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NOTICE

FREQUENTLY ASKED QUESTIONS REGARDING THE NATURAL GAS WASTE RULES

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As part of ongoing stakeholder engagement, the Oil Conservation Division (“OCD”) answers Frequently Asked Questions (“FAQs”) regarding the Natural Gas Waste Rules, 19.15.27 and 19.15.28 NMAC, which are effective on May 25, 2021. Going forward, OCD intends to release updated FAQs as appropriate.

Please submit questions to: EMNRD.Wasterule@state.nm.us.

Disclaimer

These FAQs are guidance only. They are not legally binding, do not create any rights or obligations in any person, and cannot be cited as legal authority in any civil, criminal, or administrative action or proceeding. OCD reserves the right to amend these FAQs at any time, for any reason, and without notice.

DEFINITIONS

Question #1: What is “beneficial use” under these rules?

Beneficial uses are identified in 19.15.27.9(D)(5) NMAC.

Question #2: Is the sales meter considered to be the “central delivery point”?

No. The central delivery point referenced in 19.15.27.9(D)(1) NMAC is a tool for operators that want to submit a natural gas management plan for multiple wells connected to a central facility.

Question #3: In the definition of “exploratory well” in Part 27, should paragraphs (1) and (2) be joined by “and” or “or”?

“And” is correct because both paragraphs must exist for a well to be “exploratory” under Part 27.

EMERGENCY

Question #4: Does venting or flaring during an emergency that lasts more than 8 hours violate Part 27 or count against the operator’s natural gas capture percentage?

Emergencies are defined in 19.15.27.7(H) NMAC. Subparagraph (4) applies to emergencies related to natural gas gathering systems. If an upstream operator vents or flares for longer than 8 hours after notification by a natural gas gathering system operator, those volumes are counted against the upstream operator’s gas capture requirement.

Additionally, pursuant to 19.15.27.8(G) NMAC, an operator who vents or flares for any reason and that lasts more than 8 hours cumulatively during any 24-hour period must report that event on Form C-129.

Question #5: Are events which are limited by number over a period of time, such as 4 emergencies in 30 days and 3 malfunctions in 30 days, counted on a calendar month or rolling 30-day basis?

These events are counted on a rolling 30-day basis.

Question #6: If an operator experiences more than 3 emergencies in 30 days, how are the volumes of natural gas vented or flared during these emergencies counted toward the operator’s natural gas percentage?

The operator does not count the first 3 emergencies in a rolling 30-day period. The operator must track and report all the events. OCD is still reviewing how operators will report these events on Forms C-115B and C-129. However, pursuant to 19.15.27.7(H)(7) NMAC, OCD will require the operator to explain why it “could not have reasonably anticipated the current event and it was beyond the operator’s control”.

Question #7: For emergencies under the definition, operators are limited to 3 recurring equipment failures on a rolling 30-day basis for a reporting area. Does OCD intend to evaluate these events to identify recurring problems experienced by individual operators or to identify broader trends in the industry?

OCD intends to use the data to evaluate trends for both individual operators and the industry in general. Operators should also review the data to identify opportunities to avert emergencies that could be reasonably anticipated or controlled.

Question #8: Is a malfunction that results in venting or flaring counted as an emergency?

Malfunctions and emergencies are distinct categories in the definitions. Operators will need to ensure they are complying with all requirements.

Question #9: Do emergencies that occur as a result of actions by third-party gatherers count against the 3 emergencies per rolling 30-day period?

Yes.

Question #10: If the operator must purge equipment and continue venting or flaring after an emergency or malfunction, is it an emergency, a malfunction, or a different event?

The volume of all gas vented or flared as a result of an emergency must be reported and counted. After the emergency has ended, the operator may vent or flare due to gas composition not meeting pipeline specifications to the extent allowed by 19.15.27.8(C)(3) NMAC and 19.15.27.8(D)(4)(I) NMAC and reported pursuant to 19.15.27.8(G)(2)(h) NMAC. See also the comparable provisions in 19.15.28 NMAC.

Question #11: When a third-party gatherer conducts planned maintenance which causes an upstream operator to shut-in all natural gas production, can the upstream operator vent or flare the natural gas under the definition of “emergency”?

No. Venting or flaring constitutes an emergency only when caused by an emergency, unscheduled maintenance, or malfunction of a natural gas gathering system. 19.15.28.8.D(1) NMAC requires the third-party gatherer to notify the affected operator of the planned maintenance event no less than 14 days prior to the event. Upstream operators should plan for these events, and those operators who continue to produce and vent or flare natural gas may be subject to enforcement action, including civil penalties.

AVO

Question #12: When must operators begin weekly AVO?

On May 25, 2021, the effective date of the rules.

Question #13: Will OCD publish a template or guidance for AVO documentation?

No. OCD will accept an operator’s standard documentation as evidence that it performed AVO.

FEDERAL LANDS

Question #14: Will the rules apply on federal land?

Yes.

Question #15: Must an operator comply with both state and federal requirements for venting and flaring on federal land?

Yes.

FLARE STACKS

Question #16: Is natural gas vented or flared from a combustor/incinerator a beneficial use even if the flare has a 99.99% destruction efficiency?

No. Gas flared from a combustor/incinerator or thermal oxidizer constitutes waste regardless of the flare's purported efficiency.

Question #17: Does replacing the flare tip count as flare replacement, thereby requiring the installation of an auto-ignitor or continuous pilot?

No. The rule requires installation of an auto-ignitor or continuous pilot when the "flare stack" is replaced.

Question #18: Are there any exemptions to the auto-ignitor requirement?

No. However, there are alternative compliance requirements for some flares based on the date of installation and average daily production of natural gas.

Question #19: Are operators required to submit Form C-129 for a flare that is authorized by the New Mexico Environment Department?

Yes. The prohibition on venting and flaring applies to all wells, facilities, and equipment identified in Parts 27 and 28.

NATURAL GAS MANAGEMENT PLANS

Question #20: When must operators begin to file these plans?

On May 25, 2021, the effective date of the rule.

Question #21: How will OCD know if an operator is out of compliance with the natural gas capture requirements and must submit a new plan?

An operator who is out of compliance but knowingly fails to submit a new plan, to give notice to OCD, or to comply with another requirement of Parts 27 or 28 may be subject to an enforcement action, including civil penalties.

Question #22: What is the mechanism for an operator to get back into compliance?

Operators who become aware that they are out of compliance are advised to voluntarily disclose to OCD at the earliest possible time.

Question #23: If an operator submits an APD in advance of having a signed takeaway contract with a third-party gatherer, can it list options for takeaway in the natural gas management plan?

Yes. However, because the operator cannot certify 100% takeaway, it must submit a venting or flaring plan, which OCD may either conditionally approve or deny.

NATURAL GAS CAPTURE REQUIREMENT

Question #24: If an operator already captures 98% of its natural gas, how does it comply with the minimum annual percentage increase requirement?

Each year the operator must demonstrate that it captures 98% of its natural gas or the minimum annual percentage increase requirement.

GAS SPECIFICATIONS

Question #25: Can an operator rely on the third-party gatherer to analyze the oxygen to comply with the twice-weekly analysis requirement?

Yes. However, the operator is liable for compliance with the analysis requirement and cannot disclaim responsibility based on the source of data.

Question #26: For a well with natural gas containing high H₂S that cannot be sold because there is no sour gathering line in the immediate area, must the operator continue to sample the gas twice per week?

Yes. However, the operator should consult with OCD regarding potential alternative uses for the natural gas.

Question #27: What is an operator's obligation when natural gas does not meet pipeline specifications 60 days after starting completion operations?

The operator may vent or flare the natural gas for 60 days if certain conditions are met. 19.15.27.8(E)(3) NMAC. After 60 days, the well is considered to be in "production operations" and would need to meet the requirements of 19.27.8.D(4)(I) NMAC.

GIS

Question #28: For Part 28, what standard does OCD use to format location data in GIS layers, e.g., Shapefile, File Geodatabase?

OCD is developing the standard and process for GIS layers, and will publish this information on OCD's announcement page.

INITIAL FLOWBACK

Question #29: Does initial flowback, e.g., non-capturable gas during first phase of flowback, count against the operator's 98% natural gas capture requirement?

No.

Question #30: When must operators begin to send flowback to the separator?

The relevant terms are defined in Part 27. Initial flowback "concludes when it is technically feasible for a separator to function." 19.15.27.7(L) NMAC. Separation flowback "begins when it is technically feasible for a separator to function and concludes no later than 30 days after the commencement of initial flowback." 19.15.27.7(R) NMAC. If allowed by well conditions, natural gas must be flared rather than vented during initial flowback, and the separator must be operated as soon as technically feasible. 19.15.27.8(C)(1) NMAC.

Question #31: For how long can an operator send natural gas from the separator to a flare?

"Production operations" begin 31 days after commencement of initial flowback. 19.15.27.7(P) NMAC. Venting and flaring of natural gas is prohibited during production operations except as allowed by 19.15.27.8(D) NMAC.

Question #32: Can an operator vent or flare from an existing tank battery?

No, unless the venting or flaring is subject to an exception in 19.15.27.8(C) or (D) NMAC.

Question #33: Is there a time or volume limit on the natural gas that an operator can vent or flare from an exploratory well?

An operator can vent or flare from an exploratory well for a maximum of 12 months unless extended by OCD for good cause shown. There is no volume limit, but venting is not allowed unless flaring is technically infeasible.

REPORTING

Question #34: What methodology should operators use to estimate the volume of venting or flaring during well workovers and liquids unloading and from storage tanks and thief hatches?

Pursuant to 19.15.27.8.F(5) NMAC and 19.15.28.8.E(5) NMAC, “If metering is not practicable due to circumstances such as low flow rate or low pressure venting and flaring, the operator may estimate the volume of vented or flared natural gas using a methodology that can be independently verified.”

Question #35: When will Form C-115B be available for review?

OCD is developing the Form C-115B and will notify operators when it is available.

Question #36: What is “other surface waste” that must be reported under 19.15.27.8(G)(2)(m) NMAC?

This subparagraph includes any venting or flaring which meets the definition of “surface waste” in 19.15.2.7(W)(1)(b) NMAC, but that is not otherwise identified.

Question #37: How do operators report the baseline data for the fourth quarter of 2021 and first quarter of 2022?

OCD is developing guidance for reporting baseline data and will notify operators when it is available.

Question #38: Will operators file forms and reports electronically?

Yes.

Question #39: How should operators report vented or flared natural gas from controlled and uncontrolled storage tanks?

OCD is developing Form C-115B and the initial quarterly reporting forms and will notify operators when it is available.

Question #40: How will OCD differentiate reports from operators with both upstream and midstream facilities?

Operators who own upstream and midstream facilities must file separate forms for their facilities. OCD is developing this process and will notify operators when it is available.

Question #41: How should operators report “facilities”?

OCD is currently developing the process for these reports, including, Forms C-129 and C-115B, and will notify operators when they are available.

Question #42: How should operators report venting and flaring from compressors?

For compressors located before the custody transfer point, operators should report venting and flaring at a facility level as part of production operations. For compressors located after the custody transfer point, operators should report venting and flaring as part of the natural gas gathering system facility.

Question #43: Will operators report venting and flaring on Form C-115 or Form C-115B?

OCD is developing this process and will notify operators when it is available. In the meantime, operators should continue to report using Form C-115.

Question #44: When will Form C-129 be available?

OCD has released the updated Form C-129 for stakeholder review and it will be finalized and available for operators by May 25, 2021.

Question #45: Are operators required to submit Form C-115B for a well that did not vent or flare during the reporting period?

Yes.

Question #46: Are operators required to report venting or flaring associated with produced water tanks?

Yes.

Question #47: What start date should be used on Form C-129 for a leak discovered during an inspection?

The start date is the date of discovery unless the operator is aware of an earlier date from the available information after reasonable inquiry.

Question #48: When does an operator submit its plan to meet the minimum required annual capture percentage increase if its baseline capture rate is less than 60%?

OCD will notify operators of the submittal date when it calculates and publishes the baseline natural gas capture rates.

Question #49: What form should operators use to report gas capture rates?

Forms C-115 and C-115B. OCD is developing this process and will notify operators when the new Form C-115B is available. In the meantime, operators should continue to use Form C-115.

Question #50: How should operators submit a written request to exclude acquired or sold wells from the annual natural gas capture requirement?

OCD is developing this process and will notify operators when it is available.

Question #51: How should operators notify OCD about venting or flaring events that exceed 500 mcf?

OCD has released the updated Form C-129 for stakeholder review and it will be finalized and available for operators by May 25, 2021.

STRIPPER WELLS

Question #52: How does Part 27 apply to stripper wells?

Operators of wells with an average daily production equal to or less than 60,000 cubic feet of natural gas must comply with the gas capture requirements, but the rule provide flexibility for compliance with performance standards and other requirements. See 19.15.27.8(E)(3)(c) NMAC; 19.15.27.8(E)(5)(c)(i) NMAC; 19.15.27.8(F)(2) NMAC; and 19.15.27.8(G)(2)(i) NMAC.

Question #53: Can operators vent or flare from stripper wells that are not connected to an operating natural gas gathering system?

No, except as authorized by Sections B, C, and D of 19.15.27 NMAC

TANKS

Question #54: Is an existing tank moved to a new location considered an existing or new tank under Part 27?

A tank installed after the effective date of the rule is considered a new tank under Part 27 and must comply with 19.15.27(E)(2) NMAC.

Question #55: Does Part 27 use the same installation date as NSPS OOOOa?

No. EPA's Subpart OOOOa is not applicable.

VENTING AND FLARING

Question #56: Can operators vent or flare during plugging and abandonment?

Venting and flaring during plugging and abandonment is considered to be part of production operations and is addressed in 19.15.27.8(D)(2)(d) NMAC.

Question #57: Can operators vent or flare during routine downhole maintenance other than liquid unloading?

19.15.27.8(D) NMAC identifies the exceptions to the prohibition on venting and flaring during production operations.

Question #58: Are operators who exceed the 98% natural gas capture rate subject to the prohibition on venting and flaring?

Yes. However, the prohibition on venting and flaring and the natural gas capture requirement are separate requirements.

Question #59: Are operators required to have a person on site at all times when flaring?

No.

Question #60: Can operators extend C-129 approvals for venting and flaring issued under 19.15.18.12 NMAC?

No. C-129s issued under 19.15.18.12 NMAC are null and void after May 25, 2021.