

# Oil and Gas Division

Lynn D. Helms - Director

Bruce E. Hicks - Assistant Director

**Department of Mineral Resources**

Lynn D. Helms - Director

**North Dakota Industrial Commission**
[www.dmr.nd.gov/oilgas/](http://www.dmr.nd.gov/oilgas/)

## North Dakota Industrial Commission Order 24665 Frequently Asked Questions Version 112018

**Question:** If an operator is granted a force majeure can that volume be counted as a gas credit?

**Answer:** No, force majeure gas cannot be counted as a capture credit because the gas was not physically captured.

**Question:** The policy states the operator is allowed to remove (from the total monthly volume calculation) gas volumes flared from wells affected by a force majeure event. If an operator's application, for removal of such gas is granted, does that gas volume have to be reported to the Commission?

**Answer:** Yes, all gas must be reported and accounted for on the [Gas Production Report – Form 5B](#) and the force majeure calculation adjustment will be applied during the Commission's gas capture review.

**Question:** The policy states the operator is allowed to remove 46 days of initial production test gas (subsequent to the initial 14 days of flowback gas) from the total monthly volume **calculation**. Does an operator have to report any gas to the Commission during the 60-day period?

**Answer:** Yes, all gas must be reported and accounted for on the [Gas Production Report – Form 5B](#).

**Question:** Is it possible an operator could have a higher gas capture percentage than that calculated by the Commission for a particular month?

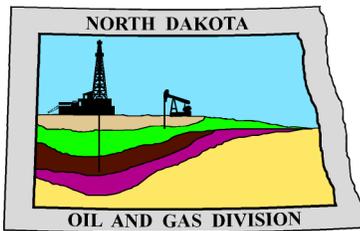
**Answer:** Yes, the Commission will calculate an operator's monthly gas capture percentage by examining all gas reported by the operator on the [Gas Production Report – Form 5B](#). If this calculation confirms the operator has achieved the Commission's gas capture goal, no further analysis is performed, even though a higher gas capture percentage might be calculated if consideration was given to the initial 60 days of production and force majeure events.

**Question:** Are there any limitations to using accumulated gas credits to meet the monthly gas capture target goal?

**Answer:** Yes, Commission approval to use gas credits will only be granted if one of the following extenuating circumstances exist: (1) right-of-way issues, (2) temporary midstream down-time for system upgrades and/or maintenance, (3) federal regulatory restrictions or delays, (4) safety issues, (5) delayed access to electrical power, and (6) possible reservoir damage.

**Question:** Will the changes outlined in the [North Dakota Industrial Commission Order 24665 Policy/Guidance Version 112018](#) increase flaring?

**Answer:** No, the gas capture goals previously set by the Commission remain unchanged; therefore all operators are required to meet gas capture goals previously set by the Commission. The Commission believes the changes will allow operators, gas gathering companies, and regulators to focus resources on areas where the gas capture goals are not being met. This will



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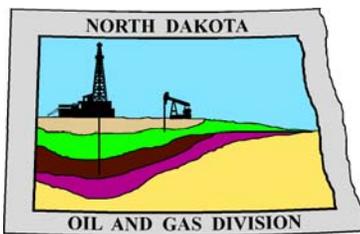
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allow operators and gas gathering companies to better predict future gas reserves, which will result in the construction of economic infrastructure to capture gas that would otherwise be flared.

**Question:** If a well is producing at or below the restriction levels stated within the order are there further restrictions?

**Answer:** If an operator hasn't met the gas capture requirements, but the well(s) are currently producing at the allowed barrels of oil per day as stated in the order, further restrictions will not be imposed. However, each well cannot produce over its restricted amount until it meets the target goal.



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**The following fields fall within the Core Area referenced in the attached  
North Dakota Industrial Commission Order 24665 Policy/Guidance Version 112018:**

Alger	Fancy Buttes	Sandricks
Alkali Creek	Four Bears	Sanish
Antelope	Garden	Siverston
Arnegard	Grail	South Fork
Avoca	Grinnell	South Tobacco Garden
Bailey	Hawkeye	Spotted Horn
Baker	Haystack Butte	Spring Creek
Banks	Heart Butte	Springbrook
Bear Creek	Hofflund	Squaw Creek
Bear Den	Jim Creek	Stanley
Beaver Lodge	Johnson Corner	Stockyard Creek
Big Bend	Juniper	Stony Creek
Big Gulch	Keene	Timber Creek
Blue Buttes	Killdeer	Tobacco Garden
Brooklyn	Last Chance	Todd
Bully	Lone Butte	Truax
Camel Butte	Long Creek	Twin Buttes
Camp	Lost Bridge	Twin Valley
Capa	Mandaree	Union Center
Catwalk	Manitou	Van Hook
Cedar Coulee	McGregory Buttes	West Capa
Charlson	Missouri Ridge	Westberg
Cherry Creek	Moccasin Creek	Williston
Chimney Butte	North Fork	Willow Creek
Clarks Creek	North Tobacco Garden	Wolf Bay
Clear Creek	Oakdale	
Corral Creek	Parshall	
Cow Creek	Patent Gate	
Crazy Man Creek	Pembroke	
Croff	Pershing	
Dimmick Lake	Phelps Bay	
Dollar Joe	Pleasant Hill	
Eagle Nest	Poe	
Edge	Rattlesnake Point	
Elidah	Reunion Bay	
Ellsworth	Robinson Lake	
Elm Tree	Sakakawea	
Epping	Sand Creek	

# **North Dakota Industrial Commission Order 24665 Policy/Guidance**

## **Version 112018**

### **Policy Goals:**

- 1) Increase the volume of captured gas and reduce the percentage of flared gas
- 2) Incentivize investment in gas capture infrastructure

### **Action items:**

- 1) Require a sworn affidavit that operator has provided Gas Production Forecast data to midstream gas gathering companies and developed a Gas Capture Plan for increased density, temporary spacing, and proper spacing cases
- 2) Require Gas Capture Plans for all applications for a permit to drill filed by an operator who has failed to meet gas capture goals in any of the most recent three months
- 3) Semi-annual meetings with midstream gas gathering companies
- 4) Semi-annual Gas Capture Improvement Plan meetings with operators who have failed to meet gas capture goals three or more of the most recent six months
- 5) Annual review of gas capture goals, gas capture progress, and extenuating circumstances to be presented by Department of Mineral Resources each December
- 6) Track flaring on/off the Fort Berthold Indian Reservation
- 7) Report capture status versus goals
- 8) Support federal efforts to streamline right-of-way process
- 9) Support efforts to encourage investment in value-added projects

The initial horizontal well drilled in each spacing unit should be allowed to produce at its maximum efficient rate, regardless if the well is connected to a gas gathering system. An operator may make application to designate gas produced from up to six horizontal wells drilled in a previously undrilled governmental township or in a governmental township outside the Bakken core area as stranded gas. Wells designated as producing stranded gas should be allowed to produce at maximum efficient rate and the operator should be allowed to remove twelve months of gas production from each stranded gas well from the total monthly volume calculation. Allowing such wells to produce at a maximum efficient rate will allow valuable information to be obtained in order to make decisions regarding future well and infrastructure requirements in the spacing unit.

Commission production records indicate the majority of gas flared in North Dakota is from wells already connected to a gas gathering system. Such wells should not be excluded from gas capture goals adopted by the Commission.

Well payout and economics should not be used to determine production restrictions.

Some flared gas contains components that if improperly combusted could cause air quality degradation and health issues.

On the Fort Berthold Indian Reservation, many Bakken Pools are also within the jurisdiction of the Mandan Hidatsa and Arikara (MHA) Nation and Bureau of Land Management (BLM). In some cases, companies must comply with MHA Nation, BLM, and Commission rules. The Commission should work with federal and tribal authorities to ensure that restrictions imposed herein minimize duplication, provide clarity, and protect the correlative rights of all owners in the respective jurisdictions.

The Commission establishes the following gas capture goals:

- 74% October 1, 2014 through December 31, 2014
- 77% January 1, 2015 through March 31, 2016
- 80% April 1, 2016 through October 31, 2016
- 85% November 1, 2016 through October 31, 2018
- 88% November 1, 2018 through October 31, 2020
- 91% beginning November 1, 2020

The gas capture percentage is calculated by summing monthly gas sold plus monthly gas used on lease plus monthly gas processed in a Commission approved beneficial manner, divided by the total monthly volume of associated gas produced.

In order to allow operators the maximum flexibility to manage their drilling, operation, and gas capture plans within the gas capture goals established by the Commission, the Commission will evaluate compliance with the gas capture goals statewide, by county, by field, then by well for each operator.

- 1) All infill horizontal wells, including overlapping spacing units, completed in a Bakken, Bakken/Three Forks, and/or Three Forks Pool are allowed to produce at a maximum efficient rate for 90 days.
- 2) The operator is allowed to remove the initial 14 days of flowback gas from the total monthly volume calculation.
- 3) The operator is allowed to remove 46 days of initial production test gas (subsequent to the initial 14 days of flowback gas) from the total monthly volume calculation.
- 4) The operator is allowed to remove from the total monthly volume calculation gas volumes flared from wells already drilled and completed on the date a force majeure event occurs if the event is properly documented in writing by the gas gathering company.
- 5) The operator is allowed to remove from the monthly volume calculation gas volumes flared from wells already drilled and completed, if gas gathering and processing capacity curtailment is properly documented in writing.
- 6) The operator is allowed to remove from the monthly volume calculation gas volumes flared from wells already drilled and completed, if it can be properly documented that such gas flaring was the result of newly completed wells being connected to the same gas infrastructure system.
- 7) The operator is allowed to remove from the monthly volume calculation gas volumes flared from wells already drilled and completed, if the following circumstances are properly documented in writing:
  - a. surface landowner, tribal, or federal government right-of-way delays
  - b. temporary midstream down-time for system upgrades and/or maintenance
  - c. federal regulatory restrictions or delays
  - d. safety issues
  - e. delayed access to electrical power
  - f. possible reservoir damage
- 8) The operator is allowed to remove from the monthly volume calculation gas volumes placed into geologic storage or utilized in an enhanced oil recovery project, if properly documented.
- 9) An operator is allowed to accumulate credits for LNG utilization, CNG utilization, and volumes of gas captured during the most recent six months in excess of the current gas capture goal.
  - a. The commission may apply all or a portion of the credit to a month in which the operator cannot meet the current gas capture goal upon application by the operator.
  - b. Credits cannot be transferred to another operator.
  - c. Unused credits expire after six months.

- d. Credits may be applied only if one or more of the extenuating circumstances exist.
- 10) The Commission recognizes the following as surplus gas being utilized in a beneficial manner that may be considered as captured gas:
- a. Equipping the well(s) with an electrical generator that consumes surplus gas
  - b. Equipping the well(s) with a system that intakes the surplus gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting the propane and heavier hydrocarbons.
  - c. Equipping the well(s) with other value-added processes as approved by the Director which reduce the volume or intensity of the flare by more than 60%.

If an operator is unable to attain the Commission's gas capture goals at maximum efficient rate, well(s) will be restricted to 200 barrels of oil per day if at least 60% of the monthly volume of associated gas produced from the well is captured, otherwise oil production from such wells shall not exceed 100 barrels of oil per day.

Flexibility in the form of temporary exemptions from production restrictions may be considered for other types of extenuating circumstances after notice and hearing if the effect of such flexibility is a significant net increase in gas capture within one year of the date such relief is granted.

### **Penalty provisions:**

Production and flaring data is two months old when filed (Example: Jan 2014 data filed Mar 2014) and data is frequently amended.

Timely communication between operators and midstream companies as well as with the Commission is of the essence. Lack of compliance with the following requirements will be considered violations:

- 1) Failure to file an application for hearing with the Commission within the month following the month in which the operator was unable to attain the Commission's gas capture goals and oil production exceeded production restrictions may result in a civil penalty of \$1,000 per month up to a maximum of \$12,500 per month beginning at \$1,000 the first month and doubling each additional month that the operator is in violation.
- 2) Failure to implement production restrictions within the month following the month in which the operator was notified by Commission staff that gas capture goals were not attained and oil production from listed well(s) is to be restricted will result in a verbal notice of violation. The Commission will issue a written notice of violation with a compliance deadline if an operator fails to implement production restrictions for a second month. A third month in violation of production restrictions may result in a civil penalty of up to \$12,500 per well for each day the well has been in violation.