

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

**IN THE MATTER OF PROPOSED
AMENDMENT TO THE COMMISSION’S
RULES TO ADDRESS PERFLUOROALKYL
AND POLYFLUOROALKYL SUBSTANCES AND
THEIR USE IN OIL AND GAS EXTRACTION,
19.15.2, 19.15.16, 19.15.31, AND 19.15.32 NMAC**

CASE NO. 23580

AMENDED APPLICATION FOR RULEMAKING

Pursuant to 19.15.3.8(A) NMAC, Petitioner WildEarth Guardians (“Guardians”), a nonprofit corporation dedicated to protecting and restoring the health of New Mexico and the western United States, hereby petitions the New Mexico Oil Conservation Commission (“Commission”) to amend its rules to address the matter of perfluoroalkyl and polyfluoroalkyl substance (“PFAS”) waste resulting from the drilling, development, and production of oil and gas in New Mexico. Guardians specifically requests the Commission amend 19.15.2, 19.15.7, 19.15.14, 19.15.16 NMAC, and 19.15.25 NMAC.

PFAS are an exceptionally toxic group of chemicals that present myriad, long-term, and persistent public health and environmental hazards. Although New Mexico has petitioned the U.S. Environmental Protection Agency to restrict the use of PFAS under federal hazardous waste law, oil and gas industry exploration and production waste is exempt from federal hazardous waste law. There is an urgent need to address this gap and ensure that, just as other industrial sectors in New Mexico face restrictions on the use of PFAS and the generation of PFAS waste, the oil and gas industry is also held accountable to protecting public health.

Guardians’ proposal consists of two primary requests:

- 1) That the Commission adopt a rule prohibiting the use of PFAS in oil and gas drilling, development, and production in order to prevent the generation of PFAS-contaminated produced water and nondomestic waste; and
- 2) That the Commission adopt a rule prohibiting the use of undisclosed chemicals in downhole operations to ensure reasonable transparency around substances used by the oil

and gas industry and to ensure industry compliance with the prohibition on the use of PFAS.

To facilitate the incorporation of these new rules, Guardians also proposes amendments to the Commission’s general provisions and to rules related to drilling and production.

In support of its rulemaking application, Guardians states the following:

- (1) A recent report by Physicians for Social Responsibility confirms that the oil and gas industry is utilizing PFAS in hydraulic fracturing operations in New Mexico. *See* Physicians for Social Responsibility, “Fracking With ‘Forever Chemicals’ in New Mexico: Evidence Shows Oil and Gas Companies Have Used PFAS in New Mexico Wells; Water Risks Especially High for Groundwater-Dependent State,” available at <https://psr.org/wp-content/uploads/2023/04/fracking-with-forever-chemicals-in-new-mexico.pdf>. The use of PFAS by the oil and gas industry leads to the creation of PFAS-contaminated produced water and other nondomestic waste.

PFAS are a class of chemicals known for their toxicity at extraordinarily low levels, their multiple negative health effects including cancer, and their persistence in the environment, leading to their nickname, “forever chemicals.” Using these chemicals is particularly risky in a state where 80 percent of the population depends on groundwater for drinking water. Oil and gas production and waste disposal operations can contaminate groundwater with toxic chemicals including PFAS – and, once contaminated, groundwater is particularly difficult to clean up.

PFAS contamination is a high priority of Governor Michelle Lujan Grisham and the State of New Mexico. In 2021, the Governor petitioned the U.S. Environmental Protection Agency to list PFAS as hazardous waste under federal law. *See* State of New Mexico Environment Department, “Governor Lujan Grisham formally petitions EPA to list PFAS as hazardous under federal law” (June 23, 2021), available at <https://www.env.nm.gov/wp-content/uploads/2021/06/2021-06-23-Gov-petitions-EPA-to-list-PFAS-under-RCRA-1.pdf>.

Oil and gas industry exploration and production waste is exempt from regulation as hazardous waste under federal law. The U.S. Resource Conservation and Recovery Act specifically exempts exploration and production waste from regulation under Subtitle C. This means that even if PFAS are listed as hazardous, they will not be treated as such if they are generated as nondomestic waste by the oil and gas industry during exploration, drilling, fracking, and production activities.

To address this serious regulatory gap, Guardians proposes the Commission adopt rules to ensure PFAS are properly regulated pursuant to the New Mexico Oil and Gas Act. The Commission has broad authority to adopt the requested rules.

Specifically, the Commission and the Oil Conservation Division have the statutory authority:

to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas [] in a manner that protects public health, the environment and fresh water resources.

70-2-12(B)(15) NMSA. The use of PFAS in drilling, fracking, and production activities means the oil and gas industry is generating produced water containing PFAS. By properly regulating the use of PFAS, the Commission will ensure protection of public health, the environment, and freshwater resources from PFAS-contaminated produced water.

The Commission and the Division also have the authority to “regulate the disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas to protect public health and the environment” and to “regulate the disposition of nondomestic wastes resulting from the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil to protect public health and the environment[.]” 70-2-12(B)(21) and (22) NMSA.

The use of PFAS by the oil and gas industry leads to the creation of nondomestic waste containing PFAS, including solid waste, such as drill cuttings, filters, and sludge, and non-produced water liquid waste, such as spilled hydraulic fracturing fluids. To properly regulate the disposition of this waste, it is imperative the Commission prohibit the use of PFAS to ensure protection of public health and the environment.

Guardians’ overall request is straightforward: to protect public health and the environment from PFAS-contaminated produced water and nondomestic waste generated by the oil and gas industry, the Commission should simply prohibit the use of PFAS, as well as undisclosed chemicals, to begin with.

Guardians’ initial May 25, 2023 petition proposed the Commission adopt rules that are very similar to regulatory updates adopted by the State of Colorado in 2022 for PFAS and the oil and gas industry. In legislation passed in 2022, Colorado updated chemical

disclosure and reporting requirements for the oil and gas industry in House Bill 22-1348 (available at https://leg.colorado.gov/sites/default/files/2022a_1348_signed.pdf) and adopted comprehensive PFAS safeguards in House bill 22-1345 (available at https://leg.colorado.gov/sites/default/files/2022a_1345_signed.pdf).

In response to feedback from the Oil Conservation Division, Guardians has dropped the provision in its first application that required disclosure of all chemicals used downhole, including trade secret chemicals in recognition of the Division's lack of authority to regulate the chemical manufacturers that hold trade secrets. Instead, in its First Amended Proposed Rule (WG Exhibit 1), Guardians includes a provision that prohibits the use of undisclosed chemicals in downhole operations. This provision does not pose a jurisdictional problem for the Division, and it accomplishes the goal of disclosure of all chemicals used downhole. Manufacturers and operators would not have to disclose any trade secrets under this provision; those undisclosed chemicals simply could not be used in New Mexico.

Guardians' amendment of its proposed rule for New Mexico also requires less of regulators in terms of staff time and resources, and pivots away from the collection of chemical data that Colorado requires to a much simpler prohibition on undisclosed chemicals for New Mexico. This ensures transparency and accountability for the non-use of PFAS in oil and gas operations without burdening the Oil Conservation Division with additional data collection and tensions about the release of chemical data for public records.

Specifically, Guardians requests the Commission adopt the following amendments:

- Part 2 to provide definitions to carry out the proposed amendments;
- Parts 7 and 14 to ensure PFAS and undisclosed chemicals are not used downhole in New Mexico;
- Part 16 to prescribe measures for chemical testing when downhole operations have the potential to negatively impact the producing formation, injection interval, communicates with other strata, casing or casing seat or may create underground waste or contaminate fresh water and to provide notice to the public of chemicals used downhole; and
- Part 25 relating to the demonstration of mechanical integrity.

Taken together, the proposed rules would ensure the oil and gas industry does not generate PFAS-contaminated produced water and nondomestic waste, and ensure an adequate system of reporting and disclosure to assure compliance.

A draft of Guardians' First Amended Proposed Rule is attached as WG Exhibit 1 to this Application.

(2) In a 2018 water plan released during her gubernatorial campaign, Michelle Lujan Grisham promised that “[as] governor” she would “[r]equire mandatory disclosure of what chemicals are used in hydraulic fracturing to better protect groundwater.” See <https://uttoncenter.unm.edu/resources/state-water-task-force/mlg-water-plan.pdf>

(3) The applicant's name is WildEarth Guardians.

(4) The contact for the applicant shall be:

Tim Davis
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(5) A proposed legal notice is attached as WG Exhibit 2.

Respectfully submitted August 23, 2024,

WILDEARTH GUARDIANS

/s/ Tim Davis

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Amended Application for Rulemaking was e-mailed to the following on August 23, 2024:

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WG EXHIBIT 1

FIRST AMENDED PROPOSED RULE

PROPOSED AMENDMENTS TO PART 2

TITLE 19 **NATURAL RESOURCES AND WILDLIFE**
CHAPTER 15 **OIL AND GAS**
PART 2 **GENERAL PROVISIONS FOR OIL AND GAS**
OPERATIONS

19.15.2.7 **DEFINITIONS:** These definitions apply to 19.15.2 NMAC through 19.15.39 NMAC.

C. Definitions beginning with the letter “C”.

~~(4)~~ **“Chemical”** means any element, chemical compound, or mixture of elements or chemical compounds that has a specific name or identity, including a Chemical Abstracts Service number.

~~(5)~~ **“Chemical disclosure list”** means a list of all chemicals used in downhole operations at a well site.

~~(4)(6)~~ **“Cm/sec”** means centimeters per second.

~~(5)(7)~~ **“CPD”** means central point delivery.

~~(6)(8)~~ **“Combination multiple completion”** means a multiple completion in which two or more common sources of supply are produced through a combination of two or more conventional diameter casing strings cemented in a common well bore, or a combination of small diameter and conventional diameter casing strings cemented in a common well bore, the conventional diameter strings of which might or might not be a conventional multiple completion.

~~(7)(9)~~ **“Commission”** means the oil conservation commission.

~~(8)(10)~~ **“Commission clerk”** means the division employee the director designates to provide staff support to the commission and accept filings in rulemaking or adjudicatory cases before the commission.

~~(9)(11)~~ **“Common purchaser for gas”** means a person now or hereafter engaged in purchasing from one or more producers gas produced from gas wells within each common source of supply from which it purchases.

~~(10)(12)~~ **“Common purchaser for oil”** means every person now engaged or hereafter engaging in the business of purchasing oil to be transported through pipelines.

~~(11)(13)~~ **“Common source of supply”**. See pool.

~~(12)~~(14) “**Condensate**” means the liquid recovered at the surface that results from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.

~~(13)~~(15) “**Contiguous**” means acreage joined by more than one common point, that is, the common boundary is at least one side of a governmental quarter-quarter section.

~~(14)~~(16) “**Conventional completion**” means a well completion in which the production string of casing has an outside diameter exceeding 2.875 inches.

~~(15)~~(17) “**Conventional multiple completion**” means a completion in which two or more common sources of supply are produced through one or more strings of tubing installed within a single casing string, with the production from each common source of supply completely segregated by means of packers.

~~(16)~~(18) “**Correlative rights**” means the opportunity afforded, as far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner’s just and equitable share of the oil or gas in the pool, being an amount, so far as can be practically determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for the purpose to use the owner’s just and equitable share of the reservoir energy.

~~(17)~~(19) “**Cubic feet of gas or cubic foot of gas**” means that volume of gas contained in one cubic foot of space and computed at a base pressure of 10 ounces per square inch above the average barometric pressure of 14.4 psi (15.025 psi absolute), at a standard base temperature of 60 degrees fahrenheit.

D. Definitions beginning with the letter “D”.

~~(6)~~ (6) “Downhole operations” means oil and gas production operations that are conducted underground.

~~(6)~~(7) “Downstream facility” means a facility associated with the transportation (including gathering) or processing of gas or oil (including a refinery, gas plant, compressor station or crude oil pump station); brine production; or the oil field service industry.

~~(7)~~(8) “DRO” means diesel range organics.

H. Definitions beginning with the letter “H”.

~~(6)~~ (6) “Hydraulic fracturing treatment” means all stages of the treatment of a well by the application of hydraulic fracturing fluid under pressure, which treatment is expressly designed to initiate or propagate fractures in an underground geologic formation to enhance the production of oil and gas.

~~(6)~~(7) “H₂S” means hydrogen sulfide.

P. Definitions beginning with the letter “P”.

~~(3)~~ **“PFAS chemicals”** means a perfluoroalkyl or polyfluoroalkyl substance with at least one fully fluorinated carbon atom.

~~(3)~~~~(4)~~ **“Pit”** means a surface or sub-surface impoundment, man-made or natural depression or diked area on the surface. Excluded from this definition are berms constructed around tanks or other facilities solely for safety, secondary containment and storm water or run-on control.

~~(4)~~~~(5)~~ **“Playa lake”** means a level or nearly level area that occupies the lowest part of a completely closed basin and that is covered with water at irregular intervals, forming a temporary lake.

~~(5)~~~~(6)~~ **“Pool”** means an underground reservoir containing a common accumulation of oil or gas. Each zone of a general structure, which zone is completely separated from other zones in the structure, is covered by the word pool as used in 19.15.2 NMAC through 19.15.39 NMAC. “Pool” is synonymous with “common source of supply” and with “common reservoir”.

~~(6)~~~~(7)~~ **“Potential”** means a well’s properly determined capacity to produce oil or gas under division-prescribed conditions.

~~(7)~~~~(8)~~ **“Ppm”** means parts per million by volume.

~~(8)~~~~(9)~~ **“PQL”** means practical quantitation limit.

~~(9)~~~~(10)~~ **“Pressure maintenance”** means the injection of gas or other fluid into a reservoir, either to maintain the reservoir’s existing pressure or to retard the reservoir pressure’s natural decline.

~~(10)~~~~(11)~~ **“Produced water”** means a fluid that is an incidental byproduct from drilling for or the production of oil and gas.

~~(11)~~~~(12)~~ **“Producer”** means the owner of a well or wells capable of producing oil or gas or both in paying quantities.

~~(12)~~~~(13)~~ **“Product”** means a commodity or thing made or manufactured from oil or gas, and derivatives of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzene, wash oil, lubricating oil and blends or mixtures of oil or gas or a derivative thereof.

~~(13)~~~~(14)~~ **“Proration day”** consists of 24 consecutive hours that begin at 7:00 a.m. and end at 7:00 a.m. on the following day.

~~(14)~~~~(15)~~ **“Proration month”** means the calendar month that begins at 7:00 a.m. on the first day of the month and ends at 7:00 a.m. on the first day of the next succeeding month.

~~(15)~~~~(16)~~ **“Proration period”** means for oil the proration month and for gas the 12-month period that begins at 7:00 a.m. on January 1 of each year and ends at 7:00 a.m. on January 1 of the succeeding year or other period designated by general or special order of the division.

~~(16)~~~~(17)~~ **“Proration schedule”** means the division orders authorizing the production, purchase and transportation of oil, casinghead gas and gas from the various units of oil or of gas in allocated pools.

~~(17)~~**(18)** “**Proration unit**” means the area in a pool that can be effectively and efficiently drained by one well as determined by the division or commission (see Subsection B of Section 70-2-17 NMSA 1978) as well as the area assigned to an individual well for the purposes of allocating allowable production pursuant to a prorationing order for the pool.

~~(18)~~**(19)** “**Prospective spacing unit**” means a hypothetical spacing unit that does not yet have a producing well.

~~(19)~~**(20)** “**PVC**” means poly vinyl chloride.

~~(20)~~**(21)** “**Psi**” means pounds per square inch.

T. Definitions beginning with the letter “T”.

~~(7)~~ “(7) **Trade secret**” means information, including a formula, pattern, compilation, program, device, method, technique or process, that:

(1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

~~(7)~~**(8)** “**Treating plant**” means a plant constructed for wholly or partially or being used wholly or partially for reclaiming, treating, processing or in any manner making tank bottoms or other waste oil marketable.

~~(8)~~**(9)** “**Tribal lands**” means those lands for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe. This includes reservations, pueblo land grants, tribal trust lands and individual trust allotments.

~~(9)~~**(10)** “**Tribal leases**” means those leases of minerals or interests in or rights to minerals for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe.

~~(10)~~**(11)** “**Tribal minerals**” means those minerals for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe.

~~(11)~~**(12)** “**True vertical depth**” means the difference in elevation between the ground level at the surface location of the well and the deepest point in the well bore.

~~(12)~~**(13)** “**Tubingless completion**” means a well completion in which the production string of casing has an outside diameter of 2.875 inches or less.

~~(13)~~**(14)** “**Tubingless multiple completion**” means completion in which two or more common sources of supply are produced through an equal number of casing strings cemented in a common well bore, each such string of casing having an outside diameter of 2.875 inches or less, with the production from each common source of supply completely segregated by cement.

U. Definitions beginning with the letter "U".

(3) "Undisclosed chemicals" means either chemicals that are listed without a Chemical Abstracts Service number in the FracFocus database pursuant to 19.15.16.19(B) NMAC, or if a safety data sheet lists ingredients that comprise less than one-hundred percent of the whole chemical product, those chemicals that make up any unlisted portion of a chemical product on a safety data sheet.

~~(3)~~(4) "Unit of proration for gas" consists of such multiples of 40 acres as may be prescribed by division-issued special pool orders.

~~(4)~~(5) "Unit of proration for oil" consists of one 40-acre tract or such multiples of 40-acre tracts as may be prescribed by division-issued special pool orders.

~~(5)~~(6) "Unorthodox well location" means a location that does not conform to the spacing requirements division rules establish.

~~(6)~~(7) "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all a division-approved facility's structural components. Examples of unstable areas are areas of poor foundation conditions, areas susceptible to mass earth movements and karst terrain areas where karst topography is developed because of dissolution of limestone, dolomite or other soluble rock. Characteristic physiographic features of karst terrain include sinkholes, sinking streams, caves, large springs and blind valleys.

~~(7)~~(8) "Upstream facility" means a facility or operation associated with the exploration, development, production or storage of oil or gas that is not a downstream facility.

W. Definitions beginning with the letter "W".

(8) "Well site" means the area that is disturbed by oil and gas operations within the boundaries of the lease.

~~(8)~~(9) "Wellhead protection area" means the area within 200 horizontal feet of a private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes or within 1000 horizontal feet of any other fresh water well or spring. Wellhead protection areas does not include areas around water wells drilled after an existing oil or gas waste storage, treatment or disposal site was established.

~~(9)~~(10) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically

adapted for life in saturated soil conditions in New Mexico. This definition does not include constructed wetlands used for wastewater treatment purposes.

~~(40)~~(11) “Working interest owner” means the owner of an operating interest under an oil and gas lease who has the exclusive right to exploit the oil and gas minerals. Working interests are cost bearing.

~~(44)~~(12) “WQCC” means the New Mexico water quality control commission.

PROPOSED AMENDMENTS TO PART 7

19.15.7.16 WELL COMPLETION OR RECOMPLETION REPORT AND LOG (Form C-105):

A. Within 45 days following the completion or recompletion of a well, the operator shall file form C-105 with the division accompanied by a summary of special tests conducted on the well, including drill stem tests, and the chemical disclosure list. In addition, the operator shall file a certification that no undisclosed chemicals or PFAS were used in the completion or recompletion of the well, a copy of electrical and radio-activity logs run on the well with form C-105. If the division does not receive form C-105 with attached certification, chemical disclosure list, logs and summaries within the specified 45-day period, the division shall withhold the allowable authorizations for the well or suspend injection authority, as appropriate, until the operator has complied with 19.15.7.16 NMAC.

B. In the case of a dry hole, a complete record of the well on form C-105, or if applicable form C-103, with the attachments listed in Subsection A of 19.15.7.16 NMAC shall accompany the notice of intention to plug the well, unless previously filed. The division shall not approve the plugging report or release the bond the operator has complied with 19.15.7.16 NMAC.

C. The division shall not keep form C-105, or if applicable form C-103, and accompanying attachments confidential unless the well’s owner requests in writing that the division keep it confidential. Upon such request, the division shall keep these data confidential for 60 ~~90~~ days from the date of the well’s completion, provided, however, that the report, logs and other attached data shall ~~may~~, when pertinent, be introduced in a public hearing before division examiners, the commission or in a court of law, regardless of the request that they be kept confidential.

D. If there is a change in the information provided under this part, the operator must submit the change to the division within 30 days after the date the operator first knew of the change.

E. The division shall retain each form C-105 and form C-103 indefinitely.

[19.15.7.16 NMAC - Rp, 19.15.13.1105 NMAC, 12/1/2008; A, 9/26/2017; A, 8/23/2022]

PROPOSED AMENDMENTS TO PART 14

19.15.14.9 APPLICATIONS: An operator shall file a complete form C-101 and complete form C-102 with the division and meet the following requirements, if applicable:

A. an applicant for a permit to drill a well within the corporate limits of a city, town or village shall give notice to the duly constituted governing body of the city, town or village or its duly authorized agent and certify on form C-101 that it gave such notice;

B. an applicant for a permit to drill in a quarter-quarter section containing an existing well or wells operated by another operator shall concurrently file a plat or other acceptable document locating and identifying the well or wells, furnish a copy of the application to the other operator or operators in the quarter-quarter section and certify on form C-101 that it furnished the copies;

C. an applicant for a permit to drill, deepen, or plug back shall certify that they will not introduce any undisclosed chemicals or PFAS in downhole operations of the well; and

€D. an applicant for a permit to operate a well in a spacing or proration unit containing an existing well or wells operated by another operator shall also comply with Subsection B of 19.15.15.12 NMAC.

[19.15.14.9 NMAC – Rp, 19.15.3.102 NMAC and 19.15.13.1101 NMAC, 12/1/2008]

19.15.14.10 APPROVAL OR DENIAL OF A PERMIT TO DRILL, DEEPEN OR PLUG BACK:

A. The director or the director’s designee may deny a permit to drill, deepen or plug back if the applicant is not in compliance with Subsection A of 19.15.5.9 NMAC and shall deny a permit to drill, deepen, or plug back, or any permit authorizing the transport of nondomestic waste, including produced water, if the applicant does not provide the certification required by Subsection C of 19.15.14.9 or provides a false certification. In determining whether to grant or deny the permit, the director or the director’s designee shall consider such factors as whether the non-compliance with Subsection A of 19.15.5.9 NMAC is caused by the operator not meeting the financial assurance requirements of 19.15.8 NMAC, being subject to a division or commission order finding the operator to be in violation of an order requiring corrective action, having a penalty assessment that has been unpaid for more than 70 days since the issuance of the order assessing the penalty or having more than the allowed number of wells out of compliance with 19.15.25.8 NMAC. If the non-compliance is caused by the operator having more than the allowed number of wells not in compliance with 19.15.25.8 NMAC, the director or director’s designee shall consider the number of wells not in compliance, the length of time the wells have been out of compliance and the operator’s efforts to bring the wells into compliance.

PROPOSED AMENDMENTS TO PART 16

TITLE 19	NATURAL RESOURCES AND WILDLIFE
CHAPTER 15	OIL AND GAS
PART 16	DRILLING AND PRODUCTION

19.15.16.17 COMPLETION OPERATIONS, SHOOTING AND CHEMICAL TREATMENT OF WELLS:

A. If Completing, shooting, fracturing or treating a well has the potential to negatively impact the producing formation, injection interval, communicates with other strata,

casing or casing seat or may create underground waste or contaminate fresh water, the operator shall within five working days notify in writing the division and proceed with diligence to use the appropriate method and means for rectifying the damage.

(1) diligence shall include but is not limited to verifying casing integrity and isolation of strata. This can include pressure testing in accordance with 19.15.25 NMAC, performing casing integrity logs, cement bond logs and any other means determined necessary by the operator or required by the division.

(2) If damage from the shooting, fracturing or treating of a well has the potential to impact surface or groundwater, the operator will test for all chemicals disclosed in previous downhole operations and will use a third party, verified laboratory to conduct any in appropriate testing necessary to verify any potential impact. The testing shall include all chemicals used in the well and may also include but is not limited to PFAS, chemicals listed in 20.6.2. NMAC and chemicals listed in 19.15.29.11.A.(5)(e) NMAC. The division can elect to request more robust sampling than what is proposed by the operator if deemed necessary due to the nature of the potential chemicals.

(3) If it is deemed there is an impact to surface or groundwater the operator shall report the impact as a major release in accordance with 19.15.29 NMAC and respond accordingly.

(4) If testing reveals the presence of PFAS or undisclosed chemicals, the Division may revoke authorization to operate upon consideration of whether the current operator or a previous well owners' operations contributed to the presence of PFAS or undisclosed chemicals.

D. If completing, shooting, fracturing or chemical treating results in the well's irreparable injury the division may require the operator to properly plug and abandon the well and take any necessary actions to mitigate any resulting impacts.
[19.15.16.17 NMAC - Rp, 19.15.3.115 NMAC, 12/1/2008; 19.15.16.17 NMAC - Rn, 19.15.16.16 NMAC, 2/15/2012]

19.15.16.19 LOG, COMPLETION AND WORKOVER REPORTS

A. Completion report. Within 45 days after the completion of a well drilled for oil or gas, or the recompletion of a well into a different common source or supply, the operator shall file a completion report with the division on form C-105. For the purpose of 19.15.16.19, a hole drilled or cored below fresh water that penetrates oil- or gas-bearing formations or that an owner drills is presumed to be a well drilled for oil or gas. The operator shall signify on form C-105, or alternatively on form C-103, whether the well has been hydraulically fractured.

B. Hydraulic fracture disclosure. For a hydraulically fractured well, the operator shall also complete and file with the FracFocus chemical disclosure registry a completed hydraulic fracturing disclosure within 45 days after completion, recompletion, or other hydraulic fracturing treatment of the well. The hydraulic fracturing disclosure shall be completed on a then current edition of the hydraulic fluid product component information form published by FracFocus and shall include complete and correct responses disclosing all information called for by the FracFocus form, provided that:

~~(1) the division does not require the reporting of information beyond the material safety data sheet data as described in 29 C.F.R. 1910.1200;~~

- ~~(2)~~ (1) the division does not require the reporting or disclosure of proprietary, trade secret or confidential business information; and
- ~~(3)~~ (2) the division shall download and archive New Mexico FracFocus submissions on a quarterly basis.
- C. If the FracFocus chemical disclosure registry is temporarily inoperable, the operator of a well on which hydraulic fracturing treatment(s) were performed shall file the information required by the then most recent FracFocus form with the division along with Well Completion Report (form C-105) or Sundry Notice (form C-103) reporting the hydraulic fracture treatment and file the information on the FracFocus internet website when the website is again operable. If the FracFocus chemical disclosure registry is discontinued or becomes permanently inoperable, the operator shall continue filing the information with the division until otherwise provided by rule or order.
- D. On or before [DATE], an operator shall provide the chemical disclosure list to:
- (1) All owners of minerals that are being developed at the well site;
 - (2) All surface owners, building unit owners, and residents, including tenants of both residential and commercial properties, that are within five thousand two hundred and eighty feet of the well site;
 - (3) The State Land Office if the state owns minerals that are being developed at the well site;
 - (4) The federal bureau of land management if the United States owns the minerals that are being developed at the well site;
 - (5) To any tribe if the minerals being developed at the well site are within the exterior boundary of that tribe's reservation and are subject to the jurisdiction of the division;
 - (6) All schools, child care centers, and school governing bodies within five thousand two hundred and eighty feet of the well site;
 - (7) Police departments, fire departments, emergency service agencies, and first responder agencies that have a jurisdiction that includes the well site;
 - (8) Local governments that have a jurisdiction within five thousand two hundred and eighty feet of the well site;
 - (9) The administrator of any public water system that operates:
 - (a) A surface water public water system intake that is located fifteen stream miles or less downstream from the well site;
 - (b) A groundwater source under the direct influence of a surface water public water system supply well within five thousand two hundred and eighty feet of the well site; and
 - (c) A public water system supply well completed within five thousand two hundred and eighty feet of the well site; and
- A. The chemical disclosure list must be disclosed to the above parties within thirty days after the operator's chemical disclosure to the division.

PROPOSED AMENDMENTS TO PART 25

19.15.25.14 DEMONSTRATING MECHANICAL INTEGRITY:

A. An operator may use the following methods of demonstrating internal casing integrity for casing investigations, casing repairs and wells to be placed in approved temporary abandonment:

(1) the operator may set a cast iron bridge plug within 100 feet of uppermost perforations or production casing shoe, load the casing with inert fluid and pressure test to 500 psi surface pressure with a pressure drop of not more than 10 percent over a 30 minute period;

(2) the operator may run a retrievable bridge plug or packer to within 100 feet of uppermost perforations or production casing shoe, and test the well to 500 psi surface pressure for 30 minutes with a pressure drop of not greater than 10 percent over a 30 minute period; or

(3) the operator may demonstrate that the well has been completed for less than five years and has not been connected to a pipeline.

B. During the testing described in Paragraphs (1) and (2) of Subsection A of 19.15.25.14 NMAC the operator shall:

(1) open all casing valves during the internal pressure tests and report a flow or pressure change occurring immediately before, during or immediately after the 30 minute pressure test;

(2) top off the casing with inert fluid prior to leaving the location;

(3) report flow during the test in Paragraph (2) of Subsection A of 19.15.25.14 NMAC to the appropriate division district office prior to completion of the temporary abandonment operations; the division may require remediation of the flow prior to approving the well's temporary abandonment.

C. An operator may use any method approved by the EPA in 40 C.F.R. section 146.8(c) to demonstrate external casing and cement integrity for wells to be placed in approved temporary abandonment.

D. The division shall not accept mechanical integrity tests or logs conducted more than 12 months prior to submittal.

E. The operator shall record mechanical integrity tests on a chart recorder with a maximum two hour clock and maximum 1000 pound spring, which has been calibrated within the six months prior to conducting the test. Witnesses to the test shall sign the chart. The operator shall submit the chart with form C-103 requesting approved temporary abandonment.

F. The division may approve other testing methods the operator proposes if the operator demonstrates that the test satisfies the requirements of Subsection B of 19.15.25.13 NMAC.

[19.15.25.14 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008]

WG EXHIBIT 2
NOTICE OF PUBLIC MEETING AND PUBLIC HEARING

The New Mexico Oil Conservation Commission (Commission) hereby gives notice that the Commission will hold the following public meeting and public hearing commencing at 9:00 am on November 12-15 in person, online, and via telephone. Oral comments may be made in person, on-line or by telephone. The Commission shall make available to the public a preliminary agenda for the meeting no later than two weeks prior to the meeting, and a final agenda for the meeting no later than 72 hours before the meeting. The agenda shall specify the order of the proceedings and, to the extent feasible, identify the specific time(s) that public comments are to be heard. The agenda shall be posted online on the Commission's Hearings page under "OCC Dockets," accessible from the following web page:

<http://www.emnrd.state.nm.us/OCD/hearings.html>.

Case No. 23580: APPLICATION OF WILDEARTH GUARDIANS TO AMEND THE COMMISSION'S RULES TO ADDRESS PFAS, AMENDMENTS TO 19.15.2, 19.15.7, 19.15.14, 19.15.16, AND 19.15.25 NMAC; STATEWIDE.

WildEarth Guardians proposes that the Commission amend its rules to prohibit the use of toxic perfluoroalkyl and polyfluoroalkyl substances ("PFAS") and undisclosed chemicals in downhole operations.

Purpose of Proposed Rule. The proposed rule is intended to prohibit the use of PFAS in order to prevent the generation of PFAS-contaminated produced water and nondomestic waste. The proposed rule is also intended to update disclosure and reporting rules to ensure compliance with this prohibition so that the division can protect public health and the environment from produced water and nondomestic waste generated by the oil and gas industry.

Legal Authority. The proposed rule is authorized by the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, and specifically, Section 70-2-6 (authorizing the Commission to exercise jurisdiction, authority, and control of and over all persons, matters, and things necessary or proper to enforce the statute), Sections 70-2-11 (authorizing the Commission to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), and Section 70-2-12 (enumerating the powers of the Commission and OCD). The public hearing is governed by the Commission's rule on rulemaking proceedings, 19.15.3 NMAC.

Availability of Proposed Rule. The full text of the proposed rule may be obtained from the Commission Clerk Sheila Apodaca at sheila.apodaca@emnrd.nm.gov or (505) 476-3458, or can

be viewed on the Rules page of the OCD's website at <http://www.emnrd.state.nm.us/OCD/rules.html>.

Public Hearing. The Commission will hold a public hearing on the proposed rule at the Commission meeting commencing at 9:00 am on November 12-15 in person, online, and via telephone. For information on how to participate in the hearing, please contact the Commission Clerk at occ.hearings@emnrd.nm.gov or (505) 476-3458, or visit the Hearings page on the OCD's website at <http://www.emnrd.state.nm.us/OCD/hearings.html>. The hearing may be continued to the following day(s) if not completed.

Proposed Modifications, Technical Testimony, and Cross Examination. Any person intending to present technical testimony at the hearing must file a Pre-Hearing Statement conforming to the requirements of Subsection B of 19.15.3.11 NMAC, no later than 5:00 pm on November 1, 2024. Filing may be accomplished by first class mail to the Commission Clerk, 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or by electronic mail to occ.hearings@emnrd.nm.gov. Any person who intends to present direct technical testimony must file their prehearing statement, with direct written testimony, no later than 5:00 pm on October 21, 2024. Persons presenting technical testimony will be subject to cross-examination on the subject matter of the person's direct testimony by the members of the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement.

Oral Comments. Any person who has not submitted a Pre-Hearing statement may present non-technical testimony or make an unsworn statement at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule and do not unduly repeat testimony. Any person who presents sworn, non-technical testimony will be subject to cross-examination by the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony; however, any person who presents an unsworn position statement or general public comment shall not be subject to cross examination. To help facilitate this hearing, persons wishing to present non-technical testimony or make an unsworn statement or public comment at the hearing are strongly encouraged to contact the Commission Clerk Sheila Apodaca at sheila.apodaca@emnrd.nm.gov or (505) 476-3458, prior to the hearing so that a list of commenters may be prepared in advance; however, at the close of oral public comment, the Commission shall open the virtual floor to any person who wishes to offer non-technical testimony or make an unsworn oral statement relevant to the proceedings.

Written or Electronic Comments. Any person may submit written or electronic comments on the proposed rule no later than 5:00 pm on November 15, 2024, unless extended by the Commission or the Chair of the Commission, by first class or electronic mail to the Commission

Clerk, 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or occ.hearing@emnrd.nm.gov.

Persons with Disabilities. If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, including a summary or other accessible form of document, please contact the Commission Clerk Sheila Apodaca at sheila.apodaca@emnrd.nm.gov or (505) 476-3458, or through the New Mexico Relay Network at 1-800-659-1779, no later than November 1, 2024.

Technical Information. Technical information that may be provided through Pre-Hearing Statements and written technical testimony will be made publicly available on the OCD Imaging, Case File Search portal on the division's website at <http://ocdimage.emnrd.state.nm.us/imaging/CaseFileCriteria.aspx>, and may be accessed by searching for Case File No. 23580.