

BEFORE THE INDUSTRIAL COMMISSION
OF THE STATE OF NORTH DAKOTA

CASE NO. 28850
ORDER NO. 31455

IN THE MATTER OF A HEARING CALLED ON A MOTION OF THE COMMISSION TO CONSIDER THE APPLICATION OF RED TRAIL ENERGY, LLC FOR AN ORDER OF THE COMMISSION DETERMINING THE AMOUNT OF FINANCIAL RESPONSIBILITY FOR THE GEOLOGIC STORAGE OF CARBON DIOXIDE FROM THE RED TRAIL ENERGY, LLC ETHANOL FACILITY LOCATED IN SECTIONS 9, 10, 11, 12, 13, 14, 15, 22 AND 23, TOWNSHIP 139 NORTH, RANGE 92 WEST, STARK COUNTY, NORTH DAKOTA PURSUANT TO NORTH DAKOTA ADMINISTRATIVE CODE SECTION 43-05-01-09.1.

ORDER OF THE COMMISSION

THE COMMISSION FINDS:

- (1) This cause came on for hearing at 9:00 a.m. on the 12th day of August, 2021.
- (2) This case is a motion of the Commission to determine the amount of financial responsibility to be required of Red Trail Energy, LLC (Red Trail) for geologic storage of carbon dioxide in the amalgamated storage reservoir pore space of the Broom Creek Formation within Sections 10, 11, 14, and 15, the E/2 SE/4 and SE/4 NE/4 of Section 9, the W/2 SW/4 Section 12, the W/2 W/2 of Section 13, the NE/4 and N/2 NW/4 of Section 22, and the N/2 of Section 23, Township 139 North, Range 92 West, Stark County, North Dakota, pursuant to North Dakota Administrative Code (NDAC) Section 43-05-01-09.1, and such relief as is appropriate.
- (3) Case Nos. 28850, 28848, and 28849 were combined for purposes of hearing.
- (4) Case No. 28848, also on today's docket, is an application by Red Trail for an order authorizing geologic storage of carbon dioxide from the Red Trail ethanol facility in the amalgamated pore space of the Broom Creek Formation in portions of Sections 9, 10, 11, 12, 13, 14, 15, 22, and 23, Township 139 North, Range 92 West, Stark County, North Dakota, pursuant to NDAC Chapter 43-05-01.
- (5) Case No. 28849, also on today's docket, is an application filed with the Commission by Red Trail for an order of the Commission determining the amalgamation of storage reservoir pore space, pursuant to a Geologic Storage Agreement for use of pore space falling within portions of Sections 9, 10, 11, 12, 13, 14, 15, 22, and 23, Township 139 North, Range 92 West,

Stark County, North Dakota in the Broom Creek Formation, has been signed, ratified, or approved by owners of interest owning at least sixty percent of the pore space interest within said lands pursuant to North Dakota Century Code (NDCC) 38-22-10.

(6) The record in these matters was left open to receive additional information from Red Trail. Such information was received on September 23 and October 18, 2021, and the record was closed.

(7) Order No. 31453 entered in Case No. 28848 created the Red Trail Richardton Ethanol Broom Creek Storage Facility #1; and Order No. 31454 entered in Case No. 28849 determined said storage facility will become effective November 1, 2021.

(8) Red Trail outlined its proposed qualifying financial responsibility instruments to be utilized to demonstrate financial responsibility pursuant to NDAC Section 43-05-01-09.1.

(9) Pursuant to NDAC Section 43-05-01-09.1 the qualifying financial responsibility instruments must cover the cost of:

- (a) Corrective action that meets the requirements of NDAC Section 43-05-01-05.1.
- (b) Injection well plugging that meets the requirements of NDAC Section 43-05-01-11.5.
- (c) Postinjection site care and facility closure that meets the requirements of NDAC Section 43-05-01-19.
- (d) Emergency and remedial response that meets the requirements of NDAC Section 43-05-01-13.

(10) Red Trail demonstrated that corrective action pursuant to NDAC Section 43-05-01-05.1 is not necessary within the delineated area of review. Red Trail testified that if corrective action were necessary, the cost to remediate a legacy well is estimated to be \$300,000 to \$500,000 per well. The Commission agrees with Red Trail's demonstration.

(11) Red Trail estimates the injection well plugging cost pursuant to NDAC Section 43-05-01-11.5 is between \$35,000 and \$60,000 per well, with an expected cost of \$40,000 per well.

(12) The Commission estimates the cost of plugging the wells to be \$80,000 per well.

(13) The Red Trail Richardton Ethanol Broom Creek Storage Facility #1 will have one injection well, the RTE #10 well (File No. 37229), located 600 feet from the south line and 250 feet from the east line of Section 10; and one monitor well, the RTE #10.2 well (File No. 37858), located 2,296 feet from the north line and 1,043 feet from the west line of Section 10, Township 139 North, Range 92 West, Stark County, North Dakota. Red Trail has filed two \$125,000 single-well bonds to meet the injection and monitoring well plugging financial responsibility requirements. Bonds are a qualifying financial responsibility instrument under NDAC Section 43-05-01-09.1.

(14) Red Trail estimates the postinjection site care and facility closure financial responsibility pursuant to NDAC Section 43-05-01-19 is \$1,760,000, and is proposed to be covered by a third-party insurance policy of \$20,000,000. The insurance policy is a qualifying financial responsibility instrument under NDAC Section 43-05-01-09.1.

(15) Red Trail estimates the emergency and remedial response costs pursuant to NDAC Section 43-05-01-13, with a worst-case scenario of an underground source of drinking water being impacted, as well as carbon dioxide migrating to the surface, utilizing existing literature and research, including that of Archer-Daniels-Midland and the proposed Future Gen 1.0 commercial carbon dioxide storage projects. Red Trail's estimate for emergency and remedial response actions is \$16,000,000 and is proposed to be covered by the aforementioned third-party \$20,000,000 insurance policy, that is deemed a qualifying financial responsibility instrument under NDAC Section 43-05-01-09.1.

(16) The Commission should set minimum amounts of qualifying financial responsibility for injection well plugging, postinjection site care and facility closure, and emergency and remedial response.

IT IS THEREFORE ORDERED:

(1) Red Trail Energy, LLC, its assigns and successors, is hereby required to maintain financial responsibility with qualifying instruments in the minimum amounts specified in paragraph (2) below, pursuant to NDAC Section 43-05-01-09.1, covering the Red Trail Richardton Ethanol Broom Creek Storage Facility #1 in Stark County, North Dakota.

- (2) The minimum amount for injection well plugging that meets the requirements of NDAC Section 43-05-01-11.5 is a \$125,000 single-well bond per well.

The minimum amount for postinjection site care and facility closure that meets the requirements of NDAC Section 43-05-01-19 is \$1,760,000.

The minimum amount for emergency and remedial response that meets the requirements of NDAC Section 43-05-01-13 is \$16,000,000.

- (3) This order shall be reviewed when a review of Order No. 31453 is conducted.
- (4) This order shall remain in full force and effect until further order of the Commission.

Dated this 19th day of October, 2021.

INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA

/s/ Doug Burgum, Governor

/s/ Wayne Stenehjem, Attorney General

/s/ Doug Goehring, Agriculture Commissioner