

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

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION FOR
THE PURPOSE OF CONSIDERING:

CASE NOS: 21529

IN THE MATTER OF PROPOSED AMENDMENTS
TO THE COMMISSION'S RULES ON RELEASES
19.15.29.6 AND 19.15.29.8 NMAC.

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS
COMMISSIONER HEARING
Agenda Item 6
November 4, 2020
Santa Fe, New Mexico

BEFORE: ADRIENNE SANDOVAL, CHAIRWOMAN
JORDAN KESSLER, COMMISSIONER
DR. THOMAS ENGLER, COMMISSIONER
CHRIS MOANDER, ESQ.

This matter came on for hearing before the New Mexico Oil Conservation Commission on Thursday, November 4, 2020, via Webex Virtual Platform, hosted by New Mexico Energy, Minerals, and Natural Resources Department.

Reported by: Irene Delgado, NMCCR 253
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1 APPEARANCES

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FOR OCD:

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1 CHAIRWOMAN SANDOVAL: All right, let's get
2 started. Again, it's 11:46, and we will move on to Item
3 Number 6 in Case Number 21529, the application for
4 rulemaking from WildEarth Guardians.

5 Mr. Timmons, would you like to make any
6 statements?

7 MR. TIMMONS: Yes, Madam Chair. I think this can
8 be pretty brief. Thank you, Madam Chair and Members of the
9 Commission, Daniel Timmons again on behalf of WildEarth
10 Guardians.

11 So as I'm sure y'all will recall at the
12 Commission's October meeting, WildEarth Guardians presented
13 a rulemaking proposal to ban spills of produced water, and
14 the Commission agreed schedule that proposal for a formal
15 hearing in April of 2021.

16 But from that discussion it became pretty clear
17 that both OCD staff and Commission felt that a better
18 approach would have been to amend the -- the Commission's
19 spill rules at 19.15.29 NMAC. So based on that feedback,
20 Guardians have filed a new proposal to amend Part 29 to
21 prevent major and minor releases as those terms are already
22 defined in the Commission's rules.

23 So the new proposal would prohibit releases not
24 just of produced water, but of oil, gas and other oil field
25 waste. So if the Commission agrees to schedule this

1 proposal for a formal rulemaking as we have suggested at the
2 April dates that the Commission has already set aside,
3 Guardians is prepared to withdraw its previously filed
4 produced water proposal.

5 So the substance of the rule, the Commission's
6 rules currently require reporting of releases larger than
7 five barrels and clean up of spills regardless of volume.
8 With the routine nature of spills across New Mexico shows
9 that these rules are simply not good enough to protect
10 public health and the environment.

11 Since 2010 there have been more than 15,000
12 documented releases across the state including more than
13 7,000 produced water spills and 4,000 spills of crude oil.
14 OCD records show nearly 145,000 barrels of crude oil spilled
15 since 2010, with only 86,000 of those recovered, leaving
16 some 59,000 barrels of crude oil lost in the environment of
17 New Mexico.

18 So taken together, those 4,000 crude oil spills
19 since 2010 would amount to the sixth largest oil spills in
20 US history, and spills and leaks continue on a daily basis.
21 As OCD records show, many, if not most of these are
22 preventable, the result of human error, equipment failure
23 and corrosion, and these are causes which could largely be
24 eliminated through proper training, maintenance and
25 materials.

1 So this proposal is intended to make it clear
2 that spilling oil, gas -- or oil and gas waste in New Mexico
3 is unacceptable. After-the-fact reporting and clean-up are
4 simply not a substitute for prevention. Clean-up is never
5 perfect. The Commission's rules do not require it to be,
6 and so every one of these thousands of spills results in
7 further degradation of New Mexico's environment.

8 It's time for the state or for this Commission to
9 say enough is enough. So we are asking the Commission to
10 exercise its authority and take this most basic step to
11 protect public health and the environment by prohibiting
12 major and minor releases by the oil and gas industry.

13 We ask that you schedule this proposal to be
14 heard starting on April 1 of 2021 following the schedule
15 previously approved for Guardian's water proposal.

16 With that, I would be happy to answer any
17 questions that you may have regarding this.

18 CHAIRWOMAN SANDOVAL: Thank you, Mr. Timmons.
19 Why don't we just summarize what you just said go through
20 each counselor and the Commissioners can ask questions.
21 Mr. Ames, do you have any comments?

22 MR. AMES: Madam Chair, Eric Ames for the OCD.
23 No, no substantive comments. We are pleased that WildEarth
24 Guardians decided to file a new petition. We want to be
25 clear that the existing petition will be dismissed in lieu

1 of the pending petition, and that the hearing will be not
2 scheduled until April of next year. Thank you.

3 CHAIRWOMAN SANDOVAL: Thank you, Mr. Ames.
4 Mr. Rankin, do you have any comments?

5 MR. RANKIN: Madam Chair, Commissioners, Adam
6 Rankin appearing for NMOGA. At this time I have no
7 substantive comments. We are still reviewing the proposed
8 rule and will be (inaudible) as we approach the hearing. So
9 thank you very much.

10 CHAIRWOMAN SANDOVAL: (Inaudible.)

11 MR. RANKIN: Madam Chair, I think you are still
12 muted.

13 CHAIRWOMAN SANDOVAL: I am still muted. It was
14 my turn. It was bound to happen. Mr. Rankin, thank you.
15 Commissioners, do you have any questions for the counselors?

16 COMMISSIONER KESSLER: Thank you, Mr. Timmons,
17 for refileing that application. (Inaudible.)

18 COMMISSIONER ENGLER: This is Tom Engler. I
19 agree, the same thing, I appreciate this effort and look
20 forward to discussing this later.

21 CHAIRWOMAN SANDOVAL: Thank you, Dr. Engler. I
22 don't have a question for any of the counselors. Maybe I
23 have a question, Ms. Malave. So procedurally, if we were
24 to -- let's see what was requested -- basically schedule
25 this proposal for the same time as the other proposal was

1 previously scheduled, can we do that? And then they, after
 2 the fact, withdraw the other proposal, or is -- is there any
 3 issue where we couldn't schedule the days and then they
 4 withdraw the other proposal after the fact?

5 MS. MALAVE: Yes, as a matter of fact you can do
 6 that simply because while you agreed to schedule the other
 7 hearing, we have not posted and/or initiated, you know, in
 8 terms of the notice and comment, so now instead of posting,
 9 you know, the notice and comment would be to this proposal
 10 as opposed to the previous one.

11 But you can pretty much vote -- yesterday I
 12 circulated a form of scheduling order that pretty much
 13 memorialized what the Commission had agreed on for that, for
 14 the previous petition, that basically apply those to this
 15 petition.

16 Because I had also spoken with Mr. Timmons when
 17 the Commission was first petitioned to gain clarification
 18 about whether or not this was a separate petition, or in
 19 lieu of, or whatever, and he -- he at that time indicated
 20 that if the Commission agreed to hear this petition, that --
 21 that WildEarth Guardians would be prepared to withdraw the
 22 earlier petition, so we would just put this petition in its
 23 place.

24 CHAIRWOMAN SANDOVAL: Thank you for the
 25 clarification. And just to confirm, Mr. Timmons, that is

1 what you are prepared to do?

2 MR. TIMMONS: Yes, Madam Chair.

3 CHAIRWOMAN SANDOVAL: Okay. Then if there are no
4 other questions, Commissioners, let's determine if we are
5 going to hold a hearing, and if so, when, and the
6 parameters.

7 I do believe Ms. Malave circulated over to me
8 what the proposal was, and I have it in front of me for
9 previously what we asked for, and we should probably take
10 about the same -- the hearing had been scheduled for April 1
11 and 2, and, if necessary, 8 and 9. And I'm fine with
12 setting it for those exact same dates. Commissioners, are
13 you in agreement?

14 COMMISSIONER ENGLER: Again, Madam Chair, this is
15 Tom Engler. The second is Good Friday. Are you guys open
16 there?

17 CHAIRWOMAN SANDOVAL: I think what we were
18 planning to do was a half day. Is what we had talked about
19 is doing a 1st, half day a 2nd, and then following up on the
20 8th and 9th as needed.

21 COMMISSIONER ENGLER: Again, Madam Chair, I don't
22 know, again, I guess based on the people who are going to be
23 inconvenienced if they have plans on that Good Friday, I
24 can't tell you.

25 CHAIRWOMAN SANDOVAL: I think we will be fine

1 hearing it on the 1st and then continuing to the 8th and 9th
2 if people are uncomfortable doing that on Good Friday or
3 have other arrangements.

4 COMMISSIONER KESSLER: I'm flexible with whatever
5 works for others. With that, the April 1, that's public
6 comments, and then the portion of the hearing on the 8th and
7 9th, something like that, you know, half of the 1st as
8 public comment, we can decide that as we get closer, but in
9 the interest of other plans, maybe it would be better to, to
10 take Friday out of the mix.

11 CHAIRWOMAN SANDOVAL: Okay. You know, I'm fine
12 with that. I don't want to inconvenience people. So we
13 will do the 1st and then the 8th and the 9th as necessary so
14 as not to overlap with Good Friday.

15 Let's see, all technical testimony shall be
16 presented to the Commission in writing and filed with the
17 Commission no later than 5 p.m. on March 18 was our previous
18 schedule. Filing would be sent to Commission Clerk Florene
19 Davidson.

20 And then any person wishing to present technical
21 testimony should speak with the Commission Clerk and sign
22 up -- I'm sorry, not technical testimony -- would present
23 any sort of comment, written comment, should send that to
24 Commission Clerk no later than 5 p.m. on the 30th. Just
25 going through this, I think that's predominantly it.

1 MS. MALAVE: Okay. You have the public comment
2 period would run the 60 days from January 30 through March
3 30 of 2021, and written comments would be accepted through 9
4 a.m. on March 30. Although, given -- well, I don't know
5 whether you want to extend that based on what you just did
6 with the other hearing, although the other hearing is
7 because it's two weeks.

8 CHAIRWOMAN SANDOVAL: I think I would prefer to
9 keep this one as it was because the other one is so long we
10 have time to take that into account after it. I want to
11 make sure that we have time to take that information into
12 account.

13 MS. MALAVE: Okay.

14 CHAIRWOMAN SANDOVAL: This one is slightly
15 different just because, one, we required a little bit longer
16 of a comment period than 60 days seems more appropriate
17 because there has not been, you know, the extensive public
18 engagement process prior, so I think that's the difference
19 in why 45 days is acceptable for the other rulemaking we
20 discussed versus 60 days for this one.

21 MS. MALAVE: Okay.

22 CHAIRWOMAN SANDOVAL: All right. Should we just
23 go through and make motions on these items?

24 MS. MALAVE: Sure.

25 CHAIRWOMAN SANDOVAL: Okay. I make a motion to

1 hold this rulemaking hearing on April 1, and April 8 and 9
2 as necessary. There will be a 60-day comment period with
3 comments due to the Commission by 5 p.m. on March 30 and
4 shall be sent to Commission Clerk Florene Davidson. Any
5 person who wishes to present oral non-technical testimony to
6 the Commission should notify clerk Florene Davidson no later
7 than 5 p.m. on March 30 as well.

8 All technical testimony shall be presented to the
9 Commission in writing and shall be filed by the Commission
10 no later than 5 p.m. on March 18, 2021. I think that's
11 predominantly it. Is there a second?

12 COMMISSIONER KESSLER: Second.

13 MS. MALAVE: Commissioner Kessler?

14 COMMISSIONER KESSLER: Approve.

15 MS. MALAVE: Commissioner Engler?

16 COMMISSIONER ENGLER: Approve.

17 MS. MALAVE: Commissioner Sandoval?

18 CHAIRWOMAN SANDOVAL: Approve. All right. The
19 motion passes unanimously.

20 (Motion passes unanimously.)

21 CHAIRWOMAN SANDOVAL: Anything that we missed,
22 Ms. Malave?

23 MS. MALAVE: I don't believe so. It was pretty
24 much covered.

25 CHAIRWOMAN SANDOVAL: Okay. All right. Well, we

1 will get these procedural orders out and that concludes
2 Agenda Item Number 6.

3 (Agenda Item 6 concluded.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

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4 REPORTER'S CERTIFICATE

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6 I, IRENE DELGADO, New Mexico Certified Court
7 Reporter, CCR 253, do hereby certify that I reported the
8 foregoing virtual proceedings in stenographic shorthand and
9 that the foregoing pages are a true and correct transcript
10 of those proceedings to the best of my ability.

11 I FURTHER CERTIFY that I am neither employed by
12 nor related to any of the parties or attorneys in this case
13 and that I have no interest in the final disposition of this
14 case.

15 I FURTHER CERTIFY that the Virtual Proceeding was
16 of poor to good quality.

17 Dated this 4th day of November 2020.

18

/s/ Irene Delgado

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Irene Delgado, NMCCR 253
License Expires: 12-31-20

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