

# North Dakota Industrial Commission Order 24665 Policy/Guidance

Version 112018041718

## Policy Goals:

- 1) ~~reduce the flared volume of gas~~Increase the volume of captured gas and reduce the percentage of flared gas
- 2) ~~reduce the number of wells flaring~~Incentivize investment in gas capture infrastructure
- 3) ~~reduce the duration of flaring from wells~~

## Action items:

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

The initial horizontal well drilled in each spacing unit should be allowed to produce at its maximum efficient rate, regardless if the well is connected to a gas gathering system. An operator may make application to designate gas produced from up to six ~~new~~ horizontal wells drilled in a previously undrilled governmental township or in a governmental township outside the Bakken core area ~~that averages less than 60% gas capture during the most recent two months~~ as stranded gas. Wells designated as producing stranded gas should be allowed to produce at maximum efficient rate and the operator should be allowed to remove ~~the first year~~twelve months of gas production from each stranded gas well from the total monthly volume calculation. Allowing such wells to produce at a maximum efficient rate will allow valuable information to be obtained in order to make decisions regarding future well and infrastructure requirements in the spacing unit.

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

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

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

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

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~~duplication, provide clarity, and protection of the~~ correlative rights ~~offer all owners the oil and gas~~  
~~companies operating~~ in the respective jurisdictions.

APPROVED

The Commission establishes the following gas capture goals:

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

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

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

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

manner that may be considered as captured gas:

- a. Equipping the well(s) with an electrical generator that consumes surplus gas
- b. Equipping the well(s) with a system that intakes the surplus gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting the propane and heavier hydrocarbons.
- c. Equipping the well(s) with other value-added processes as approved by the Director which reduce the volume or intensity of the flare by more than 60%.

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

~~Flexibility will be provided in the form of temporary exemptions from production restrictions for up to one year if an operator files a request on a sundry notice and provides the documentation necessary to validate one or more of the following extenuating circumstances:~~

- ~~1) surface landowner, tribal, or federal government right of way delays~~
- ~~2) temporary midstream down time for system upgrades and/or maintenance~~
- ~~3) federal regulatory restrictions or delays~~
- ~~4) safety issues~~
- ~~5) delayed access to electrical power~~
- ~~possible reservoir damage~~

~~A summary of temporary exemptions approved and denied will be provided in Oil and Gas Division Quarterly Reports.~~

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

### **Penalty provisions:**

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

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

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