

**OCD EXHIBIT 4D - REBUTTTAL TESTIMONY FOR PART 28**

Line #	Citation	Party	Topic	Proposed Modification	OCD Position	OCD Witness
3	7(D)	NMOGA	emergency	delete "substantial"	NMOGA suggests that OCD did not intend to limit emergencies to "immediate and substantial" impacts. NMOGA is incorrect. The term "substantial" limits the operator's ability to claim that any event is an emergency simply because the operator claims that it might have an adverse impact on safety, public health, or the environment. Even if NMOGA were correct that any safety risk were "substantial", its change also applies to public health and environment, but it has not offered any rationale for striking the term in those contexts. BLM's emergency rule, which OCD modeled its rule on, includes "substantial."	Bolander
4	7(D)(5)	NMOGA	emergency	delete "including a recurring equipment failure"	This language only excludes recurring equipment failure from the definition of emergency. Recurring equipment failure is typically related to bad management and equipment decisions. Excluding recurring equipment failure from the definition of emergency does not leave the operator without options. To the extent that a recurring equipment failure is due to an event beyond the operator's control, it can claim "malfunction." Notably, BLM's definition of emergency includes this language, and operators on federal land have been working under it.	Bolander
5	7(D)(6)	NMOGA	emergency	add "at one site for similar causes" and delete "division determines that the operator could not have reasonably anticipated the current event"	OCD added geographical limit to reporting area, but OCD must be able to conduct a case-by-case evaluation. The current language deals adequately with weather events, etc. As written, the rule gives the OCD the discretion to differentiate between, on the one hand, storms or other causes of multiple events, and on the other hand, an operator's lack of diligence. To the extent that an operator experiences a fourth or subsequent emergency, OCD added additional language to allow for truly unanticipated problems. This language ensures that operators who use inadequate or deficient equipment which result in avoidable releases are not excused. Notably, OCD's definition of emergency allows 3 emergencies in 60 days, more generous than BLM's definition (30 days).	Bolander
6	7(E)	NMOGA	flare/flaring	define term to exclude releases from low pressure equipment	Releases from some low pressure equipment constitutes waste. Because OCD changed 27.8(A), there is no need to redefine the term. The better approach is to identify specific categories as waste or not waste for accounting purposes in Section 9(B). Notably, the definition is commonly used in the industry, and is based on the action of flaring without qualifiers.	Bolander
7	7(F)	NMOGA	flare stack	define term to exclude combustion without beneficial use	The term defines a piece of equipment, not the reason for its use.	Bolander
8	7(J)	NMOGA	malfunction	delete "reasonable" and "substantial"	OCD's definition is identical with BLM's, and terms ensure that operators cannot claim <i>any</i> disruption constitutes a malfunction.	Bolander
9	7(M)	NMOGA	new gathering pipeline	add "constructed"	OCD uses "placed into service" as the point of applicability to avoid disputes over when "construction" started on a pipeline.	Bolander

10	7(N)	NMOGA	venting	define term to exclude releases from low pressure equipment	Releases from some low pressure equipment constitutes waste. Because OCD changed 27.8(A), there is no need to redefine the term. It is not good practice to identify exceptions in a definition. The better approach is to define a term as it commonly understood, and then identify exceptions in the reporting or accounting sections. This is how OCD's rule works. OCD's definition conforms with the generally understood term in the industry, and identifies exceptions in the body of the rule. By contrast, Colorado's rule includes the exceptions. Despite the different approaches, OCD and COGCC arrive at nearly the same destination. For instance, COGCC Subpart a, 8(D)(4)(d), (f), and (g), OCD excepts venting and flaring from the normal operations of identified equipment. Notably, NMOGA has not identified any type of equipment excluded by COGCC's definition that is NOT also excluded in OCD's rule.	Bolander
12	8(A)	NMOGA	V/F prohibition	redefine waste by reference to OGA; delete preference for flaring over venting	OCD defined waste by reference to OCC rules and provided exceptions for certain types of low pressure releases from the calculation of lost gas. Additionally, OCC has the statutory authority to regulate waste to protect public health and the environment, which includes prioritizing flaring over venting.	Powell
13	8(B)(1)	NMOGA	federal permit exception	change "federally" to "legally and practically", add "authorization or other requirement", add "USEPA and tribal authority with CAA designation"	OCD deleted the exception at NMED's request and because it is not needed. The remaining provisions of 8(D) cover all authorized uses of a flare. Additionally, the exception has the potential to subvert the entire rule if operators believe that the permitted use of a flare allows flaring that is prohibited by this rule.	Powell
14	8(B)(3)(a)	WELC/EDF	scheduled repair and maintenance exception	limit exception to situation when it is not technically feasible to transfer the gas to equipment not being depressurized	OCD believes that these situations will occur infrequently, and accordingly, the language is not necessary.	Bolander
15	8(B)(3) - new	NMOGA	additional exception for valves, flanges, connectors	add exception for fugitive emission components such as valves, flanges, and connectors	NMOGA suggests that these fugitive emissions are not waste, but fails to explain why. Valves, flanges and connectors that are functioning properly and properly maintained should not be leaking.	Bolander
16	8(B)(3) - new	WELC/EDF	limitation on all exceptions	limit all exceptions by requiring flaring rather than venting, and all flares must be properly sized, equipped with automatic ignitors, and have 98% destruction efficiency	The proposal is duplicative and unnecessary. There is no need to repeat the flaring vs. venting requirement. The prescriptive requirements for flares was addressed earlier, but if OCC adopts these requirements, they will appear in 8(E), making them duplicative here.	Bolander

17	8(C)(1)	NMOGA	operations plan	delete requirement to take all reasonable actions to prevent and minimize leaks and releases; delete requirement to file with OCD and implement an operations plan; operator files plan only when out of compliance with capture requirement; plan must be treated as confidential business information	NMOGA argues that a plan, which it terms a "mitigation" plan, should be required only when the operator is out of compliance. This approach undermines the point of an operations plan, which is to identify and address potential leaks and releases and patterns of recurring equipment failures before they occur, not to fix them afterwards or to ensure compliance with the capture requirement; that's the point of the gas management plan. If the operator does not do the plan until after the release, the damage is already done, and would be compounded because the plan wouldn't be done until weeks or months after the release. It does little good to plan after the event. NMOGA witness Reinermann also argued that OCD does not have the capacity to review the plan. This assertion is patently false; OCD's engineering bureau routinely reviews projects as complicated than pipelines and compressors. Finally, to the extent that NMOGA argues that OCC does not have the statutory authority to require an operations plan, this is not true; OCC has the authority to adopt rules that are reasonably necessary to prevent waste, which is the point of an operations plan, and the requirement is not preempted by federal law because it is not safety-related.	Bolander
18	8(C)(2)	NMOGA	performance standard during scheduled maintenance, replacement, and repair	delete standard	NMOGA argues a performance standard is not required because venting and flaring is allowed during these activities. An operator's ability to vent and flare during an activity does not mean that it vent or flare in any manner that it wants. A performance standard ensures that venting and flaring, if and when allowed, is minimized to the extent possible. Here, the standard prohibits venting and requires gas to be routed to a portable flare that meets minimum performance standards. NMOGA also argues that OCC cannot prioritize flaring over venting, but in fact, OCC is expressly authorized to regulate the disposition of waste to protect public health and the environment. NMOGA does not make any argument about the flare requirement, which is cross-referenced to the performance standard in 19.15.27.8(E) NMAC.	Bolander
19	8(C)(2)	WELC	performance standard during scheduled maintenance, replacement, and repair	require operators to route gas into pipeline or put to beneficial use, and only when either action is not practicable, route to a portable flare stack	OCD expects that operators will route saleable gas to a pipeline whenever possible rather than flare it or take other actions such as pump-down and other techniques. As a result, it is not necessary to prescribe this conduct.	Bolander
20	8(C)(4)	NMOGA	AVO frequency	reduce inspection frequency from weekly to monthly and exempt production equipment at sites subject to monthly EPA or NMED AVO requirement	NMOGA says that it believes that "an equivalent level of monitoring is possible through monthly inspections." This is a conclusory statement for which NMOGA presents no evidence. To the extent that OCD's requirement is not consistent with NMED's proposal, NMED can adjust its proposal. OCD cannot change its requirement to conform with a NMED rule that has not been finalized.	Powell
21	8(C)(4)(a)(i)	NMOGA	AVO scope	delete requirement to inspect "broken, damaged seals and gaskets"	OCD expects operators to check seals and gaskets for leaks. Contrary to NMOGA's assertion, this requirement does not require visual inspection by opening seals and gaskets. To make this clear, at NMOGA's suggestion, OCD clarified that visual inspections occur "externally."	Powell
22	8(C)(4)(a)(iii)	NMOGA	AVO scope	clarify that odors must be "hydrocarbon"	Strong odors indicate a problem that should be investigated. Hydrocarbons are the focus, but other strong odors, such as H2S, should not be ignored.	Powell
23	8(D)(1)	NMOGA	reporting to upstream operators - scheduled maintenance	allow telephonic or electronic notification	OCD believes that operators should give written notice of scheduled maintenance. Telephonic notice cannot be confirmed. Given the potential consequences for upstream operators, including liability for venting and flaring and compliance with gas capture requirements, operators must be required to formalize their process and demonstrate that they gave notice.	Powell

24	8(D)(2)	NMOGA	reporting to upstream operators - unscheduled maintenance	allow telephonic or electronic notification	OCD agrees that verbal notification of unscheduled maintenance is appropriate, provided that it is confirmed in writing for the reasons stated above.	Powell
25	8(D) - new	NMOGA	measurement	add provision allowing operators to estimate beneficial use through estimation	OCD requires measurement unless it is not practicable under 8(F)(7). There is no need for a separate provision for gas vented or flared during "beneficial use". Moreover, the measurement exception applies to equipment, not the type of use. Additionally, the industry already estimates beneficial use on the C-115. Adding this language could confuse operators.	Bolander
26	8(F)	WELC/EDF	reporting venting and flaring caused by emergencies & malfunctions	delete reporting of venting and flaring during events of "long duration"	WELC argues that the title is not accurate because venting and flaring for long durations is prohibited, but in fact, some events, such as venting and flaring that exceeds 8 hours in a 24 hour period, and therefore is not an emergency, is covered by this subsection.	Powell
27	8(F)(1)(a)	NMOGA	reporting venting and flaring caused by emergencies & malfunctions	limit reporting to emergencies & malfunctions not authorized by NMED, EPA, or Tribal Authority with CAA designation	OCD deleted this exception from 8(B)(1), so there is no need for a cross-reference. Additionally, the language is needed to avoid a conflict. This reporting serves a different purpose than a permit, and excusing operators from reporting would prevent OCD from even knowing about the release. Stated differently, another agency's permit may authorize use of a flare, but that doesn't mean that it should not be reported to OCD.	Powell
28	8(F)(1)(a)(i)	NMOGA	reporting venting and flaring caused by emergencies & malfunctions	limit form C-129 to "information available"	It is not necessary to state the obvious. Operators are not expected to include information that is not available. Operators shouldn't make up information, since that would be a felony under the Act.	Powell
29	8(F)(1)(a)(ii)	NMOGA	reporting venting and flaring caused by emergencies & malfunctions	limit form C-129 to "information available"	See above.	Powell
30	8(F)(1)(a)(iii)	NMOGA	reporting venting and flaring caused by emergencies & malfunctions	identify form C-129 as "final"	The requirement for an initial and final C-129 is obvious from the structure of the rule, and the additional qualifier is unnecessary.	Powell
31	8(F)(1)(a)(iii)	WELC	reporting venting and flaring caused by emergencies & malfunctions	require operators to "use best efforts to notify all members of the public whose health, safety or property are endangered" by a major release under 29.7(A)(2)(a), (c), or (d)	The proper place for this proposal is Part 29. It is not a logical outgrowth of Part 27, which is a reporting and accounting rule. Operators should focus their resources on responding to and correcting the emergency or malfunction. Other entities, such as local governments or emergency responders are better equipped to provide notice to the public, including the capacity to do reverse 911 calls.	Powell
32	8(F)(1)(b)(iv)	NMOGA	reporting venting and flaring caused by emergencies & malfunctions	identify gas analysis as "representative"	If one term is used, OCD prefers the qualifier "compositional" which more accurately describes the gas sample, but agrees with Commissioner Engler that adding "representative of the well or facility" may clarify that in some circumstances, operators may not be able to collect a sample from the precise volume of gas that was or is being vented or flared.	Bolander
33	8(F)(1)(b)(vii)	WELC	reporting venting and flaring caused by emergencies & malfunctions	incorporate list of causes of venting and flaring by reference to 8(B)(3)	OCD intends to provide a series of check boxes on form C-129 for operators to identify the cause of venting and flaring which may include many of the causes identified by NMOGA, but may include others or use different descriptors. OCD appreciates NMOGA's objective of transparency, but putting the list in the rule makes it more difficult for OCD to draft the form.	Powell

34	8(F)(1)(c)	NMOGA	reporting venting and flaring caused by emergencies & malfunctions	strike the requirement for operators to certify additional information requested by OCD	All forms and information must be certified to ensure that operators pay close attention the accuracy of information provided to OCD. NMOGA argues that operators can't know what additional information OCD may request, and therefore shouldn't have to certify it. It may be true that operators can't know what information will be requested, but the solution is not to allow them to submit inaccurate or false information; rather, they should submit only that information that they can certify as accurate and truthful. Additionally, to the extent that operators aren't comfortable with the information, they can explain their level of confidence in the provided information.	Powell
35	8(F)(1)(d)	NMOGA	reporting venting and flaring caused by emergencies & malfunctions	operators file form C-129 for gas releases and form C-141 for liquid releases	NMOGA is concerned that operators will have to file form C-141s and 129s, but its change does not improve the provision. The rule is clear that one form is filed for gas only releases and another form which include liquid releases.	Powell
36	8(F)(2)	WELC/EDF	monthly reporting	require operators to provide "formulas" and "parameters" in addition to the methodology for estimated vented and flared volumes	The additional terms are superfluous.	Bolander
37	8(F)(2)(g), (h), (i)	NMOGA	monthly reporting	delete categories for uncontrolled storage tanks, pneumatic controllers and pumps, and thief hatches	NMOGA argues that the deleted categories shouldn't be reported because they are not waste, can be difficult to estimate or are reported to EPA. First, these categories constitute waste because they can be controlled. Even if these categories do not constitute waste, OCC has the authority to require reporting in order to further its objective of preventing waste both in the present, e.g., to obtain relevant information regarding the scope of venting and flaring, and in the future, e.g., venting and flaring become waste as capture technologies become available. Second, operators are expected to make their best effort at estimation, and reporting to EPA is no substitute for reporting to OCD. In fact, operators already estimate this venting and flaring for to design and permit facilities and to comply with regulatory requirements. For instance, operators model tanks with E&P Tanks and Promax and liquids unloading for EPA Subpart W. Notably, NMOGA's witness Leonard acknowledged that although measuring or capturing vented natural gas from storage tanks is not easy, that should not be the standard for determining whether it should be done. The volumes from these categories, in addition to the volumes from the categories for thief hatches, count against the operator's 2% allowed volumes of vented and flared natural gas. This is particularly important since NMOGA witness Greaves admitted and WELC witness McCabe confirmed that the amounts could be "significant".	Bolander
38	8(F)(2)(j)	NMOGA	monthly reporting	delete category for "other not described above"	NMOGA argues that the "other" category is unnecessary and introduces uncertainty into the reporting process. OCD believes that this category allows the development of a form that can accounts for unforeseen volumes that should be reported. "Uncertainty" should be addressed by adjusting the accounting requirement, not by eliminating the requirement to report. OCD did not intend this category to report venting from equipment and events not otherwise listed, such as purge gas, bradenhead tests, etc. However, OCD recognizes that it would not be appropriate to require operators to report volumes that OCD has determined are not waste. Accordingly, OCD proposes to revise this subparagraph to say "other waste as defined in 19.15.2 NMAC that is not described above."	Powell

39	8(F)(2) - new	WELC	monthly reporting	add new category for controlled storage tanks	OCD believes that this category is not required because these tanks are controlled, meaning that their emissions are being capture for beneficial use or destruction in a flare.	Bolander
40	8(F)(3)(a), (b)	NMOGA	monthly reporting	revise lost gas calculations	NMOGA's changes reflect the deletion of categories rejected above.	Bolander
41	8(F)(5)	NMOGA	monthly reporting	delete requirement to provide forms to NMED on request	NMOGA argues that the forms are publicly available. OCD believes that operators can easily provide forms to NMED upon their request, a sister agency of state government, rather than requiring NMED to search for them. NMOGA also complains that there are "sideboards" for this requirement, but the requirement clearly applies only to forms required under Part 27. It is difficult to imagine what other "sideboards" would be needed; it is not reasonable to assume that NMED will abuse the right to request specific forms already provided to OCD.	Powell
43	9(C)	NMOGA	GIS layer showing releases durig emergencies and malfunctions	delete requirement to provide GIS layer	NMOGA argues that the GIS layer duplicates information on forms already submitted by operators and creates an "administrative burden." OCD believes that prudent operators should be tracking these releases. As NMOGA witness Smitherman acknowledged, the GIS layer would not duplicate C-129 reports because operators don't report releases less than 50 mcf on C-129s. Moreover, C-129s do not provide a visual reference to understand potential issues arising from the same or similar causes. On this point, although NMOGA claims that having a visual representation of all emergencies, malfunctions, and releases regardless of size won't have any benefit, NMOGA witness Reinermann admitted that prudent operators who prepare a GIS layer would use it to evaluate patterns. Finally, NMOGA witnes Reinermann argued that the GIS layer would not be useful because operators would not submit it until long after the releases occurred, but he admitted that operators could maintain a current map that would allow them to look for problems in real time. Additionally, NMOGA argues that OCD can use existing reports rather than a GIS layer. However, if operators assert confidentiality, OCD won't be able to create the map and link it to a specific pipeline.	Powell
44	9(C)	NMOGA	confidentiality	require OCD to maintain information as confidential upon operator's request	An operator can assert confidentiality under the statute, but OCD retains the power to determine whether the information is entitled to such protection. NMOGA argues that OCD has no say in the matter; the operator's claim is determinative. EMNRD already has rejected NMOGA's position in the geothermal energy rules, 19.11.1.8 NMAC, which requires EMNRD to review a confidentiality claim under IPRA. OCD's proposal is simpler than the geothermal energy rules, but still allows OCD to comply with its IPRA obligations while seeking a resolution of a confidentiality claim in the context of specific facts.	Powell
46	10(A)	NMOGA	capture requirements	add "begin to", add opportunity for hearing for relief from requirement	The phrase "begin to" does not clarify the rule, but rather undermines the regulatory requirement. A hearing is not necessary because an operator who fails to comply will have a hearing if OCD files an enforcement action. Operators who do not intend to comply with the requirements will use the hearing process to delay and avoid the intent of the rule. To the extent that operators face undue hardship or unusual or unforeseen circumstances, OCD has enforcement discretion to accommodate these concerns.	Brandon
47	10(A)(3)	NMOGA	capture requirements	change "statewide" to "applicable reporting area"	OCD has adopted an alternative approach that requires operators to comply with the capture requirements for the acquired wells, which by definition, is the applicable reporting area.	Brandon

48	10(A)(3)	NMOGA	capture requirements	allow operator to comply with capture requirements for acquired system separately or together with other assets	NMOGA argues that its approach is more flexible. OCD has proposed new language to require the operator to comply with the existing capture requirement unless OCD approves a different compliance date. OCD can't foresee the consequences of allowing operators, who routinely use corporate structure to partition off regulatory obligations and liability, to choose how to account for compliance with the capture requirements.	Brandon
49	10(A)(3)	WELC	capture requirements	require operators to keep the same schedule for acquired wells, and delete OCD's ability to allow a different date	OCD has adopted different language to achieve this same objective, but rejects the restriction on its ability to adjust the final compliance date. OCD should have the discretion to give operators who acquire poorly performing assets more time to demonstrate compliance; these operators should be encouraged to acquire such assets, which will result in an overall improvement in waste reduction.	Brandon
50	10(A)(4)	NMOGA	capture requirements	allow affiliated operators to consolidate reporting and compliance obligations in their discretion	See above. OCD believes that requiring consolidation better advances the rule's objective to prevent waste.	Jim
51	10(B)	NMOGA	accounting	change "accounting" to "certification" and changing the formula	NMOGA's proposal is intended to accommodate its changes to the reporting categories, and is rejected for the reasons stated above.	Jim
52	10(B)(3)(c)	NMOGA	ALARM	strike reference to form C-141	NMOGA acknowledges that Form C-141 must be filed for liquid releases, but inexplicably deletes the form. Operators that detect liquid releases with ALARM must file the appropriate form.	Brandon
53	10(B)(3)(e)(i)	NMOGA	ALARM	reduce frequency that operator must use technology to get credit from twice to once per year	NMOGA suggests that the changed frequency matches the requirement for annual instrument monitoring for gathering pipelines in 28.8(C)(5). These requirements serve different purposes and are not intended to be parallel. Instrument monitoring for pipelines is intended for basic operational integrity, while ALARM is a bonus for going beyond the basic requirements. To obtain ALARM credit, operators must show a greater commitment to using the technology than mere compliance with a basic prudent operator standards.	Jim