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NOTICE OF RULE INTERPRETATION

WASTE RULE BENEFICIAL USE OF LOST GAS FOR PURPOSES OF NATURAL GAS MANAGEMENT PLANS AND MONTHLY REPORTING

September 6, 2022

Under 19.15.27 and 19.15.28 NMAC, operators may utilize otherwise lost gas for alternative beneficial uses for the purposes of compliance with Natural Gas Management Plans (“NMGP”) and monthly reporting requirements. ‘Beneficial use’ is not specifically defined under either rule part; however, the Oil Conservation Division (“OCD”) did provide several examples of what might constitute beneficial use (*see, e.g.*, 19.15.27.9(D)(5) NMAC), including retaining the ability to review and approve currently unspecified beneficial uses at its discretion.

Consistent with that regulatory flexibility, the OCD has received and started to review multiple requests to approve cryptocurrency mining operations (i.e. Bitcoin) as an acceptable category of alternative beneficial uses under Part 27. As part of its review of those requests, OCD wish to announce general principles guiding its review and approval of beneficial use under the rules. Consistent with common industry practice, OCD’s interpretation of beneficial use under parts 27 and 28 includes alternative uses of gas produced on a lease that:

- Occurs on-lease; and
- Relates to, or enhances, existing or typical oil and gas production activities.

If both criteria above are not satisfied, the activity in question cannot constitute a beneficial use of the gas for purposes of the rule. OCD has determined that cryptocurrency mining operations do not fit within the intent or letter of Parts 27 and 28 for the following reasons:

- Cryptocurrency mining is a business venture separate and distinct from oil and gas production activities or what is necessary to successfully operate a lease for oil and gas recovery;
- While cryptocurrency mining can occur on-lease, OCD does not believe such activities are within the scope of a typical oil and gas lease; and
- Cryptocurrency mining will result in the introduction of equipment to a lease, include related electronic waste that OCD lacks the authority to effectively regulate, approve, or

inspect (issues properly left to the surface land owner).

That is not to say that an operator could not pursue the installation of a cryptocurrency mining operation at or near the oil and gas lease. They would need to obtain the necessary authorizations from the impacted surface owner, any required state or federal permits, and install a metered custody transfer point between the oil and gas operations and the cryptocurrency mining to ensure that production/sales are properly report and any associated royalties and taxes are paid.

OCD believes that this interpretation is likely to apply to other potential analogous business endeavors occurring on-/near-lease, but that have no direct bearing on oil and gas production. Operators that choose to pursue any such business venture, as explained above, may include any gas used in the activity as 'captured' gas, regardless of its ultimate use, **if the gas passes through a metered custody transfer point prior to its end use.**

Any such use must also occur subject to regulation or restrictions established by land use agreements or leases, the federal Bureau of Lands Management, New Mexico State Land Office, New Mexico Taxation and Revenue Department, New Mexico Environment Department, or any other applicable law or regulation.

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



Director