From:	Hannah Rae Neal
To:	Methanestrategy, NM, NMENV; NMOAI, NMENV; WasteRule, EMNRD, EMNRD
Cc:	Gabriel Pacyniak; James Povijua; Oriana Sandoval
Subject:	[EXT] Comments on NMED and EMNRD Draft Rules
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Good Afternoon,

Please find attached comments on NMED's Ozone Precursor Rule and EMNRD's Gas Waste Rule on behalf of both the Center for Civic Policy and the Native American Voter Alliance Education Project.

Sincerely,

Hannah Neal
UNM School of Law
NREL Clinical Student
hneal@unm.edu

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September 16, 2020

Liz Bisbey-Kuehn
Air Quality Bureau
525 Camino de los Marquez
Santa Fe, NM 87

Tiffany Polak
Oil Conservation Division
1220 South Saint Francis Dr.
Santa Fe, NM 87505

Comments submitted by email to; nm.methanestrategy@state.nm.us, nm.oai@state.nm.us and emnrd.wasterule@state.nm.us

Comments of the Center for Civic Policy and the Native American Voter Alliance Education Project in Response to NMED's Draft Ozone Precursor Rule and OCD's Draft Gas Waste Rules

I. Introduction

On behalf of the Center for Civic Policy (CCP) and the Native American Voters Alliance Education Project (NAVAEP), the University of New Mexico Natural Resources and Environmental Law Clinic (UNM Law Clinic) respectfully submits the following comments in response to the New Mexico Environmental Department's (NMED) Ozone Precursor Draft Rule, and the Oil Conservation Division's (OCD) Gas Waste Draft Rules.[1]

CCP is a non-profit community-advocacy organization whose mission is to connect underrepresented communities in New Mexico to the public policy process and to increase voter participation and turnout. CCP educates New Mexicans on a wide range of issues that impact our communities, including ethics and campaign finance reform, health care, tax and budget priorities, economic security, corporate accountability, and the environment.

CCP partners with more than 40 local and national organizations to advocate on behalf of New Mexico's low-income and minority communities; among these organizations are Somos Un Pueblo Unido, Native American Voters Alliance Education Project, Indigenous Women Rising, New Mexico CAFé, OLÉ, New Mexico Voices for Children, New Mexico Dream Team, El CENTRO de Igualdad y Derechos, New Mexico Asian Family Center, and ProgressNow New

[1] The UNM Law Clinic represents the Center for Civic Policy as legal counsel on these comments, but not NAVAEP. The comments are submitted on behalf of both organizations.

Mexico. While these organizations partner with CCP, these comments are made solely on behalf of CCP and NAVAEP.

CCP served on the Methane Advisory Panel (MAP), represented by Gabriel Pacyniak and the UNM Natural Resources and Environmental Law Clinic. CCP provided comments on the draft MAP report on February 20, 2020.

NAVAEP is a non-profit organization that engages indigenous communities throughout New Mexico on the most pressing issues facing Native people in order to build healthy and sustainable communities for Native families.

In CCP's comments on the Draft Technical Report submitted on February 20, 2020, CCP urged NMED and OCD to develop regulations that will not only lead to cost-effective reductions in methane emissions but will also result in positive impacts on New Mexico communities by maximizing job growth, minimizing harmful surface impacts, maximizing state revenue that funds public education, and by reducing harmful local co-pollutants that threaten New Mexicans' health and wellbeing.

CCP and NAVAEP are thankful for the opportunity to submit comments once again in response to NMED's Ozone Precursor Draft Rule and OCD's Gas Waste Draft Rule.

NMED and OCD are to be commended for putting forward a solid starting point for reducing air pollution and natural gas waste in the oil and gas sector. At the same time, the draft rules fall short of creating a strong framework for reducing oil and gas-related health harms, preventing unnecessary waste, and promoting methane-control related economic opportunities. In particular, the two exemptions for stripper wells and low potential-to-emit wells in NMED's draft regulations would almost completely undermine the protectiveness of the VOC regulations and would disproportionately impact vulnerable communities in the San Juan basin, including Native Americans.

CCP and NAVAEP are now urging both agencies to go further with their regulations to ensure the health and wellbeing of New Mexican's will not be compromised, and to take advantage of all benefits available to them.

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II. In Promulgating Regulations Both Agencies Should Maximize Community-Focused Co-Benefits

As detailed below, NMED has an obligation to consider co-benefits (*see* Section III.A.), and OCD has the authority to consider some co-benefits (*see* Section IV.A.).

There are four co-benefits that are particularly important to CCP and NAVAEP and the communities with which it works: (1) reducing locally harmful co-pollutants, especially VOCs (for OCD) and Hazardous Air Pollutants (HAPs) (for both agencies); (2) increasing high-quality methane-mitigation jobs for frontline communities and resulting economic benefits for New Mexicans; (3) increasing state revenue by wasting less natural gas, some of which will directly fund increased educational opportunities; and (4) reducing harms inflicted by noise and truck traffic from oil and gas operations. CCP's comments on the draft MAP report provided details on why these co-benefits were particularly important to low-income people and people of color in New Mexico.

CCP and NAVAEP urge both agencies to not only promulgate nation-leading regulations to prevent waste, reduce ozone and methane pollution, but to also maximize these community-

focused co-benefits where doing so is cost-effective. The decisions that NMED and OCD make now will have lasting implications for New Mexico communities.

III. Recommendations to Strengthen NMED's Draft Ozone Precursor Rule

A. NMED Should Seek to Reduce Localized Pollution and Maximize Community Co-Benefits in Keeping with its Authority Under the Air Quality Control Act

The Air Quality Control Act (AQCA) *requires* the Environmental Improvement Board (EIB) to control emissions of oxides of nitrogen and volatile organic compounds at a level sufficient to maintain compliance with federal standards. The statute also *requires* that the EIB consider "public-interest" and "economic" impacts when promulgating regulations, and these impacts include reducing harmful localized co-pollutants, increasing jobs, increasing state revenue, and reducing noise and traffic.

NMED has proposed regulations under its Air Quality Control Act (ACQA) authority to regulate ground-level ozone pollutants (i.e. smog) in counties that are close to exceeding federal National Ambient Air Quality Standards (NAAQS).[2] Ground-level ozone forms when Volatile Organic Compounds (VOCs)—toxic compounds that readily vaporize and adversely affect human health—combine with nitrogen oxides (NOx) in the presence of sunlight.[3] Gas emitted from oil and gas facilities typically contains intermixed VOCs, nitrous oxides, and methane, among other components.[4] Reducing ozone precursors—VOCs and NOx—therefore has the effect of also reducing methane, a potent greenhouse gas. In addition to causing ozone pollution, some VOCs such as benzene, ethylbenzene, and formaldehyde are toxic air pollutants that cause a variety of harms, including cancer, respiratory system harms, and reproductive system harms.[5] Reducing VOCs not only reduces the potential for smog, it also has the effect of reducing localized harms from these particular VOCs.

ACQA Section 74-2-5.3 requires the Environmental Improvement Board (EIB) – the entity charged with promulgating regulations under ACQA – to adopt regulations for areas within the state where pollution is within 95% of the NAAQS to keep those areas from exceeding the NAAQS.[6] According to NMED, ozone concentrations in at least six New Mexico counties meet this threshold, including in the four oil-and-gas-producing counties of Eddy, Lea,

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[2] NMSA (1978) § 74-2-5.3 (2009).

[3] U.S. ENVTL. PROTECTION AGENCY, *Ground-level Ozone Pollution: Ground-level Ozone Basics*, *available at* https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics (last visited Feb. 2020).

[4] H.P. Brown, *Composition of Natural Gas for use in the Oil and Natural Gas Sector Rulemaking* (2011), available at http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2010-0505-0084.

[5] Lesley Fleishman et al., Clean Air Task Force, FOSSIL FUMES: A PUBLIC HEALTH ANALYSIS OF TOXIC AIR POLLUTION FROM THE OIL AND GAS INDUSTRY at 7-8 (2016), *available at* https://www.catf.us/wp-content/uploads/2016/06/CATF_Pub_FossilFumes.pdf (last visited Feb. 2020).

[6] *See* https://www.epa.gov/stationary-sources-air-pollution/oil-and-natural-gas-production-facilities-national-emission

Rio Arriba, and San Juan.[7] Importantly, compliance with federal NAAQS standards is assessed on a sub-state area basis—often at the county level—reflecting that VOCs and NOx emissions form ozone on a sub-state regional, not statewide, basis.[8] Controlling emissions of these pollutants to maintain compliance with federal standards—as required by the ACQA—therefore requires ensuring that emissions are sufficiently controlled in each sub-state area, i.e., county, that is close to exceeding the federal standards.

ACQA Section 74-2-5.3 also requires the EIB to consider public-interest and economic impacts when promulgating regulations to prevent counties from exceeding NAAQS.[9] In particular, the EIB "shall consider the … public interest, including the social and economic value of the sources of emissions and subjects of air contaminants" as well as "energy, environmental and economic impacts and other social costs."[10] New Mexico courts have explicitly recognized that state statutes sometimes grant regulatory authority to agencies through such "broadly applied terms as public interest, social well-being, environmental degradation, and the like."[11] These terms are clearly capacious enough to include considerations of the benefits of reducing risk from air toxics, increasing jobs, and reducing harms from noise and truck traffic. In considering further regulations of the draft rules that NMED will propose to the EIB for promulgation, NMED should be mindful of EIB's mandatory duty to consider these economic, environmental, and social co-benefits.

B. Specific Recommendations Related to Draft Ozone Precursor Rule

CCP and NAVAEP are grateful to NMED for implementing many of the recommendations that CCP included in its comments on the draft MAP report in its draft Ozone Precursor Rule.

The draft rule establishes requirements to reduce VOCs and NOx emissions from many components and processes in the oil and gas supply chain and requires control of VOC emissions from new and existing sources. In many cases, the draft rule requires 95% control of VOC standards, which is a good starting point, although in some cases a higher standard is possible.

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[7] NMED, *Ozone Containment Initiative Air Quality Bureau, Control Strategies* (Sept. 26, 2019), *available at* https://www.env.nm.gov/air-quality/wp-content/uploads/sites/2/2019/10/OAI_Presentation_09262019.pdf (last visited Feb. 2020)

[8] Memorandum from Janet McCabe to Regional Administrators, Area Designations for the 2015 Ozone NAAQS, Feb. 25, 2016, at 6-7, https://www.epa.gov/sites/production/files/2016-02/documents/ozone-designations-guidance-2015.pdf ("EPA generally believes it is appropriate to include the entire violating or contributing county in an ozone nonattainment area").

[9] *See* https://www.epa.gov/stationary-sources-air-pollution/oil-and-natural-gas-production-facilities-national-emission

[10] NMSA (1978) § 74-2-5.3(A).

[11] *N.M. Mun. League, Inc. v. N.M. Envtl. Improvement Bd.* 1975-NMCA-083, ¶ 13, 88 N.M. 201, 209 (concluding that, in part because terms like *public interest*, *social well-being*, and *environmental degradation* "were capable of reasoned application," the New Mexico Environmental Improvement Board was within its authority to promulgate solid waste management regulations); *see also Public Serv. Co. v. N.M. Envtl. Improvement Bd.*, 1976-NMCA-039, 89 N.M. 223 (acknowledging that "the 'public interest' is a broad enough concept to permit the Board to weigh how the public will best be served" in its development of sulfur dioxide emissions regulations).

At the same time, CCP and NAVAEP see critical ways to strengthen the rule, most significantly by eliminating exceptions for stripper wells and wells with a low "potential to emit" VOCs. As described below, these exemptions severely undermine the protectiveness of the rule and are likely to cause discriminatory impacts that harm vulnerable populations.

1. NMED Should Eliminate Exceptions for Stripper Wells and Well with a Low Potential-to-Emit.

Although the draft rule creates an effective framework for reducing VOCs and NOx emissions, the rule is almost completely undermined by two exemptions. Currently the rule exempts equipment located at stripper wells and individual facilitates with site-wide total annual potential to emit less than 15 tons per year (TPY) of VOC.[12] Although these wells may emit less pollution than other wells on an individual basis, the cumulative impacts of pollution from these wells—many of which are located close together—poses a significant health danger. The two exemptions in NMED's draft regulations would severely undermine the protectiveness of the regulations and would disproportionately impact vulnerable communities in the San Juan basin, including Native Americans. This would represent both a failure to meet the legal obligation imposed by the AQCA and a discriminatory impact on the vulnerable populations—including Native Americans and children—that live in San Juan and Rio Arriba counties. NMED should amend the rule to eliminate these wholesale exceptions.

Taken together these regulations would exempt around 40% of VOC emissions from well sites across the state.[13] More importantly, in the San Juan basin, over 70% of VOC emissions from well sites would be exempted in the San Juan and Rio Arriba counties.[14]

These exemptions would have the largest impact on the San Juan basin because it is a declining field where many of the wells are marginal wells, and therefore the vast majority of wells—16,298 out of 17,177 in San Juan and Rio Arriba counties—would be exempted from the VOC standards.[15] At the same time, the cumulative impact of the pollution from these many marginal wells is causing the air pollution problems that the AQCA directs the EIB to address through these rules.

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[12] The draft rule defines 'stripper well' as an oil well with a maximum daily average oil production not exceeding 10 barrels of oil per day, or a natural gas well not exceeding 60,000 standard cubic feet of gas per day. NMED Draft Rule at 20.2.50.8 (LL), 20.2.50.25(A). Both stripper wells and low potential-to-emit wells would be subject to monitoring requirements and recordkeeping in 20.2.50.25, however these requirements do not include any substantive standards. NMED Draft Rule at 20.2.50.25(B)(1) merely requires that facilities "shall be operated and maintained consistent with manufacturer specifications and good engineering and maintenance practices." Notably, these wells are not subject to a LDAR requirement.

[13] Computed from analysis provided by EDF using well data from Enverus/DrillingInfo for 2017.

[14] *Id.*

[15] *Id. See also, e.g.,* OCD County Production by Month for San Juan County, https://wwwapps.emnrd.state.nm.us/ocd/ocdpermitting//Reporting/Production/CountyProductionInjectionSummary.aspx (showing declining gas production volumes over past 20 years).

For example, San Juan County has received an F grade for ozone pollution from the American Lung Association,[16] and is above EPA's level of concern for Respiratory Hazard Risk, due in large part to VOC emissions from oil and gas production.[17] San Juan County is also above EPA's level of concern for cancer risk, driven also by VOC emissions from oil and gas production.[18] Yet according to 2017 data, 71% of VOC well-site emissions in the county would be exempted from the proposed air pollution regulations because they were emitted at exempted wells.[19]

The numbers are similar for adjoining Rio Arriba county, where 75% of VOC well-site emissions would be exempted.[20]

The two major Permian basin counties, Lea and Eddy, would also see a substantial portion of the emissions from well sites excepted from regulation—34% and 27% respectively.[21]

Under Section 74-2-5.3, the ACQA requires the EIB to control VOC and NOx emissions in qualifying counties "to provide for attainment and maintenance" of the federal NAAQS standard. Because NAAQS attainment is assessed on a sub-state area basis,[22] the regulations must be effective at controlling emissions in the local area—i.e., the county—at a level sufficient to maintain attainment with the federal standard. It is highly doubtful that NMED's proposed regulations meet this standard when they exempt over 70% of the emissions from well sites in two counties with pronounced air pollution problems.

Moreover, these exemptions would harm vulnerable populations, including Native Americans and children.

In San Juan county alone, *22,000 Native Americans and 6,500 children* will live within one mile of an exempted well.[23]

This exemption could also place NMED at risk of a disparate impact discrimination complaint under Title VI of the Civil Rights Act. Title VI prohibits federal grantees from discriminating on the basis of race,[24] and EPA's Title VI regulations prohibit its grantees from using federal assistance in actions or programs that result in discriminatory impacts on people of a specific race.[25] The San Juan basin is unique in that it lies in part on the Navajo Nation and the area is home to one of the state's largest populations of Native Americans—41% of county residents identify as Native American.[26] The draft rule would *exempt* the majority of wellsite

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[16] Report Card: New Mexico, American Lung Association, https://www.stateoftheair.org/city-rankings/states/new-mexico/ (last visited Sept. 14, 2020).

[17] Lesley Fleishman et al, *supra* note 4 at 5.

[18] *Id.*

[19] Computed from analysis provided by EDF using well data from Enverus/DrillingInfo for 2017.

[20] *Id.*

[21] *Id.*

[22] *See* discussion *supra* at note 7.

[23] Analysis provided by EDF using well data from Enverus/DrillingInfo for 2017.

[24] 42 U.S.C. § 2000d–1.

[25] 40 C.F.R. § 7.35.

[26] Quick Facts, U.S. Census, https://www.census.gov/quickfacts/fact/table/eddycountynewmexico,sanjuancountynewmexico,NM/PST045219.

VOC emissions in the San Juan basin. In contrast, the draft rule would *not exempt* the majority of wellsite VOC emissions in the Permian Basin, which does not have a large Native American population. For example, in the Permian Basin's Eddy County, only 2.4% of Eddy County residents identify as Native American.[27] The majority of Eddy County residents—92%—identify as white.[28] In San Juan County, with its large Native American population, 71% of well-site VOC emissions would be exempted; in predominantly-White Eddy County, only 27% of wellsite emissions would be exempted.[29] The regulation would therefore likely result in a discriminatory impact on Native Americans because it allows for a much greater percentage of emissions to go unregulated in the area that has a uniquely high population of Native Americans. If NMED receives federal assistance to support this action or program, it could be subject to a Title VI complaint.

NMED cannot and should not rely on potential emission reductions from OCD's proposed gas capture regulation to satisfy the legal obligations of EIB under the ACQA.[30] First, the ACQA directs the EIB or the local air board, and not any other state agency, to "adopt a plan, including regulations" to control VOC and NOx emissions at a level sufficient to maintain compliance with federal standards.[31] Second, the proposed OCD regulations do not require agencies to inspect for leaks or to retrofit equipment at each site. This is particularly important because of the phenomenon of "super emitters," which is documented by peer-reviewed science.[32] Even a well with "potential to emit" less than 15 tons per year could be a super emitter if there is a malfunctioning dehydrator or compressor, or a failure of tank control systems.[33] The "potential-to-emit" threshold fails to account for such abnormal operation emissions. Such a super-emitter could pose a serious health risk to those living near it. NMED also cannot rely on the proposed OCD requirement that operators capture 98% of produced gas to meet their obligation to control VOC emissions.[34] As currently written, this standard does not require VOC reduction in any particular area or facility, and therefore provides no guarantee that emissions will be reduce proportionately in each county.[35] Moreover, because it does not require emission reductions at each site, it means that the local health harms from toxic VOCs could be reduced at some wells and not at others.

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[27] *Id.*

[28] *Id.*

[29] *See* discussion *supra* at notes 18 and 20.

[30] *See* NMED tweet responding to EDF twitter critique of exceptions: "Not true. EDF fails to grasp that NMED and @EmnrdNM's draft rules complement one another to target harmful emissions from every oil and gas well in the state. Both rules will result in significant reductions of #methane in #NewMexico. #TellingTheWholeStory," Sept. 3, 2020, https://twitter.com/NMEnvDep/status/1301578515142172672.

[31] NSMA (1978) § 74-2-5.3 (A) (specifying that if "environmental improvement board or the local board determines" that emission from sources in excess of 95% of NAAQS for ozone, then "it shall adopt a plan, including regulations, to control emissions").

[32] *See, e.g.,* Zavala-Araiza, D. *et al*. Super-emitters in natural gas infrastructure are caused by abnormal process conditions. *Nat. Commun.* **8,** 14012 doi: 10.1038/ncomms14012 (2017).

[33] *Id.*

[34] *See* OCD Draft Rule Venting and Flaring of Natural Gas at 19.15.27.9; OCD Draft Rule Natural Gas Gathering Systems at 19.15.28.23.

[35] *See* discussion *infra* at IV.B.2.

In sum, the stripper well and low potential-to-emit threshold exemptions severely undermine the protectiveness of the draft rule. The AQCA tasks the EIB, not another state agency, with adopting a plan and regulations to control VOCs sufficient to maintain compliance with federal ozone standards in each county. Exempting a substantial portion of wellsite emissions does not meet this obligation, and it especially fails in the San Juan basin. The exemptions will also have discriminatory impacts on vulnerable groups, in particular failing to protect Native Americans.

2. Leak Detection and Repair Requirement

In its comments on the draft MAP report, CCP urged NMED to require quarterly leak detection and repair (LDAR). LDAR is a cost-effective methane-reduction strategy that will reduce VOCs, NOx, and methane emissions and generate job growth in New Mexico communities, state revenue for education, and health co-benefits for New Mexicans.

a. Include Pneumatic Controllers in Quarterly LDAR requirements

Fugitive methane emissions escape from leaking equipment components, including from connectors, covers, closed vent systems (CVs), flanges, instruments, meters, open-ended lines (OELs), pneumatic controllers, pressure relief devices (PRDs), their hatches, and valves.[36] Quarterly leak detection and repair inspections will alert operators to leaking equipment in a timelier manner than do less-frequent inspections, promoting operators to respond according to regulations governing their maintenance and replacement of such equipment.

The current rule requires quarterly leak detection and repair (LDAR) for facilities with the potential to emit over 5 TPY of VOCs.[37] CCP and NAVAEP would like to thank NMED for including this provision and increasing the chances of catching any leaks or necessary repairs on a more frequent basis. By catching leaks sooner, companies will be able to capture more natural gas which will increase revenue for both them and the state of New Mexico which will go towards public education and accelerate the development of methane control job opportunities for New Mexicans.

NMED should close one critical loophole in its LDAR requirements, however. The draft regulation does not require operators to conduct LDAR on pneumatic controllers.[38] Yet pneumatic controllers are the second largest source of methane emissions from the oil and gas sector, and malfunctioning pneumatic controllers are responsible for half of these emissions.[39] Other jurisdictions, including Colorado and California, require operators to conduct LDAR to

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[36] U.S. ENVTL. PROTECTION AGENCY, EPA-HQ-OAR-2017-0483, Equivalency of State Fugitive Emissions Programs for Well Sites and Compressor Stations to Proposed Standards at 40 C.F.R. Part 60, Subpart OOOa (Apr. 12, 2018), *available at* www.epa.gov/sites/production/files/2018-09/documents/equivalency_of_state_fugitive_emissions_programs_for_well_sites_and_compresor_stations.pdf (last visited Feb. 2020).

[37] NMED Draft Rule 20.2.50.16 (C)(2)(c)(i).

[38] NMED Draft Rule 20.2.50.16 (A) (not including pneumatic controllers).

[39] Methane emissions from malfunctioning, low-bleed, and intermittent bleed controllers combine to be the second-largest source of emissions. New Mexico Oil and Gas Data, Environmental Defense Fund, https://www.edf.org/nm-oil-gas/emissions/ (last visited Sep. 15, 2020).

ensure that pneumatic devices are not venting between actuation events.[40] NMED should close this loophole and similarly include pneumatic controllers in the list of devices that must be subject to LDAR.

b. Require Public Posting of Identified Leaks

CCP also recommended that the regulations require prompt repair of any leaks found. Regulations that require prompt repair of leaks will cut VOCs, NOx and methane, prevent waste of valuable natural gas, and will open the door to skills-training and job opportunities for New Mexicans and inspire the development of a local labor force skilled in maintenance.

CCP and NAVAEP would like to acknowledge and thank NMED for creating a strong repair timeline into the draft rule, which generally requires repairs within 15 days or less.[41]

In keeping with NMED's request to identify areas in the NMED rule where the agency can provide more transparency,[42] CCP and NAVAEP request that all leaks identified be posted by operators to a public online database, including the date of the leak, piece of faulty equipment, facility, date the leak was discovered, and then updated when the leak is repaired. This would help ensure—and allow the public to monitor—that leaks are being timely repaired.

c. Require Replacement of Older, High Emissions Technologies.

In general, CCP recommended that regulations should require the retrofitting or replacement of older technologies that are significant sources of methane emissions. This is important because technological advances in equipment such as zero-bleed controllers and centrifugal compressors can eliminate many of the VOC and NOx emissions associated with oil and gas production. Requiring a reasonable rate of replacement on older technologies will also contribute to the development of a methane control industry and associated jobs in New Mexico.

There are several areas where NMED can and should require replacement of older technologies with new technologies that are widely used. For example, NMED can and should require operators to implement a schedule of retrofitting older pneumatic controllers and centrifugal compressors.

NMED proposes generally that existing pneumatic controllers sites without access to electric power should achieve an emission rate of 6 standard cubic feet per hour (scf/h) within one year of the rule's effective date.[43] New technology, however, such as solar-powered zero-bleed controllers, are already in use in other jurisdictions.[44] These zero emission controllers can dramatically curtail emissions from the large source of emissions in the oil and gas supply chain,

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[40] Cal. Code Regs. tit. 17, § 95668(e) (3)–(4); New Mexico Methane Advisory Panel Report at 22 (2020) (describing Colorado pneumatic LDAR requirements).

[41] NMED Draft Rule at 20.2.50.16 (D).

[42] NMED Draft Rule at Page 1, #7.

[43] NMED Draft Rule at 20.2.50.22 (B)(3). There is an exception for "function needs" that should be eliminated.

[44] *See* Alberta Energy Regulator, Directive 060, § 8.6.1

and they are endorsed in the oil-and-gas industry's *Methane Guiding Principles Partnership*.[45] NMED should require that operators transition their fleets towards these zero-emission devices on a reasonable schedule.

Similarly, CCP recommended that NMED require that wet seals be replaced by dry seals or by wet seals with degassing capture on centrifugal compressors. The current rule includes the degassing emission standard, requiring that new and existing wet seal compressors meet a 95% VOC control standard through degassing.[46] This is a huge improvement and CCP and NAVAEP are thankful for this. However, the NMED rule creates an exemption for compressors at wellhead sites—this exception should be eliminated.[47] This is harmful because it misses many opportunities to ensure wells are being properly and consistently degassed.

3. Require Reduced Emissions Completions / Recompletions

A large quantity of harmful gases, like methane and VOCs are released at the completion and recompletion stages of a well. This is extremely harmful to the atmosphere and communities across the state. This can be prevented by creating stricter regulations.

While EPA does require green completions (or Reduced Emission Completions – RECs) at most wells under Subpart OOOOa,[48] operators are reportedly using ambiguities in the regulations to avoid using green completions for each and every well.

Reduced Emissions Completion (REC) should be required under NMED's regulation. If not, large amounts of gas will be released directly into the environment which will ultimately result in harm to the community's health and harm to the environment as a whole. Operators should be required to route initial flowback through REC equipment. This will capture more gas which can be rerouted for sale. In particular, NMED should look to regulations in place in Canada, and those proposed in Colorado, that prohibit or would prohibit nearly all venting associated with flowback.[49]

Including these green completion requirements will bring in more money for the state and the education of New Mexican children. Further, by capturing the gas during the process the released of toxic gas into the atmosphere will be reduced, and the health of New Mexicans will improve.

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[45] Methane Guiding Principles, Synopsis, Reducing Methane Emissions: Best Practice Guide, Pneumatic Devices (2019), https://methaneguidingprinciples.org/wp-content/uploads/2019/11/Reducing-Methane-Emissions-Synopsis-Pneumatic-Devices.pdf.

[46] NMED Draft Rule at 20.2.50.14 (B)(1).

[47] *Id*. at (A)(1).

[48] 40 C.F.R. § 60.5375a.

[49] Regulations Respecting Reduction in the Release of Methane and Certain Volatile Organic Compounds (Upstream Oil and Gas Sector) (SOR/2018-66), § 11(2); Proposed 5 CCR 1001-9, VI.D.1.a.

IV. Recommendations to Strengthen OCD's Draft Natural Gas Waste Rules

A. OCD's Should Seek to Maximize Co-benefits it is Allowed to Consider Under the Oil and Gas Act

The Oil and Gas Act provides broad authority to OCD to prevent waste in the production of crude petroleum oil or natural gas, including through rulemaking. As the Oil Conservation Commission (OCC) has noted in prior orders, the duties assigned by the Oil and Gas Act to the OCD include "duties to prevent waste, protect correlative rights, and *protect health and the environment*" (emphasis added).[50] The Oil and Gas Act authorizes OCD to promulgate regulations to "protect public health and the environment" in specific circumstances. These circumstances include the following:[51]

• "disposition of nondomestic wastes resulting from the exploration, development. Production or storage of… natural gas";

• "transportation of… natural gas, [and] the treatment of natural gas"; and

• "disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas…"

The Oil and Gas Act also authorizes OCD to promulgate regulations to "require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties."[52]

In revising the proposed Natural Gas Waste regulations OCD should continue to consider the potential co-benefits to the environment, public health, and neighboring properties consistent with these authorities.

B. Specific Recommendations Related to OCD's Gas Waste Rules

1. OCD Should Prohibit Non-Emergency Venting

CCP recommended the OCD regulations should prohibit operators from venting when they could route gas to a process or sale, or flare instead. Venting is particularly harmful because it releases uncontrolled methane, which is 84 times more potent than carbon dioxide as a greenhouse gas over a 20 year period.[53] Venting also emits toxic pollutants that are particularly

[50] Oil Conservation Commission Order R-13096-B at 9-10.
[51] NMSA (1978) § 70-2-12.
[52] *Id.*
[53] Understanding Global Warming Potentials, EPA, https://www.epa.gov/ghgemissions/understanding-global-warming-potentials (last visited Sept. 15, 2020).

dangerous to nearby residents.[54] Limiting venting will reduce the release and creation of harmful pollutants, which will reduce the communities' health risks.

OCD should therefore prohibit venting in all stages covered by 19.15.27.8—drilling, completion, and production—except for bonafide emergency situations. Prohibiting venting at all stages of production will reduce the emissions of harmful VOCs and HAPs and will protect New Mexicans by reducing their exposure to these harmful chemicals.

2. 98% Gas Capture Requirement Should Apply at a County Level

CCP recommended in its comments on the draft MAP report operators be subject to limits on venting and flaring. We commend OCD for proposing to limit venting and flaring so that by the end of 2026, 98% of gas is captured. This will lead drive substantial public health and revenue benefits for the state.

At the same time, this statewide performance standard creates a risk that operators with assets in multiple basins could comply by substantially reducing emissions in one basin and not the other. In particular, an operator with many marginal wells in the San Juan basin as well as with some high producing wells in the Permian basin could potential comply across its fleet by largely focusing its gas capture efforts on high-producing wells in the Permian. This would have the effect of providing substantial co-pollutant reductions in the Permian but not in the San Juan basin. Similar to the effect of exempting stripper wells and low potential-to-emit VOC wells described above, this could have a discriminatory impact on Native Americans and other vulnerable populations.

CCP and NAVAEP therefore urge OCD to require that the gas capture requirement be accounted for on a county-wide basis, so that the distribution of natural gas waste reduction—and therefore pollution reduction—is more equitably distributed across the state and protects more New Mexicans. Using a county-by-county standard would also ensure that methane control work—and therefore methane control jobs—were more evenly distributed across the state.

3. Gas Management Planning Requirements Should be Strengthened to Prevent Routine Flaring, Take into Account Surface Impacts, and Provide an Opportunity for Public Input

CCP recommended that the OCD rule strengthen the requirements for gas capture planning, and CCP and NAVAEP commend OCD for including a much-strengthened gas management planning requirement for both production and gathering systems.[55] Such planning is crucial to ensuring that gas is not wasted, especially in the Permian basin where operators are drilling for oil, and to ensuring the reduction of routing flaring and unnecessary venting.

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[54] The levels of toxic pollutants emitted depend on the composition of gas from the well and where in the supply chain the venting happens. *See* H.P. Brown, *Composition of Natural Gas for use in the Oil and Natural Gas Sector Rulemaking* (2011), available at http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2010-0505-0084.

[55] OCD Draft Rules at 19.15.27.9 (D), 19.15.28.23(D).

OCD's can and should strengthen these regulations to explicitly require an end to routine flaring. Routine flaring causes environmental and public health harms, in part because not all of the gas is combusted. The World Bank Group has called to an end of routine flaring, recognizing the harms it causes.[56] While the proposed regulation is commendable in that it calls on operators to *analyze* alternatives to routine flaring,[57] it should go a step further and prohibit operators from planning on using such routine flaring.

OCD should also recognize that the Gas Management planning is an opportune time for operators to consider surface impacts from their proposed activities, including noise and truck traffic, in keeping with OCD's authority to promulgate regulations that prevent harm to neighboring properties.[58] OCD should require that gas management plans identify residences, school, churches, business and other surface uses that may be impacted by infrastructure development and proactively identify measures to mitigate such impacts. OCD should also provide a mechanism for the public to provide input and flag harmful impacts that could be mitigated through infrastructure planning.

4. OCD Should Require that 98% of Gas Be Combusted in Flaring

CCP asked EMNRD to create regulations should require the adoption of high-performance flares for both new and existing flares. This is important because flaring still releases substantial volumes of methane, because at least 2-5% of gas is not combusted during flaring.[59]

OCD did include requirements that all flares use an automatic ignition system or continuous pilot, which CCP and NAVAEP are grateful for. CCP and NAVAEP request that OCD go one step further and set a performance standard requiring that 98% of all flared gas be combusted (Destruction and Removal Efficiency, or DRE).

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[56] Zero Routine Flaring by 2030, World Bank Group, https://www.worldbank.org/en/programs/zero-routine-flaring-by-2030 (last visited Sep. 15, 2020).

[57] OCD Draft Rules at 19.15.27.9 (D)(2)(h).

[58] NMSA (1978) § 70-2-12(b)(7).

[59] *See, e.g.,* Robert Kleinberg, Greenhouse Gas Footprint of Oilfield Flares Accounting for Realistic Flare Gas Composition and Distribution of Flare Efficiencies (2019), https://doi.org/10.1002/essoar.10501228.1.

V. Conclusion

New Mexico's frontline communities bear the brunt of health, environmental, and quality of life impacts of oil and gas production. CCP and NAVAEP are grateful to NMED and OCD for taking the highly affected communities into account while drafting their rules, but they urge them to take the rules to the next step to truly prioritize the health and safety of New Mexicans. Most critical to this effort is removing exceptions for stripper wells and low-potential to emit wells from NMED's draft rules, which would severely undermine the protectiveness of the regulations.

Putting New Mexican's first will not only benefit vulnerable communities, but the State as a whole.

CCP and NAVAEP thank NMED and OCD for the opportunity to provide these comments.

Prepared by:

/s/ Hannah Neal

Hannah Neal
Clinical Law Student
UNM Natural Resources and Environmental Law Clinic
Counsel for Center for Civic Policy

Supervised by:

/s/ Gabriel Pacyniak

Professor Gabriel Pacyniak
Faculty Supervisor
UNM Natural Resources and Environmental Law Clinic