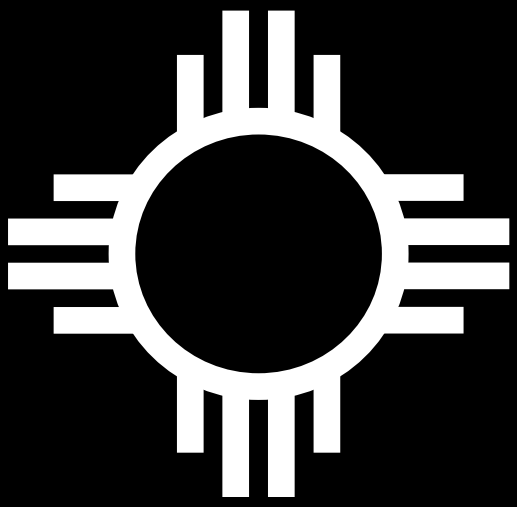
NEW MEXICO REGISTER



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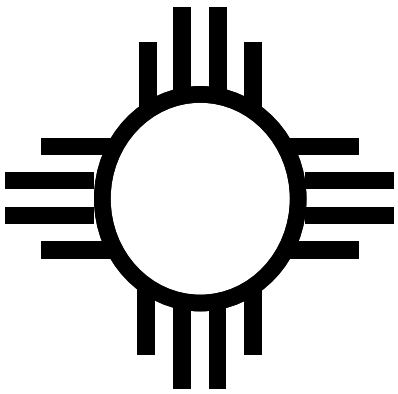

The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2007

New Mexico Register

Volume XVIII, Number 3
February 14, 2007

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Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

A=*Amended*, E=*Emergency*, N=*New*, R=*Repealed*, Rn=*Renumbered*

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Notices of Rulemaking and Proposed Rules

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING AND REGULAR MEETING.

On February 14, 2007, at 5:30 PM, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a combined public hearing in the Vincent E. Griego Chambers (City Council/County Commission Chambers) of the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102. The combined hearing will address:

* Proposal to amend 20.11.20 NMAC, Fugitive Dust Control.
* Proposal to incorporate a newly-amended 20.11.20 NMAC into the New Mexico State Implementation Plan (SIP) for air quality.

The purpose of the combined hearing is to receive testimony on proposed amendments to 20.11.20 NMAC, Fugitive Dust Control, and to place the newly-amended regulation into the SIP. The proposed regulation amendments would change the exempt status of the following sources from temporary to permanent (see 20.11.20.2.C NMAC):

(1) Areas zoned for agriculture and used for growing a crop; and
(2) Bicycle trails, hiking paths, and pedestrian paths, horse trails or similar paths used exclusively for purposes other than travel by motor vehicles; and
(3) Unpaved roadways serving six residential dwellings or fewer; and
(4) Unpaved roadways less than one-quarter mile in length that are not short-cuts; and
(5) Unpaved roadways on private easements serving residential uses that are in existence at the time this part becomes effective; and
(6) Unpaved roadways on United States department of agriculture forest service or United States department of interior park service lands if the roadways are more than one-quarter of a mile from an occupied residence; and
(7) Lots occupied by dwellings used solely for residential purposes or solely for non-commercial livestock operations smaller than three quarters of an acre, not including lots smaller than three-quarters of acre used for other purposes; and
(8) Unpaved roadways within properties used for ranching and unpaved roadways within properties owned or controlled by the United States department of energy or department of defense. However, this exemption only applies if the public does not have motor vehicle access to the roadways.

Following the combined hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adoption of the proposed regulation amendments and incorporating the newly-amended regulation into the SIP.

The Air Quality Control Board is the federally delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Air Board to administer and enforce the Clean Air Act and the New Mexico Air Quality Control Act, and to require air pollution sources within Bernalillo County to comply with air quality standards.

Hearings and meetings of the Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony is asked to submit a written Notice Of Intent (NOI) before 5:00pm on Wednesday, February 7, 2007 to: Attn: February Hearing Record, Mr. Neal Butt, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW, in advance of the hearing. The NOI shall identify the name, address, and affiliation of the person.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00pm on February 7, 2007. The comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to nbutt@cabq.gov and shall include the required name and address information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Mr. Neal Butt electronically at nbutt@cabq.gov or by phone (505) 768-2660.

NOTICE FOR PERSON WITH DISABILITIES: If you have a disability and/or require special assistance please call (505) 768-2600 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes.

NEW MEXICO COUNCIL FOR PURCHASING FROM PERSONS WITH DISABILITIES

NOTICE

The State Purchasing Council from Persons with Disabilities will hold a public hearing at 10:00 a.m., on March 15, 2007, in the New Mexico Division of Vocational Rehabilitation (NMDVR) Conference Room 435 Saint Michael's Drive, Building D, Santa Fe, New Mexico. The purpose of the meeting is to establish a rule and certain procedures with respect to purchasing of services from persons with disabilities and clarifies which services provided by persons with disabilities are suitable for sale to state agencies and local public bodies.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact Andy Winnegar, Deputy Director, NMDVR toll-free at 1-800-866-2253, in Santa Fe at 954-8521, or through the New Mexico Relay Network 1-800-659-8331. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the new rule: Title 2 Public Finance Chapter 40 Expenditure of Public Funds, Part 5 Purchasing of Services from Persons with Disabilities may be requested in writing prior to the meeting from Andy Winnegar, Deputy Director, 435 Saint Michael's Drive, Building D, Santa Fe, New Mexico. Please include a self addressed stamped envelope.

NEW MEXICO ENVIRONMENT DEPARTMENT

NEW MEXICO ENVIRONMENT DEPARTMENT NOTICE OF RULE MAKING HEARING

The New Mexico Environment Department ("NMED") will hold a public rule making hearing on March 26, 2007 at 9:00 a.m. at Porter Hall, Wendell Chino Building, 1220 St. Francis Drive, Santa Fe, New Mexico to consider promulgation of 20.1.9 NMAC (Regulatory Change Procedures - New Mexico Environment Department) and 20.12.2 NMAC (Sanitary Projects - Board of Director Training Requirements). The proponent of the rules is NMED.

Proposed 20.1.9 NMAC:

NMED proposes to promulgate procedures to govern regulatory change hearings held by NMED in order to standardize such procedures. The proposed procedures would allow any person, including NMED, to petition NMED to adopt, amend or repeal any regulation within the jurisdiction of NMED. NMED must make a determination whether to hold a hearing on the petition within 60 days. If NMED determines to hold a hearing, NMED must give at least 30 days public notice of the hearing in one newspaper of general circulation, the New Mexico Register, and NMED's website. Any person may submit written comments on the proposed regulatory change prior to or at the hearing and any person may give oral comments at the hearing. A hearing officer appointed by the Secretary of NMED conducts the hearing. A verbatim transcript or electronic recording of the hearing must be made. In the Secretary's discretion, the hearing may file a report and recommendations on the hearing. The Secretary of NMED must issue a final decision on the proposed regulatory change and a statement of reasons for the actions taken.

Proposed 20.12.2 NMAC:

NMED proposes under the Sanitary Projects Act ("SPA") to adopt training requirements for members of boards of directors of mutual domestic associations. The purpose of the training requirements is to standardize the requirements for boards of directors and to encourage boards to seek additional training. Under the proposed rules, NMED would establish minimum training requirements and continuing training requirements. The required training includes training on the responsibilities of governing bodies, the SPA, the Safe Water Drinking Act ("SWDA") and state drinking water regulations, state operator certification requirements, the Open Meetings Act, the Inspection of Public Records Act, the State Procurement Code, the State Audit Act, State Engineer reports and requirements, and basic accounting, budgeting and rate setting. Twelve hours of required training is required, which must be completed within two years of election to the board, with a minimum of 6 credits completed within one year. The suggested continuing training topics include training on water supply system basic operation, management practices and the SWDA, state drinking water sanitary survey and capacity assessment overview, advanced accounting, business planning, cost and budgeting, rate setting and asset management, funding sources for public entities, bidding and leasing practices, project management for water projects, security and emergency response, safety awareness and Public Regulation Commission reporting requirements. Board members must complete two hours of continuing education each subsequent year in their term. Mutual domestic associations must track and record the training received by their board members and must submit certificates of compliance for initial and continuing training. NMED approves all initial training.

The hearing will be conducted by a Hearing Officer appointed by the Secretary of NMED. The hearing will be conducted in accordance with a Procedural Order issued by the Hearing Officer. The full text of the proposed rules and the Procedural Order may be reviewed during regular business hours at the NMED Hearing Clerk's Office at the address below, and are available on NMED's web site at www.nmenv.state.nm.us, or by contacting the Hearing Clerk, Sally Worthington, at (505) 827-2002 or sally.worthington@state.nm.us.

All interested persons may submit written comment on the proposed rules to the Hearing Clerk at the address below prior to the hearing.

Sally Worthington, Hearing Clerk
New Mexico Environment Department
Harold Runnels Building
1190 St. Francis Dr., Room N-2150 / 2153
Santa Fe, NM 87502
Phone: (505) 827-2002, Fax (505) 827-2836

All interested persons will be given reasonable opportunity at the hearing to submit comment, orally or in writing, and to introduce exhibits.

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Judy Bentley by March 16, 2007, at NMED, Personnel Service Bureau, Room N-4071, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico, 87502. Ms. Bentley's telephone number is (505) 827-9872. TDY users please access Ms. Bentley's number through the New Mexico Relay Network at 1-800-659-8331.

The Hearing Officer will issue a report to the NMED Secretary on the proposed rules within 30 days of the hearing. The Secretary of NMED will make a final decision on the proposed rules within 30 days of the Hearing Officer's report.

NEW MEXICO OFFICE OF GUARDIANSHIP

NOTICE OF PUBLIC RULEMAKING HEARING

The New Mexico Developmental Disabilities Planning Council, Office of Guardianship, hereby gives notice that a public hearing will be held on **Thursday, March 8, 2007 at 9:00 am in 2340 Menaul Blvd, N.E., Suite 350, Albuquerque, New Mexico 87107.**

The purpose of the hearing will be to receive comments on the amendments to the eligibility section relating to Guardian Services promulgated pursuant to NMSA 1978, section 28-16B-3(A).

Any person requesting a copy of the proposed rule or wishing to testify at the hearing should contact Robert Richards at (505) 476-7337 or by mail c/o Robert Richards, DDPC, Office of Guardianship, 810 W. San Mateo, Suite "C", Santa Fe, New Mexico 87505, or by e-mail at robert_richards@qwest.net. Any person wishing to submit written or e-mail comments may do so by submitting them to Mr. Richards before the date of the hearing. No written or e-mail comments will be accepted after 5:00 p.m. on the day before the date of the hearing.

Persons requiring special accommodations at the hearing are asked to contact Mr. Richards at least two days before the date of the hearing so that arrangements can be made.

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 2:00 p.m., on March 14, 2007, in the HSD Law Library at Pollon Plaza, 2009 S. Pacheco Street, Santa Fe, New Mexico. The subject of the hearing will be **Intermediate Care Facilities for the Mentally Retarded (ICF-MR)**.

The Reserve Bed Days (8.313.2.20 NMAC) section of the program policy on Intermediate Care Facilities for the Mentally Retarded (ICF-MR), 8.313.2 NMAC, has been revised to address the number of reserve bed days available per calendar year with and without prior authorization, the documentation which must be recorded by the ICF-MR for all reserve bed days, prior authorization requirements and the documentation required for all absences from an ICF-MR.

Sixty five (65) reserve bed days per calendar year are available for all residents. The 65 reserve bed days may be used for home and community visits (vacations), to adjust to a new living environment or for hospitalizations. The need for the additional nine (9) reserve bed days for habilitation purposes was sufficiently addressed by the introduction of the 65 reserve bed days for all residents in 1990. Consequently, the 65 reserve bed days now replace the formerly available additional 9 reserve bed days. The additional six (6) reserve bed days per calendar year for discharge planning purposes, which require prior authorization by the Human Services Department, Medical Assistance Division (HSD/MAD), remain available. The content of the reserve bed day Part has been substantially reorganized to provide greater clarity on the issues of the number and purpose of reserve bed days available, and the documentation required for all reserve bed days.

Only the reserve bed day section, 8.313.2.20 NMAC, of the program policy contains substantive changes. Apart from the reserve bed day section, only minor grammatical and agency name corrections were made to the regulation text for the purpose of clarity and accuracy.

Interested persons may submit written comments no later than 5:00 p.m., March 14, 2007, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at www.state.nm.us/hsd/register.html . or by sending a self-addressed stamped envelope to Medical Assistance Division, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES DIVISION

STATE OF NEW MEXICO
REGULATION AND LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES DIVISION

NOTICE OF PUBLIC HEARING

A public meeting for the purpose of receiving comments on rule adoption of 14.9.5.14 - Medical Gas Installation and Certification - Applicable Codes which will be held at the following time and place:

* **Santa Fe, NM -** March 15, 2007, 9:00 a.m. - 12:00 Noon, CID Conference Room, 2550 Cerrillos Road
* **Albuquerque, NM** - March 15, 2007, 9:00 a.m. - 12:00 Noon, CID Conference Room, 5200 Oakland NE
* **Las Cruces, NM** - March 15, 2007, 9:00 a.m. - 12:00 Noon, CID Conference Room, Loretto Towne Center, 505 South Main, Suite 150

The public is invited to attend and comment on the adoption of the above-referenced proposed rule. If you cannot attend the meeting, you may send your written comments to Construction Industries Division, ATTENTION: Mechanical Bureau, 2550 Cerrillos Road, Santa Fe, New Mexico 87505. FAX (505) 476-4685. No comments will be received after 12:00, noon, March 15, 2007.

Copies of the proposed rule will be available at the Construction Industries Division Offices on Tuesday, February 6, 2007.

If you require special accommodations, please notify the Division of such needs no later than February 21, 2007, by calling (505) 476-4681.

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Taxation and Revenue Department proposes to amend the following regulations:

Tax Administration Act
3.1.4.13 NMAC Section 7-1-14 NMSA 1978
(Reporting According to Business Location)
3.1.7.13 NMAC Section 7-1-24 NMSA 1978
(Informal Conferences)
3.1.8.8 NMAC Section 7-1-24 NMSA 1978
(General Rules on Formal Hearings)

Gross Receipts and Compensating Tax Act

3.2.10.8 NMAC Section 7-9-7 NMSA 1978
(Tangible Personal Property Acquired Outside New Mexico for Use in New Mexico)
3.2.239.9 NMAC Section 7-9-85 NMSA 1978
(Receipts Not Eligible for Deduction)

The proposals were placed on file in the Office of the Secretary on February 1, 2007. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about April 16, 2007.

A public hearing will be held on the proposals on Wednesday, March 28, 2007, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before March 28, 2007.

3.1.4.13 **REPORTING ACCORDING TO BUSINESS LOCATION**

A. **REPORTING ACCORDING TO BUSINESS LOCATION - GENERAL:**

(1) Any person maintaining more than one place of business in New Mexico and reporting under one identification number is required to report the taxable gross receipts for each location on a single CRS-1 form. Receipts from locations in each municipality or in each county outside a municipality where a place or places of business are maintained must be indicated separately on the CRS-1 form.

(2) A person who maintains multiple places of business in a single municipality or multiple places of business not within a municipality but within a single county and who reports under one identification number is required to combine the taxable gross receipts from these places of business, indicating the total taxable gross receipts derived from all locations in each municipality or county on the CRS-1 form.

(3) For persons engaged in the construction business, "place of business" includes each place where construction is performed.

(4) The "place of business" of a person who has no other place of business in New Mexico, but who has sales personnel who reside in New Mexico, includes each place where such personnel reside. Such persons are required to report gross receipts in the manner provided in Paragraphs 3.1.4.13A(1) and (2) NMAC. The place of business of a person who has no other place of business and does not have sales personnel who reside in New Mexico but who does have service technicians who perform service calls in New Mexico is "out of state", whether the service technicians live in New Mexico or elsewhere. For the purposes of Paragraph 3.1.4.13A(4) NMAC, a "service technician" is an employee whose primary work responsibility is the repair, servicing and maintenance of the products sold or serviced by the employer and whose sales activities are at most incidental.

(5) A person, other than an itinerant peddler, who is liable for the gross receipts tax and who has no "place of business" or resident sales personnel or other employees such as service technicians in New Mexico is required to indicate on the CRS-1 form that the business location is "out-of-state".

(6) A person is required to report receipts for the location where the place of business is maintained even though the sale or delivery of goods or services was not performed at or from the place of business, except as provided in Subsection J of this section. It should be noted, however, that each construction site, as indicated in Paragraph 3.1.4.13A(3) NMAC, is a "place of business" for this purpose.

(7) If a person has more than one place of business in New Mexico, the department will accept, on audit, this person's method of crediting sales to each place of business, provided the method of crediting is in accordance with the person's regular accounting practice and contains no obvious distortion.

(8) Example 1: The X Company maintains its only place of business in Roswell, but sends its sales personnel to different cities in New Mexico to solicit sales and take orders. X is not required to report its gross receipts for each municipality in which its sales personnel are operating. X reports its gross receipts only for Roswell because its sole place of business is Roswell.

(9) Example 2: The Z Company maintains its only place of business in Grants. It makes deliveries in its own trucks to customers in various other cities within New Mexico. Z is not required to report its gross receipts for each municipality in which it makes deliveries. Z reports its gross receipts only for Grants. It is not maintaining a place of business in municipalities outside Grants solely because of its deliveries.

(10) Example 3: The W Furniture Company maintains its only office and showroom inside the city limits of Carrizozo. W's furniture warehouse is located outside the Carrizozo city limits. Furniture sold by W is, for the most part, delivered from its warehouse. W's "place of business" is in Carrizozo and it must report all its gross receipts for that municipality, regardless of the location of its warehouse.

(11) Example 4: The X Appliance Company maintains offices and showrooms in both Truth or Consequences and Las Cruces. The Truth or Consequences place of business initiates a sale of a refrigerator. The refrigerator is delivered from stock held in the Las Cruces place of business. X's place of business to which it credits the sale will be accepted on audit, if the crediting is in accordance with X's method of crediting sales in its regular accounting practice and contains no obvious distortion. If X credits the sale to its Truth or Consequences place of business, the department will accept Truth or Consequences as the location of the sale. The same result will occur if X credits the sale to its Las Cruces place of business.

B. **REPORTING ACCORDING TO BUSINESS LOCATION - UTILITIES:**

(1) Each municipality and the portion of each county outside a municipality in which customers of a utility are located constitute separate places of business. The physical location of the customer's premises or other place to which the utility's product or service is delivered to the customer is a business location of the utility.

(2) The department will accept, on audit, a utility's method of crediting its sales to its places of business, provided the method of crediting is based on the location of its customers as business locations and the method of crediting contains no obvious distortion.

(3) For the purposes of Section 3.1.4.13 NMAC, "utility" means a public utility or any other person selling and delivering or causing to be delivered to the customer's residence or place of business water via pipeline, electricity, natural gas or propane, butane, heating oil or similar fuel or providing cable television service, telephone service or Internet access service to the customer's residence or place of business.

C. **REPORTING BY PERSONS ENGAGED IN THE LEASING BUSINESS:** A person from out of state who is engaged in the business of leasing as defined in Subsection E of Section 7-9-3 NMSA 1978 and who has no place of business or resident sales personnel in New Mexico is required to indicate "out-of-state" on the CRS-1 report form and to calculate gross receipts tax due using the tax

rate for the state. An out-of-state person engaged in the business of leasing who has a place of business or resident sales personnel in New Mexico is required to report gross receipts for each municipality or area within a county outside of any municipalities in which the person maintains a place of business or resident sales personnel. An in-state person engaged in the business of leasing with more than one place of business is required to report gross receipts for each municipality or area within a county outside of any municipality in which the person maintains a place of business.

D. **REPORTING TAXABLE GROSS RECEIPTS BY A PERSON MAINTAINING A BUSINESS OUTSIDE THE BOUNDARIES OF A MUNICIPALITY ON LAND OWNED BY THAT MUNICIPALITY:** For the purpose of distribution of the amount provided in Section 7-1-6.4 NMSA 1978, persons maintaining a place of business outside the boundaries of a municipality on land owned by that municipality are required to report their gross receipts for that location. For the purpose of calculating the amount of state and local gross receipts tax due, such persons shall use the sum of the gross receipts tax rate for the state plus all applicable tax rates for county-imposed taxes administered at the same time and in the same manner as the gross receipts tax.

E. **ITINERANT PEDDLERS - TEMPORARY BUSINESS LOCATIONS:**

(1) An itinerant peddler is a person who sells from a nonreserved location chosen for temporary periods on a first-come, first-served basis. An itinerant peddler does no advertising or soliciting, has no one employed to sell and is not employed as a salesperson.

(2) An itinerant peddler shall report taxable gross receipts by the municipality or the area of a county outside any municipality where the peddler maintains a place of business. If the itinerant peddler sells from only one location, that location shall be the place of business. If an individual peddler has no set sales location, the place of business shall be the peddler's temporary or permanent residence within New Mexico.

(3) Example: X occasionally places a blanket on a sidewalk in a town wherever X can find space for the blanket and sells homemade pies. X is an itinerant peddler because the space is not reserved specifically for X, it is chosen for temporary periods, and X is not employed nor does X have employees. Additionally, because X cannot be expected to be found regularly carrying on business at the same sidewalk location every day, X's place of business, for reporting purposes, is X's residence.

(4) Any person who pays a fee to occupy a particular location or space for a determined period of time and who sells any item or performs any service at that location is not an itinerant peddler and shall report that location as a place of business.

(5) Example: X pays $50.00 to rent a space for a booth for two days during a festival. X is not an itinerant peddler because the space was assigned, and during the festival X could normally be expected to be found carrying on business at that place. X must therefore report the gross receipts from sales made during the festival to the location of the space.

(6) Any person who, in advance, advertises through print or broadcast media or otherwise represents to the public that the person will be at a particular location for a specified period of time and who sells property or performs service at that location shall report that location as a place of business.

(7) Example: X sells fish from a truck in a shopping center parking lot. X places an advertisement in the local paper informing the public where X will be located and the dates when X will sell fish at that location. X is not an itinerant peddler because X advertises and solicits business, and X can normally be expected to be found at that location during the time designated in the advertisement. The shopping center is X's place of business and X must report all activity occurring there to that location.

F. **OBVIOUS DISTORTION:** For purposes of Section 3.1.4.13 NMAC, obvious distortion shall be presumed whenever the method used to credit sales to a place of business treats similar transactions inconsistently. Any method which intentionally credits sales to a location with a lower combined tax rate primarily for the purpose of reducing the taxpayer's total tax liability shall be presumed to contain obvious distortion, shall not be allowed and may be the basis of establishing intent to evade or defeat tax under the provisions of Section 7-1-72 NMSA 1978.

G. **SPACE PROVIDED BY CLIENT CONSTITUTES BUSINESS LOCATION:**

(1) Except as provided otherwise in Paragraph 3.1.4.13G(6) NMAC, any person performing a service who occupies space provided by the purchaser of the service being performed has established a business location if the following conditions are present:

(a) the space is occupied by the provider of the service for a period of six consecutive months or longer;

(b) the provider or employees of the provider of the service are expected, by the purchaser of the services or representatives of the purchaser, to be available at that location during established times; and

(c) critical elements of the service are performed at, managed or coordinated from the purchaser's location.

(2) The following indicia will be considered in determining if the above conditions are present:

(a) the provider of the service has assigned employees to the client's location as a condition of employment;

(b) telephone is assigned for the exclusive use by the service provider;

(c) the space has been designated for the use of the service provider;

(d) the space contains office furniture or equipment furnished by either the client or the service provider for the sole use of the service provider;

(e) the service provider is identified by business name on a sign located in or adjacent to the provided space;

(f) the client or other persons can expect to communicate, either in person or by telephone, with the service provider or employees or representatives of the service provider at the space provided by the client; and

(g) the contract between the client and the service provider requires the client to provide space to the service provider.

(3) Any person meeting the three conditions as evidenced by the listed indicia must report the receipts derived from the performance of the service at the client's location to the municipality or county in which the furnished space is located.

(4) Example 1: X has entered into a contract to perform research and development services for the army at a location on White Sands missile range within Doña Ana county. The term of the contract is one year and is renewable annually. X is required by the contract to assign employees to the project at White Sands missile base on a full-time basis. The assigned employees consider White Sands as their place of employment. The army furnishes X with office and shop space as well as furniture and equipment. The space is identified as X's location by a sign containing X's business name at the main entrance to the assigned space. A specific telephone number has been assigned for X's exclusive use during the term of the contract. X shall report the receipts from services performed at the White Sands location under this contract using Doña Ana county as the location of business for gross receipts tax purposes.

(5) Example 2: Y has entered into a maintenance contract with a state agency to maintain and repair computer equipment. The state agency provides storage facilities to Y for the storage of equipment and parts which will be used by Y in the maintenance and repair of computer equipment. Y's employees are present at the location of the

state agency only when required to repair the computers. The agency contacts Y at Y's regular place of business to report equipment problems and to request necessary repairs. On receipt of a request from the agency, Y dispatches an employee to the agency's location to repair the equipment. The location of the state agency does not constitute a separate business location for Y. Y shall report its receipts from the state agency under this contract to the location where Y maintains a regular place of business.

(6) The provisions of Subsection 3.1.4.13G NMAC do not apply when:

(a) the provider of the service is a co-employer or joint employer with the client of the employees at the client's location or has entered into a contract to provide temporary employees to work at the client's facilities under the client's supervision and control; and

(b) the provider of the service has no employees at the client's location other than employees described in Subparagraph 3.1.4.13G(6)(a) NMAC above.

H. **REPORTING ACCORDING TO BUSINESS LOCATION - PERSONS SUBJECT TO INTERSTATE TELECOMMUNICATIONS GROSS RECEIPTS TAX ACT:**

(1) Each municipality and the portion of each county outside all municipalities in which customers of a person who is engaging in an interstate telecommunications business and who is subject to the interstate telecommunications gross receipts tax are located constitute separate places of business. Except for commercial mobile radio service as defined by 47 C.F.R. 20.3, the location of the person's customer is the location of the telephone sets, other receiving devices or other points of delivery of the interstate telecommunications service.

(2) The department will accept, on audit, the person's method of crediting its sales to its places of business, provided the method of crediting is based on the location of its customers as business locations and the method of crediting contains no obvious distortion.

(3) This version of Subsection 3.1.4.13H NMAC applies to all interstate telecommunications gross receipts tax returns due after January 1, 2000.

I. **REPORTING ACCORDING TO BUSINESS LOCATION - COMMERCIAL MOBILE RADIO SERVICE PROVIDERS:** For interstate telecommunications gross receipts tax returns due after January 1, 2000, each municipality and the portion of each county outside all municipalities in which customers of the provider of a commercial mobile radio service as defined by 47 C.F.R. 20.3 are located constitute separate places of business. With respect to the provision of commercial mobile radio service, the business location of a customer will be determined by the customer's service location. A customer's service location is determined first by the customer's billing address within the licensed service area. If the customer does not have a billing address within the licensed service area or if the customer's billing address is a post office box or mail-drop, then the customer's service location is the street or rural address of the customer's residence or business facility within that service area.

J. **TRANSACTIONS ON TRIBAL TERRITORY:** [~~The secretary may require~~] A person selling or delivering goods or performing services [~~to a tribal non-member~~] on the tribal land of a tribe or pueblo that has entered into a gross receipts tax cooperative agreement with the state of New Mexico pursuant to Section 9-11-12.1 NMSA 1978 is required to report those receipts based on the tribal location of the sale or delivery of the goods or performance of the service rather than the person's business location.

[3/5/70, 7/6/79, 11/20/79, 4/11/83, 11/5/85, 1/4/88, 8/22/88, 12/29/89, 8/15/90, 9/3/92, 2/22/95, 10/31/96, 7/30/99, 10/29/99; 3.1.4.13 NMAC - Rn & A, 3 NMAC 1.4.13, 12/29/00; A, 12/30/03; A, 1/17/06; A, XXX]

3.1.7.13 **INFORMAL CONFERENCES:**

A. [~~The secretary may, in appropriate cases,~~] Upon the taxpayer's written request or the department's own initiative, the department will provide for an informal conference before setting a hearing on the protest. [~~Any~~] When requested, an informal conference will be scheduled at a time and place agreed to by both parties. The secretary may attend or designate a delegate to attend. Both parties may bring representatives of their own choosing to the conference, and both parties may bring any records or documents that are pertinent to the issues to be discussed. An informal conference will be vacated if the parties resolve the protest prior to the scheduled date.

B. The purpose of the informal conference is to discuss the facts and the legal issues. The result of an informal conference will usually be one of the following:

(1) an agreement that the taxpayer will withdraw all or part of the protest;

(2) an agreement that the department will abate all or part of the assessment protested, or will refund all or part of the amount of refund claimed;

(3) an agreement to enter into a closing agreement;

(4) an agreement that one or more issues will be litigated upon stipulated facts or a statement of the case;

(5) an agreement to schedule a formal hearing; or

(6) any combination of the above agreements.

C. The taxpayer or the department may be given the opportunity to provide more facts if the situation warrants. There is no statutory restriction on the number of informal conferences that may be scheduled with a taxpayer but, after the initial informal conference, additional informal conferences will be scheduled only if the secretary believes that the additional informal conferences will be useful in resolving the issues. In the event that the taxpayer fails to appear at the informal conference without reasonable notice to the secretary, the protest may be scheduled for a formal hearing without further opportunity for an informal conference.

[11/5/85, 8/15/90, 10/31/96; 3.1.7.13 NMAC - Rn & A, 3 NMAC 1.7.13, 1/15/01, A, 8/30/01; A, XXX]

3.1.8.8 **GENERAL RULES ON FORMAL HEARINGS:**

A. Formal hearings are held in Santa Fe. Hearings are not open to the public except upon request of the taxpayer. Taxpayers may appear at a hearing for themselves or be represented by a bona fide employee or an attorney licensed to practice in New Mexico, certified public accountant or registered public accountant.

B. Every party shall have the right of due notice, cross-examination, presentation of evidence, objection, motion, argument and all other rights essential to a fair hearing, including the right to discovery as provided in these rules.

C. An adverse party, or an officer, agent or employee thereof, and any witness who appears to be hostile, unwilling or evasive may be interrogated by leading questions and may also be contradicted and impeached by the party calling that person.

D. The parties may agree to, and the hearing officer may accept, the joint submission of stipulated facts relevant to the issue or issues. The hearing officer may order the parties to stipulate, subject to objections as to relevance or materiality, to uncontested facts and to exhibits. The hearing officer may also order the parties to stipulate to basic documents concerning the controversy, such as audit reports of the department, assessments issued by the department, returns and payments filed by the party taxpayers and correspondence between the parties, and to basic facts concerning the identity and business of a taxpayer, such as the taxpayer's business locations in New Mexico and elsewhere, the location of its business headquarters and, if applicable, the state of its incorporation or registration.

[7/19/67, 11/5/85, 8/15/90, 10/31/96;

3.1.8.8 NMAC - Rn, 3 NMAC 1.8.8, 1/15/01, A, 8/30/01; A, XXX]

3.2.10.8 **TANGIBLE PERSONAL PROPERTY ACQUIRED OUTSIDE NEW MEXICO FOR USE IN NEW MEXICO:**

A. Tangible personal property acquired as a result of a transaction outside New Mexico which would have been subject to the gross receipts tax had that transaction occurred in New Mexico is subject to the compensating tax if that tangible personal property is subsequently used in New Mexico. For compensating tax purposes, a transaction would have been "subject to the gross receipts tax" when the transaction would have been within New Mexico's taxing jurisdiction, the receipts from the transaction would have been defined as gross receipts, would not have been deductible or exempt and taxation by New Mexico would not be pre-empted by federal law.

B. Example 1: X, a New Mexico resident, purchases the furniture for a new house from an El Paso, Texas, merchant. X brings this furniture into New Mexico in X's truck and puts it in the house. If X had purchased the furniture in New Mexico, the transaction would have been subject to the gross receipts tax. Therefore, X is liable for compensating tax measured by the sale price of the furniture. However, X may take a credit of up to 5% of the sale price of the furniture against the compensating tax liability on this furniture for any sales tax which was paid in Texas on the purchase of the furniture. Also, X pays no separate tax if tax collected by the seller is shown on the invoice as the New Mexico compensating tax collected by the El Paso, Texas, merchant.

C. Example 2: G operates a carnival concession. G has purchased tangible personal property in Iowa, to be used as prizes for persons performing certain skills at the carnival concession. G is subject to the compensating tax on the value of the tangible personal property acquired in Iowa, which is used as prizes in New Mexico.

[~~D. Example 3: C, a corporation, buys a computer for use in its New Mexico office from an out-of-state mail order company. The mail order company charges no gross receipts, sales or compensating tax on the transaction. C is subject to the compensating tax on the value of the computer.~~]

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 10/28/94, 11/15/96, 3.2.10.8 NMAC - Rn, 3 NMAC 2.7.8, 4/30/01; A, XXX]

3.2.239.9 **RECEIPTS NOT ELIGIBLE FOR DEDUCTION:**

[~~A. The deduction provided by Section 7-9-85 NMSA 1978 does not apply to the receipts of an organization derived from an unrelated trade or business as defined in Section 513 of the Internal Revenue Code.~~

~~B.~~] The deduction provided by Section 7-9-85 NMSA 1978 does not apply to the receipts from more than two (2) fundraising events during any calendar year. [3/16/95, 11/15/96; 3.2.239.9 NMAC - Rn, 3 NMAC 2.85.9 & A, 6/14/01; A, XXX]

NEW MEXICO WATER QUALITY CONTROL COMMISSION

NEW MEXICO WATER QUALITY CONTROL COMMISSION
NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.6.4 NMAC: STANDARDS FOR INTERSTATE AND INTRASTATE SURFACE WATERS; ANTIDEGRADATION POLICY

Notice is hereby given that the New Mexico Water Quality Control Commission (Commission) will hold a public hearing following its regular business meeting on Tuesday, April 10, 2007, at 9:00 a.m., and continuing thereafter as necessary, in the New Mexico State Capitol, Room 317, Old Santa Fe Trail and Paseo de Peralta, Santa Fe, concerning proposed amendments to Standards for Interstate and Intrastate Surface Waters (20.6.4.7 and 20.6.4.8 NMAC).

The New Mexico Environment Department (NMED) proposes to amend 20.6.4.7 NMAC by adding a definition and to amend Paragraph (3) of Subsection A of 20.6.4.8 NMAC. The amendments allow temporary and short-term water quality degradation to occur under limited circumstances in waters designated as Outstanding National Resource Waters. NMED filed the proposed amendments with the Commission on December 22, 2006, docketed as WQCC 06-11 (R).

The hearing will be conducted in accordance with NMSA 1978, Section 74-6-6 of the Water Quality Act; the Guidelines for Water Quality Control Commission Regulation Hearings; and the January 26, 2007 Prehearing Procedural Order entered by the Hearing Officer appointed for this matter, Felicia Orth.

The proposed amendments, the hearing procedures and other documents related to the hearing may be reviewed during regular business hours in the office of the Commission:
Joyce Medina, WQCC Administrator
Harold Runnels Building, 1190 St. Francis Drive, N2150
Santa Fe, NM 87502
(505) 827-2425, Fax (505) 827-2836 or Joyce.Medina@state.nm.us.
The proposed amendments, the petition for regulatory change and statement of reasons, the Guidelines for Water Quality Control Commission Regulation Hearings, and the Prehearing Procedural Order are also posted on the NMED web page at http://www.nmenv.state.nm.us/swqb/Standards/.

Anyone who intends to present technical evidence or testimony at the hearing must file a Notice of Intent with Ms. Medina by 5:00 p.m. on March 21, 2007 and should reference docket number WQCC 06-11 (R). Technical evidence or testimony means scientific, engineering, economic or other specialized information. Any person wishing to cross-examine witnesses must file an entry of appearance with Ms. Medina.

Public comment of a non-technical nature may be presented at the hearing without prior notification. A member of the general public may submit a written non-technical statement for the record in lieu of oral testimony any time prior to the close of the hearing. Any document, including non-technical written comments, filed for the Commission's review must be filed with Ms. Medina as an original plus 14 copies.

The Commission may deliberate and rule on the proposed amendments at the close of the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g., translator or sign language interpreter, to participate in any aspect of this process, please contact Judy Bentley, NMED Human Resources Bureau, 1190 St. Francis Drive, PO Box 26110, Santa Fe, NM, 87502, telephone 505-827-9872, by March 21, 2007. TDY users may access her number via the New Mexico Relay Network at 1-800-659-8331. Copies of the proposed amendments will be available in alternative forms, e.g. audiotape, if requested by March 21, 2007.

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 36 SURFACE WASTE MANAGEMENT FACILITIES

19.15.36.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505.
[19.15.36.1 NMAC - N, 2/14/2007]

19.15.36.2 SCOPE: This part applies to persons or entities that own or operate surface waste management facilities as defined in Subsection S of 19.15.1.7 NMAC.
[19.15.36.2 NMAC - N, 2/14/2007]

19.15.36.3 STATUTORY AUTHORITY: This part is adopted pursuant to the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, which grants the oil conservation division jurisdiction and authority over the disposition of wastes resulting from oil and gas operations.
[19.15.36.3 NMAC - N, 2/14/2007]

19.15.36.4 DURATION: Permanent.
[19.15.36.4 NMAC - N, 2/14/2007]

19.15.36.5 EFFECTIVE DATE: 2/14/2007, unless a later date is cited at the end of a section.
[19.15.36.5 NMAC - N, 2/14/2007]

19.15.36.6 OBJECTIVE: To regulate the disposal of oil field waste and the construction, operation and closure of surface waste management facilities.
[19.15.36.6 NMAC - N, 2/14/2007]

19.15.36.7 DEFINITIONS:

A. Definitions relating to types of surface waste management facilities.

(1) Centralized facility is a surface waste management facility:

(a) that is used exclusively by one generator subject to New Mexico's Oil and Gas Conservation Tax Act, NMSA 1978, Section 7-30-1, as amended;

(b) where the generator or operator does not receive compensation for oil field waste management at that facility; and

(c) receives exclusively oil field wastes that are generated from production units or leases the generator, or an affiliate of the generator, operates (for this provision's purposes, an affiliate of a generator is a person who controls, is controlled by or is under common control with the generator).

(2) Commercial facility is a surface waste management facility that is not a centralized facility.

(3) Landfarm is a discrete area of land designated and used for the remediation of petroleum hydrocarbon-contaminated soils and drill cuttings.

(4) Landfill is a discrete area of land or an excavation designed for permanent disposal of exempt or non-hazardous waste.

(5) Small landfarm is a centralized landfarm of two acres or less that has a total capacity of 2000 cubic yards or less in a single lift of eight inches or less, remains active for a maximum of three years from the date of its registration and that receives only petroleum hydrocarbon-contaminated soils (excluding drill cuttings) that are exempt or non-hazardous waste.

B. Other definitions.

(1) Active portion is that part of a surface waste management facility that has received or is receiving oil field waste and has not been closed.

(2) Cell is a confined area engineered for the disposal or treatment of oil field waste.

(3) Composite liner is a liner that may consist of multiple layers of geosynthetics and low-permeability soils. The different layers of a composite liner may have different material properties and may be applied at different stages of landfill liner installation.

(4) Geosynthetic is the general classification of synthetic materials used in geotechnical applications, including the following classifications:

(a) geocomposite is a manufactured material using geotextiles, geogrids or geomembranes, or combinations thereof, in a laminated or composite form;

(b) geogrid is a deformed or non-deformed, netlike polymeric material used to provide reinforcement to soil slopes;

(c) geomembrane is an impermeable polymeric sheet material that is impervious to liquid and gas as long as it maintains its integrity, and is used as an integral part of an engineered structure designed to limit the movement of liquid or gas in a system;

(d) geonet is a type of geogrid that allows planar flow of liquids and serves as a drainage system;

(e) geosynthetic clay liner (GCL) is a relatively thin layer of processed clay (typically bentonite) that is either bonded to a geomembrane or fixed between two sheets of geotextile; and

(f) geotextile is any sheet material that is less impervious to liquid than a geomembrane but more resistant to penetration damage, and is used as part of an engineered structure or system to serve as a filter to prevent the movement of soil fines into a drainage system, to provide planar flow for drainage, to serve as a cushion to protect geomembranes or to provide structural support.

(5) Leachate is the liquid that has passed through or emerged from oil field waste and contains soluble, suspended or miscible materials.

(6) Landfarm cell is a bermed area of 10 acres or less within a landfarm.

(7) Landfarm lift is an accumulation of soil or drill cuttings predominately contaminated by petroleum hydrocarbons that is placed into a landfarm cell for treatment.

(8) Liner is a continuous, low-permeability layer constructed of natural or human-made materials that restricts the migration of liquid oil field wastes, gases or leachate.

(9) Lower explosive limit is the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 77 degrees fahrenheit and atmospheric pressure.

(10) Major modification is a modification of a surface waste management facility that involves an increase in the land area that the permitted surface waste management facility occupies; a change in the design capacity or nature of the permitted oil field waste stream; addition of a new treatment process; an exception to, waiver of or change to a numerical standard provided in 19.15.36 NMAC; or other modification that the division determines is sufficiently substantial that public notice and public participation in the application process are appropriate.

(11) Minor modification is a modification of a surface waste management facility that is not a major modification.

(12) Operator means the operator of a surface waste management facility.

(13) Poor foundation conditions are features that indicate that a natural or human-induced event may result in inadequate foundational support for a surface waste management facility's structural components.

(14) Run-off is rainwater, leachate or other liquid that drains over land

from any part of a surface waste management facility.

(15) Run-on is rainwater, leachate or other liquid that drains from other land on to any part of a surface waste management facility.

(16) Structural components of a landfill are liners, leachate collection and removal systems, final covers, run-on/run-off systems and other components used in a landfill's construction or operation that are necessary for protection of fresh water, public health, safety or the environment.

(17) Unstable area is a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of a landfill's structural components. Examples of unstable areas are areas of poor foundation conditions, areas susceptible to mass earth movements and Karst terrain areas where Karst topography is developed as a result of dissolution of limestone, dolomite or other soluble rock. Characteristic physiographic features of Karst terrain include sinkholes, sinking streams, caves, large springs and blind valleys.

[19.15.36.7 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007]

19.15.36.8 SURFACE WASTE MANAGEMENT FACILITY PERMITS AND APPLICATION REQUIREMENTS:

A. Permit required. No person shall operate a surface waste management facility (other than a small landfarm registered pursuant to Paragraph (1) of Subsection A of 19.15.36.16 NMAC) except pursuant to and in accordance with the terms and conditions of a division-issued surface waste management facility permit.

B. Permitting requirements. Except for small landfarms registered pursuant to Paragraph (1) of Subsection A of 19.15.36.16 NMAC, new commercial or centralized facilities prior to commencement of construction, and existing commercial or centralized facilities prior to modification or permit renewal, shall be permitted by the division in accordance with the applicable requirements of Subsection C of 19.15.36.8 and 19.15.36.11 NMAC.

C. Application requirements for new facilities, major modifications and permit renewals. An applicant or operator shall file an application, form C-137, for a permit for a new surface waste management facility, to modify an existing surface waste management facility or for permit renewal with the environmental bureau in the division's Santa Fe office. The application shall include:

(1) the names and addresses of the applicant and principal officers and owners of 25 percent or more of the applicant;

(2) a plat and topographic map showing the surface waste management facility's location in relation to governmental surveys (quarter-quarter section, township and range); highways or roads giving access to the surface waste management facility site; watercourses; fresh water sources, including wells and springs; and inhabited buildings within one mile of the site's perimeter;

(3) the names and addresses of the surface owners of the real property on which the surface waste management facility is sited and surface owners of the real property within one mile of the site's perimeter;

(4) a description of the surface waste management facility with a diagram indicating the location of fences and cattle guards, and detailed construction/installation diagrams of pits, liners, dikes, piping, sprayers, tanks, roads, fences, gates, berms, pipelines crossing the surface waste management facility, buildings and chemical storage areas;

(5) engineering designs, certified by a registered professional engineer, including technical data on the design elements of each applicable treatment, remediation and disposal method and detailed designs of surface impoundments;

(6) a plan for management of approved oil field wastes that complies with the applicable requirements contained in 19.15.36.13, 19.15.36.14, 19.15.36.15 and 19.15.36.17 NMAC;

(7) an inspection and maintenance plan that complies with the requirements contained in Subsection L of 19.15.36.13 NMAC;

(8) a hydrogen sulfide prevention and contingency plan that complies with those provisions of 19.15.3.118 NMAC that apply to surface waste management facilities;

(9) a closure and post closure plan, including a responsible third party contractor's cost estimate, sufficient to close the surface waste management facility in a manner that will protect fresh water, public health, safety and the environment (the closure and post closure plan shall comply with the requirements contained in Subsection D of 19.15.36.18 NMAC);

(10) a contingency plan that complies with the requirements of Subsection N of 19.15.36.13 NMAC and with NMSA 1978, Sections 12-12-1 through 12-12-30, as amended (the Emergency Management Act);

(11) a plan to control run-on water onto the site and run-off water from the site that complies with the requirements of Subsection M of 19.15.36.13 NMAC;

(12) in the case of an application to permit a new or expanded landfill, a leachate management plan that describes the anticipated amount of leachate that will be generated and the leachate's handling, storage, treatment and disposal, including final post closure options;

(13) in the case of an application to permit a new or expanded landfill, a gas safety management plan that complies with the requirements of Subsection O of 19.15.36.13 NMAC;

(14) a best management practice plan to ensure protection of fresh water, public health, safety and the environment;

(15) geological/hydrological data including:

(a) a map showing names and location of streams, springs or other watercourses, and water wells within one mile of the site;

(b) laboratory analyses, performed by an independent commercial laboratory, for major cations and anions; benzene, toluene, ethyl benzene and xylenes (BTEX); RCRA metals; and total dissolved solids (TDS) of ground water samples of the shallowest fresh water aquifer beneath the proposed site;

(c) depth to, formation name, type and thickness of the shallowest fresh water aquifer;

(d) soil types beneath the proposed surface waste management facility, including a lithologic description of soil and rock members from ground surface down to the top of the shallowest fresh water aquifer;

(e) geologic cross-sections;

(f) potentiometric maps for the shallowest fresh water aquifer; and

(g) porosity, permeability, conductivity, compaction ratios and swelling characteristics for the sediments on which the contaminated soils will be placed;

(16) certification by the applicant that information submitted in the application is true, accurate and complete to the best of the applicant's knowledge, after reasonable inquiry; and

(17) other information that the division may require to demonstrate that the surface waste management facility's operation will not adversely impact fresh water, public health, safety or the environment and that the surface waste management facility will comply with division rules and orders.

D. Application requirements for minor modifications. An existing surface waste management facility applying for a minor modification shall file a form C-137 with the environmental bureau in the division's Santa Fe office describing the proposed change and identifying information that has changed from its last C-137 filing.

E. Determination that an application is administratively complete. Upon receipt of an application for a surface

waste management facility permit or modification or renewal of an existing surface waste management facility permit, the division shall review the application for administrative completeness. To be deemed administratively complete, the application shall provide information required by Subsection C or D (as applicable) of 19.15.36.8 NMAC. The division shall notify the applicant in writing when it deems the application administratively complete. If the division determines that the application is not administratively complete, the division shall notify the applicant of the deficiencies in writing within 30 days after the application's receipt and state what additional information is necessary.

[19.15.36.8 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007]

19.15.36.9 NOTICE REQUIREMENTS FOR NEW SURFACE WASTE MANAGEMENT FACILITIES, MAJOR MODIFICATIONS OR RENEWALS AND ISSUANCE OF A TENTATIVE DECISION:

A. Upon receipt of notification of the division's determination that the application is administratively complete, the applicant for a new surface waste management facility permit, permit renewal or major modification shall give written notice of the application, by certified mail, return receipt requested, to the surface owners of record within one-half mile of the surface waste management facility, the county commission of the county where the surface waste management facility site is located, the appropriate city officials if the surface waste management facility site is within city limits or within one-half mile of the city limits, and affected federal, tribal or pueblo governmental agencies. The notice shall contain the information in Paragraphs (1) through (4) of Subsection F of 19.15.36.9 NMAC. The division may extend the distance requirements for notice if the division determines that the proposed surface waste management facility has the potential to adversely impact fresh water, public health, safety or the environment at a distance greater than one-half mile. The applicant shall furnish proof that it has given the required notices.

B. The division shall distribute notice of its determination that an application for a new surface waste management facility or for a renewal or major modification of an existing surface waste management facility is administratively complete to persons who have requested notification of division and commission hearing dockets within 30 days following the date that the division determines the application to be administratively complete.

C. A person wishing to comment on an application prior to the division's preliminary consideration of the application may file comments within 30 days, or as extended by the director, after the later of the date when the applicant mails the notice required by Subsection A of 19.15.36.9 NMAC or the date when the division distributes the notice provided in Subsection B of 19.5.36.9 NMAC.

D. Within 60 days after the end of the public comment period provided in Subsection C of 19.15.36.9 NMAC, the division shall issue a tentative decision concerning the application, renewal or modification, including proposed conditions for approval or reasons for disapproval, as applicable. The division shall mail notice of the tentative decision, together with a copy of the decision, by certified mail, return receipt requested, to the applicant and shall post notice on the division's website, together with a copy of the tentative decision.

E. Within 30 days after receiving the division's tentative decision, the applicant shall provide notice of the tentative decision by:

(1) publishing a display ad in English and Spanish, in a form approved by the division, in a newspaper of general circulation in this state and in a newspaper of general circulation in the county where the surface waste management facility is or will be located; the display ad shall be at least three inches by four inches and shall not be published in the newspaper's legal or classified sections;

(2) mailing notice by first class mail or e-mail to persons, as identified to the applicant by the division, who have requested notification of applications generally, or of the particular application, including persons who have filed comments on the particular application during the initial public comment period, and who have included in such comments a legible return address or e-mail address; and

(3) mailing notice by first class or e-mail to affected local, state, federal or tribal governmental agencies, as determined and identified to the applicant by the division.

F. This notice issued pursuant to Subsection E of 19.15.36.9 NMAC shall include:

(1) the applicant's name and address;

(2) the surface waste management facility's location, including a street address if available, and sufficient information to locate the surface waste management facility with reference to surrounding roads and landmarks;

(3) a brief description of the proposed surface waste management facility;

(4) the depth to, and TDS concentration of, the ground water in the shallowest aquifer beneath the surface waste management facility site;

(5) a statement that the division's tentative decision is available on the division's website, or, upon request, from the division clerk, including the division clerk's name, address and telephone number;

(6) a description of alternatives, exceptions or waivers that may be under consideration in accordance with Subsection G of 19.15.36.18 NMAC or 19.15.36.19 NMAC;

(7) a statement of the comment period and of the procedures for requesting a hearing on the application; and

(8) a brief statement of the procedures the division shall follow in making a final decision.

[19.15.36.9 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007]

19.15.36.10 COMMENTS AND HEARING ON APPLICATION:

A. A person, whether or not such person has previously submitted comments, may file comments or request a hearing on the application by filing their comments or, in accordance with 19.15.14.1206 NMAC, a hearing request with the division clerk within 30 days after the date that the applicant issued public notice of the division's tentative decision. A request for a hearing shall be in writing and shall state specifically the reasons why a hearing should be held. The division shall schedule a public hearing on the application if, in addition to the requirements in 19.15.14.1206 NMAC:

(1) the division has proposed to deny the application or grant it subject to conditions not expressly required by rule, and the applicant requests a hearing;

(2) the director determines that there is significant public interest in the application;

(3) the director determines that comments have raised objections that have probable technical merit; or

(4) determination of the application requires that the division make a finding, pursuant to Paragraph (3) of Subsection F of 19.15.1.7 NMAC, whether a water source has a present or reasonably foreseeable beneficial use that contamination would impair.

B. If the division schedules a hearing on an application, the hearing shall be conducted according to 19.15.14.1206 through 19.15.14.1215 NMAC.

[19.15.36.10 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007]

19.15.36.11 FINANCIAL ASSURANCE REQUIREMENTS:

A. Centralized facilities. Upon notification by the division that it has approved a permit but prior to the division issuing the permit, an applicant for a new centralized facility permit shall submit acceptable financial assurance in the amount of $25,000 per centralized facility, or a statewide "blanket" financial assurance in the amount of $50,000 to cover all of that applicant's centralized facilities, unless such applicant has previously posted a blanket financial assurance for centralized facilities.

B. New commercial facilities or major modifications of existing commercial facilities. Upon notification by the division that it has approved a permit for a new commercial facility or a major modification of an existing commercial facility but prior to the division issuing the permit, the applicant shall submit acceptable financial assurance in the amount of the commercial facility's estimated closure and post closure cost, or $25,000, whichever is greater. The commercial facility's estimated closure and post closure cost shall be the amount provided in the closure plan the applicant submitted unless the division determines that such estimate does not reflect a reasonable and probable closure and post closure cost, in which event, the division shall determine the estimated closure and post closure cost and shall include such determination in its tentative decision. If the applicant disagrees with the division's determination of estimated closure and post closure cost, the applicant may request a hearing as provided in 19.15.36.10 NMAC. If the applicant so requests, and no other person files a request for a hearing regarding the application, the hearing shall be limited to determination of estimated closure and post closure cost.

C. Terms of financial assurance. The financial assurance shall be on division-prescribed forms, payable to the state of New Mexico and conditioned upon the surface waste management facility's proper operation, site closure and post closure monitoring in compliance with state of New Mexico statutes, division rules and the surface waste management facility permit terms. The applicant shall notify the division of a material change affecting the financial assurance within 30 days of discovery of such change.

D. Forfeiture of financial assurance. The division shall give the operator 20 days notice and an opportunity for a hearing prior to forfeiting financial assurance.

E. Forms of financial assurance. The division may accept the following forms of financial assurance.

(1) Surety bonds. A surety bond shall be executed by the applicant and by a corporate surety licensed to do business in the state, and shall be non-cancelable.

(2) Letters of credit. A letter of credit shall be issued by a bank organized or authorized to do commercial banking business in the United States, shall be irrevocable for a term of not less than five years and shall provide for automatic renewal for successive, like terms upon expiration, unless the issuer has notified the division in writing of non-renewal at least 90 days before its expiration date. The letter of credit shall be payable to the state of New Mexico in part or in full upon receipt from the director or the director's authorized representative of demand for payment accompanied by a notice of forfeiture.

(3) Cash accounts. An applicant may provide financial assurance in the form of a federally insured or equivalently protected cash account or accounts in a financial institution, provided that the operator and the financial institution shall execute as to each such account a collateral assignment of the account to the division, which shall provide that only the division may authorize withdrawals from the account. In the event of forfeiture pursuant to Subsection C of 19.15.36.18 NMAC, the division may, at any time and from time to time, direct payment of all or part of the balance of such account (excluding interest accrued on the account) to itself or its designee for the surface waste management facility's closure.

F. Replacement of financial assurance.

(1) The division may allow an operator to replace existing forms of financial assurance with other forms of financial assurance that provide equivalent coverage.

(2) The division shall not release existing financial assurance until the operator has submitted, and the division has approved, an acceptable replacement.

G. Review of adequacy of financial assurance. The division may at any time not less than five years after initial acceptance of financial assurance for a commercial facility, or whenever the operator applies for a major modification of the commercial facility's permit, initiate a review of such financial assurance's adequacy. Additionally, whenever the division determines that a landfarm operator has not achieved the closure standards specified in Paragraph (3) of Subsection G of 19.15.36.15 NMAC, the division may review the adequacy of the landfarm operator's financial assurance, without regard to the date of its last review. Upon determination, after notice to the operator and an opportunity for a hearing, that the financial assurance is not adequate to cover the reasonable and probable cost of a commercial facility's closure and post closure monitoring, the division may require the operator to furnish additional financial assurance sufficient to cover such reasonable and probable cost, provided that the financial assurance required of a commercial facility permitted prior to the effective date of 19.15.36 NMAC shall not exceed $250,000 except in the event of a major modification of the commercial facility. If such a commercial facility applies for a major modification, the division shall determine the applicable financial assurance requirement based on the total estimated closure and post closure cost of the commercial facility as modified, without regard to the $250,000 limit.

[19.15.36.11 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007]

19.15.36.12 PERMIT APPROVAL, DENIAL, REVOCATION, SUSPENSION, MODIFICATION OR TRANSFER:

A. Granting of permit.

(1) The division may issue a permit for an new surface waste management facility or major modification upon finding that an acceptable application has been filed, that the conditions of 19.15.36.9 and 19.15.36.11 NMAC have been met and that the surface waste management facility or modification can be constructed and operated in compliance with applicable statutes and rules and without endangering fresh water, public health, safety or the environment.

(2) Each permit the division issues for a new surface waste management facility shall remain in effect for 10 years from the date of its issuance. If the division grants a permit for a major modification of a surface waste management facility, the permit for that surface waste management facility shall remain in effect for 10 years from the date the division approves the major modification.

(a) A surface waste management facility permit may be renewed for successive 10-year terms. If the holder of a surface waste management facility permit submits an application for permit renewal at least 120 days before the surface waste management facility permit expires, and the operator is not in violation of the surface waste management facility permit on the date of its expiration, then the existing surface waste management facility permit for the same activity shall not expire until the division has approved or denied an application for renewal. If the division has not notified the operator of a violation, if the operator is diligently pursuing procedures to contest a violation or if the operator and the division have signed an agreed compliance order providing for remedying the violation, then the surface waste management facility permit shall continue in effect as above provided notwithstanding the surface waste management facility permit violation's existence. A surface waste management facility permit continued under this provision remains fully effective and

enforceable.

(b) An application for permit renewal shall include and adequately address the information necessary for evaluation of a new surface waste management facility permit as provided in Subsection C of 19.15.36.8 NMAC. Previously submitted materials may be included by reference provided they are current, readily available to the division and sufficiently identified so that the division may retrieve them.

(c) The operator shall give public notice of the renewal application in the manner prescribed by 19.15.36.9 NMAC. The division shall grant an application for renewal if the division finds that an acceptable application has been filed, that the conditions of 19.15.36.9 and 19.15.36.11 NMAC have been met and that the surface waste management facility can be operated in compliance with applicable statutes and rules and without endangering fresh water, public health, safety or the environment.

(3) The division shall review each surface waste management facility permit at least once during the 10-year term, and shall review surface waste management facility permits to which Paragraph (2) of Subsection A of 19.15.36.12 NMAC does not apply at least every five years. The review shall address the operation, compliance history, financial assurance and technical requirements for the surface waste management facility. The division, after notice to the operator and an opportunity for a hearing, may require appropriate modifications of the surface waste management facility permit, including modifications necessary to make the surface waste management facility permit terms and conditions consistent with statutes, rules or judicial decisions.

B. Denial of permit. The division may deny an application for a surface waste management facility permit or modification of a surface waste management facility permit if it finds that the proposed surface waste management facility or modification may be detrimental to fresh water, public health, safety or the environment. The division may also deny an application for a surface waste management facility permit if the applicant, an owner of 25 percent or greater interest in the applicant or an affiliate of the applicant has a history of failure to comply with division rules and orders or state or federal environmental laws; is subject to a division or commission 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. An affiliate of an applicant, for purposes of Subsection B of 19.15.36.12 NMAC, shall be a person who controls, is controlled by or under is common control with the applicant or a 25 percent or greater owner of the applicant.

C. Additional requirements. The division may impose conditions or requirements, in addition to the operational requirements set forth in 19.15.36 NMAC, that it determines are necessary and proper for the protection of fresh water, public health, safety or the environment. The division shall incorporate such additional conditions or requirements into the surface waste management facility permit.

D. Revocation, suspension or modification of a permit. The division may revoke, suspend or impose additional operating conditions or limitations on a surface waste management facility permit at any time, for good cause, after notice to the operator and an opportunity for a hearing. The division may suspend a surface waste management facility permit or impose additional conditions or limitations in an emergency to forestall an imminent threat to fresh water, public health, safety or the environment, subject to the provisions of NMSA 1978, Section 70-2-23, as amended. If the division initiates a major modification it shall provide notice in accordance with 19.15.36.9 NMAC. Suspension of a surface waste management facility permit may be for a fixed period of time or until the operator remedies the violation or potential violation. If the division suspends a surface waste management facility's permit, the surface waste management facility shall not accept oil field waste during the suspension period.

E. Transfer of a permit. The operator shall not transfer a permit without the division's prior written approval. A request for transfer of a permit shall identify officers, directors and owners of 25 percent or greater in the transferee. Unless the director otherwise orders, public notice or hearing are not required for the transfer request's approval. If the division denies the transfer request, it shall notify the operator and the proposed transferee of the denial by certified mail, return receipt requested, and either the operator or the proposed transferee may request a hearing with 10 days after receipt of the notice. Until the division approves the transfer and the required financial assurance is in place, the division shall not release the transferor's financial assurance.

[19.15.36.12 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007]

19.15.36.13 SITING AND OPERATIONAL REQUIREMENTS APPLICABLE TO ALL PERMITTED SURFACE WASTE MANAGEMENT FACILITIES: Except as otherwise provided in 19.15.36 NMAC.

A. Depth to ground water.

(1) No landfill shall be located where ground water is less than 100 feet below the lowest elevation of the design depth at which the operator will place oil field waste.

(2) No landfarm that accepts soil or drill cuttings with a chloride concentration that exceeds 500 mg/kg shall be located where ground water is less than 100 feet below the lowest elevation at which the operator will place oil field waste. See Subsection A of 19.15.36.15 NMAC for oil field waste acceptance criteria.

(3) No landfarm that accepts soil or drill cuttings with a chloride concentration that is 500 mg/kg or less shall be located where ground water is less than 50 feet below the lowest elevation at which the operator will place oil field waste.

(4) No small landfarm shall be located where ground water is less than 50 feet below the lowest elevation at which the operator will place oil field waste.

(5) No other surface waste management facility shall be located where ground water is less than 50 feet below the lowest elevation at which the operator will place oil field waste.

B. No surface waste management facility shall be located:

(1) within 200 feet of a watercourse, lakebed, sinkhole or playa lake;

(2) within an existing wellhead protection area or 100-year floodplain;

(3) within, or within 500 feet of, a wetland;

(4) within the area overlying a subsurface mine;

(5) within 500 feet from the nearest permanent residence, school, hospital, institution or church in existence at the time of initial application; or

(6) within an unstable area, unless the operator demonstrates that engineering measures have been incorporated into the surface waste management facility design to ensure that the surface waste management facility's integrity will not be compromised.

C. No surface waste management facility shall exceed 500 acres.

D. The operator shall not accept oil field wastes transported by motor vehicle at the surface waste management facility unless the transporter has a form C-133, authorization to move liquid waste, approved by the division.

E. The operator shall not place oil field waste containing free liquids in a landfill or landfarm cell. Operators shall use the paint filter test, as prescribed by the EPA (EPA SW-846, method 9095) to determine conformance of the oil field waste to this criterion.

F. Surface waste management facilities shall accept only exempt or non-hazardous waste, except as provided in Paragraph (3) of Subsection F of 19.15.36.13 NMAC. The operator shall not accept hazardous waste at a surface waste management facility. The operator shall not accept wastes containing regulated naturally occurring radioactive material (NORM) at a surface waste management facility except as provided in Subsection C of 19.15.9.714 NMAC. The operator shall require the following documentation for accepting oil field wastes, and both the operator and the generator shall maintain and make the documentation available for division inspection.

(1) Exempt oil field wastes. The operator shall require a certification on form C-138, signed by the generator or the generator's authorized agent, that represents and warrants that the oil field wastes are generated from oil and gas exploration and production operations, are exempt waste and are not mixed with non-exempt waste. The operator shall have the option to accept such certifications on a monthly, weekly or per load basis. The operator shall maintain and shall make the certificates available for the division's inspection.

(2) Non-exempt, non-hazardous, oil field wastes. The operator shall require a form C-138, oil field waste document, signed by the generator or its authorized agent. This form shall be accompanied by acceptable documentation to determine that the oil field waste is non-hazardous.

(3) Emergency non-oil field wastes. The operator may accept non-hazardous, non-oil field wastes in an emergency if ordered by the department of public safety. The operator shall complete a form C-138, oil field waste document, describing the waste, and maintain the same, accompanied by the department of public safety order, subject to division inspection.

G. The operator of a commercial facility shall maintain records reflecting the generator, the location of origin, the location of disposal within the commercial facility, the volume and type of oil field waste, the date of disposal and the hauling company for each load or category of oil field waste accepted at the commercial facility. The operator shall maintain such records for a period of not less than five years after the commercial facility's closure, subject to division inspection.

H. Disposal at a commercial facility shall occur only when an attendant is on duty unless loads can be monitored or otherwise isolated for inspection before disposal. The surface waste management facility shall be secured to prevent unauthorized disposal.

I. To protect migratory birds, tanks exceeding eight feet in diameter, and exposed pits and ponds shall be screened, netted or covered. Upon the operator's written application, the division may grant an exception to screening, netting or covering upon the operator's showing that an alternative method will protect migratory birds or that the surface waste management facility is not hazardous to migratory birds. Surface waste management facilities shall be fenced in a manner approved by the division.

J. Surface waste management facilities shall have a sign, readable from a distance of 50 feet and containing the operator's name; surface waste management facility permit or order number; surface waste management facility location by unit letter, section, township and range; and emergency telephone numbers.

K. Operators shall comply with the spill reporting and corrective action provisions of 19.15.1.19 or 19.15.3.116 NMAC.

L. Each operator shall have an inspection and maintenance plan that includes the following:

(1) monthly inspection of leak detection sumps including sampling if fluids are present with analyses of fluid samples furnished to the division; and maintenance of records of inspection dates, the inspector and the leak detection system's status;

(2) semi-annual inspection and sampling of monitoring wells as required, with analyses of ground water furnished to the division; and maintenance of records of inspection dates, the inspector and ground water monitoring wells' status; and

(3) inspections of the berms and the outside walls of pond levees quarterly and after a major rainfall or windstorm, and maintenance of berms in such a manner as to prevent erosion.

M. Each operator shall have a plan to control run-on water onto the site and run-off water from the site, such that:

(1) the run-on and run-off control system shall prevent flow onto the surface waste management facility's active portion during the peak discharge from a 25-year storm; and

(2) run-off from the surface waste management facility's active portion shall not be allowed to discharge a pollutant to the waters of the state or United States that violates state water quality standards.

N. Contingency plan. Each operator shall have a contingency plan. The operator shall provide the division's environmental bureau with a copy of an amendment to the contingency plan, including amendments required by Paragraph (8) of Subsection N of 19.15.36.13 NMAC; and promptly notify the division's environmental bureau of changes in the emergency coordinator or in the emergency coordinator's contact information. The contingency plan shall be designed to minimize hazards to fresh water, public health, safety or the environment from fires, explosions or an unplanned sudden or non-sudden release of contaminants or oil field waste to air, soil, surface water or ground water. The operator shall carry out the plan's provisions immediately whenever there is a fire, explosion or release of contaminants or oil field waste constituents that could threaten fresh water, public health, safety or the environment; provided that the emergency coordinator may deviate from the plan as necessary in an emergency situation. The contingency plan for emergencies shall:

(1) describe the actions surface waste management facility personnel shall take in response to fires, explosions or releases to air, soil, surface water or ground water of contaminants or oil field waste containing constituents that could threaten fresh water, public health, safety or the environment;

(2) describe arrangements with local police departments, fire departments, hospitals, contractors and state and local emergency response teams to coordinate emergency services;

(3) list the emergency coordinator's name; address; and office, home and mobile phone numbers (where more than one person is listed, one shall be named as the primary emergency coordinator);

(4) include a list, which shall be kept current, of emergency equipment at the surface waste management facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems and decontamination equipment, containing a physical description of each item on the list and a brief outline of its capabilities;

(5) include an evacuation plan for surface waste management facility personnel that describes signals to be used to begin evacuation, evacuation routes and alternate evacuation routes in cases where fire or releases of wastes could block the primary routes;

(6) include an evaluation of expected contaminants, expected media contaminated and procedures for investigation, containment and correction or remediation;

(7) list where copies of the contingency plan will be kept, which shall include the surface waste management facility; local police departments, fire departments and hospitals; and state and local emergency response teams;

(8) indicate when the contingency plan will be amended, which shall be within five working days whenever:

(a) the surface waste management facility permit is revised or modified;

(b) the plan fails in an emergency;

(c) the surface waste management facility changes design, construction, operation, maintenance or other circumstances in a way that increases the potential for fires, explosions or releases of oil field waste constituents that could threaten fresh water, public health, safety or the environment or change the response necessary in an emergency;

(d) the list of emergency coordinators or their contact information changes; or

(e) the list of emergency equipment changes;

(9) describe how the emergency coordinator or the coordinator's designee, whenever there is an imminent or actual emergency situation, will immediately;

(a) activate internal surface waste management facility alarms or communication systems, where applicable, to notify surface waste management facility personnel; and

(b) notify appropriate state and local agencies with designated response roles if their assistance is needed;

(10) describe how the emergency coordinator, whenever there is a release, fire or explosion, will immediately identify the character, exact source, amount and extent of released materials (the emergency coordinator may do this by observation or review of surface waste management facility records or manifests, and, if necessary, by chemical analysis) and describe how the emergency coordinator will concurrently assess possible hazards to fresh water, public health, safety or the environment that may result from the release, fire or explosion (this assessment shall consider both the direct and indirect hazard of the release, fire or explosion);

(11) describe how, if the surface waste management facility stops operations in response to fire, explosion or release, the emergency coordinator will monitor for leaks, pressure buildup, gas generation or rupture in valves, pipes or the equipment, wherever this is appropriate;

(12) describe how the emergency coordinator, immediately after an emergency, will provide for treating, storing or disposing of recovered oil field waste, or other material that results from a release, fire or explosion at a surface waste management facility;

(13) describe how the emergency coordinator will ensure that no oil field waste, which may be incompatible with the released material, is treated, stored or disposed of until cleanup procedures are complete; and

(14) provide that the emergency coordinator may amend the plan during an emergency as necessary to protect fresh water, public health, safety or the environment.

O. Gas safety management plan. Each operator of a surface waste management facility that includes a landfill shall have a gas safety management plan that describes in detail procedures and methods that will be used to prevent landfill-generated gases from interfering or conflicting with the landfill's operation and protect fresh water, public health, safety and the environment. The plan shall address anticipated amounts and types of gases that may be generated, an air monitoring plan that includes the vadose zone and measuring, sampling, analyzing, handling, control and processing methods. The plan shall also include final post closure monitoring and control options.

P. Training program. Each operator shall conduct an annual training program for key personnel that includes general operations, permit conditions, emergencies proper sampling methods and identification of exempt and non-exempt waste and hazardous waste. The operator shall maintain records of such training, subject to division inspection, for five years.

[19.15.36.13 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007]

19.15.36.14 SPECIFIC REQUIREMENTS APPLICABLE TO LANDFILLS:

A. General operating requirements.

(1) The operator shall confine the landfill's working face to the smallest practical area and compact the oil field waste to the smallest practical volume. The operator shall not use equipment that may damage the integrity of the liner system in direct contact with a geosynthetic liner.

(2) The operator shall prevent unauthorized access by the public and entry by large animals to the landfill's active portion through the use of fences, gates, locks or other means that attain equivalent protection.

(3) The operator shall prevent and extinguish fires.

(4) The operator shall control litter and odors.

(5) The operator shall not excavate a closed cell or allow others to excavate a closed cell except as approved by the division.

(6) The operator shall provide adequate cover for the landfill's active face as needed to control dust, debris, odors or other nuisances, or as otherwise required by the division.

(7) For areas of the landfill that will not receive additional oil field waste for one month or more, but have not reached the final waste elevation, the operator shall provide intermediate cover that shall be:

(a) approved by the division;

(b) stabilized with vegetation; and

(c) inspected and maintained to prevent erosion and manage infiltration or leachate during the oil field waste deposition process.

(8) When the operator has filled a landfill cell, the operator shall close it pursuant to the conditions contained in the surface waste management facility permit and the requirements of Paragraph (2) of Subsection D of 19.15.36.18 NMAC. The operator shall notify the division's environmental bureau at least three working days prior to a landfill cell's closure.

B. Ground water monitoring program. If fresh ground water exists at a site, the operator shall, unless otherwise approved by the division, establish a ground water monitoring program, approved by the division's environmental bureau, which shall include a ground water monitoring work plan, a sampling and analysis plan, a ground water monitoring system and a plan for reporting ground water monitoring results. The ground water monitoring system shall consist of a sufficient number of wells, installed at appropriate locations and depths, to yield ground water samples from the uppermost aquifer that:

(1) represent the quality of background ground water that leakage from a landfill has not affected; and

(2) represent the quality of ground water passing beneath and down gradient of the surface waste management facility.

C. Landfill design specification. New landfill design systems shall include a base layer and a lower geomembrane liner (e.g., composite liner), a leak detection system, an upper geomembrane liner, a leachate collection and removal system, a leachate collection and removal system protective layer, an oil field waste zone and a top landfill cover.

(1) The base layer shall, at a minimum, consist of two feet of clay soil compacted to a minimum 90 percent standard proctor density (ASTM D-698) with a hydraulic conductivity of 1×10^{-7} cm/sec or less. In areas where no ground water is present, the operator may propose an alternative base layer design, subject to division approval.

(2) The lower geomembrane liner shall consist of a 30-mil flexible poly vinyl chloride (PVC) or 60-mil high-density polyethylene (HDPE) liner, or an equivalent liner approved by the division.

(3) The operator shall place the leak detection system, which shall consist

of two feet of compacted soil with a saturated hydraulic conductivity of 1 x 10^{-5} cm/sec or greater, between the lower and upper geomembrane liners. The leak detection system shall consist of a drainage and collection system placed no more than six inches above the lower geomembrane liner in depressions and sloped so as to facilitate the earliest possible leak detection at designated collection points. Drainage piping shall be designed to withstand chemical attack from oil field waste and leachate and structural loading and other stresses and disturbances from overlying oil field waste, cover materials, equipment operation, expansion or contraction, and to facilitate clean-out maintenance. The material placed between the pipes and laterals shall be sufficiently permeable to allow the transport of fluids to the drainage pipe. The slope of the landfill sub-grade and drainage pipes and laterals shall be at least two percent grade; i.e., two feet of vertical drop per 100 horizontal feet. The piping collection network shall be comprised of solid and perforated pipe having a minimum diameter of four inches and a minimum wall thickness of schedule 80. The operator shall seal a solid drainage pipe to convey collected liquids to a corrosion-proof sump or sumps located outside the landfill's perimeter for observation, storage, treatment or disposal. The operator may install alternative designs as approved by the division.

(4) The operator shall place the upper geomembrane liner, which shall consist of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division, over the leak detection system.

(5) The operator shall place the leachate collection and removal system, which shall consist of at least two feet of compacted soil with a saturated hydraulic conductivity of 1 x 10^{-2} cm/sec or greater, over the upper geomembrane liner to facilitate drainage. The leachate collection and removal system shall consist of a drainage and collection and removal system placed no more than six inches above the upper geomembrane liner in depressions and sloped so as to facilitate the maximum leachate collection. Piping shall be designed to withstand chemical attack from oil field waste or leachate and structural loading and other stresses and disturbances from overlying oil field waste, cover materials, equipment operation, expansion or contraction and to facilitate clean-out maintenance. The material placed between the pipes and laterals shall be sufficiently permeable to allow the transport of fluids to the drainage pipe. The slope of the upper geomembrane liner and drainage lines and laterals shall be at least two percent grade; i.e., two feet of vertical drop per 100 horizontal feet. The piping collection network shall be comprised of solid and perforated pipe having a minimum diameter of four inches and a minimum wall thickness of schedule 80. The operator shall seal a solid drainage pipe to convey collected fluids outside the landfill's perimeter for storage, treatment and disposal. The operator may install alternative designs as approved by the division.

(6) The operator shall place the leachate collection and removal system protection layer, which shall consist of a soil layer at least one foot thick with a saturated hydraulic conductivity of 1 x 10^{-2} cm/sec or greater, over the leachate collection and removal system.

(7) The operator shall place oil field waste over the leachate collection and removal system protective layer.

(8) The top landfill cover design shall consist of the following layers (top to bottom): a soil erosion layer composed of at least 12 inches of fertile topsoil re-vegetated in accordance with the post closure provisions of Subparagraph (b) of Paragraph (2) of Subsection D of 19.15.36.18 NMAC; a protection or frost protection layer composed of 12 to 30 inches of native soil; a drainage layer composed of at least 12 inches of sand or gravel with a saturated hydraulic conductivity of 1 x 10^{-2} cm/sec or greater and a minimum bottom slope of four percent, a hydraulic barrier-layer-geomembrane (minimum of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division); and a gas vent or foundation layer composed of at least 12 inches of sand or gravel above oil field waste with soils compacted to the minimum 80 percent Standard Proctor Density. The operator shall install the top landfill cover within one year of achieving the final landfill cell waste elevation. The operator shall ensure that the final landfill design elevation of the working face of the oil field waste is achieved in a timely manner with the date recorded in a field construction log. The operator shall also record the date of top landfill cover installation to document the timely installation of top landfill covers. The operator shall provide a minimum of three working days notice to the division in advance of the top landfill cover's installation to allow the division to witness the top landfill cover's installation.

(9) Alternatively, the operator may propose a performance-based landfill design system using geosynthetics or geocomposites, including geogrids, geonets, geosynthetic clay liners, composite liner systems, etc., when supported by EPA's "hydrologic evaluation of landfill performance" (HELP) model or other division-approved model. The operator shall design the landfill to prevent the "bathtub effect". The bathtub effect occurs when a more permeable cover is placed over a less permeable bottom liner or natural subsoil.

(10) External piping, e.g., leachate collection, leak detection and sump removal systems shall be designed for installation of a sidewall riser pipe. Pipes shall not penetrate the liner with the exception of gas vent or collection wells where the operator shall install a flexible clamped pipe riser through the top landfill cover liner that will accommodate oil field waste settling and will prevent tears.

D. Liner specifications and requirements.

(1) General requirements.

(a) Geomembrane liner specifications. Geomembrane liners shall consist of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division. Geomembrane liners shall have a hydraulic conductivity no greater than 1 x 10^{-9} cm/sec. Geomembrane liners shall be composed of impervious, geosynthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. Liners shall also be resistant to ultraviolet light, or the operator shall make provisions to protect the material from sunlight. Liner compatibility shall comply with EPA SW-846 method 9090A.

(b) Liners shall be able to withstand projected loading stresses, settling and disturbances from overlying oil field waste, cover materials and equipment operations.

(c) Operators shall construct liners with a minimum of two percent slope to promote positive drainage and to facilitate leachate collection and leak detection.

(2) Additional requirements for geomembranes.

(a) Geomembranes shall be compatible with the oil field waste to be disposed. Geomembranes shall be resistant to chemical attack from the oil field waste or leachate. The operator shall demonstrate this by means of the manufacturer's test reports, laboratory analyses or other division-approved method.

(b) Geosynthetic material the operator installs on a slope greater than 25 percent shall be designed to withstand the calculated tensile forces acting upon the material. The design shall consider the maximum friction angle of the geosynthetic with regard to a soil-geosynthetic or geosynthetic-geosynthetic interface and shall ensure that overall slope stability is maintained.

(c) The operator shall thermally seal (hot wedge) field seams in geosynthetic material with a double track weld to create an air pocket for non-destructive air channel testing. In areas where double-track welding cannot be achieved, the operator may propose alternative thermal seaming methods. A stabilized air pressure of 35

pounds per square inch (psi), plus or minus one percent, shall be maintained for at least five minutes. The operator shall overlap liners four to six inches before seaming, and shall orient seams parallel to the line of maximum slope; i.e., oriented along, not across, the slope. The operator shall minimize the number of field seams in corners and irregularly shaped areas. The operator shall use factory seams whenever possible. The operator shall not install horizontal seams within five feet of the slope's toe. Qualified personnel shall perform all field seaming.

E. Requirements for the soil component of composite liners.

(1) The operator shall place and compact the base layer to 90 percent standard proctor density on a prepared subgrade.

(2) The soil surface upon which the operator installs a geosynthetic shall be free of stones greater than one half inch in any dimension, organic matter, local irregularities, protrusions, loose soil and abrupt changes in grade that could damage the geosynthetic.

(3) The operator shall compact a clay soil component of a composite liner to a minimum of 90 percent standard proctor density, which shall have, unless otherwise approved by the division, a plasticity index greater than 10 percent, a liquid limit between 25 and 50 percent, a portion of material passing the no. 200 sieve (0.074 mm and less fraction) greater than 40 percent by weight; and a clay content greater than 18 percent by weight.

F. The leachate collection and removal system protective layer and the soil component of the leak detection system shall consist of soil materials that shall be free of organic matter, shall have a portion of material passing the no. 200 sieve no greater than five percent by weight and shall have a uniformity coefficient (Cu) less than 6, where Cu is defined as D60/D10. Geosynthetic materials or geocomposites including geonets and geotextiles, if used as components of the leachate collection and removal or leak detection system, shall have a hydraulic conductivity, transmissivity and chemical and physical qualities that oil field waste placement, equipment operation or leachate generation will not adversely affect. These geosynthetics or geocomposites, if used in conjunction with the soil protective cover for liners, shall have a hydraulic conductivity designed to ensure that the liner's hydraulic head never exceeds one foot.

G. Landfill gas control systems. If the gas safety management plan or requirements of other federal, state or local agencies require the installation of a gas control system at a landfill, the operator shall submit a plan for division approval, which shall include the following:

(1) the system's design, indicating the location and design of vents, barriers, collection piping and manifolds and other control measures that the operator will install (gas vent or collection wells shall incorporate a clamped and seamed pipe riser design through the top cover liner);

(2) if gas recovery is proposed, the design of the proposed gas recovery system and the system's major on-site components, including storage, transportation, processing, treatment or disposal measures required in the management of generated gases, condensates or other residues;

(3) if gas processing is proposed, a processing plan designed in a manner that does not interfere or conflict with the activities on the site or required control measures or create or cause danger to persons or property;

(4) if gas disposal is proposed, a disposal plan designed:

(a) in a manner that does not interfere or conflict with the activities on the site or with required control measures;

(b) so as not to create or cause danger to persons or property; and

(c) with active forced ventilation, using vents located at least one foot above the landfill surface at each gas vent's location;

(5) physical and chemical characterization of condensates or residues that are generated and a plan for their disposal;

(6) means that the operator will implement to prevent gas' generation and lateral migration such that

(a) the concentration of the gases the landfill generates does not exceed 25 percent of the lower explosive limit for gases in surface waste management facility structures (excluding gas control or recovery system components); and

(b) the concentration of gases does not exceed the lower explosive limit for gases at the surface waste management facility boundary; and

(7) a routine gas monitoring program providing for monitoring at least quarterly; the specific type and frequency of monitoring to be determined based on the following:

(a) soil conditions;

(b) the hydrogeologic and hydraulic conditions surrounding the surface waste management facility; and

(c) the location of surface waste management facility structures and property lines.

H. Landfill gas response. If gas levels exceed the limits specified in Paragraph (6) of Subsection G of 19.15.36.14 NMAC, the operator shall:

(1) immediately take all necessary steps to ensure protection of fresh water, public health, safety and the environment and notify the division;

(2) within seven days of detection, record gas levels detected and a description of the steps taken to protect fresh water, public health, safety and the environment;

(3) within 30 days of detection, submit a remediation plan for gas releases that describes the problem's nature and extent and the proposed remedy; and

(4) within 60 days after division approval, implement the remediation plan and notify the division that the plan has been implemented.

[19.15.36.14 NMAC - N, 2/14/2007]

19.15.36.15 SPECIFIC REQUIREMENTS APPLICABLE TO LANDFARMS:

A. Oil field waste acceptance criteria. Only soils and drill cuttings predominantly contaminated by petroleum hydrocarbons shall be placed in a landfarm. The division may approve placement of tank bottoms in a landfarm if the operator demonstrates that the tank bottoms do not contain economically recoverable petroleum hydrocarbons. Soils and drill cuttings placed in a landfarm shall be sufficiently free of liquid content to pass the paint filter test, and shall not have a chloride concentration exceeding 500 mg/kg if the landfarm is located where ground water is less than 100 feet but at least 50 feet below the lowest elevation at which the operator will place oil field waste or exceeding 1000 mg/kg if the landfarm is located where ground water is 100 feet or more below the lowest elevation at which the operator will place oil field waste. The person tendering oil field waste for treatment at a landfarm shall certify, on form C-138, that representative samples of the oil field waste have been subjected to the paint filter test and tested for chloride content, and that the samples have been found to conform to these requirements. The landfarm's operator shall not accept oil field waste for landfarm treatment unless accompanied by this certification.

B. Background testing. Prior to beginning operation of a new landfarm or to opening a new cell at an existing landfarm at which the operator has not already established background, the operator shall take, at a minimum, 12 composite background soil samples, with each consisting of 16 discrete samples from areas that previous operations have not impacted at least six inches below the original ground surface, to establish background soil concentrations for the entire surface waste management facility. The operator shall analyze the background soil samples for total petro-

leum hydrocarbons (TPH), as determined by United States environmental protection agency (EPA) method 418.1 or other EPA method approved by the division; BTEX, as determined by EPA SW-846 method 8021B or 8260B; chlorides; and other constituents listed in Subsections A and B of 20.6.2.3103 NMAC, using approved EPA methods.

C. Operation and oil field waste treatment.

(1) The operator shall berm each landfarm cell to prevent rainwater run-on and run-off.

(2) The operator shall not place contaminated soils received after the effective date of 19.15.36 NMAC within 100 feet of the surface waste management facility's boundary.

(3) The operator shall not place contaminated soils received at a landfarm after the effective date of 19.15.36 NMAC within 20 feet of a pipeline crossing the landfarm.

(4) With 72 hours after receipt, the operator shall spread and disk contaminated soils in eight-inch or less lifts or approximately 1000 cubic yards per acre per eight-inch lift or biopile.

(5) The operator shall ensure that soils are disked biweekly and biopiles are turned at least monthly.

(6) The operator shall add moisture, as necessary, to enhance bioremediation and to control blowing dust.

(7) The application of microbes for the purposes of enhancing bioremediation requires prior division approval.

(8) Pooling of liquids in the landfarm is prohibited. The operator shall remove freestanding water within 24 hours.

(9) The operator shall maintain records of the landfarm's remediation activities in a form readily accessible for division inspection.

(10) The division's environmental bureau may approve other treatment procedures if the operator demonstrates that they provide equivalent protection for fresh water, public health, safety and the environment.

D. Treatment zone monitoring. The operator shall spread contaminated soils on the surface in eight-inch or less lifts or approximately 1000 cubic yards per acre per eight-inch lift. The operator shall conduct treatment zone monitoring to ensure that prior to adding an additional lift the TPH concentration of each lift, as determined by EPA SW-846 method 8015M or EPA method 418.1 or other EPA method approved by the division, does not exceed 2500 mg/kg and that the chloride concentration, as determined by EPA method 300.1, does not exceed 500 mg/kg if the landfarm is located where ground water is less than 100 feet but at least 50 feet below the lowest elevation at which the operator will place oil field waste or 1000 mg/kg if the landfarm is located where ground water is 100 feet or more below the lowest elevation at which the operator will place oil field waste. The operator shall collect and analyze at least one composite soil sample, consisting of four discrete samples, from the treatment zone at least semi-annually using the methods specified below for TPH and chlorides. The maximum thickness of treated soils in a landfarm cell shall not exceed two feet or approximately 3000 cubic yards per acre. When that thickness is reached, the operator shall not place additional oil field waste in the landfarm cell until it has demonstrated by monitoring the treatment zone at least semi-annually that the contaminated soil has been treated to the standards specified in Subsection F of 19.15.36.15 NMAC or the contaminated soils have been removed to a division-approved surface waste management facility.

E. Vadose zone monitoring.

(1) Sampling. The operator shall monitor the vadose zone beneath the treatment zone in each landfarm cell. The operator shall take the vadose zone samples from soils between three and four feet below the cell's original ground surface.

(2) Semi-annual monitoring program. The operator shall collect and analyze a minimum of four randomly selected, independent samples from the vadose zone at least semi-annually using the methods specified below for TPH, BTEX and chlorides and shall compare each result to the higher of the practical quantitation limit (PQL) or the background soil concentrations to determine whether a release has occurred.

(3) Five year monitoring program. The operator shall collect and analyze a minimum of four randomly selected, independent samples from the vadose zone, using the methods specified below for the constituents listed in Subsections A and B of 20.6.2.3103 NMAC at least every five years and shall compare each result to the higher of the PQL or the background soil concentrations to determine whether a release has occurred.

(4) Record keeping. The operator shall maintain a copy of the monitoring reports in a form readily accessible for division inspection.

(5) Release response. If vadose zone sampling results show that the concentrations of TPH, BTEX or chlorides exceed the higher of the PQL or the background soil concentrations, then the operator shall notify the division's environmental bureau of the exceedance, and shall immediately collect and analyze a minimum of four randomly selected, independent samples for TPH, BTEX, chlorides and the constituents listed in Subsections A and B of 20.6.2.3103 NMAC. The operator shall submit the results of the re-sampling event and a response action plan for the division's approval within 45 days of the initial notification. The response action plan shall address changes in the landfarm's operation to prevent further contamination and, if necessary, a plan for remediating existing contamination.

F. Treatment zone closure performance standards. After the operator has filled a landfarm cell to the maximum thickness of two feet or approximately 3000 cubic yards per acre, the operator shall continue treatment until the contaminated soil has been remediated to the higher of the background concentrations or the following closure performance standards. The operator shall demonstrate compliance with the closure performance standards by collecting and analyzing a minimum of one composite soil sample, consisting of four discrete samples.

(1) Benzene, as determined by EPA SW-846 method 8021B or 8260B, shall not exceed 0.2 mg/kg.

(2) Total BTEX, as determined by EPA SW-846 method 8021B or 8260B, shall not exceed 50 mg/kg.

(3) The gasoline range organics (GRO) and diesel range organics (DRO) combined fractions, as determined by EPA SW-846 method 8015M, shall not exceed 500 mg/kg. TPH, as determined by EPA method 418.1 or other EPA method approved by the division, shall not exceed 2500 mg/kg.

(4) Chlorides, as determined by EPA method 300.1, shall not exceed 500 mg/kg if the landfarm is located where ground water is less than 100 feet but at least 50 feet below the lowest elevation at which the operator will place oil field waste or 1000 mg/kg if the landfarm is located where ground water is 100 feet or more below the lowest elevation at which the operator will place oil field waste.

(5) The concentration of constituents listed in Subsections A and B of 20.6.2.3103 NMAC shall be determined by EPA SW-846 methods 6010B or 6020 or other methods approved by the division. If the concentration of those constituents exceed the PQL or background concentration, the operator shall either perform a site specific risk assessment using EPA approved methods and shall propose closure standards based upon individual site conditions that protect fresh water, public health, safety and the environment, which shall be subject to division approval or remove pursuant to Paragraph (2) of Subsection G of 19.15.36.15 NMAC.

G. Disposition of treated soils.

(1) If the operator achieves the

closure performance standards specified in Subsection F of 19.15.36.15 NMAC, then the operator may either leave the treated soils in place, or, with prior division approval, dispose or reuse of the treated soils in an alternative manner.

(2) If the operator cannot achieve the closure performance standards specified in Subsection F of 19.15.36.15 NMAC within five years or as extended by the division, then the operator shall remove contaminated soils from the landfarm cell and properly dispose of it at a division-permitted landfill, or reuse or recycle it in a manner approved by the division.

(3) If the operator cannot achieve the closure performance standards specified in Subsection F of 19.15.36.15 NMAC within five years or as extended by the division, then the division may review the adequacy of the operator's financial assurance, as provided in Subsection G of 19.15.36.11 NMAC. In that event, the division may require the operator to modify its financial assurance to provide for the appropriate disposition of contaminated soil in a manner acceptable to the division.

(4) The operator may request approval of an alternative soil closure standard from the division, provided that the operator shall give division-approved public notice of an application for alternative soil closure standards in the manner provided in 19.15.36.9 NMAC. The division may grant the request administratively if no person files an objection thereto within 30 days after publication of notice; otherwise the division shall set the matter for hearing.

H. Environmentally acceptable bioremediation endpoint approach.

(1) A landfarm operator may use an environmentally acceptable bioremediation endpoint approach to landfarm management in lieu of compliance with the requirements of Paragraph (3) of Subsection F of 19.15.36.15 NMAC. The bioremediation endpoint occurs when TPH, as determined by EPA method 418.1 or other EPA method approved by the division, is reduced to a minimal concentration as a result of bioremediation and is dependent upon the bioavailability of residual hydrocarbons. An environmentally acceptable bioremediation endpoint occurs when the TPH concentration has been reduced by at least 80 percent by a combination of physical, biological and chemical processes and the rate of change in the reduction in the TPH concentration is negligible. The environmentally acceptable bioremediation endpoint in soil is determined statistically by the operator's demonstration that the rate of change in the reduction of TPH concentration is negligible.

(2) In addition to the requirements specified in Subsection C of 19.15.36.8 NMAC, an operator who plans to use an environmentally acceptable bioremediation endpoint approach shall submit for the division's review and approval a detailed landfarm operation plan for those landfarm cells exclusively dedicated to the use of the environmentally acceptable bioremediation endpoint approach. At a minimum, the operations plan shall include detailed information on the native soils, procedures to characterize each lift of contaminated soil, operating procedures and management procedures that the operator shall follow.

(3) In addition to other operational requirements specified in 19.15.36.15 NMAC, the operator using an environmentally acceptable bioremediation endpoint approach shall comply with the following.

(a) Native soil information required. The operator shall submit detailed information on the soil conditions present for each of its landfarm cells immediately prior to the application of the petroleum hydrocarbon-contaminated soils, including: treatment cell size, soil porosity, soil bulk density, soil pH, moisture content, field capacity, organic matter concentration, soil structure, sodium adsorption ratio (SAR), electrical conductivity (EC), soil composition, soil temperature, soil nutrient (C:N:P) concentrations and oxygen content.

(b) Characterization of contaminated soil. The operator shall submit a description of the procedures that it will follow to characterize each lift of contaminated soil or drill cuttings, prior to treating each lift of contaminated soil or drill cuttings, for petroleum hydrocarbon loading factor, TPH, BTEX, chlorides, constituents listed in Subsections A and B of 20.6.2.3103 NMAC, contaminated soil moisture, contaminated soil pH and API gravity of the petroleum hydrocarbons.

(c) Operating procedures. The operator shall submit a description of the procedures, including a schedule, that it shall follow to properly monitor and amend each lift of contaminated soil in order to maximize bioremediation, including tilling procedures and schedule; procedures to limit petroleum hydrocarbon loading to less than five percent; procedures to maintain pH between six and eight; procedures to monitor and apply proper nutrients; procedures to monitor, apply and maintain moisture to 60 to 80 percent of field capacity; and procedures to monitor TPH concentrations.

(d) Management procedures. The operator shall submit a description of the management procedures that it shall follow to properly schedule landfarming operations, including modifications during cold weather, record keeping, sampling and analysis, statistical procedures, routine reporting, determination and reporting of achievement of the environmentally acceptable bioremediation endpoint and closure and post-closure plans.

[19.15.36.15 NMAC - N, 2/14/2007]

19.15.36.16 SMALL LANDFARMS: Small landfarms as defined in Paragraph (5) of Subsection A of 19.15.36.7 NMAC are exempt from 19.15.36 NMAC except for the requirements specified in 19.15.36.16 NMAC.

A. General rules.

(1) Registration. Prior to establishment of a new small landfarm, the operator shall file a form C-137 EZ, small landfarm registration, with the environmental bureau in the division's Santa Fe office. If the operator is not the surface estate owner at the proposed site, the operator shall furnish with its form C-137 EZ its certification it has a written agreement with the surface estate owner authorizing the site's use for the proposed small landfarm. The division shall issue the operator a registration number no more than 30 days from receipt of the properly completed form.

(2) Limitation. The operator shall operate only one active small landfarm per governmental section at any time. No small landfarm shall be located more than one mile from the operator's nearest oil or gas well or other production facility.

B. General operating rules. The operator shall:

(1) comply with the siting requirements of Subsections A and B of 19.15.36.13 NMAC;

(2) accept only exempt or non-hazardous wastes consisting of soils (excluding drill cuttings) generated as a result of accidental releases from production operations, that are predominantly contaminated by petroleum hydrocarbons, do not contain free liquids, would pass the paint filter test and where testing shows chloride concentrations are 500 mg/kg or below;

(3) berm the landfarm to prevent rainwater run-on and run-off; and

(4) post a sign at the site readable from a distance of 50 feet and listing the operator's name; small landfarm registration number; location by unit letter, section, township and range; expiration date; and an emergency contact telephone number.

C. Oil field waste management standards. The operator shall spread and disk contaminated soils in a single eight inch or less lift within 72 hours of receipt. The operator shall conduct treatment zone monitoring to ensure that the TPH concentration, as determined by EPA SW-846 method 8015M or EPA method 418.1 or other EPA method approved by the division,

does not exceed 2500 mg/kg and that the chloride concentration, as determined by EPA method 300.1, does not exceed 500 mg/kg. The operator shall treat soils by disking at least once a month and by watering and adding bioremediation enhancing materials when needed.

D. Record-keeping requirements. The operator shall maintain records reflecting the generator, the location of origin, the volume and type of oil field waste, the date of acceptance and the hauling company for each load of oil field waste received. The division shall post on its website each small landfarm's location, operator and registration date. In addition, the operator shall maintain records of the small landfarm's remediation activities in a form readily accessible for division inspection. The operator shall maintain all records for five years following the small landfarm's closure.

E. Small landfarm closure.

(1) Closure performance standards and disposition of soils. If the operator achieves the closure performance standards specified below, then the operator may return the soil to the original generation site, leave the treated soil in place at the small landfarm or, with prior division approval, dispose or reuse the treated soil in an alternative manner. If the operator cannot achieve the closure performance standards within three years from the registration date, then the operator shall remove contaminated soil from the landfarm and properly dispose of it at a permitted landfill, unless the division authorizes a specific alternative disposition. The following standards shall apply:

(a) benzene, as determined by EPA SW-846 method 8021 B or 8260B, shall not exceed 0.2 mg/kg;

(b) Total BTEX, as determined by EPA SW-846 method 8021 B or 8260B, shall not exceed 50 mg/kg;

(c) TPH, as determined by EPA SW-846 method 418.1 or other EPA method approved by the division, shall not exceed 2500 mg/kg; the GRO and DRO combined fraction, as determined by EPA SW-846 method 8015M, shall not exceed 500 mg/kg; and

(d) chlorides, as determined by EPA method 300.1, shall not exceed 500 mg/kg.

(2) Closure Requirements. The operator shall:

(a) re-vegetate soils remediated to the closure performance standards if left in place in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(b) remove landfarmed soils that have not or cannot be remediated to the closure performance standards within three years to a division-approved surface waste management facility, and re-vegetate the cell filled in with native soil to the standards in Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(c) if the operator returns remediated soils to the original site, or with division permission, recycles them, re-vegetate the cell filled in with native soil to the standards in Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(d) remove berms on the small landfarm and buildings, fences, roads and equipment; and

(e) clean up the site and collect one vadose zone soil sample from three to five feet below the middle of the treatment zone, or in an area where liquids may have collected due to rainfall events; the vadose zone soil sample shall be collected and analyzed using the methods specified above for TPH, BTEX and chlorides.

F. Final report. The operator shall submit a final closure report on a form C-137 EZ, together with photographs of the closed site, to the environmental bureau in the division's Santa Fe office. The division, after notice to the operator and an opportunity for a hearing if requested, may require additional information, investigation or clean up activities.

[19.15.36.16 NMAC - N, 2/14/2007]

19.15.36.17 SPECIFIC REQUIREMENTS APPLICABLE TO EVAPORATION, STORAGE, TREATMENT AND SKIMMER PONDS:

A. Engineering design plan. An applicant for a surface waste management facility permit or modification requesting inclusion of a skimmer pit; an evaporation, storage or treatment pond; or a below-grade tank shall submit with the surface waste management facility permit application a detailed engineering design plan, certified by a registered profession engineer, including operating and maintenance procedures; a closure plan; and a hydrologic report that provides sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the division to evaluate the actual and potential effects on soils, surface water and ground water. The plan shall include detailed information on dike protection and structural integrity; leak detection, including an adequate fluid collection and removal system; liner specifications and compatibility; freeboard and overtopping prevention; prevention of nuisance and hazardous odors such as H2S; an emergency response plan, unless the pit is part of a surface waste management facility that has an integrated contingency plan; type of oil field waste stream, including chemical analysis; climatological factors, including freeze-thaw cycles; a monitoring and inspection plan; erosion control; and other pertinent information the division requests.

B. Construction, standards.

(1) In general. The operator shall ensure each pit, pond and below-grade tank is designed, constructed and operated so as to contain liquids and solids in a manner that will protect fresh water, public health, safety and the environment.

(2) Liners required. Each pit or pond shall contain, at a minimum, a primary (upper) liner and a secondary (lower) liner with a leak detection system appropriate to the site's conditions.

(3) Liner specifications. Liners shall consist of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division. Synthetic (geomembrane) liners shall have a hydraulic conductivity no greater than 1×10^{-9} cm/sec. Geomembrane liners shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. Liner materials shall be resistant to ultraviolet light, or the operator shall make provisions to protect the material from sunlight. Liner compatibility shall comply with EPA SW-846 method 9090A.

(4) Alternative liner media. The division may approve other liner media if the operator demonstrates to the division's satisfaction that the alternative liner protects fresh water, public health, safety and the environment as effectively as the specified media.

(5) Each pit or pond shall have a properly constructed foundation or firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities, in order to prevent rupture or tear of the liner and an adequate anchor trench; and shall be constructed so that the inside grade of the levee is no steeper than 2H:1V. Levees shall have an outside grade no steeper than 3H:1V. The levees' tops shall be wide enough to install an anchor trench and provide adequate room for inspection and maintenance. The operator shall minimize liner seams and orient them up and down, not across a slope. The operator shall use factory seams where possible. The operator shall ensure field seams in geosynthetic material are thermally seamed (hot wedge) with a double track weld to create an air pocket for non-destructive air channel testing. A stabilized air pressure of 35 psi, plus or minus one percent, shall be maintained for at least five minutes. The operator shall overlap liners four to six inches before seaming, and orient seams parallel to the line of maximum slope, i.e., oriented along, not across, the slope. The operator shall minimize the number of field seams in corners and irregularly shaped areas. There shall be no horizontal seams within five feet of the slope's toe. Qualified personnel shall perform field

seaming.

(6) At a point of discharge into or suction from the lined pit, the liner shall be protected from excessive hydrostatic force or mechanical damage, and external discharge lines shall not penetrate the liner.

(7) Primary liners shall be constructed of a synthetic material.

(8) A secondary liner may be a synthetic liner or an alternative liner approved by the division. Secondary liners constructed with compacted soil membranes, i.e., natural or processed clay and other soils, shall be at least three feet thick, placed in six-inch lifts and compacted to 95 percent of the material's standard proctor density, or equivalent. Compacted soil membranes used in a liner shall undergo permeability testing in conformity with ASTM standards and methods approved by the division before and after construction. Compacted soil membranes shall have a hydraulic conductivity of no greater than 1 x 10^{-8} cm/sec. The operator shall submit results of pre-construction testing to the division for approval prior to construction.

(9) The operator shall place a leak detection system between the lower and upper geomembrane liners that consists of two feet of compacted soil with a saturated hydraulic conductivity of 1 x 10^{-5} cm/sec or greater to facilitate drainage. The leak detection system shall consist of a properly designed drainage and collection and removal system placed above the lower geomembrane liner in depressions and sloped so as to facilitate the earliest possible leak detection. Piping used shall be designed to withstand chemical attack from oil field waste or leachate; structural loading from stresses and disturbances from overlying oil field waste, cover materials, equipment operation or expansion or contraction; and to facilitate clean-out maintenance. The material placed between the pipes and laterals shall be sufficiently permeable to allow the transport of fluids to the drainage pipe. The slope of the interior subgrade and of drainage lines and laterals shall be at least a two percent grade, i.e., two feet vertical drop per 100 horizontal feet. The piping collection system shall be comprised of solid and perforated pipe having a minimum diameter of four inches and a minimum wall thickness of schedule 80. The operator shall seal a solid sidewall riser pipe to convey collected fluids to a collection, observation and disposal system located outside the perimeter of the pit or pond. The operator may install alternative methods as approved by the division.

(10) The operator shall notify the division at least 72 hours prior to the primary liner's installation so that a division representative may inspect the leak detection system before it is covered.

(11) The operator shall construct pits and ponds in a manner that prevents overtopping due to wave action or rainfall, and maintain a three foot freeboard at all times.

(12) The maximum size of an evaporation or storage pond shall not exceed 10 acre-feet.

C. Operating standards.

(1) The operator shall ensure that only produced fluids or non-hazardous waste are discharged into or stored in a pit or pond; and that no measurable or visible oil layer is allowed to accumulate or remain anywhere on a pit's surface except an approved skimmer pit.

(2) The operator shall monitor leak detection systems pursuant to the approved surface waste management facility permit conditions, maintain monitoring records in a form readily accessible for division inspection and report discovery of liquids in the leak detection system to the division within 24 hours.

(3) Fencing and netting. The operator shall fence or enclose pits or ponds to prevent unauthorized access and maintain fences in good repair. Fences are not required if there is an adequate perimeter fence surrounding the surface waste management facility. The operator shall screen, net, cover or otherwise render non-hazardous to migratory birds tanks exceeding eight feet in diameter and exposed pits and ponds. Upon written application, the division may grant an exception to screening, netting or covering requirements upon the operator's showing that an alternative method will adequately protect migratory birds or that the tank or pit is not hazardous to migratory birds.

(4) The division may approve spray systems to enhance natural evaporation. The operator shall submit engineering designs for spray systems to the division's environmental bureau for approval prior to installation. The operator shall ensure that spray evaporation systems are operated so that spray-borne suspended or dissolved solids remain within the perimeter of the pond's lined portion.

(5) The operator shall use skimmer pits or tanks to separate oil from produced water prior to water discharge into a pond. The operator shall install a trap device in connected ponds to prevent solids and oils from transferring from one pond to another unless approved in the surface waste management facility permit.

D. Below-grade tanks and sumps.

(1) The operator shall construct below-grade tanks with secondary containment and leak detection. The operator shall not allow below-grade tanks to overflow. The operator shall install only below-grade tanks of materials resistant to the tank's particular contents and to damage from sunlight.

(2) The operator shall test sumps' integrity annually, and shall promptly repair or replace a sump that does not demonstrate integrity. The operator may test sumps that can be removed from their emplacements by visual inspection. The operator shall test other sumps by appropriate mechanical means. The operator shall maintain records of sump inspection and testing and make such records available for division inspection.

E. Closure required. The operator shall properly close pits, ponds and below-grade tanks within six months after cessation of use.

[19.15.36.17 NMAC - N, 2/14/2007]

19.15.36.18 CLOSURE AND POST CLOSURE:

A. Surface waste management facility closure by operator.

(1) The operator shall notify the division's environmental bureau at least 60 days prior to cessation of operations at the surface waste management facility and provide a proposed schedule for closure. Upon receipt of such notice and proposed schedule, the division shall review the current closure plan for adequacy and inspect the surface waste management facility.

(2) The division shall notify the operator within 60 days after the date of cessation of operations specified in the operator's closure notice of modifications of the closure plan and proposed schedule or additional requirements that it determines are necessary for the protection of fresh water, public health, safety or the environment.

(3) If the division does not notify the operator of additional closure requirements within 60 days as provided, the operator may proceed with closure in accordance with the approved closure plan; provided that the director may, for good cause, extend the time for the division's response for an additional period not to exceed 60 days by written notice to the operator.

(4) The operator shall be entitled to a hearing concerning a modification or additional requirement the division seeks to impose if it files an application for a hearing within 10 days after receipt of written notice of the proposed modifications or additional requirements.

(5) Closure shall proceed in accordance with the approved closure plan and schedule and modifications or additional requirements the division imposes. During closure operations the operator shall maintain the surface waste management facility to protect fresh water, public health, safety and the environment.

(6) Upon completion of closure, the operator shall re-vegetate the site unless the division has approved an alternative site use plan as provided in Subsection G of 19.15.36.18 NMAC. Re-vegetation, except for landfill cells, shall consist of establishment of a vegetative cover equal to 70 percent of the native perennial vegetative cover (un-impacted by overgrazing, fire or other intrusion damaging to native vegetation) or scientifically documented ecological description consisting of at least three native plant species, including at least one grass, but not including noxious weeds, and maintenance of that cover through two successive growing seasons.

B. Release of financial assurance.

(1) When the division determines that closure is complete it shall release the financial assurance, except for the amount needed to maintain monitoring wells for the applicable post closure care period, to perform semi-annual analyses of such monitoring wells and to re-vegetate the site. Prior to the partial release of the financial assurance covering the surface waste management facility, the division shall inspect the site to determine that closure is complete.

(2) After the applicable post closure care period has expired, the division shall release the remainder of the financial assurance if the monitoring wells show no contamination and the re-vegetation in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC is successful. If monitoring wells or other monitoring or leak detection systems reveal contamination during the surface waste management facility's operation or in the applicable post closure care period following the surface waste management facility's closure the division shall not release the financial assurance until the contamination is remediated in accordance with 19.15.1.19 or 19.15.3.116 NMAC, as applicable.

(3) In any event, the division shall not finally release the financial assurance until it determines that the operator has successfully re-vegetated the site in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC, or, if the division has approved an alternative site use plan, until the landowner has obtained the necessary regulatory approvals and begun implementation of the use.

C. Surface waste management facility closure initiated by the division. Forfeiture of financial assurance.

(1) For good cause, the division may, after notice to the operator and an opportunity for a hearing, order immediate cessation of a surface waste management facility's operation when it appears that cessation is necessary to protect fresh water, public health, safety or the environment, or to assure compliance with statutes or division rules and orders. The division may order closure without notice and an opportunity for hearing in the event of an emergency, subject to NMSA 1978, Section 70-2-23, as amended.

(2) If the operator refuses or is unable to conduct operations at a surface waste management facility in a manner that protects fresh water, public health, safety and the environment; refuses or is unable to conduct or complete an approved closure plan; is in material breach of the terms and conditions of its surface waste management facility permit; or the operator defaults on the conditions under which the division accepted the surface waste management facility's financial assurance; or if disposal operations have ceased and there has been no significant activity at the surface waste management facility for six months the division may take the following actions to forfeit all or part of the financial assurance:

(a) send written notice by certified mail, return receipt requested, to the operator and the surety, if any, informing them of the decision to close the surface waste management facility and to forfeit the financial assurance, including the reasons for the forfeiture and the amount to be forfeited, and notifying the operator and surety that a hearing request or other response shall be made within 10 days of receipt of the notice; and

(b) advise the operator and surety of the conditions under which they may avoid the forfeiture; such conditions may include but are not limited to an agreement by the operator or another party to perform closure and post closure operations in accordance with the surface waste management facility permit conditions, the closure plan (including modifications or additional requirements imposed by the division) and division rules, and satisfactory demonstration that the operator or other party has the ability to perform such agreement.

(3) The division may allow a surety to perform closure if the surety can demonstrate an ability to timely complete the closure and post closure in accordance with the approved plan.

(4) If the operator and the surety do not respond to a notice of proposed forfeiture within the time provided, or fail to satisfy the specified conditions for non-forfeiture, the division shall proceed, after hearing if the operator or surety has timely requested a hearing, to declare the financial assurance's forfeiture. The division may then proceed to collect the forfeited amount and use the funds to complete the closure, or, at the division's election, to close the surface waste management facility and collect the forfeited amount as reimbursement.

(a) The division shall deposit amounts collected as a result of forfeiture of financial assurance in the oil and gas reclamation fund.

(b) In the event the amount forfeited and collected is insufficient for closure, the operator shall be liable for the deficiency. The division may complete or authorize completion of closure and post closure and may recover from the operator reasonably incurred costs of closure and forfeiture in excess of the amount collected pursuant to the forfeiture.

(c) In the event the amount collected pursuant to the forfeiture was more than the amount necessary to complete closure, including remediation costs, and forfeiture costs, the division shall return the excess to the operator or surety, as applicable, reserving such amount as may be reasonably necessary for post closure monitoring and re-vegetation in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC. The division shall return excess of the amount retained over the actual cost of post closure monitoring and re-vegetation to the operator or surety at the later of the conclusion of the applicable post closure period or when the site re-vegetation in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC is successful.

(5) If the operator abandons the surface waste management facility or cannot fulfill the conditions and obligations of the surface waste management facility permit or division rules, the state of New Mexico, its agencies, officers, employees, agents, contractors and other entities designated by the state shall have all rights of entry into, over and upon the surface waste management facility property, including all necessary and convenient rights of ingress and egress with all materials and equipment to conduct operation, termination and closure of the surface waste management facility, including but not limited to the temporary storage of equipment and materials, the right to borrow or dispose of materials and all other rights necessary for the surface waste management facility's operation, termination and closure in accordance with the surface waste management facility permit and to conduct post closure monitoring.

D. Surface waste management facility and cell closure and post closure standards. The following minimum standards shall apply to closure and post closure of the installations indicated, whether the entire surface waste management facility is being closed or only a part of the surface waste management facility.

(1) Oil treating plant closure. The operator shall ensure that:

(a) tanks and equipment used for oil treatment are cleaned and oil field waste is disposed of at a division-approved surface waste management facility (the operator shall reuse, recycle or remove tanks and equipment from the site within 90 days of

closure);

(b) the site is sampled, in accordance with the procedures specified in chapter nine of EPA publication SW-846, test methods for evaluating solid waste, physical/chemical methods, for TPH, BTEX, major cations and anions and RCRA metals, in accordance with a gridded plat of the site containing at least four equal sections that the division has approved; and

(c) sample results are submitted to the environmental bureau in the division's Santa Fe office.

(2) Landfill cell closure.

(a) The operator shall properly close landfill cells, covering the cell with a top cover pursuant to Paragraph (8) of Subsection C of 19.15.36.14 NMAC, with soil contoured to promote drainage of precipitation; side slopes shall not exceed a 25 percent grade (four feet horizontal to one foot vertical), such that the final cover of the landfill's top portion has a gradient of two percent to five percent, and the slopes are sufficient to prevent the ponding of water and erosion of the cover material.

(b) The operator shall re-vegetate the area overlying the cell with native grass covering at least 70 percent of the landfill cover and surrounding areas, consisting of at least two grasses and not including noxious weeds or deep rooted shrubs or trees, and maintain that cover through the post closure period.

(3) Landfill post closure. Following landfill closure, the post closure care period for a landfill shall be 30 years.

(a) A post closure care and monitoring plan shall include maintenance of cover integrity, maintenance and operation of a leak detection system and leachate collection and removal system and operation of gas and ground water monitoring systems.

(b) The operator or other responsible entity shall sample existing ground water monitoring wells annually and submit reports of monitoring performance and data collected within 45 days after the end of each calendar year. The operator shall report any exceedance of a ground water standard that it discovers during monitoring pursuant to 19.15.3.116 NMAC.

(4) Landfarm closure. The operator shall ensure that:

(a) disking and addition of bioremediation enhancing materials continues until soils within the cells are remediated to the standards provided in Subsection F of 19.15.36.15 NMAC, or as otherwise approved by the division;

(b) soils remediated to the foregoing standards and left in place are re-vegetated in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(c) landfarmed soils that have not been or cannot be remediated to the standards in Subsection F of 19.15.36.15 NMAC are removed to a division-approved surface waste management facility and the landfarm remediation area is filled in with native soil and re-vegetated in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(d) if treated soils are removed, the cell is filled in with native soils and re-vegetated in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(e) berms are removed;

(f) buildings, fences, roads and equipment are removed, the site cleaned-up and tests conducted on the soils for contamination;

(g) annual reports of vadose zone and treatment zone sampling are submitted to the division's environmental bureau until the division has approved the surface waste management facility's final closure; and

(h) for operators who choose to use the landfarm methods specified in Subsection H of 19.15.36.15 NMAC, that the soil has an electrical conductivity (EC_S) of less than or equal to 4.0 mmhos/cm (dS/m) and a SAR of less than or equal to 13.0.

E. Pond and pit closure. The operator shall ensure that:

(1) liquids in the ponds or pits are removed and disposed of in a division-approved surface waste management facility;

(2) liners are disposed of in a division-approved surface waste management facility;

(3) equipment associated with the surface waste management facility is removed;

(4) the site is sampled, in accordance with the procedures specified in chapter nine of EPA publication SW-846, test methods for evaluating solid waste, physical/chemical methods for TPH, BTEX, metals and other inorganics listed in Subsections A and B of 20.69.2.3103 NMAC, in accordance with a gridded plat of the site containing at least four equal sections that the division has approved; and

(5) sample results are submitted to the environmental bureau in the division's Santa Fe office.

F. Landfarm and pond and pit post closure. The post-closure care period for a landfarm or pond or pit shall be three years if the operator has achieved clean closure. During that period the operator or other responsible entity shall regularly inspect and maintain required re-vegetation. If there has been a release to the vadose zone or to ground water, then the operator shall comply with the applicable requirements of 19.15.1.19 and 19.15.3.116 NMAC.

G. Alternatives to re-vegetation. If the landowner contemplates use of the land where a cell or surface waste management facility is located for purposes inconsistent with re-vegetation, the landowner may, with division approval, implement an alternative surface treatment appropriate for the contemplated use, provided that the alternative treatment will effectively prevent erosion. If the division approves an alternative to re-vegetation, it shall not release the portion of the operator's financial assurance reserved for post-closure until the landowner has obtained necessary regulatory approvals and begun implementation of such alternative use.

[19.15.36.18 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007]

19.15.36.19 EXCEPTIONS AND WAIVERS:

A. In a surface waste management facility permit application, the applicant may propose alternatives to requirements of 19.15.36 NMAC, and the division may approve such alternatives if it determines that the proposed alternatives will provide equivalent protection of fresh water, public health, safety and the environment.

B. The division may grant exceptions to, or waivers of, or approve alternatives to requirements of 19.15.36 NMAC in an emergency without notice or hearing. The operator requesting an exception or waiver, except in an emergency, shall apply for a surface waste management facility permit modification in accordance with Subsection C of 19.15.36.8 NMAC. If the requested modification is a major modification, the operator shall provide notice of the request in accordance with 19.15.36.9 NMAC.

[19.15.36.19 NMAC - N, 2/14/2007]

19.15.36.20 TRANSITIONAL PROVISIONS: Existing permitted facilities. Surface waste management facilities in operation prior to the effective date of 19.15.36 NMAC pursuant to division permits or orders may continue to operate in accordance with such permits or orders, subject to the following provisions.

A. Existing surface waste management facilities shall comply with the operational, waste acceptance and closure requirements provided in 19.15.36 NMAC, except as otherwise specifically provided in the applicable permit or order, or in a specific waiver, exception or agreement that the division has granted in writing to the particular surface waste management facility.

B. Major modification of an existing surface waste management facility and a new landfarm cells constructed at an existing surface waste management facil-

ity shall comply with the requirements provided in 19.15.36 NMAC.

C. The division shall process an application for a surface waste management facility permit filed prior to May 18, 2006 in accordance with 19.15.9.711 NMAC, and an application filed after May 18, 2006 in accordance with 19.15.36 NMAC.

[19.15.36.20 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007]

History of 19.15.36 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

Rule 711, Commercial Surface Waste Disposal Facilities, filed 6-6-88;

Rule 711, Commercial Surface Waste Disposal Facilities, filed 10-11-89;

Rule 711, Commercial Surface Waste Disposal Facilities, filed 2-5-91;

Rule 711, Applicable to Surface Waste Management Facilities Only, filed 7-27-95;

Rule 711, Applicable to Surface Waste Management Facilities Only, filed 12-18-95.

History of Repealed Material:

Repeal of Section 711 of 19.15.9 NMAC, 2/14/2007.

Other History:

Rule 711, Applicable to Surface Waste Management Facilities Only (filed 12-18-95) renumbered and reformatted into that portion of 19 NMAC 15.I, effective 02-01-1996.

19 NMAC 15.I, Secondary or Other Enhanced Recovery, Pressure Mantenance, Salt Water Disposal, and Underground Storage (filed 01-18-96) was renumbered, reformatted and amended **to** 19.15.9 NMAC, effective 11-30-2000.

Section 711 of 19.15.9 NMAC was renumbered to and replaced by 19.15.36 NMAC, Surface Waste Management Facilities, effective 2/14/2007.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

Explanatory Paragraph: This is an amendment to 19.15.1 NMAC, Section 7. The following definitions were amended: below-grade tank, berm, bradenhead gas well, official gas-oil ratio test, oil, crude oil, or crude petroleum oil, oil field waste, oil well, operator, owner, shallow pool, shut-in, shut-in pressure, significant modification of an abatement plan, spacing unit, waste, water contaminant, watercourse, well blowout, wellhead protection area, wetlands and working interest owners. The following definitions were added: biopile, soil, surface waste management facility, waste (exempt), waste (non-exempt) and waste (non-hazardous). The amendment also removes a comment that was left inadvertently and duplicative language entered in a previous amendment. This amendment will be effective 2/14/07.

19.15.1.7 DEFINITIONS:

B. Definitions beginning with the letter "B".

(1) Back allowable shall mean the authorization for production of [~~any~~] a shortage or underproduction resulting from pipeline proration.

(2) Background shall mean, for purposes of ground water abatement plans only, the amount of ground water contaminants naturally occurring from undisturbed geologic sources or water contaminants occurring from a source other than the responsible person's facility. This definition shall not prevent the director from requiring abatement of commingled plumes of pollution, shall not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons and shall not preclude the director from exercising enforcement authority under any applicable statute, regulation or common law.

(3) Barrel shall mean 42 United States gallons measured at 60 degrees fahrenheit and atmospheric pressure at the sea level.

(4) Barrel of oil shall mean 42 United States gallons of oil, after deductions for the full amount of basic sediment, water and other impurities present, ascertained by centrifugal or other recognized and customary test.

(5) Below-grade tank shall mean a vessel, excluding sumps and pressurized pipeline drip traps, where [~~any~~] a portion of the tank's sidewalls [~~of the tank~~] is below the ground surface [~~of the ground~~] and not visible.

(6) Berm shall mean an embankment or ridge constructed [~~for the purpose of preventing~~] to prevent the movement of liquids, sludge, solids[~~,~~] or other materials.

(7) Biopile, also known as biocell, bioheap, biomound or compost pile, shall mean a pile of contaminated soils used to reduce concentrations of petroleum constituents in excavated soils through the use of biodegradation. This technology involves heaping contaminated soils into piles or "cells" and stimulating aerobic microbial activity within the soils through the aeration or addition of minerals, nutrients and moisture.

[~~(7)~~] **(8)** Bottom hole or subsurface pressure shall mean the gauge pressure in pounds per square inch under conditions existing at or near the producing horizon.

[~~(8)~~] **(9)** Braden[~~-~~]head gas well shall mean [~~any~~] a well producing gas through wellhead connections from a gas reservoir [~~which~~] that has been successfully cased off from an underlying oil or gas reservoir.

O. Definitions beginning with the letter "O".

(1) Official gas-oil ratio test shall mean the periodic gas-oil ratio test made by division order [~~of the division~~] by such method and means and in such manner as [~~prescribed by~~] the division prescribes.

(2) Oil, crude oil[~~,~~] or crude petroleum oil shall mean [~~any~~] petroleum hydrocarbon produced from a well in the liquid phase and [~~which~~] that existed in a liquid phase in the reservoir.

(3) Oil field [~~wastes~~] waste shall mean [~~those wastes produced~~] waste generated in conjunction with the exploration for, drilling for, production of, refining of, processing of, gathering of [~~and~~] or transportation of crude oil [~~and/or~~], natural gas [~~and commonly collected at field storage, processing, disposal, or service facilities, and waste collected at gas processing plants, refineries and other processing or transportation facilities~~] or carbon dioxide; waste generated from oil field service company operations; and waste generated from oil field remediation or abatement activity regardless of the date of release. Oil field waste does not include waste not generally associated with oil and gas industry operations such as tires, appliances or ordinary garbage or refuse unless generated at a division-regulated facility, and does not include sewage, regardless of the source.

(4) Oil well shall mean [~~any~~] a well capable of producing oil and [~~which~~] that is not a gas well as defined [~~herein~~] in Paragraph (5) of Subsection G of 19.15.1.7 NMAC.

(5) Operator shall mean [~~any~~] a person who, duly authorized, is in charge of the development of a lease or the operation of a producing property, or who is in charge of [~~the~~] a facility's operation or management [~~of a facility~~].

(6) Overage or overproduction shall mean the amount of oil or the amount of natural gas produced during a proration period in excess of the amount authorized on the proration schedule.

(7) Owner [~~means~~] shall mean the person who has the right to drill into and to produce from [~~any~~] a pool, and to appropriate the production either for himself or for himself and another.

S. Definitions beginning with the letter "S".

(1) Secondary recovery shall

mean a method of recovering quantities of oil or gas from a reservoir which quantities would not be recoverable by ordinary primary depletion methods.

(2) Shallow pool shall mean a pool [~~which~~] that has a depth range from [~~0~~] zero to 5000 feet.

(3) Shortage or underproduction shall mean the amount of oil or the amount of natural gas during a proration period by which a given proration unit failed to produce an amount equal to that authorized in the proration schedule.

(4) Shut-in shall be the status of a production well or an injection well [~~which~~] that is temporarily closed down, whether by closing a valve or disconnection or other physical means.

(5) Shut-in pressure shall mean the gauge pressure noted at the wellhead when the well is completely shut in, not to be confused with bottom hole pressure.

(6) Significant modification of an abatement plan shall mean a change in the abatement technology used excluding design and operational parameters, or relocation of 25[~~%~~] percent or more of the compliance sampling stations, for [~~any~~] a single medium, as designated pursuant to [~~Subsection E, Paragraph (4), Subparagraph (b), Subsubparagraph (iv) of Section~~] Item (iv) of Subparagraph (b) of Paragraph (4) of Subsection E of 19.15.5.19 NMAC.

(7) Soil shall mean earth, sediments or other unconsolidated accumulations of solid particles produced by the physical and chemical disintegration of rocks, and which may or may not contain organic matter.

[~~**(7)**~~] **(8)** Spacing unit [~~is~~] shall mean the area allocated to a well under a well spacing order or rule. Under the Oil [~~&~~] and Gas Act, NMSA 1978, Section 70-2-12.B(10), the commission has the power to fix spacing units without first creating proration units. See *rutter & wilbanks corp. v. oil conservation comm'n*, 87 NM 286 (1975). This is the area designated on division form C-102.

[~~**(8)**~~] **(9)** Subsurface water shall mean ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or may be utilized by vegetation.

(10) Surface waste management facility shall mean a facility that receives oil field waste for collection, disposal, evaporation, remediation, reclamation, treatment or storage except:

(a) a facility that utilizes underground injection wells subject to division regulation pursuant to the federal Safe Drinking Water Act, and does not manage oil field wastes on the ground in pits, ponds, below-grade tanks or land application units;

(b) a facility permitted pursuant to environmental improvement board rules or water quality control commission rules;

(c) a drilling or workover pit as defined in 19.15.2.50 NMAC;

(d) a tank or pit that receives oil field waste from a single well, regardless of the capacity or volume of oil field waste received;

(e) a facility located at an oil and gas production facility and used for temporary storage of oil field waste generated onsite from normal operations, if such facility does not poses a threat to fresh water, public health, safety or the environment;

(f) a remediation conducted in accordance with a division-approved abatement plan pursuant to 19.15.1.19 NMAC, a corrective action pursuant to 19.15.3.116 NMAC or a corrective action of a non-reportable release;

(g) a facility operating pursuant to an emergency order of the division;

(h) a site or facility where the operator is conducting emergency response operations to abate an immediate threat to fresh water, public health, safety or the environment or as the division has specifically directed or approved; or

(i) a facility that receives only exempt oil field waste, receives less than 50 barrels of liquid water per day (averaged over a 30-day period), has a capacity to hold 500 barrels of liquids or less and is permitted pursuant to 19.15.2.50 NMAC.

W. Definitions beginning with the letter "W".

(1) Waste, in addition to its ordinary meaning, shall include:

(a) underground waste as those words are generally understood in the oil and gas business, and in any event to embrace the inefficient, excessive[~~,~~] or improper use or dissipation of the reservoir energy, including gas energy and water drive, of [~~any~~] a pool, and the locating, spacing, drilling, equipping, operating[~~,~~] or producing[~~,~~] of [~~any~~] a well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from [~~any~~] a pool, and the use of inefficient underground storage of natural gas;

(b) surface waste as those words are generally understood in the oil and gas business, and in any event to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of natural gas of any type or in any form, or crude petroleum oil, or [~~any~~] a product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage[~~,~~] or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing a well or wells, or incident to or resulting from the use of inefficient storage or from the production of crude petroleum oil or natural gas, in excess of the reasonable market demand;

(c) the production of crude petroleum oil in this state in excess of the reasonable market demand for such crude petroleum oil; such excess production causes or results in waste [~~which is prohibited by~~] that the Oil and Gas Act prohibits; the words "reasonable market demand" as used herein with respect to crude petroleum oil, shall be construed to mean the demand for such crude petroleum oil, for reasonable current requirements for current consumption and use within or outside of the state, together with the demand of such amounts as are reasonably necessary for building up or maintaining reasonable storage reserves of crude petroleum oil or the products thereof, or both such crude petroleum oil and products;

(d) the non-ratable purchase or taking of crude petroleum oil in this state; such non-ratable taking and purchasing causes or results in waste, as defined in Subparagraphs (a), (b)[~~,~~] and (c) of [~~this definition~~] Paragraph (1) of Subsection W of 19.15.1.7 NMAC and causes waste by violating the Oil and Gas Act, NMSA 1978, Section 70-2-16 [~~of the Oil and Gas Act~~];

(e) the production in this state of natural gas from [~~any~~] a gas well or wells, or from [~~any~~] a gas pool, in excess of the reasonable market demand from such source for natural gas of the type produced or in excess of the capacity of gas transportation facilities for such type of natural gas; the words "reasonable market demand[~~,~~]", as used herein with respect to natural gas, shall be construed to mean the demand for natural gas for reasonable current requirements, for current consumption and for use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of natural gas or products thereof, or both such natural gas and products.

(2) Waste (exempt). Exempt waste shall mean oil field waste exempted from regulation as hazardous waste pursuant to Subtitle C of the federal Resource Conservation and Recovery Act (RCRA) and applicable regulations.

(3) Waste (hazardous). Hazardous waste shall mean non-exempt waste that exceeds the minimum standards for waste hazardous by characteristics established in RCRA regulations, 40 CFR 261.21-261.24, or listed hazardous waste as defined in 40 CFR, part 261, subpart D, as amended.

(4) Waste (non-exempt). Non-exempt waste shall mean oil field waste not exempted from regulation as hazardous

waste pursuant to Subtitle C of RCRA and applicable regulations.

(5) Waste (non-hazardous). Non-hazardous waste shall mean non-exempt oil field waste that is not hazardous waste.

[~~(2)~~] **(6)** Water shall mean all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water.

[~~(3)~~] **(7)** Water contaminant shall mean [~~any~~] a substance that could alter if released or spilled the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

[~~(4)~~] **(8)** Watercourse shall mean [~~any lake bed, or gully, draw, stream bed, wash, arroyo, or natural or human made channel through which water flows or has flowed~~] a river, creek, arroyo, canyon, draw or wash or other channel having definite banks and bed with visible evidence of the occasional flow of water.

[~~(5)~~] **(9)** Water pollution shall mean introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property.

[~~(6)~~] **(10)** Well blowout shall mean a loss of control over and subsequent eruption of [~~any~~] a drilling or workover well or the rupture of the casing, casinghead[~~,~~] or wellhead or [~~any~~] an oil or gas well or injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or [~~liquids~~] liquid, from the well.

[~~(7)~~] **(11)** Wellhead protection area shall mean the area within 200 horizontal feet of [~~any~~] a private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes or within 1000 horizontal feet of any other fresh water well or spring. Wellhead protection areas shall not include areas around water wells drilled after an existing oil or natural gas waste storage, treatment[~~,~~] or disposal site was established.

[~~(8)~~] **(12)** Wetlands shall mean those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. Constructed wetlands used for wastewater treatment purposes are not included in this definition.

[~~(9)~~] **(13)** Working interest owners are the owners of the operating interest under an oil and gas lease who have the exclusive right to exploit the oil [~~&~~] and gas minerals. Working interests are cost bearing.

[1-5-50…2-1-96; A, 7-15-96; Rn, 19 NMAC 15.A.7.1 through 7.84, 3-15-97; A, 7-15-99; 19.15.1.7 NMAC - Rn, 19 NMAC 15.A.7, 5-15-001; A, 3/31/04; A, 9/15/04; A, 09/30/05; A, 12/15/05; A, 2/14/07]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

This is an amendment to 19.15.2 NMAC, with the addition of Sections 51 and 52 that replace Sections 709 and 710 of 19.15.9 NMAC. This amendment is to be effective 2/14/07.

19.15.2.51 TRANSPORATION OF PRODUCED WATER, DRILLING FLUIDS AND OTHER LIQUID OIL FIELD WASTE:

A. No person shall transport produced water, drilling fluids or other liquid oil field waste, including drilling fluids and residual liquids in oil field equipment, except for small samples removed for analysis, by motor vehicle from a lease, central tank battery or other facility without an approved form C-133, authorization to move liquid waste. The transporter shall maintain a photocopy of the approved form C-133 in the transporting vehicle.

B. A person may apply for authorization to move produced water, drilling fluids or other liquid oil field waste by filing a complete form C-133 with the division's Santa Fe office. Authorization is granted upon the division's approval of form C-133.

C. No owner or operator shall permit produced water, drilling fluids or other liquid oil field waste to be removed from its leases or field facilities, except for small samples removed for analysis, by motor vehicle except by a person possessing an approved form C-133. The division shall post a list of currently approved form C-133s, authorization to move liquid waste, on its website. The list of form C-133s posted on the division's website on the first business day of each month shall be deemed notice of valid form C-133s for the remainder of that month.

D. The division may deny approval of a form C-133 if:

(1) the applicant is a corporation or limited liability company, and is not registered with the public regulation commission to do business in New Mexico;

(2) the applicant is a limited partnership, and is not registered with the New Mexico secretary of state to do business in New Mexico;

(3) the applicant does not possess a carrier permit under the single state registration system the public regulation commission administers, if it is required to have such a permit under applicable statutes or rules; or

(4) the applicant or an officer, director or partner in the applicant, or a person with an interest in the applicant exceeding 25 percent, is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent 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 rules 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.

E. Cancellation or suspension of authorization to move liquid wastes. Vehicular movement or disposition of produced water, drilling fluids or other liquid oil field wastes in a manner contrary to division rules, or a ground for denial of approval of form C-133 specified in Subsection D of 19.15.2.51 NMAC, shall be cause, after notice and an opportunity for hearing, for cancellation or suspension of a transporter's authorization to move liquid wastes.

[19.15.2.51 NMAC - Rp, 19.15.9.709 NMAC, 2/14/07]

19.15.2.52 DISPOSITION OF PRODUCED WATER AND OTHER OIL FIELD WASTE:

A. Prohibited dispositions. Except as authorized by 19.15.1.19 NMAC, 19.15.2.50 NMAC, 19.15.2.53 NMAC, 19.15.3.116 NMAC or 19.15.9.701 NMAC, no person, including a transporter, shall dispose of produced water or other oil field waste:

(1) on or below the surface of the ground; in a pit; or in a pond, lake, depression or watercourse;

(2) in another place or in a manner that may constitute a hazard to fresh water, public health, safety or the environment; or

(3) in a permitted pit or registered or permitted surface waste management facility without the permission of the owner or operator of the pit or facility.

B. Authorized disposition of produced water. The following methods of disposition of produced water are authorized:

(1) in a manner that does not constitute a hazard to fresh water, public health, safety or the environment, delivery to a permitted salt water disposal well or facility, secondary recovery or pressure maintenance injection facility, surface waste management facility or disposal pit permitted pursuant to 19.15.2.50 NMAC or to a drill site for use in drilling fluid; or

(2) use in accordance with a division-issued use permit or other division authorization.

C. Authorized dispositions of other oil field waste. Persons shall dispose of other oil field waste by transfer to an appropriate permitted or registered surface waste management facility or injection facility or applied to a division-authorized beneficial use. Persons may transport recovered drilling fluids to other drill sites for reuse provided that such fluids are transported and stored in a manner that does not constitute a hazard to fresh water, public health, safety or the environment.

[19.15.2.52 NMAC - Rp, 19.15.9.710 NMAC, 2/14/07]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

This is an amendment to 19.15.9 NMAC, with the repeal of Sections 709, 710 and 711, which are replaced by 19.15.2 NMAC, Sections 51, 52 and 19.15.36 NMAC. This amendment is to be effective 2-14-07.

19.15.9.709 [~~REMOVAL OF PRODUCED WATER FROM LEASES AND FIELD FACILITIES:~~

~~**A.** Transportation of any produced water by motor vehicle from any lease, central tank battery, or other facility, without an approved Form C-133 (Authorization to Move Produced Water) is prohibited.~~

~~**B.** Authorization to transport produced water may be obtained by filing three copies of Form C-133 with the director of the division in Santa Fe.~~

~~**C.** No owner or operator shall permit produced water to be removed from its leases or field facilities by motor vehicle except by a person possessing an approved Form C-133.~~][RESERVED]

[1-1-50…2-1-96; 19.15.9.709 NMAC - Rn, 19 NMAC 15.I.709, 11-30-00; Repealed, 2-14-07]

19.15.9.710 [~~DISPOSITION OF TRANSPORTED PRODUCED WATER:~~

~~**A.** No person, including any transporter, may dispose of produced water on the surface of the ground, or in any pit, pond, lake, depression, draw, streambed, or arroyo, or in any watercourse, or in any other place or in any manner which will constitute a hazard to any fresh water supplies.~~

~~**B.** Delivery of produced water to approved salt water disposal facilities, secondary recovery or pressure maintenance injection facilities, or to a drill site for use in drilling fluid will not be construed as constituting a hazard to fresh water supplies provided the produced waters are placed in tanks or other impermeable storage at such facilities.~~

~~**C.** The supervisor of the appropriate district office of the division may grant temporary exceptions to Paragraph A. above for emergency situations, for use of produced water in road construction or maintenance, or for use of produced waters for other construction purposes upon request and a proper showing by a holder of an approved Form C-133 (Authorization to Move Produced Water).~~

~~**D.** Vehicular movement or disposition of produced water in any manner contrary to these rules shall be considered cause, after notice and hearing, for cancellation of Form C-133.~~][RESERVED]

[2-1-82…2-1-96; 19.15.9.710 NMAC - Rn, 19 NMAC 15.I.710, 11-30-00; Repealed, 2-14-07]

19.15.9.711 [~~APPLICABLE TO SURFACE WASTE MANAGEMENT FACILITIES ONLY:~~

~~**A.** A surface waste management facility is defined as any facility that receives for collection, disposal, evaporation, remediation, reclamation, treatment or storage any produced water, drilling fluids, drill cuttings, completion fluids, contaminated soils, bottom sediment and water (BS&W), tank bottoms, waste oil or, upon written approval by the division, other oilfield related waste. Provided, however, if (a) a facility performing these functions utilizes underground injection wells subject to regulation by the division pursuant to the federal Safe Drinking Water Act, and does not manage oilfield wastes on the ground in pits, ponds, below grade tanks or land application units, (b) if a facility, such as a tank only facility, does not manage oilfield wastes on the ground in pits, ponds below grade tanks or land application units or (c) if a facility performing these functions is subject to Water Quality Control Commission Regulations, then the facility shall not be subject to this rule.~~

~~**(1)** A commercial facility is defined as any surface waste management facility that does not meet the definition of centralized facility.~~

~~**(2)** A centralized facility is defined as a surface waste management facility that accepts only waste generated in New Mexico and that:~~

~~**(a)** does not receive compensation for waste management;~~

~~**(b)** is used exclusively by one generator subject to New Mexico's "Oil and Gas Conservation Tax Act" Section 7-30-1 NMSA 1978 as amended; or~~

~~**(c)** is used by more than one generator subject to New Mexico's "Oil and Gas Conservation Tax Act" Section 7-30-1 NMSA 1978 as amended under an operating agreement and which receives wastes that are generated from two or more production units or areas or from a set of jointly owned or operated leases.~~

~~**(3)** Centralized facilities exempt from permitting requirements are:~~

~~**(a)** facilities that receive wastes from a single well;~~

~~**(b)** facilities that receive less than 50 barrels of RCRA exempt liquid waste per day and have a capacity to hold 500 barrels of liquids or less or 1400 cubic yards of solids or less and when a showing can be made to the satisfaction of the division that the facility will not harm fresh water, public health or the environment;~~

~~**(c)** emergency pits that are designed to capture fluids during an emergency upset period only and provided such fluids will be removed from the pit within twenty-four (24) hours from introduction;~~

~~**(d)** facilities that do not meet the requirements of the foregoing exemptions in Subsection A, Paragraph (3) of 19.15.9.711 NMAC, but that are shown by the facility operator to the satisfaction of the division to not present a risk to public health and the environment.~~

~~**B.** Unless exempt from Section 19.15.9.711 NMAC, all commercial and centralized facilities including facilities in operation on the effective date of Section 19.15.9.711 NMAC, new facilities prior to construction and all existing facilities prior to major modification or major expansion shall be permitted by the division in accordance with the following requirements:~~

~~**(1)** Application Requirements - An application, Form C-137, for a permit for a new facility or to modify an existing facility shall be filed in DUPLICATE with the Santa Fe office of the division and ONE COPY with the appropriate division district office. The application shall comply with division guidelines and shall include:~~

~~**(a)** The names and addresses of the applicant and all principal officers of the business if different from the applicant;~~

~~**(b)** A plat and topographic map showing the location of the facility in relation to governmental surveys (1/4 1/4 sec-~~

tion, township, and range), highways or roads giving access to the facility site, watercourses, water sources, and dwellings within one (1) mile of the site;

(c) The names and addresses of the surface owners of the real property on which the management facility is sited and surface owners of the real property of record within one (1) mile of the site;

(d) A description of the facility with a diagram indicating location of fences and cattle guards, and detailed construction/installation diagrams of any pits, liners, dikes, piping, sprayers, and tanks on the facility;

(e) A plan for management of approved wastes.

(f) A contingency plan for reporting and cleanup of spills or releases;

(g) A routine inspection and maintenance plan to ensure permit compliance;

(h) A Hydrogen Sulfide Prevention and Contingency Plan to protect public health;

(i) A closure plan including a cost estimate sufficient to close the facility to protect public health and the environment; said estimate to be based upon the use of equipment normally available to a third party contractor;

(j) Geological/hydrological evidence, including depth to and quality of groundwater beneath the site, demonstrating that disposal of oilfield wastes will not adversely impact fresh water;

(k) Proof that the notice requirements of Section 19.15.9.711 NMAC have been met;

(l) Certification by an authorized representative of the applicant that information submitted in the application is true, accurate, and complete to the best of the applicant's knowledge.

(m) Such other information as is necessary to demonstrate that the operation of the facility will not adversely impact public health or the environment and that the facility will be in compliance with OCD rules and orders.

(2) Notice Requirements:

(a) Prior to public notice, the applicant shall give written notice of application to the surface owners of record within one (1) mile of the facility, the county commission where the facility is located or is proposed to be located, and the appropriate city official(s) if the facility is located or proposed to be located within city limits or within one (1) mile of the city limits. The distance requirements for notice may be extended by the director if the director determines the proposed facility has the potential to adversely impact public health or the environment at a distance greater than one (1) mile. The director may require additional notice as needed. A copy and proof of such notice will be furnished to the division.

(b) The applicant will issue public notice in a form approved by the division in a newspaper of general circulation in the county in which the facility is to be located. For permit modifications, the division may require the applicant to issue public notice and give written notice as above.

(c) Any person seeking to comment or request a public hearing on such application must file comments or hearing requests with the division within 30 days of the date of public notice. Requests for a public hearing must be in writing to the director and shall set forth the reasons why a hearing should be held. A public hearing shall be held if the director determines there is significant public interest.

(d) The division will distribute notice of the filing of an application for a new facility or major modifications with the next OCD and OCC hearing docket following receipt of the application.

(3) Financial Assurance Requirements:

(a) Centralized Facilities: Upon determination by the director that the permit can be approved, any applicant of a centralized facility shall submit acceptable financial assurance in the amount of $25,000 per facility or a statewide "blanket" financial assurance in the amount of $50,000 to cover all of that applicant's facilities in a form approved by the director.

(b) New Commercial Facilities or major expansions or major modification of Existing Facilities: Upon determination by the director that a permit for a commercial facility to commence operation after the effective date of this rule can be approved, or upon determination by the director that a major modification or major expansion of an existing facility can be approved, any applicant of such a commercial facility shall submit acceptable financial assurance in the amount of the closure cost estimated in Subsection B, Paragraph (1), Subparagraph (i) above of 19.15.9.711 NMAC in a form approved by the director according to the following schedule:

(i) within one (1) year of commencing operations or when the facility is filled to 25% of the permitted capacity, whichever comes first, the financial assurance must be increased to 25% of the estimated closure cost;

(ii) within two (2) years of commencing operations or when the facility is filled to 50% of the permitted capacity, whichever comes first, the financial assurance must be increased to 50% of the estimated closure cost;

(iii) within three (3) years of commencing operations or when the facility is filled to 75% of the permitted capacity, whichever comes first, the financial assurance must be increased to 75% of the estimated closure cost;

(iv) within four (4) years of commencing operations or when the facility is filled to 100% of the permitted capacity, whichever comes first, the financial assurance must be increased to the estimated closure cost.

(c) Existing Commercial Facilities: All permittees of commercial facilities approved for operation at the time this rule becomes effective shall have submitted financial assurance in the amount of the closure cost estimated pursuant to Subsection B, Paragraph (1), Subparagraph (i) above of 19.15.9.711 NMAC but not less than $25,000 nor more than $250,000 per facility in a form approved by the director.

(i) within one (1) year of the effective date of Section 19.15.9.711 NMAC the financial assurance amount must be increased to 25% of the estimated closure costs or $62,500.00, whichever is less;

(ii) within two (2) years of the effective date of Section 19.15.9.711 NMAC the financial assurance amounts must be increased to 50% of the estimated closure costs or $125,000.00, whichever is less;

(iii) within three (3) years of the effective date of Section 19.15.9.711 NMAC the financial assurance amounts must be increased to 75% of the estimated closure costs or $187,000.00, whichever is less;

(iv) within four (4) years of the effective date of Section 19.15.9.711 NMAC the financial assurance amounts must be increased to the estimated closure cost or $250,000.00, whichever is less.

(d) The financial assurance required in subparagraphs (a), (b), or (c), above shall be payable to the State of New Mexico and conditioned upon compliance with statutes of the State of New Mexico and rules of the division, and acceptable closure of the site upon cessation of operation, in accordance with Subsection B, Paragraph (1), Subparagraph (i) of 19.15.9.711 NMAC. If adequate financial assurance is posted by the applicant with a federal or state agency and the financial assurance otherwise fulfills the requirements of this rule, the division may consider the financial assurance as satisfying the requirement of Section 19.15.9.711 NMAC. The applicant must notify the division of any material change affecting the financial assurance within 30 days of discovery of such change.

(4) The director may accept the following forms of financial assurance:

(a) Surety Bonds

(i) A surety bond shall be executed by the permittee and a corpo-

rate surety licensed to do business in the State.

(ii) Surety bonds shall be noncancellable during their terms.

(b) Letter of Credit – Letter of credit shall be subject to the following conditions:

(i) The letter may be issued only by a bank organized or authorized to do business in the United States;

(ii) Letters of credit shall be irrevocable for a term of not less than five (5) years. A letter of credit used as security in areas requiring continuous financial assurance coverage shall be forfeited and shall be collected by the State of New Mexico if not replaced by other suitable financial assurance or letter of credit at least 90 days before its expiration date;

(iii) The letter of credit shall be payable to the State of New Mexico upon demand, in part or in full, upon receipt from the director of a notice of forfeiture.

(c) Cash Accounts – Cash accounts shall be subject to the following conditions:

(i) The director may authorize the permittee to supplement the financial assurance through the establishment of a cash account in one or more federally insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the State of New Mexico.

(ii) Any interest paid on a cash account shall not be retained in the account and applied to the account unless the director has required such action as a permit requirement.

(iii) Certificates of deposit may be substituted for a cash account with the approval of the Director.

(d) Replacement of Financial Assurances

(i) The director may allow a permittee to replace existing financial assurances with other financial assurances that provide equivalent coverage.

(ii) The director shall not release existing financial assurances until the permittee has submitted, and the director has approved, acceptable replacements.

(5) A permit may be denied, revoked or additional requirements imposed by a written finding by the director that a permittee has a history of failure to comply with division rules and orders and state or federal environmental laws.

(6) The director may, for protection of public health and the environment, impose additional requirements such as setbacks from an existing occupied structure.

(7) The director may issue a permit upon a finding that an acceptable application has been filed and that the conditions of paragraphs 2 and 3 above have been met. All permits are revocable upon showing of good cause after notice and, if requested, hearing. Permits shall be reviewed a minimum of once every five (5) years for compliance with state statutes, Division rules and permit requirements and conditions.

C. Operational Requirements

(1) All surface waste management facility permittees shall file forms C-117-A, C-118, and C-120-A as required by OCD rules.

(2) Facilities permitted as treating plants will not accept sediment oil, tank bottoms and other miscellaneous hydrocarbons for processing unless accompanied by an approved Form C-117A or C-138.

(3) Facilities will only accept oilfield related wastes except as provided in Subsection C, Paragraph (4), Subparagraph (c) of 19.15.9.711 NMAC below. Wastes which are determined to be RCRA Subtitle C hazardous wastes by either listing or characteristic testing will not be accepted at a permitted facility.

(4) The permittee shall require the following documentation for accepting wastes, other than wastes returned from the wellbore in the normal course of well operations such as produced water and spent treating fluids, at commercial waste management facilities:

(a) Exempt Oilfield Wastes: As a condition to acceptance of the materials shipped, a generator, or his authorized agent, shall sign a certificate which represents and warrants that the wastes are: generated from oil and gas exploration and production operations; exempt from Resource Conservation and Recovery Act (RCRA) Subtitle C regulations; and not mixed with non-exempt wastes. The permittee shall have the option to accept on a monthly, weekly, or per load basis a load certificate in a form of its choice. While the acceptance of such exempt oilfield waste materials does not require the prior approval of the division, both the generator and permittee shall maintain and shall make said certificates available for inspection by the division for compliance and enforcement purposes.

(b) Non-exempt, Non-hazardous Oilfield Wastes: Prior to acceptance, a "Request For Approval To Accept Solid Waste", OCD Form C-138, accompanied by acceptable documentation to determine that the waste is non-hazardous shall be submitted to the appropriate district office. Acceptance will be on a case-by-case basis after approval from the division's Santa Fe office.

(c) Non-oilfield Wastes: Non-hazardous, non-oilfield wastes may be accepted in an emergency if ordered by the Department of Public Safety. Prior to acceptance, a "Request To Accept Solid Waste", OCD Form C-138 accompanied by the Department of Public Safety order will be submitted to the appropriate district office and the division's Santa Fe office. With prior approval from the division, other non-hazardous, non-oilfield waste may be accepted into a permitted surface waste management facility if the waste is similar in physical and chemical composition to the oilfield wastes authorized for disposal at that facility and is either: (1) exempt from the "hazardous waste" provisions of Subtitle C of the federal Resource Conservation and Recovery Act; or (2) has tested non-hazardous and is not listed as hazardous. Prior to acceptance, a "Request For Approval to Accept Solid Waste," OCD Form C-138, accompanied by acceptable documentation to characterize the waste, shall be submitted to and approved by the division's Santa Fe office.

(5) The permittee of a commercial facility shall maintain for inspection the records for each calendar month on the generator, location, volume and type of waste, date of disposal, and hauling company that disposes of fluids or material in the facility. Records shall be maintained in appropriate books and records for a period of not less than five years, covering their operations in New Mexico.

(6) Disposal at a facility shall occur only when an attendant is on duty unless loads can be monitored or otherwise isolated for inspection before disposal. The facility shall be secured to prevent unauthorized disposal when no attendant is present.

(7) No produced water shall be received at the facility from motor vehicles unless the transporter has a valid Form C-133, Authorization to Move Produced Water, on file with the division.

(8) To protect migratory birds, all tanks exceeding 16 feet in diameter, and exposed pits and ponds shall be screened, netted or covered. Upon written application by the permittee, an exception to screening, netting or covering of a facility may be granted by the district supervisor upon a showing that an alternative method will protect migratory birds or that the facility is not hazardous to migratory birds.

(9) All facilities will be fenced in a manner approved by the director.

(10) A permit may not be transferred without the prior written approval of the director. Until such transfer is approved by the director and the required financial assurance is in place, the transferor's financial assurance will not be released.

D. Facility Closure

(1) The permittee shall notify the division thirty (30) days prior to its intent to cease accepting wastes and close the facility. The permittee shall then begin closure

~~operations unless an extension of time is granted by the director. If disposal operations have ceased and there has been no significant activity at the facility for six (6) months and the permittee has not responded to written notice as defined in Subsection D, Paragraph (2), Subparagraph (a) of 19.15.9.711 NMAC, then the facility shall be considered abandoned and shall be closed utilizing the financial assurance pledged to the facility. Closure shall be in accordance with the approved closure plan and any modifications or additional requirements imposed by the director to protect public health and the environment. At all times the permittee must maintain the facility to protect public health and the environment. Prior to release of the financial assurance covering the facility, the division will inspect the site to determine that closure is complete.~~

~~**(2)** If a permittee refuses or is unable to conduct operations at the facility in a manner that protects public health or the environment or refuses or is unable to conduct or complete the closure plan, the terms of the permit are not met, or the permittee defaults on the conditions under which the financial assurance was accepted, the director shall take the following actions to forfeit all or part of the financial assurance:~~

~~**(a)** Send written notice by certified mail, return receipt requested, to the permittee and the surety informing them of the decision to close the facility and to forfeit all or part of the financial assurance, including the reasons for the forfeiture and the amount to be forfeited and notifying the permittee and surety that a hearing request must be made within ten (10) days of receipt of the notice.~~

~~**(b)** Advise the permittee and surety of the conditions under which the forfeiture may be avoided. Such conditions may include but are not limited to:~~

~~**(i)** An agreement by the permittee or another party to perform closure operations in accordance with the conditions of the permit, the closure plan and these Rules, and that such party has the ability to satisfy the conditions.~~

~~**(ii)** The director may allow a surety to complete closure if the surety can demonstrate an ability to complete the closure in accordance with the approved plan. No surety liability shall be released until successful completion of closure.~~

~~**(c)** In the event forfeiture of the financial assurance is required by this rule, the director shall proceed to collect the forfeited amount and use the funds collected from the forfeiture to complete the closure. In the event the amount forfeited is insufficient for closure, the permittee shall be liable for the deficiency. The director may complete or authorize completion of closure and may recover from the permittee all reasonably incurred costs of closure and forfeiture in excess of the amount forfeited. In the event the amount forfeited was more than the amount necessary to complete closure and all costs of forfeiture, the excess shall be returned to the party from whom it was collected.~~

~~**(d)** Upon showing of good cause, the director may order immediate cessation of operations of the facility when it appears that such cessation is necessary to protect public health or the environment, or to assure compliance with division rules and orders.~~

~~**(e)** In the event the permittee cannot fulfill the conditions and obligations of the permit, the State of New Mexico, its agencies, officers, employees, agents, contractors and other entities designated by the State shall have all rights of entry into, over and upon the facility property, including all necessary and convenient rights of ingress and egress with all materials and equipment to conduct operation, termination and closure of the facility, including but not limited to the temporary storage of equipment and materials, the right to borrow or dispose of materials, and all other rights necessary for operation, termination and closure of the facility in accordance with the permit.~~

~~**E.** Waste management facilities in operation at the time Section 19.15.9.711 NMAC becomes effective shall:~~

~~**(1)** within one (1) year after the effective date permitted facilities submit the information required in Subsection B, Paragraph (1), Subparagraphs (a, h, i and l) of 19.15.9.711 NMAC not already on file with the Division;~~

~~**(2)** within one (1) year after the effective date unpermitted facilities submit the information required in Subsection B, Paragraph (1), Subparagraphs (a) through (j) and Subsection B, Paragraph (1), Subparagraph (l) of 19.15.9.711 NMAC;~~

~~**(3)** comply with Subsections C and D of 19.15.9.711 NMAC unless the director grants an exemption from a requirement in these sections based upon a demonstration by the operator that such requirement is not necessary to protect public health and the environment.~~][RESERVED]

[6-6-88…2-1-96; 19.15.9.711 NMAC - Rn, 19 NMAC 15.I.711, 11-30-01; A, 4-15-03; Repealed, 2-14-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.171.400 NMAC, which will be effective on February 14, 2007. The Medical Assistance Division is amending the Chapter name.

TITLE 8 SOCIAL SERVICES
CHAPTER 171 PREMIUM ASSISTANCE FOR [~~KIDS AND PREGNANT WOMEN (CATEGORY 071)~~] CHILDREN (CATEGORY 071/2)
PART 400 RECIPIENT POLICIES

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.171.500 NMAC, which will be effective on February 14, 2007. The Medical Assistance Division is amending the Chapter name.

TITLE 8 SOCIAL SERVICES
CHAPTER 171 PREMIUM ASSISTANCE FOR [~~KIDS AND PREGNANT WOMEN (CATEGORY 071)~~] CHILDREN (CATEGORY 071/2)
PART 500 INCOME AND RESOURCE STANDARDS

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.171.600 NMAC, which will be effective on February 14, 2007. The Medical Assistance Division is amending the Chapter name.

TITLE 8 SOCIAL SERVICES
CHAPTER 171 PREMIUM ASSISTANCE FOR [~~KIDS AND PREGNANT WOMEN (CATEGORY 071)~~] CHILDREN (CATEGORY 071/2)
PART 600 BENEFIT DESCRIPTION

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an emergency to amend 8.215.500 NMAC, Sections 12 and 13, which will be effective on February 1, 2007. The Medical Assistance Division amended the sections to clarify language with regard to what resources are countable when the resources are jointly owned with others.

8.215.500.12 APPLICABLE RESOURCE STANDARDS: The resource standard for medicaid extension as well as retroactive SSI medicaid eligibility determinations is $2,000. See Section QMB-510 for resource standards applicable to QMB. See Section QDS-510 for standards applicable to the qualified disabled working individuals program. See Section SMB-510 for standards applicable to the SLIMB program.

A. **Liquid resources:** The face value of liquid resources such as cash, savings or checking accounts is considered in determining medicaid eligibility. The countable value of resources such as securities, bonds, real estate contracts and promissory notes is based on their current fair market value.

(1) An applicant/recipient must provide verification of the value of all liquid resources. The resource value of a bank account is customarily verified by a statement from the bank showing the account balance as of the first moment of the first day of the month in question. If an applicant/recipient cannot provide this verification, the ISS sends a bank or postal savings clearance to the appropriate institution(s).

(2) If the applicant/recipient can demonstrate that a check was written and delivered to a payee but not cashed by the payee prior to the first moment of the first day of the month, the amount of that check is subtracted from the applicant/recipient's checking account balance to arrive at the amount to be considered a countable resource.

B. **Nonliquid resources:** The value of nonliquid resources is computed at current fair market value. See below for discussion of equity value.

(1) **Real property:** If an applicant/recipient is the sole owner of real property other than a home and has the right to dispose of it, the entire equity value is included as a countable resource. If an applicant/recipient owns property with one or more individuals [~~, the applicant/recipient's prorated share of the equity value is counted only if the share can be liquidated without the approval of the property's co-owners.~~] and the applicant/recipient has the right, authority or power to liquidate the property or his/her share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource to the individual. The applicant/recipient must provide a copy of the legal document which indicates his/her interest in the property [~~and the liquidity of the shares~~].

(2) **Vehicles:** One automobile is totally excluded regardless of value if it is used for transportation for the individual or a member of the individual's household. Any other automobiles are considered to be nonliquid resources. Equity in the other automobiles is counted as a resource. Recreational vehicles and boats are considered household goods and personal effects rather than vehicles.

(3) **Household goods and personal effects:** Household goods and personal effects are considered countable resources if the items were acquired or are held for their value or are held as an investment. Such items can include but are not limited to: gems, jewelry that is not worn or held for family significance, or collectibles. [2-1-95, 7-31-97; 8.215.500.12 NMAC - Rn, 8 NMAC 4.SSI.511, 3-1-01; A, 1-1-06; A/E, 2-1-07]

8.215.500.13 COUNTABLE RESOURCES: Before a resource can be considered countable, the three (3) criteria listed below must be met.

A. **Ownership interest:** An applicant/recipient must have an ownership interest in a resource for it to be countable. The fact that an applicant/recipient has access to a resource, or has a legal right to use it, does not make it countable unless the applicant/recipient also has an ownership interest in it.

B. **Legal right to convert resource to cash:** An applicant/recipient must have the legal ability to spend the funds or to convert non-cash resources into cash.

(1) **Physical possession of resource:** The fact that an applicant/recipient does not have physical possession of a resource does not mean it is not his/her resource. If he/she has the legal ability to spend the funds or convert the resource to cash, the resource is considered countable. Physical possession of savings bonds is a legal requirement for cashing them.

(2) **Unrestricted use of resource:** An applicant/recipient is considered to have free access to the unrestricted use of a resource even if he/she can take those actions only through an agent, such as a representative payee or guardian.

(3) If there is a legal bar to the sale of a resource, [~~such as a co-owner legally blocking the sale of jointly owned property,~~] the resource is not countable. [~~The applicant/recipient is not required to undertake litigation in order to accomplish the sale.~~] If the co-owner of real property can bring an action to partition and sell the property, his/her interest in the property is a countable resource.

C. **Legal ability to use a resource:** If a legal restriction exists which prevents the use of a resource for the applicant/recipient's own support and maintenance, the resource is not countable.

D. **Joint ownership of resources:** If an applicant/recipient owns either liquid or non-liquid resources jointly with others, he/she has thirty (30) days from the date requested by the ISS to submit all documentation required to verify his/her claims regarding ownership of, access to, and legal ability to use the resource for personal support and maintenance. Failure to do so results in the presumption that the resource is countable and belongs to the applicant/recipient.

(1) **Jointly held property:** If jointly held property is identified during review of an active case, the ISS must:

(a) determine whether the property is a countable resource; [~~and~~]

(b) determine whether the value of the jointly held property plus the value of other countable resources exceeds the allowable resource maximum;

(c) if the value of countable resources exceeds the allowable maximum, advance notice is furnished to the applicant/recipient of the intent to close the case and his/her right to verify claims regarding ownership of, access to and legal ability to use the property for personal support and maintenance;

(d) if the applicant/recipient fails to provide required information or respond within the advance notice period, the case is closed; and

(e) if, after expiration of the advance notice period but prior to the end of the month in which the advance notice expires, the applicant/recipient provides the required evidence to show the property is not a countable resource, or is countable in an amount which, when added to the value of other countable resources, does not exceed the maximum allowable limit, and eligibility continues to exist on all other factors, the case is reinstated for the next month.

(2) **Joint bank accounts:** If liquid resources are in a joint bank account of any type, the applicant/recipient's ownership interest, while the parties to the account are alive, is presumed to be proportionate to the applicant/recipient's contributions to the total resources on deposit.

(a) The applicant/recipient is presumed to own a proportionate share of the funds on deposit unless he/she presents clear and convincing evidence that the parties to the account intended the applicant/recipient to have a different ownership interest.

(b) To establish the applicant/recipient's ownership interest in a joint account, the following are required:

(i) statement by the applicant/recipient regarding contributions to the account; reasons for establishing the account; who owns the funds in the account; and any supporting documentation; plus

(ii) corroborating statements from the other account holder(s); if either the applicant/recipient or the other account holder is not capable of making a statement, the applicant/recipient or representative must obtain a statement from a third party who has knowledge of the circumstances surrounding the establishment of the joint account.

(c) Failure to provide required documentation within thirty (30) days of the date requested by the ISS results in a determination that the entire account amount belongs to the applicant/recipient.

(d) If the existence of a jointly held bank account is identified during the review of an active case, the ISS requests evidence of ownership and accessibility. If the evidence is not furnished within thirty (30) days of the request, the case is closed.

E. **Other countable resources:** Other liquid or non-liquid resources must be considered in the calculation of total countable resources. Under certain circumstances, the following non-liquid resources may be included in the calculation of countable resources:

(1) burial funds;

(2) burial spaces;

(3) life estates;

(4) life insurance; and

(5) income-producing property.

[2-1-95, 7-31-97; 8.215.500.13 NMAC - Rn, 8 NMAC 4.SSI.512, 3-1-01; A/E, 2-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an emergency to amend 8.281.500 NMAC, Sections 11 and 12, which will be effective on February 1, 2007. The Medical Assistance Division amended the sections to clarify language with regard to what resources are countable when the resources are jointly owned with others.

8.281.500.11 APPLICABLE RESOURCE STANDARDS: An applicant/recipient is eligible for institutional care medicaid on the factor of resources if countable resources do not exceed two thousand dollars ($2,000).

A. **Liquid resources:** The face value of liquid resources such as cash, savings or checking accounts is considered in determining medicaid eligibility. The countable value of resources such as securities, bonds, real estate contracts and promissory notes is based on their current fair market value.

(1) An applicant/recipient must provide verification of the value of all liquid resources. The resource value of a bank account is customarily verified by a statement from the bank showing the account balance as of the first moment of the first day of the month in question. If an applicant/recipient cannot provide this verification, the income support specialist (ISS) sends a bank or postal savings clearance to the appropriate institution(s).

(2) If the applicant/recipient can demonstrate that a check was written and delivered to a payee but not cashed by the payee prior to the first moment of the first day of the month, the amount of that check is subtracted from the applicant/recipient's checking account balance to arrive at the amount to be considered a countable resource.

B. **Nonliquid resources:** The value of nonliquid resources is computed at current fair market value. See below for discussion of equity value.

(1) **Real property:**

(a) If an applicant/recipient is the sole owner of real property other than a home and has the right to dispose of it, the entire equity value is included as a countable resource.

(b) If an applicant/recipient owns property with one or more individuals [~~, the applicant/recipient's prorated share of the equity value is counted only if the share can be liquidated without the approval of the property's co-owners.~~] and the applicant/recipient has the right, authority or power to liquidate the property or his/her share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource to the individual. The applicant/recipient must provide a copy of the legal document which indicates his/her interest in the property [~~and liquidity of the shares~~].

(2) **Vehicles:** One automobile is totally excluded regardless of value if it is used for transportation for the individual or a member of the individual's household. Any other automobiles are considered to be nonliquid resources. Recreational vehicles and boats are considered household goods and personal effects rather than vehicles.

(3) **Household goods and personal effects:** Household goods and personal effects are considered countable resources if the items were acquired or are held for their value or are held as an investment. Such items can include but are not limited to: gems, jewelry that is not worn or held for family significance, or collectibles. [2-1-95, 7-31-97; 8.281.500.11 NMAC – Rn, 8 NMAC 4.ICM.511, 3-1-01; A, 1-1-06; A/E, 2-1-07]

8.281.500.12 COUNTABLE RESOURCES: Before a resource can be considered countable, the three (3) criteria listed below must be met.

A. **Ownership interest:** An applicant/recipient must have an ownership interest in a resource for it to be countable. The fact that an applicant/recipient has access to a resource, or has a legal right to use it, does not make it countable unless the applicant/recipient also has an ownership interest in it.

B. **Legal right to convert resource to cash:** An applicant/recipient must have the legal ability to spend the funds or to convert non-cash resources into cash.

(1) **Physical possession of resource:** The fact that an applicant/recipient does not have physical possession of a resource does not mean it is not his/her resource. If he/she has the legal ability to spend the funds or convert the resource to cash, the resource is considered countable. Physical possession of savings bonds is a legal requirement for cashing them.

(2) **Unrestricted use of resource:** An applicant/recipient is considered to have free access to the unrestricted use of a resource even if he/she can take those actions only through an agent, such as a representative payee or guardian. If there is a legal bar to the sale of a resource, [~~such as a co-owner legally blocking the sale of jointly owned property,~~] the resource is not countable. [~~The applicant/recipient is not required to undertake litigation in order to accomplish the sale.~~] If a co-owner of real property can bring an action to partition and sell the property, his/her interest in the property is a countable resource.

C. **Legal ability to use a resource:** If a legal restriction exists which prevents the use of a resource for the applicant/recipient's own support and maintenance, the resource is not countable.

D. **Joint ownership of resources:** If an applicant/recipient owns either liquid or non-liquid resources jointly with others, he/she has thirty (30) days from the date requested by the ISS to submit all documentation required to verify his/her claims regarding ownership of, access to, and legal ability to use the resource for personal support and maintenance. Failure to do so results in the presumption that the resource is countable and belongs to the applicant/recipient.

(1) **Jointly held property:** If jointly held property is identified during review of an active case, the ISS must:

(a) determine whether the property is a countable resource;

(b) determine whether the value of the jointly held property plus the value of other countable resources exceeds the allowable resource maximum;

(c) if the value of countable resources exceeds the allowable maximum, advance notice is furnished to the applicant/recipient of the intent to close the case and his/her right to verify claims regarding

ownership of, access to and legal ability to use the property for personal support and maintenance.

(i) If the applicant/recipient fails to provide required information or respond within the advance notice period, the case is closed.

(ii) If, after expiration of the advance notice period but prior to the end of the month in which the advance notice expires, the applicant/recipient provides the required evidence to show the property is not a countable resource, or is countable in an amount which, when added to the value of other countable resources, does not exceed the maximum allowable limit, and eligibility continues to exist on all other factors, the case is reinstated for the next month.

(2) **Joint bank accounts:** If liquid resources are in a joint bank account of any type, the applicant/recipient's ownership interest, while the parties to the account are alive, is presumed to be proportionate to the applicant/recipient's contributions to the total resources on deposit.

(a) The applicant/recipient is presumed to own a proportionate share of the funds on deposit unless he/she presents clear and convincing evidence that the parties to the account intended the applicant/recipient to have a different ownership interest.

(b) To establish the applicant/recipient's ownership interest in a joint account, the following are required:

(i) statement by the applicant/recipient regarding contributions to the account; reasons for establishing the account; who owns the funds in the account; and any supporting documentation; plus

(ii) corroborating statements from the other account holder(s);

(iii) if either the applicant/recipient or the other account holder is not capable of making a statement, the applicant/recipient or representative must obtain a statement from a third party who has knowledge of the circumstances surrounding the establishment of the joint account.

(c) Failure to provide required documentation within thirty (30) days of the date requested by the ISS results in a determination that the entire account amount belongs to the applicant/recipient.

(d) If the existence of a jointly held bank account is identified during the review of an active case, the ISS requests evidence of ownership and accessibility. If the evidence is not furnished within thirty (30) days of the request, the case is closed.

E. **Other countable resources:** Other liquid or non-liquid resources must be considered in the calculation of total countable resources. Under certain circumstances, the following non-liquid resources may be included in the calculation of countable resources:

(1) burial funds;
(2) burial spaces;
(3) life estates;
(4) life insurance; and
(5) income-producing property.

[2-1-95, 7-31-97; 8.281.500.12 NMAC – Rn, 8 NMAC 4.ICM.512, 3-1-01; A/E, 2-1-07]

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 7 ENERGY CONSERVATION
PART 2 ENERGY EFFICIENCY

17.7.2.1 ISSUING AGENCY: The New Mexico Public Regulation Commission.
[17.7.2.1 NMAC - N, 3-1-07]

17.7.2.2 SCOPE: This rule applies to all electric, gas and rural electric cooperative utilities subject to the commission's jurisdiction.
[17.7.2.2 NMAC - N, 3-1-07]

17.7.2.3 STATUTORY AUTHORITY: NMSA 1978, Sections 8-8-16, 62-17-1 et seq.
[17.7.2.3 NMAC - N, 3-1-07]

17.7.2.4 DURATION: Permanent.
[17.7.2.4 NMAC - N, 3-1-07]

17.7.2.5 EFFECTIVE DATE: March 1, 2007, unless a later date is cited at the end of a section. Applications filed prior to this effective date shall be governed by the specific orders related to those applications.
[17.7.2.5 NMAC - N, 3-1-07]

17.7.2.6 OBJECTIVE: The purposes of this rule is to implement the Efficient Use of Energy Act such that public utilities and distribution cooperative utilities include cost-effective energy efficiency and load management investments in their energy resource portfolios; and to set forth the commission's policy and requirements for energy efficiency and load management programs. Public utility investments in cost-effective energy efficiency and load management are an acceptable use of ratepayer money. Public utilities must evaluate and implement cost-effective programs that reduce energy demand and consumption, with the view that ratepayer-funded energy efficiency should focus on programs that serve as resource alternatives to supply-side options.
[17.7.2.6 NMAC - N, 3-1-07]

17.7.2.7 DEFINITIONS: As used in this rule:

A. affected customer class means a rate class comprised of either electricity or natural gas customers subject to a tariff rider which recovers utility energy efficiency and load management program costs;

B. alternative energy efficiency provider means an entity that assumes, with the consent of the utility, the duties and responsibilities of the public utility to provide ratepayer-funded load management and energy efficiency programs to the utility's customers;

C. avoided supply side costs means gas and electricity commodity costs, and avoided generation, transportation, transmission, distribution, operations and maintenance, administrative and general costs, and other avoided costs of supplying energy or capacity to customers;

D. commission means the New Mexico public regulation commission;

E. contractor means an individual, entity or governmental instrumentality with whom a utility or an alternative energy efficiency provider enters into a written contract for services related to the provision of one or more energy efficiency programs;

F. cost-effective means that the program being evaluated satisfies the total resource cost test, except that for self-direct programs a cost-effective measure has a simple payback of more than one year but less than seven years;

G. deemed savings means expected energy and demand savings attributed to well-known or commercially available energy efficiency and load management devices or measures based on standard engineering calculations, ratings, simulation models or field measurement studies, periodically adjusted as appropriate for New Mexico specific data, including building and household characteristics, and climate conditions in pertinent region(s) within the state;

H. demand savings means the load reduction occurring during the relevant peak period(s) as a direct result of energy efficiency and load management programs;

I. distribution cooperative utility means a utility with distribution facilities organized as a rural electric cooperative pursuant to Laws 1937, Chapter 100 or the Rural Electric Cooperative Act or

similarly organized in other states;

J. economic benefit is a net financial benefit which members of a customer class can achieve through available program participation;

K. emissions means all air emissions regulated by state or federal authorities, including but not limited to all criteria pollutants and hazardous air pollutants, plus mercury and CO2 (carbon dioxide);

L. energy efficiency means measures, including energy conservation measures, or programs that target consumer behavior, equipment or devices, to result in a decrease in consumption of electricity or natural gas without reducing the level or quality of energy services;

M. energy savings means the reduction in a customer's consumption of energy as a direct result of an energy efficiency program(s);

N. interested parties are interveners in the public utility's last general rate case and energy efficiency filing, plus persons specifically expressing to the utility an interest in energy efficiency, and excluding persons expressing to the utility that they are not interested;

O. large customer means a utility customer at a single, contiguous field, location or facility, regardless of the number of meters at that field, location or facility, with electricity consumption greater than seven thousand megawatt-hours per year or natural gas use greater than three hundred sixty thousand decatherms per year;

P. life cycle means the expected useful life of the energy efficiency measure being deployed;

Q. load management means measures or programs that target equipment or devices to decrease peak electricity demand or to shift demand from peak to off-peak periods;

R. low income customer means a customer that lives with an annual household income at or below 200% of the federal poverty level as published each year by the U.S. department of health and human services;

S. measures means the components of a public utility program, and includes any material, device, technology, educational program, practice or facility alteration that makes it possible to deliver a comparable level and quality of end-use energy service while using less energy than would otherwise be required;

T. measurement and verification means activities to determine or approximate with a high degree of certainty the actual demand and energy reductions from energy efficiency and load management programs;

U. non-energy benefits means benefits which do not affect the total resource cost of a program, including but not limited to benefits of low-income customer participation in utility programs, and reductions in greenhouse gas emissions, regulated air emissions, water consumption and natural resource depletion;

V. portfolio means all programs which will continue to be offered, and those proposed to be offered, by the public utility;

W. program costs are the reasonable costs incurred by a utility as a result of developing, implementing and administering approved program(s);

X. program means one or more measures provided as part of a single offering to consumers. An example of a program is a weatherization program which includes insulation replacement, weather stripping, and window replacement;

Y. public utility means a public utility as defined in the Public Utility Act (NMSA 1978, Section 62-3-1 et seq.) that is not also a distribution cooperative utility;

Z. statutory tariff rider caps means one and one-half percent of the bill (exclusive of gross receipts tax and franchise fees) for customers other than large customers and the lower of one and one-half percent of the bill or seventy-five thousand dollars ($75,000) per year for a large customer;

AA. total resource cost test or TRC test means a standard that is met if, for an investment in energy efficiency or load management, on a life-cycle basis the present value of the avoided supply-side monetary costs are greater than the present value of the monetary costs of the demand-side programs borne by both the utility and the participants; supply-side program costs are costs of supplying energy or capacity to customers; demand-side program costs are costs of reducing customer demand for energy or capacity.

[17.7.2.7 NMAC - N, 3-1-07]

17.7.2.8 PREFILING REQUIREMENTS FOR PROGRAM APPROVAL:

A. Solicitation of public input from interested parties. Public utilities shall, during the program planning and development process, and before seeking commission approval, solicit non-binding recommendations on the design and implementation of the programs from commission staff, the attorney general, the energy, minerals and natural resources department and other interested parties.

B. Section 62-17-6A consents. If the utility plans to propose a tariff rider that exceeds the statutory dollar and percentage caps, it shall first obtain consent from the New Mexico attorney general for customers other than large customers, and consent from affected large customers for cap increases affecting large customers. These consents must be in writing and must specify an amount and period for which the cap will be exceeded.

[17.7.2.8 NMAC - N, 3-1-07]

17.7.2.9 FILING REQUIREMENTS FOR PROGRAM APPROVAL:

A. Compliance with prefiling requirements. The utility shall describe the public participation process it used to obtain input from interested parties during the planning and development of its proposed program(s), and shall provide any written consents obtained pursuant to Subsection B of 17.7.2.8 NMAC.

B. Timing. Requests for program approval shall be made in a single filing within ninety days after the filing of the utility's annual report, except for good cause shown or as otherwise ordered by the commission.

C. Program selection.

(1) Cost effectiveness is a mandatory criterion for program selection; only programs that are cost effective are eligible for approval.

(2) When selecting among multiple potential programs, all of which are cost effective, a utility shall consider the following criteria:

(a) the extent to which the program provides significant system benefits to all members of a customer class, including non-participants;

(b) the extent to which the program offers potential for broad participation within an affected customer class;

(c) the program's ratio of cost effectiveness under the TRC test;

(d) total estimated energy and demand savings;

(e) the existence of substantial non-energy benefits, consistent with the legislative findings in the Efficient Use of Energy Act;

(f) administrative ease of program deployment;

(g) overall portfolio development considerations; and

(h) performance risk of the technologies and methods required for the program.

(3) As part of its application, the utility shall explain how it applied these criteria to select the proposed program(s).

D. Indirect impact measures that may not, in and of themselves, be cost effective, such as general education activities, energy audits, and research and development, are permissible to the extent that those measures do not negate the overall cost effectiveness of the utility's energy efficiency portfolio.

E. In its applications for

program approval, a utility shall provide to the commission and interested parties, along with an executive summary to facilitate commission review, the following:

(1) summary of existing programs and description of their relationship to the proposed programs, including a detailed explanation of all customer education efforts;

(2) the program objectives, including measures and projected savings;

(3) rate impact and customer bill impact, including data showing that the tariff rider will not cause any customer to be charged an amount greater than that permitted by the Efficient Use of Energy Act;

(4) program implementation and administration plan;

(5) a description of the responsibilities which will be assigned to utility personnel and to contractors;

(6) the targeted market segment, and the program's marketing and outreach plan;

(7) program participation requirements, if any;

(8) the time period during which the program will be offered;

(9) the expected useful life of the measures;

(10) detailed program budgets with projected expenditures, identifying program costs which will be borne by the utility and collected from its customers, with customer class allocations if appropriate;

(11) the participant costs;

(12) demonstration that the program is cost effective pursuant to the total resource cost test;

(13) a plan for how program energy and capacity savings can be measured and verified;

(14) the rationale and methodology used by the utility to estimate the proposed expenditures, and allocate the expenditures across programs and customer classes;

(15) proposed market transformation, and building code and appliance standard reforms, if any, which they have studied or propose as part of their program portfolios;

(16) forecasts of proposed program expenditures, energy and capacity savings, cost effectiveness and other items in a manner that facilitates comparison with actual results for purposes of measurement and verification, and compilation of annual reports; and

(17) a general description of the programs which the utility specifically studied and rejected.

F. Cost effectiveness using the total resource cost (TRC) test. While each program proposed by a utility must be cost effective, each measure within a program need not be cost effective.

G. The utility shall separately identify and present the assumptions, calculations and other elements associated with the TRC test. Those elements include, but are not limited to:

(1) cost of capital and discount rate employed by the utility and determination of net present value calculations;

(2) program costs to both the utility and participants;

(3) shared or allocated program costs or investments, along with a description of the sharing or allocation method;

(4) expected number of participants and program savings per participant in energy units and dollars;

(5) value of the energy/or capacity savings expected, including deemed savings, from the program to both participants and non-participants; and

(6) the period of analysis (life cycle) and a description of all resources which are assumed to be avoided by deployment of the efficiency program, including other quantifiable monetary savings.

H. In calculating the total resource cost of programs, costs shared among individual programs, such as market research and planning, program design, measurement and verification and annual reporting shall be allocated to individual programs in proportion to the direct costs assigned to those programs, unless the utility demonstrates that another allocation method is more appropriate.

I. General advertising and education-type costs, which promote energy conservation and efficiency not tied to a specific program, and which were allowable expenses prior to passage of the Efficient Use of Energy Act, need not be included as program costs for purposes of calculating the TRC test or the tariff rider cap.

J. Participation and Benefits Requirements:

(1) the utility shall demonstrate that the portfolio of programs it offers or will offer is cost-effective and designed to provide every affected customer class with the opportunity to participate and benefit economically;

(2) the overall design of portfolio offerings shall achieve widespread program access and availability within each affected customer class; for the residential class some utility energy efficiency programs shall be designed to enable low income customer participation; utilities shall describe the extent to which the programs offered allow low-income customers to participate, recognizing the financial constraints of those customers;

(3) a public utility may coordinate program service with existing resources in the community, including affordable housing programs, and low-income weatherization programs managed by the state of New Mexico; this section does not preclude the utility from designing and proposing low-income programs;

(4) public utilities shall notify customers experiencing ability-to-pay problems of the utility's energy efficiency programs and hardship funds.

K. Proposals to Eliminate Disincentives or Barriers.

(1) The utility shall file a proposal for the commission to remove any disincentives or barriers to utility-provided energy efficiency or load management which the utility believes to exist. That proposal shall identify all such disincentives, quantify any financial losses which the utility proposes to be compensated for, and include any proposals by the utility to remove disincentives or barriers.

(2) The commission's determination of the existence, and extent, of disincentives will take into account the utility's ability to mitigate the effects of a disincentive, and any incentives for supplying efficiency and load management which may offset disincentives or barriers.

(3) The utility has the burden to demonstrate that its claimed disincentives or barriers exist and are not offset, and that the removal of those disincentives or barriers in the manner proposed by the public utility will assure that the utility is financially neutral in its preference for acquiring demand or supply-side utility resources.

(4) Failure to file a proposal to remove disincentives or barriers at the time of a program filing shall preclude the utility from recovering costs to eliminate barriers or disincentives associated with the proposed program. The utility may seek prospective recovery for costs of unforeseen barriers or disincentives, recognizing that program approvals may need to be reconsidered in light of the revised information.

(5) Nothing in this section shall preclude any party from proposing alternative ratemaking methods to prospectively address any disincentives or barriers which may exist for a utility's energy efficiency or load management activities at the time of a utility's general rate case or other appropriate proceeding.

[17.7.2.9 NMAC - N, 3-1-07]

17.7.2.10 RESIDENTIAL PROGRAMS:

A. Purpose. This section requires public utilities to establish cost-effective energy efficiency programs for their residential customer class in order to ensure that all residential customers, regardless of income, have the opportunity to participate and benefit economically in order to

comply with NMSA 1978, Section 62-17-5(C). The programs are intended to assist all residential customers, including low-income customers, with conserving energy and reducing residential energy bills. The programs are also intended to reduce the residential demand for electricity and gas and the peak demand for electricity so as to reduce costs related to the purchase of fuel or of power and concomitantly reduce demand that could lead to the need to construct new generating capacity.

B. A public utility may establish an energy efficiency program specifically for its low-income customers to assist the utility's efforts in offering a balanced portfolio of energy efficiency programs.

(1) Low-income program funding. A public utility's allocation of total energy efficiency program funding to low-income programs is to be based upon factors to be articulated by the utility such as:

(a) the program's expected customer participation rates for eligible customers;

(b) the program's potential to reduce the burden of utility costs on low-income customers; and

(c) the program's ability to reduce energy demand and consumption.

(2) Integration.

(a) A public utility may coordinate program service with existing resources in the community, including affordable housing programs, and low-income weatherization programs managed by the state of New Mexico. This section does not preclude the utility from designing and proposing low-income programs.

(b) Low-income energy efficiency programs should be designed, whenever possible, to provide program services through providers that have demonstrated experience and effectiveness in the administration and provision of low-income energy efficiency services and in identification of and outreach to low-income households. In the absence of qualified independent agencies, a public utility electing not to provide program services directly may solicit competitive bids for the provision of services by providers of related housing and construction services, and ensure appropriate training of such providers.

[17.7.2.10 NMAC - N, 3-1-07]

17.7.2.11 LARGE CUSTOMER SELF-DIRECT PROGRAM AND EXEMPTIONS:

A. General. A large customer shall receive approval for a credit for and equal to the incremental expenditures that customer has made at its facilities on and after January 1, 2005 toward cost-effective energy efficiency and load management, upon demonstration to the reasonable satisfaction of the utility or self-direct program administrator that its expenditures are cost-effective. The utility shall assign a person to evaluate and approve or disapprove large customer requests for credits or exemptions. The commission may appoint a self-direct program administrator, in lieu of the utility's designated person, for good cause shown.

B. Eligibility. Large customers applying for an electricity credit or exemption must meet the electricity consumption size criterion and those applying for a gas credit or exemption must meet the gas consumption criterion. Projects by qualified customers that save electricity are eligible for an electricity credit only. Projects that save natural gas are eligible for a gas credit only. Projects that save electricity and gas are eligible for both credits although the same energy efficiency expenditures cannot be used twice. Customers become eligible for self-direct program credits only after expenditures for a qualifying energy efficiency project(s) are made. Expenditures must be documented and approved by the utility or administrator prior to the credit being awarded. If expenditures are ongoing, the customer should present and receive approval for its expenditures to the utility or program administrator annually.

C. Requirements for approval of self-direct projects or exemptions. Self-direct program participants, or large customers seeking exemption, shall submit qualified in-house or contracted engineering studies, and such other information as may be reasonably required by the utility or program administrator, to demonstrate qualification for self-direct program credits or exemptions. Large customers must respond to reasonable utility or administrator information requests and allow the utility or administrator to perform site visits if necessary. Eligible expenditures shall have a simple payback period of more than one year but less than seven years. Projects that have received rebates, financial support or other substantial program support from a utility are not eligible for a credit. The utility or administrator shall act in a timely manner on requests for self-direct program approval.

D. Requirements for exemptions from the tariff rider. A large customer shall receive an exemption to paying 70% of the tariff rider if that customer demonstrates to the reasonable satisfaction of the utility or self-direct program administrator that it has exhausted all cost-effective energy efficiency measures in its facility (or group of facilities if facilities are aggregated in order to qualify). A determination of exemption is valid for 24 months. After the expiration of 24 months, a customer may request approval for exemption again by demonstrating that it has exhausted all cost effective energy efficiency in its facility or facilities.

E. Review procedure. Approvals or disapprovals of credits or exemptions by the utility or administrator shall be subject to commission review. The utility or administrator shall file notice of each self-direct program approval or disapproval with the commission, and serve that notice on interested persons, within 5 business days of the action. Notice of an appeal of an approval or disapproval shall be filed with the Commission within 30 days of the approval or disapproval action.

F. Credits for self-direct programs. Credits for approved self-direct programs may be used to offset up to seventy percent of the tariff rider authorized by the Efficient Use of Energy Act until the credit is exhausted. Any credit not fully utilized in the year it is received shall carry over to subsequent years. The process of reviewing self-direct programs and awarding credits shall be designed to minimize utility administrative costs.

G. Measurement and verification of self-direct programs. Self-direct projects, expenditures and exemptions under this section shall be evaluated by the independent program evaluator. Large customers with approved self-direct programs or exemptions shall permit the evaluator access to all relevant engineering studies and documentation needed to verify energy savings of the project, and allow access to its site for reasonable inspections, at reasonable times. All records relevant to a self direct program shall be maintained by the large customer for the duration of that program. The evaluator shall use measurement and verification standards described in Paragraph (5) of Subsection E of 17.7.2.13 NMAC, subject to appropriate protections for confidentiality, and the evaluator's findings shall be reported in the annual report to the commission pursuant to the Efficient Use of Energy Act. Following a determination by the independent program evaluator that a project is not achieving the cost-effectiveness requirements of this section, the customer's credit for that project shall be suspended, unless otherwise ordered by the commission.

H. Confidentiality. Upon request by the large customer, the information provided pursuant to this section by large customers to the utility or program administrator, program evaluator and others shall remain confidential except as otherwise ordered by the Commission.

[17.7.2.11 NMAC - N, 3-1-07]

17.7.2.12 FILING REQUIREMENTS FOR COST RECOVERY:

A. General requirements. A public utility that undertakes

cost-effective energy efficiency and load management programs shall recover the costs of all the programs implemented after the effective date of the Efficient Use of Energy Act through an approved tariff rider. A tariff rider proposed by a public utility to fund approved energy efficiency and load management programs shall go into effect thirty days after filing, unless suspended by the commission for a period not to exceed one hundred eighty days. If the tariff rider is not approved or suspended within thirty days after filing, it shall be deemed approved as a matter of law. If the commission has not acted to approve or disapprove the tariff rider by the end of an ordered suspension period, it shall be deemed approved as a matter of law.

B. Applications for tariff rider approval filed prior to related program approval shall not be subject to the suspension and approval deadlines set forth in Subsection A of 17.7.2.12 NMAC, until program approval is obtained.

C. Cost eligibility for recovery. Utilities shall be entitled to recover through a tariff rider all reasonable costs associated with development and implementation of commission-approved programs. All costs that are consistent with program approvals are recoverable so long as the utility acts reasonably to address significant changed circumstances which may occur between the time of program approval and program expenditure.

D. Tariff rider design. As part of its cost recovery application, a utility shall present a proposed tariff rider or riders to the commission for approval. The proposed tariff rider shall incorporate recovery of any costs currently permitted recovery, as well as any new costs for which the utility seeks recovery.

(1) It is standard practice that tariff riders will be collected on a monthly basis. If the utility desires a tariff rider recovery which occurs other than monthly, it shall demonstrate to the commission why such a recovery frequency is preferable to monthly.

(2) Except for good cause shown, cost recovery should be implemented no earlier than the first billing cycle in which the affected customer class has an opportunity to participate.

(3) Tariff riders will be assessed on a percentage-of-bill basis, unless the utility demonstrates that its proposed tariff rider shall not result in customers paying tariff-rider amounts greater than those authorized by statute.

(4) The proposed tariff rider(s) shall be consistent with program approval findings that every affected customer class has the opportunity to participate and economically benefit.

(5) The tariff rider shall be designed to assure that it will not increase any customer's bill by more than the lower of one and one-half percent or $75,000 per year, unless needed consents from the attorney general or large customer(s) have been obtained as part of the utility's program approval.

(6) The time period over which recovery is being sought shall be included as part of the utility's cost recovery filing request, as well as any request for carrying costs on deferrals. Deferral costs will also be permitted for cost overruns associated with exceeded participation levels and incorrect assumptions about billing determinants which cause over or under-recoveries. Over-recoveries shall be credited to the tariff rider using the same return as under-recoveries, unless the commission orders otherwise.

(7) Program costs may be deferred for future recovery through creation of a regulatory asset, provided that the deferred recovery does not cause the tariff rider to exceed the limits imposed by this section. In addition, if the utility proposes that program costs be capitalized, the utility shall demonstrate that the proposed cost of capital associated with the program is reasonable.

E. Impact of rate moratoriums. Utilities subject to a rate moratorium or freeze, who seek to implement energy efficiency or load management programs during the moratorium, shall obtain advance commission determinations on whether costs incurred during the rate moratorium period will be permitted recovery through a separate tariff rider.

F. Except as otherwise required by law or ordered by the commission, the value of proceeds from the sale or trade of any emission credits or allowances resulting from a utility's energy efficiency programs shall be used to offset program costs. This subsection shall not preclude a utility or other party from seeking alternative treatment for these credits or allowances.

[17.7.2.12 NMAC - N, 3-1-07]

17.7.2.13 REPORTING REQUIREMENTS:

A. General. Each utility providing energy efficiency or load management programs shall file an annual report with the commission, and post that report on a publicly accessible website.

B. Timing. Utilities with greater than 250,000 New Mexico customers shall file their reports on April 1st of each year. Utilities with fewer than 250,000 New Mexico customers shall file their reports on August 1st of each year.

C. Contents. Annual reports shall include the following:

(1) measurement and verification report of the independent program evaluator, which includes documentation, at both the total portfolio and individual program levels, of expenditures, measured and verified savings, and cost-effectiveness of all utility programs including self-direct programs, as well as deemed savings assumptions and all other assumptions used by the evaluator; it shall also include such other information as the commission may from time-to-time require; M&V processes should confirm that measures were actually installed, the installation meets reasonable quality standards, and the measures are operating correctly and are expected to generate the predicted savings;

(2) a statement of any program-related expenditures not covered by the independent measurement and verification report;

(3) a statement of any funds that were budgeted but not spent during the prior year;

(4) any material variances in any projected total program costs, with an explanation for the variance;

(5) reconciliation of tariff-rider collections from the prior year, along with proposals to make up under or over-collections;

(6) a demonstration that there are no cross-subsidies between a public utility's energy efficiency and load management activities and the public utility's supply-side activities, and that all program costs of energy efficiency and load management are assigned to, and recovered from, the tariff rider; the utility shall provide its cost allocation methodology, as well as the expenditures and assignments by program, employee and cost type;

(7) the following specific, documented information for each utility program for the previous calendar year:

(a) a comparison of forecasted savings to verified achieved savings for each of the utility's energy efficiency programs;

(b) number of program participants served by each project;

(c) utility and participant costs, including M&V costs broken down by program;

(d) total avoided supply-side costs broken down by type of avoided cost (generation, transmission, distribution, etc.);

(e) total cost per (kilowatt hour) kWh, (kilowatt) kW or therm saved over the life of the measure;

(f) total economic benefits for the reporting period; and

(g) net present value of all economic benefits for the life of the measures.

(8) a description and, to the extent practical quantification, of the non-energy benefits of the utility's portfolio of programs; this description shall include the emission reductions associated with the saved energy, as well as associated emissions credits the utility has received, and the disposition of those credits;

(9) information demonstrating that the tariff rider has not permitted the utility to earn an excessive rate of return; and

(10) information on the number of customers applying for and participating in self-direct programs, the number of customers applying for and receiving exemptions, measurement and verification of self-direct program targets, payback periods and achievements, expenditures by customers on qualifying projects, and expenses incurred by the utility or administrator to oversee these programs.

D. Audit. The commission may order a utility to submit an external audit that examines whether the utility's energy efficiency and load management program costs are being properly assigned to programs in accordance with this rule, commission orders, and other applicable requirements and standards. The cost of such audit shall be considered recoverable program costs, unless the audit results in an order of the commission containing findings of malfeasance on the part of the utility, in which case, the costs of the audit shall not be recoverable by the utility through the ratemaking process.

E. Measurement and verification. The development of energy efficiency programs that deliver reliable energy savings for New Mexico ratepayers depends on well-designed methods of independent program measurement and verification (M&V), as follows:

(1) independent program evaluator selection and scope of work; the commission will direct and control the independent evaluation of energy efficiency programs; initially, the commission will accomplish this by appointing an evaluation committee for each utility upon the effective date of this rule; the evaluation committee shall consist of a representative of the utility, representatives of consumers, environmental interests, commission staff and such other persons as the commission may from time-to-time name; committee members shall serve at the pleasure of the commission; this committee will establish a competitive bidding process for evaluator selection, develop the scope and term of work for the program evaluation, establish any rotating program evaluation schedule as may be desirable, and select an independent program evaluator(s);

(2) all potential evaluators shall submit competitive bids, shall be qualified by education and experience, and shall disclose any professional services provided to the utility, any of its affiliates or any of the evaluation committee members within the last seven years; the financial interests of the independent evaluator must be independent of evaluation results; the contract for evaluator services shall be between the utility and evaluator, with funding for the evaluator contract to be recovered from the tariff rider; the contract shall specify that the work is to be performed for the benefit of the commission and that approval or denial of payments under the contract may be reviewed by the evaluation committee at its discretion; renewals of the evaluator's contract shall also be determined by the evaluation committee; disputes within the evaluation committee shall be resolved by the commission; the commission may review this procedure at any time;

(3) utility cooperation with evaluator and availability of records; the utility shall cooperate with the evaluator, and shall make information and personnel available to assist and respond to evaluator inquiries on a reasonable basis; all relevant records shall be maintained by the utility;

(4) M&V protocols; the evaluator shall employ appropriate international performance measurement and verification protocols (IPMVP), or describe any deviation from those protocols, and the reason for that deviation;

(5) deemed savings; the independent program evaluator may utilize deemed savings in the measurement and verification of utility program energy and demand savings; deemed savings will not relieve the evaluator of the duty to verify savings with statistically significant samples.

[17.7.2.13 NMAC - N, 3-1-07]

17.7.2.14 MODIFICATION OR TERMINATION OF PROGRAMS:

A. General. The commission may direct a utility to modify or terminate a particular energy efficiency or load management program if, after an adequate period for implementation of the program, the commission determines the program is not sufficiently meeting its goals and purposes. Termination of a program or programs shall be accomplished in a manner that allows the utility to fully recover its reasonable and prudent program costs.

B. Modification or termination of a program shall not nullify any obligations already incurred by the utility, alternative energy efficiency provider or contractor for the performance or failure to perform prior to the effective date of the modification or termination.

C. The utility or any interested party may request that the commission modify or terminate a program or programs for good cause. Utilities shall request program budget modification for any budget changes exceeding 25%.

[17.7.2.14 NMAC - N, 3-1-07]

17.7.2.15 ALTERNATIVE ENERGY EFFICIENCY PROVIDERS:

A. With a public utility's consent, the commission may allow for an alternative entity to provide ratepayer-funded energy efficiency and load management to customers of that public utility. That alternative energy efficiency provider shall assume all responsibilities of the utility to provide approved energy efficiency and load management programs to the utility's customers, including all filing and reporting requirements.

B. Utilities are permitted to cooperate with each other on a consensual basis to extend programs offering energy efficiency beyond their customer base.

[17.7.2.15 NMAC - N, 3-1-07]

17.7.2.16 RURAL ELECTRIC COOPERATIVES:

A. Distribution cooperative utilities shall within 24 months after the effective date of this rule and every 24 months thereafter, examine the potential to assist their customers in reducing energy consumption or peak electricity demand in a cost-effective manner. Based on these studies, distribution cooperative utilities shall implement cost-effective energy efficiency and load management programs that are economically feasible and practical for their members and customers. Approval for such programs shall reside with the governing body of each distribution cooperative utility and not with the commission.

B. Each distribution cooperative utility shall file with the commission concurrently with its annual report, filed by May 1st, a report that describes the cooperative's examination of efficiency potential described in Subsection A of 17.7.2.16 NMAC as well as all of the distribution cooperative utility's programs or measures that promote energy efficiency, conservation or load management. The report shall set forth the costs of each of the programs or measures for the previous calendar year and the resulting effect on the consumption of electricity. In offering or implementing energy efficiency, conservation or load management programs, a distribution cooperative utility shall attempt to minimize any cross-subsidies between customer classes.

C. Each distribution cooperative utility shall include in the report required by Subsection B of 17.7.2.16 NMAC a description of all programs or measures to promote energy efficiency, conservation or load management that are planned and the anticipated date for implementation.

D. Costs resulting from programs or measures to promote energy efficiency, conservation or load management may be recovered by the distribution cooperative utility through its general rates. In requesting approval to recover such costs in general rates, the distribution cooperative utility may elect to use the procedure set forth in NMSA 1978, Section 62-8-7(G).

E. The commission may develop a form which the cooperatives shall use to comply with this section.

[17.7.2.16 NMAC - N, 3-1-07]

17.7.2.17 VARIANCES:

A. Applications for a variance from any of the provisions of this guideline shall:

(1) state the reason(s) for the variance request;

(2) identify each of the sections of this guideline for which a variance is requested;

(3) describe the effect the variance will have, if granted, on compliance with this guideline;

(4) describe how granting the variance will not compromise, or will further, the purposes of this guideline; and

(5) indicate why the proposed variance is a reasonable alternative to the requirements of this guideline.

[17.7.2.17 NMAC - N, 3-1-07]

HISTORY of 17.7.2 NMAC: [RESERVED]

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

TRAINING AND RECRUITING DIVISION

Law Enforcement Academy

This is an amendment to 10.29.9 NMAC, Section 8, effective 2-14-2007.

10.29.9.8 POLICE OFFICER MINIMUM STANDARDS OF TRAINING

A. Block 1: Introduction to the academy; 8 total block hours - This unit of instruction prepares the recruit officer for the academy experience, focusing on the responsibilities the recruit must undertake to successfully complete the academy. The subjects include:

(1) academy mission; 1 hour

(2) overall academy objectives; .5 hour

(3) rules and regulations of the academy; 2 hours

(4) learning skills; 2 hours

(5) role and function of the New Mexico law enforcement academy; .5 hour

(6) sexual harassment; 2 hours

B. Block 2: Introduction to law enforcement in New Mexico; 29 total block hours - This unit of instruction identifies the core background, principles and expectations of being a law enforcement officer. The subjects include:

(1) history and principles of law enforcement; 2 hours

(2) police and the public and community oriented policing; 14 hours

(3) ethics and moral issues; 5 hours

(4) the New Mexico criminal justice system; 2 hours

(5) criminal/civil liability - standards of performance; 6 hours

C. Block 3: Physical and emotional readiness; 76 total block hours - This unit of instruction will instruct the student in health and physical fitness concepts, flexibility, strength, body composition and cardiovascular endurance. The student will be expected to successfully complete both entrance and exit standards of fitness and exit standards of job-related agility. The subjects and standards include:

(1) Physical fitness/wellness; 1 hour

(a) Academy entry standard: This standard is based on cooper clinic studies, data and recommendations. Each academy entry student will be pre-assessed on five (5) fitness/wellness evaluations:

(i) 1.5 mile run (altitude adjusted);

(ii) 1 minute sit-up;

(iii) 1 minute push-up;

(iv) sit and reach; and

(v) 300 meter run.

Entry evaluations 1 through 5 will be measured relative to age and sex norms. Each academy entry candidate must score in the 40th percentile or better, in each of the five (5) designated fitness/wellness evaluations, to be eligible for entry into state-certified law enforcement basic training academies.

(b) Academy exit goal: For each academy student the goal, through participation in the physical fitness program, is to be able to score in the 60th percentile in each of the above five (5) fitness/wellness evaluations.

(2) Physical performance requirements; 72 hours

(a) Fitness program: Each student will participate in a weekly fitness program for a minimum of one hour per session, three sessions per week.

(b) Academy fitness exit standard: Complete the 1.5 mile run and 300 meter run at the 60th percentile.

(c) Alternative to the academy fitness exit standard, 1.5 mile run: A basic or certification by waiver student may request the exit cycle ergometer test as an alternative test to the 1.5 mile run exit standard under the following conditions.

(i) The basic academy student must submit a written request to the director within thirty (30) days of the basic academy graduation date.

(ii) The certification by waiver student must submit a written request to the director thirty (30) days prior to the start date of the certification by waiver academy.

(iii) The student request will include a medical referral from a medical doctor with an active medical license who is licensed under the Medical Practice Act to practice medicine in New Mexico. The medical referral will identify the medical reason for the cycle ergometer alternative test.

(iv) The basic academy student request will also include written confirmation from the academy director that all other basic academy training requirements have been successfully completed or will be completed by the graduation date.

(v) Upon receipt of the director's written approval, the student will contact the approved medical facility and schedule for the cycle ergometer alternative test.

(vi) Payment for the cycle ergometer test will be the responsibility of the student or sponsoring agency.

(vii) Upon completion of the cycle ergometer test, the student will submit the written results to the director. The basic student must complete the cycle ergometer test and submit the results to the director prior to their academy graduation date to be eligible for certification with their academy class. The certification by waiver student must complete the cycle ergometer test and submit the results to the director prior to the certification by waiver academy start date to be eligible to attend the academy.

(viii) The basic academy student failing to successfully complete the cycle ergometer test in the listed time frames at the prescribed standard will be ineligible for certification with their class. The basic academy student must successfully complete the cycle ergometer test within six (6) months of their academy graduation date. After expiration of this six month (6) period, the unsuccessful student will be eligible to attend the next scheduled basic academy.

(ix) The certification by waiver student failing to successfully complete the cycle ergometer test in the listed time frames at the prescribed standard will result in the student being denied admission into the certification by waiver academy. The student will be eligible for reapplication to the next scheduled certification by

waiver academy.

(x) Approved medical facility and alternative test: The university of New Mexico hospital, exercise physiology laboratory and the university of Texas at El Paso, department of kinesiology, exercise physiology lab, are the only approved facilities for cycle ergometer testing. The alternative test is limited exclusively to VO_2max test using indirect calorimetry with the cycle ergometer. The student must successfully achieve the comparable 1.5 mile run exit standard for the cycle ergometer test, with altitude, age and gender adjustment.

[~~(c)~~] (d) Academy agility course #1 - Pursuit and control exit standard: Score passing time (3 minutes, 5 seconds) on agility course while wearing ten (10) pounds of extra weight.

(i) Officer is seated in a vehicle with seatbelt in use. As the timed exercise begins, the officer will undo the seatbelt and open the vehicle door.

(ii) Run 30 feet and open a building door.

(iii) Cross the threshold (4 feet) and run up two flights of stairs and pause for 60 seconds. (A rise and run of 7 inches by 11 inches is standard; 8 inches by 10 inches or 6 inches by 12 inches are acceptable variations. Standard floor landings are 10 feet high.) It is appropriate, if only one floor is available, to run up, run down, run up and pause. There is no restriction on how the officer negotiates the stairs.

(iv) Run down the stairs and out the door.

(v) Run 100 feet from the door to a 5-foot high platform; run up steps to the top of the 5-foot platform and jump down. A ladder or ramp are acceptable variations to getting on top of the platform.

(vi) Run 37.5 feet; turn and reverse; run 37.5 feet; turn and reverse; run 25 feet to a 6-foot high wall and scale it. The wall is constructed of cinder block, unpainted with a smooth top. If the applicant chooses, he or she may drag a rigid aid or object 10 feet from the side of the wall and use it as a platform to scale the wall. The rigid aid or object will have handles, a flat top, weigh 50 pounds and be 25 inches tall.

(vii) After scaling the wall, run 50 feet to a handcuff/arrest simulator; pull the arms down; touch the ends and hold for 60 seconds. The arrest simulator is 5 feet high with 60 pounds resistance in the right arm and 40 pounds in the left arm.

[~~(d)~~] (e) Academy agility course #2 - Rescue exit standard: Score passing time (42 seconds) on agility course while wearing ten (10) pounds of extra weight.

(i) Officer is standing at starting point wearing a 10-pound weight belt around the waist to simulate a gun belt. On signal the officer will run 30 feet straight ahead and jump across a 4-foot wide barrier. The barrier is low to the ground, e.g., a ditch, highway divider, etc.

(ii) Run 12.5 feet and climb, jump or hurdle over a 3-foot high barrier. The barrier is to resemble a fence or low wall, no more than 4 inches wide and at least 8 feet long, made of metal or wood.

(iii) Run 12.5 feet to the back of a vehicle equivalent to a full-sized police vehicle and push it 30 feet on a flat surface in the direction of a clear area where a victim extraction will take place. The car is occupied by a dummy (victim) wearing a seatbelt and weighing 190 pounds plus or minus 10 pounds. The dummy must meet standards established by the New Mexico law enforcement academy.

(iv) Approach the victim's door; open the door; undo the seatbelt; pull the victim out of the vehicle and drag them 20 feet perpendicular to the direction of the vehicle.

(3) emotional health and stress management; 2 hours

(4) nutrition; 1 hour

D. Block 4: Laws and procedures; 44 total block hours - This unit of instruction informs the student about law and its application to the function of a law enforcement officer. The subjects include:

(1) authority and jurisdiction; 6 hours

(2) constitution law; 2 hours

(3) criminal law; 10 hours

(4) criminal procedures and laws of arrest; 7 hours

(5) search and seizure; 15 hours

(6) civil laws; 2 hours

(7) liquor laws; 1 hour

(8) Indian country law; 1 hour

E. Block 5: Patrol procedures and operations; 99.5 total block hours - This unit of instruction will cover the various types of incidents that a law enforcement officer can be expected to be involved in while on patrol, and the practices and procedures necessary to perform the patrol function. The subjects include:

(1) role of patrol in policing the community; 1 hours

(2) patrol procedures; 16 hours

(3) patrol activities and incidents; 8 hours

(4) vehicle stop techniques; 12 hours

(5) roadblocks and barricades; 2 hours

(6) crimes in progress; 4 hours

(7) crowd control and civil disorder; 1 hour

(8) crime prevention and fear reduction; 1.5 hours

(9) special problems - gangs and terrorism; 10 hours

(10) critical incident management; 16 hours

(11) radio procedures; 5 hours

(12) patrol response simulations practicum; 13 hours

(13) nighttime vehicle stops practicum; 5 hours

(14) nighttime building searches practicum; 5 hours

F. Block 6: Principles of criminal investigation; 76 total block hours - This unit of instruction shall prepare the officer to effectively secure a crime scene, conduct an investigation, collect evidence, and prepare reports so suspects may be prosecuted. The subjects include:

(1) the officer as first responder; 6 hours

(2) interviewing and interrogation techniques and skills; 8 hours

(3) identifying, collecting and processing evidence; 16 hours

(4) identification of suspects; 2 hours

(5) crimes against people; 4 hours

(6) crimes against property; 4 hours

(7) injury and death cases; 3 hours

(8) sex crimes; 6 hours

(9) controlled substances; 8 hours

(10) informants and intelligence; 2 hours

(11) surveillance; 2 hours

(12) civil complaints and service calls; 2 hours

(13) technology crimes and investigation; 4 hours

(14) crime scene investigation practicum; 9 hours

G. Block 7: Motor vehicle law enforcement; 33.5 total block hours - This unit of instruction will furnish the officer with information relating to the laws of motor vehicles and the criteria for conducting traffic enforcement operations. The subjects include:

(1) vehicle code and enforcement; 2 hours

(2) title, registration and vehicle identification; 1 hour

(3) driver licensing; 2 hours

(4) occupant safety; 1.5 hours

(5) traffic enforcement strategies; 1 hour

(6) driving while intoxicated enforcement/impaired operator; 24 hours

(7) commercial motor vehicle enforcement; 4 hours

H. Block 8: Motor vehicle collision investigation and related issues; 34 total block hours - This unit of instruction will provide the student with a basic level of competency to conduct a traffic accident investigation, to have an awareness of the risk posed by hazardous materials, and the officer's role in a hazardous

materials incident. The subjects include:

(1) collision investigation; 24 hours

(2) hazardous materials; 8 hours

(3) traffic accident report forms; 2 hours

I. Block 9: Human relations; 29 total block hours - This unit of instruction will provide the student with tools and techniques to gain greater understanding of persons unlike themselves, so they can be more effective in their duties. The subjects include:

(1) perceptions of human behavior; 10 hours

(2) cultural diversity; 3 hours

(3) spanish language; 16 hours

J. Block 10: Crisis management; 40 total block hours - This unit of instruction will prepare the officer to effectively manage high-risk incidents to a safe and successful conclusion. The subjects include:

(1) behavior management and crisis intervention; 12 hours

(2) dispute intervention/conflict management; 8 hours

(3) handling the mentally ill and other special populations; 12 hours

(4) suicide, barricaded person, hostage situations and suicide by police; 8 hours

K. Block 11: Domestic issues; 22 total block hours - This unit of instruction will focus on the cycle of violence, the rights of victims and the responsibilities of law enforcement, and the assistance available to victims. The subjects include;

(1) juvenile law and justice; 2 hours

(2) handling juveniles and their problems; 2 hours

(3) domestic violence and police response; 8 hours

(4) victims assistance laws; 2 hours

(5) domestic violence simulation practicum; 8 hours

L. Block 12: Defensive tactics/handling arrested persons; 88 total block hours - This unit of instruction will provide the student with techniques to arrest and control subjects and also how to defend themselves from physical attack. The student will learn the relationship between subject actions and the proper levels of force that can be applied. The subjects include:

(1) use of force legal issues; 7 hours

(2) use of force continuum/judgment issues; 7 hours

(3) medical implications; 1 hour

(4) oleoresin capsicum spray; 3 hours

(5) mechanics of arrest, restraint and control; 68 hours

(6) transporting prisoners; 2 hours

M. Block 13: Report writing; 14.5 total block hours - This unit of instruction will provide the student with the competencies to effectively communicate in written form the necessary information that is required in a police report and other official communications. The subjects include:

(1) notetaking and report writing; 14.5 hours

(2) [Reserved]

N. Block 14: Case presentation; 19 total block hours - This unit of instruction will give the student the skills for proper preparation and testimony in court, and also how to prepare and question witnesses and make objections and arguments in misdemeanor cases. The subjects include:

(1) courtroom testimony and demeanor; 5 hours

(2) police officer as prosecutor and legal practice exercise; 14 hours

O. Block 15: Basic firearms course; 80 total block hours - This unit of instruction will familiarize the student with the operation and maintenance of a firearm, firearms safety, safety equipment and fundamentals of marksmanship. The student will successfully complete the New Mexico Firearms Standardized Qualifications Courses, and will display proper decision-making in shooting simulations. The subjects include:

(1) basic firearms Course; 69.5 hours

(2) body armor; 1 hour

(3) deadly force decision-making practicum; 9.5 hours

P. Block 16: Operation of a patrol vehicle; 40 total block hours - This unit of instruction will prepare the officer for proficiently operating a patrol vehicle, the various factors that affect the operation of a patrol vehicle, procedures for emergency driving, and the legal issues related to emergency vehicle operations. The student will demonstrate their competencies on the sub-skills (lane change, slalom, perception/reaction, lolly-pop, and backing) driving courses. The subject's include:

(1) introduction to emergency vehicle operations;

(2) Safe Pursuit Act

(3) emergency responses;

(4) vehicle dynamics;

(5) driving courses;

Q. Block 17: First aid and cardio pulmonary resuscitation; 16 total block hours - This unit of instruction will provide the student with skills to perform emergency care techniques to the sick and injured. The subjects include:

(1) first aid; 4 hours

(2) cardio pulmonary resuscitation; 9 hours

(3) blood borne pathogens; 3 hours

R. Block 18: Academy administration; 49.5 total block hours - This unit is for administration of the basic academy training program. This includes examinations and reviews, assessments, inspections, discretionary training time and graduations.

S. Variances to required subject hours - The 800-hour standard curriculum is designed for a class size of 30-60 students. Upon request from a satellite academy commander holding a class of less than 30 students, the director may determine if a reduction of practicum hours will still meet the objectives listed for the block and then may authorize an academy to engage in fewer practicum hours. For classes of greater than 60 students, the director may require an academy to engage in more practicum hours than the standard to meet the objectives listed for the block.

[5-29-86, 2-18-87, 2-19-87, 3-16-87, 5-31-97, 1-1-98, 3-1-98, 12-20-99; 10.29.9.8 NMAC - Rn & A, 10 NMAC 29.9.8, 4/30/01; A, 7/1/02; A, 12-14-04; A, 2-14-07]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

MANUFACTURED HOUSING DIVISION

This is an amendment to 14.12.2.7 and 14.12.2.57 NMAC, effective 02-21-07.

14.12.2.7 DEFINITIONS: All words and terms defined in the Manufactured Housing Act have the same meaning in these regulations.

A. "Act" means the Manufactured Housing Act. Chapter 60, Article 14, Section 4, NMSA, 1978 is incorporated herein and made a part of these regulations.

B. "Alternative permanent foundation systems" are defined as commercially packaged systems designed by a New Mexico licensed engineer for the purpose of classifying installations as permanent.

[B] C. "Anchoring" is defined as those systems approved by a DAPIA. Where no DAPIA approval exists a licensed professional engineer may design a anchoring system pursuant to the manufacturer's specifications.

(1) "Tie-down" is any device designed for the purpose of securing a manufactured home to the ground.

(2) "Ground anchor" is a listed

screw auger.

[C.] D. "Commercial unit" means any structure designed and equipped for human occupancy for industrial, professional or commercial purposes.

[D.] E. "Customer, consumer or homeowner". These words are used interchangeably throughout these regulations, they are intended to be synonymous, and they mean the purchaser, homeowner or owner of a manufactured home, including an occupant of a manufactured home subsequent to installation.

[E.] F. "DAPIA" means design approval primary inspection agencies as the term is utilized in the H.U.D. regulation, which is included in the federal preemption, on manufactured homes, and inclusive of on-site installations.

[F.] G. "Deliver" as it applies to section 20, means a seller's obligation shall be accomplished when a seller has completed or stands ready, willing and able to physically transport and locate the home to a buyer as specified in the purchase agreement or buyer's order and (a) the weather is not an impediment and (b) the parties responsible for preparing the installation site have acted in good faith and acted according to all relevant statues, codes and regulations. If (a) or (b) are not met, then seller will have a reasonable time to deliver the home.

[G.] H. "Down payment" means any payment, such as consideration, a deposit of remuneration, of less than the full purchase price of the home.

[H.] I. "Federal preemption" is defined as The National Manufactured Housing Construction and Safety Standards Act, Title VI, 42 U.S. Code as amended, including Section 604.(d) and The Manufactured Homes Procedural and Enforcement Regulations, Part 3282, including Section 32.82.11.

(1) Section 604(d) Title VI, 42 U.S. Code is incorporated herein and made a part of these regulations, as follows: "…. no State or political subdivision of a State shall have any authority either to establish or to continue in effect, with respect any manufactured home covered, any standard regarding construction or safety applicable to the same which is not identical to the Federal manufactured home construction standard".

(2) Section 3282.11(e) is incorporated herein and made a part of these regulations, as follows: "No state or locality may establish or enforce any rule or regulation or take any action that stands as an obstacle to the accomplishment and execution of the full purposes and objectives of congress. The test of whether a state rule or action is valid or must give way is whether the state rule can be enforced or the action taken without impairing the federal superintendence of the manufactured home industry as established by the act".

[I.] J. "Grade level" shall be defined as the finished grade around the exterior perimeter of the manufactured home; and, which shall slope away from the home to provide positive drainage consistent with Sections 50.3 and 53.

[J.] K. "Ground level" shall be defined only as the average surface level exposed under the home.

[K.] L. "HUD" means the United States department of housing & urban development.

[L.] M. "Installation inspection permit" shall mean a document issued by the division that shall be used to request any inspection or re-inspection of a manufactured home permanent or non-permanent foundation system, manufactured home installation, utility connection or re-inspection request.

[M.] N. "Liquidated damages" means the sum provided in a contract that a party agrees to pay if it breaches the contract, which sum is based on the good-faith effort of the parties to estimate the actual damages likely to result from a breach of contract.

[N.] O. "Listed materials" means equipment and materials included in a list published by a nationally recognized testing laboratory that maintain periodic inspections of production of listed equipment and materials and whose listing states either that the equipment and materials meet nationally recognized standards or have been tested and found suitable for use in a specific manner and has been approved for use in a manufacturer's installation manual or an approval in writing by the division's technical advisory council (TAC).

[O.] P. "Manufacturer II" means an enterprise whose primary business is the acquisition, restoration, renovation, or similar work and resale of distressed or damaged pre-owned manufactured housing units.

[P.] Q. "Mudslide" means the general and temporary movement down a slope of a mass of rock or soil, artificial fill, or a combination of these materials, caused or precipitated by the accumulation of water on or under the grounds.

[Q.] R. "Net listing agreement" is a prohibited employment contract in which a broker, or dealer acting as a broker, receives as a commission all monies in excess of the minimum sales price agreed upon by the broker or dealer and the listing owner.

[R.] S. "Non-permanent foundation" shall be defined as various foundational support mechanisms or arrangements other than permanent foundation systems.

[S.] T. "One hundred year flood" means the level of flooding that will be equaled or exceeded once in one hundred (100) years and has a one percent (1%) chance of occurring each year, on the average as defined by the federal emergency management agency (F.E.M.A).

[T.] U. "On-site utility terminal" means the consumer's load side of the on-site utility meter for gas and electric utilities, or the point of attachment or connection to the utility supplier's distribution system, for water and sewer.

[U.] V. "Perimeter enclosement" is defined as any arrangement that encloses and provides weather protection to the volume beneath the principle structure. Perimeter enclosements shall not be load bearing unless engineered to be load bearing by a licensed engineer or the manufacturer. Permanent perimeter enclosements are defined as constructed or assembled components consisting of durable materials (i.e. concrete, masonry, treated wood or other approved materials) or other materials approved by the division.

[V.] W. "Perimeter marriage band" is defined as the covering placed over the gap that exists between the exterior, at the unit's floor level and the perimeter enclosement. The materials used shall be appropriate for the weather and designed and installed in a manner consistent with good construction and engineering standards.

[W.] X. "Permanent foundations" are defined as constructed or assembled components consisting of durable materials (i.e. concrete, masonry, treated wood or other approved materials), and are required to be constructed on-site and shall have attachments points to anchor and stabilize the manufactured home. The design of the foundation shall be DAPIA approved or designed by a licensed professional engineer in accordance with the manufacturer's specifications.

[X.] Y. "Pre-owned home" or "pre-owned manufactured home" means a manufactured home of which title has been issued to a consumer or a manufacturer's statement of origin has been issued and a unit has been subsequently declared as real property, pursuant to New Mexico property tax laws.

[Y.] Z. "Prohibited sales notice" means a printed notification, issued by the division, that a manufactured home may not be offered for sale because of violations of these regulations.

[Z.] AA. "Regulation" means the regulations of the manufactured housing division.

[AA.] BB. "Retailer" is used interchangeably with the word "dealer" throughout these regulations, these words are synonymous, and they mean "dealer" as defined pursuant to NMSA 1978, 60-14-2 (E).

[~~BB.~~] **CC.** "Retail installment contract" means the contract as defined in NMSA 1978, 56-1-1 (H)
The contract must conform to NMSA 1978, 56-1-2.

(1) Suggested examples of when a retail installment contract will be contemplated as part of the transaction: (a) chattel mortgage from a third party lender; (b) security agreement; (c) conditional sale contract; (d) contract in form of a bailment.

(2) Suggested examples of when a retail installment contract will not be contemplated as part of the transaction: (a) cash sale.

[~~CC.~~] **DD.** "Retaining walls" are defined as a barrier with a minimum differential height of eighteen inches (18"), which retains a lateral load.

[~~DD.~~] **EE.** "Riser" means that portion of the yardline, which protrudes through the grade level of the ground.

[~~EE.~~] **FF.** "Unavailability of the manufacturer's installation manual" shall mean the inability to obtain such manual after undertaking a reasonable and diligent effort to obtain the same prior to the installation of a home; and includes, but is not limited to, circumstances where the customer of a used home has lost or misplaced the manual, the manufacturer is no longer in business and manuals are unavailable, or no such manual was ever printed or delivered at the time of the manufacture of a home and a photocopy of the manual could not be obtained at the manufactured housing division.

[~~FF.~~] **GG.** "Utility supplier" means any person, park owner, municipality or public utility that supplies electricity, water, liquefied petroleum gas, natural gas or sewer service to a manufactured home.

[~~GG.~~] **HH.** "Yardline" means a buried material providing utilities from the on-site utility terminal to the manufactured home.

[~~HH.~~] **II.** Words in the singular or plural, masculine and feminine shall each include the other where appropriate.
[14.12.2.7 NMAC - Rp, 14 NMAC 12.2.7, 9-14-00; A, 11-13-00; A, 02-21-07]

14.12.2.57 PERMANENT FOUNDATION SYSTEM:

A. These standards are minimum state requirements and they are applicable to new and used home installations, unless expressly specified otherwise. The division may approve other permanent foundations when the manufacturer's installation manual does not make a provision for permanent foundations or is not available. Two sets of drawings submitted by a New Mexico licensed engineer or a HUD approved D.A.P.I.A engineer may be submitted to the division for review, and subsequent denial or approval along with a certificate that the engineer has contacted the home's manufacturer. No political subdivision of the state shall regulate the installations or construction standards, of a manufactured home, including foundation systems.

B. Perimeter enclosement.

(1) All materials used for a perimeter enclosement must be approved by the division.

(2) Materials shall be installed in accordance with the manufacturer's recommended installation instructions or in accordance with the minimum standards accepted by the division.

(3) The manufactured home's perimeter enclosement must be self-ventilating, and no flammable objects may be stored under the manufactured home.

(4) An access or inspection panel shall be installed in the perimeter enclosement and shall be located so that utilities and blocking may be inspected.

(5) All vents and openings shall be installed to prevent entry of rodents and direct rainfall not to exceed ¼ inch mesh.

(6) All perimeter enclosements in excess of thirty inches (30") in height must be supported vertically at least every four (4') feet or installed according to the enclosement manufacturer's specifications.

C. New home installations: The manufacturer's installation manual shall be followed for all new homes installed within the state of New Mexico. The person(s) performing the work to install a new home shall be responsible to insure that all necessary installation permits have been obtained by the homeowner, customer or installer, to be determined in writing prior to the delivery of subject home. Compliance with permanent foundation criteria, site work 14.12.2.60 NMAC, planning, and zoning, slope and drainage requirements is the sole and separate responsibility of the persons, companies or contractors performing such work.

D. Installation of used, pre-owned or resold manufactured homes: The installer of a used, pre-owned or resold manufactured home shall be responsible to insure that all necessary installation permits have been obtained by the customer, retailer and or installer to be determined in writing prior to delivery of subject home. Compliance with permanent foundation criteria, site work 14.12.2.60 NMAC, planning, and zoning, slope and drainage requirements is the sole and separate responsibility of the persons, companies or contractors performing such work. The manufacturer's manual shall be kept with the subject home at all times. The installer shall use the manufacturer's installation instructions and installation manual when available.

E. Re-installed unit's: The following regulations shall apply to all homes being re-installed where no manufacturer's installation manual is provided.

(1) The lowest point of the frame shall be a minimum of eighteen (18") inches above the ground level under the manufactured home (also see Section 14.12.2.56 NMAC).

(2) The slope around the manufactured home shall provide for the control and drainage of surface water and shall be sufficient to prevent the collection of water under the home or around the perimeter of the home (see site requirements, Section 14.12.2.60 NMAC).

(3) In lieu of an engineered soil report, the soil conditions (relative to the placement of the foundation) at the installation site shall be tested by the installer prior to installing the foundation and shall be an average of at least 1000 psf with no more that 25% variability between readings. The installer shall list the psf measurement on the permanent foundation permit. Testing and recording shall be conducted as follows:

(a) test an area adjacent to, or within 10 feet of, the perimeter of the home;

(b) dig down to undisturbed soil a minimum of four (4) inches; uncover an area of at least one square foot;

(c) using a penetrometer take at least seven readings;

(d) take an average of the middle five readings disregarding the highest and lowest readings; round the average down to the nearest soil bearing value;

(e) installers shall then record the psf measurement on the permanent foundation permit; and

(f) drive a wooden stake beside the test area so that the inspector will be able to verify the results should the inspector desire to do so.

F. A minimum thirty-two inch by thirty-two inch (32"X32") access or inspection panel shall be installed a minimum of three (3") inches above grade and located to allow inspection at any time. The cover on the exterior access inspection panel must be constructed to exclude entry of vermin and water.

G. Footings and Piers:

(1) The manufactured home shall be installed on ribbon footings set on the undisturbed ground not less than five and one-half (51/2") inches in thickness and sixteen (16") inches in width with two (2) pieces of continuous three-eighth (3/8") inch rebar or a number 10 gauge re-mesh wire installed in the footing. All footings shall be constructed of a minimum of three

thousand (3000) pound concrete. All above grade footings shall be constructed with forms (wood, fiberboard, metal, plastic), used to contain poured concrete while in a plastic state. These forms must be firmly braced to withstand side pressure or settlement and to maintain design dimensions. Finished concrete surface(s) shall be smooth and level to fully accept and support pier installation(s). Forms may be removed upon sufficient hardening of concrete. The home may be placed whenever concrete is properly cured, minimum of seven (7) days.

(2) Piers shall be constructed in accordance with Section 14.12.2.56 NMAC of these regulations.

(3) The steel frame must be attached to the footing supporting the structure by means of a listed anchoring device at least every twelve (12) feet at a minimum and at least two (2) feet from each end wall.

H. Ventilation:

(1) All manufactured homes shall have one (1) square foot of unrestricted venting area for every one hundred-fifty (150) square feet of enclosed floor space. Vents shall be uniformly distributed on the two (2) opposite long- walls. At least one vent shall be located within four (4) feet of each end-wall.

(2) Vents shall be constructed and installed to exclude entry of vermin and water.

I. [~~Retro-fit~~] Alternative permanent foundation systems:

(1) Other types of permanent foundation systems designed for the purpose of classifying an [~~existing~~] installation as a permanent foundation shall be submitted on an individual basis. These require submittal of installation instructions, [~~and~~] calculations and [~~or~~] design layouts. All submissions shall be stamped by a New Mexico licensed engineer, and each application shall be region specific. Commercially packaged systems must submit their complete installation and design package to be kept on file with the division. It shall be the responsibility of the system proprietor to submit any updates or alterations of the system.

(2) [~~These systems are limited for use on homes at least two years out from original purchase date.~~] Any installation of [~~a retro fit~~] an alternative foundation system on a new home or any home within two years of original purchase must be installed based upon the manufacturer's [~~DAPIA~~] written approval [~~and must~~] or be included in the manufacturer's installation manual.

[~~**(3)** All systems whether commercially packaged or individually engineered must contain a certification that the system meets or exceeds the minimum requirements of a permanent foundation as defined in Subsection W of 14.12.2.7 NMAC and 14.12.2.57 NMAC and the permanent foundation guide for manufactured homes (HUD-007487), and must bear the engineers stamp. All calculations and or testing results in support of certification must be submitted to the division upon request.~~]

[14.12.2.57 NMAC - Rp, 14 NMAC 12.2.50, 9-14-00; A, 12-1-03; A, 7-1-05; A, 02-21-07]

End of Adopted Rules Section

Other Material Related to Administrative Law

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

NMAC Chapter Name Change

By request of the Human Services Department, the State Records Administrator considered and approved to change the name of Chapter 171 of Title 8 from "PREMIUM ASSISTANCE FOR KIDS AND PREGNANT WOMEN (CATEGORY 071)" to "PREMIUM ASSISTANCE FOR CHILDREN (CATEGORY 071/2)." This name change will take effect on 14 February 2007.

End of Other Related Material Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2007

Volume XVIII	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 16
Issue Number 2	January 17	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 30
Issue Number 7	April 2	April 16
Issue Number 8	April 17	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 14
Issue Number 12	June 15	June 29
Issue Number 13	July 2	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
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Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 3	December 14
Issue Number 24	December 17	December 31

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