ATTACHMENT B

BEFORE THE STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
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

Petitioner. **CASE NO. 23580**

Proposed Statement of Reasons on Behalf of WildEarth Guardians and New Energy Economy

1. Petitioner WildEarth Guardians ("Guardians"), a nonprofit corporation dedicated to protecting and restoring the health of New Mexico and the western United States.
2. Intervenor New Energy Economy ("NEE") is a nonprofit corporation whose mission is to build a renewable energy future for health and the environment.
3. On May 25, 2023 WildEarth Guardians petitioned the Commission to adopt rules that would ban PFAS and require full chemical disclosure in downhole oil and gas operations. The Application included a draft of the proposed rule change and a proposed legal notice. 19.15.3.8(A) NMAC.
4. At a public meeting on July 13, 2023, the Commission unanimously voted to hold a hearing on the proposed rule change.
5. On December 14, 2023, 2023 the Commission entered a procedural order scheduling a hearing on the matter for February 26 through March 1, 2024. 19.15.3.8(C) NMAC.

6. On January 19, 2024 the Oil Conservation Division ("OCD") filed its Unopposed Motion to Vacate the Hearing and Set Status Conference. The purpose Motion was to provide OCD with additional time to procure expert witnesses and to allow the parties to continue discussion about the proposed rule that would be the subject of a future rulemaking hearing. The Commission granted OCD's motion on January 31, 2024.

7. On June 3, 2024, the Commission entered an Amended Procedural Order setting the rulemaking hearing for November 12 to November 15, 2024.

8. On August 23, 2024, Guardians submitted its Amended Application for Rulemaking and attached its First Amended Proposed Rule and a proposed legal notice.

9. Pre-hearing statements were submitted by WildEarth Guardians, New Energy Economy, OCD, and the New Mexico Oil and Gas Association ("NMOGA").

10. Guardians introduced four witnesses in the proceeding: Dusty Howitt, Dr. John Spear, Dr. David Brown, and Melissa Troutman.

11. Dusty Horwitt is a lawyer and the author of seven reports related to the use of PFAS and the loopholes which prevent full disclosure of chemicals used in oil and operations, including a report focused on New Mexico. His testimony explains that PFAS have been used in New Mexico oil and gas operations, gaps exist in New Mexico's chemical disclosure reporting requirements, and that these gaps prevent regulators and the public from knowing all chemicals that are used in oil and gas downhole operations. His testimony further explains that other states have closed similar data gaps.

12. Professor John Spear is a professor of civil and environmental engineering at the Colorado School of Mines and his specialty is subsurface environmental microbiology. Dr. Spear's testimony explains that oil and gas wells will eventually leak at some point in

the future due to microbial induced corrosivity, seismicity, or a combination of those two factors, and this requires indefinite retention of the disclosed chemical information. Dr. Spear also explains that the subsurface is alive and is an ecosystem that should be protected through banning PFAS and undisclosed chemicals. His testimony further shows chemicals used in downhole operations can spread through fate and transport and that deep strata can and do communicate with shallower strata.

13. Dr. David Brown is a public health toxicologist. Dr. Brown has extensive experience working on public health issues affecting communities in the Marcellus Shale oil and gas fields and led the Southwest Pennsylvania Environmental Health Project. Dr. Brown's testimony focuses on the toxicity of PFAS, the need for complete chemical disclosure from a public health standpoint, and the public health lessons learned from the Marcellus Shale.

14. Guardians also presented one fact witness, Melissa Troutman, who compiled publicly available OCD spills data for the Commission.

15. NEE presented one witness, Dr. Kristin Hansen. Dr. Hansen is a Ph.D chemist with 26 years of experience working with and researching PFAS compounds in 3M Corporation Environmental Lab. Dr. Hansen's testimony covers PFAS mobility, persistence, toxicity, and the proposed scope of definitions of PFAS for purposes of the proposed rule. Dr. Hansen's testimony also explains the necessity for this rule to protect human health and the environment, and that any scientific uncertainty must be resolved by prevention given the toxicological effects of PFAS compounds.

FINDINGS OF THE COMMISSION

The Commission finds the following:

16. PFAS compounds are a serious threat to public health and the environment. WG Ex. 75 FR Vol. 89 No. 113 June 11, 2024; Brown Tr. 252:21-25, 253:1; Martin, Tr. 11/13/2024 225:2-6, 230:6-25; 231:1-2; Hansen, Tr. 11/14/2024 154:7-13; 156:2-3, 165:15-21, 166:1-12; Spear, Tr. 11/13/2024 69:1-8.

17. PFAS compounds have been used in oil and gas downhole operations in New Mexico. Horwitt, 11/12/2024 Tr. 11-12-2024 195:23-25; 196:1-3; WG Ex. 10 8:5-14.

18. PFAS compounds can contaminate freshwater resources through loss of well integrity events and through spills of produced water, drilling fluids, or hydraulic fracturing fluids. Hansen, Tr. 11/14/2024 156:14-20; Spear, Tr. 11/13/2024 77:9-17; Martin, Tr. 11/13/2024 215:19-25; 216:1-2.

19. Well integrity events happen roughly once a year in New Mexico. Powell, Tr. 11/14/2024 96:18-25; 97:1-7.

20. Produced water and other fluid spills happen with great frequency and high volumes in New Mexico. WG Ex. 91, 92, and 93.

21. To protect public health and the environment, the Commission must ban the use of PFAS compounds in downhole operations. Hansen, Tr. 11/14/2024 166-167; 188; 192:16-20; 200-202; NEE Exhibit B, Rebuttal Testimony of Kristen Hansen, Ph.D., at 9-10; Exhibit KH-4; Powell, Tr. 11/13/2024 271:23-24; Anderson, Tr. 11/14/2024 195:6-9.

22. Banning the use of PFAS in all downhole operations is necessary to protect the public health and environment, rather than limiting the ban solely to well completions and recompletions. Horwitt, Tr. 11/12/2024 197:3-8; Powell, Tr. 11/14/2024 221:20-25; 222:1-11; 258:4-19; Powell, 11/14/2024 49:1-7; 258:4-19.

23. Adopting the following broad definition of PFAS chemicals is more protective of public health and the environment than narrower definitions, and it has been adopted by 23 states and federal legislation: "a perfluoroalkyl or polyfluoroalkyl substance with at least one fully fluorinated carbon atom." WG Ex. 8; NEE Exhibit B, Rebuttal Technical Testimony of Dr. Kristen Hansen, at 1, 3; Hansen, Tr. 11/14/2024 155:12-14; 172:5-25; 173:1-9.

24. In order to implement a ban on PFAS, full chemical disclosure in downhole operations is necessary to ensure compliance. The current disclosure exemption for trade secret chemicals prevents full chemical disclosure. Absent full disclosure, there is no way to know if PFAS chemicals are being used in downhole operations in New Mexico. 19.15.16.19(B)(2); Powell, Tr. 11/14/2024 247:5-6; Hansen, 11/14/2024 156:23-25; 157:1-2; Horwitt Tr. 11/12/2024 199:10-15; Richardson, Tr. 11/14/2024 257:7-13.

25. Lack of chemical disclosure impedes public health work and requires medical professionals to make guesses instead of dealing with data. Brown, Tr. 11/12/2024 249:6-11; 281:20-25; 282:1-5; WG Ex. 57 7:18-21; 10:17-19;

26. The Division does not verify trade secret claims. Whether a chemical compound is claimed as a trade secret is a decision made by industry. Powell, Tr. 11/14/2024 255:9-17.

27. Millions of pounds of undisclosed trade secret chemicals have been used in New Mexico oil and gas operations. WG Ex. 10 9:7-9.

28. Other chemicals, in addition to PFAS compounds, can contaminate freshwater resources through loss of well integrity events, and through spills of produced water, drilling fluids, or hydraulic fracturing fluids. Powell, Tr. 11/14/2024 274:12-17.

29. Requiring full chemical disclosure is necessary for thorough investigation of events that have the potential to contaminate freshwater, whether loss of well integrity or spills. Sandau, Tr. 11/13/2024 171:22-25;172:1-25; 173:1-23; 189:13-25; 190:1-6; 174:8-25; 175:2-25; 176:1. Hansen, Tr. 11/14/2024 161:22-25; 162:1-20.

30. The Division must retain these disclosures indefinitely to protect public health and the environment. Powell, Tr. 11/14/2024 255:9-17; Spear, Tr. 11/14/2024 78:5-25; 79:1-14; 100:12-25; 101:1-17; 114:17-25; 115:1-11.

31. Full chemical disclosure provides first responders with information needed to protect their health. Hansen, 11/14/2024 156:23-25; 157:1-2; Horwitt, Tr. 11/12/2024 200:12-20.

32. Full chemical disclosure provides necessary data to healthcare professionals. Hansen, 11/14/2024 156:23-25; 157:1-2; WG Ex. 57 7:18-21; 10:17-19; Brown, Tr. 11/12/2024 281:20-25; 282:1-5.

33. Full chemical disclosure allows owners of private water wells to perform baseline testing before and after downhole operations commence near their property, thereby providing environmental and public health protections. Horwitt, Tr. 11/12/2024 218:12-13; 219:3-9; Richardson, Tr. 11/14/2024 251:6-11.

34. In order to protect the subterranean environment, full chemical disclosure is necessary. Spear, Tr. 11/13/2024 69:1-8; 72:7-12; 88:7-15; 110:21-25; 111:1-6.

35. Academia, regulators, and the public need the data provided by full chemical disclosure and can conduct scientific research and studies in order to make informed decisions regarding public health and the environment. Spear, Tr. 11/13/2024 72:7-12; 81:6-18; 110:21-25; Horwitt Tr. 11-12-2024 200:21-25; 201:1-3; Hansen, Tr. 11/14/2024 160:16-25; 161:1;170:20-22; 171:6-7; Sandau, Tr. 11/13/2024 178:23-25; 179:1-5;

Martin, Tr. 11/13/2024 227:8-18; WG Exhibit 88. Jiang Et Al. "Characterization of Produced Water and Surrounding Surface Water in the Permian Basin, United States" at 8.

36. Banning undisclosed chemicals in downhole operations achieves chemical transparency while providing trade secret holders with a choice to voluntarily disclose chemicals used in downhole operations, or to withhold disclosure and not use those undisclosed chemicals in their downhole operations. Powell, Tr. 11/14/2024 218:23-25; 219:2; Powell, Tr. 11/14/2024 Powell, 248:10-15; 229:10-25; 230:1-2; Hansen, Tr. 11/14/2024 204:17-25; 205:1-12.

37. Chemicals that are voluntarily disclosed are not trade secrets, because under the Uniform Trade Secrets Act trade secrets must be "the subject of efforts that are reasonable under the circumstances to maintain its secrecy." NMSA § 1978 57-3A-(2)(D)(2). Therefore, OCD will neither possess any trade secret information under this proposed rule, nor assume any risk of misappropriation liability when sharing disclosures. See NMSA § 1978 57-3A-(2)(B)(2) (defining "misappropriation").

38. Adoption of the Proposed Rule marked as Attachment A is necessary to protect public health and the environment from PFAS compounds and undisclosed chemicals used in downhole operations pursuant to the Commission's authority under NMSA 1978 §§ 70-2-12(B)(15), (21), and (22).

PROPOSED AMENDMENTS TO PART 2

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.

39. The definition of "chemical" is necessary to ensure that chemical disclosures are traceable to unique chemicals that have a Chemical Abstract Services ("CAS") number or another unique chemical identifier. Powell, Tr. 11/14/2024 224:6-20.

40. Defining "chemical disclosure list" is necessary to ensure that notifications required under the preposed rule include all chemicals used in downhole operations.

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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.

41. Defining "PFAS chemicals" as those that have "at least one fully fluorinated carbon atom" is necessary to protect the public health and the environment NMSA 1978

§70-2-12(B)(15), (21), and (22) (Providing the Commission with authority to make rules to regulate produced water and nondomestic wastes for protection of public health and the environment) WG Ex. 8; NEE Exhibit B, Rebuttal Technical Testimony of Dr. Kristen Hansen, at 1, 3; Hansen, Tr. 11/14/2024 155:12-14; 172:5-25; 173:1-9.

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T. Definitions beginning with the letter "T".

(7) "Trade secret" means any information meeting the definition in NMSA 1978 § 57-3A-2(D).

~~(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.

42. Defining trade secrets in accordance with NMSA 1978 § 57-3A-2(D) ensures that this term is defined in OCD regulations in a manner that is consistent with state law.

43. Defining "trade secrets" in accordance with state law is necessary to clarify that the proposed rule does not require disclosure of trade secret information as provided in 19.15.16.19(B)(2). ("the division does not require the reporting or disclosure of proprietary, trade secret or confidential business information.") However, chemicals that are voluntarily disclosed are not trade secrets, because under the Uniform Trade Secrets Act trade secrets must be "the subject of efforts that are reasonable under the circumstances to maintain its secrecy." NMSA § 1978 57-3A-(2)(D)(2). Therefore, holders of trade secrets have a choice of whether to voluntarily disclose identities of chemicals used downhole, or withhold them as trade secrets and not use them downhole in New Mexico.

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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.

44. Adding a new definition for "undisclosed chemicals" is necessary to implement a ban on undisclosed chemicals.

45. The Commission finds the amendments to 19.15.2 NMAC are necessary to protect public health and the environment.

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 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]

46. The addition of new certifications in 19.15.7.16(A) will implement a ban on PFAS chemicals and undisclosed chemicals in downhole operations and ensure full chemical disclosure of chemicals used.

47. The change from "may" to "shall" in 19.15.7.16(C) recognizes that the chemical data contemplated by this part will not be subject to a trade secret claim because all chemicals disclosures will be made voluntarily.

48. The addition of 19.15.7.16(D) is necessary to ensure chemical disclosures remain up to date.

49. The addition of 19.15.7.16(D) is necessary to ensure that chemicals disclosure data is available when needed including future events that threaten the environment and public health. Powell, Tr. 11/14/2024 255:9-17; Spear, Tr. 11/14/2024 78:5-25; 79:1-14; 100:12-25; 101:1-17; 114:17-25; 115:1-11.

50. The Commission finds the amendments to 19.15.7 NMAC are necessary to protect public health and the environment.

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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

~~C~~ 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]

51. The new certifications in 19.15.14.9(D), that PFAS and undisclosed chemicals will not be used in downhole operations, are necessary to enforce a ban on each and ensure that operators cannot get a permit if they do not comply.

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.

52. The amendment to 19.15.14.10(A) requires OCD to deny permits to any operator that will ensure that operators who do not comply with the new PFAS and undisclosed chemicals ban. This will help ensure compliance with the new regulatory requirements.

53. The Commission finds the amendments to 19.15.14 NMAC are necessary to protect public health and the environment.

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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 ~~injures~~ 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, accredited 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 may require 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 take enforcement action pursuant to 19.15.5 NMAC.

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.

54. The amendments to 19.15.16.17 provide testing provisions in the event that a loss of well integrity threatens freshwater resources.

55. Using an accredited laboratory, as required in the new 19.15.16.17(A)(2), ensures the accuracy and reliability of testing results.

56. The new 19.15.16.17(A)(3) clarifies that a loss of well integrity that threatens freshwater resources qualifies as a major release under OCD regulations.

57. The new 19.15.16.17(A)(4) clarifies that a loss of well integrity that threatens freshwater resources is subject to OCD enforcement action if testing reveals the presence of PFAS or undisclosed chemicals, which are banned by the new rule.

[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 the following persons and entities unless the person or entity opts out of the notification:

(1) All owners of a private water well that are within five thousand two hundred and eighty feet of the well site;

(2) The State Land Office if the state owns minerals that are being developed at the well site;

(3) The federal bureau of land management if the United States owns the minerals that are being developed at the well site;

(4) 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;

(5) Police departments, fire departments, emergency service agencies, and first responder agencies that have a jurisdiction that includes the well site;

(6) Local governments that have a jurisdiction within five thousand two hundred and eighty feet of the well site;

(7) 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

E. The chemical disclosure list must be disclosed to the above parties within thirty days after the operator's chemical disclosure to the division.

F. Chemical disclosure lists shall be made conspicuously available on the Energy, Minerals and Natural Resources Department's website.

58. Striking 19.15.16.19(B)(1) is necessary to eliminate gaps in chemical disclosure that exist in current law. Safety data sheets exempt disclosure of trade secret information and often do not otherwise fully disclose chemical identities. 29 C.F.R. 1910.1200(i); Horwitt, Tr. 11/12/2024 197:18-23.

59. The new notification provisions in 19.15.16.19(D) ensure that chemical disclosures are provided to certain persons and entities and are publicly available to all through the Energy, Mineral, and Natural Resources Department's website.

60. The Commission finds the amendments to 19.15.16 NMAC are necessary to protect public health and the environment.

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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]

61. The proposed change to 19.15.25.14 NMAC reflects the process change to how mechanical integrity tests can be used for investigations and subsequent repairs.

62. The Commission finds the amendments to 19.15.25 NMAC are necessary to protect public health and the environment.

PROPOSED CONCLUSIONS

THE COMMISSION CONCLUDES THAT:

1. The Commission has jurisdiction, under the Oil and Gas Act, NMSA 1978, §§ 70-2-1 to -38, over the parties and subject matter of this case.

2. The Commission has legal authority, under the Oil and Gas Act, to enact the proposed rule changes.

3. The Commission provided due public notice and an opportunity for the public to provide comments regarding the proposed rule change. A public hearing was held and reasonable opportunity was provided for all persons present to provide testimony, evidence and exhibits.

4. All Commissioners were present at the public hearing and considered all the evidence presented during the hearing, including the proposed amendments submitted by the parties. The Commission deliberated after the hearing and adopted the rule changes as stated above.

5. The Commission concludes that there is substantial evidence in the record to support the proposed rule changes and that these rule changes are within the authority of the Commission under the Oil and Gas Act, and that these rule changes are reasonable and further the goals of the Oil and Gas Act.

Respectfully submitted February 19, 2025,

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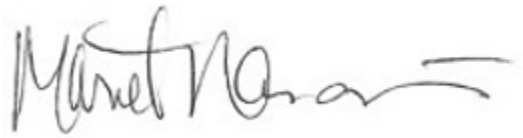
NEW ENERGY ECONOMY



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ATTACHMENT B

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Proposed Statement of Reasons was e-mailed to the following on February 19, 2025:

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