

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

**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 PRE-HEARING STATEMENT

This Pre-Hearing Statement is submitted on behalf of the New Mexico Oil and Gas Association ("NMOGA"), through its undersigned counsel, as required by NMAC 19.15.3.11.B and Amended Procedural Order No. R-21540-A.

INTRODUCTION

NMOGA supports clear, practical, cost-effective and performance-based standards designed to reduce unnecessary or excessive surface loss without beneficial use, and as such, has made intentional revisions to the Oil Conservation Division's ("Division") proposed regulations, 19.15.27 and 19.15.28 NMAC ("Proposed Rules"). NMOGA supports the Division's goal of achieving a 98% gas capture percentage by 2026. However, the experience in North Dakota indicates this goal will be difficult to achieve in the proposed five-year timeframe.¹ The rules must allow engineers, commercial teams and other experts the flexibility needed to effectively develop practical, cost effective means of achieving this goal. Overly specific operational restrictions; low volume and low pressure venting, flaring, measurement, or reporting requirements; and reporting

¹ North Dakota Industrial Commission (NDIC) first established numerical gas capture requirements in 2014 (Order 24392, 05/14/14), which initially included a 74% capture by Oct. 1, 2014 and increasing to 95% in 2020. In 2015, NDIC provided operators a 2-year extension, then formally revised its goals in 2018 to a 91% capture by Nov 1, 2020. Industry is currently capturing 93% of the produced natural gas after investing in additional gas gathering and processing infrastructure. "ND Dept of Mineral Resources Announces Record Gas Capture Numbers," North Dakota Petroleum Council Press Release, Nov. 17, 2020, <http://www.ndoil.org/nd-dept-of-mineral-resources-announces-record-gas-capture-numbers/>

requirements that overlap or duplicate areas within the jurisdiction of the New Mexico Environment Department (NMED) (including those expected to be addressed by NMED) will limit the needed flexibility and overwhelm agency and company personnel with costly tasks that hamper, distract from, and do not add value to waste reduction efforts. NMOGA has therefore offered proposed modifications that are intended to establish clear, cost-effective, performance-based standards that allow operators flexibility in reducing unnecessary or excessive surface loss without beneficial use, and avoid overly burdensome, duplicative and ineffective reporting requirements.

NMOGA further encourages the Commission to carefully consider its statutory authority² to prevent “surface waste,” which is defined as the prevention of “unnecessary or excessive surface loss or destruction without beneficial use.” *See* NMSA 1978, §70-2-3.B. The Commission must be cognizant of its statutory authority and not repeat the jurisdictional overreach that led to the vacatur of the 2016 Bureau of Land Management (BLM) Rules. *See* Wyoming v. U.S. Dept. of

² As OCD itself recognizes, there are areas “over which OCD does not have jurisdiction.” *See* New Mexico Oil Conservation Division website, Oil and Gas Education, “What are the limits on OCD’s jurisdiction?” available at <http://www.emnrd.state.nm.us/OCD/education.html#OGProd6>. In particular, the OCD states that

“[o]n non-federal lands, there are a few additional areas related to the oil and gas industry over which OCD does not have jurisdiction: . . .

Noise: OCD has no statutory authority over noise or nuisance related issues. Noise and nuisance related issues are governed by local ordinances.

Odors and Air Contaminants: OCD does not have regulatory authority over odors or air contaminants other than the disposal of certain gas by-products. However, for a well within city limits, a city may enact ordinances regarding odors or other nuisances. In addition, the [New Mexico Environment Department Air Quality Bureau](#) has jurisdiction over odor and air contaminants through the Air Quality Control Act.

Pipelines: Oil and gas pipelines are under the jurisdiction of the [NM Public Regulation Commission](#) and [U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration](#). The OCD does, however, have oversight over spills that may take place from gathering lines or pipelines related to oil and gas production activities.” *See id.* (emphasis in original) (hyperlinks in original).

Even the OCD Environmental Bureau’s scope is limited to “developing and enforcing all of the environmental regulations and programs in the oil and gas industry for the prevention of ground water contamination.” www.EMNRD.state.nm.us/ocd/envbureau.html

Interior, Case No. 2:16-CV-0285-SWS, *Order On Petitions for Review of Final Agency Action*, (D. Wyo., Oct. 8, 2020) (hereinafter “Wyoming Vacatur Decision”). As more detailed below, the Commission must remain cognizant of the meaning of “surface waste” in the Oil and Gas Act and avoid adopting proposals by other parties to monitor, measure and regulate oil and gas sources solely for purposes of reducing air emissions, as those are within the "substantive field" of the EPA and NMED under the Clean Air Act and state air quality authorities. *Id.* at 21.

NMOGA recognizes the enormous amount of effort involved in developing these regulations and appreciates the Division’s substantial revisions to the July 20, 2020 initial draft, which have resulted in the Proposed Rules. And despite concerns that remain regarding technical, safety, policy, and jurisdictional matters, NMOGA’s Proposed Modifications reflect its best efforts to work within the framework of the Proposed Rules and to provide support where it can. However, there are numerous instances where the issues and concerns are significant enough to NMOGA, and accordingly, NMOGA has proposed redlines and even alternatives to its preferred redlines, to ensure that the Commission properly considers NMOGA’s concerns. For these reasons, NMOGA has developed thoughtful, surgical, intentional and limited revisions to the Proposed Rules. To assist the Commission, the Division, and other parties with understanding NMOGA’s positions, NMOGA has provided in Exhibits A and B (each entitled “NMOGA’s Proposed Modifications”) redlines to the Proposed Rules and justifications for those redlines, respectively. As these rules are targeted to the regulated community, NMOGA greatly appreciates the opportunity to provide these intentional and necessary revisions.

A. Surface Waste Does Not Include All Surface Loss, But Only Surface Loss That is “Unnecessary” For Efficient and Effective Operations, That is “Excessive” Under Prudent Operator Standards, or That Does Not Provide a “Beneficial Use.”

The Division has proposed to strike the following regulations, which were enacted in 1950 and have governed the measurement, venting and flaring of gas at New Mexico well sites for seventy (70) years:

- NMAC 19.15.18.11: Stating operators are “not required to measure the exact amount of casinghead gas” used for fuel and normal operations and requiring metering only where “sold or transported away from a lease.”
- NMAC 19.15.18.12.A: Allowing the flaring or venting of casinghead gas for up to “60 days following the well’s completion” due to safety reasons, operational efficiencies and the difficulty in capturing casinghead gas during drilling, completion and startup operations.
- NMAC 19.15.18.12.B: Allowing flaring or venting of casinghead gas beyond 60 days following completion where it is “reasonably necessary to protect correlative rights, prevent waste or prevent undue hardships on the applicant.” (emphasis added).
- NMAC 19.15.19.10: Authorizing venting and flaring from gas wells until “after completion of a gas well.”

These long-standing provisions were enacted under, and conform with, the same statutory authority to prevent “surface waste” that governs the Commission’s authority today:

70-2-3. Waste; definitions.

A. “underground waste” as those words are generally understood in the oil and gas business, and in any event to embrace the inefficient, excessive or improper, use or dissipation of the reservoir energy....

B. “surface waste” as those words are generally understood in the oil and gas business, and in any event to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of natural gas of any type or in any form or crude petroleum oil, or any product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing, well or wells, or incident to or resulting from the use of

inefficient storage or from the production of crude petroleum oil or natural gas in excess of the reasonable market demand;

NMSA 1978, § 70-2-3 (emphasis added).

Prompted by Executive Order 2019-003, the Division seeks to replace these longstanding rules with new rules proposed as 19.15.27 (Part 27) governing well sites, and 19.15.28 (Part 28) governing gathering systems. These extensive replacement rules start by broadly classifying **all** venting and flaring as waste. *See* Proposed Part 27.8.A and Part 28.8.A. Parts 27 and 28 then proceed to: impose venting and flaring restrictions during drilling, completion and startup activities; impose performance standards on production and gathering equipment; impose measurement requirements on all venting and flaring, including low volume and low pressure gas sources; and impose new reporting obligations, which unnecessarily and inappropriately overlap with NMED.

1. Combustion and emissions from the normal operation of low pressure sources is not surface waste.

One significant example of our concerns regarding jurisdictional considerations is the inclusion of releases from low pressure sources within the definition of venting and flaring and therefore potentially treating these releases as waste. In numerous places, the Proposed Rules impose the same limitations, require the same performance standards, mandate the same treatment, and require the same measurement, reporting and gas capture plan calculations for low pressure combustion and low pressure emissions as it would from high pressure venting and flaring. As articulated in greater detail below, NMOGA does not believe that such an approach is supported from either a technical, safety, legal, or policy perspective.

Some emissions and combustion during production operations are necessary and expected during normal operations. This should not be deemed as venting and flaring. Instead,

the Commission must recognize that oil and gas production facilities and facilities within the natural gas gathering system have emissions (and combustion) as part of their normal aspects of safe oil and natural gas production and that in many instances these emissions are necessary, avoid increased emissions to the atmosphere, result in a beneficial use or at a minimum are not excessive.

Owners and operators of these facilities evaluate and, if necessary, ensure proper authorization of these emissions from NMED pursuant to NMED's authority over air quality in the state. For example, at many facilities, pneumatic controllers are used to monitor and control process parameters such as liquid level, pressure or temperature, and are designed to release natural gas as part of that monitoring and control process. The beneficial use provided by pneumatic controllers at certain facilities are regulated by the Environmental Protection Agency, and NMED is expected to propose further regulations for pneumatic controllers as part of its proposed rule package in early 2021.

Similarly, NMED already regulates low pressure sources, which are a function of normal operations, and generally, cannot be readily captured and sent to sales, and include storage tanks or other low-pressure production vessels, the loading out of liquids from storage tanks or other low-pressure production vessels to a transport vehicle, and pneumatic pumps. None of the emissions associated with these activities constitute waste. Generally, it is technically infeasible to capture emissions from these low pressure sources (e.g., during tank gauging or during thief hatch maintenance). In the limited instances where these sources could be captured, they cannot be readily routed to a sales line. Thus, emissions from these sources and related emission reduction methodologies are more appropriately addressed by NMED under its federally delegated authority and state authorizations to regulate air emissions – not through restrictive

requirements limiting air emissions pursuant to authority to reduce waste. In fact, in many cases, air quality regulations or authorizations mandate the combustion of gas from storage tanks to avoid emissions into the atmosphere. It is unnecessary and inappropriate for the Commission to specifically address every potential source of gas emitted or combusted during normal operations, particularly emissions or combustion from low pressure sources. Such a result would exceed the Commission's focus of avoiding waste. Because these sources should not be treated as venting and flaring under the rule, they also should not be mandated for measurement or estimation, reporting or inclusion in the gas capture percentages proposed by the Division.

2. The Commission's authority to regulate surface waste limits the scope of these regulations, including regulations addressing emissions and combustion from the normal operation of low pressure sources.

From a legal perspective, many of the Proposed Rule provisions, including the broad definitions of venting and flaring (and the subsequent regulations related to venting and flaring), are untethered to the statutory definition of "surface waste." While the Division cites the Commission's authority to prevent waste under Sections 70-2-6 and 70-2-11 of the Oil and Gas Act as support for the Proposed Rules,³ the Division does not cite or adhere to the critical

³ Section 70-2-6 establishes that the Commission has broad authority over the conservation of oil and gas and the prevention of waste of potash:

70-2-6 Commission's and division's powers and duties.

A. The division shall have, and is hereby given, jurisdiction and authority over all matters relating to the conservation of oil and gas and the prevention of waste of potash as a result of oil or gas operations in this state. It shall have jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas and the prevention of waste of potash as a result of oil or gas operations.

B. The commission shall have concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties as required by law. In addition, any hearing on any matter may be held before the commission if the division director, in his discretion, determines that the commission shall hear the matter. [emphasis added]

definition of “surface waste” in Section 70-2-3.B which provides appropriate sideboards on the Commission’s authority. *See* Proposed 19.15.27.3 and 19.15.28.3. Accordingly, many of the extensive replacement provisions are untethered to the statutory definition of “surface waste” and are not in sync with the Act.

Section 70-2-3.B conveys a legislative understanding that some venting and flaring is necessary to ensure worker safety, and to foster efficient and effective oil and gas development. The statute authorizes limitations on venting and flaring only when (i) “unnecessary”; (ii) “excessive;” or (iii) does not provide a “beneficial use.” Yet, the Proposed Rules start with the improper statement that **all** venting and flaring during drilling, completion, startup, production and gathering operations “constitute waste.” *See* Proposed Part 27.8.A and Part 28.8.A. From this improper premise, the Proposed Rules require operators to measure, capture or curtail surface loss whether or not it is safe, whether or not it is “necessary” for efficient and effective production operations, whether or not it is “excessive” under prudent operator standards, and whether or not it provides a “beneficial use.” As the U.S District Court for the District of Wyoming recently found, similar departures from the governing concept of “surface waste” led to the vacatur of the 2016 BLM rules:

Thus, pursuant to DOIs longstanding interpretation and implementation of its MLA authority, whether a loss is deemed “avoidable” (and therefore constitutes impermissible “waste”) has

Section 70-2-11 grants broad authority to “prevent waste” as defined in 70-2-3:

70-2-11. Power of commission and division to prevent waste and protect correlative rights.

A. The division is hereby empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided. To that end, the division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof.

B. The commission shall have concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties as required by law. [emphasis added]

turned on whether it would have been economic for the lessee to market the gas from the well at issue. In contrast, the 2016 Rule deems losses of gas “avoidable” (virtually all venting and flaring unless falling within one of twelve categories considered “unavoidable” losses) without determining whether a reasonable and prudent operator would, given the circumstances, capture and market the gas. [citations omitted]

Wyoming Vacatur Decision at 35. The Court further noted that regulations requiring operators to measure or capture surface loss traditionally recognized as necessary, non-excessive or providing a beneficial use cannot be sustained by perceived ancillary benefits to society:

To require operators to do so, especially based on an externality like the global social cost of methane, ignores the longstanding concept of "waste" in oil and gas law and is inconsistent with the prudent-operator standard incorporated in the MLA and as historically applied by the BLM.

Id. at 34.

3. NMOGA’s proposed revisions to the definitions of venting and flaring properly and necessarily exclude low pressure sources.

In order to address the above concerns and avoid having the terms venting and flaring apply to emissions or combustion from low pressure sources, NMOGA has proposed revisions to the definitions of venting and flaring that would exclude low pressure sources. As noted in greater detail below, the definitions proposed by NMOGA are consistent with the Obama Administration’s 2016 BLM Rule and the Colorado Oil and Gas Conservation Commission’s recent regulatory definitions of venting and flaring. In addition, because emissions and combustion from such low pressure sources should not be considered venting and flaring, NMOGA has also removed references to reporting of low pressure sources in 19.15.27.8.G(2), and 19.15.28.8.F(2). These changes are critical.⁴ The Commission may note that NMOGA has

⁴ It is NMOGA’s strong preference that the Commission adopt NMOGA’s proposed definitions of venting and flaring, however, in working within the Proposed Rules’ framework, and because this issue is so critical to NMOGA, that it has also provided alternative proposed changes to include or exclude (as applicable) low pressure

not removed low pressure sources (and in fact has added additional low pressure sources) to the exceptions in 19.15.27.8.D(5) and 19.15.28.8.B(3)(a). NMOGA believes that the retention of and additions to the exceptions for low pressure sources confirms and bolsters that these rules do not apply to low pressure sources. NMOGA has reflected in each of the applicable justifications its intent to eliminate low pressure sources from the Proposed Rules.

Specifically, NMOGA proposes the following redlines to the definitions of venting and flaring in both Part 27 and 28:

“Flare” or “Flaring” means the controlled combustion of natural gas without beneficial use in a device designed for that purpose. Combustion of gas from low pressure sources, including but not limited to vapor recovery towers or storage tanks, is not flaring for the purposes of 19.15.27 NMAC.

“Vent” or “Venting” means the release of uncombusted natural gas to the atmosphere, but does not include:

(1) the emission of gas from devices or equipment, such as pneumatic devices and pneumatic pumps, that are designed to emit as part of normal operations if such emissions are not prohibited by New Mexico Environment Department, Environmental Protection Agency or tribal authority;

(2) unintentional leaks that are not the result of inadequate equipment design; and

(3) natural gas released from, or downstream of, a tank unless there is no separation occurring at equipment upstream of the tank; the separation equipment is not sufficiently sized to capture the entrained gas; or the natural gas is sent to the tank during circumstances when the gas cannot be sent to the gathering line or the combustion equipment used to Flare the gas is not operating.

These definitions draw from other jurisdictions (such as the Bureau of Land Management (BLM) and the State of Colorado, Colorado Oil and Gas Conservation Commission (COGCC)) both of which have agreed generally that emissions and combustion from low pressure sources

sources from the most impactful portions of the rules, including 19.15.27.8.G(2), 19.15.28.8.F(2), 19.15.27.8.D(5) and 19.15.28.8.B(3)(a).

should not be considered waste and that venting and flaring limitations apply to high pressure natural gas that should otherwise have gone to sales.

In 2016, the Obama Administration adopted the original Methane and Waste Prevention Rule (often referred to as the “2016 BLM Venting and Flaring Rule”), which has now been vacated under the Wyoming Vacatur Decision. In that now-vacated rule, BLM adopted a venting and flaring rule requiring operators to meet a capture requirement based upon volumes from “high pressure flares.” *See* 43 C.F.R. 3179.7(c)(2); *see also* 81 Fed. Reg. 83008, 83011, 83024, 83049, 83052, and 83053 (Nov. 18, 2016) (consistently referencing that the relevant flaring relates to that from high pressure flares). In fact, in response to comments, BLM confirmed that it explicitly excluded gas from low pressure flares from the gas capture requirements, stating: “gas from low pressure flares is not included in the requirements in 3179.7 [(gas capture requirements)] because capturing the gas from these flares would require additional compression which may not be cost-effective given the volume of gas being flared.” *See* BLM, Responses to Public Comment on Final Rule, Waste Prevention, Production Subject to Royalties and Resource Conservation (Nov. 2016) at 110; *see also id.* at 110 (“[g]as flared from pneumatic pumps is low pressure gas that is not included within the gas capture requirements.”). As noted elsewhere in this Prehearing Statement, the 2016 BLM Venting and Flaring Rule was vacated for exceeding BLM’s legal authority. However, we believe it is instructive that even in adopting a rule that exceeded its legal authority, BLM only proposed to apply its gas capture requirements to high pressure flaring.

In November 2020, COGCC⁵ adopted new regulations relating to venting and flaring in its 900 series rules. In adopting those rules, the COGCC adopted a Statement of Basis and Purpose (SBP) that describes its intent in adopting those regulations. In discussing its intent, COGCC stated that “[t]he Commission’s intent in regulating Venting is to address the natural gas coming out of the well that should be, or would be sent to a gathering line or otherwise put to beneficial use (or in limited circumstances, flared), absent the Venting.” Colorado Oil and Gas Conservation Commission, Statement of Basis and Purpose, Cause No. 1R Docket No. 200600155, 800/900/1200 Mission Change, Cumulative Impacts, and Alternative Location Analysis Rulemaking (at 17). The Commission was clear that it “does not intend for its definition of Venting to include the gas entrained in the hydrocarbon liquids that is released, or flashed, as the liquids are sent from separation equipment to a tank, or from working and breathing losses.” *Id.* However, the Commission tailored its definition of venting to ensure that improper equipment design that results in the waste of natural gas is defined as venting. *Id.* at 39. The Commission defined Venting as “allowing natural gas to escape into the atmosphere,” but provided “a few significant carve-outs for clarity and to avoid duplication with AQCC regulations.” *Id.* at 16 (e.g., excluding leaks from the definition of Venting, except for leaks that result from inadequate design of separation equipment; and excluding emissions from devices from which escape of natural gas is a part of the intended operation of the devices). NMOGA has attempted to incorporate similar carve outs into its proposed definition of venting – making

⁵ NMOGA notes that it references COGCC’s proposed regulations here for a limited purpose. COGCC has a different statutory authority than this Commission and in general its rules cannot be utilized as guidance for implementation of this Commission’s authority. However, in this instance, COGCC’s exclusion of emissions and combustion from low pressure sources is instructive and should give this Commission comfort regarding NMOGA’s request to exclude such emissions from the definition of venting and flaring.

changes to reflect terminologies utilized by the Division and removing references to flaring from the definition of venting.

Similarly, COGCC reflected in its Statement of Basis and Purpose that “[t]he Commission does not intend to regulate all combustion at an oil and gas location as flaring.” *Id.* at 15. The COGCC stated that “[t]he Commission considers the combustion of high-pressure natural gas to be flaring.” *Id.* The Statement of Basis and Purposes continues: “[c]onsistent with this distinction, the Commission intends to exclude several categories of combustion from its definition of flaring, and intends for its Staff to issue guidance to specify categories of combustion that are not considered flaring. One exclusion is natural gas that is intentionally used for a beneficial onsite process. These beneficial onsite processes would not clearly meet the definition of waste.” *Id.* Thus, while COGCC did not incorporate the specific reference to low pressure sources that NMOGA has recommended in NMOGA’s Proposed Modifications, COGCC utilized its Statement of Basis and Purpose (for which a corollary does not exist here) to provide the necessary direction and context for its intent.

In sum, NMOGA strongly believes that this Commission should revise the definitions of venting and flaring to ensure that this rule does not inappropriately define “all” venting and flaring as surface waste, particularly emissions and combustion from the normal operation of low pressure sources.

B. The Commission Should Further Refine Proposed Part 28 Natural Gas Gathering Systems to Ensure Certain Provisions Do Not Exceed Its Authority or Duplicate the New Mexico Environment Department's Proposed Ozone Rule.

Part 28 of the Proposed Rules seeks to extensively regulate, for the first time, natural gas gathering systems and gathering pipelines.⁶ This Commission has been constituted under the Oil and Gas Act for over 80 years and has never enacted regulations, or sought to enact regulations, seeking to define and regulate pipeline safety or require pipeline integrity standards for gas gathering systems and gathering pipelines. All prior Commissions have rightly recognized that the regulation of gathering lines rests exclusively with other federal and state agencies, including the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration under the Federal Pipeline Safety Act and the New Mexico Public Regulatory Commission under the State Pipeline Safety Act.⁷ Accordingly, it has been the Commission's sound policy to allow these expert agencies to regulate pipeline safety pursuant to their express authority.

In line with this federal and state statutory authority and regulatory framework, NMOGA appreciates and supports the Division's revisions reflected in the October 15, 2020 version of the

⁶ These terms have the meanings as proposed by the Division. In particular, a "natural gas gathering system" subject to the proposed rules refers to "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." See Proposed Rule 19.15.28.7(L). The Division's definitions are clear that subject pipelines are those segments of pipe transferring gas from production and processing equipment to the point of delivery to, but not inclusive of, an interstate transmission pipeline system.

⁷ The Federal Pipeline Safety Act expressly preempts state regulation of interstate pipelines, providing that "[a] state may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation." See 49 U.S.C. § 60104(c). While state pipeline regulators may apply to PHMSA to participate in an interstate agent agreement for the oversight and inspection of interstate pipelines in their respective states, neither the Commission nor the New Mexico Public Regulation Commission have done so. Even the State Pipeline Safety Act (NMSA § 70-3-11)—implemented by the New Mexico Public Regulation Commission—clearly recognizes the limits of the Public Regulation Commission's jurisdiction in line with applicable federal law: "Safety rules adopted hereunder shall not apply to any transportation of oil or oil pipeline facilities regulated by the federal department of transportation." See N.M. Stat. Ann. § 70-3-13(A). Furthermore, based upon clear statutory directives from Congress, courts have consistently found that jurisdiction over interstate pipeline safety is exclusively federal and leaves no room for state regulation.

proposed rules, removing comprehensive pipeline safety and integrity standards for gathering lines. Those initial draft standards closely mirrored existing pipeline safety standards promulgated, administered, and enforced by other federal and state agencies, including provisions for records, materials, design, construction, cover, location and marking, inspection, pressure testing, start-up notification, corrosion control, maintenance, replacement, repair, cathodic protection, and integrity management. Under the Division's proposed Part 28.8.C (performance standards), operators of natural gas gathering systems would still be required to implement an operations plan to minimize the waste of natural gas. However, because the Proposed Rules do not mandate specific pipeline safety or integrity standards or provide for Division review, approval, and enforcement of operations plans, potential jurisdictional concerns appear to have been sufficiently addressed. NMOGA can support this approach and offers additional revisions to Part 28.8.C to further clarify the intended application of the operations plan.

C. Addressing Environmental Concerns from Oil and Gas Emission Sources Rests Exclusively with the EPA and NMED.

At the outset of this process, EMNRD and the NMED made clear their intent to avoid duplication, overlap and to retain clear demarcations of authority under each of the agencies' respective jurisdictions. In fact, in 2019, Governor Lujan Grisham directed EMNRD and NMED to embark on a collective and collaborative effort to address emissions reductions and gas capture in the state of New Mexico.⁸ In addition, the July 20, 2020 press release from NMED stated: "NMED and the Energy, Minerals and Natural Resources Department (EMNRD), which

⁸ The Commission should not lose sight of one of the key stated goals of the New Mexico Methane Strategy: "create regulatory certainty." See Developing New Mexico's Oil and Gas Methane Strategy, March 18, 2020, at Slide 16 (<https://www.env.nm.gov/new-mexico-methane-strategy/wp-content/uploads/sites/15/2019/07/March19CommunityImpactsMeetingPresentations.pdf>). Overlapping and conflicting multi-agency rules do not provide an easily implementable compliance program.

also released draft rules today, worked closely together throughout the process to ensure the draft rules are complementary and do not result in redundant or conflicting requirements.” This was again reiterated by both agencies in the joint presentation on August 6, 2020, where the agencies laid out their intended and respective roles. See <https://www.env.nm.gov/new-mexico-methane-strategy/wp-content/uploads/sites/15/2019/07/2020-08-06-Listening-session-presentation.pdf> (“August 6, Presentation) at 7 - 10. In that presentation, the agencies specifically stated that “[t]he New Mexico Environment Department will regulate methane emissions from oil and natural gas operations” and, “[t]he New Mexico Energy, Minerals and Natural Resources Department will regulate to prevent the waste of methane from oil and natural operations” and the “Oil and Gas Act provides the legal authority.” *Id.* at 9, 10. The agencies also made clear that they intended the EMNRD and NMED regulations to be complementary of each other and not duplicative or inconsistent. Finally, this relationship between EMNRD and NMED was set forth in the recently released New Mexico 2020 Climate Strategy Status Update and Recommendations (“Climate Change Update”).⁹ In the Climate Change Update, the New Mexico Interagency Climate Change Task Force (“Climate Change Task Force”) acknowledged that “NMED and EMNRD each regulate different aspects of the oil and gas sector.” *Id.* at 18. “The agencies have unique yet complementary jurisdictions. NMED regulates air pollution under the state Air Quality Control Act, while EMNRD regulates the waste of a resource under the state Oil and Gas Act.” *Id.*

Several of NMOGA’s comments in this Prehearing Statement and NMOGA’s Proposed Modifications are designed to avoid overlap and ensure that the agencies focus within the respective areas each has identified.

⁹ https://www.climateaction.state.nm.us/documents/reports/NMClimateChangeReport_2020.pdf

Specifically, certain remaining provisions in Part 28 unnecessarily extend to facilities and activities already regulated by NMED and overlap with a variety of requirements that NMED proposed in their informal July 2020 draft ozone rule. NMED's informal July 2020 draft rule proposes an entire section on "leak detection," which is an exercise of its authority supported by the New Mexico Environmental Improvement Act, the New Mexico Air Quality Control Act, and the State Implementation Plan. The Division's proposed rule 19.15.28.8.C.(4) would overlap with NMED's proposed program by also requiring weekly AVO inspections of various gathering system facility equipment and components. Concurrent recordkeeping and inspection requirements provide further potential for overlap and conflict between Part 28 and NMED requirements. It is NMED and the EIB, and not the Division and the Commission, that have been delegated authority by EPA to issue air quality permits and to develop and enforce air quality regulations through strategic planning. It would be a more efficient use of limited state resources for the Commission to allow NMED and the EIB to adopt regulations related specifically to emissions reductions based on performance standards because NMED staff typically have extensive experience in the area of air quality. While NMOGA supports the Division and Commission in the effort to reduce unnecessary or excessive waste, any such regulations should strictly focus on "waste" through the gas capture and management plan requirements.

Similar to Part 28, several sections in Part 27 are appropriately left to NMED's jurisdiction, specifically emissions and combustion from various low pressure sources, imposition of performance standards (such as AVO and auto-gauging) and the imposition of new reporting obligations, which unnecessary and inappropriately overlap with NMED.

NMOGA believes it would clearer, simpler, and jurisdictionally appropriate to maintain the regulatory lines that the EMNRD and NMED proposed at the outset of this process. NMOGA worked within the framework of the Proposed Rules, attempting to accept provisions when and where they do not result in uncertainty, duplication or lack of jurisdictional clarity. However, as noted above, there are several provisions with which NMOGA remains concerned and has reflected those in the redlines. In addition, NMOGA also has substantial concerns that proposals from other parties will seek to create further overlap, duplication and blurring of the lines between the respective agencies. The Commission must avoid blurring the lines further by adopting proposals that raise these jurisdictional concerns.

The Commission should also avoid reading statutory provisions into the Act that do not exist. While the Division cites Section 70-2-12 and public health and the environment as a basis for the replacement rules (*see* Proposed 19.15.27.3&6 and 19.15.28.3&6), this Section contains no general grant of authority to address impacts on “public health and the environment” from traditional gas emission sources. The Commission’s authority to address impacts to the “public health and the environment” from oil and gas activities is specifically and intentionally limited to the use and disposition of produced water, and the disposition of nondomestic wastes. *See* NMSA 1978, §§ 70-2-12(B)(15), (21) and (22).¹⁰

The lessons learned from the vacated 2016 BLM rules are that the Commission must be cognizant of its limited statutory authority and carefully analyze whether each provision in the Proposed Rules, which aim to replace the existing rules governing venting and flaring for the last seventy (70) years, are actually crafted to “prevent unnecessary or excessive surface loss,” or whether they are instead directed at emission, climate change and air quality issues “which is

¹⁰ See footnote 2.

expressly within the ‘substantive field’ of the EPA and States pursuant to the Clean Air Act.” *Id.* This goal is not at odds with the intention and statements of the agencies – who have consistently stated their intent to have the Division address waste and NMED address air quality emissions. *See e.g.*, Climate Change Update at 18 (the Division is “charged with preventing the waste of a salable resource.”). Failing to carefully consider each provision through the lens of the Commission’s limited statutory authority runs the risk of the same result as the 2016 BLM rules and running afoul of the agencies’ stated intent:

The BLM exceeded its waste prevention authority in promulgating regulations primarily intended to benefit the environment and improve air quality, without regard for its longstanding interpretation of “waste” and in a manner that is inconsistent with the administrative structure Congress enacted into law. The ancillary benefits of a rule cannot provide the primary justification for the rule, particularly where those ancillary benefits fall outside the scope of the agency's statutory authority. Otherwise, there is simply no limit on agency authority and any colorable tie to an agency's authority would permit the agency to act on a problem Congress never intended the agency to solve and would allow agencies to impose unreasonable regulations on citizens and industries to achieve outcomes unrelated to the reason the regulation was purportedly adopted.

Wyoming Vacatur Decision at p. 36-37.

D. Additional Justification for Using Established Definitions to Define the Completion and Production Stages.

NMOGA has proposed to use several terms well-known to operators from the Environmental Protection Agency’s New Source Performance Standards OOOO and OOOOa (herein “NSPS OOOO” or “NSPS OOOOa”). NSPS OOOOa applies (with limited exception) to all new oil and gas wells and supplies relevant terms describing when operators move through the pre-production process into the production phase, including completions, flowback and production. Because operators have been utilizing these terms for new and modified facilities

for the last several years in complying with NSPS OOOO and NSPS OOOOa, operators are extremely familiar to those terms, which are used by operators to demarcate when a facility has moved from one stage of the process to another. The Division's proposed definitions differ from those well-known definitions, and as such, could create a disconnect with operators tracking movement from the completion or flowback stage into production operations under NSPS OOOOa, and then separately tracking movement from the completion or flowback stage into production operations under these rules. Such an outcome could create confusion in the field, risk inconsistent terminology, and create compliance risk. Again, keeping the collective focus on preventing surface waste, there does not appear to be any basis or justification for not moving from one stage of the process to the next in a manner consistent with NSPS OOOOa.

In order to capture this concept and ensure consistency with NSPS OOOOa, NMOGA has proposed revisions to the following terms: completion operations, initial flowback, production operations, and separation flowback. Each of these terms are used, or have similarly worded terms used, in the NSPS OOOOa. NMOGA articulates the basis for its proposed changes in its justification to each of the redlines but provides one example here to explain how it believes that the Division's proposed definitions could create inconsistencies in application.

With respect to completion operations, the Division proposes to define "completion operations" as: "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." As defined, it creates the potential that "completion operations" end and "production operations" begin at a different point in the process than currently under NSPS OOOOa. Under the Division's proposed definition, completion operations conclude "on the earlier of 30 days after

commencement of initial flowback or when permanent production equipment is in use at the well.” Both terms have the capability of deeming operators to be out of completion and into production before this actually occurs from a technical perspective. First, while not common, operators cannot necessarily control the duration of the completion process and if flowback lasts longer than 31 days, operators cannot be deemed out of flowback and into production based solely on the passage of time. Second, permanent production equipment is not defined, but presumably would include either permanent separators or permanent tanks. Many companies may use either permanent separation equipment or permanent storage tanks during the flowback process, yet, are still in flowback. Operators should be encouraged to utilize permanent production equipment and thus, its use should not alter when an operator has initiated production. Instead of using these ambiguous and undefined terms, NMOGA proposes that the Commission utilize the existing and well-known definition under NSPS OOOOa for startup of production to mark movement from completion operations into production operations. Under NSPS OOOOa, the definition of “startup of production” provides appropriate limitations (which companies are already complying with) beyond just the use of permanent production equipment. *See* 40 C.F.R. 60.5430a.

Thus, NMOGA recommends that the Commission adopt the following definitions of startup of production and completion operations:

“Startup of production” means the beginning of initial flow following the end of flowback when there is continuous recovery of salable quality gas and separation and recovery of any crude oil, condensate or produced water.

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

For similar reasons, revisions to initial flowback, separation flowback, and production operations are incorporated in NMOGA's proposed modifications to address the need for consistency as articulated above.

NMOGA's PROPOSED MODIFICATIONS, STATEMENT OF REASONS AND PROPOSED EVIDENCE

As noted above, to address its concerns with areas of the Proposed Rules that regulate emissions that are not appropriately considered venting or flaring, to avoid overlap, duplication and blurring of jurisdictional lines with NMED and its rules, and to create clarity and certainty for both the agency and the regulated community, NMOGA has submitted modifications reflected in redline/strikeout format on NMOGA Exhibits A and B (each entitled "NMOGA's Proposed Modifications").¹¹ Each modification is followed by a concise statement of the reasons for the proposed change. In support of these necessary modifications, NMOGA intends to call the following witnesses:

WITNESS:

ESTIMATED TIME

John R. Smitherman, P.E.
Petroleum Engineer and
Senior Advisor to NMOGA

3.5 Hours

Mr. Smitherman is a petroleum engineer who has been qualified by federal and state courts as an expert witness in Petroleum Engineering and Oil and Gas Operations. His technical background and work experience are reflected in NMOGA Exhibit C-1. Mr Smitherman is familiar with the existing rules governing venting and flaring and the entirety of the proposed replacement rules. Starting with the definitional sections, Mr. Smitherman will provide the Commission with a complete review of NMOGA's proposed modifications to the replacement rules; discuss, elaborate

¹¹ For ease of review, NMOGA Exhibit A contains a modification to 19.15.7.25.A and modifications to replacement Part 27 addressing upstream operations. NMOGA Exhibit B contains modifications to replacement Part 28 addressing gathering (or midstream) operations.

and expand on the justifications provided for each of the proposed modifications; offer facts and expert opinions supporting NMOGA’s modifications; and address any additional issues that arise after the filing of this prehearing statement.

WITNESS:

ESTIMATED TIME

Paul Thompson
President
Epic Energy, LLC

30 minutes

Mr. Thompson is a petroleum engineer and president of Walsh Engineering and Production Corp. and Epic Energy, LLC, with extensive experience developing, drilling and managing wells and production in New Mexico. His educational background and work experience are reflected in NMOGA Exhibit D-1. Mr. Thompson has testified before the New Mexico Oil Conservation Commission/Division, and other regulatory agencies, as an expert witness in petroleum engineering. Mr. Thompson’s testimony is expected to address the Division’s proposed Auditory, Visual, and Olfactory (“AVO”) inspection frequencies in the proposed language under 19.15.27.8.E(5)(c). He will further offer facts and opinions supporting NMOGA’s modifications to 19.15.27.8.E(5)(c) and will address any additional related issues raised during the hearing.

WITNESS:

ESTIMATED TIME

Morgan Iannuzzi
Air Team Lead
Chevron U.S.A. Inc.

30 minutes

Ms. Iannuzzi is an Air Team Lead in Midland, Texas, responsible for the company’s upstream air permitting program in Texas, New Mexico, Colorado, and Oklahoma. Ms. Iannuzzi’s educational background and work experience are reflected in NMOGA Exhibit E-1. Ms. Iannuzzi’s testimony is expected to address the following topics:

- NMOGA’s requested modifications to the definition of “emergency” to exclude events lasting longer than eight hours as proposed for Parts 27.7.G(4) and 27.8.G(2)(k);

- The absence of any benefit to waste minimization and other concerns related to the proposed requirement that flare stacks be enclosed in Part 27.8.B(2);
- The inability to design and operate a flare stack for “maximum destruction efficiency” continuously as proposed in Part 27.8.E(3);
- The problems with requiring flare stacks be retrofitted no later than 18 months after the effective date of the rule as proposed in Part 27.8(E)(3)(b); and
- Clarification on the applicable timing and location of the flare requirement in Part 27.8.E(4) and the need for flexibility for operators.

Ms. Iannuzzi will further offer facts and expert opinions supporting NMOGA’s modifications and will address any additional issues that arise after the filing of this prehearing statement.

WITNESS:

ESTIMATED TIME

Paul S. Reinermann
 Field Environmental Manager
 Enterprise Field Services,
 LLC and its affiliates

1.0 Hour

Mr. Reinermann has a degree in Chemical Engineering and currently manages the permitting and regulatory compliance for oil and gas natural gas pipelines, compressor stations, natural gas process plants, fractionation plants, condensate processing plants, and storage facilities in Texas and New Mexico. Mr. Reinermann worked for the United States Environmental Protection Agency in the 1990s and was responsible for air compliance and enforcement issues. His educational background and work experience are reflected in NMOGA Exhibit F-1. Mr. Reinermann has reviewed NMOGA’s proposed modifications and is expected to address the following topics:

- NMOGA’s modifications to the proposed exclusions from the definition of “emergency” in Part 28.7.D(5) and (6) including:
 - The causes for and examples of recurring production equipment failures through no fault of the operator that warrant removal of the phrase “recurring equipment failure”;
 - The causes for and examples of successive emergencies through no fault of the operator that warrant addition of the phrase “at one site for similar causes”;

- Removal of “scheduled” in 28.8.B(3)(a) to authorize venting and flaring during “scheduled” or unscheduled maintenance; the reasons for and examples of unscheduled maintenance by gathering operators; and the need to allow venting and flaring during unscheduled maintenance for safety reasons;
- The NMOGA additions to the authorized venting and flaring activities listed in 28.8.B(3), the nature of these activities and the necessity to release or burn gas under normal operations;
- The reasons for the NMOGA modifications to operations plan required by Part 28.8.C(1) and the need to provide gathering operators flexibility to address gas capture improvements when necessary;
- The basis for monthly rather than weekly formal AVO inspections under proposed Parts 27.8.E(5)(c) and 28.8.C(4), the EPA guidelines supporting that frequency and lack of benefit from weekly vs. monthly formal AVO inspections;
- The reasons for NMOGA’s modifications to the annual AVO inspections under proposed Part 28.8.C(5) including the success of aerial visual inspections; and
- The reason for removing the requirement to submit GIS map updates with release locations under Part 28.9.C.

Mr. Reinermann will offer facts and expert opinions supporting NMOGA’s modifications and address any additional issues that arise after the filing of this prehearing statement.

WITNESS:

ESTIMATED TIME

Joseph Leonard, P.E.
Facilities and Design Engineer
Devon Energy

1.0 Hour

Mr. Leonard is an oil and gas facilities and design engineer familiar with the design and operation of oil and gas production equipment. His educational background and work experience are reflected in NMOGA Exhibit G-1. Mr. Leonard has reviewed NMOGA’s proposed modifications and is expected to address the following topics:

- NMOGA’s modifications to the proposed exclusions from the definition of “emergency” in Part 28.7.G(5) and (6) including:
 - The causes for and examples of recurring production equipment failures through no fault of the operator that warrant removal of the phrase “recurring equipment failure”;
 - The causes for and examples of successive emergencies through no fault of the operator that warrant addition of the phrase “at one site for similar causes”;

- Removal of “scheduled” in 27.8.D(5)(c) to authorize venting and flaring during “scheduled” or unscheduled maintenance, the reasons for and examples of unscheduled maintenance by production equipment operators, and the need to allow venting and flaring during unscheduled maintenance for safety reasons;
- Modifications to the reporting categories under Parts 27.8.G(2) and 28.8.F(2) to remove categories involving low flow/low pressure releases that do not constitute surface waste; and
- The meaning and purpose of uncontrolled storage tanks, pneumatic controllers and thief hatches, and the inability to capture or reasonably estimate the necessary gas releases.

Mr. Leonard will offer facts and expert opinions supporting NMOGA’s modifications and address any additional issues that arise after the filing of this prehearing statement.

WITNESS:

ESTIMATED TIME

Jeffrey “Ryan” Davis
 Operations Manager
 Merrion Oil & Gas Corp.

30 minutes

Mr. Davis is a production engineer and operations manager with Merrion Oil & Gas Corporation with experience in production, well optimization, and field operations in New Mexico. Mr. Davis’s educational background and work experience are reflected in NMOGA Exhibit H-1. Mr. Davis’s testimony is expected to address the process of liquid unloading at gas wells generally, what liquid unloading is, and why it is necessary for operators to perform this operation when liquids build up in gas wells. Mr. Davis will further offer facts and expert opinions supporting NMOGA’s modifications to proposed Parts 27.8.D(3) and 27.8.G(2)(e) and will address any additional related issues that arise after the filing of this prehearing statement.

WITNESS:

ESTIMATED TIME

David Greaves
 Chemical Engineer
 XTO Energy

1.0 Hour

Mr. Greaves is a Facilities Engineering Manager that oversees the installation and operation of oil and gas production and pipeline equipment. His educational background and work experience are

reflected in NMOGA Exhibit I-1. Mr. Greaves has assisted federal agencies on the technical aspects of the BLM's 2016 rules addressing venting and flaring and was a technical expert for the Methane Advisory Panel on measurement and gas capture topics. Mr. Greaves has reviewed NMOGA's proposed modifications and is expected to address the following topics:

- The need to remove the reference to “flowlines” in Part 27.8.F(2), the proper locations for installation of flare meters, and the difficulty of installing flare meters on existing production facilities;
- The API Manual of Petroleum Measurement Standards, why Chapter 14.10 is the appropriate reference in Part 27.8.F(3) and 28.8.E(3), the complexity of metering technologies, and the difficulties BLM and other state agencies have in approving metering technologies;
- The inability to meter “low flow” and low pressure gas, Parts 27.8.F(5) and 28.8.E(5) properly allow estimation rather than metering for these events, and why it is particularly appropriate to estimate rather than meter gas vented or flared during drilling operations and instances of beneficial use;
- The reliability of Gas-Oil-Ration (GOR) calculations authorized by Part 27.8.F(6) for wells that do not require metering equipment;
- The modifications to the reporting categories under Parts 27.8.G(2) and 28.8.F(2) to remove those involving low flow/low pressure releases that cannot be measured or metered; and
- Confirm that the 2016 BLM rules did not seek to address measurement of low pressure/low flow releases and instead focused on high pressure sources.

Mr. Greaves will offer facts and expert opinions supporting NMOGA's modifications and address any additional issues that arise after the filing of this prehearing statement.

WITNESS:

ESTIMATED TIME

Zachary L. Craft
Counsel
Enterprise Field Services,
LLC and its affiliates

30 minutes

Mr. Craft is in-house counsel with Enterprise Products Company whose area of practice focuses on environmental and regulatory permitting and compliance, as well as corporate structure and transactions. Mr. Craft's educational background and work experience are reflected in NMOGA

Exhibit J-1. Mr. Craft's testimony is expected to provide an overview of the types of various midstream corporate structures, acquisitions, and joint ventures. He will further provide facts and opinions in support of NMOGA's modifications to the proposed gas capture reporting requirements for affiliates, subsidiaries, and new acquisitions in Part 28.10.A(3) and NMOGA's proposed Subparagraph A(4). Mr. Craft will also address any additional related issues that arise after the filing of this prehearing statement.

WITNESS:

ESTIMATED TIME

John Maxey
V.P. of Drilling and Operations
Hanson Operating Co., Inc.

30 minutes

Mr. Maxey is a petroleum engineer with Hanson Operating Co., Inc. based in Roswell, New Mexico, with extensive experience managing exploration, drilling, and production operations in the Permian Basin of New Mexico. Mr. Maxey has testified before the New Mexico Oil Conservation Commission/Division, and other regulatory agencies, as an expert witness in oil and gas drilling and producing operations, waterflood unitization and operation, and SWD permitting and operation. Mr. Maxey's educational background and work experience are reflected in NMOGA Exhibit K-1. Mr. Maxey will offer facts and opinions supporting the need for different requirements under proposed rule Part 27 applicable to wells that have an average daily production equal to, or less than, 10 barrels of oil or 60,000 cubic feet of natural gas. Mr. Maxey will offer facts and opinions supporting NMOGA's requested modifications to the proposed requirements applicable to such wells in proposed parts 19.15.27.8.E(3)(c), 19.15.27.8.E(5)(c), and 19.15.27.8.F(2) and will address any additional issues that arise after the filing of this prehearing statement.

WITNESS:

ESTIMATED TIME

Yolanda Perez
Chair of NMOGA's Regulatory Practices Committee
Senior Regulatory Affairs Consultant
Occidental Oil & Gas

3 Hours

Ms. Perez is the co-chair of NMOGA's Regulatory Practices Committee and has over 40 years of experience with regulations governing oil and gas operations, including 13 years as a field operator. Ms. Perez is familiar with state and federal regulations governing oil and gas operations in eleven states, including 22 years of experience with New Mexico regulatory issues. Ms. Perez has served on advisory panels for both the New Mexico Oil Conservation Division and the New Mexico State Land Office, and more recently participated in the Methane Advisory Panel. Her educational background and work experience are reflected in NMOGA Exhibit L-1. Ms. Perez is familiar with the existing rules governing venting and flaring in New Mexico, and familiar with the entirety of the proposed replacement rules. Ms. Perez will address NMOGA's proposed modifications to the venting and flaring reporting obligations under Part 27.8.G (upstream) and Part 28.8.F (gathering/midstream), as well as the modifications to the gas capture reporting under 27.9.B and 27.10.B. Her testimony will include:

- The need for single event reporting with available information and representative gas samples for Form C-129 reporting under Parts 27.8.G(1) and 28.8.F(1);
- The expanded C-129 reporting categories for upstream operators under Part 27.8.G(1)(b) to provide more transparency at the initial event and to correlate with NMOGA's proposed monthly reporting categories under existing Form C-115;
- The problems with certification of unknown additional information in Parts 27.8.G(1)(c) and 28.8.F(1)(c);
- The conflict between the C-129 reporting under the proposed replacement rules and the Form C-141 reporting required by NMAC 19.15.29 (Releases);

- The modifications to the monthly production reporting proposed in Parts 27.8.G(2) and 28.8.F(2);
- The system implementation challenges faced by operators with the expanded monthly reporting categories proposed by Division to begin January 2022;
- NMOGA’s proposal to eliminate for upstream operators the Division’s proposed Form C-115B and utilize instead existing Form C-115 for monthly reporting, and the modifications needed to avoid this duplicative reporting;
- Modifications to the reporting categories under Parts 27.8.G(2) and 28.8.F(2) to remove categories involving low flow/low pressure releases that do not constitute surface waste;
- Changes to Parts 27.8.G(3) and 28.8.F(3) to clarify and streamline the monthly calculation of “lost gas” and the gas capture percentage;
- Changes to Parts 27.9.B and 27.10.B to clarify the reporting date, allow utilization of the monthly reports to create the yearly gas capture percentage, and to clarify the ALARM credit provisions; and
- Changes to 19.15.7.25 to allow upstream operators to use the existing C-115 forms rather than a duplicative new form C-115B.

Ms. Perez will opine that these and other proposed changes will clarify the rule, allow more transparency at the initial venting or flaring event, allow utilization of existing reporting forms, and avoid duplicative and unnecessary reporting obligations. Ms. Perez will further address any issues that arise after the filing of this prehearing statement.

WITNESS:

ESTIMATED TIME

Mike Smith
 Environmental Professional
 Devon Energy

1.0 Hour

Mr. Smith is the co-chair of NMOGA’s Environmental Affairs Committee and participated in the Methane Advisory Panel. His educational background and work experience are reflected in NMOGA Exhibit M-1. Mr. Smith is familiar with the entirety of the proposed replacement rules and NMOGA’s proposed modifications. Mr. Smith is familiar with air emission reporting and regulatory requirements implemented by the NMED. Mr. Smith’s testimony is expected to address the following topics:

- The purpose for adding “legally enforceable” and other regulatory agencies to Parts 27.8.D(1) and 28.8.B(1) and the corresponding changes needed to the C-129 reporting under Parts 27.8.G(1)(a) and 28.8.F(1)(a);
- The necessary additions to the authorized venting and flaring activities in 27.8.D(5);
- The exclusion in Parts 27.8.E(5) and 28.8.C(4) of sites subject to AVO inspections under NMED or other agency requirements to avoid duplicative and inconsistent obligations;
- Modifications to the reporting categories under Parts 27.8.G(2) and 28.8.F(2) to remove categories involving low flow/low pressure instances that do not constitute surface waste;
- The inability to convert NMED emission calculations into a reliable estimated volume for production accounting; and
- The definitions and obligations under EPGA OOOOa New Source Performance Standards.

Mr. Smith will further offer facts and expert opinions supporting NMOGA’s modifications and will address any additional issues that arise after the filing of this prehearing statement.

NMOGA’S HEARING EXHIBITS

NMOGA anticipates entering into evidence NMOGA Exhibits A through M, which contain numbered pages submitted in a designated notebook provided with this prehearing statement.

PROCEDURAL MATTERS

None at this time.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2020, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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