



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



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 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.

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.

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

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:
 - a. surface landowner right-of-way delays in excess of 180 days, or
 - b. tribal, or federal government right-of-way delays in excess of 365 days, or
 - c. federal regulatory restrictions or delays.

- 7) 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
 - 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.

- 8) The operator is allowed a variance for gas volumes placed into geologic storage or utilized in an enhanced oil recovery project if properly documented on a sundry notice with attachments.

- 9) An operator is allowed to accumulate variance credits for LNG utilization, CNG utilization, and volumes of gas captured during the most recent twelve 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 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:
 - 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.



North Dakota Industrial Commission Order 24665 Frequently Asked Questions Version 09-22-2020

Question: Has the formula for calculating an operator's gas capture percentage changed?

Answer: No, the formula used to calculate an operator's gas capture percentage has not changed. The Commission provided the exact calculation used to avoid confusion with previous versions' language which referred to "summing gas sold and gas processed in a beneficial manner".

Question: What does it mean that "due to operational, maintenance, and safety challenges the maximum actual capture percentage will average 96% of nameplate capacity"?

Answer: The Commission recognizes that operational challenges, technology, and equipment capacities, both in the gas gathering infrastructure and gas processing plants, will limit actual gas capture volumes from truly capturing 100% of all gas produced. While operators and gatherers strive to capture all volumes of gas, complete capturing of gas will never be possible.

Question: The policy states 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. If an operator's application for removal of such gas is granted, does that gas volume have to be reported to the Commission?

Answer: Yes, all gas must be reported and accounted for on the [Gas Production Report – Form 5B](#) and the force majeure calculation adjustment will be applied during the Commission's gas capture review.

Question: The policy states the operator is allowed a variance for 31 days of initial production test gas (after the initial 14 days of flowback gas). Does an operator have to report any gas to the Commission during the 60-day period?

Answer: Yes, all gas must be reported and accounted for on the [Gas Production Report – Form 5B](#).

Question: Is it possible an operator could have a higher gas capture percentage than that calculated by the Commission for a particular month?

Answer: Yes, the Commission will calculate an operator's monthly gas capture percentage by examining all gas reported by the operator on the [Gas Production Report – Form 5B](#). If this calculation confirms the operator has achieved the Commission's gas capture goal, no further analysis is performed, even though a higher gas capture percentage might be calculated if consideration was given to the initial 45 days of production and allowed variances.

Question: Will the changes outlined in the [North Dakota Industrial Commission Order 24665 Policy/Guidance Version 09-22-2020](#) increase flaring?

Answer: No, the gas capture goals previously set by the Commission remain unchanged,

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therefore all operators are required to meet gas capture goals previously set by the Commission. The Commission believes the changes will allow operators, gas gathering companies, and regulators to focus resources on areas where the gas capture goals are not being met. This will allow operators and gas gathering companies to better predict future gas reserves, which will result in the construction of economic infrastructure to capture gas that would otherwise be flared.

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