From:	Methanestrategy, NM, NMENV
To:	Spillers, Robert, NMENV
Subject:	Fw: draft ozone precursor rule - NGL comment
Date:	Thursday, September 17, 2020 9:47:18 AM
Attachments:	image002.png NGL comment_NMED Draft Ozone Precursor.pdf

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From: Matthias Sayer <Matthias.Sayer@nglep.com>
Sent: Wednesday, September 16, 2020 3:45 PM
To: Methanestrategy, NM, NMENV
Cc: Sandra DuCharme
Subject: [EXT] draft ozone precursor rule - NGL comment

Please find NGL's limited comment on the draft rule attached.

Thank you for your time and attention.

Matthias

MATTHIAS SAYER
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September 16, 2020

New Mexico Environment Department
Air Quality Bureau
525 Camino de los Marquez
Santa Fe, NM 87505
nm.methanestrategy@state.nm.us
ATTN: Liz Bisbey-Kuehn

Re: ***Draft Rule—20.2.50 Oil and Natural Gas Regulations for Ozone Precursors***

Ms. Bisbey-Kuehn,

On July 20, 2020, the New Mexico Environment Department released a draft version of its ozone precursor rules (Draft or Precursor Rule) for public review and informal comment. NGL Energy Partners, L.P. and NGL Water Solutions Permian, LLC (NGL) thank Secretary Kenney and the team at the Department for your efforts in developing these draft rules. Additionally, NGL thanks the Department for making the draft rules available for public review and comment prior to initiating a formal rulemaking process. This approach will no doubt allow for more meaningful consideration of the Draft Rules and ultimately facilitate better policy for New Mexico.

NGL Water Solutions Permian, LLC (NGL) is the largest oil and gas waste-water solutions provider in the State of New Mexico. In 2019, NGL processed nearly 1 million barrels of oil and gas waste-water daily, almost a third of the total volume of daily oil and gas waste-water produced in the State, and our volumes are climbing. As part of our effort to responsibly manage produced water in New Mexico, we have made and are continuing to make meaningful investment in produced water recycle operations. However, as discussed in our comment below, the Draft Rule present certain challenges that call into question our ability to continue that investment in the state.

Thank you for the opportunity to participate in this effort and please contact me with any follow-up inquiries.

Sincerely,

Matthias Sayer
NGL Energy Partners, LP
NGL Water Solutions Permian, LLC
matthias.sayer@nglep.com
505-216-1430

Upon review of the Draft Rules, while NGL has identified a number of provisions that will require varying degrees of operational adjustment and capital expenditure prioritization, one provision of the Draft Rule presents much more than an operational challenge. Section 20.2.50.26 "Standards for Evaporation Ponds" proposes to erect an insurmountable cost hurdle in front of produced water recycle operations in the state. The Draft Rule appears to accept a narrative that a choice must be made between capturing ozone precursor molecules and facilitating continued investment in produced water recycle. The Draft answers that false choice by closing the door on continued investment in produced water recycle in favor of capturing some unknown quantity of additional precursors. In light of the still thin data set available on recycle pond emissions and because of the necessity of continuing to develop a more robust recycle market in New Mexico, NGL questions whether the Precursor Rule need stamp out produced water recycle to succeed in its aim.

New Mexico is an arid state. According to the U.S. Drought Monitor, 100% of New Mexico is currently experiencing drought conditions, compared to 95% in 2018, and only 11% in 2017. Simultaneously, water use for hydraulic fracturing has seen sharp growth in the Permian Basin, largely because of growth in lateral well lengths. In 2017, water consumption for hydraulic fracturing in the Permian Basin was up nearly 800% from 2011, to 1.2 billion barrels. Additionally, volumes of produced water in New Mexico have increased to record levels—888 million barrels in 2017, 1 billion in 2018, and 1.3 billion in 2019. The solution to the water dilemma is simple and not novel—replace water consumed by hydraulic fracturing with recycled produced water, preserving approximately one billion barrels of fresh / brackish water for non-industry purposes—irrigation, residential consumption, other commercial applications, compact compliance, etc.

This solution is the very specific objective of H.B. 546 (Produced Water Act) from the 2019 Regular Session. The Act implemented various policy measures, all aimed at facilitating, through regulatory clarity and on the ground policy adjustments, a robust shift from reliance on fresh water for hydraulic fracturing to recycled produced water. Notably, the Act passed the New Mexico House of Representatives with unanimous support and the Senate with near unanimous support, garnering praise from House Speaker Brian Egolf as one of the "greatest environmental accomplishments" to come out of the legislature. More recently, the Oil Conservation Division (OCD) promulgated the "Produced Water Rule", implementing the Act and amending various sections of Title 19 Chapter 15 with the stated objective of "encourage[ing] the recycling or reuse of produced water." 19.15.34.3 NMAC. Implementation of the Precursor Rule in its current state will have the direct and immediate impact of thwarting the specific policy enacted by the New Mexico Legislature and the OCD. While such cannot be the intent of the Precursor Rule, it is nevertheless, it's present effect.

The two policies—capturing ozone precursors and continuing the transition to recycled produced water—need not compete in this manner. Through a more careful regulation of evaporation ponds, the former policy can be pursued without sacrificing the latter. The draft language at 20.2.50.26 A. applies to "all new and existing evaporation ponds" without, however, defining the term "evaporation pond." NGL proposes to include at 20.2.50.8, a definition of the term "evaporation pond" to exclude any impoundment otherwise permitted under NMAC 19.15.34 "Produced Water, Drilling Fluids and Liquid Oil Field Waste".

Facilities permitted under Part 34 of the OCD regulations are generally not constructed or operated with any intent to facilitate evaporation. One of the primary operational purposes of recycle impoundments is to normalize water quality prior to moving the water to the location of a

customer. Therefore, the general relationship between recycle operations and evaporation is a negative one—evaporation represents the loss of a marketable product and therefore is generally to be avoided rather than pursued.

Under this proposal, ozone precursors emitted from true evaporation ponds will remain subject to the Precursor Rule's regulatory obligations, while impoundments built to advance the transition from fresh to recycled produced water will not be abandoned and the recycle policy along with them.