

**19.15.34.2 SCOPE:** 19.15.34 NMAC applies to the transportation, disposal, recycling, re-use or the direct surface or subsurface disposition [~~by use~~] of produced water [~~produced or used~~] in connection with the development or production of oil or gas or both [~~in road construction or maintenance, or other construction, in the generation of electricity or in other industrial processes~~]. 19.15.34 NMAC also applies to the transportation of drilling fluids and liquid oil field waste.

[19.15.34.2 NMAC - Rp, 19.15.34.2 NMAC, 3/31/15; A, xx/xx/xxxx]

**19.15.34.3 STATUTORY AUTHORITY:** 19.15.34 NMAC is adopted pursuant to the Oil and Gas Act, Paragraph (15) of Subsection B of Section [~~70-2-12(B)~~] 70-2-12 NMSA 1978, which authorizes the division to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas [~~of water produced or used in connection with the drilling for or producing of oil and gas or both~~] and Paragraph (21) of Subsection B of Section [~~70-2-12(B)~~] 70-2-12 NMSA 1978 which authorizes the regulation of the disposition of nondomestic wastes from the exploration, development, production or storage of crude oil or natural gas.

[19.15.34.3 NMAC - Rp, 19.15.34.3 NMAC, 3/31/15; A, xx/xx/xxxx]

**19.15.34.6 OBJECTIVE:** To encourage the recycling [~~or~~] re-use [~~or disposition~~] of produced water [~~by use~~] in a manner that [~~will afford reasonable protection against contamination of fresh water~~] protects public health, the environment and fresh water resources and establish procedures by which persons may transport, recycle, reuse and dispose [~~of~~] produced water, drilling fluids and other liquid oil field waste in activities related to the exploration, drilling, production, treatment or refinement of oil or gas.

[19.15.34.6 NMAC - Rp, 19.15.34.6 NMAC, 3/31/15; A, xx/xx/xxxx]

**19.15.34.7 DEFINITIONS:** These definitions apply to 19.15.34.2 NMAC through 19.15.34.21 NMAC. See 19.15.2.7 NMAC for additional definitions.

**A. "Recycling facility"** is a stationary or portable facility used exclusively for the treatment, re-use or recycling of produced water [~~intended for disposition by use~~]. A recycling facility does not include oilfield equipment such as separators, heater treaters and scrubbers in which produced water may be used.

**B. "Recycling containment"** is a storage containment which incorporates a synthetic liner as the primary and secondary containment device and is used solely in conjunction with a recycling facility for the storage, treatment or recycling of produced water only for the purpose of drilling, completion, production or plugging of wells used in connection with the development of oil or gas or both.

**C. "Treatment"** refers to the reconditioning of produced water to a reusable form and may include mechanical and chemical processes.

[19.15.34.7 NMAC - N, 3/31/15; A, xx/xx/xxxx]

**19.15.34.8 REQUIREMENTS FOR [~~DISPOSITION BY USE~~] REUSE, RECYCLING [FACILITIES] OR DISPOSAL OF PRODUCED WATER:**

**A.** Recycling or [~~disposition by use~~] reuse of produced water.

(1) No permit or registration is required from the division for the [~~disposition by use~~] reuse of produced water for drilling, completion, producing [~~secondary~~] or enhanced recovery [~~pressure maintenance~~] of oil or natural gas or plugging of wells pursuant to 19.15.34 NMAC.

(2) Any other [~~disposition by use~~] reuse of produced water in the exploration, drilling, production, treatment or refinement of oil or gas requires prior approval by the appropriate division district office on form C-147. Approval requirements will be determined by the district office based upon the proposed use.

(3) Research using produced water is to be encouraged through pilot projects approved by the appropriate division district office.

(4) All produced water for recycling or [~~disposition by use~~] reuse shall be handled and stored in a manner that [~~will afford reasonable protection against contamination of fresh water~~] protects public health, the environment and fresh water resources.

(5) All operations in which produced water is used shall be conducted in a manner consistent with hydrogen sulfide gas provisions in 19.15.11 NMAC or NORM provisions in 19.15.35 NMAC, as applicable.

(6) All releases from the recycling and re-use of produced water shall be handled in accordance with 19.15.29 NMAC.

(7) Any discharge, handling, transport, storage, recycling or treatment for the disposition of treated produced water, including disposition in road construction maintenance, roadway ice or dust control or other construction, or in the application of treated produced water to land, for activities unrelated to the exploration, drilling, production, treatment or refinement of oil or gas is subject to rules adopted by the water quality control commission.

**B.** Disposal of produced water. Persons disposing of produced water shall use one of the following disposition methods:

(1) ~~[disposition in a manner that does not constitute a hazard to fresh water, public health, or the environment;]~~ delivery to a ~~[permitted salt]~~ produced water disposal well ~~[or facility]~~ permitted pursuant to 19.15.26 NMAC, a surface waste management facility permitted pursuant to 19.15.36 NMAC or a permanent pit permitted pursuant to 19.15.17 NMAC; ~~[or to a drill site for use in drilling fluid; or]~~

(2) ~~[use]~~ recycling or reuse in accordance with 19.15.34 NMAC; ~~or [other authorization from the division.]~~

(3) for uses regulated by the water quality control commission pursuant to the Water Quality Act, a person shall obtain a permit from the department of environment before using the produced water, recycled or treated water or treated product or any byproduct of the produced water.  
[19.15.34.8 NMAC - Rp, 19.15.34.12 NMAC, 3/31/15; A, xx/xx/xxxx]

### **19.15.34.9 RECYCLING FACILITIES:**

**A.** Except where recycling facilities are part of a permitted operation for the drilling, completing, producing or plugging of oil and gas wells, all recycling facilities shall be permitted or registered with the division district office. Division form C-147 shall be used for registration, financial assurance, or for a permit if not associated with the drilling, completing, producing and plugging of oil and gas wells. All operators or owners of the facility shall be named in the form C-147.

**B.** In addition to the other applicable rule requirements, registration of a recycling facility is required in the following circumstances:

(1) when the recycling facility is an addition to a surface waste management facility permitted under 19.15.36 NMAC;

(2) when the recycling facility is an addition to the secondary recovery of oil and gas, enhanced oil recovery of oil and gas, or pressure maintenance projects permitted under 19.15.26 NMAC;

(3) when the recycling facility is an addition to a ~~[salt]~~ produced water disposal well permitted under 19.15.26 NMAC;

(4) when the recycling facility is an addition to pits permitted or below-grade tanks registered in accordance with 19.15.17 NMAC;

(5) when the recycling facility is used with a closed loop system that only delivers fluid for drilling or completion purposes;

(6) when the recycling facility is used with dedicated above ground, unlined, hard-sided tanks used in accordance with the manufacturer's standards that are externally visually inspected weekly when holding fluids and a log is kept of the inspections made available to the division upon request; or

(7) when the recycling facility is used with a recycling containment registered in accordance with 19.15.34 NMAC.

**C.** Recycling facilities not identified in Subsection B of 19.15.34.9 NMAC are required to be permitted. The appropriate division district office will determine approval requirements based upon the proposed use.

**D.** Recycling facilities may be located either onsite or offsite of a well drilling location and may serve a number of wells.

**E.** The operator of a recycling facility shall keep accurate records and shall report monthly to the division the total volume of water received for recycling, with the amount of fresh water received listed separately, and the total volume of water leaving the facility for disposition by use on form C-148.

**F.** The operator of a recycling facility shall maintain accurate records that identify the sources and disposition of all recycled water that shall be made available for review by the division upon request.

**G.** Recycling facilities may not be used for the disposal of produced water.

**H.** The operator shall remove all fluids within 60 days from the date the operator ceases operations. The division district office may grant an extension for the removal of all fluids not to exceed two months.  
[19.15.34.9 NMAC - N, 3/31/15; A, xx/xx/xxxx]

**19.15.34.13 OPERATIONAL REQUIREMENTS FOR RECYCLING CONTAINMENTS:**

**A.** The operator shall inspect the recycling containment and associated leak detection systems weekly while it contains fluids. The operator shall maintain a current log of such inspections and make the log available for review by the division upon request.

**B.** The operator shall maintain and operate a recycling containment in accordance with the following requirements.

(1) The operator shall remove any visible layer of oil from the surface of the recycling containment.

(2) The operator shall maintain at least three feet of freeboard at each containment.

(3) The injection or withdrawal of fluids from the containment shall be accomplished through a header, diverter or other hardware that prevents damage to the liner by erosion, fluid jets or impact from installation and removal of hoses or pipes.

(4) If the containment's primary liner is compromised above the fluid's surface, the operator shall repair the damage or initiate replacement of the primary liner within 48 hours of discovery or seek an extension of time from the division district office.

(5) If the primary liner is compromised below the fluid's surface, the operator shall remove all fluid above the damage or leak within 48 hours of discovery, notify the division district office and repair the damage or replace the primary liner.

(6) The containment shall be operated to prevent the collection of surface water run-on.

(7) The operator shall install, or maintain on site, an oil absorbent boom or other device to contain an unanticipated release.

**C.** A recycling containment shall be deemed to have ceased operations if less than ~~[20%]~~ twenty percent of the total fluid capacity is used every six months following the first withdrawal of produced water for use. The operator must report cessation of operations to the appropriate division district office. The appropriate division district office may grant an extension to this determination of cessation of operations not to exceed six months. [19.15.34.13 NMAC - N, 3/31/15; A, xx/xx/xxxx]

**19.15.34.14 CLOSURE AND SITE RECLAMATION REQUIREMENTS FOR RECYCLING CONTAINMENTS:**

**A.** Once the operator has ceased operations, the operator shall remove all fluids within 60 days and close the containment within six months from the date the operator ceases operations from the containment for use. The division district office may grant an extension for the removal of all fluids not to exceed two months. The division district office may grant an extension to close the containment not to exceed six months. If the operator wants to use the containment for a purpose other than recycling then the operator must have that use approved or permitted by the division in accordance with the appropriate rules.

**B.** The operator shall close a recycling containment by first removing all fluids, contents and synthetic liners and transferring these materials to a division approved facility.

**C.** The operator shall test the soils beneath the containment for contamination with a five-point composite sample which includes stained or wet soils, if any, and that sample shall be analyzed for the constituents listed in Table I below.

(1) If any contaminant concentration is higher than the parameters listed in Table I, the division may require additional delineation upon review of the results and the operator must receive approval before proceeding with closure.

(2) If all contaminant concentrations are less than or equal to the parameters listed in Table I, then the operator can proceed to backfill with non-waste containing, uncontaminated, earthen material.

**D.** Within 60 days of closure completion, the operator shall submit a closure report on form C-147, including required attachments, to document all closure activities including sampling results and the details on any backfilling, capping or covering, where applicable. The closure report shall certify that all information in the report and attachments is correct and that the operator has complied with all applicable closure requirements and conditions specified in division rules or directives.

**E.** Once the operator has closed the recycling containment, the operator shall reclaim the containment's location to a safe and stable condition that blends with the surrounding undisturbed area. Topsoils and subsoils shall be replaced to their original relative positions and contoured so as to achieve erosion control, long-term stability and preservation of surface water flow patterns. The disturbed area shall then be reseeded in the first favorable growing season following closure of a recycling containment. The operator shall substantially restore the impacted surface area to the condition that existed prior to the construction of the recycling containment.

**F.** Reclamation of all disturbed areas no longer in use shall be considered complete when all ground surface disturbing activities at the site have been completed, and a uniform vegetative cover has been established that reflects a life-form ratio of plus or minus fifty percent [~~(50%)~~] of pre-disturbance levels and a total percent plant cover of at least seventy percent [~~(70%)~~] of pre-disturbance levels, excluding noxious weeds.

**G.** The re-vegetation and reclamation obligations imposed by federal, state trust land or tribal agencies on lands managed by those agencies shall supersede these provisions and govern the obligations of any operator subject to those provisions, provided that the other requirements provide equal or better protection of fresh water, human health and the environment.

**H.** The operator shall notify the division when reclamation and re-vegetation are complete.

<b>Table I</b>			
<b>Closure Criteria for Recycling Containments</b>			
Depth below bottom of containment to groundwater less than 10,000 mg/l TDS	Constituent	Method*	Limit**
51 feet - 100 feet	Chloride	EPA 300.0	10,000 mg/kg
	TPH (GRO+DRO+MRO)	EPA SW-846 Method 8015M	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B	10 mg/kg
> 100 feet	Chloride	EPA 300.0	20,000 mg/kg
	TPH (GRO+DRO+MRO)	EPA SW-846 Method 8015M	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B	10 mg/kg

\* Or other test methods approved by the division.

\*\* Numerical limits or natural background level, whichever is greater.

[19.15.34.14 NMAC - N, 3/31/15; A, xx/xx/xxxx]

**19.15.34.18 DENIAL OF FORM C-133:** The division may deny approval of a form C-133 if:

**A.** the applicant is a corporation or limited liability company, and is not registered with the secretary of state to do business in New Mexico;

**B.** the applicant is a limited partnership, and is not registered with the New Mexico secretary of state to do business in New Mexico;

**C.** the applicant does not possess a warrant for transportation under the state registration system the public regulation commission administers, if it is required to have such a permit under the applicable statutes or rules; or

**D.** the applicant or officer, director or partner in the applicant, or a person with an interest in the applicant exceeding twenty-five percent [~~(25%)~~], is or was within the past five years an officer, director or partner in the applicant, or a person with an interest in the applicant exceeding twenty-five percent [~~(25%)~~] in another entity that possesses or has possessed an approved form C-133 that has been cancelled or suspended, has a history of violating division or other state or federal environmental laws; is subject to a commission or division order, issued

after notice and hearing, finding such entity to be in violation of an order requiring corrective action; or has a penalty assessment for violation of division or commission rules or orders that is unpaid more than 70 days after issuance of the order assessing the penalty.

[19.15.34.18 NMAC - Rp, 19.15.34.9 NMAC, 3/31/15; A, xx/xx/xxxx]