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New Mexico Upstream Oil and Gas Regulation: Overview

by Earl E. DeBrine, Jr. and Deana M. Bennett, Modrall Sperling, with Practical Law Oil & Gas

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A Practice Note providing an overview of the regulatory framework for upstream oil and gas development in New Mexico. This Practice Note discusses the roles and responsibilities of key state and federal agencies, including the New Mexico Oil Conservation Commission (OCC), Oil Conservation Division (OCD), State Land Office (SLO), and the Bureau of Land Management (BLM). It addresses core operational and compliance topics such as operator registration, financial assurance requirements, and the well permitting process. The guidance details regulations for well spacing, including the specific requirements for vertical and horizontal wells under the Horizontal Well Rule, and outlines the process for obtaining compulsory pooling orders and navigating competing applications. Furthermore, this Practice Note explores critical compliance and enforcement issues, such as the Methane Waste Rule, release reporting under the Spill Rule, and regulations for Class II injection wells, including protocols for induced seismicity. It also examines the disposition of produced water under the Produced Water Act and surface access and compensation rights under the Surface Owners Protection Act (SOPA).

New Mexico has the second highest annual crude oil production of US states, accounting for 15% of total US crude oil production as of 2024. It is also the third largest producer of natural gas. (See US Energy Info. Admin.: New Mexico State Energy Profile.)

In New Mexico, there is a mixture of federal, state, tribal, and privately owned lands and minerals. As a result, oil and gas development is governed by several regulatory entities:

- The New Mexico:
  - Oil Conservation Commission (OCC or Commission); and
  - Oil Conservation Division (OCD or Division).
- The New Mexico Commissioner of Public Lands (State Land Office or SLO).
- The Bureau of Land Management (BLM).
- The New Mexico Environment Department (NMED).

This Practice Note provides an overview of regulatory requirements for upstream oil and gas development in New Mexico, including obtaining approvals to drill, well spacing and horizontal development, compulsory pooling, water management, compensation for surface use, release reporting, and enforcement.

For more information on the US oil and gas industry, see Practice Note, US Oil & Gas Industry: Overview. For information on upstream oil and gas regulation in Texas, see Practice Note, Texas Upstream Oil and Gas Regulation: Overview.

Overview of Primary Regulatory Authorities

OCC and OCD

The OCC and the OCD are divisions within New Mexico's Energy, Minerals, and Natural Resources Department (EMNRD). They were established by the New Mexico Oil and Gas Act, first enacted in 1929 to prevent the waste of oil and gas and regulate its production (NMSA 1978, §§ 70-2-1 to 70-2-39).

OCC

The OCC is composed of three members, who are:

- The OCD Director.
- A designee of the Commissioner of Public Lands.
- A designee of the Secretary of EMNRD.

(NMSA 1978, § 70-2-4.) Because both the OCD Director and the Secretary of EMNRD are appointed by the New Mexico Governor, as a practical matter the Governor appoints a majority of the OCC.

The Oil and Gas Act grants the OCC concurrent jurisdiction and authority with the OCD (NMSA 1978, § 70-2-6). However, the OCC's activities primarily focus on rulemaking and de novo review of OCD-issued hearing orders (NMSA 1978, §§ 70-2-7, 70-2-11, 70-2-12.2, and 70-2-13).

The regulations implementing the Oil and Gas Act are contained in New Mexico Administrative Code Title 19, Chapter 15 and are also available on the OCD's website.

OCD

The OCD and its four district offices in Santa Fe, Hobbs, Artesia, and Aztec handle the day-to-day administration of the Oil and Gas Act and regulation of oil and gas development. The Oil and Gas Act grants the OCD jurisdiction over all matters relating to the conservation of oil and gas. Its powers include regulation of:

- Well plugging and abandonment.
- Well spacing (see Well Spacing, Horizontal Well Development, and Non-Standard Spacing Units and Well Locations).
- Pooling (see Compulsory Pooling).
- Injection wells used in oil and gas activities (see Class II Injection Wells).
- Disposal or re-use of produced water (see Disposition of Produced Water).

(NMSA 1978, § 70-2-12(B).) The OCD also has jurisdiction over prevention of waste of potash resulting from oil or gas operations (NMSA 1978, § 70-2-6(A)). New Mexico is the top US producer of potash, which is mined in some areas that also have substantial oil and gas production.

The OCD holds hearings in Santa Fe twice a month. Its docket is primarily composed of cases seeking compulsory pooling, injection well permits, approval of non-standard spacing units, secondary recovery units, amendments to existing orders, and enforcement proceedings. Currently, hearings are held using a hybrid format, with counsel appearing in person and witnesses testifying virtually.

The OCD maintains a website that publishes its rules, posts hearing schedules for the OCD and OCC, and includes an imaging page with well files, well log files, spill incidents, administrative and environmental orders, hearing orders, case files, and operator files. For more information on OCD hearings, including the hearing dates and upcoming dockets, see NM EMNRD: Oil Conservation Division Hearings. The OCD's website includes an online database for locating orders and case files from OCC and OCD hearings, which allows for searching by case type, applicant, order date, and text.

New Mexico State Land Office

The State Land Office manages state-owned (state trust) lands in New Mexico, including about nine million acres of surface estate and 13 million acres of mineral estate. The SLO's Oil, Gas, and Minerals Division:

- Administers oil and gas leases of state trust lands, including:
  - lease sales;
  - assignments;
  - compliance with lease terms;
  - review of on-lease and off-lease activity to determine potential impairment to state trust minerals;
  - administration of the SLO's Reduced Royalty Program (NMSA 1978, § 19-10-5.1); and
  - review of unit and communitization agreements.
- Administers fresh water and saltwater disposal easements on state trust lands.
- Is responsible for reviewing all saltwater disposal applications that may affect state trust lands.

The SLO's rules, including its oil and gas leasing rules, are contained in New Mexico Administrative Code Title 19, Chapter 2 (N.M. Admin. Code 19.2.2.1 to N.M. Admin. Code 19.2.100.71). The SLO publishes an Oil and Gas Manual, which is a compilation of its oil and gas rules, administrative policies with links to its staff directory, GIS mapping, and oil and gas forms.

The SLO has an active accountability and enforcement program that reviews oil and gas leases to assess whether they are held by production and whether surface operations bonds by the lessee of record are in place. The SLO issues monthly lease and communitization agreement termination notices. It also has an Environmental Compliance Office (ECO), which conducts site evaluations of leases through drone surveys and oversees well abandonment and remediation. If surface problems exist, the SLO will refuse to approve lease assignments until idle wells are plugged and abandoned.

In 2022, the SLO promulgated the Cultural Resource Properties Protection Rule, which requires lessees of state trust lands to conduct informational reviews and cultural resource surveys before conducting surface disturbing activities and to adjust project activities to avoid damage to any identified cultural properties (N.M. Admin. Code 19.2.24.1 to N.M. Admin. Code 19.2.24.12). The rule exempts well plugging, restoration, remediation, or reclamation activities that do not involve new surface disturbing activity outside the authorized boundaries of any existing roads, rights of way, well pads, associated oil and gas facilities, or other structures.

In December 2026, the SLO proposed a rulemaking to increase the minimum surface operations bond for state leases to $150,000 and provide for increased bonding based on various risk categories including inactive wells, unremediated spills, marginal wells, and compliance history. The proposed rule also requires annual reporting concerning lease infrastructure and operations that could affect bonding requirements.

Federal Bureau of Land Management

The BLM manages about 38 million acres of mineral estate within New Mexico. This includes split estate lands (private, state, or tribal surface and federal minerals) and the Designated Potash Area near Carlsbad, which is subject to a 2012 Order by the Secretary of Interior, which places restrictions on oil and gas development.

Most oil and gas development on federal lands is governed by:

- The Mineral Leasing Act.
- The Mineral Leasing Act for Acquired Lands (30 U.S.C. §§ 351 to 360).

Oil and gas development on federally owned lands or minerals is subject to the National Environmental Policy Act (NEPA). Development of federal minerals can also result in delays and restrictions on development in areas of critical environmental concern. Of particular significance, two species found in the Permian Basin of southeast New Mexico, the lesser prairie chicken and the dunes sagebrush lizard, have been listed as endangered under the Endangered Species Act (ESA) in 2023 and 2024, although the listing for the lesser prairie chicken was invalidated by a federal district court in 2025 and its status is being evaluated by the Forest Service.

For more information on oil and gas leasing and development on federal lands, see Practice Note, Federal Onshore Oil and Gas Leasing and Development. For more information regarding the BLM's operations in New Mexico, see US Dep't of Interior: BLM: BLM New Mexico Oil & Gas.

OCD Regulation of Oil and Gas Development

Operator Registration and Financial Assurance

The requirements for becoming an oil and gas operator in New Mexico are outlined in an OCD publication titled How to Become a Well Operator in New Mexico. Operators must:

- Register with the OCD.
- Obtain a special reporting identification (OGRID) number.
- Comply with financial assurance requirements. Financial assurance requirements depend on the number of active and inactive wells operated and are:
  - $25,000 plus $2 per foot of depth, for a single well bond; and
  - for blanket multi-well bonds, from $50,000 (1 to 10 wells) to $250,000 (greater than 100 wells) for active wells and from $150,000 (1 to 5 wells) to $1,000,000 (greater than 25 wells) for inactive wells.

Operators must furnish financial assurance in the form of an irrevocable letter of credit, cash or surety bond, or a well-specific plugging insurance running to the benefit of the state (NMSA 1978, § 70-2-14).

Well Permitting

Operators must obtain a drilling permit from OCD before drilling wells on fee, state, and federal lands. The OCD coordinates permitting on federal lands with the BLM and will recognize a federal authorization for permit to drill (APD) once it is approved by BLM (N.M. Admin. Code 19.15.7.9(C)).

An operator cannot file a drilling permit application with OCD unless it has the ownership consent required for the tracts comprising the well's spacing unit. This requires obtaining the consent of:

- For a vertical well, at least one lessee or owner of unleased mineral interest at the proposed well's bottom-hole location. Alternatively, an operator can obtain a compulsory pooling order, which pools those interests.
- For a horizontal well, at least one lessee or owner of unleased interest in each tract containing any part of the wellbore that is open to the oil and gas formation so that oil or gas may enter it (completed interval).

In 2023, the OCD issued a well naming convention requiring that wells include in their names the terms:

- "State" if the spacing unit is partially or wholly comprised of state lands without any federal lands.
- "Fed" or "Federal" if there are federal lands in the spacing unit.
- "Com" if a well is part of a communitization agreement. All wells within a unit or communitization agreement must incorporate the unit name.

Well Spacing

OCD spacing rules set requirements for:

- The amount and shape of acreage around a well (spacing unit).
- Minimum setback distances that wells must observe to boundaries in the spacing unit.

Different spacing rules may apply depending on:

- Whether the well is:
  - an oil well (see Oil Wells);
  - a gas well (see Deep Gas Wells in Lea, Chaves, Eddy, and Roosevelt Counties, Deep Gas Wells in Rio Arriba, San Juan, Sandoval, and McKinley Counties, and All Other Gas Wells); or
  - a horizontal well (see Horizontal Well Development).
- The pool (underground reservoir containing a common supply of oil and gas) from which the well produces. The OCD sometimes adopts special rules applying to specific pools (special pool rules), which may include spacing rules for the pool.

Non-standard spacing units and well locations require OCD approval (see Non-Standard Spacing Units and Well Locations).

Oil Wells

Unless special pool rules require otherwise, vertical oil wells must be located:

- On a spacing unit consisting of approximately 40 contiguous surface acres:
  - substantially in the form of a square; and
  - comprising a governmental quarter-quarter section or lot and a legal subdivision of the US public land surveys (PSL survey).
- No closer than 330 feet to a boundary of the spacing unit.

Deep Gas Wells in Lea, Chaves, Eddy, and Roosevelt Counties

320-acre spacing applies to gas wells in Lea, Chaves, Eddy, or Roosevelt counties that are:

- Projected to be drilled to a gas producing formation or within a defined gas pool.
- In the Wolfcamp formation or an older formation.

These wells:

- Must be located on a spacing unit:
  - consisting of 320 surface contiguous acres, more or less; and
  - comprising any two contiguous quarter sections of a PSL section.
- Are subject to certain drilling and spacing limitations, including that:
  - the initial well on the unit cannot be closer than 660 feet to the outer boundary of the quarter section on which it is located and 10 feet to a quarter-quarter section line or subdivision inner boundary; and
  - only one infill well on the unit is allowed, which must be in the quarter section not containing the initial well and cannot be closer than 660 feet

to the outer boundary of the quarter section and 10 feet to a quarter-quarter section line or subdivision inner boundary.

(N.M. Admin. Code 19.15.15.10(B).)

Deep Gas Wells in Rio Arriba, San Juan, Sandoval, and McKinley Counties

640-acre spacing applies to deep gas wells in Rio Arriba, San Juan, Sandoval, and McKinley counties that are either:

- Projected to be drilled to a gas producing formation older than the Dakota formation.
- Development wells within a gas pool created and defined by the OCD after June 1, 1997, in a formation older than the Dakota formation, which is located within the San Juan basin.

These gas wells must be:

- In a spacing unit consisting of 640 contiguous surface acres, more or less, comprising a PSL section.
- Located no closer than:
  - 1200 feet to an outer boundary of the spacing unit;
  - 130 feet to a quarter section line; and
  - 10 feet to a quarter-quarter section line or subdivision inner boundary.

(N.M. Admin. Code 19.15.15.10(A).)

All Other Gas Wells

160-acre spacing applies to all other gas wells. These gas wells must be located:

- In a spacing unit:
  - consisting of 160 surface contiguous acres, more or less; and
  - substantially in the form of a square that is a quarter section of a PSL survey.
- No closer than:
  - 660 feet to an outer boundary of the unit; and
  - 10 feet to a quarter-quarter section or subdivision inner boundary.

(N.M. Admin. Code 19.15.15.10(C).)

Horizontal Well Development

Almost all new oil and gas development in New Mexico involves horizontal wells. In 2018, the OCC enacted a rule (Horizontal Well Rule) to provide greater clarity and specificity for horizontal wells and their spacing. The Horizontal Well Rule consolidated most requirements for horizontal wells into N.M. Admin. Code 19.15.16.1 to N.M. Admin. Code 19.15.16.21. The Horizontal Well Rule outlines requirements for standard:

- Spacing units (see Horizontal Spacing Units).
- Well locations (see Horizontal Well Spacing Rules).

The Horizontal Well Rule withstood a judicial challenge following its enactment (*Jalapeno Corp. v. N.M. Oil Conservation Comm'n*, 2020 WL 5743659 (N.M. Ct. App. Sept. 23, 2020)).

Horizontal Spacing Units

Under the Horizontal Well Rule, each horizontal well must be dedicated to a standard horizontal spacing unit or an approved non-standard horizontal spacing unit (N.M. Admin. Code 19.15.16.15(A)). The Rule sets requirements for standard spacing units, depending on whether wells are targeting an oil pool or a gas pool (N.M. Admin. Code 19.15.16.15(B)(1), (3)). For a list of pools and pool codes, see N.M. EMNRD: OCD Statistics: Pool Codes and Names.

A standard horizontal spacing unit:

- Must comprise one or more contiguous tracts that the well's completed interval penetrates, with each tract being a governmental:
  - quarter-quarter section or equivalent, for an oil spacing unit; and
  - quarter section or equivalent, for a gas spacing unit.
- May include adjoining tracts (in addition to the tracts the well penetrates), if the proposed well's completed interval is closer than 330 feet to the outer boundary of the spacing unit (the Proximity Tract rule). If the Proximity Tract rule applies, the operator may include adjoining:
  - quarter-quarter sections or equivalent tracts for oil wells; and
  - quarter sections or equivalent tracts for a gas well.

- However, the operator cannot add adjoining tracts that would make an otherwise substantially rectangular spacing unit non-rectangular.

(N.M. Admin. Code 19.15.16.15(B).)

The Horizontal Well Rule supersedes any conflicting statewide rules or special pool rules in effect as of June 26, 2018, except for the special pool rule pertaining to the Purple Sage-Wolfcamp (Gas) Pool, as outlined in Order R-14262, a pool that, while characterized as a gas pool, involves substantial oil production. 320-acre building blocks are required for gas spacing units in this pool.

Horizontal Well Spacing Rules

A horizontal well's location is standard if:

- For an oil well, its:
  - completed interval is 330 feet or more from any outer boundary of the spacing unit; and
  - first and last take points (first and last points of the completed interval where oil or gas may enter the wellbore) are no closer than 100 feet from any outer boundary.
- For a gas well, its:
  - completed interval is 660 feet or more from any outer boundary of the spacing unit; and
  - first and last take points are no closer than 330 feet from any outer boundary.
- For wells in the Purple Sage-Wolfcamp pool, both the completed interval and first and last take points observe minimum 330-foot setbacks.

There are no internal setbacks within a horizontal spacing unit. (N.M. Admin. Code 19.15.16.15(C).)

Measuring Horizontal Well Distances

The Horizontal Well Rule also addresses how to measure when a well's location is too close to minimum boundary distances. A location is generally non-standard if:

- The distance in the horizontal plane from any point in the completed interval to any outer boundary of the horizontal spacing unit, measured along a line perpendicular to the completed interval or to the tangent thereof, is less than the allowed setbacks.
- The first or last take points are projected to be closer than the allowed setbacks.
- The well's actual drilled location (as-drilled location) is closer than the allowed setbacks.
- Either:
  - the as-drilled location is more than 50 feet from the well's planned location and closer to the outer boundary of the horizontal spacing unit than the allowed setbacks; or
  - for a previously approved non-standard location, a directional survey shows that any part of the completed interval is located more than 50 feet (or, if less, 25 percent of the previously authorized distance) closer to the outer boundary of the horizontal spacing unit than the approved location.

(N.M. Admin. Code 19.15.16.15(C)(5).)

Wells that do not comply with standard location requirements (NSL or unorthodox locations) must obtain OCD approval (see Non-Standard Well Locations).

Non-Standard Spacing Units and Well Locations

Non-Standard Spacing Units

Operators must obtain OCD approval for non-standard spacing units. OCD rules outline procedures for seeking approval of non-standard units for vertical and horizontal wells (N.M. Admin. Code 19.15.15.11(B) and 19.15.16.15(B)(5)). Approval may be applied for administratively or through a hearing.

A non-standard unit application for a well must include:

- A plat comparing a standard unit to the requested non-standard unit.
- The proposed wells to be dedicated to the unit.
- Adjoining spacing units.
- A list of affected parties entitled to notice and proof that notice has been given. OCD rules impose specific notice requirements for non-standard unit applications.
- A statement discussing the need for the non-standard unit.

(N.M. Admin. Code 19.15.15.11(B) and 19.15.16.15.) However, as a matter of practice, the OCD often sets additional or refined requirements for non-standard unit applications.

Objections to a non-standard unit application must be made within 20 days from the date the OCD receives the application. The OCD Director may approve the application if no objections are received within this period. (N.M. Admin. Code 19.15.16.15(B).)

Non-Standard Well Locations

OCD requirements for non-standard well location applications are similar to requirements for non-standard spacing units (N.M. Admin. Code 19.15.15.13). OCD rules include specific notice requirements for non-standard well locations (N.M. Admin. Code 19.15.2.7 and N.M. Admin. Code 19.15.4.12). Non-standard location applications are approved administratively unless protested.

Compulsory Pooling

The Oil and Gas Act provides for compulsory pooling in which oil and gas lessees and mineral interest owners can be compelled to contribute their acreage to form a well spacing unit (NMSA 1978, §§ 70-2-17 to 70-2-18; N.M. Admin. Code 19.15.13.1 to N.M. Admin. Code 19.15.13.13).

Requirements for Compulsory Pooling

The OCD may order compulsory pooling for a proposed well if several requirements are met. These are:

- The spacing unit:
  - includes two or more separately owned tracts of land; or
  - has multiple owners of royalty or undivided mineral interests.
- The owners have not agreed to voluntarily pool their interests.
- One or more owners with the right to drill has drilled or proposes to drill a well on the unit to a common source of oil or gas.
- Compulsory pooling will:
  - avoid the drilling of unnecessary wells;
  - protect correlative rights; or
  - prevent waste of oil or gas.

(NMSA 1978, § 70-2-17(C).)

Where a spacing unit for a horizontal well includes separately owned lands or mineral or royalty interests, the operator must either obtain voluntary pooling agreements or a compulsory pooling order from the OCD before producing the well (N.M. Admin. Code 19.15.16.15(B)(10)).

Obtaining Compulsory Pooling Orders

Compulsory pooling orders:

- Require notice and hearing.
- Must contain reasonable and just terms and conditions that afford interest owners the opportunity to recover or receive without unnecessary expense their just and fair share of oil and gas.

If unleased mineral interests are pooled, their interest is credited with a seven-eighths working interest and one-eighth royalty interest. (NMSA 1978, § 70-2-17(C).)

A pooling order may include a reasonable charge for risk, which cannot exceed 200% of the nonconsenting working interest owners' pro rata share of drilling and completion costs. By rule, a standard 200% risk charge is provided for unless the party opposing pooling presents technical evidence in support of a lesser charge.

The OCD uses a standardized order for most compulsory pooling cases. This form incorporates a compulsory pooling checklist, which the applicant or their counsel prepare and submit and which includes:

- Information regarding:
  - the location and size of the unit;
  - the pool and pool code; and
  - the location of the wells proposed to be dedicated to the unit.
- Citations to the exhibit packets for detailed information supporting the application.

The application must be filed at least 30 days before the hearing date (N.M. Admin. Code 19.15.4.8(B)).

The OCD has implemented an electronic filing system for applications for administrative hearings with filing fees. An application must include the applicant's name and contact information or contact information for the applicant's attorney, the name or general description of the common source of supply or the area the order sought affects, the general nature of the order sought, the legal description of the spacing unit, and a proposed legal notice for publication (N.M. Admin. Code 19.15.4.8(A) and 19.15.4.9(A)(8)).

Competing Applications for Pooling Orders

Multiple operators sometimes file competing pooling applications to develop overlapping acreage or the same oil and gas interests. The OCC and OCD have identified several factors to consider and compare in this situation, including:

- The geologic evidence presented by each party as it relates to the proposed well location and the potential of each prospect to efficiently recover the oil and gas reserves underlying the property.
- The risk of the parties' respective proposals for the exploration and development of the property.
- Whether the negotiations between the competing parties before the applications to force pool were performed in good faith.
- The ability of each party to prudently operate the property and prevent waste.
- The differences in well cost estimates (authorizations for expenditure or AFEs) and other operational costs presented by each party for their respective proposals.
- The mineral interest ownership held by each party at the time the application is heard.
- The applicants' respective ability to timely locate well sites and to operate on the surface (surface factor).

(*KCS Medallion Resources, Inc.*, OCC Order R-10731-B, at ¶ 23 (Feb. 28, 1997); *Novo Oil & Gas Northern Delaware, LLC*, OCC Order R-21420-A, at ¶ 9 (Sept. 17, 2020); *Longfellow Energy, LP*, Order R-21834, at ¶ 14 (Sept. 8, 2021).)

Compliance and Enforcement Issues

Penalty Enforcement

In 2019, the New Mexico Legislature amended the Oil and Gas Act to grant the OCD the authority to assess penalties for violations of the Act or rules, orders, permits, or authorizations issued by the OCD under the Act (NMSA 1978, § 70-2-31). In January 2020, the OCC adopted a rule authorizing the OCD to assess civil penalties for violations of the Act and associated rules and orders. Penalties may be up to:

- $2,500 per day for each violation.
- $10,000 per day if the violation:
  - presents a risk to the health or safety of the public or of causing significant environmental harm; or
  - if the noncompliance continues beyond a time specified in the notice of violation or order issued by the OCD, OCC, or court.

No penalty assessed by the OCD or OCC after a hearing may exceed $200,000. The Division has issued a civil penalty policy, which is available on its website and updated periodically.

Methane Waste Rule

The OCC adopted its Natural Gas Waste Reduction Rules (Methane Waste Rule), effective May 2021 (N.M. Admin. Code 19.15.27.1 to N.M. Admin. Code 19.15.27.9). The Methane Waste Rule:

- Prohibits venting or flaring of natural gas during drilling, completion, or production operations, except where flaring is allowed for limited operational reasons.
- Requires operators to:
  - implement technology to reduce venting and flaring from oil and gas operations; and
  - submit gas management plans with APDs to capture more gas each year, with the goal of capturing 98% of all natural gas waste by the end of 2026.

The OCD actively enforces the Methane Waste Rule. The OCD updates its website with guidance regarding this rule from time to time and has a webpage devoted to the rule (see NM EMNRD: Methane Waste Rule). The OCC has prepared a summary of the Natural Gas Waste Rule for reference (see NM EMNRD: Natural Gas Waste Rule Summary).

A separate waste rule applies to midstream operators (N.M. Admin. Code 19.15.28.1 to N.M. Admin. Code 19.15.28.10).

Spills and Release Reporting

An OCC rule, known as the Spill Rule:

- Prohibits releases of oil, gases, produced water, condensate, and oil field wastes during drilling and other oilfield operations.

- Specifies reporting requirements for unauthorized releases.
- Establishes procedures and requirements for reporting major and minor releases, initial response, site assessment, remediation, closure, variance, and enforcement.

(N.M. Admin. Code 19.15.29.1 to N.M. Admin. Code 19.15.29.16.) The OCD has issued guidance for compliance with the Spill Rule on its website.

Other Regulatory Issues

Disposition of Produced Water

The Produced Water Act was enacted to resolve uncertainty regarding regulatory authority over the disposition of produced water and encourages reuse and recycling (NMSA 1978, §§ 70-13-1 to 70-13-5). It grants the OCD, for affording reasonable protection against contamination of fresh water supplies designated by the New Mexico state engineer, the authority to:

- Regulate the disposition of water produced or used in connection with drilling for or production of oil or gas.
- Direct surface or subsurface disposal of the water, including disposition by use in:
  - drilling for or production of oil or gas;
  - road construction or maintenance or other construction;
  - generation of electricity; or
  - other industrial processes.

(NMSA 1978, § 70-2-12(B)(15).)

Under the Produced Water Act, the operator and working interest owners of an oil or gas well have:

- Responsibility for and control over water produced from the well.
- A possessory interest in the produced water, including the right to take possession of the produced water and to use, handle, dispose of, transfer, sell, convey, transport, recycle, reuse, or treat the produced water and to obtain proceeds for any of these uses.

(NMSA 1978, § 70-13-4(A)(1).) A person who transports produced water must register with the OCD.

To encourage the use of produced water in oil and gas development, the Produced Water Act discourages the use of fresh water by declaring provisions in a contract for the sale, supply, or transportation of water void as against public policy that:

- Allow a private party to charge a tariff or fee for the movement or transport of produced water, treated water, or recycled water on surface lands owned by the state, if the agreement does not provide for transportation services.
- Requires freshwater resources to be purchased for oil and gas operations when produced water, treated water, or recycled water is available and able to be used and the operator elects to use that produced, treated, or recycled water for the operations.
- Relates to the purchase of water and precludes an operator from purchasing or using produced water, treated water, or recycled water in the operator's oil and gas operations when that water is available for the operations.

(NMSA 1978, § 70-13-5.)

NMED's Water Quality Control Commission (WQCC) is vested with authority to regulate non-oilfield uses of produced water. The WQCC acts as the state's water pollution control agency for all purposes of the New Mexico Water Quality Act, the Clean Water Act (CWA), and the Safe Drinking Water Act (SDWA).

In 2025 the WQCC proposed rules to implement and administer a state surface water quality permitting program, to fill the void left by the US Supreme Court's decision limiting the jurisdictional scope of "waters of the United States" in *Sackett v. EPA*, 598 U.S. 651 (2023) and the EPA's 2025 proposed rulemaking curtailing federal permitting requirements. The WQCC's proposed rules address the types of permits required (individual or general) when a permit is required, exemptions, and the administrative process for obtaining permits.

For more information on CWA permitting and oil and gas operations, see Practice Note, Clean Water Act Regulation of Oil and Gas Development.

Class II Injection Wells

In 1982, the EPA granted New Mexico primary enforcement authority (primacy) under the SDWA over most underground injection control (UIC)

operations within New Mexico. This includes authority to oversee and approve saltwater disposal wells and other Class II injection wells (N.M. Admin. Code 19.15.26.1 to N.M. Admin. Code 19.15.26.15).

The OCD has adopted a standard form of order for Class II injection well orders. The OCD adopted this form of order to:

- Ensure compliance with federal requirements for the UIC program.
- Include standard terms and conditions that prevent waste and protect correlative rights, public health, and the environment.
- Include enforceable permit requirements, including provisions to address emergencies, such as induced seismicity and the contamination of drinking water supplies.

In response to seismic activity that began in 2020, the OCD identified areas in Southern New Mexico as Seismic Response Areas. The OCD's oil and gas map includes a layer identifying these areas, which are designated as the Induced Seismicity Area. The OCD also implemented a Seismicity Response Protocol, which includes required measures if seismic events occur at a certain magnitude and frequency. The Protocol imposes monitoring and reporting protocols and can include shut-in or reduction in injection volumes. For more information on the Seismicity Response Protocol, see NM EMNRD: OCD Announcements & Notifications.

Compensation for Surface Use: Surface Owners Protection Act

On-Lease Surface Estate Use

Under New Mexico common law, the mineral estate is the dominant estate, which has an implied easement to use and occupy that portion of the surface estate reasonably necessary to access the mineral estate (see *Kysar v. Amoco Production Co.*, 93 P.3d 1272 (N.M. 2004)).

However, in 2007, New Mexico adopted the Surface Owners Protection Act (SOPA) (NMSA 1978, §§ 70-12-1 to 70-12-10). The SOPA changes the common law rule that oil and gas lessees are entitled to reasonable use of the surface without compensation to the owner of the surface estate and includes requirements to:

- Provide specified notice before entry on the land.
- Engage in negotiations with the fee surface owner before conducting operations.
- Reach agreement on compensation for surface damages or post an appropriate bond or other form of security to cover damages caused by oil and gas operations.
- Reclaim the surface to the condition that it existed before oil and gas operations.

Off-Lease Surface Use

Because horizontal wells are often drilled from off-lease locations, operators must also consider what rights are required to use off-lease tracts, including use of the subsurface or pore space rights in those tracts, and acquire those rights from the surface owner or other applicable owner.

New Mexico courts have not determined whether pore space is owned by the surface owner, though, in an early case, the New Mexico Supreme Court suggested that the oil and gas mineral estate does not include rights to the pore space or strata comprising the geologic formation (*Jones Noland Drilling Co. v. Bixby*, 282 P. 382 (N.M. 1929)). Because pore space ownership is unresolved, it may be necessary to obtain pass-through easements from both the surface estate owner and the mineral interest owner when a well is being drilled from off lease.