

**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 CHEMICAL DISCLOSURE
AND THE USE OF PERFLUOROALKYL AND
POLYFLUOROALKYL SUBSTANCES AND
IN OIL AND GAS EXTRACTION,
19.15.2, 19.15.7, 19.15.14, 19.15.16 AND 19.15.25 NMAC**

CASE NO. 23580

**OIL CONSERVATION DIVISION'S
PRE-HEARING STATEMENT, PRE-FILED DIRECT TESTIMONY, AND EXHIBITS**

The New Mexico Oil Conservation Division ("OCD") submits this Pre-Hearing Statement pursuant to 19.15.4.13(B) NMAC.

I. IDENTIFICATION OF PARTY AND COUNSEL

OCD has intervened in this matter and is represented by undersigned counsel.

II. STATEMENT OF THE CASE

The OCD supports aspects of WildEarth Guardians' ("Guardians") Amended Application and submits modifications to the proposed rule which are necessary simplify the rule proposal and propose a structure that provides protection for public health and the environment, a predictable and consistent regulatory environment, and an enforceable PFAS definition which can be effectively implemented within the Division's existing resources.

III. PROPOSED EVIDENCE

WITNESS:

1. Brandon Powell, Deputy Director

Mr. Powell is the Deputy Director that manages the OCD's Engineering and Environmental Bureaus. He has served with OCD in various positions for more than 18 years, including district supervisor, staff manager, inspection/enforcement supervisor, and environmental specialist. Prior to joining OCD, Mr. Powell was a facility manager and environmental technician for an environmental services company. Mr. Powell provides his written direct testimony in support of aspects of the Amended Application and proposing several modifications to the proposed rule. Mr. Powell is available for cross-examination after adoption of his written testimony. The OCD reserves the right to call Mr. Powell as necessary for the purpose of rebuttal testimony.

2. Erik Martin, PhD, DABT, PBIOL

Dr. Erik J Martin, PhD, DABT, PBIOL is a Board-certified Toxicologist who specializes in environmental risk assessment (ERA) and toxicology. Dr. Martin has over 20 years of experience as a Toxicologist, including over 18 years as an Environmental Consultant applying risk-based approaches for contaminated sites to obtain regulatory closure.

Dr. Martin has managed and completed numerous toxicology and risk assessment projects ranging from the evaluation of human health impacts associated with commercial/industrial sites to qualitative ERAs for oil and gas facilities to human health and ecological risk assessments (HHERAs) as part of large environmental impact assessments. Erik has been involved in all phases of contaminated site management including Phase 1 and 2 ESAs, supplemental site investigations, HHERAs, development of remedial action plans and risk management plans, and passive and

active remediation. Dr. Martin has much experience engaging with regulatory authorities in western Canada and elsewhere.

Dr. Martin is very knowledgeable with respect to the implementation of risk-based approaches (Tier 2) for the management of contaminated sites. He has completed many projects that required modifying generic remediation guidelines or developing site-specific remediation objectives. Dr. Martin is also very familiar with the development and application of Canadian Council of Ministers of the Environment (CCME) Environmental Quality Guidelines, in addition to many other environmental guidelines used throughout Canada (Provincial guidelines – ON, AB, BC, SK) and the United States. Erik has extensive experience developing and/or applying models for conducting exposure assessment and evaluating contaminant movement in various environmental media. These models include in-house proprietary models and publicly available models from regulatory agencies such as Health Canada and the US EPA.

Dr. Martin is an active member of many professional societies dedicated to the practice of toxicology and health risk assessment including the Society of Toxicology (SOT) and the Society of Environmental Toxicology and Chemistry (SETAC).

Dr. Martin provides his written direct testimony describing the scope of his and Vertex's scope of involvement in the instant application, scientific consensus establishing a need to regulate PFAS in the context of oil and gas operations, and the derivation of the PFAS definition proposed in OCD exhibit 1. Dr. Martin is available for cross-examination after adoption of his written testimony. The OCD reserves the right to call Dr. Martin as necessary for the purpose of rebuttal testimony.

3. Court Sandau, PhD, PChem, FRSC

Dr. Sandau is the principal and senior chemist at Chemistry Matters Inc. He has worked on arson investigations and conducted ignitable liquid residue (ILR) analysis and interpretation since 2011. Dr. Sandau is a member of the Fire Investigation Association of Alberta (FIAA) and the International Association of Arson Investigators (IAAI). Since 2015, Dr. Sandau and Chemistry Matters have held the contract to provide analysis and interpretation of ILR for fire debris samples collected by the Government of Alberta's Environment, Sustainability, and Resource Development Department and for Community and Technical Services (formerly The Office of the Fire Commissioner) through the Minister of Municipal Affairs for suspected arson investigations in the province. Dr. Sandau provides both interpretation of data as well as sampling expertise in the collection of fire debris samples. Dr. Sandau also provides litigation support and testimony required as part of any prosecution proceedings evolving from supported investigations. Dr. Sandau has provided these services for wildfire investigations through the BC Wildfire Service, under the Ministry of Forests, Lands and Natural Resource Operations. In addition to arsonous wildfires, Dr. Sandau has investigated suspected arsons with The Royal Canadian Mounted Police (RCMP), the Calgary Police Service, the Calgary Fire Department, as well as various insurance companies, corporations, and independent investigation companies. Dr. Sandau has been involved in over 400 arson investigations for wildfires, vehicle fires, and structural fires (residential and commercial). Dr. Sandau continues to research and develop new approaches to ignitable liquid residue analysis through graduate students and his adjunct professor status. Dr. Sandau regularly lectures at conferences and provides training seminars for fire investigation professionals. In addition, Dr. Sandau is a world expert and provides litigation support on cases involving the

analysis and interpretation, fate and transport, source apportionment and chemical fingerprinting of polychlorinated biphenyls (PCBs), polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans (PCDD/Fs), persistent organic pollutants (POPs), per- and polyfluoroalkyl substances (PFAS) such as perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), polycyclic aromatic hydrocarbons (PAHs), naphthenic acids (NAs), petroleum hydrocarbons (PHCs), and volatile organic compounds (VOCs). Dr. Sandau has been retained as an expert for several oil spills, oil sands investigations, and superfund site cases involving multiple contaminant evaluations and source apportionment. Dr. Sandau has been engaged in over 30 litigious matters, including 11 trials and 17 depositions. He regularly lectures at local and international conferences and symposiums. Dr. Sandau is a member in good standing for the Association of the Chemical Profession of Alberta and a fellow for the Royal Society of Chemistry. Court Sandau has an h-index of 23, i10-index of 31, and his scientific publications have received over 2800 citations.

Dr. Sandau provides his written direct testimony describing the scope of his and Vertex's scope of involvement in the instant application, scientific consensus establishing a need to regulate PFAS in the context of oil and gas operations, and the derivation of the PFAS definition proposed in OCD Exhibit 1. Dr. Sandau is available for cross-examination after adoption of his written testimony. The OCD reserves the right to call Dr. Sandau as necessary for the purpose of rebuttal testimony.

EXHIBITS:

- Exhibit 1 OCD's Proposed Modifications to Amended Application
- Exhibit 2 Direct Testimony of Brandon Powell
- Exhibit 3 Curriculum Vitae of Brandon Powell

- Exhibit 4 Slides Describing OCD's Proposal
- Exhibit 5 Example 1 of FracFocus Disclosure
- Exhibit 6 Example 2 of FracFocus Disclosure
- Exhibit 7 Curriculum Vitae of Dr. Erik Martin
- Exhibit 8 Curriculum Vitae of Dr. Court Sandau
- Exhibit 9 Direct Testimony of Dr. Erik Martin
- Exhibit 10 Direct Testimony of Dr. Court Sandau

IV. PROCEDURAL MATTERS

The OCD has not identified any procedural matters to be resolved prior to the hearing.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on October 21, 2024, I served this pleading by electronic mail on:

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