico which has a background concentration of 10,000 mg/L or less TDS, is either remediated or protected for use as domestic, industrial and agricultural water supply, and to remediate or protect those segments of surface waters which are gaining because of subsurface-water inflow, for uses designated in the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1); and [ - -96]

(b) Abate surface-water pollution so that all surface waters of the State of New Mexico are remediated or protected for designated or attainable uses as defined in the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1). [ - -96]

(2) If the background concentration of any water contaminant exceeds the standard or requirement of Section B(1), B(2) or B(3), pollution shall be abated by the responsible person to the background concentration. [ - -96]

(3) The standards and requirements set forth in Section B(1), B(2), or B(3) are not intended as maximum ranges and concentrations for use, and nothing herein contained shall be construed as limiting the use of waters containing higher ranges and concentrations. [ - -96]

B. ABATEMENT STANDARDS AND REQUIREMENTS.

(1) The vadose zone shall be abated so that water contaminants in the vadose zone shall not be capable of contaminating ground water or surface water, in excess of the standards in Subparagraphs (2) and (3) below, through leaching, percolation or as the water table elevation fluctuates. [ - -96]

(2) Ground-water pollution at any place of withdrawal for present or reasonably foreseeable future use, where the TDS concentration is 10,000 mg/L or less, shall be

abated to conform to the following standards: [ - -96]

(a) toxic pollutant(s) as defined in 20 NMAC 6.2.1101 shall not be present; and [ - -96]

(b) the standards of 20 NMAC 6.2.3103 shall be met. [ - -96]

(3) Surface-water pollution shall be abated to conform to the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1). [ - -96]

(4) Subsurface-water and surface-water abatement shall not be considered complete until a minimum of eight (8) consecutive quarterly samples, or an alternate number of samples approved by the Director, from all compliance sampling stations approved by the Director meet the abatement standards of Subparagraphs (1), (2) and (3) above. Abatement of water contaminants measured in solid-matrix samples of the vadose zone shall be considered complete after one-time sampling from compliance stations approved by the Director. [ - -96]

(5) Technical Infeasibility. [ - -96]

(a) If any responsible person is unable to fully meet the abatement standards set forth in Subparagraphs (1) and (2) above using commercially accepted abatement technology pursuant to an approved abatement plan, he may propose that abatement standards compliance is technically infeasible. Technical infeasibility proposals involving the use of experimental abatement technology shall be considered at the discretion of the Director. Technical infeasibility may be demonstrated by a statistically valid extrapolation of the decrease in concentration(s) of any water contaminant(s) over the remainder of a twenty (20) year period, such that projected future reductions during that time would be less than 20% of the concentration(s) at the time technical infeasibility is proposed. A statistically valid decrease cannot be demonstrated by fewer than eight (8) consecutive quarters. The technical infeasibility proposal shall include a substitute abatement standard(s) for those contaminants that is/are technically feasible. Abatement standards for all other water contaminants not demonstrated to be technically infeasible shall be met. [ - -96]

(b) In no event shall a proposed technical infeasibility demonstration be approved by the Director for any water contaminant if its concentration is greater than 200% of the abatement standard for that contaminant. [ - -96]

(c) If the Director cannot approve any or all portions of a proposed technical infeasibility demonstration because the water contaminant concentration(s) is/are greater than 200% of the abatement standard(s) for each contaminant, the responsible person may further pursue the issue of technical infeasibility by filing a petition with the Division seeking approval of alternate abatement standard(s) pursuant to Paragraph B(6) below. [ -- --96]

(6) Alternative Abatement Standards.

(a) At any time during or after the submission of a Stage 2 abatement plan, the responsible person may file a petition seeking approval of alternative abatement standard(s) for the standards set forth in Paragraphs(1) and (2) above. The Division may approve alternative abatement standard(s) if the petitioner demonstrates that: [ - -96]

(i) compliance with the abatement standard(s) is/are not feasible, by the maximum use of technology within the economic capability of the responsible person; or [ - -96]

(ii) there is no reasonable relationship between the economic and social costs and benefits (including attainment of the standard(s) set forth in this Paragraph B to be obtained,and [ - -96]

(iii) the proposed alternative abatement standard(s) is/are technically achievable and cost-benefit justifiable; and [ - -96]

(iv) compliance with the proposed alternative abatement standard(s) will not create a present or future hazard to public health or undue damage to property. [ - -96]

(b) The petition shall be in writing, filed with the Director. The petition shall:

- (i) State the petitioner's name and address;
- (ii) State the date of the petition;
- (iii) Describe the facility or activity for which the alternate abatement standard(s) is sought;
- (iv) State the address or description of the property upon which the facility is located;
- (v) Describe the water body or watercourse affected by the discharge;
- (vi) Identify the regulation of the Division from which the alternate abatement is sought;
- (vii) State in detail the extent to which the petitioner wishes to vary from the regulation;
- (viii) State why the petitioner believes that compliance with the regulation will impose an unreasonable burden upon his activity;
- (ix) Identify the water contaminant(s) for which alternative standard(s) is/are proposed;
- (x) State the alternative standard(s) proposed;
- (xi) Identify the three-dimensional body of water pollution for

- which approval is sought, and
- (xii) State the extent to which the abatement standard(s) set forth in Paragraph B is/are now, and will in the future be, violated.

The petition may include a transport, fate and risk assessment in accordance with accepted methods, and other information as the petitioner deems necessary to support the petition. [ - - 96]

(c) The Director shall review the petition and, within sixty (60) days after receiving the petition, shall submit a written recommendation to the Division to approve, approve subject to conditions, or disapprove any or all of the proposed alternative abatement standard(s). The recommendation shall include the reasons for the Director's recommendation. The Director shall submit a copy of the recommendation to the petitioner by certified mail. [ - - 96]

(d) If the Director recommends approval, or approval subject to conditions, of any or all of the proposed alternative abatement standard(s), the Division shall hold a public hearing on those standards. If the Director recommends disapproval of any or all of the proposed alternative abatement standard(s), the petitioner may submit a request to the Division, within fifteen (15) days after receipt of the recommendation, for a public hearing on those standards. If a timely request for hearing is not submitted, the recommended disapproval shall become a final decision of the Division and shall not be subject to review. [ - -96]

(e) If the Division grants a public hearing, the hearing shall be conducted in accordance with Division hearing procedures. The Division shall specify the period of time for which the variance is granted. [ - -96]

(f) Based on the record of the public hearing, the Division shall approve, approve subject to condition, or disapprove any or all of the proposed alternative abatement standard(s). The Division shall notify the petitioner by certified mail of its decision and the reasons therefore. [ - -96]

#### C. ABATEMENT PLAN REQUIRED.

(1) Unless otherwise provided by this Rule, all responsible persons who are abating, or who are required to abate, water pollution in excess of the standards and requirements set forth in Paragraph B. shall do so pursuant to an abatement plan approved by the Director. When an abatement plan has been approved, all actions leading to and including abatement shall be consistent with the terms and conditions of the abatement plan. [ - -96]

(2) In the event of a transfer of the ownership, control or possession of a facility for which an abatement plan is required or approved, where the transferor is a responsible

person, the transferee also shall be considered a responsible person for the duration of the abatement plan, and may jointly share the responsibility to conduct the actions required by this Rule with other responsible persons. The transferrer shall notify the transferee in writing, at least thirty (30) days prior to the transfer, that an abatement plan has been required or approved for the facility, and shall deliver or send by certified mail to the Director a copy of such notification together with a certificate or other proof that such notification has in fact been received by the transferee. The transferrer and transferee may agree to a designated responsible person who shall assume the responsibility to conduct the actions required by this Rule. The responsible persons shall notify the Director in writing if a designated responsible person is agreed upon. If the Director determines that the designated responsible person has failed to conduct the actions required by this Rule, the Director shall notify all responsible persons of this failure in writing and allow them thirty (30) days, or longer for good cause shown, to conduct the required actions before setting a show cause hearing requiring those responsible persons to appear and show cause why they should not be ordered to comply, a penalty should not be assessed, a civil action should not be commenced in district court or any other appropriate action should not be taken by the Division. [ - -96]

(3) If the source of the water pollution to be abated is a facility that operated under a discharge plan, the Director may require the responsible person(s) to submit a financial assurance plan which covers the estimated costs to conduct the actions required by the abatement plan. Such a financial assurance plan shall be consistent with any financial assurance requirements adopted by the Division. [ - -96]

#### D EXEMPTIONS FROM ABATEMENT PLAN REQUIREMENT.

(1) Except as provided in Subparagraph (2) below, Paragraphs C and E do not apply to a person who is abating water pollution: [ - -96]

- (a) from an underground storage tank, under the authority of the Underground Storage Tank Regulations (20 NMAC Part 5) adopted by the New Mexico Environmental Improvement Board, or in accordance with the New Mexico Ground Water Protection Act; [ - -96]
- (b) under the authority of the U.S. Environmental Protection Agency pursuant to either the federal Comprehensive Environmental Response, Compensation and Liability Act, and amendments, or the Resource Conservation and Recovery Act; [ - -96]
- (c) pursuant to the Hazardous Waste Management Regulations (20 NMAC 4.1) adopted by the New Mexico Environmental Improvement Board; [ - -96]

- (d) under the authority of the U.S. Nuclear Regulatory Commission or the U.S. Department of Energy pursuant to the Atomic Energy Act; [ - -96]
- (e) under the authority of a ground-water discharge plan approved by the Director, provided that such abatement is consistent with the requirements and provisions of Paragraphs A., B., E(3), E(5), F and K of this Rule. [ - -96]
- (f) under the authority of a Letter of Understanding, Settlement Agreement or Administrative Order on Consent signed by the Director prior to \_\_\_\_\_, 1996, provided that abatement is being performed in full compliance with the terms of the Letter of Understanding, Settlement Agreement or Administrative Order on Consent; and [ - -96]
- (g) on an emergency basis, or while abatement plan approval is pending, or in a manner that will result in compliance with the standards and requirements set forth in Paragraph B within one year after notice is required to be given pursuant to 19 NMAC 15.C.116.B provided that the Division does not object to the abatement action. [ - -96]

(2) If the Director determines that abatement of water pollution subject to Subparagraph (1) will not meet the standards of Paragraphs B.(2) and B.(3), or that additional action is necessary to protect health, welfare, environment or property, the Director may notify a responsible person, by certified mail, to submit an abatement plan pursuant to Paragraphs C and E.(1). The notification shall state the reasons for the Director's determination. In any appeal of the Director's determination under this Paragraph, the Director shall have the burden of proof. [ - -96]

## E ABATEMENT PLAN PROPOSAL.

(1) Except as provided for in Paragraph D of this Rule, a responsible person shall, within sixty (60) days of receipt of written notice from the Director that an abatement plan is required, submit an abatement plan proposal to the Director for approval. For good cause shown, the Director may allow for a total of one hundred and twenty (120) days to prepare and submit the abatement plan proposal. [ - -96]

### (2) Voluntary Abatement.

- (a) Any person wishing to abate water pollution in excess of the

standards and requirements set forth in Paragraph B may submit a Stage 1 abatement plan proposal to the Director for approval. Following approval by the Director of a final site investigation report prepared pursuant to Stage 1 of an abatement plan, any person may submit a Stage 2 abatement plan proposal to the Director for approval. [ - -96]

(b) Following approval of a Stage 1 or Stage 2 abatement plan proposal under E.(2)(a) above, the person submitting the approved plan shall be a responsible person under this Rule for the purpose of performing the approved Stage 1 or Stage 2 abatement plan. Nothing in this Rule shall preclude the Director from applying 19 NMAC 15.C.116.D to a responsible person if applicable. [ - -96]

(3) Stage 1 Abatement Plan.

The purpose of Stage 1 of the abatement plan shall be to design and conduct a site investigation that will adequately define site conditions, and provide the data necessary to select and design an effective abatement option. Stage 1 of the abatement plan may include, but not necessarily be limited to, the following information depending on the media affected, and as needed to select and implement an expeditious abatement option: [ - -96]

(a) Descriptions of the site, including a site map, and of site history including the nature of the discharge that caused the water pollution, and a summary of previous investigations; [ - -96]

(b) Site investigation workplan to define: [ - -96]

(i) site geology and hydrogeology, the vertical and horizontal extent and magnitude of vadose-zone and ground-water contamination, subsurface hydraulic parameters including hydraulic conductivity, transmissivity, storativity, and rate and direction of contaminant migration, inventory of water wells inside and within one (1) mile from the perimeter of the three-dimensional body where the standards set forth in Subparagraph B.(2) are exceeded, and location and number of such wells actually or potentially affected by the pollution; and [ - -96]

(ii) surface-water hydrology, seasonal stream flow characteristics, ground-water/surface-water relationships, the vertical and horizontal extent and magnitude of contamination and impacts to surface water and stream sediments. The magnitude of contamination and impacts on surface water may be, in part, defined by conducting a biological assessment of fish, benthic macroinvertebrates and other wildlife populations. Seasonal variations should be accounted for when conducting these assessments. [ - -96]

(c) Monitoring program, including sampling stations and frequencies, for the duration of the abatement plan that may be modified, after approval by the Director, as additional sampling stations are created; [ - -96]

(d) Quality assurance plan, consistent with the sampling and analytical techniques listed in 20 NMAC 6.3107.B. and with Section 1103 of the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1), for all work to be conducted pursuant to the abatement plan; [ - -96]

(e) Site health and safety plan for all work to be performed pursuant to the abatement plan; [ - -96]

(f) A schedule for all Stage 1 abatement plan activities, including the submission of summary quarterly progress reports, and the submission, for approval by the Director, of a detailed final site investigation report; and [ - -96]

(g) Any additional information that may be required to design and perform an adequate site investigation. [ - -96]

(4) Stage 2 Abatement Plan.

Any responsible person shall submit a Stage 2 abatement plan proposal to the Director for approval within sixty (60) days, or up to one hundred and twenty (120) days for good cause shown, after approval by the Director of the final site investigation report prepared pursuant to Stage 1 of the abatement plan. [ - -96]

(5) The purpose of Stage 2 of the abatement plan shall be to select and design, if necessary, an abatement option that, when implemented, will result in attainment of the abatement standards and requirements set forth in Paragraph B, including post-closure maintenance activities. Stage 2 of the abatement plan should include, at a minimum, the following information: [ - -96]

(a) Brief description of the current situation at the site; [ - -96]

(b) Development and assessment of abatement options; [ - -96]

(c) Description, justification and design, if necessary, of preferred abatement option; [ - -96]

(d) Modification, if necessary, of the monitoring program approved pursuant to Stage 1 of the abatement plan, including the designation of pre and post abatement-completion sampling stations and sampling frequencies to be used to demonstrate compliance with the standards and requirements set forth in Paragraph B; [ - -96]

(e) Site maintenance activities, if needed, proposed to be performed after termination of abatement activities; [ - -96]

(f) A schedule for the duration of abatement activities, including the submission of summary quarterly progress reports; [ - -96]

(g) A public notification proposal designed to satisfy the requirements of Subparagraphs G.(2) and (3); [ - -96]

(h) Any additional information that may be reasonably required to select, describe, justify and design an effective abatement option. [ - -96]

#### F. OTHER REQUIREMENTS.

(1) Any responsible person shall allow any authorized representative of the Director to: [ - -96]

(a) upon presentation of proper credentials, enter the facility at reasonable times; [ - -96]

(b) inspect and copy records required by an abatement plan; [ - -96]

(c) inspect any treatment works, monitoring and analytical equipment; [ - -96]

(d) sample any wastes, ground water, surface water, stream sediment, plants, animals, or vadose-zone material including vadose-zone vapor; [ - -96]

(e) use monitoring systems and wells under such responsible person's control in order to collect samples of any media listed in (d) above; and [ - -96]

(f) gain access to off-site property not owned or controlled by such responsible person, but accessible to such responsible person through a third-party access agreement, provided that it is allowed by the agreement. [ - -96]

(2) Any responsible person shall provide the Director, or a representative of the Director, with at least four (4) working days advance notice of any sampling to be performed pursuant to an abatement plan, or any well plugging, abandonment or destruction at any facility where an abatement plan has been required. [ - -96]

(3) Any responsible person wishing to plug, abandon or destroy a monitoring or water supply well within the perimeter of the 3-dimensional body where the standards set forth in Paragraph B(2) are exceeded, at any facility where an abatement plan has been required, shall propose such action by certified mail to the Director for approval, unless such approval is required from the State Engineer. The proposed action shall be designed to prevent water pollution that could result from water contaminants migrating through the well or borehole. The

proposed action shall not take place without written approval from the Director, unless written approval or disapproval is not received by the responsible person within thirty (30) days of the date of receipt of the proposal. [ - -96]

#### G. PUBLIC NOTICE AND PARTICIPATION.

(1) Prior to public notice, the applicant shall give written notice, as approved by the Division, of Stage 1 and Stage 2 Abatement Plans to the following persons: [ - -96]

(a) surface owners of record within one (1) mile of the perimeter of the geographic area where the standards and requirements set forth in Paragraph B are exceeded; [ - -96]

(b) the county commission where the geographic area where the standards and requirements set forth in Paragraph B are exceeded is located; [ - -96]

(c) the appropriate city official(s) if the geographic area where the standards and requirements set forth in Paragraph B are exceeded is located or is partially located within city limits or within one (1) mile of the city limits: [ - -96]

(d) those persons, as identified by the Director, who have requested notification, who shall be notified by mail; [ - -96]

(e) the New Mexico Trustee for Natural Resources, and any other local, state or federal governmental agency affected, as identified by the Director, which shall be notified by certified mail; [ - -96]

(f) the appropriate Governor or President of any Indian Tribe, Pueblo or Nation if the geographic area where the standards and requirements set forth in Paragraph B are exceeded is located or is partially located within tribal boundaries or within one (1) mile of the tribal boundaries, who shall be notified by certified mail; [ - -96]

(g) The distance requirements for notice may be extended by the Director if the Director determines the proposed Abatement Plan has the potential to adversely impact public health or the environment at a distance greater than one (1) mile. The Director may require additional notice as needed. A copy and proof of such notice will be furnished to the Division. [ - -96]

(2) After the Division determines that the Stage 1 and Stage 2 abatement plans are administratively complete, the applicant will issue public notice in a form approved by the Division in a newspaper of general circulation in the county in which the facility is to be located. The public notice shall include, as approved in advance by the Director: [ - -96]

- (a) name and address of the responsible person; [ - -96]
- (b) location of the proposed abatement; [ - -96]
- (c) brief description of the nature of the water pollution and of the proposed abatement action; [ - -96]
- (d) brief description of the procedures followed by the Director in making a final determination; [ - -96]
- (e) statement on the comment period; [ - -96]
- (f) statement that a copy of the abatement plan can be viewed by the public at the Division's main office or at the Division's District office for the area in which the discharge occurred; [ - -96]
- (g) statement that written comments on the abatement plan, and requests for a public meeting or hearing that include the reasons why a meeting or hearing should be held, will be accepted for consideration if sent to the Director within thirty (30) days after the determination of administrative completeness; and [ - -96]
- (h) address and phone number at which interested persons may obtain further information. [ - -96]

(3) Any person seeking to comment or request a public hearing on such Abatement Plans must file comments or hearing requests with the Division within 30 days of the date of public notice. Requests for a public hearing must be in writing to the Director and shall set forth the reasons why a hearing should be held. A public hearing shall be held if the Director determines there is significant public interest. [ - -96]

(4) The Division will distribute notice of the filing of an Abatement Plan with the next Division and Commission hearing docket following receipt of the plan. [ - -96]

#### H. DIRECTOR APPROVAL OR NOTICE OF DEFICIENCY OF SUBMITTALS.

(1) The Director shall, within sixty (60) days of receiving a Stage 1 abatement plan proposal, a site investigation report, a technical infeasibility demonstration, or an abatement completion report, approve the document, or notify the responsible person of the document's deficiency, based upon the information available. [ - -96]

(2) The Director shall, within thirty (30) days of receiving a fact sheet, approve

or notify the responsible person of the document's deficiency, based upon the information available. [ - -96]

(3) If no public meeting or hearing is held pursuant to Subparagraph G.(3), then the Director shall, within ninety (90) days of receiving a Stage 2 abatement plan proposal, approve the plan, or notify the responsible person of the plan's deficiency, based upon the information available. [ - -96]

(4) If a public meeting or hearing is held pursuant to Subparagraph G.(3), then the Director shall, within sixty (60) days of receipt of all required information, approve Stage 2 of the abatement plan proposal, or notify the responsible person of the plan's deficiency, based upon the information contained in the plan and information submitted at the meeting or hearing. [ - -96]

(5) If the Director notifies a responsible person of any deficiencies in a site investigation report, or in a Stage 1 or Stage 2 abatement plan proposal, the responsible person shall submit a modified document to cure the deficiencies specified by the Director within thirty (30) days of receipt of the notice of deficiency. The responsible person shall be in violation of this Rule if he fails to submit a modified document within the required time, or if the modified document does not make a good faith effort to cure the deficiencies specified by the Director. [ - -96]

(6) Provided that the other requirements of this Rule are met and provided further that Stage 2 of the abatement plan, if implemented, will result in the standards and requirements set forth in Paragraph B being met within a schedule that is reasonable given the particular circumstances of the site, the Director shall approve the plan. [ - -96]

#### I. INVESTIGATION AND ABATEMENT.

Any responsible person who receives approval for Stage 1 and/or Stage 2 of an abatement plan shall conduct all investigation, abatement, monitoring and reporting activity in full compliance with this Rule and according to the terms and schedules contained in the approved abatement plans. [ - -96]

#### J. ABATEMENT PLAN MODIFICATION.

(1) Any approved abatement plan may be modified, at the written request of the responsible person, in accordance with this Rule, and with written approval of the Director. [ - -96]

(2) If data submitted pursuant to any monitoring requirements specified in the approved abatement plan or other information available to the Director indicates that the abatement action is ineffective, or is creating unreasonable injury to or interference with health,

welfare, environment or property, the Director may require a responsible person to modify an abatement plan within the shortest reasonable time so as to effectively abate water pollution which exceeds the standards and requirements set forth in Paragraph B, and to abate and prevent unreasonable injury to or interference with health, welfare, environment or property. [ - -96]

#### K. COMPLETION AND TERMINATION.

(1) Abatement shall be considered complete when the standards and requirements set forth in Paragraph B are met. At that time, the responsible person shall submit an abatement completion report, documenting compliance with the standards and requirements set forth in Paragraph B, to the Director for approval. The abatement completion report also shall propose any changes to long term monitoring and site maintenance activities, if needed, to be performed after termination of the abatement plan. [ - -96]

(2) Provided that the other requirements of this Rule are met and provided further that the standards and requirements set forth in Paragraph B have been met, the Director shall approve the abatement completion report. When the Director approves the abatement completion report, he shall also notify the responsible person in writing that the abatement plan is terminated. [ - -96]

#### L. DISPUTE RESOLUTION.

In the event of any technical dispute regarding the requirements of B, D, E, J or K or Section 116.E., including notices of deficiency, the responsible person may notify the Director by certified mail that a dispute has arisen, and desires to invoke the dispute resolution provisions of this Paragraph, provided that such notification must be made within thirty (30) days after receipt by the responsible person of the decision of the Director that causes the dispute. Upon such notification, all deadlines affected by the technical dispute shall be extended for a thirty (30) day negotiation period, or for a maximum of sixty (60) days if approved by the Director for good cause shown. During this negotiation period, the Director or his/her designee and the responsible person shall meet at least once. Such meeting(s) may be facilitated by a mutually agreed upon third party, but the third party shall assume no power or authority granted or delegated to the Director by the Oil and Gas Act or by the Division or Commission. If the dispute remains unresolved after the negotiation period, the decision of Director shall be final. [ - -96]

#### M. APPEALS FROM DIRECTOR'S DECISIONS.

(1) If the Director determines that an abatement plan is required pursuant to 19 NMAC 15.C.116.D or Paragraph D.(2), approves or provides notice of deficiency of a proposed abatement plan, technical infeasibility demonstration or abatement completion report, or modifies or terminates an approved abatement plan, he shall provide written notice of such action by certified mail to the responsible person and any person who participated in the action. [ - -96]

(2) Any person who participated in the action before the Director and who is adversely affected by the action listed in Subparagraph (1) above may file a petition requesting a hearing before the Division. [ - -96]

(3) The petition shall be made in writing to the Division and shall be filed with the Division within thirty (30) days after receiving notice of the Director's action. The petition shall specify the portions of the action to which the petitioner objects, certify that a copy of the petition has been mailed or hand-delivered to the Director, and to the applicant or permittee if the petitioner is not the applicant or permittee, and attach a copy of the action for which review is sought. Unless a timely petition for hearing is made, the Director's action is final. [ - -96]

(4) The hearing before the Division shall be conducted in the same manner as other Division hearings. [ - -96]

(5) The cost of the court reporter for the hearing shall be paid by the petitioner. [ - -96]

(6) The appeal provisions do not relieve the owner, operator or responsible person of their obligations to comply with any federal or state laws or regulations. [ - -96]

**TO BE ADDED TO 19 NMAC 15.C.116:**

**STATUS OF THIS DRAFT  
AFTER 2/22/96 MEETING and BEFORE 3/28/96 MEETING**

D. **CORRECTIVE ACTION:** The owner or operator must complete Division approved corrective action for pollution from releases.

(1) Exploration, development, production and storage activities:

(a) Remediation of soil pollution, including that in the vadose zone, in accordance with Division regulations or guidelines will be approved by the Division

(b) If the Director determines that the release causes or may with reasonable probability cause water pollution in excess of the standards and requirements of Section 19.B, and the water pollution will not be abated within one year after notice is required to be given pursuant to Section C. above, the Director may notify the facility owner/operator that he is a responsible person and that an abatement plan may be required pursuant to Sections 19.C and 19.E.(1).

(2) Oil field service industry, transportation, treatment, gas processing and refining activities: Corrective action shall be taken pursuant to the Water Quality Act and Water Quality Control Commission regulations pursuant to the authority granted the Division under Section 70-2-12. B(22), NMSA 1987.



**WTK Draft following 3/28/96 committee meeting**

**TO BE ADDED TO 19 NMAC 15.A.7: DEFINITIONS**

ABATE or ABATEMENT shall mean the investigation, containment, removal or other mitigation of water pollution. [ - -96]

ABATEMENT PLAN shall mean a description of any operational, monitoring, contingency and closure requirements and conditions for the prevention, investigation and abatement of water pollution, ~~and includes Stage 1, Stage 2 or Stage 1 and 2 of the abatement plans as approved by the Director.~~ [ - -96]

BACKGROUND shall mean, for purposes of ground-water abatement plans only, the amount of ground-water contaminants naturally occurring from undisturbed geologic sources or water contaminants which ~~the responsible person establishes~~ occurring from a source other than the responsible person's facility. This definition shall not prevent the Director from requiring abatement of commingled plumes of pollution, shall not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons, and shall not preclude the Director from exercising enforcement authority under any applicable statute, regulation or common law. [ - -96]

GROUND WATER shall mean interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply. [ - -96]

HAZARD TO PUBLIC HEALTH exists when water which is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of such use, one or more of the numerical standards of 20 NMAC 6.3103.A., or the naturally occurring concentrations, whichever is higher, or if any toxic pollutant affecting human health is present in the water. In determining whether a discharge would cause a hazard to public health to exist, the Director shall investigate and consider the purification and dilution reasonably expected to occur from the time and place of discharge to the time and place of withdrawal for use as human drinking water. [ - -96]

NON-AQUEOUS PHASE LIQUID shall mean an interstitial body of liquid oil, petroleum product, petrochemical, or organic solvent, including an emulsion containing such material. [ - -96]

PERSON shall mean an individual or any other entity including partnerships, corporation, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees. [ - -96]

~~RESPONSIBLE PERSON shall mean a person who is required to abate groundwater or surface water pollution, submit an abatement plan or who submits an abatement plan pursuant to Rule 19. the owner or operator who must complete Division approved corrective action for pollution from releases. [ - -96]~~

SIGNIFICANT MODIFICATION OF STAGE 2 OF THE ABATEMENT PLAN shall mean a change in the abatement technology used excluding design and operational parameters, or relocation of 25 % or more of the compliance sampling stations, for any single medium, as designated pursuant to 20 NMAC 6.4106.E.4. [ - -96] **Toni Ristau moved to strike this definition (tabled)**

SUBSURFACE WATER shall mean ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or may be utilized by vegetation. [ - -96]

VADOSE ZONE shall mean ~~unsaturated~~ earth material below the land surface and above ground water, or in between bodies of ground water. [ - -96] **Toni Ristau motion to add "affected" and " that is fifty (50) feet or less from contact with the saturated zone" tabled.**

WATER shall mean all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water. [ - -96]

WATER CONTAMINANT shall mean any substance that could alter if discharged or spilled the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954. [ - -96]

WATER POLLUTION shall mean introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property. [ - -96]

DISCHARGE shall mean spilling, leaking, pumping, pouring, emitting, emptying, or dumping into water or in a location and manner where there is a reasonable probability that the discharged substance will reach surface or subsurface water. [ - -96]

**(19 NMAC 15.A.19)**

**19 PREVENTION AND ABATEMENT OF WATER POLLUTION.**

**A. PURPOSE**

(1) The purposes of this Rule are to:

(a) Abate pollution of subsurface water so that all ground water of the State of New Mexico which has a background concentration of 10,000 mg/L or less TDS, is either remediated or protected for use as domestic, industrial and agricultural water supply, and to remediate or protect those segments of surface waters which are gaining because of subsurface-water inflow, for uses designated in the Water quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1); and [ - -96]

(b) Abate surface-water pollution so that all surface waters of the State of New Mexico are remediated or protected for designated or attainable uses as defined in the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1).  
[ - -96]

(2) If the background concentration of any water contaminant exceeds the standard or requirement of Section B(1), B(2) or B(3), pollution shall be abated by the responsible person to the background concentration. [ - -96]

(3) The standards and requirements set forth in Section B(1), B(2), or B(3) are not intended as maximum ranges and concentrations for use, and nothing herein contained shall be construed as limiting the use of waters containing higher ranges and concentrations. [ - -96]

**B. ABATEMENT STANDARDS AND REQUIREMENTS**

(1) The vadose zone shall be abated so that water contaminants in the vadose zone shall not be capable of contaminating ground water or surface water, in excess of the standards in Subparagraphs (2) and (3) below, through leaching, percolation or as the water table elevation fluctuates. [ - -96]

(1) The vadose zone shall be abated so that water contaminants in the vadose zone will not with reasonable probability contaminate ground water or surface water, in excess of the standards in Subparagraphs (2) and (3) below, through leaching, percolation or as the water table elevation fluctuates. (proposed by Marathon as substitute for B(1) above)

"affected" vadose zone (proposed by Ristau)

(2) Ground-water pollution at any place of withdrawal for present or reasonably foreseeable future use, where the TDS concentration is 10,000 mg/L or less, shall be abated to conform to the following standards, taking into account the potential and feasibility of treatment at point of use: [ - -96]

(a) Toxic pollutant(s) as defined in 20 NMAC 6.2.1101 shall not be present; and [ - -96]

(b) The standards of 20 NMAC 6.2.3101 shall be met. [ - -96]

(3) Surface-water pollution shall be abated to conform to the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1) taking into account the potential and feasibility of treatment at point of use [ - -96]

(4) Subsurface-water and surface-water abatement shall not be considered complete until a minimum of ~~four (4)~~<sup>eight (8)</sup> consecutive quarterly samples, or an alternate lesser number of samples approved by the Director, from all compliance sampling stations approved by the Director meet the abatement standards of Subparagraphs (1), (2), and (3) above. Abatement of water contaminants measured in solid-matrix samples of the vadose zone shall be considered complete after one-time sampling from compliance stations approved by the Director. [ - -96]

(5) Technical Infeasibility. [ - -96]

(a) If any responsible person is unable to fully meet the abatement standards set forth in Subparagraphs (1) and (2) above using commercially accepted abatement technology pursuant to an approved abatement plan, he may propose that abatement standards compliance is technically infeasible. Technical infeasibility proposals involving the use of experimental abatement technology shall be considered at the discretion of the Director. Technical infeasibility may be demonstrated by a statistically valid extrapolation of the decrease in concentration(s) of any water contaminant(s) over the remainder of a twenty (20) year period, such that projected future reductions during that time would be less than 20% of the concentration(s) at the time technical infeasibility is proposed. A statistically valid decrease cannot be demonstrated by fewer than eight (8) consecutive quarters. The technical infeasibility proposal shall include a substitute abatement standard(s) for those contaminants that is/are technically feasible. Abatement standards for all other water contaminants not demonstrated to be technically infeasible shall be met. [ - -96]

(b) In no event shall a proposed technical infeasibility demonstration be approved by the Director for any water contaminant if its concentration is greater than ~~400%~~ <sup>200%</sup> (tableted) of the abatement standard for that contaminant. [ - -96]

(c) If the Director cannot approve any or all portions of a proposed technical infeasibility demonstration because the water contaminant concentration(s) is/are greater than ~~400%~~ 200% (tabled) of the abatement standard(s) for each contaminant, the responsible person may further pursue the issue of technical infeasibility by filing a petition with the Division seeking approval of alternate abatement standard(s) pursuant to Paragraph B(6) below. [- -96]

(6) Alternative Abatement Standards

(a) At any time during or after the submission of a Stage 2 abatement plan, the responsible person may file a petition seeking approval of alternative abatement standard(s) for the standards set forth in Paragraphs (1) and (2) above. The Division may approve alternative abatement standard(s) if the petitioner demonstrates that: [- -96]

(i) compliance with the abatement standard(s) is/are not feasible, by the maximum use of technology within the economic capability of the responsible person; or [- -96]

(ii) there is no reasonable relationship between the economic and social costs and benefits (including attainment of the standard(s) set forth in this Paragraph B to be obtained, and [- -96]

(iii) the proposed alternative abatement standard(s) is/are technically achievable and cost-benefit justifiable; and [- -96]

(iv) compliance with the proposed alternative abatement standard(s) will not create a present or future hazard to public health or undue damage to property. [- -96]

(b) The petition shall be in writing, filed with the Director. The petition shall:

(i) State the petitioner's name and address;

(ii) State the date of the petition;

(iii) Describe the facility or activity for which the alternate abatement standard(s) is sought;

(iv) State the address or description of the property upon which the facility is located;

(v) Describe the water body or watercourse affected by the discharge;

~~(vi) Identify the regulations of the Division from which the alternative abatement is sought; Identify the abatement standard from which petitioner wishes to vary.~~

~~(vii) State in detail the extent to which the petitioner wishes to vary from the regulation;~~

(vii) State why the petitioner believes that compliance with the regulation will impose an unreasonable burden upon his activity;

(viii) Identify the water contaminant(s) for which alternative standard(s) is/are proposed;

(ix) State the alternative standard(s) proposed;

(x) Identify the three-dimensional body of water pollution for which approval is sought, and

(xi) State the extent to which the abatement standard(s) set forth in Paragraph B is/are now, and will in the future be, violated.

The petition may include a transport, fate and risk assessment in accordance with accepted methods, and other information as the petitioner deems necessary to support the petition. [ - - 96]

(c) The Director shall review the petition and, within sixty (60) days after receiving the petition, shall submit a written recommendation to the Division to approve, approve subject to conditions, or disapprove any or all of the proposed alternative abatement standard(s). The recommendation shall include the reasons for the Director's recommendation.

The Director shall submit a copy of the recommendation to the petitioner by certified mail. [ - -96]

(d) If the Director recommends approval, or approval subject to conditions, of any or all of the proposed alternative abatement standard(s), the Division shall hold a public hearing on those standards. If the Director recommends disapproval of any or all of the proposed alternative abatement standard(s), the petitioner may submit a request to the Division, within fifteen (15) days after receipt of the recommendation, for a public hearing on those standards. If a timely request for hearing is not submitted, the

recommended disapproval shall become a final decision of the Division and shall not be subject to review. [ - -96]

(e) If the Division grants a public hearing, the hearing shall be conducted in accordance with Division hearing procedures. ~~The Division shall specify the period of time for which the variance is granted.~~ The Division shall specify the period of time for which the variance is granted. [ - -96]

(f) Based on the record of the public hearing, the Division shall approve, approve subject to condition, or disapprove any or all of the proposed alternative abatement standard(s). The Division shall notify the petitioner by certified mail of its decision and the reasons therefore. [ - -96]

#### (7) MODIFICATION OF ABATEMENT STANDARDS.

(1) If the Commission modifies applicable abatement standards after abatement measures are approved as part of a Stage 2 abatement plan under Section 4106 of this Part, a discharge plan under Section 3109 of this Part or an abatement action under the authority of the programs specified in Section 4105.A of this Part, the abatement standards in effect at the time of approval of the abatement measures, including approved alternative abatement standards, will continue to apply to that abatement action, unless:

(a.) the responsible person agrees that the modified standards apply to the abatement action;  
or

(b) the Secretary determines that compliance with those standards would create, on a site specific basis, a present or future hazard to public health or undue damage to property.

(2) The responsible person may appeal the secretary's determination under this subsection to the Commission in accordance with Section 4114 of this Part. In any such appeal, the secretary shall have the burden of proof.

(3) This subsection, and not Section 4111.B of this Part, shall apply to the modification of abatement standards in a previously approved abatement action.

### C. ABATEMENT PLAN REQUIRED.

(1) Unless otherwise provided by this Rule, all responsible persons who are abating, or who are required to abate, water pollution in excess of the standards and requirements set forth in Paragraph B. shall do so pursuant to an abatement plan approved by the Director. When an abatement plan has been approved, all actions leading to and including abatement shall be consistent with the terms and conditions of the abatement plan. [ - -96]

(2) In the event of a transfer of the ownership, control or possession of a facility for which an abatement plan is required or approved, where the transferor is a responsible person, the transferee also shall be considered a responsible person for the duration of the abatement plan, and may jointly share the responsibility to conduct the actions required by this Rule with other responsible persons. The transferrer shall notify the transferee in writing, at least thirty (30) days prior to the transfer, that an abatement plan has been required or approved for the facility, and shall deliver or send by certified mail to the Director a copy of such notification together with a certificate or other proof that such notification has in fact been received by the transferee. The transferrer and transferee may agree to a designated responsible person who shall assume the responsibility to conduct the actions required by this Rule. The responsible persons shall notify the Director in writing if a designated responsible person is agreed upon. If the Director determines that the designated responsible person has failed to conduct the actions required by this Rule, the Director shall notify all responsible persons of this failure in writing and allow them thirty (30) days, or longer for good cause shown, to conduct the required actions before setting a show cause hearing requiring those responsible persons to appear and show cause why they should not be ordered to comply, a penalty should not be assessed, a civil action should not be commenced in district court or any other appropriate action should not be taken by the Division. [ - -96]

(3) If the source of the water pollution to be abated is a facility that operated under a discharge plan, the Director may require the responsible person(s) to submit a financial assurance plan which covers the estimated costs to conduct the actions required by the abatement plan. Such a financial assurance plan shall be consistent with any financial assurance requirements adopted by the Division. [ - -96]

### D. EXEMPTIONS FROM ABATEMENT PLAN REQUIREMENT.

(1) Except as provided in Subparagraph (2) below, Paragraphs C and E do not apply to a person who is abating water pollution: [ - -96]

(a) from an underground storage tank, under the authority of the Underground Storage Tank Regulations (20 NMAC Part 5) adopted by the New Mexico Environmental Improvement Board, or in accordance with the New Mexico Ground Water Protection Act; [ - -96]

(b) under the authority of the U.S. Environmental Protection Agency pursuant to either the federal Comprehensive Environmental Response, Compensation and Liability Act, and amendments, or the Resource Conservation and Recovery Act; [ - -96]

(c) pursuant to the Hazardous Waste Management Regulations (20 NMAC 4.1) adopted by the New Mexico Environmental Improvement Board; [ - -96]

(d) under the authority of the U.S. Nuclear Regulatory Commission or the U.S. Department of Energy pursuant to the Atomic Energy Act; [ - -96]

(e) under the authority of a ground-water discharge plan approved by the Director, provided that such abatement is consistent with the requirements and provision of Paragraphs A., B., E(3), E(5), F., and K., of this Rule. [ - -96]

(f) under the authority of a Letter of Understanding, Settlement Agreement or Administrative Order on Consent or other agreement signed by the Director prior to \_\_\_\_\_, 1996, provided that abatement is being performed in full compliance with the terms of the Letter of Understanding, Settlement Agreement or Administrative Order on Consent; and [ - -96]

**proposal to delete this subsection:** (g) on an emergency basis, or while abatement plan approval is pending, or in a manner that will result in compliance with the standards and requirements set forth in Paragraph B within one year after notice is required to be given pursuant to 19 NMAC 15.C.116.B provided that the Division does not object to the abatement action. [ - -96]

(2) If the Director determines that abatement of water pollution subject to Subparagraph (1) will not meet the standards of Paragraphs B(2) and B(3), or that additional action is necessary to protect health, welfare, environment or property, the Director may notify a responsible person, by certified mail, to submit an abatement plan pursuant to Paragraphs C and E(1). The notification shall state the reasons for the Director's determination. In any appeal of the Director's determination under this Paragraph, the Director shall have the burden of proof.  
[ - -96]

#### E. ABATEMENT PLAN PROPOSAL.

(1) Except as provided for in Paragraph D of this Rule, a responsible person shall, within sixty (60) days of receipt of written notice from the Director that an abatement plan is required, submit an abatement plan proposal to the Director for approval. For good cause shown, the Director may allow for a total of one hundred and twenty (120) days to prepare and submit the abatement plan proposal. [ - -96]

(2) Voluntary Abatement.

(a) any person wishing to abate water pollution in excess of the standards and requirements set forth in Paragraph B may submit a Stage 1 abatement plan proposal to the Director for approval. Following approval by the Director of a final site investigation report prepared pursuant to Stage 1 of an abatement plan, any person may submit a Stage 2 abatement plan proposal to the Director for approval. [ - -96]

(b) Following approval of a Stage 1 or Stage 2 abatement plan proposal under E(2)(a) above, the person submitting the approved plan shall be a responsible person under this Rule for the purpose of performing the approved Stage 1 or Stage 2 abatement plan. Nothing in this Rule shall preclude the Director from applying 19 NMAC 15.C.116.D to a responsible person if applicable. [ - -96]

**Toni Ristau: Motion tabled. Moves to rework entire section and combine the Stage 1 and 2 of the abatement plan into a single process.**

(3) Stage 1 Abatement Plan.

The purpose of Stage 1 of the abatement plan shall be to design and conduct a site investigation that will adequately define site conditions, and provide the data necessary to select and design an effective abatement option. Stage 1 of the abatement plan may include, but not necessarily be limited to, the following information depending on the media affected, and as needed to select and implement an expeditious abatement option: [ - -96]

(a) Descriptions of the site, including a site map, and of site history including the nature of the discharge that caused the water pollution, and a summary of previous investigations; [ - -96]

(b) Site investigation workplan to define: [ - -96]

(i) site geology and hydrogeology, the vertical and horizontal extent and magnitude of vadose-zone and ground-water contamination, subsurface hydraulic parameters including hydraulic conductivity, transmissivity, storativity, and rate and direction of contaminant migration, inventory of water wells inside and within one (1) mile from the perimeter of the three-dimensional body where the standards set forth in Subparagraph B(2) are exceeded, and location and number of such wells actually or potentially affected by the pollution; and [ - -96]

- (b) Development and assessment of abatement options; [ - -96]
- (c) Description, justification and design, if necessary, of preferred abatement option; [ - -96]
- (d) Modification, if necessary, of the monitoring program approved pursuant to Stage 1 of the abatement plan, including the designation of pre- and post-abatement-completion sampling stations and sampling frequencies to be used to demonstrate compliance with the standards and requirements set forth in Paragraph B; [ - -96]
- (e) Site maintenance activities, if needed, proposed to be performed after termination of abatement activities; [ - -96]
- (f) A schedule for the duration of abatement activities, including the submission of summary quarterly progress reports; [ - -96]
- (g) A public notification proposal designed to satisfy the requirements of Subparagraphs G(2) and (3); [ - -96]
- (h) Any additional information that may be reasonably required to select, describe, justify and design an effective abatement option. [ - -96]

F. OTHER REQUIREMENTS.

- (1) Any responsible person shall ~~upon presentation of proper credentials and with reasonable prior notice~~ allow any authorized representative of the Director to: [ - -96]
  - (a) ~~upon presentation of proper credentials~~ enter the facility at reasonable times; [ - -96]
  - (b) inspect and copy records required by an abatement plan; [ - -96]
  - (c) inspect any treatment works, monitoring and analytical equipment; [ - -96]
  - (d) sample any wastes, ground water, surface water, stream sediment, plants, animals, or vadose-zone material including vadose-zone vapor; [ - -96]
  - (e) use monitoring systems and wells under such responsible person's control in order to collect samples of any media listed in (d) above; and [ - -96]

(f) gain access to off-site property not owned or controlled by such responsible person, but accessible to such responsible person through a third-party access agreement, provided that it is allowed by the agreement. [ - -96]

(2) Any responsible person shall provide the Director, or a representative of the Director, with at least four (4) working days advance notice of any sampling to be performed pursuant to an abatement plan, or any well plugging, abandonment or destruction at any facility where an abatement plan has been required. [ - -96]

(3) any responsible person wishing to plug, abandon or destroy a monitoring or water supply well within the perimeter of the 3-dimensional body where the standards set forth in Paragraph B(2) are exceeded, at any facility where an abatement plan has been required, shall propose such action by certified mail to the Director for approval, unless such approval is required from the State Engineer. The proposed action shall be designed to prevent water pollution that could result from water contaminants migrating through the well or borehole. The proposed action shall not take place without written approval from the Director, unless written approval or disapproval is not received by the responsible person within thirty (30) days of the date of receipt of the proposal. [ - -96]

#### G. PUBLIC NOTICE AND PARTICIPATION.

(1) Prior to public notice, the applicant shall give written notice, as approved by the Division, of Stage 1 and Stage 2 Abatement Plans to the following persons: [ - -96]

(a) surface owners of record within one (1) mile of the perimeter of the geographic area where the standards and requirements set forth in Paragraph B are exceeded; [ - -96]

(b) the county commission where the geographic area where the standards and requirements set forth in Paragraph B are exceeded is located; [ - -96]

(c) the appropriate city official(s) if the geographic area where the standards and requirements set forth in Paragraph B are exceeded is located or is partially located within city limits or within one (1) mile of the city limits: [ - -96]

(d) those persons, as identified by the Director, who have requested notification, who shall be notified by mail; [ - -96]

(e) the New Mexico Trustee for Natural Resources, and any other local, state or federal governmental agency affected, as identified by the Director, which shall be notified by certified mail; [ - -96]

(f) the appropriate Governor or President of any Indian Tribe, Pueblo or Nation if the geographic area where the standards and requirements set forth in Paragraph B are exceeded is located or is partially located within tribal boundaries or within one (1) mile of the tribal boundaries, who shall be notified by certified mail; [ - -96]

(g) The distance requirements for notice may be extended by the Director if the Director determines the proposed Abatement Plan has the potential to adversely impact public health or the environment at a distance greater than one (1) mile. The Director may require additional notice as needed. A copy and proof of such notice will be furnished to the Division. [ - -96]

(2) After the Division determines that the Stage 1 and Stage 2 abatement plans are administratively complete, the applicant will issue public notice in a form approved by the Division in a newspaper of general circulation in the county in which the facility is to be located. The public notice shall include, as approved in advance by the Director: [ - -96]

(a) name and address of the responsible person; [ - -96]

(b) location of the proposed abatement; [ - -96]

(c) brief description of the nature of the water pollution and of the proposed abatement action; [ - -96]

(d) brief description of the procedures followed by the Director in making a final determination; [ - -96]

(e) statement on the comment period; [ - -96]

(f) statement that a copy of the abatement plan can be viewed by the public at the Division's main office or at the Division's District office for the area in which the discharge occurred; [ - -96]

(g) statement that written comments on the abatement plan, and requests for a public ~~meeting~~ or hearing that include the reasons why a meeting or hearing should be held, will be accepted for consideration if sent to the Director within thirty (30) days after the determination of administrative completeness; and [ - -96]

(h) address and phone number at which interested persons may obtain further information. [ - -96]

(3) Any person seeking to comment or request a public hearing on such Abatement Plans must file comments or hearing requests with the Division within 30 days of the date of public notice. Requests for a public hearing must be in writing to the Director

and shall set forth the reasons why a hearing should be held. A public hearing shall be held if the Director determines there is significant public interest. [ - -96]

(4) The Division will distribute notice of the filing of an Abatement Plan with the next Division and Commission hearing docket following receipt of the plan. [ - -96]

#### H. DIRECTOR APPROVAL OR NOTICE OF DEFICIENCY OF SUBMITTALS.

(1) The Director shall, within sixty (60) days of receiving a Stage 1 abatement plan proposal, a site investigation report, a technical infeasibility demonstration, or an abatement completion report, approve the document, or notify the responsible person of the document's deficiency, based upon the information available. [ - -96]

(2) The Director shall, within thirty (30) days of receiving a fact sheet, approve or notify the responsible person of the document's deficiency, based upon the information available. [ - -96]

(3) If no public ~~meeting~~ or hearing is held pursuant to Subparagraph G(3), then the Director shall, within ninety (90) days of receiving a Stage 2 abatement plan proposal, approve the plan, or notify the responsible person of the plan's deficiency, based upon the information available. [ - -96]

(4) If a public ~~meeting~~ or hearing is held pursuant to Subparagraph G(3), then the Director shall, within sixty (60) days of receipt of all required information, approve Stage 2 of the abatement plan proposal, or notify the responsible person of the plan's deficiency, based upon the information contained in the plan and information submitted at the meeting or hearing.  
[ - -96]

(5) If the Director notifies a responsible person of any deficiencies in a site investigation report, or in a Stage 1 or Stage 2 abatement plan proposal, the responsible person shall submit a modified document to cure the deficiencies specified by the Director within thirty (30) days of receipt of the notice of deficiency. The responsible person shall be in violation of this Rule if he fails to submit a modified document within the required time, or if the modified document does not make a good faith effort to cure the deficiencies specified by the Director.  
[ - -96]

(6) Provided that the other requirements of this Rule are met and provided further that Stage 2 of the abatement plan, if implemented, will result in the standards and requirements set forth in Paragraph B being met within a schedule that is reasonable given the particular circumstances of the site, the Director shall approve the plan. [ - -96]

I. INVESTIGATION AND ABATEMENT.

Any responsible person who receives approval for Stage 1 and/or Stage 2 of an abatement plan shall conduct all investigation, abatement, monitoring and reporting activity in full compliance with this Rule and according to the terms and schedules contained in the approved abatement plans. [ - -96]

J. ABATEMENT PLAN MODIFICATION.

(1) Any approved abatement plan may be modified, at the written request of the responsible person, in accordance with this Rule, and with written approval of the Director.

[ - -96]

(2) If data submitted pursuant to any monitoring requirements specified in the approved abatement plan or other information available to the Director indicates that the abatement action is ineffective, or is creating unreasonable injury to or interference with health, welfare, environment or property, the Director may require a responsible person to modify an abatement plan within the shortest reasonable time so as to effectively abate water pollution which exceeds the standards and requirements set forth in Paragraph B, and to abate and prevent unreasonable injury to or interference with health, welfare, environment or property. [ - -96]

K. COMPLETION AND TERMINATION.

(1) Abatement shall be considered complete when the standards and requirements set forth in Paragraph B are met. At that time, the responsible person shall submit an abatement completion report, documenting compliance with the standards and requirements set forth in Paragraph B, to the Director for approval. The abatement completion report also shall propose any changes to long-term monitoring and site maintenance activities, if needed, to be performed after termination of the abatement plan.

[ - -96]

(2) Provided that the other requirements of this Rule are met and provided further that the standards and requirements set forth in Paragraph B have been met, the Director shall approve the abatement completion report. When the Director approves the abatement completion report, he shall also notify the responsible person in writing that the abatement plan is terminated. [ - -96]

L. DISPUTE RESOLUTION.

In the event of any technical dispute regarding the requirements of B, D, E, J, or K or Section 116.E, including notices of deficiency, the responsible person may notify the Director by certified mail that a dispute has arisen, and desires to invoke the dispute resolution provisions of this Paragraph, provided that such notification must be made within

thirty (30) days after receipt by the responsible person of the decision of the Director that causes the dispute. Upon such notification, all deadlines affected by the technical dispute shall be extended for a thirty (30) day negotiation period, or for a maximum of sixty (60) days if approved by the Director for good cause shown. During this negotiation period, the Director or his/her designee and the responsible person shall meet at least once. Such meeting(s) may be facilitated by a mutually agreed upon third party, but the third party shall assume no power or authority granted or delegated to the Director by the Oil and Gas Act or by the Division or Commission. If the dispute remains unresolved after the negotiation period, the decision of Director shall be final.

[ - -96]

#### M. APPEALS FROM DIRECTOR'S DECISIONS.

(1) If the Director determines that an abatement plan is required pursuant to 19 NMAC 15.C.116D or Paragraph D(2), approves or provides notice of deficiency of a proposed abatement plan, technical infeasibility demonstration or abatement completion report, or modifies or terminates an approved abatement plan, he shall provide written notice of such action by certified mail to the responsible person and any person who participated in the action. [ - -96]

(2) Any person who participated in the action before the Director and who is adversely affected by the action listed in Subparagraph (1) above may file a petition requesting a hearing before a Division Examiner [ - -96]

(3) The petition shall be made in writing to the Division and shall be filed with the Division within thirty (30) days after receiving notice of the Director's action. The petition shall specify the portions of the action to which the petitioner objects, certify that a copy of the petition has been mailed or hand-delivered to the Director, and to the applicant or permittee if the petitioner is not the applicant or permittee, and attach a copy of the action for which review is sought. Unless a timely petition for hearing is made, the Director's action is final. [ - -96]

(4) The hearing before the Division shall be conducted in the same manner as other Division hearings. [ - -96]

(5) The cost of the court reporter for the hearing shall be paid by the petitioner. [ - -96]

(6) Any party adversely affected by any order by the Division pursuant to any hearing held by an Examiner, shall have a right to have such matter heard denovo before the Commission.

~~(6)~~(7) The appeal provisions do not relieve the owner, operator or responsible person of their obligations to comply with any federal or state laws or regulations. [ - - 96]

~~RESPONSIBLE PERSON shall mean a person who is required to abate ground water or surface water pollution, submit an abatement plan or who submits an abatement plan pursuant to Rule 19. the owner or operator who must complete Division approved corrective action for pollution from releases. [ - -96]~~

SIGNIFICANT MODIFICATION OF STAGE 2 OF THE ABATEMENT PLAN shall mean a change in the abatement technology used excluding design and operational parameters, or relocation of 25 % or more of the compliance sampling stations, for any single medium, as designated pursuant to 20 NMAC 6.4106.E.4. [ - -96] **Toni Ristau moved to strike this definition (tabled)**

SUBSURFACE WATER shall mean ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or may be utilized by vegetation. [ - -96]

VADOSE ZONE shall mean ~~unsaturated~~ earth material below the land surface and above ground water, or in between bodies of ground water. [ - -96] **Toni Ristau motion to add "affected" and " that is fifty (50) feet or less from contact with the saturated zone" tabled.**

WATER shall mean all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water. [ - -96]

WATER CONTAMINANT shall mean any substance that could alter if discharged or spilled the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954. [ - -96]

WATER POLLUTION shall mean introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property. [ - -96]

DISCHARGE shall mean spilling, leaking, pumping, pouring, emitting, emptying, or dumping into water or in a location and manner where there is a reasonable probability that the discharged substance will reach surface or subsurface water. [ - -96]

(19 NMAC 15.A.19)

19 PREVENTION AND ABATEMENT OF WATER POLLUTION.

A. PURPOSE

(1) The purposes of this Rule are to:

(a) Abate pollution of subsurface water so that all ground water of the State of New Mexico which has a background concentration of 10,000 mg/L or less TDS, is either remediated or protected for use as domestic, industrial and agricultural water supply, and to remediate or protect those segments of surface waters which are gaining because of subsurface-water inflow, for uses designated in the Water quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1); and [ - -96]

(b) Abate surface-water pollution so that all surface waters of the State of New Mexico are remediated or protected for designated or attainable uses as defined in the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1).  
[ - -96]

(2) If the background concentration of any water contaminant exceeds the standard or requirement of Section B(1), B(2) or B(3), pollution shall be abated by the responsible person to the background concentration. [ - -96]

(3) The standards and requirements set forth in Section B(1), B(2), or B(3) are not intended as maximum ranges and concentrations for use, and nothing herein contained shall be construed as limiting the use of waters containing higher ranges and concentrations. [ - -96]

B. ABATEMENT STANDARDS AND REQUIREMENTS

(1) The vadose zone shall be abated so that water contaminants in the vadose zone shall not be capable of contaminating ground water or surface water, in excess of the standards in Subparagraphs (2) and (3) below, through leaching, percolation or as the water table elevation fluctuates. [ - -96]

(1) The vadose zone shall be abated so that water contaminants in the vadose zone will not with reasonable probability contaminate ground water or surface water, in excess of the standards in Subparagraphs (2) and (3) below, through leaching, percolation or as the water table elevation fluctuates. (proposed by Marathon as substitute for B(1) above)

"affected" vadose zone (proposed by Ristau)

(2) Ground-water pollution at any place of withdrawal for present or reasonably foreseeable future use, where the TDS concentration is 10,000 mg/L or less, shall be abated to conform to the following standards, taking into account the potential and feasibility of treatment at point of use: [ - -96]

(a) Toxic pollutant(s) as defined in 20 NMAC 6.2.1101 shall not be present; and [ - -96]

(b) The standards of 20 NMAC 6.2.3101 shall be met. [ - -96]

(3) Surface-water pollution shall be abated to conform to the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1) taking into account the potential and feasibility of treatment at point of use [ - -96]

(4) Subsurface-water and surface-water abatement shall not be considered complete until a minimum of ~~four~~ ~~(4)~~~~eight~~ ~~(8)~~ consecutive quarterly samples, or an alternate ~~lesser~~ number of samples approved by the Director, from all compliance sampling stations approved by the Director meet the abatement standards of Subparagraphs (1), (2), and (3) above. Abatement of water contaminants measured in solid-matrix samples of the vadose zone shall be considered complete after one-time sampling from compliance stations approved by the Director. [ - -96]

(5) Technical Infeasibility. [ - -96]

(a) If any responsible person is unable to fully meet the abatement standards set forth in Subparagraphs (1) and (2) above using commercially accepted abatement technology pursuant to an approved abatement plan, he may propose that abatement standards compliance is technically infeasible. Technical infeasibility proposals involving the use of experimental abatement technology shall be considered at the discretion of the Director. Technical infeasibility may be demonstrated by a statistically valid extrapolation of the decrease in concentration(s) of any water contaminant(s) over the remainder of a twenty (20) year period, such that projected future reductions during that time would be less than 20% of the concentration(s) at the time technical infeasibility is proposed. A statistically valid decrease cannot be demonstrated by fewer than eight (8) consecutive quarters. The technical infeasibility proposal shall include a substitute abatement standard(s) for those contaminants that is/are technically feasible. Abatement standards for all other water contaminants not demonstrated to be technically infeasible shall be met. [ - -96]

(b) In no event shall a proposed technical infeasibility demonstration be approved by the Director for any water contaminant if its concentration is greater than ~~400%~~ ~~200%~~ **(tabled)** of the abatement standard for that contaminant. [ - -96]

(c) If the Director cannot approve any or all portions of a proposed technical infeasibility demonstration because the water contaminant concentration(s) is/are greater than ~~400%~~ ~~200%~~ (tabled) of the abatement standard(s) for each contaminant, the responsible person may further pursue the issue of technical infeasibility by filing a petition with the Division seeking approval of alternate abatement standard(s) pursuant to Paragraph B(6) below. [- -96]

(6) Alternative Abatement Standards

(a) At any time during or after the submission of a Stage 2 abatement plan, the responsible person may file a petition seeking approval of alternative abatement standard(s) for the standards set forth in Paragraphs (1) and (2) above. The Division may approve alternative abatement standard(s) if the petitioner demonstrates that: [- -96]

(i) compliance with the abatement standard(s) is/are not feasible, by the maximum use of technology within the economic capability of the responsible person; or [- -96]

(ii) there is no reasonable relationship between the economic and social costs and benefits (including attainment of the standard(s) set forth in this Paragraph B to be obtained, and [- -96]

(iii) the proposed alternative abatement standard(s) is/are technically achievable and cost-benefit justifiable; and [- -96]

(iv) compliance with the proposed alternative abatement standard(s) will not create a present or future hazard to public health or undue damage to property. [- -96]

(b) The petition shall be in writing, filed with the Director. The petition shall:

(i) State the petitioner's name and address;

(ii) State the date of the petition;

(iii) Describe the facility or activity for which the alternate abatement standard(s) is sought:

(iv) State the address or description of the property upon which the facility is located:

(v) Describe the water body or watercourse affected by the discharge;

~~(vi) Identify the regulations of the Division from which the alternative abatement is sought; Identify the abatement standard from which petitioner wishes to vary.~~

~~(vii) State in detail the extent to which the petitioner wishes to vary from the regulation;~~

(vii) State why the petitioner believes that compliance with the regulation will impose an unreasonable burden upon his activity;

(viii) Identify the water contaminant(s) for which alternative standard(s) is/are proposed;

(ix) State the alternative standard(s) proposed;

(x) Identify the three-dimensional body of water pollution for which approval is sought, and

(xi) State the extent to which the abatement standard(s) set forth in Paragraph B is/are now, and will in the future be, violated.

The petition may include a transport, fate and risk assessment in accordance with accepted methods, and other information as the petitioner deems necessary to support the petition. [ - - 96]

(c) The Director shall review the petition and, within sixty (60) days after receiving the petition, shall submit a written recommendation to the Division to approve, approve subject to conditions, or disapprove any or all of the proposed alternative abatement standard(s). The recommendation shall include the reasons for the Director's recommendation.

The Director shall submit a copy of the recommendation to the petitioner by certified mail. [ - -96]

(d) If the Director recommends approval, or approval subject to conditions, of any or all of the proposed alternative abatement standard(s), the Division shall hold a public hearing on those standards. If the Director recommends disapproval of any or all of the proposed alternative abatement standard(s), the petitioner may submit a request to the Division, within fifteen (15) days after receipt of the recommendation, for a public hearing on those standards. If a timely request for hearing is not submitted, the

recommended disapproval shall become a final decision of the Division and shall not be subject to review. [ - -96]

(e) If the Division grants a public hearing, the hearing shall be conducted in accordance with Division hearing procedures. ~~The Division shall specify the period of time for which the variance is granted.~~ The Division shall specify the period of time for which the variance is granted. [ - -96]

(f) Based on the record of the public hearing, the Division shall approve, approve subject to condition, or disapprove any or all of the proposed alternative abatement standard(s). The Division shall notify the petitioner by certified mail of its decision and the reasons therefore. [ - -96]

#### **(7) MODIFICATION OF ABATEMENT STANDARDS.**

(1) If the Commission modifies applicable abatement standards after abatement measures are approved as part of a Stage 2 abatement plan under Section 4106 of this Part, a discharge plan under Section 3109 of this Part or an abatement action under the authority of the programs specified in Section 4105.A of this Part, the abatement standards in effect at the time of approval of the abatement measures, including approved alternative abatement standards, will continue to apply to that abatement action, unless:

(a.) the responsible person agrees that the modified standards apply to the abatement action;  
or

(b) the Secretary determines that compliance with those standards would create, on a site specific basis, a present or future hazard to public health or undue damage to property.

(2) The responsible person may appeal the secretary's determination under this subsection to the Commission in accordance with Section 4114 of this Part. In any such appeal, the secretary shall have the burden of proof.

(3) This subsection, and not Section 4111.B of this Part, shall apply to the modification of abatement standards in a previously approved abatement action.

### C. ABATEMENT PLAN REQUIRED.

(1) Unless otherwise provided by this Rule, all responsible persons who are abating, or who are required to abate, water pollution in excess of the standards and requirements set forth in Paragraph B. shall do so pursuant to an abatement plan approved by the Director. When an abatement plan has been approved, all actions leading to and including abatement shall be consistent with the terms and conditions of the abatement plan. [ - -96]

(2) In the event of a transfer of the ownership, control or possession of a facility for which an abatement plan is required or approved, where the transferor is a responsible person, the transferee also shall be considered a responsible person for the duration of the abatement plan, and may jointly share the responsibility to conduct the actions required by this Rule with other responsible persons. The transferror shall notify the transferee in writing, at least thirty (30) days prior to the transfer, that an abatement plan has been required or approved for the facility, and shall deliver or send by certified mail to the Director a copy of such notification together with a certificate or other proof that such notification has in fact been received by the transferee. The transferror and transferee may agree to a designated responsible person who shall assume the responsibility to conduct the actions required by this Rule. The responsible persons shall notify the Director in writing if a designated responsible person is agreed upon. If the Director determines that the designated responsible person has failed to conduct the actions required by this Rule, the Director shall notify all responsible persons of this failure in writing and allow them thirty (30) days, or longer for good cause shown, to conduct the required actions before setting a show cause hearing requiring those responsible persons to appear and show cause why they should not be ordered to comply, a penalty should not be assessed, a civil action should not be commenced in district court or any other appropriate action should not be taken by the Division. [ - -96]

(3) If the source of the water pollution to be abated is a facility that operated under a discharge plan, the Director may require the responsible person(s) to submit a financial assurance plan which covers the estimated costs to conduct the actions required by the abatement plan. Such a financial assurance plan shall be consistent with any financial assurance requirements adopted by the Division. [ - -96]

### D. EXEMPTIONS FROM ABATEMENT PLAN REQUIREMENT.

(1) Except as provided in Subparagraph (2) below, Paragraphs C and E do not apply to a person who is abating water pollution: [ - -96]

(a) from an underground storage tank, under the authority of the Underground Storage Tank Regulations (20 NMAC Part 5) adopted by the New Mexico Environmental Improvement Board, or in accordance with the New Mexico Ground Water Protection Act: [ - -96]

(b) under the authority of the U.S. Environmental Protection Agency pursuant to either the federal Comprehensive Environmental Response, Compensation and Liability Act, and amendments, or the Resource Conservation and Recovery Act; [ - -96]

(c) pursuant to the Hazardous Waste Management Regulations (20 NMAC 4.1) adopted by the New Mexico Environmental Improvement Board; [ - -96]

(d) under the authority of the U.S. Nuclear Regulatory Commission or the U.S. Department of Energy pursuant to the Atomic Energy Act; [ - -96]

(e) under the authority of a ground-water discharge plan approved by the Director, provided that such abatement is consistent with the requirements and provision of Paragraphs A., B., E(3), E(5), F., and K., of this Rule. [ - -96]

(f) under the authority of a Letter of Understanding, Settlement Agreement or Administrative Order on Consent or other agreement signed by the Director prior to \_\_\_\_\_, 1996, provided that abatement is being performed in full compliance with the terms of the Letter of Understanding, Settlement Agreement or Administrative Order on Consent; and [ - -96]

**proposal to delete this subsection:** (g) on an emergency basis, or while abatement plan approval is pending, or in a manner that will result in compliance with the standards and requirements set forth in Paragraph B within one year after notice is required to be given pursuant to 19 NMAC 15.C.116.B provided that the Division does not object to the abatement action. [ - -96]

(2) If the Director determines that abatement of water pollution subject to Subparagraph (1) will not meet the standards of Paragraphs B(2) and B(3), or that additional action is necessary to protect health, welfare, environment or property, the Director may notify a responsible person, by certified mail, to submit an abatement plan pursuant to Paragraphs C and E(1). The notification shall state the reasons for the Director's determination. In any appeal of the Director's determination under this Paragraph, the Director shall have the burden of proof.  
[ - -96]

#### E. ABATEMENT PLAN PROPOSAL.

(1) Except as provided for in Paragraph D of this Rule, a responsible person shall, within sixty (60) days of receipt of written notice from the Director that an abatement plan is required, submit an abatement plan proposal to the Director for approval. For good cause shown, the Director may allow for a total of one hundred and twenty (120) days to prepare and submit the abatement plan proposal. [ - -96]

(2) Voluntary Abatement.

(a) any person wishing to abate water pollution in excess of the standards and requirements set forth in Paragraph B may submit a Stage 1 abatement plan proposal to the Director for approval. Following approval by the Director of a final site investigation report prepared pursuant to Stage 1 of an abatement plan, any person may submit a Stage 2 abatement plan proposal to the Director for approval. [ - -96]

(b) Following approval of a Stage 1 or Stage 2 abatement plan proposal under E(2)(a) above, the person submitting the approved plan shall be a responsible person under this Rule for the purpose of performing the approved Stage 1 or Stage 2 abatement plan. Nothing in this Rule shall preclude the Director from applying 19 NMAC 15.C.116.D to a responsible person if applicable. [ - -96]

**Toni Ristau: Motion tabled. Moves to rework entire section and combine the Stage 1 and 2 of the abatement plan into a single process.**

(3) Stage 1 Abatement Plan.

The purpose of Stage 1 of the abatement plan shall be to design and conduct a site investigation that will adequately define site conditions, and provide the data necessary to select and design an effective abatement option. Stage 1 of the abatement plan may include, but not necessarily be limited to, the following information depending on the media affected, and as needed to select and implement an expeditious abatement option: [ - -96]

(a) Descriptions of the site, including a site map, and of site history including the nature of the discharge that caused the water pollution, and a summary of previous investigations: [ - -96]

(b) Site investigation workplan to define: [ - -96]

(i) site geology and hydrogeology, the vertical and horizontal extent and magnitude of vadose-zone and ground-water contamination, subsurface hydraulic parameters including hydraulic conductivity, transmissivity, storativity, and rate and direction of contaminant migration, inventory of water wells inside and within one (1) mile from the perimeter of the three-dimensional body where the standards set forth in Subparagraph B(2) are exceeded, and location and number of such wells actually or potentially affected by the pollution; and [ - -96]

(ii) surface-water hydrology, seasonal stream flow characteristics, ground-water/surface-water relationships, the vertical and horizontal extent and magnitude of contamination and impacts to surface water and stream sediments. The magnitude of contamination and impacts on surface water may be, in part, defined by conducting a biological assessment of fish, benthic macroinvertebrates and other wildlife populations. Seasonal variations should be accounted for when conducting these assessments. [ - -96]

(c) Monitoring program, including sampling stations and frequencies, for the duration of the abatement plan that may be modified, after approval by the Director, as additional sampling stations are created; [ - -96]

(d) Quality assurance plan, consistent with the sampling and analytical techniques listed in 20 NMAC 6.3107.B and with Section 1103 of the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1), for all work to be conducted pursuant to the abatement plan; [ - -96]

~~(e) Site health and safety plan for all work to be performed pursuant to the abatement plan.~~

(f) A schedule for all Stage 1 abatement plan activities, including the submission of summary quarterly progress reports, and the submission, for approval by the Director, of a detailed final site investigation report; and [ - -96]

(g) Any additional information that may be required to design and perform an adequate site investigation. [ - -96]

(4) Stage 2 Abatement Plan.

Any responsible person shall submit a Stage 2 abatement plan proposal to the Director for approval within sixty (60) days, or up to one hundred and twenty (120) days for good cause shown, after approval by the Director of the final site investigation report prepared pursuant to Stage 1 of the abatement plan. [ - -96]

(5) The purpose of Stage 2 of the abatement plan shall be to select and design, if necessary, an abatement option that, when implemented, will result in attainment of the abatement standards and requirements set forth in Paragraph B, including post-closure maintenance activities. Stage 2 of the abatement plan should include, at a minimum, the following information: [ - -96]

(a) Brief description of the current situation at the site: [ - -96]

- (b) Development and assessment of abatement options; [ - -96]
- (c) Description, justification and design, if necessary, of preferred abatement option; [ - -96]
- (d) Modification, if necessary, of the monitoring program approved pursuant to Stage 1 of the abatement plan, including the designation of pre- and post-abatement-completion sampling stations and sampling frequencies to be used to demonstrate compliance with the standards and requirements set forth in Paragraph B; [ - -96]
- (e) Site maintenance activities, if needed, proposed to be performed after termination of abatement activities; [ - -96]
- (f) A schedule for the duration of abatement activities, including the submission of summary quarterly progress reports; [ - -96]
- (g) A public notification proposal designed to satisfy the requirements of Subparagraphs G(2) and (3); [ - -96]
- (h) Any additional information that may be reasonably required to select, describe, justify and design an effective abatement option. [ - -96]

F. OTHER REQUIREMENTS.

- (1) Any responsible person shall ~~upon presentation of proper credentials and with reasonable prior notice~~ allow any authorized representative of the Director to: [ - -96]
  - (a) ~~upon presentation of proper credentials~~ enter the facility at reasonable times: [ - -96]
  - (b) inspect and copy records required by an abatement plan: [ - -96]
  - (c) inspect any treatment works, monitoring and analytical equipment: [ - -96]
  - (d) sample any wastes, ground water, surface water, stream sediment, plants, animals, or vadose-zone material including vadose-zone vapor: [ - -96]
  - (e) use monitoring systems and wells under such responsible person's control in order to collect samples of any media listed in (d) above; and [ - -96]

(f) gain access to off-site property not owned or controlled by such responsible person, but accessible to such responsible person through a third-party access agreement, provided that it is allowed by the agreement. [ - -96]

(2) Any responsible person shall provide the Director, or a representative of the Director, with at least four (4) working days advance notice of any sampling to be performed pursuant to an abatement plan, or any well plugging, abandonment or destruction at any facility where an abatement plan has been required. [ - -96]

(3) any responsible person wishing to plug, abandon or destroy a monitoring or water supply well within the perimeter of the 3-dimensional body where the standards set forth in Paragraph B(2) are exceeded, at any facility where an abatement plan has been required, shall propose such action by certified mail to the Director for approval, unless such approval is required from the State Engineer. The proposed action shall be designed to prevent water pollution that could result from water contaminants migrating through the well or borehole. The proposed action shall not take place without written approval from the Director, unless written approval or disapproval is not received by the responsible person within thirty (30) days of the date of receipt of the proposal. [ - -96]

#### G. PUBLIC NOTICE AND PARTICIPATION.

(1) Prior to public notice, the applicant shall give written notice, as approved by the Division, of Stage 1 and Stage 2 Abatement Plans to the following persons: [ - -96]

(a) surface owners of record within one (1) mile of the perimeter of the geographic area where the standards and requirements set forth in Paragraph B are exceeded: [ - -96]

(b) the county commission where the geographic area where the standards and requirements set forth in Paragraph B are exceeded is located: [ - -96]

(c) the appropriate city official(s) if the geographic area where the standards and requirements set forth in Paragraph B are exceeded is located or is partially located within city limits or within one (1) mile of the city limits: [ - -96]

(d) those persons, as identified by the Director, who have requested notification, who shall be notified by mail; [ - -96]

(e) the New Mexico Trustee for Natural Resources, and any other local, state or federal governmental agency affected, as identified by the Director, which shall be notified by certified mail; [ - -96]

(f) the appropriate Governor or President of any Indian Tribe, Pueblo or Nation if the geographic area where the standards and requirements set forth in Paragraph B are exceeded is located or is partially located within tribal boundaries or within one (1) mile of the tribal boundaries, who shall be notified by certified mail; [ - -96]

(g) The distance requirements for notice may be extended by the Director if the Director determines the proposed Abatement Plan has the potential to adversely impact public health or the environment at a distance greater than one (1) mile. The Director may require additional notice as needed. A copy and proof of such notice will be furnished to the Division. [ - -96]

(2) After the Division determines that the Stage 1 and Stage 2 abatement plans are administratively complete, the applicant will issue public notice in a form approved by the Division in a newspaper of general circulation in the county in which the facility is to be located. The public notice shall include, as approved in advance by the Director: [ - -96]

(a) name and address of the responsible person: [ - -96]

(b) location of the proposed abatement; [ - -96]

(c) brief description of the nature of the water pollution and of the proposed abatement action: [ - -96]

(d) brief description of the procedures followed by the Director in making a final determination: [ - -96]

(e) statement on the comment period: [ - -96]

(f) statement that a copy of the abatement plan can be viewed by the public at the Division's main office or at the Division's District office for the area in which the discharge occurred; [ - -96]

(g) statement that written comments on the abatement plan, and requests for a public ~~meeting~~ or hearing that include the reasons why a meeting or hearing should be held, will be accepted for consideration if sent to the Director within thirty (30) days after the determination of administrative completeness; and [ - -96]

(h) address and phone number at which interested persons may obtain further information. [ - -96]

(3) Any person seeking to comment or request a public hearing on such Abatement Plans must file comments or hearing requests with the Division within 30 days of the date of public notice. Requests for a public hearing must be in writing to the Director

and shall set forth the reasons why a hearing should be held. A public hearing shall be held if the Director determines there is significant public interest. [ - -96]

(4) The Division will distribute notice of the filing of an Abatement Plan with the next Division and Commission hearing docket following receipt of the plan. [ - -96]

#### H. DIRECTOR APPROVAL OR NOTICE OF DEFICIENCY OF SUBMITTALS.

(1) The Director shall, within sixty (60) days of receiving a Stage 1 abatement plan proposal, a site investigation report, a technical infeasibility demonstration, or an abatement completion report, approve the document, or notify the responsible person of the document's deficiency, based upon the information available. [ - -96]

(2) The Director shall, within thirty (30) days of receiving a fact sheet, approve or notify the responsible person of the document's deficiency, based upon the information available. [ - -96]

(3) If no public ~~meeting or~~ hearing is held pursuant to Subparagraph G(3), then the Director shall, within ninety (90) days of receiving a Stage 2 abatement plan proposal, approve the plan, or notify the responsible person of the plan's deficiency, based upon the information available. [ - -96]

(4) If a public ~~meeting or~~ hearing is held pursuant to Subparagraph G(3), then the Director shall, within sixty (60) days of receipt of all required information, approve Stage 2 of the abatement plan proposal, or notify the responsible person of the plan's deficiency, based upon the information contained in the plan and information submitted at the meeting or hearing.  
[ - -96]

(5) If the Director notifies a responsible person of any deficiencies in a site investigation report, or in a Stage 1 or Stage 2 abatement plan proposal, the responsible person shall submit a modified document to cure the deficiencies specified by the Director within thirty (30) days of receipt of the notice of deficiency. The responsible person shall be in violation of this Rule if he fails to submit a modified document within the required time, or if the modified document does not make a good faith effort to cure the deficiencies specified by the Director.  
[ - -96]

(6) Provided that the other requirements of this Rule are met and provided further that Stage 2 of the abatement plan, if implemented, will result in the standards and requirements set forth in Paragraph B being met within a schedule that is reasonable given the particular circumstances of the site, the Director shall approve the plan. [ - -96]

I. INVESTIGATION AND ABATEMENT.

Any responsible person who receives approval for Stage 1 and/or Stage 2 of an abatement plan shall conduct all investigation, abatement, monitoring and reporting activity in full compliance with this Rule and according to the terms and schedules contained in the approved abatement plans. [ - -96]

J. ABATEMENT PLAN MODIFICATION.

(1) Any approved abatement plan may be modified, at the written request of the responsible person, in accordance with this Rule, and with written approval of the Director.

[ - -96]

(2) If data submitted pursuant to any monitoring requirements specified in the approved abatement plan or other information available to the Director indicates that the abatement action is ineffective, or is creating unreasonable injury to or interference with health, welfare, environment or property, the Director may require a responsible person to modify an abatement plan within the shortest reasonable time so as to effectively abate water pollution which exceeds the standards and requirements set forth in Paragraph B, and to abate and prevent unreasonable injury to or interference with health, welfare, environment or property. [ - -96]

K. COMPLETION AND TERMINATION.

(1) Abatement shall be considered complete when the standards and requirements set forth in Paragraph B are met. At that time, the responsible person shall submit an abatement completion report, documenting compliance with the standards and requirements set forth in Paragraph B, to the Director for approval. The abatement completion report also shall propose any changes to long-term monitoring and site maintenance activities, if needed, to be performed after termination of the abatement plan.

[ - -96]

(2) Provided that the other requirements of this Rule are met and provided further that the standards and requirements set forth in Paragraph B have been met, the Director shall approve the abatement completion report. When the Director approves the abatement completion report, he shall also notify the responsible person in writing that the abatement plan is terminated. [ - -96]

L. DISPUTE RESOLUTION.

In the event of any technical dispute regarding the requirements of B, D, E, J, or K or Section 116.E, including notices of deficiency, the responsible person may notify the Director by certified mail that a dispute has arisen, and desires to invoke the dispute resolution provisions of this Paragraph, provided that such notification must be made within

thirty (30) days after receipt by the responsible person of the decision of the Director that causes the dispute. Upon such notification, all deadlines affected by the technical dispute shall be extended for a thirty (30) day negotiation period, or for a maximum of sixty (60) days if approved by the Director for good cause shown. During this negotiation period, the Director or his/her designee and the responsible person shall meet at least once. Such meeting(s) may be facilitated by a mutually agreed upon third party, but the third party shall assume no power or authority granted or delegated to the Director by the Oil and Gas Act or by the Division or Commission. If the dispute remains unresolved after the negotiation period, the decision of Director shall be final.  
[ - -96]

#### M. APPEALS FROM DIRECTOR'S DECISIONS.

(1) If the Director determines that an abatement plan is required pursuant to 19 NMAC 15.C.116D or Paragraph D(2), approves or provides notice of deficiency of a proposed abatement plan, technical infeasibility demonstration or abatement completion report, or modifies or terminates an approved abatement plan, he shall provide written notice of such action by certified mail to the responsible person and any person who participated in the action. [ - -96]

(2) Any person who participated in the action before the Director and who is adversely affected by the action listed in Subparagraph (1) above may file a petition requesting a hearing before a Division Examiner [ - -96]

(3) The petition shall be made in writing to the Division and shall be filed with the Division within thirty (30) days after receiving notice of the Director's action. The petition shall specify the portions of the action to which the petitioner objects, certify that a copy of the petition has been mailed or hand-delivered to the Director, and to the applicant or permittee if the petitioner is not the applicant or permittee, and attach a copy of the action for which review is sought. Unless a timely petition for hearing is made, the Director's action is final. [ - -96]

(4) The hearing before the Division shall be conducted in the same manner as other Division hearings. [ - -96]

(5) The cost of the court reporter for the hearing shall be paid by the petitioner. [ - -96]

(6) Any party adversely affected by any order by the Division pursuant to any hearing held by an Examiner, shall have a right to have such matter heard denovo before the Commission.

~~(6)~~(7) The appeal provisions do not relieve the owner, operator or responsible person of their obligations to comply with any federal or state laws or regulations. [ - -96]

**DRAFT**

**THE FOLLOWING REPRESENTS  
THE PROPOSED RULE 116 and NEW RULE 19 BASED UPON  
COMMITTEE ACTION TAKEN ON SEPTEMBER 12, 1996**

**PROPOSED ADDITIONAL DEFINITIONS  
TO BE ADDED TO CURRENT RULE 15.A.7**

**ABATE or ABATEMENT** shall mean the investigation, containment, removal or other mitigation of water pollution. [ - -96]

**ABATEMENT PLAN** shall mean a description of any operational, monitoring, contingency and closure requirements and conditions for the prevention, investigation and abatement of water pollution. [ - -96]

**BACKGROUND** shall mean, for purposes of ground-water abatement plans only, the amount of ground-water contaminants naturally occurring from undisturbed geologic sources or water contaminants occurring from a source other than the responsible person's facility. This definition shall not prevent the Director from requiring abatement of commingled plumes of pollution, shall not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons, and shall not preclude the Director from exercising enforcement authority under any applicable statute, regulation or common law. [ - -96]

**[DEFINITION OF "DISCHARGE" PRESENTED IN EARLIER DRAFTS WAS STRICKEN; COMMITTEE APPROVED 9/11/96]**

**FACILITY** shall mean any structure, installation, operation, storage tank, transmission line, motor vehicle, rolling stock, or activity of any kind, whether stationary or mobile. **[OCD PROPOSED 9/11/96; CONSENSUS NOT REACHED].**

**GROUND WATER** shall mean interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply. [ - -96]

**HAZARD TO PUBLIC HEALTH** exists when water which is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of such use, one or more of the numerical standards of 20 NMAC 6.3103.A., or the naturally occurring concentrations, whichever is higher, or if any toxic pollutant affecting human health is present in the water. In determining whether a release would cause a hazard to public health to exist, the Director shall investigate and consider the purification and dilution reasonably expected to occur from the time and place of release to the time and place of withdrawal for use as human drinking water. [ - -96]



[NOTE: PER COMMITTEE RECOMMENDATION 9/11/96, THE WORD "DISCHARGE" WAS REPLACED WITH THE WORD "RELEASE", EXCEPT WHERE "DISCHARGE" WAS CLEARLY THE APPROPRIATE TERMINOLOGY. THE CHANGE IS INDICATED BY REDLINING.]

NON-AQUEOUS PHASE LIQUID shall mean an interstitial body of liquid oil, petroleum product, petrochemical, or organic solvent, including an emulsion containing such material. [ - -96]

OIL FIELD WASTES shall mean those wastes produced in conjunction with the exploration, production, refining, processing and transportation of crude oil and/or natural gas and commonly collected at field storage, processing, disposal, or service facilities, and waste collected at gas processing plants, refineries and other processing or transportation facilities. [ - -96]

PERSON shall mean an individual or any other entity including partnerships, corporation, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees. [ - -96]

RELEASE shall mean all unauthorized breaks, leaks, spills, releases, fires or blowouts involving crude oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and natural gases to the environment.

REMEDICATION PLAN shall mean a written document to address reportable releases that will not with reasonable probability reach ground water or surface water, and that will likely not be remedied within one (1) year. When ground water is affected, a remediation plan may be required for releases that will be remedied within one (1) year. The plan may include appropriate information, including assessment data, health risk demonstrations, and corrective action(s). The plan may also include an alternative proposing no action beyond the submittal of a spill report. *[SEVERAL VERSIONS/WORDINGS WERE PROPOSED FOR THIS DEFINITION AT THE 9/11/96 COMMITTEE MEETING, BUT CONSENSUS HAS NOT YET BEEN REACHED].*

RESPONSIBLE PERSON shall mean the owner or operator who must complete Division approved corrective action for pollution from releases. [ - -96] [APPROVED PER 9/11/96 COMMITTEE MEETING]

SIGNIFICANT MODIFICATION OF AN ABATEMENT PLAN shall mean a change in the abatement technology used excluding design and operational parameters, or relocation of 25 % or more of the compliance sampling stations, for any single medium, as designated pursuant to 20 NMAC 6.4106.E.4. [ - -96] [CHANGE SUGGESTED BY RISTAU/PNM TO MAKE THE DEFINITION MORE GENERAL AND TO ALLOW FOR THE COMBINING OF STAGE 1 AND STAGE 2 OF THE ABATEMENT PLAN;

**NO DISAGREEMENT FROM OCD OR THE COMMITTEE MEMBERS EVIDENCED; HOWEVER, CHANGE WAS NOT SPECIFICALLY AGREED TO BY THE COMMITTEE]**

SUBSURFACE WATER shall mean ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or may be utilized by vegetation. [ - -96]

VADOSE ZONE shall mean unsaturated earth material below the land surface and above ground water, or in between bodies of ground water. [ - -96]  
**[CHANGED APPROVED BY COMMITTEE, 9/11/96]**

WATER shall mean all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water. [ - -96]

WATER CONTAMINANT shall mean any substance that could alter if released or spilled the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954. [ - -96]

WATERCOURSE shall mean any lake bed, or gully, draw, stream bed, wash, arroyo, or natural or human-made channel through which water flows or has flowed.

WATER POLLUTION shall mean introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property. [ - -96]

**[COMMENT: DEFINITION OF "DISCHARGE" WAS REMOVED, AND WORDING OF RULES WAS CHANGED TO REFER TO "RELEASE" RATHER THAN DISCHARGE, BUT "RELEASE" IS NOT DEFINED. SHOULD IT BE DEFINED?]**

WELL BLOWOUT shall mean a loss of control over and subsequent eruption of any drilling or workover well or the rupture of the casing, casinghead, or wellhead or any oil or gas well or injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or liquids, from the well.

**DRAFT**

**RULE 116 COMMITTEE PROPOSED REPLACEMENT RULE 116  
FOR CURRENT RULE 116  
(as of 9/12/96)**

**RULE 116 - RELEASE NOTIFICATION AND CORRECTIVE ACTION**

**A. NOTIFICATION:**

The Division shall be notified of any unauthorized release occurring during the drilling, producing, storing, disposing, injecting, transporting, servicing or processing of crude oil, produced water, condensate or oil field waste including Regulated NORM, or other oil field related chemicals, contaminants or mixture thereof, in the State of New Mexico in accordance with the requirements of this rule.

**B. REPORTING REQUIREMENTS:**

Notification of a release as defined in Rule A.7 shall be made by the person operating or controlling either the release or the location of the release in accordance with the following requirements:

(1) A Category I Release shall be reported by giving **both** immediate verbal notice and timely written notice pursuant to Subsection C(1) and C(2) of this Rule. For purpose of this Rule, a Category I Release is a release of a volume in excess of 25 barrels or any volume, **excluding natural gas**, which:

- (a) results in a fire;
- (b) will reach a water course;
- (c) may with reasonable probability endanger public health; or
- (d) results in substantial damage to property or the environment.

(2) A Category II Release shall be reported by giving immediate verbal notice pursuant to Subsection C (1) of this Rule. For purpose of this Rule, a Category II Release is a release of **any** volume of **natural gas**, which:

- (a) results in a fire;
- (b) may with reasonable probability endanger public health; or
- (c) result in substantial damage to property or the environment.

(3) A Category III Release shall be reported by giving timely written notice pursuant to Subsection C(2) of this Rule. For the purpose of this Rule, a Category III Release is a release of a volume, **excluding natural gas**, greater than 5 barrels but not more than 26 barrels.

**DRAFT**

C. CONTENTS OF NOTIFICATION:

(1) **Immediate verbal notification** is required to be reported pursuant to Subsection B of Rule 116 shall be reported within twenty-four (24) hours of discovery to the District Office of the Division for the area within which this release takes place. This notification shall include the identification of the location of the release by quarter-quarter section, township and range; by distance and direction from the nearest town or landmark; the nature and estimated quantity of the loss and general conditions prevailing in the area; and any mitigation or corrective action being taken.

(2) **Timely written notification** is required to be reported pursuant to Subsection B of Rule 116 within fifteen (15) days to the District Office of the Division for the area within which this release takes place by completing and filing Division Form C-116.

D. **CORRECTIVE ACTION:** The owner or operator must complete Division approved corrective action for releases which endanger public health or the environment. Releases will be addressed in accordance with a remediation plan submitted to and approved by the Division or with an Abatement Plan submitted in accordance with Rule 19 (19 NMAC 15.A.19). [ - -96].

**DRAFT**

**COMMITTEE PROPOSED NEW RULE 19  
NMAC 15.A.19)**

19. PREVENTION AND ABATEMENT OF WATER POLLUTION.

A. PURPOSE

(1) The purposes of this Rule are to:

(a) Abate pollution of subsurface water so that all ground water of the State of New Mexico which has a background concentration of 10,000 mg/L or less TDS, is either remediated or protected for use as domestic, industrial and agricultural water supply, and to remediate or protect those segments of surface waters which are gaining because of subsurface-water inflow, for uses designated in the Water quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1); and [ - -96]

(b) Abate surface-water pollution so that all surface waters of the State of New Mexico are remediated or protected for designated or attainable uses as defined in the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1). [ - -96]

(2) If the background concentration of any water contaminant exceeds the standard or requirement of Section B(1), B(2) or B(3), pollution shall be abated by the responsible person to the background concentration. [ - -96]

(3) The standards and requirements set forth in Section B(1), B(2), or B(3) are not intended as maximum ranges and concentrations for use, and nothing herein contained shall be construed as limiting the use of waters containing higher ranges and concentrations. [ - -96]

B. ABATEMENT STANDARDS AND REQUIREMENTS

(1) The vadose zone shall be abated so that water contaminants in the vadose zone will not with reasonable probability contaminate ground water or surface water, in excess of the standards in Subparagraphs (2) and (3) below, through leaching, percolation, or other transport mechanisms, or as the water table elevation fluctuates. [ALTERNATE LANGUAGE PROPOSED BY MENZIE/MARATHON, WITH ADDITION OF UNDERLINED PHRASE, APPROVED BY COMMITTEE 9/11/96]

(2) Ground-water pollution at any place of withdrawal for present or reasonably foreseeable future use, where the TDS concentration is 10,000 mg/L or less, shall be abated to conform to the following standards: [ - -96]

(a) Toxic pollutant(s) as defined in 20 NMAC 6.2.1101 shall not be present; and [ - -96]

(b) The standards of 20 NMAC 6.2.3101 shall be met. [ - -96]

**[COMMITTEE DISCUSSION ON WHERE THE POINT-OF-USE LANGUAGE SHOULD BE ADDED; CONSENSUS WAS THAT IT SHOULD BE ADDED, BUT PROBABLY NOT AT THIS LOCATION. LANGUAGE WAS ADDED AT (6) BELOW, 9/11/96]**

(3) Surface-water pollution shall be abated to conform to the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1) [ - -96] **[COMMITTEE DISCUSSION ON WHERE THE POINT-OF-USE LANGUAGE SHOULD BE ADDED; CONSENSUS WAS THAT IT SHOULD BE ADDED, BUT PROBABLY NOT AT THIS LOCATION, 9/11/96]**

(4) Subsurface-water and surface-water abatement shall not be considered complete until eight (8) consecutive quarterly samples, or an alternate lesser number of samples approved by the Director, from all compliance sampling stations approved by the Director meet the abatement standards of Subparagraphs (1), (2), and (3) above. Abatement of water contaminants measured in solid-matrix samples of the vadose zone shall be considered complete after one-time sampling from compliance stations approved by the Director. [ - -96] **[CHANGE APPROVED BY COMMITTEE, 9/11/96]**

(5) Technical Infeasibility. [ - -96]

(a) If any responsible person is unable to fully meet the abatement standards set forth in Subparagraphs (1) and (2) above using commercially accepted abatement technology pursuant to an approved abatement plan, he may propose that abatement standards compliance is technically infeasible. Technical infeasibility proposals involving the use of experimental abatement technology shall be considered at the discretion of the Director. Technical infeasibility may be demonstrated by a statistically valid extrapolation of the decrease in concentration(s) of any water contaminant(s) over the remainder of a twenty (20) year period, such that projected future reductions during that time would be less than 20% of the concentration(s) at the time technical infeasibility is proposed. A statistically valid decrease cannot be demonstrated by fewer than eight (8) consecutive quarters. The technical infeasibility proposal shall include a substitute abatement standard(s) for those contaminants that is/are technically feasible. Abatement standards for all other water contaminants not demonstrated to be technically infeasible shall be met. [ - -96]

(b) In no event shall a proposed technical infeasibility demonstration be approved by the Director for any water contaminant if its concentration is greater than 200% of the abatement standard for that contaminant. [ - -96] **[APPROVED BY COMMITTEE, 9/11/96]**

(c) If the Director cannot approve any or all portions of a proposed technical infeasibility demonstration because the water contaminant concentration(s) is/are greater than 200% of the abatement standard(s) for each contaminant, the responsible person may further pursue the issue of technical infeasibility by filing a petition with the Division seeking approval of alternate abatement standard(s) pursuant to Paragraph B(6) below. [ - -96] **[APPROVED BY COMMITTEE, 9/11/96]**

(6) Alternative Abatement Standards

(a) At any time during or after the submission of a Stage 2 abatement plan, the responsible person may file a petition seeking approval of alternative abatement standard(s) for the standards set forth in Paragraphs (1) and (2) above. The Division may approve alternative abatement standard(s) if the petitioner demonstrates that: [- -96]

(i) compliance with the abatement standard(s) is/are not feasible, by the maximum use of technology within the economic capability of the responsible person; or [- -96]

(ii) there is no reasonable relationship between the economic and social costs and benefits (including attainment of the standard(s) set forth in this Paragraph B to be obtained. [- -96]

(b) In addition, the Division may approve the specific alternative abatement standard(s) proposed by petitioner if the petitioner demonstrates that: [- -96]

(i) the proposed alternative abatement standard(s) is/are technically achievable and cost-benefit justifiable; and [- -96]

(ii) the potential for point-of-use treatment versus in-situ remediation of ground water to standards has been evaluated and will be employed if technically feasible and cost-benefit justifiable; and [- -96]

(iii) compliance with the proposed alternative abatement standard(s) will not create a present or future hazard to public health or undue damage to property. [- -96]

[THE COMMITTEE AGREED THAT THE LANGUAGE, PARAGRAPH NUMBERING, ETC. NEEDED TO BE LOOKED AT, AS THE VERSION PRESENTED IN THE LAST DRAFT, AND IN THE WQCC REGULATIONS AT PAGE 42 (20 NMAC 6.2), DID NOT APPEAR TO FLOW PROPERLY OR HAD SOMETHING MISSING OR MISPLACED. IN ADDITION, THE COMMITTEE AGREED THAT THIS WAS THE APPROPRIATE LOCATION TO INCLUDE THE POINT-OF-USE TREATMENT LANGUAGE, BUT DID NOT PROPOSE SPECIFIC LANGUAGE. THE ABOVE RE-DRAFTING OF THIS SECTION REPRESENTS A SYNTHESIS OF THE SUGGESTIONS OF VARIOUS COMMITTEE MEMBERS AT THE 9/11/96 MEETING, BUT HAS NOT BEEN REVIEWED AND AGREED UPON BY THE COMMITTEE MEMBERS AS OF 9/18/96]

(c) The petition shall be in writing, filed with the Director. The petition shall:

(i) State the petitioner's name and address;

- (ii) State the date of the petition;
- (iii) Describe the facility or activity for which the alternate abatement standard(s) is sought;
- (iv) State the address or description of the property upon which the facility is located;
- (v) Describe the water body or watercourse affected by the release;

**[SEE EARLIER NOTE; ORIGINALLY READ "DISCHARGE", CHANGE APPROVED BY COMMITTEE 9/11/96]**

(vi) Identify the abatement standard from which petitioner wishes to vary; **[APPROVED BY COMMITTEE, 9/11/96]**

(vii) State why the petitioner believes that compliance with the regulation will impose an unreasonable burden upon his activity;

(viii) Identify the water contaminant(s) for which alternative standard(s) is/are proposed;

(ix) State the alternative standard(s) proposed;

(x) Identify the three-dimensional body of water pollution for which approval is sought;

(xi) Include a demonstration of the feasibility of point-of-use treatment, if applicable; **[APPROVED BY COMMITTEE, 9/11/96]**

(xii) State the extent to which the abatement standard(s) set forth in Paragraph B is/are now, and will in the future be, violated.

(xiii) The petition may include a transport, fate and risk assessment in accordance with accepted methods, and other information as the petitioner deems necessary to support the petition. [ - -96] **[APPROVED BY COMMITTEE, 9/11/96]**

(d) The Director shall review the petition and, within sixty (60) days after receiving the petition, shall submit a written recommendation to the Division to approve, approve subject to conditions, or disapprove any or all of the proposed alternative abatement standard(s). The recommendation shall include the reasons for the Director's recommendation. The Director shall submit a copy of the recommendation to the petitioner by certified mail.

[ - -96]

(e) If the Director recommends approval, or approval subject to conditions, of any or all of the proposed alternative abatement standard(s), the Division shall hold a public hearing on those standards. If the Director recommends disapproval of any or all of the proposed alternative abatement standard(s), the petitioner may submit a request to the Division, within fifteen (15) days after receipt of the recommendation, for a public hearing on those standards. If a timely request for hearing is not submitted, the recommended disapproval shall become a final decision of the Division and shall not be subject to review. [ - -96]

(f) If the Division grants a public hearing, the hearing shall be conducted in accordance with Division hearing procedures. [ - -96]

(g) Based on the record of the public hearing, the Division shall approve, approve subject to condition, or disapprove any or all of the proposed alternative abatement standard(s). The Division shall notify the petitioner by certified mail of its decision and the reasons therefore. [ - -96]

**(7) Modification of Abatement Standards.** The abatement standards that are in effect at the time that the Stage 2 abatement plan is approved shall be the abatement standards for the duration of the abatement plan, unless the Director determines that additional action is necessary to protect public health and the environment. In any appeal of the Director's determination that additional actions are necessary, the Director shall have the burden of proof.

**[THIS SUBSTITUTE LANGUAGE WAS PROPOSED BY OCD, 9/11/96, DISCUSSED AND APPROVED WITH MINOR CHANGES, AS SHOWN ABOVE, BY THE COMMITTEE]**

### C. ABATEMENT PLAN REQUIRED.

(1) Unless otherwise provided by this Rule, all responsible persons who are abating, or who are required to abate, water pollution in excess of the standards and requirements set forth in Paragraph B. shall do so pursuant to an abatement plan approved by the Director. When an abatement plan has been approved, all actions leading to and including abatement shall be consistent with the terms and conditions of the abatement plan. [ - -96]

(2) In the event of a transfer of the ownership, control or possession of a facility for which an abatement plan is required or approved, where the transferor is a responsible person, the transferee also shall be considered a responsible person for the duration of the abatement plan, and may jointly share the responsibility to conduct the actions required by this Rule with other responsible persons. The transferror shall notify the transferee in writing, at least thirty (30) days prior to the transfer, that an abatement plan has been required or approved for the facility, and shall deliver or send by certified mail to the Director a copy of such notification together with a certificate or other proof that such notification has in fact been received by the transferee. The transferror and transferee may agree to a designated responsible person who shall assume the responsibility to conduct the actions required by this Rule. The responsible persons shall notify the Director in writing if a designated responsible person is agreed

upon. If the Director determines that the designated responsible person has failed to conduct the actions required by this Rule, the Director shall notify all responsible persons of this failure in writing and allow them thirty (30) days, or longer for good cause shown, to conduct the required actions before setting a show cause hearing requiring those responsible persons to appear and show cause why they should not be ordered to comply, a penalty should not be assessed, a civil action should not be commenced in district court or any other appropriate action should not be taken by the Division. [ - -96]

(3) If the source of the water pollution to be abated is a facility that operated under a discharge plan, the Director may require the responsible person(s) to submit a financial assurance plan which covers the estimated costs to conduct the actions required by the abatement plan. Such a financial assurance plan shall be consistent with any financial assurance requirements adopted by the Division. [ - -96]

#### D. EXEMPTIONS FROM ABATEMENT PLAN REQUIREMENT.

(1) Except as provided in Subparagraph (2) below, Paragraphs C and E do not apply to a person who is abating water pollution: [ - -96]

(a) from an underground storage tank, under the authority of the Underground Storage Tank Regulations (20 NMAC Part 5) adopted by the New Mexico Environmental Improvement Board, or in accordance with the New Mexico Ground Water Protection Act; [ - -96]

(b) under the authority of the U.S. Environmental Protection Agency pursuant to either the federal Comprehensive Environmental Response, Compensation and Liability Act, and amendments, or the Resource Conservation and Recovery Act; [ - -96]

(c) pursuant to the Hazardous Waste Management Regulations (20 NMAC 4.1) adopted by the New Mexico Environmental Improvement Board; [ - -96]

(d) under the authority of the U.S. Nuclear Regulatory Commission or the U.S. Department of Energy pursuant to the Atomic Energy Act; [ - -96]

(e) under the authority of a ground-water discharge plan approved by the Director, provided that such abatement is consistent with the requirements and provision of Paragraphs A., B., E(3), E(5), F., and K., of this Rule. [ - -96]

(f) under the authority of a Letter of Understanding, Settlement Agreement or Administrative Order on Consent or other agreement signed by the Director prior to (insert effective date of Rule), 1996, provided that abatement is being performed in full compliance with the terms of the Letter of Understanding, Settlement Agreement or Administrative Order on Consent; and [ - -96] **[APPROVED BY COMMITTEE, 9/11/96]**

(g) on an emergency basis, or while abatement plan approval is pending, or in a manner that will result in compliance with the standards and requirements set forth in Paragraph B within one year after notice is required to be given pursuant to 19 NMAC 15.C.116.B provided that the Division does not object to the abatement action. [ - -96] **[IN AN EARLIER DRAFT, IT WAS PROPOSED THAT THIS SUB-SECTION BE DELETED; THE COMMITTEE APPROVED LETTING IT STAND AS WRITTEN, 9/11/96]**

(2) If the Director determines that abatement of water pollution subject to Subparagraph (1) will not meet the standards of Paragraphs B(2) and B(3), or that additional action is necessary to protect health, welfare, environment or property, the Director may notify a responsible person, by certified mail, to submit an abatement plan pursuant to Paragraphs C and E(1). The notification shall state the reasons for the Director's determination. In any appeal of the Director's determination under this Paragraph, the Director shall have the burden of proof.  
[ - -96]

#### E. ABATEMENT PLAN PROPOSAL.

(1) Except as provided for in Paragraph D of this Rule, a responsible person shall, within sixty (60) days of receipt of written notice from the Director that an abatement plan is required, submit an abatement plan proposal to the Director for approval. **Stage 1 and Stage 2 abatement plan proposals may be submitted together.** For good cause shown, the Director may allow for a total of one hundred and twenty (120) days to prepare and submit the abatement plan proposal. [ - -96] **[THE COMMITTEE APPROVED THIS ADDITION, 9/11/96]**

#### (2) Voluntary Abatement.

(a) any person wishing to abate water pollution in excess of the standards and requirements set forth in Paragraph B may submit a Stage 1 abatement plan proposal to the Director for approval. Following approval by the Director of a final site investigation report prepared pursuant to Stage 1 of an abatement plan, any person may submit a Stage 2 abatement plan proposal to the Director for approval. [ - -96]

(b) Following approval of a Stage 1 or Stage 2 abatement plan proposal under E(2)(a) above, the person submitting the approved plan shall be a responsible person under this Rule for the purpose of performing the approved Stage 1 or Stage 2 abatement plan. Nothing in this Rule shall preclude the Director from applying 19 NMAC 15.C.116.D to a responsible person if applicable. [ - -96]

#### (3) Stage 1 Abatement Plan.

The purpose of Stage 1 of the abatement plan shall be to design and conduct a site investigation that will adequately define site conditions, and provide the data necessary to select and design an effective abatement option. Stage 1 of the abatement plan may include, but not necessarily be limited to, the following information depending

on the media affected, and as needed to select and implement an expeditious abatement option: [ - -96]

(a) Descriptions of the site, including a site map, and of site history including the nature of the ~~release~~ that caused the water pollution, and a summary of previous investigations; [ - -96] **[SEE EARLIER NOTE; ORIGINALLY READ "DISCHARGE", CHANGE APPROVED BY COMMITTEE 9/11/96]**

(b) Site investigation workplan to define: [ - -96]

(i) site geology and hydrogeology, the vertical and horizontal extent and magnitude of vadose-zone and ground-water contamination, subsurface hydraulic parameters including hydraulic conductivity, transmissivity, storativity, and rate and direction of contaminant migration, inventory of water wells inside and within one (1) mile from the perimeter of the three-dimensional body where the standards set forth in Subparagraph B(2) are exceeded, and location and number of such wells actually or potentially affected by the pollution; and [ - -96]

(ii) surface-water hydrology, seasonal stream flow characteristics, ground-water/surface-water relationships, the vertical and horizontal extent and magnitude of contamination and impacts to surface water and stream sediments. The magnitude of contamination and impacts on surface water may be, in part, defined by conducting a biological assessment of fish, benthic macroinvertebrates and other wildlife populations. Seasonal variations should be accounted for when conducting these assessments. [ - -96]

(c) Monitoring program, including sampling stations and frequencies, for the duration of the abatement plan that may be modified, after approval by the Director, as additional sampling stations are created; [ - -96]

(d) Quality assurance plan, consistent with the sampling and analytical techniques listed in 20 NMAC 6.3107.B and with Section 1103 of the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20 NMAC 6.1), for all work to be conducted pursuant to the abatement plan; [ - -96]

**[REQUIREMENT TO SUBMIT A SITE HEALTH AND SAFETY PLAN DELETED; APPROVED BY COMMITTEE, 9/11/96]**

(e) A schedule for all Stage 1 abatement plan activities, including the submission of summary quarterly progress reports, and the submission, for approval by the Director, of a detailed final site investigation report; and [ - -96]

(f) Any additional information that may be required to design and perform an adequate site investigation. [ - -96]

(4) Stage 2 Abatement Plan.

(a) Any responsible person shall submit a Stage 2 abatement plan proposal to the Director for approval with submittal of a Stage 1 abatement plan proposal, or within sixty (60) days, or up to one hundred and twenty (120) days for good cause shown, after approval by the Director of the final site investigation report prepared pursuant to Stage 1 of the abatement plan. The purpose of Stage 2 of the abatement plan shall be to select and design, if necessary, an abatement option that, when implemented, will result in attainment of the abatement standards and requirements set forth in Paragraph B, including post-closure maintenance activities.  
**[APPROVED BY COMMITTEE, 9/11/96]**

(b) Stage 2 of the abatement plan should include, at a minimum, the following information: [ - -96]

(i) Brief description of the current situation at the site; [ - 96]

(ii) Development and assessment of abatement options; [ - -96]

(iii) Description, justification and design, if necessary, of preferred abatement option; [ - -96]

(iv) Modification, if necessary, of the monitoring program approved pursuant to Stage 1 of the abatement plan, including the designation of pre- and post-abatement-completion sampling stations and sampling frequencies to be used to demonstrate compliance with the standards and requirements set forth in Paragraph B; [ - -96]

(v) Site maintenance activities, if needed, proposed to be performed after termination of abatement activities; [ - -96]

(vi) A schedule for the duration of abatement activities, including the submission of summary quarterly progress reports; [ - -96]

(vii) A public notification proposal designed to satisfy the requirements of Subparagraphs G(2) and (3); [ - -96]

(viii) Any additional information that may be reasonably required to select, describe, justify and design an effective abatement option. [ - -96]

F. OTHER REQUIREMENTS.

(1) Any responsible person shall allow any authorized representative of the Director, upon presentation of proper credentials and with reasonable prior notice, to: [ - -96] **[APPROVED BY COMMITTEE, 9/11/96]**

(a) enter the facility at reasonable times; [ - -96]

[ - -96] (b) inspect and copy records required by an abatement plan;

(c) inspect any treatment works, monitoring and analytical equipment; [ - -96]

(d) sample any wastes, ground water, surface water, stream sediment, plants, animals, or vadose-zone material including vadose-zone vapor; [ - -96]

(e) use monitoring systems and wells under such responsible person's control in order to collect samples of any media listed in (d) above; and [ - -96]

(f) gain access to off-site property not owned or controlled by such responsible person, but accessible to such responsible person through a third-party access agreement, provided that it is allowed by the agreement. [ - -96]

(2) Any responsible person shall provide the Director, or a representative of the Director, with at least four (4) working days advance notice of any sampling to be performed pursuant to an abatement plan, or any well plugging, abandonment or destruction at any facility where an abatement plan has been required. [ - -96]

(3) any responsible person wishing to plug, abandon or destroy a monitoring or water supply well within the perimeter of the 3-dimensional body where the standards set forth in Paragraph B(2) are exceeded, at any facility where an abatement plan has been required, shall propose such action by certified mail to the Director for approval, unless such approval is required from the State Engineer. The proposed action shall be designed to prevent water pollution that could result from water contaminants migrating through the well or borehole. The proposed action shall not take place without written approval from the Director, unless written approval or disapproval is not received by the responsible person within thirty (30) days of the date of receipt of the proposal. [ - -96]

#### G. PUBLIC NOTICE AND PARTICIPATION.

(1) Prior to public notice, the applicant shall give written notice, as approved by the Division, of Stage 1 and Stage 2 Abatement Plans to the following persons: [ - -96]

(a) surface owners of record within one (1) mile of the perimeter of the geographic area where the standards and requirements set forth in Paragraph B are exceeded; [ - -96]

(b) the county commission where the geographic area where the standards and requirements set forth in Paragraph B are exceeded is located; [ - -96]

(c) the appropriate city official(s) if the geographic area where the standards and requirements set forth in Paragraph B are exceeded is located or is partially located within city limits or within one (1) mile of the city limits: [ - -96]

(d) those persons, as identified by the Director, who have requested notification, who shall be notified by mail; [ - -96]

(e) the New Mexico Trustee for Natural Resources, and any other local, state or federal governmental agency affected, as identified by the Director, which shall be notified by certified mail; [ - -96]

(f) the appropriate Governor or President of any Indian Tribe, Pueblo or Nation if the geographic area where the standards and requirements set forth in Paragraph B are exceeded is located or is partially located within tribal boundaries or within one (1) mile of the tribal boundaries, who shall be notified by certified mail; [ - -96]

(g) The distance requirements for notice may be extended by the Director if the Director determines the proposed Abatement Plan has the potential to adversely impact public health or the environment at a distance greater than one (1) mile. The Director may require additional notice as needed. A copy and proof of such notice will be furnished to the Division. [ - -96]

(2) After the Division determines that the Stage 1 and Stage 2 abatement plans are administratively complete, the applicant will issue public notice in a form approved by the Division in a newspaper of general circulation in the county in which the facility is to be located. The public notice shall include, as approved in advance by the Director: [ - -96]

(a) name and address of the responsible person; [ - -96]

(b) location of the proposed abatement; [ - -96]

(c) brief description of the nature of the water pollution and of the proposed abatement action; [ - -96]

(d) brief description of the procedures followed by the Director in making a final determination; [ - -96]

(e) statement on the comment period; [ - -96]

(f) statement that a copy of the abatement plan can be viewed by the public at the Division's main office or at the Division's District office for the area in which the release occurred; [ - -96] **[SEE EARLIER NOTE; ORIGINALLY READ "DISCHARGE", CHANGE APPROVED BY COMMITTEE 9/11/96]**

(g) statement that written comments on the abatement plan, and requests for a public hearing that include the reasons why a hearing should be held,

will be accepted for consideration if sent to the Director within thirty (30) days after the determination of administrative completeness; and [ - -96] **[APPROVED BY COMMITTEE, 9/11/96]**

(h) address and phone number at which interested persons may obtain further information. [ - -96]

(3) Any person seeking to comment or request a public hearing on such Abatement Plans must file comments or hearing requests with the Division within 30 days of the date of public notice. Requests for a public hearing must be in writing to the Director and shall set forth the reasons why a hearing should be held. A public hearing shall be held if the Director determines there is significant public interest. [ - -96]

(4) The Division will distribute notice of the filing of an Abatement Plan with the next Division and Commission hearing docket following receipt of the plan. [ - -96]

#### H. DIRECTOR APPROVAL OR NOTICE OF DEFICIENCY OF SUBMITTALS.

(1) The Director shall, within sixty (60) days of receiving a Stage 1 abatement plan proposal, a site investigation report, a technical infeasibility demonstration, or an abatement completion report, approve the document, or notify the responsible person of the document's deficiency, based upon the information available. [ - -96]

(2) The Director shall, within thirty (30) days of receiving a fact sheet, approve or notify the responsible person of the document's deficiency, based upon the information available. [ - -96]

(3) If no public hearing is held pursuant to Subparagraph G(3), then the Director shall, within ninety (90) days of receiving a Stage 2 abatement plan proposal, approve the plan, or notify the responsible person of the plan's deficiency, based upon the information available. [ - -96] **[APPROVED BY COMMITTEE, 9/11/96]**

(4) If a public hearing is held pursuant to Subparagraph G(3), then the Director shall, within sixty (60) days of receipt of all required information, approve Stage 2 of the abatement plan proposal, or notify the responsible person of the plan's deficiency, based upon the information contained in the plan and information submitted at the hearing. [ - -96] **[APPROVED BY COMMITTEE, 9/11/96]**

(5) If the Director notifies a responsible person of any deficiencies in a site investigation report, or in a Stage 1 or Stage 2 abatement plan proposal, the responsible person shall submit a modified document to cure the deficiencies specified by the Director within thirty (30) days of receipt of the notice of deficiency. The responsible person shall be in violation of this Rule if he fails to submit a modified

document within the required time, or if the modified document does not make a good faith effort to cure the deficiencies specified by the Director. [ - -96]

(6) Provided that the other requirements of this Rule are met and provided further that Stage 2 of the abatement plan, if implemented, will result in the standards and requirements set forth in Paragraph B being met within a schedule that is reasonable given the particular circumstances of the site, the Director shall approve the plan. [ - -96]

#### I. INVESTIGATION AND ABATEMENT.

Any responsible person who receives approval for Stage 1 and/or Stage 2 of an abatement plan shall conduct all investigation, abatement, monitoring and reporting activity in full compliance with this Rule and according to the terms and schedules contained in the approved abatement plans. [ - -96]

#### J. ABATEMENT PLAN MODIFICATION.

(1) Any approved abatement plan may be modified, at the written request of the responsible person, in accordance with this Rule, and with written approval of the Director.

[ - -96]

(2) If data submitted pursuant to any monitoring requirements specified in the approved abatement plan or other information available to the Director indicates that the abatement action is ineffective, or is creating unreasonable injury to or interference with health, welfare, environment or property, the Director may require a responsible person to modify an abatement plan within the shortest reasonable time so as to effectively abate water pollution which exceeds the standards and requirements set forth in Paragraph B, and to abate and prevent unreasonable injury to or interference with health, welfare, environment or property. [ - -96]

#### K. COMPLETION AND TERMINATION.

(1) Abatement shall be considered complete when the standards and requirements set forth in Paragraph B are met. At that time, the responsible person shall submit an abatement completion report, documenting compliance with the standards and requirements set forth in Paragraph B, to the Director for approval. The abatement completion report also shall propose any changes to long-term monitoring and site maintenance activities, if needed, to be performed after termination of the abatement plan. [ - -96]

(2) Provided that the other requirements of this Rule are met and provided further that the standards and requirements set forth in Paragraph B have been met, the Director shall approve the abatement completion report. When the Director approves the abatement completion report, he shall also notify the responsible person in writing that the abatement plan is terminated. [ - -96]

L. DISPUTE RESOLUTION.

In the event of any technical dispute regarding the requirements of B, D, E, J, or K or Section 116.E, including notices of deficiency, the responsible person may notify the Director by certified mail that a dispute has arisen, and desires to invoke the dispute resolution provisions of this Paragraph, provided that such notification must be made within thirty (30) days after receipt by the responsible person of the decision of the Director that causes the dispute. Upon such notification, all deadlines affected by the technical dispute shall be extended for a thirty (30) day negotiation period, or for a maximum of sixty (60) days if approved by the Director for good cause shown. During this negotiation period, the Director or his/her designee and the responsible person shall meet at least once. Such meeting(s) may be facilitated by a mutually agreed upon third party, but the third party shall assume no power or authority granted or delegated to the Director by the Oil and Gas Act or by the Division or Commission. If the dispute remains unresolved after the negotiation period, the decision of Director shall be final. [ - -96]

M. APPEALS FROM DIRECTOR'S DECISIONS.

(1) If the Director determines that an abatement plan is required pursuant to 19 NMAC 15.C.116D or Paragraph D(2), approves or provides notice of deficiency of a proposed abatement plan, technical infeasibility demonstration or abatement completion report, or modifies or terminates an approved abatement plan, he shall provide written notice of such action by certified mail to the responsible person and any person who participated in the action. [ - -96]

(2) Any person who participated in the action before the Director and who is adversely affected by the action listed in Subparagraph (1) above may file a petition requesting a hearing before a Division Examiner [ - -96] [APPROVED BY COMMITTEE, 9/11/96]

(3) The petition shall be made in writing to the Division and shall be filed with the Division within thirty (30) days after receiving notice of the Director's action. The petition shall specify the portions of the action to which the petitioner objects, certify that a copy of the petition has been mailed or hand-delivered to the Director, and to the applicant or permittee if the petitioner is not the applicant or permittee, and attach a copy of the action for which review is sought. Unless a timely petition for hearing is made, the Director's action is final. [ - -96]

(4) The hearing before the Division shall be conducted in the same manner as other Division hearings. [ - -96]

(5) The cost of the court reporter for the hearing shall be paid by the petitioner. [ - -96]

(6) Any party adversely affected by any order by the Division pursuant to any hearing held by an Examiner, shall have a right to have such matter heard de novo before the Commission. [APPROVED BY COMMITTEE, 9/11/96]

(7) The appeal provisions do not relieve the owner, operator or responsible person of their obligations to comply with any federal or state laws or regulations. [ - -96]

#### N. NOTIFICATION

(1) With respect to any release from any facility of oil or other water contaminant, in such quantity as may with reasonable probability be detrimental to water or cause an exceedance of the standards in Sections B(1), B(2) or B(3), the following notification is required:

(a) As soon as possible after learning of such a release, but in no event more than twenty-four (24) hours thereafter, any person in charge of the facility shall orally notify the Division's Environmental Bureau Chief of the occurrence. To the best of that person's knowledge, the following items of information shall be provided:

(i) The name, address, and telephone number of the person or persons in charge of the facility, as well as the owner and/or operator of the facility;

(ii) Land status;

(iii) The date, time, location, and duration of the release;

(iv) The source and cause of the release;

(v) A description of the release, including its chemical composition;

(vi) The estimated volume of the release;

(vii) Any actions taken to mitigate immediate damage from the release.

(2) Within fifteen (15) days after the release is discovered, the facility owner and/or operator shall send written notification to the same Division official, verifying the prior oral notification as to each of the foregoing items and providing any appropriate additions or corrections to the information contained in the prior oral notification. [NEW SECTION PROPOSED BY OCD FOR ADDITION TO THE RULE; APPROVED BY THE COMMITTEE, WITH THE ADDITION OF "LAND STATUS" AS AN INFORMATION ITEM, ON 9/11/96]