

BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF NORTH DAKOTA

CASE NO. 29279  
(CONTINUED)  
ORDER NO. 31848

IN THE MATTER OF A HEARING CALLED  
ON A MOTION OF THE COMMISSION TO  
CONSIDER AMENDING CURRENT FIELD  
RULES AND/OR IMPOSE A POLICY TO  
ESTABLISH A DRILL-BACK POLICY FOR  
HORIZONTAL WELLS, AND SUCH OTHER  
RELIEF AS IS APPROPRIATE.

ORDER OF THE COMMISSION

THE COMMISSION FINDS:

(1) This cause originally came on for hearing at 9:00 a.m. on the 19th day of April, 2022. At that time, the hearing examiner continued the matter to June 16, 2022. At that time, the hearing examiner continued the matter to June 30, 2022.

(2) This special hearing was called on a motion of the Commission to consider amending current field rules and/or impose a policy to establish a drill-back policy for horizontal wells, and such other relief as is appropriate.

(3) Prior to the hearing, the Commission indicated it was seeking testimony of technical nature for input on the following:

- (a) Effects on correlative rights of adjacent working interest and mineral interest owners;
- (b) Effects on section line/lease-line wells;
- (c) Effects on heel-to-toe and heel-to-heel wells;
- (d) Effects on estimated ultimate recovery;
- (e) Effect of pool entry point;
- (f) Effect of ghost hole and sidetracked laterals on current/future development; and
- (g) Proper cement isolation and evaluation.

(4) The Commission received written comments prior to the April 19, 2022 hearing from Alisdair Farthing of Burlington Resources Oil & Gas Company LP, Christian Sizemore of Ovintiv USA Inc., James Benson of WPX Energy Williston, LLC, and William Houser of Continental Resources, Inc.

(5) The Commission received comments at the April 19, 2022 hearing from William Houser of Continental Resources, Inc., Abe McClellan of Continental Resources, Inc., Paul Lembcke of Ovintiv USA Inc., Christopher Frazier of XTO Energy Inc, and Jason Stangel of Petro-Hunt, L.L.C.

(6) Christopher Frazier of XTO Energy Inc provided telephonic testimony in this matter on April 19, 2022, pursuant to North Dakota Administrative Code (NDAC) Section 43-02-03-88.2. The Telephonic Communication Affidavit was received on May 2, 2022, therefore, such testimony may be considered evidence.

(7) Jason Stangel of Petro-Hunt, L.L.C. provided telephonic testimony in this matter on April 19, 2022, pursuant to NDAC Section 43-02-03-88.2. The Telephonic Communication Affidavit was received on April 19, 2022, therefore, such testimony may be considered evidence.

(8) The Commission received written comments after the April 19, 2022 hearing from Christian Sizemore of Ovintiv USA Inc. and William Houser of Continental Resources, Inc.

(9) Case No. 29449, also heard June 30, 2022, is a motion of the Commission to consider amending current field rules and/or impose a policy for drilling horizontal wells from a surface location outside the spacing unit, and such other relief as is appropriate.

(10) The Commission received written comments prior to the June 30, 2022 hearing from Ron Ness of the North Dakota Petroleum Council and TP Furlong of Irish Oil & Gas, Inc.

(11) The Commission received comments at the June 30, 2022 hearing from David Kerbaugh representing himself.

(12) Some of the comments received indicated that this matter should not be conducted under administrative rulemaking. The Commission finds that matters such as this one are intended to address drilling practices for a limited number of producing pools and should be handled as has been done previously with subject matter similar in nature, as in: (1) Commission Order No. 14496 which set requirements for 2560-acre drilling and spacing units; (2) Commission Order No. 14497 which established 1280-acre drilling units within the Bakken Pool; (3) Commission Order No. 14498 which established a 200-foot setback relative to the heel and toe of horizontal Bakken Pool wells; (4) Commission Order No. 24665 which modified flaring regulations for Bakken, Bakken/Three Forks, and Three Forks Pools; and (5) Commission Order No. 25417 which established oil conditioning standards for Bakken, Bakken/Three Forks, Three Forks, and Sanish

Pools (the Bakken Petroleum System). The Commission concludes administrative rulemaking should not be considered.

(13) The operator of a spacing unit adjacent to a spacing unit where the operator intends to horizontally drill within the Bakken Petroleum System, in which the wellbore is proposed to enter the Bakken Petroleum System within said adjacent spacing unit, needs to be notified of the proposed well bore design and have the same opportunity to object provided by the current 3-day wait policy the Commission has implemented on new permits. For purposes of this order, “operator of a spacing unit” means the principal on the bond covering a well completed, or permit to drill a well, in the Bakken Petroleum System.

The Commission believes collaboration between operators can resolve most issues in a manner that protects correlative rights, therefore operator notice should be required if drilling operations include wellbore penetration of the Bakken Petroleum System outside the spacing unit.

NDAC Section 43-02-03-31 states in part that information furnished to the director on permits, except the operator name, well name, location, permit date, confidentiality period, spacing or drilling unit description, spud date, rig contractor, central tank battery number, any production runs, or volumes injected into an injection well, shall be kept confidential from the time a request by the operator is received in writing until the six-month confidentiality period has ended. The Commission has determined the location of a horizontal well means the surface location and also the proposed downhole location of the wellbore, therefore confidentiality issues concerning the well bore location is not an issue.

(14) Ghost holes are created when a portion of the wellbore can not be properly isolated with cement, such as (a) uncemented sections within the Bakken Petroleum System when cement can not be circulated out the intermediate casing shoe; (b) uncemented sections within the Bakken Petroleum System when unable to run the intermediate casing down to the intended casing point; and (c) uncemented sections within the Bakken Petroleum System that were sidetracked.

It can be difficult to protect correlative rights when hydraulic stimulation operations intersect such ghost holes in close proximity to spacing unit setbacks. Past issues have been disposed of after notice to affected parties, hearing testimony, and the issuance of a Commission order, pursuant to NDAC Section 43-02-03-18.1. The Commission should continue to address such issues after notice and hearing.

(15) Prohibiting well bore penetration of the Bakken Petroleum System outside the target spacing unit would be equivalent to extending current setbacks since it would be nearly impossible to enter target zones horizontally at existing setbacks, resulting in lost reserves for all horizontal wells.

(16) Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes the following conclusions.

IT IS THEREFORE ORDERED:

(1) Prior to consideration of any application or permit modification to horizontally drill within a Bakken, Bakken/Three Forks, Three Forks, and/or Sanish Pool (the Bakken Petroleum System) with a wellbore that is proposed to enter the Bakken Petroleum System outside the target spacing unit for such well, applicant must submit an affidavit indicating the following documents have been provided to the operator of such adjacent spacing unit, unless specifically waived by the Director:

- (a) Directional drilling and completion plan, including trajectory details, target details, formation tops, casing design, and cementing details where such well bore traverses through the adjacent spacing unit;
- (b) Approximate date on which drilling operations will commence; and
- (c) Applicant's contact information if additional information is needed.

(2) The commencement of drilling operations of any well in paragraph (1) above shall not occur until 3 business days after the approved permit appears on the Commission's daily activity report (available on the Commission's home page), unless waived by the Director.

(3) The Commission shall have continuing jurisdiction in this matter and specifically reserves the authority, upon its own motion or the motion of any interested party, to: (a) review such requirements outlined herein; (b) determine whether additional requirements are warranted; and (c) make such further amendments or modifications as the Commission deems appropriate.

(4) This order is hereby effective September 1, 2022, shall cover all applications for drilling wells in the Bakken Petroleum System, and shall continue in full force and effect until further order of the Commission.

Dated this 4th day of August, 2022.

INDUSTRIAL COMMISSION  
STATE OF NORTH DAKOTA

/s/ Doug Burgum, Governor

/s/ Drew H. Wrigley, Attorney General

/s/ Doug Goehring, Agriculture Commissioner