From:	kaoet@protonmail.com
To:	WasteRule, EMNRD, EMNRD
Subject:	[EXT] Comments on EMNRD draft methane rule
Date:	Monday, September 14, 2020 10:11:23 PM
Attachments:	Comments on EMNRD draft rule.pdf

Thank you very much for the opportunity to comment on the EMNRD draft methane rule. My comments are attached.

Katherine Shera
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September 14, 2020

Enclosed please find comments on the EMNRD Oil Conservation Division's draft methane rule, which was released for public comment on July 20, 2020. The rule, which will regulate methane venting and flaring in New Mexico oil and gas fields, is being put forward in response to Governor Michelle Lujan Grisham's 2019 mandate (Executive Order 2019-003) to secure reductions in oil and gas sector methane emissions and prevent waste from new and existing sources across the state.

Background: During the process of drilling for petroleum, methane gas, the main constituent of natural gas, is released from underground sources in significant quantities. A valuable fuel in its own right, this co-produced methane is captured alongside the extracted petroleum, then processed, stored, and transported for later sale and use.

Unfortunately, some oil producers have at times engaged in illicit business practices (prohibited under rule 19.15.18.12(A) NMAC) whereby co-produced methane, rather than being captured for sale, is either burned off at the wellhead, or simply allowed to escape uncombusted into the surrounding environment. The fossil fuel industry, making light of these practices, uses the neutral terms 'flaring' and 'venting' to describe the methods by which operators deliberately release a dangerous gas or its toxic combustion products into local environments. This irresponsible wastage of irreplaceable fossil fuel reserves must not be tolerated by New Mexico state officials and regulators. For authorities to endorse or knowingly overlook these practices constitutes failed stewardship of public assets held in trust.

In a May 2020 publication, "Flaring in the Oilfield", the New Mexico Oil and Gas Association attempted to dismiss the problem of methane wastage in the industry by portraying flaring and venting as practices seldom employed by New Mexico oil producers. Flaring and venting, they claimed, are methods producers resort to on only an infrequent basis, and only during brief stages of the drilling lifecycle, e.g. during the maintenance or initial opening of a well.

Yet an August 2020 study by the Western Environmental Law Center ("Flaring in the Oilfield: A Closer Look") revealed that flaring and venting of co-produced methane—far from being infrequent practices—are instead used on a routine and nearly continuous basis by many New Mexico oil producers. Lines of evidence of routine flaring cited by the WELC study include: (1) the extraordinary volumes of methane being flared or vented by certain operators at specific drilling locations; and (2) the long periods of time over which certain operators have repeatedly sought state authorization to flare particular

wells. Current state methane regulations allow an operator to make application to flare a particular well for a period no longer than 60 days. Yet the WELC study showed that some major oil producers, by obtaining multiple permits consecutively, have flared particular wells continuously for periods of two, three, or even four years. In some instances, individual wells have been flared over the entire course of their existence.

The WELC data strongly suggest that methane wastage by flaring and venting have become business-as-usual for many New Mexico oil producers. The practice is especially common among producers in the Permian Basin, where oil, rather than natural gas production, is the primary motive for drilling. As natural gas prices have fallen, many oil producers—rather than making investments in infrastructure to capture and bring co-produced gas to market—have resorted to simply releasing or burning off the methane at the site of its production. Flaring and venting—far from being limited practices in the industry—have become **long-term, illicit mechanisms by which some operators dispose of co-produced methane**, rather than bear the cost of bringing the gas to market.

According to the Environmental Defense Fund's most recent estimates, methane emissions from New Mexico oil and gas production now total more than one million metric tons annually, with the majority of these emissions resulting from avoidable causes. This volume of wasted methane, according to the EDF, "has the same short-term climate impact as 22 coal-fired power plants or 28 million automobiles" annually [ref. 1].

Implications: Poor industry practices around methane capture carry high costs for New Mexico's citizens. A growing body of evidence shows that flared and vented methane poses serious health threats to neighboring communities. In Eddy, Lea, and San Juan counties, where the state's oil and gas wells are concentrated, the health burdens on nearby residents fall predominantly on people of color [ref. 2]. Furthermore, given methane's potency as a greenhouse gas (estimated as 85-90 times more damaging than an equivalent volume of CO_2), methane flaring and venting also contribute substantially to the climate crisis—bringing drought, rising temperatures, declining snowpack, and frequent forest fires upon our cherished Southwestern landscapes.

Finally, unpaid royalties on wasted methane represent a significant loss of revenue to the state; by WELC's recent estimate, approximately $43 million dollars a year of state tax and royalty revenue are foregone when an estimated $275 million worth of methane annually is illicitly disposed of by producers. This lost revenue is urgently needed to fund New Mexico schools and equity infrastructure projects, such as clean running water and universal broadband in rural and tribal areas.

Recommendations: The current methane rule-making process offers the opportunity to put an end to irresponsible practices by industry. In order to effectively address the problem of routine methane flaring by New Mexico oil and gas producers, I urge state officials charged with establishing the final methane waste rule to adopt the recommendations set forth in WELC's recent study.

Specifically, the final methane waste rule set forth by the EMNRD should:

1. Ban routine methane flaring upon the effective date of the methane rule; ensure that serial applications to flare particular wells, e.g. for periods over 90 days, are no longer tolerated.

2. Condition approval of any new drilling permits upon firm, enforceable gas capture plans, for example, on the demonstrated existence of adequate "takeaway" (infrastructure of sufficient capacity to capture co-produced methane and bring it to market) before drilling can begin.

3. Require all wells where natural gas is not brought to market to be sealed up.

Although recommendation (2) above establishes conditions for approval of new drilling permits, it must not be taken as encouragement of new drilling. Given the climate crisis and attendant urgency of the state's transition to clean energy sources, I urge state officials and regulators to (a) discourage all new fossil fuel drilling and exploration to the greatest extent possible; and (b) develop robust regulatory mechanisms to enforce this commitment.

Lastly, a comment on the methane rule-making process, specifically on the composition of the methane advisory panel. For the Native Americans who constitute more than 40% of the residents of San Juan County, about half of whom (25,000 residents) live within a half-mile of an oil or gas production site [ref. 3], **methane emissions are not mere economic or technical considerations, but everyday realities that threaten to undermine health and quality of life.**

Yet the composition of the methane advisory panel is heavily weighted towards oil and gas industry groups. Of 27 stakeholders, the panel includes only two Diné individuals to represent local Native perspectives in the methane rule-making process. Hispanic and Latino residents of San Juan, Lea, and Eddy counties are, like Native Americans, also disproportionately disadvantaged by oil and gas production in the San Juan and Permian Basins. Yet these local groups likewise have no direct representation on the methane advisory panel.

It is clear that EMNRD is working hard to provide an inclusive rule-making process, with a variety of opportunities for public participation and comment. Yet for members of local communities whose lives are daily impacted by methane and other emissions, even these opportunities to participate may fall sadly short. This would be the case if opportunities for comment were offered only or primarily during the latter stages of the rule-making process, for example.

Moving forward, I hope that EMNRD will: (1) identify and eliminate any existing structural barriers that might prevent local communities, who bear the burden of exposure, from participating fully in developing regulations that will affect them; and (2) commit to ensuring that these communities have strong, direct representation at every stage and level of the rule-making process. **Human experience, no less than specialized technical expertise, is an essential foundation of good regulation.** Reflecting upon community experience is thus especially vital to the early stages of the rule-making process, when the tone and scope of the regulation are being established.

Conclusions. Strong methane regulation will bring many benefits to the people of New Mexico. Furthermore, in an era in which robust federal public health and environmental protections sadly cannot be relied upon, our strong stance will set high standards for regulatory processes in neighboring states.

The time for New Mexico state government to sever its volatile and unsustainable dependency on fossil fuel industry revenue has long since arrived. Yet, *in the short term*, taxes and royalties on wasted methane, previously lost to the state, could constitute an immediate and substantial source of revenue useful in speeding the state's transition to an economy based on cleaner, more just, and more sustainable energy sources.

Thank you very much for the opportunity to comment on the EMNRD draft methane rule.

Katherine Shera
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References

1. "New analysis reveals growing methane problem." *Environmental Defense Fund New Mexico Oil and Gas Data*, *www.edf.org/nm-oil-gas/*
2. *Environmental Defense Fund New Mexico Oil and Gas Data Explorer*, *www.edf.org/nm-oil-gas/map*
3. Ibid.