

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

WILDEARTH GUARDIANS' AND NEW ENERGY ECONOMY'S
JOINT MOTION FOR CLARIFICATION

Joint Movants, WildEarth Guardians and New Energy Economy, request clarification regarding the Commission's decision on the scope of the PFAS ban adopted in the above referenced rulemaking:

1. On March 11, 2025, the Commission held deliberations in Case 23580.
2. During these deliberations, the Commission adopted the Oil Conservation Division's ("OCD") redlined proposal for 19.15.14.9(C) NMAC which limits the Commission's ban on PFAS substances to only completion and recompletion activities.
3. However, OCD's redline proposal for 19.15.14.9(C) NMAC was based on their *prior*, *pre-hearing* position.

4. The distinction between banning PFAS in completions and recompletions versus banning PFAS in all downhole operations was a matter of significant discussion at the hearing.¹ The import of that evidence is as follows: banning PFAS *only* to completion and recompletion activities as opposed to banning PFAS in all downhole operations, has the unintended consequence of narrowing the PFAS-ban only to fracking operations and omitting coverage of all other downhole operations including well treatment, maintenance, drilling, and enhanced oil recovery.² Given that testimony, OCD witness Brandon Powell agreed in response to questions from Commissioner Ampomah that OCD supports a PFAS ban in all downhole operations.³ Mr. Powell confirmed this position in response to questions from OCD's counsel.⁴
5. The proposed amendments to 19.15.14.9 NMAC addressed two issues: banning undisclosed chemicals and the scope of any PFAS ban that the Commission would impose. When debating amendments to 19.15.14.9 NMAC, the Commission only addressed one of these issues – whether to ban undisclosed chemicals, which was denied

¹ See e.g., Powell, Tr. 11/14/2024 49:1-7; 221:20-25; 222:1-11; 258:4-19; Horwitt, Tr. 11/12/2024 197:3-8; See also, WG Exhibit 37 Juliane Glüge et al. An Overview of the Uses of Per- and Polyfluoroalkyl Substances (PFAS) –Electronic Supplementary Information 1. Environmental Science: Processes and Impacts (Oct. 30, 2020) at 50-51, 53. (Since 1956, PFAS including fluorosurfactants had been used or proposed to be used globally in oil and gas extraction methods other than fracking, including chemical-driven gas production, chemical flooding, and the drilling that precedes fracking and other oil and gas production techniques.)

² Powell, Tr. 11/14/2024 221:20-25; 222:1-11; 258:4-19.

³ Powell, Tr. 11/14/2024 258:4-19. (“DR. AMPOMAH: OCD supports action regarding the banning of PFAS as defined through the testimony of other Division witnesses as a completion chemical additive. What about enhanced recovery? What about drilling? THE WITNESS: So that’s what I mentioned earlier. A lot of the discussion up to this was around completion and recompletion activities so that’s why that was stated that way. But after relooking at the -- how WildEarth Guardians proposed it, OCD supports the ban of PFAS in all downhole activities. DR. AMPOMAH: So in the final rule that we’ll get is going to be downhole activities, not necessarily completion. THE WITNESS: Correct.”)

⁴ Powell Tr. 11/14/2024 49:1-7.

by a 2-1 vote. However, by adopting OCD's prehearing proposed redline, the Commission, perhaps unintentionally, also decided not to extend the PFAS ban to all downhole operations. Yet, the Commission did not affirmatively address in its debate whether the PFAS ban applied only to completion and recompletion activities or to banning PFAS in all downhole operations.

6. Guardians and New Energy Economy discussed the downhole operations issue in their brief and requested a PFAS ban that covers all downhole operations consistent with their redlined proposal for 19.15.14.9(C).⁵
7. OCD also agreed in its closing statement that the PFAS ban should extend to all downhole operations.⁶
8. The only party that entered evidence at the hearing that did not agree the PFAS ban should extend to all downhole operations is NMOGA. In its closing statement, NMOGA requested that the PFAS ban only apply "to hydraulic fracturing ("fracking") completion, and recompletion fluids."⁷
9. Movants are not seeking to re-open the hearing. Movants seek a decision on the merits based upon the evidence presented at hearing.

Because the Commission adopted OCD's redline restricting the PFAS ban to only completion and recompletions, without any discussion of whether the PFAS ban should extend to all downhole operations, Joint Movants request clarification about the scope of the PFAS ban. Specifically, Joint Movants request clarification on whether the Commission's PFAS ban will

⁵ Joint Proponents brief at 37-38.

⁶ OCD's Closing Argument at 3 paragraphs 3 and 10.

⁷ NMOGA Closing Statement at 1.

extend to all downhole operations as agreed to by all but one party that presented evidence at the hearing.

Joint Movants requested positions from the other parties regarding this motion, and they responded as follows:

- a. OCD does not oppose the motion.
- b. NMOGA opposes the motion.
- c. Mr. Maxwell opposes the motion.
- d. EOG Resources opposes the motion.

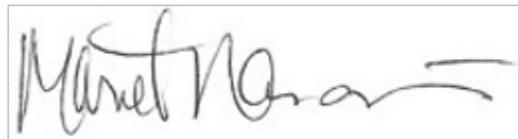
Respectfully submitted April 16, 2025,

WILDEARTH GUARDIANS

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NEW ENERGY ECONOMY

A handwritten signature in black ink, appearing to read "Mariel Nanasi", is enclosed within a thin black rectangular border.

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of WildEarth Guardians' and New Energy Economy's Joint Motion for Clarification was e-mailed to the following on April 16, 2025:

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