

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION COMMISSION RECEIVED OGD
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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

THE OIL CONSERVATION DIVISION'S PROPOSED
FACTS AND CONCLUSIONS OF LAW

COMES NOW the Oil Conservation Division (Division), with the following proposed facts and conclusions of law:

Findings of Facts:

1. This matter came before the Oil Conservation Commission (Commission) on November 17, 2011.
2. The New Mexico Oil and Gas Association (NMOGA) proposed amendment of 19.15.16 NMAC to require operators to disclose to the Oil Conservation Division (Division) the composition of the fluids used in hydraulic fracturing. *Transcript* pgs 10-11.
3. NMOGA's witness, Larry Dillon, testified that ConocoPhillips is already disclosing hydraulic fracturing fluid composition to FracFocus. Pgs. 16 – 17.
4. FracFocus is a website developed by groups of state agencies to document fluids used in the hydraulic fracturing process. Pg. 17.

5. FracFocus has a form which operators use to provide information on the well which has 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). Pg. 21.
6. The Environmental Protection Agency (EPA) has a website an individual may view if the person is interested in toxicity characteristics of a certain ingredient or CAS number. Pg. 22.
7. It is impractical for an operator to provide surface owners with 30 days advanced notice of hydraulic fracking activity because an operator does not know the final design of the fracturing fluid 30 days in advance of pumping the job. Pgs. 23-24.
8. At each well site there are Material Safety Data Sheets (MSDS) present which address how to deal with exposure to potentially hazardous chemicals. Pg. 26.
9. A MSDS is required to be present with a particular chemical or additive at all time; from the vendor's yard through transportation to location. Pg 26.
10. All chemicals used in hydraulic fracturing have MSDS. Pg. 41.
11. The Division proposed a form similar to FracFocus' form. Pg. 37.
12. The Division form will be as easy to use as the FracFocus form. Pg. 38.
13. NMOGA's witness, Mr. Dillon, believes that the Division's form will be an acceptable and workable means of disclosing potentially hazardous ingredients. Pg. 38.
14. Mr. Dillon testified that ConocoPhillips would not have a problem reporting to both the Division and FracFocus.
15. The Division formed a workgroup to review NMOGA's application. The workgroup members included Carl Chavez of the Environmental Bureau, Terry Warnell of the

Engineering Bureau, Gabrielle Gerholt of the Legal Bureau and representatives of all the Division's district offices. Pg. 53.

16. The Division proposed certain modifications to NMOGA's application including that a C-105 to be filed within 20 days and to create a form separate from FracFocus' form.

Pgs 53 – 54.

17. The Division's witness, Ed Martin, is the District 4 supervisor. He approves applications to drill, well completions, well activity, anything related to a well, inspection of those well locations, plugging approval, and pressure testing of wells. Pg. 52.

18. Mr. Martin explained that the Division's form required location of the well to be in unit, letter, section, township and range. That the Division's form required the total volume of fluid pumped because the Division believed the public would be interested in seeing how much water and chemicals in total were used to accomplish the fracture stimulation. Pg. 55.

19. The Division maintains files on every well in New Mexico, the files contain every document related to the well and the files are available to the public either by the Division's website or by visiting a district office to review the physical file. Pg. 56.

20. The well files provide an accurate picture of what has occurred downhole. Pgs 56 – 57.

21. By requiring a disclosure form to be filed with the Division, the public would have a complete picture of the well, from how it was drilled, perforated, fracked and the components of the fracturing. Pg. 57.

22. If the Division was required to obtain proprietary information but keep it confidential the Division would not be able to efficiently manage the confidential information versus public information. Pg. 59.

23. The Division was not granted authority by the Legislature to enforce the Surface Owner's Protection Act. Pg. 60.

24. The Oil and Gas Accountability Project (OGAP) agrees that it would be appropriate for a disclosure form to be filed with the Oil Conservation Division. Pg. 99 and 121.

Conclusions of Law:

1. The Commission is empowered to adopt rules. NMSA 70-2-11.
2. The Commission (and the Division) has the statutory duty to prevent waste and protect correlative rights. NMSA 70-2-11(A) and *Continental Oil Co. v. OCC*, 70 N.M. at 323, 373 P.2d at 817 (Sup. Ct. 1962).
3. The Division has the responsibility to effectively enforce regulations promulgated by the Commission. NMSA 70-2-6(A). The adoption by the Commission requiring operators to disclose hydraulic fracturing fluids is a regulation which the Division can effectively enforce.
4. The Division has the authority to collect data and therefore is within its statutory authority to require operators to disclose hydraulic fracturing fluids. NMSA 70-2-12(A)

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following party on January 6, 2012:

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