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Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address:

Agency DFA code:

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Type of rule action:

(ALD Use) Recent filing date:

New ☐ Amendment ☐ Repeal ☐ Emergency ☐ Renumber ☐

Title number:

Title name:

Chapter number:

Chapter name:

Part number:

Part name:

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference?

Please list attachments or Internet sites if applicable.

Yes ☐ No ☒

If materials are attached, has copyright permission been received?

Yes ☐No ☐Public domain ☐**Specific statutory or other authority authorizing rulemaking:**

Notice date(s):

Hearing date(s):

Rule adoption date:

Rule effective date:

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

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

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See attached 12 page document titled Oil Conservation Commission Order No. R-21674-C Order of the Commission.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Check if authority has been delegated

Adrienne Sandoval

☐

Title:

Oil Conservation Commission Chair

Signature: (BLACK ink only OR Digital Signature)

Date signed:



7/29/2021

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

IN THE MATTER OF THE APPLICATION
OF THE NEW MEXICO OIL CONSERVATION
DIVISION AND WILDEARTH GUARDIANS
TO CONSIDER THE PROPOSED AMENDMENTS
TO RULES 19.15.29.6, 19.15.29.8 AND 19.15.29.15
NMAC CONCERNING RELEASES

CASE NO. 21834
ORDER NO. R-21674-C

ORDER OF THE COMMISSION

THIS MATTER came before the New Mexico Oil Conservation Commission ("Commission") on the application of the Oil Conservation Division of the Energy, Minerals and Natural Resources Department ("Division") and WildEarth Guardians ("WEG") to amend Rules 19.15.29.6, 19.15.29.8 and 19.15.29.15 NMAC. The Commission conducted a rulemaking hearing in this matter on June 9 and subsequently deliberated in open session on June 10, 2021. The Commission, having considered the testimony, the record, and the arguments of the parties, and being otherwise fully advised, enters the following findings, conclusions, and order.

THE COMMISSION FINDS THAT:

1. Statutory Authority. The Commission is authorized to adopt rules, after a hearing, under the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, and specifically, Section 70-2-6 (authorizing the Commission to exercise jurisdiction, authority, and control of and over all persons, matters, and things necessary or proper to enforce the statute), Sections 70-2-11 (authorizing the Commission to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), Section 70-2-12 (enumerating the powers of the Commission and Division), and Section 70-2-31 (authorizing the Division to bring administrative and judicial actions for violations of the Oil and Gas Act and Commission rules). The public hearing in this matter was conducted in accordance with the Commission's rule on rulemaking proceedings, 19.15.3 NMAC.

2. Application and Notice. The Division and WEG filed an Application on March 11, 2021, to amend Rules 19.15.29.6, 19.15.29.8 and 19.15.29.15 NMAC to prohibit major and minor releases of oil, gases, produced water, condensate, oil field waste, and other contaminants that occur during oil and gas development and production to protect public health and the environment, and to conform 19.15.29.15 NMAC with the general enforcement provisions of 19.15.5.10 NMAC, which were adopted by the Commission in 2020. The Application included a draft of the proposed rule changes and a proposed legal notice. 19.15.3.8(A) NMAC.

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3. At a public meeting on April 15, 2021, the Commission decided to hold a hearing on the proposed rule changes and scheduled the rulemaking hearing to begin on June 9, 2021. 19.15.3.8(C) NMAC. The Commission determined that the hearing would be held in a virtual and telephonic format due to the public health restrictions in place to combat the COVID-19 pandemic. The Commission decided to require that anyone wishing to present technical testimony to identify all witnesses to be presented at the hearing and submit a summary of each witness's anticipated testimony, and that all members of the public should notify the Commission Clerk if they wished to address the Commission during the hearing. Commission also provided a written comment period of fifty-six (56) days, from April 15, 2021 to June 9, 2021.

4. Pre-hearing statements were submitted by the Division; WEG; the New Mexico Environmental Law Center ("NMELC") representing the Rio Grande Chapter of the Sierra Club, the Pueblo Action Alliance, Citizens Caring for the Future, the Native American Voters Alliance Education Project ("NAVAEP"), and Amigos Bravos; the Independent Petroleum Association of New Mexico ("IPANM"); and the New Mexico Oil and Gas Association ("NMOGA"). The parties proposed to present a mix of technical and non-technical witnesses, which included anticipated written testimony provided with the pre-hearing statements, as well as oral testimony during the hearing. OCD, with concurrence of WEG, IPANM, and NMOGA, proffered the initial rule changes, with NMELC offering its proposed modifications through its pre-hearing statement. In particular, NMELC's proposed rule amendments sought to add three additional regulatory requirements beyond the proposals of OCD and WEG. Additionally, the Commission reviewed all written comments, which it received prior to the hearing, and heard oral comments made during the hearing. Comments included an objection to the proposed rule changes, support for the proposed rule changes, and suggested alternative language and other modifications to the proposed rule changes.

5. Proposed Rule Changes. The Division proposed to amend 19.15.29.6, 19.15.29.8 and 19.15.29.15 NMAC. The proposed rule changes and proposed modification:

- a. Amended 19.15.29.6 NMAC to clarify that one of the objectives of 19.15.29 NMAC is to prohibit unauthorized major and minor releases;
- b. Amended 19.15.29.8 NMAC to provide for an express prohibition on major and minor releases subject to exceptions found in 19.15.27 and 19.15.28 NMAC;
- c. Amended 19.15.29.15 NMAC to align the rule with the enforcement rule found in 19.15.5.10 NMAC, which was adopted by the Commission in 2020.

6. Motion Hearing. Subsequent to the Commission's entry of its procedural order setting forth deadlines for the parties and the filing of pre-hearing statements as required under the procedural order, OCD, NMOGA, IPANM, WEG filed motions seeking to strike, exclude, or otherwise prohibit NMELC from proffering certain evidence at the June 9, 2021 hearing.

7. On June 4, 2021, Commission Hearing Officer Felicia Orth presided over a properly noticed motion hearing to address the Parties' filings. After hearing the arguments of the

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Parties and consulting relevant law, Hearing Officer Orth issued Order No. R-21674-B that, in summary:

- a. Permitted NMELC to present testimony in support of OCD and WEG's proposed rule amendments;
- b. Found NMELC's proposed additional regulatory requirements are not properly part of the rulemaking;
- c. Invited NMELC to file its own petition to amend the rules subject to the current rulemaking;
- d. Found that NMELC's pre-hearing statement, while not fully compliant with the Commission's rules or the Commission's procedural order, provides sufficient information to the other Parties concerning Mr. Zupan, but permitted the Parties to renew objections to Mr. Zupan's testimony should he offer testimony not contemplated by NMELC's pre-hearing statement;
- e. Prohibited Kayley Shoup from providing testimony concerning a purported connection between cancer and releases due to a lack of professional expertise on the matter;
- f. Barred NMELC from proffering Mr. Gaume's Excel workbook into evidence, including testimony referring to or relying upon such workbook;
- g. Barred NMELC from introducing its proposed additional regulatory requirements into evidence.

8. At the rulemaking hearing in this matter, NMELC appeared to elicit testimony from Mr. Norman Gaume, in violation of the Hearing Officer's order, to which other Parties objected, and such testimony, while given at the rulemaking hearing, is not contemplated by this Order.

9. Public Hearing. The Commission conducted a virtual public hearing on the proposed rule changes on June 9, 2021. The Commission subsequently deliberated in open session on June 10, 2021.

10. Documentary Evidence. In conjunction with their prehearing statements, OCD and NMELC provided proposed exhibits for the hearing, which generally included summaries of written technical testimony and corresponding presentations, witness résumés, proposed changes and additions to the rule amendments, and empirical demonstrative documents. Each Commissioner reviewed the proposed exhibits before, during and after the rulemaking hearing and subsequently admitted into the record such exhibits during the course of the rulemaking hearing.

11. Public Comment. Members of the public were requested to notify the Commission Clerk in advance of the meeting if they wished to provide public comment. The Commission heard nine (9) public comments during the course of the hearing. The Commission provided multiple

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opportunities for the public to provide public comment during the hearing. Several people provided comments in their individual capacity, as well as on behalf of various organizations.

12. Public comment included substantial support for the proposed rule changes, the methods used to draft the proposed rules and the hearing procedures more generally. An overwhelming majority of commenters voiced support for increasing the Division's efforts to monitor and prevent releases, averring that such enforcement and prevention methods would reduce general environmental damage, protect public health both general and specifically in Native American communities, and otherwise advance the interests of New Mexican citizens. Other comments included requests that the Commission create much more stringent regulations, including addition of source characterization reporting, notification requirements to owners or occupants of lands adjacent to unauthorized releases of oil, gases, produced water, condensate, oil field waste, and other contaminants that occur during oil and gas development and production, and requests for harsher penalties for those violating the stricter regulations.

13. Written Comments. The Commission received two (2) written comments from an individual and a nongovernmental organization prior to the hearing. The Commission formally entered all received written comments into the hearing record and reviewed these comments as part of the record of this hearing.

14. Division Testimony: The Division presented one witness in its case-in-chief: Jim Griswold. Mr. Griswold was subject to cross-examination by the other parties and by the Commissioners and Commission Counsel.

15. The Division proffered Jim Griswold, Special Projects Manager and former Environmental Bureau Chief for the Division, as witness on the Division's historical regulation of releases, Division's database of reported releases between 2010 and 2020, the nature of major and minor releases that require remediation, the proposed modifications, and the Division's perspective on the benefits of the proposed modifications.

16. Mr. Griswold detailed his work history with the Division, touching on role handling oil and gas releases, including characterization and remediation. Mr. Griswold also pointed to his experience in administrative rulemaking and crafting of guidance under such rules. Mr. Griswold testified that he is quite familiar with Part 29, which encompasses the proposed rule changes at issue in this rulemaking.

17. Mr. Griswold testified that the intent of the proposed rule changes is to bar releases.

18. Mr. Griswold explained that the proposed rule changes to 19.15.29.6 and 19.15.29.8 NMAC were intended to clarify the proposed prohibition on major and minor releases.

19. Mr. Griswold further stated that the proposed changes to 19.15.29.6 and 19.15.29.8 NMAC bring Part 29 into harmony with Part 5, the enforcement provisions, of the Division's rules.

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20. Mr. Griswold provided a lengthy history of Part 29, starting in 1991. Mr. Griswold explained how Part 29 evolved from primarily a reporting requirement rule, to a remediation rule, and then to a rule that addresses impacts of and responses to releases.

21. Mr. Griswold based his testimony pertaining to Part 29 on the Division's Exhibits two (2) through five (5), with those exhibits reflecting the evolution of Part 29 since 1991.

22. Turning to the purposes of the proposed rule changes, Mr. Griswold testified that reducing the frequency and severity of releases due to their adverse effects on public health and the environment are the priority. Mr. Griswold provided examples of such adverse effects, including the fact that releases contain substances toxic to animal and plant life, but also may find their way into groundwater and otherwise spread beyond the release site.

23. Mr. Griswold stated he reviewed the Division's database for reported releases between 2010 and 2020. Mr. Griswold found that the average number of releases per day totaled 3.4. The approximate number of releases between 2010 and 2020 totaled twelve-thousand (12,000), with about seven-thousand (7,000) involving produced water and four-thousand (4,000) involving crude oil.

24. Mr. Griswold defined a "major release" of liquids as greater than twenty-five (25) barrels, or one-thousand and fifty (1,050) gallons.

25. Mr. Griswold also noted that, while theoretically all releases are preventable, such high expectations are unrealistic. Mr. Griswold then opined that he believes a significant fraction of releases is, in fact, preventable through the implementation of best practices by operators.

26. Turning to the proposed rule changes, Mr. Griswold testified that:

- a. As to 19.15.29.6 NMAC, the addition of the language "prohibit releases" clarifies the current language and expressly establishes a prohibition on releases. The remaining changes to Section 6 clean up the rule's language for clarity.
- b. As to 19.15.29.8 NMAC, Section 8 sets forth the unambiguous prohibition on major and minor releases, providing for exceptions as found in Parts 27 and 28 of the Division's regulations. Mr. Griswold pointed out that, under Parts 27 and 28, venting and flaring could be characterized as an authorized release, and therefore must be accommodated under the proposed modifications to Section 6.
- c. As to 19.15.29.15 NMAC, Mr. Griswold testified that Section 15 is the enforcement provision of Part 29. The proposed changes to this section relate to the 2020 modifications of Part 5 of the Division's regulations, thus aligning Part 29 and Part 5.

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- d. Mr. Griswold testified that the Division and WEG's proposed changes aim to result in fewer releases. Further, Mr. Griswold testified that Part 29, through the proposed rule changes, is the primary regulation governing releases.
- e. Mr. Griswold outlined that the proposed rule changes to Part 29 grant the Division the authority to pursue civil penalties against operators responsible for unauthorized releases, a tool that should be helpful in curtailing future releases.

27. Mr. Griswold testified that the proposed rule changes came out of a collaborative process and that OCD supports the proposed rule changes. Mr. Griswold further stated that the proposed rule changes should generate more up-front due diligence by operators such that releases diminish in number.

28. WEG's Testimony: WEG presented no witnesses at the rulemaking hearing.

29. IPANM's Testimony: IPANM presented no witnesses at the rulemaking hearing.

30. NMOGA's Testimony: NMOGA presented no witnesses at the rulemaking hearing.

31. NMELC's Testimony: NMELC proffered six (6) witnesses at the rulemaking hearing: Camilla Feibelman on behalf of the Rio Grande chapter of the Sierra Club; Julia Bernal on behalf of the Pueblo Action Alliance; Kayley Shoup on behalf of Citizens Caring for the Future; Joseph Hernandez on behalf of NAVAEP; Joseph Zupan on behalf of Amigos Bravos; and Norman Gaume on behalf of Sierra Club. These witnesses were subject to cross-examination by the other parties and by the Commissioners and Commission Counsel.

32. NMELC proffered Kayley Shoup on behalf of Citizens Caring for the Future as a nontechnical witness. Ms. Shoup testified that she is a community organizer in southeastern New Mexico for Citizens Caring for the Future. Citizens Caring for the Future is a group of engaged citizens seeking to find an informed and safe path to ensure protections for member communities in the face of rapid oil and gas development in Southeast New Mexico, per Ms. Shoup.

33. Ms. Shoup testified that she is a native of Carlsbad, New Mexico and maintains her present role as a community organizer due to extensive impact of oil and gas development in her community. Ms. Shoup explained that she took up the role of community organizer precisely because of the issues of produced water and oilfield waste.

34. Ms. Shoup shared her experience with the produced water rulemaking conducted by the Commission in 2019 and how she perceived the Division as lacking authority to handle releases properly on community member lands.

35. Ms. Shoup wishes the Commission to adopt the proposed rule changes, but to focus more on how producers should remediate release sites. Ms. Shoup further testified that she has not personally been harmed by oilfield releases. However, Ms. Shoup does support this rulemaking.

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36. NMELC proffered Camilla Feibelman on behalf of the Rio Grande Chapter of the Sierra Club as a nontechnical witness. Ms. Feibelman is the director of the Rio Grande Chapter of the Sierra Club. Ms. Feibelman has a master's degree in planning from the University of Puerto Rico and earned her undergraduate degree in environmental biology from Colombia University. Ms. Feibelman worked and continues to work on environmental issues, which includes participation in technical rulemakings concerning environmental quality and protection.

37. Ms. Feibelman testified that the Rio Grande Chapter of the Sierra Club's mission is to explore, enjoy, and protect the planet, with that mission directly relating to the subject matter of this rulemaking.

38. Ms. Feibelman stated that the proposed rules are necessary to reduce the impact of the oil and gas industry on people and the environment. Ms. Feibelman further opined that collaborative rulemaking such as the present one are key to moving forward on protecting air, water, and other aspects of the environment.

39. Ms. Feibelman testified that the proposed rules increase the enforcement authority of the Division, which assists with the Sierra Club's mission. Ms. Feibelman lamented that the Division still needs more funding, staffing, and other resources to implement adequately its regulations.

40. Ms. Feibelman testified that she supports the proposed rules and this rulemaking proceeding.

41. NMELC proffered Julia Bernal on behalf of the Pueblo Action Alliance as a nontechnical witness. Ms. Bernal is the current director of Pueblo Action Alliance, a community organization that addresses environmental and social injustices that occur on ancestral tribal lands. The Pueblo Action Alliance is a woman and youth-led organization that addresses issues with the fossil fuel industries, federal land leasing programs, climate adaption and the economic impacts of extractive industries that desecrate cultural integrity.

42. Ms. Bernal testified that she now has an understanding of how "a typical fracking well works," including water usage and produced waste. Ms. Bernal further stated that produced water should be treated in a manner that holds the producers accountable for the consequences of such releases.

43. Ms. Bernal testified that she supports the proposed rules, but requested that, in the future, the Commission "engage in its 2020 Tribal Collaboration Act" with the various nations in New Mexico concerning future rulemaking.

44. NMELC proffered Norman Gaume as a technical witness. Mr. Gaume is a retired licensed professional water engineer. He possesses a Bachelor of Science in electrical engineering and a Master's of Science in civil engineering, both from New Mexico State University.

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45. Mr. Gaume detailed his professional background, which included thirty-seven (37) years of work that required a professional engineering license. Mr. Gaume's background includes water and wastewater facilities management, operations, maintenance, design, and construction, and water resources management, planning and administration. Mr. Gaume worked as the director of the New Mexico Interstate Stream Commission for six years, wherein he worked with stakeholders to ensure compliance with the 1987 United States Supreme Court decree that New Mexico never again would owe water to Texas *via* the Pecos River.

46. Mr. Gaume stated that he supports the proposed rules and this rulemaking.

47. Mr. Gaume opined that, absent the proposed rules, releases in New Mexico are not prohibited nor are they illegal.

48. Mr. Gaume stated that banning releases is an essential, but insufficient, step in avoiding releases.

49. Mr. Gaume testified that he believes the Division does not properly exercise its enforcement authority when it comes to releases.

50. Mr. Gaume testified he believes the Division's approach to regulation of releases is piecemeal, which is part of the overall problem.

51. Mr. Gaume requested that the Commission and Division provide him a regulatory plan so he and the public could begin a collaborative process of revising again the rules currently under revision.

52. Mr. Gaume asserted that, under the 1971 amendment to the New Mexico Constitution, the public has the right to a clean and safe environment. Mr. Gaume further stated that due to New Mexico's dry climate, the state's groundwater resources are especially at risk.

53. Mr. Gaume reiterated his support for the proposed rule changes and this rulemaking process.

54. Mr. Gaume also acknowledged that he has no professional experience with produced water in a professional capacity, nor had he any professional experience working with oil and gas facilities or operations. Mr. Gaume also acknowledged that he did not review any prior versions of the proposed rules, including rules that contain reporting requirements.

55. NMELC proffered Joseph Hernandez on behalf of NAVAEP as a non-technical witness. Mr. Hernandez is a member of the Zia Pueblo and lives west of Shiprock, New Mexico. He is the Diné energy organizer for the NAVA Education Project. This role requires him to engage effectively Navajo communities in renewable energy advocacy.

56. Mr. Hernandez testified that his community is very familiar with the impacts from oil and gas releases, referring to a tanker truck release on US 550 that threatened the health and lives of his community.

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57. Mr. Hernandez testified about a February 2019 release within the Counselor Chapter Borders that released fifty-five thousand (55,000) gallons of combined crude oil and produced water that ended up in the Escavada Wash that leads into Chaco National Monument.

58. Mr. Hernandez supports the proposed rule changes, but believes more needs to be done in terms of preventing releases.

59. NMELC proffered Joseph Zupan on behalf of Amigos Bravos as a technical witness. Mr. Zupan is the executive director of Amigos Bravos, a non-profit whose mission is to protect and restore the waters of New Mexico by restoring watershed health, holding polluters accountable, and building a water protection movement for the future. Prior to joining Amigos Bravos, Mr. Zupan worked as an environmental consultant with clients that included oil and gas exploration and production companies. Mr. Zupan possesses a Bachelor of Science degree from the Colorado School of Mines in chemical and petroleum refining engineering. Mr. Zupan currently holds professional engineering licenses in New Mexico and Colorado. Mr. Zupan's technical work included risk-based corrective action through calculation of risks posed by released contaminants into soil, surface water, and groundwater to develop cleanup standards that minimize risks to human health and the environment.

60. Mr. Zupan supports the proposed rule changes, which he sees as a very important step in protecting human health and the environment from the impacts of oilfield releases.

61. Deliberation and Action. The Commission began and completed deliberations regarding the proposed rule changes on June 10, 2021. The Commission reached a tentative decision on the proposed rule changes, and requested that Commission Counsel prepare a proposed order for its review and approval. At the meeting on July 8, 2021, the Commission reviewed the proposed rule changes and the proposed order, and adopted the proposed rule changes as provided in attached Exhibit A for the reasons set forth herein.

62. Reasons for Adopting Rule Changes. The Commission finds that the proposed rule changes are a reasonable implementation of the stated objectives of both the Division and WEG, and are supported by substantial evidence. The proposed rule changes appropriately amend 19.15.29.6, 19.15.29.8 and 19.15.29.15 NMAC to ensure that Part 29 is consistent with the Oil and Gas Act. The Commission finds that the proposed rule changes, as modified, create a necessary and appropriately revised framework for the Division regarding unauthorized releases of oil, gases, produced water, condensate, oil field waste, and other contaminants that occur during oil and gas development and production, as well as suitable enforcement of such a prohibition on releases. The proposed rule changes, as modified, appropriately outline the jurisdiction of the Division with respect to the regulation of unauthorized releases of oil, gases, produced water, oil field waste, and other contaminants that occur during oil and gas development and production.

63. The Commission finds that the Division and WEG's proposed rule changes to 19.15.29.6 NMAC, with the agreement of NMOGA and IPANM, are a necessary clarification that the purpose and intent of 19.15.29 NMAC, titled "Releases," is to prohibit releases.

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64. The Commission finds that the Division and WEG's proposed rule change to 19.15.29.8 NMAC by adding a new subsection (A), with the agreement of NMOGA and IPANM, is necessary and make expressly clear that major and minor releases are prohibited. The Commission further finds that the references to 19.15.27 and 19.15.28 NMAC are appropriate based on the recent venting and flaring rulemaking, particularly because the proposed rule change to add subsection (A) to 19.15.29.8 NMAC aligns with the reporting scheme found in 19.15.27, 19.15.28, and 19.15.29 NMAC.

65. The Commission finds that the Division and WEG's proposed rule changes to 19.15.29.15 NMAC, as a whole and with the agreement of NMOGA and IPANM, are necessary to align 19.15.29.15 with 19.15.5 NMAC, titled "Enforcement and Compliance," thus bringing those sections into harmony. Further, the Commission finds that the proposed rule changes to 19.15.29.15 NMAC are necessary to ensure compliance with the proposed rule changes to 19.15.29.8(A) NMAC, and to preserve the Division's enforcement discretion.

66. The Commission generally finds that the Division and WEG's proposed rule changes to 19.15.29.6, 19.15.29.8 and 19.15.29.15 NMAC provide a clear and unambiguous prohibition on major or minor releases and hereby adopts the Division and WEG's proposed rule changes as follows:

- a. The Commission hereby accepts the proposed changes to 19.15.29.6 NMAC. In particular, the Commission accepts the addition of the added language "prohibit releases and," "procedures for," and the deletion of "procedures."
- b. The Commission hereby accepts the proposed changes to 19.15.29.8 NMAC. In particular, the Commission accepts the addition of a new subsection (A), which contains the express prohibition on major and minor releases, with the exceptions of any releases permitted under 19.15.27 and 19.15.28 NMAC.
- c. The Commission hereby accepts the proposed changes to 19.15.29.15 NMAC. In particular the Commission accepts the following:
 - i. The correct placement of the phrase "pursuant to 19.15.5.10 NMAC" in subsection (A) of 19.15.29.15 NMAC.
 - ii. The replacement of "an agreed compliance" with "a stipulated final" in subsection (B) of to 19.15.29.15 NMAC.
 - iii. The replacement of "agreed compliance order or administrative compliance order" with "or final order" in subsection (C) of 19.15.29.15 NMAC.
 - iv. The deletion of subsection (D) of 19.15.29.15 NMAC.

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THE COMMISSION CONCLUDES THAT:

1. The Commission has jurisdiction, under the Oil and Gas Act, NMSA 1978, §§ 70-2-1 to -38, over the parties and subject matter of this case.
2. The Commission has legal authority, under the Oil and Gas Act, to enact the proposed rule changes.
3. The Commission provided due public notice and an opportunity for the public to provide comments regarding the proposed rule changes. The Commission held a public rulemaking hearing and provided a reasonable opportunity for all persons present or interested in the subject matter of the rulemaking hearing to provide testimony, evidence and exhibits.
4. All Commissioners were present at the public hearing. All Commissioners analyzed and considered all the evidence presented during the hearing, including the proposed rule changes submitted by the parties. The Commission deliberated at a public hearing on June 10, 2021 and adopted the proposed rule changes as stated above.
5. The Commission concludes that there is substantial evidence in the record to support the proposed rule changes and the Commission's revisions thereto, that the proposed rule changes are within the authority of the Commission under the Oil and Gas Act and are reasonable and further the goals of the Oil and Gas Act.

IT IS THEREFORE ORDERED THAT:

The proposed rule changes to 19.15.29.6, 19.15.29.8 and 19.15.29.15 NMAC are hereby approved by the Commission. The adoption of the rule changes will be final upon the latter of (a) the action, or deemed action, of the Commission on a rehearing application filed pursuant to NMSA 1978, § 70-2-25, or (b) twenty (20) days from the date of this order if no rehearing application is filed. The rule changes shall not be filed with the state records administrator until this order adopting the rule changes is approved by the Commission; then the rule changes must be filed within fifteen (15) days after the adoption. If no rehearing is required by the Commission, this Order shall serve as the "concise explanatory statement" required by NMSA 1978, § 14-4-5.5 (2017).

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DONE at Santa Fe, New Mexico, on this 8th Day of July 2021.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

Terry J Warnell

TERRY WARNELL, MEMBER

Gregory B. Bloom

GREGORY BLOOM, MEMBER

Adrienne

ADRIENNE SANDOVAL, M.E., CHAIR

SEAL

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This is an amendment to 19.15.29 NMAC, Sections 6, 8 and 15, effective August 24, 2021.

19.15.29.6 OBJECTIVE: To prohibit releases and require persons who operate or control the release or the location of the release to report the unauthorized release of oil, gases, produced water, condensate or oil field waste including regulated NORM or other oil field related chemicals, contaminants or mixtures of those chemicals or contaminants that occur during drilling, producing, storing, disposing, injecting, transporting, servicing or processing and to establish procedures for reporting, site assessment, remediation, closure, variance and enforcement [procedures].

[19.15.29.6 NMAC - Rp, 19.15.29.6 NMAC, 8/14/2018; A, 8/24/2021]

19.15.29.8 RELEASES:

A. Prohibition. Except as provided in 19.15.27 NMAC or 19.15.28 NMAC, major releases and minor releases are prohibited.

[A.] B. Requirements. For all releases regardless of volume, the responsible party shall comply with 19.15.29.8 NMAC and shall remediate the release. For major and minor releases, the responsible party shall also comply with 19.15.29.9, 19.15.29.10, 19.15.29.11, 19.15.29.12 and 19.15.29.13 NMAC.

[B.] C. Initial response. The responsible party must take the following immediate actions unless the actions could create a safety hazard that would result in injury.

(1) **Source elimination and site security.** The responsible party must take appropriate measures to stop the source of the release and limit access to the site as necessary to protect human health and the environment.

(2) **Containment.** Once the site is secure, the responsible party must contain the materials released by construction of berms or dikes, the use of absorbent pads or other containment actions to limit the area affected by the release and prevent potential fresh water contaminants from migrating to watercourses or areas that could pose a threat to public health and environment. The responsible party must monitor the containment to ensure that it is effectively containing the material and not being degraded by weather or onsite activity.

(3) **Site stabilization.** After containment, the responsible party must recover any free liquids and recoverable materials that can be physically removed from the surface within the containment area. The responsible party must deliver material removed from the site to a division-approved facility.

(4) **Remediation.** The responsible party may commence remediation immediately.
[19.15.29.8 NMAC - Rp, 19.15.29.8 NMAC, 8/14/2018; A, 8/24/2021]

19.15.29.15 ENFORCEMENT:

A. The responsible party must comply with all the requirements of 19.15.29 NMAC. The division may take enforcement action pursuant to 19.15.5.10 NMAC against any responsible party who does not comply with 19.15.29 NMAC [pursuant to 19.15.5.10 NMAC].

B. A responsible party may enter [~~an agreed compliance~~] a stipulated final order with the division for any violation of 19.15.29 NMAC, except for 19.15.29.9 NMAC. An agreed compliance order may be entered prior to or after the filing of an application by the division or any other party for an administrative compliance proceeding. Any administrative compliance order will have the same force and effect as a compliance order issued after an adjudicatory hearing.

C. The director or the director's designee may deny any application or permit, including but not limited to, a permit to drill, deepen or plug back a well if the responsible party is not in compliance with a court order [~~agreed compliance order or administrative compliance~~] or final order arising from 19.15.29 NMAC.

[D.] ~~If the division or other party files an administrative enforcement application, the provisions of 19.15.4 NMAC apply to the enforcement proceeding, unless altered or amended by 19.15.5.10 NMAC or 19.15.29 NMAC.~~

[19.15.29.15 NMAC - N, 8/14/2018; A, 8/24/2021]