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

APPLICATION OF OIL CONSERVATION DIVISION TO ADOPT 19.15.27 NMAC AND 19.15.28 NMAC, AND TO AMEND 19.15.7 NMAC, 19.15.18 NMAC, AND 19.15.19 NMAC; STATEWIDE

CASE NO. 21528

NMOGA'S MOTION TO EXCLUDE EVIDENCE AND TESTIMONY PERTAINING TO ADDITIONS TO 19.15.27.8.C(1) PROPOSED BY EDF AND CLIMATE ADVODATES

Pursuant to Section 70-2-23 and 19.15.3 NMAC, the New Mexico Oil & Gas Association ("NMOGA") moves the Oil Conservation Commission to exclude evidence and testimony at the upcoming hearing in this matter regarding Environmental Defense Fund's ("EDF") and Climate Advocates' proposed additional regulatory requirements to the Oil Conservation Division's proposed rule at 19.15.27.8.C(1). *See* EDF Exhibit 4 (excerpted), attached as **Exhibit A**; Climate Advocates' Exhibit 1 (excerpted), attached as **Exhibit B**. For the reasons stated, technical evidence and testimony relating to EDF's and Climate Advocates' requested additional regulatory requirements in 19.15.27.8.C(1) should be excluded from this rulemaking.

I. Introduction

For decades Division rules have recognized the necessity of flaring or venting casinghead gas for up to "60 days following the well's completion" due to safety issues, operational efficiencies, and the difficulty of capturing casinghead gas during drilling completion and startup operations. *See* NMAC 19.15.18.12.A. After reviewing operational practices over the last few decades, the Division initiated rulemaking to modify this provision to allow venting or flaring during initial flowback from completion or recompletion operations until "it is technically feasible for a separator to function." *See* proposed 19.15.27.8.C(1). This proposed modification

has been filed, advertised and afforded the opportunity for public comment pursuant to the stringent provisions of the Commission's rulemaking requirements. *See generally*, Oil Conservation Division's Application in Case No. 21528, attached as **Exhibit C**.

EDF and Climate Advocates have recently submitted additional proposed regulatory requirements and indicated an intent to present technical evidence on an entirely new concept injected into to the Division's proposed 19.15.27.8.C(1). The proposed additions seek to mandate the operation of what they term "air pollution control equipment" during initial flowback. This new device and associated requirements are not a logical outgrowth of the Division's petition and notice for rulemaking because the Division proposal did not make clear that such a change was contemplated. *See generally*, **Exhibit C**; *see also CSX Transp., Inc. v. Surface Transp. Bd.*, 584 F.3d 1076, 1081 (2009) (applying "logical outgrowth" test). As a consequence, the regulated entities represented by NMOGA and the general public have not had the requisite opportunity to review, analyze or evaluate the technical or legal bases for this new device and related requirements that EDF and Climate Advocates seek to mandate during initial flowback. These additions therefore violate the Commission's requirements for rulemaking and the Commission's interpretation of what constitutes "reasonable notice" of a rulemaking under the Oil and Gas Act, as provided in the governing notice regulations.

II. Argument

A. NMOGA and the Public Did Not Have Reasonable Notice of EDF's and Climate Advocates' New Flowback Device and Requirements.

Neither regulated entities represented by NMOGA nor the general public have been afforded the required notice of EDF's and Climate Advocates' proposed flowback device and requirements in advance of the hearing to begin on January 4, 2021. The proposed additions, which introduce new equipment and processes, are not contemplated by the Division's proposed

rule language nor are they a logical outgrowth of the Division's proposal. The required opportunity for NMOGA and the public to review, analyze, and evaluate the safety and operational impact of the proposed "air pollution control device" has not been provided. This lack of notice, which violates the Commission's rulemaking regulations, requires that any evidence and testimony relating to this new concept proposed by EDF and Climate Advocates be excluded and not considered by the Commission at this rulemaking.

1. Rule Additions Must be a Logical Outgrowth of the Division's Proposed Rule.

Modifications to a proposed rule must be a "logical outgrowth" of the noticed proposal to be considered at a Commission rulemaking. *See* July 31, 2020, Transcript from Case No. 2181, In the Matter of Proposed Amendments to the Commission's Rules on Produced Water, 19.15.2, 19.15.16 And 19.15.34 NMAC, attached as **Exhibit D** (relevant portions excerpted).

Modifications constitute a logical outgrowth if the public could have expected that the change would have been part of the rulemaking. *See* Exhibit D at Tr. 191:22-192:1; *see also CSX Transp., Inc.*, 584 F.3d at 1081 (stating that a modification is a logical outgrowth "if interest parties 'should have anticipated' that the change was possible").

The Commission recently rejected a series of rule changes that would have deleted substantial portions of the proposed rule language and substituted new language creating new provisions and requirements that had not been contemplated by the proposed rule. *See* Exhibit D at Tr. 188:16-22; 191:22-192:1; 195:5-8; 215:6-10. In each circumstance, the Commission rejected the proposed language because the additions were not a "logical outgrowth" of the original rule and, therefore, "cannot be considered at this rulemaking because the public was not provided adequate notice that this change would arise." *See* Exhibit D at Tr. 188:23-189:2; *see*

also id. 191:25-192:7; 195:10-13; 215:15-19 (rejecting proposed additions because they were not a "logical outgrowth" and the public did not have notice of the change).

2. The Commission has Interpreted its "Reasonable Notice" Mandate to Require that Rule Changes be a "Logical Outgrowth" of the Original Proposal.

Section 70-2-23 of the Oil and Gas Act requires "'reasonable notice' as a condition precedent to a hearing." *Johnson v. N.M. Oil Conservation Comm'n*, 1999-NMSC-021, ¶ 28, 978 P.2d 327. The mandate for "reasonable notice" applies to "hearings regarding 'any rule, regulation or order[.]'" *Id.* ¶ 28. The Commission has incorporated this "reasonable notice" mandate in its rules that govern rulemaking proceedings in 19.15.3 NMAC. By adopting such regulations, the Commission acted to ensure that the public, regulated entities, and the Division (where the Division is not the applicant) will have sufficient opportunity to scrutinize and evaluate the technical and legal bases for proposed regulations or rule amendments. The Commission has further interpreted these regulations to require rule modifications to be a logical outgrowth of the proposed rule. *See generally*, Exhibit D.

Because the additional regulations proposed by EDF and Climate Advocates introduce new equipment, concepts, and processes that were not contemplated by what the Division proposed and noticed in its rulemaking they are not a logical outgrowth of the original proposal. Consideration of evidence and testimony at this rulemaking supporting the additions would therefore violate key aspects of the Commission's substantive procedural and notice requirements.

3. Rulemaking Initiation Requires Applicants to "Specifically Identify the Rule the Applicant Proposes to Adopt" and Provide a "Draft of the Proposed Rule."

19.15.3.8 NMAC provides that any person may file an application for rulemaking, but the application must "specifically identify" the proposed rule and must include "a draft of the

proposed rule" itself. The Division fulfilled these requirements when it filed its application, summarizing the proposed rule's intended effect, and including a complete draft of the proposed rule's language. *See* Exhibit C.

However, nowhere in the Division's application materials or notice, including the draft rule itself, is there any indication that the proposed regulation contemplated the type of equipment or processes that would require "flowback vessels" to "collect and control emissions" after initial flowback by routing emissions to "an operating air pollution control equipment" with a "hydrocarbon control efficiency of at least 95%." *Compare* Exhibit C *with* Exhibits A and B. The Division's proposed language simply provides that "During initial flowback, the operator shall route flowback liquids into a completion or storage tank and commence operations of a separator as soon as it is technically feasible for a separator to function." *See* Exhibit C at 24. To reorient the Division's language to incorporate its new regulatory concepts and processes, EDF and Climate Advocates had to substantially re-draft 19.15.27.8.C(1) and add three subparagraphs to account for new control systems, specifications, testing and inspection. *See* Exhibit A and B.

Because EDF's and Climate Advocates' new regulation and requirements for well completions and re-completions were not included in, or contemplated by, the rulemaking application materials required under 19.15.27.3.8, NMOGA and the public have had no opportunity to fairly assess or evaluate the technical or legal merits in advance of the hearing.

To avoid this problem, EDF and Climate Advocates could have, and should have, filed their own applications for rulemaking on the proposed additions to be heard concurrently with the Division's proposed rule. That would have triggered the strict notice requirements under 19.15.3.9.B NMAC and would have given NMOGA and the public adequate opportunity to review and evaluate the proposed new concept. Having failed to apply for its own rulemaking to

propose this new approach to initial flowback under 19.15.27.8.C(1), EDF and Climate Advocates did not provide the required "reasonable notice."

B. 19.15.3.9.B NMAC Imposes Strict Notification Requirements for Rulemaking Proceedings that will be Subverted if Evidence and Testimony Relating to the New Flowback Device and Related Requirements are Permitted.

Had EDF and Climate Advocates filed rulemaking applications for the specific additions proposed under 19.15.27.8.C(1), they would have been required to prepare legal notice that meets the strict requirements of 19.15.3.9.B NMAC, which include:

> (1) a **summary of the full text** of the proposed rule;
> (2) a short explanation of the purpose of the proposed rule;
> (3) a **citation to the specific legal authority authorizing the proposed rule** and the adoption of the rule;
> …
> (5) information on how a person may comment on the proposed rule, where comments will be received and when comments are due; [and]
> …
> (7) **a citation to technical information**, if any, that served as a basis for the proposed rule, and **information on how the full text of the technical information may be obtained**.

By adopting these provisions as requirements for rulemaking, the Commission has incorporated them as elements necessary to provide "reasonable notice[,]" which is "a condition precedent to a hearing." *See Johnson v.*, 1999-NMSC-021, ¶ 28.

NMOGA and the public have been deprived of the materials required under 19.15.3.9.B NMAC in advance of the rulemaking hearing. The Commission's regulations also provide that public comments on the proposed requirements "shall be made part of the hearing record." 19.15.3.10 NMAC. But here, the public also has been deprived of the opportunity to comment on the new flowback device and related requirements.

If EDF and Climate Advocates are allowed to present evidence and testimony in support of their proposed additional regulations under 19.15.27.8.C(1) at the hearing, the regulatory

procedure the Commission has carefully constructed to provide meaningful notice as a condition precedent to rulemaking will be unfairly subverted.

CONCLUSION

For the reasons stated, NMOGA's Motion should be granted and evidence and testimony supporting the additional regulatory provisions proposed by EDF and Climate Advocates under 19.15.27.8.C(1) should be excluded from this rulemaking, and the Commission should disregard any such evidence or testimony when considering adoption of any final rule.

Respectfully submitted,

HOLLAND & HART, LLP

Michael H. Feldewert
Adam G. Rankin
Post Office Box 2208
Santa Fe, New Mexico 87504
TEL: (505) 988-4421
FAX: (505) 983-6043 Facsimile
mfeldewert@hollandhart.com
agrankin@hollandhart.com

ATTORNEYS FOR NEW MEXICO OIL & GAS ASSOCIATION

CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2020, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

Eric Ames
Assistant General Counsel
New Mexico Energy, Minerals, and
Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
(505) 476-3463
(505) 476) 476-3220 FAX
eric.ames@state.nm.us

Attorney for New Mexico Oil Conservation Division

Tannis Fox
Erik Schlenker-Goodrich
Western Environmental Law Center
208 Paseo del Pueblo Sur, #602
Taos, New Mexico 87571
TF: 505.629.0732
ES-G: 575.613.4197
fox@westernlaw.org
eriksg@westernlaw.org

Attorneys for Center for Civic Policy, Conservation Voters New Mexico, Dine C.A.R.E., San Juan Citizens Alliance, and Earthworks, Natural Resources Defense Council, Sierra Club and 350 New Mexico

David R. Baake
2131 North Main Street
Las Cruces, New Mexico 88001
575.343.2782
david@baakelaw.com

Attorney for Sierra Club

Elizabeth Paranhos
deLone Law Inc.
1555 Jennine Place
Boulder, CO 80304 303 442-0610
elizabethparanhos@delonelaw.com

Attorney for Environmental Defense Fund

Ari Biernoff
General Counsel
New Mexico State Land Office
P.O. Box 1148
Santa Few, New Mexico 87501-1148
(505) 827-5756
abiernoff@slo.state.nm.us

Attorney for Commissioner of Public Lands Stephanie Garcia Richard and New Mexico State Land Office

Adam G. Rankin

EXHIBIT A

(3) In an emergency or malfunction, the operator may vent natural gas to avoid a risk of an immediate and substantial adverse impact on safety, public health or the environment. The operator shall report natural gas vented or flared during an emergency or malfunction to the division pursuant to Paragraph (1) of Subsection G of 19.15.27.8 NMAC.

C. Venting and flaring during completion and recompletion operations.

(1) During initial flowback, the operator must direct all fluids to flowback vessels and collect and control emissions from each flowback vessel on and after the date of initial flowback by routing emissions to an operating air pollution control equipment that achieves a hydrocarbon control efficiency of at least 95%. If a combustion device is used, it must have a design destruction efficiency of at least 98% for hydrocarbons.

(a) Owners or operators must use enclosed, vapor-tight flowback vessels with an appropriate pressure relief system to be used only as necessary to ensure safety.

(b) Flowback vessels must be inspected, tested, and refurbished where necessary to ensure the flowback vessel is vapor-tight prior to receiving flowback.

(c) Flares used to control emissions from flowback vessels and pressure relief systems must be equipped with an automatic igniter or continuous pilot.

(2) During separation flowback, the operator shall capture and route natural gas:

(a) to a gas flowline or collection system, reinjecting it into the well, or use on-site as a fuel source or for another purpose that a purchased fuel or raw material would serve; or

(b) to a flare if routing the natural gas to a gas flowline or collection system, reinjecting it into the well, or using it on-site as a fuel source or other purpose that a purchased fuel or raw material would serve would pose a risk to safe operation or personnel safety, provided that the flare is properly sized and equipped with an automatic igniter or continuous pilot.

(3) If N2 or H2S concentrations in natural gas exceeds the gathering pipeline specifications, the operator may flare the natural gas for 60 days or until the N2 or H2S concentrations meet the pipeline specifications, whichever is sooner, provided that:

(a) the flare stack is properly sized and equipped with an automatic igniter or continuous pilot;

(b) the operator analyzes the natural gas samples twice per week;

(c) the operator routes the natural gas samples twice per week;

(d) the operator provides the pipeline specifications and natural gas analyses to the division upon request.

D. Venting and flaring during production operations. The operator shall not vent or flare natural gas except:

(1) to the extent authorized by a valid federally enforceable air quality permit issued by the New Mexico environment department;

(2) during an emergency or malfunction, but only to avoid a risk of an immediate and substantial adverse impact on safety, public health, or the environment. The operator shall notify the division of venting or flaring resulting from an emergency pursuant to Paragraph (1) of Subsection G of 19.15.27.8 NMAC.

(3) to unload or clean-up liquid holdup in a well to atmospheric pressure, provided

(a) the operator uses an automated control system, such as a plunger lift, where technically feasible and optimizes the system to minimize the venting of natural gas;

(b) the operator does not vent after the well achieves a stabilized rate and pressure;

(c) for liquids unloading by manual purging, when the operator remains present on-site until the end of unloading, takes all reasonable actions to achieve a stabilized rate and pressure at the earliest practical time and takes all reasonable actions to minimize venting to the maximum extent practicable; or

(d) during downhole well maintenance, only when the operator uses a workover rig, swabbing rig, coiled tubing unit or similar specialty equipment and minimizes the venting of natural gas to the extent that it does not pose a risk to safe operations and personnel safety and is consistent with best management practices;

(e) the operator must notify the division at least 48 hours prior to conducting unloading or well clean-up activities, except where the operator must act more quickly in order to minimize waste of natural gas. In these cases, the operator must notify the division as soon as possible prior to conducting unloading or well clean-up activities; or

(5) during the first 12 months of production from an exploratory well, or as extended by the division for good cause shown, provided:

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(6) three or more emergencies 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.

~~H.~~J. **"Flare" or "Flaring"** means the controlled combustion of natural gas in a device designed for that purpose.

~~I.~~K. **"Flare stack"** means an appropriately designed stack equipped with a burner used for the combustion and disposal of natural gas.

L. **"Flowback"** means the process of allowing fluids and entrained solids to flow from a well following stimulation, either in preparation for a subsequent phase of treatment or in preparation for cleanup and placing the well into production. Flowback ends when all temporary flowback equipment is removed from service. Flowback does not include drill-out.

M. **"Flowback fluid"** means the gases, liquids, and entrained solids flowing from a well after drilling or hydraulic fracturing or refracturing.

~~**"Gas-to-oil ratio (GOR)"** for purposes of 19.15.27 NMAC means the ratio of natural gas to oil in the production stream expressed in standard cubic feet of natural gas per barrel of oil.~~

~~J.~~N. **"Initial flowback"** means the period during completion operations that begins with the onset of flowback and concludes when it is technically feasible for a separator to function.

~~K.~~O. **"Malfunction"** 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.

~~L.~~P. **"N2"** means nitrogen gas.

~~M.~~Q. **"Natural gas"** means a gaseous mixture of hydrocarbon compounds, primarily composed of methane, and includes both casinghead gas and gas as those terms are defined in 19.15.2 NMAC.

~~N.~~ **"Production operations"** means the period that begins on the earlier of 31 days following the commencement of initial flowback or when permanent production equipment is placed into service and concludes when the well is plugged and abandoned.

~~O.~~R. **"Producing in paying quantities"** mean the production of a quantity of oil and gas that yields revenue in excess of operating expense

~~P.~~S. **"Separation flowback"** means the period during completion operations that begins when it is technically feasible for a separator to function and concludes on the earlier of 30 days after the commencement of initial flowback or when permanent production equipment is placed into service.

~~Q.~~T. **"Vent" or "Venting"** means the release of uncombusted natural gas to the atmosphere.

[19.15.27.7 NMAC – N, xx/xx/xxxx]

19.15.27.8 VENTING AND FLARING OF NATURAL GAS:

A. Venting and flaring of natural gas during drilling, completion or production operations constitutes waste and is prohibited except as authorized in Subsections B, C and D of 19.15.27.8 NMAC. The operator has a general duty to maximize the recovery of natural gas and to minimize the release of natural gas to the atmosphere. During drilling, completion and production operations, the operator shall flare natural gas rather than vent natural gas except when flaring is technically infeasible or would pose a risk to safe operations or personnel safety, and venting is a safer alternative than flaring.

B. Venting and flaring during drilling operations.

(1) The operator shall capture or combust natural gas if technically feasible using best industry practices and control technologies.

(2) A flare stack shall be located at a minimum of 100 feet from the nearest surface hole location ~~and,~~ shall be properly sized, enclosed and equipped with an automatic ignition system, ~~or continuous pilot,~~ and have a destruction removal efficiency of at least 98%.

(3) In an emergency or malfunction, the operator may vent natural gas to avoid a risk of an immediate and substantial adverse impact on safety, public health, or the environment. The operator shall report natural gas vented or flared during an emergency or malfunction to the division pursuant to Paragraph (1) of Subsection G of 19.15.27.8 NMAC.

C. Venting and flaring during completion and recompletion operations.

(1) During initial flowback, the operator must direct all fluids to flowback vessels and collect and control emissions from each flowback vessel on and after the date of initial flowback ~~fluids are routed~~

to the flowback vessel by routing emissions to an operating air pollution control equipment that achieves a hydrocarbon control efficiency of at least 95%. If a combustion device is used, it must have a design destruction efficiency of at least 98% for hydrocarbons.

(a) Operators must use enclosed, vapor-tight flowback vessels with an appropriate pressure relief system to be used only as necessary to ensure safety.

(b) Flowback vessels must be inspected, tested, and refurbished where necessary to ensure the flowback vessel is vapor-tight prior to receiving flowback.

(a)(c) Flares used to control emissions from flowback vessels and pressure relief systems must be equipped with an automatic ignitor. ~~shall route flowback fluids into a completion or storage tank and commence operation of a separator as soon as it is technically feasible for a separator to function.~~

(2) During separation flowback, the operator shall capture and route natural gas:

(a) to a gas flowline or collection system, reinject into the well, or use on-site as a fuel source or other purpose that a purchased fuel or raw material would serve; or

(b) to a flare if routing the natural gas to a gas flowline or collection system, reinjecting it into the well, or using it on-site as a fuel source or other purpose that a purchased fuel or raw material would serve would pose a risk to safe operation or personnel safety, provided that the flare is properly sized and equipped with an automatic igniter ~~or continuous pilot.~~

(3) If N_2 or H_2S concentrations in natural gas exceeds the gathering pipeline specifications, the operator may flare the natural gas for 60 days or until the N_2 or H_2S concentrations meet the pipeline specifications, whichever is sooner, provided that:

(a) the flare stack is properly sized and equipped with an automatic igniter ~~or continuous pilot~~;

(b) the operator analyzes natural gas samples twice per week;

(c) the operator routes the natural gas into a gathering pipeline as soon as the pipeline specifications are met; and

(d) the operator provides the pipeline specifications and natural gas analyses to the division upon request.

D. Venting and flaring during production operations. The operator shall not vent or flare natural gas except:

(1) to the extent authorized by a valid federally enforceable air quality permit issued by the New Mexico environment department;

(2) during an emergency or malfunction, but only to avoid a risk of an immediate and substantial adverse impact on safety, public health, or the environment. The operator shall notify the division of venting or flaring resulting from an emergency or malfunction pursuant to Paragraph (1) of Subsection G of 19.15.27.8 NMAC;

(3) to unload or clean-up liquid holdup in a well to atmospheric pressure, provided

(a) the operator uses an automated control system such as a plunger lift where technically feasible, and optimizes the system to minimize the venting of natural gas;

~~(a)~~(b) the operator does not vent after the well achieves a stabilized rate and pressure;

~~(b)~~(c) for liquids unloading by manual purging, the operator remains present on-site until the end of unloading, takes all reasonable actions to achieve a stabilized rate and pressure at the earliest practical time and takes all reasonable actions to minimize venting to the maximum extent practicable;

~~(c) for a well equipped with a plunger lift system or an automated control system, the operator optimizes the system to minimize the venting of natural gas; or~~

(d) during downhole well maintenance, only when the operator uses a workover rig, swabbing rig, coiled tubing unit or similar specialty equipment and minimizes the venting of natural gas to the extent that it does not pose a risk to safe operations and personnel safety and is consistent with best management practices; and

(e) The operator must notify the division at least 48 hours prior to conducting unloading or well clean-up activities, except where the operator must act more quickly in order to minimize waste of natural gas. In these cases, the operator must notify the division as soon as possible prior to conducting unloading or well clean-up activities.

(4) during the first 12 months of production from an exploratory ~~delineation~~ well, or as

EXHIBIT C

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

2020 OCT 15 AM09:49 HR

APPLICATION OF OIL CONSERVATION DIVISION TO ADOPT 19.15.27 NMAC AND 19.15.28 NMAC, AND TO AMEND 19.15.7 NMAC, 19.15.18 NMAC, AND 19.15.19 NMAC; STATEWIDE

CASE NO. _____

OIL CONSERVATION DIVISION'S APPLICATION TO ADOPT 19.15.27 NMAC AND 19.15.28 NMAC AND TO AMEND 19.15.7 NMAC, 19.15.18 NMAC, AND 19.15.19 NMAC

The Energy, Minerals and Natural Resources Department, Oil Conservation Division ("OCD"), applies to the Oil Conservation Commission ("Commission") to hold a public hearing to consider and adopt rules to regulate the waste of natural gas by venting and flaring in the production and gathering sectors of the oil and gas industry. The rules consist of two new and three amended rules.

The new rules are:

19.15.27 NMAC – Venting and Flaring of Natural Gas: OCD proposes to adopt a new rule to establish requirements for the operators of production facilities to report and reduce the venting and flaring of natural gas.

19.15.28 NMAC – Natural Gas Gathering Systems: OCD proposes to adopt a new rule to establish requirements for the operators of natural gas gathering systems, including gathering pipelines, to report and reduce the venting and flaring of natural gas.

The amended rules are:

19.15.7 NMAC – Forms and Reports: OCD proposes to amend an existing rule to rename a form, add new forms, and provide instructions for the use of those forms.

19.15.18 NMAC – Production Operating Practices: OCD proposes to amend an existing rule to remove a provision requiring the operators of production facilities to file an application to flare natural gas.

EXHIBIT C

19.15.19 NMAC – Natural Gas Production Operating Practice: OCD proposes to amend an existing rule to remove two provisions regarding the venting of natural gas at production facilities.

3. OCD requests that the Commission set a special hearing on the proposed rules for January 5, 2021.

4. Pursuant to 19.15.3.8(C) NMAC, and in addition to the requirements of 19.15.3.11(B)(2) NMAC, OCD requests that the Commission:

a. establish a deadline for pre-hearing motions;

b. appoint a hearing examiner to hold a pre-hearing conference to decide procedural matters and non-dispositive pre-hearing motions before the hearing;

c. schedule a meeting to hear and decide dispositive motions, if any, before the hearing;

d. require persons to file pre-hearing statements no later than December 22, 2020; and

e. authorize a party, after it presents each witness individually for direct examination, to present its witnesses as a panel for the purpose of cross-examination.

5. The rules and public notice are attached.

Respectfully submitted,

Eric Ames
Assistant General Counsel
Energy Minerals and Natural
Resources Department
1220 S. St. Francis Drive
Santa Fe, New Mexico 87505
(505) 476-3463
eric.ames@state.nm.us

EXHIBIT C

NOTICE OF PUBLIC HEARING FOR PROPOSED RULEMAKING

2020 OCT 15 AM09:49 HR

The State of New Mexico through the Oil Conservation Commission (OCC) hereby gives notice that the OCC will hold a public hearing to consider proposed rules to regulate the venting and flaring of natural gas from oil and natural gas production and gathering facilities. The public hearing will be held on-line and by telephone on January 5, 2021, at 9:00 a.m., and will be continued to the following day(s) if not completed.

Purpose of Proposed Rules. The proposed rules regulate the venting and flaring of natural gas from oil and natural gas production and gathering facilities.

Summary of Proposed Rules. The Oil Conservation Division (OCD) proposes to adopt two new rules and to amend three existing rules. The new rules are 19.15.27 NMAC, which establishes requirements for operators of oil and gas production facilities to report and reduce the venting and flaring of natural gas; and 19.15.28 NMAC, which establishes requirements for operators of natural gas gathering systems, including gathering pipelines, to report and reduce the venting and flaring of natural gas. The amended rules are 19.15.7 NMAC, to change the name of a form, add new forms, and provide instructions; 19.15.18 NMAC, to remove a provision requiring operators of production facilities an application to file an application to flare natural gas; and 19.15.19 NMAC, to remove two provisions regarding the venting of natural gas at production facilities.

Legal Authority. The proposed rules are authorized by the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, including Section 70-2-6 (authorizing the OCC to exercise jurisdiction, authority, and control of and over all persons, matters, and things necessary or proper to enforce the statute), Section 70-2-11 (authorizing the OCC to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), and Section 70-2-12 (enumerating the powers of the OCC and OCD). The public hearing is governed by the OCC's rule on rulemaking proceedings, 19.15.3 NMAC.

Availability of Proposed Rules. The full text of the proposed rules is available on the OCD's website, http://www.emnrd.state.nm.us/ocd, or by contacting the OCC Clerk, Florene Davidson at florene.davidson@state.nm.us.

Written Comments. Any person may submit written comments on the proposed rules no later than January 5, 2021, at 9:00 a.m., unless extended by the OCC, by mail, email, or delivery to the OCC Clerk, Florene Davidson, 2nd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, or florene.davidson@state.nm.us. To deliver written comments to the OCC Clerk, upon arrival at the building, call (505) 476-3200 ext. 1, and an OCC representative will come to the front door.

Public Hearing. The public hearing will be held online and by telephone on January 5, 2021, at 9:00 a.m., and will be continued to the following day(s) if not completed. The public hearing will be transcribed and recorded. To access the public hearing on-line via the Webex platform and by telephone:

Online access code:	[xxx xxx xxx]
Online password:	[xxxxxxxxxxx]
Telephone:	[xxx-xxx-xxxx.]

Public comment will be accepted each day of the hearing beginning at 4:00 p.m.

Proposed Modifications, Technical Testimony, and Cross Examination. A person who intends to propose a modification to the proposed rules, to present technical testimony at the public hearing, or to cross-examine witnesses at the public hearing must file six copies of a Pre-Hearing Statement conforming to the requirements of 19.15.3.11(B) NMAC, no later than January 5, 2021, at 5:00 p.m. The Pre-Hearing Statement must be filed by mail, email, or delivery to the OCC Clerk, Florene Davidson, 2nd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, florene.davidson@state.nm.us. To deliver a Pre-Hearing Statement to the OCC Clerk, upon arrival at the building, call (505) 476-3200 ext. 1, and an OCC representative will come to the front door. A person filing a Pre-Hearing Statement who intends to use projection equipment must contact the OCC Clerk no later than seven business days prior to the public hearing. A person who presents technical testimony at the public hearing will

be subject to cross-examination by the members of the OCC, the OCC's counsel, and other persons who filed Pre-Hearing Statements.

Oral Comments. A person who did not file a Pre-Hearing Statement may present non-technical testimony or make an unsworn statement at the public hearing. A person who wants to present non-technical testimony or make an unsworn statement at the public hearing must inform the hearing examiner. A person who presents non-technical testimony will be subject to cross-examination by the members of the OCC, the OCC's counsel, and other persons who filed Pre-Hearing Statements. A person may offer exhibits at the public hearing if the exhibits are relevant to the proposed rules and the person files the original exhibit and five copies conforming to the requirements of 19.15.3.12(C) NMAC prior the end of the public hearing. A person may file exhibits by mail, email, or delivery to the OCC Clerk, Florene Davidson, 2nd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, florene.davidson@state.nm.us. To deliver exhibits to the OCC Clerk, call (505) 476-3200 ext. 1, and an OCC representative will come to the front door.

Persons with Disabilities. A person with a disability who needs a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service, such as a summary or other accessible form of document, in order to attend or participate in the public hearing, must contact the OCC Clerk, Florene Davidson, at (505) 476-3458 or florene.davidson@state.nm.us, or through the New Mexico Relay Network at 1-800-659-1779, no later than January 5, 2021.

Technical Information. OCD consulted the following technical information for the proposed rules, which is available on OCD's website:

New Mexico Energy, Minerals & Natural Resources Department and New Mexico Environment Department, *Report of the Methane Advisory Panel*, Fall 2019.

U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, *Oil and Natural Gas Sector: Hydraulically Fractured Oil Well Completions and Associated Gas During Ongoing Production*, April 2014.

U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, *Oil and Natural Gas Sector: Liquids Unloading Processes*, April 2014.

Colorado Oil and Gas Commission, *Aesthetic and Noise Control Regulations*, 800 Series, September 2014.

Colorado Oil and Gas Commission, *Safety Regulations*, 600 Series, January 2020.

Colorado Oil and Gas Commission, *E&P Waste Management*, 900 Series, January 2020.

Colorado Oil and Gas Commission, *Draft Amendments to E&P Waste Management*, 900 Series, June 2020.

North Dakota Industrial Commission, *Order No. 24665*, July 1, 2014.

North Dakota Industrial Commission, *Required Hearing Exhibit – Gas Capture Plan*, September 16, 2014.

North Dakota Industrial Commission, *APD Gas Capture Plan Required*, October 1, 2014.

North Dakota Department of Natural Resources, *Oil and Gas Update*, October 25, 2018.

North Dakota Industrial Commission, *Frequently Asked Questions Version 1121018*, Undated.

GaffneyCline, *Tackling Flaring: Learnings from Leading Permian Operators*, June 2020.

EXHIBIT C

NOTICE OF PUBLIC HEARING FOR PROPOSED RULEMAKING 2020 OCT 15 AM09:50 HR

The State of New Mexico through the Oil Conservation Commission (OCC) hereby gives notice that the OCC will hold a public hearing to consider proposed rules to regulate the venting and flaring of natural gas from oil and natural gas production and gathering facilities. The public hearing will be held on-line and by telephone on January 5, 2021, at 9:00 a.m., and will be continued to the following day(s) if not completed.

Purpose of Proposed Rules. The proposed rules regulate the venting and flaring of natural gas from oil and natural gas production and gathering facilities.

Summary of Proposed Rules. The Oil Conservation Division (OCD) proposes to adopt two new rules and to amend three existing rules. The new rules are 19.15.27 NMAC, which establishes requirements for operators of oil and gas production facilities to report and reduce the venting and flaring of natural gas; and 19.15.28 NMAC, which establishes requirements for operators of natural gas gathering systems, including gathering pipelines, to report and reduce the venting and flaring of natural gas. The amended rules are 19.15.7 NMAC, to change the name of a form, add new forms, and provide instructions; 19.15.18 NMAC, to remove a provision requiring operators of production facilities an application to file an application to flare natural gas; and 19.15.19 NMAC, to remove two provisions regarding the venting of natural gas at production facilities.

Legal Authority. The proposed rules are authorized by the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, including Section 70-2-6 (authorizing the OCC to exercise jurisdiction, authority, and control of and over all persons, matters, and things necessary or proper to enforce the statute), Section 70-2-11 (authorizing the OCC to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), and Section 70-2-12 (enumerating the powers of the OCC and OCD). The public hearing is governed by the OCC's rule on rulemaking proceedings, 19.15.3 NMAC.

Availability of Proposed Rules. The full text of the proposed rules is available on the OCD's website, http://www.emnrd.state.nm.us/ocd, or by contacting the OCC Clerk, Florene Davidson at florene.davidson@state.nm.us.

Written Comments. Any person may submit written comments on the proposed rules no later than January 5, 2021, at 9:00 a.m., unless extended by the OCC, by mail, email, or delivery to the OCC Clerk, Florene Davidson, 2nd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, or florene.davidson@state.nm.us. To deliver written comments to the OCC Clerk, upon arrival at the building, call (505) 476-3200 ext. 1, and an OCC representative will come to the front door.

Public Hearing. The public hearing will be held online and by telephone on January 5, 2021, at 9:00 a.m., and will be continued to the following day(s) if not completed. The public hearing will be transcribed and recorded. To access the public hearing on-line via the Webex platform and by telephone:

Online access code:	[xxx xxx xxx]
Online password:	[xxxxxxxxxxx]
Telephone:	[xxx-xxx-xxxx.]

Public comment will be accepted each day of the hearing beginning at 4:00 p.m.

Proposed Modifications, Technical Testimony, and Cross Examination. A person who intends to propose a modification to the proposed rules, to present technical testimony at the public hearing, or to cross-examine witnesses at the public hearing must file six copies of a Pre-Hearing Statement conforming to the requirements of 19.15.3.11(B) NMAC, no later than January 5, 2021, at 5:00 p.m. The Pre-Hearing Statement must be filed by mail, email, or delivery to the OCC Clerk, Florene Davidson, 2nd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, florene.davidson@state.nm.us. To deliver a Pre-Hearing Statement to the OCC Clerk, upon arrival at the building, call (505) 476-3200 ext. 1, and an OCC representative will come to the front door. A person filing a Pre-Hearing Statement who intends to use projection equipment must contact the OCC Clerk no later than seven business days prior to the public hearing. A person who presents technical testimony at the public hearing will

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U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, *Oil and Natural Gas Sector: Liquids Unloading Processes*, April 2014.

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Colorado Oil and Gas Commission, *Safety Regulations*, 600 Series, January 2020.

Colorado Oil and Gas Commission, *E&P Waste Management*, 900 Series, January 2020

Colorado Oil and Gas Commission, *Draft Amendments to E&P Waste Management*, 900 Series, June 2020.

North Dakota Industrial Commission, *Order No. 24665*, July 1, 2014.

North Dakota Industrial Commission, *Required Hearing Exhibit – Gas Capture Plan*, September 16, 2014.

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North Dakota Department of Natural Resources, *Oil and Gas Update*, October 25, 2018.

North Dakota Industrial Commission, *Frequently Asked Questions Version 1121018*, Undated.

GaffneyCline, *Tackling Flaring: Learnings from Leading Permian Operators*, June 2020.

EXHIBIT C

This is an amendment to 19.15.7 NMAC, adding a new Section 25 and amending Sections 1, 8, 11, 24, and 26 through 44, effective _____.

19.15.7.1 ISSUING AGENCY: [~~Energy, Minerals and Natural Resources Department, Oil Conservation Division~~] Oil Conservation Commission.
[19.15.7.1 NMAC - Rp, 19.15.13.1 NMAC, 12/1/2008; A, xx/xx/xxxx]

19.15.7.8 GENERAL:

A. Where to file reports. Unless otherwise specifically provided for in a division rule or order, the operator shall file forms and reports 19.15.7 NMAC requires with the appropriate division district office as provided in 19.15.2.17 NMAC and 19.15.7.10 NMAC.

B. Additional data. 19.15.7 NMAC does not limit or restrict the division's authority to require the furnishing of additional reports, data or other information relative to the production, transportation, storing, refining, processing or handling of oil, gas or products in the state as may appear to the division to be necessary or desirable, either generally or specifically, for the prevention of waste and the conservation of the state's natural resources.

C. Books and records. A producer, injector, transporter, storer, refiner, gasoline or extraction plant operator, treating plant operator and initial purchaser of gas within the state shall make and keep appropriate books and records for a period of not less than five years, covering operations in New Mexico, in order to make and substantiate the reports the division requires.

D. Written notices, requests, permits and reports. A person required to file notices, requests, permits or reports shall use the forms listed below for the purpose shown in accordance with the instructions printed on the form and the rule covering the form's use or special order pertaining to its use:

(1) form C-101 - application for permit to drill, deepen or plug back;
(2) form C-102 - well location and acreage dedication plat;
(3) form C-103 - sundry notices and reports on wells;
(4) form C-104 - request for allowable and authorization to transport oil and gas;
(5) form C-105 - well completion or recompletion report and log;
(6) form C-106 - notice of intention to utilize automatic custody transfer equipment;
(7) form C-107 - application for multiple completion;
(8) form C-107-A - application for downhole commingling;
(9) form C-107-B - application for surface commingling (diverse ownership);
(10) form C-108 - application to dispose of [~~salt~~] produced water by injection into a porous formation;
(11) form C-109 - application for discovery allowable and creation of a new pool;
(12) form C-111 - gas transporter's monthly report (sheet 1 and sheet 2);
(13) form C-112 - transporter's and storer's monthly report;
(14) form C-112-A - receipts continuation sheet;
(15) form C-112-B - deliveries continuation sheet;
(16) form C-113 - refiner's monthly report (sheet 1 and sheet 2);
(17) form C-115 - operator's monthly report;
(18) form C-115B - volume of vented and flared natural gas;
[~~(18)~~] (19) form C-115-EDP - operator's monthly report (electronic data processing);
[~~(19)~~] (20) form C-116 - gas-oil ratio tests;
[~~(20)~~] (21) form C-117-A - tank cleaning, sediment oil removal, transportation of miscellaneous hydrocarbons and disposal permit;
[~~(21)~~] (22) form C-117-B - monthly sediment oil disposal statement;
[~~(22)~~] (23) form C-118 - treating plant operator's monthly report (sheet 1 and sheet 2);
[~~(23)~~] (24) form C-120-A - monthly water disposal report;
[~~(24)~~] (25) form C-121 - oil purchaser's nomination;
[~~(25)~~] (26) form C-121-A - purchaser's gas nomination;
[~~(26)~~] (27) form C-122 - multi-point and one point back pressure test for gas wells;
[~~(27)~~] (28) form C-122-A - gas well test data sheet-San Juan basin (initial deliverability test, blue paper; annual deliverability test, white);
[~~(28)~~] (29) form C-122-B - initial potential test data sheet;
[~~(29)~~] (30) form C-122-C - deliverability test report;
[~~(30)~~] (31) form C-122-D - worksheet for calculation of static column wellhead pressure

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(P_w);

[~~(31)~~] (32) form C-122-E - worksheet for stepwise calculation of (surface) (subsurface) pressure (P_c and P_w);

[~~(32)~~] (33) form C-122-F - worksheet for calculation of wellhead pressures (P_c or P_w) from known bottom hole pressure (P_f or P_s);

[~~(33)~~] (34) form C-122-G - worksheet for calculation of static column pressure at gas liquid interface;

[~~(34)~~] (35) form C-123 - request for the creation of a new pool;

[~~(35)~~] (36) form C-124 - reservoir pressure report;

[~~(36)~~] (37) form C-125 - gas well shut-in pressure report;

[~~(37)~~] (38) form C-126 - permit to transport recovered load oil;

[~~(38)~~] (39) form C-127 - request for allowable change;

[~~(39)~~] (40) form C-129 - [~~application for exception to no-flare~~] report of vented or flared natural gas;

[~~(40)~~] (41) form C-130 - notice of disconnection;

[~~(41)~~] (42) form C-131-A - monthly gas storage report;

[~~(42)~~] (43) form C-131-B - annual LPG storage report;

[~~(43)~~] (44) form C-133 - authorization to move produced water exhibit "A";

[~~(44)~~] (45) form C-134 - application for exception to division order R-8952, 19.15.18.18 NMAC or 19.15.36 NMAC;

[~~(45)~~] (46) form C-135 - gas well connection, reconnection or disconnection notice;

[~~(46)~~] (47) form C-136 - application for approval to use an alternate gas measurement method;

[~~(47)~~] (48) form C-137 - application for waste management facility;

[~~(48)~~] (49) form C-137-EZ - registration/final closure report for small landfarm;

[~~(49)~~] (50) form C-138 - request for approval to accept solid waste;

[~~(50)~~] (51) form C-139 - application for qualification of production restoration project and certification of approval;

[~~(51)~~] (52) form C-140 - application for qualification of well workover project and certification of approval;

[~~(52)~~] (53) form C-141 - release notification and corrective action;

[~~(53)~~] (54) form C-144 - pit, closed-loop system, below-grade tank or proposed alternative method permit or closure plan application;

[~~(54)~~] (55) form C-145 - change of operator; [~~and~~]

[~~(55)~~] (56) form C-146 - change of operator name;

(57) form C-147 - permit or registration for recycling and re-use of produced water, drilling fluids and liquid oil field waste; and

(58) form C-148 - reporting for recycling and re-use of produced water, drilling fluids and liquid oil field waste.

[19.15.7.8 NMAC - Rp, 19.15.13.1100 NMAC, 12/1/2008; A, xx/xx/xxxx]

19.15.7.11 UNITED STATES GOVERNMENT LEASES: For wells located on land that the United States or a native American nation, tribe or pueblo owns, an operator shall file applications for permit to drill, deepen or plug back, BLM form no. 3160-3; sundry notices and reports on wells, BLM form no. 3160-5; and well completion or recompletion report and log, BLM form no. 3160-4 with the BLM in lieu of filing the corresponding division forms with the division. All such forms are, however, subject to division approval in the same manner and to the same extent as the corresponding division forms.

[19.15.7.11 NMAC - Rp, 19.15.1.14 NMAC, 12/1/2008; A, xx/xx/xxxx]

19.15.7.24 OPERATOR'S MONTHLY REPORT (Form C-115):

A. An operator shall file a form C-115 for each non-plugged well completion for which the division has approved a form C-104 and for each secondary or other enhanced recovery project or pressure maintenance project injection well or other injection well within the state, setting forth complete information and data indicated on the forms in the order, format and style the director prescribes. The operator shall estimate oil production from wells producing into common storage as accurately as possible on the basis of periodic tests.

B. An operator shall file [~~the reports 19.15.7.24 NMAC requires~~] form C-115 using the division's

web-based online application on or before the 15th day of the second month following the month of production [~~, or if such day falls on a weekend or holiday, the first workday following the 15th~~]. An operator may apply to the division for exemption from the electronic filing requirement based upon a demonstration that such requirement would [~~operate as~~] be an economic or other hardship.

C. If an operator fails to file a form C-115 that the division accepts, the division shall, within 30 days of the appropriate filing date, notify the operator by electronic mail or letter of its intent to cancel the operator's authorization to transport or inject if the operator does not file an acceptable and complete form C-115. The notice shall inform the operator of the right to request a hearing pursuant to 19.15.4.8 NMAC. If the operator does not either file an acceptable and complete form C-115 or request a hearing on the proposed cancellation within 60 days of the original due date of the form C-115, the division may cancel the operator's authority to transport from or inject into all wells it operates.

[19.15.7.24 NMAC - Rp, 19.15.13.1115 NMAC, 12/1/2008; A, 11/14/2017; A, xx/xx/xxxx]

19.15.7.25 VENTED AND FLARED NATURAL GAS (Form C-115B):

A. An operator shall file form C-115B in accordance with 19.15.27 NMAC and 19.15.28 NMAC.

B. An operator shall file form C-115B using the division's web-based online application on or before the 15th day of the second month following the month in which venting or flaring occurred. An operator may apply to the division for exemption from the electronic filing requirement based upon a demonstration that such requirement would be an economic or other hardship.

[19.15.7 NMAC – N, xx/xx/xxxx]

[~~19.15.7.25~~] 19.15.7.26 GAS-OIL RATIO TESTS (Form C-116): An operator shall make and report gas-oil ratio tests on form C-116 as prescribed in 19.15.18.8 NMAC and applicable special pool orders. The operator shall file the form C-116.

[19.15.7.26 NMAC – Rn, 19.15.7.25 NMAC, x/xx/xxxx]

[~~19.15.7.26~~] 19.15.7.27 TANK CLEANING, SEDIMENT OIL REMOVAL, TRANSPORTATION OF MISCELLANEOUS HYDROCARBONS AND DISPOSAL PERMIT (Form C-117-A) AND MONTHLY SEDIMENT OIL DISPOSAL STATEMENT (Form C-117-B):

A. An operator shall file form C-117-A with the appropriate division district office in accordance with Subsections B, C and H of 19.15.18.17 NMAC.

B. An operator shall file form C-117-B with the division's Santa Fe office and the appropriate division district office in accordance with Subsection D of 19.15.18.17 NMAC.

[19.15.7.27 NMAC – Rn, 19.15.7.26 NMAC, xx/xx/xxxx]

[~~19.15.7.27~~] 19.15.7.28 TREATING PLANT OPERATOR'S MONTHLY REPORT (Form C-118): A treating plant operator shall file on a monthly basis form C-118 with the appropriate division district office. The form C-118 shall contain all the information the form requires. Column 1 of sheet 1-A of form C-118 entitled permit number, references form C-117-A, for each lot of oil the operator picked up for processing.

[19.15.7.28 NMAC – Rn, 19.15.7.27 NMAC, xx/xx/xxxx]

[~~19.15.7.28~~] 19.15.7.29 MONTHLY WATER DISPOSAL REPORT (Form C-120-A): An operator of a [~~salt~~] produced water disposal system shall report its operations on form C-120-A. The operator shall file form C-120-A in duplicate, with one copy to the division's Santa Fe office and one copy to the appropriate division district office, and shall postmark the form no later than the 15th day of the second succeeding month.

[19.15.7.29 NMAC – Rn & A, 19.15.7.28 NMAC, xx/xx/xxxx]

[~~19.15.7.29~~] 19.15.7.30 PURCHASER'S NOMINATION FORMS (Form C-121 and Form C-121-A):

A. Unless the director requests otherwise, a person expecting to purchase oil from producing wells in New Mexico during the second and third succeeding two months shall file form C-121 with the division's Santa Fe office not later than the 20th day of each odd-numbered month. As an example, nominations submitted by the 20th day of July shall indicate the amount of oil the purchaser desires to purchase daily during September and October.

B. The person shall file form C-121-A with the division's Santa Fe office by the first day of the month during which the division will consider at the gas allowable hearing the nominations for the purchase of gas from producing wells in New Mexico during the succeeding month. As an example, purchaser's nominations to take gas from a pool during the month of August would be considered by the division at a hearing during July, and

should be submitted to the Santa Fe office of the division by July 1.

C. In addition to the monthly gas nominations, the purchaser shall file 12-month nominations in accordance with the appropriate special pool orders.

[19.15.7.30 NMAC – Rn, 19.15.7.31 NMAC, xx/xx/xxxx]

[~~19.15.7.30~~] 19.15.7.31 MULTIPOINT AND ONE POINT BACK PRESSURE TEST FOR GAS WELL (Form C-122):

A. Gas well test data sheet - San Juan basin (form C-122-A)

B. Initial potential test data sheet (form C-122-B)

C. Deliverability test report (form C-122-C)

D. Worksheet for calculation of static column wellhead pressure (P_w) (form C- 122-D)

E. Worksheet for stepwise calculation of (surface) (subsurface) pressure (P_c & P_w) (P_f & P_s) (form C-122-E)

F. Worksheet for calculation of wellhead pressures (P_c or P_w) from known bottom hole pressure (P_f or P_s) (form C-122-F)

G. Worksheet for calculation of status column pressure at gas liquid interface (form C-122-G). The operator shall file the forms listed in Subsections A through F of 19.15.7.30 NMAC with the appropriate division district office in accordance with the provisions of the *manual for back-pressure testing of natural gas wells or gas well testing manual for northwest New Mexico*, 19.15.19.8 NMAC and applicable special pool orders and proration orders.

[19.15.7.31 NMAC – Rn, 19.15.7.30 NMAC, xx/xx/xxxx]

[~~19.15.7.31~~] 19.15.7.32 REQUEST FOR THE CREATION OF A NEW POOL (Form C-123): The appropriate division district office shall provide the operator of a well that requires the creation of a pool written instructions regarding the filing of form C-123.

[19.15.7.32 NMAC – Rn, 19.15.7.31 NMAC, xx/xx/xxxx]

[~~19.15.7.32~~] 19.15.7.33 RESERVOIR PRESSURE REPORT (Form C-124):

A. An operator shall file form C-124 to report bottom hole pressures as required under the provisions of 19.15.18.9 NMAC and applicable special pool orders.

B. An operator shall state the name of the pool; the pool datum, if established; the name of the operator and lease; the well number; the wellhead elevation above sea level; the date of the test; the total time the well was shut in prior to the test, the subsurface temperature in degrees fahrenheit at the test depth; the depth in feet at which the operator made the subsurface pressure test; the observed pressure in psi gauge corrected for calibration and temperature; the corrected pressure computed from applying to the observed pressure the appropriate correction for difference in test depth and reservoir datum plane; and any other information required on form C-124.

[19.15.7.33 NMAC – Rn, 19.15.7.32 NMAC, xx/xx/xxxx]

[~~19.15.7.33~~] 19.15.7.34 GAS WELL SHUT-IN PRESSURE TESTS (Form C-125): An operator shall file form C-125 to report shut-in pressure tests on gas wells as required under the provisions of special pool orders.

[19.15.7.34 NMAC – Rn, 19.15.7.33 NMAC, xx/xx/xxxx]

[~~19.15.7.34~~] 19.15.7.35 PERMIT TO TRANSPORT RECOVERED LOAD OIL (Form C-126): An applicant to transport recovered load oil shall file form C-126 with the appropriate division district office in conformance with 19.15.20.15 NMAC.

[19.15.7.35 NMAC – Rn, 19.15.7.34 NMAC, xx/xx/xxxx]

[~~19.15.7.35~~] 19.15.7.36 REQUEST FOR ALLOWABLE CHANGE (Form C-127): An oil producer shall file form C-127 with the appropriate division district office not later than the 10th day of the month preceding the month for which an oil producer is requesting oil well allowable changes.

[19.15.7.36 NMAC – Rn, 19.15.7.35 NMAC, xx/xx/xxxx]

[~~19.15.7.36~~] 19.15.7.37 FORMS REQUIRED ON FEDERAL LAND:

A. An operator shall use federal forms in lieu of state forms when filing application for permit to drill, deepen or plug back and sundry notices and reports on wells and well completion or recompletion report and log for wells on federal lands in New Mexico. However, the operator shall submit two extra copies of each of the

forms to the BLM, which, upon approval, will transmit the forms to the division. An operator of a well on federal land shall use the following BLM forms in lieu of division forms:

BLM Form No.	Title of Form (Same for both agencies)	Form No.
3160-3 (Nov. 1993)	Application for Permit to Drill, Deepen or Plug Back	C-101
3160-5 (Nov. 1983)	Sundry Notices and Reports on Wells	C-103
3160-4 (Nov. 1983)	Well Completion or Recompletion Report and Log	C-105

B. The above forms as the BLM may revise are the only forms that an operator may file in place of division forms.

C. After a well is completed and ready for pipeline connection, the operator shall file form C-104 along with a copy of form C-105 or BLM form No. 3160-4, whichever is applicable, with the division on wells drilled in the state, regardless of land status. Further, the operator shall file production reports using division forms; the division will not accept federal forms for reporting production.

D. An operator's failure to comply with 19.15.7.36 NMAC shall result in the division's cancellation of form C-104 for the affected well or wells.

[19.15.7.37 NMAC – Rn, 19.15.7.36 NMAC, xx/xx/xxxx]

~~[19.15.7.37 APPLICATION FOR EXCEPTION TO NO-FLARE (Form C-129):]~~ 19.15.7.38 REPORT OF VENTED OR FLARED NATURAL GAS (Form C-129): An operator shall file form C-129 when applicable, in accordance with ~~[19.15.18.12]~~ 19.15.27 NMAC and 19.15.28 NMAC.

[19.15.7.38 NMAC – Rn & A, 19.15.7.37 NMAC, xx/xx/xxxx]

~~[19.15.7.38]~~ 19.15.7.39 NOTICE OF DISCONNECTION (Form C-130):

A. An operator shall file form C-130 with the division as provided in 19.15.19.13 NMAC.

B. An operator shall state to the best of its knowledge the reasons for disconnecting a gas well from gas transportation facilities.

C. The division shall furnish the New Mexico public regulation commission with a form C-130 indicating that a disconnected gas well may or will be reconnected to a gas transportation facility for ultimate distribution to consumers outside of the state.

[19.15.7.39 NMAC – Rn, 19.15.7.38 NMAC, xx/xx/xxxx]

~~[19.15.7.39]~~ 19.15.7.40 MONTHLY GAS STORAGE REPORT (Form C-131-A); ANNUAL LPG STORAGE REPORT (Form C-131-B):

A. An operator of an underground gas storage project shall report its operation monthly on form C-131-A. The operator shall file form C-131-A with the division's Santa Fe office with a copy to the appropriate division district office and shall postmark it not later than the 24th day of the next succeeding month.

B. An operator of underground liquefied petroleum gas storage projects approved by the division shall report its operations annually on form C-131-B.

[19.15.7.40 NMAC – Rn, 19.15.7.39 NMAC, xx/xx/xxxx]

~~[19.15.7.40]~~ 19.15.7.41 AUTHORIZATION TO MOVE PRODUCED WATER:

A. A transporter of produced water shall obtain the division's approval of form C-133 in accordance with 19.15.34 NMAC prior to transportation.

B. Approval of a single form C-133 is valid for leases the transporter serves.

[19.15.7.41 NMAC – Rn, 19.15.7.40 NMAC, xx/xx/xxxx]

~~[19.15.7.41]~~ 19.15.7.42 GAS WELL CONNECTION, RECONNECTION OR DISCONNECTION NOTICE: A gas transporter accepting gas for delivery from a wellhead or central point of delivery shall notify the division within 30 days of a new connection or reconnection to or disconnection from the gathering or transportation system by filing form C-135 with the appropriate division district office.

[19.15.7.42 NMAC – Rn, 19.15.7.41 NMAC, xx/xx/xxxx]

~~[19.15.7.42]~~ 19.15.7.43 APPLICATION FOR APPROVAL TO USE AN ALTERNATE GAS MEASUREMENT METHOD (Form C-136):

A. An operator shall use form C-136 to request and obtain division approval for use of an alternate

procedure for measuring gas production from a well that is not capable of producing more than 15 MCFD (Paragraph (1) of Subsection B of 19.15.19.9 NMAC) or for a well that has a producing capacity of 100 MCFD or less and is on a multi-well lease (Paragraph (2) of Subsection B of 19.15.19.9 NMAC).

B. An operator shall fill out the applicable information required on form C-136 with the required supplemental information attached, and file it with the appropriate division district office.

[19.15.7.43 NMAC – Rn, 19.15.7.42 NMAC, xx/xx/xxxx]

[~~19.15.7.43~~] 19.15.7.44 APPLICATION FOR PRODUCTION RESTORATION PROJECT (C-139):

A. An operator shall use the division's web-based online application to apply for the production restoration tax incentive.

B. An operator shall enter a user identification number and password that it has obtained from the division and select the well for which the operator is requesting the production restoration tax incentive. The operator shall then enter the date it began the production restoration, the date the well returned to production and the process the operator used to return the well to production. The operator shall certify that the information is complete and correct.

[19.15.7.44 NMAC – Rn, 19.15.7.43 NMAC, xx/xx/xxxx]

[~~19.15.7.44~~] 19.15.7.45 APPLICATION FOR WELL WORKOVER PROJECT (C-140):

A. An operator shall use the division's web-based online application to apply for the well workover tax incentive.

B. An operator shall enter a user identification number and password that it has obtained from the division and select the well for which the operator is requesting the well workover tax incentive. The operator shall enter the date that it commenced the well workover and the date it completed the well workover. The operator shall attach a description of the workover procedure it performed to increase production and a production curve or data tabulation showing at least 12 months of production prior to the well workover and at least three months of production following the well workover to reflect a positive production increase.

[19.15.7.45 NMAC – Rn, 19.15.7.44 NMAC, xx/xx/xxxx]

EXHIBIT C

This is an amendment to 19.15.18 NMAC, Sections 1, 3, 8, 11, 12, 14, and 16, effective _____.

19.15.18.1 ISSUING AGENCY: [~~Energy, Minerals and Natural Resources Department, Oil Conservation Division~~] Oil Conservation Commission.
[19.15.18.1 NMAC - N, 12/1/2008; A, xx/xx/xxxx]

19.15.18.3 STATUTORY AUTHORITY: 19.15.18 NMAC is adopted pursuant to the Oil and Gas Act, [~~NMSA 1978,~~] Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978.
[19.15.18.3 NMAC - N, 12/1/2008; A, xx/xx/xxxx]

19.15.18.8 GAS-OIL RATIO AND PRODUCTION TESTS:

A. An operator shall take a gas-oil ratio test no sooner than 20 days nor later than 30 days following the completion or recompletion of each oil well, if:

(1) the well is a wildcat, or

(2) the well is located in a pool that is not exempt from 19.15.18.8 NMAC's requirements.

B. Provisions of 19.15.18.8 NMAC that are applicable to the pool shall govern wells completed within one mile of the outer boundary of a defined oil pool producing from the same formation. The operator shall report the test results to the division on form C-116 within 10 days following the test's completion. The gas-oil ratio the operator reports shall become effective for proration purposes on the first day of the calendar month following the date they are reported.

C. Each operator shall take an annual gas-oil ratio test of each producing oil well, located within a pool not exempted from the requirements of 19.15.18.8 NMAC, during a period the division prescribes. The division shall establish a gas-oil ratio survey schedule setting forth the period in which operators are to take gas-oil ratio tests for each pool where the division requires a test. The gas-oil ratio test shall be a test the division designates, made by the method and in the manner the division in its discretion may prescribe from time to time.

D. An operator shall file the results of gas-oil ratio tests taken during survey periods with the division on form C-116 not later than the 10th of the month following the close of the survey period for the pool in which the well is located. The gas-oil ratios thus reported shall become effective for proration purposes on the first day of the second month following the survey period's close. Unless the operator files form C-116 within the required time limit, the division shall not assign a further allowable to the affected well until the operator file form C-116.

E. In the case of special tests taken between regular gas-oil ratio surveys, the gas-oil ratio becomes effective for proration purposes upon the date the division receives form C-116 reporting the test results. A special test does not exempt a well from the regular survey.

F. During a gas-oil ratio test, an operator shall not produce a well at a rate exceeding the top proration unit allowable for the pool in which it is located by more than [~~25~~] twenty-five percent.

G. The director may exempt such pools as the director deems proper from the gas-oil ratio test requirements of 19.15.18.8 NMAC. The exemption shall be by division order directed to the operators in the pool being exempted.

H. The director may require annual productivity tests of oil wells in pools exempt from gas-oil ratio tests, during a period the division prescribes. The division shall establish an oil well productivity survey schedule setting forth the period in which productivity tests are to be taken for each pool where the division requires the tests.

I. An operator shall file the results of productivity tests taken during survey periods with the division on form C-116 (with the word "exempt" inserted in the column normally used for reporting gas production) not later than the 10th of the month following the close of the survey period for the pool in which the well is located. Unless the operator files form C-116 within the required time limit, the division shall not assign further allowables to the affected well until the operator files form C-116.

J. In the case of special productivity tests taken between regular test survey periods, which result in a change of allowable assigned to the well, the allowable change shall become effective upon the date the division receives form C-116. A special test does not exempt a well from the regular survey.

K. During the productivity test, an operator shall not produce a well at a rate exceeding the top proration unit allowable for the pool in which it is located by more than [~~25~~] twenty-five percent.
[19.15.18.8 NMAC - Rp, 19.15.5.301 NMAC, 12/1/2008; A, xx/xx/xxxx]

19.15.18.11 [~~**METERED CASINGHEAD GAS:** The owner of a lease is not required to measure the exact amount of casinghead gas the owner produces and uses for fuel purposes in the lease's development and normal operation. The owner of the lease shall meter and report casinghead gas produced and sold or transported away~~

~~from a lease, except small amounts of flare gas, in cubic feet monthly to the division. The owner of the lease may calculate the amount of casinghead gas sold in small quantities for use in the field upon a basis generally acceptable in the industry, or upon a basis approved by the division in lieu of meter measurements.~~] **[RESERVED]**
[19.15.18.11 NMAC - Rp, 19.15.5.305 NMAC, 12/1/2008; Repealed, xx/xx/xxxx]

19.15.18.12 [~~CASINGHEAD GAS:~~

~~**A.** An operator shall not flare or vent casinghead gas produced from a well after 60 days following the well's completion.~~

~~**B.** An operator seeking an exception to Subsection A of 19.15.18.12 NMAC shall file an application for an exception on form C-129 with the appropriate division district office. The district supervisor may grant an exception when the flaring or venting casinghead gas appears reasonably necessary to protect correlative rights, prevent waste or prevent undue hardships on the applicant. The district supervisor shall either grant the exception within 10 days after the application's receipt or refer it to the director who shall advertise the matter for public hearing if the applicant desires a hearing.~~

~~**C.** The division shall suspend the allowable assigned to the well if the operator flares or vents gas from a well in violation of 19.15.18.12 NMAC.~~

~~**D.** No extraction plant processing gas in the state shall flare or vent casinghead gas unless flaring or venting is made necessary by mechanical difficulty of a very limited temporary nature or unless the gas flared or vented is of no commercial value.~~

~~**E.** In the event of a more prolonged mechanical difficulty or in the event of plant shut-downs or curtailment because of scheduled or non-scheduled maintenance or testing operations or other reasons, or in the event a plant is unable to accept, process and market all of the casinghead gas produced by wells connected to its system, the plant operator shall notify the division as soon as possible of the full details of the shut-down or curtailment, following which the division shall take such action as is necessary to reduce the total flow of gas to the plant.~~

~~**F.** Pending connection of a well to a gas-gathering facility, or when a well has been excepted from the provisions of Subsection A of 19.15.18.12 NMAC, the operator shall burn all gas produced and not used, and report the estimated volume on form C-115.~~

~~**G.** The provisions of Subsection A of 19.15.18.12 NMAC do not apply to wells completed prior to January 1, 1971, in pools that had no gas-gathering facilities on that date, provided however the provisions shall apply to all wells in such a pool 60 days after the date of first casinghead gas connection in the pool.~~]
[RESERVED]
[19.15.18.12 NMAC - Rp, 19.15.5.306 NMAC, 12/1/2008; Repealed, xx/xx/xxxx]

19.15.18.14 [~~SALT OR SULPHUR~~] PRODUCED WATER: An operator shall report monthly on form C-115 the amount of water produced with the oil and gas from each well.
[19.15.18.14 NMAC - Rp, 19.15.5.308 NMAC, 12/1/2008; A, xx/xx/xxxx]

19.15.18.16 TANKS, OIL TANKS, FIRE WALLS AND TANK IDENTIFICATION:

A. No person shall store or retain oil in earthen reservoirs or in open receptacles. Dikes or fire walls are not required except an operator shall erect and maintain fire walls around permanent oil tanks or tank batteries that are within the corporate limits of a city, town or village, or where such tanks are closer than 150 feet to a producing oil or gas well or 500 feet to a highway or inhabited dwelling or closer than 1000 feet to a school or church, or where the tanks are so located that the division deems them an objectional hazard. Where fire walls are required, fire walls shall form a reservoir having a capacity one-third larger than the capacity of the enclosed tank or tanks.

B. The operator shall identify oil tanks, tank batteries, ACT systems, tanks used for [~~salt~~] produced water collection or disposal and tanks used for sediment oil treatment or storage by a sign posted on or not more than 50 feet from the tank, tank battery or system. The sign shall be of durable construction and the operator shall keep the lettering on the sign in a legible condition; the lettering shall be large enough to be legible under normal conditions at a distance of 50 feet and the sign shall identify the operator's name, the name of the lease being served by the tank or system, if any, and the location of the tank or system by unit letter, section, township and range.
[19.15.18.16 NMAC - Rp, 19.15.5.310 NMAC, 12/1/2008; A, xx/xx/xxxx]

EXHIBIT C

This is an amendment to 19.15.19 NMAC, Sections 1, 3, and 10, effective _____.

19.15.19.1 ISSUING AGENCY: [~~Energy, Minerals and Natural Resources Department, Oil Conservation Division~~] Oil Conservation Commission.
[19.15.19.1 NMAC - Rp, 19.15.6.1 NMAC, 12/1/2008; A, xx/xx/xxxx]

19.15.19.3 STATUTORY AUTHORITY: 19.15.19 NMAC is adopted pursuant to the Oil and Gas Act, [~~NMSA 1978,~~] Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978.
[19.15.19.3 NMAC - Rp, 19.15.6.3 NMAC, 12/1/2008; A, xx/xx/xxxx]

19.15.19.10 [~~GAS UTILIZATION: After the completion of a gas well, the operator shall not permit gas from the well to escape to the air, use the gas expansively in engines or pumps and then vent or use the gas to gas-lift wells unless all gas produced is processed in a gasoline plant or beneficially used thereafter without waste.~~]
[RESERVED]
[~~19.15.19.10~~ NMAC – Rp, 19.15.6.404 NMAC, 12/1/2008; Repealed, xx/xx/xxxx]

EXHIBIT C

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 28 NATURAL GAS GATHERING SYSTEMS

19.15.28.1 ISSUING AGENCY: Oil Conservation Commission.
[19.15.28.1 NMAC – N, xx/xx/xxxx]

19.15.28.2 SCOPE: 19.15.28 NMAC applies to persons engaged in oil and natural gas gathering and processing within New Mexico.
[19.15.28.2 NMAC – N, xx/xx/xxxx]

19.15.28.3 STATUTORY AUTHORITY: 19.15.28 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978.
[19.15.27.3 NMAC – N, xx/xx/xxxx]

19.15.28.4 DURATION: Permanent.
[19.15.27.4 NMAC – N, xx/xx/xxxx]

19.15.28.5 EFFECTIVE DATE: {Date}, unless a later date is cited at the end of a section.
[19.15.28.5 NMAC – N, xx/xx/xxxx]

19.15.28.6 OBJECTIVE: To regulate the venting and flaring of natural gas from natural gas gathering systems to prevent waste and, public health and the environment.
[19.15.28.6 NMAC – N, xx/xx/xxxx]

19.15.28.7 DEFINITIONS: Terms shall have the meaning specified in 19.15.2 NMAC except as specified below.

A. **"ALARM"** means advanced leak and repair monitoring technology for detecting natural gas or oil leaks or releases that is not required by applicable state or federal law, rule, or regulation and which the division has approved as eligible to earn a credit against the reported volume of lost natural gas pursuant to Paragraph (3) of Subsection B of 19.15.28.10 NMAC.

B. **"AVO"** means audio, visual and olfactory.

C. **"Custody transfer point"** means the transfer of natural gas from upstream separation, processing or treatment to a pipeline or any other form of transportation.

D. **"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, 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 the natural gas gathering system;

(2) the operator's failure to limit the gathering of natural gas when the volume of natural gas exceeds the capacity of the natural gas gathering system;

(3) scheduled maintenance;

(4) unscheduled maintenance or a malfunction that results in venting or flaring of natural gas by an upstream operator;

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

(6) three or more emergencies 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.

E. **"Flare" or "Flaring"** means the controlled combustion of natural gas in a device designed for that purpose.

F. **"Flare stack"** means an appropriately designed stack equipped with a burner used for the combustion and disposal of natural gas.

G. **"Gathering pipeline"** means a pipeline that gathers natural gas from the custody transfer point to the connection point with a natural gas processing plant or a transmission or distribution system.

H. **"GIS"** means geographic information system.

I. **"GPS"** means global positioning system.

J. **"Malfunction"** 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.

K. **"Natural gas"** means a gaseous mixture of hydrocarbon compounds, primarily composed of methane, and includes both casinghead gas and gas as those terms are defined in 19.15.2 NMAC.

L. **"Natural gas gathering system"** means the gathering pipelines and associated facilities that compress, dehydrate or treat natural gas from the custody transfer point to the connection point with a natural gas processing plant or transmission or distribution system.

M. **"New gathering pipeline"** means a gathering pipeline placed into service after {effective date of rule}.

N. **"Vent" or "Venting"** means the release of uncombusted natural gas to the atmosphere. [19.15.28.7 NMAC – N, xx/xx/xxxx]

19.15.28.8 VENTING AND FLARING OF NATURAL GAS:

A. Venting and flaring of natural gas from a natural gas gathering system constitutes waste and is prohibited except as authorized in Subsection B of 19.15.28.8 NMAC. The operator has a general duty to maximize the gathering of natural gas and to minimize the release of natural gas to the atmosphere. The operator shall flare rather than vent natural gas except when flaring is not technically feasible or would pose a risk to safe operations or personnel safety and venting is a safer alternative than flaring.

B. The operator shall not flare or vent natural gas except:

(1) to the extent authorized by a valid federally enforceable air quality permit issued by the New Mexico environment department;

(2) during an emergency or malfunction, but only to avoid a risk of an immediate and substantial adverse impact on safety, public health, or the environment. The operator shall report natural gas vented or flared during an emergency or malfunction to the division pursuant to Paragraph (1) of Subsection F of 19.15.28.8 NMAC; or

(3) during the following activities unless prohibited by applicable state and federal law, rule, or regulation for the emission of hydrocarbons and volatile organic compounds:

(a) scheduled repair and maintenance, including blowing down and depressurizing equipment to perform repair or maintenance;

(b) normal operation of a gas-activated pneumatic controller or pump;

(c) normal operation of a dehydration unit;

(d) normal operation of a compressor or compressor engine;

(e) normal operation of a storage tank or other low-pressure production vessel, but not including venting from a thief hatch that is not fully and timely closed or from a seal that is not maintained on an established schedule;

(f) gauging or sampling a storage tank or other low-pressure vessel;

(g) loading out liquids from a storage tank or other low-pressure vessel to a transport vehicle;

(h) blowdown to repair a gathering pipeline;

(i) pigging a gathering pipeline; or

(j) purging a gathering pipeline.

C. **Performance standards.**

(1) The operator shall take all reasonable actions to prevent and minimize leaks and releases of natural gas from a natural gas gathering system and shall implement an operations plan to minimize the waste of natural gas for each non-contiguous natural gas gathering system. The plan should include procedures to reduce leaks and releases, such as a routine maintenance program, cathodic protection, corrosion control, liquids management and integrity management. The operator shall file its operations plan with the division:

(a) for a natural gas gathering system placed into service after [effective date of rule], within 60 days following the date the natural gas gathering system is placed into service;

(b) for a natural gas gathering system in place on or before {effective date of rules}, within 90 days following {the effective date of these rules}; and

(c) for a natural gas gathering system to which the operator added a new gathering pipeline during the calendar year or changed the operations plan, an updated operations plan no later than March 31 of the following year.

(2) During scheduled maintenance, replacement, or repair of a new or existing natural gas gathering system, the operator shall not vent natural gas during blowdown and shall route natural gas to a portable flare stack which complies with the flare stack standards, inspection, and recordkeeping requirements in Subsection E of 19.15.27.8 NMAC.

(3) During unscheduled maintenance, replacement or repair of a new or existing natural gas gathering system, to the extent that it is technically feasible and would not pose a risk to safe operations or personnel safety, the operator shall not vent route natural gas during blowdown and shall route natural gas to a portable flare stack which complies with the flare stack standards, inspection and recordkeeping in Subsection E of 19.15.27.8 NMAC.

(4) The operator shall conduct a weekly AVO inspection of the compressors, dehydrators and treatment facilities associated with a natural gas gathering system to confirm those components are operating properly and there are no leaks or releases except as allowed in Subsection B of 19.15.28.8 NMAC.

(a) During an AVO inspection the operator shall inspect all components, including flare stacks, thief hatches, closed vent systems, pumps, compressors, pressure relief devices, valves, lines, flanges, connectors, and associated piping to identify defects, leaks, and releases by:

(i) visually inspecting for cracks and hole; loose connections; leaks; broken and missing caps; broken, damaged seals and gaskets; broken, missing and open hatches; and broken, missing and open access covers and closure devices; and to ensure a flare stack is operating in conformance with its design;

(ii) listening for pressure and liquid leaks; and

(iii) smelling for unusual and strong odors.

(b) The operator shall make and keep a record of an AVO inspection for no less than five years and make such records available for inspection by the division upon request.

(c) Subject to the division's prior written approval, the operator may use a remote or automated monitoring technology to detect leaks and releases in lieu of an AVO inspection.

(5) The operator shall perform an annual instrument monitoring of the entire length of a gathering pipeline using an AVO technique, ALARM technology or other valid method to detect leaks and releases. The operator shall record and report to the division the date and time of the monitoring, the method and technology used and the name of the employee(s) who conducted the monitoring. If the operator uses ALARM technology to detect and isolate a leak or release within 48 hours of discovery and repair the leak or release within 15 days of discovery, the operator may obtain a credit against its reported volume of lost natural gas pursuant to Paragraph (4) of Subsection B of 19.15.28.10 NMAC.

D. Reporting to affected upstream operators.

(1) No less than 14 days prior to the date of scheduled maintenance, replacement or repair of a natural gas gathering system, the operator shall provide written notification to each upstream operator whose natural gas is gathered by the system of the date and expected duration that the system will not gather natural gas.

(2) As soon as possible but no more than 24 hours after discovery of the need for unscheduled maintenance, replacement or repair of a natural gas gathering system, the operator shall provide written notification to each upstream operator whose natural gas is gathered by the system of the date and expected duration that the system will not gather natural gas.

(3) The operator shall make and keep a record of each notification for no less than five years and make such records available for inspection by the division upon request.

E. Measurement of vented and flared natural gas.

(1) The operator shall measure the volume of natural gas that it vents, flares or beneficially uses regardless of the reason or authorization for such venting or flaring.

(2) The operator shall install equipment to measure the volume of natural gas vented or flared from a natural gas gathering system.

(3) Measuring equipment shall be an orifice meter or other measurement device or technology such as a thermal mass or ultrasonic flow meter approved by the division that, at the time of installation, complies with the accuracy ratings and design standards for the measurement of natural gas, such as the American petroleum institute, international organization for standards, or American gas association.

(4) Measuring equipment shall not be designed or equipped with a manifold that allows the diversion of natural gas around the metering element except for the sole purpose of inspecting and servicing the measuring equipment.

(5) For an event for which metering is not practicable, such as low pressure venting and flaring, the operator shall estimate the volume of vented or flared natural gas.

F. Reporting of vented and flared natural gas.

(1) Venting or flaring caused by emergency or malfunction or of long duration.

(a) The operator shall notify the division of venting or flaring that exceeds 50 MCF in volume and either results from an emergency or malfunction or lasts eight hours or more cumulatively within any 24-hour period by filing a form C-129 with the division as follows:

(i) for venting or flaring that equals or exceeds 50 MCF but is less than 500 MCF, notify the appropriate division district office in writing by filing a form C-129 no later than 15 days following discovery or commencement of venting or flaring; or

(ii) for venting or flaring that equals or exceeds 500 MCF or otherwise qualifies as a major release as defined in 19.15.29.7 NMAC, notify the appropriate division district office verbally or by e-mail as soon as possible and no later than 24 hours following discovery or commencement of venting or flaring and provide the information required in form C-129. No later than 15 days following the discovery or commencement of venting or flaring, the operator shall file a form C-129 that verifies, updates, or corrects the verbal or e-mail notification; and

(iii) no later than 15 days following the termination of venting or flaring, notify the appropriate division district office by filing a form C-129.

(b) The operator shall provide and certify the accuracy of the following information in the form C-129:

(i) operator's name;

(ii) name and type of facility;

(iii) equipment involved;

(iv) analysis of vented or flared natural gas;

(v) date(s) and time(s) that venting or flaring was discovered or commenced and terminated;

(vi) measured or estimated volume of vented or flared natural gas;

(vii) cause and nature of venting or flaring;

(viii) steps taken to limit the duration and magnitude of venting or flaring; and

(ix) corrective actions taken to eliminate the cause and recurrence of venting or flaring.

(c) At the division's request, the operator shall provide and certify additional information by the specified date.

(d) The operator shall file a form C-141 instead of a form C-129 for the release of a liquid during venting or flaring that is or may be a major or minor release under 19.15.29.7 NMAC.

(2) Monthly reporting of vented and flared natural gas. The operator shall report the volume of vented and flared natural gas for each month in each category listed below. Beginning June 2021, the operator shall submit quarterly reports in a format specified by the division. Beginning January 2022, the operator shall submit a form C-115B monthly on or before the 15th day of the second month following the month in which it vented or flared natural gas. The operator shall specify whether it estimated or measured each reported volume. In filing the initial report, the operator shall provide the methodology (measured or estimated using calculations and industry standard factors) used to report the volumes on the form, and shall report changes in the methodology on future forms. The operator shall make and keep records of the measurements and estimates, including records showing how it calculated the estimates, for no less than five years and make such records available for inspection by the division upon request. The categories are:

(a) emergency;

(b) non-scheduled maintenance and malfunction;

(c) routine repair and maintenance, including blowdown and depressurization;

(d) beneficial use, including pilot and purge gas, fired equipment and engines;

(e) gathering pipeline blowdown and purging;

(f) gathering pipeline pigging;

(g) uncontrolled storage tanks;

(h) venting as a result of normal operation of pneumatic controllers and pumps;

(i) improperly closed or maintained thief hatches that are routed to a flare or control device; and

(j) other not described above.

(3) The operator shall report the lost natural gas for each month on a volumetric and percentage basis on form C-115B.

(a) To calculate the lost natural gas on a volumetric basis, the operator shall deduct the volume of natural gas used for beneficial use, vented or flared during an emergency and ALARM credits authorized by Paragraphs (5) and (6) of Subpart B of 19.15.28.10 NMAC, from the volume of natural gas reported on its form C-115B for the calendar year.

(b) To calculate the lost natural gas on a percentage basis, the operator shall deduct the volume of natural gas reported on its form C-115B for the calendar year, but not including the volume of natural gas used for beneficial use, vented or flared during an emergency and ALARM credits authorized by Paragraphs (5) and (6) of Subpart B of 19.15.28.10 NMAC, from the total volume of natural gas gathered, and divide by the total volume of natural gas gathered.

(4) Upon request by the division, the operator, at its own expense, shall retain a third-party approved by the division to verify any data or information collected or reported pursuant to Subsections E and F of 19.15.28.8 NMAC and make recommendations to correct or improve the collection and reporting of data and information, submit a report of the verification and recommendations to the division by the specified date, and implement the recommendations in the manner approved by the division.

(5) Upon the New Mexico environment department's request, the operator shall promptly provide a copy of any form filed pursuant to 19.15.28 NMAC.

[19.15.28.8 NMAC – N, xx/xx/xxxx]

19.15.28.9 LOCATION REQUIREMENTS:

A. The operator shall file with the division a GIS digitally formatted as-built map:

(1) for a new gathering pipeline or natural gas gathering system, no later than 90 days after placing the gathering pipeline or system into service;

(2) for an existing gathering pipeline or natural gas gathering system, no later than May 31, 2021; and

(3) for an addition to an existing gathering pipeline or natural gas gathering system, no later than 90 days after placing the addition into service.

B. To ensure proper field identification of a gathering pipeline in an emergency, the as-built map shall include a layer which identifies the pipeline size and construction material type.

C. No later than May 31 of each year, the operator shall file with the division an updated GIS digitally formatted as-built map of its gathering pipeline or natural gas gathering system, which shall include a GIS layer that identifies the date, location and volume of vented or flared natural gas of each emergency, malfunction and release reported to the division since 19.15.28 NMAC became applicable to the pipeline or system.

C. An operator may assert confidentiality for the GIS digitally formatted as-built map and GIS layer, which the division will review pursuant to Section 71-2-8 NMSA 1978.

[19.15.28.9 NMAC – N, xx/xx/xxxx]

19.15.28.10 STATEWIDE NATURAL GAS CAPTURE REQUIREMENTS:

A. Statewide natural gas capture requirements. Commencing January 1, 2022, the operator of a natural gas gathering system shall reduce the annual volume of vented and flared natural gas in order to capture ninety-eight percent of the natural gas gathered in each of two reporting areas, one north and one south of the Township 10 North line, by December 31, 2026. The division shall calculate and publish each operator's baseline gas capture rate based on the operator's 2021 monthly data reported on form C-115B for each reporting area in which the operator has a natural gas gathering system. In each calendar year between January 1, 2022 and December 31, 2026, the operator shall increase the percentage of natural gas captured in each reporting area in which it operates based on the following formula: (2021 baseline loss rate minus two percent) divided by five.

(1) The following table provides examples of the formula based on a range of baseline natural gas capture rates.

Baseline Natural Gas Capture Rate	Minimum Required Annual Natural Gas Capture Percentage Increase
90-98%	0-1.6%
80-89%	>1.6-3.6%

70-79%	>3.6-5.6%
0-69%	>5.6-19.6%

(2) If the operator's baseline capture rate is less than sixty percent, the operator shall submit by the specified date to the division for approval, a plan to meet the minimum required annual capture percentage increase.

(3) An operator that acquires a natural gas gathering system from another operator shall comply with its statewide natural gas capture requirements for the acquired system no later than December 1, 2026, unless the division approves a later date.

B. Accounting. No later than February 15 each year beginning in 2022, the operator shall submit a report certifying compliance with its statewide gas capture requirements. The operator's volume of vented and flared natural gas shall be counted as lost natural gas and excluded from the volume of natural gas gathered or used for beneficial use in the calculation of its statewide natural gas capture requirements, except that:

(1) the operator may exclude from the volume of gathered natural gas the volume of vented and flared natural gas pursuant to Subparagraph (a) of Paragraph (2) of Subsection F of 19.15.28.8 NMAC for which the operator timely filed, and the division approved, a form C-129; and

(2) the operator may exclude from the volume of gathered natural gas the volume of natural gas reported as a beneficial use pursuant to Subparagraphs (d) or (h) of Paragraph (2) of Subsection F of 19.15.28.8 NMAC, provided that the operator identifies the volume of vented natural gas, the reason that the operator vented the natural gas rather than capturing it and any other relevant information requested by the division; and

(3) an operator that used a division-approved ALARM technology to monitor for leaks and releases may obtain a credit against the volume of lost natural gas if it discovered the leak or release using the ALARM technology, and the operator:

(a) isolated the leak or release within 48 hours following field verification;

(b) repaired the leak or release within 15 days or another date approved by the division;

(c) timely notified the division by filing a form C-129 or form C-141;

(d) timely reported the volume of natural gas leaked or released on form C-115 as an ALARM event pursuant to Subparagraph (n) of Paragraph (2) of Subsection F of 19.15.28.8 NMAC; and

(e) used ALARM monitoring technology as a routine and on-going aspect of its waste-reduction practices.

(i) For discrete waste-reduction practices such as aerial methane monitoring, the operator must use the technology at least twice per year; and

(ii) for waste-reduction practices such as automated emissions monitoring systems that operate routinely or continuously, the division will determine the required frequency of use.

(4) An operator may file an application with the division for a credit against its volume of lost natural gas that identifies:

(a) the ALARM technology used to discover the leak or release;

(b) the dates on which the leak or release was discovered, field-verified, isolated, and repaired;

(c) the method used to measure or estimate the volume of natural gas leaked or released;

(d) a description and the date of each action taken to isolate and repair the leak or release;

(e) visual documentation or other verification of discovery, isolation, and repair of the leak or release;

(f) a certification that the operator did not know or have reason to know of the leak or release before discovery using ALARM technology; and

(g) a description of how the operator used ALARM technology as a routine and on-going aspect of its waste-reduction practices.

(5) For each leak or release reported by an operator that meets the requirements of Paragraphs (3) and (4) of Subsection B of 29.15.28.10 NMAC, the division, in its sole discretion, may approve a credit that the operator can apply against its reported volume of lost natural gas as follows:

(a) a credit of forty percent of the volume of natural gas discovered and isolated within 48 hours of discovery and timely repaired; and

(b) an additional credit of twenty percent if the operator used ALARM technology no less than once per calendar quarter as a routine and on-going aspect of its waste-reduction practices.

(6) A division-approved ALARM credit shall:

(a) be used only by the operator who submitted the application pursuant to Paragraph (4) of Subsection B of 29.15.28.10 NMAC;

(b) not be transferred to or used by another operator, including a parent, subsidiary, related entity or person acquiring the natural gas gathering system;

(c) be used only once; and

(d) expire 24 months after division approval.

C. Third-party verification. Upon request by the division, the operator, at its own expense, shall retain a third-party approved by the division to verify any data or information collected or reported pursuant to Subsections E and F of 19.15.28.8 NMAC and make recommendations to correct or improve the collection and reporting of data and information, submit a report of the verification and recommendations to the division by the specified date, and implement the recommendations in the manner approved by the division.

[19.15.28.10 NMAC – N, xx/xx/xxxx]

EXHIBIT C

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 27 VENTING AND FLARING OF NATURAL GAS

19.15.27.1 ISSUING AGENCY: Oil Conservation Commission.
[19.15.27.1 NMAC – N, xx/xx/xxxx]

19.15.27.2 SCOPE: 19.15.27 NMAC applies to persons engaged in oil and gas development and production within New Mexico.
[19.15.27.2 NMAC – N, xx/xx/xxxx]

19.15.27.3 STATUTORY AUTHORITY: 19.15.27 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978.
[19.15.27.3 NMAC – N, xx/xx/xxxx]

19.15.27.4 DURATION: Permanent.
[19.15.27.4 NMAC – N, xx/xx/xxxx]

19.15.27.5 EFFECTIVE DATE: {DATE}, unless a later date is cited at the end of a section.
[19.15.27.5 NMAC – N, xx/xx/xxxx]

19.15.27.6 OBJECTIVE: To regulate the venting and flaring of natural gas from wells and production equipment and facilities to prevent waste and protect correlative rights, public health, and the environment.
[19.15.27.6 NMAC – N, xx/xx/xxxx]

19.15.27.7 DEFINITIONS: Terms shall have the meaning specified in 19.15.2 NMAC except as specified below.

A. **"ALARM"** means advanced leak and repair monitoring technology for detecting natural gas or crude oil leaks or releases that is not required by applicable state or federal law, rule, or regulation, and which the division has approved as eligible to earn a credit against the reported volume of lost natural gas pursuant to Paragraph (3) of Subsection B of 19.15.28.10 NMAC.

B. **"Average daily production"** has the same meaning as in Subsection A of 19.15.6.7 NMAC.

C. **"AVO"** means audio, visual and olfactory.

D. **"Completion operations"** means the period that begins with the initial perforation of the well in the completed interval and concludes on the earlier of 30 days after commencement of initial flowback or when permanent production equipment is first placed into service.

E. **"Drilling operations"** means the period that begins when a well is spud and concludes when casing and cementing has been completed and casing slips have been set to install the tubing head.

F. **"Delineation well"** means a well located in a spacing unit the closest boundary of which is two miles or more from:

(1) the outer boundary of a defined pool that has produced oil or gas from the formation to which the well is or will be drilled; and

(2) an existing gathering pipeline as defined in 19.15.28 NMAC.

G. **"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, 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) the operator's failure to limit production 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 that is caused by an emergency, unscheduled maintenance, or malfunction of a natural gas gathering system as defined in 19.15.28 NMAC;

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

or

(6) three or more emergencies 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.

H. "Flare" or "Flaring" means the controlled combustion of natural gas in a device designed for that purpose.

I. "Flare stack" means an appropriately designed stack equipped with a burner used for the combustion and disposal of natural gas.

J. "Gas-to-oil ratio (GOR)" for purposes of 19.15.27 NMAC means the ratio of natural gas to oil in the production stream expressed in standard cubic feet of natural gas per barrel of oil.

K. "Initial flowback" means the period during completion operations that begins with the onset of flowback and concludes when it is technically feasible for a separator to function.

L. "Malfunction" 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.

M. "N_2" means nitrogen gas.

N. "Natural gas" means a gaseous mixture of hydrocarbon compounds, primarily composed of methane, and includes both casinghead gas and gas as those terms are defined in 19.15.2 NMAC.

O. "Production operations" means the period that begins on the earlier of 31 days following the commencement of initial flowback or when permanent production equipment is placed into service and concludes when the well is plugged and abandoned.

P. "Producing in paying quantities" mean the production of a quantity of oil and gas that yields revenue in excess of operating expenses.

Q. "Separation flowback" means the period during completion operations that begins when it is technically feasible for a separator to function and concludes on the earlier of 30 days after the commencement of initial flowback or when permanent production equipment is placed into service.

R. "Vent" or "Venting" means the release of uncombusted natural gas to the atmosphere.

[19.15.27.7 NMAC – N, xx/xx/xxxx]

19.15.27.8 VENTING AND FLARING OF NATURAL GAS:

A. Venting and flaring of natural gas during drilling, completion or production operations constitutes waste and is prohibited except as authorized in Subsections B, C and D of 19.15.27.8 NMAC. The operator has a general duty to maximize the recovery of natural gas and to minimize the release of natural gas to the atmosphere. During drilling, completion and production operations, the operator shall flare natural gas rather than vent natural gas except when flaring is technically infeasible or would pose a risk to safe operations or personnel safety, and venting is a safer alternative than flaring.

B. Venting and flaring during drilling operations.

(1) The operator shall capture or combust natural gas if technically feasible using best industry practices and control technologies.

(2) A flare stack shall be located at a minimum of 100 feet from the nearest surface hole location and shall be enclosed and equipped with an automatic ignition system or continuous pilot.

(3) In an emergency or malfunction, the operator may vent natural gas to avoid a risk of an immediate and substantial adverse impact on safety, public health, or the environment. The operator shall report natural gas vented or flared during an emergency or malfunction to the division pursuant to Paragraph (1) of Subsection G of 19.15.27.8 NMAC.

C. Venting and flaring during completion and recompletion operations.

(1) During initial flowback, the operator shall route flowback fluids into a completion or storage tank and commence operation of a separator as soon as it is technically feasible for a separator to function.

(2) During separation flowback, the operator shall capture and route natural gas:

(a) to a gas flowline or collection system, reinject into the well, or use on-site as a fuel source or other purpose that a purchased fuel or raw material would serve; or

(b) to a flare if routing the natural gas to a gas flowline or collection system, reinjecting it into the well, or using it on-site as a fuel source or other purpose that a purchased fuel or raw material would serve would pose a risk to safe operation or personnel safety, provided that the flare is equipped with an automatic igniter or continuous pilot.

(3) If N_2 or H_2S concentrations in natural gas exceeds the gathering pipeline specifications, the operator may flare the natural gas for 60 days or until the N_2 or H_2S concentrations meet the pipeline specifications, whichever is sooner, provided that:

(a) the flare stack is equipped with an automatic igniter or continuous pilot;

(b) the operator analyzes natural gas samples twice per week;

(c) the operator routes the natural gas into a gathering pipeline as soon as the pipeline specifications are met; and

(d) the operator provides the pipeline specifications and natural gas analyses to the division upon request.

D. Venting and flaring during production operations. The operator shall not vent or flare natural gas except:

(1) to the extent authorized by a valid federally enforceable air quality permit issued by the New Mexico environment department;

(2) during an emergency or malfunction, but only to avoid a risk of an immediate and substantial adverse impact on safety, public health, or the environment. The operator shall notify the division of venting or flaring resulting from an emergency or malfunction pursuant to Paragraph (1) of Subsection G of 19.15.27.8 NMAC;

(3) to unload or clean-up liquid holdup in a well to atmospheric pressure, provided

(a) the operator does not vent after the well achieves a stabilized rate and pressure;

(b) for liquids unloading by manual purging, the operator remains present on-site until the end of unloading, takes all reasonable actions to achieve a stabilized rate and pressure at the earliest practical time and takes all reasonable actions to minimize venting to the maximum extent practicable;

(c) for a well equipped with a plunger lift system or an automated control system, the operator optimizes the system to minimize the venting of natural gas; or

(d) during downhole well maintenance, only when the operator uses a workover rig, swabbing rig, coiled tubing unit or similar specialty equipment and minimizes the venting of natural gas to the extent that it does not pose a risk to safe operations and personnel safety and is consistent with best management practices;

(4) during the first 12 months of production from a delineation well, or as extended by the division for good cause shown, provided:

(a) the operator proposes and the division approves the well as a delineation well;

(b) the operator is in compliance with its statewide gas capture requirements; and

(c) if a delineation well is capable of producing in paying quantities within 12 months of the division's approval, the operator submits an updated form C-129 to the division, including a natural gas management plan and timeline for connecting the well to a natural gas gathering system; or

(5) during the following activities unless prohibited by applicable state or federal law, rule, or regulation for the emission of hydrocarbons and volatile organic compounds:

(a) gauging or sampling a storage tank or other low-pressure production vessel;

(b) loading out liquids from a storage tank or other low-pressure production vessel to a transport vehicle;

(c) scheduled repair and maintenance, including blowing down and depressurizing production equipment to perform repair and maintenance;

(d) normal operation of a gas-activated pneumatic controller or pump;

(e) normal operation of a storage tank or other low-pressure production vessel, but not including venting from a thief hatch that is not fully and timely closed or from a seal that is not maintained on an established schedule;

(f) a bradenhead test;

(g) a packer leakage test;

(h) a production test lasting less than 24 hours unless the division requires or approves a longer test period; or

(i) when N_2 or H_2S concentrations in natural gas exceeds the gathering pipeline specifications, provided the operator analyzes natural gas samples twice per week to determine whether the specifications have been achieved, routes the natural gas into a gathering pipeline as soon as the pipeline specifications are met and provides the pipeline specifications and natural gas analyses to the division upon request.

E. Performance standards for separation, storage tank and flare equipment.

(1) The operator shall design completion and production separation equipment and storage tanks for maximum throughput and pressure to maximize hydrocarbon recovery and minimize excess natural gas flashing and vapor accumulation.

(2) The operator shall equip a permanent storage tank associated with production operations that is installed after {effective date of rule} with an automatic gauging system that reduces the venting of natural gas.

(3) The operator shall combust natural gas in a flare stack that is properly sized and designed for and operated at maximum efficiency.

(a) A flare stack installed or replaced after May 31, 2021 shall be equipped with an automatic ignitor or continuous pilot.

(b) A flare stack installed before June 1, 2021 shall be retrofitted with an automatic ignitor or continuous pilot or technology that alerts the operator that the flare has malfunctioned no later than 18 months after {effective date of rule}.

(c) A flare stack located at a well with an average daily production of equal to or less than 10 barrels of oil or 60,000 cubic feet of natural gas shall be equipped with an automatic ignitor or continuous pilot if the flare stack is replaced after {effective date of the rule}.

(4) A flare stack located at a well spud after {effective date of rule} shall be securely anchored and located at least 100 feet from the well and storage tanks.

(5) The operator shall conduct an AVO inspection on the frequency specified below to confirm that all production equipment is operating properly and there are no leaks or releases except as allowed in Subsection D of 19.15.27.8 NMAC.

(a) During an AVO inspection the operator shall inspect all components, including flare stacks, thief hatches, closed vent systems, pumps, compressors, pressure relief devices, valves, lines, flanges, connectors, and associated piping to identify defects, leaks, and releases by:

(i) visually inspecting for cracks and holes; loose connections; leaks; broken and missing caps; broken, damaged seals and gaskets; broken, missing and open hatches; broken, missing and open access covers and closure devices; and to ensure a flare stack is operating in conformance with its design;

(ii) listening for pressure and liquid leaks; and

(iii) smelling for unusual and strong odors.

(b) The operator shall conduct an AVO inspection weekly:

(i) during the first year of production; and

(ii) on a well with an average daily production greater than 10 barrels of oil or 60,000 cubic feet of natural gas.

(c) The operator shall conduct an AVO inspection weekly if it is on site, and in no case less than once per calendar month with at least 20 calendar days between inspections:

(i) on a well with an average daily production equal to or less than 10 barrels of oil or 60,000 cubic feet of natural gas; and

(ii) on shut-in, temporarily abandoned, or inactive wells.

(d) The operator shall make and keep a record of an AVO inspection for not less than five years and make such record available for inspection by the division upon request.

(7) Subject to the division's prior written approval, the operator may use a remote or automated monitoring technology to detect leaks and releases in lieu of an AVO inspection.

F. Measurement of vented and flared natural gas.

(1) The operator shall measure the volume of natural gas that it vents, flares, or beneficially uses during drilling, completion, and production operations regardless of the reason or authorization for such venting or flaring.

(2) The operator shall install equipment on flowlines that are piped from equipment such as high pressure separators, heater treaters and vapor recovery units to measure the volume of natural gas vented or flared from a well authorized by an APD issued after May 31, 2021 that has an average daily production greater than 10 barrels of oil or 60,000 cubic feet of natural gas.

(3) Measuring equipment shall be an orifice meter or other measurement device or technology such as a thermal mass or ultrasonic flow meter approved by the division that, at the time of installation, complies with the accuracy ratings and design standards for the measurement of natural gas, such as the American petroleum institute, international organization for standards, or American gas association.

(4) Measuring equipment shall not be designed or equipped with a manifold that allows the diversion of natural gas around the metering element except for the sole purpose of inspecting and servicing the measurement equipment.

(5) For an event for which metering is not practicable, such as low pressure venting and flaring, the operator may estimate the volume of vented or flared natural gas.

(6) For a well that does not require measuring equipment, the operator shall estimate the volume of vented and flared natural gas based on the result of an annual GOR test for that well reported on form C-116.

(7) The operator shall install additional measuring equipment whenever the division determines that the existing measuring equipment or GOR test is not sufficient to measure the volume of vented and flared natural gas.

G. Reporting of vented or flared gas.

(1) Venting or flaring caused by emergency or malfunction, or of long duration.

(a) The operator shall notify the division of venting or flaring that exceeds 50 MCF in volume and either results from an emergency or malfunction, or lasts eight hours or more cumulatively within any 24-hour period by filing a form C-129 with the division as follows:

(i) for venting or flaring that equals or exceeds 50 MCF but less than 500 MCF, notify the appropriate division district office in writing by filing a form C-129 no later than 15 days following discovery or commencement of venting or flaring;

(ii) for venting or flaring that equals or exceeds 500 MCF or otherwise qualifies as a major release as defined in 19.15.29.7 NMAC, notify the appropriate division district office verbally or by e-mail as soon as possible and no later than 24 hours following discovery or commencement of venting or flaring and provide the information required in form C-129. No later than 15 days following the discovery or commencement of venting or flaring, the operator shall file a form C-129 that verifies, updates, or corrects the verbal or e-mail notification; and

(iii) no later than 15 days following the termination of venting or flaring, notify the appropriate division district office by filing a form C-129.

(b) The operator shall provide and certify the accuracy of the following information in the form C-129:

(i) operator's name;

(ii) name and type of facility;

(iii) equipment involved;

(iv) analysis of vented or flared natural gas;

(v) date(s) and time(s) that venting or flaring was discovered or commenced and terminated;

(vi) measured or estimated volume of vented or flared natural gas;

(vii) cause and nature of venting or flaring;

(viii) steps taken to limit the duration and magnitude of venting or flaring; and

(ix) corrective actions taken to eliminate the cause and recurrence of venting or flaring.

(c) At the division's request, the operator shall provide and certify additional information by the specified date.

(d) The operator shall file a form C-141 instead of a form C-129 for the release of a liquid during venting or flaring that is or may be a major or minor release under 19.15.29.7 NMAC.

(2) Monthly reporting of vented and flared natural gas. The operator shall report the volume of vented and flared natural gas for each month in each category listed below. Beginning June 2021, the operator shall submit quarterly reports in a format specified by the division. Beginning January 2022, the operator shall submit a form C-115B monthly on or before the 15th day of the second month following the month in which it vented or flared natural gas. The operator shall specify whether it estimated or measured each reported volume. In filing the initial report, the operator shall provide the methodology (measured or estimated using calculations and industry standard factors) used to report the volumes and shall report changes in the methodology on future forms. The operator shall make and keep records of the measurements and estimates, including records showing how it calculated the estimates, for no less than five years and make such records available for inspection by the division upon request. The categories are:

(a) emergency;

(b) non-scheduled maintenance or malfunction;

(c) routine repair and maintenance, including blowdown and depressurization;

(d) routine downhole maintenance, including operation of workover rigs, swabbing rigs, coiled tubing units and similar specialty equipment;

(e) manual liquid unloading;

(f) uncontrolled storage tanks;

(g) insufficient availability or capacity in a natural gas gathering system during separation phase of completion operations or production operations;

(h) natural gas that is not suitable for transportation or processing because of N_2 or H_2S concentration;

(i) venting as a result of normal operation of pneumatic controllers and pumps, unless the operator vents or flares less than 500,000 cubic feet per year of natural gas;

(j) improperly closed or maintained thief hatches that are routed to a flare or control device;

(k) venting or flaring in excess of four hours that is caused by an emergency, unscheduled maintenance or malfunction of a natural gas gathering system as defined in 19.15.28 NMAC; and

(l) other not described above.

(3) The operator shall report the lost natural gas for each month on a volumetric and percentage basis on form C-115B.

(a) To calculate the lost natural gas on a volumetric basis, the operator shall deduct the volume of natural gas sold, used for beneficial use, vented or flared during an emergency, and vented or flared because it was not suitable for transportation or processing, from the natural gas produced.

(b) To calculate the lost natural gas on a percentage basis, the operator shall add the volume of natural gas sold, used for beneficial use, vented or flared during an emergency and vented or flared because it was not suitable for transportation or processing, and divide by the total volume of natural gas produced.

(4) 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.

(5) Upon request by the division, the operator, at its own expense, shall retain a third-party approved by the division to verify any data or information collected or reported pursuant to Subsections F and G of 19.15.27.8 NMAC and make recommendations to correct or improve the collection and reporting of data and information, submit a report of the verification and recommendations to the division by the specified date, and implement the recommendations in the manner approved by the division.

(6) Upon the New Mexico environment department's request, the operator shall promptly provide a copy of any form filed pursuant to 19.15.27 NMAC.

[19.15.27.8 NMAC – N, xx/xx/xxxx]

19.15.27.9 STATEWIDE NATURAL GAS CAPTURE REQUIREMENTS:

A. Statewide natural gas capture requirements. Commencing January 1, 2022, the operator shall reduce the annual volume of vented and flared natural gas in order to capture ninety-eight percent of the natural gas produced from its wells in each of two reporting areas, one north and one south of the Township 10 North line, by December 31, 2026. The division shall calculate and publish each operator's baseline natural gas capture rate based on the operator's 2021 monthly data reported on form C-115B for each reporting area in which the operator operates a well. In each calendar year between January 1, 2022 and December 31, 2026, the operator shall increase the percentage of natural gas captured in each reporting area in which it operates based on the following formula: (2021 baseline loss rate minus two percent) divided by five.

(1) The following table provides examples of the formula based on a range of baseline natural gas capture rates.

Baseline Natural Gas Capture Rate	Minimum Required Annual Natural Gas Capture Percentage Increase
90-98%	0-1.6%
80-89%	>1.6-3.6%
70-79%	>3.6-5.6%
0-69%	>5.6-19.6%

(2) If the operator's baseline capture rate is less than sixty percent, the operator shall submit by the specified date to the division for approval a plan to meet the minimum required annual capture percentage increase.

(3) An operator that acquires one or more wells from another operator shall comply with its statewide natural gas capture requirements for the acquired well(s) no later than December 1, 2026, unless the division approves a later date.

B. Accounting. No later than February 15 each year beginning in 2022, the operator shall submit a report certifying compliance with its statewide gas capture requirements. The operator's volume of vented and flared natural gas shall be counted as produced natural gas and excluded from the volume of natural gas sold or used for beneficial use in the calculation of its statewide natural gas capture requirements, except that:

(1) the operator may exclude from the volume of produced natural gas the volume of natural gas vented or flared pursuant to Subparagraphs (a) and (h) of Paragraph (2) of Subsection G of 19.15.27.8 NMAC for which the operator timely filed, and the division approved, a form C-129; and

(2) the operator may exclude from the volume of produced natural gas the volume of natural gas reported as a beneficial use or vented or flared from a delineation well and reported on the operator's form C-115.

(3) An operator that used a division-approved ALARM technology to monitor for leaks and releases may obtain a credit against the volume of lost natural gas if it discovered the leak or release using the ALARM technology and the operator:

(a) isolated the leak or release within 48 hours following field verification;

(b) repaired the leak or release within 15 days following field verification or another date approved by the division;

(c) timely notified the division by filing a form C-129 or form C-141;

(d) timely reported the volume of natural gas leaked or released on form C-115 as an ALARM event pursuant to Subparagraph (n) of Paragraph (2) of Subsection F of 19.15.28.8 NMAC; and

(d) used ALARM monitoring technology as a routine and on-going aspect of its waste-reduction practices.

(i) For discrete waste-reduction practices such as aerial methane monitoring, the operator must use the technology at least twice per year; and

(ii) for waste-reduction practices such as automated emissions monitoring systems that operate routinely or continuously, the division will determine the required frequency of use.

(4) An operator may file an application with the division for a credit against its volume of lost natural gas that identifies:

(a) the ALARM technology used to discover the leak or release;

(b) the dates on which the leak or release was discovered, field-verified, isolated and repaired;

(c) the method used to measure or estimate the volume of natural gas leaked or released;

(d) a description and the date of each action taken to isolate and repair the leak or release;

(e) visual documentation or other verification of discovery, isolation and repair of the leak or release;

(f) a certification that the operator did not know or have reason to know of the leak or release before discovery using ALARM technology; and

(g) a description of how the operator used ALARM technology as a routine and on-going aspect of its waste-reduction practices.

(5) For each leak or release reported by an operator that meets the requirements of Paragraphs (3) and (4) of Subsection B of 29.15.28.10 NMAC, the division, in its sole discretion, may approve a credit that the operator can apply against its reported volume of lost natural gas as follows:

(a) a credit of forty percent of the volume of natural gas discovered and isolated within 48 hours of discovery and timely repaired;

(b) an additional credit of twenty percent if the operator used ALARM technology no less than once per calendar quarter as a routine and on-going aspect of its waste-reduction practices.

(6) A division-approved ALARM credit shall:

(a) be used only by the operator who submitted the application pursuant to Paragraph (4) of Subsection B of 29.15.27.10 NMAC;

(b) not be transferred to or used by another operator, including a parent, subsidiary, related entity, or person acquiring the well;

(c) be used only once; and

(d) expire 24 months after division approval.

C. Third-party verification. Upon request by the division, the operator, at its own expense, shall retain a third-party approved by the division to verify any data or information collected or reported pursuant to Subsections F and G of 19.15.27.8 NMAC and make recommendations to correct or improve the collection and reporting of data and information, submit a report of the verification and recommendations to the division by the specified date, and implement the recommendations in the manner approved by the division.

D. Natural gas management plan.

(1) After May 31, 2021, the operator shall file a natural gas management plan with each APD for a new or recompleted well. The operator may file a single natural gas management plan for multiple wells drilled or recompleted from a single well pad or that will be connected to a central delivery point. The natural gas management plan shall describe the actions that the operator will take at each proposed well to meet its statewide natural gas capture requirements and to comply with the requirements of Subsections A through F of 19.15.27.8 NMAC, including for each well:

(a) the operator's name and OGRID number;

(b) the name, API number, location and footage; and

(c) the anticipated dates of drilling, completion and first production.

(2) An operator that, at the time it submits an APD for a new or recompletion well, is not in compliance with its statewide natural gas capture requirements shall also include the following information in the natural gas management plan:

(a) the anticipated volume of produced natural gas in units of MCFD for the first year of production;

(b) the existing natural gas gathering system the operator has contracted or anticipates contracting with to gather the natural gas, including:

(i) the name of the natural gas gathering system operator;

(ii) the name and location of the natural gas gathering system;

(iii) a map of the natural gas gathering system as built or as planned if it has not yet been built; and

(iv) the maximum daily capacity of the natural gas gathering system to which the well will be connected; and

(c) the operator's plans for connecting the well to the natural gas gathering system, including:

(i) the anticipated date on which the natural gas gathering system will be available to gather the natural gas produced from the well;

(ii) whether, at the time of application, the natural gas gathering system has existing capacity to gather the anticipated natural gas production volume from the well; and

(iii) whether the operator anticipates the operator's existing well(s) connected to the same natural gas gathering system will continue to be able to meet anticipated increases in line pressure caused be the well and the operator's plan to manage increased line pressure.

(3) The operator may submit a request asserting confidentiality for information specified in Paragraph (2) of Subsection D of 19.15.27.9 NMAC, which the division will review in accordance with Section 71-2-8 NMSA 1978.

(4) The operator shall certify that it has determined based on the available information at the time of submitting the natural gas management plan either:

(a) it will be able to connect the well to a natural gas gathering system in the general area with sufficient capacity to transport one hundred percent of the volume of natural gas the operator anticipates the well will produce commencing on the date of first production, taking into account the current and anticipated volumes of produced natural gas from other wells connected to the pipeline gathering system; or

(b) it will not be able to connect to a natural gas gathering system in the general area with sufficient capacity to transport one hundred percent of the volume of natural gas the operator anticipates the

well will produce commencing on the date of first production, taking into account the current and anticipated volumes of produced natural gas from other wells connected to the pipeline gathering system.

(5) If the operator determines it will not be able to connect a natural gas gathering system in the general area with sufficient capacity to transport one hundred percent of the anticipated volume of natural gas produced on the date of first production from the well, the operator shall submit a venting and flaring plan to the division that evaluates the potential alternative uses for the natural gas until a natural gas gathering system is available, including:

(a) power generation on lease;
(b) power generation for grid;
(c) compression on lease;
(d) liquids removal on lease;
(e) reinjection for underground storage;
(f) reinjection for temporary storage;
(g) reinjection for storage;
(h) reinjection for enhanced oil recovery;
(i) fuel cell production; and
(j) other alternative uses approved by the division.

(6) If, at any time after the operator submits the natural gas management plan and before the well is spud:

(a) the operator becomes aware that the natural gas gathering system it planned to connect the well to has become unavailable or will not have capacity to transport one hundred percent of the production from the well, no later than 20 days after becoming aware of such information, the operator shall submit for the division's approval a new or revised venting and flaring plan containing the information specified in Paragraph (4) of Subsection D of 19.15.27.9 NMAC; and

(b) the operator becomes aware that it has become out of compliance with the statewide natural gas capture requirements, no later than 20 days after becoming aware of such information, the operator shall submit for the division's approval a new or revised natural gas management plan containing the information specified in Paragraph (2) of Subsection D of 19.15.27.9 NMAC.

(7) If the operator does not make a certification or fails to submit an adequate venting and flaring plan, or if the division determines that the operator will not have adequate natural gas takeaway capacity at the time a well will be spud, the division may:

(a) deny the APD; or
(b) conditionally approve the APD.

[19.15.27.9 NMAC – N, xx/xx/xxxx]

EXHIBIT D

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

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION FOR
THE PURPOSE OF CONSIDERING:

CASE NOS: 21281

IN THE MATTER OF PROPOSED
AMENDMENTS TO THE COMMISSION'S
RULES ON PRODUCED WATER,
19.15.2, 19.15.16 AND 19.15.34 NMAC.

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS
COMMISSIONER HEARING, VOLUME 2
Agenda Item
July 31, 2020
Santa Fe, New Mexico

BEFORE: ADRIENNE SANDOVAL, CHAIRWOMAN
JORDAN KESSLER, COMMISSIONER
DR. THOMAS ENGLER, COMMISSIONER
MIGUEL LOZANO, ESQ.

This matter came on for virtual hearing before the New Mexico Oil Conservation Commission on Thursday, July 31, 2020 through the New Mexico Energy, Minerals, and Natural Resources Department, Webex Platform, Santa Fe, New Mexico.

Reported by: Irene Delgado, NMCCR 253
PAUL BACA PROFESSIONAL COURT REPORTERS
500 Fourth Street, NW, Suite 105
Albuquerque, NM 87102
505-843-9241

EXHIBIT D

APPEARANCES

FOR NMOGA:

MICHAEL FELDEWERT
HOLLAND & HART
PO Box 2208
Santa Fe, NM 87504
mfeldewert@hollandhart.com

FOR OCD:

CHERYL L. BADA
DEPUTY GENERAL COUNSEL
ENERGY MINERALS AND NATURAL RESOURCES DEPARTMENT
1220 S. St. Francis Drive
Santa Fe, NM 87505
cheryl.bada@state.nm.us

FOR WildEarth GUARDIANS:

DANIEL L. TIMMONS
SAMANTHA RUSCAVAGE-BARZ
301 N. Guadalupe St., Suite 201
Santa Fe, NM 87501
dtimmons@wildearthguardians.com

FOR SIERRA CLUB:

DOUGLAS MEIKLEJOHN
CARA LYNCH
NEW MEXICO ENVIRONMENTAL LAW CENTER
1405 Luisa Street, #5
Santa Fe, NM 87505

FOR NEW ENERGY ECONOMY:

MARIEL NANASI
NEW ENERGY ECONOMY
1431 Seville Road
Santa Fe, NM 87505

CLOSING ARGUMENT

By OCD
By NMOGA
By WildEarth Guardians
By Sierra Club
By New Energy Economy

EXHIBIT D

EXHIBITS

PUBLIC COMMENT

WITNESSES

that it's not allowed to -- you're not allowed to use it for any land use on pad, I don't think that goes under the scope, it probably goes anywhere else.

COMMISSIONER ENGLER: Probably under procedures.

CHAIRWOMAN SANDOVAL: We will visit that in a moment then.

Statutory authority, 19.15.34.3, we had two proposals, one proposal from the Sierra Club, and one proposal from WildEarth Guardians. It's just different types of ways of adding language about protecting public health, the environment and fresh water. I believe it was the Division who afforded the WildEarth Guardian language. Is that what you recall, Dr. Engler?

COMMISSIONER ENGLER: Yes, that's correct. It's in a manner that protects public health, the environment and fresh water resources, I think that's good to do that.

CHAIRWOMAN SANDOVAL: I agree. It again adds the explicit statement in there. So we would propose to use WildEarth Guardian's change to 19.15.34.3 as it was proposed in their proposal.

MR. LOZANO: Okay. Yes, Madam Chair.

CHAIRWOMAN SANDOVAL: All right. The next change, or next several changes are changes to the objectives. I think it would be good maybe, Dr. Engler, to -- I will just go through and list kind of the different,

the different options here for changes to the objective.

So the original change to the objective is the change that the Oil Conservation Division made, which also explicitly states protects public health, environment, and fresh water resources. I think it is good to state that in as many places as possible, so I'm fine with their edition.

At the end of the Oil Conservation language they use that kind of same language that I believe the WildEarth Guardians use (inaudible) I think maybe we should change that to within the jurisdiction of the Division to keep it aligned. Okay. So that was the change from the Oil Conservation Division.

We will get to New Mexico Oil and Gas Association and see if they have any, they have any proposed changes to the objective.

WildEarth Guardians had multiple changes to the objectives. They added -- they deleted the entire section which had been added by the Oil Conservation Division, and they rewrote it to create four sections of equal importance to prohibit hydraulic fracturing, to prohibit hydraulic (inaudible) the use of surface or groundwater that has less than a 1000 milligrams per liter of TDS.

On that statement specifically, I do not believe that that change is a logical outgrowth of the original OCD rule, and therefore cannot be considered at this rulemaking

because the public was not provided adequate notice that this change would arise.

COMMISSIONER ENGLER: I agree.

CHAIRWOMAN SANDOVAL: Okay.

COMMISSIONER ENGLER: (inaudible).

CHAIRWOMAN SANDOVAL: Excellent. B, to ensure the protection of public health, the environment and fresh water resources from any transportation, recycling, reuse and disposition of produced water, I believe that -- or other Division proposal, and then some of this language about the -- the original statements of public health -- and protection of public health and environment and fresh water resources, so I believe that section is adequately covered in the proposal.

COMMISSIONER ENGLER: That's correct. B of WildEarth Guardians is really a restatement of what we already had.

CHAIRWOMAN SANDOVAL: C, that prohibits the use of produced water and the use of recycled produced water in any activities that are not directly related to oil -- to drilling -- to exploration, drilling, production, treatment or refinement of oil and gas.

I mean, I feel like we put that in here already, so (inaudible).

COMMISSIONER ENGLER: Correct.

COMMISSIONER ENGLER: Yes. Madam Chair, it's -- again, it's already explicitly in the Division objective. So (inaudible) I'm fine with what the Division wrote.

CHAIRWOMAN SANDOVAL: I would agree. Okay. So that -- I mean we walked through the four objectives proposed by WildEarth Guardians. I do not propose to enter any of those in this updated rule language, but look at Sierra Club's objective section.

Okay. So again, similar to WildEarth Guardians, they strike that whole paragraph predominantly that the Oil Conservation Division proposed, and they have three objectives.

In A, to provide protection of public health, the environment and fresh water resources from produced water production, storage, transportation and reuse of any oil and gas industry. I --

COMMISSIONER ENGLER: That's, again, is very good, but it's also already covered.

CHAIRWOMAN SANDOVAL: I agree. Okay. So we will not include Section A of the Sierra Club's objective section.

B, to prohibit the use of fresh water in major well fracturing unless there is well permitted. Again this is similar to WildEarth Guardian's proposal which we discussed. I do not believe that this is a logical

outgrowth of the proposed rule, and therefore it cannot be considered during this rulemaking section.

It would have to be -- because this, you know, the public could not have expected that this would have been part of the rulemaking, and therefore were not given adequate notice, so therefore it cannot be part of this rulemaking.

COMMISSIONER ENGLER: I would concur, and just add that they provided really no testimony whatsoever about alternatives or how to go about this in terms of not just the prohibition of the fresh water, but how you go about the alternatives. So without any really strong evidence or testimony, I would -- I just read that as (inaudible) and agree with what you are saying.

CHAIRWOMAN SANDOVAL: Okay. So we will not be including B.

C, to encourage recycling or reuse of produced water it has to be related activities related to exploration, drilling, production, treatment or refinement of oil and gas that permanently and physically separate the reuse of produced water from ground water or surface water (inaudible) water.

Again I believe this is covered in the Oil Conservation Division proposal in that first line, and so that adequately covered what is being stated there.

secondary recovery or enhanced recovery of oil and natural gas or plugging of wells pursuant to 19.15.34 NMAC.

MR. LOZANO: Thank you.

CHAIRWOMAN SANDOVAL: Yes. Okay. Let's move on to WildEarth Guardians' proposal. They require some pretty large changes that require basically, for the reuse of produced water, you have to get a permit, obtain a permit.

So there's a couple of items here of concern. Again, this was not a logical outgrowth of the proposed rule, and therefore the public was not provided notice that this could be part of the rulemaking, and so that's the first reason.

The second reason which we heard testimony from Mr. Brancard on is, we do not require a permit for any other water type, and so this would actually make using recycled produced water more onerous on operators and might have the unintended consequence of not meeting the objectives of this rule, which is to encourage recycling, and so I do not believe that that should be included.

COMMISSIONER ENGLER: Yes, Madam Chair, whether permit as one entity proposes or the registration of another, I think the -- I agree with your statement, that the objective is to promote the reuse. And that this is, this is going to be more onerous and less of a promotion

Dr. Engler, do you have any concerns with 1, 2 or 3?

COMMISSIONER ENGLER: Madam Chair, I think (inaudible) spelled out (inaudible) and the third component is necessary for this rule.

CHAIRWOMAN SANDOVAL: Okay. Okay. So now let's move first to the WildEarth Guardians' edition of C. So that would have been 19.15.34.8C, which basically says you cannot use fresh water or drinking water in drilling and completions operations.

You know, we had a proposal, I believe, from Sierra Club in (inaudible). First of all, I think Mr. Brancard testified that (inaudible) he is unsure if OCD has the direct authorization to do this.

Second, it's -- again, I think (inaudible) it is not a logical outgrowth of the initial proposal and therefore cannot be considered in this rulemaking because the public was not afforded reasonable public notice that this may be a requirement going forward. Dr. Engler?

COMMISSIONER ENGLER: I concur, and I guess I will add the statement that, again there was really no evidence or testimony provided to say why this should be prohibited.

CHAIRWOMAN SANDOVAL: And actually, that is almost identical to Sierra Club's C, which says no fresh