STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

APPLICATION OF OIL CONSERVATION DIVISION TO ADOPT 19.15.41 NMAC, 19.15.42 NMAC, AND 19.15.43 NMAC, STATEWIDE **CASE NO. 25875**

OIL CONSERVATION DIVISION'S PROPOSED STATEMENT OF REASONS WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Oil Conservation Division, through undersigned counsel, hereby submits its Proposed Statement of Reasons with Findings of Fact and Conclusions of Law. This Statement of Reasons with Findings of Fact and Conclusions of Law is drafted in the form of a proposed order for ease of use by the Commission. *See* 19.15.3.12(A)(2)(g) NMAC.

I. PROCEDURAL BACKGROUND

A. PETITION

1. Pursuant to 19.15.3.8 NMAC, any person may petition the Commission to adopt, amend or repeal any rule within the commission's jurisdiction.

2. On December 22, 2025, the Division filed its Application to Adopt 19.15.41 NMAC, 19.15.42 NMAC, and 19.15.43 NMAC. The Application also requested that the Commission set a special hearing on the Rule and assign a Hearing Officer to oversee the hearing process.

3. On January 15, 2026, the Commission met during a duly called meeting with a quorum and granted a hearing on the Division's Application.

4. On May 13, 2026, the Commission issued an Order Appointing Hearing Officer and assigned Felicia Orth as the Hearing Officer.

5. On May 18, 2026, the Division filed and served an Amended Application to Adopt 19.15.41 NMAC, 19.15.42 NMAC, and 19.15.43 NMAC. The Amended Application contained clerical language and citation updates from the original Application. The Application also requested that the Commission set a special hearing on the proposed rule beginning July 27, 2026.

6. On June 8, 2026, the Hearing Officer issued a Prehearing Procedural Order, outlining the process and deadlines for the rulemaking proceeding. *See* Prehearing Procedural Order (June 8, 2026).

7. The hearing was set to begin at 9 a.m. on July 27, 2026, and continue as necessary through August 7, 2026. *Id*., at ¶ 1.

8. As of filing this Statement of Reasons, the following parties filed an entry of appearance in the rulemaking proceeding: Oil Conservation Division (i.e., Petitioner); Oxy USA, Inc., New Mexico Oil and Gas Association ("NMOGA"), Diné C.A.R.E., Earthworks, San Juan Citizens Alliance, Sierra Club Rio Grande Chapter, Tó Nizhóní Áni, and Western Environmental Law Center (collectively "Conservation Groups"); Center for Biological Diversity; and WildEarth Guardians.

B. PUBLIC ENGAGEMENT

9. Prior to initiation of the rulemaking proceeding, the Class VI proposed rules were posted to the Oil Conservation Division website, a notice was published on August 22, 2025, and workshop invitation emails were sent to relevant listservs of interested organizations.[1]

10. Additionally, informational letters were sent out to 23 Tribal Nations represented in New Mexico indicating the State's intention to apply for Class VI primacy.[2]

[1] See https://www.emnrd.nm.gov/ocd/wp-content/uploads/sites/6/Class-VI-Public-Notice-Public-Comment-1.pdf
[2] OCD Exhibit 14 at 5-6

11. Stakeholders engaged in the outreach process included community members and community leadership, first responders, industry professionals, trade organizations, non-governmental organizations (NGOs), landowners, Tribal leaders and members, representatives of regulatory bodies, the State Land Office, universities and community colleges, and state legislators.[3] The Division further held a Class VI Primacy workshop on October 9, 2025, for purposes of soliciting feedback.[4]

12. In addition to accepting feedback on the proposed regulatory changes during the aforementioned engagement process, the Division continued to ensure it was able to accept public comments in writing via electronic mail and ensured that the public could comment directly to the Commission.

C. PUBLIC NOTICE

13. The Commission and the Division provided all legally required notices for this rulemaking hearing.

14. Upon filing the Petition and the Commission's decision to grant a hearing, the Commission published an advertisement or "notice of rulemaking hearing" in the New Mexico Register to provide public notice of (1) the proposed rules, (2) the dates and times of the hearing, and (3) the procedures for public comment on the proposed rules. The notice of rulemaking hearing was published by the SRCA, at Volume XXXVII, Issue 11, on June 9,2026. The Commission satisfied the New Mexico Register public notice requirements in the State Rules Act, NMSA 1978, Section 14-4-5.2(A), and 19.15.3.9(A)(6) NMAC.

[3] *Id*. at 6

[4] https://www.eventbrite.com/e/the-importance-of-class-vi-primacy-tickets-1657684080709?utm-campaign=social&utm-content=attendeeshare&utm-medium=discovery&utm-term=listing&utm-source=cp&aff=ebdsshcopyurl

15. The Commission/Division published the notice of rulemaking hearing in newspapers of general circulation throughout New Mexico on June 9, 2026, specifically the Albuquerque Journal. Thus, the Commission complied with the newspaper public notice requirements in 19.15.3.9(A) NMAC.

16. Furthermore, the Division distributed rulemaking information by:

a. Posting the notice of rulemaking hearing on the Division's Announcements and Notification website at https://www.emnrd.nm.gov/ocd/ocd-announcements-and-notifications/ Thus, the Commission, through the Division, complied with the public notice requirements in Section 14-4-2(E)(1) of the State Rules Act and 19.15.3.9(A)(1) NMAC.

b. Posting the notice of rulemaking hearing on the New Mexico Sunshine Portal at https://statenm.my.salesforce-sites.com/public/SSP_RuleHearingSearchPublic. Thus, the Commission complied with the public notice requirements in Section 14-4-2(E)(2) of the State Rules Act and 19.15.3.9(A)(2) NMAC.

c. Making the notice of rulemaking hearing, petition, statement of reasons, and proposed rules available as paper copies in the agency's district, field, and regional offices. Thus, the Commission complied with the public notice requirements in Section 14-4-2(E)(3) of the State Rules Act and 19.15.3.9(A)(3) NMAC.

d. Sending notice of rulemaking hearing by e-mail to persons who have made a written request for notice from the Commission of announcements addressing the subject of the rulemaking proceeding and who have provided an e-mail address to the Commission. Thus the Commission complied with the public notice requirements in Section 14-4-2(E)(4) of the State Rules Act and 19.15.3.9(A)(4) NMAC.

e. Providing it to the New Mexico Legislative Council Service for distribution to appropriate interim and standing legislative committees. Thus the Commission complied with the public notice requirements in Section 14-4-2(E)(7) of the State Rules Act and 19.15.3.9(A)(5) NMAC.

17. Pursuant to the State-Tribal Collaboration Act, NMSA 1978, Sections 11-18-1 to –5 the Commission provided the notice of rulemaking hearing to Tribes, Nations, and Pueblos.

18. Therefore, the Division and the Commission provided all statutory and regulatory required notices of the hearing to the public.

D. HEARING LOGISTICS

19. The Parties, other than the Division (i.e., the Petitioner), seeking to appear in the hearing filed their entries of appearance on or before June 29, 2026.

20. Parties seeking to present technical testimony, including the Division, filed notices of intent to present such testimony, with their written direct testimony and exhibits, on or before June 29, 2026.

21. Prior to the public rulemaking hearing, parties seeking to present demonstrative exhibits during their testimony, including the Division, filed demonstrative exhibits to support their case.

22. The Commission ordered the hearing be conducted in a hybrid format, with both virtual and in-person participation options. The hearing was held virtually via Teams and in person at the Pecos Hall on the first floor of the Wendell Chino Building, 1220 S. St. Francis Drive, Santa Fe, NM 87505.

23. The Commission held a public rulemaking hearing on July 27, 2026 to August 3, 2026 to hear the parties' cases and oral public comment.

24. All interested persons were given a reasonable opportunity to submit data, views, or arguments orally, and in writing, and to examine witnesses testifying at the hearing. *See* NMSA 1978, § 70-2-23; *see also* 19.15.3.12 NMAC; *Sw. Pub. Serv. Co. v. New Mexico Pub. Regul. Comm'n*, 2025-NMSC-013, ¶ 48, 572 P.3d 878, 897 ("Any right in a rulemaking to notice and an opportunity to be heard is statutory and does not result from the constitutional guarantee of due process."); *Livingston v. Ewing*, 1982-NMSC-110, ¶ 14, 98 N.M. 685, 652 P.2d 235 ("There is no fundamental right to notice and hearing before the adoption of a rule; such a right is statutory only.").

25. The Division submitted Applicant's Notice of Final Proposed Changes to OCD Exhibits 1, 2, and 3 on September 11, 2026.

E. PUBLIC RECORD

26. The following exhibits filed into the docket were admitted into the record during the hearing: [INSERT BASED ON HEARING].

27. Demonstrative exhibits used by the parties' witnesses are not evidence admitted into the record that the Commission may rely upon for reasoning to support its decision.

F. DELIBERATIONS

28. After the close of the record, the Commission – with a quorum – deliberated on the rules on [INSERT DATE BASED ON DELIBERATION DATE].

29. The Commission considered all facts and circumstances and concluded Parts 41 through 43, as proposed by the Division, satisfy the directives for conservation of oil and gas, the prevention of waste of oil and gas as a result of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations. Parts 41 through 43, as

proposed by the Division, also satisfy the directives of the Geologic Carbon Dioxide Storage Stewardship Act.

II. LEGAL AUTHORITY

A. AUTHORITY OF THE COMMISSION AND DIVISION

30. The New Mexico Legislature may delegate rulemaking authority to an administrative agency through an enabling statute. NMSA 1978, § 70-2-11; *New Energy Economy, Inc. v. Shoobridge*, 2010-NMSC-049, ¶ 14, 149 N.M. 42, 243 P.3d 746.

31. The Oil Conservation Division ("Division" or "OCD") has jurisdiction and authority to enforce the Geologic Carbon Dioxide Storage Stewardship Act, NMSA 1978, Sections 74-14-1 through 74-14-7 ("Stewardship Act"). NMSA 1978, § 74-14-3(B).

32. The Stewardship Act expressly authorizes the Division to adopt and promulgate rules and issue orders implementing the Act. NMSA 1978, § 74-14-3(B).

33. The Oil Conservation Commission ("Commission" or "OCC") exercises concurrent jurisdiction and authority with the Division. NMSA 1978, § 70-2-6(B).

34. The Stewardship Act expressly references the federal Underground Injection Control ("UIC") Class VI program and defines the sequestration facilities subject to the Act to include injection wells used for geologic sequestration. NMSA 1978, § 74-14-2.

35. The Stewardship Act contemplates regulation of sequestration facilities whose injection operations are authorized under the federal UIC Class VI program. NMSA 1978, §§ 74-14-2 to -6.

36. The Division cannot effectively administer the Stewardship Act's provisions governing closure, transfer of responsibility, long-term stewardship, liability, and the stewardship

fund without enforceable requirements governing the construction, operation, monitoring, plugging, and closure of Class VI wells.

37. The authority necessary to regulate the complete operational life cycle of a sequestration facility is therefore expressly granted by, or fairly implied from, the Division's authority to implement and enforce the Stewardship Act.

38. The Oil and Gas Act independently authorizes the Division and the Commission to make and enforce rules, regulations, and orders and to do whatever is reasonably necessary to carry out the purposes of that Act, whether or not the authority is specified in a particular section. NMSA 1978, § 70-2-11(A).

39. The Oil and Gas Act authorizes the Division and the Commission to prevent waste and protect correlative rights. NMSA 1978, § 70-2-11.

40. The Oil and Gas Act authorizes regulation of matters concerning protection of fresh water, prevention of waste, and protection of oil and gas resources. NMSA 1978, § 70-2-12(B).

41. The Final Proposed Rules address matters within the Division's traditional jurisdiction and technical expertise, including well siting, construction, integrity, operation, injection, monitoring, plugging, prevention of waste, and protection of fresh-water resources.

42. The Legislature has specifically authorized the Commission to regulate the disposition, handling, transportation, storage, recycling, or disposal of produced water pursuant to authority delegated under the federal Safe Drinking Water Act in a manner that protects public health, the environment, and fresh-water resources. NMSA 1978, § 70-2-12(B)(15).

43. Although Section 70-2-12(B)(15) does not independently address Class VI wells, it confirms the Legislature's determination that the Division and the Commission are appropriate

agencies to administer underground-injection authority delegated under the Safe Drinking Water Act.

44. The Stewardship Act and the Oil and Gas Act provide complementary sources of authority for the proposed Class VI program.

45. The Stewardship Act supplies direct authority over geologic-sequestration facilities, rulemaking authority, and implementation of the State's long-term stewardship responsibilities.

46. The Oil and Gas Act supplies complementary technical, administrative, and enforcement authority over protection of fresh water, prevention of waste, and protection of correlative rights.

47. The Legislature has therefore granted the Division sufficient authority to propose and administer, and the Commission sufficient authority to adopt and enforce, rules governing Class VI wells and geologic-sequestration facilities.

48. Parts 41, 42, and 43 of Title 19, Chapter 15 NMAC are reasonably necessary to implement the authority and responsibilities assigned to the Division and the Commission by the Stewardship Act and the Oil and Gas Act.

49. The Final Proposed Rules are reasonably consistent with the statutes authorizing their adoption and are within the delegated authority of the Division and the Commission.

B. STATUTORY CONSTRUCTION DETERMINES THE LEGISLATIVE REQUIREMENTS FOR THE RULES

50. The purpose of statutory construction is to ascertain and give effect to the Legislature's intent.[5] *Badilla v. Wal-Mart Stores E. Inc.*, 2015-NMSC-029, ¶ 12, 357 P.3d 936; *see also* NMSA 1978, § 12-2-19 ("The text of a statute or rule is the primary, essential source of its meaning"). The Court looks "first to the plain language of the statute, giving the words their ordinary meaning, unless the Legislature indicates a different one was intended." *Badilla*, 2015-NMSC- 029, ¶ 12. Where the language is "clear and unambiguous," the court will end its inquiry and "refrain from further statutory interpretation." *Id*. The court will reject, however, a "mechanical statutory construction when the results would be absurd, unreasonable, or contrary to the spirit of the statute." *State v. Almanzar*, 2014-NMSC001, ¶ 14-15, 316 P.3d 183, 186.

51. Statutory provisions addressing the same subject must be read together and harmonized when reasonably possible. *State ex rel. Quintana v. Schnedar,* 115 N.M. 573, 575–76, 855 P.2d 562, 564–65 (1993) ("[T]wo statutes covering the same subject matter should be harmonized and construed together when possible, in a way that facilitates their operation and the achievement of their goals.")

52. The Stewardship Act and the Oil and Gas Act must therefore be construed together when determining the Legislature's requirements for regulation of Class VI wells and geologic-sequestration facilities.

53. The Legislature's express references to the UIC Class VI program demonstrate that it enacted the Stewardship Act with knowledge of the federal regulatory program governing geologic sequestration. NMSA 1978, § 74-14-2.

[5] New Mexico courts apply the same principles of construction to administrative regulations as they do to statutes. *See Carrillo v. My Way Holdings*, LLC, 2017-NMCA-024, ¶ 22, 389 P.3d 1087; *WildEarth Guardians v. New Mexico Envtl. Improvement Bd.*, 2024-NMCA021, ¶ 12, 542 P.3d 820 (reaffirming the principle).

54. The Legislature's references to Class VI wells and sequestration facilities must be given substantive effect and cannot be construed as incidental or surplus language.

55. The federal Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f *et seq.*, establishes a cooperative-federalism framework under which EPA administers the UIC program unless a state obtains primary enforcement responsibility, commonly referred to as primacy.

56. A state may obtain primacy for the Class VI program independently of the other classes of injection wells. 40 C.F.R. § 145.1(i).

57. Following EPA approval, the state administers its approved UIC program in lieu of the federal permitting program, subject to EPA's continuing oversight and enforcement authority. 40 C.F.R. §§ 145.1(e)–(f), 145.21(f).

58. To obtain primacy, New Mexico must establish a regulatory program encompassing permitting, compliance evaluation, enforcement, public participation, and information sharing. 40 C.F.R. § 145.1(c).

59. New Mexico must demonstrate adequate legal authority to administer and enforce the applicable federal requirements. 40 C.F.R. § 145.11.

60. New Mexico must maintain procedures for inspections, surveillance, record review, and investigation of potential violations. 40 C.F.R. § 145.12.

61. New Mexico must possess adequate authority to restrain unauthorized activities, enjoin violations, and obtain applicable civil and criminal remedies. 40 C.F.R. § 145.13.

62. A state primacy application must include the governing statutes and regulations, a description of the proposed program, an attorney general's statement establishing adequate legal authority, and a memorandum of agreement with EPA. 40 C.F.R. §§ 145.22–145.25.

63. The requirements for Class VI primacy extend across the complete regulatory life cycle of a sequestration facility. *See generally* 40 C.F.R. Parts 144–146.

64. A complete Class VI program must address permit applications, site characterization, area-of-review delineation, well construction, operation, testing and monitoring, corrective action, emergency response, plugging, post-injection site care, site closure, financial responsibility, reporting, public participation, and enforcement. *See generally* 40 C.F.R. Parts 144–146.

65. The Legislature's assignment of responsibilities involving Class VI wells and long-term stewardship must be construed in light of the complete regulatory program required for New Mexico to obtain primacy.

66. The Legislature did not limit the Division's authority to activities occurring after injection operations have ended.

67. The Division cannot fulfill its statutory responsibilities for closure and long-term stewardship without enforceable requirements governing the preceding stages of siting, construction, operation, monitoring, corrective action, plugging, and site closure.

68. The Legislature therefore contemplated an integrated regulatory program governing Class VI wells from permit application through long-term stewardship.

69. New Mexico's Class VI program must preserve each mandatory federal protection and be at least as stringent as the applicable federal requirements. 40 C.F.R. § 145.11(b)(1).

70. Federal law permits New Mexico to adopt requirements that are more stringent or more extensive than the federal minimum. 40 C.F.R. § 145.1(g).

71. The Division and the Commission may tailor the State's Class VI requirements to New Mexico's geology, administrative procedures, regulatory structure, and programmatic needs, provided that the resulting program remains at least as stringent as the federal program.

72. The Final Proposed Rules establish the permitting, technical, administrative, compliance, and enforcement components required for New Mexico to seek Class VI primacy.

73. The Final Proposed Rules implement the regulatory authority contemplated by the Legislature and are consistent with the cooperative-federalism framework established by the SDWA.

74. A Commission rule will be upheld unless it is arbitrary, capricious, or an abuse of discretion; unsupported by substantial evidence in the record; or otherwise not in accordance with law. NMSA 1978, § 70-2-12.2(C).

75. Agency action is arbitrary or capricious when it is unreasonable, lacks a rational connection between the facts found and the decision made, or fails to consider an important aspect or relevant factor. *N.M. Mining Ass'n v. N.M. Water Quality Control Commission*, 2007-NMCA-010, ¶ 22, 141 N.M. 41, 150 P.3d 991.

76. Substantial evidence is relevant evidence that a reasonable mind could accept as adequate to support a conclusion. *Rinker v. State Corporation Commission*, 1973-NMSC-021, ¶ 5, 84 N.M. 626, 506 P.2d 783.

77. An agency decision may be supported by substantial evidence even when the record could support inconsistent conclusions. *Trujillo v. Employment Security Department*, 1987-NMCA-008, ¶ 18, 105 N.M. 467, 734 P.2d 245.

78. The Commission's factual determinations must be based on the administrative record developed in this proceeding.

79. The evidentiary record consists of sworn testimony, admitted exhibits, and materials properly subject to official notice.

80. An agency decision is not in accordance with law when the agency unreasonably or unlawfully misinterprets or misapplies the governing law. *N.M. Mining Ass'n*, 2007-NMCA-010, ¶ 11.

81. Agency rules are presumptively valid and must be upheld when they are reasonably consistent with the statutes authorizing their adoption. *N.M. Mining Ass'n*, 2007-NMCA-010, ¶ 11; *Tenneco Oil Co. v. N.M. Water Quality Control Commission*, 1986-NMCA-033, 105 N.M. 708, 736 P.2d 986.

82. The Final Proposed Rules are supported by substantial evidence in the rulemaking record, are rationally connected to that evidence, and are reasonably consistent with the Stewardship Act, the Oil and Gas Act, and the federal Class VI requirements.

83. Adoption of the Final Proposed Rules is within the Commission's delegated authority, is neither arbitrary nor capricious, and is otherwise in accordance with law.

III. RULE LANGUAGE

84. The Commission adopts rules 19.15.41 NMAC, 19.15.42 NMAC, and 19.15.43 NMAC, **OCD Exhibits 1, 2, and 3 and Final Proposed Rules**, respectively.

85. All parties had the benefit of evaluating the Division's rule proposal and the opportunity to respond to such language in the rulemaking. Changes made to Parts 41, 42, and 42 post-petition, were made in response to testimony, party proposals, and Commissioner questions. Each revision concerns a subject expressly placed at issue by the Division's amended application and proposed rule text, is supported by the rulemaking record, and either conforms the state

program more closely to the federal Class VI requirements or clarifies how the proposed program will be administered.

86. Parts 41, 42, and 43 were drafted to comply with 1.24.10 NMAC, New Mexico Administrative Code (NMAC), which establishes standards for uniform rule filings in an easily understood and common format, and include non-substantive changes made to meet the State Records Center and Archives' current style and formatting requirements for NMAC rules. These include using words for numbers zero to nine (except dates) and figures for numbers 10 and greater, spelling out numerical figures when using percentages (and spelling out "percent"), spelling out fractions, using figures and symbols to represent amounts of money (and not spelling out the number), and using proper indents for all subsections, paragraphs and subparagraphs, pursuant to 1.24.10.12 NMAC, Style. Internal and external cross-references were also updated for consistency, statute and rule citations reformatted where necessary, and typographical and punctuation errors corrected.

87. The substantive changes to Parts 41, 42, and 43 are described below.

19.15.41.7 NMAC, Definitions

88. 19.15.41.7 NMAC ("Definitions") provides the definitions for commonly used terms in the rule. Definitions for specific terms only appearing in another section of the Rule are contained in the section. Section 19.15.41.7 reflects a mandatory section for all rules promulgated by New Mexico state agencies. *See* 1.24.10.8(F)(7) NMAC (requiring a definitions section for all rules promulgated by New Mexico state agencies).

89. The Conservation Groups proposed a change to the definition of "area of review" to exclude reference of area permits.[6] The Division accepted this revision and further revised the definition of "area of review" in Paragraph (4) of Subsection A of 19.15.41.7 NMAC to conform the terminology and modeling-based approach used in the Final Proposed Rules to the corresponding federal Class VI definition. The revised definition identifies the area of review as the region surrounding a geologic-sequestration project in which underground sources of drinking water may be endangered by injection activity and provides that the area is delineated through computational modeling based on the physical and chemical properties of the injected carbon-dioxide stream, displaced fluids, and available site-specific data. The Commission finds that the revision promotes consistency with the federal Class VI program and provides an appropriate technical basis for delineating the area subject to evaluation, monitoring, and corrective action.

90. The Division revised the definition of "cesspool" in Paragraph (1) of Subsection C of 19.15.41.7 NMAC to remove "and/or" to conform with New Mexico rule drafting guidelines. Because the provision was not controverted and the record provides a reasonable basis for its adoption, the Commission adopts the revised definition of "cesspool" as proposed by the Division.

91. The Division revised the definition of "permit" in Paragraph (1) of Subsection P of 19.15.41.7 NMAC to remove references to permitting programs that are not administered under Parts 41 through 43 of 19.15 NMAC. The Division also deleted the definition of "point of injection" because that term is not used elsewhere in the Final Proposed Rules and was derived from permitting programs outside the scope of this Class VI rulemaking. The Commission finds that these revisions are non-substantive clarifications because they do not alter the requirements

[6] Conservation Groups Direct Testimony of Dr. Harvey at 48-49

applicable to a Class VI permit, injection well, or sequestration facility and do not eliminate any protection required by the federal Class VI regulations.

92. The Division revised the definition of "state" in Paragraph (5) of Subsection S of 19.15.41.7 NMAC to specify that the term means the State of New Mexico. The Commission finds that this revision eliminates potential ambiguity concerning the governmental and geographic jurisdiction addressed by the rules without expanding the Division's jurisdiction or imposing a new regulatory obligation.

19.15.41.8 NMAC, Procedures for Decision Making

93. During the rulemaking hearing, a Commissioner suggested an addition to paragraph (2) of Subsection A of 19.15.41.8 NMAC to include that the director shall notify an applicant in writing of identified deficiencies in a Class VI application and may request additional information.[7] The Division cautioned that there may be concerns with federal stringency.[8] The Commission therefore declines to add the recommended language to the Final Proposed Rules.

94. No party controverted Subsection B of 19.15.41.8 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

95. No party controverted Subsection C of 19.15.41.8 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

[7] Tr. Day 3: 568:6-13
[8] Id. at 570:1-3

96. No party controverted Subsection D of 19.15.41.8 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

97. Conservation Groups requested that paragraph (8) of Subsection E of 19.15.41.8 NMAC be revised to include third-party verification of the modeling ensemble to be included for distribution of mail notices.[9] The Division opposed this proposed revision because it would add significant cost and administrative burden and the Division already has the ability to retain or consult independent technical experts to assist in evaluating complex modeling issues.[10] The Commission finds that the record does not contain substantial evidence establishing that the proposed change is necessary or appropriate as a statewide requirement. The Commission therefore declines to adopt the Conservation Group's proposal and adopts 19.15.41.8.E NMAC as set forth in the Division's Final Proposed Rules.

98. No party controverted Subsection F of 19.15.41.8 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

99. No party controverted Subsection G of 19.15.41.8 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

[9] CG Exhibit 1-A at 9.
[10] OCD Exhibit 22 at 12

100. Oxy requested that paragraphs (1) and (2) of Subsection H of 19.15.41.8 NMAC be revised to extend the permit to construct a Class VI injection well from two years to five years.[11] The Division opposed this proposed revision because it asserted that a two-year construction period provides permittees with a reasonable amount of time to begin construction.[12] The Commission finds the Division's position is better supported by the weight of the evidence and therefore adopts 19.15.41.8.H NMAC as set forth in the Division's Final Proposed Rules.

101. During the rulemaking hearing, the Commission recommended that paragraph (1) subparagraph (a) contain an addition of "conditions" as a specification for changes between draft permits and final permits.[13] The Division supported this modification because it would bring clarity to the proposed language and improve implementation of the program.[14] The Division incorporated this suggestion into its Final Proposed Rules. The Commission therefore adopts the provision as proposed by the Division.

102. Oxy requested a new subsection (K) of 19.15.41.8 NMAC to include provisions addressing the process for appeals and review of the Division's final permit decisions.[15] The Division acknowledged that clarification was needed and added to its Final Proposed Rules Subsection J of 19.15.41.8 NMAC to clarify that appeals from final permitting decisions under Parts 41, 42, and 43 of 19.15 NMAC are governed by the procedures and standards established in 19.15.4 NMAC.[16] The Commission finds that this cross-reference identifies the applicable administrative-review process, promotes procedural certainty, and does not alter the substantive standards governing Class VI permits. The Commission therefore adopts the revised language.

[11] Oxy Exhibit 1A at 7
[12] OCD Exhibit 25 at 11-12
[13] Tr. Day 3 at 566:3-25
[14] *Id*.
[15] Oxy Exhibit 1A at 7; Oxy Exhibit 3 at 5-6
[16] Tr. Day 2 at 451:8-13

19.15.42.7 NMAC, Definitions

103. 19.15.42.7 NMAC ("Definitions") provides the definitions for commonly used terms in the rule. Definitions for specific terms only appearing in another section of the Rule are contained in the section. Section 19.15.42.7 reflects a mandatory section for all rules promulgated by New Mexico state agencies. *See* 1.24.10.8(F)(7) NMAC (requiring a definitions section for all rules promulgated by New Mexico state agencies).

104. The Conservation Groups proposed a change to the definition of "area of review" to exclude reference of area permits.[17] The Division accepted this revision and further revised the definition of "area of review" in Paragraph (3) of Subsection A of 19.15.42.7 NMAC to conform the terminology and modeling-based approach used in the Final Proposed Rules to the corresponding federal Class VI definition. The revised definition identifies the area of review as the region surrounding a geologic-sequestration project in which underground sources of drinking water may be endangered by injection activity and provides that the area is delineated through computational modeling based on the physical and chemical properties of the injected carbon-dioxide stream, displaced fluids, and available site-specific data. The Commission finds that the revision promotes consistency with the federal Class VI program and provides an appropriate technical basis for delineating the area subject to evaluation, monitoring, and corrective action and thus adopts this revision.

105. The Division revised the definition of "permit" in Paragraph (1) of Subsection P of 19.15.42.7 NMAC to remove references to permitting programs that are not administered under Parts 41 through 43 of 19.15 NMAC. The Division also deleted the definition of "point of injection" because that term is not used elsewhere in the Final Proposed Rules and was derived

[17] CG Exhibit 1-B at 11; Conservation Groups Direct Testimony of Dr. Harvey at 48-49

from permitting programs outside the scope of this Class VI rulemaking. The Commission finds that these revisions are non-substantive clarifications because they do not alter the requirements applicable to a Class VI permit, injection well, or sequestration facility and do not eliminate any protection required by the federal Class VI regulations.

106. The Division revised the definition of "state" in Paragraph (5) of Subsection S of 19.15.42.7 NMAC to specify that the term means the State of New Mexico. The Commission finds that this revision eliminates potential ambiguity concerning the governmental and geographic jurisdiction addressed by the rules without expanding the Division's jurisdiction or imposing a new regulatory obligation and thus adopts this revision.

19.15.42.8 NMAC, General Provisions

107. Pursuant to Commissioner questioning during the rulemaking hearing regarding exempted aquifers, the Division in its Final Proposed Rules revised Paragraph (2) of Subsection A of 19.15.42.8 NMAC to clarify that an aquifer is not an exempted aquifer unless it has been affirmatively designated through the applicable federal and state procedures.[18] The revision further recognizes EPA's authority to approve aquifer exemptions and provides that an aquifer exemption is not effective for purposes of the Class VI program merely because it is proposed by the Director or included in a state program submission. The Commission finds that this clarification preserves EPA's role in the exemption process and prevents the rule from being interpreted to authorize the Division to make an aquifer exemption effective without the required federal approval and thus adopts this revision.

[18] Tr. Day 2-3 at 451:5-13; 319:15-25; 320:1-20

108. During the rulemaking hearing, a Commissioner suggested an addition to Subsection A of 19.15.42.8 NMAC to include EPA technical guidance may be considered when administering the Class VI program.[19] The Division was hesitant to accept this suggestion, as EPA guidance can change and it may introduce uncertainty into the rule.[20] The Commission finds this matter is more appropriately addressed through technical guidance, or the Director's existing authority to require additional information or protective measures when warranted. The Commission therefore declines to add the recommended language to the Final Proposed Rules.

109. The Conservation Groups proposed to revise Subparagraph (c) of Paragraph (2) of Subsection B of 19.15.42.8 NMAC to exempt information that is already in the public record from confidentiality claims.[21] The Division accepted a variation of this revision and added in its Final Proposed Rules Subparagraph (c) of Paragraph (2) of Subsection B of 19.15.42.8 NMAC to clarify that information already available for public inspection is not eligible for confidential treatment merely because it is submitted in connection with a Class VI application or permit. The Commission finds that this provision does not expand public disclosure beyond that required by applicable law and does not eliminate protection for information that otherwise qualifies as confidential. The provision instead confirms that information already lawfully available to the public cannot acquire confidential status through its submission to the Division. The Commission therefore adopts this revision as reflected in the Division's Final Proposed Rules.

110. No party controverted Subsection C of 19.15.42.8 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the

[19] Tr. Day 3 589:7-13
[20] *Id*. at 589-590
[21] CG Exhibit 1B at 14; 123

applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

111. No party controverted Subsection D of 19.15.42.8 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

112. No party controverted Subsection E of 19.15.42.8 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

19.15.42.9 NMAC, General Program Requirements

113. No party controverted Subsection A of 19.15.42.9 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

114. No party controverted Subsection B of 19.15.42.9 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

115. No party controverted Subsection C of 19.15.42.9 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the

applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

116. No party controverted Subsection D of 19.15.42.9 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

117. No party controverted Subsection E of 19.15.42.9 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

118.. The Conservation Groups proposed to revise Paragraph (1) of Subsection F of 19.15.42.9 NMAC that would remove the standard allowing for the Director to determine whether carbon dioxide injection into an oil and gas reservoir presents an increased risk to USDW's compared to Class II operations before requiring a Class VI permit.[22] The Division opposed this revision, demonstrating that the existing federal framework is appropriate because it preserves the risk-based evaluation established by the EPA for determining whether a Class II operation should transition to a Class VI geologic sequestration permit.[23] The Commission finds that the Division's position is better supported by the record. In particular, the proposal would conflict with a federal requirement. The Commission therefore declines to adopt the Conservation Groups proposal and adopts the Division's proposal as set forth in its Final Proposed Rules.

119. The Conservation Groups proposed to add "integrity of the caprock seal for long-term containment" to the considerations identified in Subparagraph (i) of Paragraph (2) of

[22] CG Exhibit 1-B at 17
[23] OCD Exhibit 22 at 13

Subsection F of 19.15.42.9 NMAC for purposes of evaluating potential risks to underground sources of drinking water.[24] The Division agreed with this recommendation.[25] During the rulemaking hearing, the language was further refined.[26] Thus, the Division added "integrity of the confining zone" to the considerations identified in Subparagraph (i) of Paragraph (2) of Subsection F of 19.15.42.9 NMAC for determining whether conversion of a Class II well to a Class VI well would create an increased risk to an underground source of drinking water. The Commission finds that the integrity of the confining zone is directly relevant to whether injected carbon dioxide and displaced formation fluids will remain confined and whether a proposed conversion can protect underground sources of drinking water. The revision therefore provides an appropriate, risk-based consideration for the Director's site-specific evaluation of a proposed conversion and the Commission adopts this recommendation as proposed in the Division's Final Proposed Rules

19.15.42.10 NMAC, Authorization of Underground Injection by Rule

120. No party controverted 19.15.42.10 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts this Section as proposed by the Division.

19.15.42.11 NMAC, Authorization by Permit

121. No party controverted Subsection A of 19.15.42.11 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the

[24] CG Exhibit 1-B at 18
[25] OCD Exhibit 22 at 14
[26] Tr. Day 3 at 635:18-25

applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

122. No party controverted Subsection B of 19.15.42.11 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

123. No party controverted Subsection C of 19.15.42.11 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

124. No party controverted Subsection D of 19.15.42.11 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

125. No party controverted Subsection E of 19.15.42.11 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

126. No party controverted Subsection F of 19.15.42.11 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

127. No party controverted Subsection G of 19.15.42.11 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

128. No party controverted Subsection H of 19.15.42.11 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

129. No party controverted Subsection I of 19.15.42.11 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts the provision as proposed by the Division.

130. Oxy proposed a new Paragraph (8) to Subsection J of 19.15.42.11 NMAC that non-material non-substantive permit modifications that do not pose a risk to underground sources of drinking water may be considered when classifying a minor modification of a permit.[27] The Division opposed this revision, as the terms "non-material" and "non-substantive" are inherently subjective and may create uncertainty regarding which permit changes qualify as minor modification, and the proposed rule already allows the Director the discretion to clarify or correct plans.[28] The Commission finds the Division's position more persuasive and better supported by the record. In particular, the proposal would reduce necessary Director discretion and lacks an adequate technical basis. The Commission therefore declines to adopt Oxy's proposal and adopts the Division's proposal as set forth in its Final Proposed Rules.

[27] Oxy Exhibit B at 12; Oxy Exhibit 3 at 7-8
[28] OCD Exhibit 22 at 33

19.15.42.12, Permit Conditions

131. No party controverted 19.15.42.12 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts this Section as proposed by the Division.

19.15.42.13 NMAC, State UIC Program Requirements

132. The Division revised Paragraph (1) of Subsection A of 19.15.42.13 NMAC to remove references to Class II wells because the Final Proposed Rules establish requirements for the Class VI program and do not revise the State's existing Class II program. The Commission finds that this revision conforms the provision to the noticed scope of this proceeding without reducing the enforcement authority applicable to Class VI wells and thus adopts this revision.

133. The Division also revised Subparagraph (c) of Paragraph (1) of Subsection A of 19.15.42.13 NMAC to identify the existing statutory authority for criminal fines under Subsection F of Section 70-2-31 NMSA 1978. The Commission finds that the cross-reference clarifies the source and extent of the Division's existing enforcement authority and does not create a new penalty or change the conduct subject to enforcement and thus adopts this revision.

19.15.43.7, Definitions

134. 19.15.43.7 NMAC ("Definitions") provides the definitions for commonly used terms in the rule. Definitions for specific terms only appearing in another section of the Rule are contained in the section. Section 19.15.43.7 reflects a mandatory section for all rules promulgated by New Mexico state agencies. *See* 1.24.10.8(F)(7) NMAC (requiring a definitions section for all rules promulgated by New Mexico state agencies).

135. No party controverted 19.15.43.7 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts this Section as proposed by the Division.

19.15.43.8, General Provisions

136. No party controverted 19.15.43.8 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts this Section as proposed by the Division.

19.15.43.9 NMAC, Criteria and Standards Applicable to Class VI Wells

137. No party controverted Subsection A of 19.15.43.9 NMAC or proposed a material change to its requirements. The provision is supported by the Division's testimony and the applicable federal requirements. The Commission therefore adopts this provision as proposed by the Division.

138. The Division revised the area-of-review provisions in Paragraph (1) of Subsection B and Paragraph (1) of Subsection E of 19.15.43.9 NMAC to use terminology and a modeling-based delineation consistent with the federal Class VI requirements. The provisions define the area of review as the region surrounding a geologic-sequestration project in which underground sources of drinking water may be endangered by injection activity and require delineation through computational modeling based on the properties of the injected carbon-dioxide stream and available site-characterization, monitoring, and operational data. The Commission finds that these revisions promote consistency among the definitions and substantive requirements in Parts 41

through 43 and provide an appropriate technical foundation for area-of-review delineation, reevaluation, monitoring, and corrective action.

139. The Conservation Groups proposed a new Paragraph (9) and (10) in Subsection B of 19.15.43.9 NMAC that defines "intensive corrective action area" and "plume stabilization."[29] The Division opposed both of these proposed definitions, as they are project-specific and would introduce new regulatory definitions.[30] The Commission finds the Division's position more persuasive and better supported by the record. In particular, the proposal would impose a universal requirement despite site-specific conditions and lacks an adequate technical basis. The Commission therefore declines to adopt the Conservation Groups proposal and adopts Subsection B of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

140. The Conservation Groups proposed an addition to Items (ii) and (v), Subparagraph (c), Paragraph (1) of Subsection C of 19.15.43.9 NMAC that adds anticipated changes in pressure associated with injection for purposes of dynamic fault stability analysis.[31] The Division opposed these proposals because the rules as proposed by the Division already require characterization of known or suspected faults and factures as part of site characterization and area of review modeling.[32] The Commission finds the Division's position is better supported by the record because Conservation Group's proposal would duplicate existing protections. The Commission therefore declines to adopt Conservation Group's proposal and adopts Subsection C of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

141. The Center for Biological Diversity ("CBD") proposed an addition to Subparagraph (d), Paragraph (1) of Subsection C of 19.15.43.9 NMAC that adds in requirements for tabulation

[29] CG Exhibit 1-C at 31
[30] OCD Exhibit 22 at 15
[31] CG Exhibit 1-C at 32
[32] OCD Exhibit 22 at 16

of all wells within the area of review are identified, including numerous non-physical and physical investigation requirements.[33] The Division opposed this change, stating that an applicant already must identify all wells within the area of review.[34] The Commission finds that CBD's proposal would duplicate existing protections and increase administrative burden. The Commission therefore declines to adopt CBD's proposal and adopts Subsection C of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

142. CBD proposed an addition to Paragraph (1) of Subsection D of 19.15.43.9 NMAC that adds a 10-mile radius for site characterization to investigate transmissive fractures and faults.[35] The Division opposed this addition due to the Class VI program not assuming risks that extend a predetermined distance from the injection well and EPA guidance emphasizing that site characterization data are collected to build the conceptual model that supports area of review modeling and risk assessment.[36] The Commission finds that CBD's proposal impose a universal requirement despite site-specific conditions and thus the Commission declines to adopt CBD's proposal and adopts Subsection C of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

143. CBD proposed an additional Paragraph (3) of Subsection D of 19.15.43.9 NMAC that adds that no new Class VI wells shall be sited within one half mile radius of various public buildings and spaces.[37] The Division opposed this suggestion as they do not directly inform the core technical evaluations to determine whether a proposed Class VI well can be constructed, operated, monitored, or closed in a manner that protects underground sources of drinking water.[38]

[33] CBD Exhibit 1 at 6
[34] OCD Exhibit 25 at 2-3
[35] CBD Exhibit 1 at 8
[36] OCD Exhibit 22 at 3-4
[37] CBD Exhibit 1-C at 8
[38] OCD Exhibit 25 at 3

The Commission finds that CBD's proposal lacks an adequate technical basis and thus declines to adopt CBD's proposal.

144. Oxy proposed revisions to Item (i), Subparagraph (b), Paragraph (2) of Subsection E of 19.15.43.9 NMAC that replaces the minimum reevaluation frequency for area of review to once every five years.[39] The Division opposed this revision and recommended that New Mexico adopt a two year but no longer than four year requirement after injection begins because it is a reasonable point at which sufficient pressure, injection, and monitoring data should be available.[40] The Commission finds that the Division supported this reasoning with substantial evidence and thus declines to adopt Oxy's proposal and adopts Subsection E of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

145. The Conservation Groups proposed revisions to Item (ii), Subparagraph (b), Paragraph (2) of Subsection E of 19.15.43.9 NMAC, to include pressure monitoring data and geochemical monitoring data that would warrant a reevaluation of the area of review.[41] The Division opposed this recommendation as this would introduce requirements that are overly prescriptive and attempt to codify detailed technical methodologies that are better addressed through permit review, guidance, and project-specific evaluation.[42] The Commission finds the Division's position more persuasive and better supported by the record. In particular, the proposal would impose universal requirements despite site-specific conditions and lacks an adequate technical basis. The Commission therefore declines to adopt the Conservation Group's proposal and adopts Subsection E of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

[39] Oxy Exhibit 1-C at 7-8
[40] OCD Exhibit 22 at 31-32
[41] CG Exhibit 1-C at 34
[42] OCD Exhibit 22 at 16

146. The Conservation Groups proposed revisions to Item (iv), Subparagraph (c), Paragraph (2) of Subsection E of 19.15.43.9 NMAC to add that independent, certified third-party verifications must be used to delineate the area of review.[43] The Division opposed this addition, as the Division and technical staff are responsible for reviewing permit applications, including all modeling inputs, and this would also add significant cost and administrative burden without a corresponding increase in protection.[44] The Commission finds that the Conservation Groups proposal would impose universal requirements despite site-specific conditions and lacks an adequate technical basis. The Commission therefore declines to adopt the Conservation Groups proposal and adopts Subsection E of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

147. The Conservation Groups proposed various revisions to Items (i)-(viii) of Subparagraph (a), Paragraph (3) of Subsection E of 19.15.43.9 NMAC. This includes adding peer-reviewed or commercially available modeling to delineation of the area of review, and specific requirements for the model including an ensemble approach; data collected from at least three wells; scalar factor; geochemical reactions and lithology; pressure and chemical interactions; and confirmation of validity of the model via monitoring wells.[45] The Division opposed these changes as the proposed modeling requirements are better addressed through permit review, guidance, and project-specific evaluation rather than regulation.[46] The Commission finds that the Conservation Groups proposal would impose universal requirements despite site-specific conditions and lacks an adequate technical basis. The Commission therefore declines to adopt the Conservation Groups

[43] CG Ex 1-C at 34
[44] OCD Exhibit 22 at 12
[45] CG Ex 1-C at 34-35
[46] OCD Ex. 22 at 16-17

proposal and adopts Subsection E of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

148. The Conservation Groups proposed revisions to Paragraph (5) of Subsection E of 19.15.43.9 NMAC to propose specific triggers for area of review reevaluation including reference to a specific numeric threshold of either twenty percent of the modeled increase of fifty kilopascals difference between modeled and measured pressure.[47] The Division opposed this suggestion, as appropriate area of review reevaluation should be based on site-specific conditions, monitoring results, and professional judgment as opposed to regulation.[48] The Commission finds that the Conservation Groups proposal would impose universal requirements despite site-specific conditions and lacks an adequate technical basis. The Commission therefore declines to adopt the Conservation Groups proposal and adopts Subsection E of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

149. CBD proposed additions to Paragraph (2) of Subsection E of 19.15.43.9 NMAC to include requirements for the summary of an area of review including software used and the method to calculate parameters.[49] The Division opposed this suggestion as it introduces a level of specificity that would reduce regulatory flexibility and create unnecessary costs without improving protections for underground sources of drinking water.[50] The Commission finds that CBD's proposal would impose universal requirements despite site-specific conditions and lacks an adequate technical basis. The Commission therefore declines to adopt CBD's proposal and adopts Subsection E of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

[47] CG Ex. 1-C at 35
[48] OCD Ex. 22 at 20
[49] CBD Exhibit 1 at 8
[50] OCD Ex. 22 at 5

150. CBD proposed a new paragraph (5) of Subsection E of 19.15.43.9 NMAC including requirements to employ non-physical and physical review and well requirements that were plugged prior to 1952.[51] The Division opposed this change, as it introduces overly prescriptive requirements that are more appropriate for guidance and project specific OCD application review.[52] The Commission finds that CBD's proposal would impose universal requirements despite site-specific conditions and lacks an adequate technical basis. The Commission therefore declines to adopt CBD's proposal and adopts Subsection E of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

151. CBD proposed a new paragraph (7) of Subsection E of 19.15.43.9 NMAC regarding mandatory requirements for reevaluation of the area of review.[53] The Division opposed this change, as it introduces overly prescriptive requirements that are more appropriate for guidance and project specific OCD application review.[54] The Commission finds that CBD's proposal would impose universal requirements despite site-specific conditions and lacks an adequate technical basis. The Commission therefore declines to adopt CBD's proposal and adopts Subsection E of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

152. During the rulemaking hearing, a Commissioner suggested an addition to paragraph (3) of Subsection E of 19.15.43.9 NMAC to include documentation regarding model methodology and models used and sensitivity and uncertainty analysis.[55] The Commission finds that the matter is more appropriately addressed through site-specific permit conditions, technical guidance, or the

[51] CBD Ex. 1 at 9
[52] OCD Exhibit 22 at 6-7
[53] CBD Ex. 1 at 9-10
[54] OCD Exhibit 22 at 7-8
[55] Tr. Day 3: 607:15-25

Director's existing authority to require additional information. The Commission therefore declines to add the recommended language.

153. The Conservation Groups proposed to strike "self-insurance" and "any other instruments satisfactory to the director" for the consideration of qualifying financial assurance instruments under Subsection F of 19.15.43.9 NMAC.[56] The Division opposed this suggestion, as self-insurance may provide financial assurance that is equal to or greater than that available through third-party insurance products.[57] The Commission finds that the Conservation Groups proposal would reduce necessary Director discretion and finds the Division's position more persuasive. The Commission therefore declines to adopt the Conservation Groups proposal and adopts Subsection F of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

154. The Conservation Groups proposed adding "monitoring wells" to various provisions to injection well construction requirements under Subsection G of 19.15.43.9 NMAC.[58] The Division generally supported this addition,[59] however the revision was not included in the Division's Notice of Final Proposed Changes. The Commission finds that the proposed revision in Dr. Schnaar's rebuttal testimony[60] is the most appropriately tailored language addressing the substance of the Conservation Groups' proposal and is supported by the weight of the evidence. The Commission therefore adopts the proposed amendments to Subsection G of 19.15.43.9 NMAC as written in the Division's Exhibit 22.

155. CBD proposed to add various requirements to the casing requirements under Subsection H of 19.15.43.9 NMAC.[61] The Division opposed adding language that was undefined

[56] CG Ex. 1-C at 35
[57] OCD Exhibit 25 at 7-8
[58] CG Ex. 1-C at 39
[59] OCD Ex. 22 at 21-22
[60] Id.
[61] CBD Ex. 1 at 14-15

in the rule such as "best available technology" and that the requirements are not technically necessary.[62] The Commission finds that CBD's proposal would impose universal requirements despite site-specific conditions and lacks an adequate technical basis. The Commission therefore declines to adopt CBD's proposal and adopts Subsection H of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

156. CBD proposed to add a pressure ramp up period to the initiation of injection well operations at paragraph (1) of Subsection I of 19.15.43.9 NMAC.[63] The Division opposed this suggestion as it would impose universal requirements and are not technically necessary.[64] The Commission finds that CBD's proposal would impose universal requirements despite site-specific conditions and lacks an adequate technical basis. The Commission therefore declines to adopt CBD's proposal and adopts Subsection I of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

157. The Conservation Groups proposed to add monthly casing inspection logs to mechanical integrity requirements at Subsection J of 19.15.43.9 NMAC.[65] The Division opposed this suggestion due to technical difficulties of implementing this requirement in practice as well as it not being technically necessary in every case.[66] The Commission finds that the Conservation Groups proposal would impose universal requirements despite site-specific conditions and lacks an adequate technical basis. The Commission therefore declines to adopt the Conservation Groups proposal and adopts Subsection J of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

[62] OCD Ex. 25 at 4-5; OCD Ex. 23 at 2-5
[63] CBD Ex 1 at 15
[64] OCD Ex 23 at 2-3
[65] CG Ex. 1-C at 42
[66] OCD Ex. 25 at 8

158. CBD proposed to add new alternative acoustic methods to mechanical integrity requirements at Subsection J of 19.15.43.9 NMAC.[67] The Division opposed this suggestion as a performance-based approach would allow the Director to select the appropriate method for a particular project.[68] The Commission finds that CBD's proposal would impose universal requirements despite site-specific conditions and lacks an adequate technical basis. The Commission therefore declines to adopt CBD's proposal and adopts Subsection J of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

159. The Conservation Groups proposed to add statistical tests for groundwater monitoring at Subsection K of 19.15.43.9 NMAC.[69] The Division opposed this suggestion due to technical difficulties of implementing this requirement in practice as well as it not being technically necessary in every case.[70] The Commission finds that the Conservation Groups proposal would impose universal requirements despite site-specific conditions and lacks an adequate technical basis. The Commission therefore declines to adopt the Conservation Groups proposal and adopts Subsection K of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

160. CBD proposed various provisions to Subsection K of 19.15.43.9 NMAC regarding log requirements, ambient noise tomography, and minimum of one year background sampling for isotopic signatures.[71] The Division opposed this suggestion as it would impose technical requirements that may not be appropriate for every project.[72] The Commission finds that CBD's proposal would impose universal requirements despite site-specific conditions and lacks an

[67] CBD Ex 1 at 15
[68] OCD Ex. 23 at 5
[69] CG Ex. 1-C at 42-43
[70] OCD Ex. 22 at 25-26
[71] CBD Ex. 1 at 16-17
[72] OCD Ex. 23 at 5-6

adequate technical basis. The Commission therefore declines to adopt CBD's proposal and adopts Subsection K of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

161. The Conservation Groups proposed to add that an owner or operator must have at least one employee on the premises to carry out the emergency and remedial response plan at Subsection O of 19.15.43.9 NMAC.[73] The Division opposed this suggestion as this objective can often be achieved through continuous automated monitoring and control systems as opposed to constant personnel presence.[74] The Commission finds that the Conservation Groups proposal lacks an adequate technical basis. The Commission therefore declines to adopt the Conservation Groups proposal and adopts Subsection O of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

162. The Conservation Groups proposed to add additional requirements for when injection must immediately cease at Subsection O of 19.15.43.9 NMAC.[75] The Division opposed this suggestion as the appropriate decision to suspend or terminate injection should be based on the totality of the available technical information and the Conservation Groups proposal would limit the flexibility needed to respond to site-specific conditions.[76] The Commission finds that the Conservation Groups proposal lacks an adequate technical basis. The Commission therefore declines to adopt the Conservation Groups proposal and adopts Subsection O of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

163. CBD proposed revisions to Subsection O of 19.15.43.9 NMAC to include procedures to temporarily cease injections and training and necessary equipment for local

[73] CG Ex. 1-C at 49
[74] OCD Ex. 25 at 10-11
[75] CG Ex. 1-C at 49
[76] OCD Ex. 25 at 10-11

emergency responders.[77] The Division opposed this suggestion as it is prescriptive and not flexible for site specific conditions.[78] The Commission finds that CBD's proposal lacks an adequate technical basis. The Commission therefore declines to adopt CBD's proposal and adopts Subsection O of 19.15.43.9 NMAC as set forth in the Division's Final Proposed Rules.

164. The Division revised Paragraph (5) of Subsection O of 19.15.43.9 NMAC to require periodic review of the emergency and remedial response plan at least once every five years and to require submission of an amended plan, or a demonstration that no amendment is necessary, following the circumstances specified in the rule. The Commission finds that this revision is consistent with 40 C.F.R. § 146.94(d) and ensures that the approved plan remains responsive to changes in the area of review, site conditions, monitoring information, and project operations, and thus adopts this revision.

Other Commissioner Recommendations

165. During the hearing, Commissioners explored several potential revisions to the Division's proposed rules. The Commission considered each recommendation in light of the testimony and exhibits admitted into the record, the applicable federal Class VI requirements, the Commission's statutory authority, and the scope of the noticed rulemaking.

166. The Commission finds that the recommendations discussed below should not be incorporated into the final rules because they are already addressed by the rules' performance standards and the Director's permit-specific authority, lack sufficient evidentiary support for adoption as uniform statewide requirements, or concern subjects beyond the noticed scope of this proceeding.

[77] CBD Ex. 1 at 23
[78] OCD Ex. 25 at 6

Site Characterization, Modeling, and Area of Review

167. A Commissioner inquired whether requiring three-dimensional seismic data at every Class VI project, including at the beginning of the permitting process would be appropriate to include in the Class VI program.[79] The record establishes that three-dimensional seismic data may improve reservoir and fault characterization at some sites, but the need for such data depends on the geology, complexity, existing information, and data gaps associated with the individual project.[80] The Commission finds that this site-specific approach is better supported by the record and therefore declines to impose a universal three-dimensional seismic requirement.

168. A Commissioner also recommended adding a buffer around the modeled area of review to account for uncertainty concerning the movement of the carbon-dioxide plume or pressure front.[81] The record does not establish a uniform distance, methodology, or percentage that would constitute an appropriate buffer for every project. The evidence instead supports addressing uncertainty through project-specific modeling, sensitivity analysis, monitoring data, periodic reevaluation, and any additional margin required by the Director based on the characteristics of the particular site.[82]

169. Because the size and configuration of an appropriate area of review depend on site-specific geology, injection conditions, plume behavior, and pressure response, a universal buffer could be insufficient for one project and unnecessarily expansive for another. The Commission therefore declines to add a fixed area-of-review buffer and adopts the Division's modeling-based approach.

[79] Tr. Day 2 at 269–272; Tr. Day 3 at 698:19–699:20.
[80] Tr. Day 2 at 269:17–21; Tr. Day 3 at 698:3–699:20.
[81] Tr. Day 2 at 274:17–275:24.
[82] *Id*. at 275:18–25.

170. A Commissioner recommended requiring the identification and mapping of all faults and fractures within the area of review and the comprehensive mapping of mineral and geothermal resources.[83] The record does not establish that every fault, fracture, mineral resource, or geothermal resource - regardless of its relationship to containment or project risk - must be mapped for every Class VI application. An unbounded mapping requirement could require information unrelated to the purposes of the Class VI program and could implicate matters administered under other statutes or by other agencies. The Commission therefore retains the requirement to evaluate features relevant to containment, underground sources of drinking water, and interests within the Commission's statutory jurisdiction.

180. A Commissioner recommended requiring a comprehensive review of mineral resources and mineral interests within two miles of each proposed Class VI project.[84] The record does not provide a technical basis for selecting a uniform two-mile radius, particularly because the modeled area of review may vary substantially among projects.[85] The Commission therefore declines to adopt a fixed two-mile review area and retains the site-specific area of review and application requirements contained in the final rules.

Construction Materials and Testing

181. A Commissioner recommended expressly requiring laboratory testing of proposed cement against the chemistry of the project-specific carbon-dioxide stream.[86] The record supports obtaining appropriate compatibility information but does not establish that one laboratory protocol

[83] Tr. Day 3 at 702:1–703:10.
[84] Tr. Day 3 at 726:9–24.
[85] *Id*. at 726:14–24.
[86] Tr. Day 2 at 267:8–268:11.

should be prescribed for every project.[87] The Commission finds that the final rules' performance standard and the Director's authority to require supporting data provide adequate protection while allowing the required demonstration to reflect the proposed materials, carbon-dioxide-stream chemistry, and site conditions. The Commission therefore declines to add a universal cement-testing protocol.

Definitions and Terminology

182. A Commissioner recommended further defining "long-term" within the definition of geologic sequestration and revising the term "owner or operator" to distinguish the regulated owner or operator from a surface owner, mineral owner, or other property-interest holder.[88]

183. The terms "geologic sequestration" and "owner or operator" are used consistently with the federal Class VI program and, when read in context, identify the persons responsible for the regulated Class VI facility and injection activities. The record does not establish that the existing terminology creates a substantive ambiguity requiring additional rule language. Revising federal terminology also could create inconsistency concerning the persons responsible for compliance. The Commission therefore retains the definitions used in the Division's Final Proposed Rules.

184. A Commissioner recommended expressly adding limited partnerships, limited liability partnerships, and limited liability companies to the definition of "person."[89] The existing definition is sufficiently broad to encompass legal entities subject to the Class VI requirements, including the identified forms of business organization. Because the proposed additions would not

[87] Tr. Day 2 at 267:18–268:11.
[88] Tr. Day 3 at 620:1–622.
[89] Tr. Day 3 at 624:1–625:8.

materially change the entities covered by the rules, the Commission finds that further enumeration is unnecessary.

185. A Commissioner recommended further defining "drilling operations" in Subsection H of 19.15.41.8 NMAC.[90] The term is used broadly enough to encompass the different drilling activities and project schedules that may arise in Class VI permitting. The record does not establish a more precise definition that would apply appropriately to every project without inadvertently excluding relevant activities or limiting necessary administrative flexibility. The Commission therefore declines to add a definition.

186. A Commissioner recommended revising the definition of "confining zone" from a formation capable of limiting fluid movement above the injection zone to a formation limiting movement out of the injection zone.[91] The existing definition is consistent with the federal Class VI terminology and focuses on preventing upward fluid movement that could endanger an underground source of drinking water. The proposed revision could materially broaden the definition and impose obligations concerning lower or lateral formations without sufficient testimony establishing the regulatory consequences of that change. The Commission therefore retains the Division's definition.

187. A Commissioner recommended expanding the definition of "well monitoring" to expressly include pressure, temperature, and seismic monitoring.[92] Those forms of monitoring are addressed, where applicable, by the substantive testing and monitoring provisions of the final rules and by permit-specific monitoring requirements. Expanding the definition is unnecessary and

[90] Tr. Day 3 at 628
[91] Tr. Day 3 at 634–635.
[92] Tr. Day 3 at 639–640.

could alter the scope of provisions using that defined term without adequate evidence concerning the resulting regulatory consequences. The Commission therefore declines to revise the definition.

Performance Standards and Permit-Specific Requirements

188. A Commissioner recommended that the rules provide more specific definitions or numerical standards for "adequate" funding, staffing, training, laboratory controls, and quality assurance.[93] These provisions incorporate performance standards that must be applied in light of the size, complexity, risk, and operational characteristics of each Class VI project.

189. The record does not establish uniform numerical criteria for determining the appropriate level of funding, staffing, training, laboratory controls, or quality assurance for every project. The Director may evaluate these matters during application review and impose permit conditions necessary to ensure compliance. The Commission therefore retains the performance-based language and concludes that further implementation detail may be addressed through permit conditions, forms, or program guidance.

X190. A Commissioner recommended establishing a maximum period during which a Class VI well may remain inactive or shut in.[94] The record does not establish a technically defensible statewide period after which every inactive well must resume injection, undergo additional testing, or be plugged.

191. The final rules require maintenance of mechanical integrity, compliance with permit conditions, testing, monitoring, and protection of underground sources of drinking water during periods of non-injection. They also authorize the Director to impose inspection, testing,

[93] Tr. Day 3 at 629:1–630:12.
[94] Tr. Day 3 at 633:1–20.

corrective-action, or plugging requirements based on the circumstances of an individual well. The Commission therefore declines to adopt a universal maximum inactive period.

192. A Commissioner recommended prescribing a fixed frequency for analysis of the carbon-dioxide stream.[95] The record does not establish one sampling frequency appropriate for all sources and projects. The Commission therefore adopts the Division's performance-based requirement that analysis occur at a sufficient frequency and authorizes the Director to establish an appropriate frequency through the permit.

193. A Commissioner recommended requiring soil-gas monitoring and specifying a seasonally representative baseline period.[96] The record does not establish that soil-gas monitoring is necessary at every site or that a uniform baseline period of a specified length is appropriate throughout New Mexico. The Commission therefore retains the Division's site-specific framework.

194. A Commissioner recommended specifying minimum requirements for seismic-monitoring arrays, including the number of instruments necessary to locate and characterize induced seismic events.[97] The record establishes that multiple stations may be appropriate for some projects but that network design depends on project location, background seismicity, site geology, anticipated events, and the availability of existing regional monitoring stations. The Commission therefore retains a performance standard requiring monitoring capable of addressing project-specific seismic risks and authorizes the Director to require an appropriate network through the permitting process.

[95] Tr. Day 3 at 673:1–25.
[96] Tr. Day 3 at 675:1–677:20
[97] Tr. Day 3 at 682:1–683:20.

Emergency and Remedial Response

195. A Commissioner recommended revising the emergency and remedial response provisions to state expressly that they apply to carbon-dioxide releases reaching the surface and not only to conditions that may endanger an underground source of drinking water.[98]

196. The existing endangerment trigger is consistent with the federal Class VI requirements, whose principal purpose is protection of underground sources of drinking water. The emergency and remedial response plan may address surface releases and other project-specific emergencies where relevant, and other applicable laws may separately govern pipeline safety, worker safety, or public-safety consequences beyond the Class VI well program. The Commission therefore declines to broaden the federal trigger in a manner that could extend the rule to activities or risks outside the noticed Class VI program.

197. A Commissioner also recommended clarifying that the geographic area addressed by an emergency and remedial response plan is project-specific and is not necessarily limited to the modeled area of review.[99] The Commission agrees that emergency planning must reflect the circumstances and reasonably foreseeable effects of the individual project. The existing rules permit the Director to require a plan appropriate to the project and do not establish the area of review as an absolute geographic limitation on emergency planning. Because the recommended concept is already accommodated by the performance-based requirement, the Commission finds that additional rule language is unnecessary.

198. A Commissioner recommended establishing buffers or setbacks from schools, municipalities, and population centers.[100] No witness identified or supported a particular statewide

[98] Tr. Day 3 at 661:1–669:20
[99] Tr. Day 3 at 670:1–25
[100] Tr. Day 3 at 671:1–25

setback distance, and the record does not establish that one distance would appropriately address the varying geology, well design, injection conditions, containment characteristics, and emergency-response capabilities of different projects.

199. The final rules address potential risks through site characterization, confining-zone requirements, well construction and integrity standards, operating limits, monitoring, corrective action, and emergency response. The Director also may deny a permit or impose additional conditions when a proposed location cannot satisfy the applicable protective standards. The Commission therefore declines to adopt universal setbacks unsupported by the present record.

Records, Information, and Confidentiality

200. A Commissioner recommended requiring the Division to retain certain records for longer than ten years after site closure and expressly providing for the sharing of compliance and monitoring data with other state and federal agencies.[101] The record does not establish a particular additional retention period or demonstrate why a uniform period longer than the period stated in the final rules is necessary for every project. The Commission therefore declines to establish an additional retention period or duplicative data-sharing requirement in the final rules.

Correlative Rights and Mineral Interests

201. A Commissioner recommended that the Class VI rules state more expressly and repeatedly that the program protects correlative rights and mineral rights in addition to underground sources of drinking water.[102] The Commission declines the proposed revisions while

[101] Tr. Day 3 at 649:24–650; 654:1–18
[102] Tr. Day 3 at 660:1–25

recognizing that adoption of the Class VI rules does not displace the Commission's independent duties under the Oil and Gas Act.

202. A Commissioner recommended requiring permit applicants to establish land or pore-space agreements before permit issuance and to possess an applicable lease or other legal right before applying for a permit or commencing injection.[103] The record does not support requiring every applicant to submit every landowner or tribal agreement as a universal permit prerequisite, and the notice for this proceeding did not propose a comprehensive property-rights or pore-space-ownership regime. The Commission therefore declines to adopt the proposed requirements. Permit applicants remain responsible for obtaining all property rights, leases, agreements, and approvals independently required by law.

203. A Commissioner recommended expanding permit notice to surface owners and mineral-interest holders and requiring the Division to review mineral leases, saltwater-disposal wells, and depth severances.[104] The record does not establish administrable criteria for identifying every potentially affected mineral interest, including unrecorded or disputed interests, or for requiring the Division to determine title during Class VI permit review.

204. The final rules provide notice to the persons and governmental entities identified by the applicable federal and state procedures and allow the Division to consider relevant, reasonably available information concerning affected interests and existing wells. The Commission therefore declines to impose a requirement that could make the Division responsible for conclusively identifying or adjudicating private property interests.

[103] Tr. Day 3 at 716:6–24; 754:9–22.
[104] Tr. Day 3 at 724:8–725:6.

Public-Comment Period

205. A Commissioner recommended establishing a mandatory sixty-day public-comment period for every Class VI permit application.[105] The final rules provide a public-comment period of at least thirty days, consistent with the federal minimum, and permit a longer period when warranted by the complexity or significance of an individual application.

206. The record does not establish that every Class VI application requires sixty days of public comment or that the existing minimum would prevent meaningful participation. A universal sixty-day period could delay applications that do not require additional review without improving public participation. The Commission therefore retains the minimum thirty-day period and the discretion to provide additional time when appropriate.

Financial Responsibility

207. A Commissioner recommended authorizing the Director to increase financial-assurance requirements based on an applicant's or operator's compliance history.[106] The final rules require financial responsibility sufficient to cover the costs of corrective action, injection-well plugging, post-injection site care, site closure, and emergency and remedial response, and they authorize periodic review and adjustment of the required amount based on updated cost information and project risk.

208. The record does not establish criteria or a methodology for converting prior compliance issues into an increased financial-assurance amount. An undefined compliance-history adjustment could operate as a penalty unrelated to the costs secured by the financial instrument. The Commission therefore declines to adopt a compliance-based surcharge while retaining the

[105] Tr. Day 3 at 725:14–726:8
[106] Tr. Day 3 at 741:7–22.

Director's authority to reject inadequate instruments and require financial responsibility sufficient to cover the applicable cost and risk.

IX. COMPLIANCE WITH STATUTORY AND REGULATORY RULEMAKING PROCEDURES

209. Adoption of 19.15.41 NMAC, 19.15.42 NMAC, and 19.15.43 NMAC, as set forth in the Division's Final Proposed Rules, is reasonably necessary to implement and enforce the Geologic Carbon Dioxide Storage Stewardship Act. See NMSA 1978, § 74-14-3(B).

210. The Final Proposed Rules establish requirements governing the permitting, construction, operation, monitoring, plugging, closure, and long-term stewardship of geologic-sequestration facilities and thereby enable the Division to carry out the responsibilities assigned to it under the Geologic Carbon Dioxide Storage Stewardship Act. See NMSA 1978, §§ 74-14-2 to -6.

211. Adoption of the Final Proposed Rules is consistent with the authority of the Division and the Commission to make and enforce rules, regulations, and orders and to take actions reasonably necessary to carry out the purposes of the Oil and Gas Act. See NMSA 1978, §§ 70-2-6(B), 70-2-11(A).

212. The Final Proposed Rules further the statutory purposes of preventing waste and protecting correlative rights by establishing enforceable requirements for the siting, construction, operation, mechanical integrity, monitoring, corrective action, plugging, and closure of Class VI wells. See NMSA 1978, §§ 70-2-2, 70-2-6, 70-2-11, and 70-2-12.

213. The Final Proposed Rules protect fresh-water resources by requiring the siting, construction, operation, testing, monitoring, corrective action, plugging, and closure of Class VI

wells in a manner designed to prevent the movement of carbon dioxide or formation fluids into underground sources of drinking water. See NMSA 1978, § 70-2-12(B)(15), (21), and (22).

214. Regulation of Class VI wells under the Final Proposed Rules concerns matters within the Division's and the Commission's statutory jurisdiction and technical expertise, including underground injection, well construction and integrity, subsurface migration, protection of fresh water, prevention of waste, and protection of oil and gas resources.

215. The Final Proposed Rules establish the permitting, technical, administrative, compliance, public-participation, and enforcement components necessary for New Mexico to seek primary enforcement responsibility for the federal Class VI Underground Injection Control program under the Safe Drinking Water Act. See 42 U.S.C. § 300h-1; 40 C.F.R. Parts 124 and 144–146.

216. The Final Proposed Rules preserve the mandatory protections required by the federal Class VI program and are at least as stringent as the applicable federal requirements. See 40 C.F.R. §§ 145.1 and 145.11.

217. The Commission provided notice of the proposed rulemaking and a meaningful opportunity for interested persons to submit written and oral comments, present evidence, conduct cross-examination, and offer rebuttal in accordance with the State Rules Act and the Commission's procedural rules. See NMSA 1978, §§ 14-4-5.2 to -5.5; 19.15.3 NMAC.

218. The Final Proposed Rules remain within the subject matter and regulatory framework identified in the Division's amended application, the proposed rule text, and the notice of rulemaking.

219. The modifications reflected in the Final Proposed Rules respond to matters raised during the rulemaking proceeding, are supported by the administrative record, and do not establish a materially different regulatory program from the Class VI program identified in the notice.

220. The Final Proposed Rules are supported by substantial evidence in the administrative record, including sworn testimony and admitted exhibits, and bear a rational relationship to the facts and technical considerations established in that record. See NMSA 1978, § 70-2-12.2(C).

221. The Final Proposed Rules are drafted in accordance with 1.24.10 NMAC, the uniform rules governing the style and format of rules published in the New Mexico Administrative Code.

222. The Final Proposed Rules comply with the applicable statutory and regulatory rulemaking requirements, are within the authority delegated to the Division and the Commission, and are neither arbitrary, capricious, nor otherwise contrary to law.

223. The Commission therefore concludes that adoption of 19.15.41 NMAC, 19.15.42 NMAC, and 19.15.43 NMAC, as set forth in the Division's Final Proposed Rules, is reasonably necessary to implement the Stewardship Act and the Oil and Gas Act, protect fresh-water resources, prevent waste, protect correlative rights, and establish an enforceable Class VI program that satisfies the requirements for state primacy under the Safe Drinking Water Act.

X. CLERICAL CORRECTION NOTED BY THE DIVISION

224. The Division proposed a revision to the definition of "Area of review" in Paragraph (4) of Subsection A of 19.15.41.7 and Paragraph (3) of Subsection A of 19.15.42.7 in its Final Proposed Changes to OCD Exhibits 1, 2, and 3. As part of that revision, a citation to the code of federal

regulations was replaced with a cross reference to the New Mexico Administrative Code, as proposed. The revised language includes an incorrect cross reference to "Subsection I of 19.15.43.9 NMAC." The definitions of "Area of review" in each referenced paragraph should read "Subsection E of 19.15.43.9 NMAC." The Commission finds that these revisions are non-substantive clarifications because they do not alter the requirements applicable to a Class VI permit, injection well, or sequestration facility and do not eliminate any protection required by the federal Class VI regulations. As such, the Commission adopts the clerical updates referenced in this paragraph.