

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

IN THE MATTER OF THE APPLICATION OF THE
NEW MEXICO OIL AND GAS ASSOCIATION FOR
AMENDMENT OF CERTAIN PROVISIONS OF
TITLE 19, CHAPTER 15, PART 16 OF THE NEW
MEXICO ADMINISTRATIVE CODE CONCERNING
LOG, COMPLETION, HYDRAULIC FRACTURING
AND WORKOVER REPORTS, STATEWIDE.

CASE NO. 14753
ORDER NO. R-13470-A

ORDER OF THE COMMISSION

THIS MATTER, having come before the New Mexico Oil Conservation Commission (Commission) on November 17, 2011 at Santa Fe, New Mexico, on the application of the New Mexico Oil and Gas Association for adoption of amendments to 19.15.16 NMAC to require operators to disclose to the Oil Conservation Division (Division) the composition of the fluids used in hydraulic fracturing and the Commission, having carefully considered public comment and the evidence and other materials submitted to it, now, on this 23rd day of January, 2012,

FINDS THAT:

1. This is a rulemaking proceeding initiated on the New Mexico Oil and Gas Association's application for adoption of amendments to 19.15.16.18 NMAC. Transcript pgs. 10-11.
2. Notice was given of the application and the hearing of this matter, and the Commission has jurisdiction of the parties and the subject matter herein.
3. After the November 17, 2011 hearing of this matter, the Commission deliberated in open session, reviewed the proposed amendments, and voted to accept them, along with some changes by the Commission. This Order indicates the Commission's analysis of certain key provisions and of the entire proposal. Additional reasons are included in the hearing transcript of the Commission deliberations.

The New Mexico Oil and Gas Association's Application

4. The New Mexico Oil and Gas Association filed its application for rule amendment on August 8, 2011 (Application). The application proposed to amend 19.15.16.18 NMAC by amending the provisions of Division rules concerning log,

completion, hydraulic fracturing, and workover reports to require the disclosure of the composition of fluids used to hydraulically fracture new and recompleted wells.

5. The amendments to 19.15.16.18 NMAC (which will be renumbered as 19.15.16.19 NMAC because of a concurrent rulemaking, Case No. 14744, that adds a new section 19.15.16.15 NMAC and necessitates the renumbering of following sections) as adopted by the Commission are attached to this Order as Attachment A. The New Mexico Oil and Gas Association's proposed amendments are in the record with its August 8, 2011 Application for Rulemaking.

The Hearing Process

6. The Commission required any person recommending modifications to the language of the proposed amendments to submit them by November 2, 2011. The Commission received recommended modifications from the Division and Earthworks' Oil and Gas Accountability Project.

7. The Commission required any person intending to present technical testimony at the hearing to file pre-hearing statements by November 9, 2011. The Commission received pre-hearing statements from the Division, the New Mexico Oil and Gas Association, Earthworks' Oil and Gas Accountability Project, and Halliburton Energy Services, Inc. Attorneys for the Division, the New Mexico Oil and Gas Association, Earthworks' Oil and Gas Accountability Project, Halliburton Energy Services, Inc., and the Independent Petroleum Association of New Mexico appeared and examined witnesses or otherwise participated in the hearing.

8. The Commission required written comments to be filed by November 9, 2011. The Commission received numerous written comments as well as public comments at the November 17, 2011 hearing.

9. The Commission held a public hearing to take testimony and other evidence on the New Mexico Oil and Gas Association's proposal and proposed modifications to the New Mexico Oil and Gas Association's proposal on November 17, 2011.

10. At the hearing, the New Mexico Oil and Gas Association presented the testimony of Larry Dillon, the Completions Manager for ConocoPhillips Company's San Juan Basin Unit. Mr. Dillon testified about ConocoPhillips' use and submission of the Hydraulic Fracturing Fluid Product Component Information Disclosure template proscribed as of July 1, 2011 by the Ground Water Protection Counsel/Interstate Oil and Gas Compact Commission's FracFocus Registry website; the information provided on the template; how the Hydraulic Fracturing Fluid Disclosure Form proposed by the Division mirrors the FracFocus template; and the amount of time required to obtain from service providers the information necessary to complete the FracFocus template.

11. At the hearing, the Division presented the testimony of Ed Martin, the District IV Supervisor for the Division. Mr. Martin testified regarding the Division's proposed modifications to the New Mexico Oil and Gas Association's proposal including requiring notification of hydraulic fracturing on a Form C-105 or C-103, the form proposed by the Division, and the administrative burdens of the Division with regard to notices and disclosures for hydraulic fracturing.

12. At the hearing, Earthworks' Oil and Gas Accountability Project presented the testimony of Gwen Lachelt, the Director of the Oil and Gas Accountability Project. Ms. Lachelt testified regarding the Earthworks' Oil and Gas Accountability Project's proposed modifications to the New Mexico Oil and Gas Association's proposed amendments, which would require 30 days prior notice to the surface owner of the planned hydraulic fracturing treatment and disclosure of all additives and chemical ingredients in the hydraulic fracturing fluids.

13. The Commission deliberated on the application in open session during its meeting on November 17, 2011.

Findings Concerning the Proposed Amendments to 19.15.16.18 NMAC

14. The New Mexico Oil and Gas Association proposed amendments to 19.15.16.18 NMAC in order to provide for the disclosure of the composition of fluids used to hydraulically fracture new and recompleted wells, yet protect the proprietary, trade secret, and confidential business information contained within the composition of the fluids. Transcript (Tr.) pgs. 10-11.

15. The New Mexico Oil and Gas Association's proposed amendments require the operators of all new or recompleted wells to disclose to the Division the composition of all chemicals appearing on Material Safety Data Sheets (MSDS) within 45 days after hydraulic fracturing operations are conducted on the well. The disclosure would be filed on either the prescribed July 1, 2011 FracFocus template, or on an alternative form approved by the Division.

16. ConocoPhillips is already disclosing hydraulic fracturing fluid composition to FracFocus. Tr. pgs. 16-17.

17. FracFocus is a website developed by groups of state agencies to document fluids used in the hydraulic fracturing process. Tr. pg. 17. It is a voluntary registry for individual companies to disclose the chemicals used in hydraulic fracturing operations. As of July 1, 2011 the FracFocus website only required disclosure of chemicals for which there are an MSDS. Tr. pg. 97; OGAP Exhibit F, 23-24.

18. Since September 2011, the FracFocus website has required disclosure of chemicals used in hydraulic fracturing regardless of whether there is an MSDS for the chemical. Tr. pg. 97-98.

19. MSDS have been adopted for chemicals that have been deemed to be hazardous in an occupational setting under standards adopted by the federal Occupational Safety and Health Administration. Tr. pg. 116.

20. FracFocus has a form that operators use to voluntarily provide information on wells that have been hydraulically fractured. The form includes well identification, components of the fracking fluids, supplier of the chemical, purpose of the chemical, and the chemical abstract service number (CAS number). Tr. page. 21.

21. The United States Environmental Protection Agency has a website individuals may view if the person is interested in toxicity characteristics of a certain ingredient or CAS number. Tr. page 22.

22. It is impractical for an operator to provide surface owners with 30 days prior notice of hydraulic fracturing fluids composition because an operator does not know the final design of the fracturing fluid 30 days in advance of pumping the job. Tr. pgs. 23-24.

23. Earthworks' Oil and Gas Accountability Project testified that in states where prior notification of hydraulic fracturing operations is required, companies file estimates of the ingredients that will be used in the hydraulic fracturing fluids and then revise the information within 60 days after fracturing occurs. Tr. pg. 137.

24. This estimated information is already available on the Division's website or FracFocus' website from other fracturing jobs performed on other wells in those formations. Tr. pgs. 47, 48, and 128.

25. At each well site there are MSDS present that address how to deal with exposure to potentially hazardous chemicals. Tr. pgs. 26.

26. An MSDS is required to be present with a particular chemical or additive at all times – from the vendor's yard through transportation to location. Tr. pg. 26.

27. MSDS are widely accepted by a variety of first responder organizations like police and fire departments. Limiting reporting to chemicals for which there is an MSDS is administratively efficient. Tr. pg. 58.

28. Chemicals used in hydraulic fracturing have MSDS. Tr. pg. 41.

29. The Division proposed certain modifications to the New Mexico Oil and Gas Association's application including that a Form C-105 to be filed within 20 days, not 45 days as proposed by the New Mexico Oil and Gas Association, and to create a form separate from FracFocus' form. Tr. pg. 53-54.

30. The Division proposed a form similar to FracFocus' form. Tr. pg. 37.

31. The Division's witness, Ed Martin, explained that the Division's form requires location of the well to be reported in unit, letter, section, township, and range. The FracFocus form identifies wells by latitude and longitude and its use would require operators and the public to determine a well's footage location by using the API number. Tr. pgs. 49-50, 55, and 65.

32. Unlike the FracFocus form, the Division's proposed form would require the total volume of fluid pumped because the Division believes that the public is interested in seeing how much water and chemicals in total are used to accomplish fracture stimulation. Tr. pg. 55.

33. The Division's proposed form will be as easy to use as the FracFocus form. Tr. pg. 38.

34. The Division maintains files on every oil or gas well in New Mexico; the files contain every document related to the well and the files are available to the public either through the Division's website or by visiting a district office to review the physical file. Tr. page 56.

35. The well files provide an accurate picture of what occurred downhole. Tr. pgs. 56-57.

36. By requiring a disclosure form to be filed with the Division, the public will have a complete picture of the well, from how it was drilled, perforated, and stimulated, including the components of the hydraulic fracturing fluids. Tr. pg. 57.

37. Earthworks' Oil and Gas Accountability Project proposed that all ingredients be disclosed, even confidential business, proprietary, or trade secret information pursuant to procedures that "deal with the proprietary commercial information". Tr. pgs. 131-132. Earthworks' Oil and Gas Accountability Project, however, did not propose modifications that included procedures for dealing with proprietary, trade secret, or confidential commercial information or state what the Division should do with confidential information once the operator provided it to the Division.

38. If the Division was required to obtain confidential business, trade secret, or proprietary information but keep it confidential, the Division would not be able to efficiently manage the confidential information versus the public information because of limited resources and would have no process for evaluating or using the confidential information. Tr. pg. 59.

39. Earthworks' Oil and Gas Accountability Project agrees that it is appropriate for a disclosure form to be filed with the Division. Tr. pgs. 99 and 121.

40. The New Mexico Oil and Gas Association's witness, Larry Dillon, testified that he believed that the Division's proposed form is an acceptable and workable means of disclosing potentially hazardous ingredients. Tr. pg. 38.

41. Mr. Dillon testified that ConocoPhillips would not have a problem reporting to both the Division and FracFocus. Tr. pg. 50.

42. The New Mexico Oil and Gas Association's proposed amendment of 19.15.16.18 NMAC should be adopted as modified by the Commission based upon the Division's proposed modifications.

43. Adoption of the proposed amendments will result in the mandatory disclosure of the composition of hydraulic fracturing fluids by requiring disclosure to publicly accessible records of each hazardous chemical that is required by the Occupation Health and Safety Administration regulations to be listed on an MSDS. Tr. pgs. 46 and 58.

44. Use of a Division approved disclosure form will allow operators to easily meet the disclosure requirements and gives the Division and Commission control of the form's contents. Tr. pg. 54.

Conclusions of Law

45. NMSA 1978, Sections 70-2-11 and 70-2-12.B grant the Division authority to implement rules to carry out the purposes of the Oil and Gas Act, Chapter 70, NMSA 1978 Article 2 (the Act). NMSA 1978, Section 70-2-6.B provides that the Commission shall have concurrent jurisdiction or authority with the Division to the extent necessary for the Commission to perform its duties. Generally, the Commission adopts rules, the Division implements those rules, and the Commission hears any final administrative adjudicatory proceedings.

46. The Commission (and the Division) has a statutory duty to prevent waste and protect correlative rights. NMSA 1978, Section 70-2-11(A) and *Continental Oil Co. v. OCC*, 70 N.M. at 323, 373 P.2d at 817 (Sup.Ct. 1962).

47. Section 70-2-12 also gives the Division, and by extension the Commission, the powers necessary to carry out its duties to prevent waste, protect correlative rights, and protect public health and the environment, including "the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, tanks, plants, refineries and all means and modes of transportation and equipment; to hold hearings; to provide for the keeping or records and the making of reports and for the checking of the accuracy of the records and reports..." (NMSA 1978, Section 70-2-12(A)). In addition, Section 70-2-12 gives the Division, and by extension the Commission, the specific power to "require reports showing locations of all oil or gas

wells and for the filing of logs and drilling records or reports.” (NMSA 1978, Section 70-2-12(B)(3)).

48. The Division has the responsibility to effectively enforce rules promulgated by the Commission. NMSA 1978, Section 70-2-6.A. The adoption by the Commission of a rule requiring operators to disclose the components of hydraulic fracturing fluids that have an MSDS and are not confidential business, proprietary, or trade secret information is a rule that the Division has the staff and resources to enforce.

49. The Division has the authority to collect data and therefore is within its statutory authority to require operators to disclose hydraulic fracturing fluids. NMSA 1978, Section 70-2-12.A.

50. The requirements of the amendments proposed by the New Mexico Oil and Gas Association, as modified, are reasonable, and alternative regulatory methods would not accomplish these objectives.

51. The Commission concludes that amendments to 19.15.16.18 NMAC (which will be renumbered as 19.15.16.19 NMAC) be adopted in the form attached hereto as **Attachment A**.

IT IS THEREFORE ORDERED THAT:

1. The Commission hereby adopts the amendments to 19.15.16.18 NMAC (which will be renumbered as 19.15.16.19 NMAC) of the Division rules shown in Attachment A to this Order, effective as of the date of publication thereof in the New Mexico Register.

2. Division staff is instructed to secure prompt publication of the referenced rule changes in the New Mexico Register.

3. The Commission retains jurisdiction of this matter for entry of such further orders as may be necessary.

DONE at Santa Fe, New Mexico on the 23rd of January 2012.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION



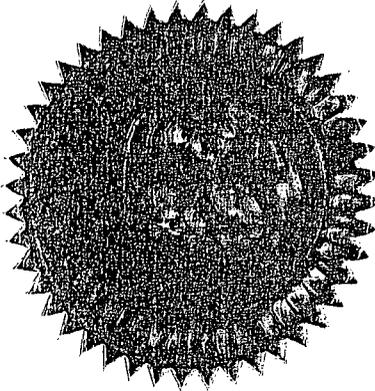
SCOTT DAWSON, Member



ROBERT BALCH, Member



JAMI BAILEY, Chair



SEAL

ATTACHMENT A

~~[19.15.16.18]~~ 19.15.16.19 LOG, COMPLETION AND WORKOVER REPORTS:

A. Within 20 days after the completion of a well drilled for oil or gas, or the recompletion of a well into a different common source of supply, the operator shall file a completion report with the division on form C-105. For the purpose of ~~[19.15.16.18]~~ 19.15.16.19 NMAC, a hole drilled or cored below fresh water or 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. For a hydraulically fractured well, the operator shall also complete and file the division's hydraulic fracturing disclosure form within 45 days after completion of the well. The hydraulic fracture disclosure form shall include the well API number; the well name; the well number; the well location by unit, lot, section, township and range; the county where the well is located; the well's surface and bottom hole locations by footage from the section line; the operator's name and address; the operator's OGRID; the operator's phone number; the fracture date; the well's production type (oil or gas); the pool code; the well's gross fractured interval; the well's true vertical depth; the total volume of fluid pumped; and a description of the hydraulic fluid composition and concentration listing each ingredient and for each ingredient the trade name, supplier, purpose, chemical abstract service number, maximum ingredient concentration in additive as percentage by mass, maximum ingredient concentration in the hydraulic fracturing fluid as percentage by mass; certification by the operator that the information included on the hydraulic fracture disclosure form is true and complete to the best of the operator's knowledge and belief; and the signature, printed name, e-mail address and title of the operator or operator's designated representative. 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. The division does not require the reporting or disclosure of proprietary, trade secret or confidential business information.

[19.15.16.19 NMAC - Rp, 19.15.13.1104 NMAC, 12/1/08; 19.15.16.19 NMAC - Rn & A, 19.15.16.18 NMAC, x/x/12]