

Navajo Nation Council Delegate Daniel E. Tso
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Colorado Latino Forum · Continental Network of Indigenous Women of the Americas · Diné C.A.R.E.
Green Latinos Colorado · Honor the Earth · Southwest Native Cultures · Tewa Women United
Torreon Community Alliance · YUCCA Action
Arroyo Hondo Land Trust · Center for Biological Diversity · Chaco Alliance · Clean Energy Now Texas
Common Ground Rising · Delaware Riverkeeper Network · Earth Care · Food and Water Action
Frack Off Greater Chaco · Frack Free Four Corners · Frack Free New Mexico · Global Voice
Green Amendments For The Generations · JB Consulting
Multicultural Alliance for a Safe Environment · NastyWomenNM · New Energy Economy
Oil Change International · PNM Shareholders for a Responsible Future · ProgressNow New Mexico
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SEED (Securing Economic and Energy Democracy for SW NM) · VitaleTherapeutics, Inc. · We Are One River
WildEarth Guardians

July 29, 2020

Secretary Sarah Cottrell Probst
Department of Energy, Minerals, and
Natural Resources
1220 South St. Francis Drive
Santa Fe, NM 87505

Commissioners Sandoval, Kessler,
and Engler
Oil Conservation Commission
1220 South St. Francis Drive
Santa Fe, NM 87505

Re: Regulating Toxic Oil and Gas Industry Waste - Put New Mexico's Clean Water, Health, and Environment First

Dear Secretary Probst and Oil Conservation Commissioners,

We are writing to urge you to pause your plans to adopt proposed regulations regarding the use of “produced water.” [As oil and gas extraction has boomed in New Mexico, the oil and gas industry has faced rising costs and difficulties in disposing its waste.](#) In the midst of a global health pandemic and crashing oil prices, rather than slow or even stop production, industry continues to call on the Trump Administration and the Michelle Lujan Grisham Administration to simply reclassify their waste as “not toxic.” The industry’s strategy is to re-label their waste so they can more cheaply dispose of it, dumping it into rivers, onto crops, and into drinking water supplies.

At the end of June, the New Mexico Oil Conservation Division announced its intention to amend regulations [with proposed rules focused on making it easier for the oil and gas industry to transport and use its toxic waste while drilling and fracking.](#) The Division’s de-regulatory approach assumes that “produced water” is a relatively benign byproduct of oil and gas production. To the contrary, as reports across the U.S. have found, this “water” is [actually a toxic cocktail of radioactive materials, heavy metals, proprietary fracking chemicals, and other contaminants](#) that are a clear threat to public health, the environment, and fresh water resources.

Aided by the absence of a pre-hearing stakeholder engagement process, the proposed rules fall dramatically short of the Division's mandate to "regulate" the use of produced water within the oil and gas fields "in a manner that protects public health, the environment and fresh water sources." 70-2-12.B(12) NMSA 1978. Alarming, the proposed rules actually endorse the dumping and discharge of this waste outside of oil and gas producing regions.

The Oil Conservation Division's proposed regulations would allow oil and gas companies to use and transport "produced water" when drilling and fracking, provided that public health, the environment, and fresh water are protected. Unfortunately, there exists no standards or safeguards to actually protect public health, the environment, and fresh water from "produced water." In fact, this [waste is considered too toxic to treat](#). Absent clear standards and information, there is no way for the Commission to ensure that the use and transport of the oil and gas industry's toxic waste will protect workers, adjacent communities, groundwater, surface waters, and otherwise ensure the environment is not contaminated.

Furthermore, the proposed rules would allow the oil and gas industry to discharge or otherwise dump its toxic waste outside of oil and gas producing areas. Although the rules would allow this only where approved by the New Mexico Water Quality Control Commission, they explicitly imply that the Commission will at some point adopt rules that will actually allow the dumping of "produced water" onto lands and in streams. This is a scary proposition considering that there are no known methods to safely treat this waste. The Oil Conservation Division's rules appear to set the stage for a more insidious plan to allow companies to dump their toxic waste into our environment.

Overall, these rules would set a dangerous precedent. Rather than help New Mexico transition away from reliance on oil and gas, they would further entrench and enshrine the industry, jeopardizing the state's public health and financial well-being, our environment, and our ability to meet climate objectives.

New Mexico's communities and clean water deserve to be protected. If the Oil Conservation Commission moves forward in adopting new regulations, we urge you to adopt rules that:

- Prohibit the use of fresh water during drilling and hydraulic fracturing;
- Expressly forbid the discharge or dumping of "produced water;" and
- Require that as "produced water" is created, transported, or used, it is regulated as a toxic and hazardous waste that is inherently dangerous and handled and disposed of accordingly.

We urge the Oil Conservation Division to course correct and focus on developing

and implementing meaningful rules for oil and gas waste management, including water conservation and watershed resilience strategies to protect communities and meet our state's climate goals. Please put the brakes on your proposal to amend your regulations and instead put New Mexico's clean water, health, and environment first. Thank you.

Signed,

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