

**OCD EXHIBIT 4C - REBUTTAL TESTIMONY FOR PART 27**

Line #	Citation	Party	Topic	Proposed Modification	OCD Position	OCD Witness
3	7(D)	NMOGA	completion operations	adopt EPA OOOOa definition; insert "startup of production" for "earlier of 30 days after initial flowback or installation of permanent production equipment"	OCD inserted "end of separation flowback" in lieu of the cited phrase to recognize that separation flowback may take longer than 30 days and to encourage the installation of permanent equipment at the earliest possible time. Prudent operators should be sizing their equipment to accommodate the max or near-max flowback in order to initiate separation at the earliest possible time. While operators are encouraged to install permanent equipment, they can use temporary equipment if they determine that it is more economical. Additionally, OCD does not want to adopt EPA definitions which were designed for air quality purposes. NMOGA exaggerates the importance of consistency between OCD's definitions and EPA's, which serve a different purpose, and BLM's, which were repealed. Perhaps even more importantly, NMOGA's proposed definitions would create a loophole that could swallow the entire rule. NMOGA's definition of completion begins with initial perforation and concludes upon startup of production. NMOGA's definition of startup of production begins with initial flowback and concludes with continuous recovery of salable gas from the beginning of completion operations until "there is continuous recovery of salable quality of gas separation and recovery of any crude oil, condensate or produced water." These definitions do not provide a clearly delineated point in time that objectively determines the end of the completion phase and the start of production. As a result, operators have complete discretion to determine when the completion phase ends. In the absence of objective criteria, it would be impossible for OCD to evaluate the operator's determination when "startup of production" has occurred, and consequently when a well has progressed into the production phase. Indeed, depending on the operator's drilling plan, the well may never reach the end of completion. NMOGA's proposed definitions would allow an operator to extend the completion phase indefinitely, and continue to vent or flare natural gas for as long as it wants based on unique and unverifiable factors. by contrast, OCD definitions work together. "Completion operations" begins with the initial perforation of the well in completed interval and concludes at end of separation flowback. "Initial flowback" begins with the onset of flowback concludes when technically feasible for separator to function. "Separation flowback" begins when technically feasible for a separator to function concludes 30 days after commencement of initial flowback. "Production operations" begins 31 days following the commencement of initial flowback. It is clear when completion ends and production begins.	Bolander
4	7(G)	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
5	7(G)(2)	NMOGA	emergency	delete "exceeds the sales contract volume of gas"	A well operator that fails to plan correctly may attempt to put more gas in the gathering line than authorized by its contract. If the system operator rejects that gas, the well operator should be liable for it. Such volumes would not necessarily "exceed the capacity of the equipment or system". BLM's definition of emergency also includes this language, and operators on federal land have been working under it.	Bolander
6	7(G)(4)	NMOGA	emergency	allow 8 hours of venting and flaring "off the books"	It is important to note that 4 hours is not a response time; it is an exemption for vented and flared volumes that counted against the operator's 2% allowance. If the number of emergencies is excessive, the operator may have a problem that needs to be fixed. In any event, NMOGA has no data only how many emergencies occur and their frequency or distribution. NMOGA witness Smitherman testified that he was not aware if any of the companies represented by the 79 members of his team tracked emergencies. As for the time issue, NMOGA witness lanuzzi testified that of the 4 emergencies she was aware of, venting and flaring resulting from 3 of them was fixed in less than 8 hours. Notably, BLM's definition of emergency provides 0 hours "off the books", so OCD's proposal may be more generous than appropriate.	Powell

7	7(G)(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
8	7(G)(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
9	7(H)	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
10	7(I)	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
11	7(K)	NMOGA	initial flowback	change end point from "when it is technically feasible for a separator to function" to "separation flowback"	OCD opposes all NMOGA's proposed changes to the operating phrase definitions for the reasons stated in 7(D). OCD's proposed definitions work together and none should be changed.	Bolander
12	7(L)	NMOGA	malfunction	delete "reasonable" and "substantial"	OCD's definition is identical with BLM's, and terms ensure that operators cannot claim any disruption constitutes a malfunction.	Bolander
13	7(P)	NMOGA	production operations	begins "upon the startup of production" and adds new definition of "startup of production"	OCD prefers technical terms related to oil and gas operations rather than EPA air quality definitions. A definition that uses a fixed period, e.g., beginning 31 days after commencement of initial flowback, is easier to enforce and incentivizes operators to size their separation equipment for the largest flowback volumes and to begin separation as soon as technically feasible. See 7(D).	Bolander
14	7(Q)	NMOGA	separation flowback	changes start and end points	See above.	Bolander
15	7(R)	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
16	7 - new	WELC/EDF	air pollution control equipment	add definition	The definition relates to WELC/EDF's proposal for RECs, which OCD does not support.	Bolander
17	7 - new	WELC/EDF	drill out	add definition	See above.	Bolander
18	7 - new	WELC/EDF	flowback	add definition	See above.	Bolander
19	7 - new	WELC/EDF	flowback fluid	add definition	See above.	Bolander
20	7 - new	EDF	certify	add definition	Not needed. OCD can draft the form to identify who can certify on behalf of an operator.	Powell
22	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

23	8(B)(1)	NMOGA	drilling operations	change "technically feasible" to "reasonably practicable"	The concept of technical feasibility includes the concept of regular or normal use. As NMOGA acknowledges, "reasonably practicable" incorporates economic considerations, making the definition difficult to apply because economics varies by operator based on non-technical factors. Additionally, the language is consistent with BLM's rule regarding venting at Section 3179.6.b.1.	Bolander
24	8(B)(2)	WELC/EDF	drilling operations	require proper sizing, automatic ignitors, and 98% destruction efficiency for flares	OCD revised this paragraph to cover location only and moved design-related standards to 8(E)(3). With respect to design-related standards, OCD believes that a performance standard is preferable, and operators should be able to select the appropriate technology. Additionally, 98% destruction efficiency requirement is an EPA requirement based on air quality considerations, and is not appropriate here. BLM did not impose this requirement because flares routinely cannot achieve this efficiency, and it makes little sense to establish a requirement that most operators cannot achieve regularly.	Bolander
25	8(B)(3)	NMOGA	drilling operations	delete "substantial"	See "emergency" above.	Bolander
26	8(C)(1)	WELC/EDF	completion operations	RECs: require operators to capture gas during initial flowback using special equipment and combust the gas using "air pollution control equipment"	WELC/EDF's proposed requirements for RECs are intended to capture natural gas as the earliest possible time, which may not be during the initial flowback stage. While possible, there are several potential issues with capturing gas during the initial flowback stage: 1) feasibility - ability to capture gas during slug flow conditions; 2) safety - dependent upon correct design of equipment resulting in overpressurization and excess venting through safety device; and 3) well type - such as gas wells are more capable of capture during this stage however oil wells will result in high liquid rates with varying flow conditions to be able to accurately design a flare or control system. In addition, OCD believes that pre-separation (before gas treatment) does not constitute waste.	Bolander
27	8(C)(2)(b)	WELC/EDF	completion operations	add "properly sized" and delete "continuous pilot"	See 8(B)(2) above.	Bolander
28	8(C)(3)(a)	WELC/EDF	completion operations	add "properly sized" and delete "continuous pilot"	See above.	Bolander
29	8(C)(3)(b)	NMOGA	completion operations	reduce frequency of gas analysis from twice to once per week	OCD expects operators to check their gas on a frequent basis in order to minimize unnecessary and excessive venting and flaring. The sooner that an operator knows that its gas is back to pipeline specifications, the sooner it will stop venting and flaring. NMOGA's change would double the time before an operator has the relevant information.	Bolander
30	8(D)(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
31	8(D)(2)(b)	NMOGA	liquid unloading exception	allow operator to be on-site or "in close proximity"; delete "all" reasonable actions	The exception is narrow because liquid unloading is a potentially significant source of vented natural gas that is avoidable, e.g., waste. The term "in close proximity" is not sufficient to ensure proper oversight during liquid unloading. NMOGA's witness could not define the range of "close proximity", acknowledged that it could be 5 or even 10 miles in radius depending on the wells being unloaded, and rendered the requirement virtually unenforceable. He also acknowledged that BLM required operators to remain on site, see 3179.104 Downhole well maintenance and liquids unloading (d) manual unloading – "person conducting the well purging remain present on-site throughout the event" (although he erroneously stated that the BLM rule had been rescinded), so operators on federal land already had to comply with that requirement, and he acknowledged that Colorado required operators to remain on site, see 1001-9 Part D II.G.1.b. - "The owner or operator must be present on-site during any planned downhole well maintenance, well liquids unloading, or well plugging event and must ensure that any emissions from the well associated with the event are limited to the maximum extent practicable", and that operators in Colorado's portion of the San Juan Basin already complied with this requirement. With respect to removing "all", the deletion would allow operators to take only some of the available actions, which is even more likely to occur if they are not physically present. NMOGA argues that "all" would require operator to use non-routine or experimental methods, but it ignores that "all" qualifies the phrase "reasonable actions", which already excludes such methods.	Bolander

32	8(D)(2)(b)	WELC/EDF	liquid unloading exception	require automated control system; delete provision that allows automated system as option	OCD does not require reporting for liquids unloading using plunger lift and does not count venting during this process as waste. On the other hand, while OCD exempts for venting during manual liquids unloading if managed properly from the prohibition on venting and flaring, it considers such venting to be waste that must be reported and accounted for as lost gas. OCD is not situated to select production methods for operators.	Bolander
33	8(D)(2)(II)	NMOGA	commissioning exception	extend exception to post-commissioning venting and flaring	NMOGA testified that operators should be allowed to vent and flare natural gas due to O2 content after the commissioning of pipelines, equipment, or facilities. However, NMOGA witnesses could not identify the frequency, duration, or volume associated with post-commissioning activities, and so, in essence, is asking for a loophole without being able to identify the effect. OCD did add commissioning to the venting and flaring exception in 8(D).	Bolander
34	8(D)(3)(c)	EDF	exploratory well exception	limit exception to 60 days of producing in paying quantities, with extension up to 12 months	OCD believes that 60 days is not sufficient time for an operator to develop and evaluate the decline curves and stabilized reservoir pressures for exploratory wells, especially for oil wells for which the profitability of the play and the subsequent investment in takeaway capital must be evaluated. OCD prefers to require operators to make this determination as soon as possible, and to terminate venting and flaring thereafter. OCD does not expect the number of exploratory wells to be significant, and does not want to impose arbitrary restrictions that hamper the exploration of new fields.	Bolander
35	8(D)(3)(e)	WELC/EDF	liquid unloading exception	require operators to notify OCD at least 48 hours before conducting liquid unloading (or as soon as possible if necessary to act more quickly to reduce venting)	Operators conduct liquid unloading frequently and routinely. Managing thousands of notices would be a burden on the agency with no offsetting benefit.	Powell
36	8(D)(4)(c)	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
37	8(D)(6)(f)	EDF	bradenhead test exception	limit test 30 minutes if practicable	This requirement is impractical because bradenhead tests in New Mexico typically require at least 30 minutes per casing string, with the exception of the production string, which in any event, is not vented directly to the atmosphere. Moreover, restricting bradenhead tests to 30 minutes could adversely effect the utility of the test for identifying defective casing, posing a risk to public health and the environment, including ground water and aquifers.	Powell
38	8(D)(4)(k)	NMOGA	pipeline spec exception	allow operators to collect only one sample per week, rather than two	See 8(C)(3)(b) above.	Bolander
39	8(D)(4) - 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
40	8(D)(4) - 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 OCD disagrees because properly functioning and maintained valves, flanges and connectors should not be leaking.	Bolander
41	8(E)(1)	NMOGA	separation equipment and storage tank performance standard	strike "maximum" for anticipated throughput and pressure	NMOGA argues that operators should be allowed to design facilities for anticipated throughput and pressure, but not the maximum because they cannot predict the need and facilities may be oversized. Operators who design for "anticipated" throughput will focus on production, not flowback. As a result, their equipment will be undersized. Operators should be expected to know enough about their operation to design equipment sufficiently to handle the reasonably expected throughput. Operators should be incentivized to size their equipment to reduce unnecessary venting and flaring. This section has a secondary objective of requiring operators to design separation equipment to minimize waste, which may include multi-stage separation to minimize flashing in storage tanks. The Methane Guiding Principles Best Practice on Flaring state that adding a second separation stage is a reasonable mitigation option to reduced excess flashing.	Bolander

42	8(E)(2)	NMOGA	storage tank performance standard	delete standard	NMOGA argues that the standard, which requires new tanks to be equipped with automatic gauging systems, is not needed because storage tank venting is not waste. Because automatic gauging systems are technically feasible for new tanks, and as a result, storage tank venting can be controlled, venting from tanks without such gauging constitutes waste. The rule provides that manual gauging on <i>existing</i> tanks is not considered waste.	Bolander
43	8(E)(3)	NMOGA	flare performance standard	allow flare that "ensure[s] proper combustion of gases"	OCD prefers the phrase "complete and continuous" because it better defines the required performance than "proper", which has no readily ascertainable technical meaning and would allow substandard performance for even state-of-the-art flares. Nonetheless, OCD does not mean to imply that flares must achieve 100% destruction efficiency. However, it is difficult to formulate a standard that optimizes performance without making that implication. Accordingly, in the interest of compromise, OCD proposes the phrase "that maximizes flare combustion efficiency."	Bolander
44	8(E) - new	EDF	flare performance standard	require flares to be enclosed and have a 98% design destruction efficiency	OCD is not aware of any waste-related reason to require flares to be enclosed. Regarding 98% destruction efficiency, see above.	Bolander
45	8(E) - new	EDF	flare performance standard	require operators to submit engineer's certification that flare have sufficient and consistent flow and heat content to achieve 98% design destruction efficiency	OCD prefers performance standards rather than prescriptive requirements. 8(E)(3) satisfies this objective by prescribing performance standards that allows OCD to evaluate the effectiveness of flares.	Bolander
46	8(E)(3)(a)	WELC/EDF	flare performance standard	require 98% destruction efficiency	See above.	Bolander
47	8(E)(3)(b)	NMOGA	flare performance standard for existing flares at non-stripper wells	allow operators to retrofit flares installed before 6/1/2021 with automatic ignitor, continuous pilot, or other malfunction alert technology no later than 24 months after effective date of rule or an alternative date approved by OCD	OCD believes that 18 months is sufficient time for operators to retrofit these flares. NMOGA claimed that operators need more time because of the limited number of manufacturers and installers, but did not provide any evidence in support of such limitations. Additionally, OCD does not need or want a provision allowing an alternative date; such requests will burden the agency unnecessarily. To the extent that an operator can demonstrate true hardship or unusual circumstances, the agency can use its enforcement discretion to enter an agreement for compliance by a date certain, backed by stipulated penalties.	Bolander
48	8(E)(3)(b)	WELC/EDF	flare performance standard for existing flares at non-stripper wells	allow operators to retrofit flares installed before 6/1/2021 with automatic ignitor, continuous pilot, or other malfunction alert technology no later than 120 days after effective date of rule	OCD believes that 120 days is not sufficient time for operators to retrofit these flares given capital planning requirements and probable timelines for equipment and vendors as stated by NMOGA. WELC/EDF provides no data to show that 120 days is more reasonable. OCD acknowledges that NMOGA also didn't provide data. Lacking data, OCD believes that its original proposal of 18 months is appropriate.	Bolander
49	8(E)(3)(c)	NMOGA	flare performance standard fo stripper wells	state that flares at stripper wellls "shall only be required" if the flare is replaced after effective date of rule	NMOGA's phrasing is unnecessary and poor regulatory language. OCD's language achieves the same result and reads better.	Bolander
50	8(E)(3)(c)	WELC/EDF	flare performance standard for stripper wells	require flares at stripper wells to be equipped with automatic ignitor no later than 12 months after effective date of rule	OCD opposes requiring all stripper wells to equip their flares with automatic ignitors within 12 months. First, this requirement is not consistent with general practice which grandfathers sources until they reconstruct or replace significant equipment. Second, this requirement could render many stripper wells economically unviable. This could cause waste in a different way: prematurely shut in wells, undeveloped resources, and additional costs for the state to plug abandoned wells.	Bolander
51	8(E)(5)	NMOGA	AVO frequency	exempt production equipment at sites subject to monthly EPA or NMED AVO requirement	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. Based on ongoing conversations with NMED, OCD has every expectation that NMED will ensure that its final rule will not conflict with the rule adopted by the Commission.	Powell
52	8(E)(5)(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
53	8(E)(5)(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

54	8(E)(5)(b)	NMOGA	AVO frequency for non-stripper wells	conduct AVO inspections on non-stripper wells monthly (rather than weekly)	NMOGA's analysis inflates the amount of work required. Scheduling and recordkeeping should be minimal, particularly since, as NMOGA witnesses testified, operators already schedule and track information during personnel visits to well sites. Prudent operators already schedule well visits, already go to the site as frequently as every day or at least once per week, already require personnel to conduct an AVO inspection of well sites (NMOGA witness Thompson called it "subconscious" and "Pumper 101"), already record production and other data on paper or electronic forms. It defies logic to claim that a prudent operator who already does all these activities would require additional personnel. Finally, NMOGA expressed concern that OCD will require operators to use a specific type of record, but OCD has clarified that it will not require a particular form of recordkeeping. OCD testified that it will accept whatever recordkeeping method a prudent operator would reasonably use. For example, OCD would not object to operators adding checkboxes for each element of the AVO inspection to their existing paper or electronic recordkeeping format, much as Colorado already allows in Rule 7. It does not make sense to require operators to inspect less frequently than they already do now.	Powell
55	8(E)(5)(c)	NMOGA	AVO frequency for stripper wells	conduct AVO inspections on stripper wells once per year (rather than monthly)	See above. NMOGA is concerned about the burden of conducting these inspections, but admits that prudent operators already routinely inspect their facilities and equipment. NMOGA claims that the frequency is not justified because the potential for waste is low, but this is a conclusory statement not supported by the facts.	Powell
56	8(F)(5)	WELC/EDF	measurement	require operators to calculate flared and vented gas using EPA GHG rule methods, other methods approved by OCD, or "best information"	OCD will require operators to use verifiable methods, but believes that the EPA GHG rule methods are just one type of methodology that is available and accepted within the industry. Limiting to a single methodology precludes the use of other methodologies that may be more appropriate. OCD will use the third party verification process as needed.	Bolander
57	8(F)(5)	SLO	measurement	require operators to calculate flared and vented gas using independently verifiable methods approved by OCD	See above. OCD did not accept SLO's suggestion for language defining how to perform the GOR test since that method is already described in another OCD rule.	Bolander
58	8(F)(5)	NMOGA	measurement	add "or during drilling operations"	The phrase is unnecessary because there is no measurement or reporting during drilling operations.	Bolander
59	8(F)(6)	NMOGA	measurement	add phrase "as per subparagraph (2) of this subpart"	Contrary to NMOGA's claim, the phrase does not add "clarity", isn't necessary, and doesn't comport with SRC rules.	Bolander
60	8(F)(7)	WELC/EDF	measurement	strike "or GOR test"	The GOR test is a valid method of estimation. Note: OCD proposes to modify this paragraph in response to the parties' concern that OCD should require metering if it disagrees with the operator's decision to not install metering under 8(F)(5): "The operator shall install measuring equipment whenever the division determines that <b>metering is practicable</b> or the existing measuring equipment or GOR test is not sufficient to measure the volume of vented and flared natural gas."	Bolander
61	8(F)(8) - new	NMOGA	measurement	require OCD to give notice and provide an opportunity for hearing before requiring operator to install measuring equipment	NMOGA describes the new language but does not justify it. NMOGA appears to want a hearing for any OCD decision. That approach is unworkable. There is no need for hearing on a decision that an operator has failed to provide an adequate means of collecting the data required by the rule.	Powell
62	8(F) - 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
63	8(G)(1)	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
64	8(G)(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(D)(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

65	8(G)(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
66	8(G)(1)(a)(ii)	NMOGA	reporting venting and flaring caused by emergencies & malfunctions	limit form C-129 to "information available"	See above.	Powell
67	8(G)(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, rendering the qualifier unnecessary.	Powell
68	8(G)(1)(a)(iii)	WELC/EDF	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
69	8(G)(1)(b)	NMOGA	reporting venting and flaring caused by emergencies & malfunctions	identify form C-129 as "final"	See 8(G)(1)(a)(iii) above.	Powell
70	8(G)(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
71	8(G)(1)(b)(vii)	NMOGA	reporting venting and flaring caused by emergencies & malfunctions	add list of causes of venting and flaring	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
72	8(G)(1)(b)(vii)	WELC/EDF	reporting venting and flaring caused by emergencies & malfunctions	add list of causes of venting and flaring by reference to 9(G)(2)	See above.	Powell
73	8(G)(1)(b)(viii)	WELC/EDF	reporting venting and flaring caused by emergencies & malfunctions	add non-exclusive list of steps taken to limit the duration and magnitude of venting and flaring	There is no need to add a non-exclusive list. See above.	Powell
74	8(G)(1)(b)(ix)	WELC/EDF	reporting venting and flaring caused by emergencies & malfunctions	add non-exclusive list of corrective actions taken to eliminate the cause and recurrence of venting and flaring	See above.	Powell
75	8(G)(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

76	8(G)(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
77	8(G)(2)	NMOGA	monthly reporting	require reporting on form C-115 rather than C-115B; delete requirement for operators to identify whether volume is measured or estimated, and if estimated, the method used and any changes to the initial method; add "unless otherwise approved by the division" to vary the start date from January 2022	NMOGA says that operators do not have accounting systems to handle form C-115B. OCD is confident that operators can learn to use the new form, which is required to provide the information necessary to enforce the rule. The form serves an entirely different purpose than Form C-115, which cannot be used to evaluate venting and flaring from individual wells or facilities. For example, four taxable properties - Rosa Unit, San Juan 28 7 Unit, VPR "A" Unit, and Northeast Blanco Unit have almost 2,000 wells, and an unknown but significant number of tanks and other equipment. The Rosa Unit alone has more than 500 wells. Other operators have taxable properties with multiple wells, such as Oxy's Indian Hill Unit, which has 20 wells. OCD expects that an analysis would show that many taxable properties have multiple wells. If the operators of these taxable properties were to report their vented and flared volumes on Form C-115, then it would be impossible for OCD to identify potential venting and flaring issues at the wells and facilities and, contrary to the testimony of NMOGA witness Perez, for operators to "allocate back" these volumes to specific wells or facilities. Additionally, Form C-115 is not appropriate as currently configured, including how it is linked to SLO and TRD. On other hand, NMOGA does not explain its deletion of the references to measured vs. vented and methodology, which is essential information to ensure that operators are using verifiable methods. With respect to the added phrase "unless otherwise approved by the division", OCD does not intend to allow operators to vary from the reporting deadline, so there is no need for the phrase. Finally, NMOGA also argues that operators don't have to report gas releases less than 50 mcf pursuant to Part 29; this may be true, but it is clear that Part 18 requires reporting of all venting and flaring regardless of the amount. See 19.15.18.12.F NMAC ("Pending connection of a well to a gas-gathering facility, or when a well has been excepted from the provisions of Subsection A of 19.15.18.12 NMAC, the operator shall burn all gas produced and not used, and report the estimated volume on form C-115.")	Powell
78	8(G)(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
79	8(G)(2)(d), (e), (f)	NMOGA	monthly reporting	delete categories for downhole maintenance, manual liquid unloading, and uncontrolled storage tanks	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
80	8(G)(2) - new	WELC/EDF	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



81	8(G)(2)(g)	NMOGA	monthly reporting	delete reference to "separation phase of completion operations" in insufficient availability or capacity in natural gas gathering system	Operators are required to capture gas during the separation phase of completion operations, e.g., as soon as it is technically feasible to operate a separator. See 7(Q) and 8(C)(2).	Bolander
82	8(G)(2)(g)	WELC/EDF	monthly reporting	delete reference to "separation phase", add "downstream processing plant", and add non-exclusive list of examples of insufficient availability or capacity of natural gas gathering systems and downstream processing plants	WELC/EDF's deletion of "separation phase" is related to its REC proposal which would require capture at all stages of the flowback process, rather than after it becomes technically feasible to operate a separator. Adding "downstream processing plant" is unnecessary because such a plant is part of the natural gas gathering system, and the term interjects uncertainty because the term is not defined. Finally, the non-exclusive list is not necessary and introduces terms and concepts not otherwise addressed in the rule.	Bolander
83	8(G)(2)(i)	NMOGA	monthly reporting	delete category for pneumatic controllers and pumps	NMOGA argues that this category does not constitute waste and it is too difficult to calculate the volumes. See above. Note: Venting and flaring from the normal operation of pneumatic controllers and pumps is not counted as lost gas under 9(B). However, OCD proposes to require reporting these volumes because pneumatics are considered one of the largest sources of vented and flared gas in New Mexico.	Bolander
84	8(G)(2)(j)	NMOGA	monthly reporting	delete category for thief hatches	NMOGA argues that this category does not constitute waste and it is too difficult to calculate the volumes. See 8(G)(2)(d), (e), (f) above. Note: Tanks can be modeled, or alternatively, can be routed and metered to a control device.	Bolander
85	8(G)(2)(m)	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 account 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
86	8(G)(3)(a), (b)	NMOGA	monthly reporting	revise lost gas calculations	NMOGA's changes reflect the deletion of categories rejected above.	Bolander
87	8(G)(4)	NMOGA	monthly reporting	delete requirement to report wasted gas to royalty owners	Reporting waste to royalty owners will cause operators to change their wasteful production practices. Operators will be required to collect this information, which they can send to royalty owners using already established methods. Notably, Colorado also requires such reporting. Nonetheless, OCD recognizes that the proposed language imposes an obligation on operators prior to the availability of the monthly reports. Accordingly, OCD proposes to add the initial phrase "Beginning January 2022." Additionally, OCD agrees with NMOGA that overriding royalty interest owners do not require this reporting, and will except from the requirement.	Powell
88	8(G)(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
90	9(A)	NMOGA	capture requirements	add "begin to" and 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.	Powell

91	9(A)	WELC/EDF	capture requirements	add parenthetical phrases "in addition to requirements of 19.15.27.8 NMAC" and "by at least the amount"	the first phrase is superfluous and does not improve the regulatory requirement. The structure of the rule already makes the capture requirements "additional" to the prohibition on venting and flaring. The second phrase undermines the regulatory requirement. Operators are required to achieve annual incremental improvements to a final goal of 98%. Operators who do better than the increment in one year may "bank" their improvement against the increment for subsequent years so that the focus is compliance with the annual target, not the increment itself. Operators' capture rates may fluctuate over the course of five years as they develop new resources, and the increments are intended to keep them on track, not to lock down improvements at the cost of developing the resources in a flexible manner.	Powell
92	9(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.	Powell
93	9(A)(3)	WELC/EDF	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.	Powell
94	9(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.	Bolander
95	9(B)(3)(c)	NMOGA	ALARM	delete 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.	Powell
96	9(B)(4)(d)(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. Operators have no obligation to use ALARM technologies or to seek a credit, but to obtain ALARM credit, operators must show a greater commitment to using the technology than mere compliance with the prudent operator standard.	Bolander
97	9(B)(5)(c)	WELC/EDF	ALARM	add "calculate"	Superfluous. "Measure or estimate" cover the necessary actions.	Bolander
98	9(C)	WELC/EDF	third party verification	add reference to 27.9(B)(4)	The change is unnecessary because OCD extended third party verification to the entire part.	Bolander
99	9(D)(1)	WELC/EDF	natural gas plan - contents	require operators to certify that they have communicated certain information to natural gas gathering systems	OCD believes that the natural gas plan properly focuses on the operator's certification of gas takeaway capacity, because ensuing gas takeaway capacity is the ultimate goal. Requiring the operator to certify that it communicated specific information to the natural gas gathering system is not necessary to achieve this goal, and inserts OCD into a private business transaction.	Bolander
100	9(D)(1)	EDF	natural gas plan - contents	require operators to describe anticipated safety risks and procedures for reducing frequency of liquid unloading events	OCD does not believe that this language is necessary due to the multiple variables that could be encountered.	Bolander
101	9(D)(2)(c)(ii)	WELC/EDF	natural gas plan - contents	add phrase "and at the anticipated time of connection is expected to have capacity"	OCD modified the verb to read "has or will have", which has the same effect as WELC/EDF's more wordy proposal.	Bolander
102	9(D)(2)(d)	WELC/EDF	natural gas plan - contents	add requirement to disclose the name and location of the natural gas gathering system that will receive the gas	OCD does not need this information to ensure that operators are planning for takeaway capacity. Operators may not know at the time of spud which system will be selected, since the drilling process takes considerable time. There also may be multiple gathering systems available in the area by limiting the selection to one it could force the operator into a less efficient system which could unintentionally require more venting and flaring. That said, the operator cannot produce until it has adequate takeaway capacity.	Bolander
103	9(D)(3)	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

104	9(D)(5)	WELC/EDF	venting & flaring plan	require operators to select the alternative use in order to ensure that the gas is put that use	OCD prefers a performance standard to a prescriptive mandate. Operators should be able to use any alternative use that is appropriate for the situation, and should be given the discretion using good engineering judgment to change those uses depending on the circumstances. OCD's objective is to encourage better production practices, not to micromanage field operations. Additionally, it is unrealistic to expect that operators have a plan for 100%; no beneficial use is 100%. The objective is to require planning, not to compel operators to shut in wells.	Bolander
105	9(D)(7)	NMOGA	APD review	add reference to certification in subparagraph (4), limit review to "complete" venting and flaring plans, and strike OCD's authority to deny or condition APDs if operators don't have adequate takeaway capacity at the time of spud	The reference to subparagraph (4) is superfluous. The limitation to "complete" plans is inappropriate, since a plan may contain all of the required information, but not actually constitute an adequate plan for venting and flaring. Checking the boxes is not enough; the plan must contain sufficient detail and insight to reduce wasteful production practices. It is true that the rule does not define "adequate", but the agency has significant expertise evaluating the adequacy of operator submittals and is presumed to exercise its discretion reasonably. Finally, OCD believes that takeaway capacity is perhaps the most relevant consideration in approving APDs for new wells. A well that does not have such capacity will routinely flare to dispose of gas, which is prohibited by the rule.	Powell
106	9(D)(7)	WELC/EDF	APD review	require OCD to deny APDs for operators that are not in compliance with gas capture requirements	OCD's proposal provides appropriate enforcement discretion to deal with operators who submit APDs but are not in compliance with their capture requirements or do not have 100% takeaway capacity. OCD can condition the APDs and/or take other enforcement action, including assessment of civil penalties. Operators who are out of compliance must submit more robust gas management plans, and cannot spud any well until they are in compliance. WELC/EDF's proposal would severely and inappropriately restrict OCD's enforcement discretion and make it difficult for operators to simultaneously pursue both compliance and development of the oil and gas resource, which requires advance planning, including capital allocation, reservoir mapping, and personnel and equipment decisions.	Powell
107	9(D)(8)	WELC/EDF	APD review	require OCD to deny or condition APDS for operators that do not provide submit venting and flaring plans that provide for 100% takeaway capacity or 100% alternative uses	See above.	Powell