

OCD Policy Determination

How to address a release to the vadose zone at a Part 36 landfarm pursuant to Part 29

April 21, 2021

In accordance with the vadose zone monitoring requirements of 19.15.36.15.E NMAC, landfarm operators are required to monitor vadose zone soils between three and four feet below the cell's original ground surface beneath the treatment zone to determine whether a release has occurred due to leaching from the oil field waste residing in the treatment zone.

This document is to advise OCD Staff how to address the following scenario: When a landfarm operator completes the release response sampling required of 19.15.36.15.E(5) NMAC and submits a response action plan proposing to remediate the "unauthorized" release discovered in the vadose zone pursuant to 19.15.29 NMAC and OCD approves the response plan.

Once OCD approves the response plan of 19.15.36.15.E(5) NMAC to remediate the release to the vadose zone pursuant to 19.15.29 NMAC, the landfarm operator shall complete the release notification requirements of 19.15.29.9 NMAC and 19.15.29.10 NMAC.

The landfarm operator shall remove the treatment zone soils (oil field waste being remediated) and complete the site assessment/characterization required of 19.15.29.11 NMAC of the vadose zone, if needed. The release will be considered a release of an unknown quantity in most cases. Based upon the sampling results of the response action plan of 19.15.36.15.E(5) NMAC, in some cases the constituents of concern will exceed the Table 1 list and other constituents will have to be addressed pursuant to 19.15.29.11.A(5)(e) NMAC.

After approval of the site assessment/characterization and remediation plan required by 19.15.29.11 NMAC, the landfarm operator shall complete the applicable remediation and closure requirements of 19.15.29.12 NMAC. After the approval of the release closure report the landfarm operator will reapply the treatment zone soils over the remediated vadose zone to continue landfarm operations.

It should be noted in the closure report in accordance with 19.15.29.13.E NMAC, *the surface restoration, reclamation and re-vegetation obligations imposed by federal or state agencies or tribes on lands managed or owned by those agencies supersede these provisions....* This includes the closure and post-closure requirements of 19.15.36.18 NMAC. The landfarm operator should recognize 19.15.29.13.E NMAC above and provide a clear statement that it will comply with the applicable requirements of 19.15.36 NMAC in lieu of the requirements 19.15.29.13 NMAC.

For future vadose zone monitoring requirements of 19.15.36.15.E NMAC, in an area that had a previously identified release and was closed pursuant to 19.15.29 NMAC, OCD will use the Part 29 release closure report results for the constituents of concern as new background levels only in areas delineated by the site assessment and characterization report. For all other constituents that were not addressed under the Part 29 closure report, the landfarm operator shall use the OCD-

approved facility background of Part 36. If vadose zone monitor sampling results are higher than the new background levels, the operator will follow all applicable requirements of 19.15.36.15.E(5) NMAC to address the release.