

## ***Increased Oversight Needed: Protecting New Mexico From Oil and Gas Industry Toxic Waste***

### **Problem: Fracking Waste**

The oil and gas industry has a waste problem. **For every barrel of oil produced, industry consumes an average of 3 barrels of fresh water and produces 4-7 times as much toxic fracking waste.**<sup>i</sup>

Environmental regulations require industry to reuse this waste for drilling or hydraulic fracturing, or dispose of it through deep injection wells to ensure it never reaches the surface. Even then, this disposal method has not been proven safe and is known to cause earthquakes and sinkholes.<sup>ii</sup>



As oil and gas has boomed in New Mexico, the industry has faced rising costs and difficulties in disposing of its waste. Instead of limiting production to limit waste, **industry has lobbied officials to roll-back safeguards and relabel their waste** as “produced water” or worse yet, “new water”.<sup>iii</sup>

**Fracking waste is too toxic to treat.** It contains contaminants that can’t be removed, including radioactive materials, heavy metals, and extreme salts.<sup>iv</sup> Because fracking fluids are often treated as trade secrets and exempted from disclosure requirements under the Safe Drinking Water Act, no one knows everything that’s in fracking waste or how to treat it.<sup>v</sup> **The EPA currently lacks approved testing methods for 86% of more 1,000+ chemicals found in fracking waste.**<sup>vi</sup>

### ***We don’t know enough about fracking or fracking waste.***

- ***Problem:*** New Mexico cannot regulate what it does not know. Through trade secret loopholes, companies can hide the names of chemicals used in drilling fluids, making it impossible for regulators to address all potential hazards.<sup>vii</sup>
- ***Solution: Require disclosure.*** Amend The New Mexico Oil and Gas Act to require hydraulic fracturing chemicals to be disclosed *before* drilling begins.



### ***“Produced water” is toxic and radioactive.***

***Problem:*** Fracking waste includes hazardous heavy metals, corrosive salts, and more than a thousand chemicals used in drilling, including known/suspected carcinogens, and endocrine disruptors that harm developmental and reproductive health,<sup>viii</sup> including radioactive materials, including radium, radon, uranium, potassium and thorium; produced water from the Permian Basin is known to contain significant levels of uranium.<sup>ix</sup>

**Solution: Manage hazardous waste as hazardous waste.** Amend the New Mexico Hazardous Waste Act to remove the exemption for oil and gas waste.

***Fracking waste is being spilled, and leaked, and exploding across New Mexico.***

- **Problem:** With more than three spills per day,<sup>x</sup> and explosions happening in people's backyards,<sup>xi</sup> more than 2 million gallons of waste were spilled in 2020<sup>xii</sup> alone and there have been almost 700 produced water spills so far in 2022.<sup>xiii</sup>

**Solution: Mandate penalties for spills.** Since February 2020, NM Oil Conservation Division has had expressed authority under NMSA 1978, § 70-2 to issue fines and penalties for spills, but **the Division has yet to issue a single penalty for the thousands of spills** that have occurred in the Greater Chaco and Greater Carlsbad regions since 2020.



<sup>i</sup> New Mexico Environment Department, "Produced Water Management in New Mexico," October 30, 2019, available at: [https://www.env.nm.gov/new-mexico-produced-water/wp-content/uploads/sites/16/2019/10/Produced-Water-Public-Meeting-Presentation\\_ENGLISH\\_Final-191030.pdf](https://www.env.nm.gov/new-mexico-produced-water/wp-content/uploads/sites/16/2019/10/Produced-Water-Public-Meeting-Presentation_ENGLISH_Final-191030.pdf).

<sup>ii</sup> Mosier, J., "More sinkholes? Permian Basin buckling under stress of oil and gas drilling, study says," Dallas Morning News (March 22, 2018), <https://www.dallasnews.com/business/energy/2018/03/22/more-sinkholes-permian-basin-buckling-under-stress-of-oil-and-gas-drilling-study-says/>

<sup>iii</sup> Paskus, L., "In New Mexico, Move to Reuse Fracking Water Stirs Cry for Transparency," *NewsDeeply* (Sept. 17, 2018), <https://www.newsdeeply.com/water/articles/2018/09/17/in-new-mexico-move-to-reuse-fracking-water-stirs-cry-for-transparency>

<sup>iv</sup> U.S. Environmental Protection Agency, "Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States," Final Report EPA-600-R-16-236Fa at 7-1 (Dec. 2016), [www.epa.gov/hfstudy](http://www.epa.gov/hfstudy).

<sup>v</sup> *Supra*. Note 2.

<sup>vi</sup> Danforth, C., et al., An Integrative Method for Identification and Prioritization of Constituents of Concern in Produced Water from Onshore Oil and Gas Extraction, *Environment International* 134, at 8 (2020)

<sup>vii</sup> McCormick, M., "Conflicting Theories at Play: Chemical Disclosure and Trade Secrets in the New Federal Fracking Regulation," *Golden Gate University Environmental Law Journal* (2016), <https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1143&context=oguelj>.

<sup>viii</sup> Elliott, E.G., Unconventional Oil and Gas Development and Risk of Childhood Leukemia: Assessing the Evidence, *Science of the Total Environment* 138 (2017)

<sup>ix</sup> U.S. Environmental Protection Agency, "Radioactive Waste Material from Oil and Gas Drilling," <https://www.epa.gov/radtown/radioactive-waste-material-oil-and-gas-drilling>

<sup>x</sup> Hedden, A., "Southeast New Mexico Plagued by Oil and Gas Spill as Production Booms in Permian Basin," *Carlsbad Current Argus* (Feb. 29, 2020), <https://www.currentargus.com/story/news/local/2020/02/28/southeast-new-mexico-plagued-oil-and-gas-spills-production-booms/4895121002/>.

<sup>xi</sup> Jamail, D., "Fracking Company has Made it Rain Toxic Water Upon New Mexico Without Penalty," *TruthOut* (Sept. 2, 2020), <https://truthout.org/articles/fracking-company-has-made-it-rain-toxic-water-upon-new-mexico-without-penalty>.

<sup>xii</sup> Chamberlain, K., "'Dereliction of duty': 1.6 million gallons of produced water spilled so far in 2020," *NM Political Report* (Aug. 19, 2020), <https://nmpoliticalreport.com/2020/08/19/dereliction-of-duty-1-6-million-gallons-of-produced-water-spilled-so-far-in-2020/>.

<sup>xiii</sup>