

New Mexico Oil and Gas Regulators A Month Away From Stricter Emissions Rules

A two-year process to develop stricter state regulations on oil and gas emissions of methane and other natural gasses, New Mexico could conclude the rulemaking last month as state regulators will codify the new rules into law.

The State's Oil Conservation Commission (OCC) finished its two days of deliberation on the rules on Feb. 12 and is expected to vote on the final rule changes at its March 25 meeting.

The rules proposed by the Energy, Minerals and Natural Resources Department would require midstream and upstream oil and gas operators to capture 98 percent of natural gas emissions by 2026, while adding requirements that operators report natural gas losses to the state at every level of operations.

Routine venting and flaring would be prohibited under the new rules, and operators who fail to meet gas capture targets could be denied future drilling permits, blocked from starting to drill new wells or face other enforcement actions such as fines.

Low-performing or "stripper" wells would be granted some flexibility under the new rules but would still be required to meet gas capture requirements.

The rules were drafted by the Oil Conservation Division (OCD) after months of public hearings following an executive order from Gov. Michelle Lujan Grisham in 2019 that formed the state's Climate Change Task Force and called

on executive agencies to find ways and create new policy to reduce New Mexico's impact on the environment.

Public comments on the drafted rules were accepted from Nov. 24, 2020 to Jan. 8 and the Commission held several days of public hearings last month.

Discussions throughout the process received input from oil and gas industry leaders, environmentalists, state officials and members of the public.

In closing arguments filed by the Division on Feb. 5, the OCD voiced its support for the proposed rules as a means to address pollution from oil and gas extraction while stopping the waste of natural gas as a resource.

“The proposed rules fulfill Gov. Michelle Lujan Grisham’s commitment to reducing methane emissions and the Oil Conservation Commission’s longstanding effort to prevent the waste of natural gas during the exploration, production, and processing of the state’s liquid mineral resources,” read the written comments.

“The Proposed Rules properly reflect the Commission’s duties to conserve oil and gas through judicious supervision, prevent waste, and protect correlative rights.”

During the Commission’s deliberations last week, Chair Adrienne Sandoval who also serves as director of the Oil Conservation Division said the most significant consideration for the Commission was its definition of waste.

“In my mind, the biggest threshold issue is sort of the argument of what is waste and what isn’t waste,” she said.

Final statements filed by a consortium of climate advocacy groups led by the Environmental Defense Fund called for the Commission to limit venting and flaring even during the initial flowback when wells are completed.

Some gas release is often needed during the initial stages of a well’s life cycle to safely pressurize a well as it goes into production.

The groups also requested the Commission add a clause in the proposed rules to require operators report all major sources of waste including from “outdated” pneumatic devices and flaring from storage tanks.

Operators should also be required to retrofit facilities with updated gas capture equipment within six months of the rules taking effect, the groups argued, despite contentions from the New Mexico Oil and Gas Association (NMOGA) that it would take up to 24 months for such equipment to be available and put to use.

If operators are not in compliance, environmentalists contended they should face automatic denials of new drilling permits.

“OCC’s fundamental obligation under the Oil and Gas Act is to prevent ‘waste’ associated with the production or handling of oil and gas resources,” read the statements. “Exercising its authority to regulate waste, OCC also has authority to protect public health and the environment.”

In its closing statements, NMOGA argued low-pressure sources of emissions should not be considered waste as they are not marketable for sale by operators and that oil and gas companies should be given more leeway for emergencies that require gas releases for safety reasons.

“The Division’s failure to exclude from the gas capture requirement low-pressure sources that do not constitute “surface waste” turns the gas capture requirement into an arbitrary emissions cap,” read NMOGA’s statement.

Under the current proposal, NMOGA said a third emergency within a 60-day period would count against an operator’s gas capture requirements and could unfairly be applied to numerous facilities owned by same operator.

Incidents such as weather events or power outages could unduly impact a company’s gas capture obligations under the proposal, NMOGA argued.

“If the definition of emergency is applied site by site, this will still allow the Division to detect patterns of failure that may indicate poor operations without arbitrarily and unduly impacting operators with numerous sites in a single reporting area,” read the statement.