



INDUSTRIAL COMMISSION OF NORTH DAKOTA

Doug Burgum
Governor

Wayne Stenehjem
Attorney General

Doug Goehring
Agriculture Commissioner

News

September 22, 2020

For Immediate Release

INDUSTRIAL COMMISSION PROVIDES CLARITY TO GAS CAPTURE PERCENTAGE

BISMARCK – The North Dakota Industrial Commission (NDIC) today approved amendments to the Gas Capture Guidance Policy to provide more transparency into how the gas capture percentage is calculated as well as provide more clarity around requirements within the policy.

The amended policy clarifies how the percentage of gas capture is being calculated specifically where variances are applied in that calculation. Moving forward the formula is outlined directly in the policy. The revisions also expand upon which requests for variances would require a public notice and hearing – adding curtailment due to gas gathering capacity to the list.

“North Dakota’s gas capture policy goals remain unchanged,” stated the Industrial Commission in a joint statement. “The expectation that gas capture reach 91% by Nov. 1, 2020, was not amended. The primary goal of the policy is to increase the volume of captured gas and reduce the percentage of flared gas.”

The new policy version does amend the definition of stranded gas to apply to spacing units which have not seen drilling activity in five years instead of the previous definition of “undrilled government townships.” The intent behind this modification is to see drilling activity increase in areas where the current pricing market has devastated pursuit of new production.

The Industrial Commission consists of Gov. Doug Burgum, as chairman, Attorney General Wayne Stenehjem and Agriculture Commissioner Doug Goehring. The Commission oversees the Department of Mineral Resources’ Oil and Gas Division.

Attachments: Revised Policy and Redline Version of Revised Policy

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For further information contact Katie Haarsager, DMR at 328-8020

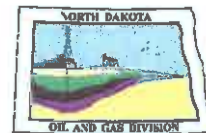


The following fields fall within the Core Area referenced in the attached North Dakota Industrial Commission Order 24665 Policy/Guidance Version 09-22-2020:

Alger	Fancy Buttes	Sandrocks
Alkali Creek	Four Bears	Sanish
Antelope	Garden	Siverston
Arnegard	Grail	South Fork
Avoca	Grinnell	South Tobacco Garden
Bailey	Hawkeye	Spotted Horn
Baker Banks	Haystack Butte	Spring Creek
Bear Creek	Heart Butte	Springbrook
Bear Den	Hofflund	Squaw Creek
Beaver Lodge	Jim Creek	Stanley
Big Bend	Johnson Corner	Stockyard Creek
Big Gulch	Juniper	Stony Creek
Blue Buttes	Keene	Timber Creek
Brooklyn	Killdeer	Tobacco Garden
Bully	Last Chance	Todd
Camel Butte	Lone Butte	Truax
Camp	Lost Bridge	Twin buttes
Capa	Mandaree	Union Center
Catwalk	Manitou	Van Hook
Cedar Coulee	McGregory Buttes	West Capa
Charlson	Missouri Ridge	Westberg
Cherry Creek	Moccasin Creek	Williston
Chimney Butte	North Fork	Willow Creek
Clarks Creek	North Tobacco Garden	Wolf Bay
Clear Creek	Oakdale	
Corral Creek	Parshall	
Cow Creek	Patent Gate	
Crazy Man Creek	Pembroke	
Croff	Pershing	
Dimmick Lake	Phelps Bay	
Dollar Joe	Pleasant hill	
Eagle Nest	Poe	
Edge	Rattlesnake Point	
Elidah	Reunion Bay	
Ellsworth	Robinson lake	
Elm Tree	Sakakawea	
Epping	Sand Creek	

Bruce E. Hicks
ASSISTANT DIRECTOR
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Lynn D. Helms
DIRECTOR
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North Dakota Industrial Commission Order 24665

Policy/Guidance Version 09-22-2020

Policy Goals:

- 1) Increase the volume of captured gas and reduce the percentage of flared gas
- 2) Incentivize investment in gas capture infrastructure

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.

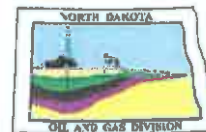
All infill horizontal wells, including overlapping spacing unit wells, completed in a Bakken, Bakken/Three Forks, Sanish, and/or Three Forks Pool are allowed to produce at a maximum efficient rate for 90 days.

-An operator may submit a sundry notice and attachments to make application to designate gas produced from up to five horizontal wells drilled in a spacing unit with no drilling activity in the previous five years previously undrilled governmental township or in a spacing unit governmental township outside the Bakken core area 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 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 duplication, provide clarity, and protect the correlative rights of all owners in the respective jurisdictions.

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

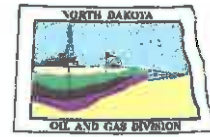
The Commission recognizes that due to operational, maintenance, and safety challenges the maximum actual capture percentage will average 96% of nameplate capacity.

The gas capture percentage is calculated by dividing the total monthly volume of gas flared minus the total monthly volume of variances by the total monthly volume of associated gas produced, subtracting the result from one, and multiplying by one-hundred 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.

$(1 - ((\text{total monthly volume of gas flared} - \text{total monthly volume of variances}) / \text{total monthly volume of associated gas produced})) \times 100$

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)1) The operator is allowed a variance for to remove the initial 14 days of flowback gas if properly documented on a sundry notice with attachments, from the total monthly volume calculation.
- 3)2) The operator is allowed a variance for to remove 3146 days of initial production test gas (subsequent to the initial 14 days of flowback gas) if properly documented on a sundry notice with attachments from the total monthly volume calculation.
- 4)3) The operator is allowed a variance for 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 on a sundry notice with attachments from in writing by the gas gathering company.
- 5)4) The operator is allowed a variance for to remove from the monthly volume calculation gas volumes flared from wells already drilled and completed, if gas gathering and processing capacity curtailment temporary midstream down-time for system upgrades and/or maintenance is properly documented on a sundry notice with attachments, is properly documented in writing.



~~65)~~ The operator is allowed a variance for to remove from the monthly volume calculation gas volumes flared from wells already drilled and completed, if properly documented on a sundry notice with attachments that such gas flaring was the result of newly completed wells being connected to the same gas infrastructure system.

~~76)~~ The operator is allowed a variance for to remove from the monthly volume calculation gas volumes flared from wells already drilled and completed, if the following circumstances are properly documented on a sundry notice with attachments in writing:

- a. surface landowner right-of-way delays in excess of 180 days, or
- ab. tribal, or federal government right-of-way delays in excess of 365 days, or
- ~~ba. 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
- ~~fa. possible reservoir damage~~

~~87)~~ After notice and hearing the operator shall be allowed a variance for gas volumes flared from wells already drilled and completed, if the following circumstances are properly documented:

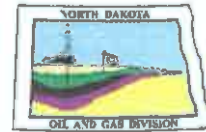
- a. safety issues, or
- b. possible reservoir damage, or
- c. a gas gathering capacity curtailment documented as follows:
 - the well is connected to a gas gathering system
 - a. the operator has provided a gas production forecast to the midstream gas gathering company
 - the operator or midstream gas gathering company provides the reason for the curtailment and proposed remedies and timelines
 - the operator identifies alternate development opportunities and midstream gas gathering capacity
 - the operator or midstream gas gathering company provides an estimate of investments made and required to increase gas gathering capacity in the area.

~~98)~~ The operator is allowed a variance for to remove from the monthly volume calculation gas volumes placed into geologic storage or utilized in an enhanced oil recovery project, if properly documented on a sundry notice with attachments.

~~109)~~ An operator is allowed to accumulate variance credits for LNG utilization, CNG utilization, and volumes of gas captured during the most recent twelvesix months in excess of the current gas capture goal if properly documented on a sundry notice with attachments.

- 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 twelvesix months.

Credits may be applied only if one or more of the extenuating circumstances exist.



H)10) The Commission recognizes the following variances 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 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 (Example: 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.



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Elidah	Sakakawea	
Ellsworth	Sand Creek	
Elm Tree	Sandrock	
Epping	Sanish	



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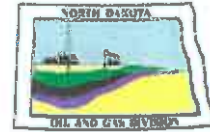
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An operator may submit a sundry notice and attachments to designate gas produced from up to five horizontal wells drilled in a spacing unit with no drilling activity in the previous five years or in a spacing unit outside the Bakken core area as stranded gas. Wells designated as producing stranded gas should be allowed to produce at a maximum efficient rate and the operator should be allowed to remove the first 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.

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The gas capture percentage is calculated by dividing the total monthly volume of gas flared minus the total monthly volume of variances by the total monthly volume of associated gas produced, subtracting the result from one, and multiplying by one-hundred.

$$(1 - ((\text{total monthly volume of gas flared} - \text{total monthly volume of variances}) / \text{total monthly volume of associated gas produced})) \times 100$$

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) The operator is allowed a variance for the initial 14 days of flowback gas if properly documented on a sundry notice with attachments.
- 2) The operator is allowed a variance for 31 days of initial production test gas (subsequent to the initial 14 days of flowback gas) if properly documented on a sundry notice with attachments.
- 3) The operator is allowed a variance for gas volumes flared from wells already drilled and completed on the date a force majeure event occurs if the event is properly documented on a sundry notice with attachments from the gas gathering company.
- 4) The operator is allowed a variance for gas volumes flared from wells already drilled and completed if temporary midstream down-time for system upgrades and/or maintenance is properly documented on a sundry notice with attachments.
- 5) The operator is allowed a variance for gas volumes flared from wells already drilled and completed if properly documented on a sundry notice with attachments that such gas flaring was the result of newly completed wells being connected to the same gas infrastructure system.



- 6) The operator is allowed a variance for gas volumes flared from wells already drilled and completed if the following circumstances are properly documented on a sundry notice with attachments:
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 - b. Credits cannot be transferred to another operator.
 - c. Unused credits expire after twelve months.

- 10) The Commission recognizes the following variances as surplus gas being utilized in a beneficial manner that may be considered as captured gas:
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