

**STATE OF NEW MEXICO  
WATER QUALITY CONTROL COMMISSION**



**In the Matter of:**

**PROPOSED AMENDMENTS TO  
GROUND AND SURFACE WATER  
PROTECTION REGULATIONS,  
20.6.2 NMAC**

**WQCC 17-03(R)**

**ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY**

The Energy, Minerals and Natural Resources Department hereby files this Notice of Intent to Present Technical Testimony.

1. Identify the person for whom the witness(es) will testify:

The witness identified below will testify for the New Mexico Energy, Minerals and Natural Resources Department.

2. Identify each technical witness the person intends to present and state the qualifications of that witness including a description of their educational and work background:

William Brancard, General Counsel, for the Energy, Minerals and Natural Resources Department will testify regarding the Environment Department's proposed changes to 20.6.2.3105.L, M, and N NMAC and to 20.6.2.5101.D(1) – (3) NMAC. Mr. Brancard has served as General Counsel of the New Mexico Energy, Minerals and Natural Resources Department since 2010. From 2003 to 2010, he served as the Director of the Mining and Minerals Division in the Department. He has also worked as an Assistant Land Commissioner and an Assistant Attorney General for the State of New Mexico as well as practicing law with the firm of Sutin, Thayer & Browne in Albuquerque and Santa Fe. Mr. Brancard is a graduate of Hamilton College (1979) and Harvard Law School (1987) and attended the London School of Economics.

3. Summarize, or include a copy of, the direct testimony of each technical witness:

A copy of Mr. Brancard's testimony is attached as EMNRD Exhibit 1. Mr. Brancard will provide testimony that will last approximately 20 minutes, depending on the length of cross-examination and any rebuttal testimony.

4. Include the text of any recommend modifications to the proposed regulatory change:

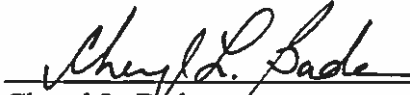
The Energy, Minerals and Natural Resources Department does not have recommended modifications to the proposed regulatory change.

5. List and attach all exhibits anticipated to be offered at the hearing:

EMNRD Exhibit 1 - Written Direct Testimony of William Brancard

Dated this 11<sup>th</sup> day of September 2017.

Respectfully submitted,

  
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**ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
DIRECT TESTIMONY OF WILLIAM BRANCARD**

I am offering this testimony on behalf of the New Mexico Energy, Minerals and Natural Resources Department ("EMNRD").

**Interests of EMNRD.** EMNRD has a number of interests impacted by the changes to 20.6.2 NMAC. First, the Oil Conservation Division ("OCD") and the State Parks Division of EMNRD are constituent agencies under the Water Quality Act, NMSA 1978, Section 74-6-2(K). The Water Quality Control Commission has delegated the administration of its regulations for oil and natural gas facilities to OCD. NMSA 1978, Section 74-6-4(F). Thus, OCD is responsible for administering 20.6.2 NMAC for oil and gas facilities subject to the Water Quality Act, including issuing discharge permits and taking compliance actions.

Second, several EMNRD divisions, along with NMED, are responsible for administering the federal Safe Drinking Water Act Underground Injection Control ("UIC") program at various facilities. See 40 C.F.R. 147.1601. These include programs administered under separate regulatory authorities and under the Underground Injection Control portion of 20.6.2 NMAC. 20.6.2.5000 to 20.6.2.5399 NMAC.

Finally, several EMNRD programs regulate groundwater protection under other statutory provisions and are exempt from 20.6.2 NMAC. These include discharges regulated under the Oil and Gas Act, NMSA 1978, Sections 70-2-1 *et seq.*, the Surface Mining Act, NMSA 1978, Sections 69-25A-1 *et seq.*, and the Geothermal Resources Development Act, NMSA 1978, Sections 71-9-1 *et seq.*

**Proposed Changes.** This testimony is limited to the changes that impact the last of these interests. EMNRD reserves the right to address the impacts to its other interests in rebuttal testimony. This testimony will briefly address the following amendments proposed by the New Mexico Environment Department:

**20.6.2.3105.L, M, N**

L. Effluent or leachate discharges resulting from activities regulated by [~~a mining plan approved and~~ ] permit issued by the [~~New Mexico Coal~~] mining and minerals division of

the energy, minerals and natural resources department pursuant to the Surface Mining [Commission] Act, NMSA 1978, Sections 69-25A-1 to -36, provided that this exemption shall not be construed as limiting the application of appropriate ground water protection requirements by the mining and minerals division and the New Mexico Coal Surface Mining Commission;

M. Effluent or leachate discharges which are regulated ~~[by]~~ under the Oil [Conservation Commission] and Gas Act and the regulation of which by the Water Quality Control Commission would interfere with the exclusive authority granted under Section 70-2-12 NMSA 1978, ~~[or under other laws, ]~~ to the Oil Conservation Commission and the oil conversation division.

N. Discharges resulting from activities regulated by the energy conservation and management division of the energy, minerals and natural resources department under the authority of the Geothermal Resources Development Act, NMSA 1978, Sections 71-9-1 to -11 (2016);

#### **20.6.2.5101.D(1) – (3)**

D. The exemptions from the discharge permit requirement listed in 20.6.2.3105 NMAC do not apply to underground injection control wells except as provided below:

(1) wells regulated by the oil conservation division of the energy, minerals and natural resources department under the exclusive authority granted under Section 70-2-12 NMSA 1978 or under other sections of the "Oil and Gas Act";

(2) wells regulated by the ~~[oil conservation division]~~ energy conservation management division of the energy, minerals and natural resourced department under the "Geothermal Resources Development Act";

(3) wells regulated by the ~~[New Mexico coal surface mining bureau]~~ mining and minerals division of the energy, minerals and natural resources department under the "Surface Mining Act";

**Testimony:** These changes pertain to exemptions from the requirement to obtain a discharge permit under these rules. EMNRD supports these changes as necessary to provide the correct statutory and agency references. These changes do not expand the scope of the exemptions, and, in one instance, slightly narrow the exemption.

These exemptions fall into three categories: (1) exemptions for activities regulated under the Surface Mining Act, NMSA 1978, Sections 69-25B-1 *et seq.*; (2) exemptions for activities under the Oil and Gas Act, NMSA 1978, Sections 70-2-1 *et seq.*; and (3) exemptions for activities regulated under the Geothermal Resources Development Act, NMSA 1978, Sections 71-9-1 *et seq.*

The changes mostly update 20.6.2 NMAC to clarify the names of the entities and the names of the statutes which relate to the exemptions mentioned above. Of particular importance is the repeal of the Geothermal Resources Conservation Act, Sections 71-5-1 *et seq.* and its

replacement with the Geothermal Resources Development Act, Sections 71-9-1 *et seq.* That change narrowed the scope of EMNRD's geothermal regulation, and therefore the scope of the exemption from 20.6.2 NMAC, and also transferred the regulation of geothermal facilities from one EMNRD division (OCD) to another, the Energy Conservation and Management Division. The changes to 20.6.2.3105.N and 20.6.2.5101.D(2) reflect this shift.

### 1. Surface Mining Act

The exemptions in 20.6.2.3105.L and 20.6.2.5101.D(3) reflect the exemption for activities regulated under the Surface Mining Act. The Surface Mining Act, NMSA 1978, Sections 69-25A-1 to 69-25A-36, provides for the comprehensive regulation of coal mines in New Mexico including regulation of impacts to groundwater quality. That Act is administered by the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department. The changes to 20.6.2.3105.L and 20.6.2.5101.D(3) correct the name of the regulatory authority.

### 2. Oil and Gas Act/Water Quality Act

The exemptions in 20.6.2.3105.M and 20.6.2.5101.D(1) reflect the exemption in the Water Quality Act, NMSA 1978, Section 74-6-12.G:

G. The Water Quality Act does not apply to any activity or condition subject to the authority of the oil conservation commission pursuant to provisions of the Oil and Gas Act [Chapter 70, Article 2 NMSA 1978], Section 70-2-12 NMSA 1978 and other laws conferring power on the oil conservation commission to prevent or abate water pollution.

The proposed changes in 20.6.2.3105.M and 20.6.2.5101.D(1) focus the exemption on the activities regulated under the Oil and Gas Act.

### 3. Geothermal Resources Development Act

The exemptions in 20.6.2.3105.N and 20.6.2.5101.D(2) reflect the exemption for geothermal activities regulated by EMNRD. House 289 and Senate Bill 223 from the 2016 Regular Legislative Session enacted the repeal of the Geothermal Resources Conservation Act, Sections 71-5-1 *et seq.* and its replacement with the Geothermal Resources Development Act, Sections 71-9-1 *et seq.* Laws 2016, Ch. 71 and 78. That change narrowed the scope of EMNRD's geothermal regulation, and therefore the scope of the exemption from 20.6.2 NMAC, and also transferred the regulation of geothermal facilities from one EMNRD division (OCD) to another, the Energy Conservation and Management Division. The changes to 20.6.2.3105.N and 20.6.2.5101.D(2) reflect this shift.