

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

**IN THE MATTER OF PROPOSED
AMENDMENTS TO THE COMMISSION'S
RULES ON RELEASES,
19.15.29.6 AND 19.15.29.8 NMAC**

CASE NO. _____

APPLICATION FOR RULEMAKING

Pursuant to 19.15.38(A) NMAC, Petitioner WildEarth Guardians (“Guardians”) hereby petitions the New Mexico Oil Conservation Commission (“OCC”) to amend rules 19.15.29.6 and 19.15.29.8 NMAC. Currently, the Commission’s rules do not prohibit spills or releases of oil, gases, produced water, oil field waste, or other contaminants that occur during oil and gas activities. The proposed rule would fill that glaring regulatory hole by specifically prohibiting major or minor releases, as those terms are already defined in the Commission’s rules.

Guardians states that:

- (1) The proposed rule change prohibits major or minor releases of oil, gases, produced water, oil field waste, and related contaminants that occur during oil and gas activities. The proposed rule further clarifies the Oil Conservation Division’s authority to enforce this prohibition to prevent major and minor releases.

Routine releases of toxic chemicals associated with oil and gas activities, including oil, gas, produced water, oil field waste, and related contaminants pose a serious threat to public health and the environment in New Mexico. OCD’s spills database shows more than 15,000 reported releases since 2010, including more than 7,000 releases of oil and gas wastewater (aka “produced water”) and more than 4,000 releases of crude oil. More than 7,000 “major” releases have been reported since 2010. Just this year, there were 1,060 reported releases through October 1st, including 539 produced water releases (266 “major”) and 281 crude oil releases (128 “major”).

While OCC’s rules require reporting and cleanup of both major and minor releases, the Commission’s cleanup standards fail to ensure that the operators responsible for spills fully remediate the environmental damage caused by toxic pollution. In fact, OCD records show significant quantities of oil and gas and related toxic waste products “lost” into the environment after accidental releases.

For example, of the nearly 145,000 barrels of crude oil reported as released into New Mexico's environment since 2010, OCD records show less than 86,000 barrels as "recovered," leaving some 59,000 barrels of toxic crude oil "lost" across New Mexico, equivalent to 2.5 *million gallons* of crude oil. In aggregate, the volume of oil spilled across New Mexico in the past ten years would constitute the 6th largest oil spill in U.S. history.

The volume of toxic "produced water" spilled across New Mexico is also staggering: nearly 800,000 barrels released since 2010, with about 318,000 barrels lost, leaving more than 13.3 *million gallons* of toxic, potentially radioactive, oil and gas waste remaining in the soils of New Mexico.

Just this year, approximately 9,300 barrels of oil have been reported as released in New Mexico, with OCD records showing about 3,300 barrels lost into the environment. This is more than 138,000 gallons of crude oil left spilled across New Mexican lands, without consequence or penalty. To date in 2020, produced water spills total nearly 45,000 barrels, with more than one-third of that volume – approximately 700,000 gallons of toxic produced water – "lost" in the environment.

While the Commission's rules provide cleanup standards for a limited number of constituents, 19.15.29.12.E tbl. I, the vast majority of toxic chemicals found in oil and gas-related releases are not covered by the Commission's cleanup rules. For example, there is no requirement that contaminated soil be tested for radioactive contamination before OCD approves closure of a cleanup site, despite the well-established radioactivity of oil and gas waste. Accordingly, after-the-fact reporting and cleanup obligations standing alone are inadequate to protect public health and the environment. Spills of toxic oil and gas and the industry's toxic waste must be prevented from occurring in the first place.

A draft of the proposed rule change is attached as Exhibit A to this Application.

(2) The applicant's name is WildEarth Guardians.

(3) The contact for the applicant shall be:

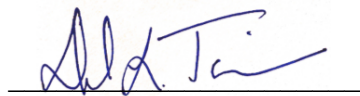
Daniel Timmons, Staff Attorney
301 N. Guadalupe Street, Suite 201
Santa Fe, NM. 87501
(505) 570-7014
dtimmons@wildearthguardians.org

(4) A proposed legal notice is attached as Exhibit B.

Guardians requests that the Commission, at its November 4, 2020 meeting or otherwise no sooner than 15 days and no later than 60 days from the submittal of this Application, grant a hearing on the proposed rule changes and issue an order pursuant to 19.15.3.8(C) NMAC specifying procedures to conduct the rulemaking and hearing in a manner that provides a robust opportunity for public involvement while taking into consideration public health and safety in light of the current COVID-19 public health emergency.

Respectfully submitted this 19th day of October 2020,

WILDEARTH GUARDIANS

A handwritten signature in blue ink, appearing to read "D. Timmons", is written over a horizontal line.

Daniel Timmons, Staff Attorney
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EXHIBIT A
PROPOSED RULE CHANGE FOR THE OIL CONSERVATION COMMISSION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 29 RELEASES

19.15.29.6 OBJECTIVE: ~~To prevent the release 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 reporting, site assessment, remediation, closure, variance and enforcement procedures; and to require persons who operate or control the release or the location of the release to report and remediate the unauthorized release.~~

19.15.29.8 RELEASES:

A. Releases Prohibited. Major releases and minor releases are prohibited and shall be subject to the enforcement authority of the division, including but not limited to issuance of a notice of violation, commencement of a civil action, and/or assessment of civil penalties, in accordance with NMSA 1978, § 70-2-31 and 19.15.5 NMAC.

BA. 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.

CB. 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.

EXHIBIT B
NOTICE OF PUBLIC MEETING AND PUBLIC HEARING

The New Mexico Oil Conservation Commission (Commission) hereby gives notice that the Commission will hold the following public meeting and public hearing commencing at 9:00 am on April 1-2 and 7-8, 2021 (as may be necessary) online and via telephone. Oral comments may be made either on-line or by telephone. The Commission shall make available to the public a preliminary agenda for the meeting no later than two weeks prior to the meeting, and a final agenda for the meeting no later than 72 hours before the meeting. The agenda shall specify the order of the proceedings and, to the extent feasible, identify the specific time(s) that public comments are to be heard. The agenda shall be posted online on the Commission's Hearings page under "OCC Dockets," accessible from the following web page:
<http://www.emnrd.state.nm.us/OCD/hearings.html>.

Case No. ____ : APPLICATION OF WILDEARTH GUARDIANS TO AMEND THE COMMISSION'S RULES FOR RELEASES IN 19.15.29.6 AND 10.15.29.8 NMAC; STATEWIDE.

WildEarth Guardians proposes that the Commission amend 19.15.29.6 and 10.15.29.8 NMAC to prohibit the unauthorized release of oil, gas, produced water, and other oil and gas waste, and to provide the Oil Conservation Division with enforcement authority related to violations of the proposed prohibition on such releases.

Purpose of Proposed Rule. The proposed rule is intended to prohibit major and minor releases of oil, gas, produced water, oil field waste, and other contaminants that occur during oil and gas activities within the jurisdiction of the division to protect public health and the environment.

Legal Authority. The proposed rule is authorized by 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), and Section 70-2-12 (enumerating the powers of the Commission and OCD). The public hearing is governed by the Commission's rule on rulemaking proceedings, 19.15.3 NMAC.

Availability of Proposed Rule. The full text of the proposed rule may be obtained from the Commission Clerk, Florene Davidson at florene.davidson@state.nm.us or (505) 476-3458, or can be viewed on the Rules page of the OCD's website at <http://www.emnrd.state.nm.us/OCD/rules.html>.

Public Hearing. The Commission will hold a public hearing on the proposed rule at the Commission meeting commencing at 9:00 am on April 1-2 and 7-8, 2021 (as needed) online and via telephone. For information on how to participate in the hearing, please contact the Commission Clerk, Florene Davidson at florene.davidson@state.nm.us or (505) 476-3458, or visit the Hearings page on the OCD's website at <http://www.emnrd.state.nm.us/OCD/hearings.html>. The hearing may be continued to the following day(s) if not completed.

Proposed Modifications, Technical Testimony, and Cross Examination. Any person intending to propose a modification to the proposed rule, to present technical testimony at the hearing, or to cross-examine witnesses must file a Pre-Hearing Statement conforming to the requirements of Subsection B of 19.15.3.11 NMAC, no later than 5:00 pm on [DATE TO BE DETERMINED], 2021. Filing may be accomplished by first class mail to the Commission Clerk, Florene Davidson, 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or by electronic mail to OCD.Hearings@state.nm.us. Any person who presents technical testimony will be subject to cross-examination by the members of the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony.

Oral Comments. Any person who has not submitted a Pre-Hearing statement may present non-technical testimony or make an unsworn statement at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule and do not unduly repeat testimony. Any person who presents sworn, non-technical testimony will be subject to cross-examination by the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony; however, any person who presents an unsworn position statement or general public comment shall not be subject to cross examination. To help facilitate this virtual hearing, persons wishing to present non-technical testimony or make an unsworn statement or public comment at the hearing are strongly encouraged to contact the Commission Clerk, Florene Davidson, at florene.davidson@state.nm.us or (505) 476-3458, prior to the hearing so that a list of commenters may be prepared in advance; however, at the close of oral public comment, the Commission shall open the virtual floor to any person who wishes to offer non-technical testimony or make an unsworn oral statement relevant to the proceedings.

Written or Electronic Comments. Any person may submit written or electronic comments on the proposed rule no later than 9:00 am on April 1, 2021, unless extended by the Commission or the Chair of the Commission, by first class or electronic mail to the Commission Clerk, Florene Davidson, 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or florene.davidson@state.nm.us.

Persons with Disabilities. If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, including a summary or other accessible form of document, please contact the Commission Clerk, Florene Davidson, at florene.davidson@state.nm.us or (505) 476-3458, or through the New Mexico Relay Network at 1-800-659-1779, no later than July 2, 2020.

Technical Information. Oil Conservation Division spill records may be accessed online at: <https://wwwapps.emnrd.state.nm.us/ocd/ocdpermitting/Data/Spills/Spills.aspx>. Additional technical information that may be provided through Pre-Hearing Statements and written technical testimony will be made publicly available on the OCD Imaging, Case File Search portal on the division's website at: <http://ocdimage.emnrd.state.nm.us/imaging/CaseFileCriteria.aspx>, and may be accessed by searching for Case File No. _____.