



**COMMENTS ON THE OFFICE OF CONSERVATION'S NOTICE OF INTENT TO
AMEND LAC 43:XIX, Subparts 1 and 15.**

Environmental Defense Fund (“EDF”) by and through the undersigned, greatly appreciates the opportunity to submit the following comment on the Louisiana Department of Natural Resources ("the Department"), Office of Conservation's notice of intent to amend LAC 43:XIX, Subparts 1 and 15. We submitted comments on the Department's draft proposed regulatory amendment to LAC 43:XIX. Subpart.I. Chapter 35 ("Potpourri") published on March 20, 2023. We incorporate those comments here.

EDF is a membership organization with more than 3 million members and activists worldwide and in the state of Louisiana, many of whom are deeply concerned about waste and pollution from oil and natural gas development and operations. EDF brings a strong commitment to sound science, collaboration, and market-based solutions to our most pressing environmental and public health challenges.

I. Introduction

EDF supports the amendments to LAC 43:XIX, Subparts 1 and 15 as they represent a considerable improvement over the status quo and will lead to a reduction in wasted natural gas and methane emissions from Louisiana's production facilities. In 2019, Louisiana oil and gas producers wasted approximately 5.2 billion cubic feet of methane through venting and flaring alone—that is \$16 million of natural gas. That is enough wasted gas to supply all the households

in Baton Rouge for over a year and a half. Per our analysis, the proposed prohibition on routine flaring will apply to approximately 94% of the natural gas produced from oil wells in the state¹ and will prevent the release to the atmosphere of between 218,000 and 364,000 metric tons of CO₂e annually (100-year and 20-year GWPs, respectively).² The extension of the prohibition on venting to horizontal wells applies to 4,553 horizontal wells, excluding stripper wells, that are currently not regulated.³ Horizontally drilled wells comprise the vast majority of new wells being permitted in the state, and thus the removal of the horizontal well exemption will extend critical protections to the majority of new wells going forward.⁴ These, as well as other proposed improvements discussed below, represent a significant improvement over the status quo and will reduce waste associated with venting and flaring.

While the rule stops short of implementing a complete ban on routine flaring from all oil wells in Louisiana—something other states have done and an outcome EDF believes is lawful and feasible for Louisiana—there is much to like in the current proposal. We particularly support the following provisions, all of which are new:

¹ EDF analysis based on 2019 data. Oil well here refers to any well that produces some amount of hydrocarbon liquids. Per our analysis oil wells produced gas 404,340,000 MCF of natural gas in 2019. The proposed prohibition on flaring applies to 2,960 oil wells responsible for 379,400,000 MCF of produced natural gas.

² EDF used reported 2019 flaring data for the Haynesville play in TX (available at the well level in Enverus Prism) in order to estimate the proportion of flaring at wells of various trajectories and production levels (i.e., stripper, GOR, vertical, horizontal). After comparing production profiles between TX and LA, EDF determined the Haynesville to be the closest comparative producing region to LA as a whole. EDF used the Haynesville play as a proxy for well-level flaring data in LA to estimate that 71% of flaring occurs at wells under the proposed ban on routine flaring. An additional 11% of flaring is estimated to occur at vertical wells with a GOR<2000/1, and another 18% is estimated to occur at wells that would fall under a ban on routine flaring aside from their stripper status. EDF used these categorical proportions to disaggregate the reported 5.056 bcf (EIA, LDNR) of flared gas in LA in 2019 by well type, and estimated CO₂ emissions from flaring using a 95% flare efficiency.

³ EDF analysis based on 2019 production and trajectory data obtained from Enverus.

⁴ EDF review of Enverus data regarding the type of wells permitted and spud over the last decade. There has been a steady increase in the percent of horizontal or directional wells permitted, with horizontal or directional wells comprising over half of the permitted wells since 2017. Similarly, horizontal or directional wells comprised between 60% of the wells spud in 2016. This percentage increased to more than 80% of the wells spud in 2023. See Figure 1, below.

- A requirement that with their application for a permit to drill, oil and gas operators certify that they will either route 100% of their produced gas to sales or, if not, represent how they will manage their gas. As discussed further below, in a situation where an operator cannot certify that 100% of their produced gas will be routed to sales, we support the proposal's options to either shut-in or submit a gas capture plan that ensures the gas is beneficially used, but not the option that allows an operator to "evaluate if [the] well is [a] candidate for flaring based on economic hardship."⁵
- The new prohibition on routine flaring.
- The removal of the horizontal well exemption from the current prohibition on venting.
- The narrowing of the availability of the economic hardship exemption and the addition of new informational requirements to justify the exemption.
- New monthly reporting requirements for venting and flaring.

II. Comments on Key Substantive Provisions

A. Subpart 1, Ch. 1, Section 103: Gas capture plans.

Overall, EDF supports the newly proposed Section 103 to Chapter 1 of Part XIX. This section adds a new requirement to operators applying for a permit to drill. Per the newly proposed Section 103, at the time of application to drill all operators must certify either that they "will be able to connect the well to a natural gas gathering system in the general area with sufficient capacity to transport one hundred percent of the volume of natural gas the operator

⁵ LAC 43:XIX. § A.3.

anticipates the well will produce"⁶ or that they will not be able to make such a connection.⁷

Operators that cannot make this certification must either shut-in the well until the operator can make such a certification, "evaluate if the well is a candidate for flaring based on economic hardship" or "provide a gas capture plan that evaluates and selects one or more beneficial uses until a gas gathering system is available."⁸ Beneficial uses cannot result in venting or flaring.⁹

There is no reason an operator should ever routinely flare during normal oil production from a new well. As set forth in our prior comments, prudent operators can plan where and when to drill, complete, and begin production at new wells. Such planning, which may involve coordination with midstream and/or other upstream operators, can ensure that an operator can connect new wells to a "gathering system...with sufficient capacity to transport one hundred percent of the volume of natural gas the operator anticipates the well will produce..." as required by proposed Section 103.A.3. The draft rule acknowledges this reality by including a certification of adequate takeaway capacity provision.¹⁰ We agree that operators who cannot make this certification must either shut in the well or employ an alternative method to capture and put to beneficial use, rather than vent or flare, associated natural gas.¹¹ As our prior comments demonstrated, a suite of economic and technically feasible alternatives exist to venting or flaring. Shutting in a well is one such option, and an option that in the opinion of Tom Alexander, a former Vice President of Southwestern Energy, will not harm the reservoir.¹² As the draft rule acknowledges, other options include using the produced gas for field use or

⁶ LAC 43:XIX. §103.A.3.a.

⁷ LAC 43:XIX. §103.A.3.b.

⁸ Id. at §103.A.3.b.

⁹ Id. at §103.A.3.b.iii.(a)-(d). None of the enumerated beneficial uses in iii.(a)-(c) should result in venting or flaring and the catch-all provision in (d) prohibits venting or flaring from "other alternative beneficial uses."

¹⁰ Id. at § 103.A.3.a.

¹¹ Id. at § 103.A.3.b.i., iii.

¹² Export Report of Thomas Michael Alexander, Alexander Engineering at 3 (hereinafter "Alexander Report"), submitted with EDF comments on Potpourri.

power generation for alternative uses.¹³ As our prior comments discussed, these and other alternative beneficial uses are cost effective and feasible—especially for new wells where operators are in complete control of where and when to drill and bring new wells online.

The rule allows for the possibility that an operator will not have adequate takeaway capacity for a limited period of time and allows an operator to employ alternative means to utilize associated gas provided such means do not result in venting or flaring. Specifically, operators who cannot certify that they will connect to a gathering system with adequate takeaway capacity may provide “a gas capture plan that evaluates or selects one of more beneficial uses *until a natural gas gathering system is available...*” (emphasis added).¹⁴ We agree that operators can and should be able to connect to a gathering system prior to production and thus that reliance on abatement options other than sending associated gas to sales are applicable only in limited instances when adequate takeaway capacity is temporarily unavailable. Situations that could give rise to a short-term unavailability of an otherwise available gathering system could include temporary downtime of the gathering line due to maintenance or temporary line capacity constraints.¹⁵

We do not believe the provision in proposed Section 103 A.3.b.ii., allowing an operator to “evaluate if well is candidate for flaring based on economic hardship per Section 3507.B...”¹⁶ is necessary nor consistent with the Department’s mandate to minimize waste. La. Stat. tit. 30 Section 3(16)(b) defines waste as including “producing of an oil or gas well in a manner causing, or tending to cause, *unnecessary* or excessive surface loss or destruction of oil or gas.” (emphasis added). For the reasons set forth above and in our prior comments, routine flaring is

¹³ LAC 43:XIX § A.3.b.i.iii.

¹⁴ Id. at § A.3.b.ii.

¹⁵ Alexander Report at 4; EDF Comments on Potpourri at 13-14.

¹⁶ LAC 43:XIX § A.3.b.i.ii.

never justified from a new well.¹⁷ Operators can and should properly plan and coordinate, as necessary, with midstream operators, to ensure adequate takeaway capacity at the onset of production. Such planning is wholly within the control of operators. In those rare situations when an otherwise available gathering line becomes temporarily unavailable, the draft rule allows an operator to provide a gas capture plan to the Department that evaluates or selects the use of one or more beneficial uses for the gas. This alternative provides upstream operators with a pathway to begin production absent the availability of a gas gathering line on a temporary basis. Such operators can use the associated gas onsite, convert the gas to compressed natural gas, inject or reinject the gas, use it for electrical generation, or another beneficial use that does not result in venting or flaring. At least one of these options will be economically feasible for operators of new wells since new wells are at their peak of production, and thus revenue potential is maximized. As discussed in our prior comments, “CNG trucking is a “portable, scalable and low or negative cost” approach to gas capture.¹⁸ CNG trucking is particularly economical where operators can pool gas production from multiple well pads.¹⁹ For particularly high producing wells CNG trucking will constitute a net benefit for operators.²⁰ Utilizing gas for onsite use can also result in net savings to operators. Analysis prepared by Rystad Energy estimates that, on average, on-site use of gas nets a profit of \$8.60/mcf.²¹ Additionally, operators can shut in the well until adequate takeaway capacity is regained. The expert report of Tom Alexander notes that not only is shutting in wells not harmful to production but in some instances it can enhance the performance of the well.²² We anticipate the Department granting very few

¹⁷ EDF Comments on Potpourri at 13-14.

¹⁸ EDF Comments on Potpourri at 16.

¹⁹ Id.

²⁰ Id.

²¹ Id. at 18.

²² Alexander Report at 4.

exceptions pursuant to this provision in light of the availability of economic and feasible options for capturing and either selling, injecting or beneficially using produced natural gas.

We respectfully request the Department review the need for Section 103 A.3.b.ii in the future based on the number of economic hardship requests the Department receives and grants. This review could be part of a larger review of Chapters 1 and 35 of Part XIX, as we discuss below.

We recommend a clarifying change to proposed Section 103 A.3.b.iii. This provision allows an operator who cannot certify connection to a gathering system to submit a gas capture plan “that evaluates or selects” one or more beneficial uses. We believe the intent of the gas capture plan requirement is to ensure that operators who cannot certify adequate takeaway capacity have an alternative plan to capture and put to beneficial use produced associated gas. As such, we suggest replacing the “or” in “evaluates or selects” with “and.” Thus, operators submitting a gas capture plan would be required to “evaluate *and* select” a beneficial use for the produced associated gas that does not result in waste.

B. Subpart 15, Ch. 35. Prohibition on Venting

Current Conservation rules prohibit “venting of natural gas from any well producing in the state” unless the district manager grants an economic hardship exception. In addition, operators may vent due to “unavoidable situations.”²³ Operators of horizontal wells and wells in recognized stripper well areas (“stripper wells”) are exempt.²⁴

The proposed amendments to Section 3507 and Section 3509 alter the current framework applicable to venting from oil and gas wells. First, the proposed amendments remove the economic hardship exception and the horizontal well exemption. The amendments only allow

²³ LAC 43:XIX § 3511.

²⁴ Id. at § 3509.

for venting where “permissible flaring” is neither economical nor safe. Unlike the Potpourri, the amendments do not apply to preproduction activities.

We support the proposed expansion of the prohibition on venting to horizontal wells. As our prior comments set forth, venting is a particularly pernicious practice that emits methane—a powerful climate-forcer responsible for at least 25% of current warming today.²⁵ Leading states such as Colorado and New Mexico, as well as EPA, prohibit venting other than where necessary for safety or during temporally limited and specifically enumerated instances.²⁶

We reiterate our support for a limited exception for venting where necessary for safety. We do not support the exception for venting where permissible flaring is not economical. Leading states do not have a similar exception and EPA has proposed to prohibit all venting other than where necessary for safety.²⁷ New Mexico prohibits venting other than “when flaring is technically infeasible or would pose a risk to safe operations or personnel safety, and venting is a safer alternative to flaring.”²⁸ Colorado similarly only allows for venting during production during certain temporally limited exceptions such as during maintenance activities, bradenhead monitoring, and upset conditions.²⁹ As New Mexico recognizes there may be technical reasons that can prevent an operator from flaring, such as low-pressure or low volume gas that is insufficient to power a flare or combustor continuously without the assistance of supplemental fuel.³⁰ We are not aware of any similar constraints that would justify venting rather than flaring based on economic considerations—particularly in light of the exemption for stripper wells. Indeed, the expert report of Tom Alexander submitted with our prior comments notes only three

²⁵ IEA, Methane and Climate Change, <https://www.iea.org/reports/global-methane-tracker-2022/methane-and-climate-change>.

²⁶ 87 Fed. Reg. 74,702 (Dec. 6, 2022); 2 Colo. Code Regs. § 404-1-903.d; N.M. Code R. § 19.15.27.8.

²⁷ 87 Fed. Reg. 74,702 (Dec. 6, 2022).

²⁸ N.M.A.C. § 19.15.27.8.A.

²⁹ 2 Colo. Code Regs. § 404-1-903.d.1.

³⁰ N.M.A.C. § 19.15.27.8.D.(4).

instances where venting is ever necessary: during upset conditions, during bradenhead monitoring, and during packer leakage testing.³¹ Accordingly, in the future, we respectfully request the Department review, and consider revising through a new rulemaking action, Section 3507.A. in so far as it allows operators to vent where “permissible flaring” is not economical. We further request the Department clarify what is meant by “economical” in Section 3507.A. since this term is not defined and it is not clear if “economical” means something other than demonstrating an “economic hardship” as defined in Section 3507.B.

Consistent with our comments on the Potpourri, we also request the Department re-examine the exemption for preproduction activities in the future. While EPA regulates completions, leading states such as New Mexico and Colorado have adopted even more protective requirements for completions. Such states also regulate drilling. As part of a future review of its rules, we urge the Department to review, and consider removing through a new rulemaking action, the exemption for “drilling, completion, and hydraulic fracturing operations” in proposed Section 3509.A.3., and in so doing, consider adopting rules consistent with those contained in the Potpourri for these activities.

C. Subpart 15, Ch.35. Prohibition and Definition of Routine Flaring.

We support the amendments to Subpart 15, Ch. 35 that propose to eliminate routine flaring at wells with a gas/oil ratio > 2000/1 and horizontal wells with a gas/oil ratio < 2001/1. Current Louisiana rules do not contain any prohibition on routine flaring. Adding a restriction on routine flaring is an important step towards reducing “unnecessary or excessive destruction of gas,” as required by La. Stat. tit. 30 Section 2 and 3(16)(b). As our prior comments demonstrated, routine flaring is never justified as there are myriad options available to operators

³¹ Alexander Report at 6.

to capture and either use, sell, store, or reinject associated gas. Routine flaring is thus both “unnecessary” and “excessive.” The actions of other leading states who have banned routine flaring, including Colorado, New Mexico and Alaska, and policies of numerous leading producers, are in accord.³² The draft rule therefore closes an important gap with respect to routine flaring. Per our analysis, the proposed prohibitions on routine flaring from covered wells applies to approximately 94% of the natural gas produced from oil wells in 2019, accounting for the exemption for stripper wells in Section 3509.A.2. Moreover, horizontally drilled wells account for the majority of applications to drill new wells in the state. The prohibition against routine flaring from horizontal wells, combined with the new certification and gas capture requirements in Section 103 will ensure that future wells do not unnecessarily contribute climate-altering, harmful and wasteful emissions to the atmosphere. EDF estimates that prohibiting routine flaring at covered wells (i.e., non-stripper horizontal wells, as well as non-stripper vertical wells with a GOR>2000/1) will prevent between 218,000 and 364,000 metric tons of CO₂e annually (100-year and 20-year GWPs, respectively).³³ Prohibiting routine flaring from these wells would prevent the waste of natural gas valued at \$10,840,000³⁴ annually and is equivalent to preventing the emissions from more than 975,000 passenger vehicles being driven for a year.

While we support the proposed prohibitions on routine flaring, we recommend the Department revisit the GOR thresholds in the future. As we noted in our prior comments, the Governor’s Climate Action Plan recommended the Department “enact methane waste rules in

³² EDF Comments on Potpourri, 10-11.

³³ EDF analysis, *supra* note 2.

³⁴ Value calculated using Henry Hub price for 2019, which is \$2.90 per MMBtu (2022 dollars).

line with rules of other states.”³⁵ While a significant improvement over current regulations, the draft rules fall short when compared to leading rules adopted by Colorado and New Mexico. These states have successfully implemented a wholesale ban on routine flaring from all wells, regardless of the amount of gas produced, or the ratio of gas to oil. According to the EIA, Colorado is the fifth largest oil producer in the U.S. and New Mexico is the second largest producer of oil.³⁶ If operators in New Mexico and Colorado can capture and put their natural gas to beneficial use than so can Louisiana operators, especially those operators of non-stripper wells who nevertheless produce associated gas and are exempt from the proposed prohibition on routine flaring due to the proposed GOR thresholds. Going forward, the Department will have records on the amount of gas and oil produced by operators subject to the proposed ban on routine flaring and venting. We respectfully request the Department review, and consider revising through a new rulemaking action, the rule in two years to determine if the GOR thresholds are in line with the statutory mandate to minimize waste by prohibiting the drilling or producing of an oil well in a manner causing, or tending to cause, unnecessary or excessive destruction of gas.³⁷

C. Narrowing of Availability of Economic Hardship Exception

The proposal retains an exception for economic hardship from the current rule, yet moves this exception from Section 3507.A (prohibition on venting) to Section 3507.B. (prohibition on routine flaring). Additionally, the proposal limits the availability of this exception in two ways. First, in Section 3507.B. the proposal limits the applicability of the economic hardship exception to operators who demonstrate “that the current market value, at the point of delivery, of the gas

³⁵ State of Louisiana, Climate Action Plan (Feb. 2022), https://gov.louisiana.gov/assets/docs/CCI-Task-force/CAP/Climate_Action_Plan_FINAL_3.pdf, p.68.

³⁶ US Energy Information Administration, <https://www.eia.gov/state>.

³⁷ LSA-R.S. § 30:3(16)(b).

proposed to be flared exceeds the cost involved in making such gas available to a market, or where revenue from a beneficial use identified in § 103.A.3.b.I-IV exceeds the cost in implementing the same.” The second part of this demonstration, namely the requirement that operators seeking this exception must demonstrate that the revenue from a beneficial use exceeds the cost of implementing a beneficial use, is a new addition to the economic hardship exception demonstration. Second, the amendments propose specific informational requirements operators must submit to the district manager as support for the exception request.

As a general policy matter, we do not support broad exceptions to associated gas capture requirements based on economics. This is particularly true in those instances, such as here, where the capture requirements apply to a limited subset of wells in a state. As set forth in our prior comments, and reflected in rules promulgated by Colorado and New Mexico, operators have available a suite of economically viable options to capture and sell, put to beneficial use, or inject and store, natural gas. Routine flaring, as proposed to be defined by the Department, is unnecessary and wasteful. As set forth above, operators of new wells can plan to ensure adequate takeaway capacity. And, if a gathering system becomes unavailable for reasons outside of the producer’s control, operators can employ methods or technologies to limit any necessary flaring to a temporary method of managing gas and avoid prolonged, routine flaring.³⁸ Such methods include:

- Temporarily shutting in wells until the gathering system becomes available. Per the expert opinion of Thomas Alexander, shutting in wells does not harm well productivity and in some cases, may enhance well performance. Moreover,

³⁸ EDF Comments on Potpourri, 14-19.

temporary shut ins do not destroy, but rather merely delay, royalty payments since shut ins do not permanently end production.³⁹

- Converting the associated gas to compressed natural gas (CNG) and trucking the CNG to gas processing plants.
- Utilizing associated gas for onsite use.

While we do not believe the economic hardship exception is necessary or appropriate, we support the Department's amendments to the exception that require operators to evaluate other options for utilizing associated gas than simply sending it to a sales line.

We also appreciate the additional information requirements the Department proposes to include in an operator's demonstration of economic hardship. Current rules do not specify what, if any, information an operator seeking an economic hardship exception from the current prohibition on venting must provide. The current proposal requires operators seeking the exception to provide the following information to substantiate the request: relevant well information; a statement of need; economic justification; evaluation of alternative beneficial use per § 103.A.3.b.I-IV; rate; and length of time. While we suggest some minor clarifications to these informational requirements below, we support the addition of clear, specific information upon which the district manager can assess the legitimacy of an exception request. Clear criteria are also helpful to the public who have an interest in understanding the factors the district managers will weigh when considering when determining whether to approve of an exception request.

We suggest a few minor clarifying revisions to the information requirements proposed in 3507.B. and 3507.B.1-5. First, as discussed above the Department Proposes to require operators

³⁹ New Mexico Methane Advisory Panel Report (2019), at 159, available at <https://www.env.nm.gov/wp-content/uploads/sites/15/2019/08/MAP-Technical-Report-December-19-2019-FINAL.pdf>.

demonstrate that “revenue from a beneficial use identified in § 103.A.3.b.I-IV exceeds the cost in implementing the same.” We suggest revising this sentence to state “revenue *or economic benefit* from a beneficial use identified in § 103.A.3.b.I-IV exceeds the cost in implementing the same.” Certain beneficial uses, such as use of associated gas to replace purchased fuel for onsite use, power generation for alternative use, and injection for storage and future use, may not result in increased revenue for the operator from the beneficial use but may deliver an economic benefit to the operator.

Second, we believe the citation to Section 103 in proposed B.3. is incorrect. We believe the proper citation is to § 103.A.3.b.iii.(a)-(d) as this is the provision that lists allowable beneficial uses of gas in the absence of a connection to a gathering system. The draft rule cites to § 103.A.3.b.I-IV, which does not exist.

Third, we suggest clarifications to 3507.B.4 and 5. As proposed, the informational requirement in B.4. applies to “rate.” We assume this refers to rate of production of oil and gas for the well(s) for which an operator seeks an exception, however we suggest clarifying the language to be more explicit.

Fourth, the informational requirement in B.5. applies to “length of time.” It is unclear if this is meant to refer to the length of time for which an operator seeks an exception or the length of time that the well for which the exception is requested has been producing. Clarifying language would be helpful to provide clear instructions for operators and transparency regarding the intent of the informational requirements for the public. We suggest that exceptions be granted for limited periods of time—two years or less—as the availability and costs of capture methods and technologies can change considerably over time.

E. Sections 3507 and 3509. Regulation of Horizontally Drilled Wells

We support the proposed removal of the exemption in current Section 3509 for horizontal wells. The current rules, which only apply to venting, do not apply to horizontally drilled wells. In 2019, there were 4,553 horizontal wells, excluding stripper wells, in the state, responsible for the production of 2,841 bcf of natural gas. Excluding gas-only horizontal wells, gas production from horizontal non-stripper oil wells accounts for 80% of all associated gas production and 9% of total gas production. Operators of these wells are not required to conserve, let alone combust or flare, this natural gas. Unfortunately, data on the amount of gas that such wells currently waste—either through venting or flaring—is not available as the Department does not require operators to report vented or flared volumes on the well level. Thus, we do not have reliable ways to estimate the waste, or methane or other pollutant emissions, from currently exempt horizontal wells. Nevertheless, given the number of such wells in the state, and the amount of gas produced by such wells, we view the removal of the exemption for horizontal wells as an important protection offered by the amendments.

In addition, in recent years there has been a steady uptick in applications for permits to drill, and spudding of, horizontal wells.⁴⁰

Figure 1. Spuds and Permits by Well Type⁴¹

Spud Year	Vertical	Horizontal/Directional
2023	13%	80%
2022	19%	77%
2021	16%	78%
2020	19%	77%
2019	28%	64%
2018	32%	61%
2017	27%	66%
2016	35%	60%

⁴⁰ EDF analysis based on information obtained in Enverus.

⁴¹ Information for calendar year 2023 is incomplete.

Permit Approved Year	VERTICAL	HORIZONTAL/DIRECTIONAL	Total
2023	28%	71%	344
2022	24%	75%	855
2021	25%	74%	609
2020	24%	75%	494
2019	38%	61%	725
2018	37%	62%	876
2017	37%	62%	909

The extension of the prohibition on venting in current Section 3507 to horizontally drilled wells combined with the prohibition on flaring in proposed Section 3507.B and takeaway capacity certification requirement in proposed Section 103 will help ensure that gas is conserved by the majority of newly drilled wells in the state going forward. This is also a critical improvement over the status quo.

F. Section 3511. Exemption for "Unavoidable Situations."

Current rules allow venting due to "unavoidable situations." This term is not defined in current rules nor in the proposed amendments. The proposed amendments extend this exemption to flaring.⁴²

We urge the Department to clarify the meaning of "unavoidable situations" by defining this term. Neither current rules nor proposed amendments define this term. Webster's dictionary defines unavoidable as "impossible to avoid or evade." Thus, circumstances that are outside the reasonable control of an upstream operator, such as temporary loss of a gathering system due to unforeseeable downstream maintenance or equipment failures, constitute "unavoidable situations." The draft rule contained in the Potpourri contained an exception for "upset conditions" defined as "a sudden unavoidable failure, breakdown, event, or malfunction, beyond

⁴² Proposed Section 3511.A.

the reasonable control of the Operator, of any equipment or process that results in abnormal operations and requires correction but does not include an event arising from or related to an operator's negligence, failure to install appropriate equipment, or failure to perform scheduled maintenance." We believe this addresses the same types of circumstances as the Department's "unavoidable situations" exception yet provides significantly greater clarity as to what types of events are covered by the exception. We recommend the Department clarify Section 3511.A. by defining "unavoidable situations" as "a sudden unavoidable failure, breakdown, event, or malfunction, beyond the reasonable control of the Operator, of any equipment or process that results in abnormal operations and requires correction but does not include an event arising from or related to an operator's negligence, failure to install appropriate equipment, or failure to perform scheduled maintenance."

Current Department rules do not require operators report the amount of vented gas lost during "unavoidable situations." We recommend the Department clarify that Section 3507.E., requiring "permissible venting or flaring" include venting or flaring resulting from "unavoidable situations." Operators that vent due to "unavoidable situations" are not out of compliance with the prohibition on venting in Section 3507.A. since Section 3511 permits venting during "unavoidable situations." Thus, venting during an "unavoidable situation" is "permissible venting." Tracking the amount of venting that occurs during "unavoidable situations" will help the Department and the public track the amount of waste occurring in Louisiana due to this exception while also ensuring that operators are not impermissibly venting or flaring due to events that are well within their control, and thus clearly avoidable.

G. Reporting requirements

We support and appreciate the Department's proposed requirement that operators report "permissible venting or flaring."⁴³ We suggest the Department clarify what constitutes "permissible venting or flaring" since this term is not defined and the term is not clear on its face. For example, since the rules do not prohibit venting or flaring at certain wells, e.g., stripper wells, is venting or flaring at such wells "permissible."? Or, does the reporting requirement only apply to venting or flaring that occurs due to one of the exceptions contained in Section 3507 (e.g., venting due to safety or routine flaring due to economic hardship)?

We encourage the Department to require operators report all flared and vented volumes, regardless of whether such activities occur at exempt wells, during exempt activities such as preproduction activities, or subject to exceptions, such as "unavoidable situations." Doing so will ensure the state, and the public, knows how much waste is actually occurring from oil and gas wells in the state. Such information is important in order to ensure the Department is carrying out its mandate to minimize waste and important to ensuring compliance with the rules. Such information can also help inform future rule revisions, whether required to ensure consistency with federal requirements such as the upcoming EPA emission guidelines for existing oil and gas sources, or to ensure consistency with Louisiana law and policy priorities.

III. Conclusion

We greatly appreciate the Department's consideration of our comments on much needed amendments to LAC 43:XIX, Subparts 1 and 15. We look forward to the Department's expeditious promulgation and implementation of the amendments which will prohibit routine flaring at sites responsible for an estimated 71% of flaring, reducing emissions by approximately

⁴³ Proposed Section 3507.E.

364,000 metric tons of CO₂e annually, equivalent to preventing the emissions from more than 975,000 passenger vehicles being driven for a year.⁴⁴

Respectfully submitted,

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⁴⁴ EDF analysis assuming a 20-year GWP.