

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

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

**Petitioner.**

**CASE NO. 23580**

**WILDEARTH GUARDIANS' AND NEW ENERGY ECONOMY'S**  
**JOINT MOTION FOR REHEARING**

**I. Introduction**

This motion addresses two issues. First, evidence in the record supports a PFAS prohibition in all downhole operations, and there is no evidence in the record that supports a narrower prohibition that only applies to completion and recompletion operations. Adoption of a rule that is not based on substantial evidence and arbitrarily limits a PFAS prohibition to completion and recompletion activities results in reversible error. NMSA 1978 § 70-2-12.2 (Court of Appeals shall set aside rules that are “arbitrary, capricious or an abuse of discretion” or “not supported by substantial evidence in the record.”) Second, the Commission’s June 3, 2025 Order does not provide a date when the community notification provisions in 19.15.16.19(D) NMAC take effect. Therefore, WildEarth Guardians and New Energy Economy (“Joint Movants”) file this Motion for Rehearing, and request that 1) the Commission adopt a PFAS prohibition that includes all downhole operations consistent with the record in this matter, and 2) the Commission makes the

community notice provisions adopted in the June 3, 2025 Order effective when the rule becomes effective.

A PFAS prohibition that does not extend to all downhole operations is not a prohibition. The Commission's adoption of a rule prohibiting the use of PFAS in only completions and recompletions means that operators can use unlimited amounts of PFAS in other downhole operations like drilling and enhanced oil recovery.<sup>1</sup> This is significant in terms of the quantity of completion operations versus all downhole operations. OCD Deputy Director Brandon Powell testified that in addition to completions and recompletions, there are at least 7,000 *additional* downhole activities using chemical treatments per year in New Mexico. Mr. Powell testified, "for completion – completion and recompletion activities. In that scope, you're probably looking at two to 3,000 instances per year."<sup>2</sup> Compare that to all downhole operations which according to Mr. Powell's testimony include thousands more operational events per year. He stated, "If you talk about all downhole and chemical treatments, you're probably looking at tens of thousands of events per year."<sup>3</sup> Specifically for loss of well integrity events, Mr. Powell testified there are "typically once a year at most" related to completions and recompletions, and "If we expand that to downhole operations, you're still looking at probably a very small number, but it would be more than that one a year."<sup>4</sup>

The Commission can remedy this gap by 1) granting rehearing, 2) adopting a rule that prohibits PFAS in all downhole operations, and 3) applying the testing provisions for loss of well integrity events to all downhole operations. Joint Movants do not ask for the evidentiary record to

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<sup>1</sup> Powell, Tr. 11/13/2024 258:4-19.

<sup>2</sup> Powell, Tr. 11/13/2024 251:22-24

<sup>3</sup> Powell, Tr. 11/13/2024 251:25, 252:1-2; *see also Id.* 261:8-10 ("Yeah. For downhole activities, there's tens -- tens of thousands of downhole activities that involve injection of chemicals.")

<sup>4</sup> Powell, Tr. 11/14/2024 97:4-7.

be reopened. Instead, Joint Movants ask the Commission to apply the PFAS prohibition in all downhole operations based on the record developed during the November 2024 hearing and the ample evidence already before the Commission. Accordingly, Joint Movants request rehearing in this matter for the Commission to apply the PFAS prohibition and testing procedures to all downhole operations.

Second, the June 3, 2025 Order adopts community notice provisions in 19.15.16.19(D) NMAC, but leaves the effective date blank.<sup>5</sup> Evidence in the record shows that public accessibility to chemical disclosures increases trust in regulators.<sup>6</sup> Accordingly, the community notification provision should become effective upon the effective date of the rule.

Last, Joint Movants provide proposed redline changes to the language adopted by this Commission's June 3, 2025 Order at the end of this Motion.

## **II. Procedural Posture**

This issue arises out of the deliberations that the Commission conducted on March 11, 2025. During those deliberations, the Commission adopted the Oil Conservation Division's ("OCD") redlined proposal for 19.15.14.9(C) NMAC which limits the Commission's prohibition on PFAS substances to only completion and recompletion activities.<sup>7</sup> However, OCD's redline proposal for the scope of the PFAS prohibition was based on their *prior, pre-hearing* position.<sup>8</sup> At the May 15, 2025 hearing, Mr. Tremaine confirmed this fact stating, "We did not submit a final

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<sup>5</sup> OCC No. 23580 PFAS Rule Making Order and Reasons for the Action Taken at 15 (June 3, 2025)

<sup>6</sup> Brown, Tr. 11/12/2024 257:21-24; 258:1-5.

<sup>7</sup> OCC No. 23580 PFAS Rule Making Order and Reasons for the Action Taken at 11 (June 3, 2025)

<sup>8</sup> Compare OCD 1-0007 (limiting a PFAS prohibition to completion and recompletion activities) with OCD's Closing Argument at 3 paragraphs 3 and 10 ("The presence of PFAS as an additive in oil and gas *downhole* activities creates a potential pathway of exposure to humans" and "Prohibiting the use of defined PFAS compounds from use as *downhole* additives will not negatively affect the exploration, development, or production of oil and gas, because the industry has phased out the use of PFAS.") (emphasis added)

redline and instead relied on a record from the hearing and the parties' redlines. So the redline that's being referred to is the one that the Division submitted prior to the hearing."<sup>9</sup> Additionally, the distinction between prohibiting PFAS in completions and recompletions versus prohibiting PFAS in all downhole operations was a matter of significant discussion at the November hearing.<sup>10</sup>

On April 16, 2025, Guardians filed a Motion for Clarification asking the Commission to reopen deliberations pursuant to 19.15.3.13(A) NMAC. The Commission denied that motion on May 15, 2025 and declined to reopen deliberations. During that motion hearing, the Commission expressed some reservations about the procedural appropriateness of reopening deliberations instead of reconsidering the scope of the PFAS prohibition pursuant to the procedure afforded by NMSA 1978 Section 70-2-25 for rehearing after the Commission enters a final order.<sup>11</sup> The Commission entered its final order in this matter on June 3, 2025. That final order limits the PFAS prohibition to completion and recompletion activities.<sup>12</sup> Joint Movants now file this motion for rehearing under NMSA 1978 Section 70-2-25, to provide the Commission with the opportunity to reconsider the scope of the PFAS prohibition it will implement and ask that the Commission

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<sup>9</sup> Tremaine, Tr. 05/15/2025 40:8-12.

<sup>10</sup> See e.g., Powell, Tr. 11/14/2024 49:1-7; 221:20-25; 222:1-11; 258:4-19; Horwitt, Tr. 11/12/2024 197:3-8; See also, WG Exhibit 37 Juliane Glüge et al. An Overview of the Uses of Per- and Polyfluoroalkyl Substances (PFAS) –Electronic Supplementary Information 1. Environmental Science: Processes and Impacts (Oct. 30, 2020) at 50-51, 53. (Since 1956, PFAS including fluorosurfactants had been used or proposed to be used globally in oil and gas extraction methods other than fracking, including chemical-driven gas production, chemical flooding, and the drilling that precedes fracking and other oil and gas production techniques.)

<sup>11</sup> See Tr. 05/15/2025 36:3-16 Commr. Bloom: ("I would probably agree that a lot of us would like to hear from OCD on this, but by doing so, would we be reopening the evidentiary record and introducing something new here, because - that's my first question. I might have a follow-up." Chair Razatos: "I must admit Mr. Chandler, that's my question as well. If we do get information from the OCD stating that the information was a misrepresentation, does that open us up to - is that a reopening or is that something that you see - that will allow us to be able to say yay or nay on reopening this. I'm trying to figure out procedurally how that works."); Tr. 05/15/2025 37:16-19 Commr. Bloom: ("are we still going to be on solid ground if we reopen to deliberate on this point that was raised in a motion for clarification, you know, or is it or would you propose, counsel, that we look at rehearing.")

<sup>12</sup> OCC No. 23580 PFAS Rule Making Order and Reasons for the Action Taken (June 3, 2025)

prohibit PFAS in all downhole operations. Joint Movants further request that this Commission implement the rule's community notification provisions without delay.

### **III. Authority**

Joint Movants present this motion under the provisions of NMSA 1978 Section 70-2-25(A) which provides, “[w]ithin twenty days after entry of an order or decision of the commission, a party of record adversely affected may file with the commission an application for rehearing in respect of any matter determined by the order or decision, setting forth the respect in which the order or decision is believed to be erroneous.” Joint Movants file this motion on June 18, 2025, within the 20-day period following the Commission's June 3, 2025 Order.

### **IV. Argument**

A rule that imposes a PFAS prohibition limited to completions and recompletions is neither protective of public health, the environment, or freshwater resources, nor is it based on the evidence in the record. This Commission's rulemaking decisions must be supported by substantial evidence, and must not be arbitrary and capricious. *See Earthworks v. OCC*, 2016-NMCA-055, ¶ 10, (“In reviewing an administrative order on its merits, [] we determine: (1) whether the agency acted fraudulently, arbitrarily, or capriciously; (2) whether based upon the whole record on review, the decision of the agency is not supported by substantial evidence[.]”) (internal citation and quotations omitted). *See also* NMSA 1978 § 70-2-12.2 (Court of Appeals shall set aside rules that are “arbitrary, capricious or an abuse of discretion” or “not supported by substantial evidence in the record.”) Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Rutter & Wilbanks Corp. v. OCC*, 1975-NMSC-006, ¶ 20. Rules are arbitrary and capricious if “there is no rational connection between the facts found and choices

made, or necessary aspects of consideration or relevant factors are omitted.” *Bass Enters. Prod. Co. v. Mosaic Potash Carlsbad Inc.*, 2010-NMCA-065, ¶ 45, 148 N.M. 516.

Here, there is no evidence at all in the record to support a PFAS prohibition that is limited to only completions and recompletions, but there is ample evidence to prohibit PFAS use in all downhole operations. Therefore, a decision to limit the PFAS prohibition to completions and recompletions in the absence of any supporting evidence is arbitrary and capricious, and cannot meet the standard of “substantial evidence.”

**A. Evidence in the record supports a PFAS prohibition in all downhole operations, and there is no evidence in the record that supports a narrower prohibition limited to completions and recompletions.**

Where there is no evidence in the record to support a decision, the decision cannot be based on “substantial evidence” as required by the Oil and Gas Act. NMSA 1978 § 70-2-12.2. Such a decision is also arbitrary and capricious, because it is “without a rational basis when viewed in light of the whole record.” *Bass Enters. Prod. Co.*, 2010-NMCA-065, ¶ 45. The Commission’s June 3, 2025 Order confirms that there is no evidence to limit the PFAS prohibition to completion and recompletion operations, because the statement of reasons does not cite to any evidence that supports such a narrow prohibition instead of a broader prohibition that applies to all downhole operations.<sup>13</sup>

Here, the only party that entered evidence at the hearing that did not agree the PFAS prohibition should extend to all downhole operations is NMOGA. In its closing statement, NMOGA requested that the PFAS prohibition only apply “to hydraulic fracturing (“fracking”)

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<sup>13</sup> OCC No. 23580 PFAS Rule Making Order and Reasons for the Action Taken at 9-11, 13-14 (June 3, 2025).

completion, and recompletion fluids.”<sup>14</sup> However, NMOGA did not provide any record cites to support this position, nor is there any evidence in the record to support their position. Note that neither EOG Resources nor Mr. Maxwell entered any evidence at all during the hearing.

NMOGA’s statement that it supported a PFAS prohibition in “hydraulic fracturing (“fracking”) completion, and recompletion fluids,” is also unsupported by any argument. NMOGA made no argument in its closing brief to support its position.<sup>15</sup> As the New Mexico Court of Appeals recently stated in *Richard v. Marathon Petroleum Corp.*, No. A-1-CA-40747, May 14, 2025 (slip op.) “We will not review unclear arguments, or guess at what [a party’s] arguments might be.” (citing *Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339). Furthermore, NMOGA entered no evidence to support its position. *See Earthworks*, 2016-NMCA-055, ¶ 31 (“Petitioners state no factual basis for this, and the record does not support their argument.”)

In contrast, evidence in the record demonstrates why a PFAS prohibition in all downhole operations is necessary. As Mr. Horwitt pointed out in his direct testimony, the Glüge study, marked as WG Ex. 37, noted that since 1956, PFAS, including fluorosurfactants, have been used or proposed to be used globally in oil and gas extraction methods other than fracking, including chemical-driven gas production, chemical flooding, and the drilling that precedes fracking and other oil and gas production techniques.<sup>16</sup> This is important because any PFAS used downhole can come back up with flowback and produced water, which are mixed for purposes of disposal.<sup>17</sup>

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<sup>14</sup> NMOGA Closing Statement at 1.

<sup>15</sup> NMOGA Closing Statement at 1.

<sup>16</sup> See also, WG Exhibit 37 Juliane Glüge et al. An Overview of the Uses of Per- and Polyfluoroalkyl Substances (PFAS) –Electronic Supplementary Information 1. Environmental Science: Processes and Impacts (Oct. 30, 2020) at 50-51, 53.

<sup>17</sup> Powell, Tr. 11/14/2024 225:24-25 226:3-23 (“Do you agree that one of the purposes of the proposed rule is to protect groundwater? A: Yes. Q: And do you agree that PFAS could be a threat to groundwater contamination regardless of its source? A: Yes. Q: Do chemicals that are put downhole come back up? A:

Furthermore, Dr. Spear testified how chemicals introduced downhole can leak into the environment via microbial induced corrosion and seismic activity “between now and 500 years from now.”<sup>18</sup>

Mr. Horwitt further explained that wastewater spills after fracturing are not the only concern; spills of fracking or drilling fluids prior to downhole operations also pose a risk to freshwater.<sup>19</sup> However, if this Commission prohibits the use of PFAS in any downhole operation, then any spills that occur prior to downhole operations will not contain PFAS.

During the November rulemaking hearing, OCD witness Brandon Powell agreed in response to questions from Commissioner Ampomah that OCD supports a PFAS prohibition in all downhole operations:

“DR. AMPOMAH: OCD supports action regarding the banning of PFAS as defined through the testimony of other Division witnesses as a completion chemical additive. What about enhanced recovery? What about drilling?

THE WITNESS: So that’s what I mentioned earlier. A lot of the discussion up to this was around completion and recompletion activities so that’s why that was stated that way. But after relooking at the -- how WildEarth Guardians proposed it, OCD supports the ban of PFAS in all downhole activities.

DR. AMPOMAH: So in the final rule that we’ll get is going to be downhole activities, not necessarily completion.

THE WITNESS: Correct.”<sup>20</sup>

Mr. Powell is OCD’s deputy director in charge of the Engineering and Environmental Bureaus, with over 18 years of experience with the Division.<sup>21</sup> Mr. Powell confirmed OCD’s support for a

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I would assume they would come back up and the -- the fluids that weren't produced from the well. Q: So they could come back up [in] flow back? A: Yes. Q: They could be present [in] produce[d] water that's brought to the surface? A: Yes. Q: Are flow back and produced water mixed together for purposes of disposal? A: Yes. Q: For the chemicals that come -- that go downhole and come back up be used for [enhanced] oil recovery? A: Yes. Q: Could they be used for further fracking? A: Yes.”)

<sup>18</sup> Spear, Tr. 11/13/2024 78:13; 77-91

<sup>19</sup> Horwitt, Tr. 11/12/2024 217:12-25.

<sup>20</sup> Powell, Tr. 11/14/2024 258:4-19.

<sup>21</sup> OCD Ex. 2-0013, Direct Testimony of Brandon Powell; OCD Ex. 3 C.V. of Brandon Powell.



PFAS prohibition in downhole operations in response to questions from OCD's counsel.<sup>22</sup> Mr. Powell also testified at the hearing that there are many activities in addition to completions and recompletions that are considered downhole operations, including well treatment, maintenance, drilling, and enhanced oil recovery.<sup>23</sup> Mr. Powell also testified that the testing procedures that the rule would require in loss of well integrity events should also apply to all downhole operations.<sup>24</sup>

Furthermore, OCD maintained this position in its closing statement stating "The presence of PFAS as an additive in oil and gas *downhole* activities creates a potential pathway of exposure to humans" and "Prohibiting the use of defined PFAS compounds from use as *downhole* additives will not negatively affect the exploration, development, or production of oil and gas, because the industry has phased out the use of PFAS."<sup>25</sup> (Emphasis added). Guardians and New Energy Economy also discussed the downhole operations issue in their brief and requested a PFAS prohibition that covers all downhole operations.<sup>26</sup> Note that Guardians' August 23, 2025 Amended Proposed PFAS Rule<sup>27</sup> included a PFAS ban in downhole operations, as did Guardians original Petition for Rulemaking.

OCD also stated during the May 15, 2025 hearing on the Joint Motion for Clarification that it supported a ban on PFAS in all downhole operations. Mr. Tremaine stated "So OCD's final position was that -- and we do believe that it is reflected and supported in the record -- was that

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<sup>22</sup> Powell Tr. 11/14/2024 49:1-7.

<sup>23</sup> Powell, Tr. 11/14/2024 221:20-25; 222:1-11; 258:4-19.

<sup>24</sup> Powell, Tr. 11/14/2024 54:23-25; 55:1-7 (stating that the testing procedures in 19.15.16.17 NMAC that occur after a well integrity event "would actually be probably more inclusive if we used downhole operations.")

<sup>25</sup> OCD's Closing Argument at 3 paragraphs 3 and 10 (emphasis added).

<sup>26</sup> Joint Proponents brief at 37-38.

<sup>27</sup> WG Ex. 1.

downhole operations was appropriate, and I think that all of the parties found that to be acceptable at the hearing.”<sup>28</sup>

**B. A PFAS prohibition in all downhole operations is necessary to protect public health, the environment, and freshwater resources.**

If the Commission does not prohibit PFAS in all downhole operations, there will be no legal prohibition on the use of PFAS in downhole operations like drilling. Therefore, unlimited amounts of PFAS can be used in drilling. Any PFAS used in drilling will have multiple pathways to contaminate the environment. As explained at the hearing, both spills and loss of mechanical integrity events pose a risk to freshwater resources and public health.<sup>29</sup> Additionally, there is ample evidence in the record to show that once PFAS enters the environment, it is a threat to public health.<sup>30</sup> Once PFAS enters the environment it is mobile and persistent.<sup>31</sup>

Another example of the importance of prohibiting PFAS in all downhole operations is the recent well blowout that occurred near Galeton, Colorado on April 6, 2025. That event released an unknown volume<sup>32</sup> of “wellbore fluids and fluids native to the formation”<sup>33</sup> into the surrounding community, resulting in the evacuation of homes and closure of an elementary school within a ½ mile radius of the wellsite.<sup>34</sup> While events like these are rare, they illustrate the need to prohibit harmful, persistent substances like PFAS in all downhole operations. Once PFAS is introduced

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<sup>28</sup> Tr. 05/15/2025 Tremaine: 40:15-19.

<sup>29</sup> Joint Post-Hearing Closing Brief for Adoption of Proposed Rule Amendments on Behalf of WildEarth Guardians and New Energy Economy (“Joint Proponents’ Brief”) Section III(A) at 9-15.

<sup>30</sup> Joint Proponents’ Brief Section III(B) at 15-16.

<sup>31</sup> Joint Proponents’ Brief Section III(C) at 16-18.

<sup>32</sup> <https://ecmc.state.co.us/cogisdb/Facility/FacilityDetail?facid=489797>

<sup>33</sup> [https://ecmc.state.co.us/documents/media/galeton\\_Q&A\\_20250415.pdf](https://ecmc.state.co.us/documents/media/galeton_Q&A_20250415.pdf)

[https://ecmc.state.co.us/library.html#/special\\_projects/bishop](https://ecmc.state.co.us/library.html#/special_projects/bishop)

<sup>34</sup> See Attachment 1 Weld County, Colorado Evacuation Order; *see also*

<https://www.weld.gov/Government/Departments/Public-Information-Office/Bishop-Well-Incident/News-Updates>

into downhole operations, it will persist and can contaminate the environment through multiple pathways, including spills, loss of mechanical integrity events, and in the Galeton case, blowouts. As NMOGA's witness Dr. Richardson testified, the way to prevent PFAS contamination is to prohibit its use in the first place.<sup>35</sup> Dr. Richardson agreed that prohibiting PFAS "is the goal of this hearing."<sup>36</sup>

Allowing the use of PFAS and undisclosed chemicals in downhole operations other than completions and recompletions creates unnecessary risks to the environment and public health. As Mr. Powell testified, there is currently no legal restriction that prevents a company from using PFAS in future downhole operations:

Q: "Is there currently any regulatory restriction that you know of that prevents a company from using PFAS in future downhole operations?"

A: Currently or after this?

Q: Currently.

A: No."<sup>37</sup>

Without a ban in all downhole operations, PFAS can still be used in oil and gas production and can contaminate the environment. Unless this Commission prohibits PFAS in all downhole operations, there will be no restriction of PFAS use in drilling, well maintenance, enhanced oil recovery, and other operations that are not completions and recompletions.

### **C. "Downhole operations" is broader than completions and recompletions.**

The fact that OCD changed its position at the hearing and agreed that a PFAS prohibition in downhole operations is appropriate demonstrates that "completions and recompletions" is not comprehensive enough to protect public health and the environment, because it does not include

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<sup>35</sup> Richardson, Tr. 11/15/2024 252:25; 253:1-10. (When asked, "if you ban it in the first place you presumably wouldn't have to remove it from the environment?" he answered, "there is still going to be residual PFAS to deal with . . . But yes, if you ban a compound, it is no longer used, then you will not see it -- it's use in the environment will be less, that's correct.")

<sup>36</sup> Richardson, Tr. 11/15/2024 252:25; 253:1.

<sup>37</sup> Powell, Tr. 11/14/2024 232:3-9

all downhole operations. In fact, Mr. Powell testified that there are about 3,000 completion and recompletion activities per year in New Mexico, and there are tens of thousands of additional downhole activities using chemical treatments.<sup>38</sup> As explained above, OCD witness Brandon Powell testified at the hearing that a PFAS prohibition in all downhole operations is appropriate. This was a change from OCD's original position that the prohibition should apply to only completions and recompletions.

Our statutes, regulations and caselaw also distinguish between drilling and well completion by listing "completing" and "drilling" as separate operations. Under the Uniform Statute and Rule Construction Act NMSA 1978 Section 12-2A-1 *et seq.*, "A statute or rule is construed, if possible, to [] give effect to its entire text."<sup>39</sup> This means that "[C]ourts read an entire statute as a whole, considering statutory provisions in relation to one another, and give effect to all provisions of a statute so as to render no part inoperative or surplusage." *Pirtle v. Legis Council*, 2021-NMSC-026, ¶ 19. This rule applies equally to the interpretation of statutes and regulations. *Albuquerque Bernalillo Cnty. Water Util. Auth. v. N.M. Pub. Regul. Comm'n*, 2010-NMSC-013, ¶ 51, 148 N.M. 21 ("The canons of statutory construction guide our interpretation of administrative regulations.").

In the present matter, the listing of "completions" separately from "drilling" in New Mexico law means that these terms do not mean the same thing – they are separate operations. For example, the Oil and Gas Act separately lists "drilling" and "completing" in the pooling and spacing statute. *See* NMSA § 70-2-17 (placing a cap which charge for risk shall not exceed two hundred percent of the nonconsenting working interest owner's or owners' prorata share of the cost of *drilling* and *completing* the well.") (emphasis added).

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<sup>38</sup> Powell, Tr. 11/13/2024 251:25, 252:1-2, 261:8-10.

<sup>39</sup> NMSA 1978 § 12-2A-18(A)(2).

Our caselaw likewise makes this distinction. *See Evarts v. Stovall* 1938-NMSC-001, ¶ 5, 42 N.M. 32 (distinguishing between expenditures for drilling a well and separate costs to complete a well). *See also Mountain States Natural Gas Corp. v. Petroleum Corp. of Texas* 693 F.2d 1015, 1017 (10<sup>th</sup> Cir. 1982) (noting that the well at issue “was drilled to its maximum depth by November 17 and was completed on January 10, 1979.”) *See also Jalapeno Corp. v. N.M. Oil Conservation Commission*, A-1-CA-37449 ¶ 16 (non-precedential) (noting that this Commission adopted 19.15.13.8(A) NMAC to effectuate NMSA § 70–2–17 permitting pooling orders “to provide for the recovery of risk charges associated with the drilling, completion or working over and re-completion of each unit well for which the order provides.”) (internal quotations omitted)

Additionally, this Commission’s own rules distinguish completions from drilling. *See* 19.15.11.11(B) NMAC (“Drilling, completion, workover and well servicing operations involving a hydrogen sulfide concentration of 100 ppm or greater shall include hydrogen sulfide detection and monitoring equipment[.]”) and 19.15.13.8(B) NMAC (noting that “drilling, reworking, diverting, deepening, plugging back and testing the well; completing the well in a formation pooled by the order; and equipping the well for production” are all separate costs that can be recovered under this Commission’s “Charge for Risk” rules).

Legal treatises and other states likewise recognize this distinction. *See e.g.*, 8 Howard R. Williams & Charles J. Meyers, *Oil And Gas Law: Manual Of Oil And Gas Terms*, at 179 (d. 2015) (“In sum, the specialized industry definition of completion is primarily concerned with *an event following drilling. . .*”) (emphasis added) (citing *Burns v. Louisiana Land Exploration Co.*, 870 F.2d 1016 (1989)); Ariz. R.S. § 27-551(2) (““Completion operations’ means work performed in an oil or gas well *after the well has been drilled* to the point where the production string of casing is to be set[.]”)

In conclusion, our statutes, regulations, and caselaw list different downhole operations separately, because they are separate operations. Drilling is not the same as “completions and recompletions.” OCD recognized this and changed their position during the hearing to support a PFAS prohibition in all downhole operations.

**D. The Commission does not have to adopt a definition for “downhole operations” in order to prohibit PFAS in downhole operations, but there is evidence in the record to provide a definition if the Commission decides to add one to the rule.**

During deliberations, Commissioners also expressed concern that the lack of a definition for “downhole operations” might preclude a PFAS prohibition broader in scope than one that applies to only completions and recompletions.<sup>40</sup> The Commission’s June 3, 2025 Order reflects this fact stating “Petitioner’s proposed change to include ‘downhole operations’ was not adopted because this term was not adopted in the definitions section.”<sup>41</sup> However, the absence of a definition for “downhole operations” in Joint Movants’ proposed rule does not affect the Commission’s ability to prohibit PFAS in downhole operations, because it is a commonly understood industry term. When asked if including a definition for “downhole operations” was necessary for the proposed rule, Mr. Powell testified that there was no need to define “downhole operations”, because it is “a commonly used term for any operations that happen in the well.”<sup>42</sup> Note that this explanation is virtually the same as the definition proposed by Guardians – “‘Downhole operations’ means oil and gas production operations that are conducted underground.”<sup>43</sup> Therefore, if the Commission wants to insert a definition for “downhole

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<sup>40</sup> Tr. 05/15/2025 Ampomah: 50:5-10 (“Because the way I see it is that once we open it up for downhole operations, then we are going to be forced to define what the downhole operations is, and that, more or less, you know, negates most of the discussions that we had, you know, as part of the deliberations.”)

<sup>41</sup> OCC No. 23580 PFAS Rule Making Order and Reasons for the Action Taken at 11, ¶ 4 (June 3, 2025)

<sup>42</sup> Powell Tr. 11-14-24 49-18-24

<sup>43</sup> WG Ex. 1.

operations” into the final rule it can adopt the definition proposed by Guardians or adopt the definition provided by Mr. Powell at the hearing. It can also decide that a definition for “downhole operations” is unnecessary, because the term is commonly understood as Mr. Powell explained in his testimony.

**E. The community notice provisions of 19.15.16.19(D) NMAC should become effective on the effective date of the rule.**

Evidence in the record shows public accessibility to chemical disclosures increases trust in regulators. As Dr. Brown explained:

[I]f you don't tell somebody that something[']s toxic or something is there, and you know it, and they find out that you didn't tell it to them, you [] cease becoming a trusted source. And once you cease to become a public trusted source, the public health community and the government overall loses its ability to protect the population, because [people] just don't believe you . . . They think you lie.”<sup>44</sup>

Dr. Brown elaborated on this point using the Flint water crisis as an example saying, “In Flint, the government covered up the problem of lead exposure in children from drinking water which led to higher exposures” and concluded “disclosure leads to trust” and “half-truths lead to skepticism.”<sup>45</sup> Because notification will lead to trust, this Commission should not delay in requiring community notification, and the provisions of 19.15.16.19(D) NMAC should become effective on the effective date of the rule.

**V. Conclusion**

A PFAS prohibition that does not apply to all downhole operations is not protective of public health, the environment, or freshwater resources. The PFAS prohibition in completions and recompletions adopted by this Commission does not include other downhole operations like

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<sup>44</sup> Brown, Tr. 11/12/2024 257:21-24; 258:1-5.

<sup>45</sup> WG Ex. 97 2:15-18.

drilling or enhanced oil recovery.<sup>46</sup> The Commission must prohibit PFAS in all downhole operations based on evidence that is already in the record in this matter. Because there is no contravening evidence to base a decision upon, arbitrarily limiting the PFAS prohibition to only completion and recompletion operations would constitute reversible error. *Herman v. Miners' Hosp.*, 1991-NMSC-021, ¶ 6, 111 N.M. 550 (“When applying whole record review, the reviewing court views the evidence in the light most favorable to the agency decision, but may not view favorable evidence with total disregard to contravening evidence.”) The Commission does not need, but can adopt a definition for “downhole operations” to effectuate this prohibition. Last, the community notification provisions should become effective upon the effective date of the adopted regulation.

WHEREFORE, Joint Movants respectfully request that the Commission grant their Motion for Rehearing in this matter for the sole purposes of prohibiting the use of PFAS in downhole operations and making the community notification provisions effective on the effective date of the regulation. Joint Movants request this Commission implement the PFAS ban in all downhole operations consistent with the evidence already in the record in this proceeding. Redlined language that would implement the relief requested by Joint Movants is below. The redlines are changes to the language adopted in the Commission’s June 3, 2025 Order:

**19.15.7.16 “~~Well Completion or Recompletion~~ Downhole Operations Report and Log (Form C-105, C-103).”**

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

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<sup>46</sup> Powell, Tr. 11/14/2024 258:4-19.



were added to the fluid used in the ~~completion or recompletion~~ downhole operations 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.

#### **19.15.14.9 “Applications”**

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~~ downhole operations of the well;

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

A.If ~~completing~~ downhole operations, 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~~ downhole operations 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~~ any downhole operation 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.

**19.15.16.19 “~~Log, Completion and Workover~~ Downhole Operations Reports”**

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

Prior to filing this motion, Joint Movants requested positions from the other parties. OCD takes no position on this motion. NMOGA, Mr. Maxwell and EOG Resources oppose this motion.

Respectfully submitted June 18, 2025,

WILDEARTH GUARDIANS

/s/ Tim Davis

Tim Davis

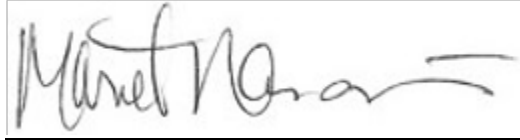
WildEarth Guardians

301 N. Guadalupe Street, Suite 201

Santa Fe, NM. 87501

(505) 988-9126  
[tdavis@wildearthguardians.org](mailto:tdavis@wildearthguardians.org)

NEW ENERGY ECONOMY

A handwritten signature in black ink, appearing to read "Mariel Nanasi", is enclosed within a rectangular box. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mariel Nanasi, Esq.  
422 Old Santa Fe Trail  
Santa Fe, NM 87501  
(505) 469-4060  
[mariel@seedsbeneaththesnow.com](mailto:mariel@seedsbeneaththesnow.com)

CERTIFICATE OF SERVICE

I certify that a true and correct copy of WildEarth Guardians' and New Energy Economy's Joint Motion for Rehearing was e-mailed to the following on June 18, 2025:

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[occ.hearings@state.nm.us](mailto:occ.hearings@state.nm.us)

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[inspector@sunshineaudit.com](mailto:inspector@sunshineaudit.com)

/s/ Tim Davis  
Tim Davis

**From:** [Roy Rudisill](#)  
**To:** [Roy Rudisill](#)  
**Subject:** FW: CodeRed and IPAWS for well incident  
**Date:** Wednesday, May 28, 2025 12:00:53 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[image007.png](#)  
[image008.png](#)

---

**Roy Rudisill**

Director, Weld County

Office of Emergency Management

Desk: 970-304-6540

Cell: 970-381-0417

P.O. Box 758, 1150 O St., Greeley, CO 80632

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**From:** Tina Powell <[tpowell@weld.gov](mailto:tpowell@weld.gov)>  
**Sent:** Wednesday, May 28, 2025 11:51 AM  
**To:** Roy Rudisill <[rrudisill@weld.gov](mailto:rrudisill@weld.gov)>  
**Subject:** FW: CodeRed and IPAWS for well incident

Let me know if you need anything different.

**Tina Powell**

Director of Public Safety Communications

Public Safety Communications

Desk: 970-400-2895

Cell: 970-646-3557

1551 N. 17<sup>th</sup> Ave., Ste. 2, Greeley, CO 80631[Join Our Team](#)

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---

**From:** Allison Theunissen <[atheunissen@weld.gov](mailto:atheunissen@weld.gov)>  
**Sent:** Tuesday, May 27, 2025 11:44 AM  
**To:** Tina Powell <[tpowell@weld.gov](mailto:tpowell@weld.gov)>  
**Subject:** CodeRed and IPAWS for well incident

IPAWS:

Connected  
IPAWS

201896  
COG ID

12/21/2025  
Certificate Expiration

Live  
Environment

CLOSE

Launch Records

2025

Q

STATUS ^	LAUNCH DATE/TIME ^	EXPIRATION DATE/TIME ^	EVENT CODE ^	TYPE ^	MESSAGE NAME ^	LAUNCHED BY ^	TIME ZONE ^	LAUNCH ID ^
Expired	Apr 06 2025 21:40	Apr 06 2025 23:40	EVI	Alert	20250406- 00724	COWeldCou nty_201896_ 11	MST	53312 ^

20250406-  
00724

LAUNCH ID  
#53312

EVENT CODE

EVI

CATEGORY

HEALTH

WEA HANDLING

IMMINENT  
THREAT

URGENCY

IMMEDIATE

CERTAINTY

OBSERVED

SEVERITY

EXTREME

RESPONSE TYPE

EVACUATE

REQUESTING  
AGENCY

OEM

Active For  
02h 0m 0s ● EXPIRED

LAUNCHED ON

APR 06 2025 21:40

EXPIRES ON

APR 06 2025 23:40

TIME ZONE

MST

Validation Codes

Code Name

Code Number

Result

CAPEX

200

Ack

Esri, TomTom, Garmin, Safe...

Powered by Esri

FIPS CODES

008123

WELD,CO

COGS

VIEW CARRIER RESPONSES

Messages

EAS Message

ENGLISH

THIS IS WELD COUNTY 9 1 1 WITH A MESSAGE FROM THE GALETON FIRE DEPARTMENT. UNITS ARE WORKING AN INCIDENT IN THE AREA OF WELD COUNTY ROAD 51 AND WELD COUNTY ROAD 72. IF YOU ARE WITHIN ONE HALF MILE OF THE AREA PLEASE EVACUATE TO A SAFE LOCATION. FURTHER DIRECTIONS WILL FOLLOW. THANK YOU.

WEA Message

ENGLISH (90 CHARACTERS)

PLEASE EVACUATE THE AREA OF WCR 51 AND WCR 72 WITHIN A ONE HALF MILE RADIUS. THANK YOU

ENGLISH (360 CHARACTERS)

THIS IS WELD COUNTY 9 1 1 WITH A MESSAGE FROM THE GALETON FIRE DEPARTMENT. UNITS ARE WORKING AN INCIDENT IN THE AREA OF WELD COUNTY ROAD 51 AND WELD COUNTY ROAD 72. IF YOU ARE WITHIN ONE HALF MILE OF THE AREA PLEASE EVACUATE TO A SAFE LOCATION. FURTHER DIRECTIONS WILL FOLLOW. THANK YOU.

Audio Message (EAS Only)

ENGLISH

TTS\_Mp3.mp3

MP3 Message

## EAS Message:

THIS IS WELD COUNTY 9 1 1 WITH A MESSAGE FROM THE GALETON FIRE DEPARTMENT. UNITS ARE WORKING AN INCIDENT IN THE AREA OF WELD COUNTY ROAD 51 AND WELD COUNTY ROAD 72. IF YOU ARE WITHIN ONE HALF MILE OF THE AREA PLEASE EVACUATE TO A SAFE LOCATION. FURTHER DIRECTIONS WILL FOLLOW. THANK YOU.

## WEA Message:

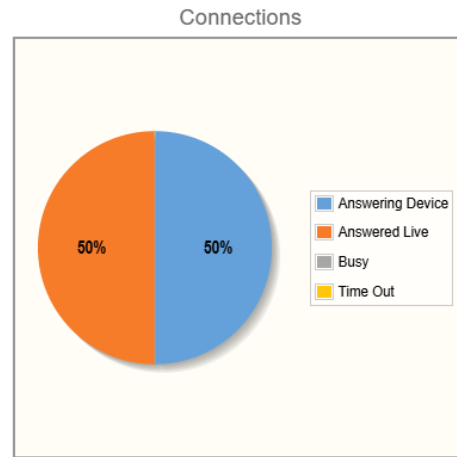
90 Character - PLEASE EVACUATE THE AREA OF WCR 51 AND WCR 72 WITHIN A ONE HALF MILE RADIUS. THANK YOU

360 Character - THIS IS WELD COUNTY 9 1 1 WITH A MESSAGE FROM THE GALETON FIRE DEPARTMENT. UNITS ARE WORKING AN INCIDENT IN THE AREA OF WELD COUNTY ROAD 51 AND WELD COUNTY ROAD 72. IF YOU ARE WITHIN ONE HALF MILE OF THE AREA PLEASE EVACUATE TO A SAFE LOCATION. FURTHER DIRECTIONS WILL FOLLOW. THANK YOU.

CodeRed:

Scenario 04/06/2025-18:48:37

Launch ID	#4568641
Launched By	Communications Supervisor
Notification Type	Emergency
Auto Recall	Yes
Started	4/6/2025 6:58:48 PM
Ended	4/6/2025 7:00:34 PM
Expiration	None
Voice Minutes Used	7
Emails	4
Phone Calls	10
Text Messages	9
TDD	0
Mobile	Yes
Attempted Calls	10
Numbers Reached	10
Numbers Not Reached	0



## CALL SUCCESS

Optional Settings

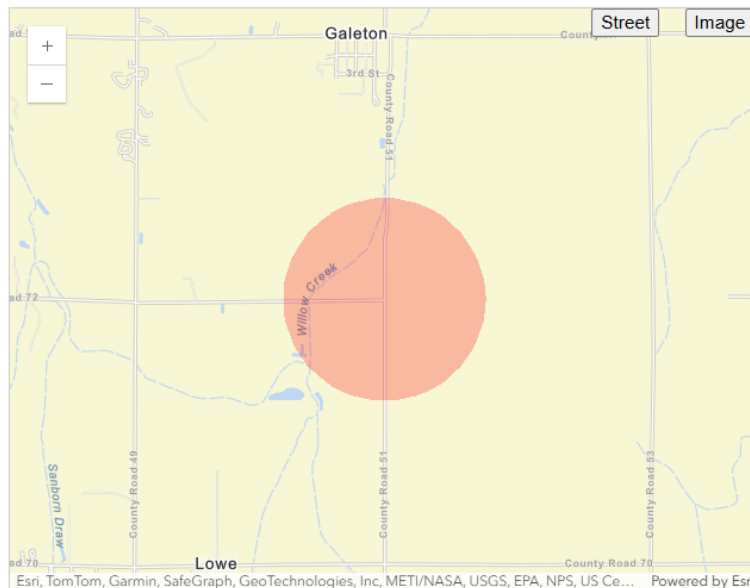
Caller ID #: 8664195000

[VIEW CONTACTS](#)

MESSAGES

**FOLLOW UP**

**Job Follow Up - Launch ID #4568641**




### Summary:








Total Calls: 10  
Attempted Calls: 10  
Always Calls: 5  
Geographic: 9  
Non-Geographic: 1  
Connected: 10  
Non-Connected: 0

**Legend:**

Multiple Contacts

 Geographic Cluster

Single Contacts

-  Live Answer
-  Answering Device
-  Line Busy
-  Operator Intercept
-  Fax Machine
-  No Answer
-  Time Out

### Follow Up Action

RE-CALL CONNECTS

EXPAND CALLING AREA

[SEND EMAILS](#)

SEND TEXT

**LOOKUP BY PHONE**



Scenario 04/06/2025-18:48:37

Launch ID  
Launched By  
Notification Type  
Auto Recall  
Started  
Ended  
Expiration  
Voice Minutes Used  
Emails  
Phone Calls  
Text Messages  
TDD  
Mobile  
Attempted Calls  
Numbers Reached  
Numbers Not Reached  
Optional Settings  
Caller ID #

VIEW CONTACTS  
FOLLOW UP

### Voice Messages

Primary Voice Message

0:00 / 0:20

### Text Messages

Text Message

THIS IS WELD COUNTY 9 1 1 WITH A MESSAGE FROM THE GALETON FIRE DEPARTMENT. UNITS ARE WORKING AN INCIDENT IN THE AREA OF WELD COUNTY ROAD 51 AND WELD

Email Message

THIS IS WELD COUNTY 9 1 1 WITH A MESSAGE FROM THE GALETON FIRE DEPARTMENT. UNITS ARE WORKING AN INCIDENT IN THE AREA OF WELD COUNTY ROAD 51 AND WELD

TDD Message

THIS IS WELD COUNTY 9 1 1 WITH A MESSAGE FROM THE GALETON FIRE DEPARTMENT. UNITS ARE WORKING AN INCIDENT IN THE AREA OF WELD COUNTY ROAD 51 AND WELD

Answering Device  
Answered Live  
Busy  
Time Out

## Text message:

THIS IS WELD COUNTY 9 1 1 WITH A MESSAGE FROM THE GALETON FIRE DEPARTMENT. UNITS ARE WORKING AN INCIDENT IN THE AREA OF WELD COUNTY ROAD 51 AND WELD COUNTY ROAD 72. IF YOU ARE WITHIN ONE HALF MILE OF THE AREA PLEASE EVACUATE TO A SAFE LOCATION. FURTHER DIRECTIONS WILL FOLLOW. THANK YOU.

## Email message:

THIS IS WELD COUNTY 9 1 1 WITH A MESSAGE FROM THE GALETON FIRE DEPARTMENT. UNITS ARE WORKING AN INCIDENT IN THE AREA OF WELD COUNTY ROAD 51 AND WELD COUNTY ROAD 72. IF YOU ARE WITHIN ONE HALF MILE OF THE AREA PLEASE EVACUATE TO A SAFE LOCATION. FURTHER DIRECTIONS WILL FOLLOW. THANK YOU.

## TDD Message:

THIS IS WELD COUNTY 9 1 1 WITH A MESSAGE FROM THE GALETON FIRE DEPARTMENT. UNITS ARE WORKING AN INCIDENT IN THE AREA OF WELD COUNTY ROAD 51 AND WELD COUNTY ROAD 72. IF YOU ARE WITHIN ONE HALF MILE OF THE AREA PLEASE EVACUATE TO A SAFE LOCATION. FURTHER DIRECTIONS WILL FOLLOW. THANK YOU.

Thank you,

**Allison Theunissen**

E911 MSAG and Program Manager

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