

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.¹ 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.² Even then, this disposal method has not been proven safe and is known to cause earthquakes and sinkholes.³



“Produced water” is too toxic to treat. It contains contaminants that can’t be removed, including radioactive materials, heavy metals, and extreme salts.⁴ Because fracking fluids are classified as trade secrets and exempted from disclosure requirements under the Safe Drinking Water Act,⁵ no one knows what’s in fracking waste or how to treat it. The EPA currently lacks approved testing methods for more 86% of more 1,000+ chemicals found in produced water.⁶

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.⁷

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.⁸

¹ 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.

² U.S. Environmental Protection Agency, “Study of Oil and Gas Extraction Wastewater Management Under the Clean Water Act,” Draft Report EPA-2019-821-R19-001 (May 2019), https://www.epa.gov/sites/production/files/2019-05/documents/oil-and-gas-study_draft_05-2019.pdf.

³ 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/>.

⁴ 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.

⁵ *Supra*. Note 2.

⁶ 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)

⁷ 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>

⁸ 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=gguelj>.

- **Solution: Require disclosure.** Amend NMSA 1978, § 70-2 to require hydraulic fracturing chemicals to be disclosed *before* drilling begins.

Produced water is toxic.

- **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.⁹
- **Solution: Manage waste as waste.** Amend NMSA 1978, § 74-7-3 to remove the exemption for oil and gas waste.

Produced water is radioactive.

- **Problem:** Fracking waste contains radioactive materials, including radium, radon, uranium, potassium and thorium, and produced water from the Permian Basin is known to contain significant levels of uranium.¹⁰
- **Solution: Provide safety regulations for oil and gas workers.** Direct Occupational Safety and Health Commission to adopt regulations that ensure worker safety. Direct the Transportation Commission to adopt rules ensuring safe transport of radioactive produced water on New Mexico's roads and highways.

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

- **Problem:** With more than three spills per day,¹¹ and explosions happening in people's backyards,¹² more than 1.7 million gallons of water have been spilled so far in 2020.¹³
- **Solution: Prohibit spills.** Amend NMSA 1978, § 70-2 to explicitly prohibit produced water spill, making clear that such spills constitute violations subject to enforcement and penalties.



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⁹ Elliott, E.G., Unconventional Oil and Gas Development and Risk of Childhood Leukemia: Assessing the Evidence, Science of the Total Environment 138 (2017)

¹⁰ 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>

¹¹ 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/>.

¹² 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>.

¹³ 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/>.