

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

**IN THE MATTER OF PROPOSED
AMENDMENT TO THE COMMISSION'S
RULES TO ADDRESS PERFLUOROALKYL
AND POLYFLUOROALKYL SUBSTANCES AND
THEIR USE IN OIL AND GAS EXTRACTION,
19.15.2, 19.15.16, 19.15.31, AND 19.15.32 NMAC**

CASE NO. _____

APPLICATION FOR RULEMAKING

Pursuant to 19.15.3.8(A) NMAC, Petitioner WildEarth Guardians (“Guardians”), a nonprofit corporation dedicated to protecting and restoring the health of New Mexico and the western United States, hereby petitions the New Mexico Oil Conservation Commission (“Commission”) to amend its rules to address the matter of perfluoroalkyl and polyfluoroalkyl substance (“PFAS”) waste resulting from the drilling, development, and production of oil and gas in New Mexico. Guardians specifically requests the Commission amend 19.15.2 and 19.15.16 NMAC and add 19.15.31 and 19.15.32 NMAC to its regulations.

PFAS are an exceptionally toxic group of chemicals that present myriad, long-term, and persistent public health and environmental hazards. Although New Mexico has petitioned the U.S. Environmental Protection Agency to restrict the use of PFAS under federal hazardous waste law, oil and gas industry exploration and production waste is exempt from federal hazardous waste law. There is an urgent need to address this gap and ensure that, just as other industrial sectors in New Mexico face restrictions on the use of PFAS and the generation of PFAS waste, the oil and gas industry is also held accountable to protecting public health.

Guardians’ proposal consists of two primary requests:

1. That the Commission adopt a rule prohibiting the use of PFAS in oil and gas drilling, development, and production in order to prevent the generation of PFAS-contaminated produced water and nondomestic waste; and
2. That the Commission adopt new chemical disclosure and reporting rules to ensure reasonable transparency around substances used by the oil and gas industry and to ensure industry compliance with the prohibition on the use of PFAS.

To facilitate the incorporation of these new rules, Guardians also proposes amendments to the Commission’s general provisions and to rules related to drilling and production.

In support of its rulemaking application, Guardians states the following:

- (1) A recent report by Physicians for Social Responsibility confirms that the oil and gas industry is utilizing PFAS in hydraulic fracturing operations in New Mexico. *See* Physicians for Social Responsibility, “Fracking With ‘Forever Chemicals’ in New Mexico: Evidence Shows Oil and Gas Companies Have Used PFAS in New Mexico Wells; Water Risks Especially High for Groundwater-Dependent State,” available at <https://psr.org/wp-content/uploads/2023/04/fracking-with-forever-chemicals-in-new-mexico.pdf>. The use of PFAS by the oil and gas industry leads to the creation of PFAS-contaminated produced water and other nondomestic waste.

PFAS are a class of chemicals known for their toxicity at extraordinarily low levels, their multiple negative health effects including cancer, and their persistence in the environment, leading to their nickname, “forever chemicals.” Using these chemicals may be particularly risky in a state where 80 percent of the population depends on groundwater for drinking water. Oil and gas production and waste disposal operations can contaminate groundwater with toxic chemicals including PFAS – and, once contaminated, groundwater is particularly difficult to clean up.

PFAS contamination is a high priority of Governor Michelle Lujan Grisham and the State of New Mexico. In 2021, the Governor petitioned the U.S. Environmental Protection Agency to list PFAS as hazardous waste under federal law. *See* State of New Mexico Environment Department, “Governor Lujan Grisham formally petitions EPA to list PFAS as hazardous under federal law” (June 23, 2021), available at <https://www.env.nm.gov/wp-content/uploads/2021/06/2021-06-23-Gov-petitions-EPA-to-list-PFAS-under-RCRA-1.pdf>.

Oil and gas industry exploration and production waste is exempt from regulation as hazardous waste under federal law. The U.S. Resource Conservation and Recovery Act specifically exempts exploration and production waste from regulation under Subtitle C. This means that even if PFAS are listed as hazardous, they will be not be treated as such if they are generated as nondomestic waste by the oil and gas industry during exploration, drilling, fracking, and production activities.

To address this serious regulatory gap, Guardians proposes the Commission adopt rules to ensure PFAS are properly regulated pursuant to the New Mexico Oil and Gas Act. The Commission has broad authority to adopt the requested rules.

Specifically, the Commission and the Oil Conservation Division have the statutory authority:

to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas [] in a manner that protects public health, the environment and fresh water resources.

70-2-12(B)(15) NMSA. Here, the use of PFAS in drilling, fracking, and production activities means the oil and gas industry is generating produced water containing PFAS. The use of PFAS in downhole hydraulic fracturing activities, for example, means that PFAS can end up in hydraulic fracturing fluids that are a part of produced water. By properly regulating the use of PFAS, the Commission will ensure protection of public health, the environment, and freshwater resources from PFAS-contaminated produced water.

The Commission and the Division also have the authority to “regulate the disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas to protect public health and the environment” and to “regulate the disposition of nondomestic wastes resulting from the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil to protect public health and the environment[.]” 70-2-12(B)(21) and (22) NMSA.

The use of PFAS by the oil and gas industry can lead to the creation of nondomestic waste containing PFAS, including solid waste, such as drill cuttings, filters, and sludge, and non-produced water liquid waste, such as spilled hydraulic fracturing fluids. To properly regulate the disposition of this waste, it is imperative the Commission prohibit the use of PFAS to ensure protection of public health and the environment.

Guardians’ overall request is straightforward: to protect public health and the environment from PFAS-contaminated produced water and nondomestic waste generated by the oil and gas industry, the Commission should simply prohibit the use of PFAS to begin with.

Guardians proposes the Commission adopt rules that are very similar to regulatory updates adopted by the State of Colorado in 2022 for PFAS and the oil and gas industry. In legislation passed in 2022, Colorado updated chemical disclosure and reporting requirements for the oil and gas industry in House Bill 22-1348 (available at https://leg.colorado.gov/sites/default/files/2022a_1348_signed.pdf) and adopted

comprehensive PFAS safeguards in House bill 22-1345 (available at https://leg.colorado.gov/sites/default/files/2022a_1345_signed.pdf).

Specifically, Guardians requests the Commission adopt two new parts to Title 19, Chapter 15 of the New Mexico Administrative code. A new Part 31 would adopt new chemical disclosure and reporting requirements for the oil and gas industry to ensure greater transparency and understanding around the substances used by companies in the drilling, development, and production of oil and gas. A new Part 32 would establish a prohibition on the use of PFAS in the drilling, development, and production of oil and gas to ensure that produced water and nondomestic waste generated by the oil and gas industry does not contain PFAS. Taken together, the proposed rules would ensure the oil and gas industry does not generate PFAS-contaminated produced water and nondomestic waste, and ensure an adequate system of reporting and disclosure to assure compliance.

To facilitate the addition of the new Part 31 and new Part 32, Guardians also proposes minor amendments to the Commission's General Provisions that would add definitions. Guardians also proposes to strike as redundant the Commission's current chemical reporting and disclosure requirements under 19.15.16 NMAC.

WildEarth Guardians requests the Commission hold a rulemaking hearing in September 2023. This would provide ample time for the Commission to agree to set a rulemaking hearing date at its June 2023 meeting and provide sufficient time for interested persons to engage and provide notices of intent to provide technical testimony.

A draft of the proposed rule additions and amendments is attached as Exhibit A to this Application.

(2) The applicant's name is WildEarth Guardians.

(3) The contact for the applicant is:

Jeremy Nichols, WildEarth Guardians' Climate and Energy Program Director
301 N. Guadalupe Street, Suite 201
Santa Fe, NM. 87501
(303) 437-7663
jnichols@wildearthguardians.org

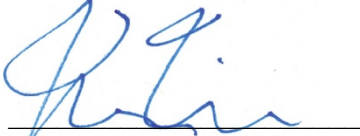
(4) A proposed legal notice is attached as Exhibit B.

Guardians requests that the Commission, at a meeting held no sooner than 15 days and no later than 60 days from the submittal of this Application, grant a hearing on the proposed rule

changes and issue an order pursuant to 19.15.3.8(C) NMAC specifying procedures to conduct the rulemaking and hearing in a manner that provides a robust and inclusive opportunity for public involvement and engagement.

Respectfully submitted this 25th day of May 2023,

WILDEARTH GUARDIANS



Jeremy Nichols
Climate and Energy Program Director
WildEarth Guardians
301 N. Guadalupe Street, Suite 201
Santa Fe, NM. 87501
(303) 437-7663
jnichols@wildearthguardians.org

EXHIBIT A

PROPOSED RULE CHANGES

New proposed rule language in red
Removed rule language in blue strikethrough

PROPOSED AMENDMENTS TO CHAPTER 15, PART 2

TITLE 19
CHAPTER 15
PART 2
OPERATIONS

NATURAL RESOURCES AND WILDLIFE
OIL AND GAS
GENERAL PROVISIONS FOR OIL AND GAS

19.15.2.7 DEFINITIONS: These definitions apply to 19.15.2 NMAC through 19.15.39 NMAC.

A. Definitions beginning with the letter “A”.

- (1) “Abate” means to investigate, contain, remove or mitigate water pollution.
- (2) “Abatement” means the investigation, containment, removal or other mitigation of water pollution.
- (3) “Abatement plan” means a description of operational, monitoring, contingency and closure requirements and conditions for water pollution’s prevention, investigation and abatement.
- (4) “Act” or “Oil and Gas Act” means Chapter 70, Article 2 NMSA 1978, as it may be modified or amended.
- (5) “Additive” means a chemical or combination of chemicals added to a base fluid for use in a hydraulic fracturing treatment and includes proppants.
- ~~(5)~~(6) “Adjoining spacing units” mean those existing or prospective spacing units in the same pool that are touching at a point or line on the subject spacing unit.
- ~~(6)~~(7) “Adjusted allowable” means the allowable production a well or proration unit receives after all adjustments are made.
- ~~(7)~~(8) “AFE” means authorization for expenditure.
- ~~(8)~~(9) “Affected persons” means the following persons owning interests in a spacing unit or other identified tract:
 - (a) the operator, as shown in division records, of a well on the tract, or, if the tract is included in a division-approved or federal unit, the designated unit operator;
 - (b) in the absence of an operator, or with respect to an application wherein the operator of the spacing unit or identified tract is the applicant, each

working interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant files the application;

(c) as to any tract or interest therein that is not subject to an existing oil and gas lease, each mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application; and

(d) if the United States or state of New Mexico owns the mineral estate in the spacing unit or identified tract or any part thereof, the BLM or state land office, as applicable; or

(e) if the mineral estate in the spacing unit or identified tract or any part thereof is tribal land, the BLM, the United States department of the interior, bureau of Indian affairs, and the relevant tribe.

~~(9)~~(10) **“Allocated pool”** means a pool in which the total oil or gas production is restricted and is allocated to various wells in the pool in accordance with proration schedules.

~~(10)~~(11) **“Allowable production”** means that number of barrels of oil or cubic feet of gas the division authorizes to be produced from an allocated pool.

~~(11)~~(12) **“APD”** means application for permit to drill.

~~(12)~~(13) **“API”** means the American petroleum institute.

~~(13)~~(14) **“Approved temporary abandonment”** means the status of a well that is inactive, has been approved in accordance with 19.15.25.13 NMAC and complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC.

~~(14)~~(15) **“Aquifer”** means a geological formation, group of formations or a part of a formation that can yield a significant amount of water to a well or spring.

~~(15)~~(16) **“ASTM”** means ASTM International - an international standards developing organization that develops and publishes voluntary technical standards for a wide range of materials, products, systems and services.

B. Definitions beginning with the letter “B”.

(1) **“Back allowable”** means the authorization for production of an underproduction resulting from pipeline proration.

(2) **“Background”** means, for purposes of ground water abatement plans only, the amount of ground water contaminants naturally occurring from undisturbed geologic sources or water contaminants occurring from a source other than the responsible person’s facility. This definition does not prevent the director from requiring abatement of commingled plumes of pollution, does not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons and does not preclude the director from exercising enforcement authority under any applicable statute, rule or common law.

(3) **“Barrel”** means 42 United States gallons measured at 60 degrees fahrenheit and atmospheric pressure at the sea level.

(4) **“Barrel of oil”** means 42 United States gallons of oil, after deductions for the full amount of basic sediment, water and other impurities present, ascertained by centrifugal or other recognized and customary test.

(5) **“Base fluid”** means the continuous phase fluid type, such as water, used in a hydraulic fracturing treatment.

(5)(6) **“Below-grade tank”** means a vessel, excluding sumps and pressurized pipeline drip traps, where a portion of the tank's sidewalls is below the surrounding ground surface's elevation. Below-grade tank does not include an above ground storage tank that is located above or at the surrounding ground surface's elevation and is surrounded by berms.

(6)(7) **“Berm”** means an embankment or ridge constructed to prevent the movement of liquids, sludge, solids or other materials.

(7)(8) **“Biopile”**, also known as biocell, bioheap, biomound or compost pile, means a pile of contaminated soils used to reduce concentrations of petroleum constituents in excavated soils through biodegradation. This technology involves heaping contaminated soils into piles or “cells” and stimulating aerobic microbial activity within the soils through the aeration or addition of minerals, nutrients and moisture.

(8)(9) **“BLM”** means the United States department of the interior, bureau of land management.

(9)(10) **“Bottom hole pressure”** means the gauge pressure in psi under conditions existing at or near the producing horizon.

(10)(11) **“Bradenhead gas well”** means a well producing gas through wellhead connections from a gas reservoir that has been successfully cased off from an underlying oil or gas reservoir.

(11)(12) **“BS&W”** means basic sediments and water.

(12)(13) **“BTEX”** means benzene, toluene, ethylbenzene and xylene.

C. **Definitions beginning with the letter “C”.**

(1) **“Carbon dioxide gas”** means noncombustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks.

(2) **“Casinghead gas”** means a gas or vapor or both gas and vapor indigenous to and produced from a pool the division classifies as an oil pool. This also includes gas-cap gas produced from such an oil pool.

(3) **“Certified mail”** or **“certified mail, return receipt requested”** means United States Postal Service Certified Mail or equivalent service that provides tracking and signature receipt, including Federal Express, United Parcel Service, or similar courier services.

(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 Abstracts Service number”** means the unique numerical identifier assigned by the Chemical Abstracts Service to a chemical.

(6) **“Chemical disclosure information”** means the information disclosed to the division under Part 31 of this Chapter.

(7) **“Chemical disclosure list”** means a list of chemicals used in downhole operations at a well site.

(8) “Chemical disclosure website” means a website that is capable of displaying chemical disclosure lists and can be accessed by the public.

(9) “Chemical product” means any product that consists of one or more chemicals and is sold or distributed for use in downhole operations in the state. It includes additives, base fluids, and hydraulic fracturing fluids. It does not include the structural and mechanical components of a well site where downhole operations are being conducted.

(4)(10) “Cm/sec” means centimeters per second.

(5)(11) “CPD” means central point delivery.

(6)(12) “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)(13) “Commission” means the oil conservation commission.

(8)(14) “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)(15) “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)(16) “Common purchaser for oil” means every person now engaged or hereafter engaging in the business of purchasing oil to be transported through pipelines.

(11)(17) “Common source of supply”. See pool.

(12)(18) “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)(19) “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)(20) “Conventional completion” means a well completion in which the production string of casing has an outside diameter exceeding 2.875 inches.

(15)(21) “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)(22) “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)~~(23) **“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.

D. Definitions beginning with the letter “D”.

(1) **“Deep pool”** means a common source of supply that is situated 5000 feet or more below the surface.

(2) **“Depth bracket allowable”** means the basic oil allowable the division assigns a pool and based on its depth, unit size or special pool orders, which, when multiplied by the market demand percentage factor in effect, determines the pool's top proration unit allowable.

(3) **“Direct vendor”** means any distributor, supplier, or other entity that sells or supplies one or more chemical products directly to an operator or service provider for use at a well site and does not include entities that manufacture, produce, or formulate chemical products for further manufacture, formulation, sale, or distribution by third parties prior to being supplied directly to operators or service providers.

~~(3)~~(4) **“Director”** means the director of the New Mexico energy, minerals and natural resources department, oil conservation division.

(5) **“Discloser”** means an operator, any service provider using one or more chemical products in the course of downhole operations, and any direct vendor that provides one or more chemical products directly to the operator or service provider for use at a well site.

~~(4)~~(6) **“Division”** means the New Mexico energy, minerals and natural resources department, oil conservation division.

~~(5)~~(7) **“Division clerk”** means the division employee the director designates to accept filings in adjudicatory cases before the division.

(8) **“Downhole operations”** means oil and gas production operations that are conducted underground.

~~(6)~~(9) **“Downstream facility”** means a facility associated with the transportation (including gathering) or processing of gas or oil (including a refinery, gas plant, compressor station or crude oil pump station); brine production; or the oil field service industry.

(10) **“Drilling fluid”** means a fluid that is circulated into the borehole of a well to lubricate and cool the drill bit.

~~(7)~~(11) **“DRO”** means diesel range organics.

H. Definitions beginning with the letter “H”.

(1) **“Hardship gas well”** means a gas well where underground waste occurs if the well is shut-in or curtailed below its minimum sustainable flow rate.

(2) **“Hazard to public health”** exists when water that is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of the use, one or more of the numerical standards of

Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher, or if a toxic pollutant as defined at Subsection WW of 20.6.2.7 NMAC affecting human health is present in the water. In determining whether a release would cause a hazard to public health to exist, the director investigates and considers the purification and dilution reasonably expected to occur from the time and place of release to the time and place of withdrawal for use as human drinking water.

(3) **“Hazardous waste”** means non-exempt waste that exceeds the minimum standards for waste hazardous by characteristics established in RCRA regulations, 40 CFR 261.21-261.24, or listed hazardous waste as defined in 40 CFR, part 261, subpart D, as amended.

(4) **“HDPE”** means high-density polyethylene.

(5) **“High gas-oil ratio proration unit”** means a unit with at least one producing oil well with a gas-oil ratio exceeding the limiting gas-oil ratio for the pool in which the unit is located.

(6) **“Hydraulic fracturing fluid”** means the fluid, including any base fluid and additives, used to perform a hydraulic fracturing treatment.

(7) **“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.

~~(6)~~(8) **“H₂S”** means hydrogen sulfide.

M. Definitions beginning with the letter “M”.

(1) **“Manufacturer”** means a person or entity that makes, assembles, or otherwise generates a chemical product or whose trade name is affixed to a chemical product.

~~(1)~~(2) **“Marginal unit”** means a proration unit that is incapable of producing top proration unit allowable for the pool in which it is located.

~~(2)~~(3) **“Market demand percentage factor”** means that percentage factor of one hundred percent or less as the division determines at an oil allowable hearing, which, when multiplied by the depth bracket allowable applicable to each pool, determines that pool’s top proration unit allowable.

~~(3)~~(4) **“MCF”** means 1000 cubic feet.

~~(4)~~(5) **“MCFD”** means 1000 cubic feet per day.

~~(5)~~(6) **“MCFGPD”** means 1000 cubic feet of gas per day.

~~(6)~~(7) **“Measured depth”** means the total length of the well bore.

~~(7)~~(8) **“Mg/l”** means milligrams per liter.

~~(8)~~(9) **“Mg/kg”** means milligrams per kilogram.

~~(9)~~(10) **“Mineral estate”** is the most complete ownership of oil and gas recognized in law and includes the mineral interests and the royalty interests.

~~(10)~~(11) **“Mineral interest owner”** means a working interest owner, or an owner of a right to explore for and develop oil and gas that is not subject to an existing oil and gas lease.

~~(11)~~(12) **“Minimum allowable”** means the minimum amount of production from an oil or gas well that may be advisable from time to time to the end that production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

~~(12)~~(13) **“Miscellaneous hydrocarbons”** means tank bottoms occurring at pipeline stations; oil storage terminals or refineries; pipeline break oil; catchings collected in traps, drips or scrubbers by gasoline plant operators in the plants or in the gathering lines serving the plants; the catchings collected in private, community or commercial salt water disposal systems; or other liquid hydrocarbon that is not lease crude or condensate.

P. Definitions beginning with the letter “P”.

(1) **“Penalized unit”** means a proration unit to which, because of an excessive gas-oil ratio, the division assigns an allowable that is less than top proration unit allowable for the pool in which it is located and also less than the ability of the well or wells on the unit to produce.

(2) **“Person”** means an individual or entity including partnerships, corporations, associations, responsible business or association agents or officers, the state or a political subdivision of the state or an agency, department or instrumentality of the United States and of its officers, agents or employees.

(3) **“PFAS chemicals”** means perfluoroalkyl and polyfluoroalkyl substances, which are a class of fluorinated organic chemicals containing 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) **“Proppants”** means materials that are inserted or injected into an underground geologic formation during oil and gas operations in order to prevent fractures from closing.

~~(13)~~(15) **“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)~~(16) **“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)~~(17) **“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)~~(18) **“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)~~(19) **“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)~~(20) **“Prospective spacing unit”** means a hypothetical spacing unit that does not yet have a producing well.

~~(19)~~(21) **“PVC”** means poly vinyl chloride.

~~(20)~~(22) **“Psi”** means pounds per square inch.

T. Definitions beginning with the letter “T”.

(1) **“Tank bottoms”** means that accumulation of hydrocarbon material and other substances that settles naturally below oil in tanks and receptacles that are used in oil’s handling and storing, and which accumulation contains more than two percent of BS&W; provided, however, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet to the tank.

(2) “TDS” means total dissolved solids.

(3) “Temporary abandonment” or “temporarily abandoned status” means the status of a well that is inactive.

(4) “Top proration unit allowable for gas” means the maximum number of cubic feet of gas, for the proration period, the division allocates to a gas producing unit in an allocated gas pool.

(5) “Top proration unit allowable for oil” means the maximum number of barrels for oil daily for each calendar month the division allocates on a proration unit basis in a pool to non-marginal units. The division shall determine the top proration unit allowable for a pool by multiplying the applicable depth bracket allowable by the market demand percentage factor in effect.

(6) “TPH” means total petroleum hydrocarbons.

(7) “Trade secret” means the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, improvement, confidential business or financial information, listing of names, addresses, or telephone numbers, or other information relating to any business or profession which is secret and of value. To be a “trade secret” the owner thereof must have taken measures to prevent the secret from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

~~(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.

W. Definitions beginning with the letter “W”.

(1) “Waste”, in addition to its ordinary meaning, includes:

(a) underground waste as those words are generally understood in the oil and gas business, and to embrace the inefficient, excessive or improper use or dissipation of the reservoir energy, including gas energy and water drive, of a pool, and the locating, spacing, drilling, equipping, operating or producing of a well or wells in a manner to reduce or tend to reduce the total quantity of oil or gas ultimately recovered from a pool, and the use of inefficient underground storage of gas;

(b) surface waste as those words are generally understood in the oil and gas business, and to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of gas of any type or in any form, or oil, or a product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing a well or wells, or incident to or resulting from the use of inefficient storage or from the production of oil or gas, in excess of the reasonable market demand;

(c) oil production in this state in excess of the reasonable market demand for the oil; the excess production causes or results in waste that the Oil and Gas Act prohibits; reasonable market demand as used herein with respect to oil means the demand for the oil, for reasonable current requirements for current consumption and use within or outside of the state, together with the demand of amounts as are reasonably necessary for building up or maintaining reasonable storage reserves of oil or the products thereof, or both the oil and products;

(d) the non-ratable purchase or taking of oil in this state; the non-ratable taking and purchasing causes or results in waste, as defined in Subparagraphs (a), (b) and (c) of Paragraph (1) of Subsection W of 19.15.2.7 NMAC and causes waste by violating the Oil and Gas Act, Section 70-2-16 NMSA 1978;

(e) the production in this state of gas from a gas well or wells, or from a gas pool, in excess of the reasonable market demand from such source for gas of the type produced or in excess of the capacity of gas transportation facilities for such type of gas; the words “reasonable market demand”, as used herein with respect to gas, shall be construed to mean the demand for gas for reasonable current requirements, for current consumption and for use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of gas or products thereof, or both the gas and products.

(2) “Water” means all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water.

(3) **“Water contaminant”** means a substance that could alter if released or spilled water’s physical, chemical, biological or radiological qualities. Water contaminant does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

(4) **“Watercourse”** means a river, creek, arroyo, canyon, draw or wash or other channel having definite banks and bed with visible evidence of the occasional flow of water.

(5) **“Water pollution”** means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or property use.

(6) **“Well blowout”** means a loss of control over and subsequent eruption of a drilling or workover well or the rupture of the casing, casinghead or wellhead of an oil or gas well or injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or liquid, from the well.

(7) **“Well bore”** means the interior surface of a cased or open hole through which drilling, production or injection operations are conducted.

(8) **“Well site”** means the area that is directly disturbed during oil and gas operations.

~~(8)~~(9) **“Wellhead protection area”** means the area within 200 horizontal feet of a private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes or within 1000 horizontal feet of any other fresh water well or spring. Wellhead protection areas does not include areas around water wells drilled after an existing oil or gas waste storage, treatment or disposal site was established.

~~(9)~~(10) **“Wetlands”** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. This definition does not include constructed wetlands used for wastewater treatment purposes.

~~(10)~~(11) **“Working interest owner”** means the owner of an operating interest under an oil and gas lease who has the exclusive right to exploit the oil and gas minerals. Working interests are cost bearing.

~~(11)~~(12) **“WQCC”** means the New Mexico water quality control commission.

PROPOSED AMENDMENTS TO CHAPTER 15, PART 16

**TITLE 19
CHAPTER 15
PART 16**

**NATURAL RESOURCES AND WILDLIFE
OIL AND GAS
DRILLING AND PRODUCTION**

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) the division does not require the reporting or disclosure of proprietary, trade secret or confidential business information; and~~
 - ~~(3) 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.~~

PROPOSED ADDITION OF CHAPTER 15, PART 31

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 31 DISCLOSURE OF CHEMICALS USED IN DOWNHOLE OIL AND
GAS OPERATIONS

19.15.31.1 ISSUING AGENCY: Oil Conservation Commission

19.15.31.2 **SCOPE:** 19.15.31 applies to persons engaged in oil and gas exploration, development and production within New Mexico.

19.15.31.3 **STATUTORY AUTHORITY:** 19.15.31 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978.

19.15.31.4 **DURATION:** Permanent.

19.15.31.5 **EFFECTIVE DATE:** Upon adoption by the New Mexico Oil Conservation Commission

19.15.31.6 **OBJECTIVE:** To ensure the disclosure of potentially hazardous and toxic chemicals used in exploration, development, and production of oil and gas in order to protect public health and the environment from produced water and nondomestic waste generated by the oil and gas industry.

19.15.31.7 **DEFINITIONS:** [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.31.8 **DISCLOSER CHEMICAL DISCLOSURE INFORMATION AND DECLARATION:**

- A. On and after January 1, 2024, a discloser that sells or distributes a chemical product for use in downhole operations in the state or that uses a chemical product in downhole operations in the state must:
 - (1) Disclose to the division:
 - (a) The trade name of the chemical product; and
 - (b) A list of the names and Chemical Abstracts Service numbers of each chemical used in the chemical product; and
 - (c) If a discloser believes that a chemical constituent of a chemical product is a trade secret or is proprietary information, nevertheless disclose the chemical constituent; and
 - (2) Provide a written declaration to the division that the chemical product contains no intentionally added PFAS chemicals.
- B. For disclosers that were already selling or distributing a chemical product for use in downhole operations in the state before July 31, 2023, or that were using the chemical product before July 31, 2023, the information and declaration required to be provided pursuant to paragraph A of this section must be provided to the division at least thirty days before January 1, 2024.
- C. For disclosers that begin to sell, distribute, or use a chemical product for use in downhole operations in the state on or after July 31, 2023, the information and declaration required to be provided pursuant to subsection (2)(a) of this section must be provided to the division at least thirty days before the discloser begins selling, distributing, or using the chemical product.

19.15.31.9 **TRADE SECRETS:**

- A.** If a manufacturer does not provide the information described in 19.15.32.8 for a chemical product that it sells or distributes for use in downhole operations in the state to a discloser upon the request of the discloser or the division, the manufacturer must provide the division with a trade secret form of entitlement for the chemical product. At a minimum, the manufacturer must include in the trade secret form of entitlement for the chemical product:
- (1)** The name of each chemical used in the chemical product; and
 - (2)** The Chemical Abstracts Service number of each chemical used in the chemical product.
- B.** If, after making a request to the manufacturer of the chemical product pursuant to this section, a discloser is unable to disclose the information described in this subsection, the discloser shall disclose to the division:
- (1)** The name of the chemical product's manufacturer;
 - (2)** The chemical product's trade name;
 - (3)** The amount or weight of the chemical product; and
 - (4)** A safety data sheet for the chemical product, if it is available for disclosure by the discloser and provides the information described in 19.15.32.8 NMAC.
- C.** In the event that the discloser is unable to disclose the information described in subsection A of this section, the division shall obtain the information from the manufacturer.

**19.15.31.10 OPERATOR CHEMICAL DISCLOSURE INFORMATION—
DECLARATION:**

- A.** On and after January 1, 2024, and subject to this, an operator of downhole operations using a chemical product must:
- (1)** Disclose to the division:
 - (a)** The date of commencement of downhole operations;
 - (b)** The county and coordinates of the well site where downhole operations are being or will be conducted;
 - (c)** The unique numerical identifier assigned by the American Petroleum Institute to the well where downhole operations are being or will be conducted and the US well number assigned to the well where downhole operations are being or will be conducted; and
 - (d)** The trade names and quantities of any chemical products the operator used in downhole operations; and
 - (2)** Provide a written declaration to the division that the chemical product contains no intentionally added PFAS chemicals.
 - (3)** For a downhole operation that commenced before January 1, 2024, and that will be ongoing on January 1, 2024, the information and declaration required to be provided pursuant to this section must be provided to the division within one hundred twenty days after January 1, 2024.
 - (4)** For a downhole operation that commences on or after January 1, 2024, the information and declaration required to be provided pursuant to this section must be provided to the division within sixty days before the commencement of the downhole operation.

19.15.31.11 CHANGE IN CHEMICAL DISCLOSURE INFORMATION:

- A. If there is a change in the information provided under this part, the discloser or operator, or the manufacturer, must submit the change to the division within thirty days after the date the discloser, manufacturer, or operator first knew of the change.

19.15.31.12 CHEMICAL DISCLOSURE LISTS:

- A. The division shall make chemical disclosure information for each well site publicly available via the division's existing permitting data portal.
- B. The division shall include in the chemical disclosure list an alphabetical list of the names and Chemical Abstracts Service registry numbers of each chemical used in downhole operations at the well site.
- C. Notwithstanding any law to the contrary, the division shall include the names and Chemical Abstracts Service registry numbers of all chemicals used in downhole operations in the chemical disclosure list and shall not protect the names or Chemical Abstracts Service registry numbers of any chemical as a trade secret or proprietary information. Any formulas and processes continue to have trade secret protections.
- D. The division shall not include in the chemical disclosure list:
- (1) The trade name of a chemical product used in downhole operations at the well site; or
 - (2) The total amount of a chemical in a chemical product.
- E. No later than thirty days after an operator makes the disclosures required under 19.15.32.10 NMAC, the division shall:
- (1) Post the chemical disclosure list on the division's permitting portal and include the date of the submission of the chemical disclosure list to the division in the post; and
 - (2) Provide the chemical disclosure list to the operator of the applicable well.
- F. The division shall:
- (1) Post an updated chemical disclosure list if there are any notifications received from a discloser, manufacturer, or operator under subsection (4) of this section and include the date of the notification by the discloser, manufacturer, or operator in the post; and
 - (2) Ensure that:
 - (a) All chemical disclosure lists and updated chemical disclosure lists remain viewable by the public;
 - (b) The chemical disclosure information is searchable for each well site; and
 - (c) The chemical disclosure website allows members of the public to download chemical disclosure lists in an electronic, delimited format.

19.15.31.13 COMMUNITY NOTIFICATION:

- A. On or before January 31, 2024, an operator shall provide the chemical disclosure list to:
- (1) All owners of minerals that are being developed at the well site;

- (2) All surface owners, building unit owners, and residents, including tenants of both residential and commercial properties, that are within two thousand six hundred forty feet of the well site;
 - (3) The State Land Office if the state owns minerals that are being developed at the well site;
 - (4) The federal bureau of land management if the United States owns the minerals that are being developed at the well site;
 - (5) 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;
 - (6) All schools, child care centers, and school governing bodies within two thousand six hundred forty feet of the well site;
 - (7) Police departments, fire departments, emergency service agencies, and first responder agencies that have a jurisdiction that includes the well site;
 - (8) Local governments that have a jurisdiction within two thousand six hundred forty feet of the well site;
 - (9) 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 under the direct influence of a surface water public water system supply well within two thousand six hundred forty feet of the well site; and
 - (c) A public water system supply well completed in a type III aquifer within two thousand six hundred forty feet of the well site; and
- B.** The chemical disclosure list must be disclosed within thirty days after the operator's chemical disclosure to the division.

PROPOSED ADDITION OF CHAPTER 15, PART 32

**TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 32 PROHIBITION ON PFAS CHEMICALS**

19.15.32.1 ISSUING AGENCY: Oil Conservation Commission

19.15.32.2 SCOPE: 19.15.32 applies to persons engaged in oil and gas exploration, development, and production within New Mexico.

19.15.32.3 STATUTORY AUTHORITY: 19.15.32 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978.

19.15.32.4 DURATION: Permanent.

19.15.32.5 EFFECTIVE DATE: Upon adoption by the New Mexico Oil Conservation Commission

19.15.32.6 **OBJECTIVE:** To prohibit the use of toxic perfluoroalkyl and polyfluoroalkyl chemicals in substances utilized in the exploration, development, and production of oil and gas to prevent the generation of PFAS-contaminated produced water and nondomestic waste.

19.15.32.7 **DEFINITIONS:** [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.32.8 **PROHIBITION ON THE USE AND DISTRIBUTION OF PFAS
CHEMICALS:**

- A.** On and after January 1, 2024, no person shall utilize, cause to be utilized, and/or authorize the utilization of oil and gas products that contain intentionally added PFAS chemicals in the exploration, development, and production of oil and gas.
- B.** On and after January 1, 2024, no person shall sell, offer for sale, distribute for sale, or distribute for use oil and gas products that contain intentionally added PFAS chemicals within the State of New Mexico.

EXHIBIT B
NOTICE OF PUBLIC MEETING AND PUBLIC HEARING

The New Mexico Oil Conservation Commission (Commission) hereby gives notice that the Commission will hold the following public meeting and public hearing commencing at 9:00 am on September 14-15 and 21-22, 2023 (as may be necessary) in person, online, and via telephone. Oral comments may be made in person, on-line or by telephone. The Commission shall make available to the public a preliminary agenda for the meeting no later than two weeks prior to the meeting, and a final agenda for the meeting no later than 72 hours before the meeting. The agenda shall specify the order of the proceedings and, to the extent feasible, identify the specific time(s) that public comments are to be heard. The agenda shall be posted online on the Commission's Hearings page under "OCC Dockets," accessible from the following web page: <http://www.emnrd.state.nm.us/OCD/hearings.html>.

Case No. ____ : APPLICATION OF WILDEARTH GUARDIANS TO AMEND THE COMMISSION'S RULES TO ADDRESS PFAS, ADDITION OF 19.15.31 AND 19.15.32 NMAC AND AMENDMENTS TO 19.15.2 AND 19.15.16 NMAC; STATEWIDE.

WildEarth Guardians proposes that the Commission amend its rules to add 19.15.31 and 19.15.32 NMAC to adopt new reporting and disclosure requirements for the oil and gas industry and to prohibit the use of toxic perfluoroalkyl and polyfluoroalkyl substances ("PFAS"). WildEarth Guardians also proposes the Commission amend 19.15.2 and 19.15.16 NMAC to facilitate the adoption of new Parts 31 and 32.

Purpose of Proposed Rule. The proposed rule is intended to prohibit the use of PFAS in order to prevent the generation of PFAS-contaminated produced water and nondomestic waste. The proposed rule is also intended to update disclosure and reporting rules to ensure compliance with this prohibition so that the division can protect public health and the environment from produced water and nondomestic waste generated by the oil and gas industry.

Legal Authority. The proposed rule is authorized by the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, and specifically, Section 70-2-6 (authorizing the Commission to exercise jurisdiction, authority, and control of and over all persons, matters, and things necessary or proper to enforce the statute), Sections 70-2-11 (authorizing the Commission to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), and Section 70-2-12 (enumerating the powers of the Commission and OCD). The public hearing is governed by the Commission's rule on rulemaking proceedings, 19.15.3 NMAC.

Availability of Proposed Rule. The full text of the proposed rule may be obtained from the Commission Clerk, Florene Davidson at florene.davidson@state.nm.us or (505) 476-3458, or can be viewed on the Rules page of the OCD's website at <http://www.emnrd.state.nm.us/OCD/rules.html>.

Public Hearing. The Commission will hold a public hearing on the proposed rule at the Commission meeting commencing at 9:00 am on September 14-15 and 21-22, 2023 (as needed) in person, online, and via telephone. For information on how to participate in the hearing, please contact the Commission Clerk, Florene Davidson at florene.davidson@state.nm.us or (505) 476-3458, or visit the Hearings page on the OCD's website at <http://www.emnrd.state.nm.us/OCD/hearings.html>. The hearing may be continued to the following day(s) if not completed.

Proposed Modifications, Technical Testimony, and Cross Examination. Any person intending to propose a modification to the proposed rule, to present technical testimony at the hearing, or to cross-examine witnesses must file a Pre-Hearing Statement conforming to the requirements of Subsection B of 19.15.3.11 NMAC, no later than 5:00 pm on [DATE TO BE DETERMINED], 2023. Filing may be accomplished by first class mail to the Commission Clerk, Florene Davidson, 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or by electronic mail to OCD.Hearings@state.nm.us. Any person who presents technical testimony will be subject to cross-examination by the members of the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony.

Oral Comments. Any person who has not submitted a Pre-Hearing statement may present non-technical testimony or make an unsworn statement at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule and do not unduly repeat testimony. Any person who presents sworn, non-technical testimony will be subject to cross-examination by the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony; however, any person who presents an unsworn position statement or general public comment shall not be subject to cross examination. To help facilitate this hearing, persons wishing to present non-technical testimony or make an unsworn statement or public comment at the hearing are strongly encouraged to contact the Commission Clerk, Florene Davidson, at florene.davidson@state.nm.us or (505) 476-3458, prior to the hearing so that a list of commenters may be prepared in advance; however, at the close of oral public comment, the Commission shall open the virtual floor to any person who wishes to offer non-technical testimony or make an unsworn oral statement relevant to the proceedings.

Written or Electronic Comments. Any person may submit written or electronic comments on the proposed rule no later than 9:00 am on September 1, 2023, unless extended by the Commission or the Chair of the Commission, by first class or electronic mail to the Commission Clerk, Florene Davidson, 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or florene.davidson@state.nm.us.

Persons with Disabilities. If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, including a summary or other accessible form of document, please contact the Commission Clerk, Florene Davidson, at florene.davidson@state.nm.us or (505) 476-3458, or through the New Mexico Relay Network at 1-800-659-1779, no later than July 2, 2020.

Technical Information. Technical information that may be provided through Pre-Hearing Statements and written technical testimony will be made publicly available on the OCD Imaging, Case File Search portal on the division's website at <http://ocdimage.emnrd.state.nm.us/imaging/CaseFileCriteria.aspx>, and may be accessed by searching for Case File No. _____.