

Valentine, Velvet, EMNRD

From: Davidson, Florene, EMNRD
Sent: Friday, January 8, 2021 4:16 PM
To: Valentine, Velvet, EMNRD
Subject: FW: PBPA Comments on NMOCD Proposed Methane Rules
Attachments: PBPA Comments on NMOCD Proposed Methane Rules.pdf

Case 21528

From: Stephen Robertson PBPA <Stephen@PBPA.info>
Sent: Friday, January 8, 2021 3:49 PM
To: Davidson, Florene, EMNRD <florene.davidson@state.nm.us>
Cc: Shepperd, Ben <ben@pbpa.info>
Subject: [EXT] PBPA Comments on NMOCD Proposed Methane Rules

Clerk Davidson,

Attached, please find written comments submitted by PBPA on the OCD proposed rules to regulate the venting and flaring of natural gas from oil and natural gas production and gathering facilities.

Thank you,

Stephen

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January 8, 2020

Submitted via Electronic Mail

Director Adrienne Sandoval
C/O OCC Clerk Florene Davidson
Oil Conservation Commission
Energy, Minerals, and Natural Resources Department
1220 South St. Francis Dr.
Santa Fe, NM 87505

Re: Comments on the New Mexico Energy, Minerals and Natural Resources Department Final Proposed Methane Rules at NMAC 19.15.7, 18, 19, 27 & 28.

Director Sandoval:

The Permian Basin Petroleum Association (“PBPA”) and its member companies appreciate the opportunity to comment on the proposed final rules developed by the New Mexico Energy, Minerals and Natural Resources Department (“EMNRD”) to regulate the venting and flaring of natural gas from oil and natural gas production and gathering facilities being considered by the Oil Conservation Commission at proposed Administrative Code (“NMAC”) 19.15.7, 18, 19, 27 & 28. PBPA previously offered comments on a prior version of these final rules and these additional comments are intended to compliment those previously provided.

PBPA is the largest regional oil and gas association in the United States. Since 1961, the PBPA has been the voice of the Permian Basin oil and gas industry. The PBPA’s mission is to promote the safe and responsible development of our region’s oil and gas resources while providing legislative, regulatory and educational support services for the petroleum industry. The PBPA membership includes the smallest exploration and service companies as well as some of the largest companies with world-wide operations. The Permian Basin is the largest inland oil and gas reservoir and the most prolific oil and gas producing region in the world.

While PBPA is greatly supportive of improvements to the regulatory framework for oil and gas operations in New Mexico, as presented, the final proposed rules contain multiple concerning aspects, many of which are carried forward from previous drafts of the rule and were commented on previously by PBPA, but several other are new as to this final proposed version. While we do not detail all previously provided comments herein, we request you revisit our previous comments and incorporate those recommendations into your final enacted rule.

PBPA has engaged the Oil Conservation Division throughout the drafting process on these rules. We previously submitted written comments on September 16, 2020 outlining our suggested edits and concerns. We will continue to engage with the Division and Commission in hopes of rules being developed that accomplish the goal of reducing emissions without putting the oil and gas industry in New Mexico out of business.

Specifically as to the final proposed rule, we want to highlight the following concerns:

- Even though reporting categories have been reduced from the previous draft of the rule to this proposed final rule, they are still too onerous, will lead to inaccuracies and do not prevent waste. As stated in our previous comments, accounting software is not designed for so many additional categories and, if required, upgrades will require eighteen (18) to twenty-four (24) months. Further, PBPA believes reporting vented and flared volumes on form C-115 provides the most accurate information on volumes of wasted natural gas.
- Definitions for “emergency” and “malfunction”, which received little or no change from the previous draft, are overly broad and are likely to result in conflict (19.15.27.7). We still recommend the definitions for “emergency” and “malfunction” which we offered in our previous comments.

“Emergency” means a temporary, infrequent and unavoidable event in which the loss of natural gas is uncontrollable or necessary to avoid a risk of an immediate and substantial adverse impact on safety, public health or the environment. An emergency is limited to a period not to exceed 24 hours, unless the division determines that conditions exist necessitating venting or flaring for a longer period, is caused by an unanticipated event or failure that is out of the operator’s control and was not due to operator negligence. An emergency ~~but~~ does not include an event arising from or related to:

(1) the operator’s failure to install appropriate equipment of sufficient capacity to accommodate the anticipated or actual rate and pressure of production;

(2) ~~except as provided in subparagraph (4),~~ the operator’s failure to limit production from a gas well when the production rate exceeds the capacity of the related equipment or natural gas gathering system as defined in 19.15.28 NMAC, or exceeds the sales contract volume of natural gas;

(3) scheduled maintenance;

(4) ~~venting or flaring of natural gas for more than four hours after notification that is caused by an emergency, unscheduled~~

~~maintenance, or malfunction of a natural gas gathering system as defined in 19.15.28 NMAC;~~

(54) the operator's negligence, including a recurring equipment failure;

or

(65) ~~more than three failures of the same component within a single piece of equipment with 365 days. three or more emergencies within a single reporting area pursuant to Subsection A of 19.15.27.9 NMAC experienced by the operator within the preceding 60 days, unless the division determines the operator could not have reasonably anticipated the current event and it was beyond the operator's control.~~

“Malfunction” means any sudden failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions. ~~means a sudden, unavoidable failure or breakdown of equipment beyond the reasonable control of the operator that substantially disrupts operations and requires correction, but does not include a failure or breakdown that is caused entirely or in part by poor maintenance, careless operation or other preventable equipment failure or breakdown.~~

- Language taking into consideration the differing circumstances for low producing wells when compared to other operations have not been sufficiently addressed in this final rule. On the comments we submitted on September 16, 2020, which covered portions of the NMED last draft rule as well, we made recommendations for definitions of a “Stripper Well Facility” in the NMED draft rule, as well as references to such definition in the OCD rules. At that point in time, the two agencies had been working together to develop their own rules and such a recommendation seemed efficient and appropriate. However, if OCD continues to push forward regardless of the status of the NMED rules, the OCD rules need to do more to address low producing wells, or “Stripper Well Facilities.”

For instance, the definition PBPA offered for “Stripper Well Facility” is as follows:

“An individual oil or gas well or Wellhead Site, as defined herein, with a daily average oil production not exceeding 15 barrels of oil per day, or a natural gas well with a daily average natural gas production not exceeding 250,000 standard cubic feet per day, or any wellhead site with

a site-wide total annual potential to emit less than 25 tons per year (tpy) of volatile organic compounds (VOC).”

Along with this offered definition, several other suggested changes were given regarding low producing wells. We request that you again review our comments provided on September 16, 2020 for those additional recommendations.

- PBPA supports the comments provided by the New Mexico Oil and Gas Association and the Independent Petroleum Association of New Mexico during the hearing process. In particular, PBPA would like to provide additional written comment concerning the requirement contained within Proposed Section 19.15.27.8(G)(4) which, as presented during the Commission’s on-going hearing, states:

The operator shall report the vented and flared natural gas on a volumetric and percentage basis to all royalty owners in the mineral estate being produced by the well on a monthly basis, keep such reports for not less than five years and make such records available for inspection by the division upon request.

As testified to by Division staff and consultants during the hearing, this draft provision requires the reporting of all vented and flared natural gas, regardless of whether or not such venting or flaring includes venting or flaring that does not qualify as waste under the New Mexico Oil and Gas Act in NMSA 1978, § 70-2-3. As such, these reports do not limit reporting to volumes specifically designated as waste and instead create a more general reporting requirement of venting and flaring. It is unclear how this requirement will decrease waste specifically since it is not targeted towards waste. Moreover, the payment of royalties oftentimes does not hinge on a consideration of waste and is instead contingent on language contained within individual lease agreements. Most commonly, leases provide that royalties are payable on volumes “sold or removed” from the lease. It is unclear how, reporting on vented or flared volumes could be used to rewrite existing contractual commitments made between private parties. Additionally, we have observed inconsistencies with other State and Federal laws and royalty requirements.

First, the payment of royalties to private parties is governed under New Mexico Law by the Proceeds Payment Act. *See* NMSA 1978, § 70-10-1, et seq. This law does not require monthly royalty payments in all circumstances. Additionally, the law does not require any payments to be made specifically by an NMOCD designated operator. Instead, the

law more generally creates royalty payment obligations for “payors.” *Id.* The term “payor” has been defined by the New Mexico Legislature as “the party who undertakes to distribute oil and gas proceeds to the parties entitled thereto” *Id.* at § 70-10-2. This can include an operator, but also includes a variety of other parties such as a non-operating working interest owner or first purchaser of the production.

There are several carve outs included within the New Mexico Proceeds Payment Act which specify situations when monthly payments are not remitted to royalty owners. Payment frequency can be set by contract. *Id.* at § 70-10-3. Payments can be held in suspense accounts for periods of time, particularly when an owner is un-locatable. *Id.* at § 70-10-4. Payments can lawfully not be made until the payment amount equals at least \$100.00. *Id.* at § 70-10-5. No payments are required to be remitted until the royalty owner executes a reasonable division order, directing payment remittance and confirming the fractional percentage of the royalty interest. *Id.* Thus, monthly statements are not remitted to every royalty owner and the Legislature clearly understood the fact that it would be overly burdensome to require such communications on payors. Notably, the Legislature did not vest the Oil Conservation Commission or Division with any jurisdiction over these matters. The Division’s draft proposal does not align with these important nuisances created by the Legislature and places new burdens on oil and gas operators.

In regards to federal oil and gas leases, it is unclear how the Commission would require operators to submit information to the Federal Government. The royalty owner is the United States and while the lease agreements are issued by the Bureau of Land Management within the Department of the Interior, production volumes and royalties are reported to the Office of Natural Resources Revenue (“ONRR”) by the lessee (not necessarily the operator). ONRR has strict on-line reporting requirement and royalty payors must comport their production reports to ONRR’s on-line reporting system or the report will be rejected entirely. There simply isn’t a flexible way to report new information. There has been no indication during the on-going hearing that ONRR is ready, able and willing accept the reporting required under proposed Section 19.15.27.8(G)(4). This is concerning to operators because it creates some confusion as to whether it can comply with both NMOCD rules and ONRR’s strict reporting requirements. If ONRR will not amend its on-line reporting system to comport with NMOCD’s regulation, the question remains how such information should be reported to the United States.

- The authorized third party certifications/verifications now provided in the proposed final rule will not accomplish a reduction in venting or flaring but will only increase the cost of operations and burden on the regulated community (19.15.27.8). If this section is not removed, the OCD should add specific reasons or situations that an operator could be directed to retain third-party verification. It is our recommendation, however, that such threshold be higher than simply being that a third party verification is required if a hearing is requested. Furthermore, all affected operators should be allowed to submit input for the parameters under which the OCD will approve third-party companies.
- It still appears the COVID-19 pandemic and the rules' impact on the New Mexico economy have not been taken into consideration in the drafting of these rules.

On behalf of our members, we respectfully submit these comments to the Oil Conservation Commission and request they be taken into consideration in the further development of the draft rules. The PBPA appreciates your time in reviewing and considering these comments.

Regards,



Ben Shepperd
President
Permian Basin Petroleum Association