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Because Water Matters.

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NM Water Commission caves to industry, will make rule reversing 11-month-old fracking wastewater discharge ban

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Today, the New Mexico Water Quality Control Commission (WQCC) accepted a rulemaking petition filed by an oil and gas industry-led organization that would begin the process to create a rule allowing oil and gas wastewater—called “produced water”—to be discharged to New Mexico surface and ground waters and used in agriculture. Produced water is a toxic soup of chemicals that the WQCC concluded less than a year ago in a prior rulemaking could not be treated to levels safe to discharge into the state’s waters. The existing rule banning produced water discharge went into effect 10 months ago and is available [here](#). As written, the new industry-proposed rule would be one of the most permissive rules on oil and gas wastewater discharge nationwide.

Accepting the rulemaking petition and scheduling a hearing is the first step in a long rulemaking process. Technical testimony and arguments on the merits of the proposed rule will be heard in a multi-day hearing scheduled to be scheduled at a later date.

The Western Environmental Law Center, representing Amigos Bravos, Sierra Club, and Citizens Caring for the Future, argued two motions in opposition to the petition at last month’s WQCC meeting. Despite almost four hours of public testimony at last month’s meeting, the vast majority of which in opposition, and multiple motions and arguments against the petition from groups that have officially entered as parties in the matter, the WQCC voted 7-4 to move forward with the rulemaking.

“I’m disappointed the commission voted today to consider allowing discharge of oil and gas’ wastewater and threatening New Mexico rivers, streams, and ground water,” said **Tannis Fox, senior attorney at the Western Environmental Law Center**. “The protective rule adopted less than one year ago underwent a rigorous debate, spanning 18 months and hundreds of pages of expert testimony. But the oil and gas industry won’t take no for an answer and the New Mexico

Environment Department is sitting on the sidelines while industry proposes to undo the rule NMED proposed and its scientists supported with expert testimony during the first rulemaking.”

“I can’t believe we are back here,” said **Rachel Conn, deputy director of Amigos Bravos**. “How many times do we as New Mexicans who care about clean water have to stand up to defeat this ill-advised effort to discharge toxic oil and gas wastewater into our rivers, streams and groundwater? The rule passed last year, after an 18-month process with days of technical testimony, protects our water by prohibiting discharge while encouraging the development of science and treatment technology through pilot projects. We have entered as a party in this new rulemaking and will be presenting a technical case in opposition to discharge of this toxic wastewater.”

“For more than 50 years, the Water Quality Control Commission has based its decisions on science to ensure we protect our ground and surface waters from contaminants that can harm humans as well as animal and plant life,” said **Dale Doremus, a former state hydrologist now with the Sierra Club Rio Grande Chapter**. “It is critical that we have science-based water quality standards, promulgated by the commission, for all possible contaminants in produced water before any discharge to ground and surface water is considered. For a rule this important to New Mexico’s water quality future, it should be the Environment Department bringing forward a proposed rule, not the industry that will be regulated.”

“Many of my neighbors here in southern New Mexico have told me they are worried that the risk of contaminating the clean water they use for irrigation and watering their animals with the chemicals in oil and gas waste is not worth the small water quantity produced water would provide,” said **Haley Jones, organizer for Citizens Caring for the Future**. “Clean water is extremely precious down here, and we can not afford to risk spoiling this resource that is so critical to our southern New Mexico communities.”

As seen in previous meetings and hearings on produced water, New Mexicans showed up in force at last month’s meeting to give public comment in opposition to the proposed industry rule that, if adopted, would allow discharge of produced water into New Mexico’s ground and surface waters. Additional opportunities for public comment will be provided during the hearing on the petition.

Background

In the Permian Basin of southeastern New Mexico and Texas, oil and gas extraction brings to the surface an [average](#) of about four barrels of “produced water” per barrel of oil, and as much as 12 barrels. Produced water contains hundreds of known and unknown chemicals, many of which are toxic to human health and the environment. Some of those chemicals are industry “trade secret” fracking chemicals undisclosed to the public. The industry has historically injected this waste back underground, which is expensive and can cause earthquakes and water contamination. The oil and gas industry has a very expensive problem of what to do with this waste.

The New Mexico Environment Department (NMED) petitioned the WQCC in December 2023 to adopt a rule to prohibit all discharges of produced water to ground and surface waters. NMED based its petition on the best available science, which shows that produced water contains toxic chemicals harmful to human health and the environment, and that technologies to effectively treat produced water so it is safe are not available at scale. NMED supported its petition with the expert testimony from five of its scientists with expertise in protecting the state's ground and surface water.

Amigos Bravos and Sierra Club, represented by Western Environmental Law Center, supported the prohibition with expert testimony, demonstrating based on peer-reviewed literature that we don't know all the chemicals in produced water, a mixture of fracking fluids and underground water for which there is no effective treatment. Moreover, the state of New Mexico does not have surface water quality standards for at least 180 potentially toxic chemicals in produced water. While the New Mexico Oil and Gas Association, New Mexico's most powerful industry lobbying behemoth, opposed the ban on discharge, one of its primary experts testified that discharge of treated produced water at scale is premature.

In May 2025, the WQCC adopted a [rule](#) completely banning produced water discharge to ground and surface waters effective from July 12, 2025 through December 31, 2030. The existing rule also allows non-discharging pilot projects for further research on treatment.

Before the rule entered into force, an oil and gas industry group filed a new rulemaking petition that would be plagued with controversy. After Gov. Lujan Grisham's office ordered department heads to get the industry-written rule "over the finished line" [sic], public outcry forced the WQCC to reverse its decision to undertake a new rulemaking. Today, the WQCC decided to undertake a rulemaking hearing for yet another industry-proposed rule less than a year after adopting the five-year ban on produced water discharge.

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