

The Legislature has exempted oil and gas pollution from key environmental protections.

New Mexico Constitution Article XX, § 21

Pollution control

“The protection of the state's beautiful and healthful environment is hereby declared to be of fundamental importance to the public interest, health, safety and the general welfare. The legislature shall provide for control of pollution and control of despoilment of the air, water and other natural resources of this state, consistent with the use and development of these resources for the maximum benefit of the people.” (As added November 2, 1971.)

Oil and Gas Production Pollutes

- Oil and gas production releases hundreds of air contaminants, including:
 - **Volatile Organic Compounds**, including carcinogens like benzene
 - **Nitrogen Oxides**
 - **Particulate Matter**
 - **Sulfur Dioxide**
 - **Hydrogen Sulfide**
 - **Ozone** is formed by Volatile Organic Compounds and Nitrogen Oxides interacting in the atmosphere.

Hazardous Waste Act

- The Hazardous Waste Act **explicitly excludes the regulation of waste associated with oil and gas exploration, development, or production.**
- NMSA 1978 § 74-4- 3(K)(2)(A) (“Hazardous waste” under the statute “does not include any of the following . . . (a) drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy.”).

Hazardous and Radioactive Materials Act

- The Hazardous and Radioactive Materials Act **excludes the regulation of all waste associated with oil and gas exploration, development, or production.**
- NMSA 1978 § 74- 4A-4(D) (“hazardous waste” does not include “drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy, any fly ash waste, bottom ash waste, slag waste, flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels”).

Solid Waste Act

- The Solid Waste Act **excludes the regulation of all waste associated with oil and gas exploration, development, production, transportation, storage, or treatment.**
- NMSA 1978 § 74-9-3(N)(1) (“solid waste” does not include “(1) drilling fluids, produced waters and other non-domestic wastes associated with the exploration, development or production, transportation, storage, treatment or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy. . . .”).

Groundwater Protection Act

- The Groundwater Protection Act **does not include many types of storage facilities associated with oil and gas production and waste, explicitly excluding surface impoundments, pits, ponds and lagoons, pipeline facilities.** NMSA § 1978 74-6B-3(A)(3).
- The Act does not mandate measures for preventing leaks in the first place. Nor does it address any of the other ways in which oil and gas production can pollute groundwater.

Water Quality Act

- 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 [],** NMSA 1978 § 70-2-12 and other laws conferring power on the oil conservation commission to prevent or abate water pollution.” NMSA 1978 § 74-6-12(G).
- OCD has authority to regulate water pollution from oil and gas and to apply Water Quality Act standards to oil and gas pollution but is not mandated to.

Environmental Quality Act (Little NEPA)

- In 1971 the State enacted a state law analogue to the National Environmental Policy Act, which required state agencies to conduct an environmental review before projects were approved.
- Passed to “encourage productive and enjoyable harmony between man and his environment, promote efforts to prevent or eliminate damage to and improve the environment and biosphere and stimulate the health and welfare....” N.M. Stat. Ann. § 12-20-1(A) (Repl. 1971).
- Repealed in 1974.

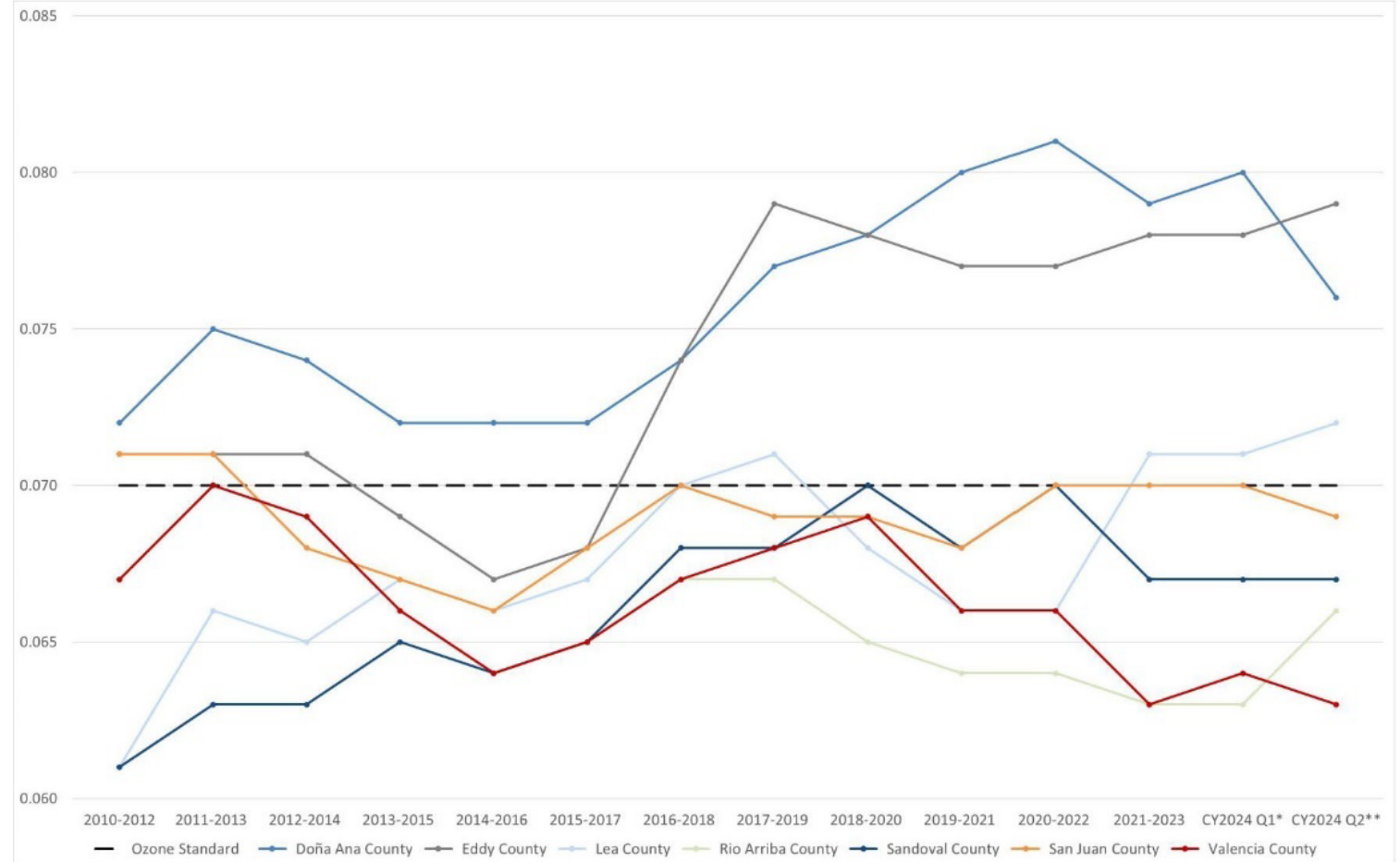
Air Quality Control Act

- The AQCA requires the Environmental Improvement Board to adopt regulations “to attain and maintain national ambient air quality standards and prevent or abate air pollution.” NMSA 1978 § 74-2-5(B)(1). The AQCA also mandates that the Environment Department shall enforce these rules and the AQCA in order to maintain the National Ambient Air Quality Standards (“NAAQS”) and prevent or abate air pollution. NMSA 1978 § 74-2-5.1.
- However, NMED continues to authorize oil and gas air pollution in areas that violate the NAAQS – most of these authorizations have no public notice or public participation.

Ozone Levels - Unhealthy and Increasing



Ozone NAAQS Design Values



*4/1/2021 - 3/31/2024, **7/1/2021 - 6/30/2024

A design value is a statistic that describes the air quality status of a given location relative to the level of the National Ambient Air Quality Standards (NAAQS). Design values are typically used to designate and classify nonattainment areas, as well as to assess progress towards meeting the NAAQS.

This graph is updated quarterly and newly added data has not been certified by U.S. EPA. All data displayed should be considered preliminary and used with discretion. The New Mexico Environment Department is not responsible for the accuracy of the data or any interpretations or conclusions that may be drawn from the data.

The New Mexico Oil and Gas Act is not a pollution control statute.

- The Oil and Gas Act was originally passed in New Mexico in 1935. Its purpose is to prohibit waste in the production or handling of oil and gas. NMSA 1978 § 70-2-2. **The Act's purpose does not include protecting the environment or public health from the hazards created by oil and gas production.**

The New Mexico Oil and Gas Act is not a pollution control or public health protection statute.

- The Oil and Gas Act established the Oil Conservation Division and authorizes the Division to limit oil and gas production, but only if necessary to prevent waste or protect property rights. See NMSA 1978 §§ 70-2-1 et seq. “Waste” is defined in terms of market value, and how to efficiently extract and sell as much oil and gas as possible, and not to produce in excess of the reasonable market demand.
- The Act does not authorize the Oil Conservation Division to limit production in order to control pollution or protect the environment. See NMSA 1978 § 70-2-3.

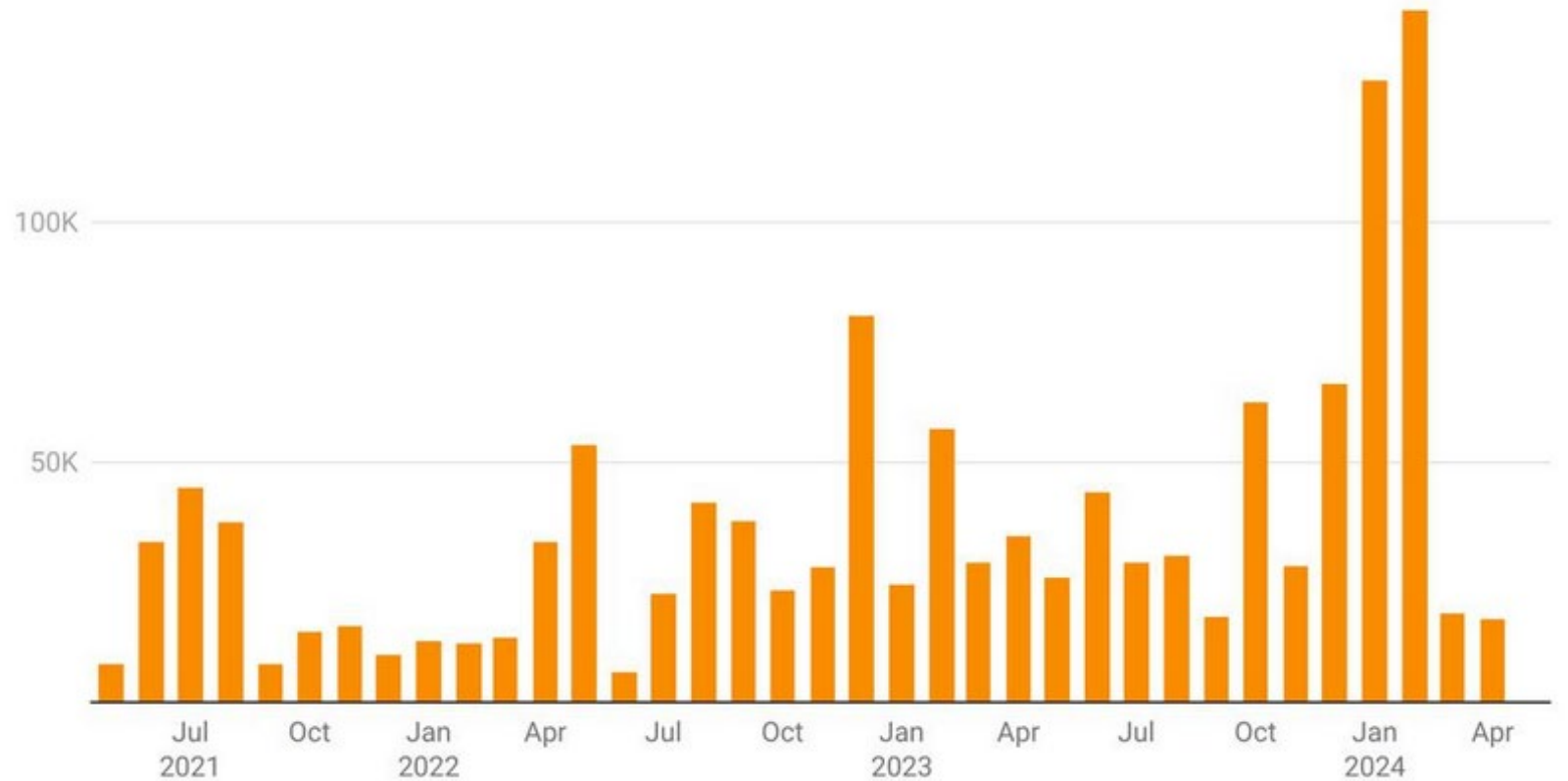
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- New Mexico has no laws requiring environmental review or impact assessment before oil and gas development is approved, and New Mexicans have no mechanism by which to challenge oil and gas development that detrimentally impacts the environment, public health, or cultural resources.
- Since the New Mexico Constitution was amended in 1971 to mandate control of pollution, the State has not amended the Oil and Gas Act to include mandatory environmental or public health protections.

Methane Vented to the Air

May 2021-May 2024

The Methane Rule is Not Working



All amounts are in Mcf, or thousands of cubic feet, the industry standard

Chart: Jerry Redfern • Source: NM Oil Conservation Division • Created with Datawrapper

Thank You

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