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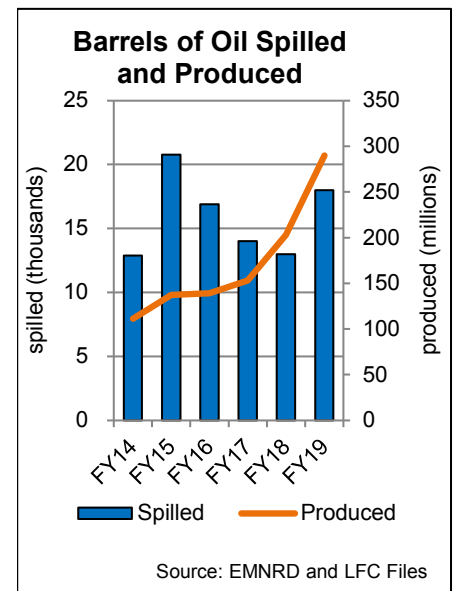
As Governor Michelle Lujan Grisham has stated repeatedly throughout the COVID-19 epidemic, and I quote “From day one, my administration’s response to COVID-19 has been grounded in science and data. The only way we get through this pandemic is if we take to heart what public health experts have to say. It’s the best thing we can do to protect ourselves and our loved ones.” That approach has saved lives and we applaud her leadership. The same legal, medical, social and moral standards must be applied to the O&G environmental disaster that is ongoing in the Permian Basin. But it hasn’t.

In fact, Governor Lujan Grisham’s approach to regulating the O&G has been hands off! What are the results?

In 2019, the O&G industry produced an estimated 300 million barrels of oil, and 1,259,341,048 barrels (>50b gallons) of “produced water”.¹ “Produced water” is actually a waste byproduct of the fracking process -- a toxic cocktail of radioactive² materials, heavy metals, proprietary fracking chemicals, and other contaminants that are known to be carcinogenic and dangerous to human health and the environment. According to the New Mexico Oil Conservation Division (OCD), there were 1,523 reported spills in New Mexico in 2018. That’s roughly 4.2 spills per day. That means on an average each day there are 252 bbls of produced water spilled; 44 barrels of crude oil spilled; 677,000 cubic feet of natural gas leaked.³

The State of New Mexico is failing New Mexicans

NM Governmental agencies have already failed to protect human health and the environment from the dangers of the oil and gas industry. While the O&G companies that own



¹ Bill Brancard, General Counsel, Energy, Minerals and Natural Resource Department, 9/3/2020, presentation before the Water & Natural Resources Committee, NM Legislature.

² “America’s Radioactive Secret,” *Rolling Stone*, 1/21/2020, <https://www.rollingstone.com/politics/politics-features/oil-gas-fracking-radioactive-investigation-937389/>

³ <https://westernpriorities.org/2018-new-mexico-oil-and-gas-toxic-release-tracker/>

the fracking wells are responsible for the accidents and poor management that lead to regular and repeated spills and releases of toxic waste, it is undeniable that New Mexico has failed to hold industry accountable and provide proper oversight and enforcement of existing rules.⁴ **The number of well inspections has decreased by 28% between the administrations of Governor Martinez (42,880 inspections in 2018) and Governor Lujan Grisham (31,043 inspections in 2019).**⁵ Indeed many of these companies are repeat violators of basic environmental regulations and are allowed to continue to operate. The division issued just 1,620 violations in FY19, **78 percent of the number issued in FY18**, despite significant increases in oil and gas production that year.⁶ The OCD attributes fewer inspections and a lack of compliance with permits and regulations to compliance officer vacancies. However, somehow OCD continues to process most approved drilling permits within 10 business days.

From January 1, 2019, the day Governor Lujan Grisham took office, until October 12, 2020, some of the top O&G producers reported the following discharges:

O&G	Number of Incidents	OCD web cite
WPX	97	https://wwwapps.emnrd.state.nm.us/ocd/ocdpermitting/Data/Spills/SpillSearchResults.aspx?IncidentIdSearchClause=BeginsWith&Severity=All&Ogrid_Name=WPX&OperatorSearchClause=Contains&FacilityIdSearchClause=BeginsWith&FacilityNameSearchClause=BeginsWith&WellNameSearchClause=BeginsWith&County=Eddy&Section=00s
Oxy USA	165	https://wwwapps.emnrd.state.nm.us/ocd/ocdpermitting/Data/Spills/SpillSearchResults.aspx?IncidentIdSearchClause=BeginsWith&Severity=All&Ogrid_Name=Oxy%20USA&OperatorSearchClause=Contains&FacilityIdSearchClause=BeginsWith&FacilityNameSearchClause=BeginsWith&WellNameSearchClause=BeginsWith&County=Eddy&Section=00s

⁴ “Well inspections were down in FY 2019 due to high vacancy rates in OCD field offices.” Energy Minerals Natural Resource Department annual report, 2019, http://www.emnrd.state.nm.us/documents/EMNRD_AnnualReport_2019_nm.pdf, p. 63. “In calendar year 2019 the OCD inspected 27,756 oil and gas wells and facilities out of 65,062 total facilities.” p. 60. “Timely approval of [application] permits [to drill] in conjunctions with the OCD’s inspection program ensures that the oil an gas industry can thrive [.]” pp. 60-61. In 2016 a total of 49,624 were inspected; in 2017 a total of 37,928 were inspected; in 2018 a total of 42,880 were inspected; and in 2019 a total of 31,043 were inspected. p. 63.

⁵ *Id.*

⁶ https://www.nmlegis.gov/Entity/LFC/Documents/Agency_Report_Cards/521%20-%20EMNRD%20FY20%20Q1.pdf

		eSearchClause=BeginsWith&Incident_DateRangeStart=01/01/2019&Incident_DateRangeEnd=03/23/2020&Section=00
Devon Energy	185	https://wwwapps.emnrd.state.nm.us/ocd/ocdpermitting/Data/Spills/SpillSearchResults.aspx?IncidentIdSearchClause=BeginsWith&Severity=All&Ogrid_Name=Devon%20Energy&OperatorSearchClause=Contains&FacilityIdSearchClause=BeginsWith&FacilityNameSearchClause=BeginsWith&WellNameSearchClause=BeginsWith&Incident_DateRangeStart=01/01/2019&Incident_DateRangeEnd=03/23/2020&Section=00
Chevron USA	63	https://wwwapps.emnrd.state.nm.us/ocd/ocdpermitting/Data/Spills/SpillSearchResults.aspx?IncidentIdSearchClause=BeginsWith&Severity=All&Ogrid_Name=Chevron&OperatorSearchClause=Contains&FacilityIdSearchClause=BeginsWith&FacilityNameSearchClause=BeginsWith&WellNameSearchClause=BeginsWith&Incident_DateRangeStart=01/01/2019&Incident_DateRangeEnd=03/23/2020&Section=00
Marathon Oil	60	https://wwwapps.emnrd.state.nm.us/ocd/ocdpermitting/Data/Spills/SpillSearchResults.aspx?IncidentIdSearchClause=BeginsWith&Severity=All&Ogrid_Name=Marathon&OperatorSearchClause=BeginsWith&FacilityIdSearchClause=BeginsWith&FacilityNameSearchClause=BeginsWith&WellNameSearchClause=BeginsWith&Incident_DateRangeStart=01/01/2019&Incident_DateRangeEnd=03/23/2020&Section=00
XTO Energy	287	https://wwwapps.emnrd.state.nm.us/ocd/ocdpermitting/Data/Spills/SpillSearchResults.aspx?IncidentIdSearchClause=BeginsWith&Severity=All&Ogrid_Name=XTO%20Energy&OperatorSearchClause=BeginsWith&FacilityIdSearchClause=BeginsWith&FacilityNameSearchClause=BeginsWith&WellNameSearchClause=BeginsWith&Incident_DateRangeStart=01/01/2019&Incident_DateRangeEnd=03/23/2020&Section=00
ConocoPhillips	58	https://wwwapps.emnrd.state.nm.us/ocd/ocdpermitting/Data/Spills/SpillSearchResults.aspx?IncidentIdSearchClause=BeginsWith&Severity=All&Ogrid_Name=ConocoPhillips&OperatorSearchClause=Contains&FacilityIdSearchClause=BeginsWith&FacilityNameSearchClause=BeginsWith&WellNameSearchClause=BeginsWith&Incident_DateRangeStart=01/01/2019&Incident_DateRangeEnd=03/23/2020&Section=00

Repeat O&G violators and NM complicity

Indeed many of the O&G companies are repeat violators of basic environmental regulations and are allowed to continue to operate. For instance, shortly after the fracked waste water explosion from a flowline on January 21, 2020 that shot up 25ft. in the air, fanning across the road and

showering human beings, animals, land and homes,⁷ WPX illegally dumped at least 13 bbls of produced fracked waste water on land.⁸ Similar to past violations, WPX received no ticket, no punishment for their violations, are allowed to continue to operate, leading to the occurrence of major incidents. WPX and the other O&G industries' deplorable record of discharges make the risk of damage foreseeable. NM governmental entities charged with the responsibility of protecting health, environment and water resources do not engender confidence in its ability to 1) prevent incidents from occurring; 2) notify impacted landowners and/or community members of the damage caused; and 3) require remediation of the problems. (The vast majority of "causes" of spills is "equipment failure.") This ongoing environmental disaster is preventable and foreseeable, as in, the likelihood of harm is knowable. We charge the Lujan Grisham administration with reckless disregard for knowing about the harm and failing to take action to prevent the harm. We call on her administration, NMED and OCD, to make the discharge of produced water illegal, because, in her words: it is the "best thing we can do to protect ourselves and our loved ones." We call on her administration to do their jobs: to regulate, supervise, monitor, control, penalize and enforce against oil and gas pollution "[t]o protect human health and the environment from the effects of development of the state's oil [and] gas ... resources".⁹ To do otherwise would be irresponsible in the extreme and, perhaps, knowingly criminal.

⁷ [https://truthout.org/articles/fracking-company-has-made-it-rain-toxic-water-upon-new-mexico-without-penalty/and https://nmpoliticalreport.com/2020/08/19/dereliction-of-duty-1-6-million-gallons-of-produced-water-spilled-so-far-in-2020/](https://truthout.org/articles/fracking-company-has-made-it-rain-toxic-water-upon-new-mexico-without-penalty/and-https://nmpoliticalreport.com/2020/08/19/dereliction-of-duty-1-6-million-gallons-of-produced-water-spilled-so-far-in-2020/)

⁸ Incident ID NRM2006956859; causing a saturation depth approximately 3 inches.

⁹ <http://www.emnrd.state.nm.us/OCD/envbureau.html>