



Produced Water Monthly Series, Part 1 of 4: New Mexico Oil Conservation Commission Undertakes Produced Water Spills Rulemaking

By: [James Parrot](#)

At its November 4, 2020 meeting, in Case No. 21526, the New Mexico Oil Conservation Commission (OCC) unanimously voted to set a hearing on a petition for rulemaking to address spills and releases. The petition was brought by WildEarth Guardians (WEG), and a hearing on the rulemaking is set to begin in April of 2021. The petition requested new rules to prohibit “major or minor releases” as defined by the rules of the OCC and New Mexico Oil Conservation Division (OCD).

Under current OCD rules, a “minor release” is an unauthorized release between 5-25 bbls or 50-500 MCF, which is not otherwise considered a major release. A “major release” is an unauthorized release that:

- a) is more than 25 bbls or 500 MCF of gas;
- b) results in or is the result of a fire;
- c) will probably reach a watercourse;
- d) will probably endanger public health; **or**
- e) substantially damages property or the environment.

A major release is also defined as a release that will probably be detrimental to fresh water. Notably, the “unauthorized” criterion is omitted from this definition. Thus, under the proposed rulemaking, the OCD could authorize a release, and then later consider it a prohibited release if it finds it will probably be detrimental to fresh water.

OCD rules do not define the types of substances that are subject to the release rules. OCD rules concerning releases (NMAC §§ 19.15.29.1, et seq.) were adopted pursuant to N.M. STAT. ANN. §§ 70-2-11 and 70-2-12. The former statute addresses prevention of waste and protection of correlative rights, while the latter statute regulates “the disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas to protect public health and the environment.” Thus, new release rules would arguably apply to oil and natural gas, along with such nondomestic wastes.

The vote on November 4, 2020 in Case No. 21526 was directly related to Case No. 21469, which the OCC heard on October 15, 2020. In that matter, the OCC voted 2-1 in favor of taking up a similar petition for rulemaking from WEG, also concerning spills, but only as to produced water. At the October 15, 2020 hearing, OCD staff commented that the petition for rulemaking proposed making amendments to the wrong section of OCD’s rules. Specifically, the petition proposed amending Part 34, which addresses the transportation, disposal, recycling and reuse of

produced water. OCD staff argued that it should have requested amendment of Part 29, which deals with spills and releases. Ultimately, OCC Commissioner Engler voted against the petition, with a suggestion that WEG refile it with a correction to the rule to be amended. However, OCC Commissioner Kessler and Chairwoman Sandoval voted to set a hearing on the petition, noting the concerns about the improper section in the petition.

At the October 15, 2020 hearing, the New Mexico Oil & Gas Association (NMOGA) made brief comments about the petition. NMOGA argued that the current OCD rules, by their definitions, disallow releases unless they are otherwise authorized. NMOGA also argued that OCD has abundant enforcement authority and has been using that authority. Since the rules adequately address releases without authorization, as well as enforcement, NMOGA argued that the proposed rulemaking is superfluous.

The OCC established a 60-day public comment period, which will run from January 29, 2021 until March 30, 2021.

For additional information, or to submit comments on the proposed rules, please contact [James Parrot](#).