

**STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL
RESOURCES OIL CONSERVATION COMMISSION**

**IN THE MATTER OF THE APPLICATION
OF THE NEW MEXICO OIL CONSERVATION
TO CONSIDER THE PROPOSED RULES TO
REGULATE THE VENTING AND FLARING OF
NATURAL GAS FROM OIL AND NATURAL GAS
PRODUCTION AND GATHERING FACILITIES**

**CASE NO. 22225
ORDER NO. R-21889-B**

ORDER OF THE COMMISSION

THIS MATTER came before the New Mexico Oil Conservation Commission ("Commission") on the application of the Oil Conservation Division of the Energy, Minerals and Natural Resources Department ("Division") to amend Rule 19.15.28 NMAC. The Commission conducted a hearing in this matter from December 17, 2021 and deliberated in open session on the same day. The Commission, having considered the testimony, the record, and the arguments of the parties, and being otherwise fully advised, enters the following findings, conclusions, and order.

THE COMMISSION FINDS THAT:

1. Statutory Authority. The Commission is authorized to adopt rules, after a hearing, under the Oil and Gas Act, NMSA 1978, Sections 70-2-1 to -38 ("Act"). NMSA 1978, § 70-2-12.2. The Commission and the Division are given the duty to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas in a manner that protects public health, the environment, and fresh water resources. NMSA 1978, § 70-2-12(B)(15).

2. Application and Notice. The Division filed an Application on September 24, 2021, to amend Rule 19.15.28 NMAC to correct errors in the rule that occurred in the original January 2021 rulemaking concerning 19.15.28 NMAC, among other rule changes. The Application included a draft of the proposed rule change and a proposed legal notice. 19.15.3.8(A) NMAC.

3. At a public meeting on October 14, 2021, the Commission voted to hold a hearing on the proposed rule change and scheduled the rulemaking hearing to begin on December 17, 2021. 19.15.3.8(C) NMAC. The Commission determined that the hearing would be held in a virtual and telephonic format due to the public health restrictions in place to combat the COVID-19 pandemic. The Commission decided to require that anyone wishing to present technical testimony identify all witnesses to be presented at the hearing and a summary of each witness's anticipated testimony, and that all members of the public notify the Commission Clerk if they wished to address the

Commission during the hearing. The Commission also provided a written comment period of thirty-eight (38) days, from November 9, 2021 to noon on December 17, 2021.

4. Pre-hearing statements were submitted by the Division and the New Mexico Oil and Gas Association (“NMOGA”). The Division presented one technical witness who provided testimony alongside technical exhibits. Only the Division proposed changes to 19.15.28 NMAC; the Commission received no evidence or pleadings concerning the Division’s proposed changes other than that of the Division. The Commission received no public comment concerning the Division’s proposed changes to 19.15.28 NMAC.

5. Proposed Rule Changes. The Division proposed to amend Rule 19.15.28 NMAC. The proposed rule change generally included the following:

- a. Amendment of 19.15.28.8(F)(3) NMAC to correct an inaccurate lost natural gas calculation; and
- b. Amendment of 19.15.28.10(B) NMAC to correct an internal citation and clarify the provision’s application to gathering systems.

6. Public Hearing. The Commission conducted a virtual public hearing on the proposed rule changes on December 17, 2021 and subsequently deliberated in open session on the same day.

7. Documentary Evidence. In conjunction with its prehearing statement, the Division proposed exhibits for the hearing, which included the resume of its single witness, James Bolander, Jr., P.E. and a PowerPoint presentation outlining the Division’s proposed changes. Each Commissioner reviewed the proposed exhibits before, during and after the rulemaking hearing and subsequently admitted into the record such exhibits during the course of the rulemaking hearing.

8. Public Comment. Members of the public were permitted to appear and make comment at the hearing. However, the Commission received no public comments. The Commission provided multiple opportunities for members of the public to provide public comment during the hearing.

9. Written Comments. The Commission received no written comments for this rulemaking.

10. Division Testimony. The Division presented one (1) witness in its case-in-chief: James Bolander, Jr., P.E. NMOGA did not conduct a cross-examination of Mr. Bolander. Madam Chair was the only Commissioner who questioned Mr. Bolander.

11. Mr. Bolander testified about his 36 years of experience working for energy producers as a petroleum engineer and registered professional engineer, which included multiple executive operations and executive engineer roles. Currently Mr. Bolander works as a consultant for both producers and environmental groups alike. Mr. Bolander was involved in the collaborative effort that resulted in the original rules adopted in January 2021 and worked with the Division on the proposed amendments to 19.15.28 NMAC.

12. As to the proposed amendments to 19.15.28.8(F)(3) NMAC, Mr. Bolander testified that the Division discovered the calculation flaw in this Subsection during the development of a quarterly and monthly reporting tool. The calculation error in the current rule would result in releases not being counted against an operator's natural gas capture percentage, contrary to the intent behind the current rule, which seeks to count releases such as those deemed beneficial use, emergency releases, and normal operation of pneumatics against an operator's natural gas capture percentage.

13. Mr. Bolander explained that the proposed amendments to 19.15.28.8(F)(3) NMAC now sums the volume of vented or flared natural gas that is counted against an operator's natural gas capture percentage while omitting emissions that should not be counted against an operator's natural gas capture percentage, thereby achieving the Division and Commission's intentions for the 19.15.28 NMAC. Mr. Bolander further provided testimony on the particular mathematical changes to 19.15.28(F)(3) NMAC and testified that such changes rectify the current issue with 19.15.28(F)(3) NMAC.

14. Mr. Bolander turned to the Division's proposed changes to 19.15.28.10(B) NMAC, which governs the accounting method for vented and flared natural gas. Mr. Bolander explained that the proposed changes to 19.15.28.10(B) NMAC address carry-over errors from 19.15.28.8(F)(3) NMAC. The first error is an incorrect citation of "19.15.27.8" in the subject subsection; the other error being a reference to "natural gas produced," which stems from the error in 19.15.28.8(F)(3) NMAC. Both errors affect upstream producers.

15. Mr. Bolander testified that, as to the first error, a change in citation is needed, from "19.15.27.8" to "19.15.28.8," to ensure the subject rule provides for the proper calculation of an operator's natural gas capture percentage. Mr. Bolander also testified that the term "produced" should be changed to "gathered," which is consistent with the rule's applicability to upstream producers.

16. Madam Chair questioned Mr. Bolander, asking him if the Division's proposed changes to 19.15.28 NMAC are merely small, technical changes to correct the subject formula so that it operates consistent with the intent of the Commission and the January 2021 rulemaking and whether the proposed changes to 19.15.28 NMAC meet that original intent. Mr. Bolander answered in the affirmative to each question.

17. Reasons for Adopting Rule Changes. The Commission finds that the proposed rule amendments to 19.15.28 NMAC are supported by substantial evidence. The proposed rule amendments appropriately amend Rule 19.15.28 NMAC to ensure that each rule is consistent with the Oil and Gas Act and the Commission's intent and objectives in the January 2021 venting and flaring rulemaking. The Commission finds that the proposed rule changes create a necessary and appropriately revised framework for the Division and Commission regulation of vented and flared gas waste. The proposed rule changes appropriately outline the jurisdiction of the Division with respect to the regulation of vented and flared natural gas waste in the oil and gas industry.

18. The Commission finds that the Division's revision of reporting requirement calculations as described in the proposed amendments to 19.15.28.8(F)(3) NMAC are necessary

to ensure that the Division collects data related to the venting or flaring of natural gas in the oil and gas industry to inform Division regulation and, in particular, the 98% capture requirement for all operators by 2026. The Commission believes that reporting of reliable data by operators is critical to the prevention of waste, as requested by the Division. Therefore, the Commission finds that the Division's proposed amendments to 19.15.28.8(F)(3) NMAC are accepted without modification.

19. The Commission finds that the Division's revision of citations and certain terms of 19.15.28.10(B), as described in the proposed amendments to 19.15.28.10(B) NMAC, are necessary to ensure that the Division collects data related to the venting or flaring of natural gas in the oil and gas industry to inform Division regulation and, in particular, the 98% capture requirement for all operators by 2026. The Commission believes that reporting of reliable data by operators is critical to the prevention of waste, as requested by the Division. Therefore, the Commission finds that the Division's proposed amendments to 19.15.28.10(B) NMAC are accepted without modification.

THE COMMISSION CONCLUDES THAT:

1. The Commission has jurisdiction, under the Oil and Gas Act, NMSA 1978, §§ 70-2-1 to -38, over the parties and subject matter of this case.

2. The Commission has legal authority, under the Oil and Gas Act, to enact the proposed rule changes.

3. The Commission provided due public notice and an opportunity for the public to provide comments regarding the proposed rule change. The Commission held a public rulemaking hearing and provided a reasonable opportunity for all persons present or interested in the subject matter of the rulemaking hearing to provide testimony, evidence and exhibits.

4. All Commissioners were present at the public hearing and each Commissioner reviewed all transcripts and admitted evidence consistent with the Commissioners' duties and obligations. All Commissioners analyzed and considered all the evidence presented during the hearing, including the proposed amendments submitted by the parties. The Commission deliberated at a public hearing on December 17, 2021 and adopted the rule changes as stated above.

5. The Commission concludes that there is substantial evidence in the record to support the Division's proposed rule changes and the Commission's revisions to those changes, that these rule changes are within the authority of the Commission under the Oil and Gas Act and that these rule changes are reasonable and further the goals of the Oil and Gas Act.

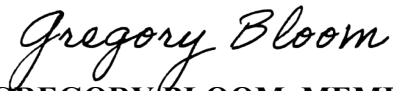
IT IS THEREFORE ORDERED THAT:

The proposed amendments to 19.15.28 NMAC are hereby approved by the Commission. The adoption of the rule changes will be final upon the latter of (a) the action, or deemed action, of the Commission on a rehearing application filed pursuant to NMSA 1978, § 70-2-25, or (b) twenty (20) days from the date of this order if no rehearing application is filed. The rule change

shall not be filed with the state records administrator until the rule change is adopted and then must be filed within fifteen (15) days after the adoption. If no rehearing is required by the Commission, this Order shall serve as the “concise explanatory statement” required by NMSA 1978, § 14-4-5.5 (2017).

DONE at Santa Fe, New Mexico, on this 13th day of January 2022.

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**



GREGORY BLOOM, MEMBER



TERRY WARNELL, MEMBER



ADRIENNE SANDOVAL, M.E., CHAIR