

Ozone Precursor Rule 20.2.50 NMAC FAQ

The Ozone Precursor Rule (“OPR”, 20.2.50 NMAC, or “Part 50”) went into effect on August 5, 2022. This document contains questions that have been asked of the New Mexico Environment Department (“NMED” or “The Department”).

This document updates the original FAQ document first shared with industry on September 1, 2022 and updated as of October 7, 2022. **New updates (as of December 30, 2022) are highlighted.**

Effective Date and Compliance Timelines

Q) The effective date of the rule is 08/05/2022, but there are phase-in dates for some sections of the rule. What does this mean for a facility if there is no phase-in date listed?

A) If a phase-in date is listed, the facility must comply with the associated date listed in the rule. If there is no phase-in date listed, the facility must comply with the rule on 08/05/2022.

Q) If a parent company owns subsidiaries with individually permitted facilities and equipment subject to the rule, will NMED consider the entire inventory of the parent company for compliance scheduling?

A) Yes. For example, in the parts of the rule that state a company’s percentage of equipment needed to comply by a certain date, the parent company may use a percentage of all of their assets to meet these requirements.

Q) Can you confirm whether the first monthly/quarterly OGI inspections for gathering and boosting stations should occur by September 5, 2022?

A) If monthly OGI inspections are required and no other time extension applies, the first will be due on or before September 5, 2022, 1 month after the effective date of the rule (August 5, 2022). For quarterly inspections, the first will be due on or before November 5, 2022, 3 months after the effective date of the rule.

Q) The storage tank section has a requirement to implement an annual training program for the tank measurement and thief hatch systems. Does this requirement need to be met before the end of 2022?

A) The rule has an effective date of August 5, 2022, therefore, the first training must be conducted no later than August 4, 2023, then within one year annually thereafter.

Q) When do pneumatic pumps need to comply?

A) Two years if supply line is available; three years for compliance if it is not.

Q) When must existing storage vessels be retrofitted?

A) All thief hatches should be designed to close once over-pressurization has ceased. This should happen through the pressure settings on the thief hatch. This may only require maintenance work at most facilities. However, if a thief hatch does not work this way, retrofits should be undertaken as soon as possible, even though there is no specific requirement in the rule to do so. The company should want to do this to

capture/control as much gas as possible for “good pollution control practices” and so that PTE does not have to account for thief hatches that do not close properly.

Q) When do OGI or Method 21 inspections need to start for existing well sites within 1,000 feet of an occupied area? And do we need determine whether wellhead-only facilities are within 1,000 feet of occupied areas? (Section 116.C(3))

A) By August 5, 2024, all existing well sites (excluding wellhead-only facilities) within 1,000 feet of an occupied area must have completed their first periodic OGI/Method 21 inspection. Frequency depends on Potential to Emit. Existing wellhead-only facilities (excluding those near occupied areas) are on a phase-in schedule: 30% by January 1, 2024; 65% by January 1, 2025; and 100% by January 1, 2026. Inactive well sites have different compliance deadlines. Subparagraphs (f) and (g) are, in effect, exceptions to the 2-year compliance deadline in subparagraph (a). Also, determinations of proximity are required for wellhead-only facilities, since they are a subset of well sites.

Alternative Equipment Leak Monitoring Plans

Q) What is the process for proposing an alternative equipment leak monitoring plan?

A) NMED is in the process of developing an application for an alternative equipment leak monitoring plan. Until this application is developed, monitoring as specified in the rule must be followed.

Q) Will applications be allowed to be administratively amended?

A) All applications, whether original or amended, will need to come through the Office of Compliance & Enforcement. Each original or amended application will be considered on a case-by-case basis.

Applicability

Q) Are plugged and abandoned wells considered inactive well sites?

A) Yes

Q) Does the rule apply to natural gas liquids transmission pipeline and associated pump stations?

A) No, but transmission compressor stations are subject to the rule.

Q) Are amine reboilers heaters, if they are over 20 MMBtu/hr?

A) Yes, amine reboilers are considered heaters under the rule.

Q) Is a compressor that is not on location with a wellsite and has several different wells going to it considered a gathering and boosting station?

A) Yes, due to fitting one or more of the qualifying processes in the definition at 20.2.7.G(1) NMAC.

Q) Is a pig receiving facility with a tank for liquids collected during those activities a gathering station?

A) Pig launching/receiving operations may be associated with a gathering/boosting station, but are not considered themselves to be gathering/boosting stations.

Q) What is the difference between a process vessel and a storage vessel?

A) If the vessel is “designed to contain an accumulation of hydrocarbon liquid or produced water,” then it is a storage vessel by definition. Process vessels often contain liquids for a specified process and liquids are contained in them for a shorter period of time; their main purpose is not storage.

Q) Are the following devices considered pneumatic controllers: (1) back pressure valve that operates independently of a level controller; and (2) “Little Joe” or “Big Joe”?

A) Yes, all of these are considered pneumatic controllers.

Q) Please verify that tanks storing hydrocarbon liquids downstream of custody transfer are not subject to the rule.

A) Each company must consider applicability for their own sources subject to the rule. If the tanks are under your company’s control, this does not mean that they are not subject to the rule just because there has been a custody transfer. This would be a gigantic loophole that is not justifiable, nor is it an appropriate interpretation of the rule language.

Q) Are plugged and abandoned wells subject to OGI surveys?

A) Section 116 states that OGI inspections are “of thief hatches, closed vent systems, pumps, compressors, pressure relief devices, open-ended valves or lines, valves, flanges, connectors, piping, and associated equipment.” A plugged and abandoned well, would have none of this equipment so there is nothing to inspect/survey.

Q) Tanks subject to NSPS OOOOa require tank emissions to be reduced and the resulting emissions are below the section 123 threshold for storage vessels. Are these tanks subject to Section 123?

A) Since NSPS OOOOa provides a federally enforceable limit, that limit can be used in calculating PTE for the storage vessels. If those calculations show that the resulting emissions are below the section 123 thresholds, then the storage vessels are not subject to the requirements in that section.

General Compliance

Q) Does 20.2.50.13(C)(4)(i) indicate that for both the initial emissions test and subsequent periodic emissions test, it would be acceptable to only collect data on NOx and CO emissions rates, and use the CO results to show compliance for VOC standards?

A) Yes.

Q) Where can I find forms, files and other items an operator must file with NMED to satisfy the requirements of the rule?

A) We are currently developing these forms. Once they have been developed you will be able to find them on our website.

Q) Can NMED provide guidance as to an acceptable calculation methodology for SSM as it relates to PTE, so that we can more precisely discern what will need quarterly vs. monthly OGI?

A) PTE is defined in 20.2.50.7.P(4); PTE must include SSM. This is the same as in our Permitting rules. Therefore, the same calculation methodology used in permit applications should be used here.

Q) Is an owner or operator to complete an Alternative Compliance Plan for every facility that operates engines or turbines, or are they to complete one plan that covers all facilities in New Mexico?

A) Each facility that wishes to use an alternative compliance plan needs a written and approved plan and the engines or turbines to be covered must be listed in the plan. In any submission to the AQB, the company must demonstrate that they have fulfilled all requirements in paragraph 20.2.50.113.B(10). Until such plan is approved, all other compliance requirements must be met.

Q) Will NMED consider the removal of an existing piece of equipment a suitable means of achieving compliance?

A) Hypothetically, this would be possible. However, we would need assurance that eliminating the use of this equipment would not cause an increase in the use of other equipment, simply transferring emissions from one piece of equipment to another. If this option is used for compliance, the Department would require documented evidence that a transfer of emissions is not occurring.

Q) Is there a time limit for repair in case of an ECD alarm?

A) There is no time limit for repairs given. However, under General Provisions (Section 112.A), sources must operate and maintain control and monitoring equipment at all times consistent with safety and good air pollution control practices of minimizing emissions of VOC and NOx. Further, General Requirements (Paragraph B) state that control devices must be operated and maintained consistent with good engineering and maintenance practices and that a control device operates as a closed vent system. NMED would then interpret this to mean that repairs are completed as soon as practicable, but in no event later than 30 days, consistent with Section 116 requirements. In case of an alarm activation, document what needs to be done to complete a repair and any circumstances that would prevent the repair from being completed immediately; a schedule for completion of the repair would be helpful for determining if you are operating using good air pollution control practices, good engineering and maintenance practices and whether your control device is operating as a closed vent system. Barring circumstances beyond the company's control, repair should be able to be accomplished within a few days of the alarm activation – similar to the flare requirements – to be considered good practices.

Q) What is the schedule for new wellhead only facilities? Annually on startup? Where does the rule specifically state this?

A) See C(3)(b)

A) New wellhead only facilities must comply annually, semi-annually, or quarterly upon startup, depending on PTE.

A) Wellhead only facilities are a subcategory of the more general term, "wellhead facilities", and the category of existing wellhead only facility is a further modifier for wellhead only facilities. Therefore, new wellhead only facilities must follow the wellhead facilities requirements as there is no separate requirement for them. OGI/EPA Method 21 schedule is phased in only for existing wellhead only facilities (as an exception to the general understanding that, unless stated otherwise, compliance begins on the effective date), not new wellhead only facilities.

Q) Does the 3 TPY for existing multi-tank batteries apply to individual tanks or to the entire battery?

A) PTE thresholds apply to individual storage vessels, not the entire tank battery.

Q) (Section 123) How is PTE calculated for a facility with no permit required or registered with an NOI that captures VOCs from storage tanks via a VRU and that VRU is considered process equipment, not control equipment?

A) NMED intends for sources to use the same PTE calculation methodology as they would (or did) for their NOI registrations or permits. The definition of “Control device” excludes VRU “used primarily as process equipment.” To be compliant, however, the VRU uptime must be consistent with the capture efficiency represented in the permit/NOI application; otherwise a permit modification or NOI revision will be required.

Q) Do we need to add a control device to tanks from which a VRU captures VOCs as process if PTE post-capture is still above 3 tons per year per tank?

A) Section 123 simply requires a combined capture and control efficiency of 95%. If the VRU actually achieves this efficiency, the requirements in Section 123 are met. However, Section 115 is applicable to closed vent systems and additional VRU requirements are found in Subsection E. Within 3 years, a backup control device or redundant VRU must be installed to operate during startup, shutdown, maintenance or other VRU downtime. Otherwise, the source must be isolated during times the VRU is not operating.

Q) (Section 114.A) Is a tank battery a subset of a well site? Could a compressor be located at both a tank battery and a well site? How do we determine if Section 114 is applicable?

A) Tank batteries are not a subset of well sites, although they may be “associated with” a well site; this is in contrast to “Standalone tank batteries.” Compressors are not considered to be at both a tank battery and a well site. If the compressor operates to support a tank battery, it is subject to requirements in Section 114. If it operates to support a well site only, it is not subject to Section 114.

Q) If a new tank battery is not connected to the grid (and therefore, not required to install a LACT), but later connects to the grid, what production rates apply?

A) The production rates that apply are the current production rates as of the time when grid power is available at the site.

Q) What are NMED’s expectations on signage regarding automatic tank measurement systems?

A) Signage may be loosely construed to include directions to finding the information required.

Q) If an available control device (for pneumatic pumps) is unable to achieve a 95% emissions reduction and it is not technically feasible to route emissions to a fuel cell or process, will NMED accept less than 95% emissions reduction?

A) The subparagraph in question (20.2.50.120.B(5)(d) NMAC) refers to facilities without access to electrical power. If a control device at such a facility is unable to achieve a 95% reduction in VOC emissions, the emissions must further (or first) be routed to a fuel cell or process. Only in the circumstances that it is technically infeasible to route to a fuel cell or process (documented) would it be acceptable to achieve less than 95% reduction in VOC emissions by routing to the control device.

Q) For the engine (and turbine) inventories required, do we submit the required schedule to NMED? What needs to be included? Can it be modified?

A) Inventories and compliance schedules (to be prepared by January 1, 2023) should not be submitted to NMED unless specifically requested. The schedule should show specific engines and when each engine is anticipated to be in compliance. Once the schedule has been prepared, substitutions can be made if the percentages in the appropriate tables are met.

Q) Table 1 in section 113 doesn't list a tons per year limit. How do we know the tpy limit to reduce to?

A) For each engine, complete a calculation based on the emission rate for that engine. Staff engineers should be able to do this calculation.

Q) Does a "unique ID apply only if a leak occurs? Does the ID need to be physically marked?

A) Section 112 states that each "source requiring equipment monitoring, testing or inspection shall develop and implement a data system ..." Records to be maintained "regarding each source requiring equipment monitoring, testing, or inspection" shall include "(a) unique identification number; ... (c) type of source (e.g., tank, VRU, dehydrator, pneumatic controller, etc.) ... (e) make, model, and serial number ..." Therefore, the unique ID applies to individual components. The ID may be physical, but also must be electronic. However, if a repair tag is needed, this must be physical.

Q) If exhaust from natural gas actuated pneumatic valves and natural gas driven diaphragm pumps is captured and routed to a tank/pipe or a combustor/flare, is this a non-emitting controller?

A) As long as this equipment releases gases "to a process, sales line, or to a combustion device instead of directly to the atmosphere," and the pumps and valves are operated as designed, they would be considered a "Routed pneumatic controller" and are non-emitting per the definition at 20.2.50.7.N(4) NMAC.

Monitoring and Leak Detection

Q) Is there guidance on technologies for monitoring requirements? Specifically for time stamp, GPS tracking, and other monitoring activities outlined in the rule?

A) NMED has a year to provide companies with guidance on monitoring technologies, and companies will have at least an additional year after the release of that guidance to comply and implement technologies.

Q) Does NMED require a standard piece of equipment to collect data necessary for the Ozone Precursor Rule?

A) No, the company can decide the technology used.

Q) Do quarterly Method 22 requirements apply to emergency flares?

A) Yes, if these control devices are "used to comply with the emission standards and emission reduction requirements in this Part."

Q) How will NMED address LDAR requirements in light of supply chain issues and lack of qualified personnel?

A) Because many companies already comply with NSPS OOOOa leak detection requirements, NMED does not believe this requirement should be overly burdensome.

Further, the requirement offers the option of EPA Method 21 in lieu of OGI. In addition, companies have known this requirement was possible for several months prior to the rule becoming effective. Therefore, this requirement is not phased in and compliance is expected according to the timelines in the rule.

Q) Does the PTE threshold in section 116 refer to fugitive emissions only?

A) No, the PTE threshold in this section refers to the facility as a whole, including all sources of VOC emissions.

Q) When do LDAR requirements start for sites within 1,000 feet of an occupied structure?

A) Determinations of proximity must be complete for existing well sites within 90 days of the effective date. Quarterly inspections should start as soon as possible, considering the possible harm to those in the occupied areas, but no later than two years from the effective date (i.e., by August 5, 2024).

Q) Is the initial compliance test required 180 days after the compliance date in the Section 113 tables?

A) Yes, initial compliance testing is required within 180 days of the required compliance with the emission standard. The idea is that the tests will show compliance. However, many engines and turbines already require testing, either for federal regulations, permit requirements, or both. As long as the appropriate methods are used, this testing may be used to show compliance.

Q) When do AVO inspections start?

A) Because there is no provision in the rule for beginning AVO inspections later than the effective date, these inspections should have begun immediately after the effective date.

Flowback Vessels and Preproduction Operations

Q) In Colorado's rule, applicability to flowback vessels excludes tanks used for sand collection. Also, flowback that goes directly to permanent tanks would be covered under storage vessel requirements, not those applicable to flowback vessels and preproduction operations. Is this correct?

A) NMED has reconsidered its previous answer. Because the requirements at 20.2.50.127 NMAC specifically refer to flowback, and the sand-collecting boxes collect solids prior to flowback, these sand boxes are not subject to this section of the rule.

Q) The flowback section has language that requires a daily AVO of the flowback vessel/process. Some operators utilize normal production facilities for portions of the flowback process. Since flowback through normal production facilities is no different than other "normal production", does that mean daily AVO's are needed during this timeframe only when using temporary flowback equipment?

A) NMED agrees that, if normal production facilities (for which emissions must be gathered/controlled) are used during the flowback period instead of temporary vessels, the AVO requirements in this situation would revert to those found in Section 116 – *Equipment Leaks and Fugitive Emissions*. All standards and requirements found in Section 127 apply when temporary equipment is used during flowback.

Prohibited Activity and Credible Evidence

- Q)** Will the NMED develop a protocol for third parties to demonstrate credible evidence?
- A)** 20.2.50.128 NMAC does not create a new standard; rather, it codifies NMED’s existing practice with respect to evidence or information received by the Department from any person or entity. When members of the public submit evidence or information to NMED, NMED staff evaluate the evidence and, in consultation with NMED attorneys, determine whether it is “credible” such that it warrants further investigation and/or enforcement action. As part of this evaluation, NMED may seek further information from the person that provided the evidence to the Department, as well as from the alleged violator. NMED is not going to develop or provide any type of protocol for 3rd parties to make a “demonstration” of credibility under 20.2.50.128 NMAC. As has always been the case, the determination of whether evidence submitted by any person is sufficiently “credible” such that it can support an enforcement action lies solely within the discretion of NMED based on its own internal technical and legal review.

Reporting and Recordkeeping

- Q)** If a company owns or operates multiple subsidiary companies in New Mexico which have their own individually permitted facilities and equipment subject to the rule, can the parent company combine the affected equipment inventories of the subsidiaries for purposes of determining compliance with the rule?
- A)** Companies can keep and track their inventories for compliance as an aggregate list if they would like but should be able to pull information on a specific set of equipment if necessary or requested by the Department. If the Department requests a single facility’s data, we should only receive what is requested and not an entire database of unrequested data. A Compliance Database Report (CDR) should be able to be run by facility.
- Q)** Section 123 – D(1) states “...monitor, calculate, or estimate (monthly) total liquid throughput in barrels.” Should this be calculated in net standard volume or gross volume?
- A)** Gross Volume

Inspection

- Q)** May facilities skip inspection and monitoring due to weather events?
- A)** There are no force majeure provisions in the rule, so the requirements must be met. However, NMED is not unreasonable and understands that situations may arise and a company or facility will need to act accordingly. In such cases, the company *may* be able to document the event to our satisfaction and request an “enforcement discretion” due to the event. NMED anticipates these events to be extremely rare. There is also no penalty for completing inspections early, so if a dramatic weather event is predicted in the forecast the facility may meet their inspection requirements prior to the weather

event. Additionally, no enforcement discretion will be approved for “skipping” a monitoring event as it must still be completed as soon as possible.

Q) If a well is not producing any gas, can inspections be suspended due to shut in status?

A) Equipment that has been shut down does not need to be restarted solely for the purpose of testing, monitoring, or inspection. If a well is shut in, equipment that still has the potential for emissions would need to be monitored. For example, a storage vessel containing hydrocarbons would still need any applicable inspection; if it has been emptied and degassed it would not.

Miscellaneous

Q) Does NMED have guidance on the data sources to use for determining impacted residents and occupied areas?

A) NMED does not have guidance on what data sources to use for determining occupied areas. As defined in 20.2.50.7.O(1), publicly available information should suffice to make determinations.

Q) What does the term “Maximum design rating” for turbine horsepower refer to?

A) Any turbine that has a design rating at or above 1,000 bhp in the unit specifications should follow Table 3 in section 20.2.50.113.B.7.

Q) Definition of well site

A) The equipment under the operator’s control directly associated with one or more oil wells or natural gas wells upstream of the natural gas processing plant or gathering and boosting station, if any. “Wellhead only facilities” are a subset of well sites.

Q) Does NMED have a threshold based on \$/ton of emissions reduced for economic infeasibility?

A) NMED does not have a set model for calculating economic feasibility.

Q) Does NMED plan to hold a similar event in the SE part of New Mexico?

A) NMED plans to hold a series of industry workshops that provide compliance guidance. If capacity and resources allow us, these will all be hybrid (in-person and virtual). If we are able to offer this workshop in person, southeastern New Mexico will be an option.

Q) Will NMED field staff training materials be available to the public?

A) Yes. Training materials will be posted on the Compliance & Enforcement website.

Q) When does the training program need to be in place for tank measurement and thief hatch systems?

A) The first training must be conducted no later than August 5, 2023 and within one year annually thereafter.

Q) Can operators notify residents affected by well workovers in an annual letter?

A) No, this is not the intent of this requirement. The intent is to notify residents of imminent work that may harm their health. As such, a generic annual notification is insufficient.

Q) What is NMED’s definition of property boundary – the fenced-in area?

A) As there is not a definition of property boundary in the rule, we would interpret it to be the commonly accepted, plain language definition of property boundary which may or may not coincide with the fenced-in area.

Q) Does a commercial building that operates solely in the oil and gas upstream and/or midstream industry count as an occupied are?

A) Yes; therefore, notifications are required. The goal is to notify and protect all citizens to the greatest extent possible, whether they work in the industry or not. The notice may be an email to the office manager, so this should not be too burdensome.

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