

**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, 19.15.29.8, and 19.15.29.15 NMAC**

**CASE NO. \_\_\_\_\_**

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**APPLICATION FOR RULEMAKING**

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Pursuant to 19.15.3.8(A) NMAC, Petitioners WildEarth Guardians (“Guardians”) and New Mexico Energy, Minerals and Natural Resources Department, Oil Conservation Division (“Division”) hereby apply to the New Mexico Oil Conservation Commission (“Commission”) to amend 19.15.29.6, 19.15.29.8, and 19.15.29.15 NMAC. Currently, the Commission’s rules do not prohibit unauthorized releases of oil, gases, produced water, oil field waste, and other contaminants that occur during oil and gas development and production. The proposed rule would fill that regulatory gap by prohibiting major and minor releases as those terms are defined in the Commission’s rules.

Petitioners state that:

- (1) The proposed rule changes prohibit major and minor releases of oil, gases, produced water, oil field waste, and other contaminants that occur during oil and gas development and production and clarify the Division’s authority to enforce this prohibition.

Releases of oil, gas, produced water, oil field waste, and other contaminants from oil and gas development and production pose a threat to public health and the environment in New Mexico. The Division’s spills database contains more than 12,000 records for releases reported between January 1, 2010 and December 2020, including an estimated 7,000 releases of produced water and 4,000 releases of crude oil. For 2020, the Division’s records show 733 releases of produced water, of which 330 were major releases, and 398 releases of crude oil, of which 90 were major releases.

After-the-fact reporting and cleanup obligations standing alone are inadequate to protect public health and the environment. Operators should not release oil, gas, produced water, and other contaminants in the first place, and the Division should be given the tools necessary to prevent those releases.

The proposed rule changes also conform 19.15.29.15 NMAC with the general enforcement provisions in 19.15.5.10 NMAC, which were adopted by the Commission in 2020.

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

- (2) The Applicants are WildEarth Guardians and the Oil Conservation Division.
- (3) The contacts for the Applicants shall be:

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

Petitioners request that the Commission, as soon as possible after 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 the procedures to conduct the hearing in a manner that provides a robust opportunity for public involvement while taking into consideration the public health and safety in light of the COVID-19 emergency.

Respectfully submitted this 11th day of March 2021,

WILDEARTH GUARDIANS

/s/ Daniel L. Timmons

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OIL CONSERVATION DIVISION

*/s/ Eric Ames*

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**EXHIBIT A**

**PROPOSED RULE CHANGES**

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

**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.

**19.15.29.8            RELEASES:**

**A.            Prohibition.** Major releases and minor releases are prohibited.

**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.

**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 order~~ a stipulated final order with the division for any violation of 19.15.29 NMAC

**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 order~~ or final order arising from a violation of 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.~~

## 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 May \_\_ 2021 (and subsequent days as may be necessary) online and via telephone. Oral comments may be made either online 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 AND NEW MEXICO OIL CONSERVATION DIVISION TO AMEND THE COMMISSION'S RULES FOR RELEASES IN 19.15.29.6, 19.15.29.8, AND 19.15.29.15 NMAC; STATEWIDE.**

WildEarth Guardians and the Oil Conservation Division propose that the Commission amend 19.15.29.6, 19.15.29.8, and 19.15.29.15 NMAC to prohibit the unauthorized release of oil, gas, produced water, and other contaminants, and to clarify the Division's authority to enforce this prohibition on major and minor releases.

**Purpose of Proposed Rule Changes.** The proposed rule changes are intended to prohibit major and minor releases of oil, gas, produced water, 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.

**Legal Authority.** The proposed rule changes are 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), Section 70-2-12 (enumerating the powers of the Commission and OCD), 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 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 changes may be obtained from the Commission Clerk, Florene Davidson at [florene.davidson@state.nm.us](mailto: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 changes at the Commission meeting commencing at 9:00 am on May \_\_, 2021 (and subsequent days 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](mailto: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 changes, 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 \_\_\_\_\_, 2021. Filing may be accomplished by first class mail to the Commission Clerk, Florene Davidson, 3<sup>rd</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or by electronic mail to [OCD.Hearings@state.nm.us](mailto:OCD.Hearings@state.nm.us). Any person who presents technical testimony will be subject to cross-examination on the subject matter of the person's direct testimony by the members of the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement.

**Oral Comments.** Any person who has not submitted a Pre-Hearing Statement may present non-technical testimony or make an unsworn statement or comment at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule changes and do not unduly repeat testimony. Any person who presents non-technical testimony will be subject to cross-examination on the subject matter of the person's direct testimony by the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement. Any person who presents an unsworn statement or comment shall not be subject to cross-examination. To facilitate this virtual hearing, persons wishing to present non-technical testimony or make an unsworn statement or comment at the hearing should contact the Commission Clerk, Florene Davidson, at [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us) or (505) 476-3458, prior to the hearing so that a list of persons may be prepared in advance. Notwithstanding this procedure, after the Commission has heard each person on the list, the Commission will open the virtual floor to any person who wishes to offer non-technical testimony or an unsworn statement or comment relevant to the proposed rule changes.

**Public Comments.** Any person may submit comments on the proposed rule changes no later than 9:00 am on May \_\_, 2021, unless extended by the Commission or the Chair of the Commission,

by first class or electronic mail to the Commission Clerk, Florene Davidson, 3<sup>rd</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or [florene.davidson@state.nm.us](mailto: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](mailto: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.** The following technical information served as the basis for the proposed rule changes:

EPA, Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States, EPA-600-R-16-236Fa (Dec. 2016), available at: [www.epa.gov/hfstudy](http://www.epa.gov/hfstudy).

Oil Conservation Division spill records may be accessed online at: <https://wwwapps.emnrd.state.nm.us/ocd/ocdpermitting/Data/Spills/Spills.aspx>,

using the following search parameters under “Spill Details”:

- Spill Material: All; Dates: 1/1/2010 – 12/31/2020
- Spill Material: All; Dates: 1/1/2020 – 12/31/2020
- Spill Material: Crude Oil; Dates: 1/1/2010 – 12/31/2020
- Spill Material: Crude Oil; Dates: 1/1/2020 – 12/31/2020
- Spill Material: Produced Water; Dates: 1/1/2010 – 12/31/2020
- Spill Material: Produced Water; Dates: 1/1/2020 – 12/31/2020

Pre-Hearing Statements, including technical testimony and exhibits, will be posted for public inspection on the Division’s website at

<http://ocdimage.emnrd.state.nm.us/imaging/CaseFileCriteria.aspx> or by searching for Case File No. \_\_\_\_\_.