

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

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IN RE THE APPLICATION OF THE NEW MEXICO  
OIL AND GAS ASSOCIATION FOR AMENDMENT  
OF CERTAIN PROVISIONS OF TITLE 19, CHAPTER 15,  
PART 16 OF THE NEW MEXICO ADMINISTRATIVE  
CODE CONCERNING LOG, COMPLETION, HYDRAULIC  
FRACTURING, AND WORKOVER REPORTS, STATEWIDE

Case No. 14753

EARTHWORKS'  
OIL AND GAS ACCOUNTABILITY PROJECT'S  
PRE-HEARING STATEMENT

Earthworks' Oil and Gas Accountability Project (OGAP) hereby files its Pre-hearing Statement for the hearing in this matter scheduled for November 17, 2011. Six copies of this Pre-hearing Statement are being filed pursuant to 19.15.3.11 NMAC. In accordance with 19.15.3.11.B(1), OGAP is represented in this matter by attorneys who are named below.

OGAP's witness

OGAP intends to call Gwen Lachelt as a witness to provide technical testimony in this matter. Ms. Lachelt's resume is attached as Exhibit A. As is indicated in her resume, Ms. Lachelt is the director and co-founder of OGAP. OGAP is a non-profit organization that works with urban, rural and Native communities to protect their homes, health, and environment from the impacts of oil and gas development. OGAP is a resource for these communities, providing expertise on oil and gas development, environmental impacts and public health impacts. OGAP has thousands of members nationwide and 400 members in New Mexico. OGAP and its members have an interest in the proposed hydraulic fracturing rule because it will impact how oil and gas companies conduct their operations in and near members' communities.

Ms. Lachelt has worked on oil and gas issues since 1988 when Amoco, now BP,

announced plans to drill a thousand gas wells in her community. She has dedicated her career to protecting landowner rights and air and water quality threatened by energy development. Her work to prevent and reduce the impacts caused by oil and gas development has resulted in numerous policy reforms and new laws at the federal, state and local level throughout the United States and Canada, including enactment of the New Mexico Surface Owners Protection Act, NMSA 1978 §§70-12-1 *et seq.* Ms. Lachelt has a B.A. in Political Science and pursued graduate studies in Environment & Community at Antioch University.

Ms. Lachelt's testimony

On the basis of her experience working with communities and surface owners impacted by oil and gas operations, Ms. Lachelt will testify in favor of the recommended modifications to proposed rule 19.15.16.18 filed in this matter by OGAP. A copy of those recommended modifications is attached as Exhibit B. In that copy, the changes to the rule proposed by the New Mexico Oil and Gas Association (NMOGA) are indicated by underlining. OGAP's recommended modifications to the rule are indicated by capitalization.

In general, OGAP supports full disclosure of all chemicals and other constituents of hydraulic fracturing operations. These operations have the potential to contaminate ground water. Disclosure is a public health and safety issue, and disclosure alone imposes no substantive standards on oil and gas operations. OGAP's position is that disclosure is necessary to protect landowners, oil and gas industry workers, regulatory professionals, first responders, and other health personnel who might be exposed to these substances. It also is OGAP's position that advance disclosure is needed because exposure can occur during the hydraulic fracturing operation as opposed to after the operation is complete. In the case of an unintended or accidental exposure, it is imperative that all affected parties have immediate access to all

information regarding the substances in question. Finally (although this is not in the recommended modifications that OGAP filed), OGAP advocates that disclosure also occur on the New Mexico Oil Conservation Division website in order to facilitate access by members of the public.

Specifically, Ms. Lachelt will address the following:

Ms. Lachelt will assert that in order for the proposed rule to be consistent with the principles of the New Mexico Surface Owners Protection Act that favor providing notice to the owners of surface lands where oil and gas drilling is proposed, the proposed rule should require disclosure of all fluids and substances to be used in hydraulic fracturing operations to the surface owner before hydraulic fracturing begins.

Ms. Lachelt also will testify that in order to make disclosure complete and meaningful for surface owners and members of communities in which oil and gas operations occur, and to make the proposed rule consistent with analogous requirements and proposed requirements in other states, the proposed rule should mandate disclosure of the type and volume of base fluids used in hydraulic fracturing, each additive used and the chemical ingredients in the additives, the additives' associated chemical abstracts service registry numbers, and the actual or maximum concentration of each chemical ingredient used in hydraulic fracturing. Ms. Lachelt also will advocate that this disclosure be mandatory without regard to whether there is an MSDS for the specific chemical or substance involved.

Finally, Ms. Lachelt will assert that the proposed rule should be modified to clarify that entities conducting hydraulic fracturing operations should report the required information to the FracFocus website or to the successor of that website so that the relevant information will be available even if the FracFocus website is no longer operative.

## Exhibits

OGAP anticipates that Ms. Lachelt will use the following exhibits in her testimony:

Ms. Lachelt's resume (attached Exhibit A);

OGAP's recommended modifications to NMOGA's proposed rule (attached Exhibit B);

Colorado's proposed rule governing disclosure with respect to hydraulic fracturing (attached Exhibit C);

Texas's proposed rule governing disclosure in connection with hydraulic fracturing (attached Exhibit D);

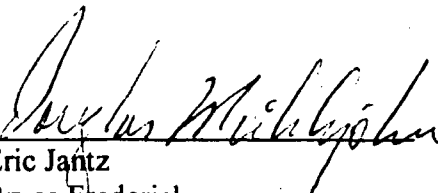
The provision of Wyoming's rule governing disclosure in connection with hydraulic fracturing (attached Exhibit E); and

An excerpt from a U.S. Department of Energy report addressing the FracFocus website (attached Exhibit F).

## Duration of testimony

OGAP anticipates that Ms. Lachelt's direct testimony will take one hour. OGAP does not know how long other parties' cross-examination of Ms. Lachelt will take.

Dated: November 9, 2011.



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