

**STATE OF NEW MEXICO  
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES  
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF PROPOSED AMENDMENTS  
TO THE COMMISSION'S RULES TO ADDRESS  
CHEMICAL DISCLOSURE AND THE USE OF  
PERFLUOROALKYL AND POLYFLUOROALKYL  
SUBSTANCES AND IN OIL AND GAS EXTRACTION,  
19.15.2, 19.15.7, 19.15.14, 19.15.16 AND 19.15.25 NMAC**

**Case No. 23580  
Order No. R-23824**

**WILDEARTH GUARDIANS,**

**PETITIONER**

**PFAS RULE MAKING ORDER  
and REASONS FOR THE ACTION TAKEN**

This matter comes before the New Mexico Oil Conservation Commission ("Commission" or "OCC") upon a Petition filed on May 25, 2023, and an Amended Petition filed on August 23, 2024, by WildEarth Guardians ("Petitioner") for changes to 19.15.2, 19.15.7, 19.15.14, 19.15.16 and 19.15.25 NMAC. Public hearings were held November 12 through November 15, 2024. Petitioner provided a final set of proposed rules in its Proposed Statement of Reasons on February 19, 2025. Public deliberations were held on March 11, 2025. The Commission, having reviewed the submittals, testimony, evidence, the Hearing Officer's Report and the Proposed Findings of Fact and Conclusions of Law hereby issues, as provided for in 19.15.3.12 NMAC and 19.15.3.13.C NMAC, the following ORDER and REASONS FOR THE ACTION TAKEN. The Commission has the authority to adopt, refuse to adopt or adopt the proposed rule change in part pursuant to 19.15.3.13C NMAC. The Commission's actions are the following:

#### **19.15.2.7C4. “Definitions”**

Petitioner proposed new language for a definition for the term “chemical.”

The Commission voted to refuse to adopt the proposed rule change.

The Commission’s reasons are:

1. There is a common term for “chemical” that exists in the industry. Oil Conservation Commission, 3/11/25 Meeting Transcript (OCC Tr.) page 6 lines 3-4 (6:3-4).
2. The definition as proposed is not the generally accepted scientific term for “chemical.” New Mexico Oil and Gas Association’s (NMOGA) Proposed Findings of Fact and Conclusions of Law (FOF) # 40.

**19.15.2.7C5. “Definitions”**

Petitioner proposed new language for a definition for the term “chemical disclosure list.”

The Commission voted to refuse to adopt the proposed rule change.

The Commission’s reasons are:

1. Operators already disclose the constituents in their fracking and completion fluids in FracFocus under 19.15.16.19B NMAC. NMOGA FOF #43. OCC Tr. 12:9-11.
2. The creation of a new list may conflict with the Commission’s authority because the authority extends only to acquiring and accessing such potentially protected information where necessary for the protection of public health. New Mexico Oil Conservation Division’s (Division) Closing Argument, p.4, citing to NMSA 1978, Sections 70-2-11, 70-2-12(B)(15), (21), (22), 57-3A-1, 14-2-1(F).
3. The Commission does not have the requisite authority to compel disclosure of protected information marked “trade secret” to the public in a new list. OCC Tr. 16:4-7; 15:23-25; 23:20-24:2.
4. This aspect of the proposal is within the purview of the New Mexico Legislature. Division’s Closing Argument, p.4.
5. When the Commission or Division acquires information, it becomes responsible for the appropriate handling and protection of this information. Division’s Closing Argument, p.4.
6. Not only is the protection of trade secret information stated in the Uniform Trade Secrets Act, the legislature also has directed agencies to withhold such proprietary information from public inspection. Division’s Closing Argument, p.4.
7. The adoption of a new definition may restrict innovation. OCC Tr. 24:5-7.

**19.15.2.7P3. “Definitions”**

Petitioner proposed new language for a definition for the term “PFAS chemicals.”

The Commission voted to adopt the proposed rule change. The remainder of the definitions under (P) are renumbered accordingly.

The adopted language reads:

P(3) “PFAS chemicals” means a perfluoroalkyl or polyfluoroalkyl substance with at least one fully fluorinated carbon atom.”

The Commission’s reasons are:

1. PFAS chemicals are a serious threat to public health and the environment. Petitioners Statement of Reasons on Behalf of WildEarth Guardians (Petitioner) and New Energy Economy’s (Petitioner’s FOF) #16.
2. The Division’s witness, Dr. Erik Martin, stated that studies “have shown that there are toxicological effects” of PFAS on humans. Petitioner’s Closing Brief, p. 15, citing to Martin, Tr. 11/13/2024, 225:2-6.
3. PFAS chemicals have been used in oil and gas operations in New Mexico. Petitioner’s FOF #17.
4. NMOGA’s witness, Dr. Stephen Richardson, testified that “despite some limited historical use of PFAS in hydraulic fracturing operations, the oil and gas industry has since transitioned away from these compounds in favor of other nonPFAS containing chemistries as evident by the data provided in FracFocus.” Petitioner’s Post-Hearing Closing Brief, p. 22, citing to Richardson, Tr. 11/14/2024, 253:21-25, 254: 1-10.
5. These chemicals are so toxic the industry does not want to use them anymore. OCC Tr. 35:2-5.

6. NMOGA's witness, Dr. Stephen Richardson, testified that: "I don't think it would have any impact at all, to be honest" on the oil and gas industry. Petitioner's Post-Hearing Closing Brief, pp. 1-2, citing to Richardson, Tr. 11/15/2024, 291: 21-23; OCC Tr. 30:19-22.
7. PFAS chemicals can contaminate freshwater resources through loss of well integrity events and through spills of produced water, drilling fluids or hydraulic fracturing fluids. Petitioner's FOF #18.
8. According to the New Mexico Environment Department, approximately 78 percent of New Mexicans get their drinking water from groundwater. 81 percent of New Mexicans are served by public systems with water derived from ground water sources, and over 170,000 New Mexicans depend on private wells for drinking water. Groundwater makes up nearly half of the total water annually withdrawn for all uses in New Mexico, including agriculture and industry. Petitioner's Post-Hearing Closing Brief, pp. 9-10, citing to Petitioner's Ex. 3.
9. Well integrity events happen roughly once a year in New Mexico. Petitioner's FOF #19.
10. Petitioner's definition of PFAS chemicals as those that have "at least one fully fluorinated carbon atom" is broader than the other parties' definitions and casts a wider net to protect the public health and the environment. Petitioner's FOF #41.
11. Petitioner's definition of PFAS chemicals is protective of public health and the environment because it has been adopted by 23 states and federal legislation. Petitioner's FOF #23; OCC Tr. 30:3-6.
12. Petitioner's definition would cover 10X of the chemicals as compared to other parties' definitions. OCC Tr. 31:23 – 32:4.

13. Waiting for a testing regime that can test for all PFAS chemicals is not reason to delay the adoption of Petitioner's proposed change. OCC Tr. 29:8-19; 30:12-16.
14. Division's witness, Dr. Court Sandau, stated that adopting Petitioner's definition will not impede the development of more standard analytical methods for PFAS detection. Petitioner's Post-Hearing Closing Brief, p. 20, citing to Sandau, Tr. 11/13/2024, 182:18-25.

**19.15.2.7T. “Definitions”**

Petitioner proposed new language for a definition for the term “trade secret.”

The Commission voted to refuse to adopt the proposed rule change.

The Commission’s reasons are:

1. Trade secret is defined under the New Mexico Trade Secrets Act in NMSA 1978, Section 57-3A-2D. NMOGA’s FOF #64, 71.
2. The proposed definition cited to the definition of “trade secret” in NMSA 1978, Section 57-3A-2D.
3. The proposed definition is redundant of NMSA 1978, Section 57-3A-2D. OCC Tr. 47:17-21; 51:10-15..

### **19.15.2.7U3. “Definitions”**

Petitioner proposed new language for a definition for the term “undisclosed chemicals.”

The Commission voted to refuse to adopt the proposed rule change.

The Commission’s reasons are the same as the above reasoning stated in the section for not adopting the “chemical disclosure list.”



**19.15.7.16 “Well Completion or Recompletion Report and Log (Form C-105).”**

The Commission voted to adopt the Petitioner’s proposal in part and refused it in part.

The adopted language reads:

A. Within 45 days following the completion or recompletion of a well, the operator shall file form C-105 with the division accompanied by a summary of special tests conducted on the well, including drill stem tests. In addition, the operator shall file a certification that no PFAS chemicals were added to the fluid used in the completion or recompletion of the well, a copy of electrical and radio-activity logs run on the well with form C-105. If the division does not receive form C-105 with attached certification, logs and summaries within the specified 45-day period, the division shall withhold the allowable authorizations for the well or suspend injection authority, as appropriate, until the operator has complied with 19.15.7.16 NMAC.

B. In the case of a dry hole, a complete record of the well on form C-105, or if applicable form C-103, with the attachments listed in Subsection A of 19.15.7.16 NMAC shall accompany the notice of intention to plug the well, unless previously filed. The division shall not approve the plugging report or release the bond the operator has complied with 19.15.7.16 NMAC.

C. The division shall not keep form C-105, or if applicable form C-103, and accompanying attachments confidential unless the well's owner requests in writing that the division keep it confidential. Upon such request, the division shall keep these data confidential for 90 days from the date of the well's completion, provided, however, that the report, logs and other attached data may, when pertinent, be introduced in a public hearing before division examiners, the commission or in a court of law, regardless of the request that they be kept confidential.

D. If there is a change in the information provided under this part, the operator must submit the change to the division within 30 days after the date the operator first knew of the change.

The Commission’s reasons are:

1. The Commission voted to adopt the Petitioner’s proposals in subsections B and D.
2. The Commission voted to adopt the Division’s proposals in subsections A and C as stated in OCD Exhibit 1-0007.
3. Both the Division and Petitioner’s proposed changes included the “certification” provision.
4. The addition of a new certification will implement a ban on PFAS chemicals. Petitioner’s FOF #46.

5. The adoption of the new language provides that if the Division does not receive form C-105 with the new certification, the Division shall now be able to withhold the allowable authorizations for the well or suspend injection authority, as appropriate, until the operator has complied with 19.15.7.16 NMAC.
6. Petitioner's proposed change to include the term "chemical disclosure list" was not adopted because this term was not adopted in the definitions section. OCC Tr. 54:23-25.
7. The NMOGA's proposed change to include "intentional" actions was not adopted because intentionality can be difficult to determine regarding whether an action was intentional or not. OCC Tr. 55:22-56:1.
8. Petitioner's proposed change to the term "shall" in subsection C was not adopted. The word "may" was retained in subsection C because it provides for an option and matches the meaning of the term "when pertinent" in the same sentence. OCC Tr. 63:21-25; 67:11-23.
9. Petitioner's proposed change for a new subsection E to require the forms to be retained "indefinitely" was not necessary because there is already a State Records retention schedule for government documents. OCC Tr. 72:3-10.

#### 19.15.14.9 “Applications”

The Commission voted to adopt the Petitioner’s proposal in part and refused it in part.

The adopted language reads:

C. An applicant for a permit to drill, deepen or plug back shall certify that they will not introduce any additives that contain PFAS chemicals in the completion or recompletion of the well; and

D. an applicant for a permit to operate a well in a spacing or proration unit containing an existing well or wells operated by another operator shall also comply with Subsection B of 19.15.15.12 NMAC.

The Commission’s reasons are:

1. The Commission voted to adopt the Division’s proposal as stated in OCD Exhibit 1-0008.
2. Both the Division and Petitioner’s proposed changes included a new subsection C with a “certification” provision. The new certification is necessary to ensure that operators cannot get a permit if they do not comply. Petitioner’s FOF #51.
3. Petitioner’s proposed change to include “undisclosed chemicals” was not adopted because this term was not adopted in the definitions section. OCC Tr. 73:16-20.
4. Petitioner’s proposed change to include “downhole operations” was not adopted because this term was not adopted in the definitions section.

**19.15.14.10 “Approval or Denial of a Permit to Drill, Deepen or Plug Back”**

The Commission voted to refuse to adopt the proposed rule change.

The Commission voted to adopt the Division’s proposal.

The adopted language reads:

“A. The director or the director’s designee may deny a permit to drill, deepen or plug back if the applicant is not in compliance with 19.15.14.9 NMAC and Subsection A of 19.15.5.9 NMAC.”

The Commission’s reasons are:

1. The Commission voted to adopt the Division’s proposal as stated in OCD Exhibit 1-0008.
2. The Division’s proposed change included a citation to the “Applications” section, which is needed to clarify the enforcement process. OCC Tr. 78:18-25.
3. Petitioner’s proposed addition to include “nondomestic waste” and “produced water” in this subsection were not supported by substantial evidence in the record. NMOGA’s FOF #106-107; OCC Tr. 83:1-6.
4. Petitioner’s proposed addition of “nondomestic waste” and “produced water” was not adopted because these terms present complex topics beyond the scope of this particular subsection. OCC Tr. 83:11-14.

**19.15.16.17 “Shooting and Chemical Treatment of Wells”**

The Commission voted to adopt the Petitioner’s proposal in part and refused it in part.

The adopted language reads:

**19.15.16.17 “Completion Operations, Shooting and Chemical Treatment of Wells”**

A.If completing, shooting, fracturing or treating a well injures has the potential to negatively impact the producing formation, injection interval, communicates with other strata, casing and casing seat or may create underground waste or contaminate fresh water, the operator shall within five working days notify the division in writing the division and proceed with diligence to use the appropriate method and means for rectifying the loss of containment or any damage.

(1) diligence shall include but is not limited to verifying casing integrity and isolation of strata. This can include pressure testing in accordance with 19.15.25 NMAC, performing casing integrity logs, cement bond logs and any other means determined necessary by the operator or required by the division.

(2) If damage from the shooting, fracturing or treating of a well has the potential to impact surface or groundwater, then the operator will disclose to the Division all additives used in the applicable fluid stream including trade secret additives as necessary to identify all potential contaminants. If trade secret chemical information is received by the Division, the Division will hold that information confidential as required by 1978 NMSA 14-2-1. Based on the chemicals identified by the operator and the Division the operator will test for all identified potentially harmful chemicals and will use a third party, verified laboratory to conduct any appropriate testing necessary to verify any potential impact. The testing may also include but is not limited to PFAS, chemicals listed in 20.6.2 NMAC and chemicals listed in 19.15.29.11.A(5)(e) NMAC. The division may require more robust sampling than what is proposed by the operator if deemed necessary due to the nature of the potential chemicals.

(3) If it is deemed there is an impact to surface or groundwater the operator shall report the impact as a major release in accordance with 19.15.29 NMAC and respond accordingly.

B. If completing, shooting, fracturing or chemical treating results in the well’s irreparable injury the division may require the operator to properly plug and abandon the well and take any necessary actions to mitigate any results impacts.

The Commission’s reasons are:

1. The existing language was a two sentence paragraph and the proposal breaks it into several new subsections.

2. The Commission voted to adopt Petitioner's proposal in subsections (A)(1), (A)(3) and (B) with the typographical correction as the proposal listed subsection (B) as subsection (D).
3. The Commission voted to adopt the Division's proposal in subsections (A), (A)(2) as stated in OCD Exhibit 1-0009 to -11 with the typographical correction for the word "appropriate" in the seventh line of (A)(2).
4. The proposal is protective of public health and the environment because it provides increased enforcement abilities for the Division.
5. The proposal provides testing provisions in the event that a loss of well integrity threatens freshwater resources. Petitioner's FOF #54.
6. Using an accredited laboratory ensures the accuracy and reliability of testing results. Petitioner's FOF #55.
7. NMOGA's proposed language in Exhibit A.11-A.12 was a late addition and did not allow parties sufficient time to evaluate it. OCC Tr. 100:10-13; 119:14-20.

### 19.15.16.19 “Log, Completion and Workover Reports”

The Commission voted to adopt the Petitioner’s proposal in part and refused it in part.

The adopted language reads:

D. On or before [DATE], an operator shall provide the FracFocus disclosure to the following persons and entities unless the person or entity opts out of the notification:

- (1) All owners of a private water well that are within five thousand two hundred and eighty feet of the well site;
- (2) The State Land Office if the state owns minerals that are being developed at the well site;
- (3) The federal bureau of land management if the United States owns the minerals that are being developed at the well site;
- (4) To any tribe if the minerals being developed at the well site are within the boundary of that tribe’s reservation and are subject to the jurisdiction of the division;
- (5) Police departments, fire departments, emergency service agencies, and first responders that have a jurisdiction that includes the well site;
- (6) Local governments that have a jurisdiction within five thousand two hundred and eighty feet of the well site;
- (7) The administrator of any public water system that operates (a) A surface water public water system intake that is located fifteen stream miles or less from the well site; (b) A groundwater source under the direct influence of a surface water public water system supply well within five thousand two hundred and eighty feet of the well site and (c) A public water system supply well completed within five thousand two hundred and eighty feet of the well site.

E. The FracFocus disclosure must be disclosed to the above parties via certified mail within thirty days of being filed with FracFocus.

The Commission’s reasons are:

1. Petitioner’s proposed change to refer to “chemical disclosure list” was not adopted because this term was not adopted in the definitions section. It will be replaced with “FracFocus disclosure” terminology. OCC Tr. 143:11-16. This replacement of terms eliminates the need to adopt Petitioner’s proposals for subsections (B)(1) and (F).

2. Operators already disclose the constituents in their fracking and completion fluids in FracFocus under 19.15.16.19B NMAC. NMOGA FOF #43.
3. It is important to provide information to the public. Petitioner's Post-Hearing Closing Brief, p. 27, citing to Brown, Petitioner's Exhibit 57 at 7:18-21; OCC Tr. 134:5-14; 150:5-9.
4. Public accessibility to chemical disclosures increases trust in regulators. Petitioner's Post-Hearing Closing Brief, p. 41, citing to Brown, Tr. 11/12/2024, 257:21-24, 258:1-5.
5. The persons and entities have the option to opt out if the information is more than they want to review. OCC Tr. 132:13-17.
6. Petitioner's proposed change to refer to exterior boundary was simplified as the term "exterior" is redundant of the term "boundary." OCC Tr. 139:6-14.



**19.15.25.14 “Demonstrating Mechanical Integrity”**

The Commission voted to adopt the Petitioner’s proposal in part and refused it in part.

The adopted language reads:

- A. An operator may use the following methods of demonstrating internal casing integrity for casing repairs and wells to be placed in approved temporary abandonment.

The Commission’s reasons are:

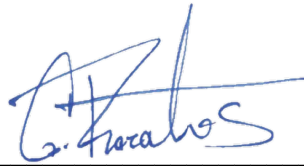
1. The Commission voted to adopt the NMOGA’s proposal as stated in Exhibit A.16.
2. The proposed change regarding “casing repairs” reflects the process change in how mechanical integrity tests can be used for subsequent repairs. Petitioner’s FOF #61.
3. There may not be a standard term for “casing investigations.” NMOGA FOF # 151; OCC Tr. 152: 6-12.
4. The term “casing integrity” together with the term “casing investigations” may cause confusion. NMOGA FOF #153; OCC Tr. 152:16-20.

**CONCLUSION**

The Commission is authorized to adopt regulations pursuant to the New Mexico Oil and Gas Act, NMSA 1978, Sections 70-2-11 and -12. Based on the enumerated findings and reasons stated above and pursuant to this authority, this Order is ADOPTED:

IT IS SO ORDERED.

DATED: 6/03/2025

A handwritten signature in blue ink, appearing to read "G. Razatos", is written over a horizontal line.

Gerasimos Razatos, Chairman  
New Mexico Oil Conservation Commission