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Water Quality Control Commission poised to adopt rule prohibiting discharge of oil and gas wastewater to ground and surface waters

Rule would allow dangerous exception for “pilot projects” to discharge 84,000 gallons per day of treated fossil fuel waste to groundwater, risking public health

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Following a day and a half of deliberations, the Water Quality Control Commission is poised to adopt a rule that prohibits the discharge of “produced water” to New Mexico’s ground and surface waters. Produced water is a waste byproduct of oil and gas operations and contains hundreds of known and unknown chemicals, many of which are toxic to human health and the environment. The Commission, however, carved out an exception to the prohibition not based on science or the expert evidence that would allow “pilot projects” to discharge up to 84,000 gallons per day of treated produced water to groundwater.

The New Mexico Environment Department (NMED) petitioned the Commission 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 can contain hundreds of known and unknown chemicals, that many of the chemicals are potentially 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 hydraulic 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.

During the deliberations, the Commission decided to adopt the prohibition against discharge to ground and surface water but carved out an exception—neither proposed by NMED nor

offered by any other party in the proceeding—that allows “pilot projects” to discharge up to 84,000 gallons per day of treated produced water to New Mexico’s groundwater resources. Pilot projects are intended to characterize and study produced water treatment methods.

There was no evidence presented to the Commission that a discharge to groundwater of such magnitude will not contaminate drinking water aquifers. Further, there are no groundwater quality standards for a multitude of potentially toxic chemicals that could be dumped into our groundwater. The Commission gave no explanation and cited no evidence in this decision. Further, it is unclear why NMED’s representative on the Commission disagreed with and voted against the recommendation of the five NMED scientists.

The Commission will review the final rule language at its May 13 meeting before final adoption.

“Produced water is a toxic soup. We don’t now know how to effectively treat this wastewater at scale so it is safe for our communities and the environment,” said Tannis Fox, senior attorney at the Western Environmental Law Center. “A prohibition against discharge of produced water to our state’s most precious resource—our surface and groundwater—is supported by the best available science. We strongly oppose the Commission’s proposed exception to a ban, which has no basis in the science or in the record before the Commission and was not supported by NMED’s own experts. Once an aquifer is polluted, it is difficult, costly and sometimes impossible to clean up. The Commission is playing Russian roulette with New Mexicans’ drinking water.”

“While we are pleased that the Commission plans to adopt a ban on the discharge of oil and gas wastewater to New Mexico’s surface waters, we are dismayed that the Commission ignored the extensive record on the harms and toxicity of this wastewater and is proposing to allow its discharge to our precious New Mexico groundwater resources,” said Rachel Conn, deputy director of Amigos Bravos. “Issuing discharge permits for these large-scale pilot projects using inadequate water quality standards will not protect public health and the environment and could result in unsafe levels of toxic pollutants being discharged into our groundwater.”

On behalf of the Rio Grande Chapter of the Sierra Club, Dale Doremus, a former state hydrogeologist, said: “For more than 50 years, the 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. At this time, a ban on the discharge of treated and untreated produced water is what the science supports. Exempting projects that can discharge up to 84,000 gallons per day of treated oil and gas wastewater to groundwater is not based on science and threatens the health of our aquifers.”

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