

Case No. 23580



**WILDEARTH GUARDIANS' APPLICATION FOR  
A RULE TO ADDRESS PERFLUOROALKYL  
AND POLYFLUOROALKYL SUBSTANCES AND  
THEIR USE IN OIL AND GAS EXTRACTION**

## **Governor Michelle Lujan Grisham:**

“New Mexico will continue to lead on the issue of PFAS – because everyone deserves to live in a community free of environmental contamination.”

<https://www.governor.state.nm.us/2021/10/26/epa-responds-to-gov-lujan-grishams-petition-will-move-to-list-four-pfas-chemicals-as-hazardous-constituents/>

# New Mexico Taking Steps to Confront PFAS

- Petitioned EPA to regulate PFAS under Resource Conservation and Recovery Act
- Unfortunately, oil and gas exploration, development, production waste exempt from regulation under RCRA
- There is a need for the state to act to address gaps in federal oversight of oil and gas industry waste
- We know industry is using PFAS to some degree



# New Rules to Address PFAS, Disclosure

- Modeled off legislation passed in Colorado
- Would expressly prohibit use of PFAS to prevent contamination of environment by waste
- Update chemical disclosure requirements to ensure enforceability, also ensure OCD has access to information regarding use of other substances that may present risks to public health and the environment

## 19.15.32.8 CHEMICALS:

### PROHIBITION ON THE USE AND DISTRIBUTION OF PFAS

- A. On and after January 1, 2024, no person shall utilize, cause to be utilized, and/or authorize the utilization of oil and gas products that contain intentionally added PFAS chemicals in the exploration, development, and production of oil and gas.
- B. On and after January 1, 2024, no person shall sell, offer for sale, distribute for sale, or distribute for use oil and gas products that contain intentionally added PFAS chemicals within the State of New Mexico.

# **Commission's Authority to Promulgate the Proposed Rule**

- The Commission has broad authority under the Oil and Gas Act to “make and enforce rules, regulations and orders,[] to carry out the purpose of [the] act. NMSA 1978 §70-2-11.
- Specifically, the Act gives the commission power to promulgate rules:
  - to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water [] in a manner that protects public health, the environment and fresh water resources; §70-2-11(B)(15)
  - to regulate the disposition of nondomestic wastes [in the oil and gas industry] to protect public health and the environment; and §70-2-11(B)(21) and (22)
- Pursuant to these powers, the Commission can adopt the proposed rule.

# The Petition Meets Regulatory Requirements

- The Petition includes:
  - a brief summary of the proposed rule's intended effect;
  - a draft of the proposed rule attached as Exhibit A; and
  - a proposed legal notice attached as Exhibit B
- The petition conforms with 19.15.3.8 NMAC