

**19.15.17 NMAC
PITS, CLOSED-LOOP SYSTEMS, BELOW-GRADE TANKS AND SUMPS**

FREQUENTLY ASKED QUESTIONS

Disclaimer:

This webpage is meant for guidance only. These answers may change with on-going input from operators and OCD staff. The answers given should not be construed to be the language of Part 17 or OCD policy. Please watch for updates; and as always, please contact OCD for clarifications.

19.15.1.7 NMAC DEFINITIONS

FAQ 1. Ground water “... shall mean interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply.” What methods may an operator use to check for ground water?

A: OCD has determined that any water, even a small amount, which can be recovered by a well is a “sufficient volume to be utilized as a water supply.”

Operators can check for ground water by gauging a nearby water well, checking OSE’s iWATERS database, using technical publications, etc..

PART 17 PITS, CLOSED-LOOP SYSTEMS, BELOW-GRADE TANKS AND SUMPS

19.15.17.7 NMAC DEFINITIONS

FAQ 2. It is not clear from the definition of a closed-loop system whether steel tanks used with a reverse unit, frac tanks, acid job, etc., require a permit.

A: These types of steel tanks are not a closed-loop system as defined. Operators should submit a form C-144 and check the “Pit” box, then check “Steel Pit.”

FAQ 3. The definition of a Temporary pit is that it will be closed within one year. When does the clock start?

A: The definition states ““Temporary pit” means a pit, including a drilling or workover pit, which is constructed with the intent that the pit will hold liquids for less than six months and will be closed in less than one year.” The clock, by definition, starts when the drilling or workover pit is constructed. The temporary pit shall not hold liquids for more than six months. In accordance with the closure requirements, 19.15.17.13 NMAC, the temporary pit shall be closed within six months of the rig release date. Thus combined, operation and closure should not exceed one year.

19.15.17.8 NMAC PERMIT REQUIRED

FAQ 4. Does an operator get to choose whether to meet only BLM's or OCD's requirements?

A: No, operators must meet both sets of requirements.

19.15.17.9 NMAC PERMIT APPLICATION

FAQ 5. Does an APD have to have a C-144 attached to be approved?

A: No, the APD can be approved. However construction of the pit shall not begin before the C-144 permit is approved.

FAQ 6. For a new well, does a C-144 have to be submitted with the APD?

A: No, it can be filed as a separate document.

FAQ 7. Form C-144 is used to both open and close a pit. Who must sign?

A: The Operator.

FAQ 8. Regarding the reporting of closure, is the operator required to send in the original C-144 or fill out a new one?

A: It is recommended that a copy of the original C-144 be completed and submitted to expedite the closure completion determination, but it is not required.

FAQ 9. 17.15.17.9 B (2) NMAC What type of surface and ground water hydrology information do operators need to submit with its temporary pit permit application?

A: The hydrogeologic data is required as part of the permit application and shall be attached with the new form C-144. The hydrogeologic data must consist of statements or attached maps that demonstrate the site's topography, soils, geology, surface hydrology and ground water hydrology. The operator must note the source of information that it has considered, such as; OSE's iWATERS database, local water well, topo maps, etc.

FAQ 10. 17.15.17.9 B (2) NMAC Can an operator develop a general closure plan for certain types of closures in regard to type of closure and depth to ground water?

A: No, a general closure plan will not identify the disposal facility and the disposal facility's permit number. As for an on-site closure plan, depth to ground water is only one of the several siting criteria that must be provided. The operator may create a template that requires minor adjustments, such as the disposal facility and the disposal facility's permit number or confirmation sampling depending on distance to ground water.

FAQ 11. 19.15.17. 9 D NMAC Putting the location of a pit on Form C-102 may obscure the location of a well on that form.

A: *It may be a tight fit, but the Pit Rule requires this to be done.*

19.15.17.10 NMAC SITING REQUIREMENTS

FAQ 12. Under siting requirements, operators are able to utilize a pit solely to cavitate a coal bed methane well where ground water is less than 50 feet below the bottom of design - does this also apply to on-site closure?

A: *No, the area adjacent to a temporary drill pit, the backstop, and the drainage area used to contain the waste while an operator cavitates a CBM well do not have to be lined because of the flaring associated with this procedure. However, temporary drilling pits associated with CBM wells must meet the siting requirements, including the 50 feet of vertical separation.*

FAQ 13. Will an existing Storm Water Pollution Prevention Plans (SWPP) or Spill Prevention, Control and Countermeasure plans (SPCC) for each location adequately address the hydrologic information requirements for existing below grade tanks?

A: *No. Such plans only address surface water impacts and storm water control.*

FAQ 14. 19.15.17.10 A (1) (f) NMAC Where can operators obtain wetlands information?

A: *Operators may access wetlands information at the following U.S. Fish and Wildlife Service wetlands webpages:*

<http://www.fws.gov/>

<http://wetlandsfws.er.usgs.gov/wtlnds/launch.html>

FAQ 15. 19.15.17.10 A (1) (i) NMAC Where can operators obtain a map of the 100-year floodplain?

A: *Operators may access 100-year floodplain at the following FEMA webpages: <http://www.fema.gov/>
<http://msc.fema.gov/webapp/wcs/stores/servlet/FemaWelcomeView?storeId=10001&catalogId=10001&langId=-1>*

FAQ 16. Currently, the city of Farmington only allows hydrocarbon containing tanks (i.e., production tanks) to be installed below grade. The Pit Rule prohibits below-grade tanks from being installed when the vertical separation between the bottom of the below-grade tank and the ground water is less than 50 feet. The two requirements may contradict each other; what is an operator supposed to do in this circumstance?

A: *Operators may be able to get an exception from OCD; however, operators must comply with other regulatory requirements and cannot use OCD as a shield against the requirements of municipalities or the BLM.*

FAQ 17. How are operators to demonstrate that they have met the siting requirements for a temporary pit, below-grade tank, permanent pit, or utilizing an on-site closure method? Will OCD provide a checklist, or can the operator make a one-line statement on form C-144 that the siting

requirements have been met? How will operators be assured that its site specific “interpretation” of the siting requirements will be consistent with OCD's interpretation?

A: Operators must attach a demonstration of compliance to a form C-144 for each siting criteria, such as; topographic maps, OSE's iWATERS database, copy of the FEMA map, etc. Operators can no longer use forms C-101 and C-103 to submit pit information. OCD will not provide a checklist at this time - operators may submit any document that meets the requirements of the Pit Rule. Operators are responsible for its own interpretation of the Pit Rule requirements - OCD cannot assure operators that whatever the operator submits will be acceptable to OCD.

FAQ 18. Is an operator allowed to put a new pit on top of an old closed pit?

A: Yes, the new pit is covered by the Part 17 and must satisfy all the requirements (including the release confirmation sampling criteria).

19.15.17.11 NMAC DESIGN AND CONSTRUCTION SPECIFICATIONS

FAQ 19. 19.15.17.11 C NMAC Are operators required to post a sign on the fence surrounding a new temporary pit if the operator has already posted a sign at the entrance of a new facility?

A: Operators do not need another sign for a facility that is currently signed under Rule 103 (19.15.3.103 NMAC).

FAQ 20. 19.15.17.11 D NMAC Would a hog wire fence be an acceptable alternative fencing instead of barb wire?

A: Hog wire fencing might be acceptable in some circumstances - this will be up to the District offices will determine on a case-by-case basis.

FAQ 21. 19.15.17.11 G NMAC Are operators required to construct the vault around a BGT with a 2 to 1 slope?

A: No.

FAQ 22. 17.15.17.11 I (4)&(5) NMAC Can operators use a double bottom tank with leak detection instead of a liner underneath the BGT if the side walls are visible?

A: No, but the operators may submit the diagram and obtain an exemption from the Environmental Bureau.

19.15.17.12 NMAC OPERATIONAL REQUIREMENTS

FAQ 23. 19.15.17.12 A (8) NMAC. Are operators required to keep an oil absorbent boom at all times at the well site while the pit is open or does it only have to keep it when the rig is on site? How is it to be stored or does it matter?

A: *The oil absorbent boom must remain on-site until the pit is closed. Operators may store the boom in any prudent fashion.*

FAQ 24. Will OCD provide specifics on what the inspections should address to meet the for temporary pit inspections requirement during drilling or workover operations? What exactly is required and will OCD provide operators with a formal checklist to document the required inspections? Will these be the same requirements for the weekly inspections? If not, what exactly will be required on a weekly basis? Will OCD be providing a separate formal checklist on which these inspections should be documented?

A: *The inspection should document that the operator is complying with the rules, such as checking the fluid level, the condition of the liner, presence of oil in the pit, etc. It is up to the operator to develop its own checklist. The same will be required for the weekly inspections.*

FAQ 25. Do the yearly protocol requirements for a SWPP Plan satisfy the requirement for below-grade tank inspections? If not, what exactly is required in the inspections, and will OCD be providing a formal checklist on which the inspection should be documented?

A: *No, because operators are required to inspect a BGT on a monthly basis. The operator must inspect the tank to see if it complies with the rules, leak detection, condition of the tank, oil in the tank, etc. Again, it is up to the operator to develop their own checklist.*

FAQ 26. Under operational requirements for permanent pits and below-grade tanks, operators must remove any visible or measurable layer of oil from the fluid surface. Is compressor oil exempt from this requirement?

A: *No, compressor oil is not exempt.*

19.15.17.13 NMAC CLOSURE REQUIREMENTS

FAQ 27. What about cement in a drilling pit? Is an operator allowed to dump the cement returns on the ground and leave in place?

A: *No, cement must be properly handled like all other pit contents.*

FAQ 28. 19.15.17.13 F NMAC Under general requirements for closure, the operator is required to file a deed notice identifying the exact location of the on-site burial with the county clerk in the county where the on-site burial occurs. What specific document identifying the exact location should be filed? Under which records at the county clerk should this be filed, i.e., conveyance records?

A: *The county clerk should be consulted on the specifics on how to file a notice in deed. The operator should provide a copy of the filed documented that has been stamped by the county clerk in order to demonstrate compliance.*

FAQ 29. 19.15.17.13F NMAC Can a BLM stamped application serve as a surface owner notice for on-site closure?

A: Yes, if the BLM is the surface owner. No, if it is a split estate.

FAQ 30. Which form do operators use to record the location of an on-site burial?

A: Operator must use form C-105. It is recommended to attach a plat. Operators may not use form C-102.

FAQ 31. 19.15.17.13 F (1) (d) NMAC Under the general requirements of closure, the operator is required to place a steel marker at the center of an on-site burial extending at least four feet above mean ground level. How will this apply when fee surface owners do not want the steel marker on their property? Will the surface owner be able to request an exemption to this requirement in writing?

A: Operators can apply for an exception. The surface owner cannot automatically circumvent this requirement – it requires OCD approval of an exception request. OCD will certainly give all due consideration to any of the surface owners wishes on this matter.

FAQ 32. 19.15.17.13 F (1) (b) NMAC Are operators required to notify both the surface owner and the grazing tenant? Are operators required to notify the BLM, BOR, and SLO when these agencies are the “surface owners?”

A: Operators are required to notify only the surface owner. OCD will consider that the operator has met the surface owner notification requirements if the APD is approved by BLM before being submitted to OCD. However, OCD will not accept a blanket approval from the BLM - notice must be provided for each APD. Operators must separately notify other agencies, such as the BOR and SLO.

FAQ 33. 19.15.17.13 F (1) (d) NMAC Can a plate be used to mark the location of a pit instead of a steel pole for safety and site access reasons on a location while the site is active?

A: Yes, and OCD will require the operator to attach the riser to the plate after they have plugged the well. Such requests should be addressed in the closure plan.

FAQ 34. 19.15.17.13 F (1) (e) NMAC Is form C-105 (completion report form) the correct form to report on-site burial? It would seem to make more sense to submit this information on form C-102.

A: The Pit Rule is final and specifies form C-105; therefore, OCD must require operators to comply with this provision. The C-105 has been revised to accommodate the Rule.

FAQ 35. 19.15.17.13 I (2) NMAC Operators may not always be able to accomplish re-seeding by drilling as specified in the Pit Rule because of slopes issues. Can an operator use a broadcast technique as an alternative method and can this practice be approved by the division district office? Also, is the requirement for the two successive growing seasons proof that re-seeding method actually worked?

A: Yes, the Division may administratively approve broadcast seeding, but by whatever method, the seeding method must be successful. The Pit Rule specifies two years, but does not require operators to maintain the vegetative cover for more than two years.

FAQ 36. Does the Pit Rule require operators to dig and haul in agricultural areas?

A: Generally no, that is between the surface owners and the operators - SOPA applies. The division may impose conditions or requirements 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 permit.

19.15.17.14 NMAC EMERGENCY ACTIONS

19.15.17.15 NMAC EXCEPTIONS

19.15.17.16 NMAC PERMIT APPROVALS, CONDITIONS, DENIALS, REVOCATIONS, SUSPENSIONS, MODIFICATIONS OR TRANSFERS

19.15.17.17 NMAC TRANSITIONAL PROVISIONS

FAQ 37. 19.15.17.17 D NMAC Can an operator submit a spreadsheet as a permit application for its existing below-grade tank?

A: No, because OCD needs site specific information for permitting consideration.

FAQ 38. 19.15.17.17.E (2) NMAC How will operators of existing temporary pits that are open and cannot satisfy the 4 foot division-prescribed soil cover for in-place burial be able to close?

A: Operators must apply for an exception. It is recommended that the exception request propose the minimum topsoil standards for on-site closure of 19.15.17.13.H NMAC.

FAQ 39. Do operators have to remove an existing below-grade tank if the vertical separation from ground water is less than 50 feet, or are the operators only required to comply with the construction requirements?

A: If operators have a previous permit (i.e., Rule 50 below-grade tanks), then Part 17 does not require operators to meet the siting requirements for the 50 foot vertical separation to ground water. However, if the operator was not previously permitted (i.e., Rule 50 below-grade tanks), then Part 17 does require the operator to meet the siting requirements. That means that the operator would have to close the below-grade tanks with an approved closure plan or request an exception to the siting requirements.

FAQ 40. Are operators required to resubmit a pit closure plan for approval under Part 17 if the plan has already been approved under the “old” Rule 50?

A: *Possibly. Yes, if no closure activity (e.g., liquids have been removed, waste material has been removed or solidified, etc.) has taken place at the pit site prior to June 16, 2008, then the operator must submit a second form C-144 to apply for closure plan approval. The second form C-144 must be submitted within 30 days of June 16, 2008, for approval. Form C-144 has been updated and operators should no longer use the forms dated prior to June 16, 2008. The form C-144 must be submitted for approval within 30 days of June 16, 2008. If the pit is unlined, then it must be closed within 3 months of June 16, 2008. If the pit is lined, then it must be closed within 6 months of June 16, 2008.*

No, if closure activity (e.g., liquids have been removed, waste material has been removed or solidified, etc.) has already commenced at the pit site on or before June 15, 2008, then the operator may proceed with its closure plan approved under Rule 50. However, if the pit is unlined, then the operator must close the unlined pit with 3 months of June 16, 2008. If the pit is lined, then the operator must close the lined pit within 6 months of June 16, 2008.

FAQ 41. Are operators required to resubmit a closed loop system or pit permit application on a form C-144 for approval under the Pit Rule if the APD has already been approved under the “old” Rule 50?

A: *Possibly. Yes, if the closed loop system or pit has not been installed as of June 16, 2008, then the operator must submit a second form C-144 to apply for a permit for the closed loop system. The form C-144 must be submitted within 30 days of June 16, 2008, for approval. Form C-144 has been updated and operators should no longer use the forms dated prior to June 16, 2008.*

No, if the closed loop system or pit has been installed on or before June 15, 2008. The operator may proceed with its APD approved under Rule 50.

FAQ 42. Under the closure requirements for in-place burial, the rules states that the operator must cover the geomembrane with compacted, non-waste containing earthen material and that a geomembrane cap is not required. Is this correct?

A: *Yes, geomembrane caps are not required for in-place burials.*

FAQ 43. 19.15.17.13 NMAC The Pit Rule requires the operator to submit a closure report on form C-144 with all necessary attachments, including a plot plan within 60 days of closure completion. What does OCD expect the plot plan to consist of? Also, operators are required to provide details on back-filling, capping and covering, where applicable. What information should be reported?

A: *All of the information that is required by the rule. The plot plan can be any type of appropriate, scaled diagram that depicts the closure site. The operators must provide all the details, such as; dates, volume of backfill, liner and cover specs, locational information, photo documentation of site reclamation work, etc.*

FAQ 44. 19.15.17.13 F (1) (e) NMAC specifies that "the operator shall report the exact location of the on-site burial on form C-105 filed with the Division." Is in-place burial of a temporary pit the same location as closure of a temporary pit?

A: 19.15.17.13F(1)(e) NMAC, requires that the operator report the exact location of the on-site burial on form C-105. OCD has revised form C-105 accordingly. Yes, the location of an "in-place burial" closure of a temporary pit is the exact same location of the temporary pit. This will not be the case for "in-place burial" of a drying pad associated with a closed-loop system. It requires the operator to construct a temporary pit for in-place burial.

However, "on-site burial" also includes "on-site trench burial"; therefore, an operator that chooses to close using the on-site trench burial method must report the location of the lined trench on form C-105.

FAQ 45. Section 19.15.17.13 K NMAC (which specifies the closure report requirements) states that "if the operator used a temporary pit, the operator shall provide a plat of the pit location on form C-105 within 60 days of closing the temporary pit." Can an operator just provide the exact location of the steel marker location in lat/long?

No, the lat/long location of the temporary pit closure is not adequate - the operator must provide a plat of the location of the pit location attached on form C-105. This is required for temporary pits, including a temporary pit constructed for "in-place burial" of a drying pad.

The Pit Rule does not actually specify that operator's must provide the location of an on-site trench burial on a plat, but does specify that the operator report the exact location on form C-105. It is recommended by OCD to provide the location on a plat and may be requested by the division.

FAQ 46. How exactly should the on-site closure or temporary pit location be identified on the C-105 - can the operator just report the location of the steel marker in lat/long?

The operator must specify lat/long of its temporary pit on form C-105. OCD encourages operators to not only report the lat/long on its plat depicting the location of the pit and to also plat the location of an on-site trench burial. The exact location of an on-site trench burial must be reported on C-105, but, as noted above, a plat is not required. The plat must depict the locations of all temporary pits, including the location of former temporary pits that the operator closed using the excavate and removal closure method and on-site trench burial sites. Steel markers are not required when the operator closes the site by waste excavation and removal, but are required for on-site closures.

FAQ 47. Are operators required to submit form C-144 closure reports within 60 days of the pit being closed or within 60 days after the two successful growing seasons after reseeding?

A: The form C-144 closure report must be filed 60 days from when the pit is closed and reseeded.

FAQ 48. Are operators still required to reseed a site if it wants to use the former site of a below-grade tank or pit?

A: No. See 19.15.17.13G(2) NMAC which specifies acceptable alternatives to re-vegetation.

FAQ 49. Are operators required to wait for two successful growing seasons before a plugging bond is released for a plugged well? If so, will this affect the bonding for the well or will it require additional financial assurance?

A: *OCD will release the bond when all other OCD rules and regulations have been satisfied. The grass does not have to be re-established before OCD will release the operator's plugging bond.*

FAQ 50. 19.15.17.12. B(4) NMAC specifies that “the operator shall note the date of drilling or workover rig's release on form C-105 or form C-103 upon well or workover completion.” Can an operator empty the liquids from the drilling pit within 30 days of the release of the drilling rig but still leave the pit open until it can move in a completion rig several months later. What if the operator completes one formation with plans to later complete another formation?

A: *No, the timeline for closure for a pit starts when the drilling rig that drilled the well is released.*

FAQ 51. What requirements apply to an operator if it already has a pit in operation but has not closed the pit on June 16, 2008.

The Pit Rule requires operators with an approved closure plan to follow the operation and closure requirements of the Pit Rule, but not the design requirements. For example, if an operator has an approved APD with closure for a 12 mil liner, but the pit has not been actually constructed, then the operator must meet all of the Pit Rule requirements. However, if the operator has an approved APD with closure plan and constructed the pit with a 12 mil liner before June 16, 2008, the operator can utilize the 12-mil lined pit but must comply with the operational requirements of the Pit Rule and obtain an approved closure plan pursuant to the Part 17.

FAQ 52. There is an apparent conflict between the requirement for operators to equip or retrofit BGTs. One provision specifies five years and another specifies one year. What will OCD require?

A: *OCD will give operators five years from June 16, 2008 to comply.*

FAQ 53. What if one pit is used for two or more well sites? Will the operators still have to follow closure time frame?

A: *Yes, if the time from when the first rig is released and the second well is spudded exceeds the time frame, then the operator will have to close pit. However, if the operator spuds the second well before that time frame is exceeded, then it would not have to close the pit until after the rig is released from the second well.*

FAQ 54. How many on-site disposal trenches are allowed at a single well site?

A: *Part 17 specifies one trench per drying pad or temporary pit. An operator could request an exception for more than one trench or one for closure of more than one drying pad or temporary pit from the same well site with proper justification. Operators cannot bury pit contents from another well in an off-site trench burial.*

FAQ 55. How does the Pit Rule address surface reclamation of historical pits?

A: *The Pit Rule does not address this issue. The intent of the Pit Rule was to address deficiencies in the old Pit Rule, not to address surface restoration or remediation of old legacy pits. Therefore, any legacy pit surface reclamation project will be handled on a case-by-case basis with the District office, Environmental Bureau, and*

landowner involved in the process. OCD may require operators to take appropriate actions at any pit, regardless of the age of the pit, if the pit contents may pose a threat to the environment.

FAQ 56. What kind of pit is a fresh water frac pit that is used to service a number of frac jobs?

A: It is a permanent pit because it is neither a drilling pit nor a workover pit.