

Hamlet, Robert, EMNRD

From: Hamlet, Robert, EMNRD
Sent: Tuesday, April 14, 2020 4:05 PM
To: 'Liz Klein'
Cc: Natalie Gordon; Bratcher, Mike, EMNRD; Venegas, Victoria, EMNRD; Eads, Cristina, EMNRD
Subject: RE: Closure-Deferral Denied - 3 Bear - Dark Canyon (Carlsbad 960 SWD) (Incident #NAB1929160071) (2RP-5675)

Liz,

The OCD can't go back and approve the initial report that was denied on 3/23/2020. There are too many inaccuracies and changes that need to be made. Also, the OCD needs an accurate representation of what remediation has occurred and if the operator has done the necessary steps to clean the spill up. We also need to follow protocol and make sure all forms are submitted correctly and signed-off on by an OCD Environmental Specialist.

- The Report that was denied on 3/23/2020 asked for a deferral on 11 soil sample points. If you are now requesting closure, the report must remove the parts about deferring soil sample points. Explain that those 11 soil sample points were excavated and contaminated soil was removed.
- Either verbally say that these 11 sample points were delineated deeper and contaminated soil was removed or create a column in your table that shows what was excavated and what is In Situ.
- Please explain the issue with the site map on the first report and that it was an aerial phot from before the site was fully constructed and that the 4 sample points in question were off the pad. A more recent photo shows that they are on the pad.
- Essentially, the OCD needs an accurate report of what occurred, what remediation has been accomplished, and what you are asking for (closure request).
- Please make the necessary changes to the report and email me the P.O. Number after it has been uploaded. I will review it as quickly as possible.

If it were a minor change, I could go back and approve closure, but this report requires a total rewrite.

Please let me know if you have any further questions.

Thank you,

Robert J Hamlet
State of New Mexico
Energy, Minerals, and Natural Resources
Oil Conservation Division
811 S. First St., Artesia NM 88210
(575) 748-1283
Robert.Hamlet@state.nm.us

OCD approval does not relieve the operator of liability should their operations fail to adequately investigate and remediate contamination that may pose a threat to groundwater, surface water, human health or the environment. In addition, OCD approval does not relieve the operator of responsibility for compliance with any other federal, state, or local laws and/or regulations.

From: Liz Klein <lklein@3bearllc.com>

Sent: Monday, April 13, 2020 3:38 PM

To: Hamlet, Robert, EMNRD <Robert.Hamlet@state.nm.us>

Cc: Natalie Gordon <ngordon@vertex.ca>

Subject: [EXT] RE: Closure-Deferral Denied - 3 Bear - Dark Canyon (Carlsbad 960 SWD) (Incident #NAB1929160071) (2RP-5675)

In regards to your closure denial for Dark Canyon SWD #001 from March 23, 2020, we would like to request reconsideration of the closure denial. Based on the following information:

- The release that occurred in October 2019 occurred entirely on the active 3 Bear site, with the majority of the release in containment and only a portion of it released outside of containment onto the compacted site pad and access way, as shown on the revised map submitted 4/10/2020.
- Following the fire and release, all of the contaminated soil was removed entirely and the area remediated to below the stated closure criteria levels outlined in Table 1 of [19.15.29.12](#) NMAC, as demonstrated by the confirmatory sample data shown in Table 4, Attachment 5 of the closure report submitted and the associated laboratory reports. No areas of contamination remain.
- As all required spill closure criteria for an active site has been met, we respectfully request closure of this incident.

Regarding deferral and closure, our apologies for the confusion here. The wording Vertex used in the report was based on the terminology defined in NM-EMNRD guidance "Procedures for Implementation of the Spill Rule (19.15.29 NMAC)" published on June 21, 2019. The first bullet in that guidance defines the three terms: remediation, reclamation and restoration, whereby remediation means the cleanup and removal of contaminated soils and reclamation/restoration means replacing the removed material and getting vegetation to grow again. However, deferral and reclamation/restoration does not apply since all the soil was remediated on the active site (there was no contaminated soil left at the facility). The report submitted requests full closure for the spill/incident based site remediation that was completed. We will avoid this wording in the future to avoid any confusion.

I have also highlighted in yellow the parts of the regulation that apply to this spill. And the text strike out are things that did not occur.

Hope this helps. I would be happy to schedule a call with you and Natalie to discuss.

Thank you.

Liz Klein
3Bear Energy
303-882-4404

Highlighted in yellow are the parts of the regulation that apply to the Dark Canyon Incident #NAB1929160071. Text strike out are things that did not occur.

[19.15.29.12](#)

REMEDIATION AND CLOSURE:

- A. The responsible party must remediate all releases regardless of volume.
- B. Remediation requirements.

(1) Unless remediation is completed, and a final closure report submitted, within 90 days of discovery of the release, the responsible party must complete division-approved remediation for releases either pursuant to a remediation plan approved pursuant to 19.15.29.12 NMAC or pursuant to an abatement plan in accordance with 19.15.30 NMAC. If the director determines that the release has caused water pollution in excess of the standards and requirements of 19.15.30 NMAC, the director may notify the responsible party that an abatement plan may be required pursuant to 19.15.30 NMAC.

(2) Any remediation under 19.15.29 NMAC should be completed as soon as practicable. Any remediation that exceeds 90 days must follow the division approved timeline in the remediation plan. The responsible party may request an extension of time to remediate upon a showing of good cause as determined by the division.

C. **Remediation plan requirements.** The responsible party must take the following action for any major or minor release containing liquids.

(1) The responsible party must submit a detailed description of proposed remediation measures in accordance with the findings of the site assessment/characterization plan that includes:

- (a) delineation results, including laboratory analysis;
- (b) a scaled sitemap showing release area with horizontal and vertical delineation points;
- (c) estimated volume of impacted material to be remediated;
- (d) proposed remediation technique; and
- (e) proposed timeline for remediation activities.

(2) The responsible party shall restore the impacted surface area of a release occurring on a developed well pad, central tank battery, drilling site, compressor site or other exploration, development, production or storage sites to meet the standards of Table I of <https://protect-us.mimecast.com/s/UQg5CR60A4Tn8zjBu9GNVH?domain=19.15.29.12> NMAC or other applicable remediation standards and restore and reclaim the area pursuant to <https://protect-us.mimecast.com/s/IMatCVOkG8H01RN9Fzgqgg?domain=19.15.29.13> NMAC. If contamination is located in areas immediately under or around production equipment such as production tanks, wellheads and pipelines where remediation could cause a major facility deconstruction, the remediation, restoration and reclamation may be deferred with division written approval until the equipment is removed during other operations, or when the well or facility is plugged or abandoned, whichever comes first. The deferral may be granted so long as the contamination is fully delineated and does not cause an imminent risk to human health, the environment, or ground water. Final remediation and reclamation shall take place in accordance with <https://protect-us.mimecast.com/s/UQg5CR60A4Tn8zjBu9GNVH?domain=19.15.29.12> and <https://protect-us.mimecast.com/s/IMatCVOkG8H01RN9Fzgqgg?domain=19.15.29.13> NMAC once the site is no longer being used for oil and gas operations.

(3) The responsible party shall remediate the impacted surface area of a release not occurring on a lined, bermed or otherwise contained exploration, development, production or storage site to meet the standards of Table I of 19.15.29.12 NMAC or other applicable remediation standards and restore and reclaim the area pursuant to 19.15.29.13 NMAC.

(4) If a release occurs within the following areas, the responsible party must treat the release as if it occurred less than 50 feet to ground water in Table I of 19.15.29.12 NMAC:

- (a) within
 - (i) 300 feet of any continuously flowing watercourse or any other significant watercourse, or
 - (ii) 200 feet of any lakebed, sinkhole or playa lake (measured from the ordinary high water mark);
- (b) within 300 feet from an occupied permanent residence, school, hospital, institution or church;
- (c) within
 - (i) 500 feet of a spring or a private, domestic fresh water well used by less than five households for domestic or stock watering purposes, or
 - (ii) 1000 feet of any fresh water well or spring;
- (d) within incorporated municipal boundaries or within a defined municipal fresh water well field covered under a municipal ordinance adopted pursuant to Section 3-27-3 NMSA 1978 as amended, unless the municipality specifically approves;
- (e) within 300 feet of a wetland;
- (f) within the area overlying a subsurface mine;
- (g) within an unstable area; or
- (h) within a 100-year floodplain.

(5) The division has 60 days from receipt of the proposed remediation plan to review and approve, approve with conditions or deny the remediation plan. If 60 days have lapsed without response from the division, then the plan is deemed denied. If the plan is approved with conditions or affirmatively denied, the division shall provide a written summary of deficiencies on which the decision is based. If the responsible party disagrees with any conditions of approval or denial of the plan, it shall consult with the division or file an application for hearing pursuant to 19.15.4 NMAC within 30 days of the denial or issuance of the conditions.

D. **Closure requirements.** The responsible party must take the following action for any major or minor release containing liquids.

(1) The responsible party must test the remediated areas for contamination with representative five-point composite samples from the walls and base, and individual grab samples from any wet or discolored areas. The samples must be analyzed for the constituents listed in Table I of [19.15.29.12](#) NMAC or constituents from other applicable remediation standards.

(a) The responsible party must verbally notify the appropriate division district office two business days prior to conducting final sampling. If the division district office does not respond to the notice within the two business days, the responsible party may proceed with final sampling. The responsible party may request a variance from this requirement upon a showing of good cause as determined by the division.

~~(b) The responsible party may submit a composite and grab sample plan for the division's review and approval separately or with the remediation plan.~~

(c) Alternately, without division approval, the responsible party may elect to perform a composite and grab sample plan of the remediated area where each composite sample is not representative of more than 200 square feet.

(2) If all composite and grab sample concentrations are less than or equal to the parameters listed in Table I of [19.15.29.12](#) NMAC or any conditions of approval, then the responsible party may proceed to backfill any excavated areas.

E. Closure reporting. The responsible party must take the following action for any major or minor release containing liquids.

(1) The responsible party must submit to the division a closure report on form C-141, including required attachments, to document all closure activities including sampling results and the details on any backfilling, capping or covering, where applicable. The responsible party must certify that all information in the closure report and attachments is correct and that the responsible party has complied with all applicable closure requirements and conditions specified in division rules or directives. The responsible party must submit closure report along with form C-141 to the division within 90 days of the remediation plan approval. The responsible party may apply for additional time to submit the final closure report upon a showing of good cause as determined by the division. The final report must include:

- (a) a scaled site and sampling diagram;
- (b) photographs of the remediated site prior to backfill;
- (c) laboratory analyses of final sampling; and
- (d) a description of all remedial activities.

(2) The division district office has 60 days to review and approve or deny the closure report. If 60 days have lapsed without response from the division, then the report is deemed denied. If the report is affirmatively denied, the division shall provide a written summary of deficiencies on which the decision is based. If the responsible party disagrees with denial of the closure report, it may consult with the division or file an application for hearing pursuant to 19.15.4 NMAC within 30 days of the denial.

From: Liz Klein

Sent: Friday, April 10, 2020 12:15 PM

To: Hamlet, Robert, EMNRD <Robert.Hamlet@state.nm.us>; Bratcher, Mike, EMNRD <mike.bratcher@state.nm.us>

Cc: Venegas, Victoria, EMNRD <Victoria.Venegas@state.nm.us>; Eads, Cristina, EMNRD <Cristina.Eads@state.nm.us>

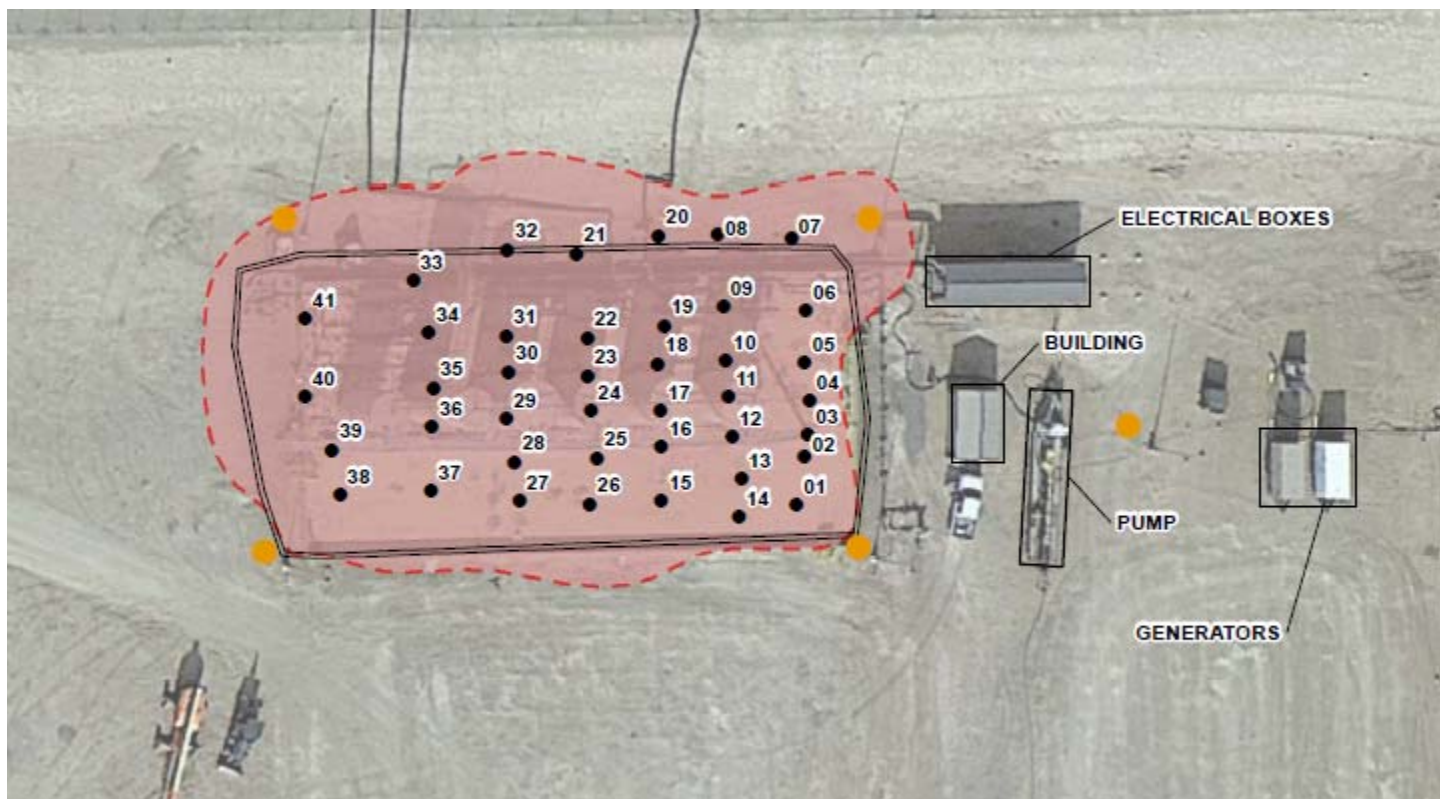
Subject: RE: Closure-Deferral Denied - 3 Bear - Dark Canyon (Carlsbad 960 SWD) (Incident #NAB1929160071) (2RP-5675)

Attached is a map with the original gps sampling points overlaid on a more recent aerial that shows the site fully constructed. The aerial photo that was the background on diagram in the C-141 submittal was an aerial photo from before the site was fully constructed; so it appeared that 4 sample points were off the pad. The four sample points in question are on the pad. I apologize for the confusion. And am requesting a full closure for the incident.

Please let me know if you have any questions and if this clears up the concerns.

Thank you.

Liz Klein
3Bear Energy
303-882-4404





From: Hamlet, Robert, EMNRD [<mailto:Robert.Hamlet@state.nm.us>]

Sent: Wednesday, March 25, 2020 7:41 AM

To: Liz Klein <lklein@3bearllc.com>

Cc: Bratcher, Mike, EMNRD <mike.bratcher@state.nm.us>; Venegas, Victoria, EMNRD <Victoria.Venegas@state.nm.us>; Eads, Cristina, EMNRD <Cristina.Eads@state.nm.us>

Subject: RE: Closure-Deferral Denied - 3 Bear - Dark Canyon (Carlsbad 960 SWD) (Incident #NAB1929160071) (2RP-5675)

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Liz,

At the conclusion of your report it says, "Based on the location of the release, underneath a tank battery and on an active well pad and access road, Vertex requests that restoration and reclamation of the release area be **deferred** until such time as the tank battery is removed, and the pad and access road are reclaimed per [19.15.29.13](#) NMAC regulations". In the future, if asking for a deferral, we only need a signed/dated C-141 Page 5. A closure page is unnecessary and won't come into play until the site has been fully remediated in the future.

We had this exact discussion in one of our environmental meetings a couple weeks ago about lease roads. They are not part of the pad and need to be treated the same way as pasture with 4 feet of clean material (600 mg/kg for Chlorides and 100 mg/kg for TPH). In the pasture area or on a lease road, 4 feet below the ground surface, soil contamination limits revert back to Table 1 "Closure Criteria for Soils Impacted by a Release" included in the spill rule <http://164.64.110.134/parts/title19/19.015.0029.html>

The four points look like they are off the pad or on the lease road and even your own diagram shows that they are outside the boundary of the active pad.

Please follow the OCD directives below and resubmit the plan once the 4 off-pad soil sample locations have been delineated fully and the contaminants removed.

Thank you,

Robert J Hamlet
State of New Mexico
Energy, Minerals, and Natural Resources
Oil Conservation Division
811 S. First St., Artesia NM 88210
(575) 748-1283
Robert.Hamlet@state.nm.us

OCD approval does not relieve the operator of liability should their operations fail to adequately investigate and remediate contamination that may pose a threat to groundwater, surface water, human health or the environment. In addition, OCD approval does not relieve the operator of responsibility for compliance with any other federal, state, or local laws and/or regulations.

From: Liz Klein <lklein@3bearllc.com>
Sent: Tuesday, March 24, 2020 3:53 PM
To: Hamlet, Robert, EMNRD <Robert.Hamlet@state.nm.us>
Cc: Bratcher, Mike, EMNRD <mike.bratcher@state.nm.us>; Venegas, Victoria, EMNRD <Victoria.Venegas@state.nm.us>; Eads, Cristina, EMNRD <Cristina.Eads@state.nm.us>
Subject: [EXT] RE: Closure-Deferral Denied - 3 Bear - Dark Canyon (Carlsbad 960 SWD) (Incident #NAB1929160071) (2RP-5675)

Hi Robert,

We received the below closure denial on March 23, 2020, and would like to provide some clarification for you and request reconsideration of the closure denial. In your explanation, this was referred to as a closure-deferral request; however, we did not ask for deferral but rather straight closure.

The release that occurred in October 2019 occurred entirely on the active 3 Bear site, with the majority of the release in containment and only a portion of it released outside of containment on the compacted site pad and access way. The aerial photo in the report map was not as current as the photo below. The photo below shows that this access-way is not an off-site or lease road, but rather an essential part of the site and associated production/SWD complex. No liquids went off-site or into undisturbed pasture.

Following the fire and release, the associated tanks and equipment within the containment were removed entirely and the area remediated to closure levels prior to the facility being rebuilt. The release was remediated to below the stated closure criteria levels outlined in Table 1 of [19.15.29.12](#) NMAC, as demonstrated by the confirmatory sample data shown in Table 4, Attachment 5 of the closure report submitted and the associated laboratory reports. Because all of the release was on the active pad, it is my understanding that we would not be required to implement restoration and reclamation activities at this time.

Please let me know if this helps clarify the extent of the spill or if you need additional information.

Thank you for your understanding in this matter.

Liz Klein

3Bear Energy, LLC
303-882-4404 (C)
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1512 Larimer Street, Suite 540
Denver, CO 80202



From: Hamlet, Robert, EMNRD [<mailto:Robert.Hamlet@state.nm.us>]
Sent: Monday, March 23, 2020 4:26 PM
To: Liz Klein <lklein@3bearllc.com>
Cc: Bratcher, Mike, EMNRD <mike.bratcher@state.nm.us>; Venegas, Victoria, EMNRD <Victoria.Venegas@state.nm.us>; Eads, Cristina, EMNRD <Cristina.Eads@state.nm.us>
Subject: Closure-Deferral Denied - 3 Bear - Dark Canyon (Carlsbad 960 SWD) (Incident #NAB1929160071) (2RP-5675)

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Elizabeth,

We have received your closure-deferral report and final C-141 for **Incident #NAB1929160071 Dark Canyon (Carlsbad 960 SWD)**, thank you. This closure-deferral is denied.

- Please include a C-141 Remediation Plan Page 5 on any future Deferral Request. The OCD cannot approve closure on a release until after the deferred sample points have been cleaned up and the contaminants removed.
- Based on the location of the release, underneath a tank battery and on an active well pad, deferral of soil sample locations: BS19-02, BS19-11, BS19-12, BS19-15, BS19-18, BS19-19, BS19-24, BS19-28, BS19-29, and BS19-37 is approved.

- Soil sample locations BS19-38, BS19-39, BS19-40, and BS19-41 are either on the service road or in the pasture. Both of these locations are considered to be in the pasture/off-pad and need to be delineated to 600 mg/kg for Chlorides and 100 mg/kg for TPH. All off-pad areas must contain a minimum of 4 feet non-waste containing uncontaminated, earthen material.
- Please, complete the delineation/excavation on the 4 soil sample locations in the pasture/off-pad and upload the updated deferral request including signed/dated C-141 Page 5 to the Payment Portal upon completion.

Please let me know if you have any further questions.

Thank you,

Robert J Hamlet
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