

# EMNRD OCD Rebuttal to NMOGA

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NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

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# 19.15.2.7 NMAC Overview

# Change of Rules 19.15.2.H(6) NMAC

WG/NMOGA proposal	OCD Modification	Modification Reasoning
<p><u>(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.</u></p>	<p><u>(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.</u></p>	<p>This is a common industry term. Defining it may cause unintended limitations to the scope and potentially affect other rules.</p> <p>For example, OCD doesn’t define fluid. Hydraulic fracturing can happen with Nitrogen etc. that some may not understand as a fluid.</p>

# Change of Rules 19.15.2.1(8) NMAC

NMOGA proposal	OCD Modification	Modification Reasoning
<p><u>(8) “Intentionally added PFAS” means PFAS that are deliberately added during the manufacture of a chemical production to serve an intended function in the final product.</u></p>	<p><u>(8) “Intentionally added PFAS” means PFAS that are deliberately added during the manufacture of a chemical production to serve an intended function in the final product.</u></p>	<p>OCD does not agree with using the term “intentionally added” as this creates an environment where the OCD may have to assess or litigate operator responsibility for information which was not obtained by the operator. For example, if a third party adds PFAS but doesn’t tell the operator or the operator doesn’t make the third party certify it, the operator could state they didn’t know about it, so it wasn’t intentional on their part.</p>

# Change of Rules 19.15.2.P(3) NMAC

NMOGA proposal	OCD Modification	Modification Reasoning
<p><u>(3) "PFAS" means a perfluoroalkyl or polyfluoroalkyl substance with at least two or more sequential fully fluorinated carbon atom.</u></p>	<p><u>"PFAS chemicals" means any chemical with at least a perfluorinated methyl group (-CF<sub>3</sub>) or a perfluorinated methylene group (-CF<sub>2</sub>-), excluding those with a Hydrogen [H], Chlorine [Cl], Bromine [Br], or Iodine [I] atom attached to the subject carbon atom. For the purposes of completing environmental investigations, the specific PFAS chemicals that can be included in the chemical analysis include those listed in United States Environmental Protection Agency (US EPA) Standard Analytical Methods documents (specifically, Method 537.1 [drinking water], Method 533 [drinking water], Method 8327 [groundwater, surface water, and wastewater], Method 1633 [wastewater, surface water, groundwater, soil, biosolids, sediment, landfill leachate, and fish tissue], OTM-45 [air: semi-volatile and particulate-bound PFAS], and OTM-50 [air: volatile PFAS]; including updated versions for each standard method).</u></p>	<p>Using the definition they way it is proposed by OCD, we believe satisfies the NMOGA's concern of regulating substances that are not currently used while allowing the definition to advance with developments in testing and identification for PFAS chemicals that may be used in the future.</p> <p>OCD's proposal, in its entirety, avoids both unnecessary breadth, provides appropriate applicability as testing and identification methods progress, and minimizes the potential need for subsequent rulemaking, through the OCD's proposed definition and the language OCD included in 19.15.16.17. The division and the operator would be testing for constituents that could be in the fluid stream. There are times when the same Chemicals are used in both a non-oilfield and oilfield environments. This would ensure that the definition isn't so restrictive that it couldn't grow with future usages that one day may include 1 carbon atom even if those items aren't used today.</p>

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# 19.15.7.16 NMAC Overview

# Change of Rules 19.15.7.16.A NMAC

NMOGA proposal	OCD Modification	Modification Reasoning
<p>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, <del>and the chemical disclosure list.</del> In addition, the operator shall file <u>a certification that no PFAS was intentionally used in completion or recompletion of the well</u> <del>undisclosed chemicals or PFAS were used in the completion or recompletion of the well</del>, 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 <u>certification, chemical disclosure list</u>, logs and summaries within the specified 45-day period, the division shall withhold the allowable <u>authorizations</u> for the well or suspend injection authority, as appropriate, until the operator has complied with 19.15.7.16 NMAC.</p>	<p>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, <del>and the chemical disclosure list.</del> In addition, the operator shall file <u>a certification that no undisclosed chemicals or PFAS chemicals were used added to the fluid used in the completion or recompletion of the well</u>, 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 <u>certification, chemical disclosure list</u>, logs and summaries within the specified 45-day period, the division shall withhold the allowable <u>authorizations</u> for the well or suspend injection authority, as appropriate, until the operator has complied with 19.15.7.16 NMAC.</p>	<p>While OCD's and NMOGA's proposal are similar, the OCD does not endorse the inclusion of the "intentionally used" addition as previously mentioned due to enforcement ambiguity.</p>

# Change of Rules 19.15.7.16.C NMAC

NMOGA proposal	OCD Modification	Modification Reasoning
<p>C. The division shall not keep form C-105, <u>or if applicable form C-103</u>, 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 <u>60</u> <del>90</del> days from the date of the well's completion, provided, however, that the report, logs and other attached data <u>shall</u> <del>may</del>, 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.</p>	<p>C. The division shall not keep form C-105, <u>or if applicable form C-103</u>, 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 <u>60-90</u> <del>90</del> days from the date of the well's completion, provided, however, that the report, logs and other attached data <u>shall</u> <del>may</del>, 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.</p> <p>OCD Exhibit 11-0109</p>	<p>OCD is requesting to keep the 90-day timeline as necessary in certain instances for operators to get the pertinent data from third parties.</p> <p>A key point is the deadline does not trigger at the point OCD receives the sundries. Rather, it from the date of the associated completion.</p> <p>OCD believes "may" instead of "shall" is more appropriate as the data may not be requested or necessary at a hearing or be available for public review if it is subject to other state statutes regarding confidential information.</p>



# Change of Rules 19.15.7.16.E NMAC

NMOGA proposal	OCD Modification	Modification Reasoning
<p><u>E. The division shall retain each form C-105 and form C-103 indefinitely.</u></p>	<p><u><del>E. The division shall retain each form C-105 and form C-103 indefinitely.</del></u></p>	<p>This is something already performed by the OCD. This type of change could potentially conflict with the State's record retention rules.</p>

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# 19.15.14.9.C NMAC Overview

# Change of Rules 19.15.14.9.C NMAC

NMOGA proposal	OCD Modification	Modification Reasoning
<p><u>C. an applicant for a permit to drill, deepen, or plug back shall certify that they will not intentionally introduce any PFAS containing hydraulic fracturing fluids in hydraulic fracturing operations of the well; and introduce any undisclosed chemicals or PFAS in downhole operations of the well; and</u></p>	<p><u>C. an applicant for a permit to drill, deepen, or plug back shall certify that they will not introduce any additives that contain undisclosed chemicals or PFAS chemicals in downhole operations the completion or recompletion operations of the well; and</u></p>	<p>While OCD's and NMOGA's proposal are similar, the OCD does not endorse the inclusion of the "intentionally used" addition as previously mentioned due to enforcement ambiguity. Also, limiting this section purely to "hydraulic fracturing operations" may inadvertently allow PFAS containing chemicals to be used in other types of completions or recompletions.</p>

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# 19.15.14.10.A NMAC Overview

# Change of Rules 19.15.14.10.A NMAC

NMOGA proposal	OCD Modification	Modification Reasoning
<p>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 <u>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.</u> ...</p>	<p>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 <u>with 19.15.14.9 NMAC and Subsection A of 19.15.5.9 NMAC</u> <del>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.</del></p>	<p>The proposed change is for simplification purposes and to ensure consistency with the other modifications to the permitting section.</p>

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# 19.15.16.17 NMAC Overview

# Change of Rules 19.15.16.17.A&B NMAC

NMOGA proposal	OCD Modification	Modification Reasoning
<p>A. If shooting, fracturing or treating a well injures the producing formation, injection interval, casing or casing seat and 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. If 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; or</p> <p>B. If a well integrity event occurs from the hydraulic fracturing of a well and causes a loss of containment outside the target strata or damages the well 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 loss of containment or any damage.</p>	<p>A. If <del>Completingcompleting</del>, shooting, fracturing or treating a well <u>has the potential to negatively impact</u> the producing formation, injection interval, <u>communicates with other strata</u>, casing or casing seat or may create underground waste or contaminate fresh water, the operator shall within five working days notify <u>the division</u> in writing <del>the division</del> and proceed with diligence to use the appropriate method and means for rectifying <u>the loss of containment or any</u> damage.</p>	<p>NMOGA has kept what is currently in the rule for Subsection A and created a Subsection B to address the potential for impact. The OCD does not oppose this process at a high level.</p> <p>NMOGA’s construction of subsection B limits the section to “hydraulic fracturing” rather than all types of completions. This limits the applicability of the section and is not supported by the OCD.</p>

# Change of Rules 19.15.16.17 NMAC

## NMOGA proposal

B(2) If a well integrity event of the type enumerated in paragraph B of this section occurs and has a reasonable probability to contaminate surface or groundwater, then:

(a) the division may request that the supplier, service company, or operator who submitted the FracFocus hydraulic fracturing disclosure, in accordance with NMAC 19.15.16.19 (B), submit to the division additional information regarding the specific identity and/or Chemical Abstracts Service (CAS) number of any additive or chemical ingredient(s) used in the hydraulic fracturing operations, including confidential, proprietary, or trade-secreted information. Any confidential, proprietary, or trade-secreted information must be submitted to the division in an envelope clearly marked "confidential." Should the division receive a request for disclosure of any information marked "confidential," including, but not limited to, requests under NMSA 1978, §§ 14-2-1 to 14-2-12, for disclosure of the information, the division will forward the request to the party claiming the information is confidential. Not later than five business days after receiving the request, the party claiming confidentiality shall submit to the division a verification that the information remains wholly or partially confidential, identifying any portions of the information that is no longer confidential, and setting out the specific facts and legal authority supporting nondisclosure. If requested by the party seeking disclosure of the information, the division may provide to the party seeking disclosure of the information, the name, contact information, and/or other identifying information of the party claiming the information is confidential.

(b) the division may require the operator to test surface or groundwater within the immediate vicinity of the well integrity event and the division may require the operator to sample for the following contaminants:

(i) all contaminants identified on Table I of 19.15.29.12, and as may be amended; and

(ii) all chemicals disclosed in the FracFocus hydraulic fracturing disclosure in accordance with 19.15.16.19(B) NMAC and which are also identified as groundwater contaminants in 20.6.2.3103 NMAC, and as may be amended.

(c) The operator must use an appropriately certified, third-party laboratory to conduct the commensurate sampling and analysis; and will engage with the division to gain access to valid sampling points within the immediate vicinity of the well integrity event.

OCP Exhibit 14-0117



# Change of Rules 19.15.16.17 NMAC

## OCD proposal

A(2) If damage from the shooting, fracturing or treating of a well has the potential to impact surface or groundwater, then the operator will disclose to the Division all additives used in the applicable fluid stream including trade secret additives as necessary to identify all potential contaminants. If trade secret chemical information is received by the Division, the Division will hold that information confidential as required by 1978 NMSA 14-2-1. Based on the chemicals identified by the operator and the Division the operator will test for all identified potentially harmful chemicals 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 may require more robust sampling than what is proposed by the operator if deemed necessary due to the nature of the potential chemicals.

# Change of Rules 19.15.16.17 NMAC

## Modification Reasoning

- NMOGA's subsection (2) uses the statement "reasonable probability to contaminate" whereas the WG's proposal uses "potential to impact". "Reasonable probability to contaminate" requires that OCD make a technical conclusion before requiring an investigation, where the material must be evaluated to assess the level of impact. OCD at this point in time is looking to detect an impact and would not have the information to make a conclusion as to the level of contamination. As a threshold to initiate an investigation, OCD believes this language establishes too high of a burden and would delay or prevent appropriate testing.
- NMOGA's proposal places the initial request burden on the OCD by stating "the division may request" at the start of subsection (2)(a) to request additional data. This burden should be on the operator that controls the situation to approach and provide the information to OCD.
- NMOGA's subsection (2)(a) places the potential request on the supplier and service company which the OCD may or may not regulate. Historically this burden has been on the operator as the operations on the site as performed under the operator's control.
- In NMOGA's subsection (2)(b) again places the burden on the division to request data, including sampling groundwater in the vicinity of the well integrity event. At this point in time OCD is looking for what is included in the fluid stream as a potential contaminate and a groundwater investigation is better suited under 19.15.29 or 19.15.30 NMAC.
- **In summary OCD feels that NMOGA's proposal places an unnecessary burden on the OCD, requires a technical conclusion prior to investigation, creates a potential bar to appropriate testing and investigation, and is not as clear as the OCD's draft.**

# Change of Rules 19.15.16.17.A.3 NMAC

NMOGA proposal	WG proposal Modification	Modification Reasoning
<p>C. <u>If the division determines that the well integrity event caused a major release, as defined in 19.15.29 NMAC, then the operator shall report the release in accordance with 19.15.29 NMAC or has polluted, as defined in 19.15.30 NMAC, subsurface water then the operator shall abate the pollution in accordance with 19.15.30 NMAC as applicable.</u></p>	<p><u>(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.</u></p>	<p>OCD agrees with WG’s proposal. NMOGA’s proposal places the major release determination on the OCD. This determination should be initially made by the operator. WG’s proposal essentially identifies a major release, as any impact to water is deemed a major release under 19.15.29. Also, 19.15.29 already establishes when and how an incident gets transferred to 19.15.30 NMAC, so that language is unnecessary.</p>

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# 19.15.16.19 NMAC Overview

# *Change of Rules 19.15.16.19.B NMAC*

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## OCD Response

OCD does not oppose NMOGA's proposed change to this section, OCD's version only allows a scaled down version from the WG proposal if the OCC wishes to keep part of the section.

# Change of Rules 19.15.16.19.B NMAC

NMOGA proposal	OCD Modification	Modification Reasoning
<p><del>E. The chemical disclosure list must be disclosed to the above parties within thirty days after the operator's chemical disclosure to the division.</del></p>	<p>None</p>	<p>OCD does not oppose NMOGA's proposed change to this section, OCD's version only allows a scaled down version from the WG proposal for 19.15.16.19.D, if the OCC wishes to keep part of that section, then the proposed WG section would then still be needed.</p>

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# 19.15.25.14.A NMAC Overview

# Change of Rules 19.15.25.14.A NMAC

NMOGA proposal	WG Proposal	Modification Reasoning
<p><b>A.</b> An operator may use the following methods of demonstrating internal casing integrity <del>for casing investigations,</del> <u>casing repairs and</u> wells to be placed in approved temporary abandonment:</p>	<p><b>A.</b> An operator may use the following methods of demonstrating internal casing integrity <u>for casing investigations, casing repairs and</u> wells to be placed in approved temporary abandonment:</p>	<p>The OCD supports WG’s proposed section of this rule. NMOGA's version of 19.15.16.17.B(1) NMOGA states diligence includes “verifying casing integrity”. OCD does not feel it is clear enough that this verification would be accomplished as written in NMOGA’s proposed changes to 19.15.25.14.A. NMOGA’s proposed section does not reference pressure tests for casing verification. As currently written in NMOGA’s proposal, the demonstration of integrity would only be “for casing repairs” not investigations or verifications.</p>