

Hearings begin on New Mexico's proposed oil and gas methane venting and flaring rules

New Mexico's ongoing efforts to reduce pollution from the oil and gas industry continued Monday with the opening of a two-week public testimony hearing on rules proposed by fossil fuel regulators intended to address the venting and flaring of methane gas.

Venting is used by operators to release excess gas into the air, while flaring is the process of burning off such gas.

The practices became controversial during the recent oil and gas boom in New Mexico, which drew concerns for air pollution in the state's two main oil and gas regions – the Permian Basin in the southeast and San Juan Basin in the northwest.

Upon taking office in January 2019, New Mexico Gov. Michelle Lujan Grisham established the state's Climate Change Task Force and instructed the New Mexico Environment Department (NMED) and Energy, Minerals and Natural Resources Department (EMNRD) to develop complimentary regulations aimed at strengthening environmental regulations related to air pollution believed to be caused by the fossil fuel industry.

Both rulemakings were ongoing throughout 2020 and continued in 2021 with ENMRD's Oil Conservation Division (OCD) recently proposing draft rules, and the Oil Conservation Commission holding a hearing Monday to solicit comments from industry leaders, environmental groups and the public.

EMNRD's rules would target pollution, while EMNRD would address waste of natural gas resources.

A contentious clause in the proposal specified that low-performing or stripper wells would be granted some flexibility to meeting requirements for inspections or retrofits as such activities can be costly, but would not exempt them from gas capture targets, per a statement from EMNRD.

At the hearing, NMED Environmental Protection Division Director Sandra Ely said NMED's draft rules would be proposed in April and a hearing was likely the following summer. She said the Department was supportive of EMNRD's proposal.

“The agencies set out to address separate but complimentary rules. The two sets of rules are designed to work together. The Environment Department strongly supports the rules proposed before the commission and urges that they be adopted.”

The OCD's proposal would require both midstream and upstream operators to capture 98 percent of their natural gas by the end of 2026, while also requiring reporting for gas loss at each stage of operations.

Any operator which fails to meet required gas capture targets could be denied drilling permits, per the proposal by EMNRD, be blocked from starting drilling operations or could face enforcement actions such as fines.

Routine venting and flaring would be banned under the proposal.

In a pre-hearing statement from the New Mexico State Land Office, the agency argued that half of oil and gas wells on State Trust land were designated as “stripper wells” and voiced concern that the propose rules could not be enforced equally for all operators.

The Office also called for a mandate to be added to the rule requiring operators comply with state audits the Land Office uses to assess royalties on flared gas.

“More than half of the wells on State Trust Lands are classified as stripper wells under OCD standards – with a significant portion of those wells operated by large, profitable companies that can afford to meter their wells,” the statement read.

“The Commissioner (Stephanie Garcia Richard) is concerned that the proposed rule, while a necessary first step, does not go far enough toward ensuring compliance consistently and fairly for all operators.”

Environmentalists continued to accuse the state of exempting most of the state’s wells through the “flexibility” offered to stripper wells.

Several groups participating in the proceedings expressed concern that the clause constituted a loophole that would allow operators to continue polluting the air even after the rules were enacted – exempting 95 percent of wells in the state.

James Jimenez, executive director of New Mexico Voices said the industry’s impact on the state’s budget as a major economic driver must not cause officials to overlook its effects on the environment, and more gas capture could mean more revenue for public schools and other government-funded services.

“We must not allow the oil and gas industry’s outsized impact on our state budget and economy to be an excuse to ignore the detrimental effects of fossil fuel dependency on our climate, our air quality, and the health of our communities, Jimenez said.

“Strong air pollution and methane waste rules are a critical step toward industry accountability and ensuring that New Mexico’s schools get the funding that is owed to them.”

Celerah Hewes, New Mexico field organizer with the Moms Clean Air Task Force, a national activist group focusing on air pollution, pointed to a recent study from the Environmental Defense Fund that showed 1 million tons of methane were emitted by New Mexico oil and gas operators each year and 70 percent of emissions came from leaks at wells sites and other extraction facilities.

She said the State needed stronger rules than proposed to eliminate venting and flaring.

“The OCD must strengthen the proposed rules to eliminate oil and gas pollution,” Hewes said. “These methane rules are needed because we have a serious methane waste and pollution problem. Our children are counting on this.”

Nick King, a pastor at the Carlsbad Mennonite Church said that while stronger restrictions on oil and gas operations could affect companies’ bottom lines and the industry’s economic impact on New Mexico, any losses were worth better protection for the environment.

“We all dislike more regulations, but sometimes they’re very necessary. This is an existential threat to us, the climate,” King said. “We realize the regulation may adversely affect our economy, but I am willing to make that sacrifice to protect our future. There needs to be reasonable and responsible regulations.”

The Rev. David Rogers, of Carlsbad’s First Christian Church, said the rules as proposed would be ineffective in stopping climate change and pollution in New Mexico.

The proposed rule is a step in the right direction, but it does not go far enough,” Rogers said. “When known violators are allowed to continue to operate and there are too many loopholes that exempt most of New Mexico’s wells, there is no stopping this climate bomb.”

In its published pre-hearing statement, the New Mexico Oil and Gas Association (NMOGA), a trade group representing oil and gas producers in New Mexico argued five years might not be enough time for operators to develop their own solutions to methane emissions.

NMOGA also filed a motion to dismiss a portion of the proposal requiring operators report vented and flared gas to all royalty owners on a monthly basis, arguing that the clause contradicted New Mexico's Oil and Gas Act and that the data was already publicly available via reports made to the state.

The Association represented several testimonies from industry leaders throughout the proceedings.

“Overly specific operational restrictions; low volume and low pressure venting, flaring or measurement requirements and reporting requirements that overlap or duplicate areas within the jurisdiction of the NMED will limit the needed flexibility and overwhelm agency and company personnel with costly tasks will hamper, distract from and do not add value to waste reduction efforts,” the statement read.