

This was not received before the
5 pm, April 25, 2016
written comments deadline.

Eve Suchy
4845 20th Avenue
Mandan, ND 58554

Received
APR 27 2016
ND Oil & Gas Division

April 22, 2016

Oil and Gas Division
600 E Boulevard AVE, DEPT 405
Bismarck, ND 58505-0840

In Re: Proposed Amendment to NDAC 43-02-03-01, Definition of **'Interested Party'**

To Whom It May Concern,

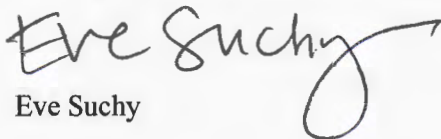
I write because I am very concerned about the proposal currently before the North Dakota Industrial Commission to create a definition of "interested party" within Title 43 of the Administrative Code. I advocate for eliminating the definition entirely.

I do not believe the purpose of the proposed definition (requiring the witness to have an ownership or management interest in the affected land) is to "clarify" or to "update obsolete language in the current definition" as Department of Mineral Resources materials explain. For one thing, there is no current definition. I believe the purpose of the proposal is to limit the public's ability to speak at Commission hearings.

As an avid hiker, camper and photographer in the Badlands and other wilderness areas in western North Dakota, I hope the air quality, water quality and viewshed of certain pristine areas can be preserved as oil and gas development occurs. My family and many of my friends feel the same way. Holding public hearings, open to public testimony, is the only way our voices can be heard.

The Hearings Officer still has the power to control off-topic or inappropriate testimony. Restrictive language defining an interested party is not necessary to control a meeting, neither for the NDIC or any other state agency, commission or department.

Thank you for your consideration,


Eve Suchy

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Tuesday, April 26, 2016 7:38 AM
To: Kadrmass, Bethany R.
Subject: FW: code amendments; interested parties

This comment may have come in too late. Karlene

This was not received before the
5 pm, April 25, 2016
written comments deadline.

From: mdhoff25 [<mailto:mdhoff25@bis.midco.net>]
Sent: Monday, April 25, 2016 7:29 PM
To: Fine, Karlene K.
Subject: code amendments; interested parties

TO NORTH DAKOTA INDUSTRIAL COMMISSION
FROM MARIE D HOFF, 911 N. MANDAN STREET, BISMARCK, ND 58501
SUBJ: WHO CAN OFFER TESTIMONY

I find it disturbingly undemocratic that the NDIC wishes to curb public input into decisions regarding siting of pipelines and other decisions regarding activity in the oil fields

Although I live in Bismarck, I feel personally affected by and concerned about the impact of such decisions on my own life as well as that of all NORTH DAKOTANS. WE all have a stake, we are all affected by oil and gas exploration, extraction and transport on our land, our air, our water and the long-term impacts on the people and the animal and plant life of North Dakota. I used to love driving through/ visiting northwestern ND and feel that I have been robbed of the beauty of this quarter of my home state by the impacts of the oil industry. Just because I don't live immediately in the vicinity doesn't mean it doesn't affect me; as an American I have a right to comment on what is going on in my country and certainly, anywhere in my home state.

So far, no one has been unruly, outrageously long-winded, or "off-the-wall" in their testimony in public hearings;. It is your duty as public officials to be sure you hear and truly listen to the public; we have bigger stakes in our STATE than do the oil companies (they pull out the minute the money dries up and then we the taxpayers of the ENTIRE STATE must help with the clean up) -- (both the environmental and social disasters permeating the oil patch.

WE HAVE A RIGHT TO BE HEARD, PEACE, MARIE D HOFF



Received
APR 26 2016
ND Oil & Gas Division

Mr. Bruce Hicks, Assistant Director
NDIC Department of Mineral Resources, Oil and Gas Division
600 E. Boulevard Ave.
Bismarck, ND 58505

RE: Comments on Proposed Rules Changes to NDAC

Dear Mr. Hicks:

Continental Resources, Inc. ("Continental") appreciates the opportunity to comment on the North Dakota Industrial Commission's (NDIC) Proposed Rule Changes. Continental submits these comments which support and augment those submitted by the North Dakota Petroleum Council (NDPC).

Continental is a top 10 independent oil producer in the United States Lower 48 and a leader in America's energy renaissance. Based in Oklahoma City, Continental is the largest leaseholder and one of the largest producers in the nation's premier oil field, the Bakken play of North Dakota and Montana. Continental also has significant positions in Oklahoma, including its SCOOP Woodford and SCOOP Springer discoveries and the STACK and Northwest Cana plays. With a focus on the exploration and production of oil, Continental has unlocked the technology and resources vital to American energy independence and our nation's leadership in the new world oil market. In 2017, Continental will celebrate 50 years of operations.

Continental's success has increased direct and indirect employment, helped the local economies of North Dakota, Montana, and Oklahoma flourish, and contributed to lower commodity prices throughout the world. While Continental is committed to complying with all applicable federal and state regulations, we firmly believe that regulations need to fix real problems with common sense solutions that will have a meaningful and measurable impact on operations in the state of North Dakota and throughout the United States of America.

Continental agrees with the necessity of adding regulations for underground gathering systems to the North Dakota regulations. We do however, have concerns with the manner in which the regulations have been approached in some cases. North Dakota will be the first state to directly regulate produced water gathering systems. Other states as well as federal regulating agencies will once again be looking to North Dakota as the trailblazer. Continental believes that additional time should be taken to re-work some of the proposed regulations to ensure that the intended result is achieved in a reasonable and practical manner and would propose that the NDIC postpone the promulgation of these proposed rule changes until the forthcoming 2017 legislative session just eight (8) months hence.

As currently written, there are multiple requirements that Continental believes exceed the legislative authorization of HB 1358 specifically in regards to underground gathering pipelines. Other requirements are included that Continental believes go beyond the legislative intent of HB 1358. Continental is confident that with some adjustments, these proposed regulations can be re-written as a practical set of rules for produced

water and crude oil underground gathering pipelines in North Dakota. As a demonstration of the need for changes to the proposed rule, Continental offers the following comments and recommendations:

(For reference, a screen capture of the first page of the enrolled House Bill 1358 has been copied into these comments:)

**Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015**

HOUSE BILL NO. 1358
(Representatives D. Anderson, Hatlestad, J. Nelson, Porter, Weisz)
(Senators Bekkedahl, O'Connell)

AN ACT to create and enact a new section to chapter 38-08 and a new subsection to section 38-08-26 of the North Dakota Century Code, relating to the operation of underground gathering pipelines and the sharing of information by a surface owner; to amend and reenact subsection 18 of section 38-08-02, subdivisions d and l of subsection 1 of section 38-08-04, subsection 6 of section 38-08-04, and section 38-08-04.5 of the North Dakota Century Code, relating to an exception to confidentiality of well data, to underground gathering pipelines, to temporarily abandoned status, and the uses of the abandoned oil and gas well plugging and site reclamation fund; to provide a report to the legislative management; to provide a transfer; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 18 of section 38-08-02 of the North Dakota Century Code is amended and reenacted as follows:

18. "Underground gathering pipeline" means an underground gas or liquid pipeline ~~that with~~ associated above ground equipment which is designed for or capable of transporting crude oil, natural gas, carbon dioxide, or water produced in association with oil and gas which is not subject to chapter 49-22. As used in this subsection, "associated above ground equipment" means equipment and property located above ground level, which is incidental to and necessary for or useful for transporting crude oil, natural gas, carbon dioxide, or water produced in association with oil and gas from a production facility. As used in this subsection, "equipment and property" includes a pump, a compressor, storage, leak detection or monitoring equipment, and any other facility or structure.

SECTION 2. A new section to chapter 38-08 of the North Dakota Century Code is created and enacted as follows:

Controls, inspections, and engineering design on crude oil and produced water underground gathering pipelines.

The application of this section is limited to an underground gathering pipeline that is designed or intended to transfer crude oil or produced water from a production facility for disposal, storage, or sale purposes and which was placed into service after August 1, 2015. Upon request, the operator shall provide the commission the underground gathering pipeline engineering construction design drawings and specifications, list of independent inspectors, and a plan for leak protection and monitoring for the underground gathering pipeline. Within sixty days of an underground gathering pipeline being placed into service, the operator of that pipeline shall file with the commission an independent inspector's certificate of hydrostatic or pneumatic testing of the underground gathering pipeline.

SECTION 3. AMENDMENT. Subdivision d of subsection 1 of section 38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

- d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter, and the rules and orders of the industrial commission, including without limitation a bond covering the operation of any underground gathering pipeline transferring oil or produced water from a production facility for disposal, storage, or sale purposes, except that if the commission requires a bond to be furnished, the person required to furnish the bond may elect to deposit under such terms and conditions

H. B. NO. 1358 - PAGE 4

The surface owner may share information contained in the geographic information system database.

SECTION 8. TRANSFER - ABANDONED OIL AND GAS WELL PLUGGING AND SITE RECLAMATION FUND TO OIL AND GAS RESEARCH FUND - PRODUCED WATER PIPELINE STUDY - REPORT TO LEGISLATIVE MANAGEMENT. The director of the office of management and budget shall transfer the sum of \$1,500,000 from the abandoned oil and gas well plugging and site reclamation fund to the oil and gas research fund for the purpose of funding a special project through the energy and environmental research center at the university of North Dakota during the biennium beginning July 1, 2015, and ending June 30, 2017. The special project must focus on conducting an analysis of crude oil and produced water pipelines including the construction standards, depths, pressures, monitoring systems, maintenance, types of materials used in the pipeline including backfill, and an analysis of the ratio of spills and leaks occurring in this state in comparison to other large oil and gas-producing states with substantial volumes of produced water. The industrial commission shall contract with the energy and environmental research center to compile the information and the center shall work with the department of mineral resources to analyze the existing regulations on construction and monitoring of crude oil and produced water pipelines, determine the feasibility and cost effectiveness of requiring leak detection and monitoring technology on new and existing pipeline systems, and provide a report with recommendations to the industrial commission and the energy development and transmission committee by December 1, 2015. The industrial commission shall adopt the necessary administrative rules necessary to improve produced water and crude oil pipeline safety and integrity. In addition, the industrial commission shall contract for a pilot project to evaluate a pipeline leak detection and monitoring system.

43-02-03-01 DEFINITIONS

Comment: Throughout the document, Continental requests that the term “gathering system” be used rather than “pipeline”. A gathering system is an entirely different operation from a traditional pipeline. This fact can be read throughout technical references including PHMSA. A gathering system indicates that the system has a significant number of inlets with potentially more than one outlet. The term also is also typically associated with an increased level of dynamics than a traditional pipeline system.

Continental believes that the definition of “Saltwater handling facility” is under defined throughout the proposed regulations. In an effort to provide clarity, Continental suggests a modification to the definition as follows:

45. “Saltwater handling and disposal facility” means and includes any site used for the handling, storage, and disposal of fluids which are brought to the surface in conjunction with oil and gas exploration and production.

43-02-03-14 ACCESS TO RECORDS

Comment: Continental is concerned with the inclusion of underground gathering pipelines in the Access to Records section. Continental requests clarification that inclusion of underground gathering pipelines in this section does not constitute a potential requirement to provide right-of-way documents or other construction documents that are already of public record and filed with the associated county. Additionally, an underground gathering system, unlike a traditional well site, has a large associated document set that would potentially create an unnecessary administrative burden both upon the operator and the NDIC. Continental requests that this section be rewritten to separate the access to records requirements for wells and non-well associated facilities such as underground gathering pipelines.

43-02-03-15 BOND AND TRANSFER OF WELLS

Comment: Continental requests the exemption of source wells used for enhanced recovery operations. The State Water Board already has jurisdiction over water source wells thus these wells are already regulated. Adding source wells to the NDIC regulations would cause duplicative oversight.

Continental is concerned with the potential ambiguity caused by the number of undefined terms used within this section. Continental requests the terms “underground gathering system”, “saltwater handling facility”, and “flowline” be defined. Continental proposes the following definition for “underground gathering system”:

- “Underground Gathering System” means and includes a buried piping system constructed of one or many segments for the purpose of transporting produced water or crude oil from a production facilities to a saltwater handling and disposal facility or crude oil handling facility.

43-02-03-15.8.a

Comment: Continental inquires as to the legislative authorization for the NDIC proposing changes to the range of activation start dates of which operators will be required to submit GIS data. As of April 1, 2014, 43-02-03-29 requires operators to submit GIS and shape file data for all underground gathering pipelines placed into service placed into service on August 1, 2011 to June 30, 2013. Continental objects to the NDIC proposing that all legacy underground gathering systems require GIS and shape file data reporting to the NDIC.

In addition, Continental questions the practicality of the data requirement for legacy underground gathering systems. Despite the GIS data request requirement being reduced in magnitude for older systems than for

newly constructed systems, there still remains data that is not practicably available on all legacy gathering systems. Unless a system has been excavated, the burial depth is not necessarily known. Although the basic material of the system is most likely known, full specifications may not be documented. Acknowledgement should be included that legacy systems should submit as much documentation as is practicably available. The minimum requirement should be established. Legacy underground gathering systems are most appropriately handled in the North Dakota One-Call system.

43-02-03-15.8.b

Comment: Continental is unclear as to the intent of the term “portion” in 15.8.b(1). It is also unclear as to the intended meaning behind the reference to 43-02-03-29.1. Continental suggests modification to the section as follows:

8.b(1) Any segment of an underground gathering pipeline system that has been out of service without pressure monitoring or pressure testing for more than one year and is not properly abandoned pursuant to 43-02-03-29.1(15): and

Comment: Continental understands the intention of this proposed regulation; however, the proposal does not address that complete reclamation following construction of a new underground gathering pipeline in North Dakota typically requires more than one season. The initial reclamation is completed following the closing of the trench with seeding being performed at the appropriate time of the year for the crops or ground cover present. Additional reclamation may be necessary following the next season depending on ground conditions at the time of construction, at the time of reclamation, and during the period following reclamation. Simply stating that a right-of-way has not “been properly reclaimed” is overly simplistic and risks misunderstandings between landowners and operators as to the intention of this regulation.

(2) An underground gathering pipeline right-of-way, including associated pipeline facility and above ground equipment, that have not been properly reclaimed pursuant to 43-02-03-29.1(5) or are in the process of reclamation.

43-02-03-17 Sign on Well or Facility

Comment: Continental requests clarification that the proposed modifications to the regulation do not imply that signs will be required for fresh water wells or fresh water handling equipment.

43-02-03-29.1 Underground Gathering Pipelines

Overall Comment: Continental believes this section has gone beyond the legislative intent of HB 1358 by incorporating existing underground gathering pipelines rather than systems placed into service beginning August 1, 2015. Continental also believes that this section goes beyond the statutory authority granted by HB 1358 in the level of detail of the requirements, pre-construction notification, and the submission of the design for review. Continental does not believe it was the intent of HB 1358 to grant the NDIC with the authority to review and approve the design of underground gathering pipeline systems.

It is neither practical nor reasonable to establish rigid regulations for gathering systems that by their nature are a diverse collection of sizes, materials, operating conditions, architectures, and most importantly are designed to be dynamic. Continental is concerned that the NDIC’s attempt to create one-size-fits-all regulations will cause unintended consequences when owners of underground gathering systems attempt to conform to rigid regulations rather than designing with practical flexibility and long-term considerations.

43-02-03-29.1.3.a(1) The notice of intent to construct a crude oil or produced water underground gathering pipeline must include the following:

Overall Comment: Continental believes that several of the items requested in this proposal are inappropriate for the pre-construction phase of gathering systems. These requirements exceed that which is required by other regulatory agencies for much larger pipelines regulated at the state and federal level. Requiring the submission of this level of data will not add to the end goal of reduced gathering system incidents.

3.a(1)(a) Continental suggests that the “proposed date construction is scheduled to begin” be clarified to acknowledge a “proposed initial construction start date for the underground gathering system”. Without clarification, the requirement risks the interpretation that a proposed start date would be required to be submitted for each segment of the pre-construction gathering system. That requirement would be burdensome and impractical.

3.a(1)(b) Continental recommends acknowledging that this data is the pre-construction proposed route and thus potentially may change during the course of construction as necessary.

3.a(1)(c) Continental objects to the requirement for submission of pre-construction design drawings. Continental acknowledges the appropriateness of requesting a pre-construction GIS shape file with a moderate amount of proposed information regarding the proposed underground gathering system; however, we find the request to submit actual design drawings to cross the line into design review and thus exceed the legislative intent of HB 1358. HB 1358 specifically authorizes the NDIC to request engineering construction design drawings and specifications; however it did not authorize the NDIC to make it a standard requirement for submission as a pre-construction requirement. Continental requests that the requirement be re-worded as follows:

3.a(1)(c) Upon request, the proposed underground gathering pipeline design drawings.

3.a(1)(c)iii The anticipated operating pressure of the pipeline will be below the established MAOP. Requiring submission of the anticipated operating pressure of a true gathering system is not practical nor does it add value to the goal of reducing incident rates in gathering systems. Operating pressures in a true gathering system vary due to the dynamic nature created when producing wells come online and are shut in for periods of time. Completion activity, pigging operations, workover operations, and even power disruptions can all impact the volume of fluids that enter the gather system in particular segments thus resulting in variability in operating pressures. Continental believes it would be practical to request what the planned MAOP of the gathering system will be, but not the operating pressure. Continental requests that the requirement be re-worded as follows:

3.a(1)(c)iii Upon request, the planned maximum allowable operating pressure (MAOP) of the gathering system.

3.a(1)(c)iv Continental does not object to the request of the planned gathering system integrity test method. The objection is to the request for the inclusion of the proposed test procedure. Many true gathering systems are constructed and activated in segments with integrity verification testing occurring per segment prior to activation. Continental requests that the requirement be re-worded as follows:

3.a(1)(c)iv Upon request, the planned gathering system integrity test method.

3.a(1)(c)v Continental cautions that this requirement is unnecessary on the majority of underground gathering systems in North Dakota due to the construction material of choice being non-metallic. Continental requests 3.a(1)(c)v be struck.

3.a(1)(c)vii Continental requests that the requirement to submit the location and type of “all” bored or bored and cased road crossings be struck due to an overall impracticality of the requirement. Even if the word “all” is removed from the requirement, Continental does not see the value in submitting pre-construction plans for hundreds of road crossings. Continental understands that a presumption may have been made by the NDIC that minor roads are simply open cut rather than bored. This is not the case in general for some operators including Continental who elect to bore the vast majority of all road crossings regardless of the size of the road. Many road crossing permits are only valid for a limited period of time so are secured closer to the time of actual construction. It is impractical to presume that road crossings are planned fully in advance of construction beginning on more than just the smallest of gathering systems. As with several others in this section, Continental also finds this request to be beyond the legislative intent of HB 1358. Continental requests 3.a(1)(c)vii be struck.

3.a(1)(c)viii Continental objects to the requirement of pre-construction documentation of “all environmentally sensitive areas, such as wetlands, streams, or other surface waterbodies that the pipeline traverses, including a proposed plan for horizontal directional drilling, if applicable.” This requirement is in excess of what is required even by the US Fish and Wildlife Service in areas of concurrence in North Dakota. US FWS only requires a response of “bore or avoid” when responding to their correspondence. Continental believes the request to provide proposed horizontal directional drilling plans for water bodies, exclusive of established significant lakes or rivers, to be excessively burdensome without adding value. Given the variation in data quality among aerial data services and even the variation within a county in the same data service, the most accurate decision making is performed on-site as the construction team approaches the wetlands, potholes, or other minor surface waterbodies. Attempts to require pre-constructive documentation is counter-productive and risks discouraging on-site flexibility. Continental requests that the requirement be re-worded as follows:

3.a(1)(c)viii Upon request, the location of all significant lakes or rivers including a proposed plan for horizontal directional drilling, if applicable.

3.a(1)(d) Continental acknowledges that HB 1358 granted the legislative authority to require upon request a list of independent inspectors for the underground gathering pipeline. HB 1358 did not grant the authority to require this list be a pre-construction requirement or that the full credentials of the independent inspectors be provided. Continental requests that the requirement be re-worded as follows:

3.a(1)(d) Upon request, a list of all third-party independent inspectors.

3.a(2) Continental does not believe that HB 1358 granted the legislative authorization for the NDIC to regulate gas gathering systems. Continental requests that 43-02-03-29.1.3.a(2) be struck.

3.b Continental is concerned with the use of the verbiage “portion thereof that has been out of service for more than one year”. Continental proposes the following revision to clarify this requirement:

3b. The underground gathering system owner shall notify the NDIC of any underground gathering system or segment of gathering system that has been inactive without pressure monitoring for more than one year.

3.c Continental objects to the use of the word “immediately” in the requirement to notify the director. The “immediate” response should be to secure safety and environmental opportunities prior to making notifications. Once the situation is stabilized, notifications can be made. Continental proposes the following the following:

3c. If any damage occurs as a result of excavating for an underground gathering system, the underground gathering system owner shall notify the director as soon as practicable once immediate safety and site considerations have been taken into account.

43-02-03-29.1.4 Design and construction

Overall Comment: Although HB 1358 granted statutory authority to the NDIC to “adopt the necessary administrative rules necessary to improve produced water and crude oil pipeline safety and integrity”, Continental believes that section 43-02-03-29.1.4 far exceeds the legislative intent of HB 1358 by establishing prescriptive construction practices and design requirements.

4.a Continental requests that “newly constructed” be replaced with a construction date 6 months following the promulgation of these proposed rules. Sufficient time must be given following the finalization of these rules in order for reasonable consideration to be taken into account for existing designs.

4.b Continental objects to the requirements that all “newly constructed underground gathering pipelines must be designed in a manner that allows for line maintenance, periodic line cleaning, and internal integrity inspection.” Continental believes that this one-size-fits-all requirements is not appropriate for all produced water and crude oil underground gathering systems in North Dakota. Internal inspection is neither necessary nor practical for non-metallic gathering lines. The reference to allowing for “line maintenance” is vague. Continental is uncertain as to the NDIC’s intent in applying this regulation across the board to all underground gathering systems.

4.c Continental objects to this regulation in the manner in which it is written. Continental requests that the requirement be re-worded as follows:

4.c Installation crews must be trained for the installation practices that are within their job scope.

4.d Continental requests that only one topic be addressed per line item.

4.d Continental objects to the requirement that underground gathering systems “be installed in a manner that minimizes interference with agriculture, road and utility construction..”. Right-of-way easements are negotiated with individual landowners. Gathering system owners already comply with existing North Dakota One-Call requirements. Continental is uncertain as to the intent of including this vague regulation in the proposal. Continental requests this portion of 4.d be struck.

4.d Continental objects to the requirement as stated in this line item that underground gathering systems “be installed in a manner that minimizes ... the introduction of secondary stresses, the possibility of damage to the pipe,...”. Continental requests this portion of 4.d be struck due to it being addressed in other portions of the proposed regulations.

4.d Continental supports the requirement that tracer wire is to be installed with non-conductive underground gathering systems. Continental requests that 4.d be re-worded as follows:

4.d Underground gathering systems installed after the promulgation of these rules {insert date} that are constructed of nonconductive material shall have tracer wire installed.

4.e Continental objects to this proposed regulation based on the lack of definition and practicality. Continental proposes a limitation of 2 inches for acceptable rock limitation in the trench bottom or within 2 feet of the pipe. 2 inches is a reasonable and standard installation practice for non-metallic pipe. Continental recommends the acknowledgment of pipe risers, sandbags, trench breakers, and sakcrete as other potential items that are acceptable in the trenches. Continental objects to the minimum width limitation as set forth in the proposed regulations. Setting a minimum 6 inch of clearance on each side of the pipe would restrict the use of many of the trenchers currently in use in North Dakota for larger pipe sizes. This is an unnecessary & unreasonable restriction. Continental recommends that 4e be re-worded as follows:

4e. Gathering system trench bottoms must be free of rocks greater than 2 inches, trash, and other foreign material not required for pipeline installation.

4.f Continental requests that the NDIC strike this proposal to require that all graded roads be crossed by way of bores. Continental believes this proposed regulation is beyond HB 1358 statutory authority since it does not “improve produced water and crude oil pipeline safety and integrity”. Continental requests 4f be struck.

4.g Although visual inspection of piping and components is a good practice, Continental is concerned that making this “good practice” into a regulation is impractical. The regulation that is practical is requiring integrity testing of the gathering system prior to activation. Continental recommends striking 4.g or creating a small section of non-enforceable recommended practices.

4.h Although pipe handling to minimize stress and avoid physical damage is a good practice, Continental is concerned that making this “good practice” into a regulation is impractical. The regulation that is practical is requiring integrity testing of the gathering system prior to activation. Pipe materials vary in the handling methods which also vary depending on ambient conditions. Continental recommends striking 4h or creating a small section of non-enforceable recommended practices.

4.i Continental objects to the attempted prescriptive nature of this proposed regulation. Surface settling of the right-of-way that causes much concern with the public is not generally caused by settling of the pipe. The dominant cause for the right-of-way settling is frozen ground thawing after the trench has been filled. Since care must be taken not to over-compact the right-of-way, it is typical to need to re-dress the right-of way the following season in an effort to reclaim any areas of potential settling. Soil conditions, ambient summer temperatures, ambient winter temperatures, conditions during construction, and length of time the trench was open all can impact the amount of settling a right-of-way experiences. Continental believes that the concern regarding pipe support is unnecessary and is being influenced by issues unrelated to pipe support. Continental requests 4i be struck.

4.j Continental requests clarification that the underground gathering system will be shallower than 4 feet as it approaches associated above ground equipment and facilities. Continental requests that the requirement be re-worded as follows:

4j. Cover depth must be a minimum of four feet [1.22 meters] from the top of the pipe to the finished grade except where the underground gathering system approaches above ground equipment or facilities. The cover depth for an undeveloped governmental section line must be a minimum of six feet [1.83 meters] from the top of the pipe to the finished grade.

4.k Continental objects to the proposed regulations in 4k. Continental believes this proposed regulation is beyond HB 1358 statutory authority since it does not “improve produced water and crude oil pipeline safety and integrity”. The regulations within this section are beyond that which the US FWS even requires in areas of concurrence within North Dakota.

43-02-03-29.1.5 Pipeline right-of-way

5.b Continental objects to the statement that all “markers” must be removed from the right-of-way. While we understand the intent of this regulation, Continental requests the regulation be re-worded as follows for clarification regarding gathering system markers:

5b. The gathering system right-of-way shall be reclaimed as closely as practicable to original condition. All stakes, construction markers, cables, ropes, skids, and any other debris or material not native to the area or required for gathering system safety must be removed from the right-of-way and lawfully disposed of.

5.d Continental expresses concern over the use of the word “compacted” in reference to the reclamation of the right-of-way. Over compaction of right-of-ways is a significant frustration to landowners following gathering system and pipeline construction. Regardless of proper top soil segregation and re-stacking, if the top soil is over compacted significantly enough, crops and grasses will not grow properly until new top soil is brought in and the entire area is disked.

43-02-03-29.1.7 Associated pipeline facility

Comment: Continental is concerned with the lack of clarity in the terms “associated pipeline facilities” and “above ground equipment”. It is unclear as to the intent of the differentiation between these two terms.

Continental requests that the waiver by the director in the second paragraph be moved to the last sentence in order to be applicable to the full paragraph. Tanks that have been properly isolated due to reduced volumes, especially during market downturn conditions, do not act as a negative component to the facility.

Continental objects to the inclusion of dike requirements in 43-02-03-29.1.7 for produced water or crude oil tanks. Dikes are already required in general for produced water and crude oil storage tanks in North Dakota. Continental objects to the dike capacity for an associated pipeline facility be “of sufficient dimension to contain the total capacity of the largest tank plus one day’s fluid throughput.” Continental acknowledges that the NDIC has included a statement that the director may lower the required capacity of the dike “if the necessity therefor can be demonstrated to the director’s satisfaction”; however, it has been the experience of many operators that the success of addressing dike capacity in the past has been inconsistent. Extremely large containment areas with large expanses of liner material are high maintenance especially due to the extreme wind conditions frequently observed in North Dakota. This level of maintenance increases the risk of damaged liners should an incident ever occur and the liner need to be in service. The NDIC has a history of inconsistent response to engineering controls and has to date given the industry the impression that the NDIC prefers expansive containment to technology.

Continental objects to the final paragraph of 43-02-03-29.1.7 in which the proposed rules state that the “storage of solids is prohibited at any pipeline facility.” This proposed regulation is under defined and impractical. Solids recovered during pigging operations are frequently collected at SWD facilities in approved containers until disposed of in authorized facilities. Continental is concerned that the use of the word “storage” could be interpreted to mean that solids such as these routine solids would not be allowed to be collected responsibly on site prior to proper transportation. Continental recommends the following modification to the proposed regulation:

The storage of solids for a period of longer than 180 days is prohibited at any gathering system facility unless otherwise authorized.

43-02-03-29.1.8 Underground gathering pipeline as built

8.a Continental objects to this section on the basis that it exceeds the statutory authority granted by HB 1358 by requesting GIS and shape file data for gathering systems placed into service prior to August 1, 2015.

Continental also objects overall to the proposed requirement to automatically submit information on gathering systems placed into service prior to or after August 1, 2015. It is the clear legislative intent of HB 1358 that gathering system operators provide data “upon request” for systems placed into service after August 1, 2015. That data is referenced in HB 1358 as including “engineering construction design drawings and specifications, list of independent inspectors, and a plan for leak protection and monitoring”. It was not the legislative intent to include the extensive list of data that the NDIC has included in these proposed regulations.

Continental also expresses concerns that extensive manpower has already been applied to the reconstruction of our corporate GIS deck for these gathering systems to comply with the NDIC’s initial data request. The NDIC is now requesting modifications to that which was originally requested. To add to the concern, item (2) leaves the requirement open with the verbiage “or any other specifications deemed necessary by the director”. Continental objects to this disregard for usage of industry’s technical manpower. Any requests for modification to a corporate GIS data set causes a significant investment in technical manpower to comply with the modification.

8.a(1) Due to the fact that Continental objects to some of the requirements of 43-02-03-29.1 as currently proposed, Continently currently objects to this requirement.

8.a(2) Continental does not object to this requirement when supplied “upon request” for gathering systems placed into service after August 1, 2015.

8.a(3) Continental does not object to this requirement when supplied “upon request” for gathering systems placed into service after August 1, 2015.

8.a(4) Continental does not object to this requirement when supplied “upon request” for gathering systems placed into service after August 1, 2015.

8.a(5) Continental does not object to the requirement of the type of fluid that will be transported when supplied “upon request” for gathering systems placed into service after August 1, 2015.

Continental does object to the requirement for the “direction of fluid flow” due to the fact that in some true gathering systems, the direction of fluid flow is variable. This is another example of the dynamic nature of some gathering systems that is able to be designed into a system to provide additional operational flexibility. Continental expresses concern for the lack of definition of the request for “direction of fluid flow”. The proposed regulations, and the previous requests, fail to define if the direction of flow is to be reported in a shape file attribute of N/S/E/W, north/south/east/west, or flow direction attributes within the shape file itself. Continental requests that “direction of fluid flow” portion of 8.a(5) be struck on the basis that it does not “improve produced water and crude oil pipeline safety and integrity”

8.a(6) Continental does not object to this requirement when supplied “upon request”. Continental does however caution the NDIC that many typical gathering systems are not tested as a full entity but rather as individual segments as construction is completed.

8.a(7) Continental does not object to this requirement when supplied “upon request” for gathering systems placed into service after August 1, 2015.

8.a(8) Continental does not object to this requirement when supplied “upon request” for gathering systems placed into service after August 1, 2015.

8.a(9) Continental does not object to this requirement when supplied “upon request” for gathering systems placed into service after August 1, 2015. Continental does object to the use of the phrase “leak detection” as there are no systems available that are capable of practicably detecting 100% of leaks. For this reason, the statutory language of HB 1358 was specifically and by design “leak protection and monitoring”.

8.a(10) Continental does not object to this requirement when supplied “upon request” for gathering systems placed into service after August 1, 2015. Continental does express confusion regarding the NDIC’s structuring of the GIS decks. Originally Continental submitted a separate GIS deck for each individual gathering system, but was subsequently requested to combine the systems into a state-wide GIS deck for the entire company. The proposed regulations do not give guidance as to the GIS deck structure of this request.

8.a(11) Continental does not object to this requirement when supplied “upon request” for gathering systems placed into service after August 1, 2015.

8.b Continental requests clarification of this proposal to comply with the legislative intent of HB 1358. Continental proposes the following modification:

8.b The requirement to submit a geographical information system layer is not to be construed to be required on buried piping utilized to connect flares, tanks, treaters, or other equipment of a well site or production facility or to connect a wellhead to any of its associated tanks, treaters, or other equipment.

43-02-03-29.1.9 Operating requirements

Comment: Continental objects to the use of the reference “pressure-regulating devices” and requests the use of more appropriate technical language. Continental recommends the use of the PHMSA language, “pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment”. This proposed language would address Continental’s concern that the term “pressure-regulating devices” insinuates a level of automation that is neither necessary nor practical in all gathering system scenarios. Continental proposes the following modified language:

9. The maximum allowable operating pressure shall not exceed the manufacturer’s specifications of the pipe or the manufacturer’s specifications of any other component of the gathering system, whichever is less. The underground gathering system must be equipped with pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment to prevent the pipeline from operating above the maximum allowable pressure.

43-02-03-29.1.10 Leak detection and monitoring

Overall Comment: As stated previously, Continental objects to the use of the phrase “leak detection”. Continental requests that the word “detection” be replaced with “protection” in this entire section. The statutory language of HB 1358 was specifically and by design “leak protection and monitoring”.

Continental finds the first paragraph of this section to be under defined. It is ambiguous as to if a leak detection (protection) and monitoring plan is required, if an operator must submit one if they have a plan in existence, or if it is optional for the director to require an operator to create a plan.

Continental objects to the use of the term “computational pipeline monitoring leak detection systems” in the second paragraph. A CPM leak detection system is typically understood to be an algorithmic based leak detection system that is not appropriate to the typical gathering system. A CPM system is not design for highly dynamic, low pressure, low diameter gathering systems are dominant in North Dakota. Continental is concerned that inclusion of references to CPM insinuates a level of automated monitoring that is neither practical nor, in many cases, effective. It is unclear if the NDIC is proposing a regulation to require a particular level of training and documentation should an operator choose to deploy CPM monitoring or if the NDIC is proposing CPM monitoring as a viable form of gathering system monitoring. Continental requests that this paragraph be struck on the basis that it is beyond statutory authority for the NDIC to specify methods of leak protection and monitoring.

Continental supports the need for gathering system operators to create an individual data sharing plan with all producing operators delivering fluids into their gathering system. Continental adamantly opposes any reference to “real-time shared access to data”. Many producers, including Continental, have already created reasonable and practical data sharing plans that preserve data security while allowing the gathering system operator access to necessary system parameters on a near real-time basis. Real-time data sharing is a well-documented risk that has been lectured about at many technical conferences around the world in excess of 15 years. As stated by the National Institute of Standards and Technology within the U.S. Department of Commerce in their 2011 Special Publication 800-82:

“If the control network does not have a security perimeter clearly defined, then it is not possible to ensure that the necessary security controls are deployed and configured properly. This can lead to unauthorized access to systems and data, as well as other problems.” (p. 3-13)

“Rogue and/or unknown connections into ICS can leave a backdoor for attacks” (p. 3-14)

Further information can be found at the Industrial Control Systems Computer Emergency Response Team (ICS-CERT). Their website is <https://ics-cert.us-cert.gov/>

Continental objects to the proposed requirement to notify “immediately” if a discrepancy in the shared data is discovered and to maintain a “record of all data discrepancies”. This is an unnecessary and impractical requirement that additionally is under defined. The NDIC has not defined what data is required to be shared. It is unclear as to what “discrepancy” the NDIC is referring to in this paragraph. By the nature of fluid meters, a variance will exist between two meters at distance from each other. Factors including but not limited to temperature, meter accuracy, shrinkage, air in the lines, and line balancing can affect the variance between two meters. The larger and more dynamic a system is, the more likely two meters are to have differences. It is impractical to require that “all data discrepancies” be addressed and acted upon “immediately”.

43-02-03-29.1.11 Spill Response

Comment: Continental objects to the jurisdictional involvement of the NDIC with underground gathering systems since spills or breaches of an underground gathering system will within the jurisdiction of the North Dakota Department of Health. Requiring development of spill response plans in conjunction with local emergency managers will overwhelm local officials.

43-02-03-29.1.12 Corrosion control

Overall Comment: As written, Continental is concerned that this section is overly prescriptive and does not allow for several standard industry methods.

43-02-03-29.1.13 Pipeline integrity

Comment: Continental objects to the generalized requirement that “no owner may return to service a portion of pipeline that has been repaired, replaced, relocated, or otherwise changed until it has been pressure tested”. This requirement is impractical and unnecessary when making minor changes to surface connections, valves, and risers. The NDIC leaves no room for practical discretion. This lack of practical discretion is risking the unintended consequence of field operators delaying preventative maintenance due to overly burdensome regulations. If it was the intent of the NDIC that this proposed regulation apply only to buried portions of the gathering system, Continental requests that the NDIC make that clarification.

13.a Continental objects to the requirement of 48 hour notice prior to any pipeline integrity testing. This is impractical and overly restrictive given the opening paragraph of this section stating that “no owner may return to service a portion of pipeline that has been repaired, replaced, relocated, or otherwise changed until it has been pressure tested”. Small repairs can be located and repaired in a single day. It is unreasonable to mandate that a system be shut-in for 48 hours. For minor surface repairs, it is not typical for a full pressure test of that segment of the gathering system be conducted.

13.b(8) Continental objects to the requirement of GIS and shape file data accompanying pressure tests. As previously stated, the NDIC is currently requiring that Continental submit a GIS deck for the entire state of North Dakota any time there is new information to submit of a small piece of one of our gathering systems. This is excessive and burdensome. We object to the submission of a GIS and shape file every time we pressure test a segment or portion of one of our gathering systems.

43-02-03-29.1.14 Pipeline repair

14.a Continental requests that 14.a be struck. It is not practice to request than an operator of an underground gathering system wait 48 hours “prior to any underground gathering pipeline repair or replacement”.

14.b. Continental requests clarification as to how this GIS and shape file data is to be designated within the GIS deck.

43-02-03-29.1.15 Pipeline abandonment

15.a Continental requests clarification as to if this requirement is for crude oil and produced water gathering lines or for crude oil and gas gathering lines. Continental also requests that the word “permanently” be placed before “abandoned”. Additionally, Continental requests that fresh water underground lines be excluded from abandonment requirements.

15.a(3) Continental requests this requirement be reworded as follows:

15.a(3) Purge the pipeline with fresh water, air, or inert gas in a manner that effectively removed all produced water or crude oil.

43-02-03-30 Notification of Fires, Leaks, Spills, or Blowouts

Comment: Continental objects to the requirement to notify the NDIC of a leak involving an underground gathering system unless that leak occurs on a well site. If the leak is off a well site, it falls under the jurisdiction of the North Dakota Department of Health.

Continental also objects to the use of the term “root cause analysis” as this implies a specific investigation process that is not appropriate for small incidents and spills. Continental recommends the use of “primary cause” or other such verbiage.

43-02-03-49 Oil Production Equipment, Dikes, and Seals

Overall Comment: Of the total spills that Continental experienced in North Dakota during the 2014-2015 time frame, approximately 86% were less than 5 barrels total and all spills were cleaned up back to background conditions. Of these spills, 91% were contained on location, and of the remaining 9%, approximately 75% are due to misting or other activities and circumstances such that a facility berm would have been ineffective in containing these spills. Continental currently places berms around all storage tanks as per the requirements of 40CFR§112, and around all flow through process vessels (separators, treaters, headers, etc.). The requirement for facility berms would require an initial expenditure of an average of over \$10,000 in capital to construct. Continental’s experience where facility berms have been employed has revealed an additional \$40,000 in annual de-watering costs and as much as \$50,000 in site reconstruction costs after one season of storm water held on the facility premises, resulting in a total \$100,000 expense for the first year. Facility berms are impractical on many locations and may create hazardous conditions with pooled water/ice in all seasons. Holding water on location during the summer months will breed mosquitos and other insects and during winter months can also create an ice hazard.

Currently 25% of all Continental well locations have complete or partial site location berms because of their proximity to water or other environmentally sensitive areas as required by NDIC policy. We see no benefit in constructing these berms on other locations and incurring the additional significant expense for very minimal environmental benefit. A very minimal number of spills will actually be contained on location by these very costly and hazardous structures. Continental requests that this portion of 42-02-03-49 be struck from the proposed rule.

“A perimeter berm, at least one foot [30.48 centimeters] in height, shall be constructed of sufficiently impermeable material to provide emergency containment around all storage facilities and production sites and to divert surface drainage away from the site, unless waived by the director.”

43-02-03-53.2 Saltwater Handling Facility Siting

Comment: Continental objects to this proposed regulation and requests that it be struck. This request is based on the perspective that this proposal is broad and overreaching. Experience has proven to Continental that the North Dakota State Water NDIC aquifer database is based on limited data. All additional data provided to the ND State Water NDIC helps to strengthen their data set. What can be perceived as “hydrologically sensitive” at first may be proven to be a valid site for a saltwater handling facility once the proper investigation is performed.

43-02-05 Underground Injection Control

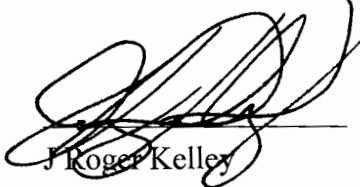
43-02-05-07.1 Mechanical Integrity

Comment: Continental objects to the proposed requirement: “Prior to performing any workover project on an existing well, the operator must obtain approval from the director.” Continental suggests the following modification:

7.1 Prior to performing any workover project on an existing well during which the packer or other means of annular isolation could be affected, the operator must obtain approval from the director.

Continental appreciates the opportunity to submit these comments to the proposed revisions to NDIC rules regarding gathering lines and associated facilities. Continental expects that the NDIC can readily see the many uncertainties and necessities for further definition that have been pointed out in the application of these rules as written and hopes that they will recognize the need for further clarity. We again suggest that this rule-making be pushed to the 2017 legislative session for revision.

Sincerely

A handwritten signature in black ink, appearing to read "J. Roger Kelley", is written over a horizontal line.

Director of Regulatory Affairs

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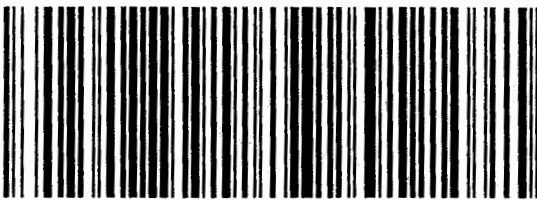


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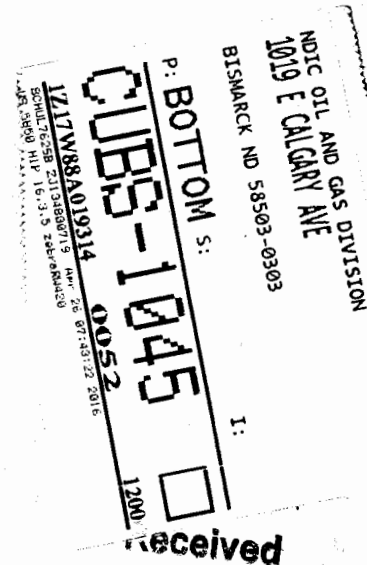


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APR 26 2016
ND Oil & Gas Division

Kadrmass, Bethany R.

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To: Melissa Carroll
Subject: {EXTERNAL}-UPS Delivery Notification, Tracking Number 1Z17W88A0193140052



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Delivery Time: 10:56 AM

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Tracking Number: 1Z17W88A0193140052

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Kadrmas, Bethany R.

From: UPS Quantum View <auto-notify@ups.com>
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The status of your package has changed.

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Shipment Details

Tracking Number:	<u>1Z17W88A0193140052</u>
Ship To:	NDIC - Oil & Gas Division 600 E. Boulevard Dept 405 BISMARCK, ND 585050840 US
UPS Service:	NEXT DAY AIR
Package Weight:	0.3 LBS
Reference Number 1:	Melissa Carroll

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Kadrmass, Bethany R.

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Number of Packages:	1
Scheduled Delivery:	04/25/2016
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Kadrmass, Bethany R.

From: Steve Poeckes <stevepoeckes@yahoo.com>
Sent: Thursday, April 28, 2016 4:14 PM
To: Kadrmass, Bethany R.
Subject: Re: closed meetings

yes

On Thursday, April 28, 2016 1:27 PM, "Kadrmass, Bethany R." <brkadrmass@nd.gov> wrote:

Mr. Poeckes,

Are your comments regarding the Commission's proposed rules?

Case No. 24957: On a motion of the Commission to consider adopting new rules and amendments to the "General Rules and Regulations for the Conservation of Crude Oil and Natural Gas" codified as Article 43-02 North Dakota Administrative Code.

Bethany Kadrmass

North Dakota Oil and Gas Division
P: 701-328-8020 | F: 701-328-8022
brkadrmass@nd.gov | www.dmr.nd.gov/oilgas

From: -Info-Industrial Commission of ND
Sent: Thursday, April 28, 2016 12:51 PM
To: Kadrmass, Bethany R.
Subject: FW: closed meetings

From: Steve Poeckes [<mailto:stevepoeckes@yahoo.com>]
Sent: Tuesday, April 26, 2016 5:13 PM
To: -Info-Industrial Commission of ND
Subject: Re: closed meetings

the meetings around the state to allow the NDIC meetings to be unavailable to the public unless you are on the agenda

On Monday, April 25, 2016 12:17 PM, -Info-Industrial Commission of ND <ndicinfo@nd.gov> wrote:

Steven - It is unclear to me what meetings you are referring to. Could you please clarify? Karlene

-----Original Message-----

From: TCP [<mailto:stevepoeckes@yahoo.com>]
Sent: Monday, April 25, 2016 8:07 AM
To: -Info-Industrial Commission of ND
Subject: closed meetings

My name is Steven Poeckes I was not able to attend meetings on closed door meetings of NDIC and want to go on record as opposed to this policy

Kadrmass, Bethany R.

From: -Info-Industrial Commission of ND
Sent: Tuesday, April 26, 2016 8:25 AM
To: Kadrmass, Bethany R.
Subject: FW: Proposed Rules Changes

Bethany – This came in before the deadline yesterday. I just found it in my IC info box. Please include it in the record for administrative rules. Karlene

From: TRISH MCGUIRE [<mailto:gyposyfilms@msn.com>]
Sent: Monday, April 25, 2016 1:16 PM
To: -Info-Industrial Commission of ND
Subject: Proposed Rules Changes

I've heard that the new rules were developed with members of the oil and gas industry. If that is the case, I'm disappointed in North Dakota's elected officials. North Dakotans want their public and private lands protected for generations to come. These rules benefit the oil and gas industry and not North Dakotans and North Dakota. I strongly oppose the implementation of these rules.

Patricia McGuire

Kadrmas, Bethany R.

From: thesams@srt.com
Sent: Monday, April 25, 2016 11:17 AM
To: Hicks, Bruce E.
Subject: April 11-14, 2016 Hearings--Proposed Definition 25

Dear Mr. Hicks,

I own mineral interests in two ND counties. My husband passed away last year, and since then I rely on advice from people that have familiarity with the management of mineral assets. At times this means asking a family member to speak on my behalf. This occurred recently regarding the January 20, 2016 (spacing hearing) for Case 24741. I had an unfortunate fall in December and because of the resulting injury I was unable to travel to Bismarck for the hearing.

My niece and nephew attended the hearing to speak on behalf of the “Aunts”—all of us in our 80s. I was disappointed that the company attorney objected to their presentation and was further disappointed that the report deemed their testimony as hearsay. I checked the definition of “hearsay” and found the word is not applicable to their testimony. So the basis for the objection needs to be clarified.

Lastly, it appears the proposed Definition 25 appears to be intended to eliminate any such objection by a company attorney. As a result, the testimony of my representatives should be included in the consideration of your final decision regarding the company proposal.

Thank you for your consideration.

Sincerely,

Barbara J. Samuelson

2842 First Avenue SW

Minot, ND 58701

(701) 839-2339

Kadrmass, Bethany R.

From: -Info-Oil & Gas Division
Sent: Tuesday, April 26, 2016 8:31 AM
To: Kadrmass, Bethany R.
Subject: FW: NDAA 43-02 proposed amendments - comments from GMCSG
Attachments: GMCSG NDIC administrative rules amendments comments 4-23-16.pdf; ATT00001.htm;
NDIC - Ltr from NWLA RE Comments on 2016 Rulemaking.pdf; ATT00002.htm

Found one!

Alison Ritter

Public Information Officer
Department of Mineral Resources
1016 East Calgary Ave, Bismarck
Phone: 701-328-8036
Fax: 701-328-8022
amritter@nd.gov
www.dmr.nd.gov/oilgas

From: Vawnita Best [<mailto:vawnitabest@gmail.com>]
Sent: Monday, April 25, 2016 3:22 PM
To: -Info-Oil & Gas Division
Subject: NDAA 43-02 proposed amendments - comments from GMCSG



GMCSG
1930 118th Ave NW
Watford City ND 58854

April 23, 2016

North Dakota Industrial Commission
Department of Mineral Resources
Oil and Gas Division
600 E Boulevard Ave, Dept 405
Bismarck, ND 58505-0840

RE: Comments on Amendments to Administrative Rules

Director Helms and members of the Commission:

Thank you for the opportunity to comment on the proposed amendments and additions to the NDAA Chapter 43-02-03, Chapter 43-02-05, and Chapter 43-02-08. The Greater McKenzie County Stewardship Group represents approximately forty surface owners and tenants in McKenzie County and its surrounding area. Through questionnaires, the organization has established that it represents nearly 100,000 acres of surface operations. Overall, the GMCSG is supportive of proposed amendments and believes that if the proposed amendments are adopted and enforced they should have a positive impact by providing protection to the natural resources of the oil and gas development areas and tools for remediation and reclamation in North Dakota.

The GMCSG has a similar mission to the Northwest Landowners Association and our members share similar concerns. The GMCSG supports the comments of the Northwest Landowners Association as enclosed and encourages the adoption of the amendments as prescribed in the Northwest Landowners Association comments.

Sincerely,

Vawnita Best
Chairperson, GMCSG
vawnitabest@gmail.com
(701) 580-1862

Enclosed: Comments on proposed amendments to NDAC 43-02-03, -05, and -08 from
the Northwest Landowners Association



*For responsible development of
North Dakota's resources*

Troy Coons, Chairman
Bob Grant, Treasurer

Thomas Wheeler, Vice Chairman
Galen Peterson, Secretary

6050 Old Highway 2
Berthold, ND 58718
www.nwlandowners.com

April 25, 2016

North Dakota Industrial Commission
Department of Mineral Resources
Oil and Gas Division
600 E Boulevard Ave, Dept. 405
Bismarck, ND 58505-0840

*Via hand delivery and email to
Lynn Helms (lhelms@nd.gov) and
Bruce Hicks (bhicks@nd.gov)*

**Re: Comments on Proposed Amendments to Administrative Rules
Pursuant to Notice Dated February 29, 2016**

To Oil and Gas Division:

Thank you for the opportunity to comment on the proposed amendments and additions to the North Dakota Administrative Code (NDAC) Chapter 43-02-03 (Oil & Gas), Chapter 43-02-05 (Underground Injection Control), and Chapter 43-02-08 (Stripper Well Property Determination). The Northwest Landowners Association commends the Oil and Gas Division on making a number of significant improvements in the administrative regulations, and is hopeful that stringent enforcement of these new regulations will help to address some of the numerous concerns raised by our association in recent years.

The Northwest Landowners Association does, however, have concerns with several of the proposed rules, as well as with the lack of amendment to certain other rules, and these concerns will be set forth below by topic matter with specific reference to sections of the North Dakota Administrative Code where appropriate.

I. The definition of "interested party" is illegal

NDIC's proposed definition of "interested party" is illegal because it would limit the parties that may participate in administrative hearings to a group that is narrower than the legislature has approved by statute. This violates the principle commonly known as separation of powers (*e.g.*, the executive branch attempting to change laws passed by the legislature).

Specifically, the state's Administrative Agencies Practices Act ("AAPA"), which governs the process used in administrative hearings, uses the terms "party" and "parties" extensively. While no further definition of these terms is provided in the statute, the Supreme Court has interpreted the definition of "party" in the AAPA to mean "real party in interest, as well as an adverse party." *Reliance Ins. Co. v. Pub. Serv. Comm'n*, 250 N.W.2d 918, 926 (N.D. 1977). Importantly, the Supreme Court has defined "real party in interest" *broadly* to mean

one who has a real, actual, material, or substantial interest in the subject matter of the action. As a general rule, a real party in interest is a person for whose immediate benefit an action is prosecuted and who will control the recovery therein. A person is not a real party in interest if he has only a nominal, formal, or technical interest in the action.

Associated Gen. Contractors of N. Dakota v. Local No. 580 of Laborers Int'l Union of N. Am., 278 N.W.2d 393, 397 (N.D. 1979) (internal quotations and citations omitted).

Here, NDIC's definition of "interested party" is significantly narrower than the Supreme Court's definition of "real party in interest." NDIC's definition requires ownership of an interest in real property that is either directly at issue or adjacent to the property at issue. A "real party in interest," on the other hand, is simply "one who has a real, actual, material, or substantial interest in the subject matter." *Associated Gen. Contractors of N. Dakota v. Local No. 580 of Laborers Int'l Union of N. Am.*, 278 N.W.2d 393, 397 (N.D. 1979).

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The jurisdiction of the district court is defined by statute, and cannot be overridden by an administrative rule. This is exactly what the NDIC is doing with its proposed definition of “interested party,” however.

Under North Dakota law, “Any party to any proceeding heard by an administrative agency... may appeal from the order.” N.D.C.C. § 28-32-42. This statute reflects a legislative determination regarding appellate rights, but the concept of standing is a constitutional doctrine created by the courts. “In the context of an appeal for judicial review of an agency decision, standing is an aspect of the basic constitutional concept that confines the exercise of judicial power to actual cases and controversies.” *Shark v. U.S. W. Commc'ns, Inc.*, 545 N.W.2d 194, 197 (N.D. 1996).

The Supreme Court of North Dakota has stated: “We believe that any person who is directly interested in the proceedings before an administrative agency who may be factually aggrieved by the decision of the agency, and who participates in the proceeding before such agency, is a ‘party’ to any proceedings for the purposes of taking an appeal from the decision.” *Application of Bank of Rhame*, 231 N.W.2d 801, 808 (N.D. 1975) (emphasis added). The Court later stated that “Decisions by this court since *Bank of Rhame* have continued to employ its three-part analysis for who has standing to obtain judicial review of an agency decision: One who is factually aggrieved, directly interested, and participates.” *Shark v. U.S. W. Commc'ns, Inc.*, 545 N.W.2d 194, 198 (N.D. 1996).

By defining “interested party” as “an individual or number of individuals that have a property ownership or management interest in or adjacent to the subject matter,” the NDIC is limiting the ability of individuals not only to participate in certain agency proceedings, but also to appeal NDIC’s final determinations in such proceedings. Specifically, N.D.A.C. § 43-02-03-88.1 relates to

Applications to amend field rules to allow additional wells on existing spacing units, for pooling under North Dakota Century Code section 38-08-08, for a flaring exemption under North Dakota Century Code section 38-08-06.4 and section 43-02-03-60.2, for underground injection under chapter 43-02-05, for commingling in one well bore the fluids from two or more pools under section 43-02-03-42, for converting a mineral well to a freshwater well under section 43-02-03-35, and for establishing central tank batteries or central production facilities under section 43-02-03-48.1....

It is important to recognize that there may be situations where a person who would normally meet the constitutional standing requirements set forth by the Supreme Court of North Dakota would be prevented from participation in these hearings before the NDIC. As a result of this, that individual would not have “participated” in the NDIC proceeding, and therefore would not have standing to appeal.

A couple of examples help to illustrate the problem.

1. An operator applies for a permit for underground injection. Landowner lives a half a mile away, so her property is not the subject of this proceeding, and if there are other landowners between her and the project location, she is also not an adjacent landowner. If the injection well is passing through an aquifer that landowner relies upon, however, she would normally have standing to object or at least participate to examine the evidence proffered in the proceeding. Since she does not meet NDIC’s definition of an “interested party,” however, she would be unable to participate in the administrative proceeding, and therefore

would not meet the Supreme Court's requirement for standing that she participate in the administrative proceeding such that she could take an appeal to the district court.

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The end result is that the NDIC's definition of "interested party" violates the separation of powers principle. The NDIC is an executive agency, and it cannot trump the Legislative Assembly's decision on who can appeal from an administrative agency, nor can it trump the Judiciary's standing doctrine regarding justiciability.

To paraphrase, the NDIC's definition of "interested party" is unconstitutional because it conflicts with the provisions in the Administrative Agencies Practice Act passed by the Legislature which determines who can appeal from administrative decisions, and it also conflicts with the ND Supreme Court's decisions on who has standing to appeal from a decision of an administrative agency.

The North Dakota Supreme Court has stated that it does not "look favorably" upon an agency "challenging the standing of those seeking a review of its decision." *Reliance Ins. Co. v. Pub. Serv. Comm'n*, 250 N.W.2d 918, 923 (N.D. 1977). While the *Reliance* case specifically dealt with an administrative agency arguing *in court* that a party should not be able to seek review of the agency's decision, the same principle applies to an agency trying to limit judicial review of its decisions by administrative rule with even greater force.

II. The definition of "saltwater handling facility" is vague and overly broad

The new definition includes not only containers such as pits, tanks, or pools, but now covers any "site." The word site is incredibly broad, and is synonymous with "place." Therefore, read literally, the definition covers any place "used for the handling, storage, disposal of deleterious substances obtained, or used, in connection with oil and gas exploration and development."

This definition is also facially illegal. N.D.C.C. ch. 23-29 governs special waste landfills, and "'Special waste' means solid waste that is not a hazardous waste regulated under chapter 23-20.3 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production..." N.D.C.C. § 23-29-03(16). These facilities are regulated by the North Dakota Department of Health. N.D.C.C. § 23-29-03(2).

The definition proposed by NDIC for "saltwater handling facility" is again a violation of the separation of powers principle. The NDIC cannot extend its jurisdiction through an administrative rule when the Legislative Assembly has conferred jurisdiction for certain oilfield waste facilities on the North Dakota

Department of Health.

The definition is also concerning because of the potential impact on local governments. The facilities regulated by the Health Department are also subject to approval by local zoning authorities. The NDIC has intervened in a recent lawsuit to argue that a local zoning authority's jurisdiction is preempted by NDIC jurisdiction. To the extent that the NDIC is attempting to expand its jurisdiction, it will also likely lead to a decrease in local government jurisdiction based on the NDIC's legal position regarding its own jurisdiction. Northwest Landowners Association supports local control, and this support does not end with supporting state control over federal controls, but extends to local governments as well.

Aside from the concerns expressed regarding the definition of saltwater handling facilities, other additions regarding regulation of such facilities are commendable and a vast improvement over existing regulations.

III. Bond amounts for wells and underground gathering systems are inadequate

The NDIC has an existing requirement of a \$50,000 bond per well (N.D.A.C. § 43-02-03-15(1-2)) and is proposing a \$50,000 bond per underground gathering pipeline, and allows a \$100,000 blanket bond to cover numerous wells and numerous gathering pipelines. Although there is a provision that limits the number of un-reclaimed wells and gathering pipelines allowed under a blanket bond, this does not prevent an operator from bonding many wells and gathering pipelines with a bond of \$100,000. As the recent downturn has shown, if an operator operating over 100 wells declares bankruptcy, it may not have the financial means to reclaim its wells or spill sites, and \$100,000 is insufficient to ensure reclamation.

Additionally, for most well site reclamations, \$50,000 is likely insufficient. Northwest Landowners Association requested information on reclamation costs from an environmental consulting firm, and was informed that the cost to reclaim a well or spill site can range from tens of thousands of dollars to millions of dollars. While well sites may be easier to reclaim than spill sites, spills on well pads are frequent, and our consultant indicated that reclamation costs for well pads that have been contaminated are significantly higher. Northwest Landowners Association suggests that bond amounts for well pads that have been contaminated (particularly by produced water) should be greater than \$50,000. Northwest Landowners Association suggests that for well sites that two or more spills on site, the bond be increased to account for the additional costs to reclaim such as well site. Additionally, the bond amounts for spill clean-up from pipeline spills (particularly of produced water), according to our consultant, are insufficient.

The proposed addition to N.D.A.C. § 43-02-03-15 at subsection 8(a) refers to a bond for an "underground gathering pipeline system." This subsection also allows a blanket bond for numerous underground gathering pipeline systems." There are definitions for "crude oil or produced water underground gathering pipeline" and "underground gas gathering pipeline" in N.D.A.C. § 43-02-03-29.1 and for "underground gathering pipeline" in N.D.C.C. § 38-08-02 (18), but there is no definition for "underground gathering pipeline system." The term "system" is vague and ambiguous. More importantly, the term could be construed to cover an operator's entire system of gathering pipelines in North Dakota. Northwest Landowners Association suggests deleting the term "system" from N.D.A.C. § 43-02-03-15.

The proposed addition to N.D.A.C. § 43-02-03-15 at subsection 8(b) contains a significant discrepancy.

Subsection 8(b) indicates that the “blanket bond covering more than one underground gathering pipeline system shall be limited to no more than six of the following in aggregate....” After listing the limiting facilities, the subsection states: “If this aggregate of underground gathering pipeline systems is reached, the commission may refuse to accept additional pipeline systems on the bond....” This subsection should be changed to read: “If this aggregate of underground gathering pipeline systems is reached, the commission will refuse to accept additional pipeline systems on the bond....”

The definitions for “crude oil or produced water underground gathering pipeline” and “underground gas gathering pipeline” in N.D.A.C. § 43-02-03-29.1 are also ambiguous as drafted. The current definitions could apply to an entire gathering system. The definition refers to transfer from a production facility for disposal, storage, or sale, or from a production facility to a gas processing facility, for example. Generally, numerous wells are connected to a single gathering system, and this definition could be construed to mean that the proposed \$50,000 bond applies to an entire gathering system rather than a single pipeline. Northwest Landowners Association suggests that the NDIC limit the applicability of any given \$50,000 bond to a specific maximum length and diameter of pipeline.

This is an important protection for landowners, especially in the current economic climate with operators becoming insolvent and some declaring bankruptcy. While the industry has expressed concern over the cost of additional regulations, it was never an option for an operator to not fully reclaim a well site, and the size of the bond, particularly for blanket bonding, should not be a significant burden for solvent operators, and the requirement is most important for those operators with questionable solvency.

IV. Diking requirements should take into account rainfall events

The requirement to erect dikes around associated pipeline facilities at N.D.A.C. § 43-02-03-29.1(7) and saltwater handling facilities at N.D.A.C. § 43-02-03-53.3(5) require a dike “of sufficient dimension to contain the total capacity of the largest tank plus one day’s fluid throughput.” Northwest Landowners Association suggests that this rule should also take into account rainfall events. For example, rules promulgated by the North Dakota Department of Health with respect to waste management facilities are instructive. For certain facilities, these rules require secondary containment systems to be “[d]esigned or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a twenty-five-year, twenty-four-hour rainfall event....” N.D.A.C. § 33-24-05-106. Northwest Landowners Association suggests inclusion of this or similar language into the diking requirements of N.D.A.C. § 43-02-03-29.1(7) and N.D.A.C. § 43-02-03-53.3(5), as well as for perimeter berms as required by N.D.A.C. § 43-02-03-49, N.D.A.C. § 43-02-03-51.3(6) and N.D.A.C. § 43-02-03-53.3(6).

Dikes and berms are also currently required to be constructed “of sufficiently impermeable materials.” This should be amended to require clay or a synthetic liners, or a material that is equally or more impermeable.

Additionally, the rule should contain guidelines for disposing of water within the dike or perimeter berm that becomes mixed with contaminants on site from spilled produced water and hydrocarbons. It would not be acceptable for an operator to pump this contaminated rainwater over the dike or berm, so guidelines for how an operator should deal with excess rainwater within the dike or berm containment should be developed. Testing should be conducted with handheld EC meters or other economical

methods for quickly determining whether excess rainwater has been contaminated.

Finally, Northwest Landowners Association would like to emphasize the importance of these dikes and berms. According to a consultant with whom we discussed these standards, there have been numerous instances where companies have saved millions of dollars because a dike contained a spill that would have otherwise contaminated surrounding land. It is doubtful that the overall cost of spills on North Dakota farmland is as great as these common sense diking requirements.

V. Design and construction standards and third party inspections

The addition of specific design and construction standards and third party inspection requirements at N.D.A.C. § 43-02-03-29.1 is a significant improvement to the NDIC rules and should be commended. The standards regarding pipelines resting on undisturbed native soil, and requiring at least six inches of clearance on each side of the pipe are preferable to standards such as “minimizing interference with agriculture” because they are objectively verifiable by a third party inspector. It is suggested that the NDIC consider drafting greater specificity into these standards.

VI. Site construction

The revised topsoil depth contained in N.D.A.C. § 43-02-03-19 is commendable and more protective of precious topsoil. Topsoil should be stripped to the depth of color change. The NDIC has also proposed the following: ‘Operators shall file a sundry notice (form 4) detailing the work that was performed and a current site diagram, which identifies the stockpiled topsoil location and thickness.’ It is recommended that the NDIC add an additional requirement for the operator to also identify “steps taken to stabilize topsoil.”

VII. Street addresses

In a number of places, NDIC has removed language requiring street addresses for well sites and other facilities (See N.D.A.C. §§ 43-02-03-16, 43-02-03-17, 43-02-03-28, 43-02-03-51.1). These addresses are crucial for emergency responders. Obtaining a street address is a minimal burden to help our emergency responders get to these locations for emergencies. The requirements for these addresses should not be removed, and should be required for saltwater handling facilities as well.

VIII. Notification of spills

N.D.A.C. § 43-02-03-30 requires notice of a fire, leak, spill, or blowout to be given to the surface owner “within a reasonable time.” It is suggested that the following language be added to this sentence: “If any such incident occurs or travels offsite of a facility, the persons, as named above, responsible for proper notification shall within a reasonable time, but in all cases within forty-eight (48) hours from the incident, also notify the surface owners upon whose land the incident occurred or traveled.”

IX. Reclamation of surface

The reference at N.D.A.C. § 43-02-03-34.1(1) to “a treating plant or facility” is ambiguous. It is suggested that the reference be made directly to “saltwater handling facility” and to any other specific facilities to which the rule is intended to apply.

The NDIC standard for reclamation is significantly lacking, and the NDIC should take this opportunity to amend this section. Currently, the NDIC requires a site to be “reclaimed as closely as practicable to original condition.” It is common for pipeline easements and surface use agreements to include language requiring reclamation of cropland to pre-disturbance soil productivity measured by yields on adjacent undisturbed lands, and for pasture land, native prairie, and hay land, for the type and density of vegetation to be equal to that of adjacent undisturbed lands. This standard is a simple recognition that the land should be restored to its pre-disturbed condition, and not “as close as reasonably practicable.” The standard NDIC uses should match the standards regularly required by landowners in pipeline easement and surface use agreements.

Additionally, testing should be done to ensure that all contaminants have been removed, that naturally occurring elements are returned to background levels, and that the soil is restored to its pre-contaminated status. Specifically, testing should be conducted to determine background levels for SAR, pH, electrical conductivity, the four major cations: sodium, calcium, magnesium, potassium, the four major anions: chloride, sulfate, carbonate, bi-carbonate; and also ammonia as N (nitrogen), nitrate and nitrite as N, exchangeable sodium percentage (ESP), calcium carbonate equivalent, cation exchange capacity, USDA texture (percent clay, sand, and silt), and organic matter percentage. Testing should also be done with penetrometers to determine compaction within the topsoil in order to ensure this is returned to background levels. Testing for petroleum constituent should also be performed, including total petroleum hydrocarbons (TPH) as gasoline and as diesel/fuel oil, and benzene, ethyl benzene, toluene, and xylenes, at a minimum. Spill sites should be returned to pre-contamination status based on testing for background levels in the aforementioned categories.

N.D.A.C. § 43-02-03-34.1(1) also requires operators to “provide a copy of the proposed reclamation plan to the surface owner at least ten days prior to commencing the work unless waived by the surface owner.” This does not provide the surface owner with an adequate opportunity to provide input on the plan. The notice should be provided to the surface owner at the time the sundry notice (form 4) is filed with the director.

The Northwest Landowners Association commends the Oil and Gas Division on making a number of significant improvements in the administrative regulations, and is hopeful that stringent enforcement of these new regulations will help to address some of the numerous concerns raised by our association in recent years.

Sincerely,

Troy Coons

Troy Coons, Chairman
Northwest Landowners Association

This letter was received after the deadline for written comments, but was received via email prior to the deadline.



GMCSG
1930 118th Ave NW
Watford City ND 58854

April 23, 2016

North Dakota Industrial Commission
Department of Mineral Resources
Oil and Gas Division
600 E Boulevard Ave, Dept 405
Bismarck, ND 58505-0840

Received
APR 27 2016
ND Oil & Gas Division

RE: Comments on Amendments to Administrative Rules

Director Helms and members of the Commission:

Thank you for the opportunity to comment on the proposed amendments and additions to the NDAA Chapter 43-02-03, Chapter 43-02-05, and Chapter 43-02-08. The Greater McKenzie County Stewardship Group represents approximately forty surface owners and tenants in McKenzie County and its surrounding area. Through questionnaires, the organization has established that it represents nearly 100,000 acres of surface operations. Overall, the GMCSG is supportive of proposed amendments and believes that if the proposed amendments are adopted and enforced they should have a positive impact by providing protection to the natural resources of the oil and gas development areas and tools for remediation and reclamation in North Dakota.

The GMCSG has a similar mission to the Northwest Landowners Association and our members share similar concerns. The GMCSG supports the comments of the Northwest Landowners Association as enclosed and encourages the adoption of the amendments as prescribed in the Northwest Landowners Association comments.

Sincerely,

Vawnita Best
Chairperson, GMCSG
vawnitabest@gmail.com
(701) 580-1862

Enclosed: Comments on proposed amendments to NDAC 43-02-03, -05, and -08 from the Northwest Landowners Association



*For responsible development of
North Dakota's resources*

Received
APR 27 2016
ND Oil & Gas Division

Troy Coons, Chairman
Bob Grant, Treasurer

Thomas Wheeler, Vice Chairman
Galen Peterson, Secretary

6050 Old Highway 2
Berthold, ND 58718
www.nwlandowners.com

April 25, 2016

North Dakota Industrial Commission
Department of Mineral Resources
Oil and Gas Division
600 E Boulevard Ave, Dept. 405
Bismarck, ND 58505-0840

*Via hand delivery and email to
Lynn Helms (lhelms@nd.gov) and
Bruce Hicks (bhicks@nd.gov)*

**Re: Comments on Proposed Amendments to Administrative Rules
Pursuant to Notice Dated February 29, 2016**

To Oil and Gas Division:

Thank you for the opportunity to comment on the proposed amendments and additions to the North Dakota Administrative Code (NDAC) Chapter 43-02-03 (Oil & Gas), Chapter 43-02-05 (Underground Injection Control), and Chapter 43-02-08 (Stripper Well Property Determination). The Northwest Landowners Association commends the Oil and Gas Division on making a number of significant improvements in the administrative regulations, and is hopeful that stringent enforcement of these new regulations will help to address some of the numerous concerns raised by our association in recent years.

The Northwest Landowners Association does, however, have concerns with several of the proposed rules, as well as with the lack of amendment to certain other rules, and these concerns will be set forth below by topic matter with specific reference to sections of the North Dakota Administrative Code where appropriate.

I. The definition of "interested party" is illegal

NDIC's proposed definition of "interested party" is illegal because it would limit the parties that may participate in administrative hearings to a group that is narrower than the legislature has approved by statute. This violates the principle commonly known as separation of powers (*e.g.*, the executive branch attempting to change laws passed by the legislature).

Specifically, the state's Administrative Agencies Practices Act ("AAPA"), which governs the process used in administrative hearings, uses the terms "party" and "parties" extensively. While no further definition of these terms is provided in the statute, the Supreme Court has interpreted the definition of "party" in the AAPA to mean "real party in interest, as well as an adverse party." *Reliance Ins. Co. v. Pub. Serv. Comm'n*, 250 N.W.2d 918, 926 (N.D. 1977). Importantly, the Supreme Court has defined "real party in interest" *broadly* to mean

one who has a real, actual, material, or substantial interest in the subject matter of the action. As a general rule, a real party in interest is a person for whose immediate benefit an action is prosecuted and who will control the recovery therein. A person is not a real party in interest if he has only a nominal, formal, or technical interest in the action.

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The Supreme Court of North Dakota has stated: “We believe that any person who is directly interested in the proceedings before an administrative agency who may be factually aggrieved by the decision of the agency, and who participates in the proceeding before such agency, is a ‘party’ to any proceedings for the purposes of taking an appeal from the decision.” *Application of Bank of Rhame*, 231 N.W.2d 801, 808 (N.D. 1975) (emphasis added). The Court later stated that “Decisions by this court since *Bank of Rhame* have continued to employ its three-part analysis for who has standing to obtain judicial review of an agency decision: One who is factually aggrieved, directly interested, and participates.” *Shark v. U.S. W. Commc'ns, Inc.*, 545 N.W.2d 194, 198 (N.D. 1996).

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A couple of examples help to illustrate the problem.

1. An operator applies for a permit for underground injection. Landowner lives a half a mile away, so her property is not the subject of this proceeding, and if there are other landowners between her and the project location, she is also not an adjacent landowner. If the injection well is passing through an aquifer that landowner relies upon, however, she would normally have standing to object or at least participate to examine the evidence proffered in the proceeding. Since she does not meet NDIC’s definition of an “interested party,” however, she would be unable to participate in the administrative proceeding, and therefore

would not meet the Supreme Court's requirement for standing that she participate in the administrative proceeding such that she could take an appeal to the district court.

2. An operator submits an application to establish a central tank battery on an existing spacing unit. Landowner owns land nearby, but not adjacent to the land that makes up the spacing unit. Again, Landowner is unable to participate under the NDIC rule, and therefore unable to take an appeal from the decision. Landowner could be a quarter (1/4) mile away from the tank battery, and would normally have standing to object to the tank battery (for example, if the tank battery would require numerous pipelines across his property) or might have standing to support the tank battery (for example, if the tank battery would significantly reduce truck traffic on local roads), but could not appeal under the rule because he would not be able to participate in the administrative proceeding.

The end result is that the NDIC's definition of "interested party" violates the separation of powers principle. The NDIC is an executive agency, and it cannot trump the Legislative Assembly's decision on who can appeal from an administrative agency, nor can it trump the Judiciary's standing doctrine regarding justiciability.

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Additionally, the rule should contain guidelines for disposing of water within the dike or perimeter berm that becomes mixed with contaminants on site from spilled produced water and hydrocarbons. It would not be acceptable for an operator to pump this contaminated rainwater over the dike or berm, so guidelines for how an operator should deal with excess rainwater within the dike or berm containment should be developed. Testing should be conducted with handheld EC meters or other economical

methods for quickly determining whether excess rainwater has been contaminated.

Finally, Northwest Landowners Association would like to emphasize the importance of these dikes and berms. According to a consultant with whom we discussed these standards, there have been numerous instances where companies have saved millions of dollars because a dike contained a spill that would have otherwise contaminated surrounding land. It is doubtful that the overall cost of spills on North Dakota farmland is as great as these common sense diking requirements.

V. Design and construction standards and third party inspections

The addition of specific design and construction standards and third party inspection requirements at N.D.A.C. § 43-02-03-29.1 is a significant improvement to the NDIC rules and should be commended. The standards regarding pipelines resting on undisturbed native soil, and requiring at least six inches of clearance on each side of the pipe are preferable to standards such as “minimizing interference with agriculture” because they are objectively verifiable by a third party inspector. It is suggested that the NDIC consider drafting greater specificity into these standards.

VI. Site construction

The revised topsoil depth contained in N.D.A.C. § 43-02-03-19 is commendable and more protective of precious topsoil. Topsoil should be stripped to the depth of color change. The NDIC has also proposed the following: ‘Operators shall file a sundry notice (form 4) detailing the work that was performed and a current site diagram, which identifies the stockpiled topsoil location and thickness.’ It is recommended that the NDIC add an additional requirement for the operator to also identify “steps taken to stabilize topsoil.”

VII. Street addresses

In a number of places, NDIC has removed language requiring street addresses for well sites and other facilities (See N.D.A.C. §§ 43-02-03-16, 43-02-03-17, 43-02-03-28, 43-02-03-51.1). These addresses are crucial for emergency responders. Obtaining a street address is a minimal burden to help our emergency responders get to these locations for emergencies. The requirements for these addresses should not be removed, and should be required for saltwater handling facilities as well.

VIII. Notification of spills

N.D.A.C. § 43-02-03-30 requires notice of a fire, leak, spill, or blowout to be given to the surface owner “within a reasonable time.” It is suggested that the following language be added to this sentence: “If any such incident occurs or travels offsite of a facility, the persons, as named above, responsible for proper notification shall within a reasonable time, but in all cases within forty-eight (48) hours from the incident, also notify the surface owners upon whose land the incident occurred or traveled.”

IX. Reclamation of surface

The reference at N.D.A.C. § 43-02-03-34.1(1) to “a treating plant or facility” is ambiguous. It is suggested that the reference be made directly to “saltwater handling facility” and to any other specific facilities to which the rule is intended to apply.

The NDIC standard for reclamation is significantly lacking, and the NDIC should take this opportunity to amend this section. Currently, the NDIC requires a site to be “reclaimed as closely as practicable to original condition.” It is common for pipeline easements and surface use agreements to include language requiring reclamation of cropland to pre-disturbance soil productivity measured by yields on adjacent undisturbed lands, and for pasture land, native prairie, and hay land, for the type and density of vegetation to be equal to that of adjacent undisturbed lands. This standard is a simple recognition that the land should be restored to its pre-disturbed condition, and not “as close as reasonably practicable.” The standard NDIC uses should match the standards regularly required by landowners in pipeline easement and surface use agreements.

Additionally, testing should be done to ensure that all contaminants have been removed, that naturally occurring elements are returned to background levels, and that the soil is restored to its pre-contaminated status. Specifically, testing should be conducted to determine background levels for SAR, pH, electrical conductivity, the four major cations: sodium, calcium, magnesium, potassium, the four major anions: chloride, sulfate, carbonate, bi-carbonate; and also ammonia as N (nitrogen), nitrate and nitrite as N, exchangeable sodium percentage (ESP), calcium carbonate equivalent, cation exchange capacity, USDA texture (percent clay, sand, and silt), and organic matter percentage. Testing should also be done with penetrometers to determine compaction within the topsoil in order to ensure this is returned to background levels. Testing for petroleum constituent should also be performed, including total petroleum hydrocarbons (TPH) as gasoline and as diesel/fuel oil, and benzene, ethyl benzene, toluene, and xylenes, at a minimum. Spill sites should be returned to pre-contamination status based on testing for background levels in the aforementioned categories.

N.D.A.C. § 43-02-03-34.1(1) also requires operators to “provide a copy of the proposed reclamation plan to the surface owner at least ten days prior to commencing the work unless waived by the surface owner.” This does not provide the surface owner with an adequate opportunity to provide input on the plan. The notice should be provided to the surface owner at the time the sundry notice (form 4) is filed with the director.

The Northwest Landowners Association commends the Oil and Gas Division on making a number of significant improvements in the administrative regulations, and is hopeful that stringent enforcement of these new regulations will help to address some of the numerous concerns raised by our association in recent years.

Sincerely,

Troy Coons

Troy Coons, Chairman
Northwest Landowners Association

Kadrmass, Bethany R.

From: Megan Laudenschlager <megan@strengthennd.com>
Sent: Monday, April 25, 2016 2:10 PM
To: Ritter, Alison M.; Hicks, Bruce E.; Helms, Lynn D.; Connors, Kevin C.
Cc: Troy Coons
Subject: Rules Response
Attachments: NDIC - Ltr from NWLA RE Comments on 2016 Rulemaking.pdf

Good afternoon!

Attached you will find the electronic copy of Northwest Landowners Association's written response to the proposed rule changes. Troy Coons will be delivering a hard copy of the response to your office later this afternoon.

Thank you!

On behalf of Northwest Landowners Association,

Megan Laudenschlager
Strengthen ND
12 South Main St. - Ste. 12
P.O. Box 982
Minot, ND 58702-0982
701.303.0840
megan@strengthennd.com



StrengthenND®



*For responsible development of
North Dakota's resources*

Troy Coons, Chairman
Bob Grant, Treasurer

Thomas Wheeler, Vice Chairman
Galen Peterson, Secretary

6050 Old Highway 2
Berthold, ND 58718
www.nwlandowners.com

April 25, 2016

North Dakota Industrial Commission
Department of Mineral Resources
Oil and Gas Division
600 E Boulevard Ave, Dept. 405
Bismarck, ND 58505-0840

*Via hand delivery and email to
Lynn Helms (lhelms@nd.gov) and
Bruce Hicks (bhicks@nd.gov)*

**Re: Comments on Proposed Amendments to Administrative Rules
Pursuant to Notice Dated February 29, 2016**

To Oil and Gas Division:

Thank you for the opportunity to comment on the proposed amendments and additions to the North Dakota Administrative Code (NDAC) Chapter 43-02-03 (Oil & Gas), Chapter 43-02-05 (Underground Injection Control), and Chapter 43-02-08 (Stripper Well Property Determination). The Northwest Landowners Association commends the Oil and Gas Division on making a number of significant improvements in the administrative regulations, and is hopeful that stringent enforcement of these new regulations will help to address some of the numerous concerns raised by our association in recent years.

The Northwest Landowners Association does, however, have concerns with several of the proposed rules, as well as with the lack of amendment to certain other rules, and these concerns will be set forth below by topic matter with specific reference to sections of the North Dakota Administrative Code where appropriate.

I. The definition of "interested party" is illegal

NDIC's proposed definition of "interested party" is illegal because it would limit the parties that may participate in administrative hearings to a group that is narrower than the legislature has approved by statute. This violates the principle commonly known as separation of powers (e.g., the executive branch attempting to change laws passed by the legislature).

Specifically, the state's Administrative Agencies Practices Act ("AAPA"), which governs the process used in administrative hearings, uses the terms "party" and "parties" extensively. While no further definition of these terms is provided in the statute, the Supreme Court has interpreted the definition of "party" in the AAPA to mean "real party in interest, as well as an adverse party." *Reliance Ins. Co. v. Pub. Serv. Comm'n*, 250 N.W.2d 918, 926 (N.D. 1977). Importantly, the Supreme Court has defined "real party in interest" *broadly* to mean

one who has a real, actual, material, or substantial interest in the subject matter of the action. As a general rule, a real party in interest is a person for whose immediate benefit an action is prosecuted and who will control the recovery therein. A person is not a real party in interest if he has only a nominal, formal, or technical interest in the action.

Associated Gen. Contractors of N. Dakota v. Local No. 580 of Laborers Int'l Union of N. Am., 278 N.W.2d 393, 397 (N.D. 1979) (internal quotations and citations omitted).

Here, NDIC's definition of "interested party" is significantly narrower than the Supreme Court's definition of "real party in interest." NDIC's definition requires ownership of an interest in real property that is either directly at issue or adjacent to the property at issue. A "real party in interest," on the other hand, is simply "one who has a real, actual, material, or substantial interest in the subject matter." *Associated Gen. Contractors of N. Dakota v. Local No. 580 of Laborers Int'l Union of N. Am.*, 278 N.W.2d 393, 397 (N.D. 1979).

The North Dakota Legislative Assembly has granted limited power to administrative agencies to promulgate rules. See N.D.C.C. § 28-32-02; 28-32-01(11). However, it is implausible that this is sufficient to allow an agency to limit the parties to the action themselves, especially in light of the Supreme Court's definition of "party" under the AAPA. Further, the legislature has specifically stated that "[the Industrial Commission] may act upon its own motion, or upon the petition of any interested person." N.D.C.C. 38-08-11(4) (section entitled "Rules Covering Practice Before Commission"). This is a clear legislative mandate that the NDIC shall execute the law that it "act...upon the petition of any interested person." It is not an invitation to redefine the phrase interested person in order to limit the rights of citizens to be involved in administrative processes. If NDIC wishes to exercise lawmaking authority by limiting the parties that may appear in hearings more narrowly than allowed by statute, it must have delegated lawmaking authority from the legislature to do so. *Stutsman Cty. v. State Historical Soc. of N. Dakota*, 371 N.W.2d 321, 327 (N.D. 1985) ("the true distinction between a delegable and non-delegable power [is] whether the power granted gives the authority to make a law or whether that power pertains only to the execution of a law which was enacted by the Legislature.") Here, NDIC has no such authority.

NDIC's proposed definition of "interested party" also usurps authority of the courts by improperly limiting access to review of agency decisions to a narrower group of individuals than intended by the legislature. Pursuant to the Constitution of North Dakota, "All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law..." N.D. Const. art. I, § 9. More importantly, the Constitution also states "The district court shall have original jurisdiction of all causes, except as otherwise provided by law, and such appellate jurisdiction as may be provided by law or by rule of the supreme court." N.D. Const. art. VI, § 8 (emphasis added).

The jurisdiction of the district court is defined by statute, and cannot be overridden by an administrative rule. This is exactly what the NDIC is doing with its proposed definition of “interested party,” however.

Under North Dakota law, “Any party to any proceeding heard by an administrative agency... may appeal from the order.” N.D.C.C. § 28-32-42. This statute reflects a legislative determination regarding appellate rights, but the concept of standing is a constitutional doctrine created by the courts. “In the context of an appeal for judicial review of an agency decision, standing is an aspect of the basic constitutional concept that confines the exercise of judicial power to actual cases and controversies.” *Shark v. U.S. W. Commc'ns, Inc.*, 545 N.W.2d 194, 197 (N.D. 1996).

The Supreme Court of North Dakota has stated: “We believe that any person who is directly interested in the proceedings before an administrative agency who may be factually aggrieved by the decision of the agency, and who participates in the proceeding before such agency, is a ‘party’ to any proceedings for the purposes of taking an appeal from the decision.” *Application of Bank of Rhame*, 231 N.W.2d 801, 808 (N.D. 1975) (emphasis added). The Court later stated that “Decisions by this court since *Bank of Rhame* have continued to employ its three-part analysis for who has standing to obtain judicial review of an agency decision: One who is factually aggrieved, directly interested, and participates.” *Shark v. U.S. W. Commc'ns, Inc.*, 545 N.W.2d 194, 198 (N.D. 1996).

By defining “interested party” as “an individual or number of individuals that have a property ownership or management interest in or adjacent to the subject matter,” the NDIC is limiting the ability of individuals not only to participate in certain agency proceedings, but also to appeal NDIC’s final determinations in such proceedings. Specifically, N.D.A.C. § 43-02-03-88.1 relates to

Applications to amend field rules to allow additional wells on existing spacing units, for pooling under North Dakota Century Code section 38-08-08, for a flaring exemption under North Dakota Century Code section 38-08-06.4 and section 43-02-03-60.2, for underground injection under chapter 43-02-05, for commingling in one well bore the fluids from two or more pools under section 43-02-03-42, for converting a mineral well to a freshwater well under section 43-02-03-35, and for establishing central tank batteries or central production facilities under section 43-02-03-48.1....

It is important to recognize that there may be situations where a person who would normally meet the constitutional standing requirements set forth by the Supreme Court of North Dakota would be prevented from participation in these hearings before the NDIC. As a result of this, that individual would not have “participated” in the NDIC proceeding, and therefore would not have standing to appeal.

A couple of examples help to illustrate the problem.

1. An operator applies for a permit for underground injection. Landowner lives a half a mile away, so her property is not the subject of this proceeding, and if there are other landowners between her and the project location, she is also not an adjacent landowner. If the injection well is passing through an aquifer that landowner relies upon, however, she would normally have standing to object or at least participate to examine the evidence proffered in the proceeding. Since she does not meet NDIC’s definition of an “interested party,” however, she would be unable to participate in the administrative proceeding, and therefore

would not meet the Supreme Court's requirement for standing that she participate in the administrative proceeding such that she could take an appeal to the district court.

2. An operator submits an application to establish a central tank battery on an existing spacing unit. Landowner owns land nearby, but not adjacent to the land that makes up the spacing unit. Again, Landowner is unable to participate under the NDIC rule, and therefore unable to take an appeal from the decision. Landowner could be a quarter (1/4) mile away from the tank battery, and would normally have standing to object to the tank battery (for example, if the tank battery would require numerous pipelines across his property) or might have standing to support the tank battery (for example, if the tank battery would significantly reduce truck traffic on local roads), but could not appeal under the rule because he would not be able to participate in the administrative proceeding.

The end result is that the NDIC's definition of "interested party" violates the separation of powers principle. The NDIC is an executive agency, and it cannot trump the Legislative Assembly's decision on who can appeal from an administrative agency, nor can it trump the Judiciary's standing doctrine regarding justiciability.

To paraphrase, the NDIC's definition of "interested party" is unconstitutional because it conflicts with the provisions in the Administrative Agencies Practice Act passed by the Legislature which determines who can appeal from administrative decisions, and it also conflicts with the ND Supreme Court's decisions on who has standing to appeal from a decision of an administrative agency.

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Finally, Northwest Landowners Association would like to emphasize the importance of these dikes and berms. According to a consultant with whom we discussed these standards, there have been numerous instances where companies have saved millions of dollars because a dike contained a spill that would have otherwise contaminated surrounding land. It is doubtful that the overall cost of spills on North Dakota farmland is as great as these common sense diking requirements.

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The addition of specific design and construction standards and third party inspection requirements at N.D.A.C. § 43-02-03-29.1 is a significant improvement to the NDIC rules and should be commended. The standards regarding pipelines resting on undisturbed native soil, and requiring at least six inches of clearance on each side of the pipe are preferable to standards such as “minimizing interference with agriculture” because they are objectively verifiable by a third party inspector. It is suggested that the NDIC consider drafting greater specificity into these standards.

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In a number of places, NDIC has removed language requiring street addresses for well sites and other facilities (See N.D.A.C. §§ 43-02-03-16, 43-02-03-17, 43-02-03-28, 43-02-03-51.1). These addresses are crucial for emergency responders. Obtaining a street address is a minimal burden to help our emergency responders get to these locations for emergencies. The requirements for these addresses should not be removed, and should be required for saltwater handling facilities as well.

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N.D.A.C. § 43-02-03-30 requires notice of a fire, leak, spill, or blowout to be given to the surface owner “within a reasonable time.” It is suggested that the following language be added to this sentence: “If any such incident occurs or travels offsite of a facility, the persons, as named above, responsible for proper notification shall within a reasonable time, but in all cases within forty-eight (48) hours from the incident, also notify the surface owners upon whose land the incident occurred or traveled.”

IX. Reclamation of surface

The reference at N.D.A.C. § 43-02-03-34.1(1) to “a treating plant or facility” is ambiguous. It is suggested that the reference be made directly to “saltwater handling facility” and to any other specific facilities to which the rule is intended to apply.

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The Northwest Landowners Association commends the Oil and Gas Division on making a number of significant improvements in the administrative regulations, and is hopeful that stringent enforcement of these new regulations will help to address some of the numerous concerns raised by our association in recent years.

Sincerely,

Troy Coons

Troy Coons, Chairman
Northwest Landowners Association



*For responsible development of
North Dakota's resources*

Received
APR 25 2016
ND Oil & Gas Division

Troy Coons, Chairman
Bob Grant, Treasurer

Thomas Wheeler, Vice Chairman
Galen Peterson, Secretary

6050 Old Highway 2
Berthold, ND 58718
www.nwlandowners.com

April 25, 2016

North Dakota Industrial Commission
Department of Mineral Resources
Oil and Gas Division
600 E Boulevard Ave, Dept. 405
Bismarck, ND 58505-0840

*Via hand delivery and email to
Lynn Helms (lhelms@nd.gov) and
Bruce Hicks (bhicks@nd.gov)*

**Re: Comments on Proposed Amendments to Administrative Rules
Pursuant to Notice Dated February 29, 2016**

To Oil and Gas Division:

Thank you for the opportunity to comment on the proposed amendments and additions to the North Dakota Administrative Code (NDAC) Chapter 43-02-03 (Oil & Gas), Chapter 43-02-05 (Underground Injection Control), and Chapter 43-02-08 (Stripper Well Property Determination). The Northwest Landowners Association commends the Oil and Gas Division on making a number of significant improvements in the administrative regulations, and is hopeful that stringent enforcement of these new regulations will help to address some of the numerous concerns raised by our association in recent years.

The Northwest Landowners Association does, however, have concerns with several of the proposed rules, as well as with the lack of amendment to certain other rules, and these concerns will be set forth below by topic matter with specific reference to sections of the North Dakota Administrative Code where appropriate.

I. The definition of "interested party" is illegal

NDIC's proposed definition of "interested party" is illegal because it would limit the parties that may participate in administrative hearings to a group that is narrower than the legislature has approved by statute. This violates the principle commonly known as separation of powers (e.g., the executive branch attempting to change laws passed by the legislature).

Specifically, the state's Administrative Agencies Practices Act ("AAPA"), which governs the process used in administrative hearings, uses the terms "party" and "parties" extensively. While no further definition of these terms is provided in the statute, the Supreme Court has interpreted the definition of "party" in the AAPA to mean "real party in interest, as well as an adverse party." *Reliance Ins. Co. v. Pub. Serv. Comm'n*, 250 N.W.2d 918, 926 (N.D. 1977). Importantly, the Supreme Court has defined "real party in interest" *broadly* to mean

one who has a real, actual, material, or substantial interest in the subject matter of the action. As a general rule, a real party in interest is a person for whose immediate benefit an action is prosecuted and who will control the recovery therein. A person is not a real party in interest if he has only a nominal, formal, or technical interest in the action.

Associated Gen. Contractors of N. Dakota v. Local No. 580 of Laborers Int'l Union of N. Am., 278 N.W.2d 393, 397 (N.D. 1979) (internal quotations and citations omitted).

Here, NDIC's definition of "interested party" is significantly narrower than the Supreme Court's definition of "real party in interest." NDIC's definition requires ownership of an interest in real property that is either directly at issue or adjacent to the property at issue. A "real party in interest," on the other hand, is simply "one who has a real, actual, material, or substantial interest in the subject matter." *Associated Gen. Contractors of N. Dakota v. Local No. 580 of Laborers Int'l Union of N. Am.*, 278 N.W.2d 393, 397 (N.D. 1979).

The North Dakota Legislative Assembly has granted limited power to administrative agencies to promulgate rules. See N.D.C.C. § 28-32-02; 28-32-01(11). However, it is implausible that this is sufficient to allow an agency to limit the parties to the action themselves, especially in light of the Supreme Court's definition of "party" under the AAPA. Further, the legislature has specifically stated that "[the Industrial Commission] may act upon its own motion, or upon the petition of any interested person." N.D.C.C. 38-08-11(4) (section entitled "Rules Covering Practice Before Commission"). This is a clear legislative mandate that the NDIC shall execute the law that it "act...upon the petition of any interested person." It is not an invitation to redefine the phrase interested person in order to limit the rights of citizens to be involved in administrative processes. If NDIC wishes to exercise lawmaking authority by limiting the parties that may appear in hearings more narrowly than allowed by statute, it must have delegated lawmaking authority from the legislature to do so. *Stutsman Cty. v. State Historical Soc. of N. Dakota*, 371 N.W.2d 321, 327 (N.D. 1985) ("the true distinction between a delegable and non-delegable power [is] whether the power granted gives the authority to make a law or whether that power pertains only to the execution of a law which was enacted by the Legislature.") Here, NDIC has no such authority.

NDIC's proposed definition of "interested party" also usurps authority of the courts by improperly limiting access to review of agency decisions to a narrower group of individuals than intended by the legislature. Pursuant to the Constitution of North Dakota, "All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law..." N.D. Const. art. I, § 9. More importantly, the Constitution also states "The district court shall have original jurisdiction of all causes, except as otherwise provided by law, and such appellate jurisdiction as may be provided by law or by rule of the supreme court." N.D. Const. art. VI, § 8 (emphasis added).

The jurisdiction of the district court is defined by statute, and cannot be overridden by an administrative rule. This is exactly what the NDIC is doing with its proposed definition of “interested party,” however.

Under North Dakota law, “Any party to any proceeding heard by an administrative agency... may appeal from the order.” N.D.C.C. § 28-32-42. This statute reflects a legislative determination regarding appellate rights, but the concept of standing is a constitutional doctrine created by the courts. “In the context of an appeal for judicial review of an agency decision, standing is an aspect of the basic constitutional concept that confines the exercise of judicial power to actual cases and controversies.” *Shark v. U.S. W. Commc'ns, Inc.*, 545 N.W.2d 194, 197 (N.D. 1996).

The Supreme Court of North Dakota has stated: “We believe that any person who is directly interested in the proceedings before an administrative agency who may be factually aggrieved by the decision of the agency, and who participates in the proceeding before such agency, is a ‘party’ to any proceedings for the purposes of taking an appeal from the decision.” *Application of Bank of Rhame*, 231 N.W.2d 801, 808 (N.D. 1975) (emphasis added). The Court later stated that “Decisions by this court since *Bank of Rhame* have continued to employ its three-part analysis for who has standing to obtain judicial review of an agency decision: One who is factually aggrieved, directly interested, and participates.” *Shark v. U.S. W. Commc'ns, Inc.*, 545 N.W.2d 194, 198 (N.D. 1996).

By defining “interested party” as “an individual or number of individuals that have a property ownership or management interest in or adjacent to the subject matter,” the NDIC is limiting the ability of individuals not only to participate in certain agency proceedings, but also to appeal NDIC’s final determinations in such proceedings. Specifically, N.D.A.C. § 43-02-03-88.1 relates to

Applications to amend field rules to allow additional wells on existing spacing units, for pooling under North Dakota Century Code section 38-08-08, for a flaring exemption under North Dakota Century Code section 38-08-06.4 and section 43-02-03-60.2, for underground injection under chapter 43-02-05, for commingling in one well bore the fluids from two or more pools under section 43-02-03-42, for converting a mineral well to a freshwater well under section 43-02-03-35, and for establishing central tank batteries or central production facilities under section 43-02-03-48.1....

It is important to recognize that there may be situations where a person who would normally meet the constitutional standing requirements set forth by the Supreme Court of North Dakota would be prevented from participation in these hearings before the NDIC. As a result of this, that individual would not have “participated” in the NDIC proceeding, and therefore would not have standing to appeal.

A couple of examples help to illustrate the problem.

1. An operator applies for a permit for underground injection. Landowner lives a half a mile away, so her property is not the subject of this proceeding, and if there are other landowners between her and the project location, she is also not an adjacent landowner. If the injection well is passing through an aquifer that landowner relies upon, however, she would normally have standing to object or at least participate to examine the evidence proffered in the proceeding. Since she does not meet NDIC’s definition of an “interested party,” however, she would be unable to participate in the administrative proceeding, and therefore

would not meet the Supreme Court's requirement for standing that she participate in the administrative proceeding such that she could take an appeal to the district court.

2. An operator submits an application to establish a central tank battery on an existing spacing unit. Landowner owns land nearby, but not adjacent to the land that makes up the spacing unit. Again, Landowner is unable to participate under the NDIC rule, and therefore unable to take an appeal from the decision. Landowner could be a quarter (1/4) mile away from the tank battery, and would normally have standing to object to the tank battery (for example, if the tank battery would require numerous pipelines across his property) or might have standing to support the tank battery (for example, if the tank battery would significantly reduce truck traffic on local roads), but could not appeal under the rule because he would not be able to participate in the administrative proceeding.

The end result is that the NDIC's definition of "interested party" violates the separation of powers principle. The NDIC is an executive agency, and it cannot trump the Legislative Assembly's decision on who can appeal from an administrative agency, nor can it trump the Judiciary's standing doctrine regarding justiciability.

To paraphrase, the NDIC's definition of "interested party" is unconstitutional because it conflicts with the provisions in the Administrative Agencies Practice Act passed by the Legislature which determines who can appeal from administrative decisions, and it also conflicts with the ND Supreme Court's decisions on who has standing to appeal from a decision of an administrative agency.

The North Dakota Supreme Court has stated that it does not "look favorably" upon an agency "challenging the standing of those seeking a review of its decision." *Reliance Ins. Co. v. Pub. Serv. Comm'n*, 250 N.W.2d 918, 923 (N.D. 1977). While the *Reliance* case specifically dealt with an administrative agency arguing *in court* that a party should not be able to seek review of the agency's decision, the same principle applies to an agency trying to limit judicial review of its decisions by administrative rule with even greater force.

II. The definition of "saltwater handling facility" is vague and overly broad

The new definition includes not only containers such as pits, tanks, or pools, but now covers any "site." The word site is incredibly broad, and is synonymous with "place." Therefore, read literally, the definition covers any place "used for the handling, storage, disposal of deleterious substances obtained, or used, in connection with oil and gas exploration and development."

This definition is also facially illegal. N.D.C.C. ch. 23-29 governs special waste landfills, and "'Special waste' means solid waste that is not a hazardous waste regulated under chapter 23-20.3 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production...." N.D.C.C. § 23-29-03(16). These facilities are regulated by the North Dakota Department of Health. N.D.C.C. § 23-29-03(2).

The definition proposed by NDIC for "saltwater handling facility" is again a violation of the separation of powers principle. The NDIC cannot extend its jurisdiction through an administrative rule when the Legislative Assembly has conferred jurisdiction for certain oilfield waste facilities on the North Dakota

Department of Health.

The definition is also concerning because of the potential impact on local governments. The facilities regulated by the Health Department are also subject to approval by local zoning authorities. The NDIC has intervened in a recent lawsuit to argue that a local zoning authority's jurisdiction is preempted by NDIC jurisdiction. To the extent that the NDIC is attempting to expand its jurisdiction, it will also likely lead to a decrease in local government jurisdiction based on the NDIC's legal position regarding its own jurisdiction. Northwest Landowners Association supports local control, and this support does not end with supporting state control over federal controls, but extends to local governments as well.

Aside from the concerns expressed regarding the definition of saltwater handling facilities, other additions regarding regulation of such facilities are commendable and a vast improvement over existing regulations.

III. Bond amounts for wells and underground gathering systems are inadequate

The NDIC has an existing requirement of a \$50,000 bond per well (N.D.A.C. § 43-02-03-15(1-2)) and is proposing a \$50,000 bond per underground gathering pipeline, and allows a \$100,000 blanket bond to cover numerous wells and numerous gathering pipelines. Although there is a provision that limits the number of un-reclaimed wells and gathering pipelines allowed under a blanket bond, this does not prevent an operator from bonding many wells and gathering pipelines with a bond of \$100,000. As the recent downturn has shown, if an operator operating over 100 wells declares bankruptcy, it may not have the financial means to reclaim its wells or spill sites, and \$100,000 is insufficient to ensure reclamation.

Additionally, for most well site reclamations, \$50,000 is likely insufficient. Northwest Landowners Association requested information on reclamation costs from an environmental consulting firm, and was informed that the cost to reclaim a well or spill site can range from tens of thousands of dollars to millions of dollars. While well sites may be easier to reclaim than spill sites, spills on well pads are frequent, and our consultant indicated that reclamation costs for well pads that have been contaminated are significantly higher. Northwest Landowners Association suggests that bond amounts for well pads that have been contaminated (particularly by produced water) should be greater than \$50,000. Northwest Landowners Association suggests that for well sites that two or more spills on site, the bond be increased to account for the additional costs to reclaim such as well site. Additionally, the bond amounts for spill clean-up from pipeline spills (particularly of produced water), according to our consultant, are insufficient.

The proposed addition to N.D.A.C. § 43-02-03-15 at subsection 8(a) refers to a bond for an "underground gathering pipeline system." This subsection also allows a blanket bond for numerous underground gathering pipeline systems." There are definitions for "crude oil or produced water underground gathering pipeline" and "underground gas gathering pipeline" in N.D.A.C. § 43-02-03-29.1 and for "underground gathering pipeline" in N.D.C.C. § 38-08-02 (18), but there is no definition for "underground gathering pipeline system." The term "system" is vague and ambiguous. More importantly, the term could be construed to cover an operator's entire system of gathering pipelines in North Dakota. Northwest Landowners Association suggests deleting the term "system" from N.D.A.C. § 43-02-03-15.

The proposed addition to N.D.A.C. § 43-02-03-15 at subsection 8(b) contains a significant discrepancy.

Subsection 8(b) indicates that the “blanket bond covering more than one underground gathering pipeline system shall be limited to no more than six of the following in aggregate....” After listing the limiting facilities, the subsection states: “If this aggregate of underground gathering pipeline systems is reached, the commission may refuse to accept additional pipeline systems on the bond....” This subsection should be changed to read: “If this aggregate of underground gathering pipeline systems is reached, the commission will refuse to accept additional pipeline systems on the bond....”

The definitions for “crude oil or produced water underground gathering pipeline” and “underground gas gathering pipeline” in N.D.A.C. § 43-02-03-29.1 are also ambiguous as drafted. The current definitions could apply to an entire gathering system. The definition refers to transfer from a production facility for disposal, storage, or sale, or from a production facility to a gas processing facility, for example. Generally, numerous wells are connected to a single gathering system, and this definition could be construed to mean that the proposed \$50,000 bond applies to an entire gathering system rather than a single pipeline. Northwest Landowners Association suggests that the NDIC limit the applicability of any given \$50,000 bond to a specific maximum length and diameter of pipeline.

This is an important protection for landowners, especially in the current economic climate with operators becoming insolvent and some declaring bankruptcy. While the industry has expressed concern over the cost of additional regulations, it was never an option for an operator to not fully reclaim a well site, and the size of the bond, particularly for blanket bonding, should not be a significant burden for solvent operators, and the requirement is most important for those operators with questionable solvency.

IV. Diking requirements should take into account rainfall events

The requirement to erect dikes around associated pipeline facilities at N.D.A.C. § 43-02-03-29.1(7) and saltwater handling facilities at N.D.A.C. § 43-02-03-53.3(5) require a dike “of sufficient dimension to contain the total capacity of the largest tank plus one day’s fluid throughput.” Northwest Landowners Association suggests that this rule should also take into account rainfall events. For example, rules promulgated by the North Dakota Department of Health with respect to waste management facilities are instructive. For certain facilities, these rules require secondary containment systems to be “[d]esigned or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a twenty-five-year, twenty-four-hour rainfall event....” N.D.A.C. § 33-24-05-106. Northwest Landowners Association suggests inclusion of this or similar language into the diking requirements of N.D.A.C. § 43-02-03-29.1(7) and N.D.A.C. § 43-02-03-53.3(5), as well as for perimeter berms as required by N.D.A.C. § 43-02-03-49, N.D.A.C. § 43-02-03-51.3(6) and N.D.A.C. § 43-02-03-53.3(6).

Dikes and berms are also currently required to be constructed “of sufficiently impermeable materials.” This should be amended to require clay or a synthetic liners, or a material that is equally or more impermeable.

Additionally, the rule should contain guidelines for disposing of water within the dike or perimeter berm that becomes mixed with contaminants on site from spilled produced water and hydrocarbons. It would not be acceptable for an operator to pump this contaminated rainwater over the dike or berm, so guidelines for how an operator should deal with excess rainwater within the dike or berm containment should be developed. Testing should be conducted with handheld EC meters or other economical

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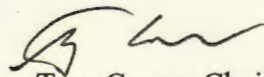
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Sincerely,



Troy Coons, Chairman
Northwest Landowners Association

Kadrmass, Bethany R.

From: Coughlin, Dawn <DCoughlin@hess.com>
Sent: Monday, April 25, 2016 4:03 PM
To: Hicks, Bruce E.
Cc: Helms, Lynn D.; Ritter, Alison M.; Noyes, Joel
Subject: North Dakota Industrial Commission 2016 Proposed Rules
Attachments: Hess Final Comment Letter.pdf

Dear Assistant Director Hicks,

Attached, you will find comments submitted by Hess Corporation for the proposed rule changes to NDAC Chapters 43-02-03, 43-02-05 and 43-02-08. Hess looks forward to your review and response to our comments.

Sincerely,

Dawn M. Coughlin
Sr. Advisor, Environmental Affairs
Hess Corporation
1501 McKinney Street
Houston, TX 77010
Office: 713-496-4840|Mobile: 713-396-6885
Email: dcoughlin@hess.com



HESS CORPORATION
1501 McKinney St
Houston, TX 77010

April 25, 2016

Mr. Bruce Hicks, Assistant Director
North Dakota Industrial Commission
Oil and Gas Division
600 E Boulevard Avenue
Department 405
Bismarck, ND 58505-0840

RE: North Dakota Administrative Code: 43-02-03 General Rules; 43-02-05 Underground Injection Control and 43-02-08 Stripper Well Property Determination

Dear Assistant Director Hicks:

Hess Corporation ("Hess") is a United States-based leading global independent energy company engaged in the exploration and production of crude oil and natural gas. Hess is a diversified company with assets onshore and offshore, as well as domestically and internationally. Producing crude oil and natural gas in a safe and environmentally responsible manner is the primary focus of our business, and Hess supports a reasonable and holistic approach to regulations. Hess considers responsible management of our environmental footprint to be an important component of our operational excellence.

Hess, and its affiliates, have a significant presence in North Dakota that began nearly 65 years ago when the company drilled its first well in the state. Hess expects to have 1,260 wells online by the end of the year across an area of roughly 578,000 net acres. In addition to upstream crude oil and natural gas production assets, Hess, through a joint venture, operates the Tioga Gas Plant in Tioga, North Dakota which has the capacity to process up to 250 million standard cubic feet of natural gas per day. Since the beginning of the development of the Bakken, Hess has been an active participant and leader in industry working groups such as the North Dakota Petroleum Council ("NDPC"), and also works closely with state regulatory agencies such as the North Dakota Industrial Commission ("NDIC"), and the North Dakota Department of Health, to address issues that are critical to producing crude oil and natural gas in a manner protective of human health and the environment.

Hess agrees with the comments filed on the proposed rulemaking by the NDPC and incorporates them by reference herein. We additionally would like to further expand upon several sections of the NDPC's comments.

Specifically, Section 43-02-03-29.1 Underground Gathering Pipelines goes far beyond the legislative intent of House Bill 1358 and the subsequent recommendations of the EERC study. Section 2 of House Bill 1358 is expressly applicable only to pipelines placed into service after August 1, 2015. However,

the NDIC includes proposed requirements retroactively without providing for a reasonable timeframe for operators to bring existing underground gathering lines into compliance. Most notably, Hess has significant concerns with the timing of the introduction of the proposed leak detection and monitoring requirements. The EERC study acknowledged the complexity of leak detection and monitoring and therefore did not recommend a leak detection and monitoring plan at this time. Additionally, NDIC proposed computational pipeline monitoring leak detection systems. These systems are not appropriate for gathering lines, as they are intended for transmission lines. Hess strongly urges NDIC to postpone the proposed leak detection and monitoring requirements until more information can be evaluated by EERC. In fact, Hess is working with the EERC to test leak detection technologies this year.

Additionally, proposed Section 43-02-03-49 Oil Production Equipment, Dikes and Seals proposes that operators construct a minimum one foot berm around all new and existing storage facilities and production sites. This proposal will have significant costs, safety, feasibility and long-term operation and maintenance impacts. Moreover, construction, operation, and maintenance of the berms could have unintended consequences for operators related to drainage and management of collected stormwater. The NDIC does not address expectations for what they would deem a reasonable timeframe to bring existing sites into compliance with the proposed berm construction requirements. The costs to retrofit existing well pad sites alone can easily be anticipated to cost into the tens of millions of dollars to industry. Significant additional costs will be incurred for installation of berms at future well pads, the long term operation and maintenance requirements, and other additional costs to retrofit.

Hess acknowledges and agrees with the NDIC goal of minimizing the impacts of leaks and spills. In fact, we have designed and implemented a containment system for new well pad installations. The prescriptive berm which the NDIC is proposing would not allow for Hess to retain this current design, which has been effective. Hess would be forced to retrofit our well pads at a significant cost, but with no additional environmental benefits. Hess proposes a risk-based tiered approach to improving spill control and containment which can be achieved through flexible design and engineering solutions. We also request a reasonable risk-based phase in timeframe to retrofit existing well pad sites.

Hess requests that the NDIC postpone promulgating this proposed regulatory requirement to allow for industry to work collaboratively with you to explore a solution that will achieve the intended goal.

Finally, Hess offers NDIC comments on specific sections relating to the proposed rules as set forth below.

43-02-03-01 Definitions

Hess agrees with and endorses the comments from NDPC on section 43-02-03-01.25, and would urge the Commission to make the appropriate edits to reflect those comments.

43-02-03-01.4445. Saltwater Handling Facility

Comment: Hess understands that NDIC intended the Saltwater Handling Facility proposed regulations to target commercial facilities, not produced water tanks or produced water disposal wells that are owned and operated by the oil and gas operator and are used directly to support their operations. If our understanding is in fact correct, Hess recommends NDIC incorporate the following suggested language changes within the Saltwater Handling Facility definition:

Suggested language: 4445. “Saltwater Handling and Disposal Facility” means and includes ~~any container such as a pit, tank, or pool, whether covered or uncovered, and a site~~ commercial handling, storage and disposal of ~~deleterious substances obtained, or used, in in connection with the drilling or operation of wells~~ fluids which are brought to the surface in connection with oil and gas ~~exploration and development~~ production.

Comment: In addition, the proposed rules include numerous terms that have no existing definitions and therefore the proposed rules should be clarified by adding definitions for the following terms: “facility”, “storage facility” and “production facility”. By providing definitions, NDIC will promote an improved ability for the affected parties to understand the intended compliance requirements.

43-02-03-14 Access to Records

Comment: The existing and proposed language is unclear. Hess suggests the following modified language.

Suggested language: “...completing, producing, operation, or servicing oil and gas wells, underground gathering pipelines, injection wells, or treating plants shall permit the commission, director, and their representatives to come upon any lease, property, underground gathering pipeline right-of-way, well, or drilling rig operated or controlled by them, to determine compliance ~~complying~~ with state safety rules and, subject to obligations and requirements set forth in the site access agreements from the surface owner, to inspect the records and operation of such wells, underground gathering pipelines and treating plants, and to have reasonable access ~~at all times~~ to any and all records of wells, underground gathering pipelines and treating plants. If requested, copies of such records must be filed with the commission.”

43-02-03-15 Bond and Transfer of Wells

43-02-03-15.1 Bond requirements.

Comment: Hess requests that the NDIC exclude “source well for use in enhance recovery operations” from the Bond requirements section. Although “source well” is not defined, it is assumed that NDIC is referring to water source wells. Water wells are permitted by the North Dakota Water Commission. Consideration for the potential need and degree of bonding water wells may be best served under the same agency that holds the permit. Although Hess requests

that the language be struck, we also ask the NDIC to clarify their intention as to whether the bonding requirement was to only apply to new wells drilled or for the bonding requirement to be retroactive? If the requirement is proposed to be retroactive, the proposed language included no provision for a timeframe for existing active wells to apply for and obtain the required bonds.

Hess agrees with and endorses the comments from NDPC on sections 43-02-03-15.7; 43-02-03-15.8 and 43-02-03-15.8.b, and would urge the Commission to make the appropriate edits to reflect those comments.

43-02-03-17 Sign on Well or Facility

Comment: The proposed language appears to bring in legacy well sites and require modifications to some existing signage without providing for a reasonable timeframe to inventory, obtain and install the required replacement signage. In addition, it is unclear as to whether the new proposed language would require separate and additional signage for centralized tank batteries at well sites where existing, compliant signage for the wells already is in place.

Additionally, as requested above in the Definitions section comments, “facility” should be defined within section 43-02-03-01 Definitions.

43-02-03-19 Site Construction

Comment: NDIC should clarify the intent of the addition of the word “materials”. The proposed language of “Soil stabilization ~~additives~~ materials, liners, fabrics, and other materials...” is confusing given the use of the word “materials” twice within the same sentence.

Suggested Language: “Soil stabilization ~~additives~~ liners, fabrics and other materials...”

Comment: Hess proposes the following language modification as a more appropriate submittal given that the thickness of a soil stockpile varies.. In addition, Hess suggests that the NDIC clarify that their intention is not to require an operator to file subsequent Form 4 sundry notices for ongoing routine soil stabilization maintenance such as replacement of straw waddles, erosion control blankets or other erosion control implements. Maintaining the controls of the original plan should be implicit.

Suggested Language: Operators shall file a sundry notice (form 4) detailing the work that was performed and a current site diagram, which identifies the stockpiled topsoil location and ~~thickness~~ estimated volume.

43-02-03-28 Safety Regulation

Hess agrees with and endorses the comments from NDPC on section 43-02-03-28, and would urge the Commission to make the appropriate edits to reflect those comments.

43-02-03-29.1 Underground Gathering Pipelines

43-02-03-29.1.2 Definitions

Hess agrees with and endorses the comments from NDPC on section 43-02-03-29.1.2, and would urge the Commission to make the appropriate edits to reflect those comments.

43-02-03-29.1.3 Notification

Hess agrees with and endorses the comments from NDPC on section 43-02-03-29.1.3, and would urge the Commission to make the appropriate edits to reflect those comments.

Comment: NDIC should clarify the definition of the “start of construction consistent with other pipeline regulations.”

NDIC should clarify that the notice to the Commission referenced in Subsection 3.a is intended to be a verbal notification only and not subject to approval by the Commission.

NDIC should clarify the definition of the terms “associated pipeline facilities and above ground equipment” and “environmentally sensitive area”.

Hess is concerned with the vague language on contractor qualifications in Subsection 3.a (1)(d) and being able to provide individual contractor employee qualifications and competency documentation within the 7 day notification documents package. How will the NDIC benchmark the qualifications required?

Hess requests clarification on subsection 3.b. It is unclear what is meant by “out of service”. The Commission should clarify whether this is meant to address “abandoned”, not yet in service, or merely not flowing for some period of time. It is also unclear what constitutes a “portion” of an underground gathering pipeline, and no consideration has been taken for a line that is part of an active system and has pressure monitoring.

Hess recommends striking Subsection 3.c , but if it is retained, the period of time should be changed to within 24 hours and verbal notification would be allowed.

43-02-03-29.1.4 Design and construction

Hess agrees with and endorses the comments from NDPC on section 43-02-03-29.1.4, and would urge the Commission to make the appropriate edits to reflect those comments.

Comment: In 4.d, the phrase “...tracer wire shall be buried with any nonconductive pipe installed.” appears to be intended as a separate, stand-alone requirement. Hess proposes that this requirement, if retained, be included as a separate subsection...

Subsection 4.g. requires an inspection of all pipe and components before installation. Will documentation of the inspection be required?

For Subsection 4.k(1), The NDIC should provide an explanation and justification the requirement for a registered surveyor or strike the requirement.

For Subsection 4.k(5), The NDIC should explain why the location of the proposed drilling mud pit is required or strike this requirement. These locations are not typically shown on plats.

43-02-03-29.1.5 Pipeline right-of-way

Hess agrees with and endorses the comments from NDPC on section 43-02-03-29.1.5, and urges the Commission to make the appropriate edits to reflect those comments.

Comment: For Subsection 5.a “topsoil” is defined within this section. The NDIC should incorporate the definition of “topsoil” into 43-02-03-01 Definitions as it is referenced in both 43-02-03-29.1.5 and 43-02-03-19.

Suggested language: ...All stakes, construction markers, cables, ropes, skids, and any other debris or material not native to the area must be removed from the right-of-way and lawfully disposed of within 30 day of completion of construction. Permanent pipeline markers should be set as necessary for safe operations...

43-02-03-29.1.6 Inspection

Hess agrees with and endorses the comments from NDPC on section 43-02-03-29.1.6, and urges the Commission to make the appropriate edits to reflect those comments.

43-02-03-29.1.7 Associated pipeline facility

Hess agrees with and endorses the comments from NDPC on section 43-02-03-29.1.7, and urges the Commission to make the appropriate edits to reflect those comments.

Comment: The NDIC should clarify the process that would be employed if the owner and commission disagree on permitting installation within 500’.

43-02-03-29.1.8 Underground gathering pipeline as built

Hess agrees with and endorses the comments from NDPC on section 43-02-03-29.1.8, and would urge the Commission to make the appropriate edits to reflect those comments.

43-02-03-29.1.9 Operating requirements

Hess agrees with and endorses the comments from NDPC on section 43-02-03-29.1.9, and would urge the Commission to make the appropriate edits to reflect those comments.

43-02-03-29.1.10 Leak detection and monitoring

Hess agrees with and endorses the comments from NDPC on section 43-02-03-29.1.10, and would urge the Commission to make the appropriate edits to reflect those comments.

43-02-03-29.1.11 Spill response

Hess agrees with and endorses the comments from NDPC on section 43-02-03-29.1.11, and would urge the Commission to make the appropriate edits to reflect those comments.

43-02-03-29.1.12 Corrosion Control

Hess agrees with and endorses the comments from NDPC on section 43-02-03-29.1.12, and would urge the Commission to make the appropriate edits to reflect those comments.

02-03-29.1.13 Pipeline integrity

Hess agrees with and endorses the comments from NDPC on section 43-02-03-29.1.13, and would urge the Commission to make the appropriate edits to reflect those comments.

Comment: NDIC should clearly define the term “pressure test” and set clear guidance for compliance while allowing operational flexibility. There are various methods of pressure testing, therefore NDIC should provide flexibility as appropriate to accommodate various methodologies. For example, testing can be accomplished using service fluid which would not require shutting in the line. In addition, air or nitrogen testing can be performed and water can be used for pressure testing.

Additionally, Hess suggests striking subsection 13.a. Pressure testing is not typical for minor repairs such as installing a sleeve or grinding out a gouge

In subsection 13.c, The NDIC should consider and clarify whether this requirement is better placed as an obligation of the operator or the owner.

43-02-03-29.1.14 Pipeline repair

Hess agrees with and endorses the comments from NDPC on section 43-02-03-29.1.14, and would urge the Commission to make the appropriate edits to reflect those comments.

Comment: Hess cautions that the terms “owner” and “operator” should be used deliberately and should not be interchanged. Therefore, Hess proposes the following language change:

Suggested language: No ~~owner~~operator may use any pipe, valve, or fitting, for replacement in repairing an underground gathering pipeline, unless it is designed and constructed to meet ~~the pipeline manufacturer’s design specifications~~ maximum allowable pipeline pressure.

43-02-03-29.1.15 Pipeline abandonment

Hess agrees with and endorses the comments from NDPC on section 43-02-03-29.1.15, and urges the Commission to make the appropriate edits to reflect those comments.

43-02-03-30 Notification of Fires, Leaks, Spills or Blowouts

Hess agrees with and endorses the comments from NDPC on section 43-02-03-30, and urges the Commission to make the appropriate edits to reflect those comments.

Comment: The proposed language changes are unclear, including the terms “receptacle” and “facility associated with oil, gas or water production, injection, processing or well servicing”. This term is overly broad and could be interpreted to include field offices. In addition, fresh water wells should be excluded and “well servicing” is undefined. Hess proposes the following language modification:

Suggested Language:

“...or any - facility oil, gas and associated produced water, injection or processing facility, shall verbally notify the director immediately...”

43-02-03-34.1.2 Reclamation of Surface

Comment: The term “appurtenances” should be either clarified or defined within section 43-02-03-01 Definitions.

43-02-03-40 Gas-Oil Ratio Test

Comment: The NDIC should not include this clause within this regulatory section and should instead promulgate the regulatory changes through the Field Spacing Orders, as applicable. Hess’s proposal to remove this clause notwithstanding, if NDIC moves forward with this language, Hess recommends striking the term “significant”. The term is ambiguous, and may cause operators to continuously resubmit form 9 since the gas-oil ratio can continually increase up to the bubble point. In addition, GOR “tests” would result in well shut-downs. Performing measurements and metering would provide the necessary information. Additionally, given that the NDIC monitors production and should be responsible for requesting additional information based on their interpretation of field production information.

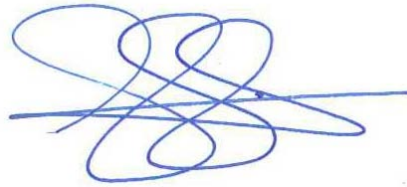
Suggested language: Each operator shall take a gas-oil ratio test within thirty days following the completion or recompletion of an oil well. Each test shall be conducted using standard industry practices unless otherwise specified by the director. The initial gas-oil ratio must be reported on the well completion or recompletion report (form 6). Subsequent gas-oil ratio tests-measurements shall be performed on producing wells through metering when the producing pool appears to have reached bubble point or there is a significant change, as requested by Director. After the discovery of a new pool, each operator shall make additional gas-oil ratio tests as directed by the director or provided for in field rules. During tests each well shall be produced at a maximum efficient rate. The director may shut in any

well for failure to make such test until such time as a satisfactory test can be made, or satisfactory explanation given. The results of all gas-oil ratio tests shall be submitted to the director on form 9, which shall be accompanied by a statement that the data on form 9 is true and correct.

Conclusion

Hess recognizes that NDIC has invested significant efforts in preparation of these proposed rules and appreciates the opportunity to comment. For all the reasons detailed in this comment letter, Hess strongly urges NDIC reevaluate and revise these rules based on the comments submitted. The prescriptive nature of many of these rules does not allow for flexibility by industry to meet the intended environmental, health and safety goals through practices that have already been implemented or are currently under evaluation and development. For those rules where significant comments have been made, Hess recommends continued engagement with industry over the next several months and deferral until the 2017 legislative session.

Respectfully submitted,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Gerbert Schoonman
Vice President, Bakken Operations
Hess Corporation

Kadrmass, Bethany R.

From: Grant.Slick@AE2S.com
Sent: Monday, April 25, 2016 4:19 PM
To: Hicks, Bruce E.
Cc: Andrea.Boe@AE2S.com; Matt.Odegard@AE2S.com; Sanford.Case@AE2S.com
Subject: Written Comments for NDAC 43-02-03 Proposed Modifications
Attachments: AE2S Industrial Comments NDAC Gathering Pipeline Modifications.pdf

Bruce,

Please find attached written comments for the proposed modifications to NDAC 32-02-03.

Please feel free to direct any addition questions or clarifications to my attention. Thank you for the opportunity to provide input.

Regards,

Grant Slick, P.E.
General Manager
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April 25, 2016

Bruce Hicks, Assistant Director
NDIC Department of Mineral Resources, Oil and Gas Division
600 E. Boulevard Ave.
Bismarck, ND 58505

**RE: *Written comments on proposed amendments and additions to
NDAC Chapter 43-02-03, Chapter 43-02-05, and Chapter 43-02-08***

Dear Mr. Hicks:

Thank you for the opportunity to provide comments on the proposed Administrative Rules changes. AE2S and its associated entities provide engineering, construction, and operation services of freshwater and produced water systems for the oil and gas industry among many other services for private and public entities. Additionally, our company has also responded to produced water spills, containment, and cleanup.

We understand the need for and support the efforts of the State to create safe perimeters for water management in the oil industry. By and large, our firm already abides by the majority of the proposed rules suggested for implementation. However, there are some proposed rules that leave room for interpretation, are unclear, or exceed, what seem to be, reasonable measures of safety which can ultimately affect the financial viability of the very infrastructure the State is trying support.

Please consider the following comments on the proposed rules:

43-02-03-29.1. Underground Gathering Pipelines

Comment: This section seems to expand greatly on the intended purposed of HB 1358. AE2S companies participated in the EERC study to provide our real life experiences and continue to lend out expertise to this area. Through this expertise, we feel that there may be topics in the subsections to clarify or reconsider including the following:

43-02-03-29.1.3 Notification

Subsection a.(1): In all practicality, the owner or design/builder will not be able to provide all the data at the level of detail requested in this section prior to commencing new construction. Often, routes change due to unforeseen landowner issues, change in serving more or less well pads, environmental issues, etc. Of special concern is subsection a.(1).(c).viii which states that all environmentally sensitives areas will include a proposed plan for horizontal directional drilling. "Environmentally sensitive" is a broad term and a asking for a plan prior to construction is difficult. We suggest striking this statement and consider creating a simple **draft** form for notification of pipeline construction with more minimal information that an owner or design/builder can update after construction is completed.

43-02-03-29.1.4 Design and Construction

Subsection b.: There are two issues with this subsection including defining what “newly constructed” refers to in terms of a date. The more important issue is that the text is very unclear when it refers to allowance for periodic line cleaning. Does this mean that the line must be “piggable” or is a “flush plan” acceptable. Construction of pig launching and receiving facilities at every line size transition will substantially increase the amount of above ground facilities, land owner impacts, and system costs.

Subsection e: In the second paragraph, there is language that reads the width of the trench must provide a minimum of 6 inches of clearance on each side of the pipe. If this rule is instituted, it essentially eliminates the possibility of using “plowing” which is a very common technique of installing pipeline that reduces impacts to land and reduces construction costs.

Subsection f: In regards that all graded roads must be bored if a pipeline is to cross is too broad of a statement. We suggest this be the requirement if crossing county, state, or township roads if not otherwise granted by the governing agency.

Subsection k: This entire section has the ability to create inconsistent designs, undue administrative costs, and loss of flexibility during construction. The first sentence includes language that notes any underground gathering pipeline that traverses environmentally sensitive areas shall have a horizontal directional drilling plan. The connotation of “environmentally sensitive” is somewhat ambiguous as what may be a sensitive wetland/wet area one year may not constitute a designated environmentally sensitive area the next year.

Also, during construction, decisions are made to alter pipeline paths due to additional well pad or reduced well pad connections, landowner easements, right of way, and other items that can occur throughout the process. This level of design detail is not justified for a vast majority of bores on a project and makes it difficult to add or modify bores in the field.

43-02-03-29.1.7 Associated Pipeline Facility

The first paragraph notes that no associated pipeline facilities and above ground equipment shall be installed less than five hundred feet from an occupied dwelling.... It is unclear if this applies to minor facilities such as gate valves, etc.

43-02-03-29.1.10 Leak Detection and Monitoring

In the last paragraph in this section there is language pertaining to “real-time” shared access to data between operator of the production facility, the crude oil or produced water gathering pipeline owner, and the operator at the point or points of disposal, storage, or sale. Real time shared data access may not be a possibility do to security procedures, software incompatibilities, and operator specific proprietary information. Well pads are typically brought on-line in advance of the operators



communications system infrastructure and it is not always feasible to install temporary communications facilities. Real time language should be reworded to include a grace period of a certain amount of time.

43-02-03-29.1.12 Corrosion Control

Section b: This section notes that all metallic underground gathering pipelines installed must have sufficient corrosion control. This statement is broad and without parameters. We would suggest using PHMSA's requirements as it pertains to this section.

43-02-03-29.1.13 Pipeline Integrity

Section c: This subsection mentions that pipeline integrity can be demonstrated through "periodic" pressure testing. Periodic needs a defined timeline. We would suggest annual testing.

43-02-03-29.1.14 Pipeline Repair

Section a: This subsection notes that at least 48-hours prior to any underground gathering pipeline repair or replacement, the underground gathering pipeline owner must notify the commission, as provided by the direct. This would be impossible when responding to emergency repairs and, thus, wording to exclude emergency repairs from this requirement should be included in the section.

The above text concludes our comments on the proposed Administrative Rules changes. Again, thank you for the opportunity to provide our comments and perspective. Please feel free to contact us if further explanation is needed.

Sincerely,

AE2S Industrial, LLC

A handwritten signature in black ink, appearing to read 'Grant Slick', is written over a horizontal line.

Grant Slick, PE
General Manager

Kadrmass, Bethany R.

From: Laura Erickson <Laura.Erickson@cardno.com>
Sent: Monday, April 25, 2016 4:32 PM
To: Hicks, Bruce E.; Bohrer, Mark F.; Connors, Kevin C.; Helms, Lynn D.
Cc: Reice Haase
Subject: Cardno comments on proposed NDAC rule changes
Attachments: Cardno Comments to NDIC Proposed Rule Changes_SUBMITTAL.pdf

Good afternoon gentlemen,

Please find attached Cardno's comments on the proposed amendments and additions to North Dakota Administrative Code (NDAC) Chapters 43-02-03, 43-02-05, and 43-02-08.

Let me know if you have any questions or need clarification on specific comments we've made.

Thanks for the opportunity to be a part of the rulemaking process.

Have a great week!

LE

Laura Erickson

ENVIRONMENTAL SERVICES CLIENT LEAD
NATURAL RESOURCES & HEALTH SCIENCES DIVISION
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April 25, 2016

Mr. Bruce Hicks
Assistant Director
Oil and Gas Division
North Dakota Industrial Commission
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Bismarck, ND 58505-0840

Cardno, Inc.

1007 24th Street West,
Suite 2
Williston, ND 58801
USA

Tel. 701.572.1455
www.cardno.com

REF: Comments related to proposed amendments and additions to North Dakota Administrative Code (NDAC) Chapter 43-02-03 (Oil & Gas), Chapter 43-02-05 (Underground Injection Control), and Chapter 43-02-08 (Stripper Well Property Determination)

Dear Mr. Hicks,

Cardno, Inc. (Cardno) respectfully submits written comments in response to the proposed amendments and additions to the aforementioned chapters of the North Dakota Administrative Code.

As providers of regulatory, engineering, and environmental services to oil and gas producers and waste management companies who operate treating plants and salt water disposals, we have a number of recommendations to suggest as part of this rule-making. Our comments have been added as red strikeouts, callouts, or textboxes to the file downloaded from the Oil and Gas Division website. Should you have any questions or require clarification of specific comments, please feel free to contact me directly at 701-571-8636.

Sincerely,



Laura Erickson
Environmental Services Client Lead
Cardno, Inc.



GENERAL RULES AND REGULATIONS

CHAPTER 43-02-03

43-02-03-01. DEFINITIONS. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-08 except:

1. "Adjusted allowable" means the allowable production a proration unit receives after all adjustments are applied.
2. "Allocated pool" is one in which the total oil or natural gas production is restricted and allocated to various proration units therein in accordance with proration schedules.
3. "Allowable production" means that number of barrels of oil or cubic feet of natural gas authorized to be produced from the respective proration units in an allocated pool.
4. "Barrel" means forty-two United States gallons [158.99 liters] measured at sixty degrees Fahrenheit [15.56 degrees Celsius] and fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter].
5. "Barrel of oil" means forty-two United States gallons [158.99 liters] of oil after deductions for the full amount of basic sediment, water, and other impurities present, ascertained by centrifugal or other recognized and customary test.
6. "Bottom hole or subsurface pressure" means the pressure in pounds per square inch gauge under conditions existing at or near the producing horizon.
7. "Bradenhead gas well" means any well capable of producing gas through wellhead connections from a gas reservoir which has been successfully cased off from an underlying oil or gas reservoir.
8. "Casinghead gas" means any gas or vapor, or both gas and vapor, indigenous to and produced from a pool classified as an oil pool by the commission.
9. "Certified or registered mail" means any form of service by the United States postal service, federal express, Pitney Bowes, and any other commercial, nationwide delivery service that provides the delivery or refusal to accept delivery.

Recommend insertion of definition for
"commercial disposal well" to this section from
43-02-05-11. BONDING REQUIREMENTS
10. "Common purchaser for natural gas" means any person now or hereafter engaged in purchasing, from one or more producers, gas produced from gas wells within each common source of supply from which it purchases, for processing or resale.
11. "Common purchaser for oil" means every person now engaged or hereafter engaging in the business of purchasing oil in this state.

12. "Common source of supply" is synonymous with pool and is a common accumulation of oil or gas, or both, as defined by commission orders.
13. "Completion" means an oil well shall be considered completed when the first oil is produced through wellhead equipment into tanks from the ultimate producing interval after casing has been run. A gas well shall be considered complete when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after casing has been run. A dry hole shall be considered complete when all provisions of plugging are complied with as set out in this chapter.
14. "Condensate" means the liquid hydrocarbons recovered at the surface that result from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.
15. "Cubic foot of gas" means that volume of gas contained in one cubic foot [28.32 liters] of space and computed at a pressure of fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter] at a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius].
16. "Director" means the director of oil and gas of the industrial commission, the assistant director of oil and gas of the industrial commission, and their designated representatives.
17. "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool, which artificial means or application includes pressuring, cycling, pressure maintenance, or injection to the pool of a substance or form of energy but does not include the injection in a well of a substance or form of energy for the sole purpose of
 - a. Aiding in the lifting of fluids in the well; or
 - b. Stimulation of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.
18. "Exception well location" means a location which does not conform to the general spacing requirements established by the rules or orders of the commission but which has been specifically approved by the commission.
19. "Gas lift" means any method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.
20. "Gas-oil ratio" means the ratio of the gas produced in cubic feet to a barrel of oil concurrently produced during any stated period.
21. "Gas-oil ratio adjustment" means the reduction in allowable of a high gas-oil ratio proration unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.

Recommend replacing "interested party" with "affected party" which has been defined in other states as "a [party] who has suffered or will suffer actual injury or economic damage other than as a member of the general public or as a competitor, and includes surface owners of property on which the [facility] is located and operators of wells located within [x distance] of the proposed [facility]."

22. "Gas wells for the transportation of natural gas, or some other device or equipment in like operation whereby natural gas produced from gas wells connected therewith can be transported.
23. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the commission.
24. "High gas-oil ratio proration unit" means a proration unit with a producing oil well with a gas-oil ratio in excess of the limiting gas-oil ratio for the pool.
25. "Interested party" means an individual or number of individuals that have a property ownership or management interest in or adjacent to the subject matter.
- ~~25-26.~~ "Injection or input well" means any well used for the injection of air, gas, water, or other fluids into any underground stratum.
- ~~26-27.~~ "Limiting gas-oil ratio" means the gas-oil ratio assigned by the commission to a particular oil pool to limit the volumes of casinghead gas which may be produced from the various oil-producing units within that particular pool.
- ~~27-28.~~ "Log or well log" means a systematic, detailed, and correct record of formations encountered in the drilling of a well, including commercial electric logs, radioactive logs, dip meter logs, and other related logs.
- ~~28-29.~~ "Multiple completion" means the completion of any well so as to permit the production from more than one common source of supply.
- ~~29-30.~~ "Natural gas or gas" means and includes all natural gas and all other fluid hydrocarbons not herein defined as oil.
- ~~30-31.~~ "Occupied dwelling" or "permanently occupied dwelling" means a residence which is lived in by a person at least six months throughout a calendar year.
- ~~31-32.~~ "Official gas-oil ratio test" means the periodic gas-oil ratio test made by order of the commission and by such method and means and in such manner as prescribed by the commission.
- ~~32-33.~~ "Offset" means a well drilled on a forty-acre [16.19-hectare] tract cornering or contiguous to a forty-acre [16.19-hectare] tract having an existing oil well, or a well drilled on a one hundred sixty-acre [64.75-hectare] tract cornering or contiguous to a one hundred sixty-acre [64.75-hectare] tract having an existing gas well; provided, however, that for wells subject to a fieldwide spacing order, "offset" means any wells located on spacing units cornering or contiguous to the spacing unit or well which is the subject of an inquiry or a hearing.

~~33.~~34. "Oil well" means any well capable of producing oil or oil and casinghead gas from a common source of supply as determined by the commission.

~~34.~~35. "Operator" is the principal on the bond covering a well and such person shall be responsible for drilling, completion, and operation of the well, including plugging and reclamation of the well site.

~~35.~~36. "Overage or overproduction" means the amount of oil or the amount of natural gas produced during a proration period in excess of the amount authorized on the proration schedule.

~~36.~~37. "Potential" means the properly determined capacity of a well to produce oil, or gas, or both, under conditions prescribed by the commission.

~~37.~~38. "Pressure maintenance" means the injection of gas or other fluid into a reservoir, either to increase or maintain the existing pressure in such reservoir or to retard the natural decline in the reservoir pressure.

~~38.~~39. "Proration day" consists of twenty-four consecutive hours which shall begin at seven a.m. and end at seven a.m. on the following day.

~~39.~~40. "Proration month" means the calendar month which shall begin at seven a.m. on the first day of such month and end at seven a.m. on the first day of the next succeeding month.

~~40.~~41. "Proration schedule" means the periodic order of the commission authorizing the production, purchase, and transportation of oil or of natural gas from the various units of oil or of natural gas.

~~41.~~42. "Proration unit for gas" means the unit of production as determined by special pool rules issued by the commission.

~~42.~~43. "Recomplete" means the subsequent completion of a well in a reservoir.

~~43.~~44. "Reservoir" means pool or common source of supply.

~~44.~~45. "Saltwater handling facility" means and includes any container ~~such as a pit, tank, or pool, whether covered or uncovered, and site used for the handling, storage, disposal of deleterious substances~~ obtained, or used, in connection with the drilling or operation of wells oil and gas exploration and development.

~~45.~~46. "Shut-in pressure" means the pressure in a well when the well is completely shut in, not to be confused with the pressure in a well when the well is producing.

~~46.~~47. "Spacing unit" is the area in a reservoir which is capable of producing, and proration purposes in accordance with the commission's rules or orders.

Does "salt water handling facility" apply to only "commercial" operators? Please specify if this definition is all-encompassing or only for commercial ops.

recommend insert...."used... as an 'interim' or 'intermediate' gathering point" for the handling.....

Strongly recommend replacing the phrase "deleterious substances" with "Authorized Class II fluids, including non-hazardous exploration and production waste other than produced water."

~~47-48.~~ "Stratigraphic test well" means any well or hole, except a seismograph shot hole, drilled for the purpose of gathering information in connection with the oil and gas industry with no intent to produce oil or gas from such well.

~~48-49.~~ "Tank bottoms" means that accumulation of hydrocarbon material and other substances which settle naturally below crude oil in tanks and receptacles that are used in handling and storing of crude oil, and which accumulation contains basic sediment and water in an amount rendering it unsaleable to an ordinary crude oil purchaser; provided, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet thereto.

~~49-50.~~ "Treating plant" means any plant permanently constructed or portable used for the purpose of wholly or partially reclaiming, treating, processing, or recycling tank bottoms, waste oils, drilling mud, waste from drilling operations, produced water, and other wastes related to crude oil and natural gas exploration and production. This is not to be construed as to include saltwater handling and disposal operations which typically recover skim oil from their operations, treating mud or cuttings at a well site during drilling operations, or treating flowback water during completion operations at a well site.

History: Amended effective January 1, 1983; May 1, 1992; July 1, 1996; December 1, 1996; September 1, 2000; July 1, 2002; January 1, 2008; April 1, 2014; ____.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-11. ORGANIZATION REPORTS. Every person acting as principal or agent for another or independently engaged in the drilling of oil or gas wells, or in the production, storage, transportation, refining, reclaiming, treating, marketing, or processing of crude oil or natural gas, engaged in the disposal of produced water, ~~or~~ engaged in treating plant operations, or engaged in underground gathering pipeline operations in North Dakota shall immediately file with the director the name under which such business is being conducted or operated; and name and post-office address of such person, the business or businesses in which the person is engaged; the plan of organization, and in case of a corporation, the law under which it is chartered; and the names and post-office addresses of any person acting as trustee, together with the names and post-office addresses of any officials thereof on an organization report (form 2). In each case where such business is conducted under an assumed name, such organization report shall show the names and post-office addresses of all owners in addition to the other information required. A new organization report shall be filed when and if there is a change in any of the information contained in the original report.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; April 1, 2014; ____.

43-02-03-14. ACCESS TO RECORDS. The commission, director, and their representatives shall have access to all well records wherever located. All owners, operators, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, producing, operation, or servicing oil and gas wells, underground gathering pipelines, injection wells, or treating plants shall permit the commission, director, and their representatives to come upon any lease, property, pipeline right-of-way, well, or drilling rig operated or controlled by them, complying with state safety rules and to inspect the records and operation of such wells, and to have access at all times to any and all records of wells. If requested, copies of such records must be filed with the commission. The confidentiality of any data submitted which is confidential pursuant to subsection 6 of North Dakota Century Code section 38-08-04 and section 43-02-03-31 must be maintained.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; April 1, 2014; ____.

Change "wells" to
"facilities."

Seems redundant across
jurisdictions, as source wells
are permitted through SWC.

43-02-03-15. BOND AND TRANSFER OF WELLS.

1. Bond requirements. Prior to commencing drilling operations, any person who proposes to drill a well for oil, gas, ~~or~~ injection, or source well for use in enhanced recovery operations, shall submit to the commission, and obtain its approval, a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of such well shall be the principal on the bond covering the well. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.
2. Bond amounts and limitations. The bond shall be in the amount of fifty thousand dollars when applicable to one well only. Wells drilled to a total depth of less than two thousand feet [609.6 meters] may be bonded in a lesser amount if approved by the director. When the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, the principal may submit a bond conditioned as provided by law. Wells utilized for commercial disposal operations must be bonded in the amount of fifty thousand dollars. A blanket bond covering more than one well shall be in the amount of one hundred thousand dollars, provided the bond shall be limited to no more than six of the following in aggregate:
 - a. A well that is a dry hole and is not properly plugged;
 - b. A well that is plugged and the site is not properly reclaimed; and

- c. A well that is abandoned pursuant to subsection 1 of North Dakota Century Code section 38-08-04 or section 43-02-03-55 and is not properly plugged and the site is not properly reclaimed.

If this aggregate of wells is reached, all well permits, for which drilling has not commenced, held by the principal of such bond are suspended. No rights may be exercised under the permits until the aggregate of wells drops below the required limit, or the operator files the appropriate bond to cover the permits, at which time the rights given by the drilling permits are reinstated. A well with an approved temporary abandoned status shall have the same status as an oil, gas, or injection well. The commission may, after notice and hearing, require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the economic value of the well or wells and the expected cost of plugging and well site reclamation, as determined by the commission. The commission may refuse to accept a bond or to add wells to a blanket bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of wells; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

3. Unit bond requirements. Prior to commencing unit operations, the operator of any area under unitized management shall submit to the commission, and obtain its approval, a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of the unit shall be the principal on the bond covering the unit. The amount of the bond shall be specified by the commission in the order approving the plan of unitization. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

Prior to transfer of a unit to a new operator, the commission, after notice and hearing, may revise the bond amount for a unit, or in the case when the unit was not previously bonded, the commission may require a bond and set a bond amount for the unit.

4. Bond terms. Bonds shall be conditioned upon full compliance with North Dakota Century Code chapter 38-08, and all administrative rules and orders of the commission. It shall be a plugging bond, as well as a drilling bond, and is to endure up to and including approved plugging of all oil, gas, and injection wells as well as dry holes. Approved plugging shall also include practical reclamation of the well site and appurtenances thereto. If the principal or surety shall satisfy the conditions or for the bond.

5. Transfer of wells under bond. Transfer of property or other interest in the well from the bond covering the well, such as must proceed as follows:

use "all-inclusive" language to cover any facility transfer, not just wells, since this section describes the general process of site transfer and should apply to all facilities under NDIC jurisdiction, not just wells - OR - provide more specific transfer protocol for treating plants in Paragraph 6, and salt water handling facilities...

- a. The principal must notify the director, in writing, of all proposed transfers of wells at least thirty days before the closing date of the transfer. The director may, for good cause, waive this requirement.

The principal shall submit to the commission a form 15 reciting that a certain well, or wells, describing each well by quarter-quarter, section, township, and range, is to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form signed by a party duly authorized to sign on behalf of the principal.

On said transfer form the transferee shall recite the following: "The transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such well under the transferee's one-well bond or, as the case may be, does accept the responsibility of such wells under the transferee's blanket bond, said bond being tendered to or on file with the commission." Such acceptance must likewise be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.

- b. When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of plugging the well and site reclamation. If such wells include all the wells within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any well from a bond if the well is in violation of a statute, rule, or order.
 - c. The transferee (new operator) of any oil, gas, or injection well, shall be responsible for the plugging and site reclamation of any such well. For that purpose the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue and attach to such well. The original or prior bond shall not be released as to the plugging and reclamation responsibility of any such transferor until the transferee shall submit to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging and site reclamation of such wells is completed and approved.
6. Treating plant bond. Prior to the commencement of operations, any person proposing to operate a treating plant must submit to the commission and obtain its approval of a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the operation of the plant shall be the principal on the bond. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be as prescribed in section 43-02-03-51.3. It is to remain in force until the operations cease, all equipment is removed from the site, and the site and appurtenances thereto are reclaimed, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy

the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond. The director may refuse to transfer any treating plant from a bond if

Need clarification on what is meant by "appurtenance" here.

7. Saltwater handling facility bond. Prior to the commencement of operations, any person proposing to operate a saltwater handling facility, that is not already bonded as an appurtenance, must submit to the commission and obtain its approval of a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the operation of the saltwater handling facility shall be the principal on the bond. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be as prescribed in section 43-02-03-53.3. It is to remain in force until the operations cease, all equipment is removed from the site, and the site and appurtenances thereto are reclaimed, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond. Transfer of property does not release the bond. The director may refuse to transfer any saltwater handling facility from a bond if the saltwater handling facility is in violation of a statute, rule, or order.

Please clarify meaning of "appurtenance" here.

8. Crude oil and produced water underground gathering pipeline bond. The bonding requirements for crude oil and produced water underground gathering pipelines are not to be construed to be required on piping utilized to connect wells, tanks, treaters, flares, or other equipment on the production facility.
 - a. Any owner of an existing underground gathering pipeline transferring crude oil or produced water must submit to the commission and obtain its approval of a surety bond or cash bond prior to July 1, 2017. Any owner of a proposed underground gathering pipeline to transfer crude oil or produced water must submit to the commission and obtain its approval of a surety bond or cash bond prior to placing into service. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the operation of the crude oil or produced water underground gathering pipeline shall be the principal on the bond. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota. The bond shall be in the amount of fifty thousand dollars when applicable to one crude oil or produced water underground gathering pipeline system only. Such underground gathering pipelines that are less than one mile [1609.34 meters] in length may be bonded in a lesser amount if approved by the director. When the principal on the bond is operating multiple gathering pipeline systems within the state or proposes to do so, the principal may submit a blanket bond conditioned as provided by law. A blanket bond covering one or more underground gathering pipeline systems shall be in the amount of one hundred thousand dollars. The owner shall file with the director, as prescribed by the director, a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of all associated pipeline facilities and above ground equipment and the

pipeline centerline from the point of origin to the termination point of all underground gathering pipelines on the bond. Each layer shall include at least the following information:

- (1) The name of the pipeline gathering system and other separately named portions thereof;
- (2) The type of fluid transported;
- (3) The pipeline composition;
- (4) Burial depth; and
- (5) Approximate in-service date.

b. The blanket bond covering more than one underground gathering pipeline system shall be limited to no more than six of the following in aggregate:

- (1) Any portion of an underground gathering pipeline system that has been out of service for more than one year and is not properly abandoned pursuant to 43-02-03-29.1; and
- (2) An underground gathering pipeline right-of-way, including associated pipeline facility and above ground equipment, that have not been properly reclaimed pursuant to 43-02-03-29.1.

recommend insertion of "...is physically isolated from the system,..."

If this aggregate of underground gathering pipeline systems is reached, the commission may refuse to accept additional pipeline systems on the bond until the aggregate is brought back into compliance. The commission may, after notice and hearing, require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the economic value of the underground gathering pipeline system and the expected cost of pipeline abandonment and right-of-way reclamation, as determined by the commission. The commission may refuse to accept a bond or to add underground gathering pipeline systems to a blanket bond if the owner or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of gathering pipelines; if a civil or administrative action brought by the pending against the owner or surety company; if an underground gathering pipeline system has exhibited multiple failures; or for other good cause.

What constitutes a failure: any spill, any volume?

Including operator, third party, etc?

c. The underground gathering pipeline bond is to remain in force until the pipeline has been abandoned as provided in section 43-02-03-29.1, and the right-of-way, including all associated pipeline facilities and above ground equipment, have been reclaimed as provided in section 43-02-03-29.1, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.

d. Transfer of underground gathering pipelines under bond. Transfer of property does not release the bond. In case of transfer of property or other interest in the underground gathering pipeline and the principal desires to be released from the bond covering the underground gathering pipeline, the principal must proceed as follows:

- (1) The principal must notify the director, in writing, of all proposed transfers of underground gathering pipelines at least thirty days before the closing date of the transfer. The director may, for good cause, waive this requirement.

Notice of underground gathering pipeline transfer. The principal shall submit, as provided by the director, a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of all associated pipeline facilities and above ground equipment and the pipeline centerline from the point of origin to the termination point of all underground gathering pipelines to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form

15pl signed by a party duly authorized to sign on behalf of the principal.

Could end up with several Forms 15 (TP, PL, SHF) - NDIC may consider combining all into one form with checkbox indicated type of facility being transferred.

The notice of underground gathering pipeline transfer shall recite the following: "The transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such underground gathering pipelines under the transferee's pipeline bond or, as the case may be, does accept the responsibility of such underground gathering pipelines under the transferee's pipeline systems blanket bond, said bond being tendered to or on file with the commission." Such acceptance must likewise be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.

- (2) When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of abandoning the underground gathering pipelines and right-of-way reclamation. If such underground gathering pipelines include all underground gathering pipeline systems within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any underground gathering pipeline from a bond if the underground gathering pipeline is in violation of a statute, rule, or order.

- (3) The transferee (new owner) of any underground gathering pipeline shall be responsible for the abandonment and right-of-way reclamation of any such underground gathering pipeline. For that purpose the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of

the surety of the original or prior bond that the latter's responsibility shall continue and attach to such underground gathering pipeline. The original or prior bond shall not be released as to the abandonment and right-of-way reclamation responsibility of any such transferor until the transferee shall submit to the commission an acceptable bond to cover such underground gathering pipeline. All liability on bonds shall continue until the abandonment and right-of-way reclamation of such underground gathering pipeline is completed and approved by the director.

~~7.9.~~ Bond termination. The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging and reclamation is approved. If approved, liability under such bond may be formally terminated upon receipt of a written request by the principal. The request must be signed by an officer of the principal or a person authorized to sign for the principal.

~~8.10.~~ Director's authority. The director is vested with the power to act for the commission as to all matters within this section, except requests for alternative forms of security, which may only be approved by the commission.

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; December 1, 1996; September 1, 2000; July 1, 2002; May 1, 2004; January 1, 2006; April 1, 2012; April 1, 2014; ____.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-16. APPLICATION FOR PERMIT TO DRILL AND RECOMPLETE.

Before any person shall begin any well-site preparation for the drilling of any well other than surveying and staking, such person shall file an application for permit to drill (form 1) with the director, together with a permit fee of one hundred dollars. Verbal approval may be given for site preparation by the director in extenuating circumstances. No drilling activity shall commence until such application is approved and a permit to drill is issued by the director. The application must be accompanied by the bond pursuant to section 43-02-03-15 or the applicant must have previously filed such bond with the commission, otherwise the application is incomplete. An incomplete application received by the commission has no standing and will not be deemed filed until it is completed.

The application for permit to drill shall be accompanied by an accurate plat certified by a registered surveyor showing the location of the proposed well with reference to true north and the nearest lines of a governmental section, the latitude and longitude of the proposed well location to the nearest tenth of a second, the ground elevation, ~~confirmation that a legal street address has been requested for the well site, and well facility if separate from the well site,~~ and the proposed road access to the nearest existing public road. Information to be included in such application shall be the proposed depth to which the well will be drilled, estimated depth to the top of important markers, estimated depth to the top of objective horizons, the proposed mud program, the proposed casing program, including size and weight thereof, the depth at which each casing

string is to be set, the proposed pad layout, including cut and fill diagrams, and the proposed amount of cement to be used, including the estimated top of cement.

For wells permitted on new pads built after July 31, 2013, permit conditions imposed by the commission may include, upon request of the owner of a permanently occupied dwelling within one thousand feet of the proposed well, requiring the location of all flares, tanks, and treaters utilized in connection with the permitted well be located at a greater distance from the occupied dwelling than the ~~oil and gas~~ well head, if the location can be reasonably accommodated within the proposed pad location. If the facilities are proposed to be located farther from the dwelling than the well bore, the director can issue the permit without comment from the dwelling owner. The applicant shall give any such owners written notice of the proposed facilities personally or by certified mail, return receipt requested, and addressed to their last-known address listed with the county property tax department. The commission must receive written comments from such owner within five business days of the owner receiving said notice. An application for permit must include an affidavit from the applicant identifying each owner's name and address, and the date written notice was given to each owner. The owner's notice must include:

1. A copy of North Dakota Century Code section 38-08-05.
2. The name, telephone number, and if available the electronic mail address of the applicant's local representative.
3. A sketch of the area indicating the location of the owner's dwelling, the proposed well, and location of the proposed flare, tanks, and treaters.
4. A statement indicating that any such owner objecting to the location of the flare, tanks, or treaters, must notify the commission within five business days of receiving the notice.

Prior to the commencement of recompletion operations or drilling horizontally in the existing pool, an application for permit shall be filed with the director. Included in such application shall be the notice of intention (form 4) to reenter a well by drilling horizontally, deepening, or plugging back to any source of supply other than the producing horizon in an existing well. Such notice shall include the name and file number and exact location of the well, the approximate date operations will begin, the proposed procedure, the estimated completed total depth, the anticipated hydrogen sulfide content in produced gas from the proposed source of supply, the weight and grade of all casing currently installed in the well unless waived by the director, the casing program to be followed, and the original total depth with a permit fee of fifty dollars. The director may deny any application if it is determined, in accordance with the latest version of ANSI/NACE MR0175/ISO 15156, that the casing currently installed in the well would be subject to sulfide stress cracking.

The applicant shall provide all information, in addition to that specifically required by this section, if requested by the director. The director may impose such terms and conditions on the permits issued under this section as the director deems necessary.

The director shall deny an application for a permit under this section if the proposal would cause, or tend to cause, waste or violate correlative rights. The director of oil and gas shall state in writing to the applicant the reason for the denial of the permit. The applicant may appeal the decision of the director to the commission.

A permit to drill automatically expires one year after the date it was issued, unless the well is drilling or has been drilled below surface casing. A permit to recompleate or to drill horizontally automatically expires one year after the date it was issued, unless such project has commenced.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; September 1, 2000; July 1, 2002; April 1, 2010; April 1, 2012; April 1, 2014; ____.

General Authority
NDCC 38-08-05

Law Implemented
NDCC 38-08-05

43-02-03-17. SIGN ON WELL OR FACILITY. Every well or facility associated with the production, transportation, purchasing, storage, treating or processing of oil, ~~and gas, and water~~ except plugged wells shall be identified by a sign. The sign shall be of durable construction and the lettering thereon shall be kept in a legible condition. The wells on each lease or property shall be numbered in nonrepetitive sequence, unless some other system of numbering was adopted by the owner prior to the adoption of this chapter. Each sign must show the facility name or well name and number (which shall be different or distinctive for each well or facility), the name of the operator, file or facility number (if applicable), and the location by quarter-quarter, section, township, and range. ~~For all wells and associated facilities, the sign shall also include the legal street address, if available.~~

~~Existing well identification signs that are otherwise in accord with this section except that well locations are shown by quarter section rather than quarter quarter section or show the permit number rather than the file number shall be allowed to remain.~~

History: Amended effective January 1, 1983; May 1, 1992; September 1, 2000; April 1, 2014; ____.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-19. SITE CONSTRUCTION. In the construction of a site, access road, and all associated facilities, the topsoil shall be removed, stockpiled, and stabilized or otherwise reserved for use when the area is reclaimed. "Topsoil" means the suitable plant growth material on the surface; however, in no event shall this be deemed to be more than the top ~~eight~~ twelve inches [~~20.32~~30.48 centimeters] of soil or deeper than the depth of cultivation, whichever is greater. Soil stabilization ~~additives~~ materials, liners, fabrics, and other materials to be used onsite, on access roads or associated facilities, must be reported on a sundry notice (form 4) to

This sentence could be removed if it is incorporated into the secondary containment language in other sections of the code.

the director within thirty days after application. The reclamation plan for such materials shall also be included.

When necessary to prevent pollution of the land surface and freshwaters, the director may require the site to be sloped and diked.

Well and facility sites ~~and associated facilities~~ shall not be located in, or hazardously near, bodies of water, nor shall they block natural drainages. Sites and associated facilities shall be designed to divert surface drainage from entering the site.

Well and facility sites ~~and associated facilities~~ or appropriate parts thereof shall be fenced if required by the director.

Within six months after the completion of a well or construction of a facility, the portion of the ~~well~~ site not used for ~~well~~ operations shall be reclaimed, unless waived by the director. Operators shall file a sundry notice (form 4) detailing the work that was performed and a current site diagram, which identifies the stockpiled topsoil location and thickness. Well and facility sites ~~and all associated facilities~~ shall be stabilized to prevent erosion.

Recommend specifying NDIC-preferred units (inches, since 12" is referenced in other portions of the rule with regard to topsoil stockpile)

History: Amended effective May 1, 1992; July 1, 2002; January 1, 2008; April 1, 2010; April 1, 2012

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-19.3. EARTHEN PITS AND OPEN RECEPTACLES. Except as otherwise provided in sections 43-02-03-19.4 and 43-02-03-19.5, no saltwater, drilling mud, crude oil, waste oil, or other waste shall be stored in earthen pits or open receptacles except in an emergency and upon approval by the director.

A lined earthen pit or open receptacle may be temporarily used to retain oil, water, cement, solids, or fluids generated in well ~~completion, servicing, or plugging~~ operations. A pit or receptacle used for this purpose must be sufficiently impermeable to provide adequate temporary containment of the oil, water, or fluids. The contents of the pit or receptacle must be removed within seventy-two hours after operations have ceased and must be disposed of at an authorized facility in accordance with section 43-02-03-19.2. Within thirty days after operations have ceased, the earthen pit shall be reclaimed and the open receptacle shall be removed. The director may grant an extension of the thirty-day time period to no more than one year for good reason.

The director may permit pits or receptacles used solely for the purpose of flaring casinghead gas. A pit or receptacle used for this purpose must be sufficiently impermeable to provide adequate temporary containment of fluids. Permission for such pit or receptacle shall be conditioned on locating the pit not less than one hundred fifty feet [45.72 meters] from the vicinity of wells and tanks and keeping it free of any saltwater, crude oil, waste oil, or other waste. Saltwater, drilling mud, crude oil, waste oil, or other waste shall be removed from the pit or receptacle within

twenty-four hours after being discovered and must be disposed of at an authorized facility in accordance with section 43-02-03-19.2.

The director may permit pits used solely for storage of freshwater used in completion and well servicing operations. Permits for freshwater pits shall be valid for a period of one year but may be reauthorized upon application. Freshwater pits shall be lined and no pit constructed for this purpose shall be wholly or partially constructed in fill dirt unless approved by the director. The director may approve chemical treatment to municipal drinking water standards upon application.

The freshwater pit shall have signage on all sides accessible to vehicular traffic clearly identifying the usage as freshwater only.

The director may permit portable-collapsible receptacles used solely for storage of fluids used in completion and well servicing operations although no flowback fluids shall be allowed. Permits for such receptacles shall be valid for a period of one year but may be reauthorized upon application. Such receptacles must utilize a sealed inner bladder, erected to conform to American petroleum institute standards and shall not be wholly or partially constructed on fill dirt unless approved by the director. Such receptacles shall have signage on all sides accessible to vehicular traffic clearly identifying the fluid contained within.

History: Effective September 1, 2000; amended effective April 1, 2010; April 1, 2012; ____.

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43-02-03-28. SAFETY REGULATION. During drilling operations all oil wells shall be cleaned into a pit or tank, not less than forty feet [12.19 meters] from the derrick floor and one hundred fifty feet [45.72 meters] from any fire hazard.

All flowing oil wells must be produced through an approved oil and gas separator or emulsion treater of ample capacity and in good working order. No boiler, electric generator, or treater shall be placed nearer than one hundred fifty feet [45.72 meters] to any producing well or oil tank. Placement as close as one hundred twenty-five feet [38.10 meters] may be allowed if a spark or flame arrestor is utilized on the equipment. Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least one hundred fifty feet [45.72 meters] from the vicinity of wells and tanks. All waste shall be burned or disposed of in such manner as to avoid creating a fire hazard. All vegetation must be removed to a safe distance from any production or injection equipment to eliminate a fire hazard.

The director may require remote operated or installed on, or shut in for no more than forty days, any of pollution or injury to the public health or safety.

No well shall be drilled nor production or in handling facility or treating plant constructed less than

Recommend changing to: "All vegetation must be removed to a safe distance from facility equipment and pad to eliminate a fire hazard." Fires from flares and lightning strikes can be spread easily by strong ND winds; therefore additional vegetation should be discouraged around these sites.

occupied dwelling unless agreed to in writing by the owner of the dwelling or authorized by order of the commission.

~~The operator of any well approved after March 31, 2014, shall submit the legal street address of the well site, and well facility if separate from the well site, to the commission on a sundry notice (form 4) immediately upon receiving the legal street address.~~

Subsurface pressure must be controlled during all drilling, completion, and well-servicing operations with appropriate fluid weight and pressure control equipment. The operator conducting any well stimulation shall give prior written notice, up to seven days and not less than three business days, to any operator of a well completed in the same pool, if publicly available information indicates or if the operator is made aware, if the completion intervals are within one thousand three hundred twenty feet [402.34 meters] of one another.

History: Amended effective January 1, 1983; May 1, 1990; September 1, 2000; January 1, 2006; January 1, 2008; April 1, 2012; April 1, 2014; ____.

General Authority
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Law Implemented
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43-02-03-29. WELL AND LEASE EQUIPMENT. Wellhead and lease equipment with a working pressure at least equivalent to the calculated or known pressure to which the equipment may be subjected shall be installed and maintained. Equipment on producing wells shall be installed to facilitate gas-oil ratio tests, and static bottom hole or other pressure tests. Valves shall be installed and maintained in good working order to permit pressure readings to be obtained on both casing and tubing.

~~All newly constructed underground gathering pipelines must be devoid of leaks and constructed of materials resistant to external corrosion and to the effects of transported fluids. All such pipelines installed in a trench must be installed in a manner that minimizes interference with agriculture, road and utility construction, the introduction of secondary stresses, the possibility of damage to the pipe, and tracer wire shall be buried with any nonconductive pipe installed. When a trench for an oil and gas underground gathering pipeline is backfilled, it must be backfilled in a manner that provides firm support under the pipe and prevents damage to the pipe and pipe coating from equipment or from the backfill material.~~

- ~~1. The operator of any underground gathering pipeline placed into service on August 1, 2011, to June 30, 2013, shall file with the director, by January 1, 2015, a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of the pipeline centerline. The operator of any underground gathering pipeline placed into service after June 30, 2013, shall file with the director, within one hundred eighty days of placing into service, a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of the pipeline centerline. An~~

~~affidavit of completion shall accompany each layer containing the following information:~~

- ~~a. A statement that the pipeline was constructed and installed in compliance with section 43-02-03-29.~~
 - ~~b. The outside diameter, minimum wall thickness, composition, internal yield pressure, and maximum temperature rating of the pipeline, or any other specifications deemed necessary by the director.~~
 - ~~c. The anticipated operating pressure of the pipeline.~~
 - ~~d. The type of fluid that will be transported in the pipeline and direction of flow.~~
 - ~~e. Pressure to which the pipeline was tested prior to placing into service.~~
 - ~~f. The minimum pipeline depth of burial.~~
 - ~~g. In-service date.~~
 - ~~h. Leak detection and monitoring methods that will be utilized after in-service date.~~
 - ~~i. Pipeline name.~~
 - ~~j. Accuracy of the geographical information system layer.~~
2. ~~When an oil and gas underground gathering pipeline or any part of such pipeline is abandoned, the operator shall leave such pipeline in a safe condition by conducting the following:~~
- ~~a. Disconnect and physically isolate the pipeline from any operating facility or other pipeline.~~
 - ~~b. Cut off the pipeline or the part of the pipeline to be abandoned below surface at pipeline level.~~
 - ~~c. Purge the pipeline with fresh water, air, or inert gas in a manner that effectively removes all fluid.~~
 - ~~d. Remove cathodic protection from the pipeline.~~
 - ~~e. Permanently plug or cap all open ends by mechanical means or welded means.~~
3. ~~Within one hundred eighty days of completing the abandonment of an underground gathering pipeline the operator of the pipeline shall file with the director a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research~~

~~institute (Esri) shape file format showing the location of the pipeline centerline and an affidavit of completion containing the following information:~~

- ~~a. A statement that the pipeline was abandoned in compliance with section 43-02-03-29.~~
- ~~b. The type of fluid used to purge the pipeline.~~

~~The requirement to submit a geographical information system layer is not to be construed to be required on buried piping utilized to connect flares, tanks, treaters, or other equipment located entirely within the boundary of a well site or production facility.~~

History: Amended effective January 1, 1983; January 1, 2006; April 1, 201

General Authority
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.....any facilities,
including oil and gas
production sites,
treating plants, salt
water handling facilities,
and salt water
disposals...."

43-02-03-29.1. UNDERGROUND GATHERING PIPELINES.

1. Application of section. This section is applicable to all underground gathering pipelines designed for or capable of transporting crude oil, natural gas, or produced water from an oil and gas production facility for the purpose of storage, or for sale purposes. If these rules differ from the pipeline manual prescribed installation and operation practices, the pipeline manual installation and operation practices take precedence.

.....production facilities,
treating plants, salt
water handling facilities,
and salt water
disposals...."

2. Definitions. The terms used throughout this section apply to this section only.

- a. "Crude oil or produced water underground gathering pipeline" means an underground gathering pipeline designed or intended to transfer crude oil or produced water from a production facility for disposal, storage, or sale purposes.
- b. "Underground gas gathering pipeline" means an underground gathering pipeline designed or intended to transfer associated or non-associated gas from a production facility to a gas processing facility; or an underground gathering pipeline designed or intended to transfer residue gas from a gas processing facility to an oil and gas production facility; or an underground gathering pipeline designed or intended to transfer carbon dioxide to or within an enhanced recovery project.

3. Notification.

- a. The underground gathering pipeline owner must notify the commission, as provided by the director, at least seven days prior to commencing new construction of any underground gathering pipeline.

(1) The notice of intent to construct a crude oil or produced water underground gathering pipeline must include the following:

(a) The proposed date construction is scheduled to begin.

(b) A geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the proposed location of the pipeline centerline from the point of origin to the termination point.

(c) The proposed underground gathering pipeline design drawings, including all associated pipeline facilities and above ground equipment.

i. The proposed pipeline material, specifications (i.e. size, weight, grade, wall thickness, coating, and standard dimension ratio).

ii. The type of fluid to be transported.

iii. The anticipated operating pressure of the pipeline.

iv. The method of testing pipeline integrity (e.g. hydrostatic or pneumatic test) prior to placing the pipeline into service, including the proposed test procedure.

v. Type of external and internal corrosion control (e.g. cathodic protection and corrosion inhibitors).

vi. Proposed burial depth of the pipeline

vii. The location and type of all road crossings (i.e. bored and cased or bored only).

viii. The location of all environmentally sensitive areas, such as wetlands, streams, or other surface waterbodies that the pipeline traverses, including a proposed plan for horizontal directional drilling, if applicable.

(d) A list of all third-party independent inspectors and a description of each independent inspector's qualifications, certifications, experience, or specific training.

(2) The notice of intent to construct an underground gas gathering pipeline must include the following:

(a) The proposed date construction is scheduled to begin.


(b) A geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the proposed location of the pipeline centerline from the point of origin to the termination point.

- b. The underground gathering pipeline owner shall notify the commission of any underground gathering pipeline system or portion thereof that has been out of service for more than one year.
- c. If any damage occurs as a result of excavating for an underground gathering pipeline, the underground gathering pipeline owner shall immediately notify the director.

4. Design and construction.

- a. All newly constructed underground gathering pipelines must be devoid of leaks and constructed of materials resistant to external corrosion and to the effects of transported fluids.
- b. All newly constructed underground gathering pipelines must be designed in a manner that allows for line maintenance, periodic line cleaning, and internal integrity inspection.
- c. Installation crews must be thoroughly trained in all manufacturer-prescribed installation procedures.
- d. Underground gathering pipelines must be installed in a manner that minimizes interference with agriculture, road and utility construction, the introduction of secondary stresses, the possibility of damage to the pipe, and tracer wire shall be buried with any nonconductive pipe installed.
- e. Pipeline trenches must be constructed to allow for the pipeline to rest on undisturbed native soil and provide continuous support along the length of the pipe. Trench bottoms must be free of rocks, debris, trash, and other foreign material. If a trench bottom is over excavated, the trench bottom must be backfilled with appropriate material and compacted prior to installation of the pipe to provide continuous support along the length of the pipe.

The width of the trench must provide a minimum of 6 inches [15.24 centimeters] of clearance on each side of the pipe. Trench walls must be excavated to ensure minimal sluffing of sidewall material into the trench. Subsoil from the excavated trench shall be stockpiled separately from previously stripped topsoil.

- f. All underground gathering pipelines that cross a graded road must be bored unless the responsible governing agency specifically permits the owner to open cut the road.
- g. No pipe or other component may be installed in a pipeline system unless it has been visually inspected at the site of installation to ensure that it is not damaged in a manner that could impair its strength or reduce its serviceability.
- h. The pipe shall be handled in a manner that minimizes stress and avoids physical damage to the pipe during stringing, joining, or lowering in. During the lowering in process the pipe string must be properly supported so as not to induce excess stresses on the pipe or the pipe joints or cause weakening or damage to the outer surface of the pipe.
- i. When a trench for an underground gathering pipeline is backfilled, it must be backfilled in a manner that provides firm support under the pipe and prevents damage to the pipe and pipe coating from equipment or from the backfill material. Sufficient backfill material must be placed in the haunches of the pipe to provide long-term support for the pipe. Backfill material must be free of rocks and foreign debris. Backfilling material must be compacted during placement in a manner that provides support for the pipe and reduces the potential for damage to the pipe and pipe joints.
- j. Cover depths must be a minimum of four feet [1.22 meters] from the top of the pipe to the finished grade. The cover depth for an undeveloped governmental section line must be a minimum of six feet [1.83] from the top of the pipe to the finished grade.
- k. Any underground gathering pipeline that traverses environmentally sensitive areas, such as wetlands, streams, or other surface waterbodies shall be horizontal directionally drilled in a manner that minimizes impacts to these areas. A proposed horizontal directional drilling plan shall include the following:
- any registered surveyor?
- 
- (1) An accurate plat certified by a registered surveyor showing the locations of the entry and exit points with reference to true north and the nearest lines of a governmental section, the latitude and longitude of the proposed locations of the entry and exit points to the nearest tenth of a second, and the ground elevation of the entry and exit points;
- (2) The proposed drill-path, including depth to which the borehole will be drilled, the minimum and maximum depth of the drill-path below the surface, and the estimated length from entry to exit points;
- (3) Type of drilling mud;

- (4) The method for determining the location of the drill path while drilling (e.g. sonde or transmitter);
- (5) A schematic showing the proposed location of the drilling mud pit, if applicable;
- (6) The results of the channel degradation and scour analysis, if required by the director; and
- (7) The results of any geotechnical analysis prepared by the owner or required by the director.

5. Pipeline right-of-way.

- a. Topsoil must be stripped from the pipeline right-of-way, segregated from the subsoils, and stockpiled for use in right-of-way reclamation. "Topsoil" means the suitable plant growth material on the surface; however, in no event shall this be deemed to be more than the top twelve inches [30.48 centimeters] of soil or deeper than the depth of cultivation, whichever is greater.
- b. The pipeline right-of-way shall be reclaimed as closely as practicable to original condition. All stakes, markers, cables, ropes, skids, and any other debris or material not native to the area must be removed from the right-of-way and lawfully disposed of.
- c. During right-of-way reclamation all subsoils and top soils must be returned in proper order to as close to the original depths as practicable.
- d. The reclaimed right-of-way soils shall be compacted and stabilized to prevent excessive settling, sluffing, cave-ins, or erosion.
- e. The underground gas gathering pipeline owner is responsible for the right-of-way reclamation and maintenance until the pipeline has been abandoned and the right-of-way, including all associated pipeline facilities and above ground equipment, have been reclaimed as provided in subsection 15 of this section.
- f. The crude oil and produced water underground gathering pipeline owner is responsible for the right-of-way reclamation and maintenance until such pipeline is released by the commission from the pipeline bond pursuant to 43-02-03-15.

6. Inspection.

All newly constructed crude oil and produced water underground gathering pipelines must be inspected by third-party independent inspectors to ensure the pipeline is installed as prescribed by the manufacturer's specifications and in accordance with

the requirements of this section. No person may be used to perform inspections unless that person has been trained and is qualified in the phase of construction to be inspected.

7. Associated pipeline facility.

No associated pipeline facilities and above ground equipment shall be installed less than five hundred feet [152.40 meters] from an occupied dwelling unless agreed to in writing by the owner of the dwelling or authorized by order of the commission.

All associated pipeline facilities and above ground equipment used to store crude oil or produced water must be devoid of leaks and constructed of materials resistant to the effects of crude oil, produced water, brines, or chemicals that may be contained therein. The above materials requirement may be waived by the director for tanks presently in service and in good condition. Unused tanks and associated above ground equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year.

Dikes must be erected around all produced water or crude oil tanks at any new facility prior to placing the associated underground gathering pipeline into service. Dikes must be erected and maintained around all crude oil or produced water tanks or above ground equipment, when deemed necessary by the director. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid throughput. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction. Discharged crude oil or produced water must be properly removed and may not be allowed to remain standing within or outside of any diked areas.

The storage of solids is prohibited at any pipeline facility. Any solids generated at a pipeline facility must be removed and properly disposed of in an authorized facility in accordance with all applicable local, state, and federal laws and regulations.

8. Underground gathering pipeline as built.

- a. The owner of any underground gathering pipeline placed into service after July 31, 2011, shall file with the director, as prescribed by the director, within one hundred eighty days of placing into service, a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of all associated pipeline facilities and above ground equipment and the pipeline centerline from the point of origin to the termination point. An affidavit of completion shall accompany each layer containing the following information:

- (1) A statement that the pipeline was constructed and installed in compliance with section 43-02-03-29.1.
 - (2) The outside diameter, minimum wall thickness, composition, internal yield pressure, and maximum temperature rating of the pipeline, or any other specifications deemed necessary by the director.
 - (3) The maximum allowable operating pressure of the pipeline.
 - (4) The specified minimum yield strength of the pipeline.
 - (5) The type of fluid that will be transported in the pipeline and direction of fluid flow.
 - (6) Pressure and duration to which the pipeline was tested prior to placing into service.
 - (7) The minimum pipeline depth of burial from the top of the pipe to the finished grade.
 - (8) In-service date.
 - (9) Leak detection and monitoring methods that will be utilized after in-service date.
 - (10) The name of the pipeline gathering system and any other separately named portions thereof.
 - (11) Accuracy of the geographical information system layer.
- b. The requirement to submit a geographical information system layer is not to be construed to be required on buried piping utilized to connect flares, tanks, treaters, or other equipment located entirely within the boundary of a well site or production facility.

9. Operating requirements.

The maximum allowable operating pressure shall not exceed the manufacturer's specifications of the pipe or the manufacturer's specifications of any other component of the pipeline, whichever is less. The underground gathering pipeline must be equipped with pressure-regulating devices to prevent the pipeline from operating above the maximum allowable pressure.

10. Leak detection and monitoring.

All crude oil and produced water underground gathering pipeline owners must file with the commission any leak detection and monitoring plan prepared by the owner or required by the director.

Recommend strike "real time" - allow the operator and gathering PL owners to determine frequency of data exchange and access; due to the added record-keeping requirements, all data can be audited by NDIC. Real-time systems do not seem a reasonable requirement at this time with the additional operational controls and practices that will be required as a part of this new rulemaking.

ns installed on a crude oil and
be operated, maintained, and
e's recommended practice for
cord keeping and dispatcher
rk detection system must be
tute's recommended practice

All crude oil or produced water underground gathering pipeline owners must develop and maintain a data sharing plan. The plan must provide for ~~real-time~~ shared access to data between the operator of the production facility, the crude oil or produced water underground gathering pipeline owner, and the operator at the point or points of disposal, storage, or sale. If a discrepancy in the shared data is observed, all parties involved in the data sharing shall be notified immediately and action shall be taken to determine the cause. A record of all data discrepancies shall be retained by the crude oil or produced water underground gathering pipeline owner. If requested, copies of such records must be filed with the commission.

11. Spill response.

All crude oil and produced
maintain a spill response plan d

Consider allowing a systemic, field-wide, or unit-wide plan; however, county-wide is probably too broad to appropriately address localized changes in topography, hydrology, geology, etc.

underground gathering pipeline. The plan must detail the necessary steps for an effective and timely response to a pipeline spill. The spill response plan must be ~~developed in conjunction with the local emergency manager~~ and tailored to the specific risks in the localized area. Response capabilities must address access to equipment and tools necessary to respond, as well as action steps to protect the health and property of impacted landowners, citizens, and the environment.

12. Corrosion control.

Recommend strike "local emergency manager" as this requirement will overwhelm local officials.

- a. Underground gathering pipelines must be designed to withstand the effects of external corrosion and maintained in a manner that mitigates internal corrosion.
- b. All metallic underground gathering pipelines installed must have sufficient corrosion control.
- c. All coated pipe shall be electronically inspected prior to placement using coating deficiency (i.e. holiday) detectors to check for any faults not observable by visual examination. The holiday detector shall be operated in accordance with manufacturer's instructions and at a voltage level appropriate for the electrical characteristics of the pipeline system being tested. During installation

all joints, fittings, and tie-ins shall be coated with materials compatible with the coatings on the pipe. Coating materials must:

- (1) Be designed to mitigate corrosion of the buried pipeline;
- (2) Have sufficient adhesion to the metal surface to prevent under film migration of moisture;
- (3) Be sufficiently ductile to resist cracking;
- (4) Have enough strength to resist damage due to handling and soil stress;
- (5) Support any supplemental cathodic protection; and
- (6) If the coating is an insulating type, have low moisture absorption and provide high electrical resistance.

d. Cathodic protection systems shall meet or exceed the minimum criteria set forth in the National Association of Corrosion Engineers standard practice Control of External Corrosion on Underground or Submerged Metallic Piping Systems.

e. If internal corrosion is anticipated or detected, the underground gathering pipeline owner must take prompt remedial action to correct any deficiencies, such as increased pigging, use of corrosion inhibitors, internal coating of the pipeline (e.g. an epoxy paint or other plastic liner), or a combination of these methods.

- (1) Corrosion inhibitors must be used in sufficient quantity to protect the entire part of the pipeline system that the inhibitors are designed to protect. Coupons or other monitoring equipment must be used to determine the effectiveness of the inhibitors in mitigating internal corrosion. The coupons or other monitoring equipment must be examined at least twice a year, but with intervals not exceeding six months.

13. Pipeline integrity.

No underground gathering pipeline owner may operate a pipeline unless it has been pressure tested and demonstrated integrity. In addition, no owner may return to service a portion of pipeline that has been repaired, replaced, relocated, or otherwise changed until it has been pressure tested.

a. The underground gathering pipeline owner must notify the commission at least forty-eight hours prior to commencement of any pipeline integrity test to allow a representative of the commission to witness the testing process and results.

- b. An independent inspector's certificate of hydrostatic or pneumatic testing of a crude oil or produced water underground gathering pipeline shall be submitted within sixty days of the test and include the following:
- (1) The name of the pipeline gathering system and any other separately named portions thereof;
 - (2) The date of the test;
 - (3) The duration of the test;
 - (4) The length of pipeline that was tested;
 - (5) The maximum and minimum test pressure;
 - (6) The starting and ending pressure;
 - (7) A copy of the chart recorder results; and
 - (8) A geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of the centerline of the portion of the pipeline that was tested.
- c. The underground gathering pipeline owner must demonstrate continual pipeline integrity for all in-service underground gathering pipelines. Pipeline integrity can be demonstrated through periodic pressure testing, computational pipeline monitoring and leak detection systems, or internal integrity inspections. Pipeline integrity records shall be retained for the in-service life of the pipeline and made available upon request by the commission.

14. Pipeline repair.

Each owner shall, in repairing an underground gathering pipeline or pipeline system, ensure that the repairs are made in a manner that prevents damage to persons or property.

No owner may use any pipe, valve, or fitting, for replacement in repairing an underground gathering pipeline, unless it is designed and constructed to meet the pipeline manufacturer's design specifications.

- a. At least forty-eight hours prior to any underground gathering pipeline repair or replacement, the underground gathering pipeline owner must notify the commission, as provided by the director.
- b. Within one hundred eighty days of repairing or replacing any underground gathering pipeline the owner of the pipeline shall file with the director a

geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of the centerline of the repaired or replaced pipeline and an affidavit of completion containing the following information:

- (1) A statement that the pipeline was repaired in compliance with section 43-02-03-29.1.
- (2) The reason for the repair or replacement.
- (3) The length of pipeline that was repaired or replaced.
- (4) Pressure and duration to which the pipeline was tested prior to returning to service.

c. Clamping or squeezing as a method of repair for any produced water underground gathering pipeline is prohibited.

15. Pipeline abandonment.

a. When an oil and gas underground gathering pipeline or any part of such pipeline is abandoned, the owner shall leave such pipeline in a safe condition by conducting the following:

- (1) Disconnect and physically isolate the pipeline from any operating facility, associated pipeline facility and above ground equipment, or other pipeline.
- (2) Cut off the pipeline or the part of the pipeline to be abandoned below surface at pipeline level.
- (3) Purge the pipeline with fresh water, air, or inert gas in a manner that effectively removes all fluid.
- (4) Remove cathodic protection from the pipeline.
- (5) Permanently plug or cap all open ends by mechanical means or welded means.
- (6) The site of all associated pipeline facilities and above ground equipment shall be reclaimed pursuant to section 43-02-03-34.1.

b. Within one hundred eighty days of completing the abandonment of an underground gathering pipeline the owner of the pipeline shall file with the director a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research

institute (Esri) shape file format showing the location of the pipeline centerline and an affidavit of completion containing the following information:

- (1) A statement that the pipeline was abandoned in compliance with section 43-02-03-29.1.
- (2) The type of fluid used to purge the pipeline.
- (3) The date of pipeline abandonment.
- (4) The length of pipeline abandoned.

History: Effective _____.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-30. NOTIFICATION OF FIRES, LEAKS, SPILLS, OR BLOWOUTS. All persons controlling or operating any well, underground gathering pipeline, receiving tank, storage tank, treating plant, or any other receptacle or facility into which associated with oil, gas, or water is produced, received, stored, processed, or through which oil, gas, or water is injected, piped, or transported, production, injection, processing, or well servicing, shall verbally notify the director immediately and follow up utilizing the online initial notification report within twenty-four hours after discovery of any fire, leak, spill, blowout, or release of fluid. The initial report must include the name of the reporting party, including telephone number and address, date and time of the incident, location of the incident, type and cause of the incident, estimated volume of release, containment status, waterways involved, immediate potential threat, and action taken. If any such incident occurs or travels offsite of a facility, the persons, as named above, responsible for proper notification shall within a reasonable time also notify the surface owners upon whose land the incident occurred or traveled. Notification requirements prescribed by this section shall not apply to any leak, spill, or release of fluid that is less than one barrel total volume and remains onsite of a facility. The initial notification must be followed by a written report within ten days after cleanup of the incident, unless deemed unnecessary by the director. Such report must include the following information: the operator and description of the facility, the legal description of the location of the incident, date of occurrence, date of cleanup, amount and type of each fluid involved, amount of each fluid recovered, steps taken to remedy the situation, root cause of the accident incident, and action taken to prevent reoccurrence, and if applicable, any additional information pursuant to subdivision e of subsection 1 of North Dakota Century Code section 37-17.1-07.1. The signature, title, and telephone number of the company representative must be included on such report. The persons, as named above, responsible for proper notification shall within a reasonable time also provide a copy of the written report to the surface owners upon whose land the incident occurred or traveled.

The commission, however, may impose more stringent spill reporting requirements if warranted by proximity to sensitive areas, past spill performance, or careless operating practices as determined by the director.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; January 1, 2008; April 1, 2010; April 1, 2014; ____.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-30.1. LEAK AND SPILL CLEANUP. At no time shall any spill or leak be allowed to flow over, pool, or rest on the surface of the land or infiltrate the soil. Discharged fluids must be properly removed and may not be allowed to remain standing within or outside of diked areas, although the remediation of such fluids may be allowed onsite if approved by the director. Operators and responsible parties must respond with appropriate resources to contain and clean up spills.

History: Effective April 1, 2012; ____.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-31. WELL LOG, COMPLETION, AND WORKOVER REPORTS. After the plugging of a well, a plugging record (form 7) shall be filed with the director. After the completion of a well, recompletion of a well in a different pool, or drilling horizontally in an existing pool, a completion report (form 6) shall be filed with the director. In no case shall oil or gas be transported from the lease prior to the filing of a completion report unless approved by the director. The operator shall cause to be run an open hole electrical, radioactivity, or other similar log, or combination of open hole logs, of the operator's choice, from which formation tops and porosity zones can be determined. The operator shall cause to be run a gamma ray log from total depth to ground level elevation of the well bore. ~~Prior~~ Within six months of reaching total depth and prior to completing the well, the operator shall cause to be run a log from which the presence and quality of bonding of cement can be determined in every well in which production or intermediate casing has been set. The obligation to log may be waived or postponed by the director if the necessity therefor can be demonstrated to the director's satisfaction. Waiver will be contingent upon such terms and conditions as the director deems appropriate. All logs run shall be available to the director at the well site prior to proceeding with plugging or completion operations. All logs run shall be submitted to the director free of charge. Logs shall be submitted as one digital TIFF (tagged image file format) copy and one digital LAS (log ASCII) formatted copy, or a format approved by the director. In addition, operators shall file two copies of drill stem test reports and charts, formation water analyses, core analyses, geologic reports, and noninterpretive lithologic logs or sample descriptions if compiled by the operator.

All information furnished to the director on ~~new~~ 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, ~~and~~ any production runs, or volumes injected into an injection well, shall be kept confidential for not more than six months if requested by the operator in writing. The six-month period shall commence on the date the well is completed or the date the written request is received, whichever is earlier. If the written request accompanies the application for permit to drill or is filed after permitting but prior to spudding, the six-month period shall commence on the date the well is spudded. The director may release such confidential completion and production data to health care professionals, emergency responders, and state, federal, or tribal environmental and public health regulators if the director deems it necessary to protect the public's health, safety, and welfare.

All information furnished to the director on recompletions or reentries, except the operator name, well name, location, permit date, confidentiality period, spacing or drilling unit description, spud date, rig contractor, ~~and~~ any production runs, or volumes injected into an injection well, shall be kept confidential for not more than six months if requested by the operator in writing. The six-month period shall commence on the date the well is completed or the date the well was approved for recompletion or reentry, whichever is earlier. Any information furnished to the director prior to approval of the recompletion or reentry shall remain public.

Approval must be obtained on a sundry notice (form 4) from the director prior to perforating or recompleting a well in a pool other than the pool in which the well is currently permitted.

After the completion of any remedial work, or attempted remedial work such as plugging back or drilling deeper, acidizing, shooting, formation fracturing, squeezing operations, setting liner, perforating, reperforating, or other similar operations not specifically covered herein, a report on the operation shall be filed on a sundry notice (form 4) with the director. The report shall present a detailed account of all work done and the date of such work; the daily production of oil, gas, and water both prior to and after the operation; the shots per foot, size, and depth of perforations; the quantity of sand, crude, chemical, or other materials employed in the operation; and any other pertinent information or operations which affect the original status of the well and are not specifically covered herein.

Upon the installation of pumping equipment on a flowing well, or change in type of pumping equipment designed to increase productivity in a well, the operator shall submit a sundry notice (form 4) of such installation. The notice shall include all pertinent information on the pump and the operation thereof including the date of such installation, and the daily production of the well prior to and after the pump has been installed.

All forms, reports, logs, and other information required by this section shall be submitted within thirty days after the completion of such work, although a completion report shall be filed immediately after the completion or recompletion of a well in a pool or reservoir not then covered by an order of the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; September 1, 2000; July 1, 2002; January 1, 2006; January 1, 2008; April 1, 2010; April 1, 2012; ____.

43-02-03-34. METHOD OF PLUGGING. All wells shall be plugged in a manner which will confine permanently all oil, gas, and water in the separate strata originally containing them. This operation shall be accomplished by the use of mud-laden fluid, cement, and plugs, used singly or in combination as may be approved by the director. All casing strings shall be cut off at least three feet [91.44 centimeters] below the final surface contour, and a cap with file number shall be welded thereon. Core or stratigraphic test holes drilled to or below sands containing freshwater shall be plugged in accordance with the applicable provisions recited above. After plugging, the site must be reclaimed pursuant to section 43-02-03-34.1.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; July 1, 2002; April 1, 2014; ____.

43-02-03-34.1. RECLAMATION OF SURFACE.

1. Within a reasonable time, but not more than one year, after a well is plugged, or if a permit expires, has been canceled or revoked, or a treating plant or facility is decommissioned, the site, access road, and other associated facilities constructed shall be reclaimed as closely as practicable to original condition. Prior to site reclamation, the operator or the operator's agent shall file a sundry notice (form 4) with the director and obtain approval of a reclamation plan. The operator or operator's agent shall provide a copy of the proposed reclamation plan to the surface owner at least ten days prior to commencing the work unless waived by the surface owner. Verbal approval to reclaim the site may be given. The notice shall include:
 - a. The name and address of the reclamation contractor;
 - b. The name and address of the surface owner and the date when a copy of the proposed reclamation plan was provided to the surface owner;
 - c. A description of the proposed work, including topsoil redistribution and reclamation plans for the access road and other associated facilities; and
 - d. Reseeding plans, if applicable.

The commission will mail a copy of the approved notice to the surface owner.

All equipment, waste, and debris shall be removed from the site. Flow lines shall be purged ~~in a manner approved by the director~~ pursuant to section 43-02-03-29.1.

Flow lines shall be removed if buried less than three feet [91.44 centimeters] below final contour.

2. Gravel or other surfacing material shall be removed, stabilized soil shall be remediated, and the ~~well~~ site, access road, and other associated facilities constructed for the well, treating plant, or facility, shall be reshaped as near as is practicable to original contour.

Gravel or other surfacing material shall be removed, stabilized soil shall be remediated, and the well site or facility, access road, and ~~other associated facilities constructed for the well~~ appurtenances shall be reshaped as near as is practicable to original contour.

3. The stockpiled topsoil shall be evenly distributed over the disturbed area and, where applicable, the area revegetated with native species or according to the reasonable specifications of the appropriate government land manager or surface owner.
4. Within thirty days after completing any reclamation, the operator shall file a sundry notice with the director reporting the work performed.
5. The director, with the consent of the appropriate government land manager or surface owner, may waive the requirement of reclamation of the site and access road after a well is plugged or treating plant or facility is decommissioned and shall record documentation of the waiver with the recorder of the county in which the site or road is located.

History: Effective April 1, 2012; amended effective April 1, 2014; ____.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-40. GAS-OIL RATIO TEST. Each operator shall take a gas-oil ratio test within thirty days following the completion or recompletion of an oil well. Each test shall be conducted using standard industry practices unless otherwise specified by the director. The initial gas-oil ratio must be reported on the well completion or recompletion report (form 6). Subsequent gas-oil ratio tests shall be performed on producing wells when the producing pool appears to have reached bubble point or there is a significant change. After the discovery of a new pool, each operator shall make additional gas-oil ratio tests as directed by the director or provided for in field rules. During tests each well shall be produced at a maximum efficient rate. The director may shut in any well for failure to make such test until such time as a satisfactory test can be made, or satisfactory explanation given. The results of all gas-oil ratio tests shall be submitted to the director on form 9, which shall be accompanied by a statement that the data on form 9 is true and correct.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; ____.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-48. MEASUREMENT OF OIL. Oil production may not be transported from a well premises, ~~or~~ central production facility, treating plant, or saltwater handling facility until its volume has been determined through the use of properly calibrated meter measurements or tank measurements. All meter and tank measurements, and volume determinations must conform to American petroleum institute standards and be corrected to a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius] and fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter].

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1992; May 1, 1994; July 1, 1996; April 1, 2014; ____.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-49. OIL PRODUCTION EQUIPMENT, DIKES, AND SEALS. Storage of oil in underground or partially buried tanks or containers is prohibited. Surface oil tanks and production equipment must be devoid of leaks and ~~in good condition~~ constructed of materials resistant to the effects of produced fluids or chemicals that may be contained therein. Unused tanks and production equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year. ~~Dikes must be erected and maintained around oil tanks at any production facility built or rebuilt on or after July 1, 2000.~~

Dikes must be erected around oil tanks at any new production facility ~~within thirty days after the well has been completed~~ prior to completing any well. Dikes must be erected and maintained around oil tanks at ~~production all facilities built prior to July 1, 2000, when deemed necessary unless a waiver is granted by the director.~~ Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid production. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction.

Add language about Director's discretion to require sloping specifications in addition to diking...

A perimeter berm, at least one foot [30.48 centimeters] in height, shall be constructed of sufficiently impermeable material to provide emergency containment around all storage facilities and production sites and to divert surface drainage away from the site, unless waived by the director.

Numbered ~~metal~~ weather-resistant security seals shall be properly utilized on all oil access valves and access points to secure the tank or battery of tanks.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; July 1, 2002; May 1, 2004; April 1, 2010; April 1, 2012; ____.

43-02-03-51.1. TREATING PLANT PERMIT REQUIREMENTS.

1. The treating plant permit application shall be submitted on form 1tp and shall include at least the following information:
 - a. The name and address of the operator.
 - b. An accurate plat certified by a registered surveyor showing the location of the proposed treating plant and the center of the site with reference to true north and the nearest lines of a governmental section. The plat shall also include the latitude and longitude of the center of the proposed treating plant location to the nearest tenth of a second, and the ground elevation, ~~and the legal street address~~. The plat shall also depict the outside perimeter of the treating plant and verification that the site is at least five hundred feet [152.4 meters] from an occupied dwelling.
 - c. A schematic drawing of the proposed treating plant site, drawn to scale, detailing all facilities and equipment, including the size, location, and purpose of all tanks, the height and location of all dikes, the location of all flowlines, and the location of the topsoil stockpile. It shall also include the proposed road access to the nearest existing public road and the authority to build such access.
 - d. Cut and fill diagrams.
 - e. An affidavit of mailing identifying each owner of any permanently occupied dwelling within one-quarter mile of the proposed treating plant and certifying that such owner has been notified of the proposed treating plant.
 - f. Appropriate geological data on the surface geology.
 - g. Schematic drawings of the proposed diking and containment, including calculated containment volume and all areas underlain by a synthetic liner.
 - h. Monitoring plans and leak detection for all buried or partially buried structures.
 - i. The capacity and operational capacity of the treating plant.
2. Permits may contain such terms and conditions as the commission deems necessary.
3. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit, any directive of the commission, or any applicable rule or statute. Any permit issued under this section may be suspended by the director for good cause.

4. Permits are transferable only with approval of the commission.
5. Permits may be modified by the commission.
6. A permit shall automatically expire one year after the date it was issued, unless dirtwork operations have commenced to construct the site.
7. If the treating plant is abandoned and reclaimed, the permit shall expire and be of no further force and effect.

History: Effective April 1, 2014; ____.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-51.3. TREATING PLANT CONSTRUCTION AND OPERATION REQUIREMENTS.

1. Before construction of a treating plant begins, the operator shall file with the commission a surety bond or cash bond conditioned upon compliance with all laws, rules and regulations, and orders of the commission. The bond amount shall be specified in the commission order authorizing the treating plant and shall be based upon the location, type, and capacity of the plant, processing method, and plan of operation for all plant waste approved in the commission order and shall be payable to the industrial commission. In no case shall the bond amount be set lower than fifty thousand dollars.
2. Treating plant sites and associated facilities or appropriate parts thereof shall be fenced if required by the director. All fences installed within or around any facility must be constructed in a manner that promotes emergency ingress and egress.
3. All storage tanks shall be kept free of leaks and in good condition. Storage tanks for saltwater shall be constructed of, or lined with, materials resistant to the effects of saltwater.
4. All waste, recovered solids, and recovered fluids shall be stored and handled in such a manner to prevent runoff or migration offsite.
5. Dikes of sufficient dimension to contain the total capacity of the maximum volume stored must be erected and maintained around all storage and processing tanks. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. All processing equipment shall be underlain by a synthetic impermeable material, unless waived by the director. ~~A perimeter dike of sufficiently impermeable material shall be erected and maintained around the treating plant site.~~ The site shall be sloped and diked

to divert surface drainage away from the site. The operations of the treating plant shall be conducted in such a manner as to prevent leaks, spills, and fires. All accidentally discharged fluids and wastes shall be promptly and properly removed and shall not be allowed to remain standing within the diked area or on the treating plant premises. All such incidents shall be properly cleaned up, subject to approval by the director. All such incidents shall be promptly reported to the director and a detailed account of any such incident must be filed with the director in accordance with section 43-02-03-30.

6. A perimeter berm, at least one foot [30.48 centimeters] in height, shall be constructed of sufficiently impermeable material to provide emergency containment around the treating plant and to divert surface drainage away from the site, unless waived by the director.
- ~~6.7.~~ Immediately upon the commencement of treatment operations, the operator shall notify the commission in writing of such date.
- ~~7.8.~~ The operator of a treating plant shall provide continuing surveillance and conduct such monitoring and sampling as the commission may require.
- ~~8.9.~~ Storage pits, waste pits, or other earthen storage areas shall be prohibited unless authorized by an appropriate regulatory agency. A copy of said authorization shall be filed with the commission.
- ~~9.10.~~ Burial of waste at any treating plant site shall be prohibited. All residual water and waste, fluid or solid, shall be disposed of in an authorized facility.
- ~~10.11.~~ The operator shall take steps to minimize the amount of residual waste generated and the amount of residual waste temporarily stored onsite. Solid waste shall not be stockpiled onsite unless authorized by an appropriate regulatory agency. A copy of said authorization shall be filed with the commission.
- ~~11.12.~~ If deemed necessary by the director, the operator shall cause to be analyzed any waste substance contained onsite. Such chemical analysis shall be performed by a certified laboratory and shall adequately determine if chemical constituents exist which would categorize the waste as hazardous by state department of health standards.
- ~~12.13.~~ Treating plants shall be constructed and operated so as not to endanger surface or subsurface water supplies or cause degradation to surrounding lands and shall comply with section 43-02-03-28 concerning fire hazards and proximity to occupied dwellings.
- ~~13.14.~~ The beginning of month inventory, the amount of waste received and the source of such waste, the volume of oil sold, the amount and disposition of water, the amount and disposition of residue waste, fluid or solid, and the end of month inventory for each treating plant shall be reported monthly on form 5p with the director on or before the first day of the second succeeding month, regardless of the status of operations.

~~14.15.~~ Records necessary to validate information submitted on form 5p shall be maintained in North Dakota.

~~15. An annual report for each treating plant shall be submitted to the commission, due on June first of each year. The report shall include at least the following:~~

~~a. A schematic drawing or drawings of the treating plant site, drawn to scale, detailing all facilities and equipment, including the size, location, and purpose of all tanks, the height and location of all dikes, all areas underlain by a synthetic liner, the location of all flowlines, and the location of the topsoil stockpile. It shall also include the road access to the nearest existing public road.~~

~~b. Present inventory of fluids and solids on location.~~

~~c. Future plans for the next year.~~

~~d. Any other information requested by the director.~~

16. All proposed changes to any treating plant are subject to approval by the commission. Updated schematics shall be furnished to the commission within thirty days following any changes to the treating plant.

17. The operator shall comply with all applicable rules and orders of the commission. All rules in this chapter governing oil well sites shall also apply to any treating plant site.

History: Effective April 1, 2014; ____.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-52. REPORT OF OIL PRODUCTION. The operator of each well ~~in every~~ completed in any pool shall, on or before the first day of the second month succeeding the month in which production occurs or could occur, file with the director the amount of production made by each such well upon form 5 or approved computer sheets no larger than eight and one-half by eleven inches [21.59 by 27.94 centimeters]. The report shall be signed by both the person responsible for the report and the person witnessing the signature. The printed name and title of both the person signing the report and the person witnessing the signature shall be included. Wells for which reports of production are not received by the close of business on said first day of the month may be shut in for a period not to exceed thirty days. The director shall notify, by certified mail, the operator and authorized transporter of the shut-in period for such wells. Any oil produced during such shut-in period shall be deemed illegal oil and subject to the provisions of North Dakota Century Code section 38-08-15.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; December 1, 1997; September 1, 2000; ____.

43-02-03-52.1. REPORT OF GAS PRODUCED IN ASSOCIATION WITH OIL.

The operator of each well ~~in every~~ completed in any pool shall, on or before the fifth day of the second month succeeding the month in which production occurs or could occur, file with the director the amount of gas produced by each such well upon form 5b or approved computer sheets no larger than eight and one-half by eleven inches [21.59 by 27.94 centimeters]. The report shall be signed by both the person responsible for the report and the person witnessing the signature. The printed name and title of both the person signing the report and the person witnessing the signature shall be included. Wells for which reports of production are not received by the close of business on said fifth day of the month may be shut in for a period not to exceed thirty days. The director shall notify, by certified mail, the operator and authorized transporter of the shut-in period for such wells. Any gas produced during such shut-in period must be deemed illegal gas and subject to the provisions of North Dakota Century Code section 38-08-15.

History: Effective May 1, 1992; amended effective December 1, 1997; September 1, 2000; ____.

43-02-03-53. SALTWATER HANDLING FACILITIES.

1. No saltwater handling facility may be constructed without obtaining a permit from the commission. Saltwater handling facilities in existence prior to October 1, 2016, that are not currently bonded as an appurtenance to a well or treating plant, shall have ninety days from the date notified by the commission that a permit is required to submit the required information in order for the commission to approve such facility.
- ~~1.2.~~ All saltwater liquids or brines produced with oil and natural gas shall be processed, stored, and disposed of without pollution of freshwater supplies.
- ~~2.3.~~ Underground injection of saltwater liquids and brines shall be in accordance with chapter 43-02-05.
4. The permitting and bonding requirements for a saltwater handling facility set forth in sections 43-02-03-53, 43-02-03-53.1, and 43-02-03-53.3 are not to be construed to be required if the facility is bonded as a well or treating plant appurtenance. Such facilities will be considered in the permit application for the well or treating plant.
- ~~3.~~ ~~Surface facilities are acceptable provided that:~~

- a. ~~They are devoid of leaks and constructed of materials resistant to the effects of produced saltwater liquids, brines, or chemicals that may be contained therein. The above materials requirement may be waived by the director for tanks presently in service and in good condition. Unused tanks and injection equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year.~~
 - b. ~~Dikes must be erected and maintained around saltwater tanks at any saltwater handling facility built or rebuilt on or after July 1, 2000. Dikes must be erected around saltwater tanks at any new facility within thirty days after the well has been completed. Dikes must be erected and maintained around saltwater tanks at saltwater handling facility built prior to July 1, 2000, when deemed necessary by the director. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid production. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction. Discharged saltwater liquids or brines must be properly removed and may not be allowed to remain standing within or outside of any diked areas.~~
4. ~~The operator shall take steps to minimize the amount of solids stored at the facility.~~
5. ~~Any salable crude oil recovered from a saltwater handling facility shall be reported on a form 5 SWD.~~

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; July 1, 2002; May 1, 2004; April 1, 2010; April 1, 2012; ____.


General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-53.1. SALTWATER HANDLING FACILITY PERMIT REQUIREMENTS.

1. A permit for construction of a saltwater handling facility must be approved by the commission prior to construction. The saltwater handling facility permit application shall be submitted on a sundry notice (form 4) and include at least the following information:
- a. The name and address of the operator.
 - b. An accurate plat certified by a registered surveyor showing the location of the proposed saltwater handling facility and the center of the site with reference to true north and the nearest lines of a governmental section. The plat shall also include the latitude and longitude of the center of the proposed saltwater handling

facility location to the nearest tenth of a second and the ground elevation. The plat shall also depict the outside perimeter of the saltwater handling facility and verification that the site is at least five hundred feet [152.4 meters] from an occupied dwelling.

- c. A schematic drawing of the proposed saltwater handling facility site, drawn to scale, detailing all facilities and equipment, including the size, location, and purpose of all tanks, the height and location of all dikes, the location of all flowlines, and the location and thickness of the stockpiled topsoil. It shall also include the proposed road access to the nearest existing public road and the authority to build such access.
 - d. Cut and fill diagrams.
 - e. Schematic drawings of the proposed diking and containment including calculated containment volume and all areas underlain by a synthetic liner, as well as a description of all containment construction material.
 - f. The anticipated daily throughput of the saltwater handling facility.
- 2. Permits may contain such terms and conditions as the commission deems necessary.
 - 3. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit, any directive of the commission, or any applicable rule or statute. Any permit issued under this section may be suspended by the director for good cause.
 - 4. Permits are transferable only with approval of the commission. 
 - 5. Permits may be modified by the commission.
 - 6. A permit shall automatically expire one year after the date it was issued, unless dirtwork operations have commenced to construct the site.
 - 7. If the saltwater handling facility is abandoned and reclaimed, the permit shall expire and be of no further force and effect.

History: Effective: _____.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-53.2. SALTWATER HANDLING FACILITY SITING. All saltwater handling facilities shall be sited in such a fashion that they are not located in a geologically or hydrologically sensitive area.

History: Effective: _____.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-53.3. SALTWATER HANDLING FACILITY CONSTRUCTION AND OPERATION REQUIREMENTS.

1. Bond requirement. Before construction of a saltwater handling facility begins, the operator shall file with the commission a surety bond or cash bond conditioned upon compliance with all laws, rules and regulations, and orders of the commission. The bond shall be in the amount of fifty thousand dollars and shall be payable to the industrial commission. The commission may, after notice and hearing, require a higher bond amount. Such additional amounts for bonds must be related to the economic value of the facility and the expected cost of decommissioning and site reclamation, as determined by the commission. The commission may refuse to accept a bond if the operator or surety company has failed in the past to comply with all laws, rules and regulations, and orders of the commission; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.
2. Saltwater handling facility sites or appropriate parts thereof shall be fenced if required by the director. All fences installed within or around any facility must be constructed in a manner that promotes emergency ingress and egress.
3. All waste, recovered solids, and fluids shall be stored and handled in such a manner to prevent runoff or migration offsite.
4. Surface tanks shall not be underground or partially buried, must be devoid of leaks, and constructed of, or lined with, materials resistant to the effects of produced saltwater liquids, brines, or chemicals that may be contained therein. The above materials requirement may be waived by the director for tanks presently in service and in good condition. Unused tanks and equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year.
5. Dikes must be erected and maintained around saltwater tanks at any saltwater handling facility. Dikes must be erected around saltwater tanks at any new facility prior to introducing fluids. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid throughput. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction. The operations of the saltwater handling facility shall be conducted in such a manner as to prevent leaks, spills, and fires. Discharged liquids or brines must be properly removed and may not be allowed to remain standing within or outside of any diked areas. All such incidents shall be properly cleaned up, subject to

Recommend
adding
discretionary
sloping
requirement.

- approval by the director. All such incidents shall be promptly reported to the director and a detailed account of any such incident must be filed with the director in accordance with section 43-02-03-30.
6. A perimeter berm, at least one foot [30.48 centimeters] in height, shall be constructed of sufficiently impermeable material to provide emergency containment around the facility and to divert surface drainage away from the site, unless waived by the director.
 7. The operator shall take steps to minimize the amount of solids stored at the facility.
 8. Immediately upon the commissioning of the saltwater handling facility, the operator shall notify the commission in writing of such date.
 9. The operator of a saltwater handling facility shall provide continuing surveillance and conduct such monitoring and sampling as the commission may require.
 10. Storage pits, waste pits, or other earthen storage areas shall be prohibited unless authorized by an appropriate regulatory agency. A copy of said authorization shall be filed with the commission.
 11. Burial of waste at any saltwater handling facility site shall be prohibited. All residual water and waste, fluid or solid, shall be disposed of in an authorized facility.
 12. If deemed necessary by the director, the operator shall cause to be analyzed any waste substance contained onsite. Such chemical analysis shall be performed by a certified laboratory and shall adequately determine if chemical constituents exist which would categorize the waste as hazardous by state department of health standards.
 13. Saltwater handling facilities shall be constructed and operated so as not to endanger surface or subsurface water supplies or cause degradation to surrounding lands and shall comply with section 43-02-03-28 concerning fire hazards and proximity to occupied dwellings.
 14. All proposed changes to any saltwater handling facility are subject to prior approval by the director.
 15. Upon completion of any saltwater handling facility modification, the operator shall file a report of the modification on a sundry notice (form 4) with the director within thirty days. The report shall include details of the modification and include a schematic drawing of the saltwater handling facility site, drawn to scale, detailing all facilities and equipment, including the size, location, and purpose of all tanks, the height and location of all dikes as well as a calculated containment volume, and the location of all flowlines.
 16. Any salable crude oil recovered from a saltwater handling facility shall be reported on a form 5 SWD.

17. The operator shall comply with all laws, rules and regulations, and orders of the commission. All rules in this chapter governing oil well sites shall also apply to any saltwater handling facility site.

History: Effective: ____.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-53.4. SALTWATER HANDLING FACILITY ABANDONMENT AND RECLAMATION REQUIREMENTS.

1. Notice of intention to abandon. The operator or the operator's agent shall file a notice of intention (form 4) to abandon and obtain the approval of the director, prior to the commencement of abandonment operations. The notice shall state the name of the operator, the name and location of the saltwater handling facility, and a detailed account of proposed work. Within thirty days after the abandonment of any saltwater handling facility has been accomplished, the owner or operator thereof shall file a detailed account of the abandonment procedures on a sundry notice (form 4), and if requested, a copy of any job ~~receipt~~ setting forth in detail the method and operations used in abandoning the saltwater handling facility.
- replace with "record."
2. After abandonment the site must be reclaimed pursuant to section 43-02-03-34.1.

History: Effective ____.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-55. ABANDONMENT OF WELLS ~~OR~~, TREATING PLANTS, OR SALTWATER HANDLING FACILITIES - SUSPENSION OF DRILLING.

1. The removal of production equipment or the failure to produce oil or gas, or the removal of production equipment or the failure to produce water from a source well, for one year constitutes abandonment of the well. The removal of injection equipment or the failure to use an injection well for one year constitutes abandonment of the well. The failure to plug a stratigraphic test hole within one year of reaching total depth constitutes abandonment of the well. The removal of treating plant equipment or the failure to use a treating plant for one year constitutes abandonment of the treating plant. The removal of saltwater handling facility equipment or the failure to use a saltwater handling facility for one year constitutes abandonment of the saltwater handling facility. An abandoned well must be plugged and its site must be reclaimed ~~and~~, an abandoned treating plant must be removed and its site must be reclaimed, and an abandoned saltwater handling facility must be removed and its site must be reclaimed, pursuant to sections

43-02-03-34 and 43-02-03-34.1. A well not producing oil or natural gas in paying quantities for one year may be placed in abandoned-well status pursuant to subsection 1 of North Dakota Century Code section 38-08-04.

2. The director may waive for one year the requirement to plug and reclaim an abandoned well by giving the well temporarily abandoned status. This status may only be given to wells that are to be used for purposes related to the production of oil and gas. If a well is given temporarily abandoned status, the well's perforations must be isolated, the integrity of its casing must be proven, and its casing must be sealed at the surface, all in a manner approved by the director. The director may extend a well's temporarily abandoned status and each extension may be approved for up to one year. A fee of one hundred dollars shall be submitted for each application to extend the temporary abandonment status of any well. A surface owner may request a review of a well temporarily abandoned for at least seven years pursuant to subsection 1 of North Dakota Century Code section 38-08-04.
3. In addition to the waiver in subsection 2, the director may also waive the duty to plug and reclaim an abandoned well for any other good cause found by the director. If the director exercises this discretion, the director shall set a date or circumstance upon which the waiver expires.
4. The director may approve suspension of the drilling of a well. If suspension is approved, a plug must be placed at the top of the casing to prevent any foreign matter from getting into the well. When drilling has been suspended for thirty days, the well, unless otherwise authorized by the director, must be plugged and its site reclaimed pursuant to sections 43-02-03-34 and 43-02-03-34.1.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; August 1, 1999; January 1, 2008; April 1, 2010; April 1, 2012; April 1, 2014; ____.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-80. REPORTS OF PURCHASERS AND TRANSPORTERS OF CRUDE OIL. On or before the first day of the second month succeeding that in which oil is removed, purchasers and transporters, including truckers, shall file with the director the appropriate monthly reporting forms. The purchaser shall file on form 10 and the transporter on form 10a the amount of all crude oil removed and purchased by them from each well, ~~or~~ central production facility, treating plant, or saltwater handling facility during the reported month. The transporter shall report the disposition of such crude oil on form 10b. All meter and tank measurements, and volume determinations of crude oil removed and purchased from a well or central production facility must conform to American petroleum institute standards and corrected to a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius] and fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter].

Prior to removing any oil ~~from a well central production facility~~, purchasers and transporters shall obtain an approved copy of a producer's authorization to purchase and transport oil ~~from a well or central production facility~~ (form 8) from either the producer or the director.

The operator of any oil rail facility shall report the amount of oil received and shipped out of such facility on form 10rr.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; September 1, 2000; April 1, 2014; ____.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-81. AUTHORIZATION TO TRANSPORT OIL FROM A WELL, TREATING PLANT, ~~OR~~ CENTRAL PRODUCTION FACILITY, OR SALTWATER HANDLING FACILITY. Before any crude oil is transported from a well, treating plant, ~~or~~ central production facility, or saltwater handling facility, the operator shall file with the director, and obtain the director's approval, an authorization to purchase and transport oil (form 8).

Oil transported before the authorization is obtained or if such authorization has been revoked shall be considered illegal oil.

The director may revoke the authorization to purchase and transport oil for failure to comply with any rule, regulation, or order of the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; September 1, 2000; April 1, 2014; ____.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-90. HEARINGS - COMPLAINT PROCEEDINGS - EMERGENCY PROCEEDINGS - OTHER PROCEEDINGS.

1. Except as more specifically provided in North Dakota Century Code section 38-08-11, the rules of procedure established in subsection 1 of North Dakota Century Code section 28-32-21 apply to proceedings involving a complaint and a specific-named respondent.
2. For proceedings that do not involve a complaint and a specific-named respondent the commission shall give at least fifteen days' notice (except in emergency) of the time and place of hearing thereon by one publication of such notice in a newspaper of general circulation in Bismarck, North Dakota, and in a newspaper of general circulation in the county where the land affected or some part thereof is situated, unless in some particular proceeding a longer period of time or a different method of

publication is required by law, in which event such period of time and method of publication shall prevail. The notice shall issue in the name of the commission and shall conform to the other requirements provided by law.

3. In case an emergency is found to exist by the commission which in its judgment requires the making of a rule or order without first having a hearing, the emergency rule or order shall have the same validity as if a hearing with respect to the same had been held after notice. The emergency rule or order permitted by this section shall remain in force no longer than forty days from its effective date, and in any event, it shall expire when the rule or order made after due notice and hearing with respect to the subject matter of such emergency rule or order becomes effective.

Any person moving for a continuance of a hearing, and who is granted a continuance, shall submit a twenty-five dollar fee, or the estimated cost of republication if the cost exceeds fifty dollars, to the commission to pay the cost of republication of notice of the hearing.

History: Amended effective March 1, 1982; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; July 1, 2002; ____.

General Authority
NDCC 38-08-11

Law Implemented
NDCC 28-32-21,
38-08-11

43-02-03-90.2. OFFICIAL RECORD. The evidence in each case heard by the commission, unless specifically excluded by the hearing officer, includes the certified directional surveys, ~~and~~ all oil, water, and gas production records, and all injection records on file with the commission.

Any interested party may submit written comments on or objections to the application prior to the hearing date. Such submissions must be received no later than five p.m. on the last business day prior to the hearing date and may be part of the record in the case if allowed by the hearing examiner. Settlement negotiations between parties to a contested case are only permissible as governed by North Dakota Century Code section 28-32-24, although the hearing officer may strike such testimony from the record for good cause.

History: Effective May 1, 1992; amended effective April 1, 2010; April 1, 2012; ____.

General Authority
NDCC 28-32-06

Law Implemented
NDCC 28-32-06

UNDERGROUND INJECTION CONTROL
CHAPTER 43-02-05

43-02-05-04. PERMIT REQUIREMENTS.

1. No underground injection may be conducted without obtaining a permit from the commission after notice and hearing. The application shall be on a form 14 provided by the commission and shall include at least the following information:
 - a. The name and address of the operator of the injection well.
 - b. The surface and bottom hole location.
 - c. Appropriate geological data on the injection zone and the top and bottom confining zones including geologic names, lithologic descriptions, thicknesses, and depths.
 - d. The estimated bottom hole fracture pressure of the top confining zone.
 - e. Average and maximum daily rate of fluids to be injected.
 - f. Average and maximum requested surface injection pressure.
 - g. Geologic name and depth to base of the lowermost underground source of drinking water which may be affected by the injection.
 - h. Existing or proposed casing, tubing, and packer data.
 - i. A plat depicting the area of review, (one-quarter-mile [402.34-meter] radius) and detailing the location, well name, and operator of all wells in the area of review. The plat should include all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes, and water wells. The plat should also depict faults, if known or suspected.
 - j. The need for corrective action on wells penetrating the injection zone in the area of review.
 - k. Proposed injection program.
 - l. Quantitative analysis from a state-certified laboratory of freshwater from the two nearest freshwater wells within a one-mile [1.61-kilometer] radius. Location of the wells by quarter-quarter, section, township, and range must also be submitted. This requirement may be waived by the director in certain instances.
 - m. Quantitative analysis from a state-certified laboratory of a representative sample of water to be injected. A compatibility analysis with the receiving formation

may also be required.

- n. List identifying all source wells or sources of injectate.
 - o. A legal description of the land ownership within the area of review.
 - p. An affidavit of mailing certifying that all landowners within the area of review have been notified of the proposed injection well. If the proposed injection well is within an area permit authorized by a commission order, the notice shall inform the landowners within the area of review that comments or objections may be submitted to the commission within thirty days. If the proposed injection well is not within an area permit authorized by a commission order, the notice shall inform the landowners within the area of review that a hearing will be held at which comments or objections may be directed to the commission. A copy of the letter sent to each landowner must be attached to the affidavit.
 - q. All logging and testing data on the well which has not been previously submitted.
 - r. Schematic drawings of the injection system, including current and proposed well bore construction, surface facility construction, including the size, location, and purpose of all tanks, the height and location of all dikes and containment including a calculated containment volume, all areas underlain by a synthetic liner, and the location of all flowlines. It shall also include the proposed road access to the nearest existing public road and the authority to build such access.
 - s. Traffic flow diagram of the site, depicting sufficient area to contain all anticipated traffic.
 - t. A review of the surficial aquifers within one mile of the proposed injection well site or surface facilities.
 - u. Sundry notice detailing the proposed procedure.
- 2. Permits may contain such terms and conditions as the commission deems necessary.
 - 3. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit or any applicable rule or statute. Any permit issued under this section may be suspended by the director for good cause.
 - 4. Before a permit for underground injection will be issued, the applicant must satisfy the commission that the proposed injection well will not endanger any underground source of drinking water.
 - 5. No person shall commence construction of an underground injection well or site without prior approval of the director.

6. Permits are transferable only with approval of the commission.
7. Permits may be modified by the commission.
8. Before injection commences in an underground injection well, the applicant must complete any needed corrective action on wells penetrating the injection zone in the area of review.
9. All injection wells permitted before November 1, 1982, shall be deemed to have a permit for purposes of this section; however, all such prior permitted wells are subject to all other requirements of this chapter.
10. A permit shall automatically expire one year after the date it was issued, unless operations have commenced to complete the well as an injection well.
11. If the permitted injection zone is plugged and abandoned, the permit shall expire and be of no further force and effect.

History: Effective November 1, 1982; amended effective May 1, 1992; May 1, 1994; July 1, 1996; May 1, 2004; January 1, 2006; April 1, 2014; ____.

General Authority
NDCC 38-08-04(2)

Law Implemented
NDCC 38-08-04(2)

43-02-05-07. MECHANICAL INTEGRITY.

1. Prior to commencing operations, the operator of a new injection well must demonstrate the mechanical integrity of the well. Prior to performing any workover project on an existing well, the operator must obtain approval from the director. All existing injection wells must demonstrate continual mechanical integrity and be tested at least once every five years. An injection well has mechanical integrity if:
 - a. There is no significant leak in the casing, tubing or packer.
 - b. There is no significant fluid movement into an underground source of drinking water or an unauthorized zone through vertical channels adjacent to the injection bore.
2. One of the following methods must be used to evaluate the absence of significant leaks:
 - a. Pressure test with liquid or gas.
 - b. Monitoring of positive annulus pressure following a valid pressure test.
 - c. Radioactive tracer survey.

3. One of the following methods must be used to establish the absence of significant fluid movement:
 - a. A log from which cement can be determined or well records demonstrating the presence of adequate cement to prevent such migration.
 - b. Radioactive tracer survey, temperature log, or noise log.

History: Effective November 1, 1982; amended effective May 1, 1990; July 1, 1996; May 1, 2004; ____.

General Authority
NDCC 38-08-04(2)

Seems this definition should be moved to "Definitions" section in 43-02-03-01

Law Implemented
NDCC 38-08-04(2)

43-02-05-11. BONDING REQUIREMENTS. All injection wells, ~~except commercial injection wells,~~ must be bonded as provided in section 43-02-03-15. A commercial injection well is one that only receives fluids produced from wells operated by a person other than the principal on the bond. ~~Each commercial injection well must be bonded at the single well bond rate as provided in section 43-02-03-15.~~

History: Effective November 1, 1982; amended effective May 1, 1992; July 1, 2002; ____.

General Authority
NDCC 38-08-04(2)

Law Implemented
NDCC 38-08-04(2)

STRIPPER WELL AND STRIPPER WELL PROPERTY DETERMINATION CHAPTER 43-02-08

43-02-08-02.1. PROPERTY DETERMINATION. The director recognizes the following as properties:

1. A unit.
2. A spacing unit.
3. Contiguous tracts within a lease.
4. A single well drilled and completed prior to July 1, 2013, is considered a single well stripper well property. A single well drilled and completed after June 30, 2013, is considered a single well stripper well.

Any well or portion of a property previously qualified as a stripper well property may not be redesignated to be included in another property unless approved by the commission after notice and hearing or unless such property lies within a unitized common source of supply.

~~If a well that has previously qualified as a stripper well property is reentered and recompleted as a horizontal well, the stripper well property status on that well will terminate.~~

All wells on the property must have been completed prior to July 1, 2013. A well completed after July 1, 2013, cannot be added to an existing property.

History: Effective September 1, 1987; amended effective May 1, 1992; May 1, 2004; April 1, 2014; ____.

General Authority
NDCC 38-08-04(5)

Law Implemented
NDCC 38-08-04(4)
57-51.1-01

43-02-08-03. DIRECTOR SHALL DETERMINE STRIPPER WELL OR STRIPPER WELL PROPERTY STATUS.

1. Upon receipt of an application for stripper well or stripper well property determination, the director shall review the application, information, or comments submitted by any interested person and all relevant information contained in the books, files, and records of the commission.
2. Stripper well or stripper well property status will be determined on the basis of the qualified maximum total production of oil from the well or property. In order to qualify production from a well or property as maximum total production, the oil-producing well or each oil-producing well on the property must have been

maintained at the maximum efficient rate of production or is not capable of exceeding the production thresholds below if the well or property had been maintained at the maximum efficient rate of production throughout the twelve-month qualifying period.

- a. A property meets the requirements of a stripper well property if the qualified maximum total production of oil from the property excluding condensate did not exceed the following:
 - (1) Production from a well with a well depth of six thousand feet [1828.8 meters] or less did not exceed an average of ten barrels per day;
 - (2) Production from a well with a well depth of more than six thousand feet [1828.8 meters] but not more than ten thousand feet [3048.0 meters] did not exceed an average of fifteen barrels per day; or
 - (3) Production from a well with a well depth of more than ten thousand feet [3048.0 meters] did not exceed an average of thirty barrels per day.
- b. A well meets the requirements of a stripper well if the qualified maximum total production of oil from the well, excluding condensate, did not exceed the following:
 - (1) Production from a well with a well depth of six thousand feet [1828.8 meters] or less did not exceed an average of ten barrels per day;
 - (2) Production from a well with a well depth of more than six thousand feet [1828.8 meters] but not more than ten thousand feet [3048.0 meters] did not exceed an average of fifteen barrels per day;
 - (3) Production from a well outside the Bakken and Three Forks formations with a well depth of more than ten thousand feet [3048.0 meters] did not exceed an average of thirty barrels per day; or
 - (4) Production from a well in the Bakken or Three Forks formations with a well depth of more than ten thousand feet [3048.0 meters] did not exceed an average of thirty-five barrels per day.
3. Within thirty days of the receipt of a complete application for stripper well or stripper well property status, or a reasonable time thereafter, the director shall either grant or deny the application.
4. If an application for stripper well or stripper well property status is denied, the director shall enter a written determination denying the application and specify the basis for the denial. If an application for stripper well or stripper well property status is granted, the director shall enter a written determination granting the application. A copy of the determination either granting or denying the application must be

forwarded by the director by mail to the applicant and all other persons submitting comments. It is the obligation of the applicant to notify and advise the state tax commissioner, all other operators in the well or property, and the purchaser of the crude oil of the determination of the director.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992; July 1, 1996; May 1, 2004; April 1, 2014; ____.

General Authority
NDCC 38-08-04(5)

Law Implemented
NDCC 38-08-04(4)
57-51.1-01

Kadrmass, Bethany R.

From: Holcomb, Taylor <tholcomb@targaresources.com>
Sent: Monday, April 25, 2016 4:39 PM
To: Hicks, Bruce E.
Cc: Middlebrooks, Dan C.
Subject: Targa's Comments on Proposed Chapter 43 Rulemaking
Attachments: Targa Comments on NDIC Proposed Rules.pdf

Assistant Director Hicks,

Attached are Targa's comments on NDIC's proposed revisions to Chapter 43 of the North Dakota Administrative Code. If you have any questions, please feel free to contact me.

Thanks very much,
Taylor

Taylor Holcomb
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Targa Badlands LLC
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April 25, 2016

Via Email

Bruce Hicks, Assistant Director
NDIC Department of Mineral Resources, Oil and Gas Division
600 E. Boulevard Ave.
Bismarck, ND 58505
bhicks@nd.gov

Re: North Dakota Administrative Code – Proposed Chapter 43 Rulemaking

Assistant Director Hicks,

Targa Badlands LLC ("***Targa***") thanks you for the opportunity to provide comments on the North Dakota Industrial Commission's ("***NDIC***") proposed Chapter 43 rules relating to underground gathering pipelines. Targa owns and operates 560.7 miles of crude and natural gas gathering lines in North Dakota, and Targa shares NDIC's goal of improving underground gathering pipeline safety and integrity. Targa supports the North Dakota Petroleum Council's and GPA Midstream Association's previously submitted comments, and Targa offers these further comments in the spirit of ensuring that our shared goal of improving underground pipeline safety and integrity is sensibly achieved.

Consistency with H.B. 1358. In Section 8 of House Bill 1358, the North Dakota Legislature directed NDIC to contract with the University of North Dakota's Energy and Environmental Research Center ("***EERC***") "to analyze the existing regulations on construction and monitoring crude oil and produced water pipelines [and to] determine the feasibility and cost effectiveness of requiring leak detection and monitoring technology on new and existing pipeline systems." The EERC's resultant report was to guide the NDIC in "adopt[ing] administrative rules necessary to improve produced water and crude oil pipeline safety." NDIC has now proposed these rules in NDAC § 43-02-03-29.1, and its notice of these proposed rules explains that these proposed rules are "necessary to improve underground gathering and pipeline safety and integrity pursuant to House Bill 1358."

But in some cases the proposed rules go beyond what the Legislature prescribed in H.B. 1358 and what the EERC recommended in its liquid-specific report. For instance, NDAC §§ 43-02-03-29.1(3) – (5), (8), (9), and (12) – (15) appear to apply not only to crude oil and produced water gathering lines, but also to gas gathering lines. As such, Targa respectfully requests that NDIC review and revise its proposed rules for consistency with Legislative prescriptions and EERC recommendations.

The role of independent inspectors. NDIC's proposed rules contemplate an unnecessarily large role for third-party independent inspectors. In Section 2 of H.B. 1358, the Legislature only required pipeline operators to file an independent inspector's certificate of hydrostatic or pneumatic testing of underground crude oil and produced water gathering pipelines with the NDIC within 60 days of a pipeline being placed into service. As such, Targa supports NDIC's proposed NDAC § 43-02-03-29.1(13)(b) in that it is consistent with H.B.

1358, except that NDIC should require submission of the certificate of hydrostatic or pneumatic testing within 60 days of the pipeline being placed into service instead of "within sixty days of the test."

Any other role for independent third party inspectors not only exceeds Legislative directives, but also is unnecessary and impractical. For instance, in proposed NDAC § 43-02-03-29.1(6), NDIC requires all newly constructed crude oil and produced water underground gathering pipelines to be "inspected by third-party independent inspectors to ensure the pipeline is installed as prescribed by the manufacturer's specifications and in accordance with the requirements of this section," and that "no person may be used to perform inspections unless that person has been trained and is qualified in the phase of construction to be inspected." Targa strongly believes that this should be a role for operator personnel and not third-party independent inspectors. Whether there are enough qualified inspectors available to perform this role is of serious concern. Further, Targa believes that its personnel are better qualified, more reliable, and more conscientious than independent third parties. As such, the extra-statutory independent inspector provisions in NDIC's proposed rules will unnecessarily cause delays and impose needless expenses on operators, with no benefit to pipeline safety.

Leak Detection. Targa interprets NDIC's leak detection proposal at NDAC § 43-02-03-29.1(10) not as requiring a specified form of leak detection, and instead as requiring all owners of crude oil and produced water gathering lines to file leak detection and monitoring plans, if any, with the NDIC. Further, if an owner installs a computational pipeline monitoring system on a gathering line, NDIC proposes to require that it be "operated, maintained, and tested" in accordance with API's recommendation practices, which is consistent with PHMSA's CPM rules in 49 C.F.R. Part 195. However, NDIC also proposes to require all such owners to "develop and maintain a data sharing plan." The data to be shared would most likely be obtained from Targa's SCADA systems, and Targa and others in the industry consider that information highly proprietary and confidential. As such, Targa respectfully requests that NDIC remove the data sharing requirement from the rules.

Targa remains committed to working with the NDIC to achieve our shared goal of improving underground pipeline safety and integrity, and hopes that these comments help NDIC achieve that goal in a sensible manner. If you have any questions about these comments, please feel free to contact me at 713-584-1047.

Sincerely,



Dan C. Middlebrooks

Executive Vice President, Northern Field G&P



**LABORERS DISTRICT COUNCIL
MINNESOTA AND NORTH DAKOTA**

Affiliated with Laborers International Union
of North America

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TODD T. PUFAHL
President & Business Manager

Comments on proposed gathering line regulations

ND Department of Mineral Resources
Oil and Gas Division
600 E Boulevard Ave, Dept 405
Bismarck, ND 58505-0840



The Laborers International Union of North America represents a half-million members across the U.S. and Canada, including thousands who have worked on pipeline and other construction projects in North Dakota. We are strong supporters of responsible, sustainable development of oil and gas resources. We fight harder than any other organization in the country for development of needed energy infrastructure, including the recently approved Dakota Access Pipeline.

We congratulate the Commission for the rule changes proposed today with the notable exception of the proposed definition of interested parties. We don't want that issue to completely overshadow what could be an important step forward.

North Dakota has gained an unfortunate reputation as the wild west for oil and gas development. Not only a consequence of extensive media coverage of state's nation-leading rate of worker deaths and high-profile oil and saltwater spills. It's what we hear from pipeliners and contractors that have worked in other jurisdictions, and whose experience all-too-often has been that "anything goes" in North Dakota.

There is a strong process through Public Service Commission for safe and sound installation and operation regulated pipelines. Unfortunately same process has not been in place for gathering lines even though gathering lines arguably pose the greatest risk to state's lands, people, and natural environment. If fully implemented and enforced, and only if fully implemented and enforced, the proposed rule changes could move North Dakota from the back of the pack to the front when it comes to installation and operation of gathering lines by establishing clear standards and lines of responsibility.

We hope that you will remove the definition of interested parties, which would prevent the people who know the most about the process of building and maintaining pipelines from contributing, and move forward with and fully resource implementation of the rules. These rules could make oil and gas development more sustainable, protect state lands and residents, and create more career opportunities for skilled local tradespeople who know how to get the job done right.

The following are specific aspects of the rule changes that are particularly important:

Bonding: We support the principle that the owners of saltwater handling facilities and gathering pipelines should be able to provide financial assurance in the event that the facility is abandoned or causes environmental damage. We agree, however, with the representative of 1804 Operating who argued at the Dickinson hearing that the proposed amounts are far too little to cover the potential damage of a major spill.

We recommend that the Commission investigate the 1804 Operating representative's suggestion that operators be required to prove that they have in place an insurance policy that would cover the damage of a significant spill.

Pre-construction notification requirement (new pipelines and repairs) – We commend the Commission's proposal to require seven-day notification of new gathering line construction because we believe that such notification will help to hold operators and contractors and provide a record that can be consulted in the event of problems related to the construction or operation of the pipeline. We would, however, urge the Commission to go further in two key respects.

- First, we recommend that the Commission require the operator providing notice to list all contractors that will perform work on the project. In our experience, many pipeline contractors working in North Dakota are capable and perform quality. Unfortunately, there are handful that perform evidently poor-quality work, and we believe that these contractors may be disproportionately responsible for problems ranging from landowner complaints to spills. By requiring listing of contractors, the Commission would have the information needed to identify problem contractors.
- Second, we recommend that the Commission either require the operator to provide the same notification to landowners, or make the notification publicly available so it can be accessed by landowners. We have spoken to many landowners who express frustration with the lack of information provided to them by owners concerning planned, current, and past gathering line construction projects. Landowners have complained about discovering unidentified contractors working on their land, sometimes in areas where no easement has been signed. The notification process could help provide information and peace of mind to many landowners.

Immediate notification of all line strikes – Line strikes are, in our experience, the single greatest risk associated with building pipelines in the Bakken. While line strikes happen throughout the country, the Bakken has unique features – including line density that may exceed any other shale play and proliferation of unmarked and poorly marked lines from current and past booms – that create a potentially lethal cocktail. There's no faster way to create the conditions for a spill or maim or kill a worker than to hit a hot line during construction, and a typical pipeline may encounter dozens of such lines for each mile built.

We have been told of multiple instances in which construction crew inadvertently hit lines or other underground facilities but the damage was never reported. While contractors are already reported to report third-party line strikes, strikes on lines operated by the same owner can cause just as much damage. The reporting requirement could help to ensure that any damage is properly repaired, and that contractors are held accountable for construction practices that have potential to damage infrastructure and hurt or kill workers

Proper training of installation crews – The EERC report on liquids gathering lines highlights the central importance of a skilled, trained workforce:

"In the final analysis, no single pipeline product option, installation technique, or leak detection technology will impact the rate of leaks and spills more than ensuring that each and every person on each and every installation crew is made acutely aware of the risks of improper installation procedures and that each person follows these procedures to the letter. Increased state inspection with limited additional regulatory authority may help to ensure that proper procedures are followed, but the ultimate responsibility still rests with contractors performing the work."

In our interviews with pipeliners who have performed or witnessed substandard work on the job, lack of proper training is a key theme. They report working for employers that essentially hired workers 'off the street' and provided little or no training. Unfortunately, even as construction has slowed, we have seen little improvement in the average skill level pipeline construction workers.

We recommend that the Commission come up with more specific guidance on the definition of "thoroughly trained" that makes clear the training must involve hands-on instruction from qualified instructors, and not simply a manufacturer-provided training video and booklet. While it is not essential that every member of the crew is a 20-year pipeline veteran, each member of the crew should have received basic classroom and hand-on training, and each crew needs to have veterans with training and experience specific to the type of pipe and construction that is underway.

Proper debris-free trench bedding and backfill – In our interviews with pipeliners and review of public records, we have found multiple examples where pipelines were apparently laid in trenches with foreign debris, rocks, and/or poorly compacted soil that is susceptible to settling over time, as well as examples where rocks and other debris were dumped on top of the pipe. Failure to properly pad pipe or sift rocks from dirt. One North Dakota pipeliner, for example, described a regular practice of backfilling trenches after the inspectors had gone home and listening to the "ding-da-ding-ding-ding" of rock hitting pipe all night long.

Proper handling of pipe – The seeds of future spills are often sewn through improper handling of the pipe during stringing along the right of way and lowering in to the trench. We have witnessed and documented multiple examples of pipe left on the ground where the coating can easily be scratched rather than maintained on skids. Like other issues, this is likely a result of poor training of crews who may be unaware of the sensitivity of the pipe to mishandling.

Use and disclosure of directional drilling for wetlands and waterbodies – Directional drilling has become a standard technique for building pipelines through wetlands and across streams and rivers, but proper planning and execution are essential to achieve the desired goal. While plans may call for directional drills that avoid any disturbance to wetland areas, we have seen construction practices that undermine the goal by putting equipment and construction work into the very wetland the plan sought to avoid. One pipeliner, for example, described being forced to perform tie-ins waist-deep in wetland because the directional drilling subcontractor regularly came up short. The detailed plans proposed in the new rules could help to avoid such problems by making clear that operators and contractors will be held accountable to the plans.

Removal and segregation of up to 12" of topsoil – In our experience, failure to properly remove, segregate, and replace topsoil during the construction of gathering lines is a serious problem in North Dakota. On many occasions, our staff and members have witnessed practices that include the mixing of topsoil and subsoil, stripping only the ditch line, and in some cases the construction of pipelines directly on the grass with no stripping at all.

Elimination of clamping as a repair method – As noted in the EERC report, crimping pipe does permanent damage to the structure and we believe the reputable contractors already avoid the practice.

Thank you for your attention.

Kevin Pranis
Marketing Representative
LIUNA Great Lakes Region Organizing Committee

CROWLEY FLECK PLLP
ATTORNEYS

1331 9th Avenue NW – 2nd Floor
P.O. Box 1206
Williston, ND 58802-1206
Phone: (701)572-2200
Fax: (701)572-7072

FACSIMILE TRANSMITTAL

TO: NDIC Oil and Gas Division – Dept. of Mineral Resources
ATTN: Bruce e. Hicks, Assistant Director
FROM: Trevor Hunter
FAX NO. 701-328-8022
RE: North Dakota Pipeline Company LLC
Comment on Proposal Subsection 43-02-29.1(15)(b), N.D.A.C.

Letter from Trevor Hunter to follow cover sheet.

Received
APR 25 2016
ND Oil & Gas Division

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(Pages: 3 including cover sheet)

CROWLEY | FLECK LLP
ATTORNEYS

Trevor A. Hunter
P.O. Box 1206
Williston, ND 58802-1206
Phone – 701.572.2200
Fax – 701.572.7072
E-Mail: thunter@crowleyfleck.com

Received
APR 25 2016
ND Oil & Gas Division

April 25, 2016

NDIC Oil and Gas Division
Department of Mineral Resources
600 East Boulevard Ave., Dept. 405
Bismarck, North Dakota 58505-0840
Attn: Bruce E. Hicks, Assistant Director
Facsimile: (701) 328-8022
E-Mail: brkadrmas@nd.gov

Via E-Mail and Facsimile

RE: North Dakota Pipeline Company LLC – Comment on Proposed Subsection 43-02-03-29.1(15)(b), N.D.A.C.

Dear Mr. Hicks:

Our firm represents North Dakota Pipeline Company LLC and submits this comment to the proposed amendments and additions to the North Dakota Administrative Code Chapter 43-02-03 (Oil & Gas).

Proposed section 43-02-03-29.1, N.D.A.C., concerns underground pipelines. Specifically, subsection 43-02-03-29.1(15)(b), N.D.A.C., requires that the owner of an abandoned underground gathering pipeline file certain GCS and Esri files and provide an affidavit of completion providing detailed information on the abandoned line.

North Dakota Pipeline Company LLC requests that this new subsection be amended to only apply to underground gathering pipelines put into service after July 31, 2011. Under the current proposed language, the provision would arguably apply to any and all underground gathering pipelines abandoned prior to the adoption date of the subsection. North Dakota Pipeline Company LLC, as well as other similarly situated companies, had many lines put into service as long as 65 years ago and which have long since been removed from service. GCS and Esri information is simply not available for these lines. As such, a service date of July 31, 2011 is more appropriate as GCS and Esri information for lines installed after this date should be readily available.

BILLINGS BISMARCK BOZEMAN BUTTE CASPER CHEYENNE HELENA KALISPELL MISSOULA SHERIDAN WILLISTON

C R O W L E Y F L E C K . C O M

NDIC Oil and Gas Division
Department of Mineral Resources
April 25, 2016
Page 2 of 2

Please do not hesitate to contact me should you have any questions. Thank you for your careful consideration of North Dakota Pipeline Company LLC's comment and requested amendment to this proposed rule change.

Sincerely,

CROWLEY FLECK PLLP

A handwritten signature in black ink, appearing to read 'T. A. Hunter', with a long horizontal flourish extending to the right.

Trevor A. Hunter

cc: North Dakota Pipeline Company LLC

Kadrmass, Bethany R.

From: Trevor A. Hunter <thunter@crowleyfleck.com>
Sent: Monday, April 25, 2016 4:54 PM
To: Kadrmass, Bethany R.
Cc: Hicks, Bruce E.
Subject: North Dakota Pipeline Company LLC's Comment on Proposed Subsection 43-02-03-29.1(15)(b), N.D.A.C.
Attachments: Letter to NDIC - North Dakota Pipeline Company LLC - 4.25.16.pdf

Hello:

Our firm represents North Dakota Pipeline Company LLC and submits the attached comment to the proposed amendments and additions to the North Dakota Administrative Code Chapter 43-02-03 (Oil & Gas) on its behalf. Thank you for your consideration.

**Trevor A. Hunter****Attorney at Law**

CROWLEY FLECK PLLP

1331 9th Avenue NW - 2nd Floor

P.O. Box 1206

Williston, North Dakota 58802

Phone 701.572.2200 Fax 701.572.7072

thunter@crowleyfleck.com

www.crowleyfleck.com

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C R O W L E Y | F L E C K PLLP
ATTORNEYS

Trevor A. Hunter
P.O. Box 1206
Williston, ND 58802-1206
Phone – 701.572.2200
Fax – 701.572.7072
E-Mail: thunter@crowleyfleck.com

April 25, 2016

NDIC Oil and Gas Division
Department of Mineral Resources
600 East Boulevard Ave., Dept. 405
Bismarck, North Dakota 58505-0840
Attn: Bruce E. Hicks, Assistant Director
Facsimile: (701) 328-8022
E-Mail: brkadrmas@nd.gov

Via E-Mail and Facsimile

RE: North Dakota Pipeline Company LLC – Comment on Proposed Subsection 43-02-03-29.1(15)(b), N.D.A.C.

Dear Mr. Hicks:

Our firm represents North Dakota Pipeline Company LLC and submits this comment to the proposed amendments and additions to the North Dakota Administrative Code Chapter 43-02-03 (Oil & Gas).

Proposed section 43-02-03-29.1, N.D.A.C., concerns underground pipelines. Specifically, subsection 43-02-03-29.1(15)(b), N.D.A.C., requires that the owner of an abandoned underground gathering pipeline file certain GCS and Esri files and provide an affidavit of completion providing detailed information on the abandoned line.

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NDIC Oil and Gas Division
Department of Mineral Resources
April 25, 2016
Page 2 of 2

Please do not hesitate to contact me should you have any questions. Thank you for your careful consideration of North Dakota Pipeline Company LLC's comment and requested amendment to this proposed rule change.

Sincerely,

CROWLEY FLECK PLLP

A handwritten signature in black ink, appearing to read 'T. A. Hunter', with a long horizontal flourish extending to the right.

Trevor A. Hunter

cc: North Dakota Pipeline Company LLC

Kadrmass, Bethany R.

From: White, Renee <RWhite2@newalta.com>
Sent: Monday, April 25, 2016 4:37 PM
To: Kadrmass, Bethany R.
Subject: Newalta - Comments Regarding the NDIC Proposed Rules
Attachments: 20160425 Comments Regarding the NDAC Changes.pdf

Good afternoon Bethany,

Please find attached Newalta comments regarding the NDIC Proposed Rules. If you have any questions please feel free to give me a call at (403) 806-9879.

Regards,
Renee

Renee White | Sr. Regulatory Advisor | Newalta Corporation

Corporate Office | 211 - 11 Ave S.W. | Calgary, Alberta T2R 0C6
403.806.9879 Phone
403.808.8468 Cellular
403.806.7077 Fax
www.newalta.com

From: Kadrmass, Bethany R. [<mailto:brkadrmass@nd.gov>]
Sent: Thursday, March 10, 2016 8:19 AM
To: White, Renee
Subject: NDIC Proposed Rules

Renee,

Written comments on the proposed rules, sent to the Oil and Gas Division, 600 E Boulevard Ave, Dept 405, Bismarck, ND 58505-0840, received by 5pm, April 25th, 2016, will be fully considered. You may also send them to me via email. I'll respond confirming receipt.

Let me know if you have additional questions.

Bethany Kadrmass
North Dakota Oil and Gas Division
P: 701-328-8020 | F: 701-328-8022
brkadrmass@nd.gov | www.dmr.nd.gov/oilgas



April 25, 2016

North Dakota Industrial Commission
Oil and Gas Division
600 E Boulevard Ave, Dept. 405
Bismarck, ND 58505-0840

Attention: Bethany Kadrmas:

RE: FULL NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES

Newalta Corporation (Newalta) would like to submit the following comments on the changes to the North Dakota Administrative Code (NDAC) Chapter 43-02-03 (Oil & Gas), Chapter 43-02-05 (Underground Injection Control), and Chapter 43-02-08 (Stripper Well Property Determination) proposed by the North Dakota Industrial Commission (NDIC), Department of Mineral Resources, Oil and Gas Division.

43-02-03-19 SITE CONSTRUCTION

"Within six months after the completion of a well or construction of a facility the portion of the site not used for operations shall be reclaimed, unless waived by the director. Operators shall file a sundry notice (form 4) detailing the work that was performed and a current site diagram, which identifies the stockpiled topsoil location and thickness. Well and facility sites shall be stabilized to prevent erosion."

- When constructing a site, an operator may clear and prepare the land for future expansion, not just initial operations. This should not be limited by having to reclaim the unused portion of the site.
- Newalta respectfully suggests that if the above clause is included in the changes that there be additional wording which indicates that this is on a go forward basis and not retroactive to sites already constructed or in operation.

43-02-03-19.3 EARTHEN PITS AND RECEPTICLES

Newalta recognizes that the intent of the proposed changes in the section is to allow for new technology when flowing back a well after hydraulic stimulation. However, there is no definition of new technology or a defined process (i.e. pilot project, hearing, etc.) in order to use the new technology mentioned in this section. This section only speaks to specific use of pits and receptacles. The addition of a definition for new technology and clarification around the process to use technology would be beneficial.



43-02-03-28 SAFETY REGULATION

"No well shall be drilled nor production or injection equipment installed nor saltwater handling facility or treating plant constructed less than five hundred feet [152.40 meters] from an occupied dwelling unless agreed to in writing by the owner of the dwelling or authorized by order of the commission."

- Newalta respectfully suggests that additional wording be added which clarifies that this is on a go forward basis and not retroactive to sites already constructed or in operation.
- An additional concern is the applicability of the set-back requirements when a sundry notice is submitted. Would a re-evaluation of the set-back be required?

43-02-03-30 NOTIFICATION OF FIRES, LEAKS, SPILLS, OR BLOWOUTS

"Notification requirements prescribed by this section shall not apply to any leak, spill, or release of fluid that is less than one barrel total volume and remains onsite of a facility"

- Newalta acknowledges the need to define reporting requirements for on-site releases. One barrel total volume is conservative when compared to other jurisdictions. A trigger of six barrels total volume for an on-site release is better aligned with Colorado, Montana, and Saskatchewan.

Newalta appreciates the opportunity to provide comments on the proposed changes to the NDAC regulations. If you should have any questions please contact me at (403) 806-9879 or via email at rwhite2@newalta.com.

Sincerely,

NEWALTA CORPORATION

A handwritten signature in black ink that reads "R. White".

Renee White, EP
EHS Sr. Regulatory Advisor

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Monday, April 25, 2016 4:30 PM
To: Kadrmass, Bethany R.
Subject: FW: Comments - NDAC Chapter 43-02-03, etc.
Attachments: DRC Comments ND Industrial Commission_Apr 25 16.pdf

Bethany – Comments on the proposed administrative rules. Karlene

From: Jennifer Weisgerber [<mailto:jennifer@drcinfo.com>]
Sent: Monday, April 25, 2016 4:25 PM
To: Fine, Karlene K.
Cc: Nicole Donaghy; Don Morrison
Subject: Comments - NDAC Chapter 43-02-03, etc.

Attached are comments for the proposed amendments and additions to the North Dakota Administrative Code (NDAC) Chapter 43-02-03 (Oil & Gas), Chapter 43-02-05 (Underground Injection Control), and Chapter 43-02-08 (Stripper Well Property Determination).

Thank you,

Jennifer Weisgerber
Communications Coordinator
Dakota Resource Council
701.989.1762 (cell)



DAKOTA RESOURCE COUNCIL

1200 Missouri Ave, Suite 201, Bismarck ND 58504

701-224-8587 • www.drcinfo.org

Dakota Resource Council Comments Regarding 43-02-03 General Rules

Monday, April 25, 2016

The proposed rule to define the term “interested party” will prohibit testimony from citizens not directly invested in the facility or property but who will still be impacted by truck traffic, emissions, and the threat of contamination. Spills and contamination are not limited to the imaginary boundaries of right-of-ways, easements, and well pad sites.

Dakota Resource Council members and the people of North Dakota value an open process that makes space for concerns to be heard and documented. We are all an “interested party” when it comes to shared natural resources. Limiting the definition will prohibit the participation of any person who may offer expert testimony on behalf of the interest of all people.

Also, testimony at oil and gas hearings is the only assurance for any party to claim a possible grievance, as stated in North Dakota Century Code.

23-01-36. Appeal from permit proceedings.

An appeal from the issuance, denial, modification, or revocation of a permit issued under chapter 23-20.1, 23-20.3, 23-25, 23-29, or 61-28 may be made by the person who filed the permit application, or by any person who is aggrieved by the permit application decision, provided that person participated in or provided comments during the hearing process for the permit application, modification, or revocation.

Members of Dakota Resource Council strongly urge you to not wrongly define the term of an interested party, thereby taking away the right to oppose any facility that may impact surrounding residents. We cannot control what could happen, as we have all witnessed for the last nine years.

Proposed rule 43-02-03-28 on the safety regulation for the setback distance for salt water handling facilities should be required to have a larger setback than 500 feet.

The setback of 500 feet is standard for oil and gas facilities in the Bakken, and landowners are not protected from the effects of exposure to any of these facilities. Close proximity to industrial activity has been shown to have an impact on not only physical health, but also mental health.¹ Noise, light, and vibration from constant truck traffic will increase and last as long as the facility is in operation.

¹ Arbelaez, J., Baizel, B. (2015). Californians at risk: An analysis of health threats from oil and gas pollution in two communities. Earthworks; 2015 <http://www.cleanwateraction.org/files/publications/CaliforniansAtRiskFINAL.pdf>



DAKOTA RESOURCE COUNCIL

1200 Missouri Ave, Suite 201, Bismarck ND 58504

701-224-8587 • www.drcinfo.org

Members of Dakota Resource Council strongly urge the NDIC to increase setbacks from inhabited dwellings to 1,320 feet to ensure that the exposure to industrialized pollution is minimized.

23-02-03-29.1 is aimed to improve the underground gathering pipeline safety and integrity.

Section 10 states that the operator is required to file with the commission any leak detection and monitoring plan. This does not require the operator to state where the location of the controls must be. Dakota Access Pipeline, for example, will run under two critical areas of the Missouri River. Controls for this pipeline are expected be located in Texas, increasing the damages of any area of rupture that may be left for an unnecessary amount of time. It does make a difference where these controls are monitored, especially in relation to emergency first responders.

Members of Dakota Resource Council strongly urge that controls for monitors, valves, and pressure monitors be located within state to mitigate the cost of and time to respond to an undesired event.

Craig Scott

Chair, Board of Directors

on behalf of Dakota Resource Council



1101 1st Ave. N., Fargo, ND 58102
P.O. Box 2064, Fargo, ND 58107-2064
Phone: 701-298-2200 • 1-800-367-9668 • Fax: 701-298-2210

4900 Ottawa St., Bismarck, ND 58503
P.O. Box 2793, Bismarck, ND 58502-2793
Phone: 701-224-0330 • 1-800-932-8869 • Fax: 701-224-9485

April 25, 2016

NDIC Oil and Gas Division
600 East Boulevard Ave Dept 405
Bismarck, ND 58505-0840
Attn: Bruce Hicks

Received
APR 25 2016
ND Oil & Gas Division

Dear Mr. Hicks,

North Dakota Farm Bureau has reviewed the proposed changes, particularly those proposed changes to Chapter 43-02-03 that could impact public comments on projects.

From our perspective general public comments are not needed for private business transactions on private property. There may be need for comments from local government leaders, but only within the realm of their jurisdiction, and their personal bias and opinions must not be allowed.

Outside individuals or special interest groups that have no direct connection to projects often use public comments as an opportunity to make political statements that go for outside the sphere of sound science. These interests should not be allowed to undermine legitimate business projects that are playing by the rules set forth in statute.

Unless there is realistic potential for negative impacts on neighboring property owners, we believe that comments should be restricted to stakeholders who have the potential to be directly affected by the proposed project.

First and foremost we believe that private property rights and private business transactions should be focused on, in any proposed rule changes, and protecting those basic rights are our top priority.

Pete Hanebutt
North Dakota Farm Bureau
Office 701-224-0330
Cell 701-371-0027





North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502
April 24, 2016

Mr. Lynn Helms, Director
Oil and Gas Division
Department of Mineral Resources
North Dakota Industrial Commission
600 East Boulevard Avenue
Dept. 405
Bismarck, North Dakota 58505-0840



Dear Mr. Helms:

These comments are provided by the North Dakota Chapter of The Wildlife Society on the proposed administrative rules on oil and gas regulations. The Chapter is comprised of approximately 350 wildlife and natural resource biologists, land managers, educators and law enforcement officers in the State. The Chapter has a long history of involvement in oil and gas, energy, and public land issues in the State.

The Chapter supports many of the proposed rule changes dealing with underground gathering pipelines, saltwater handling facilities, bonding requirements, and berms on oil pads. These proposed rules should provide greater safety for landowners, the public and the landscape of western North Dakota.

However the Chapter opposes the proposed definition of "interested party" in the new rules. As we read the proposed definition, it would exclude public comments on oil and gas permit issues that affect public lands or may occur on "adjacent" lands, adjacent also being undefined. It would also prevent public comments on permits on oil and gas issues that affect public natural resources including fish, wildlife, air and water, and that use or affect other public interests such as roads, utilities, and public services.

Since the four public hearings on the proposed rules, the Oil and Gas Division has presented a number of reasons why the change in the interested party definition was needed. First, it was explained that the Oil and Gas Division and the ND Industrial Commission need a means to "weigh" the comments received. Later, it was stated that the rules change was needed to define who had standing in providing comments on oil and gas issues. These rationales are both shams. The Oil and Gas Division and the Industrial Commission are supposed to weigh the comments received, those from the general public as well as from industry. The Division and Commission do not need a rule that states "disregard comments from the citizens". Similarly, the general public certainly has the right to comment on a public permit action that affects or occurs on public lands or "adjacent" to public lands. In addition, the public has the right to comment on proposed actions that occur on private land but may affect public natural

resources such as fish, wildlife, water, and air, or affect public entities such as public roads and transportation, public health, or use the public's ground and surface water resources.

During the ND Industrial Commission meetings on the State's Extraordinary Places policy in 2014, Governor Dalrymple said the Commission welcomed public comments on these oil and gas issues that affected the public lands. Attorney General Stenehjem was quoted in the Bismarck Tribune on this very issue as saying he "favored wide and robust public involvement when the government is taking any kind of action." Clearly, this proposed rule is at odds with the views of two of the members of the North Dakota Industrial Commission.

Again, we ask that this definition be deleted from consideration in the proposed rules change.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. McEnroe". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael R. McEnroe
Energy and Government Relations
North Dakota Chapter of The Wildlife Society

cc:

The Honorable Jack Dalrymple, Governor of North Dakota, NDIC Chair
Attorney General Wayne Stenehjem, ND Industrial Commission
Agriculture Commissioner Doug Goehring, ND Industrial Commission

North Dakota Wildlife Federation

Ensuring abundant wildlife, wildlife habitat, and access to wildlife recreational opportunities



April 25, 2016

Oil and Gas Division
Department of Mineral Resources
North Dakota Industrial Commission
600 East Boulevard Avenue, Dept. 405
Bismarck, North Dakota 58505-0840



Re: Proposed Administrative Rules

The North Dakota Wildlife Federation is the State's largest sportsmen and women's organization in North Dakota, made up of over 1,300 members in fifteen clubs across the State.

The North Dakota Wildlife Federation opposes the definition of "interested party" in the proposed administrative rules. The proposed definition would prohibit the Federation, as well as other interested conservation groups, from commenting on oil and gas permit issues that affect our public lands in the State. The North Dakota Wildlife Federation is vitally interested in the oil and gas issues that affect our fish, wildlife, and natural resources and public lands in western North Dakota. We will continue to comment on issues that affect the State's wildlife and natural resources.

Governor Dalrymple and Attorney General Stenehjem have both been quoted as welcoming public comments on oil and gas issues. It would seem that these two members of the North Dakota Industrial Commission would be opposed to this proposed rule.

The North Dakota Wildlife Federation respectfully asks the Oil and Gas Division to delete this proposed definition of interested party from further consideration.

Sincerely,

Charles S. Vasicek
Past President, NDWF



PO Box 1091 • Bismarck, North Dakota 58502 • E-mail: ndwf@ndwf.org • Fax: 701-223-4645
Office Manager: 701-222-2557 • 1-888-827-2557 • Web: www.ndwf.org

Kadrmass, Bethany R.

From: Dorothy Ventsch <dventsch@restel.net>
Sent: Monday, April 25, 2016 4:17 PM
To: Kadrmass, Bethany R.
Subject: 2016 New rules comments

The proposed amendment to define “interested party” appears to be another attempt to silence the small voice of the people who live in the middle of the oil boom’s chaotic activity. It is taking away the constitutional right of free speech. The purpose of a hearing is to hear from all sides, that being the public and industry. If the public is taken out of it, then “public hearing” will have to be defined. There are times when the general public (the people living here) have knowledge and concerns that are not a priority with the state government or industry, but they should be. The residents of the area are affected more than anyone when these decisions are made.

Thank you.

Dorothy Ventsch
New Town, ND

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Tuesday, April 26, 2016 9:49 AM
To: Kadrmass, Bethany R.
Subject: FW: Department of Mineral Resources 2016 New Rules

Bethany – This came in before the deadline. Please include in the record. Karlene

From: Haugen, Shelley K.
Sent: Tuesday, April 26, 2016 9:45 AM
To: Nisbet, Jason; Fine, Karlene K.
Subject: FW: Department of Mineral Resources 2016 New Rules

From: Apache [<mailto:apache@itdapachep1.itd.nd.gov>] **On Behalf Of** Corinne Lee
Sent: Monday, April 25, 2016 4:20 PM
To: -Info-Governor's Office
Subject: Department of Mineral Resources 2016 New Rules

Contact Form Submission

Name

Corinne Lee

Email Address

lunacx13@gmail.com

Phone Number

17012582465

Subject

Department of Mineral Resources 2016 New Rules

Comments

Dear Governor Dalrymple I am writing about the Proposed change to the definition of "interested parties" in regards to who is allowed to comment at Oil & gas hearings. I can see no reason to change it from the way it is at the current time. All North Dakotans are affected by the degradation of our air, land, water, and way of life that oil and gas development brings. We very much have a right to comment on that (especially on public lands!) and to try to provide some balance to unchecked destruction. To limit the number of people who are allowed to speak on this is simply wrong. Please continue to allow all people of North Dakota to be "interested parties" and comment on what is happening to their environment. Thank you, Corinne Lee 711 2nd st Bismarck 58501

Submitted from governor.nd.gov on 04/25/2016 - 4:20pm from IP address: [165.234.159.13]

Kadrmass, Bethany R.

From: Corinne L <lunacx13@gmail.com>
Sent: Monday, April 25, 2016 4:02 PM
To: Kadrmass, Bethany R.
Subject: 2016 new rules comments

I am writing about the proposed new definition of "interested parties" in regards to who will be allowed to comment at Oil & Gas hearings. There really is no reason to change it from the current definition. All North Dakotans are affected by the degradation to our air, land, water and way of life that oil and gas development brings about. We most definitely have a right to comment on that (especially on public lands!) and hopefully mitigate the destruction. Limiting the number of people who can comment on that process is simply wrong. Please leave things as open as they are at the present time.

Thank you, Corinne Lee
711 2nd st n
Bismarck
58501

Kadrmass, Bethany R.

From: Helms, Lynn D.
Sent: Monday, April 25, 2016 3:56 PM
To: Kadrmass, Bethany R.
Subject: FW: Comment on Oil and Gas Division Administrative Proposed Rules: "Interested Party," and lack of proper wellsite Metering of methane flaring and venting

From: bruce bale [mailto:bruce.rb11@yahoo.com]
Sent: Monday, April 25, 2016 3:54 PM
To: Helms, Lynn D.; governor@state.nd.us; -Info-Attorney General
Subject: Comment on Oil and Gas Division Administrative Proposed Rules: "Interested Party," and lack of proper wellsite Metering of methane flaring and venting

Comment on Oil and Gas Division Administrative **Proposed Rules: "Interested party,"** and lack of **proper wellsite Metering** of methane flaring and venting.

1. Where is the rule in these otherwise good proposals requiring adequate well site **metering** of flared and vented gas, as Is required in the BLM regulations, and on offshore U.S. and Canadian operations, where companies still manage to eagerly bid, drill and profit?

2. Most of these proposed regulations appear very well-intended, nurturing protective goals and effects. The only question over them is, Why weren't they enacted long ago? However, if a rule excluding such an important right as comment from All interested parties is offered, why wasn't this rule *also* on the books earlier? How did we ever manage to survive with this scary term undefined for twenty years? What repeated or longstanding "egregious or wasteful problems" have given rise to the imperative Need for this curious new rule? Like the one-sided clamor and push for "tougher" voter I.D. laws (which just happen to also exclude more opposing voters), is this simply another solution, desired by a few seeking an advantage through our government, in search of a problem, that doesn't really exist? Is this high-handed rule in response to any kind of real, grassroots movement? Are voters up in arms, to give away more of their rights? Are other states silencing their citizens, preferring to usher in dominance over their states' residents by outside profit interests? Is this calculated repression of affected citizen voices being carefully coordinated with other oil producing states?

Why is this proposed rule completely opposite of our own Legislature's rules encouraging affected citizens' rights to be heard? Will "interested party" now be conveniently restricted to only immediate landowners and property managers? So children, elderly and others suffering from respiratory diseases – some brought on or exacerbated by deadly production by-products that flaring creates are no longer "interested?" For all those harmed by this state's dismal ongoing record of allowing continuously excessive flaring, will we now try to reduce this to a mere quibble about definitions? Why is it now necessary to close this process, to exclude and deprive others that the Division might deem "not interested," forcing them to take further, expensive and – for ordinary folks – arduous steps, to contest, appeal and even litigate their rights? Is this an attempt to turn what often Greatly affects

the public or many of its members, their health, safety and enjoyment of our increasingly shrinking, diminutive natural environment and the few “special places” left, into a mere private dispute, among only two or a very few “interested parties?” How much thought was given to Welcoming and Encouraging our state’s citizens to exercise their Rights to Participate in their Government, its Rulemaking and the Effects upon their well-being? Could this simply be another bald-faced attempt to define and categorize away participation by affected members of the public and our right to shape government decisions that impact us?

In fact, with ND’s record of being the worst at allowing reckless, excessive flaring, isn’t every person, plant and animal on the Planet *Very* interested indeed – in their very future survival? Why stifle opposition, dissent and consideration of other North Dakotans’ rightful speech, to leave us with a neat, clean and orderly process to quickly dispatch with such troubling issues, barring the doors and keeping the public out, favoring an entitled, government-endorsed corporatocracy? Why promote the *interest*-ing effect of Excluding our state residents, while Including foreign, out-of-state corporations, partnerships, other business entities, *and* non-resident individual owners, many of whom are mostly (if not exclusively) interested in petroleum operations here only for the money they produce, and little else? Isn’t this exactly the kind of profit-motivated gag rule that the notorious American Legislative Exchange Council, ALEC, heartily approves of? One might also wonder why no hearings on these proposed rules were held in our state’s more populous eastern areas: Fargo, Grand Forks, Wahpeton, Jamestown and Valley City, for instance. Although state citizens also live there, they too would be barred from participating in government’s handling of oil and gas matters. Are they Less than potentially uninterested parties?

No amount of ignoring, glossing over, sweeping under the rug or industry money, denials or influence can alter the raw, overwhelming scientific evidence that destructive climate change is well under way, caused by the ongoing, careless greenhouse gas emissions that our continuing fossil fuel production and use is causing. Some officeholders and others here might prefer to continue taking advantage of the fact that, unlike the instantly obvious destructive effects of salt and petroleum spills, results of the ongoing discharge of methane and carbon dioxide that are loading up the atmospheric burden of devastating global warming – increasingly imperiling our civilization and life on earth – aren’t as immediately apparent. So, that’s another easy can to kick down the road, for some distant “later” (although insurance companies and our own military aren’t.) As members of the only political party on the planet that loudly declares its stubborn, blind ignorance and chosen disbelief of the central, manmade causes of out of control greenhouse gas emissions and the frightening, destructive climate change we’re watching unfolding before us, is this only more of beckoning poor little oil and gas companies to hide under your protective skirts, protected from all troubling or disliked regulation, and boosting profits any way they wish?

It may seem great for a while, when some states, through some policies, act as though they’re only loosely related to, governed by and responsible to the rest of the country – the Union, and the world. Then, we can focus undisturbed on our own narrow, insular political scenery and whims and, for some, our perceived parochial “best” interests, with real workers and voters, businesses depending on them, and hoped for growth and tax revenues, while ignoring or altogether dispensing with other troublesome, unwanted existing rules, that impede what some might prefer as a current, haltingly, sometimes “prosperous” status quo and “progress” we’re willing to surrender to and depend on, like oil boom money. We may do so, even while the realities of how some of our industries

currently assault the rest of our lives, landscapes, values and climate are also progressively, needlessly encroaching on and deteriorating our very way and quality of life, while destroying our atmosphere, and ultimately, our civilization. Does excluding all but a select, influential, privileged, narrow few consider our respiratory health, and the welfare of those living near flaring vents, pump jacks, leaking gas and oil pipelines and equipment, and occasionally explosive rail lines?

While we may welcome beneficial wealth that exploiting our resources adds to, the last time I checked, North Dakotans are also still vested with the right to rely on their Constitutional guarantees. Has allowing even the proposal of this severe but until now still unneeded gag rule into our law considered that promoting such a ham-handed, misguided restriction would surely give at least some wakeful people here pause, to wonder why anyone would be so eager, or at least ready, to go along with suppressing other very interested Americans here voicing their dissent and alternative viewpoints, in the dubious and as yet not obvious need to “streamline” some “more efficient” process? Isn’t again succumbing to kneeling before some petroleum institute, its subordinates, or *any* industry – allowing it in (on its own invitation) to draft our laws for us (or for *it*), revising those which don’t quite fit it’s aims and profit goals – always fraught with the dangers of one-sided self-interest, trampling over the rest of the non-corporate populace, not to mention our Constitution’s rather settled, protected First Amendment Free Speech rights? Are our own legislators’ and executive office’s rule-drafting abilities so feeble, that we must resort to letting any self-interested industry commandeer such tasks? Isn’t the Department of Mineral Resources’ Oil and Gas Division “strong enough” to decide on its own, case-by-case, if completely, *Truly* unrelated parties appear before it, to give their voices less weight, without casting a crippling (to all *other* Interested parties) rule into stone? How much less public comment, scrutiny, potential disapproval and criticism from our small rural state’s “little guys” does the oil and gas industry (whose well-paid, tax-deductible lobbyists may tend to loom over) need, in its hopes for that more “streamlined, efficient” approach to terminating controversies before this commission? This is the same group that urged our legislators to give them the right for an even quicker taking of private property using eminent domain, to satisfy their desires for immediate rights of way, after some of their procurement methods have chafed.

Doesn’t the callous disregard of the unwanted chilling effects of such prior restraints excluding all other affected North Dakotans, whether on a limited target group such as those who value our natural places and their quiet enjoyment equally with economic prosperity, or on the interests of the public at large, also obviously trample over our individual First Amendment rights, to seek redress of grievances? (“Congress shall make no law ... abridging ... the right of the people ... to petition the Government for a redress of grievances?”) Procedural and Substantive Due Process and the federal Supremacy clause probably figure in here, too. Will promulgating such a gag rule, silencing the expression of opposing voices and views, merely subject the state to again needlessly throwing away more millions defending pointless, expensive lawsuits that knowledgeable people would agree the state is again guaranteed bound to lose?

These Constitutional guarantees also include the right to quiet enjoyment of one’s property, from noxious or risky nuisance – a right properly subject to regulating those interfering with it under the state’s police power. Ongoing and serious interference with this right shouldn’t be regarded as merely an incidental cost of doing business, collateral damage and profit promotion. Was the state’s attorney general consulted, for his opinion over the

prudence of this terrible idea? Don't such troubling rules unfairly pose a real dilemma for the Oil and Gas Division's Director: sometime regulator, sometime promoter? Which "hat" is he wearing today, at this hour?

Why has the oil industry become such a favorite son? Why is so much interest focused on getting more wells on line for their tax revenue, in what's declared such an otherwise currently prosperous state, while continuing to be a leader in contributing to climate destruction? Lately we've heard bragging about how our state is doing just fine now, without the oil boom, thank you – population is increasing (as are the accompanying problems: human trafficking, narcotics, gangs). Yet here we are, still pandering to oil interests, tightening the screws to further drive down and away prudent regulations and oversight, still among the most lenient and wayward in the U.S. And many of the jobs this growing population "enjoys" are minimum wage – something always omitted, never mentioned. If More, not Fewer, North Dakotans HAD participated in this Commission's decision making process, would the money our careless flaring policies let go up in smoke – undeniably the worst in the country, as documented in a well-researched pamphlet published in 2014 by the Western Organization of Resource Councils – come in handy about now, when we've had to slash state spending? Is this merely another show for oil companies, designed to prove our unwavering loyalty to them? Won't they be satisfied until the last organisms on our planet have been exterminated by climate change, and only cockroaches are left crawling around?

Do all oil and gas interests welcome any further public involvement, since some have already drawn so much warranted scrutiny on some of their behavior, waste and violations here? Are our rights to peacefully and safely enjoy our lands, homes and environment, much less our Right to Be Heard in government matters Directly affecting us, up for sale, to be summarily disposed of so cheaply? How is yielding our state's assets to visiting outside profiteers beneficial to North Dakotans? Is it inconvenient to allow citizens a voice in their government processes, and to hear opposing viewpoints which might include Many excellent reasons that some ongoing, overly permissive profiteering shouldn't be allowed here? Isn't this the kind of monstrous intrusion government is supposed to protect us *From*, not hand us, bound and gagged, over *To*?

Actively encouraged active participation in government decision making should continue to be the bedrock of American democracy, freedoms and liberties. Is it any wonder that our own legislators are calling for a proper, independent ethics oversight and review process? Is this only the opening salvo, the familiar "quiet all opposition" and silence all critics, part of the slippery slope that autocracies and military dictatorships engage in all the time, with impunity, as a useful forethoughtful expediency? What does the oil industry and this Commission next have in store for, planning to spring upon, us? What's this the setup for; what else is coming around the corner, in the offing? What does the oil industry want next, This week, from North Dakota? Let's roll over! And give them whatever they demand, as we shake in our boots, that they might forever fold up and depart. Forgive and let bygones be bygones – oil spills, wasting methane gas, radioactive filter socks – you name it. Let's start afresh! How does this sinister rule not treat the rest of as prey, ready for whatever Next scheme some outside oil interests think they need or know they want? Are these rules being formulated, quite belatedly now, as an end run around future EPA regulations, in an attempt to preclude or water down support for them?

Is this part of the state administration's and dominant party's strategy to turn North Dakota's financial woes around, whose shaky publicly stated plan is "I hope oil prices go back up?" Will this make commonplace hearings like last fall's on again delaying and relaxing irresponsible flaring rules – really only a public airing – by the elected (subject to political pressures and its money) Industrial Commission members, retreating from the position it had handed over to the oil lobby here, to back away from even the laughably obscene, excessive flaring requirements that industry had allowed itself to promise it would meet – which would still be the worst in the country, by a long shot? Why have so many come to view the Commission's actions here as mere rubber stamp formalities by willing handmaidens, on industry-directed process, quietly agreed to, the deals cut in advance behind closed doors? Is this proposal what's taught as being "in the best public interest" at revered learning institutions like Harvard and UND Law School? Why do we continue to be 51st in energy efficiency, like improved building insulation, from lack of leadership on – even outright denial by silence – instead of working to thwart and curb climate change, as the rest of the world is? That does make for more energy demand, though, doesn't it?

Why does this rule so resemble the kind of bad, give-away-the-homestead government we look at with contempt, when other, less enlightened states allow it to continue or impose it on their citizens; states where chemical and petroleum manufacturers subject those too poor to move away to a wide variety of birth defects and other diseases and pollution? Will this rule reassure and mollify any whimpering privateers that ND is "wide open for any kind of business," or is it now quiet, unchallenged wasteful pillaging of the resources here? Does this rule take advantage of many here who, like others elsewhere, seem less aware and informed of government and what industry is quietly doing around them – who's getting what – and follow a school of fish tactic: If we swim with the crowd, maybe only a few of us will get picked off and sacrificed at any one time, by any given predator?

Why exclude other clearly affected parties from deliberation and decision making? Isn't oil and gas about the largest industry in North Dakota that this Division regulates? So isn't it vital that regulating such a large, important business be transparent and open to public scrutiny, understanding and review? Leave it open to the light and disinfectant effect of broad publication, instead of recasting an often highly public matter and effect into a mere quiet, dispute or disagreement between two parties, one with usually outsize power, removed from the often disinfecting shine of the public spotlight. Do we want to encourage even more of this example as the pattern for future constriction? Why do some perceive steps like this, as granting favors to fellow chums in a special, exclusive, elite club, with a rarified atmosphere, from those soon departing office, or seeking to gain another? Is this a worthy legacy, or part of a proud record to run on? Is this yet another generous gift from the departing, who lately have espoused in press releases that this state is doing fine elsewhere, despite the temporary but deep contraction of the oil industry here?

Doesn't this defy the very purpose of ND's open meeting law – it's not merely to formalize agreed upon favors that a one-sided government has agreed to bestow on its supporters, or on anyone who promises to make a quick buck here. Are the Industrial Commission's elected members truly Fair and Impartial, upholding law and equity, for the benefit of All North Dakotans, avoiding even the appearance of any thought of impropriety from campaign donors or others? Does anyone on the Commission still have interests in the subject industry or related holdings, in blind trusts or otherwise, in the very subject matter before them that they're directed to determine Impartially?

Any government must recognize the risks, of placating and kowtowing to powerful moneyed interests, whose products may contribute enticing amounts and growth to local and state economies and tax revenues, when their commodities' prices and demand are up, but who almost inevitably insist on, or at least ceaselessly chip away at, freeing themselves of any regulation or restriction they deem too confining or expensive.

Government leaders seek, then placate, what are only easy but fleeting, misleading answers to stable long-term growth – fortune seekers, profiteers, gypsy roughnecks and the desperate unemployed coming here, but who nearly all consider somewhere else their true home they'll return to whenever a boom goes bust or they've reaped as much as they wish – in misguided efforts to “deliver” greater (although undeniably, repeatedly proven only temporary) “prosperity and growth” to their party faithful, smaller, sometimes economically stagnant communities and the rest of the public.

Do the rest of these good regulations go as far as they really can, providing adequate safeguards and protections from what we've seen so far, without injuring the oil industry and still allowing them a reasonable profit compared to other U.S. investment returns, considering the other government tax breaks and benefits they still cling to? Are these regulations as tight as the tightest, yet obviously quite workable regulations of other states, like Alaska? Also in Canada?

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Tuesday, April 26, 2016 9:56 AM
To: Kadrmass, Bethany R.
Subject: FW: Re, 2016 New Rules Comments

Bethany – As you can see there is a reference to a letter but the Governor's Office did not receive it. Perhaps it went directly to your office. Please note their e-mail in the record. Karlene

From: Haugen, Shelley K.
Sent: Tuesday, April 26, 2016 9:54 AM
To: Fine, Karlene K.
Subject: RE: Re, 2016 New Rules Comments

There was no letter sent to our office as of yet. Will forward if we receive it.

From: Fine, Karlene K.
Sent: Tuesday, April 26, 2016 9:51 AM
To: Haugen, Shelley K.
Subject: RE: Re, 2016 New Rules Comments

Shelley – This refers to a letter. Was there a letter with this e-mail? If there is, please forward. Thanks, Karlene

From: Haugen, Shelley K.
Sent: Tuesday, April 26, 2016 9:46 AM
To: Nisbet, Jason; Fine, Karlene K.
Subject: FW: Re, 2016 New Rules Comments

From: Apache [<mailto:apache@itdapachep1.itd.nd.gov>] **On Behalf Of** Rob and Mary Sand
Sent: Monday, April 25, 2016 4:09 PM
To: -Info-Governor's Office
Subject: Re, 2016 New Rules Comments

Contact Form Submission

Name
Rob and Mary Sand

Email Address
killdeermtn@gmail.com

Phone Number
7016908256

Subject
Re, 2016 New Rules Comments

Comments

FYI: Here is a copy of the letter we sent to the Industrial Commission: Oil and Gas Division 600 E Boulevard AVE, DEPT 405 Bismarck, ND 58505-0840 We are writing to ask the Industrial Commission to REJECT the current proposal to define who can testify at hearings related to oil wells, spacing units, flaring, pipelines, saltwater disposal, waste disposal, water depots and any other oil and gas infrastructure, including roads. ALL North Dakotans are "interested parties." And when the discussion relates to federal lands, all U.S. citizens are interested parties. Sincerely, Rob and Mary Sand 93 112th Avenue NW Killdeer, ND 58640 Mary: marysand01@gmail.com Rob: killdeermtn@gmail.com

Submitted from governor.nd.gov on 04/25/2016 - 4:09pm from IP address: [165.234.159.13]

Kadrmass, Bethany R.

From: Mary Sand <marysand01@gmail.com>
Sent: Monday, April 25, 2016 3:49 PM
To: Kadrmass, Bethany R.
Cc: Rob Sand
Subject: 2016 New Rules Comments

Oil and Gas Division
600 E Boulevard AVE, DEPT 405
Bismarck, ND 58505-0840

We are writing to ask the Industrial Commission to REJECT the current proposal to define who can testify at hearings related to oil wells, spacing units, flaring, pipelines, saltwater disposal, waste disposal, water depots and any other oil and gas infrastructure, including roads. ALL North Dakotans are "interested parties." And when the discussion relates to federal lands, all U.S. citizens are interested parties.

Sincerely,

Rob and Mary Sand
93 112th Avenue NW
Killdeer, ND 58640

Mary: marysand01@gmail.com
Rob: killdeermtn@gmail.com

Kadrmass, Bethany R.

From: McDonough, Robbie <robbie.mcdonough@crestwoodlp.com>
Sent: Monday, April 25, 2016 2:59 PM
To: Kadrmass, Bethany R.
Subject: Crestwood Equity Partners LP's Comments to NDIC's Proposed Rulemaking
Attachments: 2016-04-25 NDIC Comments Cover Letter.pdf; 2016-04-25 NDIC Detailed Comments.pdf

Bethany,

I understand you are accepting email submissions of public comments regarding the NDIC proposal to adopt and amend NDAC Chapters 43-02-03, 43-02-05 and 43-02-08. Please find Crestwood Equity Partners LP's comments and cover letter attached.

Please confirm receipt and acceptance of this email at your earliest convenience. Thanks you and have a wonderful week.

Kind Regards,

Robbie R. McDonough

Vice President, Land & Government Relations

Crestwood

700 Louisiana Street, Suite 2550, Houston, Texas 77002

P: 713-380-3001 | **C:** 281-728-9550

F: 832-519-2250

robbie.mcdonough@crestwoodlp.com

crestwoodlp.com



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700 Louisiana Street
Suite 2550
Houston, TX 77002

P: (832) 519.2200
F: (832) 519.2250
www.Crestwoodlp.com

April 25, 2016

Bruce Hicks, Assistant Director
North Dakota Industrial Commission,
Department of Mineral Resources, Oil and Gas Division
600 E. Boulevard Avenue
Bismarck, North Dakota 58505

via Hand Delivery

Re: Comments on Proposed Rule Changes

Dear Mr. Hicks:

Crestwood Equity Partners LP ("Crestwood") appreciates the opportunity to provide comments on the proposed Administrative Rules changes. Crestwood owns and operates midstream businesses in multiple unconventional shale resource plays across the United States. In North Dakota, Crestwood is engaged in the gathering of natural gas, crude oil and produced water, and the storage, terminaling, and marketing of crude oil. Crestwood is committed to the communities in which we operate and we value our relationship with North Dakota and the NDIC.

Crestwood appreciates the NDIC's efforts to promote and maximize the benefits of oil and gas development in the State and we thank the Commission for inviting the public to comment on these important proposed rule changes. Crestwood supports the thoughtful comments made by the North Dakota Petroleum Council ("NDPC") and the GPA Midstream Association ("GPA") and supplements such with our comments (enclosed). With the inclusion of NDPC's, GPA's and Crestwood's recommendations, Crestwood supports those rule changes proposed by the NDIC which will efficiently and effectively impact pipeline safety and operations in a positive manner.

As you know, the midstream sector is heavily regulated by a variety of regimes - the EPA, OSHA, USFWS and USACE to name a few - and each regulation comes with additional costs. We are grateful that prior to asking the NDIC to create new regulations, the Legislature (through HB 1358) directed the NDIC to engage the EERC to study and make recommendations on improving produced water and crude oil pipeline safety and integrity. Crestwood joins other commenters in expressing its concerns that several of the proposed rules extend beyond the recommendations of the EERC and, most importantly, beyond the legislative directives found in HB 1358. Crestwood encourages the Commission to reassess the necessity and legislative mandate supporting each rule.

Attached you will find Crestwood's detailed comments. Crestwood again thanks the Commission for the opportunity to provide its comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. McDonough', is written over a horizontal line.

Robbie R. McDonough
Vice President, Land & Government Relations
Crestwood Equity Partners LP

enclosure

Connections
for America's
Energy™

**Detailed Comments to NDIC Proposed Rule Changes
submitted by
Crestwood Equity Partners LP**

13-02-03 General Rules

43-02-03-15.8.d.(1) Transfer of underground gathering pipelines under bond (page 11 of proposed rules)

Comments:

1. Crestwood incorporates by reference the comments of NDPC and GPA regarding this section.
2. Crestwood recommends changing the notice requirements in this section to post transfer instead of pre-transfer. Requiring a 30 day timeline prior to transfer will unnecessarily delay and has the potential to disrupt an owner's ability to sell its assets. For example, it is not uncommon for a sales contract to be signed and closed on within a two week time frame. As written the rules would delay the transaction an additional two weeks. Additionally, sale transactions are highly confidential matters and underground gathering pipeline owners should not be forced to share details of a transfer prior to that transfer becoming general public information.

Suggested Language: *8.d.(1) The principal must notify the director, in writing, of all proposed transfers of underground pipelines ~~within~~ ~~at least~~ thirty days ~~following~~ ~~before~~ the closing date of the transfer.*

43-02-03-29.1 Underground Gathering Pipelines (page 19 of proposed rules)

Comments:

1. Crestwood incorporates by reference the comments of NDPC and GPA regarding this section.
2. Crestwood finds that this section exceeds the legislative intent of HB 1358. HB 1358 is expressly written as prospective legislation for underground crude and produced water pipelines in service after August 1, 2015. As written, this section will have a retroactive effect on crude, produced water, gas and carbon dioxide underground gathering pipelines placed into service prior to August 1, 2015. Underground gathering pipelines that transport natural gas or carbon dioxide are distinctly excluded from HB 1358. Accordingly many of the new rules in the section should only apply to underground gathering pipelines that transport crude oil or produced water.
3. Crestwood recommends striking Subsections 3.a.(1)(b) & 3.a.(2)(b) on the basis that providing shape files prior to the installation of the pipeline is costly and burdensome to the operator, particularly when one considers the detailed information the rules propose to require in 3.a.(1)(c).
4. Crestwood particularly supports and incorporates herein the comments of NDPC concerning the provisions of subsection 3.a.(1)(c).
5. Crestwood respectfully submits that Subsection 3.b. is ambiguous and vague. Crestwood recommends changing the language to provide for a notification within one (1) year of abandonment of a pipeline.
6. Crestwood respectfully submits that Subsection 3.c. should be stricken as it is redundant with current law, ambiguous, vague, and burdensome. The provisions of this section duplicate the efforts of the One Call System. However, if the Commission chooses to retain this section, the Commission

should note that the term “damage” is not defined and it is unclear how it should be applied. Crestwood recommends clarifying with the following language: “If any damage occurs to an underground gathering pipeline as a result...” Additionally, the excavating party should be responsible for reporting the damage and not necessarily the underground gathering pipeline owner. Finally, Crestwood cannot determine any public policy reason for immediate reporting. Companies should be given at least 24 hours to report.

43-02-03-29.1.4 Design and Construction (page 21 of proposed rules)

Comments:

1. Crestwood incorporates by reference the comments of NDPC and GPA regarding this section.
2. Crestwood finds this section exceeds the legislative intent of HB 1358. Gas and carbon dioxide underground gathering pipelines are distinctly excluded from HB 1358, accordingly many of the new rules in the section should only apply to crude oil and produced water underground gathering pipelines.
3. Crestwood also respectfully submits that Subsection 4.k. is beyond the scope of HB 1358. Wetlands, streams, and other surface water bodies are already regulated by U.S. Army Corps of Engineers through its nationwide permit system. The USACE regulations are established, and contain publically-vetted, time tested requirements that have balanced the interests of commerce and the environment for some time. The NDIC’s rules proposed by this subsection would significantly raise the costs to underground gathering pipeline owners and would have no impact on the safety or integrity of the pipeline. Should the Commission choose to implement this section, the term “environmentally sensitive area” should be a newly proposed defined term subject to public comment as, in its current use, it is overly broad, vague, and over-reaching in scope.

43-02-03-29.1.5 Pipeline right-of-way (page 23 of proposed rules)

Comments:

1. Crestwood incorporates by reference the comments of NDPC and GPA regarding this section.
2. Crestwood finds that this section exceeds the legislative intent of HB 1358. With the exception of subsection f., this section should be stricken in its entirety. The issue of regulating pipeline reclamation has come before the legislature in at least the last two legislative session and in both sessions the legislature declined to direct any agency to assume regulation of the issue. Because every parcel of land is unique, Crestwood believes that landowners and pipeline professionals are in the best position to determine proper reclamation and maintenance of a right-of-way.

43-02-03-29.1.10 Leak detection and monitoring (page 25 of proposed rules)

Comments:

1. Crestwood incorporates by reference the comments of NDPC and GPA regarding this section.
2. Crestwood is concerned with the sharing plan included in this section. If the Commission chooses to implement this rule, it should include an “opt out” provision for underground gathering pipeline owners that measure every input and output on its system. Additionally, the term “real time” is ambiguous and vague. Depending on the definition of “real time,” this rule potentially puts impracticable, if not impossible, burdens on operators.

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Monday, April 25, 2016 2:59 PM
To: Kadrmass, Bethany R.
Subject: FW: RE:administrative code 43-02-03-01 proposed amendment
Attachments: Amendment.docx

Bethany – Letter for the proposed administrative rules. Karlene

From: Madeline Luke [<mailto:mzInd@yahoo.com>]
Sent: Monday, April 25, 2016 2:24 PM
To: Fine, Karlene K.
Subject: RE:administrative code 43-02-03-01 proposed amendment

Dear Ms Fine:

Please forward this letter to the correct office. I believe the deadline is today at 5 PM.

Thank you,
Madeline Luke

The purpose of this letter is to oppose the proposed amendment to North Dakota administrative code 43-02-03-01 which states that person/s allowed to testify at oil and gas hearings before the NDIC must be an individual or number of individuals who have property ownership in or adjacent to the subject matter.

The ND oil and gas webpage states "Our mission is to encourage and promote the development, production, and utilization of oil and gas in the state in such a manner as will prevent waste, maximize economic recovery, and fully protect the correlative rights of all owners to the end that the landowners, the royalty owners, the producers, and the general public realize the greatest possible good from these vital natural resources." Furthermore, the notice of public notice regarding this and other rule changes states that this amendment is not expected to have an impact of over \$50,000 on the regulated community.

The proposed amendment will prevent expert testimony which may very well help to prevent waste and maximize economic benefit to the landowners and royalty owners. To disallow such information is to deny stakeholders the benefit of hard earned knowledge, technical advances and regulatory options that come from other areas in the country that have fracking experience. The agency is in danger of failing its declared mission by refusing to hear outside expertise.

The assumption that "interested parties" are only landowners and their adjacent neighbors is ludicrous. The laws of physics dictate that excess noise, air pollution, and road dust extend beyond property lines. Oil and brine leaks and exploding oil cars occur anywhere. Wildlife habitat degradation extends beyond immediate well pads areas.

"The greatest possible good" must consider both the positives and negatives of fracking. The general public, including people in eastern North Dakota who have never seen an oil well, share in the burdens and rewards from oil and gas extraction. The money and jobs have been flowing from west to east; we also share the crime, cost of needed infrastructure, contamination of our air and water. The impacted community includes more than just a property owner and his neighbor; so the regulated community is the surrounding farms, towns, watersheds, highways- anyone downstream. One does not get much for \$50,000 these days.

Finally, this amendment violates the principle of free speech. The purpose of hearings is to allow citizens to voice their opinion about a particular issue. A good way of pre-determining a permit hearing is to limit who can come in the door to speak; effective but not democratic; I suspect not even legal.

Thank you for considering these comments,

Madeline Z. Luke

Valley City

April 24, 2016

Kadrmass, Bethany R.

From: Debbie Beaver <dbeaver@gpaglobal.org>
Sent: Monday, April 25, 2016 2:53 PM
To: Hicks, Bruce E.; Kadrmass, Bethany R.
Subject: Comments on Proposed Rule Changes Due April 25, 2016
Attachments: 2016-4-25 NDIC_Final_Ltr_Comment.docx

Dear Mr. Hicks,

Attached are the comments of the GPA Midstream Association in response to the proposed changes to NDAC § 43-02-03, NDAC § 43-02-05 and NDAC § 43-02-08.

GPA Midstream appreciates the opportunity to participate with the North Dakota Industrial Commission (NDIC) in its rulemaking process.

Should you have any problems accessing the attached comments, please contact Debbie Beaver at the below contract address, email or phone number(s).

Best wishes,

Debbie Beaver
Director, State Government Affairs
GPA Midstream Association
Sixty Sixty American Plaza, Suite 700
Tulsa, Oklahoma 74135

office: (918) 493-3872
cell: (918) 346-3262
dbeaver@GPAglobal.org
www.GPAglobal.org
www.GPAconvention.org



April 25, 2016

Assistant Director Bruce Hicks
NDIC, Department of Mineral Resources, Oil and Gas Division
600 E. Boulevard Ave.
Bismark, ND 58505
Submitted Electronically via E-Mail

Re: North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division Proposed Rule Change and Adoption of New Rules (February 29, 2016)

Dear Assistant Director Hicks:

The GPA Midstream Association (GPA Midstream) appreciates the opportunity to comment on the North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division's (NDIC) proposed amendments and additions to the North Dakota Administrative Code Chapter 43-02-03 (Oil & Gas), Chapter 43-02-05 (Underground Injection Control), and Chapter 43-02-08 (Stripper Well Property Determination) (February 29, 2016) (Proposed Amendments and Additions). GPA Midstream's comments relate specifically to the interests of its company members and the North Dakota communities in which its members operate. In short, GPA Midstream, and its members, look forward to a continued long, prosperous and cooperative relationship with North Dakota, its communities and the NDIC.

GPA Midstream has served the U.S. energy industry since 1921 as an incorporated non-profit trade association. GPA Midstream is composed of nearly 100 corporate members that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as "midstream activities." Such processing includes the removal of impurities from the raw gas stream produced at the wellhead, as well as the extraction of natural gas liquids (NGL's) such as ethane, propane, butane and natural gasoline. GPA Midstream members account for more than 90 percent of the NGLs produced in the United States.

GPA Midstream appreciates the NDIC's commitment to an effective and efficient oil and gas regulatory environment. With the incorporation of our four recommended adjustments and clarifications, GPA Midstream supports many of NDIC's Proposed Amendments and Additions. As you know, the oil and gas industry, and in particular the industry's midstream sector, is subject to multiple regulatory regimes. The comments listed herein are built to foster a continued workable North Dakota regulatory regime that dovetails with existing regulatory requirements.

GPA Midstream Association
Sixty Sixty American Plaza, Suite 700
Tulsa, Oklahoma 74135
(918) 493-3872

To that end, GPA Midstream proposes the following adjustments.

Support of NDPC Comment

GPA Midstream has closely reviewed the North Dakota Petroleum Council's (NDPC) April 20, 2016 comments (Comments). GPA Midstream supports fully the NDPC Comments and their suggested revisions.

Limit 43-02-03-29.1's Application to Oil and Produced Water Lines

GPA Midstream strongly suggests that NDIC apply Section 2 of House Bill 1358, titled, "Controls, inspections, and engineering design on crude oil and produced water underground gathering pipelines," (HB1358) to crude oil and produced water underground pipelines, only. By applying HB1358 Section 2's terms to natural gas and carbon dioxide lines, NDAC Section 43-02-03-29.1 goes beyond the intent of the legislature. HB1358, Section 2 states that, "[t]he application of this section is limited to an underground gathering pipeline that is designed or intended to transfer crude oil or produced water from a production facility for disposal, storage, or sale purposes and which was placed into service after August 1, 2015." *House Bill No. 1358 Section 2*, Sixty-fourth Legislative Assembly of North Dakota (January 6, 2015). Similarly, NDIC's Full Notice of Intent to Adopt and Amend Administrative Rules, states that "[t]he purpose of the adoption of NDAC Section 43-02-03-29.1 is necessary to improve underground pipeline safety and integrity pursuant to House Bill 1358." *Full Notice of Intent to Adopt and Amend Administrative Rules*, NDIC (February 29, 2016) page 2. Pursuant to NDIC's statement, the addition of Section 43-02-03-29.1 is intended to implement the authorizations described in HB1358 – an application that reaches crude oil and produced water lines, only.

In contrast, as written the NDIC Section 43-02-03-29.1 Proposed Amendment and Addition goes beyond HB1358's authorization. Specifically, NDIC's Section 43-02-03-29.1 addition applies to "all underground gathering pipelines designed for or capable of transporting crude oil, natural gas, carbon dioxide or produced water from an oil and gas production facility for the purpose of disposal storage, or for sale purposes." *Section 43-02-03-29.1 (1), Proposed Rule Changes and Adoption of New Rules*, NDIC (February 29, 2016). As proposed, this rule applies, not only to crude oil and produced water lines, but also to natural gas and carbon dioxide lines. Accordingly, since HB1358 states that this section should only apply to crude oil and produced water lines, it is without question that, should the NDIC adopt the proposed adjustments to Section 43-02-03-29.1, they will violate HB1358's legislative authorization. As a result, GPA Midstream suggests that the NDIC limit the application of Section 43-02-03-29.1 to underground crude oil and produced water lines.

NDIC's Associated Pipeline Facilities Regulation Should Expressly Preempt Political Subdivision Ordinances, Permitting or Other Regulations

NDIC's Proposed Amendments and Additions to Section 43-02-03-29.1 (7) should expressly preempt related regulatory requirements of the state's political subdivisions. As written, this section states, among other things, that "[n]o associated pipeline facilities and above ground

equipment shall be installed less than five hundred feet [152.40 meters] from an occupied dwelling unless agreed to in writing by the owner of the dwelling or authorized by order of the commission.” *Id.* at (7). Currently, many state political subdivisions apply their regulatory requirements, including but not limited to, planning and zoning criteria to above ground facilities regardless of their connection to NDIC regulations. In an effort to avoid dual and potential conflicting regulations and requirements, GPA Midstream recommends that the NDIC incorporate language at the end of Section 43-02-03-29.1 (7) that expressly preempts these requirements. This language could read as follows: “Associated pipeline facilities and above ground equipment that are otherwise subject to this section shall not fall within the regulatory jurisdiction of the state’s political subdivisions that would otherwise regulate the associated pipeline facility or above ground equipment.”

Data Sharing Should be Eliminated and If Not Discrepancies Submissions Should be Confidential

NDIC’s Proposed Amendment and Addition requiring data sharing is not needed, is overly burdensome and should be eliminated from the proposal. NDIC’s Section 43-02-03-29.1 (10) requires crude oil and produced water underground gathering pipeline owners to develop and maintain data sharing plans. The proposal states that the data sharing plan “must provide for real-time shared access to data between the operator of the production facility, the crude oil or produced water underground gathering pipeline owner, and the operator at the point or points of disposal, storage, or sale.” *Id.* at (10). Many North Dakota underground pipeline operators gather crude oil and production water from thousands of well sites. The connections tying these well sites into the downstream gathering systems, while safe and efficient, are manually gauged. This type of measurement is not real time and volumes are not, and cannot, be reported until the associated production tank has been emptied. Requiring the development of real time gauging systems would not only be overly burdensome (requiring the installation of, at a minimum, electronic meters, flow computers and communications equipment at thousands of locations), but also expensive and should be eliminated from the Proposed Amendments and Additions.

At a minimum, NDIC’s Proposed Amendments and Additions should state that data sharing discrepancy submissions will be kept confidential. As mentioned, NDIC’s Section 43-02-03-29.1 (10) Proposed Amendment and Addition requires crude oil and produced water underground gathering pipeline owners to develop and maintain data sharing plans. These data sharing plans are required to provide shared access to data between the production facility operator, pipeline operator and the operator at the point of disposal, storage, or sale. Records of data discrepancies, if requested, “must be filed with the commission.” *Id. at (10)*. GPA Midstream suggests that NDIC add a statement to the end of Section 43-02-03-29.1 (10) stating that “All copies of records so filed with the commission shall be maintained as confidential and proprietary and shall be afforded the protections of the State of North Dakota’s confidential document status.”

Integrity Test Notice Should be Eliminated

NDIC’s Proposed Amendments and Additions should not require notice prior to conducting pipeline integrity tests. NDIC’s Section 43-02-03-29.1 (13) (a) requires underground gathering

pipeline owners to “notify the commission at least forty-eight hours prior to commencement of any pipeline integrity test . . .” *Id. at (13) (a)*. In addition, subsection (b) requires the pipeline owner to submit “[a]n independent inspector’s certificate of hydrostatic or pneumatic testing . . . within sixty days of the test . . .” *Id. at (13) (b)*. As written, the rules require an NDIC mandated independent inspector to witness the underground gathering pipeline owner’s hydrostatic test along with an additional NDIC representative. These two rules, taken together, are redundant. Requiring forty-eight hour prior notice to allow for an NDIC representative to witness a test that is already witnessed by an independent inspector provides little if any additional security or integrity enhancement. In contrast, the notice provision will likely create unneeded service and repair delays. GPA Midstream suggests NDIC eliminate Section 43-02-03-29.1 (a) from its Proposed Amendments and Additions.

As noted, GPA Midstream welcomes the opportunity to comment on NDIC’s Proposed Amendments and Additions. GPA Midstream members who operate gas, oil and produced water gathering pipelines in North Dakota will be directly impacted by the proposed rule changes. We welcome and look forward to assisting the NDIC foster and develop a continued effective and efficient regulatory environment that promotes job creation, community safety, environmental protection and resource stewardship.

Sincerely,

Mark Sutton
President & CEO
GPA Midstream Association



Received
APR 25 2016
ND Oil & Gas Division

Fax Transmission

1675 Broadway, #1600

Denver, CO 80202

(303) 592-8880 (O)

(303) 592-8881 (F)

Date: April 25, 2016

To: NDIC Oil & Gas Commission

From: Eric Sundberg

Of Pages: 4 (including cover sheet)

Please call (720) 420-6975 w/any
questions or concerns

X Original will follow via ~~USPS~~ FedEx

 Original will not follow



North Dakota Industrial Commission
Oil and Gas Division
600 E Boulevard Ave., Dept. 405
Bismarck, ND 58505-0840

Received
APR 25 2016
ND Oil & Gas Division

Re.: Proposed 2016 Amendments and Additions to NDAC

To Whom It May Concern:

On behalf of Slawson Exploration Company, Inc., a privately held oil and natural gas exploration and development company, thank you for the opportunity to comment on the North Dakota Industrial Commission's proposed revisions to North Dakota Administrative Code (NDAC) Chapter 43-02-03.

Independent oil and gas companies, like Slawson Exploration, have played an important role in North Dakota's contribution to America's domestic energy renaissance. Unconventional resource development, like the Williston Basin, has spurred economic growth and moved our country closer to being energy independent. Our continued success is dependent upon the continued partnership between North Dakota regulatory agencies and industry in taking a common sense approach in developing regulations that are not overly restrictive and costly, which in turn creates business uncertainty. As such, Slawson would like to provide comments on the following sections of the proposed rules:

43-02-03-29.1 Section 3 (1) (d) & Section 6 Inspection

The proposed rule would require a list of all third-party independent inspectors and a description of each independent inspector's qualifications, certifications, experience, or specific training.

Companies that already have qualified personnel should have the optionality to conduct their own inspections and certify that the work has been conducted in a manner that meets all local, state and federal regulatory requirements. The need to utilize third-party inspection services should only be required when there are no qualified company personnel available.

Rocky Mountain Division

1675 Broadway, Suite 1600
Denver, Colorado 80202
(303) 592-8880 - FAX (303) 592-8881

43-02-03-29.1 Section 4 (b) Design & Construction

The proposed rule would require newly constructed gathering pipelines to be designed in a manner that allows for line maintenance, periodic line cleaning, and internal integrity inspection.

Slawson utilizes a low pressure crude oil gathering system that is made up of polyurethane pipelines. This type of system is very difficult to conduct smart pigging operations on, that would be required for internal integrity verifications. Operational flexibility is needed under this proposed rule to address gathering systems such as this that do not require the same cleaning and internal corrosion verification that other pipeline systems might need.

43-02-03-29.1 Section 7 Associated Pipeline Facility

The proposed rule states that unused tanks and associated above ground equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year.

Pipeline facilities often times have equipment stored there that is not currently in use, but will be utilized in operations at some point in the near future. We request a clarification of the language be made, or removal all together, as the current text would limit a pipeline operator's ability to maintain equipment yards necessary for ongoing operations and future construction projects.

43-02-03-29.1 Section 10 Leak Detection & Monitoring

The proposed rule states that all crude oil and produced water underground gathering pipeline owners must file with the commission any leak detection and monitoring plan prepared by the owner or required by the director.

The proposed rule provides the example of a computational pipeline monitoring leak detection system. We would like to ensure that other leak detection systems will be consider under the new rule as the computational monitoring system is not a practical solution for all gathering systems. We utilize a line balancing system that is monitored with SCADA and is more than efficient for leak detection in our low pressure crude oil gathering pipeline network. It would cause unnecessary cost to the company to install the necessary equipment and software to implement a computational pipeline monitoring system.

43-02-03-29.1 Section 13 Pipeline Integrity

The proposed rule states that no owner may return to service a portion of the pipeline that has been repaired, replaced, relocated, or otherwise changed until it has been pressure tested.

We request that when a section of a pipeline is being replaced, the operator has the ability to pre-test that section of pipe for integrity and x-ray the welds without pressure testing the entire pipeline section. This could be accomplished through field inspector notification and approval. Depending on the gathering system design and location of pipeline repair, it could be very difficult to pressurize the entire pipeline segment.

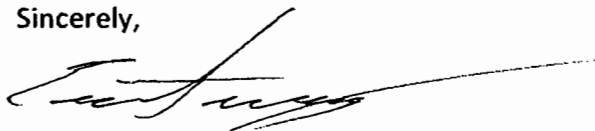
43-02-03-29.1 Section 13(b) Pipeline Integrity

Request the ability to use a qualified employee to certify the hydrostatic tests instead of requiring the use of third-party inspectors.

We also request that the ability to pressure test a crude oil pipeline segment after a repair with the crude oil product and a pressure gauge at each end of the pipeline segment. This process will still meet the intent of the rule and allow for a cost effective means of pressure testing certain gathering systems that might be difficult to pressure test using traditional hydrostatic methods.

Slawson appreciates the opportunity to provide comments on the proposed rules and looks forward to working with the North Dakota Industrial Commission and Department of Mineral Resources, Oil and Gas Division as we continue to move through the rule making process.

Sincerely,



Eric Sundberg
Environmental & Regulatory Manager
Slawson Exploration Company, Inc.



This letter was received after the deadline for written comments, but was received via fax prior to the deadline.

Received
APR 26 2016
ND Oil & Gas

North Dakota Industrial Commission
Oil and Gas Division
600 E Boulevard Ave., Dept. 405
Bismarck, ND 58505-0840

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Rocky Mountain Division

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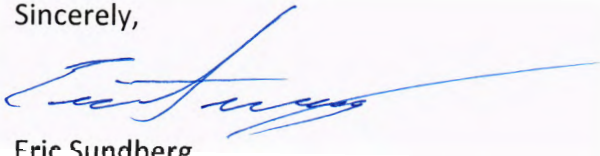
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Sincerely,



Eric Sundberg

Environmental & Regulatory Manager

Slawson Exploration Company, Inc.



United States Department of the Interior

National Park Service
Theodore Roosevelt National Park
Post Office Box 7
Medora, North Dakota 58645



April 22, 2016

Received

North Dakota Industrial Commission
Oil and Gas Division
600 East Boulevard Ave Department 405
Bismarck, North Dakota 58505-0840

APR 25 2016

ND Oil & Gas Division

Dear North Dakota Industrial Commission:

The National Park Service (NPS) appreciates the opportunity to provide comments on the North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division proposed amendments to the North Dakota Administrative Code (NDAC).

The NPS commends the Oil and Gas Division's changes pertaining to bonding requirements and saltwater handling facilities. However, we are concerned with proposed amendments to NDAC § 43-02-03-01 regarding what interest a party must have to be allowed to testify at a hearing. The proposed amendment defines an interested party as "an individual or number of individuals that have a property ownership or management interest in or adjacent to the subject matter." This language is ambiguous and appears to limit our agencies' ability to comment on permits that impact National Park Service sites in North Dakota. The NPS has provided testimony at dozens of Commission hearings since 2008. Many cases were directed at energy development on lands not directly adjacent to NPS properties or managed by the agency. We have provided viewshed maps as part of our testimony, which clearly indicate visual impacts from development on both adjacent and non-adjacent lands. Additionally, the term "management interest" is open to interpretation. Although the NPS does not have direct management over the lands leased and developed for oil and gas activities, it does have an interest in preserving national park resources including the visitor experience, scenic vistas, dark night skies, wilderness, cultural landscapes, air quality, and soundscapes. It is difficult for managers to preserve NPS resources affected by external activities and this is the only North Dakota state process available to address energy development impacts.

I. NPS units in North Dakota

Theodore Roosevelt National Park comprises 70,447 acres of land in three separate units in Billings and McKenzie Counties: the South Unit, the North Unit, and the Elkhorn Ranch Unit. The park memorializes Theodore Roosevelt and pays tribute to his enduring contribution to the conservation of our nation's resources by preserving and protecting the scenery, wildlife, and wilderness qualities of the North Dakota Badlands which inspired him. The park's night skies, clean air, and wilderness qualities offer exceptional beauty, silence, and solitude for nearly 600,000 people who visit the park annually. Theodore Roosevelt National Park was recently ranked number five on the New York Times *52 Best Places to Visit in 2016* list. The park is the most popular North Dakota tourism destination and the sole reason that most out of state visitors cite for coming to the state.

Public Law 89-458 (80 Stat. 211) authorized the establishment of Fort Union Trading Post National Historic Site on June 20, 1966 “to commemorate the significant role played by Fort Union as a fur trading post on the upper Missouri River.” The Fort Union Trading Post National Historic Site straddles the border of North Dakota and Montana. The site is just 450 acres which makes protection of the viewshed on all sides critical. A fundamental value of the historic site is the uninterrupted view of the Missouri River and the wide-open prairie, which still remains relatively free of modern development. The rural landscape provides a sense of place for visualizing the area’s history, experiencing the isolation of the frontier, and appreciating the importance of the Missouri and Yellowstone River confluence to both American Indians and European Americans.

Congress established the Lewis and Clark National Historic Trail in an amendment to the National Trails System Act in 1978 [16 U.S.C. § 1244(a)(6)]. The NPS administers the trail and is charged with the identification and protection of the historic route, remnants, and artifacts of the Lewis and Clark Expedition for public use and enjoyment. Both Fort Union Trading Post National Historic Site and Knife River Indian Villages National Historic Site are NPS places associated with the Lewis and Clark Trail in North Dakota.

II. NPS policy calls for protecting park scenery and avoiding impairment

The NPS is required by the Organic Act of 1916 (16 US Code 1) to “...to conserve the scenery and the natural and historic objects and wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them *unimpaired* for the enjoyment of future generations.” The term “impairment” is an important legal term that is explained in the NPS’s *Management Policies 2006*. Park managers are expressly prohibited from allowing for the “impairment” of park resources and values unless “...directly and specifically provided for by legislation or by the proclamation establishing the park (Section 1.4.4).”

Section 1.4.5 states that impairment can “result from sources or activities outside the park” and is an action:

...that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values. Whether an impact meets this definition depends on the particular resources and values that would be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts.

Management Policies 2006 also state that an impact would be more likely to constitute impairment to the extent that it affects a resource or value whose conservation is:

- necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park; or
- key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park; or
- identified in the park’s general management plan or other relevant NPS planning documents as being of significance.

III. NPS resources and values impacted by oil and gas development in the Bakken

Air Quality: While approval of projects generating air pollutants within NPS boundaries is within the purview of the NPS, many of the pollution sources affecting parks are located outside park boundaries. The Clean Air Act (CAA) established the Prevention of Significant

Deterioration (PSD) of Air Quality program to protect and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic or historic value (42 USC 7401 et seq). The PSD program includes a classification approach for controlling air pollution. Class I areas are afforded the greatest degree of air quality protection. Theodore Roosevelt National Park is a Class I airshed, and the CAA allows only moderate air quality deterioration in these areas. The PSD program focuses primarily on air pollution sources outside park boundaries. The CAA also established a national goal of preventing any future, and remedying any existing, human-made visibility impairment in Class I areas. "Visibility impairment" under the CAA visibility protection regulations is defined as "any humanly perceptible change in visibility."

Night skies: National parks harbor some of the darkest night skies in the United States. Night skies have intrinsic value and play critical roles in wildlife interactions, visitor experience, and cultural landscape integrity. Landscape-scale protection is essential to management of night skies and natural darkness because artificial light can travel long distances.

Acoustic environment and soundscapes: National parks are highly valued for their natural sound (such as wind, water flow, wildlife calls), and the acoustic elements of cultural and historical sounds (such as deep quiet or armament blasts from historical battle reenactments). Each national park has its own unique acoustic environment, which provides a strong appeal for park visitors. The intrinsic sounds of a park are essential for the natural and historical scenery, and they have a crucial role for park wildlife. Many species depend on the natural condition of a park acoustic environment for mating behaviors, hunting, natural cues, and indications of the park's biological health.

Wilderness: The Wilderness Act of 1964 recognized the importance of protecting wilderness values and established areas "where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain." Wilderness is a value promoted and protected by many national parks, regardless of their official designation under the Act. These areas encompass open space, watersheds, soundscapes, ecosystems, and wild plants and animals. Wilderness provides inspirational or spiritual values to humans and provides a sanctuary for reflection, solitude and connection with nature. According to the Wilderness Act, "each agency administering any area designated as wilderness shall be responsible for preserving wilderness character." NPS Director's Order 41 Wilderness Stewardship, Section 6 Introduction states "The goal of wilderness stewardship is to keep these areas as natural and wild as possible in the face of competing purposes and impacts brought on by activities that take place elsewhere in the park and beyond park boundaries." Moreover, Section 6.2 states: Wilderness character is the combination of biophysical, experiential, and symbolic ideals that distinguishes wilderness from other lands. The five qualities of wilderness character are (1) untrammelled, (2) undeveloped, (3) natural, (4) offers outstanding opportunities for solitude or primitive and unconfined recreation, and (5) other features of scientific, educational, scenic, or historical value. Noise and light pollution (have been discussed previously) and visual impacts could all degrade wilderness character.

Ecosystem processes: Natural cycles upon which ecosystems depend (e.g., water, biogeochemical, energy, circadian cycles, disturbance) must be maintained, to the extent feasible, within national parks. Because the areas needed to maintain these processes do not necessarily correspond to political boundaries, it is important to have an understanding of how development of adjacent lands might affect critical ecosystem processes, such as periodic flooding that creates sediment for riparian plants or habitat for fish. It is also important to recognize that climate change may strongly impact ecosystem processes, and therefore that

development on adjacent lands may have a different impact on ecosystems in a park in the future than it would today.

Cultural Landscapes: The NPS defines a cultural landscape as “a geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person or exhibiting other cultural or aesthetic values.” Similar to historic resources, cultural landscapes are evidence of our country’s origins and embody human development over time. These resources are typically settings of value within the natural world that demonstrate a strong connection between humans and their landscape, based on human needs, such as those to grow food, build shelter, and find places to perform ceremonial rites. These settings include cemeteries and burial grounds, historic battlefields, or sites significant to a historical figure. These places allow visitors to view natural landscapes as a cultural resource that ties to human development. Many cultural landscapes exist solely within NPS boundaries; however these irreplaceable sites may still be affected by external projects. Still, landscapes with cultural significance that are not officially identified as cultural landscapes on the National Register may still extend beyond the boundaries of NPS and can be impacted by external projects.

The permitting process that we have participated in to date has provided a forum for proactive mitigation of impacts. We believe that the early identification of impacts affords an opportunity to address impacts with companies and the state before permitting occurs. We welcome the opportunity to share concerns with the commission and companies conducting work around NPS areas. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Wendy Hart Ross", written in a cursive style.

Wendy Hart Ross
Superintendent

Oil & Gas Division
600 East Boulevard Ave
Dept. 405
Bismarck, ND 58505-0840

Received
APR 25 2016
ND Oil & Gas Division

Re: Comment on Proposed Amendments to NDAC

I am a landowner who lives in Dunn County.

I am asking you to vote no on the proposed amendment to NDAC 43-02-03-01 in regards to who can testify at a Commission hearing.

I believe that this amendment will limit the ability of landowners such as me to be able to testify in regards to projects that may be in close proximity to me.

In our rural areas there are more people that can be affected than just the adjacent landowners to these projects.

We may have residents who live by the roads that are used by the industry to reach these projects. This will have impacts on the roads and on the residents, landowners, school buses, emergency services and others who also use them.

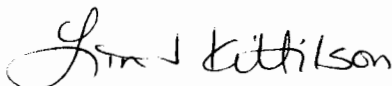
We have many sources of water that are used by many of the residents of North Dakota which have the potential to become contaminated. Citizens who use any water which may suffer any negative effects from a project should have the ability to speak of their concerns.

We also may have residents who have other livelihoods such as tourism businesses close to these or there may be residential subdivisions which are also close.

Landowners, businesses and residents no longer would have the ability to express their concerns if this proposed amendment was passed even if they are in close proximity. Acts of nature or accidents at these sites can possibly have consequences for more than just an adjacent landowner. Not allowing residents and citizens of North Dakota to testify would be very unfair to those of us who live here.

Please do not pass this amendment as these are just some of the examples of those who could possibly suffer negative impacts from not being able to testify.

Thank you.



Linda Kittilson
11220 5th St SW
Killdeer, ND 58640

Oil & Gas Division
600 East Boulevard Ave
Dept. 405
Bismarck, ND 58505-0840

Received
APR 25 2016
ND OGC

Re: Comment on Proposed Amendments to NDAC

I am a landowner who lives in Dunn County.

I am asking you to vote no on the proposed amendment to NDAC 43-02-03-01 in regards to who can testify at a Commission hearing.

I believe that this amendment will limit the ability of landowners such as me to be able to testify in regards to projects that may be in close proximity to me.

In our rural areas there are more people that can be affected than just the adjacent landowners to these projects.

We may have residents who live by the roads that are used by the industry to reach these projects. This will have impacts on the roads and on the residents, landowners, school buses, emergency services and others who also use them.

We have many sources of water that are used by many of the residents of North Dakota which have the potential to become contaminated. Citizens who use any water which may suffer any negative effects from a project should have the ability to speak of their concerns.

We also may have residents who have other livelihoods such as tourism businesses close to these or there may be residential subdivisions which are also close.

Landowners, businesses and residents no longer would have the ability to express their concerns if this proposed amendment was passed even if they are in close proximity. Acts of nature or accidents at these sites can possibly have consequences for more than just an adjacent landowner. Not allowing residents and citizens of North Dakota to testify would be very unfair to those of us who live here.

Please do not pass this amendment as these are just some of the examples of those who could possibly suffer negative impacts from not being able to testify.

Thank you.

Ivan Hoeker
640114 Ave S.W
Hilldeer, ND 58640

Oil & Gas Division
600 East Boulevard Ave
Dept. 405
Bismarck, ND 58505-0840

Received
APR 25 2016
ND Oil & Gas Division

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Thank you.

Daphne Decker
640114 Ave SW
Hilldeer, ND 58640

**PLANNING & ZONING BOARD
COUNTY OF MOUNTRAIL**

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BILL KLUG
CHASE LINDBERG
TRUDY RULAND
CHARLIE SORENSON
GARY WEISENBERGER
LINDA WIENBAR

Received
APR 25 2016
ND Oil & Gas Division

April 22, 2016

Hon. Jack Dalrymple
Governor, State of North Dakota
600 East Boulevard Avenue
Bismarck, ND 58505-0001

Hon. Wayne Stenehjem
North Dakota Attorney General
600 East Boulevard Avenue
Bismarck, ND 58505-0040

Hon. Douglas Goehring
North Dakota Agriculture Commissioner
600 East Boulevard Avenue, Dept. 602
Bismarck, ND 58505-0020

Hon. Lynn Helms
Director, North Dakota Industrial Comm.
600 East Boulevard Ave., Department 405
Bismarck, ND 58505-0840

Re: North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division
proposed amendments and additions to ND Administrative Code Chapter 43-02-03, Chapter 43-02-05 and Chapter 43-02-08

Gentleman:

The Mountrail County Board of Commissioners met on Tuesday, April 19, 2016 and reviewed the proposed amendments and additions to the above referenced North Dakota Administrative Codes. The following comments are made on behalf of the Mountrail County Board of Commissioners:

43-02-03-01 Definitions

- 25. "Interested party" means an individual or number of individuals that have a property interest or management interest in or adjacent to the subject matter.**

Limiting the parties that can testify hinders information which may be relevant to making a proper decision by the Commission and deprives Counties and the citizens of North Dakota the right to be heard.

44.-45 "Saltwater handling facility" means and includes any container such as a pit, tank or pool, whether covered or uncovered, and site used for the handling, storage, disposal of deleterious substances obtained, or used, in connection with the drilling or operation of wells oil and gas exploration and development.

According to the Encarta Dictionary English (North America) "Deleterious means harmful having a harmful or damaging effect on somebody or something." This is very vague and leaves it wide open as to what a saltwater handling facility may accept. This could greatly increase the jurisdiction of the NDIC over "portable" facilities that are presently outside of the jurisdiction of the NDIC. In the past few years, this has been one of the greatest incidents of concern with mineral development, and is presently not being adequately addressed by the NDIC under the present definitions. What assurance do we have that by increasing the jurisdiction of the NDIC via this definitional change will be for the public benefit?

April 22, 2016

43-02-03-16 APPLICATION FOR PERMIT TO DRILL AND RECOMLETE

Paragraph II, Line 4

~~"...confirmation that a legal street address has been requested for the well site, and well facility if separate from the well..."~~

43-02-03-17 SIGN ON WELL OR FACILITY

Paragraph I, Line 9

~~"...For all wells and associated facilities, the sign shall also include the legal street address, if available..."~~

43-02-03-28 SAFETY REGULATION

Paragraph V

~~"The operator of any well approved after March 31, 2014, shall submit the legal street address of the well site, and well facility if separate from the well site,..."~~

43-02-03-51.1 TREATING PLAN PERMIT REQUIREMENTS

Paragraph 1. Sub-paragraph b. Line V

~~"...and the legal street address..."~~

The proposed omission of the requirement of a 911 address does not make sense, as it is IMPERATIVE that emergency responders be able to be directed to an exact location in the event of a mishap on that site. We have implemented a statewide system to insure creditable information is given to emergency responders, and it appears the striking of the requirement would be a step in the wrong direction.

43-02-03-53.1 SALTWATER HANDLING FACILITY PERMIT REQUIREMENTS

The following should be included "the legal street address of the facility."

43-02-03-53.2 SALTWATER HANDLING FACILITY SITING

An additional requirement should be that an access permit for the salt water disposal facility would be needed from the governmental entity that has jurisdiction of the public roadway which the facility would be adjacent to.

43-02-05-04 PERMIT REQUIREMENTS

The following should be included "the legal street address of the facility."

Thank you for the opportunity comment on these proposed administrative rules.

Sincerely

Wade G. Enget

Wade G. Enget (04165)

Mountrail County States Attorney

Donald W. Longmuir Jr.

Donald W. Longmuir Jr., AICP

Mountrail County Planner

Cc: Arlo Borud, Chairman, Mountrail County Commission
Greg Boschee, Vice Chairman, Mountrail County Commission
Garry A. Jacobson, Mountrail County Commission
Colleen Reese, Mountrail County Commission
Trudy Ruland, Mountrail County Commission

Kadrmass, Bethany R.

From: Don Longmuir <donl@co.mountrail.nd.us>
Sent: Friday, April 22, 2016 2:06 PM
To: Hicks, Bruce E.; Rauschenberger, Ron W.; -Info-Attorney General; -Info-Dept. of Agriculture; Helms, Lynn D.
Cc: Enget, Wade G.
Subject: Comments for Proposed Administrative Rules
Attachments: 04-22-15 letter.pdf

Importance: High

This email is being sent and a written copy has been placed in today's U.S. Mail.

Donald W. Longmuir Jr.

Donald W. Longmuir Jr., AICP
Zoning Administrator/Planner
Disaster Emergency Coordinator
P.O. Box 248
8103 61st Street NW
Stanley, ND 58784-0248

**PLANNING & ZONING BOARD
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April 22, 2016

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600 East Boulevard Avenue
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Bismarck, ND 58505-0020

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Director, North Dakota Industrial Comm.
600 East Boulevard Ave., Department 405
Bismarck, ND 58505-0840

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April 22, 2016

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Colleen Reese, Mountrail County Commission
Trudy Ruland, Mountrail County Commission



PO Box 24300, M/C LS760
Oklahoma City, OK 73124
EnableMidstream.com

April 19, 2016

Bruce Hicks, Assistant Director
NDIC Department of Mineral Resources,
Oil and Gas Division
600 E. Boulevard Ave.
Bismarck, ND 58505

Received
APR 25 2016
ND Oil & Gas Division

Re: Comments on NDIC Proposed Rule Changes

Dear Mr. Hicks;

Enable Bakken Crude Services, LLC ("Enable Bakken") appreciates the opportunity to submit comments on the North Dakota Industrial Commission's ("NDIC") proposed rule changes for Chapter 43-02-03. Enable Bakken is a transporter of crude oil through two pipeline systems located in Dunn, McKenzie, Mountrail and Williams Counties, North Dakota. Enable Bakken transports crude oil on behalf of shippers in interstate commerce as a common carrier subject to the Federal Energy Regulatory Commission's ("FERC") regulations under the Interstate Commerce Act. Enable Bakken has a tariff on file with FERC for each of its pipeline systems.

Enable Bakken acknowledges and appreciates the NDIC's efforts in formulating and drafting the proposed rule changes for Chapter 43-02-03. However, as Enable Bakken's comments demonstrate, some of the NDIC's proposed changes require clarification or modification in certain key respects. In addition, the NDIC should remain cognizant of the fact that the oil and gas industry already is subject to very rigorous regulation by state and federal agencies and that revised rules should avoid duplicating already existing rules and regulations. The proposed rule changes should also reflect the realities of the current economic environment and the constraints placed on company resources in complying with a multitude of statutes and regulations.

Enable Bakken asks that the NDIC give careful consideration to the proposed clarifications and modifications reflected in Enable Bakken's comments. These comments are being submitted in a spirit of cooperation and to assist the NDIC's in its efforts in changing the proposed rules.

Respectfully submitted,

A handwritten signature in black ink that reads "Royce A. Brown".

Royce A. Brown
Senior Director
Pipeline Safety

Enclosure

Response to NDIC Proposed Rule Changes

Chapter 43-02-03

43-02-03-01. Definitions

We believe the definition of “saltwater handling facility” requires clarification to better define the intended types of facilities that would be subject to regulation, thereby avoiding the potential for misinterpretation/application to above ground equipment, such as measurement equipment, associated with underground pipelines (i.e., Associated Pipeline Facilities, as described in 43-02-03-29.1, Section 7). Our proposed definition is as follows.

“Saltwater handling facility means and includes any container and site used primarily for the handling, storage, and disposal of saltwater (produced water), obtained, or used, in connection with oil and gas exploration and development.”

43-02-03-11. Organization Reports

We have no comments, language changes or additions to this section.

43-02-03-14. Access to Records

We have no issue with record review. However, a better definition is needed as to what the review of the records is intended for and which records would be required. Access to any and all operating records really does not help either party address safety concerns and allows too much room for interpretation. As written, an operator could choose not to keep certain records and be in compliance.

43-02-03-15. Bond and Transfer of Wells

- a. We believe limiting bond requirements to a surety bond or cash bond is impracticable and that the NDIC can accomplish their goal, while providing more flexibility for operators, by adding a letter of credit option to all sections including wells, units, treating plants, saltwater handling facilities, crude oil and produced water underground gathering pipeline. We suggest that the language be changed from “...a surety bond or cash bond” to “...a surety bond, cash bond or letter of credit” in Section 1, 3, 6, 7 and 8a.
- b. Comment on 8(a)
Section 8(a) references the following bond requirements: “fifty thousand dollars when applicable to one crude oil or produced water underground gathering pipeline system only;” and “A blanket bond covering one or more underground gathering pipeline systems shall be in the amount of one hundred thousand dollars.” However the term “underground gathering pipeline system” is undefined and allows for too much individual interpretation. 43-02-03-29.1 provides definitions for “Crude oil or produced water underground gathering pipeline” and “Underground gas gathering pipeline” but no definition for system. We recommend the NDIC provide more specificity and definition around the term underground gathering pipeline system.
- c. Comment on 8(b)
 - (1) This language restricts what can be covered under a \$100,000 blanket bond to no more than six of the following: “Any portion of an underground gathering pipeline system that has been out of service for more than one year and not properly abandoned pursuant to 43-02-03-29.1.” Due to any number of operational considerations (e.g., delay in completing a well serviced by the pipeline, changing flow dynamics in a field, etc.), operations of a given gathering line may be

Response to NDIC Proposed Rule Changes

Chapter 43-02-03

suspended for periods of time that could exceed one year. However, a pipeline operator may still have plans to operate that pipeline in the future once the serviced well is completed, additional wells are drilled, and/or flow dynamics in the system change. Consequently, we suggest the following language changes to 43-02-03-15.8(b)(1): “Any portion of an underground gathering pipeline system that has been permanently removed from service and is not properly abandoned pursuant to 43-02-03-29.1; and”

- (2) This language restricts what can be covered under a \$100,000 blanket bond to no more than six of the following: An underground gathering pipeline right-of-way, including associated pipeline facility and above ground equipment, that have not been properly reclaimed pursuant to 43-02-03-29.1. However, 43-02-03-29.1 has multiple areas that discuss right-of-way reclamation such as 5(b), 5(c), 5(d) and 5(e) which references subsection 15. Subsection 15(a)(6) subsequently references section 43-02-03-34.1. This process is confusing even in the best case scenarios. Therefore, we recommend the NDIC provide more specificity and definition around the reclamation requirements in 43-02-03-15.8(b)(2) or strike this language altogether.

d. Comment on 8(d)(1)

This section outlines the procedures to have a bond released. In paragraph (1), operators are required to notify the Director at least 30 days before the closing date of a transfer. The Director may, for good cause, waive this requirement. If an operator transfers a pipeline system to another party, it is in the operator’s best interest to have the bond released as soon as possible. However, in the event a transfer is made and the operator fails to address the bond, the Director should have the option to address it at any time thereafter and get it released. We suggest the 30-day requirement be deleted from this document and propose that this paragraph read as follows: “The principal must notify the director, in writing, of all transfers of underground gathering pipelines.”

43-02-03-16. Application for Permit to Drill and Recomplete

We have no comments, language changes or additions to this section.

43-02-03-17. Sign on well or facility

We have no comments, language changes or additions to this section.

43-02-03-19. Site Construction

We have no comments, language changes or additions to this section.

43-02-03-19.3. Earthen Pits and Receptacles

This section and proposed changes appears specific to pits or receptacles associated with drilling or reworking a well. It does not appear to apply to any of our operations. That said, it should be noted that use of pits as outlined in an approved SPCC plan or other such federally, or local codes, shall supersede this and cannot be in conflict with such above mentioned plans. Example, a retention pond located within a tank farm is approved as part of the SPCC plan and as a means to reduce rain water erosion. This should not be subject to the regulation language in this section.

Response to NDIC Proposed Rule Changes

Chapter 43-02-03

43-02-03-28. Safety Regulation

We have no comments, language changes or additions to this section.

43-02-03-29. Well and Lease Equipment

We have no comments, language changes or additions to this section.

43-02-03-29.1. Underground Gathering Pipelines

1. Application of section

- a. The references to “pipeline manufacturer’s prescribed installation” seem problematic with the exception of specialty pipe products (other than standard carbon steel pipe). We believe that the pipeline operator’s engineering standards, procedures based on federal regulations, and established industry best practices should take precedence in most cases unless you are working with a specialty pipe product.

Suggested language revision follows:

Application of section. This section is applicable to all underground gathering pipelines designed for or capable of transporting crude oil, natural gas, carbon dioxide, or produced water from an oil and gas production facility for the purpose of disposal, storage, or for sale purposes. If these rules differ from the pipeline manufacturer’s prescribed installation and operation practices, applicable state or federal regulations, the pipeline operator’s established procedures and specifications, or established and accepted industry standards, then the pipeline manufacturer’s prescribed installation and operation practices, applicable state or federal regulations, the pipeline operator’s established procedures and specifications, or established and accepted industry standards will take precedence.

2. Definitions

We have no comments, language changes or additions to this section.

3. Notification

- a. Comment on Section 3.a

We are not opposed to providing the NDIC with 7-day advance notice of planned gathering pipeline construction activities. However, the proposed rules should be revised to clearly state that project proponents need not obtain affirmative response or authorization from the NDIC prior to commencing new construction activities. Additionally, the means (e.g., electronic or hardcopy submittal, location for submittal, etc.) and form of notification should be clearly defined (e.g., a standard notice of intent form).

- b. Comment on Sections 3.a.1 and 3.a.2

The proposed notification rules would require that proponents of new gathering pipelines provide detailed geographic information system (GIS) pipeline centerline data, as well as other detailed design drawings. Such data that provide detailed location information for pipeline facilities are normally regarded as Critical Energy Infrastructure Information (CEII) and/or Privileged & Confidential (P&C) information that is not made publically available and that is protected from disclosure under the Freedom of Information Act and state sunshine laws. The NDIC must provide the regulated industry

Response to NDIC Proposed Rule Changes

Chapter 43-02-03

with assurances that the detailed and sensitive information identified for inclusion in project notifications to the NDIC will be treated and maintained with appropriate confidentiality and protected from public disclosure.

c. Comment on Section 3.b

The intent of the proposed notification requirements for gathering pipelines that have been out of service for more than one year is unclear. Due to any number of operational considerations (e.g., delay in completing a well serviced by the pipeline, changing flow dynamics in a field, etc.), operations of a given gathering line may be suspended for periods of time that could exceed one year. However, a pipeline operator may still have plans to operate that pipeline in the future once the serviced well is completed, additional wells are drilled, and/or flow dynamics in the system change. Furthermore, the notification requirements here in concert with the cross reference to NDIC proposed pipeline abandonment requirements at Section 43-02-03-29.15 could be misinterpreted to require that a pipeline operator complete pipeline abandonment activities on any pipeline that has been taken out of service for more than one year. As a result, additional clarification and specificity is needed. Additionally, the anticipated schedule for NDIC notification should be specified (e.g., “notify the commission within 180 days of any underground gathering pipeline...”).

d. Comment on Section 3.c

The proposed requirement for “immediate” NDIC notification in the event of excavation damage to an underground gathering pipeline is vague and overly broad. For example, it is unclear whether the notification requirement refers to pipeline damage that may occur to foreign lines during new construction activity or damage inflicted by a third-party on an operator’s existing pipeline or the pipeline under construction. Additionally, specific reporting criteria and reporting process should be defined. For example, the term “immediate” is not specific or clearly defined. Finally, the method of reporting (e.g., by phone, electronic form submittal, etc.) needs to be specified.

e. Comment on Section 3.d

This section states the pipeline operator will provide a list of all 3rd party inspectors including a list of their respective qualifications and experience. While a list can be provided, a project is very dynamic and during staffing it is not uncommon that the personnel may change from the original resources selected. In addition, we reserve the right as the purchaser of the 3rd party service, to remove personnel from the job site at any given time. Consequently, it is not beneficial to produce an initial list of resources to be used. We believe that such a list can be produced upon request to show the qualifications and experience of the personnel being utilized at any given time.

4. Design and Construction

a. Comment on Section 4.b

The proposed rule states: “All newly constructed underground gathering pipelines must be designed in a manner that allows for line maintenance, periodic line cleaning, and internal integrity inspection.” This statement fails to take into account the fact that the smallest available inline inspection diameter is six inches. Additionally, inline inspection

Response to NDIC Proposed Rule Changes

Chapter 43-02-03

technology would be of no beneficial use on the pipe materials commonly being used for produced water gathering pipelines. We recommend that the NDIC consider rewriting this section to include only metallic pipe with a minimum diameter of 8 inches.

b. Comment on Section 4.i

As it pertains to trench backfill, this section indicates that “Backfill material must be free of rocks and foreign debris.” Where rock occurs in native subsoil material, it is generally screened from the initial layer of soil (soil padding) placed around the pipeline, or other measures are implemented to protect the coating and integrity of the pipeline (e.g., rock shield wrapped around the pipe). However, with this exception, native rock is generally included in the trench backfill as a standard industry practice. If this were not the case, then rock excavated from the trench would have to be hauled and disposed of, and the volumetric balance of the excavated material would have to be made up with soil imported from off the construction right-of-way. For this reason, the language in this subsection should be revised to read:

“When a trench for an underground gathering pipeline is backfilled, it must be backfilled in a manner that provides firm support under the pipe and prevents damage to the pipe and pipe coating from equipment or from the backfill material. Sufficient backfill material must be placed in the haunches of the pipe to provide long-term support for the pipe. Backfill material must be free of non-native rocks and foreign debris. Backfilling material must be compacted during placement in a manner that provides support for the pipe and reduces the potential for damage to the pipe and pipe joints.”

c. Comment on Section 4.k

The proposed rule states that “Any underground gathering pipeline that traverses environmentally sensitive areas, such as wetlands, streams, or other surface waterbodies shall be horizontal directionally drilled in a manner that minimizes impacts to these areas.” However, the U.S. Army Corps of Engineers (USACE), rather than the NDIC, is the regulatory entity that has jurisdictional authority (pursuant to Section 404 of the Clean Water Act) over fill and construction related disturbance to wetlands, streams, and other surface waterbodies (i.e., waters of the United States). Further, the USACE, through its Nationwide Permit and Individual Permit programs, provides pipeline operators with a means to obtain permit authorization for activities associated with the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States. Given that project proponents may obtain permit authorization for the open-cut installation of pipelines across wetlands, streams, and other surface waters, NDIC should not preclude such installation practices as a viable construction alternative to horizontal directional drill (HDD) installation. Additionally, pipeline installation via HDD is not always a practicable installation alternative. Any number of site-specific constraints, including geology and sediments, workspace or construction access restrictions, topography and terrain, frozen conditions, or risk of an inadvertent return of drilling fluid (i.e., frac-out) could render an HDD infeasible or less environmentally preferred than a conventional open-cut or dry pipeline installation method. For these reasons, the language in this subsection should be revised to read: “Any underground gathering pipeline that traverses environmentally sensitive areas, such as wetlands, streams, or other surface waterbodies shall be horizontal directionally

Response to NDIC Proposed Rule Changes

Chapter 43-02-03

drilled in a manner that minimizes impacts to these areas, except where requisite permit authority has been obtained to utilize alternative pipeline installation techniques, including open-cut installation. A horizontal directional drilling plan, where horizontal directional drill is proposed, shall include the following:"

Comment on Section 4.k.1

Section 4.k.(1) states "An accurate plat certified by a registered surveyor showing the locations of the entry and exit points with reference to true north and the nearest lines of a governmental section, the latitude and longitude of the proposed locations of the entry and exit points to the nearest tenth of a second, and the ground elevation of the entry and exit points." However, requiring the survey of entry and exit location points prior to execution of project does not appear to be beneficial as these locations would only provide the proposed locations. Additionally, the entry and exit locations are eventually tied into the existing pipeline and the tie-in weld locations are typically surveyed in for reference making this step redundant. We recommend the following changes to the language:

"An engineered HDD design plan, developed by operator, showing the locations of the entry and exit points with reference to true north and the nearest lines of a governmental section, the latitude and longitude of the proposed locations of the entry and exit points to the nearest tenth of a second, and the ground elevation of the entry and exit points;"

- d. Subsection k.6 requires inclusion of the "results of the channel degradation and scour analysis, if required, by the director." However, NDIC provides no information or details on the scope of a potentially requisite "channel degradation and scour analysis," nor does it provide information on when, or what criteria, would be used to determine when such an analysis is appropriate or required. We suggest that this proposed requirement be eliminated altogether, or that such analysis be limited to HDD installations of major waterbodies where there is potential for significant stream bed scour or mobility over time (e.g., rivers classified as navigable pursuant to Section 10 of the Rivers and Harbors Act).

5. Pipeline right-of-way

a. Comment on Section 5.a

The proposed rule would require that topsoil "be stripped from the pipeline right-of-way, segregated from the subsoils, and stockpile for use in right-of-way reclamation." We agree that topsoil stripping and segregation, which maintains soil fertility and preserves the native seed bank, is a useful tool to ensure successful reclamation of areas disturbed during pipeline construction. However, we note that the proposed requirement is overly broad as written, such that additional specificity is needed. For example, proposed rule implies that topsoil must be stripped across the full width of the pipeline right-of-way and in all types of land use. However, topsoil segregation is generally only implemented in specific land use areas, such as cultivated or rotated croplands, managed pastures, hayfields, and other areas at landowner or land managing agency request. Additionally, topsoil is generally only stripped from directly over the pipeline ditch and the adjacent subsoil spoil storage area, where there is actually

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potential for mixing of surface and subsoil layers during normal construction conditions. In wet working conditions, it may be advisable to strip topsoil from the full width of the construction right-of-way to avoid rutting and mixing of soils. However, stripping of soil from the full width of the construction right-of-way increases construction disturbance, duration, and right-of-way land requirements, as there must be adequate room set aside to stockpile and segregate the stripped topsoil. Further, as an environmental best management practice, topsoil stripping in wetlands is generally limited to only the trench line to minimize disturbance within the wetland resource. And topsoil stripping is generally not practicable in saturated or inundated wetlands. For these reasons, we propose the following alternative language for this subsection, which is adapted from the Federal Energy Regulatory Commission's Upland Erosion Control, Revegetation, and Maintenance Plan:

"Unless the landowner or land management agency specifically approves otherwise, prevent the mixing of topsoil with subsoil by stripping topsoil from either the full work area or from the trench and subsoil storage area (ditch plus spoil side method) in cultivated or rotated croplands, and managed pastures; residential areas; hayfields; and other areas at the landowner's or land managing agency's request. Where topsoil segregation is performed, the project sponsor must segregate at least 12 inches of topsoil in deep soils (more than 12 inches of topsoil) or the entire topsoil layer in soils with less than 12 inches of topsoil. In wetlands, segregate the top 1 foot of topsoil from the area disturbed by trenching, except in areas where standing water is present or soils are saturated."

b. Comment on Section 5.b

The proposed rule indicates that "All stakes, markers, cables, ropes, skids, and any other debris or material not native to the area must be removed from the right-of-way and lawfully disposed of." This proposal is over-broad in scope and ignores the fact that some materials "not native to the area" will remain on the pipeline right-of-way following construction and restoration activities. Such non-native materials may include pipeline markers and/or warning signs, which are installed along the pipeline centerline at specified intervals to identify the pipeline location, as well as matting, geotextiles, rock aprons, etc., which are used for temporary and permanent erosion control purposes. For these reasons, the language in this subsection should be revised to read: "The pipeline right-of-way shall be reclaimed as closely as practicable to original condition. Construction debris, including stakes, cables, ropes, skids, and any other debris or material not native to the area must be removed from the right-of-way and lawfully disposed of, unless the landowner or land managing agency approves leaving the materials onsite for beneficial reuse, stabilization, or habitat restoration."

c. Comment on Section 5.d

In general, the goal of pipeline right-of-way restoration and reclamation measures is to alleviate soil compaction, which may contribute to reduced productivity. It is therefore unclear why the proposed rules specify that soils should be "compacted" during reclamation. For these reasons, the language in this subsection should be revised to read:

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“The reclaimed right-of-way soils shall be de-compacted, as needed, and stabilized to prevent excessive settling, sluffing, cave-ins, or erosion.”

d. **Comment on Section 5.e and f**

These sections indicate that the “pipeline owner is responsible for the right-of-way reclamation and maintenance” until the pipeline is abandoned (natural gas) or released from the pipeline bond (crude oil and produced water). However, as pipeline owners generally maintain a restrictive easement on their pipeline rights-of-way, but do not own or otherwise control the land, it is difficult in practice for pipeline owners to truly control and limit activities that may contribute to disturbance of the right-of-way (e.g., land clearing activities performed by landowners, deleterious grazing practices, unauthorized ATV use, etc.). For these reasons, it is unfair and impractical for NDIC to impose rules holding pipeline owners accountable for all maintenance and reclamation on their pipeline right-of-ways. Rather, pipeline owners should be held accountable for those maintenance and reclamation practices that result from and are inherent to the construction, operation, and maintenance of the pipeline.

6. Inspection (including third party inspection)

- a. This section infers that all inspection will be done by 3rd party inspection. While 3rd party inspection is typically utilized, we do withhold the right to have an internal inspector perform inspection duties. All inspection, whether 3rd party or internal, will be performed within the guidelines of PHMSA and DOT CFR 49 Part 195.

Additionally, we believe “Independent” is vague and overly broad and that “third party” implies the inspector is independent from the pipeline operator. We recommend dropping the term “independent” from this section.

7. Associated pipeline facilities

- a. Most of the language here is comparable to the federal regulations for SPCC, except for the statement “Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day’s fluid throughput.” Not only is this language excessive, it is unnecessary. The federal regulation 40 CFR 112.8(c)(2) states: “Construct all bulk storage tank installations (except mobile refuelers and other non-transportation related tank trucks) so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.” We recommend the NDIC proposed rule be rewritten to be in compliance with the federal regulation.

8. Underground gathering pipeline as built

The proposed notification rules would require that proponents of new gathering pipelines provide detailed geographic information system (GIS) pipeline centerline data, as well as other detailed design drawings. Such data that provide detailed location information for pipeline facilities are normally regarded as Critical Energy Infrastructure Information (CEII) and/or Privileged & Confidential (P&C) information that is not made publically available and that is protected from disclosure under the Freedom of Information Act and state sunshine laws. The NDIC must provide the regulated industry with assurances that the

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detailed and sensitive information identified for inclusion in project notifications to the NDIC will be treated and maintained with appropriate confidentiality and protected from public disclosure.

9. Operating requirements

- a. Part 192 of CFR 49 references Maximum Allowable Operating Pressure (MAOP) for natural gas pipelines, whereas Part 195 references Maximum Operating Pressure (MOP) for liquid pipelines. We recommend that this language be revised to address not only MAOP, but Maximum Operating Pressure (MOP) as well.
- b. The second part of this proposed rule states that “The underground gathering pipeline must be equipped with pressure-regulating devices to prevent the pipeline from operating above the maximum allowable pressure.” We recommend this language be revised to read “each operator of a gathering pipeline system must provide adequate controls and protective equipment to control operating pressures below maximum allowable operating pressure for natural gas pipelines or maximum operating pressure for liquid pipelines.”

10. Leak detection and monitoring

- a. We have no objection to development and submittal of a leak detection plan, but this does not appear to be mandatory based on the language of this proposed rule unless required by director. The proposed rule needs more clarity around meeting the requirement when requested by the director. In addition, a leak detection plan is not solely limited to CPM and can contain other means of determining leaks other than CPM, such as line surveillance and SCADA monitoring.
- b. Traditional CPM’s are designed and used on transmission pipelines typically with one input and one output. In gathering pipelines, there are typically many inputs to the system and possibly more than one output. This could create issues with operating, maintaining, and testing in accordance with API since it was written to support the operations, testing and Maintenance of traditional CPM’s.
- c. A real time data sharing plan is not reasonable or achievable. First, the definition of real time could be many things and is dependent on poll interval, calculations, etc. Second, technology and coordination of such an effort is prohibitive. This will essentially force pipeline operators to provide SCADA systems for interconnected operators. To make real-time data sharing possible, without violating Cybersecurity policies and recommendations from API RP 1164, each interconnection with other parties will require confidentiality agreements, background screening and training/ awareness for interconnected operators, adding further requirements on underground pipeline operators. API RP 1164 Cybersecurity states that connections to SCADA systems should be limited and that every extra connection to SCADA systems increases the risk that deliberate or unintentional attacks can happen. Traditionally, if real-time data needs to be shared, then both parties connect to the same field devices and provide their own telemetry and SCADA. Third, managing discrepancies between data or lack of data will detract from an operator’s ability to truly focus on operations, thus creating the

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potential for safety issues. Who notifies whom and who is responsible for the investigation? What details should be recorded and how long should the records be kept? This uncertainty will discourage operators from installing CPM systems.

11. Spill response

- a. This section is much too vague and allows for too much individual interpretation. We currently implement an Emergency Response Plan (ERP) for our North Dakota gathering system. The ERP is a DOT regulated plan and goes above the minimum requirements stated here. Compliance with 49 CFR 194 and the spill response noted therein, must supersede this section. We recommend a change to the language stating that those having an Emergency Response Plan established under 49 CFR 194 meets or exceeds the State of North Dakota's Spill Response requirements.

12. Corrosion control

- a. Underground gathering pipelines must be designed to withstand the effects of external corrosion and maintained in a manner that mitigates internal corrosion. This directive seems very open to interpretation and does not provide clear guidance. We suggest the adoption of the applicable sections of 49 CFR 192 (natural gas) & 195 (hazardous liquids). Implementing operator requirements based on this established set of Federal Regulations will make it more effective for NDIC to regulate and for operators to implement.
- b. All metallic underground gathering pipelines installed must have sufficient corrosion control. This directive does not provide clear guidance. As indicated above, we suggest the adoption of the applicable sections of 49 CFR 192 (natural gas) & 195 (hazardous liquids).
- c. "All coated pipe shall be electronically inspected prior to placement using coating deficiency (i.e. holiday) detectors to check for any faults not observable by visual examination. The holiday detector shall be operated in accordance with manufacturer's instructions and at a voltage level appropriate for the electrical characteristics of the pipeline system being tested. During installation all joints, fittings, and tie-ins shall be coated with materials compatible with the coatings on the pipe. Coating materials must:
(1) Be designed to mitigate corrosion of the buried pipeline;
(2) Have sufficient adhesion to the metal surface to prevent under film migration of moisture;
(3) Be sufficiently ductile to resist cracking;
(4) Have enough strength to resist damage due to handling and soil stress;
(5) Support any supplemental cathodic protection; and
(6) If the coating is an insulating type, have low moisture absorption and provide high electrical resistance."
Federal code language is preferable to Paragraph 12c above. Items 1-6 above are taken from §195.559 verbatim.
- d. National Association of Corrosion Engineers standard practice Control of External Corrosion on Underground or Submerged Metallic Piping Systems is incorporated by

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reference into CFR 192 and 195. It is our suggestion to adopt the applicable sections of 49 CFR 192 (natural gas) & 195 (hazardous liquids).

- e. “If internal corrosion is anticipated or detected, the underground gathering pipeline owner must take prompt remedial action to correct any deficiencies, such as increased pigging, use of corrosion inhibitors, internal coating of the pipeline (e.g. an epoxy paint or other plastic liner), or a combination of these methods.” We believe that the phrase “Prompt remedial action” is too open to interpretation. This term should either be removed or replaced with a specified timeframe.

Paragraph e.(1) internal corrosion coupon examination interval differs from federal code. We propose that the last sentence of paragraph e. (1) be revised to read: “The coupons or other monitoring equipment must be examined at least twice each calendar year, but with intervals not exceeding 7½ months.”

13. Pipeline Integrity

General Comments: If ND intends to improve pipeline safety and integrity, it should just adopt the existing requirements of Federal Code 49 CFR, Parts 192 and 195. These federal codes give specific guidance for inspecting liquid Could Affect Segments (CAS) and High Consequence Areas (HCA). By contrast, the NDIC guidance is very vague.

There is no guidance provided on the requirement to pressure test. Both test level and applicability to existing, in-service pipelines is currently undefined in 43-02-03-29.1. All of this information is clear in Parts 192 and 195. Accordingly, we suggest the following language revision:

“No underground gathering pipeline owner may operate a pipeline, constructed after this issuance of this rule, unless it has been pressure tested and demonstrated integrity. In addition, no owner may return to service a portion of pipeline that has been repaired, replaced, relocated, or otherwise changed until it has been pressure tested. Pressure tests will be in accordance with applicable federal regulations CFR 49 Part 192 or CFR 49 Part 195.”

13(a) states that the underground gathering pipeline owner must notify the commission at least forty-eight hours prior to commencement of any pipeline integrity test to allow a representative of the commission to witness the testing process and results.

We strongly recommend the NDIC to rewrite this paragraph and take into account the following considerations:

- 1) The notification process needs to simply be a notification process, not an approval process.
- 2) Specific notification process should be defined (e.g., by phone, electronic form submittal, contact information for notification, etc.) as the method of reporting is not specified.
- 3) There needs to be an exemption for emergency repair situations.

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Concerning 13(b), we strongly urge the commission to strike this language from the proposed Century Code changes because this will have minimal value unless the NDIC has a vast amount of GIS data available for the rest of the system.

Additionally, we believe “Independent” is a vague and overly broad term and that “third party” implies the inspector is independent from the pipeline operator. We recommend deleting the term “independent” from this section. A third party inspector or company inspector will sign hydrostatic test documents indicating a successful test. The documentation can be produced, upon request by the commission, to verify the details of the hydrotesting such as date, duration, pipe length, test pressures and inspector approval.

Additionally, as currently written, the proposed rules contain inconsistencies between 13(b) and 14(b). First, 13(b) requires a submission of “independent” inspector’s certificate of hydrotest while the repair in 14(b) requires affidavit of completion by the pipeline owner. Why can a pipeline owner verify completion of repair but an “independent” inspector is required for the hydrotest? It seems the pipeline owner would be sufficient to certify the hydrotest also, given that a proper repair and proper hydrotest are at least equally important in the process. Second, a repair with an associated hydrotest would trigger duplicate reporting process, one for the hydrotest and one for the repair, each with individual reporting requirements. If the commission feels operators need to report this information, we recommend that one process be utilized that includes both repair and hydrotest, with both hydrotest and repair certified by submission from representative of pipeline owner.

We believe that 13(c) Periodic is vague and undefined. Therefore, we recommend the NDIC establish a defined assessment cycle for integrity inspections. For example, Texas uses 10 years for non-CAS liquid lines, PHMSA is moving towards 15 years for baseline MCA gas segments, 20 years for reassessment.

14. Pipeline Repair

General Comments: The federal code is becoming very specific about repairs in liquid (CAS and non-CAS segments) and gas (HCA, MCA and non-MCA) pipe segments. We believe that these rules should be incorporated instead of manufacturer design specifications. NDIC eventually needs to develop specific standards for FlexSteel pipelines. However our preference is for NDIC to exclude FlexSteel from rule.

We recommend that changes be made to the following language:

“Each owner shall, in repairing an underground gathering pipeline or pipeline system, ensure that the repairs are made in a manner that prevents damage to persons or property, excluding typical ground disturbances and damage to ROW generated during the repair process.

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No owner may use any pipe, valve, or fitting, for replacement in repairing an underground gathering pipeline, unless it is designed and constructed to meet the applicable state or federal regulations for pipeline construction.

a. At least forty-eight hours prior to any underground gathering pipeline repair or replacement, the underground gathering pipeline owner must notify the commission, as provided by the director.”

We strongly recommend the NDIC rewrite this paragraph and take into account the following considerations:

- 1) The notification process needs to simply be a notification process, not an approval process.
- 2) Specific notification process should be defined (e.g., by phone, electronic form submittal, contact information for notification, etc.) as the method of reporting is not specified.
- 3) There needs to be an exemption for emergency repair situations.

Regarding 14(b), we strongly urge the commission to strike this language from the proposed Century Code changes because this will have minimal value unless the NDIC has a vast amount of GIS data available for the rest of the system.

The documentation can be produced, upon request by the commission, to verify the details of the repair such as date, reason, pipe length, test pressures and inspector approval.

Additionally, the way these proposed rules are currently written creates inconsistencies between 13(b) and 14(b). First, 13(b) requires a submission of “independent” inspector’s certificate of hydrotest while the repair in 14(b) requires affidavit of completion by the pipeline owner. Why can a pipeline owner verify completion of repair but an “independent” inspector is required for the hydrotest? It seems the pipeline owner would be sufficient to certify the hydrotest also, given that a proper repair and proper hydrotest are at least equally important in the process. Second, a repair with an associated hydrotest would trigger duplicate reporting process, one for the hydrotest and one for the repair, each with individual reporting requirements. If the commission feels operators need to report this information we recommend that one process be utilized that includes both repair and hydrotest which would be sufficient with both hydrotest and repair certified by submission from representative of pipeline owner.

15. Pipeline abandonment

- a. This section is consistent with our current abandonment procedures. However section 15.b.2 needs to be consistent with section 15.a.3.

43-02-03-30. Notification of Fires, Leaks, Spills, or Blowouts

The proposed language in this section did not change much from the existing language. The existing language mentions pipelines. The proposed language calls out underground gathering pipelines

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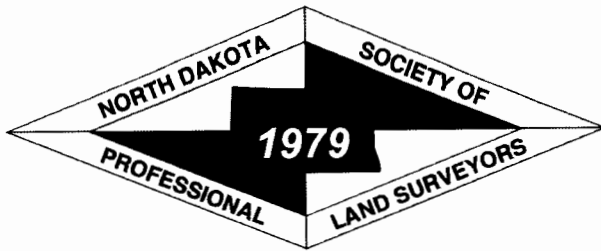
specifically. The remainder of the notification requirements is basically the same as before. We are already complying with this section. Consequently, the change will not have an adverse impact on our operations.

43-02-03-30.1. Leak and Spill Cleanup

The proposed language did not change much from the existing language. NDIC is adding "and responsible parties" to those who must respond to a leak or spill. We are already required to respond.

43-02-03-31 through 43-02-08-03

We have no comments, language changes or additions to these sections.



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April 19, 2016

NDIC Oil and Gas Division
600 East Boulevard Ave., Dept. 405
Bismarck, ND 58505-0840

Received
APR 25 2016
ND Oil & Gas Division

To Director Helms and the Committee Members of the North Dakota Industrial Commission,
Department of Mineral Resources Oil and Gas Division

Subject: Proposed NDAC 43-02-03-29.1 UNDERGROUND GATHERING PIPELINES Rule Change

I am writing this letter to correspond with the testimony given by Gregory Johnson, PLS at the Bismarck hearing on April 11th, Curtis Glasoe, PLS at the Dickinson hearing on April 12th, and Edward Rintamaki, PLS at the Williston hearing on April 13th on behalf of the North Dakota Society of Professional Land Surveyors (NDSPLS).

NDSPLS is made up of over 300 members, of which some 185 are Registered Professional Land Surveyors, who live and practice in this state. There are approximately 500 Professional Land Surveyors who are registered to practice in ND. We are licensed and regulated by the North Dakota State Board of Registration for Professional Engineers and Professional Land Surveyors. Our Mission and objective is: to unite all of the Professional Land Surveyors in the State of North Dakota; to elevate the standards of the surveying profession; to establish basic minimum standards and requirements for surveys; to assist in promoting legislative and educational programs to improve the professional status of the Land Surveyor; to work in cooperation with local, county, state, federal and tribal governments in our field of endeavor; to uphold a rigid code of ethics; to strive to improve our relations with our clients and the public by doing our work with precision and integrity; to maintain a good relationship between Land Surveyors and Engineers.

NDSPLS is in favor of the proposed NDAC 43-02-03-29.1 Underground Gathering Pipelines Rule Change, with the addition to correcting the proper GIS datum realization reporting requirements to comply with NDCC 38-08-26 and NDCC 47-20.2-03 describing the North Dakota Coordinate System. The amended wording would read as follows:

"for GIS reporting, the operator of any underground pipeline placed into service after August 1, 2011, shall file with the Director of the North Dakota Industrial Commission - Oil and Gas Division, a Geographic Information System (GIS) digital file in Environmental System Research Institute, Inc. (Esri) line Shapefile (SHP) along with the associated spatial realization reference/map projection information describing the North Dakota Coordinate System (NDCC 47-20.2-03) locating the centerline of the pipeline as constructed from origin to terminating point. The submitted Shapefile must have a completed attribute table, datum realization listing [NAD 83 (1996) (NSRS2007) (2011) or most recent listing] with the proposed NDAC 43-02-03-29.1 required data."

Also in 43-02-03-29.1.4.k(1) the amended wording would read as follows:

"(1) An accurate plat certified by a North Dakota registered professional land surveyor" showing the locations of the entry and exit point.

We think these requirements are needed to help define the various works being done by many individuals and companies in and out of state who may use other NAD83 systems of information with different projections/realizations. With the advent of GPS technologies and the varied GIS providers throughout the country, a standard needs to be stated for reporting this information to the appropriate agencies who use the

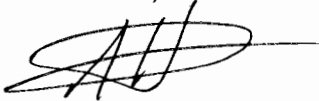
information. Without mention of these requirements, varied results can and will happen for the location and referencing of items. The NAD 83 requirements need to have the specified projections/realizations used for a particular project stated, as these spatial references and projections change over time and as the National Geodetic Survey (NGS) information improves with new information collected, accepted, distributed and published.

It is also important to have the Professional Land Surveyor be registered in North Dakota. While the technical aspects of land surveying may be the same for most parts of the country, North Dakota, through its Century and Administrative Codes, has its own unique platting requirements, boundary determination laws and land ownership laws. It is for the protection of our citizens that these codes must be followed. The best way to ensure that is with the requirement for a Registered Professional Land Surveyor specifically licensed by the North Dakota State Board of Registration for Professional Engineers and Professional Land Surveyors.

On behalf of the North Dakota Society of Professional Land Surveyors, I therefore urge this Committee to approve with the recommendations stated above for the Proposed NDAC 43-02-03-29.1 and 43-02-03-29.1.k(1) Rule Change. There are other references in Chapter 43-02-03 that should have this reporting information stated also that are not under current Proposed Rules Change listed.

The North Dakota Society of Professional Land Surveyors appreciates your consideration of our testimony.

Thank You,

A handwritten signature in black ink, appearing to read 'AH', with a horizontal line extending to the right.

Aaron Hummert, PLS North Dakota LS-7512
President of the North Dakota Society of Professional Land Surveyors

April 11, 2016

Bruce Hicks, Assistant Director
NDIC Department of Mineral Resources, Oil and Gas Division
600 E. Boulevard Ave.
Bismarck, ND 58505

Received
APR 25 2016
ND Oil & Gas Division

RE: Comments on Proposed Rules Changes

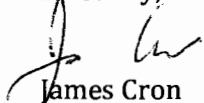
Dear Mr. Hicks:

Thank you for the opportunity to provide comments on the proposed Administrative Rules changes. Please see the attached document with our comments. My wife and I own non-operated working interests in a water flood producing property and a SWD property in ND. To formulate my comments I reviewed the entire document, with supporting research via review of ASME and API standards as well as API recommended procedures (RP), as well as conversations with operators, legislators, NGO's and other concerned parties in the areas that we participate in.

As you know, the proposed rules involve forty changes to the regulatory framework in North Dakota. Many of these changes are the result of the 2015 legislative session and the following Energy and Environmental Research Center study. After my review, I concluded that many of the proposed changes, including the requirements for underground gathering pipelines and saltwater handling facilities are really broad and go far beyond, after a discussion with a ND legislator, the legislative intent was and the recommendations of the EERC study. One of the more confusing items in the documentation is the lack of clear definition between production flow lines and gathering lines as well as a clear distinction between saltwater gathering systems and the systems used for injection of saltwater for secondary recovery, as well as field SWD wells. Other proposed changes, like increased dike and perimeter berm requirements, stipulate substantive changes for the industry and add to the industry's cost per well, which for low rate, low grade crude producing properties could be economically catastrophic resulting in violation of 43-02-03-02 and 43-02-03-06 of the ND Century Code in to regards to prudent operations and the prevention of waste. Additionally, the use of unneeded diking across the entire locations will result in water retention on locations from snow and rain resulting in increased costs and waste of untainted freshwater run off.

Noting the scale of the proposed changes in my review, I can appreciate the time and effort these rules have required. My experience in other industries reveals to me that the oil and gas industry is heavily regulated and I see the need to adapt regulations as needed. And my wife and I are fine with that. However, it is tough out there in the "patch" as this time. Economics cannot absorb the great costs of increasing regulation as we once did. And I think that all parties must remain cognizant that not all segments of the ND oil and gas industry are the same and one-size-fits-all rules are not good practice. Implementation of the proposed rule changes, in their current form, will drive smaller operators out of business, resulting in the loss of livelihood, reduce taxes receipts and result in the waste of natural resources by the premature abandonment of producing properties. Over regulation in a volatile national and global economy could lead to undesirable effects if we are not diligent in monitoring the ever-changing regulatory and economic climate.

Sincerely,



James Cron
101 NE Iowa Ave.
Flaxton, ND 58737

Enc: Attachment

43-02-03 General Rules

43-02-03-01 Definitions

Comments:

In general, we feel that 'good cause' sprinkled about the language should be defined.

43-02-03-01.25. Interested Party

Comments:

We feel that that this definition is too broad and has potential to allow input from parties, who have no connection or relevance to a project other than their broad personal or political agenda. We think the language should recognize that that interest common to members of the general public does not qualify an individual as an interested party.

43-02-03-01.4445. Saltwater Handling Facility

Comments:

We understand that proposed changes are to allow the definition to be used for saltwater disposal facilities and gathering system facilities while still using the definition within the production and drilling rules. However, it appears the definition inadvertently includes additional facilities and is unclear. The proposed language does not clearly differentiate between a salt water handling facility and say, a secondary recovery injection system facility.

43-02-03-14 Access to Records

Comments:

The language seems confusing. We don't understand the need for this language when right-of- way documents are filed on record with the County. Our 25 years in the E&P business, with majors and independent firms I have not seen records of this type. We would suggest that the documentation be delivered to the NDIC when requested, thus reducing the burden for the operation as well as government.

43-02-03-15 Bond and Transfer of Wells

43-02-03-15.1 Bond requirements.

Comments:

We don't see the need for a bond for any source well that is contributing to a secondary recovery unit. Presumably a "source well" refers to a "water source well" and perhaps this needs to be defined and such a well is permitted by the State Engineer. We see a conflict between the two governmental bodies that should be rectified in the legislature rather through the toing and froing of government oversight. 43-02-03-16 a permit is required for any "well." Including water source wells within the bonding section

indicated that a permit from the NDIC is required and that would be duplicative of existing requirements to obtain permits from the State Engineer.

We also believe that the NDIC needs to define appurtenance, as the term is used numerous times. Shouldn't it be defined in 43-02-03-01 DEFINITIONS?

43-02-03-15.7 Saltwater handling facility bond

Comments:

The language proposed, we feel, requires clarification if existing saltwater disposal well bonds cover the associated saltwater handling facility. Operators who operate a facility with a saltwater disposal well already have bonds in place to cover the reclamation costs associated with that location. We are opposed to any additional bond for the saltwater handling facility as it is costly and unduly burdening, especially for small operators. In addition, the language does not clarify if in existing secondary recovery units would require a bond for their injection facilities. We feel that existing plants, constructed before June 1, 2016 should be exempt from this bonding if the practice is sustained in the language.

43-02-03-15.8 Crude oil and produced water underground gathering pipeline bond.

Comments:

We feel that this section is overkill, and while it may not be the intent of the author, it appears that it may apply to all "lines", including those acting as flow lines from individual wells to production batteries as well as flow lines from CTB's to the secondary recovery unit's injection facilities. In addition we believe the legislative intent excluded flow lines and any lines put in place prior to April of 2011. We think that a new definitions be added to 43-02-03-01 to define production facility, secondary recovery facility, production flow lines, and secondary recovery flow lines from the CTB to the injection facility as well as injection lines from the secondary recovery injection facilities to the unit injection wells and SWD. The definitions would provide needed clarity to this section. Additionally, as I am sure others have noted in the documentation, the terms 'system' and 'flow lines' need to be defined or clarified.

43-02-03-16 Application for Permit to Drill and Recomplete

Comments:

Due to the current economic climate, we see benefit in extending the permit length from one year to two years on all new and existing permits. This will bring North Dakota in line with the Federal permits as noted in Onshore Oil and Gas Order No. 1, Section III.G, and create a more efficient process for the NDIC, especially if further spending cuts require reduction in staff at the permitting level.

43-02-03-17 Sign on Well or Facility

Comments:

The language is confusing as written as it appears this policy may be retroactive. Current signage is more than adequate for emergency responders and NDIC field personnel. New signs on all existing wells will be costly and burdensome.

43-02-03-19 Site Construction

Comments:

We believe that the language is murky. Is this meant to be for the well site, roads, etc.?

We are opposed to the language proposed by NDIC in regards to the following, “be more than the top eight twelve inches [20.3230.48 centimeters] of soil or deeper than the depth of cultivation, whichever is greater. This language is flawed as being too ambiguous. The biggest opposition found in this language is the increased damage to the soil profile and the additional cost: This rule change adds 33% on to each location cost for stripping the surface layer, which is unnecessary. What is the farmer is subsoiling the land is that deepest? Who decides? Will soil tests be required? We feel existing language preserved and the proposed language stricken.

43-02-03-19.3 Earthen Pits and Open Receptacles

Comments:

We are opposed to this language as it seems far reaching, does not allow for the use of completion operations when permitted reserve pits are in use. Furthermore the language seems to eliminate the use of small temporary pits for flaring of casing head gas while drilling.

43-02-03-28 Safety Regulation

Comments:

We feel the NDIC needs to define the term ‘stimulation’, as its wide application in this language seems to encompass all forms of stimulation rather the intent which is probably hydraulic stimulation. We think this language is too broad and cumbersome when applied to non-Bakken/Three Forks reservoirs which undergo low rate stimulations utilizing acid, for example, and have no noticeable effect on offset production.

For high-rate hydraulic stimulation, increasing the amount of time required for an operator to give notice prior to conducting well stimulation. This will provide operators with adjacent well activity with more time to appropriately react to activity taking place in the vicinity. This suggested change has been agreed to by other operators from word we received from the NDPC.

43-02-03-29.1 Underground Gathering Pipelines

Comments:

After review, discussions with legislators, etc., we feel that this section goes against was intended by HB 1358 and subsequent EERC study. In its current form some of the proposed rules contained in this section apply to existing pipelines. It is impractical to apply many of the requirements contained in this section to existing lines and we do not believe this was legislative intent. Section 2 of HB 1358 is applicable only to pipelines placed into service after August 1, 2015. If this section must apply to lines placed into service after August 1, 2015, a reasonable period of time to bring existing lines into compliance should be identified. Additionally, many of the requirements in this section appear to require approval from the NDIC, this seems very inefficient.

43-02-03-29.1.2 Definitions

Comments:

By its pursuit of a separate definition within section 43-02-03-29.1, and then using the same terms throughout the rest of 43-02-03, the NDIC is promoting confusion and ambiguity. By merely locating definitions within a particular section insists that these terms have other meaning than what is proscribed elsewhere and allows for contradictory interpretation. In addition, by its construction it casts a wider net than intended as it does differentiate clearly between production flow lines and gathering systems nor acknowledge the use of secondary recover or EOR systems, as we are taking water from the production facilities and transferring it to the injection facilities. What about the transfer from the test facility to a production facility if they are not on the same pad? Are these gathering lines or production flow lines? We see a clear distinction between what is a flow line for well production and what is a gathering line, this language does share the same distinction.

Suggested language: ...2.b. "Underground gas gathering pipeline" means an underground gathering pipeline designed or intended to transfer associated or non-associated gas from a production facility to a gas processing facility; or an underground gathering pipeline designed or intended to transfer residue gas from a gas processing facility to an oil and gas production facility; or an underground gathering pipeline designed or intended to transfer carbon dioxide to or within an enhanced recovery project.

We feel the lack of definition around secondary recovery units in this language to be most disconcerting as we are taking water from the production facilities and transferring it to the injection facilities. What about the transfer from the test facility to a production facility if they are not on the same pad?

43-02-03-29.1.3 Notification

Comments:

We feel that sections 3.a(1)(c)iii, 3.a(1)(c)iv, 3.a(1)(c)v, 3.a(1)(c)vii, and 3.a(1)(c)viii are over-reaching, ambiguous and outside the intent of the legislation. The language seems similar to information required by the PSC for its duties in regards to large pipeline, and is inappropriate for gathering lines. The notification language is vague in regards to the notification process, when the seven day notice period begins and ends. We have added a couple of comments below so the various subsections.

Subsection 3.1.d

We think this language is ambiguous and outside the scope of the NDIC jurisdiction. Who's responsible for credentials of the 3rd party inspector? The gatherer, the operator? What training and certifications is third-party inspectors required to have?

Subsection 3.c

The action that would result from this language would be redundant as "One-Call" is already in place. Is it the intent for the NDIC to build a system that is in parallel to "One-Call". What is the definition of "damage"?

43-02-03-29.1.4 Design and construction

Comments:

Subsection 4.b.

We don't see how this language pertains to non-metallic pipelines, such as Flexsteel?

Subsection 4.c.

This language is vague and unneeded, and we feel that this is outside the scope of the NDIC's preview. Who's responsible for this training? The gatherer, the field operator, the installer? What training and certifications are installers required to have?

Subsection 4.d.

We feel this language is confusing, if native soil is rocky, does this mean it is best to land gathering lines on this soil type? That goes against best practice of say the BLM.

<http://www.blm.gov/style/medialib/blm/wy/information/NEPA/pfodocs/anticline/rd-seis.Par.58090.File.dat/17app6.pdf>, pg 6-5.

Subsection 4.e.

This potential rule creates excessive trenching, and maximum disturbance of the soil profile, while creating additional costs that are unneeded. We would suggest the use of API RP 1102 and ASME B31.4-2002 pg (40-42) as representative documents that offer guidance. As written, the language may also block the use of plowing or knifing techniques which can result in less impact to the land and lower construction costs. We recommend removing this requirement.

Subsection 4.g.

The language is vague without technical direction. We suggest ASME B31.4-2002, para. 436 being the more appropriate reference.

Subsection 4.k.

The proposed language smacks of over-reach and is an instrument for permitting which was not the intent of HB 1358. We feel it should be stricken.

43-02-03-29.1.5 Pipeline right-of-way

Comments:

We feel that this language is vague and incorrect in its intent, especially in regards to ASME B31.4.

43-02-03-29.1.6 Inspection

Comments:

We feel that this language is too vague and does not speak to the qualifications of the inspector.

43-02-03-29.1.7 Associated pipeline facility

Comments:

This language is confusing in regards to other facilities and seems like an after-thought. It is not clearly defined. We find berm requirements in the last paragraph of subsection being without merit as state regulations already address dike requirements for oil production tanks. We reject the notion that the language as noted 'required capacity of the dike may be lowered by the director if the necessity thereof can be demonstrated to the director's satisfaction' is applied justly and consistently in its current form.

Due to the language of Subsection 7, a number of questions of clarity arise. The terms 'associated pipeline facility' and 'above ground equipment' are undefined and could vary the interpreted intent of this section greatly and cause significant issues. Section 18 of 38-08-02 clearly defines 'associated above ground equipment' and is clear, and we perplexed as to why the proposed language seems to create two separate products. We think limiting the proposed language to 'associated above ground equipment' as defined in 38-08-02. This section also needs clarification that it is only applicable prospectively. All of the requirements of the second paragraph of this section should include the good-cause exemption at the Director's discretion due to market conditions.

43-02-03-29.1.8 Underground gathering pipeline as built

Comments:

We find this language over-reaching and not in the spirit of legislative intent of HB 1358. We find this language impractical and if implemented too costly to apply. This was not meant for a permitting vehicle and in itself would not provide any relief from possible spills.

Subsection 8.b

We think this section should expressly convey that this requirement is not intended to cover flowlines, as only gathering pipeline systems were the focus of the legislative intent of HB 1358. The language in this subsection contradicts the statutory definitions of gathering pipelines and systems. We request language be introduced offers a clear exclusion of all flowlines from the proposed rules.

43-02-03-29.1.9 Operating requirements

Comments:

The language is vague in regards to what a 'pressure-regulating device is' and needs to follow a standard such as ASME B31.4 or rely on PHMSA guidelines. The lack of definition on this term leaves this regulation open to potential misinterpretation and expectations of technology that is unnecessary or possibly inappropriate.

43-02-03-29.1.10 Leak detection and monitoring

Comments:

We think this section is setting up the State of ND for future legal ramifications as to imply all leaks can be detected and remedied immediately is misleading at best. We question whether the NDIC has the skill set in place to successfully review and competently or critique an operator's leak detection plan.

After review of API RP 1130, and reading the language, we wondered if the EERC investigator had actually read the document. According to API RP 1130, "CPM systems that use algorithmic approach to detect hydraulic anomalies in pipeline operating parameters." "The primary purpose of these systems is to provide tools that assist pipeline controllers in detecting commodity releases that are within the sensitivity of the algorithm." It also states that the RP refers to single phase systems which may not be applicable in all cases. Why RP 1130 was so haphazardly referenced in this language is perplexing as it gives the impression that the use of CPM systems can detect all leaks is misrepresentation of the capabilities of such a system. In addition the implementation on all gathering systems of such a system would be too costly for small gathering systems making them uneconomical. We feel that the CPM language should be deleted from this section.

We find the data-sharing plan without merit as the language does not set a standard, nor does it provide any guidance on what should be done with this data. Currently spill data goes into the government but there seems to be no way to see spill data via the NDIC statistics or portals. We see this data sharing program as just a data "black hole" with cost but no benefit to industry or the public at large.

43-02-03-29.1.11 Spill response

Comments:

By this language we interpret that the NDIC want to get into the ND Health department's jurisdiction for spills that occur off site. We feel if that is so, then it needs to be changed through the legislative process and not at the whim of the pen.

43-02-03-29.1.13 Pipeline integrity

Comments:

We feel this language should mirror requirement as much as found ASME B31.4.

Subsection 13.c.

The phrase: 'computational pipeline monitoring and leak detection systems' should be changed to 'leak protection and monitoring systems'. Statutory language is specifically 'leak protection and monitoring', NOT leak detection. In addition the first statement in this subsection is too broad and should be removed or the NDIC should provide clarification on 'continual pipeline integrity'.

43-02-03-29.1.14 Pipeline repair

Comments:

Subsection 14.a.

This is a bit of a head scratcher. Does the NDIC really want the operator to wait 48 hours to await approval from the NDIC? This language seems erroneous and without and basis in practical thought. The clock is ticking when a leak is detected, and having to wait for several days to get oversight is without merit and promotes damaging the environment further. The question of jurisdiction applies that unless the spill would occur onsite, the ND Dept of Health would be the responsible government agency.

Subsection 14.c

The use of clamps or sleeves is permitted via ASME 31.4-2002, 451.6.2 which the latest standard we have access to. We feel this should also be allowed for use in all flow and gathering lines in ND in times of emergency and the line cannot be shut down for long. Or this ban should only pertain to gathering systems though explicit language.

43-02-03-29.1.15 Pipeline abandonment

Comments:

Subsection 15.a.

The language requires purging of a pipeline to a state that is not practical as non-hazardous fluids, such as freshwater, are left behind. The rule needs to accommodate for this, and clarify that the line should be void of produced fluid.

43-02-03-30 Notification of Fires, Leaks, Spills or Blowouts

Comments:

We think the term 'root cause' is too vague, as root cause analysis can be a lengthy process and not cost effective or reasonable for a minimum spill volume. In addition, freshwater should not be a party to this section. The question of jurisdiction applies that unless the spill occurs onsite, the ND Dept. of Health would be the responsible government agency.

43-02-03-30.1 Leak and Spill Cleanup

Comments:

We ask that the addition of 'responsible parties' be stricken from the language or if included in the language that the responsible party be defined.

43-02-03-31 Well Log, Completion & Workover Reports

Comments:

How does this proposed change account for electronic only reports?

43-02-03-34.1 Reclamation of Surface

Comments:

It would be helpful if the term 'facilities' was defined in the language referenced the definition.

43-02-03-40 Gas-Oil Ratio Test

Comments:

Could the NDIC define the term 'significant' as it seems vague when applied to this section?

3-02-03-49 Oil Production Equipment, Dikes and Seals

Comments:

Upon reading of this proposed language, we are vehemently opposed to it. The Director already has the authority to require berms when it is required. The language seems like a gregarious expansion of the Director's authority to require dikes and appears to require new dikes on pre-2000 wells. The proposed, expanded, requirement would increase the cost to operators, and in the current price environment would like result in a large number of wells being plugged and abandoned. The resulting action from this language would be a waste of resources, a reduction in revenue for the State of ND, and result in the loss of jobs. We estimate the cost of building a berm on each well pad will range from \$8,000-35,000 per pad on new wells plus maintenance costs we estimate of the 10-20% of the original installation costs. Based on past experience, operators will also incur expenses of deal with the melt run off and storm-water captured on site, which may range between 10%-30% of the original installation cost per a well per a year per company. Interestingly, the Federal agencies typically don't use berms due to the unavoidable accumulation of runoff water from rain or snow.

The language as drafted seems to require perimeter berms for existing wells. We do not agree with the need for perimeter berms, and we soundly reject the notion to retroactively applying this rule to existing pads. We don't believe the intent was to apply to existing wells, and recommend the rules include language stating as such.

If berms must be constructed on all pads, after we are done plugging out what were once economic wells, we think that the spill reporting threshold becomes even more unrealistic. We would, after discussion, concur with other parties and suggest that no spill less than 10 barrels should have to be reported when occurring on a pad with a berm. Adding berm to locations will add to the well site foot print and negatively affect farmland such as in the areas where we participate in. This reduction in farmland will add stress to what is otherwise a good relationship with the landowners, reduce agriculturally productive land and result in the waste in resources.

Additionally, the term 'sufficiently impermeable material' does not have any practical application and seems to imply that only clay berms are acceptable and ignores the plethora of products in the market place to erection retention dikes.

Finally how does NDIC deduce how to calculate the required capacity of the dikes? Federal SPCC requirement is different than the verbal NDIC interpretation provided in the past. We suggest the NDIC adopt a logical, transparent standard for this calculation and publish it. Many of the spills being deemed uncontained are the result of things like vapor release or a blow out, where the uncontained fluid is carried offsite by the wind. It's clear to see that adding perimeter berms would only affect an incredibly small number of spills and leaks. The cost to benefit ration in this situation is incredibly disproportionate.

43-02-03-51.1 Treating Plant Permit Requirements

Comments:

Does this language pertain to temporary plants such as oil presses for reclaiming tank bottoms? Who is responsible for any permitting?

43-02-03-51.3 Treating Plant Construction and Operation Requirements

Comments:

Per the proposed language, the requirement of perimeter berms would apply to existing treating plants. We do not see the need for perimeter berms, we would suggest, at a minimum, the requirement only apply to new treating plants. Wouldn't sloping offer better offsite drainage? The term 'sufficiently impermeable material' does not have any practical application and requires further definition.

How does this apply temporary plants?

43-02-03-52 Report of Oil Production

Comments:

The language of this section is confusing. What does 'could occur' mean? Is the NDIC asking the operators to pick a number from the sky to fulfill its data needs?

43-02-03-52.1 Report of Gas Produced in Association with Oil

The language of this section is confusing. What does 'could occur' mean? Is the NDIC asking the operators to pick a number from the sky to fulfill its data needs?

43-02-03-53 Saltwater Handling Facilities

Comments:

We are concerned that language does not differentiate injection plants for secondary recovery and injection plants infield SWD's and those of commercial plants? We don't think it is the intent of the NIDC to include the former with the latter. To do so would have serious implications for already struggling secondary recovery production operations as well as operators with their own infield SWD systems. We recommend this language be changed accommodate this difference.

43-02-03-53.1 Saltwater Handling Facility Permit Requirements

We believe that this language should apply only to new commercial saltwater handling and disposal facilities and not injection plants for secondary recovery and injection plants infield SWD's . We feel that existing saltwater handling and disposal facilities should be grandfathered in to the new requirements, with the original UIC permit acting as the permit, if this language persists. For a struggling, and much needed industry in ND, these new rules will put a number of operators out of business. The loss of tax revenue, jobs and effects to local communities coupled with the impact to the competitive landscape resulting in higher costs for operators far outweighs the benefits of such rules.

GIS requirements are onerous and require small operators to invest in expensive software and training or depend on even more expensive 3rd party services with no benefit.

After review we are concerned that subsections 2 and 5 are very open-ended. We ask that these sections be omitted in the language. Striking subsection 1.e. is recommended, as the information it would obtain is already required in subsection 1.c.

We ask the NDIC change the language in subsection 6, as operators have been able to request a renewal for a second year on permits which is a beneficial practice and suggest the inclusion of an exemption if authorized by the director in this subsection.

43-02-03-53.2 Saltwater Handling Facility Siting

We are concerned the term 'hydrologically sensitive area' is broad and needs clarification. We reached out to other industry resources and recommend the following language they have adopted:

Suggested language: All saltwater handling and disposal facilities shall be sited in such a fashion that they are not located in a geologically or hydrologically sensitive area unless otherwise supported by a hydrogeological study.

43-02-03-53.3 Saltwater Handling Facility Construction and Operation Requirements

How does this apply to injection plants for secondary recovery and infield SWD's? It seems vague on what a saltwater handling facility is. How does it differ from a water flood facility?

What does the NDIC hope to achieve with the requirement in subsection 2?

It is very easy to deduce that the containment capacity required in subsection 5 is too great. Facilities connected to gathering systems contend with larger volumes of throughput than traditional trucked facilities. These gathering system associated facilities then end up having extremely large dikes that become impractical. Considering that many operators have CCTV or SCADA monitoring or manned operations consideration should be given to re-evaluate this rule and use a more common sense approach. Additionally, these facilities are visited frequently or have personnel on-site when active. This reduces the risks associated with releases not being identified in a 24-hour period.

We think that the berm requirement in subsection 6 is make this section unworkable due to the volume of truck traffic.

Can we get the meaning of the intent of subsection 9?

Please omit subsection 12. The intent of this section seems to be to allow a process for a hazardous determination for any waste on an E&P site. E&P waste has already been deemed RCRA-exempt, making this requirement inappropriate and unnecessary.

Sections 14 and 15 go too far and inappropriate language. Operators should not be required to seek approval for changes in valves, controls, piping configurations, pumps, motors, etc. especially if the

changes do not change the volumetric capacity of the tanks, they should not fall under the jurisdiction of the NDIC.

43-02-03-53.4 Saltwater Handling Facility Abandonment and Reclamation Requirements

We are wondering why this is needed and why this information cannot be captured and submitted on a Form 4. This seems like a redundant request for information and inefficient.

43-02-03-55 Abandonment of Wells or, Treating Plants, or Saltwater Handling Facilities – Suspension of Drilling

Comments:

We feel this section has been too broad and to accommodate treating plants and etc., abandonments they should be included under their appropriate sections. How does this apply to injection plants for secondary recovery and infield SWD's? Can this be covered by a form 4 asking for an extension?

Subsection 1. What are paying qualities? Should this be defined in section 43-02-03-01? Will the NDIC provide a list of wells that should be produced or not produced on the economic viability of the well? Will the NDIC publish the economic parameters to determine what a paying well is? We think there should be language that allows exemption at the discretion of the director.

Subsection 2. We suggest a change of the language in subsection 2 is needed for clarity. As currently written, the language could be interpreted to mean a surface owner may request a review each of seven years. We also feel the secondary recovery units should be exempt from this language and that if the language persists that the review should be every ten years.

43-02-03-90 Hearings, Complaints and Other Proceedings

Comments:

We don't see the need for the NDIC to be increasing or charging fees without a legislative mandate for hearings. The hearings are a primary role of the Department of Mineral Resources, which is funded through a general fund appropriation. Hearings are often continued for good cause by the applicant or the agency. We object to the new fee. If the fee stands, it must be billed in a timely manner so that it is able to be billed to applicant. Also, continuances put forth by the agency should have not a fee applied to the parties involved.

We also feel that more hearings should be done in an internet format utilizing a service such as WebEx or the like as a means to reduce cost to the parties involved in the hearings by reductions in travel and associated costs, while decreasing risk of traffic accidents incurred while traveling to hearings.

43-02-05 Underground Injection Control

43-02-05-04 Permit Requirements

Comments:

Subsection 1. n+1

We feel the language is too broad in regards to the schematics. As written it appears that the drawing would require a PE stamp, which would incur significant costs to the permit. We feel that a drawing, which is not to scale as being appropriate. We also feel that this permit requirement should be for new permits from June 1, 2017. We also feel that an exemption of this data apply for secondary recovery and in field SWD's. In addition, we wish the NDIC to clarify and publish the method for calculating the volume of the system dikes.

GIS requirements are onerous and require small operators to invest in expensive software and training or depend on even more expensive 3rd party services with no benefit.

Subsection 10. We feel that changing the automatic expiration to a period of two years in subsection 10 to be consistent with other oil and gas permits.

43-02-05-07 Mechanical Integrity

Comments:

We understand the need to ensure the mechanical integrity of wells. We do not think that an operator should be required to obtain permission to work on their own wells. We suggest the requirement be of notification via a Form 4 rather than approval. We would invite the NDIC to define a 'workover project' and recommends the insertion of 'injection' for clarity in the language.

We feel this language from an industry NGO will suffice:

Suggested language: Prior to performing any workover project on an existing injection well during which it is anticipated that the packer or other means of annular isolation will be disrupted, the operator must obtain approval from notify the director by means of a sundry.

43-02-05-11 Bonding Requirements

Comments:

Would the NDIC please explain how this language applies to secondary recovery units that may have multiple injection wells and SWD's that are already covered by unit bonds? We feel that if this language does apply to secondary recovery unit it should be for units formed after June 1, 2017. New bonding requirements for existing installations could result in project abandonment due to the high costs.

Cron Industries, LLC

Comments on Proposed NDIC Administrative Rules Changes

43-02-08 Stripper Well Property Determination

Comments:

We are fundamentally opposed to this language as it does not address the needs for secondary recovery units, from a long term perspective. Also we don't see how this compliments efficient operations during a price downturn cycle when wells are minimally produced to maintain the lease and reduce expenses? By not acknowledging, or ignoring, the difference in the two tiers of production in ND, with its different production strategies, the result will be devastating in the long run for ND. The resulting action from this language would be a waste of resources, a reduction in revenue for the State of ND, and result in the loss of jobs that will impact small communities in the far reaches of central and Western ND.

Bridger Pipeline LLC

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Received
APR 25 2016
ND Oil & Gas Division

April 22, 2016

Bruce Hicks, Assistant Director
NDIC Department of Mineral Resources, Oil and Gas Division
600 E. Boulevard Ave.
Bismarck, ND 58505

Re: Comments on Proposed NDIC Rules Changes

Dear Mr. Hicks:

Thank you for the opportunity to provide comments on the proposed Administrative Rules changes. Bridger Pipeline LLC and Belle Fourche Pipeline Company are proud to have been a part of the energy industry in N. Dakota for the past half a century and look forward to continuing to be involved in the safe gathering and transportation of N. Dakota crude oil for the next 50 years and beyond.

As noted during the hearings there are some timelines laid out in the proposed changes that would be helpful to have better defined or to provide what we believe are more reasonable time frames within which to work. During the hearing I was asked to provide a list and although I have included reference to most in the specific comments attached, I have listed the key ones below for your convenience. They include:

- 1) **43-02-03-11. ORGANIZATION REPORTS.** The term "immediately file" is problematic for organizations who were not subject to the rules previously. We recommend language giving 60 days to comply for any organizations that become subject to the rules. This would serve the commission going forward as well if the rules are expanded at a later date to apply to any other parts of the industry.
- 2) **43-02-03-15.8.a. BOND AND TRANSFER OF WELLS.** As currently proposed with an October 1, 2016 effective date the July 1, 2017 deadline to have bonding in place will be burdensome and difficult to meet for many operators. Additionally if there are any delays in the effective date for the proposed rules this becomes a more significant issue. We recommend tying the compliance date to the effective date and would recommend no less than one year after the effective date.
- 3) **43-02-03-17. SIGN ON WELL OR FACILITY.** As currently proposed this section does not have any timeline associated with it. We would propose a compliance date based on the date the rule becomes effective and applicable to a given facility. Depending on clarity asked for in later comments this could be a

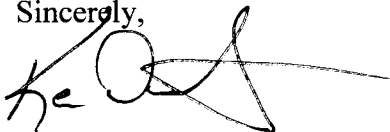
significant undertaking and we would again ask for no less than one year from the date the rule becomes effective and or applicable to any facilities for which the rule was not formerly applicable.

- 4) **43-02-03-29.1.4 Design and Construction.** As currently proposed this section uses the term “newly constructed”. Design of a system happens prior to installation, so this section cannot apply to any pipelines constructed prior to the rules being made effective. Therefore we suggest that the term be removed from the sub paragraphs and a timeframe be added to paragraph 1. **Application of section** that allows for a 60 day window after the rules become effective.
- 5) **43-02-03-29.1.12 UNDERGROUND GATHERING PIPELINES. CATHODIC PROTECTION.** There are no dates prescribed in this section, and we would propose that a time after construction similar to the requirements currently prescribed by PHMSA for transmission pipelines would be appropriate. PHMSA language in §195.563(a). reads: “The cathodic protection must be in operation not later than 1 year after the pipeline is constructed, relocated, replaced, or otherwise changed, as applicable.”

We commend the NDIC for seeking input and for their efforts in putting these rules together, and we commend the Energy and Environmental Research Center in the work they did in studying gathering lines in order to assist in putting the useful rules in place. We are somewhat concerned that in some cases the proposed rules go beyond what was intended by the legislature and don't always seem to reflect what the EERC study found. The EERC report noted that “In the end, pipelines will undoubtedly always be safer and more economical than truck transport or other alternatives to transporting energy product to market”. We agree that pipelines continue to be the safest mode of transportation, but through this process it is important that the NDIC carefully consider the cost to benefit ratio of each of the proposed rules, or pipelines will not continue to be the economical choice, and as such, more energy products will find their way back onto trucks as the preferred mode of transportation.

It is our belief that where safety is concerned, pipelines continue to be the clear choice in transportation of energy products and we look forward to working with the commission and others in the industry to continue to improve on our safety as an industry. Thanks again for this opportunity to provide input into the process.

Sincerely,



Ken Dockweiler
Director, Land, Government and Compliance
Bridger Pipeline LLC

Enclosure: 1

Specific Comments by Bridger Pipeline LLC (Bridger)

43-02-03-14. Access to Records.

Comment: As written this section is unclear on the kinds of records being required. Specifically as a gathering pipeline company Bridger will not have any “well records” or “records of wells” to share with the commission. Additionally, with regard to access to pipeline right of ways (ROW) this can be very problematic with the stipulations in many of the current ROW documents. Specifically in many current ROW documents surface access is allowed only during construction, emergency response and in most cases results in additional fees due to the landowner. Through other requirements within these rules NDIC personnel are expected to be on the ROW to inspect construction and as such there is an implied requirement that they be allowed on the ROW during construction. Additional language here is neither necessary nor appropriate and should be stricken.

Recommendation: Strike the phrase Pipeline Right of Way, add some definition to the type of pipeline records to be accessed or address the access in other sections where the records are required

43-02-03-15.8.a Bonding of Pipelines.

Comment: As written this section is unclear and overreaching. Key to the industries understanding of the rules intentions are definitions around the terms “system” and “production facility”. Without clear definitions there will undoubtedly be inconsistent application by the industry and inconsistent enforcement by NDIC. As noted in cover letter we also have some concerns over the hard date of July 1, 2017 and recommend a one year window from the effective date of these proposed changes.

Suggested language: (added to 43-02-03-01. Definitions.) 39. “Production facility” means any well pad as permitted pursuant to section 43-02-03-16 or any central production facility as permitted pursuant to section 43-02-03-48.1

43-02-03-15.8.b Blanket Bonds

Comment: As written this section is unclear, overreaching and allows the commission an inappropriate amount of discretion. The language does not recognize several scenarios where a gathering segment may be out of service, but is not “abandoned”. It seems clear that the purpose of the bond is to provide the financial means to properly abandon a gathering pipeline and reclaim any surface disturbance in doing so. To that end we believe the term “economic value of the underground pipeline” is irrelevant and should not be included as criteria for the commission to use in determining extra bond amounts. Finally without some clarity on what is meant by the terms “multiple failures” and without some guidance on what is meant by a past failure to comply with “statutes rules and orders” Bridger believes that the last sentence of this paragraph should be struck.

Suggested language: 8.b.(1) Any portion of an underground gathering pipeline system that has been out of service for more than one year, is physically isolated, and is not properly abandoned pursuant to 43-02-03-29.1; and

43-02-03-17. Sign on Well or Facility:

Comment: As written this language could result in excessive signage that would be a nuisance to landowners and would provide little or no additional benefit to the safety or integrity of gathering pipelines. Bridger currently installs “line markers” in accordance with 49CFR 195.410 along the right of way and at above ground structures. This signage provides the name of the operating company, type of product transported and an emergency phone number for the public to reach us 24 hours per day. We believe our current “signage” is adequate and meets the intention of the NDIC, but it is unclear in the language as proposed. A clear definition of “Facility” may help to clarify the intention of this section.

43-02-03-29.1 Underground Gathering Pipelines

Comment: As currently drafted some of these rules would apply to existing pipelines. It is impractical to apply many of the requirements contained herein to existing pipelines and we do not believe that the intent of HB 1358 was to include anything placed into service prior to August 1, 2015. As such we believe the Commission should clarify the applicability of this section. Additionally, many of the rules in this section are worded in such a way as to require approval from the commission for certain actions. As this was not the legislative intent the commission should clarify where notifications are expected and clean up any language that suggests an approval process.

43-02-03-29.1.3(a) Notification – Construction

Comment: Bridger has several concerns with this section. In subsection 3.a. notice is required but there is no direction on the method of notification. Additionally there should be some clarification on rather or not the 7 days advance notice is in calendar days or working days. Finally, there is a question as to what triggers a notification. Should it be triggered when a gathering system is started, each time a segment of the system is started, every time a tie-in to a production facility is made or some step in between. Is there a footage requirement that would trigger the commission notification such that short tie-ins from a gathering line to a production facility would not need to be separately noticed? We recommend the Commission add some language clarifying the above issues in the final language.

Additionally the notification segment goes well beyond what is reasonable and in some cases beyond what was anticipated by the legislature. This is especially important depending on how the commission clarifies the triggers of notification, timelines of notification as mentioned above. To clean up this notification section Bridger recommends that the notification required contain only items a and b and portions of section c of the proposed language as modified per the recommendation below.

- 1) Change the requirement in 3.a(1)(b) to the “proposed route”. This is more consistent with the type of information available prior to construction and the as-built is already required post construction in section **43-02-03-29**.
- 2) Delete subsections 3.a(1)(c)iv, 3.a(1)(c)v, 3.a(1)(c)vi, 3.a(1)(c)vii and 3.a(1)(c)viii as they go beyond the intent of the legislature.
 - a. Item iv at the very least should be revised to include simply the test method. As proposed **43-02-03-29.1.13.b** already requires that all pressure testing be reviewed by a third party inspector for certification so the procedure and process of conducting the test will be reviewed and any additional submission of the procedure is redundant and not additive to the safety of the pipeline.
 - b. Item vi is again redundant. Minimum burial depth is already a requirement in proposed rule **43-02-03-29.1.4.j** and as such a requirement that it be part of a “notification” is redundant and not additive to the safety of the pipeline. Additionally burial depth can vary greatly depending on topography, geological features, proposed future use of the surface and many other things so a proposed burial depth may be a wide range of data across a gathering system.
 - c. Item vii is again redundant as the requirement to provide the proposed route in section 3.a(1)(b) will illustrate where any road crossings are proposed. An additional requirement that duplicates this information is not additive to the cause of pipeline safety and as such should not be required.
 - d. Bridger applauds the NDIC for their recognition in item viii that not all wetlands or environmentally sensitive areas require horizontal directional drilling with the words “if applicable” and would encourage the commission to reconsider the requirement in section 4(k) that ALL environmentally sensitive areas be horizontal direction drilled. Nevertheless we believe that this section is not appropriate in any “notice to construct” and as such should be stricken.

43-02-03-29.1.3(b) Notification – Out of service

Comment: Bridger has no objection with the language but would propose that the NDIC clarify what they intend by the phrase “out of service”. Does this include a gathering line built but not yet commissioned; does this include lines which are shut in for a period of time due to market fluctuations? We would recommend that this be clarified to include only those gathering lines which are out of service and physically disconnected from other facilities.

43-02-03-29.1.3(c) Notification – Damage

Comment: In general we believe this paragraph is unnecessary. There are mechanisms already in place to report damage “to underground facilities” in both the Once Call System as well as through the North Dakota Department of Health. To that end we recommend that it be struck. If the NDIC is determined to retain this paragraph we recommend that the commission at least provide some clarification. As written this language is very vague and hard to understand. As written damage could be damage to anything, including unrelated facilities or equipment. A definition of damage could clarify what is intended to be called damage (nick in the coating,

rupture, severing the tracer wire, etc.) as well as specify that the damage the NDIC is interested in is just damage TO the gathering line.

43-02-03-29.1.4 Design and Construction

Comment: We believe that this section demonstrates a loss of focus by the NDIC. According to the EERC study *“it appears that pipeline projects are specified using appropriate construction methods and, in some cases, strict requirements similar to PHMSA pipeline standards. Information compiled indicates that deficiencies, when encountered, are in the execution of those installation requirements.”* They went on to find that *“This indicates that prescription of best practices is not a factor in the North Dakota pipeline spills record”*. In accordance with those findings we encourage the NDIC to focus on the execution of sound standards and the inspection thereof and would encourage the NDIC to retain the language regarding design of gathering pipelines currently found in the second paragraph of **43-02-03-29. WELL AND LEASE EQUIPMENT**. If the NDIC is determined to provide more specific design standards there are many already in print that could be referenced and we would encourage the NDIC to reference those already in place rather than attempt to write technical standards. Specific issues with this section include the following:

- 1) **1.4.a** uses the term newly constructed underground gathering line. Bridger suggests that the commission use a specific date and in particular would suggest that any such date be tied to the effective date of the rules changes. Suggested time is 60 days after the effective date, such that if the rules are made effective. It appears that the NDIC intends for the majority of Section **43-02-03-29.1. UNDERGROUND GATHERING PIPELINES** to apply to “newly constructed” and as such it may be appropriate to include the definition on what “newly constructed” means in the lead-in sentence and remove the term from the sub paragraphs.
Suggested Language: Application of section. Unless otherwise noted in a subparagraph this section is applicable to all underground gathering pipelines, designed and constructed 60 days or more after the effective date of these rules, that is designed for and capable of.....
- 2) **1.4.b** as written is very impractical. Specifically the language uses the term “ALL”. While Bridger routinely builds our trunk lines in a gathering system to accommodate pigging operations it is impractical to build each well tie-in to also be “piggable”. If the NDIC is determined to use the word ALL, many wells that are in close proximity to gathering systems may continue to be candidates to be trucked rather than connected.
- 3) **1.4.c** as written is over-reaching. While we agree that individuals should be thoroughly trained in the aspects of installation which they will be asked to perform it is not practical for them all to be trained in all installation practices. As written this would require a crew that installs only steel pipe to be trained in how to install ALL technologies and pipe types.
- 4) **1.4.d** is redundant and unnecessary. Particularly in the ROW acquisition process the needs of the landowner(s) are negotiated. Additionally counties and the state all have a permit process through which the needs of the county and county roads are addressed.

- 5) **1.4.e** is impractical as written and unnecessary. As infrastructure continues to grow, there are often times that a gathering line will cross another utility or gathering line. In some cases this will result in the pipe resting on soil that is less than “undisturbed”. Again there are industry standards that adequately delineate trenching and pipe support and Bridger recommends that the NDIC reference those standards rather than attempt to write new. Additionally in the second paragraph of this sub-section there are several requirements that are unclear. The purpose of the width of ditch restriction is unclear and would at times create more unsafe conditions than providing any measure of safety. The sluffing of sidewall material is a function of the soil makeup more than it is a function of the method of excavation and as such this language is inappropriate. Finally the subsoil separation from topsoil is redundant as this issue is covered in section 5.a
- 6) **1.4.f** is redundant and unnecessary. As noted above states and counties all have permit processes that require boring as necessary to meet their needs. As they are the governing parties in this instance it is inappropriate for the NDIC to propose usurping their authorities.
- 7) **1.4.k** is unnecessary and redundant and should be deleted. The decision to directionally drill or not should be left in the hands of the landowners or the trustees of those lands. In regards to wetlands there are already requirements in place for these to be protected which is not necessarily best done by horizontal direction drill. While many times the preferred method of crossing a wetland, sensitive area or even a wet spot is directional drilling, it is sometimes more conducive to protection of the area to route around, or in the right conditions to open cut a trench through the area. In any event the scale of the information in the proposed language is well beyond what should be expected in notification as field conditions may dictate many changes to the aspects of the plan. If the NDIC is determined to retain any of this language they should consider limiting the requirements to wetlands/sensitive areas greater than 150’ in width.

43-02-03-29.1.5 Pipeline Right of Way

Comment: Bridger Commends the Commission for their use of definitions especially with regards to topsoil, but has some concerns with a lack of clarity in some of the language in this section as further discussed below.

- 1) **5.b** includes the use of the word “all” when discussing the removal of stakes markers etc. Many gathering pipeline operators utilize “line markers” to give the public notice that a pipeline is buried in the area. Requiring the removal of “all” markers is therefore detrimental to pipeline safety and Bridger recommends that the NDIC insert the words “unnecessary or temporary” after the word “All” in the second sentence such that permanent markers can continue to be maintained along the right of way.
- 2) **5.e** and **5.f** would be more appropriate in the abandonment sections and we suggest that the NDIC consider deleting them from this section. If this language is retained in this section the NDIC should clarify that “maintenance” required of the operator is only that maintenance that is related to the operator’s activities.

43-02-03-29.1.7 Associated pipeline facility.

Comment: Subsection 7. also raises a number of questions of clarity. The terms ‘associated pipeline facility’ and ‘above ground equipment’ are undefined and could vary the interpreted intent of this section greatly and cause significant issues. Section 18 of 38-08-02 clearly defines ‘associated above ground equipment’ and is clear, and Bridger is unsure why the proposed language aims to create two separate things. Bridger recommends limiting the proposed language to ‘associated above ground equipment’ as defined in 38-08-02. This section also needs clarification that it is only applicable prospectively. All of the requirements of the second paragraph of this section should include the good-cause exemption at the Director’s discretion due to market conditions. Bridger suggests accomplishing this by moving the second sentence in the paragraph to the end of the paragraph.

The final paragraph of the subsection prohibits storage of solids at pipeline facilities, but does not account for soils being treated. Bridger suggests excluding soils being treated using the language suggested below.

Suggested language: No associated pipeline facilities and above ground equipment shall be installed less than five hundred feet [152.40 meters] from an occupied dwelling unless agreed to in writing by the owner of the dwelling or authorized by order of the commission.

All associated pipeline facilities and above ground equipment used to store crude oil or produced water must be devoid of leaks and constructed of materials resistant to the effects of crude oil, produced water, brines, or chemicals that may be contained therein. The above materials requirement may be waived by the director for tanks presently in service and in good condition. Unused tanks and associated above ground equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year. The above materials requirement may be waived by the director for tanks presently in service and in good condition.

Dikes must be erected around all produced water or crude oil tanks at any new facility prior to placing the associated underground gathering pipeline into service. Dikes must be erected and maintained around all crude oil or produced water tanks or above ground equipment, when deemed necessary by the director. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day’s fluid throughput. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction. Discharged crude oil or produced water must be properly removed and may not be allowed to remain standing within or outside of any diked areas.

The storage of solids for a period of longer than 90 days is prohibited at any pipeline facility unless otherwise authorized. Any solids generated at a pipeline facility must be removed and properly disposed of in an authorized facility, or utilized in an approved treatment process such as land farming, in accordance with all applicable local, state, and federal laws and regulations.

43-02-03-29.1.8. Underground gathering pipeline as built.

Comment: Bridger is also concerned with subsection 8. We believe the language proposed in this section goes far beyond the legislative intent of HB 1358. NDCC 38-08-27 clearly limits the application of requirements in this section to lines placed into service after August 1, 2015, and Bridger strongly objects to the proposed rules adding an additional three years by using August 1, 2011 as the cutoff. Again, NDCC 38-08-27 only requires engineering construction design drawing and a plan for leak detection and monitoring be submitted only upon request. The legislative committees discussed this requirement at length, and were clear in their intent. As written, this section requires automatic submission of information far beyond that requirement, creating a deluge of paperwork for both operators and DMR staff. Additionally, many of the requirements of the proposed language provide no benefit to preventing leaks or spills.

43-02-03-29.1.9 Operating Requirements

Comment: Bridger believes that the term “pressure regulating device” is too narrow to meet the intent of this paragraph. PHMSA uses the terms “pressure limiting device, relief valve, pressure regulator or other item of pressure control” which we believe would be more appropriate. In some cases pressure can be controlled with the use of pumps which are not capable of exceeding the pressure limitation of the pipeline. By mirroring the PHMSA language NDIC can accomplish the goal of requiring a pipeline to be operated within its design limits. To require the addition of a mechanical device that is subject to failure when one is not needed is detrimental to the safety of the pipeline system.

43-02-03-29.1.10 Leak Detection and Monitoring

Comment: Bridger has a number of concerns with this section. First, we believe that proposing this requirement at this time is premature. In fact the legislature in HB 1358 prescribed a pilot project to be conducted on the use of leak detection systems on gathering lines and the EERC is currently putting together that work to provide real information regarding cost benefit analysis. Bridger currently employs a line balancing system that accounts for volumes into the system and volumes out of the system to monitor for leaks. If the NDIC is determined to include language regarding Leak Detection and Monitoring at this time it should consider the following:

- 1) The use of the term “leak detection” and “leak detection systems” can be misleading as no system can detect leaks 100 percent of the time. The statute was clear on having leak protection.
- 2) The first paragraph is unclear and may be overly burdensome. Adding another plan to be submitted to the director creates yet another pile of paperwork with little or no benefit.
- 3) The second paragraph which gets into Computational Pipeline Monitoring or CPM is particularly premature. CPM is currently deployed and is somewhat effective on transmission pipelines where the inputs, outputs pressures and flow rates are somewhat constant. With the variations of each of these aspects in a gathering line it is yet to be seen just how effective the systems can be deployed and at what cost. Bridger suggests that the NDIC return to this issue after the EERC has completed the

pilot program and can provide better data regarding effectiveness and the cost benefit analysis associated therewith.

- 4) The third paragraph should be struck. If not struck entirely all references to crude oil should be eliminated. As this paragraph is in the leak protection section it is assumed that the NDIC is most concerned with the data necessary to protect from leakage. We do not share data with the producer, but receive all of the data necessary for any leak protection from the LACT units on the location.

43-02-03-29.1.11 Spill response.

Comment: Bridger Pipeline believes that this paragraph should be struck in its entirety. Owners of crude oil gathering lines are already required to maintain several different plans under several different federal regulations and are already required to report any spills off location to the North Dakota Department of Health.

43-02-03-29.1.12 Corrosion Control

Comment: Bridger suggests that a timeline be added to when any corrosion control system should be active on a newly constructed pipeline. PHMSA has maintained the standard that within one year of construction a pipe is to be protected. Bridger agrees that a one year timeframe is adequate and encourages NDIC to adopt similar language. Additionally, we believe this section is overly limiting and would suggest that the NDIC reference an existing standard.

43-02-03-29.1.13 Pipeline Integrity

Comment: Bridger believes that as written the paragraph is overly burdensome and needs some clarification. We believe that the intent of the entire section could be accomplished in a much clearer fashion. We would propose the retention of the first sentence and striking the second. The second sentence as well as sub paragraph a. is overly burdensome and not additive to pipeline safety. We would also suggest deletion of paragraph c. If the NDIC is determined to include paragraph c we would recommend deletion of the word continual in the first sentence as it is confusing and adds little to the sentence. We would recommend deletion of the second sentence as there may be many other methods to demonstrate the integrity of a pipeline including volumetric balancing.

43-02-03-29.1.14 Pipeline Repair

Comment: Bridger has several concerns with this paragraph including specifically subparagraph a. We believe that this requirement is actually detrimental to the safety and health of the residents and property of the state of North Dakota. To delay repairs to a pipeline in order to make notification is not in keeping with the intent of these rules updates. Additionally Bridger suggests in sub paragraph c that the commission add the word “permanent” before “repair” to allow for the industry and PHMSA accepted practices of utilizing clamping or squeezing as methods of temporary repair.

43-02-03-29.1.15 Pipeline Abandonment

Comment: Bridger proposes the addition of the term permanent/permanently to add clarity to this section. To the title of the section add the word “Permanent” before “Pipeline Abandonment” and add the word “permanently” before the word “abandoned” in paragraph a.

The terms ‘associated pipeline facility’ and ‘above ground equipment’ are undefined and could vary the interpreted intent of this section greatly and cause significant issues. Section 18 of 38-08-02 clearly defines ‘associated above ground equipment’ and is clear, and Bridger is unsure why the proposed language aims to create two separate things. Bridger recommends limiting the proposed language in subsection a.6. to ‘associated above ground equipment’ as defined in 38-08-02. The reclamation laid out in 43-02-03-34.1 and prescribed here would not be appropriate for the removal of carsonite line markers and in many cases would be overkill for cathodic protection test stations.

Finally in b.2. we recommend that the “type of fluid” be replaced with “medium” to recognize that something other than liquid may be used for the purging process including inert gas such as nitrogen.

43-02-03-30 Notification of Fires Leaks, spills or blowouts.

Comment: As noted previously the NDDOH has jurisdiction over spills that occur off location and as such we recommend that the NDIC delete the term “underground gathering pipeline” from the opening sentence in this section.

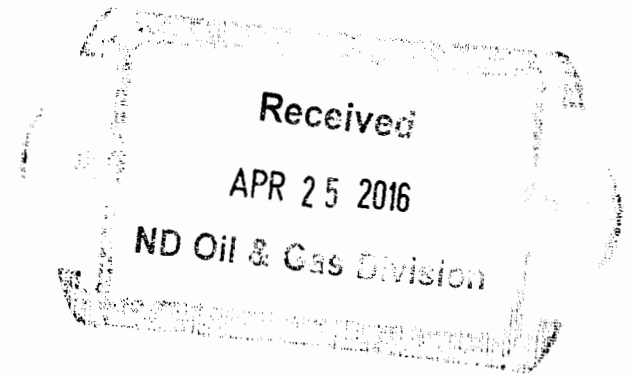
Mike Henderson
Regional Vice President - Bakken



Marathon Oil
5555 San Felipe Street
Houston, Texas 77056
Telephone 713.296.1992
mahenderson@marathonoil.com

April 22, 2016

Bruce Hicks, Assistant Director
North Dakota Industrial Commission
Dept. of Mineral Resources, Oil & Gas Division
600 E. Boulevard Ave., Dept. 405
Bismarck, ND 58505



Re: Comments on Proposed Rule Changes

Mr. Hicks:

Thank you for the opportunity to provide comments on the proposed administrative rule revisions. Enclosed for filing, please find the comments from Marathon Oil Company (Marathon).

Marathon would like to support the comments provided to you by North Dakota Petroleum Council (NDPC). With the incorporation of the rule clarifications and suggested language changes presented in the NDPC comments, Marathon would support many of the proposed new rules.

43-02-03-49. – Oil Production Equipment, Dikes and Seals. Specifically, Marathon would like to comment on the proposed change to require perimeter berms be constructed around all production facilities ("pads"). This expanded requirement would greatly increase the cost of operations with a greater burden put on economically challenging production locations, while according to our data, would offer little if any expected environmental benefit. The estimated cost impact to construct a perimeter berm around all of our estimated 280 un-bermed locations alone would be a multimillion-dollar requirement (estimated to average nearly \$18,000 per pad), not including the ongoing yearly expense of maintenance and storm water removal. The unintended impacts to health, environmental and safety are concerns of Marathon; such as, developing ice and flooding of production equipment causing potentially harmful production interruptions.

Marathon believes the current policy requiring perimeter berms only when necessary is effective and the proposed change will not greatly reduce releases

leaving location. The information derived from our own reportable spill tracking from January 1, 2012 to February 29, 2016 showed that the majority of Marathon spills originating on a pad and went off the pad are in the form of a mist that a perimeter location berm would not have prevented. Of the spills leaving a pad, only 3 percent would have been prevented with a perimeter berm, of which 60 percent of those spills involved freshwater (not an E&P waste). The total amount of spill volume leaving a location outside of the freshwater spills, that a berm would have prevented, was less than 1 barrel.

Again, Marathon believes the Commission should continue to assess locations on a case-by-case basis and evaluate whether a perimeter berm is necessary based on the environmental sensitivity in the area of each location. Marathon believes that a one size fits all regulation, in this case, is not a reasonable solution, and puts a financial burden on the operator for a perceived problem that our data does not support.

Thank you for your time and consideration.

Truly Yours,



MARATHON OIL COMPANY

Mike Henderson

Regional Vice President, Bakken

cc: Nicole Singer
Darrel Nodland
Jeff Parker
Zac Weis



NARO-ND
8951 47th ST NW
NEW TOWN ND 58763
Gary D Preszler, VP
(701) 258-5205

April 25, 2016

Hand delivered

OIL AND GAS DIVISION
600 E BOULEVARD AVE DEPT 405
BISMARCK ND 58505-0840

RE: Case No. 24957
Proposed Administrative Rules Amendments

Dear Members of the Commission:

The North Dakota NARO Chapter, an affiliate of the National Association of Royalty Owners (NARO), was formed in late 2012. The ND chapter currently has approximately 200 members consisting of ND residents and out-of-state residents having mineral ownership in ND. The purpose of the Chapter is to preserve, protect and advance the social, economic and educational interests and full legal and constitutional rights of mineral and royalty owners in ND.

Thank you for the opportunity to provide written comments on proposed Administrative Rules Article 43-02.

NDAC § 43-02-03-01, "Interested Party" Definition

We believe that the proposed definition may be too limiting even for property owners, inclusive of mineral owners, that may not necessarily be located in or adjacent to the subject matter but may still be affected by a case outcome. For example, cases that determine temporary or proper well spacing in field orders that are precedent setting as to other fields having similar reservoir characteristics. We further believe that a litmus test should be such that a party's rights to seek judicial remedies are not denied. The ability to seek relief in the judicial system is even more applicable in complaint hearing cases under NDAC § 43-02-03-90 that follow the Administrative Agencies Practices Act, NDCC § 28-32-21.

Black's Law Dictionary, tenth edition, defines "standing" as "a parties right to make a legal claim or seek judicial enforcement of a duty or right".

Recognizing a parties' interest to seek judicial appeal remedies, we suggest further expanding the "interested party" definition similar to the following:

25. "Interested party" means an individual or number of individuals that have a property ownership or management interest in or adjacent to the subject matter or that have a legal claim as to the case outcome.

Much of the oral testimony during the public hearings for Case No. 24957 were witnesses that expressed concerns that the definition eliminates informative "public comments" from being allowed in hearings. Agency representatives' reaction to those claims in media reports was that that was not the Commission's intent. Rather, the agency was merely attempting to place different weighting as to a parties' basis for commenting. We suggest that may be accomplished with the suggested definition of "interested party" and how the definition relates to testimony under NDAC §§ 43-02-03-88.2 and 43-02-03-90.2, and further

providing for public comments to be considered by a Hearing Examiner in the case findings. Therefore, NARO-ND suggests further amendments to NDAC § 43-02-03-90.2 Official Record:

"Any interested party, and parties providing general public comments, may submit written comments on or objections to the application prior to the hearing date".

To acknowledge receipt of general public comments and to recognize consideration, the Commission may need to also amend NDAC § 43-02-03-98 Report of Examiner:

"Upon the conclusion of any hearing before an examiner, the examiner shall promptly consider the proceedings in such hearing, including any general public comments, and based upon the record of such hearing, the examiner shall prepare a report and recommendations for the disposition of the matter or proceeding by the commission".

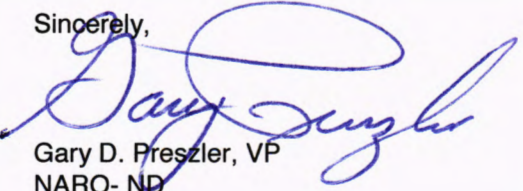
Such amendments clarify that public comments are permissible and considered yet commenting parties are distinguished from an 'interested party' have full hearing procedural rights.

All Other Proposed Amendments

NARO-ND does not have any specific suggestions, or objections, regarding all other proposed new rules and amendments concerning underground crude oil, carbon dioxide, or disposal water gathering pipelines, including well-site or product storage construction. We do, however, support efforts to regulate industry activity to ensure safe and responsible protection for all public and private interests.

Again, thank you for the opportunity to provide comments.

Sincerely,



Gary D. Preszler, VP
NARO-ND

Kadrmass, Bethany R.

From: Kathryn Hilton <bakkenresister@gmail.com>
Sent: Monday, April 25, 2016 1:46 PM
To: Kadrmass, Bethany R.
Subject: IC rule changes comments

Formal Comments on IC administrative rule changes
04/25/2016

Updating administrative rules is an opportunity for the Industrial Commission to take a strong stance moving forward and write out detailed rules for improved standards in oil field operations. Instead, the Commission is wasting this opportunity with empty language and un-enforceable standards. The following comments are in no way a reflection of the inadequacies of the entire document, but should provide an insight into language the Commission should revisit and improve before finalizing any changes.

Other than to briefly mention the unconstitutionality in the defining of, "interested party" I will defer to the comments of similarly concerned individuals and groups.

43-02-03-19.3: Given the toxic nature of drill cuttings no earthen pits should be allowed.

43-02-03-29.1:

#7- 1,000ft would be a more adequate measure to protect surrounding properties from damage when malfunctions occur and result in catastrophic events. "sufficiently impermeable" is inadequate in defining measures companies must take to ensure containment. IC should use its authority to set specific standards. There is no requirement for replacing pipe that is damaged

#12- "sufficient corrosion control" is ambiguous and sets no standards and practices. The IC should use its authority and to set specific standards.

#15- removing fluid from abandoned pipelines is a good start, but pipe scale would remain which is both radioactive and toxic- the IC should use its authority to require removal and appropriate(my own vague language) disposal of this material.

43-02-03-53.3: Saltwater handling facility construction and operating requirements

#5- language regarding dikes should specifically require that they would contain the capacity of all tanks on site. Language regarding dikes and containment in other sections of administrative law should also be changed to reflect the necessity being able to contain all fluids from all tanks plus one day's throughput.

#12- there are no specific standards set for sampling/testing requirements or frequency. All waste streams should be sampled/tested upon arrival at facility and quarterly updates should be mandatory.

In saltwater handling facility permitting/ construction and operating requirements there is no mention of providing any geologic data- which is critically important in permitting/siting to minimize the risk of disposal leaching into aquifers or contaminating ground water.

Throughout the rule change document many rules allow exemption, extensions and modifications based on the "director's discretion" - no exemptions, extensions or modifications should be allowed and barring this, language should be changed to "commission's discretion" ex. 43-02-03-29.1 #7, 43-02-03-51.3 #6, 43-02-03-53.3

To conclude my comments, I would like to note that rule changes do not address pipes that are installed above ground and should also be subject to stringent construction standards and monitoring practices. I sincerely hope the Commission will "give weight" to my testimony and a concerned resident who is highly aware of the

toxic nature of industry in spite of federally given exemptions and every effort taking by the Commission, DOH, and all members of industry to downplay the harm that is coming.

Kathryn Hilton
2200 46th Ave. SE
Mandan, ND 58554

North Dakota Industrial Commission
Oil and Gas Division

Received
APR 20 2016
ND Oil & Gas Division

April 19, 2016

43-02-03-01 The effects of decisions made the by North Dakota Industrial Commission regarding oil and gas extend far beyond a particular property. Everybody has the right and responsibility to speak on these issues. "Interested party" should not be limited.

43-02-03-16 A legal street address for well-sites should be essential for 911 purposes. It can be challenging for EMS to locate injured workers without a 911 location. Workers at well-sites often are not familiar enough with the area to give good directions to their locations, and valuable time can be lost. Any economic benefit to the industry would be minimal compared to the lives and health of their workers.

Carol Ventsch

New Town, ND

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Monday, April 25, 2016 1:28 PM
To: Kadrmass, Bethany R.
Subject: FW: Attached Image
Attachments: 0586_001.pdf

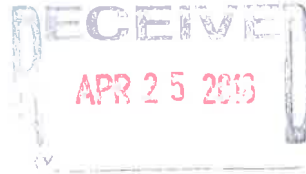
For the proposed administrative rules record. Karlene

From: Haugen, Shelley K.
Sent: Monday, April 25, 2016 12:25 PM
To: Nisbet, Jason; Fine, Karlene K.
Subject: FW: Attached Image

From: ND Governor's Office [<mailto:gov.office.copier@nd.gov>]
Sent: Monday, April 25, 2016 12:24 PM
To: Haugen, Shelley K.
Subject: Attached Image

North Dakota Industrial Commission

Governor Jack Dalrymple



April 19, 2016

43-02-03-01 The effects of decisions made the by North Dakota Industrial Commission regarding oil and gas extend far beyond a particular property. Everybody has the right and responsibility to speak on these issues. "Interested party" should not be limited.

43-02-03-16 A legal street address for well-sites should be essential for 911 purposes. It can be challenging for EMS to locate injured workers without a 911 location. Workers at well-sites often are not familiar enough with the area to give good directions to their locations, and valuable time can be lost. Any economic benefit to the industry would be minimal compared to the lives and health of their workers.

Carol Ventsch

3750-81st Ave. NW

New Town, ND

A handwritten signature in blue ink that reads "Carol Ventsch". The signature is written in a cursive style with a large, stylized 'C' and 'V'.

Cc: Oil and Gas Division

Office of the Attorney General

North Dakota Industrial Commission
Attorney General Wayne Stenehjem

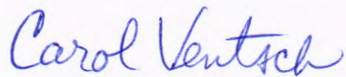
This letter was received after the deadline for written comments, but was received via email prior to the deadline.

April 19, 2016

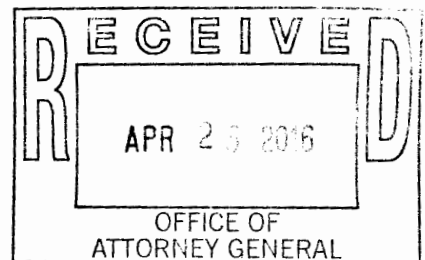
43-02-03-01 The effects of decisions made the by North Dakota Industrial Commission regarding oil and gas extend far beyond a particular property. Everybody has the right and responsibility to speak on these issues. "Interested party" should not be limited.

43-02-03-16 A legal street address for well-sites should be essential for 911 purposes. It can be challenging for EMS to locate injured workers without a 911 location. Workers at well-sites often are not familiar enough with the area to give good directions to their locations, and valuable time can be lost. Any economic benefit to the industry would be minimal compared to the lives and health of their workers.

Carol Ventsch
3750-81st Ave. NW
New Town, ND



Cc: Oil and Gas Division
Office of the Governor



Kadrmass, Bethany R.

From: -Info-Industrial Commission of ND
Sent: Monday, April 25, 2016 1:09 PM
To: Kadrmass, Bethany R.
Subject: FW: interested party ruling

Bethany – Comments for the proposed administrative rules record. Karlene

From: Solberg [<mailto:larock@ndsupernet.com>]
Sent: Monday, April 25, 2016 1:06 PM
To: -Info-Industrial Commission of ND
Subject: interested party ruling

I am writing to you today as a lifetime citizen of North Dakota concerning the interested party ruling. I have sat at many public meetings dealing with zoning and other issues that directly affect our families livelihood and where we live, all oil and gas related whether it be pipeline, railroad spurs or frac sand plants. Our neighbors and environmental organizers all supported each other whether you were an adjacent landowner or not because it affects all of us that live in surrounding area. Anytime our water, air quality, land etc. is affected we are all "interested parties" therefore we all have right to our freedom of speech which as you remember is part of the United States constitution. We are still a democracy and at a public meeting anyone who wants to speak should be given the opportunity to voice their concerns; the oil and gas companies have the right to speak their mind and give you their proposals, which many of them meet with public officials many times before the actual meeting, we have seen this first hand; so why shouldn't we as the general public not have that same opportunity. As long as we are taxpayers of this state we have the right to have a say what happens in this state when it affects our lives, we cannot bend over backwards to the oil and gas companies for the sake of revenue or because our officials do not want to sit at a meeting till midnight. I ask you to say NO on the interested party ruling and do not take away our freedom of speech! Thank you for your time.

Laurie Solberg
Belfield, ND

Kadrmass, Bethany R.

From: Mark Peihl <zoe.anderson.peihl@gmail.com>
Sent: Monday, April 25, 2016 12:56 PM
To: Kadrmass, Bethany R.
Subject: 2016 New Rules Comments

Do not place new restrictions on who can provide public input on energy industry actions. Drop the proposed definition for who is an interested party. Thank you.

Mark Peihl
1113 1st St N
Fargo ND 58102-3729
701-234-1995

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Tuesday, April 26, 2016 9:52 AM
To: Kadrmass, Bethany R.
Subject: FW: 2016 New Rules Comments

Bethany – I believe this came in before the deadline. Please include in the record. Karlene

From: Haugen, Shelley K.
Sent: Tuesday, April 26, 2016 9:48 AM
To: Nisbet, Jason; Fine, Karlene K.
Subject: FW: 2016 New Rules Comments

From: Apache [<mailto:apache@itdapachep1.itd.nd.gov>] **On Behalf Of** Mark Peihl
Sent: Monday, April 25, 2016 12:58 PM
To: -Info-Governor's Office
Subject: 2016 New Rules Comments

Contact Form Submission

Name
Mark Peihl

Email Address
zoe.anderson.peihl@gmail.com

Phone Number
7012341995

Subject
2016 New Rules Comments

Comments
Do not place new restrictions on who can provide public input on energy industry actions. Drop the proposed definition for who is an interested party. Thank you. Mark Peihl 1113 1st St N Fargo ND 58102-3729 701-234-1995

Submitted from governor.nd.gov on 04/25/2016 - 12:57pm from IP address: [165.234.159.14]

Kadrmass, Bethany R.

From: -Info-Industrial Commission of ND
Sent: Monday, April 25, 2016 12:18 PM
To: Kadrmass, Bethany R.
Subject: FW: Proposed rule changes on pipelines

For the record on the proposed administrative rules. Karlene

From: Mike Larson [mailto:mr_larson1@hotmail.com]
Sent: Monday, April 25, 2016 6:50 AM
To: -Info-Industrial Commission of ND
Subject: Proposed rule changes on pipelines

North Dakota Industrial Commission;

We have no children to bring into our future but I have grave concern for you children and their children's children future to live in a clean and pristine environment. In my short 59 years on this planet I have seen some major changes in the water, land and air. Our state bird is almost extinct. Farmers have sprayed crops and killed most all the trees we all paid for, not to mention farm the ditch's up to the road. We have fish on Prozac ect. because most drugs pass through our bodies and flow downstream from our sewage plants. The illumated North Dakota sky's of flaring wells is a gross waste of resources. When I was building inspector for Ward County a developer built a home just 26 feet from the center of a high pressure gas line built in 1955 and there was no way to stop them because it meet the setback placed on that line back then. I sure hope the future homebuyer will be informed. Not to forget the poor zoning choice of the City of Berthold to allow a open tank oil train facility located within a ¼ mile of a missile site, electrical substation, and the city residents of a 5-9 member voluntary fire department. We have became slobbs not stewards and have our focus to now and not the future. This benefits maybe a few hundred people whos greed and need is for today and have no time to wait.

We have ancient litter in the ground and would be dam fools to leave this for future generations. Why is there not a fund to clean up our garbage. We can't beat the bankruptcies or lawyers to make the pipeline owners responsible so a fund for complete reclamation is needed. Why not place new pipelines while we replace the old and kill two birds with one stone and eliminate the extensive process which bothers the greedy. Also to keep the public from speaking at your meetings is wrong and you know it. Water is plentiful but good water is a premium lets not screw that up next.

Mike & Barb Larson
185 14th Ave N
Carrington, ND 58421

Sent from [Mail](#) for Windows 10

Kadrmass, Bethany R.

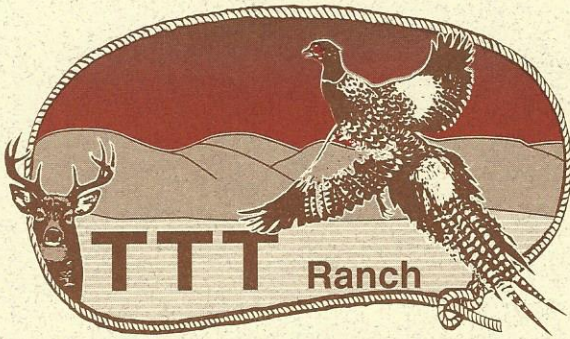
From: Fred Evans <fred@tttoil.com>
Sent: Monday, April 25, 2016 11:23 AM
To: Kadrmass, Bethany R.; NDPC@NDOIL.ORG
Cc: Joyce Evans; Fred@TTToil.com
Subject: Emailing: Scan0013
Attachments: Scan0013.pdf

Attached is a letter addressing "RULE CHANGES" for NDIC. If any questions, please call Fred 701-628-2418, or e-mail response to this e-mail.
Fred & Joyce Evans T T T

Your message is ready to be sent with the following file or link attachments:

Scan0013

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.



April 25, 2016

North Dakota Industrial Commission
600 E. Blvd Ave., dept. 405
Bismarck, ND 58505-0840

This letter is to address potential "rules" made by NDIC involving drilling/completing/producing OIL, and then moving OIL out of the fine state of North Dakota. This addresses not only the new "potential changes", but also any of the older NDIC rules which are burdensome on the industry. An industry which has helped make North Dakota great, along with being very beneficial to all of its residence.

We, that is Fred & Joyce Evans, Stanley, ND are fairly large land owners in Mountrail County. We may not be in the very center of Bakken-Activity, but certainly not that far from it. We have a good number of producing Oil-Wells on land we own, and also have interest in wells on land we do not own.

Two (2) very beneficial things happened, not only to us, but also to other land owners (surface only), mineral owners and the whole state of North Dakota, and that is the Bakken-Wells were much better producers than anticipated, and along with that, the price of OIL stayed Higher for an extended period of time. The devastating price collapse could have happened a year, two (2) years, or even three (3) years sooner. The total economy North Dakota and all if the residence should be very thankful.

As the Bakken-Boom developed it seemed there were continually more negative comments by individuals and groups attempting to "bombard-the-industry" with More and MORE rules, many of which were totally unnecessary and not only detrimental to the OIL industry, but some were pretty counter Productive! In seemed the "goal of the rule makers" was to attempt to pacify the "complainers"! Then, when NDIC would go along with anything, they just kept coming back and wanting more, all of which was pretty much detrimental to not only Oil-Companies, but to Mineral-Owners, even the surface owners, and also to the State of North Dakota. Now the Bakken-Boom is over, we can all stand back and see some of the errors that were made and attempt to correct them.

CASE IN POINT: #1 **DIKES-AROUND-PADS!**

It is important to have effective dikes where needed, that is Dikes-Around-Tanks, but why put a Dikes-Around-Pads? First, there is not going to be any escaped Oil/Water come from the well-head, but only from the tanks, which are diked. Second, with rains, the trapped water in the Dike is a hazard, and if that water had been allowed to drain off the pad as it should have, the Well-Site could dry up and make for safer working conditions. Third, if the water needs to be drain off the Diked-Site, the land owner has to be notified, when the water should have not been Diked in the first place, but allowed to run off, to Make the Grass-Grow-Higher, or help the crops out next to the Well-Site.

There is no doubt that Dikes-Around-Well-Pad has got to be one of the worst ideas which has been approved and implemented by NDIC. There does not need to be Dikes when wells are being drilled and certainly not on Producing-OIL-Well-Pads. PLEASE REMOVE DIKING DRILLING AND PRODUCING WELL-PADS FROM YOUR RULE BOOK. Regulate Dikes on Tanks/Tank Batteries where it's needed.

4949 Triple T Road
Stanley, North Dakota 58784
Phone 701-628-2418 • www.tttranch.com

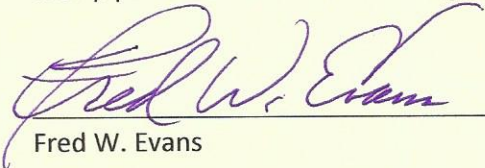
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Currently the "trigger point" is one (1) bl of OIL "spilled", which may be OK if the escaped OIL is not on a Production-Pad, that is if it happens off of a Production-Pad for any reason. With that being said, should there be a loss of some OIL on the Production-Pad, the amount to cause concern should be raised to TEN BARRELS (10). OIL is not bad! It's organic matter, it can be cleaned up and taken care of, which companies do all the time. One (1) bl reporting if lost on a company's Production-Pad is far too restrictive, and needs to be raised to 10 bls. And, please, don't compromise with five (5) bls, the number needs to be TEN (10) BARRELS of escaped OIL if it's contained on the Production-Pad. There is no doubt a company will take care of what needs to be done, with way less bureaucracy.

A side note: SALT WATER: There is nothing much more plentiful in the world than Salt Water, as 71% of our world is covered with it, and there are all kinds of Critters Living in it. Should there be accidents with Salt Water/Production Water, it gets cleaned up, and taken care of quickly. It's nothing short of disheartening to hear on the evening news about "THE POISONOUS SALT WATER SPILL". Far over dramatized. How much Salt would you guess is put on the streets of Minneapolis in one (1) winter?

In SUMMARY: The NDIC has a job to do, and has taken care of things relatively well, but keep in mind, there is a fine line between "putting penalties on companies", or "TAXING THEM"! Again, things got out of hand with High-Priced-OIL, and everyone moving fast, and making it too easy to make "OVER RESTRICTIVE REGULATIONS", regulations which were not needed, are not needed now, and the ones that have been implemented that were "poor and too restrictive" should be abolished, and now is a great time to do just that, change or get rid of those bad rules, which were hastily put in place!

Again, we have many wells located on land we own the surface on, and we also have a few Mineral acres. Companies have been great to work with, they have paid excessive amounts for well-pads along with pipe-line easement and damages. Please, don't Kill-the-Goose-that's-Laying-the-Golden-EGGS!


Fred W. Evans

4-25-16

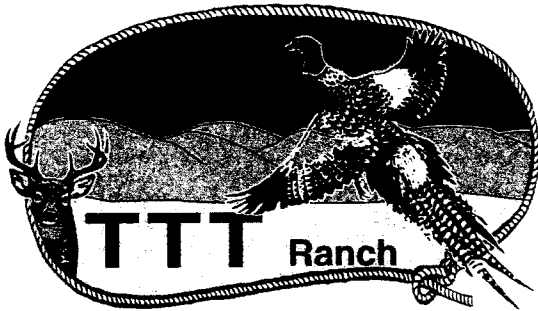

Joyce Evans

CC: NDPC

Received

APR 25 2016

ND Oil & Gas Division



North Dakota Industrial Commission
600 E. Blvd Ave., dept. 405
Bismarck, ND 58505-0840

April 25, 2016

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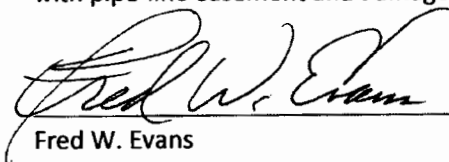
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 9-25-16
Fred W. Evans


Joyce Evans

CC: NDPC

Kadrmass, Bethany R.

From: Larry Heilmann <lheilmann3535@gmail.com>
Sent: Monday, April 25, 2016 10:27 AM
To: Kadrmass, Bethany R.
Subject: 2016 New Rules Comments

I am writing on behalf of the Friends of Theodore Roosevelt National Park in opposition to the proposed change to the definition of "Interested Party" in the rules about who can testify before the Industrial Commission. The Friends is an organization devoted to the preservation and public enjoyment of the natural, historical and cultural amenities of Theodore Roosevelt National Park. As the only national park in North Dakota it attracts hundreds of thousands of visitors each year from North Dakota, all 50 states and many foreign countries. They come for the scenery, the wildlife and the history of Theodore Roosevelt. Central to the tourist enjoyment of the park is the same vast landscape and solitude that Roosevelt wrote about.

Today that is threatened. From within all three units of the park oil development is visible and audible. We are not opposed to oil development but when specific examples of that development impinge negatively on the viewshed and soundshed of the park we feel that we and others need the right to inform our government of our views and work positively with them to mitigate negative effects. This proposed rule change eliminates that right.

Theodore Roosevelt National Park belongs to all the citizens of North Dakota and the United States. They need the right to be involved in decisions that affect it. We therefore ask that the "interested party" proposal be removed from consideration and that the rights of all citizens to comment and testify on government actions be continued as is. Don't limit those who can testify.

Larry J. Heilmann, President
Friends of Theodore Roosevelt National Park
3535 31st St S
Fargo, ND 58104
lheilmann3535@gmail.com
701-367-9064

Kadrmass, Bethany R.

From: TONY KIEFFER <TKEY4@msn.com>
Sent: Monday, April 25, 2016 9:59 AM
To: Hicks, Bruce E.
Subject: April 11-14, 2016 Hearings - Proposed Definition #25

San Angelo, Texas
April 25, 2016

RE: Proposed Definition #25

Mr. Bruce Hicks
Deputy Commissioner
North Dakota Industrial Commission
Bismarck, ND.

Dear Mr. Hicks

I am writing this e-mail in response to the proposed amendments and additions to the North Dakota Administrative Code, Chapter 43-02-03 (Oil & Gas), Definition #25.

My wife and I own a farmstead near Portal, North Dakota and my wife has a mineral interest in the family farm land surrounding our farmstead. Our permanent place of residence is in Texas and we travel to North Dakota two or three times each year to stay at our farmstead and perform necessary maintenance and repairs to the property. We both are very concerned about the impact the recent oil boom has had to our property and from time to time we have been desirous of attending various public forums conducted by the North Dakota Industrial Commission so that we might voice our opinions on various issues that come before the commission. However, due to the distances involved and the requirements of our employments in Texas, it is not practical for us to attend these forums in person.

We are of the opinion that Definition #25 - "Interested Party" is too exclusive in its construction as it prohibits us from making our voice heard and our opinions known unless we expend a substantial amount of time and money traveling back and forth to North Dakota. We believe that the definition of "Interested Party" should be expanded by adding the following wording, "or their designee" to the definition.

To be exact: "Interested party" means an individual or number of individuals that have a property ownership or management interest in or adjacent to the subject matter, **or their designee.**

By expanding the definition of "Interested Party" to include a Designee, it would enable us to authorize another family member, attorney, organization or other appropriate person, to express our concerns for us without incurring a very burdensome cost in time and money to travel to North Dakota.

If the North Dakota Industrial Commission has concerns over just how someone could or should nominate a "Designee", I am sure a simple form could be developed by the commission which could be accessed at the commission's web site. The form could be downloaded, signed and notarized by the "Interested Party" and provided to the "Designee" as authorization to speak for the "Interested Party".

Thank you for your time and consideration of this matter.

Anthony L. and Nancy S. Kieffer
3213 Cedarhill Dr.
San Angelo, TX 76904
325 944-1656

April 25, 2016

VIA EMAIL and HAND DELIVERY

Ms. Bethany Kadrmas
North Dakota Industrial Commission
Oil and Gas Division
600 East Boulevard
Bismarck, North Dakota 58505-0310

Received
APR 25 2016
ND Oil & Gas Division

**RE: KINDER MORGAN, INC.
COMMENTS FOR CASE 24957**

Dear Bethany:

Please find attached herewith the comments of Kinder Morgan, Inc. for filing in Case 24957.

Should you have any questions, please advise.

Sincerely,


LAWRENCE BENDER

LB/leo

Enclosure

58610281_1.docx

Attorneys & Advisors
main 701.221.8700
fax 701.221.8750
www.fredlaw.com

Fredrikson & Byron, P.A.
1133 College Drive, Suite 1000
Bismarck, North Dakota
58501-1215



April 25, 2016

Mr. Lynn Helms
Director
Department of Mineral Resources Oil and Gas Division
600 East Boulevard Avenue, Dept. 405
Bismarck, ND 58505-0840

RE: Case No. 24957: On a motion of the Commission to consider adopting new rules and amendments to the "General Rules and Regulations for the Conservation of Crude Oil and Natural Gas" codified as Article 43-02 North Dakota Administrative Code.

Dear Mr. Helms:

Hiland Crude, LLC ("Hiland Crude") and Hiland Partners Holdings LLC ("Hiland Partners", together, the "Hiland Entities"), thank you for this opportunity to provide comments on the proposed new rules and amendments to the General Rules and Regulations for the Conservation of Crude Oil and Natural Gas codified as Article 43-02 of the North Dakota Administrative Code ("Proposed Rules"). As background, Hiland Crude owns and operates over 1,500 miles of crude oil gathering and transmission pipelines within the states of Montana and North Dakota. Over 1,200 miles of crude oil pipelines are located in North Dakota. Hiland Partners owns and operates over 1,900 miles of natural gas gathering and transmission pipelines within the states of Montana, North Dakota and South Dakota. Over 1,400 miles of natural gas pipelines are located in North Dakota. The Hiland Entities are indirect subsidiaries of Kinder Morgan, Inc. ("KMI"). KMI is the largest energy infrastructure company in North America. KMI owns an interest in or operates approximately 84,000 miles of pipelines and approximately 180 terminals. Its pipelines transport natural gas, refined petroleum products, crude oil, carbon dioxide (CO₂) and other energy products throughout most of the major energy producing regions of North America. KMI companies also store or handle at terminals a variety of products and materials such as gasoline, jet fuel, ethanol, coal, petroleum coke and steel. KMI prides itself on being a class-leading operator of energy infrastructure. KMI first began operating in the state of North Dakota in February 2015, when KMI acquired the assets of the Hiland Entities located in the state. Since that time, KMI personnel have operated the Hiland Entities in North Dakota.

COMMENTS ON PROPOSED RULES

The passage of HB 1358 has provided the North Dakota Industrial Commission, by and through its Oil and Gas Division of the Department of Mineral Resources (“NDIC”), the opportunity to address the regulation of pipeline gathering systems located or to be located in the state of North Dakota. The industry in which the Hiland Entities operate is heavily regulated by a combination of municipal, local, state and federal laws, rules and regulations, and the Hiland Entities understand the need for these rules to adapt and evolve over time. In that context, the Hiland Entities appreciate the time and effort that have been put into development of both the December 2015 UND Energy & Environmental Research Center Study and the NDIC’s development of the Proposed Rules. With appropriate clarifications and changes, the Hiland Entities support many of the Proposed Rules. However, the Hiland Entities offer the following comments on the Proposed Rules in an effort to help guide the NDIC in the rulemaking process that is currently underway.

A. Reiteration of Comments of North Dakota Petroleum Council and Gas Processors Association.

The Hiland Entities are members of the North Dakota Petroleum Council (“NDPC”) and the GPA Midstream Association (“GPA”). The Hiland Entities participated extensively in the review and analysis of the Proposed Rules with both trade associations, and also participated extensively in the development of the comments both the NDPC and GPA have, or will be submitting on the Proposed Rules. As such, and for the sake of brevity, the Hiland Entities will not restate the positions of the NDPC and GPA here, but state their support for the comments of the NDPC and the GPA on the Proposed Rules. The NDPC and GPA comments were the result of considerable effort of many different entities that operate within North Dakota, and the Hiland Entities trust that the NDIC will carefully consider the positions and concerns raised by the NDPC and the GPA.

B. Legal Authority and Federal Preemption.

The Hiland Entities believe the NDIC should clearly recognize that certain provisions of the Proposed Rules that address pipeline safety, operations, maintenance, design and construction may be preempted by the Federal Pipeline Safety Act (“PSA”), and 49 U.S.C. § 601. A basic tenant of U.S. law and regulation is that, if the Congress evidences an intent to occupy a certain field of law, state laws regulating that same topic of law are preempted by the Supremacy Clause of the U.S. Constitution.¹ Further, express preemption also exists where Congress enacts an explicit statutory demand that state law be displaced.² The PSA does contain a clear and

¹ See *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984).

² See *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992); See also, *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 541 (2001). A court may also infer this intent “where the pervasiveness of the federal regulation precludes supplementation by the States, where the federal interest in the field is sufficiently dominant, or where ‘the object sought to be obtained by the federal law and the character of the obligations imposed by it . . .

express preemption provision, establishing that “[a] State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.”³ A state may be certified by the U.S. DOT’s Pipeline and Hazardous Materials Safety Administration (“PHMSA”) and adopt additional or more stringent standards, but only for intrastate pipeline facilities and only if those standards are compatible with the federal standards.⁴ Lastly, courts have held that regulations promulgated by federal agencies have the same preemptive power as statutes where the Congress has delegated the requisite authority to the administrative agency.⁵

With regard to regulation of gathering pipelines, the PSA broadly defines transportation of hazardous liquid to include gathering lines.⁶ To that end, PHMSA has very recently released an inclusive, 550 page Notice of Proposed Rulemaking where PHMSA has expressed its specific intent to comprehensively expand regulation and information collection activities over certain unregulated liquid and gas gathering lines.⁷ When finalized, these rules proposed by PHMSA will preempt any existing state rules that regulate the same liquid and gas gathering lines. The Hiland Entities believe the NDIC should pay particular attention to the PHMSA rulemaking process to ensure proper application of its rules and regulations, considering how certain aspects of the Proposed Rules may be preempted by Federal regulation, so as to avoid unnecessary litigation and appellate review.

C. Additional Comments on Proposed Rules.

As a general observation, the Proposed Rules appear largely directed towards regulating the construction and installation practices, with relatively few specific guidelines for minimum design requirements. In contrast, PHMSA regulation of gathering and transmission pipelines is largely directed towards specifying minimum design requirements to which regulated entities must design compliant systems. Fundamentally, the Proposed Rules are a drastic shift from other requirements within the same sphere of regulation applicable to gathering pipelines and operators. The Hiland Entities request the NDIC consider modifying the Proposed Rules to be founded on prescriptive rules, based on accepted safety-engineering consensus design standards,

reveal the same purpose.” See *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 300 (1988) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

³ See 49 U.S.C. § 60104(c).

⁴ See *Id.*

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similar to PHMSA and other regulatory agencies. Examples of consensus design standards or recommended practices may include American Society of Mechanical Engineers (“ASME”) B31.8 and B31.4, or American Petroleum Institute (“API”) RP 80. Such prescriptive rules should include specific requirements for gathering pipeline operators to maintain appropriate documentation to ensure gathering facilities are installed per the required safety-engineering consensus design standards. Requiring operators to follow engineering consensus standards and document compliance with such standards will help ensure gathering facilities are designed to appropriate and safe engineering standards to the benefit of public safety and environmental impacts. Furthermore, regulations based on engineering consensus design standards with appropriate documentation provides a more consistent, traceable, and auditable means by which the NDIC may verify operator compliance. The Hiland Entities believe such an approach is more practical and should be considered by the NDIC.

There are certain comments and concerns that are of particular importance to the Hiland Entities or which have not been addressed by the NDPC or GPA. These issues include the following:

1. 43-02-03-01. DEFINITIONS.

a. 43-02-03-01.22. Gas Transportation Facility (page 3)

- i. *Comments:* The terms “Gas Transportation Facility” should be more specifically defined to include above ground facilities. The Hiland Entities suggest the following additions to the definition: “Gas Transportation Facility” means a pipeline including facilities required to operate the pipeline (compressor station, meter station) in operation serving one or more gas wells for the transportation of natural gas, or some other device or equipment in like operation whereby natural gas produced from gas wells connected therewith can be transported.

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a. 43-02-03-29.1.1. Application of section. (page 19)

- i. *Comments:* The Hiland Entities believe it should be made clear that this section is not applicable to pipelines or pipeline segments regulated by 49 CFR Parts 192 and 195.

- ii. ***Suggested Language:*** This section is applicable to all underground gathering pipelines designed for or capable of transporting crude oil, natural gas, carbon dioxide, or produced water from an oil and gas production facility for the purpose of disposal, storage, or for sale purposes. If these rules differ from the pipeline manufacturer's prescribed installation and operation practices, the pipeline manufacturer's prescribed installation and operation practices take precedence. *This section is not applicable to pipelines or pipeline segments subject to 49 CFR Parts 192 and 195.*
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e. 43-02-03-29.1.6. Inspection. (page 23)

- i. **Comments:** The requirement to use "Third Party" inspectors goes beyond requirements applied by other state and federal agencies, including PHMSA requirements for interstate transmission lines. If the intent of this section is to keep personnel from inspecting their own work, then the paragraph should be rephrased to allow operators to use internal personnel to perform the inspection who are independent from the task they are inspecting. This is the requirement PHMSA imposes on hazardous liquid pipeline construction in §195.204.
- ii. **Suggested Language:** All newly constructed crude oil and produced water underground gathering pipelines must be inspected by ~~third-party~~ independent inspectors to ensure the pipeline is installed as prescribed by the manufacturer's specifications and in accordance with the requirements of this section. No person may be used to perform inspections unless that person has been trained and is qualified in the phase of construction to be inspected. An inspector shall be independent if the inspector did not perform the construction task requiring inspection. Nothing in this section prohibits the operator from inspecting construction tasks with operator personnel who are trained and did not perform the construction task requiring inspection.

f. 43-02-03-29.1.1. Operating Requirement. (page 25)

- i. **Comments:** There are multiple types of devices that can be used to protect the maximum allowable pressure of any particular pipeline

system. As currently written, this section would limit operators to only using regulators. The NDIC should consider revising this section to allow operators the ability to design their pipeline systems using the types of devices best suitable to that pipeline.

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g. 43-02-03-29.1.10. Leak Detection and Monitoring. (Page 25 and 26)

- i. ***Comments:*** The Hiland Entities have over 1,800 crude well sites where manual tank gauging is used for measurement of crude oil into gathering pipelines. This type of measurement is not real-time and volumes are not reported until after a tank has been emptied. Additionally, the gathering pipelines do not have steady state flows and pressures. Tank volumes are pumped into the pipelines after the tank has been manually gauged which results in numerous pumps starting and stopping at various times. The result is there is not a steady state of pressures or flow where a computational monitoring system would be appropriate for a gathering system. The Proposed Rules state that the operator must develop a data sharing plan with real-time access. This is not feasible in most instances, where crude oil is manually gauged at its input into a gathering system. Additionally, most operators measure into their own gathering pipelines, which would make data sharing unnecessary. To the extent the Proposed Rules require real-time measurement, the costs would be extraordinary and therefore this request should be eliminated in the new rules.

h. 43-02-03-29.1.12.d. Corrosion control. (page26)

- i. ***Comments:*** This section should be specific as to which part of NACE SP 0169 is being incorporated into the Proposed Rules. This section is specific to Cathodic Protection Criteria, so it should only incorporate paragraphs 6.2.2, 6.2.3, 6.2.4, 6.2.5 and 6.3. Also, the NDIC should incorporate the 2007 version of NACE SP 0169 to be consistent with PHMSA. Operators with assets regulated under PHMSA would have written their operating procedures based of the 2007 version.

- ii. ***Suggested Language:*** Cathodic protection systems shall meet or exceed the minimum criteria set forth in the National Association of Corrosion Engineers standard practice SP 0169-2007, Paragraphs 6.2.2, 6.2.3, 6.2.4, 6.2.5 and 6.3. Control of External Corrosion on Underground or Submerged Metallic Piping Systems.
 - i. **43-02-03-29.1.13. Pipeline Integrity.** (page 27)
 - i. ***Comments:*** The first sentence may limit common repair practices in the pipeline industry such as a “leak clamp”. A pressure test is not performed when using a leak clamp for a repair. Also, this section should specify that only the piece of pipe that is being replaced, repaired, relocated, or otherwise changed need be pressure tested.
 - j. **43-02-03-29.1.13.a. Pipeline Integrity.** (page 27)
 - i. ***Comments:*** This section requires a 48 hour notification prior to beginning a pressure test. The notification requirement will be very burdensome and result in a delay of return to service after a routine repair or replacement. It is not uncommon for operators to find a problem on a pipeline, repair it or replace it, and bring back into service within a single day. Also, an operator may use pre-tested pipe for routine repairs and replacements.
4. **GENERAL.**
- a. **Grandfathering of Existing Systems.**
 - i. ***Comments:*** The NDIC should add language to the Proposed Rules that provide the new requirements are not retroactively applied to pipelines constructed prior to the effective date of the Proposed Rules. Many of the Proposed Rules cannot be applied to pipelines constructed prior to the effective date of the Proposed Rules, as they relate to construction of assets rather than operation. If there are some specific rules that the NDIC desires to apply retroactively, the NDIC should provide specifics as to those rules, and operators should be given an opportunity for review and comment as well as sufficient time to make the required modifications.

D. Adoption and Implementation of Proposed Rules.

As a prudent and class leading operator of midstream infrastructure, the Hiland Entities will undertake all necessary steps to ensure compliance with all rules finally adopted of the NDIC. Since KMI believes regulatory compliance is not optional, it expends hundreds of millions of dollars each year on integrity management and maintenance programs to operate its assets safely and to protect the public, its employees, contractors and the environment so as to be compliant. To that end, KMI dedicates significant staff and resources to the compliance with and audit of all applicable rules and regulations.

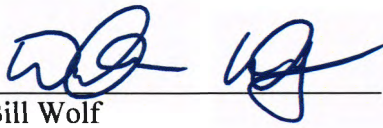
Certainly in this proceeding, adoption of the Proposed Rules will result in a dramatic shift in the current regulations as to how a midstream operator installs, operates and maintains infrastructure that would be subject to such rules. The rules finally adopted will represent a significant departure from past practice and regulation. As such, companies that take their compliance obligations and duties as a regulated entity seriously (like the Hiland Entities do) will be required to spend a great amount of time and expense on developing, maintaining and auditing processes and procedures for compliance with the final rules. Further, the Hiland Entities will be required to comply with the various notification and approval timeframes contained in the final rules, whether it believes them to be reasonable or not. While the impact of whatever final rules the NDIC adopts is unknown at the moment, based on the Proposed Rules the Hiland Entities expect the impact on its current business operations in North Dakota will be significant.

To the extent the NDIC expects the industry as a whole to comply with its final rules, the Hiland Entities believe it is necessary for the NDIC to fully enforce the final rules. Should the final rules not be fairly and equally enforced against all regulated entities, the Hiland Entities are concerned that some in the regulated community may apply a cost-benefit analysis as to whether or not to comply with the final rules. To the extent some entities may not be willing to spend the time and expense necessary to comply with the final rules and instead choose to ignore them, if such actions are not exposed and discouraged through full compliance, such a scenario will serve to punish those entities who comply with the NDIC's rules and regulations against those who choose to not comply. The Hiland Entities strongly encourage the NDIC to give careful consideration to adopting policies and procedures, and the commitment of significant resources, to ensure the fair and equal enforcement of its rules and regulations to those it regulates. Certainly those that are regulated by the NDIC owe a duty to the regulators to comply with the rules and regulations that are adopted pursuant to rule making process, and such a duty is undertaken best under a fair application of the rules and regulations.

CONCLUSION

Thank you very much for consideration of the comments offered herein by the Hiland Entities. The Hiland Entities look forward to their continued participation in this administrative process with the NDIC, and the ultimate adoption of final rules that are consistent with the legislative mandate and make sense for both the NDIC and the regulated industry.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Bill Wolf', is written over a horizontal line.

Bill Wolf
Assistant General Counsel
Kinder Morgan, Inc.
1001 Louisiana St., Suite 1000
Houston, TX 77002
713-420-6998
bill_wolf@kindermorgan.com

*Counsel for Kinder Morgan, Inc., Hiland Crude, LLC and
Hiland Partners Holdings LLC*

Kadrmass, Bethany R.

From: Entzi-Odden, Lyn <lodden@fredlaw.com>
Sent: Monday, April 25, 2016 8:45 AM
To: Kadrmass, Bethany R.
Cc: Bender, Lawrence
Subject: Comments for Case 24957 from Kinder Morgan
Attachments: Case 24957 letter.pdf; Kinder Morgan Comments on NDIC Gathering Rules.pdf

Bethany,

Please see the attached, which is will also be hand delivered this morning.



This is a transmission from the law firm of Fredrikson & Byron, P.A. and may contain information which is privileged, confidential, and protected by the attorney-client or attorney work product privileges. If you are not the addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this transmission in error, please destroy it and notify us immediately at our telephone number (701) 221-8700. The name and biographical data provided above are for informational purposes only and are not intended to be a signature or other indication of an intent by the sender to authenticate the contents of this electronic message.

April 25, 2016

VIA EMAIL and HAND DELIVERY

Ms. Bethany Kadrmas
North Dakota Industrial Commission
Oil and Gas Division
600 East Boulevard
Bismarck, North Dakota 58505-0310

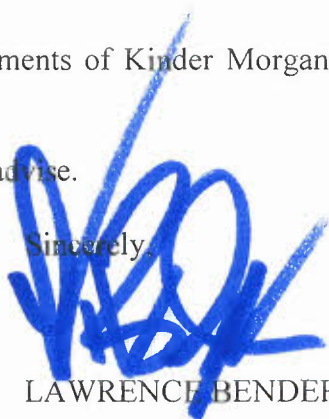
**RE: KINDER MORGAN, INC.
COMMENTS FOR CASE 24957**

Dear Bethany:

Please find attached herewith the comments of Kinder Morgan, Inc. for filing in Case 24957.

Should you have any questions, please advise.

Sincerely,



LAWRENCE BENDER

LB/leo

Enclosure

58610281_1.docx

Attorneys & Advisors
main 701.221.8700
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Fredrikson & Byron, P.A.
1133 College Drive, Suite 1000
Bismarck, North Dakota
58501-1215



April 25, 2016

Mr. Lynn Helms
Director
Department of Mineral Resources Oil and Gas Division
600 East Boulevard Avenue, Dept. 405
Bismarck, ND 58505-0840

RE: Case No. 24957: On a motion of the Commission to consider adopting new rules and amendments to the "General Rules and Regulations for the Conservation of Crude Oil and Natural Gas" codified as Article 43-02 North Dakota Administrative Code.

Dear Mr. Helms:

Hiland Crude, LLC ("Hiland Crude") and Hiland Partners Holdings LLC ("Hiland Partners", together, the "Hiland Entities"), thank you for this opportunity to provide comments on the proposed new rules and amendments to the General Rules and Regulations for the Conservation of Crude Oil and Natural Gas codified as Article 43-02 of the North Dakota Administrative Code ("Proposed Rules"). As background, Hiland Crude owns and operates over 1,500 miles of crude oil gathering and transmission pipelines within the states of Montana and North Dakota. Over 1,200 miles of crude oil pipelines are located in North Dakota. Hiland Partners owns and operates over 1,900 miles of natural gas gathering and transmission pipelines within the states of Montana, North Dakota and South Dakota. Over 1,400 miles of natural gas pipelines are located in North Dakota. The Hiland Entities are indirect subsidiaries of Kinder Morgan, Inc. ("KMI"). KMI is the largest energy infrastructure company in North America. KMI owns an interest in or operates approximately 84,000 miles of pipelines and approximately 180 terminals. Its pipelines transport natural gas, refined petroleum products, crude oil, carbon dioxide (CO₂) and other energy products throughout most of the major energy producing regions of North America. KMI companies also store or handle at terminals a variety of products and materials such as gasoline, jet fuel, ethanol, coal, petroleum coke and steel. KMI prides itself on being a class-leading operator of energy infrastructure. KMI first began operating in the state of North Dakota in February 2015, when KMI acquired the assets of the Hiland Entities located in the state. Since that time, KMI personnel have operated the Hiland Entities in North Dakota.

COMMENTS ON PROPOSED RULES

The passage of HB 1358 has provided the North Dakota Industrial Commission, by and through its Oil and Gas Division of the Department of Mineral Resources (“NDIC”), the opportunity to address the regulation of pipeline gathering systems located or to be located in the state of North Dakota. The industry in which the Hiland Entities operate is heavily regulated by a combination of municipal, local, state and federal laws, rules and regulations, and the Hiland Entities understand the need for these rules to adapt and evolve over time. In that context, the Hiland Entities appreciate the time and effort that have been put into development of both the December 2015 UND Energy & Environmental Research Center Study and the NDIC’s development of the Proposed Rules. With appropriate clarifications and changes, the Hiland Entities support many of the Proposed Rules. However, the Hiland Entities offer the following comments on the Proposed Rules in an effort to help guide the NDIC in the rulemaking process that is currently underway.

A. Reiteration of Comments of North Dakota Petroleum Council and Gas Processors Association.

The Hiland Entities are members of the North Dakota Petroleum Council (“NDPC”) and the GPA Midstream Association (“GPA”). The Hiland Entities participated extensively in the review and analysis of the Proposed Rules with both trade associations, and also participated extensively in the development of the comments both the NDPC and GPA have, or will be submitting on the Proposed Rules. As such, and for the sake of brevity, the Hiland Entities will not restate the positions of the NDPC and GPA here, but state their support for the comments of the NDPC and the GPA on the Proposed Rules. The NDPC and GPA comments were the result of considerable effort of many different entities that operate within North Dakota, and the Hiland Entities trust that the NDIC will carefully consider the positions and concerns raised by the NDPC and the GPA.

B. Legal Authority and Federal Preemption.

The Hiland Entities believe the NDIC should clearly recognize that certain provisions of the Proposed Rules that address pipeline safety, operations, maintenance, design and construction may be preempted by the Federal Pipeline Safety Act (“PSA”), and 49 U.S.C. § 601. A basic tenant of U.S. law and regulation is that, if the Congress evidences an intent to occupy a certain field of law, state laws regulating that same topic of law are preempted by the Supremacy Clause of the U.S. Constitution.¹ Further, express preemption also exists where Congress enacts an explicit statutory demand that state law be displaced.² The PSA does contain a clear and

¹ See *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984).

² See *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992); See also, *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 541 (2001). A court may also infer this intent “where the pervasiveness of the federal regulation precludes supplementation by the States, where the federal interest in the field is sufficiently dominant, or where ‘the object sought to be obtained by the federal law and the character of the obligations imposed by it . . .

express preemption provision, establishing that “[a] State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.”³ A state may be certified by the U.S. DOT’s Pipeline and Hazardous Materials Safety Administration (“PHMSA”) and adopt additional or more stringent standards, but only for intrastate pipeline facilities and only if those standards are compatible with the federal standards.⁴ Lastly, courts have held that regulations promulgated by federal agencies have the same preemptive power as statutes where the Congress has delegated the requisite authority to the administrative agency.⁵

With regard to regulation of gathering pipelines, the PSA broadly defines transportation of hazardous liquid to include gathering lines.⁶ To that end, PHMSA has very recently released an inclusive, 550 page Notice of Proposed Rulemaking where PHMSA has expressed its specific intent to comprehensively expand regulation and information collection activities over certain unregulated liquid and gas gathering lines.⁷ When finalized, these rules proposed by PHMSA will preempt any existing state rules that regulate the same liquid and gas gathering lines. The Hiland Entities believe the NDIC should pay particular attention to the PHMSA rulemaking process to ensure proper application of its rules and regulations, considering how certain aspects of the Proposed Rules may be preempted by Federal regulation, so as to avoid unnecessary litigation and appellate review.

C. Additional Comments on Proposed Rules.

As a general observation, the Proposed Rules appear largely directed towards regulating the construction and installation practices, with relatively few specific guidelines for minimum design requirements. In contrast, PHMSA regulation of gathering and transmission pipelines is largely directed towards specifying minimum design requirements to which regulated entities must design compliant systems. Fundamentally, the Proposed Rules are a drastic shift from other requirements within the same sphere of regulation applicable to gathering pipelines and operators. The Hiland Entities request the NDIC consider modifying the Proposed Rules to be founded on prescriptive rules, based on accepted safety-engineering consensus design standards,

reveal the same purpose.” See *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 300 (1988) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

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- ii. ***Suggested Language:*** The maximum allowable operating pressure shall not exceed the manufacturer's specifications of the pipe or the manufacturer's specifications of any other component of the pipeline, whichever is less. The underground gathering pipeline must be equipped with pressure limiting devices, relief devices, or overpressure shut-in devices where the maximum allowable pressure could be exceeded during normal operation. ~~protected equipped with pressure regulating device to prevent the pipeline from operating above the maximum allowable pressure.~~

g. 43-02-03-29.1.10. Leak Detection and Monitoring. (Page 25 and 26)

- i. ***Comments:*** The Hiland Entities have over 1,800 crude well sites where manual tank gauging is used for measurement of crude oil into gathering pipelines. This type of measurement is not real-time and volumes are not reported until after a tank has been emptied. Additionally, the gathering pipelines do not have steady state flows and pressures. Tank volumes are pumped into the pipelines after the tank has been manually gauged which results in numerous pumps starting and stopping at various times. The result is there is not a steady state of pressures or flow where a computational monitoring system would be appropriate for a gathering system. The Proposed Rules state that the operator must develop a data sharing plan with real-time access. This is not feasible in most instances, where crude oil is manually gauged at its input into a gathering system. Additionally, most operators measure into their own gathering pipelines, which would make data sharing unnecessary. To the extent the Proposed Rules require real-time measurement, the costs would be extraordinary and therefore this request should be eliminated in the new rules.

h. 43-02-03-29.1.12.d. Corrosion control. (page26)

- i. ***Comments:*** This section should be specific as to which part of NACE SP 0169 is being incorporated into the Proposed Rules. This section is specific to Cathodic Protection Criteria, so it should only incorporate paragraphs 6.2.2, 6.2.3, 6.2.4, 6.2.5 and 6.3. Also, the NDIC should incorporate the 2007 version of NACE SP 0169 to be consistent with PHMSA. Operators with assets regulated under PHMSA would have written their operating procedures based of the 2007 version.

- ii. ***Suggested Language:*** Cathodic protection systems shall meet or exceed the minimum criteria set forth in the National Association of Corrosion Engineers standard practice SP 0169-2007, Paragraphs 6.2.2, 6.2.3, 6.2.4, 6.2.5 and 6.3. ~~Control of External Corrosion on Underground or Submerged Metallic Piping Systems.~~
 - i. **43-02-03-29.1.13. Pipeline Integrity.** (page 27)
 - i. ***Comments:*** The first sentence may limit common repair practices in the pipeline industry such as a “leak clamp”. A pressure test is not performed when using a leak clamp for a repair. Also, this section should specify that only the piece of pipe that is being replaced, repaired, relocated, or otherwise changed need be pressure tested.
 - j. **43-02-03-29.1.13.a. Pipeline Integrity.** (page 27)
 - i. ***Comments:*** This section requires a 48 hour notification prior to beginning a pressure test. The notification requirement will be very burdensome and result in a delay of return to service after a routine repair or replacement. It is not uncommon for operators to find a problem on a pipeline, repair it or replace it, and bring back into service within a single day. Also, an operator may use pre-tested pipe for routine repairs and replacements.
4. **GENERAL.**
- a. **Grandfathering of Existing Systems.**
 - i. ***Comments:*** The NDIC should add language to the Proposed Rules that provide the new requirements are not retroactively applied to pipelines constructed prior to the effective date of the Proposed Rules. Many of the Proposed Rules cannot be applied to pipelines constructed prior to the effective date of the Proposed Rules, as they relate to construction of assets rather than operation. If there are some specific rules that the NDIC desires to apply retroactively, the NDIC should provide specifics as to those rules, and operators should be given an opportunity for review and comment as well as sufficient time to make the required modifications.

D. Adoption and Implementation of Proposed Rules.

As a prudent and class leading operator of midstream infrastructure, the Hiland Entities will undertake all necessary steps to ensure compliance with all rules finally adopted of the NDIC. Since KMI believes regulatory compliance is not optional, it expends hundreds of millions of dollars each year on integrity management and maintenance programs to operate its assets safely and to protect the public, its employees, contractors and the environment so as to be compliant. To that end, KMI dedicates significant staff and resources to the compliance with and audit of all applicable rules and regulations.

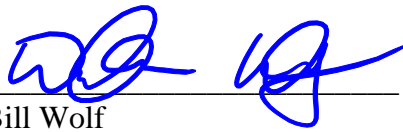
Certainly in this proceeding, adoption of the Proposed Rules will result in a dramatic shift in the current regulations as to how a midstream operator installs, operates and maintains infrastructure that would be subject to such rules. The rules finally adopted will represent a significant departure from past practice and regulation. As such, companies that take their compliance obligations and duties as a regulated entity seriously (like the Hiland Entities do) will be required to spend a great amount of time and expense on developing, maintaining and auditing processes and procedures for compliance with the final rules. Further, the Hiland Entities will be required to comply with the various notification and approval timeframes contained in the final rules, whether it believes them to be reasonable or not. While the impact of whatever final rules the NDIC adopts is unknown at the moment, based on the Proposed Rules the Hiland Entities expect the impact on its current business operations in North Dakota will be significant.

To the extent the NDIC expects the industry as a whole to comply with its final rules, the Hiland Entities believe it is necessary for the NDIC to fully enforce the final rules. Should the final rules not be fairly and equally enforced against all regulated entities, the Hiland Entities are concerned that some in the regulated community may apply a cost-benefit analysis as to whether or not to comply with the final rules. To the extent some entities may not be willing to spend the time and expense necessary to comply with the final rules and instead choose to ignore them, if such actions are not exposed and discouraged through full compliance, such a scenario will serve to punish those entities who comply with the NDIC's rules and regulations against those who choose to not comply. The Hiland Entities strongly encourage the NDIC to give careful consideration to adopting policies and procedures, and the commitment of significant resources, to ensure the fair and equal enforcement of its rules and regulations to those it regulates. Certainly those that are regulated by the NDIC owe a duty to the regulators to comply with the rules and regulations that are adopted pursuant to rule making process, and such a duty is undertaken best under a fair application of the rules and regulations.

CONCLUSION

Thank you very much for consideration of the comments offered herein by the Hiland Entities. The Hiland Entities look forward to their continued participation in this administrative process with the NDIC, and the ultimate adoption of final rules that are consistent with the legislative mandate and make sense for both the NDIC and the regulated industry.

Respectfully submitted,



Bill Wolf
Assistant General Counsel
Kinder Morgan, Inc.
1001 Louisiana St., Suite 1000
Houston, TX 77002
713-420-6998
bill_wolf@kindermorgan.com

*Counsel for Kinder Morgan, Inc., Hiland Crude, LLC and
Hiland Partners Holdings LLC*

Kadrmass, Bethany R.

From: Jon Rask <jonrask1@gmail.com>
Sent: Sunday, April 24, 2016 9:09 PM
To: Kadrmass, Bethany R.
Subject: 2016 New Rules Comments: Interested Party Definition

Dear Oil and Gas division,

Public participation in the development of oil and gas in North Dakota should be more **inclusive** not more exclusive, and absolutely so in the regulatory sphere of oil and gas hearings. People from all over the United States are stakeholders in this proposed rule change, because it affects **public lands**.

The proposed new definition of "Interested party" is wrong and stands to eliminate and remove the public from involvement in decision making processes for oil and gas development in North Dakota.

Public lands belong to all citizens. The People have ownership. We have responsibility to uphold the right to public involvement in management and development decisions.

There is no need for a new definition of "Interested party" and this proposed rule change should be withdrawn.

Eliminate the "interested party" definition. Delete it. Remove it. Make it go away. It is wrong.

Thank you for the opportunity to comment,

Jon Rask

PO Box 228

Moffett Field, CA 94035

Kadrmass, Bethany R.

From: Terry S <eqrlrghts@yahoo.com>
Sent: Sunday, April 24, 2016 6:54 PM
To: Hicks, Bruce E.
Subject: Proposed amendments and additions to the ND Administrative Code Chapter 43-02-03, Chapter 43-02-05, and Chapter 43-02-08

Proposed comments also mailed to NDIC.

April 24, 2016

Bruce E. Hicks
ND Industrial Commission
Department of Mineral Resources
Oil and Gas Division
600 E Boulevard Ave, Dept. 405
Bismarck, ND 58505-0840

RE: Proposed amendments and additions to the ND Administrative Code Chapter 43-02-03, Chapter 43-02-05, and Chapter 43-02-08, https://www.dmr.nd.gov/oilgas/2016_43-02-03-et-al-NDAC.pdf.

The following comments are being submitted.

NDAC § 43-02-03-01 – Given that resources (air, water (creeks, streams, rivers, surface, ground, runoff, impounded, etc.), land, game & fish, biological species, cultural, tribal, state and national park, national grassland, etc.) are negatively affected by oil & gas development, including from toxic chemicals injected, radioactive and toxic waste, noise pollution, light pollution, etc. in the immediate area, region, and in the state, I propose it is the right of all those impacted by oil & gas development to testify at a NDIC hearing.

NDAC § 43-02-03-28 – I propose saltwater handling facilities and treating plants to be at least 2,640 feet from an occupied dwelling unless the owner agrees or approved by order of the Commission after notice and hearing.

NDAC § 43-02-03-31- I propose to allow all information to be available on a confidential well to assure that cement evaluation is timely.

NDAC § 43-02-03-51.1- I propose the amendments require schematic drawings to include calculated containment volumes and include the requirement that an operator submit the legal street address of a treating plant.

NDAC § 43-02-03-90.2 – I propose the amendments will include the injection records into the evidence of each case heard by the Commission, and also clarify that settlement negotiations between parties to a contested case are governed by statute and the hearing officer must include such testimony in the record.

Respectfully submitted,

Terry Schaunaman, land/property owner
1314 6th Ave S,
Fargo, ND
701-306-2463

This letter was received after the deadline for written comments, but it was received via email prior to the deadline.

April 24, 2016
Bruce E. Hicks
ND Industrial Commission
Department of Mineral Resources
Oil and Gas Division
600 E Boulevard Ave, Dept. 405
Bismarck, ND 58505-0840

Received
APR 27 2016
ND Oil & Gas Division

RE: Proposed amendments and additions to the ND Administrative Code Chapter 43-02-03, Chapter 43-02-05, and Chapter 43-02-08,
https://www.dmr.nd.gov/oilgas/2016_43-02-03-et-al-NDAC.pdf.

The following comments are being submitted.

NDAC § 43-02-03-01 – Given that resources (air, water (creeks, streams, rivers, surface, ground, runoff, impounded, etc.), land, game & fish, biological species, cultural, tribal, state and national park, national grassland, etc.) are negatively affected by oil & gas development, including from toxic chemicals injected, radioactive and toxic waste, noise pollution, light pollution, etc. in the immediate area, region, and in the state, I propose it is the right of all those impacted by oil & gas development to testify at a NDIC hearing.

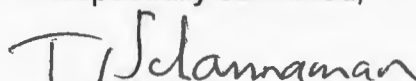
NDAC § 43-02-03-28 – I propose saltwater handling facilities and treating plants to be at least 2,640 feet from an occupied dwelling unless the owner agrees or approved by order of the Commission after notice and hearing.

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Respectfully submitted,


Terry Schaanaman, land/property owner
1314 6th Ave S,
Fargo, ND
701-306-2463

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Monday, April 25, 2016 11:16 AM
To: Kadrmass, Bethany R.
Subject: FW: 2016 New Oil and Gas Rules Comments

For the proposed rules record. Karlene

From: Haugen, Shelley K.
Sent: Monday, April 25, 2016 8:22 AM
To: Nisbet, Jason; Fine, Karlene K.
Subject: FW: 2016 New Oil and Gas Rules Comments

From: Apache [<mailto:apache@itdapachep1.itd.nd.gov>] **On Behalf Of** Karen Kreil
Sent: Sunday, April 24, 2016 5:40 PM
To: -Info-Governor's Office
Subject: 2016 New Oil and Gas Rules Comments

Contact Form Submission

Name
Karen Kreil

Email Address
karen.kreil57@gmail.com

Phone Number
7015277329

Subject
2016 New Oil and Gas Rules Comments

Comments

I am writing in opposition to the proposed definition of "interested party" included in the General Rules and Regulations for oil and gas development. The air, water, and wildlife belong to all North Dakota citizens, therefore all North Dakotans should have the opportunity to comment on proposed oil and gas development. The oil and gas industry has proven time and time again that they have strong influence over any rules, regulations, or policies concerning oil development. The oil and gas industry should not have a disproportionate voice in comparison to the citizens of the state just because they are in the business of maximizing profits. I request that the proposed definition be removed from the proposed rules.

Submitted from governor.nd.gov on 04/24/2016 - 5:40pm from IP address: [165.234.159.13]

Kadrmass, Bethany R.

From: Karen Kreil <karen.kreil57@gmail.com>
Sent: Sunday, April 24, 2016 5:41 PM
To: Kadrmass, Bethany R.
Subject: 2016 New Rules Comments

North Dakota Industrial Commission:

I am writing in opposition to the proposed definition of "interested party" included in the General Rules and Regulations. The air, water, and wildlife belong to all North Dakota citizens, therefore all North Dakotans should have the opportunity to comment on proposed oil and gas development. The oil and gas industry has proven time and time again that they have strong influence over any rules, regulations, or policies concerning oil development. The oil and gas industry should not have a disproportionate voice in comparison to the citizens of the state just because they are in the business of maximizing profits. I request that the proposed definition be removed from the proposed rules.

Sincerely,

Karen Kreil
831 N Mandan Street
Bismarck, ND 58501
karen.kreil57@gmail.com

Kadrmass, Bethany R.

From: Helms, Lynn D.
Sent: Monday, April 25, 2016 12:45 PM
To: Kadrmass, Bethany R.
Subject: FW: Oil and Gas Division Rule Change

From: Madden, John [<mailto:john.madden@email.und.edu>]
Sent: Sunday, April 24, 2016 3:43 PM
To: Helms, Lynn D.; ndag@nd.gov
Subject: Oil and Gas Division Rule Change

I'm writing to express my opposition to the ND Industrial Commission's "new definition" of their administrative rules, a definition that will essentially disallow testimony from interested citizens regarding oil company action applications in their monthly meetings. This change clearly is aimed at blocking testimony from individuals and groups who might oppose oil (and related) company actions that degrade the quality of ND parks and public lands.

I am a frequent visitor to Theodore Roosevelt National Park. I have witnessed the destruction of the natural environment surrounding the park that has resulted from the Bakken oil boom. I have followed with interest and dismay the state government's absence of effective regulation of oil company activities in the face of this boom.

I fully understand the need to exploit ND's mineral resources; I also understand that this exploitation can be managed in a way that has much less impact on the beauty of the state's public lands than has been the case to date. The citizens of North Dakota should have every right to voice their opinions regarding the use of these lands. The proposed rule change is a direct abridgement of this right, one that is motivated by corporate interests rather than the interests of the citizens of North Dakota.

John Madden

702 Central Plains Ct.

Grand Forks, ND 58201

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Monday, April 25, 2016 11:17 AM
To: Kadrmass, Bethany R.
Subject: FW: 2016 New Rules Comments

For the proposed rule record. Karlene

From: Haugen, Shelley K.
Sent: Monday, April 25, 2016 8:23 AM
To: Nisbet, Jason; Fine, Karlene K.
Subject: FW: 2016 New Rules Comments

From: Apache [<mailto:apache@itdapachep1.itd.nd.gov>] **On Behalf Of** Roger and Patricia Ashley
Sent: Sunday, April 24, 2016 11:43 AM
To: -Info-Governor's Office
Subject: 2016 New Rules Comments

Contact Form Submission

Name

Roger and Patricia Ashley

Email Address

pashley@ndsupernet.com

Phone Number

7012258190

Subject

2016 New Rules Comments

Comments

In regards to the proposed rule changes, please strike the amendment to NDAC § 43-02-03-01 definition number 25, "Interested party' means an individual or number of individuals that have a property ownership or management interest in or adjacent to the subject matter." The proposed change will entirely exclude public comment and restrict state and federal management agencies from commenting. The proposed definition is designed to silence citizens of North Dakota as well as agencies here to protect us from the negative impacts of gas and oil development. Why does the North Dakota Industrial Commission want to take away our right to comment on development that impacts our air, water, and way of life? Federal and State lands belong to us, the citizens of North Dakota and the United States. We, the people, own these lands and thus have the responsibility to protect their natural resources. This rule change denies the public's right to speak on behalf of these resources. And on a personal level, there is an oil well less than 1500' from our house. We did not receive notification that it was going in "because our property does not adjoin the property the well is on." Our property corners meet. If private property rights are truly a concern of the ND Industrial Commission why were

we not given our right of notification? The proposed rule does not protect private landowners and takes away the rights of concern citizens, in fact it would disallow our right to comment on an oil well less than 1500' from our house. The oil and gas industry impacts the water we drink, the air we breathe and the soil that grows our food. They are a business. We are the people who have to live in the environment the industry is impacting and the proposed rule denies us our right to full participation in North Dakota government to ensure clean water and air. The proposed amendment to NDAC § 43-02-03-01 definition number 25, "Interested party" means an individual or number of individuals that have a property ownership or management interest in or adjacent to the subject matter." should be removed. Thank you.

Submitted from governor.nd.gov on 04/24/2016 - 11:43am from IP address: [165.234.159.14]

This letter was received after the deadline for written comments, but was received via email prior to the deadline.

23 April 2016

Oil and Gas Division
600 E. Boulevard Ave, Dept. 405
Bismarck, ND 58505-0840

Received
APR 27 2016
ND Oil & Gas Division

Dear Sirs:

In regards to the proposed rule changes, please strike the amendment to NDAC § 43-02-03-01 definition number 25, "'Interested party' means an individual or number of individuals that have a property ownership or management interest in or adjacent to the subject matter."

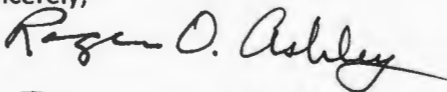
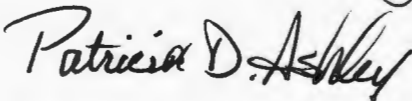
The proposed change will entirely exclude public comment and restrict state and federal management agencies from commenting. The proposed definition is designed to silence citizens of North Dakota as well as agencies here to protect us from the negative impacts of gas and oil development. Why does the North Dakota Industrial Commission want to take away our right to comment on development that impacts our air, water, and way of life?

Federal and State lands belong to us, the citizens of North Dakota and the United States. We, the people, own these lands and thus have the responsibility to protect their natural resources. This rule change denies the public's right to speak on behalf of these resources.

And on a personal level, there is an oil well less than 1500' from our house. We did not receive notification that it was going in "because our property does not adjoin the property the well is on." Our property corners meet. If private property rights are truly a concern of the ND Industrial Commission why were we not given our right of notification? The proposed rule does not protect private landowners and takes away the rights of concern citizens, in fact it would disallow our right to comment on an oil well less than 1500' from our house.

The oil and gas industry impacts the water we drink, the air we breathe and the soil that grows our food. They are a business. We are the people who have to live in the environment the industry is impacting and the proposed rule denies us our right to full participation in North Dakota government to ensure clean water and air. The proposed amendment to NDAC § 43-02-03-01 definition number 25, "'Interested party' means an individual or number of individuals that have a property ownership or management interest in or adjacent to the subject matter." should be removed.

Sincerely,

Roger and Patricia Ashley
11720 30th Street SW
Dickinson, ND 58601

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Monday, April 25, 2016 11:13 AM
To: Kadrmass, Bethany R.
Subject: FW: Keep North Dakotans at the table

Bethany – Comments for the record on the proposed rules. Karlene

From: Bette Stieglitz [<mailto:bette@consultant.com>]
Sent: Sunday, April 24, 2016 2:53 PM
To: Fine, Karlene K.
Subject: Keep North Dakotans at the table

You must vote NO on the amendment and adoption of NDAC 43 02 03 01, and allow the public the right to speak. We still live in a democracy!

Bette Stieglitz
1115 Ninth Avenue South
Fargo, ND 58103

701 318-0785

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Monday, April 25, 2016 11:13 AM
To: Kadrmass, Bethany R.
Subject: FW: Proposed amendment to NDAC

Bethany – Comments on the proposed rules. Karlene

From: Jan Kuhn [<mailto:garyjankuhn@gmail.com>]
Sent: Sunday, April 24, 2016 2:29 PM
To: Fine, Karlene K.
Subject: Proposed amendment to NDAC

Oil & Gas Division
600 East Boulevard Ave
Dept. 405
Bismarck, ND 58505-0840

Re: Comment on Proposed Amendments to NDAC

I am a landowner who lives in Dunn County.

I am asking you to vote no on the proposed amendment to NDAC [43-02-03-01](#) in regards to who can testify at a Commission hearing.

I believe that this amendment will limit the ability of landowners such as me to be able to testify in regards to projects that may be in close proximity to me.

In our rural areas there are more people that can be affected than just the adjacent landowners to these projects.

We may have residents who live by the roads that are used by the industry to reach these projects. This will have impacts on the roads and on the residents, landowners, school buses, emergency services and others who also use them.

We have many sources of water that are used by many of the residents of North Dakota which have the potential to become contaminated. Citizens who use any water which may suffer any negative effects from a project should have the ability to speak of their concerns.

We also may have residents who have other livelihoods such as tourism businesses close to these or there may be residential subdivisions which are also close.

Landowners, businesses and residents no longer would have the ability to express their concerns if this proposed amendment was passed even if they are in close proximity. Acts of nature or accidents at these sites can possibly have consequences for more than just an adjacent landowner. Not allowing residents and citizens of North Dakota to testify would be very unfair to those of us who live here.

Please do not pass this amendment as these are just some of the examples of those who could possibly suffer negative impacts from not being able to testify.

Thank you.

Gary and Jan Kuhn
10830 23rd St SW
Manning, ND. 58642

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Monday, April 25, 2016 11:11 AM
To: Kadrmass, Bethany R.
Subject: FW: pipelines

Bethany Comments for the proposed rules record. Karlene

-----Original Message-----

From: Sharon Krieger [<mailto:skdc1955@icloud.com>]
Sent: Sunday, April 24, 2016 1:37 PM
To: Fine, Karlene K.
Subject: pipelines

At a recent open house with TransCanada Pipeline in Tioga a few weeks ago, they were unaware of the large Tesoro oil spill nine miles NE of Tioga that occurred in September 2013. I, as a lay person, was surprised as this was one of the largest--if not the largest oil spills in North America.

Is it possible with the proposed limits on testifying that the concerns of lay people about such things as these 33 acres of polluted land would not be allowed? This seems an out and out violation of the First Amendment. Sharon Krieger, Tioga

Sent from my iPad

Kadrmass, Bethany R.

From: Betty Stenzel <nhmt.portland@gmail.com>
Sent: Sunday, April 24, 2016 12:12 PM
To: Hicks, Bruce E.
Subject: Proposed definition 25, Monday, April 25

Mr. Bruce Hicks,

This is a follow-up to my emails from Saturday regarding our family farmland and mineral rights. I am sure you are aware of the needs and rights of both owners and large oil companies.

I do believe that since we as a family cannot be there to voice our concerns, you can see to it that our representative will be allowed to take our place (Vivian and/or Ted Hawbaker). (see previous email)

The current rule NEEDS to be changed. Our farm will remain long after the oil company leaves.
Thank you for your attention,

Betty Stenzel
1190 SW Binford Lake Parkway
Gresham, OR 97080
503-367-8423

Kadrmass, Bethany R.

From: Betty Stenzel <nhmt.portland@gmail.com>
Sent: Saturday, April 23, 2016 11:54 AM
To: Hicks, Bruce E.
Subject: Betty Stenzel regarding April Proposed Definition 25 - additional information

Bruce,

Also, I concur with any emails sent to you by Barb Salerno's regarding this matter (Proposed Definition 25).

Please call me if you have any questions.

Thank you,
Betty Stenzel
503-367-8423

Kadrmass, Bethany R.

From: Betty Stenzel <nhmt.portland@gmail.com>
Sent: Saturday, April 23, 2016 11:46 AM
To: Hicks, Bruce E.
Subject: April 11-14,2016,hearings - Proposed Definition 25

Bruce Hicks,

I, Betty Stenzel, am a 68 year old widow living in Oregon who owns mineral rights in western ND and due to urgent matters here and the distance involved cannot be present at the above mentioned public hearing regarding a certain company's plans for my minerals.

Therefore, I am requesting that Ted and/or Viv Hawbaker (or anyone they appoint) represent me in this matter now and in the future.

Thank you,

Betty Stenzel
1190 SW Binford Lake Parkway
Gresham, OR 9080

503-367-8423

Kadrmass, Bethany R.

From: Vadamay Kingsley <vadamay@bis.midco.net>
Sent: Saturday, April 23, 2016 11:13 AM
To: Hicks, Bruce E.; Kingsley
Subject: April 11-14 2016, Hearings - Proposed Definition 25

I am an 80 year old Bismarck Resident who owns mineral interests. I follow the oil industry activity in the Bismarck Tribune- or call my niece for information. I depend on individuals, other than myself, to clarify my concerns as well as talk to lease buyers and/ or company division order personnel.

I attended a commission hearing this year, (Jan. 20 2016, Case 24741) I was horrified , that altho I was sitting right there in the audience, the company attorney did not wish to allow my niece/ nephew to testify on My sisters and my behalf ! When my presence was pointed out the hearing officer allowed my niece / nephew to testify as to the concerns regarding my interest; however , as I understand it, their testimony was later deemed ' not relevant' Even tho I was sitting right there !! The lack of relevance was identified as ' they did not own the interest themselves' - Even though they stated up front that they were speaking on my behalf and that of my sisters (and other people)

Please make sure that such an occurrence will not happen again by amending what ever wording/ rule on which the company's attorney based his objection . I understand that Definition 25 of 43-02-03 -01 is intended to clarify that someone, other than myself , can testify for me as long as they state that they are testifying on my behalf.

(I assume you can understand that I want to safeguard our mineral interest, BUT hearing the vocabulary /terminology I heard at that hearing further convinced me that speaking into that microphone could easily give me a heart attack and I doubt any of us want that delay .)

Vadamay Kingsley
1307 Meredith Drive
Bismarck, N D 58501

Phone 701 220 0855

Kadrmas, Bethany R.

From: Marylou Krause <jerrymaryfess@icloud.com>
Sent: Saturday, April 23, 2016 12:34 PM
To: Hicks, Bruce E.
Subject: April 11-14, 2016 hearings - proposal 25

I am an 86-year-old ND resident who owns mineral interests in Burke County and who wishes to have another individual(s) speak on my behalf at any hearings affecting my interests -- this, if I ask another individual to speak on my behalf, that such can occur AND that the testimony will be considered in the final decision -- not deemed irrelevant due to lack of ownership/interest, by the individual speaking for me, in the land under discussion.

I understand that Rule 25 will clarify that I can ask a daughter/son/niece/nephew or another individual and testify at any NDIC hearing affecting my interest and that their words will be as if I spoke them, and, therefore, the company attorney cannot object to their speaking on my behalf and that the testimony will not be disregarded. I'm in particular concerned about this definition due to the hearing on January 20, 2016, for Case 24714, in which the company attorney objected to testimony from my niece/nephew who were clear that they were speaking on behalf of myself and my sisters. They were allowed to speak; however, ultimate written testimony summary recited that their testimony was irrelevant because they did not own within the land under discussion (though they (niece/nephew) own the surface and own surface and minerals adjacent to the land under discussion). Their testimony was NOT hearsay - the concerns they expressed were as if I were present.

Marylou Krause
214 Co. Highway 1. PO box 332
Fessenden, North Dakota 58438

Winter address:
17224 E. Alta Loma
Fountain Hills, AZ. 85268

Phone: 701-578-4836. (Cell)

Jerry & Marylou

Kadrmass, Bethany R.

From: Ileen Campbell <ileen3032@gmail.com>
Sent: Saturday, April 23, 2016 3:08 PM
To: Hicks, Bruce E.
Subject: April 11-14, 2016, hearings proposed Definition 25

I live in Spokane, WA, however, I own mineral interests in Burke County and depend on family in ND to keep me informed as to the activity regarding my interests. I understand there were recent objections from a company attorney regarding my niece/nephew speaking for my benefit at a hearing this year. (Case 24741 on January 29, 2016 20, 2016)

I am 84 years old and at the time of that meeting I was dealing with Chemo and Radiation treatments for cancer. I do not have the comfort level to travel 800-1000 miles to Bismarck for a meeting to tell the commission my concerns about the company proposal. It is Important to have someone I trust to speak on my behalf and that the concerns expressed by whomever says they are speaking on my behalf be treated as if I spoke them.

According to the summary of NDAC 43-02-03-01 in the FULL NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES, I can be assured that when/if I ask to have a person(s) I trust speak on my behalf that a company attorney will not object to such person(s) doing so, and that their testimony will be taken into consideration as if I'd said the words.

Ileen Campbell
3304 E 44th ave. #342
Spokane, WA. 99223

Phone - 253-225-0046

Sent from my iPad

Kadrmass, Bethany R.

From: Barb Salerno <gitgo@bresnan.net>
Sent: Saturday, April 23, 2016 10:46 PM
To: Hicks, Bruce E.
Subject: April 11-14, 2016, hearings -- Proposed Definition 25,,
Attachments: ND Oil & Gas Letters.pdf

Importance: High

Please find attached letters from both myself and my sister, Susan Witte regarding our position of the April 11 - 14, 2016 hearings -- Proposed Definition 25.

Thank you.
Barb Salerno
1104 13th St. W
Havre, MT 59501
Ph. 406-265-3163

Your message is ready to be sent with the following file or link
attachments:
ND Oil & Gas Letters

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

April 23, 2016

Ms. Barbara Salerno
1104 13th St. W.
Havre, MT 59501

Mr. Bruce Hicks
Assistant Director
North Dakota Oil & Gas Commission

RE: April 11-14, 2016, hearings -- Proposed Definition 25

Gentlemen:

I, along with my sister and sister-in-law, own surface and minerals in Burke County. Because we do not live in ND, our land is farmed by a local farmer who has lived there for his 50+ years. I/we depend on him for information affecting decisions we are faced with regarding our mineral interests.

Due to jobs and distance, it is not feasible for any of us to travel to Bismarck for hearing(s) affecting our interests. It was most irritating to receive a summary from our farmer that the attorney for the company objected to testimony from him at the January 20, 2016, hearing for Case 24741 affecting our interests in sections 29 and 32-164-91. Though the testimony did proceed, it seems that his testimony was not accepted during the decision process.

This message is to support a definition of who may testify – which I understand may come under the Definition 25 – the first paragraph under the city hearing locations of the FULL NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES.

I wish to be clear that **whatever procedure allows the company's attorney to object to testimony from a knowledgeable individual to speak on behalf of a mineral and/or surface owner NEEDS TO BE AMENDED TO ALLOW TESTIMONY** from an individual who is speaking on behalf of someone for whatever reason may be given for not attending. I was told that I can write a message regarding the case; however, my concern is that my message would not fully address the company wording that will be presented.

We have dealt, through our farmer and on our own, with more than one oil company who talks a good story but has no follow through OR their 'foot dragging' is so extended that his and/or our time spent in follow-up is above and beyond their so-called 'good owner relations'.

Summary of this message: Please make sure your rule(s) and/or Definition 25 address the matter of testimony from a knowledgeable individual(s) who says he is speaking on my behalf regarding my mineral interests whether the interest is named in the case or is within a mile or so. I'm aware that previous decisions can later affect my interest; therefore, it is important that I can address an issue that may ultimately affect my interest.

A handwritten signature in blue ink that reads "Barbara Salerno". The script is cursive and fluid.

Barbara Salerno

Address: 1104 13th St. W., Havre, MT 59501

Phone: 406-265-3163 (H)

April 23, 2016

Ms. Susan Witte
3707 US Highway 2 NE
Havre, MT 59501

Mr. Bruce Hicks
Assistant Director
North Dakota Oil & Gas Commission

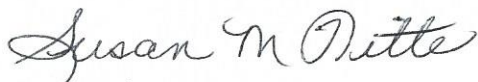
RE: April 11-14, 2016, hearings -- Proposed Definition 25

Gentlemen:

It is important that an 'individual in the know' help me handle my ND mineral interests. I have a fellow who farms my surface and at the same time is very knowledgeable regarding location and use by companies of my mineral interests. This fellow has lived in the area all of his life [he is 50 something] and has farmed our land for many years.

Please regard this message as if it included all of the words that Barb Salerno's message says.

The attorney who didn't want our concerns voiced by our farmer must not understand that it takes time away from jobs and costs even more money and that since he is 'representing' a company, I, too, should be able to have someone 'represent' me, as long as he is knowledgeable of the area under discussion.


Susan Witte

Address: 3707 US Highway 2 NE, Havre, MT 59501

Phone: 406-265-8822 (H)

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Monday, April 25, 2016 11:09 AM
To: Kadrmass, Bethany R.
Subject: FW: Comment on Proposed Amendments to NDAC
Attachments: Scan20160423080917.pdf

Bethany - Comments on rules. Karlene

From: Greg & Renae [<mailto:twodoor@ndsupernet.com>]
Sent: Saturday, April 23, 2016 9:17 AM
To: Fine, Karlene K.
Subject: Comment on Proposed Amendments to NDAC

Attached is a signed letter of our comments.

Greg & Renae Schneider
440 122nd Ave SW
Killdeer, ND 58640

Oil & Gas Division
600 East Boulevard Ave
Dept. 405
Bismarck, ND 58505-0840

Re: Comment on Proposed Amendments to NDAC

I am a landowner who lives in Dunn County.

I am asking you to vote no on the proposed amendment to NDAC 43-02-03-01 in regards to who can testify at a Commission hearing.

I believe that this amendment will limit the ability of landowners such as me to be able to testify in regards to projects that may be in close proximity to me.

In our rural areas there are more people that can be affected than just the adjacent landowners to these projects.

We may have residents who live by the roads that are used by the industry to reach these projects. This will have impacts on the roads and on the residents, landowners, school buses, emergency services and others who also use them.


We have many sources of water that are used by many of the residents of North Dakota which have the potential to become contaminated. Citizens who use any water which may suffer any negative effects from a project should have the ability to speak of their concerns.


We also may have residents who have other livelihoods such as tourism businesses close to these or there may be residential subdivisions which are also close.

Landowners, businesses and residents no longer would have the ability to express their concerns if this proposed amendment was passed even if they are in close proximity. Acts of nature or accidents at these sites can possibly have consequences for more than just an adjacent landowner. Not allowing residents and citizens of North Dakota to testify would be very unfair to those of us who live here.

Please do not pass this amendment as these are just some of the examples of those who could possibly suffer negative impacts from not being able to testify.

Thank you.


440 122nd Ave SW
Killdeer, N.D. 58640
4-23-16

1 
440 122nd Ave SW
Killdeer, ND 58640
4-23-16

Kadrmass, Bethany R.

From: V N <dakotavagabond@live.com>
Sent: Saturday, April 23, 2016 9:16 PM
To: Kadrmass, Bethany R.; V N
Subject: 2016 New Rules Comments
Attachments: NPCA Oil and Gas Testimony.docx

Hi Bethany-

I was hoping to see you at the public hearing last week. I testified in Dickinson, so I missed you. Mr. Helms asked that I send a written version of my comments from the April 12 meeting.

Here it is.

Thank you.

Valerie

Valerie Naylor
Private Consultant
NPCA
dakotavagabond@live.com

National Parks Conservation Association Testimony for North Dakota Oil and Gas Commission Hearing
Presented by Valerie J. Naylor, Private Consultant, NPCA

Dickinson, North Dakota – Tuesday, April 12

My name is Valerie Naylor. I am here as a private consultant on behalf of the National Parks Conservation Association. NPCA is a non-partisan, non-profit organization that has been a leading voice in safeguarding national parks since 1919.

NPCA has more than 1 million members and supporters nationwide and 1648 members and supporters in the state of North Dakota.

To my knowledge, NPCA has never testified on an Oil and Gas Division case in North Dakota, and would never do so frivolously. However, if we felt that an oil and gas development could cause harm to one of the three national parks in western North Dakota – Theodore Roosevelt National Park, Knife River Indian Villages National Historic Site, or Fort Union Trading Post National Historic Site – we may want to provide comments on specific cases.

The proposed language in NDAC § 43-02-03-01-25 is an issue. The word “adjacent” is vague in a land of wide open spaces. Sometimes developments miles away can affect a park or other property, and sometimes adjacent developments do not pose much of a concern. The proposed definition of “Interested party” is also a problem, and would appear to prevent anyone who is not a neighboring landowner or representative of industry from testifying.

NPCA has been working on national park issues for 97 years, and has a history of working on issues in western North Dakota. NPCA has much more experience, interest and expertise in determining what may or may not be of potential harm to a national park than does the general public. By providing testimony in certain situations, we may be able to assist the commission, national parks and the industry to prevent deterioration of the parks, and better conserve our beloved North Dakota resources.

NPCA asks that you strike the entire definition in 43-02-03-01-25. I have attended over a dozen ND oil and gas hearings. I have never observed testimony from *uninterested* parties, only from industry, and a very limited number of agency representatives and non-profit organizations. Industry experts are encouraged and expected to testify at the hearings. I’m sure you don’t want to restrict agencies, organizations, and individuals that have expertise and true interest from providing information to the Oil and Gas Commission any more than you want to restrict industry experts from testifying at the same hearing.

We appreciate your attention to this issue.

Thank you.

Kadrmass, Bethany R.

From: Jan Swenson <bcajan@bis.midco.net>
Sent: Saturday, April 23, 2016 2:28 PM
To: Kadrmass, Bethany R.
Subject: BCA Comments on 2016 New Rules
Attachments: BCA 2016 New Rules Comments.pdf

Bethany,

Please receive the attached Badlands Conservation Alliance's comments on the proposed 2016 rule changes.

Thank you.

Jan Swenson, ED
Badlands Conservation Alliance
701-255-4958



Badlands Conservation Alliance
Field Office
801 North 10 Street
Bismarck, ND 58501
701-255-4958 badlandsconservationalliance.org

April 23, 2016

Oil and Gas Division
600 E Boulevard Ave., Dept. 405
Bismarck, ND 58505-0840

RE: North Dakota Industrial Commission, Department of Natural Resources, Oil and Gas Division proposed amendments and additions to the North Dakota Administrative Code (NDAC) Chapter 43-02-03 (Oil & Gas), Chapter 43-02-05 (Underground Injection Control), and Chapter 43-02-08 (Stripper Well Property Determination)

To whom it may concern:

Provided below is the text of Oral Testimony at the April 11, 2016 hearing in Bismarck, ND by Badlands Conservation Alliance Executive (BCA) Director, Jan Swenson. Additional comments follow that testimony.

Badlands Conservation Alliance has a history of providing testimony at North Dakota Industrial Commission case hearings. In 2012 and 2013 our participation was sporadic, but since January of 2014 we have routinely reviewed monthly case dockets, providing testimony as relevant to our organizational mission and almost exclusively as impacts public lands.

The required notice we provide to the Oil and Gas Division by 5 PM the day prior to the date of said hearings begins with this statement:

Badlands Conservation Alliance (BCA) is a non-profit conservation organization focused on management of public lands in western North Dakota with particular attention to Theodore Roosevelt National Park, the Little Missouri National Grassland, and state school lands under the ND Department of Trust Lands.

On the less frequent occasions that we speak to natural resources issues such as water quality protection, flaring impacts or flaring exceptions, we include: The current transformative cumulative impacts of energy development on the natural resources of western North Dakota have prompted us to advocate more broadly.

BCA feels a deep and committed responsibility to follow and testify at monthly hearings:

1) Our organization and its members hold significant familiarity with these lands and value them for a host of ecological, heritage and personal reasons, frequently through multiple generations. We have on-the-ground expertise; we know these places as part of a larger landscape, not only as section, township and range.

2) We firmly believe that the earlier in the process concerns regarding oil and gas development are brought forward, the more likelihood that solutions can be found that satisfy all interests or at least mitigate impacts.

3) BCA is a proponent of comprehensive landscape scale planning, whether for industrial development, wildlife management, recreational planning or any combination of these and other multiple-uses on or impacting public lands.

4) Our intent in testifying is to share our expertise, be it knowledge of surface attributes or representation of values other than that of either industry or industry regulators. We want them to know where they are at – on the surface, not only two miles below that surface.

While state and federal agencies may at times share or closely align with BCA's interests that is not to be assumed and is on occasion contrary to fact. BCA routinely comments on both state and federal actions through both formal and informal processes. Just as we would not be satisfied with a state or federal agency being solely responsible for representation of our values or our preferred management direction, particularly without our input, we hold that the Oil and Gas Division of the Department of Mineral Resources cannot adequately claim to represent us as "being no different than the general public."

Public lands belong to all citizens. The People have ownership. We have responsibility to uphold the right to public involvement in management and development decisions.

The proposed new definition of "Interested party" is in and of itself unclear in meaning and arbitrary and capricious in intent. We anticipate it would have the practical effect of removing BCA's well established interest in testifying at hearing. The lack of clarity in use of the term "adjacent" holds the risk of limiting or denying even local, state and federal agency participation as regards their ability to protect their specific missions and jurisdictions. Private land owners would be denied the ability to voice concerns regarding actions impacting their surface values and their livelihoods that were beyond the confined legal description of their properties, for example well pads or infrastructure impacting their water supplies.

Public participation in the development of oil and gas in North Dakota should be more inclusive not more exclusive, and absolutely so in the regulatory sphere of oil and gas hearings. We would all benefit. There is no need for a new definition of "Interested party" and this proposed rule change should be withdrawn.

Thank you for the opportunity to comment.

In addition to our oral testimony above:

BCA would commend the work done by the Oil and Gas Division to improve regulatory control of the oil and gas industry in North Dakota as generally exhibited in the proposed new rules. They represent a considerable step in the right direction.

We would add that we have reviewed the comments to be submitted by the Environmental Defense Fund for improvement to language re: gas gathering lines and fully support their recommendations.

Finally, Badlands Conservation Alliance was in attendance at the April 20, 2016 monthly meeting of the North Dakota Industrial Commission. It is our opinion that Director Helms did a brief but sound job of summarizing the four hearings on the proposed new rules.

However, we were taken aback with comments expressed by Agricultural Commissioner Doug Goehring as to private property rights and the proposed definition of "interested party."

First, the attendees of the four public hearings included a diverse representation of North Dakota citizens asking the proposed new definition of "interested party" be struck. Attendees and testifiers included a healthy percentage of private landowners that own mineral rights beneath their surface and those who do not.

Private property rights are all too frequently used by industry, either directly through their own words or indirectly by others, to provoke the agricultural community in opposition to conservation. This is a sad and disingenuous strategy. But, it is often politically effective. Unfortunately it is also a loss to us all.

Agriculture and conservation share many values. Both interests consider themselves stewards of the land and our natural resources. It is BCA's hope that an outcome of the citizen response to the proposed definition of "interested party" and the request for its withdrawal will result in greater participation at oil and gas hearings by a broader spectrum of North Dakota citizens, and especially by private landowners impacted by oil and gas development.

Respectfully,

A handwritten signature in black ink, appearing to read "Jan Swenson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jan Swenson, ED
Badlands Conservation Alliance

Kadrmass, Bethany R.

From: Shelly Ventsch <ventsch5@restel.com>
Sent: Friday, April 22, 2016 11:22 PM
To: Kadrmass, Bethany R.
Subject: 2016 New rules comments
Attachments: NDIC additional comments.pdf

In addition to my comments at the Williston hearing, I would like to submit the attached comments also. Thank you.

Shelly Ventsch
New Town, ND

April 22, 2016

After receiving more information since submitting my comments at the NDIC Williston hearing, I am submitting the following as additional comments regarding the proposed amendments to the NDAC.

NDAC 43-02-03-01 Definitions

--If taking public comments at hearings is becoming time-consuming, set a time limit for each comment, such as 3 minutes per commenter, whether it be a resident from the next county or a representative from an oil company. From what I have witnessed, the speakers for the industry tend to speak at length, while the general public usually has written comments and are finished speaking after reading them.

--Consider why there is an "increasing frequency" of people appearing at hearings. Perhaps they are becoming increasingly unhappy with the decisions being made?

--By not allowing the general public to comment, the NDIC, who are all elected public officials, would be making a statement--"We don't want to hear any of your concerns, even though we are elected to work for you, the people of the state."

--The state, as a whole, benefits from oil production. Tax money is distributed throughout the state. Some of that tax money may be needed to clean up messes left by the oil industry. Hence, public funds make it so everyone has an interest and should be allowed to comment.

--Consider if Pierce County commissioners had not allowed any public input regarding the EERC's and the Dept. of Energy's plan to drill deep bore holes to study North Dakota as a possible storage area for spent nuclear waste. I recall the governor and the attorney general were both against this, mentioning this as being forced on us by the federal government.

--Federal government making decisions and not allowing public comment would be labelled "government overreach" by state officials. If the public is not allowed to comment at NDIC hearings, isn't that also "government overreach," but on a state level?

--If "interested party" is going to get a definition, then "property ownership" and "management interest" need to be defined:

Property--The surface? The minerals? The actual project? The water on the land (which is all publicly owned)? Township boards, if it's adjacent to a section line ROW? County commissioners, if it's adjacent to a county road ROW? Anyone who owns a lot in a cemetery, if it's adjacent to a cemetery? Utility companies who have an easement?

Management interest--Landowners? Owners of the project? Contractors/subcontractors? Township/county planning and zoning commissions? Renters? Hunters who manage coyote population for ranchers? County weed control boards? Fish & Wildlife Service? These are all "management" interests that could be on or adjacent to the location of a proposed project.

NDAC 43-02-03-49 Oil Production Equipment, Dikes, and Seals

NDAC 43-02-03-51.3 Treating Plant Construction and Operation Requirements

--There should be adequate dikes around everything where there is a possibility of contamination of the surrounding area. There should be listed specific reasons why a waiver may be granted by the director. Expense or inconvenience or burdensome to the oil company are not legitimate reasons.

Shelly Ventsch
New Town, ND

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Monday, April 25, 2016 11:20 AM
To: Kadrmass, Bethany R.
Subject: FW: Comments on proposed amendments to NDAC

For the proposed rules record. Karlene

From: Haugen, Shelley K.
Sent: Monday, April 25, 2016 8:30 AM
To: Nisbet, Jason; Fine, Karlene K.
Subject: FW: Comments on proposed amendments to NDAC

From: Apache [<mailto:apache@itdapachep1.itd.nd.gov>] **On Behalf Of** Shelly Ventsch
Sent: Friday, April 22, 2016 11:04 PM
To: -Info-Governor's Office
Subject: Comments on proposed amendments to NDAC

Contact Form Submission

Name
Shelly Ventsch

Email Address
ventsch5@restel.com

Phone Number

Subject
Comments on proposed amendments to NDAC

Comments

I submitted comments at the Williston hearing. The following are additional comments. NDAC 43-02-03-01 Definitions --If taking public comments at hearings is becoming time-consuming, set a time limit for each comment, such as three minutes per commenter, whether it be a resident from the next county or a representative from an oil company. From what I have witnessed, the speakers for the industry tend to speak at length, while the general public usually has written comments and are finished speaking after reading them. --Consider why there is an "increasing frequency" of people appearing at hearings. Perhaps they are becoming increasingly unhappy with the decisions being made? --By not allowing the general public to comment, the NDIC, who are all elected public officials, would be making a statement--"We don't want to hear any of your concerns, even though we are elected to work for you, the people of the state." --The state, as a whole, benefits from oil production. Tax money is distributed throughout the state. Some of that tax money may be needed to clean up messes left by the oil industry. Hence, public funds make it so everyone has an interest and should be allowed to comment. --Consider if Pierce County commissioners had not allowed any public input regarding the EERC's and the Dept. of Energy's plan to drill bore holes to study North Dakota as a possible storage area for spent nuclear waste. I recall the governor and the attorney general were both against this, mentioning this as being forced on us by the federal government. --Federal government making decisions

and not allowing public comment would be labelled "government overreach" by state officials. If the public is not allowed to comment at NDIC hearings, isn't that also "government overreach," but on a state level? --If "interested party" is going to get a definition, then "property ownership" and "management interest" need to be defined: Property--The surface? The minerals? The actual project? The water on the land (which is all publicly owned)? Township boards, if it's adjacent to a section line ROW? County commissioners, if it's adjacent to a county road ROW? Anyone who owns a lot in a cemetery, if it's adjacent to a cemetery? Utility companies who have an easement? Management interest--Landowners? Owners of the project? Contractors/subcontractors? Township/county planning and zoning commissions? Renters? Hunters who manage coyote population for ranchers? County weed control boards? Fish & Wildlife Service? These are all "management" interests that could be on or adjacent to the location of a proposed project. NDAC 43-02-03-49 Oil Production Equipment, Dikes, and Seals NDAC 43-02-03-51.3 Treating Plant Construction and Operation Requirements --There should be adequate dikes around everything where there is a possibility of contamination of the surrounding area. There should be listed specific reasons why a waiver may be granted by the director. Expense or inconvenience or burdensome to the oil company are not legitimate reasons. Thank you.

Submitted from governor.nd.gov on 04/22/2016 - 11:03pm from IP address: [165.234.159.14]

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Monday, April 25, 2016 11:20 AM
To: Kadrmass, Bethany R.
Subject: FW: NDIDC: Wells Pipelines & other infrastructure development, don't limit those who can testify

For the proposed rule record. Karlene

From: Haugen, Shelley K.
Sent: Monday, April 25, 2016 8:29 AM
To: Nisbet, Jason; Fine, Karlene K.
Subject: FW: NDIDC: Wells Pipelines & other infrastructure development, don't limit those who can testify

From: Apache [<mailto:apache@itdapachep1.itd.nd.gov>] **On Behalf Of** John Staley
Sent: Friday, April 22, 2016 3:58 PM
To: -Info-Governor's Office
Subject: NDIDC: Wells Pipelines & other infrastructure development, don't limit those who can testify

Contact Form Submission

Name

John Staley

Email Address

jstaley@midco.net

Phone Number

7017400265

Subject

NDIDC: Wells Pipelines & other infrastructure development, don't limit those who can testify

Comments

Dear Governor; I urge you to not limit any citizen of North Dakota from testifying on the any state policy issue. It is simply not democratic and against the values of the citizens of our state. In reference to the April 20th article in the Bismark Tribune: Don't limit those who can testify, I emphatically urge you to resist any attempt to limit citizens from their constitutional right to testify at hearings related to how wells, pipelines and other infrastructure is developed. There should be no action to insert any language relating to "interested party" as a way to limit testimony. All citizens have an interest, given the way oil impact is being made through this state such as on the budgets of our universities, as an example. Thank you for considering my request, John Staley
101 Reeves Ct. Grand Forks, ND

Submitted from governor.nd.gov on 04/22/2016 - 3:57pm from IP address: [165.234.159.13]

Kadrmass, Bethany R.

From: jstaley@midco.net
Sent: Friday, April 22, 2016 3:56 PM
To: Kadrmass, Bethany R.
Subject: NDIDC: Wells Pipelines & other infrastructure development, don't limit those who can testify

Dear Commissioners; I urge you to not limit any citizen of North Dakota from testifying on the any state policy issue.

It is simply not democratic and against the values of the citizens of our state.

In reference to the April 20th article in the Bismark Tribune: Don't limit those who can testify, I emphatically urge you to resist any attempt to limit citizens from their constitutional right to testify at hearings related to how wells, pipelines and other infrastructure is developed.

There should be no action to insert any language relating to "interested party" as a way to limit testimony. All citizens have an interest, given the way oil impact is being made through this state such as on the budgets of our universities, as an example.

Thank you for considering my request,

John Staley
101 Reeves Ct.
Grand Forks, ND

Kadrmass, Bethany R.

From: Nick Johnson <njohnson@1804operating.com>
Sent: Friday, April 22, 2016 4:47 PM
To: Kadrmass, Bethany R.
Subject: 1804 Operating's comments on proposed rule changes
Attachments: 1804 Operating comments FINAL 4-22-16.pdf

Bethany,
Please find the attached .pdf of 1804 Operating's comments on the proposed rule changes.

Thanks,

Nick Johnson
Director of Land
1804 Operating, LLC
214-699-4820

Many of the comments outlined below are derived from those made by the North Dakota Petroleum Council (the "NDPC"). Each comment so derived is labeled with "(NDPC)" at the end of the applicable paragraph.

43-02-03 General Rules

43-02-03-01 Definitions (page 1 of proposed rules)

43-02-03-01.25 Interested Party (page 3 of proposed rules)

Comment: 1804 Operating supports public comment on specific issues at formal NDIC hearings. However, the Commission should consider developing a comment process that would give independent parties having no personal justiciable property ownership or management interest the ability to provide input, but give greater weight to comments from directly impacted parties such as land owners, mineral owners, royalty owners and the permittee. (NDPC)

43-02-03-01.45 Saltwater Handling Facility (page 4 of proposed rules)

Comment: 1804 Operating believes the intent of these changes is to allow the definition to be used for saltwater disposal facilities and gathering system facilities while still using the definition within the production and drilling rules. However, 1804 Operating is concerned that as is, the definition unintentionally includes additional facilities and is unclear. 1804 Operating recommends using the UIC application definition contained in 43-02-05-01. 1804 Operating is also concerned because 'saltwater handling facility' has not been clearly defined. We believe the intention of the Commission is to only include commercial facilities that are neither on or part of well sites nor a treatment plant. We believe changing the term to 'saltwater handling and disposal facility' and using the suggested language below will accurately reflect that intent and clarify the full definition. "'Saltwater Handling and Disposal Facility' means and includes any site used for the handling, storage, and disposal of fluids which are brought to the surface in connection with oil and gas production." (NDPC)

43-02-03-11 Organization Reports (page 5 of proposed rules)

Comment: 1804 Operating feels that identifying a period of time to file the organization report in would be helpful. We suggest inserting the following sentence into the final section of 43-02-03-11 "Companies engaged in underground gathering pipeline operations on October 1, 2016, shall file and organization report within 60 days of the effective date of the 2016 amendments to this section." (NDPC)

43-02-03-14 Access to Records (page 6 of proposed rules)

Comment: 1804 Operating is concerned with this section, and does not understand its necessity when right-of-way documents are already public and filed on record with the County. 1804 Operating is also concerned that the large amount of data this requirement would produce may create additional administrative burdens for the NDIC staff and delay the construction process. If the change is necessary, 1804 Operating suggests making it required only upon the request of the Director rather than automatic. Not many underground gathering pipelines are going to have "well records" or "any and all

records of wells". 1804 Operating recommends modifying these phrases to better identify access to underground pipeline records. (NDPC)

Additionally, 1804 Operating recommends inserting 'underground gathering' after 'property' and prior to 'pipeline right-of-way' on line six of section 43-02-03-14 for consistency.(NDPC)

43-02-03-15 Bond and Transfer of Wells (page 6 of proposed rules)

43-02-03-15.1 Bond requirements (page 6 of proposed rules)

No Comments

42-02-03-15.7 Saltwater handling Facility bond. (page 9 of proposed rules)

Comment: 1804 Operating requests clarification on whether existing saltwater disposal well bonds cover the associated saltwater handling facility. Operators who operate a facility onsite with a saltwater well already have bonds in place to cover the reclamation costs associated with that study location. 1804 Operating encourages the Commission to look to the results of the ongoing IOGOC study when determining appropriate bond amounts. (NDPC)

43-02-03-15.8 Crude oil and produced water underground gathering pipeline bond (page 9 of proposed rules)

Comment: 1804 Operating is concerned that this section is overreaching. 1804 Operating recommends a new definition be added to 43-02-03-01 to define production facility. This definition would provide needed clarity to this section. Additionally, 1804 Operating suggests the terms 'system' and 'flow lines' also be defined or clarified. 1804 Operating also requests clarity on whether a blanket bond is required if a crude oil or produced water underground gathering pipeline is being built in sections. 1804 Operating believes a system should include all sections of pipeline. (NDPC)

1804 Operating also requests that any deadline to have all underground gathering pipelines bonded should take into account the date the rule goes into effect. If rules are not in place until October 1, 2016, the July 1st, 2017 deadline is burdensome and difficult to meet. (NDPC)

Suggested language: (added to 43-02-03-01. Definitions) 39. "Production facility" means any well pad as permitted pursuant to section 43-02-03-16 or any central production facility as permitted pursuant to section 43-02-03-48.1 (NDPC)

43-02-03-15.8.a(3) Pipeline Composition (page 10 of proposed rules)

Comment: 1804 Operating is concerned that the phrase "pipeline composition" is vague and recommends replacing it with "The pipeline material and design specifications" (NDPC)

43-02-03-15.8.b Crude oil and produced water underground gathering pipeline bond (page 10 of proposed rules)

Comment: As written this section does not have clear standards and gives the Commission an inappropriate amount of discretion. 1804 Operating recommends adding 'physically isolated' to the proposed language of subsection 8.b.(1). While an underground gathering pipeline may not be technically in service, a tie-in may still be active and have pressure on it. In these situations, a line has not been physically isolated, should not be considered out of service or abandoned, and should not contribute to the aggregate. For this reason, 1804 Operating recommends delineating between this type of line or system and those that have been truly abandoned. 1804 Operating is concerned with the idea of relating additional bond amounts to the economic value of the underground gathering pipeline system as proposed in 8.b.(2), and recommends striking that language. 1804 Operating believes the intent is to ensure that the State has the funds available to abandon the pipeline safely and reclaim the right-of-way, so that should be the only consideration. The pipeline's value has no relevance in relation to higher bond amounts. 1804 Operating also recommends striking the last sentence in subsection 8.b.(2), as it does not clearly define 'multiple', nor does it take into account damage or failures caused by a third party. We do not believe it is the Commission's intent, but want to clarify that if an operator has installed an underground gathering pipeline, but has not yet placed it into service, that line should not be considered abandoned. (NDPC)

Suggested Language: 8.b.(1) Any portion of an underground gathering pipeline system that has been out of service for more than one year, is physically isolated, and is not properly abandoned pursuant to 43-02-03-29.1; and

8.b.(2) An underground gathering pipeline right-of-way, including associated pipeline facility and above ground equipment, that have not been properly reclaimed pursuant to 43-02-03-29.1

If this aggregate of underground gathering pipeline systems is reached, the commission may refuse to accept additional pipeline systems on the bond until the aggregate is brought back into compliance. The commission may, after notice and hearing, require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the expected cost of pipeline abandonment and right-of-way reclamation, as determined by the commission. (NDPC)

43-02-03-16 Application for Permit to Drill and Recomplete (page 12 of proposed rules)

Comment: 1804 Operating recommends the permit length be extended to two years on all new and existing permits. This will bring North Dakota in line with BLM policy, as federal APD's are in effect for two years and may be renewed for up to two years pursuant to Onshore Oil and Gas Order No. 1, Section III.G. This will allow for proper planning and better utilization of NDIC staff time. With the current reduced rig count, industry cannot drill all of the permitted wells within one year. It is a waste of time and resources to repeat the permit process. (NDPC)

43-02-03-17 Sign on Well or Facility (page 14 of proposed rules)

Comment: NDPC is concerned that the proposed language would bring about a glut of signage. Landowners, the public and industry would not likely appreciate unnecessary signs scattered across the landscape. This section needs to be clarified and limited to what is truly necessary for safety and identification purposes so that it does not create an eyesore and redundancy. To do so, 1804 Operating recommends signage only be required on produced water facilities. Additionally, providing a definition

of facility would limit unnecessary signage by clarifying things like compressor stations and pig stations, or multiple facilities on a single location that need to be signed to this standard. 1804 Operating is also concerned that, as written, this policy may be retroactive. Requiring new signs on all existing wells will be costly and burdensome. (NDPC)

Suggested Language: Every well or facility associated with the production, transportation, purchasing, storage, treating or processing of oil, gas, and produced water except plugged wells shall be identified by a sign. (NDPC)

43-02-03-19 Site Construction (page 14 of proposed rules)

Comment: 1804 Operating suggests language clarifying the intent is for well sites and the term and intent for the word 'materials', which is being used to replace 'additives'. 1804 Operating is concerned that 'materials' may refer to straw wattles and erosion control blankets. It is inappropriate to submit a sundry notice each time erosion control maintenance is performed. Additionally, thickness in the pile will vary. 'Volume' is more appropriate. (NDPC)

43-02-03-19.3 Earthen Pits and Open Receptacles (page 15 of proposed rules)

Comment: 1804 Operating is concerned that the process for permitting portable-collapsible receptacles has not been clearly identified, and suggests only notification of use be required. 1804 Operating also recommends exempting untreated fresh water from the permit or notification and other requirements. There is no benefit in NDIC overseeing the storage of fresh water. (NDPC)

43-02-03-28 Safety Regulation (page 16 of proposed rules)

No Comments

43-02-03-29 Well and Lease Equipment (page 17 of proposed rules)

No comments

43-02-03-29.1 Underground Gathering Pipelines (page 19 of proposed rules)

Comment: 1804 Operating believes this section goes far beyond what was intended by HB 1358 and the following EERC study. As currently drafted some of the proposed rules in this section apply to existing pipelines. It is impractical to apply many of these requirements to existing lines and 1804 Operating does not believe this was the legislative intent. This issue was clearly discussed, debated and determined that this section NOT be retroactive. Section 2 of HB 1358 is expressly applicable only to pipelines placed into service after August 1, 2015. If this section must apply to lines placed into service before August 1, 2015, a reasonable period of time to bring existing lines into compliance should be identified. PHMSA 192 rulemaking gives two years for previously unregulated facilities to achieve compliance. Additionally, many of the requirements in this section appear to require approval from the Commission. This was also not legislative intent. (NDPC)

43-02-03-29.1.2 Definitions (page 19 of proposed rules)

No Comments

43-02-03-29.1.3 Notification (page 19 of proposed rules)

Comment: 1804 Operating has a number of questions and issues with this subsection. Subsection 3.a requires notification of the Commission seven days prior to commencement of construction. 1804 Operating suggests that this sentence be amended to state: "The underground gathering pipeline owner must notify the commission, as provide by the director, at least seven business days prior to commencing new construction of any underground gathering pipeline." Additionally, 1804 Operating requests that the Commission create a standardized reporting form to be used in notifying the Commission. 1804 Operating is also concerned that this rule could be interpreted to require the Commission's approval prior to construction which would clearly go beyond the legislative intent and results of the EERC study. As such, we have a number of recommendations.

1804 Operating recommends changing the requirement in subsection 3.a.(1)b. to the proposed route. It is impossible to provide the detailed information required prior to completion, and submission of the shape files requested is required upon completion. (NDPC)

1804 Operating also recommends striking subsections 3.a(1)(c)iii, 3.a(1)(c)iv, 3.a(1)(c)v, 3.a(1)(c)vii, 3.a(1)(c)viii. Many of these requirements are on par with the level of information required by the Public Service Commission for a much larger transmission line. 1804 Operating believes this is inappropriate for gathering lines. (NDPC)

Subsection 3.a(1)(c)iii is unnecessary and impractical. Due to the nature of a gathering system with multiple input and output points, the operating pressure of a pipeline will greatly differ from one end to the other, making this number imprecise at best.

Subsection 3.a(1)(c)iv requires submission of the proposed test procedure. This is unnecessary and impractical, considering the method has already been submitted. As noted above, we recommend striking this subsection. (NDPC)

Subsection 3.a(1)(c)v is unnecessary and again, a detail level beyond legislative intent. It is also a non-issue for non-metallic pipelines. As noted above, we recommend striking this subsection. If retained, it should be reworded to say "Type of external and internal corrosion control (e.g. cathodic protection and corrosion inhibitors) for all metallic pipelines."

Subsection 3.a(1)(c)vii is impractical due to the use of the word "all". Depending on how large a project is and how far in advance the 'notice of intent to construct' is being filed, this may be impossible. As noted above, we recommend striking this subsection. (NDPC)

Subsection 3.a(1)(c)viii removes flexibility of an operator to adjust routes on site. Removing the flexibility could cause more damage than leaving the judgement to bore/avoid on site. Filling an in-depth plan is impractical due to the imaging files being outdated. Surveys are done far in advance with final staking done just prior to the job starting. This is done in an effort to minimize impact to farming and to reduce the risk of stakes being knocked over. In most situations, crews encountering a wet spot (often not even an "official" wetland), they will bore

or avoid it all together. The landowner is contacted when the route veers too far off the pre-planned path. As noted above, we recommend striking this subsection. If it is to be retained, 1804 Operating recommends it be reworded to say “The location of all environmentally sensitive areas, such as wetlands, streams, or other surface waterbodies located within 200 feet of the proposed pipeline centerline, including proposed start and end points for any bore deemed necessary to avoid disturbance.”

Subsection 3.a(1)(d) is ambiguous. Will 1804 Operating be able to change inspectors during a job or will we be required to only use the one initially submitted? If the inspector does change, will notification be required? We request clarification on this rule and would suggest it be worded “A list of all third-party independent inspectors and a description of each independent inspector’s qualifications, certifications, and experience, or specific training. If the underground gathering pipeline owner changes inspectors, the Commission shall be notified of the new inspector’s qualifications, certifications, and experience and the date upon which the new inspector will start.”

1804 Operating also asks for clarification on subsection 3.b. It is unclear what is meant by ‘out of service’. The Commission should clarify whether this is meant to address ‘abandoned’ or merely not flowing for some period of time. We would also want to clarify that a newly installed line, but not yet commissioned, not be considered ‘out of service’. It is also unclear what constitutes a ‘portion’ of an underground gathering pipeline, and no consideration has been taken for a line that is part of an active system and has pressure monitoring. (NDPC)

Subsection 3.c. is also ambiguous, and somewhat redundant and damages are already reported to the One Call System. Requiring multiple reporting procedures is inefficient. The term ‘damage’ also needs to be defined. Additionally, the expectation of ‘immediately’ is unreasonable. The immediate focus of the operator should be on securing the situation to ensure that safety and environmental risks are minimized. NDPC recommends striking this subsection, but if it is to be retained, the period of time should be changed from immediately to within 24 hours. (NDPC)

43-02-03-29.1.4 (page 21 of proposed rules)

Comment: Subsection 4.a. discusses newly constructed underground gathering pipelines. The Commission should replace this with ‘underground gathering pipelines constructed after October 1, 2016,’ as newly constructed is too vague of terminology and doesn’t allow for a specific timeframe moving forward. (NDPC)

1804 Operating is concerned with subsection 4.b., as these requirements are not practical nor necessary for non-metallic gathering systems. 1804 Operating suggests rewording this section to state “All newly constructed metallic underground gathering pipelines must be designed in a manner that allows for line maintenance, periodic line cleaning, and internal integrity inspection.”

Subsection 4.c is vague and impossible to determine or enforce. It is unclear what the section means or entails, and what the intended compliance mechanism will be to prove that all installation crews are trained. Additionally, requiring crews to be trained in ALL manufacturer prescribed installation practices is a broad statement and not practical nor enforceable. We

suggest language clarifying training only for practices they are tasked to perform. Suggested language: "Installation crews must be trained in all installation practices for which they are tasked to perform." (NDPC)

Section 4.d indicates operators must limit impact to agriculture, road and utility construction. This sentence is poorly structured and needs review. These requirements are already required in the North Dakota One-Call Law. In addition to complying with state law, operators already coordinate with external stakeholders to acquire permission for pipeline routes. In most cases, the long-term impact to the land is minimal as it is common practice for ROW contracts to require the pipeline ROW to be reclaimed for future beneficial use. Again, operators already work to limit the impact to utility companies who own the lines impacting ROW plans by coordinating with North Dakota One-Call requirements. 1804 Operating believes the checks and balances are already in place ensuring operators limit these impacts through coordination with all applicable stakeholders leaving NDIC oversight unnecessary. Duplicating law under multiple jurisdictions is not beneficial. 1804 Operating recommends striking this section. (NDPC)

In 4.e. the Commission requires 'undisturbed native soil' and in instances where the trench is over-excavated provide 'appropriate' material to provide continuous support of the pipe. Both terms are poorly defined and expectations are ambiguous. 1804 Operating suggests reliance on some industry standard, such as ASME or API, that can be incorporated by reference to provide needed clarity. Additionally, it is common practice to use gravel to support pipelines. As gravel may be interpreted to be 'rocks', we suggest clarifying language, potentially with a 2 inch cutoff, as usage may vary based on the situation. In addition, the usage of trench breakers or sandbags should be allowed. (NDPC)

Subsection 4.e. also sets a minimum width of trenches to have 6" of clearance on either side of the pipe. This provision would restrict most (if not all) trenchers currently being utilized in ND for any pipe larger than 8 inches. The rule as written may also block the use of plowing or knifing techniques which result in less impact to the land and lower construction costs. 1804 Operating recommends removing this requirement. Suggested language: "...Trench bottoms must be free of rocks greater than 2 inches, debris, trash and other foreign material not required for pipeline installation..." (NDPC)

Subsection 4.f is an impractical requirement. 1804 Operating recommends only requiring county, state and township roads require boring. (NDPC)

Subsection 4.g. requires an inspection of all pipe and components before installation. Although this is typically the responsibility of the contractor and inspector, the proposed language does not specify who (DMR or the company) is responsible for this inspection. 'Visually inspected' is also an ambiguous term and it may not be practical to visually inspect every inch of the pipe prior to installation. 1804 Operating also recommends striking the phrase 'in a pipeline system' and clarifying the term 'component'. Suggest language: "No pipe or other component may be installed unless it has been visually inspected at the site of installation to ensure that it is not damaged in a manner that could impair its strength or reduce its serviceability." (NDPC)

1804 Operating has concerns as to what would constitute 'stresses' in subsection 4.h and how these requirements could be documented or proved to the satisfaction of the State. (NDPC)

1804 Operating requests further clarification of the Commission's intent in subsection 4.i. Typically, trench settling issues that get so much attention occur due to frozen ground thawing after it is buried. Other settling issues are more minor and just require fill and packing. Care must be taken not to over compact the soil in an effort to allow crops to grow properly. Discing the soil to complete reclamation is common practice. Additionally, some of the comments in regard to subsection 4.e also apply to this subsection. It is common practice to use gravel to support pipelines. As gravel may be interpreted to be 'rocks', we suggest clarifying language, potentially with a 2 inch cutoff, as usage may vary based on the situation. Suggested language: "...Backfill material that will be within 2 feet of the pipeline must be free of rocks greater than 2 inches and foreign debris. Backfilling material must be compacted as appropriate during placement..." (NDPC)

The requirements in subsection 4.k. qualify as what would be required for permitting rather than gathering system construction notification. Again, legislative intent was not to require permitting. Requiring this level of pre-planning and documentation for a gathering system will remove all flexibility in on-site relationships with landowners. In current practices, the on-site foreman has the authorization to bore or avoid any additional wet areas and work with the landowner to achieve the most practical solution possible. 1804 Operating recommends the underground gathering pipeline traverse an environmentally sensitive area for a minimum distance of 150 feet before horizontal drilling be required. The proposed language does not specify how, when or to whom the plan is to be submitted. Additionally, 1804 Operating also objects to the requirement of a registered surveyor as companies have individuals qualified and experienced in these tasks and it was not required in statute. (NDPC)

43-02-03-29.1.5 Pipeline right-of-way (page 23 of proposed rules)

Comment: The proposed language in subsection 5.b. states that all markers must be removed from the ROW. It is assumed the Commission does not intend that pipeline markers be removed. The markers are usually posted within line of sight to help in inspection and provide damage prevention precautions. The proposed language regarding 'markers' should be changed to either 'temporary' or 'construction'. Suggested language: "...All stakes, construction markers, cables, ropes, skids and any other debris or material not native to the area must be removed from the right-of-way and lawfully disposed of. Permanent pipeline markers should be set as necessary for safe operations..." (NDPC)

Caution should be taken with the word "compacted" when used in reference to ROW reclamation as in subsection 5.d. 1804 Operating suggests differentiating between subsoil and topsoil, as subsoil compaction is necessary to avoid settling of the pipeline, but over compaction of topsoil is a significant issue in proper regrowth of plant material and crops. (NDPC)

1804 Operating believes that subsection 5.f. is far more appropriate in the abandonment subsection, and that the language in this section should clarify that maintenance of the ROW is transferable upon sale and that reclamation lies with the owner of record at time of abandonment. It should also clarify that the right-of-way owner is not responsible for maintenance unrelated to their activities. (NDPC)

43-02-03-29.1.6 Inspection (page 23 of proposed rules)

Comment: Statute only requires a certificate of hydrostatic or pneumatic testing by a third party inspector. NDCC 38-08-27 states, "Upon request, the operator shall provide the commission the underground gathering pipeline engineering construction design drawings and specifications, list of independent inspectors, and a plan for leak protection and monitoring the underground gathering pipeline. Within sixty days of an underground gathering pipeline being placed into service, the operator of that pipeline shall file with the commission an independent inspector's certificate of hydrostatic or pneumatic testing of the underground gathering pipeline." Once again, the proposed language in subsection 6 reaches beyond the legislative intent in requiring the inspector to ensure the pipeline is installed as prescribed by the manufacturer's specifications and in accordance with the additional proposed requirements. 1804 Operating recommends this section be struck, as statute is clear. (NDPC)

43-02-03-29.1.7 Associated pipeline facility (page 24 of proposed rules)

Comment: Subsection 7. Also raises number of questions of clarity. The terms 'associated pipeline facility' and 'above ground equipment' are undefined and could vary the interpreted intent of this section greatly and cause significant issues. Section 18 of 38-08-02 clearly defines 'associated above ground equipment' and is clear, and 1804 Operating is unsure why the proposed language aims to create two separate things. 1804 Operating recommends limiting the proposed language to 'associated above ground equipment' as defined in 38-08-02. This section also needs clarification that it is only applicable prospectively. All of the requirements of the second paragraph of this section should include the good-cause exemption at the Director's discretion due to market conditions. 1804 Operating suggests accomplishing this by moving the second sentence in the paragraph to the end of the paragraph. (NDPC)

43-02-03-29.1.8 Underground gathering pipeline as built (page 24 of proposed rules)

Comment: 1804 Operating is also concerned with subsection 8. We believe the language proposed in this section goes far beyond the legislative intent of HB 1358. NDCC 38-08-27 clearly limits the application of requirements in this section to lines placed into service after August 1, 2015, and 1804 Operating strongly objects to the proposed rules by adding for years by using August 1, 2011 as the cutoff. Again, NDCC 38-08-27 only requires engineering construction design drawing and a plan for leak detection and monitoring be submitted only upon request. The legislative committees discussed this requirement at length, and were clear in their intent. As written, this section requires automatic submission of information far beyond that requirement, creating a deluge of paperwork for both operators and DMR staff. Additionally, many of the requirements of the proposed language provide no benefit to preventing leaks or spills. (NDPC)

1804 Operating recommends striking the last sentence of subsection 8.a. and subsections 8.a.(1)-(8) and 8.a.(10)-(11). Subsection 8.a.(5) asks for the direction of fluid flow. 1804 Operating believes this is not pertinent and has no value, as if a line is breached, the direction of flow will change toward the breach and not stay in the original direction of flow. Additionally, in a dynamic gathering system with multiple inlets and outlets, there can be segments of flow that are bi-directional by design. On complex gathering systems, it is common for segments to be activated as construction is completed and tested individually. The NDIC database would need to be able to accept a value of 'multi'. Suggested language: "... (9) Leak protection and monitoring methods that will be utilized after in-service date..." (NDPC)

43-02-03-29.1.9 Operating Requirements (page 25 of proposed rules)

Comment: Without further definition, the use of the term 'pressure-regulating devices' in subsection 9. is inappropriate. PHMSA uses the term 'pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment' in their section title 'Overpressure safety devices and overfill equipment' which encompasses a large variety of options. 'Pressure regulating devices' can insinuate an automated control device that is not necessarily appropriate nor practical on all systems. In some cases a pipeline may be protected from overpressure by installing pumps which cannot develop a pressure beyond the specification of the pipe. The lack of definition on this term leaves this regulation open to potential misinterpretation and expectations of technology that is unnecessary or possibly inappropriate. 1804 Operating recommends using the PHMSA term as it leaves the options of relief devices, regulating devices, pump limitations or pressure control valves all in the scope and allows engineering to drive the best solution for the application. PHMSA acknowledges that in instances where there is no potential for over-pressurization, pressure regulating devices are unnecessary. (NDPC)

43-02-03-29.1.10 Leak detection and monitoring (page 25 of proposed rules)

Comment: 1804 Operating also has a number of objections to subsection 10. First, it should be said that the term 'leak detection' should not be used in the title and the following subsection, as there is no system that can detect leaks 100 percent of the time, and the intent of the statute is 'protection'. The first statement in this subsection is ambiguous - there is uncertainty as to whether a plan is required, or just required to be submitted if an operator has a plan. It also seems unnecessary to file a leak detection and monitoring plan with the director, as this creates yet another pile of paperwork without any benefit. Second, 1804 Operating is concerned with the language regarding Computational Pipeline Monitoring (CPM) leak detection systems. These systems are not appropriate for gathering line, as they are intended for transmission lines. CPM models are generally considered to be algorithm based models for pipeline monitoring. Note that they are not leak detection systems despite commonly being referred to as such. According to API RP 1130 "CPM systems that use algorithmic approach to detect hydraulic anomalies in pipeline operating parameters." "The primary purpose of these systems is to provide tools that assist pipeline controllers in detecting commodity releases that are within the sensitivity of the algorithm." It is concerning that CPM is referenced without caution, thus insinuating that it is applicable and potentially expected to be applied on a broad range of crude oil and produced water gathering systems in North Dakota, even though it is not appropriate for all gathering systems. Language in this subsection should be altered so it is clear that a CPM program is not required. (NDPC)

1804 Operating is also concerned with the language in this subsection referencing data sharing plans. First, 'real-time shared access' is commonly considered a serious data security risk. Presently, 1804 Operating uses volumes over a period of time to balance input and output volumes on our gathering systems. Real time volume balancing is not possible on a gathering system with multiple variable inputs, outputs and various pressure levels throughout the day.

Suggested Language: 10. Leak protection and monitoring

...All produced water underground gathering pipeline owners must develop and maintain a data sharing plan. The plan must provide for shared access to data between the operator of the production facility, produced water underground gathering pipeline owner, and the operator at the point or points of disposal, storage or sale. If a discrepancy in the shared data is observed, all parties involved in the data sharing shall be notified immediately and action shall be taken to determine the cause. A record of all data discrepancies shall be retained by the produced water underground gathering pipeline owner. If requested, copies of such records must be filed with the commission. (NDPC)

43-02-03-29.1.11 Spill Response (page 26 of proposed rules)

Comment: Some of the proposed language in subsection 11 is inappropriate, as the North Dakota Department of Health has jurisdiction over spills that occur offsite, and each companies spill plan may differ. Additionally, requiring local emergency managers to work on every spill plan will overwhelm the local agencies and bombard them with paperwork. This is extremely onerous and will significantly slow down the process. 1804 Operating recommends striking the last two sentences of this subsection. (NDPC)

43-02-03-29.1.12 Corrosion Control (page 26 of proposed rules)

No Comments

43-02-03-29.1.13 Pipeline Integrity (page 27 of proposed rules)

Comment: Language proposed in subsection 13 is also problematic. It is not practical to leave a gathering system shut-in for 48 hours to wait for testing. Many small repairs can be made the same day they are discovered. Requiring a 48 hour delay would cause unnecessary shut-ins of the gathering system. In comparison, DOT does not require 48 hours notice, so it would seem inappropriate for the Commission to do so. If the Commission is concerned with operators conducting a valid test, then requiring a certification of calibrated gauges and a signed chart or downloaded data would be more appropriate. Delaying the repair of a leak is counter to the intent of the rulemaking, which is to proactively prevent spills. Pressure testing is also not typical for minor repairs. Other forms of non-destructive examination can be used in lieu of pressure testing and are acceptable by industry standards. (NDPC)

In subsection 13.c. the phrase 'computational pipeline monitoring and leak detection systems' should be changed to 'leak protection and monitoring systems.' Statutory language is specifically 'leak protection and monitoring', NOT leak detection. In addition the first statement in this subsection is too broad and should be removed or the NDIC should provide clarification on 'continual pipeline integrity'. Suggested Language: "The underground gathering pipeline owner of record must demonstrate pipeline integrity for all in-service underground gathering pipelines. Pipeline integrity can be demonstrated through periodic pressure testing, leak protection and monitoring systems, or internal integrity inspections. Pipeline integrity records shall be retained for the in-service life of the pipeline and made available upon request by the commission." (NDPC)

43-02-03-29.1.14 Pipeline Repair (Page 28 of proposed rules)

Comment: It is inappropriate to require an operator to wait 48 hours to repair or replace their gathering system as in subsection 14.a. An operator will commence repairs as close to immediately as possible upon discovery of the situation to ensure that minimal damage is done. Waiting 48 hours would risk further environmental damage and economic harm to an operator. If necessary to retain this subsection, it should make a distinction from an emergency situation where 48 hour prior notification is not feasible. 1804 Operating recommends striking subsection 14.a. (NDPC)

During emergency conditions or after third party damage has occurred, the temporary use of clamps or squeezing is an accepted best practice in mitigating further damage to the environment. The NDIC should make a distinction or take into account these factors when prohibiting the use of such measures for permanent repairs as in subsection 14.c. (NDPC)

Suggested Language: No owner may use any pipe, valve, or fitting, for replacement in repairing an underground gathering pipeline, unless it is designed and constructed to withstand maximum allowable pipeline pressure (NDPC)

43-02-03-29.1.15 Pipeline abandonment (page 29 of proposed rules)

Comment: Subsection 15.1 requires purging of pipeline in a manner that effectively removes all fluid. This is impractical because the methods used to purge a line may leave behind acceptable harmless fluids, such as water. The rule needs to accommodate for this, and clarify that the line should be void of produced fluid. 1804 Operating also requests language that limits this requirement to only lines being permanently abandoned, not those that are temporarily out of service. Suggested Language: "...a. When an oil and gas underground gathering pipeline or any part of such pipeline is permanently abandoned, the owner shall....(3) Purge the pipeline with fresh water, air, or inert gas in a manner that effectively removes all produced fluid..." (NDPC)

43-02-03-30 Notification of Fires, Leaks, Spills or Blowouts (page 30 of proposed rules)

Comment: 1804 Operating objects to the addition of 'root' to this section. To most operators, 'root cause' is a term indicating that a full official root cause analysis must be performed. This is not a reasonable requirement for small spills. Fresh water should be exempted from this section. The addition of gathering pipelines to this section leads to the question of what defines 'onsite' when dealing with a gathering pipeline leak. Unless the leak occurs on a well site, a release would fall under the jurisdiction of the North Dakota Department of Health. (NDPC)

In addition to our concerns about root cause analysis and gathering line leaks, 1804 Operating believes the reporting requirements of spills greater than one barrel onsite included in this section is extreme. Pads are designed for containment and efficient cleanup. Requiring reporting of this type of spill is a waste of agency resources and staff time, when emphasis and time should be spent on larger and contained spills that pose a threat to the health and safety of the environment. Comparable states set the minimum reporting requirement much higher. Federal law sets the bar at 10 bbl. 1804 Operating encourages you to adopt key finding and recommendation 5 of the EERC study, Liquids Gather Pipelines: A Comprehensive Analysis and 'recognize the impact the minimum reporting threshold has on spill statistics and evaluate accordingly how to interpret and report these data. North Dakota has among the lowest minimum reporting thresholds of the top seven oil-producing states. This creates the potential

to skew the comparison of spills between states with higher reporting thresholds, making it appear that North Dakota has more spills than other oil-producing states.' Paralleling North Dakota's reporting requirements with federal and other states' requirements will result in more accurate and consistent reporting. The Bureau of Land Management separates spills into two categories: Major Spills and Other-Than-Major Spills (aka Minor). Minor spills or discharges in non-sensitive areas involving less than 10 bbl of liquid do not require oral or written reports. 1804 Operating strongly suggests increasing the reporting requirement contained within this section to 10 bbl or greater, especially when considering the potential of the new requirements proposed in 43-02-03-49. (NDPC)

43-02-03-30.1 Leak and Spill Cleanup (page 31 of proposed rules)

Comment: 1804 Operating objects to the addition of 'responsible parties.' This broad term needs further definition if it is to be included. (NDPC)

43-02-03-31 Well Log, Completion & Workover Reports (page 31 of proposed rules)

No Comments

43-02-03-34 Method of Plugging (page 33 of proposed rules)

No Comments

43-02-03-34.1 Reclamation of Surface (page 33 of proposed rules)

Comment: The term facilities needs to be defined. (NDPC)

43-02-03-40 Gas-Oil Ratio Test (page 34 of proposed rules)

No Comments

43-02-03-48 Measurement of Oil (page 35 of proposed rules)

No Comments

43-02-03-49 Oil Production Equipment, Dikes and Seals (page 35 of proposed rules)

No Comments

43-02-03-51.1 Treating Plant Permit Requirements (page 36 of proposed rules)

No Comments

43-02-03-51.3 Treating Plant Construction and Operating Requirements (page 37 of proposed rules)

No Comments

43-02-03-52 Report of Oil Production (page 39 of proposed rules)

No Comments

43-02-03-52.1 Report of Gas Produced in Association with Oil (page 40 of proposed rules)

No Comments

43-02-03-53 Saltwater Handling Facilities (page 40 of proposed rules)

Comment: 1804 Operating is concerned that the application of this section is unclear because 'saltwater handling facility' has not been clearly defined. We believe the intention of the Commission is to only include commercial facilities that are neither on or part of well sites nor a treatment plant. We believe changing the term to 'saltwater handling and disposal facility' as described in our comments on section 43-02-03-1 accurately reflects this intent. (NDPC)

43-02-03-53.1 Saltwater Handling Facility Permit Requirements (page 41 of proposed rules)

Comment: 1804 Operating believes existing saltwater handling and disposal facilities should be grandfathered in to the new requirements, with the original UIC permit acting as the permit. Additionally, 1804 Operating is concerned that subsections 2 and 5 are very open-ended. We suggest striking these sections. We also recommend striking subsection 1.e., as the information it would obtain is already required in subsection 1.c. (NDPC)

Prior to the rule change proposed in subsection 6, operators have been able to request a renewal for a second year on permits. We request that this practice continue and suggest the inclusion of an exemption if authorized by the director in this subsection. (NDPC)

43-02-03-53.2 Saltwater Handling Facility Siting (page 42 of proposed rules)

Comment: 1804 Operating is concerned the term 'hydrologically sensitive area' is broad and needs clarification as suggested below. "All saltwater handling and disposal facilities shall be sited in such a fashion that they are not located in a geologically or hydrologically sensitive area unless otherwise supported by a hydrogeological study." (NDPC)

43-02-03-53.3 Saltwater Handling Facility Construction and Operation Requirements (page 43 of proposed rules)

Comment: 1804 Operating would like further clarification on what the Commission hopes the requirement in subsection 2 will accomplish. (NDPC)

1804 Operating is concerned that the containment capacity required in subsection 5 is too great. Facilities connected to gathering systems tend to have a larger throughput than traditional trucked facilities. These gathering system associated facilities then end up having extremely large dike capacities that become impractical. Considering that many operators including 1804 Operating have SCADA monitoring or manned operations at these larger facilities, consideration should be given to re-evaluate this rule. Additionally, these facilities are visited frequently or have personnel on-site when active. This reduces the risks associated with releases not be identified in a 24-hour period. Suggested language: "Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid throughput. An

exception will be granted for sites that are manned twenty-four hours or that are monitored remotely with shut-down capabilities. For sites with continual monitoring, the dikes must be of sufficient dimension to contain the total capacity of two times the largest tank within the facility. The required capacity of..." (NDPC)

1804 Operating is concerned that the berm requirement in subsection 6 will be due to the volume of truck traffic. (NDPC)

1804 Operating requests clarification of the intent of subsection 9. (NDPC)

1804 Operating recommends striking subsection 12. The intent of this section seems to be to allow a process for a hazardous determination for any waste on an E&P site. E&P waste has already been deemed RCRA-exempt, making this requirement inappropriate and unnecessary. (NDPC)

1804 Operating feels that sections 14 and 15 are overreaching and inappropriate. Operators should not be required to seek changes for approval in valves, control, piping configurations, pumps, motors, etc. If changes do not change the volumetric capacity of the tanks, they should not fall under the jurisdiction of the Commission. (NDPC)

43-02-03-53.4 Saltwater Handling Facility Abandonment and Reclamation Requirements (page 45 of proposed rules)

Comment: 1804 Operating believes a job 'receipt' would not accomplish what the Commission is looking for and suggests the term 'record' be used instead. "...and if requested, a copy of any job record setting forth in detail the method and operations used in abandoning the saltwater handling facility." (NDPC)

43-02-03-55 Abandonment of Wells, Treating Plants, or Saltwater Handling Facilities - Suspension of Drilling (page 45 of proposed rules)

Comment: 1804 Operating recommends the addition of an exemption at the discretion of the director to 43-02-03-55.1. Additionally, 1804 Operating suggests a change of the language in subsection 2 for clarity. As currently written, it could be interpreted to mean a surface owner may require a review every seven years. "After a well has been temporarily abandoned for at least seven years, a surface owner may request a review pursuant to subsection 1 of North Dakota Century Code section 38-08-04." (NDPC)

43-02-03-80 Reports of Purchasers and Transporters of Oil (page 46 of proposed rules)

No Comments

43-02-03-81 Authorization to Transport Oil (page 47 of proposed rules)

No Comments

43-02-03-90 Hearings, Complaints and Other Proceedings (page 47 of proposed rules)

Comment: 1804 Operating strongly questions the necessity of the proposed change, as well as the need for the fee at all. These hearings are a primary role of the Department of Mineral Resources, which is funded through a general fund appropriation. Hearings are often continued for good cause by the applicant or the agency. We object to the new fee. If the fee stands, it must be billed in a timely manner so that it is able to be billed to the applicant. "Any person moving for a continuance of a hearing, and who is granted a continuance, shall submit a twenty-five dollar fee, or the estimated cost of republication if the cost exceeds fifty dollars, if billed within 30 days, to the commission to pay the cost of republication of notice of the hearing. (NDPC)

43-02-03-90.2

No Comments

43-02-05 Underground Injection Control

43-02-05-04 Permit Requirements (page 49 of proposed rules)

Comment: 1804 Operating recommends changing the automatic expiration to a period of two years in subsection 10 to be consistent with other oil and gas permits. (NDPC)

43-02-05-07 Mechanical Integrity (page 51 of proposed rules)

Comment: 1804 Operating understands the desire of the Commission to ensure mechanical integrity of wells, however, we do not feel an operator should be required to obtain permission to work on their own wells. We suggest the requirement be of notification rather than approval. Additionally, 1804 Operating seeks guidance on what the Commission considers a 'workover project' and recommends the insertion of 'injection' for clarity. "Prior to performing any workover project on an existing injection well during which it is anticipated that the packer or other means of annular isolation will be disrupted, the operator must notify the director by means of a sundry. (NDPC)

43-02-05-11 Bonding Requirements (page 52 of proposed rules)

No comments.

43-02-08 Stripper Well Property Determination

43-02-08-02.1 Property Determination (page 53 of proposed rules)

No Comments

43-02-08-03 Director to Determine Stripper Well Status (page 53 of proposed rules)

No Comments

Kadrmass, Bethany R.

From: Buel Sonderland <elk42041@aol.com>
Sent: Friday, April 22, 2016 3:50 PM
Subject: 2016 New Rules Comments

My comments on the proposed rule change to redefine "interested parties" allowed to testify or comment at hearings on the development of oil, gas, pipelines and infrastructure, is to ask the NDIC to reject the proposal. To remove it from consideration.

North Dakota citizens take pride in their state and we cherish our right to speak out and voice our comments. We are affected by this type of development as we work and recreate in the state.

Buel Sonderland
701-799-2646
2102 25 1/2 Ave S
Fargo, ND 58103
elk42041@aol.com

Kadrmass, Bethany R.

From: Bonnie Palecek <bonniepconsult@gmail.com>
Sent: Friday, April 22, 2016 2:14 PM
To: Kadrmass, Bethany R.
Subject: 2016 New Rules Comments
Attachments: BCA Oil and Gas Hearing.docx

704 Mandan St.
Bismarck, ND 58501

Oil and Gas Division
600 E. Blvd Ave Dept 405
Bismarck, ND 58505
April 22, 2016

To Whom It May Concern:

I am writing as a landowner and a concerned North Dakota citizen regarding the proposed definition of "interested party" relating to hearings on oil and gas development in North Dakota.

I am deeply troubled by what appears to be a growing trend to limit public involvement in issues such as this, issues which are of grave mutual concern to all of us. It is hard to comprehend why we would ever want to discourage such involvement, when so many have worked for so long to encourage the opposite, trying to get people to see and act on their stake in an informed, engaged community. This kind of limiting proposal only encourages cynicism and passivity; it creates a sense of helplessness fostered by being left out of decision making processes that intimately affect our daily lives.

Please don't pursue this unfortunate proposal further. Keep the reality of a strong and engaged populace alive!

Thank you,

Bonnie Palecek

704 Mandan St.
Bismarck, ND 58501

Oil and Gas Division
600 E. Blvd Ave Dept 405
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Please don't pursue this unfortunate proposal further. Keep the reality of a strong and engaged populace alive!

Thank you,

Bonnie Palecek

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Monday, April 25, 2016 11:18 AM
To: Kadrmass, Bethany R.
Subject: FW: 2016 New Rules Comments

For the proposed rule record. Karlene

From: Haugen, Shelley K.
Sent: Monday, April 25, 2016 8:29 AM
To: Nisbet, Jason; Fine, Karlene K.
Subject: FW: 2016 New Rules Comments

From: Apache [<mailto:apache@itdapachep1.itd.nd.gov>] **On Behalf Of** Bonnie Palecek
Sent: Friday, April 22, 2016 2:19 PM
To: -Info-Governor's Office
Subject: 2016 New Rules Comments

Contact Form Submission

Name
Bonnie Palecek

Email Address
bonniepalecek@gmail.com

Phone Number
7012027396

Subject
2016 New Rules Comments

Comments

704 Mandan St. Bismarck, ND 58501 Oil and Gas Division 600 E. Blvd Ave Dept 405 Bismarck, ND 58505
April 22, 2016 To Whom It May Concern: I am writing as a landowner and a concerned North Dakota citizen regarding the proposed definition of "interested party" relating to hearings on oil and gas development in North Dakota. I am deeply troubled by what appears to be a growing trend to limit public involvement in issues such as this, issues which are of grave mutual concern to all of us. It is hard to comprehend why we would ever want to discourage such involvement, when so many have worked for so long to encourage the opposite, trying to get people to see and act on their stake in an informed, engaged community. This kind of limiting proposal only encourages cynicism and passivity; it creates a sense of helplessness fostered by being left out of decision making processes that intimately affect our daily lives. Please don't pursue this unfortunate proposal further. Keep the reality of a strong and engaged populace alive! Thank you, Bonnie Palecek

Submitted from governor.nd.gov on 04/22/2016 - 2:19pm from IP address: [165.234.159.14]

Kadrmass, Bethany R.

From: Viv Hawbaker <curlnski@nccray.com>
Sent: Monday, April 25, 2016 1:16 PM
To: Hicks, Bruce E.
Cc: tmfarm@nccray.com
Subject: Comment for April 11-14, 2016 Hearings on Proposed Rules/Amendments

TO: Oil and Gas Commission, NDIC

From: **Viv Hawbaker** 701.770.3890
PO Box 1831, Williston, ND 58802
Ted Hawbaker 701.339-1122 c/ 701.933-2869 h
10741 Highway 52, Portal, ND 58772

Subj: April 2016 Proposed Rule Changes -- Definitions
Proposed Definition 25 – page 3 of
General Rules and Regulations
43-02-03-01 – Addition of #25

The proposed addition of Rule 25 definition recites in the Full Notice of Intent ... :

"Interested party" means an individual or number of individuals that have a property ownership or management interest in or adjacent to the subject matter.

If the intended application of this rule/definition is to

- clarify who may testify at the NDIC monthly hearings,
 - o we support this added rule
 - to address the current hearing rule[s] that allows a company attorney/representative to object to testimony from individual[s] who testify on behalf of a mineral/surface owner within the sections that are named in the case on the docket
 - to address the current rule[s] that determines that testimony 'on behalf of an owner by a knowledgeable party' cannot be used in the decision making process

Our support of the proposed rule stems from appearing at two hearings in which John Morrison and Wade Mann, both attorneys for Petro Harvester, objected to testimony that was presented on behalf of individuals who requested that we speak on their behalf. The two cases in which the company attorney objected are

- [October, 2014 Case 23104—Mr. Morrison objected—Order 25433](#)
- [January, 2016 Case 24741—Mr. Mann objected --Order 27104](#)

One of the interest owners was sitting in the audience of the hearing room during the January case; we had asked her to join us at the table, but she wanted nothing to do with speaking in front of strangers.

[I did try to find the rule that allows a company attorney to object to testimony so I could reference it in this comment—I realize it is somewhere but it is beyond my search knowledge.]

Recent examples of owners who requested representation on their behalf are individuals who are

- 80+-year old mineral owners [a real life example but any age group is applicable]
- Landlords who call the tenant to discuss any proposal regarding the use of their surface for oil and gas activity and/or regarding a lease buyer who calls with an offer
- Friends/neighbors who may not have the 'on the ground' knowledge but have concerns and/or wish to know how a case may affect their interests

- The above three examples are only that; they are real-life examples wherein testimony has been objected to by company attorney due to lack of ‘personal ownership’ by the individual testifying—that objection was raised even though it was made clear that the testimony was presented on BEHALF OF OWNERS who had prior commitments. That the testimony presented was directly related to the company operations within the field and/or sections under discussion, did not seem to be a concern to the company.

The addition of ‘individual[s] having a property interest or management interest in or adjacent to the subject matter’, provides the hearing staff with pertinent information regarding the company and/or the land under consideration. This is a scenario that will only grow as more and more owners become distanced from the land. The distance from the land leaves the owners in the position of asking for help from parties who are knowledgeable of the land and company practices as well as potential issues that may arise from company use of their land or company plans regarding production from the mineral interest.

As you are aware, more and more land is in the hands of ‘landlords’ and the actual farming is performed by a tenant. Also, as the owners die, their heirs may or may not be knowledgeable of issues regarding their asset[s] and, therefore, ‘off the land’ owners will be looking for information. The type of information they are in need of does not come by consulting an attorney. Therefore, they are looking at fellow owners and/or tenants for information.

Summary: This support is not intended to cause a person/entity outside the specific definition ‘have a property ownership or management interest’ to not have a voice regarding an issue they deem applicable to the case; however, **the support is for an individual[s] to present testimony on behalf of an owner [surface or mineral or both] without having a company attorney object and/or the commission hearing rules to deem said testimony is not relevant** – even when it is presented on behalf of an owner.



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Kadrmass, Bethany R.

From: Viv Hawbaker <curlnski@nccray.com>
Sent: Thursday, April 21, 2016 8:51 AM
To: Hicks, Bruce E.
Subject: Inquiry for Comment --FW: Proposed Definition 25 and case hearing attorney objection to testimony from mineral owner ...
Attachments: 2016 Apr 7--define interested party article.pdf; 2016 Apr 12-interested party Rule 25.pdf; 2016 Apr 14 interested party p1.pdf; 2016 Apr 14 interested party.pdf

Good morning, Bruce –

This is a follow up to last Friday's inquiry – which I can see may have just gone into a folder regarding comments on the Proposed Rules/Amendments.

To complete my comment on the Proposed Definition 25, I thought it would make sense to reference the basis for the company attorney to voice an objection to my testimony at two hearings over the past 1.5 years.

My original inquiry is below.

Viv Hawbaker
701.770.3890

From: Viv Hawbaker [mailto:curlnski@nccray.com]
Sent: Friday, April 15, 2016 2:32 PM
To: 'Hicks, Bruce E.'
Cc: 'Ted & Mary Hawbaker'
Subject: Proposed Definition 25 and case hearing attorney objection to testimony from mineral owner ...

Bruce –

Summary of Question: Basis/Procedural Rule for company attorney objection to testimony from a mineral owner in the field named in the case OR objection to testimony on behalf of an owner within the sections and/or field in a case.

I have appeared at two commission hearings regarding spacing requests from Petro Harvester.

- October, 2014 Case 23104—Order 25433
- January, 2016 Case 24741—Order 27104

The company attorneys, John Morrison and Wade Mann, each raised an objection to testimony from me and in January also from my brother. Fortunately, each time the hearing officer allowed me and/or my brother, Ted Hawbaker, to present our concerns.

After each hearing, I did a cursory search through the Rules & Regulations posted on the DMR website--
<https://www.dmr.nd.gov/oilgas/> looking for the basis of the attorneys' objection.

After not finding a basis/rule, I let each occurrence drop since I didn't anticipate needing to appear at another hearing and I didn't know who to contact with my question regarding the basis for each attorney's objection.

The reason for this inquiry about the rule/basis for the attorneys' objection [because I don't know who else to ask] is because of the following:

- Proposed Definition 25 of 43-02-03-01 has been receiving much negative press [three articles so far that I've read]

- When I read the proposed definition in March, I'd thought it would address and, therefore, eliminate the company attorney from objecting to testimony on behalf of an owner within the subject case sections
- I hoped that the word 'adjacent', in the proposed definition, would include owners within a field who are concerned about a precedent being set, as to spacing or other rule, regarding the field in which the owner has minerals
- When I read Mr. Helms' comment in the Apr 12 article [about half way down the page [second column of the article]], I thought that confirmed my take on the proposal and I planned to write a comment to that effect

Before I finish my written comment in support of the assumption I made and the way I read Mr. Helms' comment in the Apr 12 article, I think it would be helpful to know what was the basis for Mr. Morrison's and Mr. Mann's objections so I can address that issue as the basis for my support.

Viv Hawbaker
Williston, ND
701.770.3890

Please know that I appreciate the willingness of the staff to listen to concerns.

From: Hicks, Bruce E. [<mailto:bhicks@nd.gov>]
Sent: Friday, April 15, 2016 10:11 AM
To: Viv Hawbaker
Subject: RE: email address to send written comments regarding Proposed Rule Changes

Viv,

You can send your written comments to me. Please note we must receive them before 5pm on April 25, 2016.
Sincerely,

Bruce E. Hicks

Assistant Director
Oil and Gas Division
Dept of Mineral Resources
North Dakota Industrial Commission
701-328-8020
bhicks@nd.gov
www.dmr.nd.gov/oilgas
Bismarck, ND 58505-0840

From: Viv Hawbaker [<mailto:curlnski@nccray.com>]
Sent: Wednesday, April 13, 2016 9:12 PM
To: Hicks, Bruce E.
Subject: email address to send written comments regarding Proposed Rule Changes

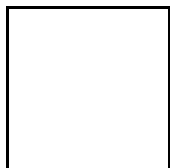
Bruce –

Can the written comments be **emailed to the oil and gas division?**

If so, what EMAIL address should be used?

Sorry, to bother you with this but would much prefer email to snail mail.

Viv Hawbaker
701.770.3890



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Defining ‘interested party’ could affect oil hearings

BY AMY DALRYMPLE
FORUM NEWS SERVICE

BISMARCK - A proposed North Dakota Industrial Commission rule would severely limit public participation in oil and gas issues, the Democratic candidate for governor said this week.

Marvin Nelson, a state legislator from Rolla, said he opposes a proposal under consideration that would define an “interested party” in oil and gas statutes as a landowner or property manager.

“Years ago, people were required to own land to vote, and we thought those days were past,” Nelson said. “Now, the Industrial Commission says people can’t even comment without owning land.”

In North Dakota oil and gas statutes, there are several references to an “interested party” in the context of appearing at hearings or submitting comments. But the statutes don’t define interested party.

The proposed definition states this: “Interested party means an individual or

number of individuals that have a property ownership or management interest in or adjacent to the subject matter.”

Nelson said the policy change would prevent North Dakotans from commenting on oil and gas proposals that affect the state’s land, water and air.

“To me, it seems like such a huge limitation on the public,” Nelson said.

Alison Ritter, spokeswoman for the Department of Mineral Resources, said the proposal seeks to find a workable definition for “interested party.”

“This is exactly why we go through the lengthy public process to get comment and to get input so we can get to the right conclusion,” Ritter said.

The definition was drafted by the Department of Mineral Resources Oil and Gas Division, Ritter said.

Attorney General Wayne Stenehjem, one of three Industrial Commission members and the Republican candidate for governor, said the definition is only a proposal and

the Industrial Commission has not taken a stance on it.

“I favor a wide and robust public involvement when the government is taking any kind of action,” Stenehjem said.

The Industrial Commission consists of the governor, attorney general and agriculture commissioner.

Jan Swenson, who routinely testifies at monthly oil and gas hearings on behalf of the Badlands Conservation Alliance, said she’s concerned about how the definition could affect her group’s ability to participate.

“We don’t really know what this says at this point,” Swenson said.

The Badlands Conservation Alliance often comments on oil proposals that affect areas near Theodore Roosevelt National Park, the Little Missouri National Grasslands and other public lands.

“Industry has, on occasion, shown concern that we are there. We have been tolerated more than we have been welcomed,”

Swenson said. “Which we, of course, think is an error because BCA has an expertise about public land in western North Dakota that we don’t think industry has.”

The public will have the opportunity to comment on that proposed rule and others next week at four public hearings scheduled April 11-14 in Bismarck, Dickinson, Williston and Minot. Stenehjem noted that typically such hearings have only been in Bismarck, but this time hearings were scheduled in other Bakken communities.

Many of the other proposed rules under consideration deal with adding stronger regulations for gathering pipelines and saltwater handling facilities.

“It’s kind of a shame because most of the rest of the rules generally look pretty good,” Nelson said.

The full proposal, details about the public hearings and information about how to submit comments can be found at www.dmr.nd.gov/oilgas. Written comments will be accepted through April 26.

ND land values decline for second year

BY JESSICA HOLDMAN
BISMARCK TRIBUNE

BISMARCK – Along with lower crop values, North Dakota farmland values have dropped for the second year in a row.

“Going forward, the question is: How fast and how far will land values decline?” Andy Swenson, North Dakota State University Extension Service farm management specialist, said in a statement.

According to a North Dakota Department of Trust Lands study, North Dakota average cropland values declined about 4 percent in 2015. A report by the North Dakota Chapter of the American Society of Farm Managers and Rural Appraisers found the decline to be greater — 9 percent in 2015. Swenson expects land values to drop by another 5 to 10 percent in 2016.

The declines come on the heels of an 11-year streak of value increases averaging 15 percent annually.

Only one region of the state saw an increase. From January 2015 through January 2016, land values in the northwest rose 13 percent to \$1,185. Swenson said crops, like durum, peas and lentils, typically grown in the region were more profitable than other crops in 2015.

Northwest landowners

• NORTH DAKOTA IN BRIEF

APPROVAL PROCESS FOR OIL REFINERY NEAR PARK COULD BE LENGTHY

FRYBURG, N.D. (AP) — The permitting process for a proposed oil refinery in southwestern North Dakota will be lengthy because of the proposed plant’s proximity to Theodore Roosevelt National Park, a state health official says.

Houston-based Meridian Energy Group Inc. is planning a 55,000-barrel-per-day refinery between Fryburg and Belfield. The \$850 million plant would be only about 3 miles from the national park.

The plant will have to meet more stringent air

quality standards because of its location, state Health Department environmental engineer Craig Thorstenson told The Bismarck Tribune.

It could take as long as a year to run computer models that factor in existing pollution, new pollution from the refinery, and wind and weather data, according to Thorstenson.

“It’s a very unique situation. It will be very difficult and lengthy,” he said.

Meridian has hired a company that specializes in emission dispersion modeling, and the refinery will be “the cleanest plant ever built,” President Wil-

liam Prentice said.

“We know how close this is to the park, and we think we can co-exist with pristine air,” he said.

Meridian plans to file an air quality permit application with the state next month.

The National Park Service and the federal Environmental Protection Agency have the right to weigh in on the decision.

In the meantime, the company is seeking permission from Billings County to begin dirt work. A final decision could come in early May.

MAN GETS NO ADDITIONAL JAIL TIME FOR HIGH-SPEED CHASE

GRAND FORKS, N.D. (AP) — A man who led police on a car chase from Reynolds to Grand Forks that reached speeds approaching 130 mph will see

no additional jail time.

WDAZ-TV reports that 21-year-old Cole Johnson was sentenced Tuesday. Under a plea deal with prosecutors, he will complete a drug court program and serve two years of probation.

Authorities said that during the chase last November, Johnson continued to flee even after running over a tire deflation device deployed by police, and that he had “total disregard to the public.”

LINCOLN MAN CHARGED WITH ATTEMPTED MURDER IN ALLEGED ATTACK

LINCOLN, N.D. (AP) — Bond has been set at \$75,000 cash for a Lincoln man accused of trying to kill a woman by hitting her in the head with a rock and choking her.

Forty-four-year-old Arthur Crissler faces an

attempted murder charge and two other felonies that together carry a maximum punishment of 30 years in prison.

Court documents don’t list an attorney for Crissler, and a home telephone listing for him could not be found.

Court documents say the 41-year-old woman was able to get away on Friday night and flag down a passing motorist when Crissler went inside a residence to allegedly get a gun.

Crissler is on federal probation for a 2007 drug-related conviction.

JUDGE DECLINES TO THROW OUT NORTH DAKOTA VOTER ID LAWSUIT

BISMARCK, N.D. (AP) — A federal judge has refused to throw out a lawsuit alleging that North Dakota’s voter identification laws are unfair and unconstitutional.

The complaint was filed in January by seven members of the Turtle Mountain Band of Chippewa. It alleges that the voter ID requirements violate the U.S. Voting Rights Act.

The plaintiffs say some tribal members can’t afford the required identification.

The state said in its motion to dismiss that the plaintiffs failed to state a valid claim in the complaint. U.S. District Judge Daniel Hovland disagreed and said tribal members have properly outlined their claims with personal stories of each plaintiff and their experience with the state’s voting laws.

North Dakota is the only state without voter registration, but state law has required voters to provide ID since 2004.

STUTSMAN VOTERS TO CONSIDER APPOINTED STATE’S ATTORNEY

JAMESTOWN, N.D. (AP) — Residents of Stutsman County will get to vote in June on whether the state’s attorney should be appointed instead of elected.

KQDJ radio reports that Stutsman County commissioners during a recent meeting discussed the ballot language regarding the county position. Stutsman County Auditor Casey Bradley says current State’s Attorney Fritz Fremgen refrained from giving his opinion on the change. Bradley says the commission has run the ballot language by several other commissions.

An investigation by an outside agency last year found that Fremgen likely violated the county’s harassment policy by creating a hostile work environment, but it found no evidence of criminal activity. The county could not fire Fremgen because he was elected, but commissioners instructed him to receive coaching by the Village Business Institute of Fargo.

ARMY CORPS OF ENGINEERS DEEMS LAKE SAKAKAWEA TO BE ICE-FREE

RIVERDALE, N.D. (AP) — Lake Sakakawea is officially ice-free.

The Army Corps of Engineers declared the Missouri River reservoir ice-free on Friday, April 1.

The lake was deemed iced over on Jan. 15. KXMC-TV reports that the 77-day span is the fourth-shortest length of time the lake has been iced over since it was formed by Garrison Dam in the mid-1950s.

The shortest ice duration on the lake was 69 days in 2012.



(Forum News Service/Mikkel Pates)

This field stood unplanted east of Dickinson, N.D., on July 2, 2014. The prairie pothole states of North Dakota, South Dakota, Minnesota and Iowa, have been heavy users of prevent-plant crop insurance benefits. Photo taken July 2, 2014, Dickinson, N.D. (Embargo to March 3, 2015, 1 a.m.)

also did not see the same level of value increases previously as those in other regions.

From 2004 to 2014, land values increased about 300 percent for all regions but the northwest, whose land value increased only 170 percent.

Central North Dakota, the northern Red River Valley and southwest North Dakota land values stayed about the same. The southeast and northeast regions’ values dropped 4 and 8 percent. The southern Red River Valley declined 12 percent.

“Declining values of land reduce the borrowing capacity of the landowning farmer,” Swenson said. “This could be a serious problem if a farm needs

to borrow money to cash flow.”

While lower land values make the purchasing price more attractive to potential buyers, “lower crop prices and farm incomes have dampened the financial ability and enthusiasm of farmers for purchasing land,” Swenson said.

Several regions had a decline in cropland cash rental rates but the decline of rents is happening at a much slower rate than the land value declines. The largest decline was in south central North Dakota, down 11.6 percent to \$56.90 per acre.

The last significant period of decline in land values was from 1981 to 1987, when values dropped 40 percent.



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XNLY252124

The family of Virgil Karst would like to express their sincere gratitude to those who assisted in the care of our Dad in recent years.

- Bethel Lutheran Nursing and Rehabilitation Center
- Mercy Medical Center
- Dr. Paul Andelin
- Dr. John Andelin
- Dr. Wm. Curtis Small
- Dr. Edward Pierce and Staff
- Sidney Health Center
- Sidney Health Center Extended Care Facility

Our family would also like to thank all of Dad's family, friends and neighbors who have so humbled us with their outpouring of love and support since his passing. We truly do live in a wonderful and caring community

Sincerely,
Blaine Karst; Daniel, Lanette, Alex and Allyson Young

XNLY264432

Emails show museum closed green energy exhibit after complaints from fossil fuel industry

BY EMILY GUERIN
INSIDE ENERGY

BISMARCK -- It's hard not to notice the influence of the oil and coal industries at the North Dakota Heritage Center in Bismarck. Inside the Continental Resources-sponsored Inspiration Gallery you can learn about coal reclamation, touch the Bakken shale, and guess which everyday products are made of petroleum. You can buy oil-themed chocolate at the gift store. Fossil fuel companies are some of the largest donors to this museum, which reopened in 2014 after a \$52 million expansion and renovation.

That's why a traveling Smithsonian exhibit called Green Revolution that talked about climate change and renewable energy seemed like an odd fit. In fact, it was closed just four months after it opened, and just over a week after a series of complaints from the oil and coal industry groups that helped the museum expand.

The day after the exhibit closed, a volunteer behind the museum's front desk sighed and said, "Oh boy," when a reporter asked to see the Green Revolution exhibit. She summoned a museum employee who said exhibit was closed and was being enhanced. When asked why, she read from a piece of paper taped to the desk.

"(The exhibit) has been open for about three months, and after assessing the exhibit and receiving visitor feedback we are going to temporarily close the exhibit gallery to enhance the exhibit," she read, and then looked up. "It's a Smithsonian exhibit, but I think they're adding the North Dakota story."

She called the museum's communications director, Kimberly Jondahl, down to explain further. Standing in front of the exhibit's locked door, Jondahl said the plan was to add more about local sustainability efforts in North Dakota and reopen the exhibit.

"The green movement can have a little

controversy in it based on who the person is looking at the exhibit," she said. "What we want to do to is make sure it's balanced."

The exhibit includes panels that talk about green jobs, wind energy and recycling. There are phrases like "kick the oil habit," "factories belch pollution" and "expensive, polluting fossil fuels." Yet Jondahl said they had not received pushback from oil or coal companies.

"We've had comments of, 'let's try to show a balanced perspective.' There haven't been any comments at all of take the exhibit away or don't have it here at all."

According to an open records request made by Inside Energy, no one from the coal or oil and gas industries asked explicitly for the exhibit to be taken down. But in an email dated Monday, Feb. 29, the North Dakota Petroleum Council -- which has given

over \$200,000 to the museum -- said the placement of the exhibit, right across from the North Dakota Petroleum Council Gallery, seemed "inappropriate."

Tessa Sandstrom, communications director for the North Dakota Petroleum Council, said she heard from a friend who works in the oil industry who was unhappy with the exhibit.

He sent her some pictures of offending panels. Without going to visit herself, she complained to her boss, Ron Ness, that the exhibit wasn't objective.

"To have it just saying that we're terrible people right next to an exhibit where we helped buy a T. rex that I'm sure kids just love, it was a little frustrating and disappointing frankly," she said. "We felt it was inflammatory and didn't tell the full truth."

That same week, David Straley, a spokes-

man for North American Coal -- which has donated a quarter million dollars to the museum -- complained the exhibit, "throws coal and fossil fuels under the bus" and said it may cause "some internal heartburn (hopefully not more)" from the company.

Both times, Marlo Sveen, development director for the State Historical Society of North Dakota Foundation, the nonprofit organization that raised \$12 million for the museum expansion, promptly assured the donors their complaints would be taken seriously.

"We are not pleased," he wrote back to North American Coal's Straley, who declined to comment for this story. "There is a meeting scheduled for next Tuesday to discuss what to do."

And there was. On March 2, two days after receiving Ness' email, Claudia Berg, director of the State Historical Society of North Dakota, which runs the Heritage Center, had sent out an email scheduling a meeting for the following Tuesday to assess the exhibit in light of recent complaints.

On the following Tuesday, March 8, Berg made the call to close the exhibit.

"Really, it was not pressure from anyone to close the exhibit," she said, "it was our own decision to close it and make it better."

Berg says she had concerns about Green Revolution from day one. She thought it was "lacking enthusiasm" and that visitors and volunteers complained it was boring.

"This was a discussion we were having much earlier than this," she said. "It's happenstance that some of this coordinated the way you have it laid out."

Berg plans to reopen Green Revolution after adding more about sustainability efforts in North Dakota. They have asked the same oil and coal industry groups that complained about the exhibit for more information on how they have become more green. Berg says it is appropriate to ask them, because she lacks that expertise.



The Green Revolution exhibit at the North Dakota Heritage Center.

Photo by Emily Guerin -- Prairie Public/Inside Energy

TransCanada resumes sending oil shipments through Keystone Pipeline

BLAKE NICHOLSON
ASSOCIATED PRESS

BISMARCK, N.D. (AP) — TransCanada Corp. has resumed sending oil through the Keystone Pipeline after a weeklong shutdown prompted by a leak and oil spill in southeastern South Dakota.

The pipeline came back online Sunday, but with a reduced pressure under a controlled restart whose terms were ordered by the federal Pipeline and Hazardous Materials Safety Administration. TransCanada also will be reviewing construction records, doing additional inspections of the pipeline and additional ground and air monitoring, spokesman Mark Cooper said Monday.

TransCanada estimates about 400 barrels of oil, or just under 17,000 gallons, spilled onto private land during the leak, the duration of which the company says is unknown. Federal regulators sent the company an order Saturday that said an "anomaly" on a weld on the pipeline was to blame for the leak, but

the cause wasn't immediately determined. When a third-party metallurgist hired by TransCanada discovered the leak, it was releasing oil at a rate of about two drops per minute.

State Department of Natural Resources environmental scientist Brian Walsh said oil contaminated only the nearby soil and not any waterways or aquifers. Tainted soil was removed and work will continue to restore the

site, Cooper said. The two directly affected landowners will be compensated for their time and any damage,

es, he said.

"We recognize this is a significant inconvenience to their day-to-day lives," Cooper said.

The leak was discovered April 2 on the pipeline that transports crude from Alberta, Canada, to refineries in Illinois and Oklahoma, passing through the eastern Dakotas, Nebraska, Kansas and Missouri. It can handle 550,000 barrels, or about 23 million gallons, daily. Cooper did not have an estimate on when the pipeline would

ramp up to normal operations.

Analysts have said the shutdown will have only a short-term impact on the oil market, and that consumers are unlikely to see an impact at the gas pump because the system is already oversupplied. The state Department of Natural Resources has the authority to levy fines for such incidents, but Walsh declined Monday to speculate on that possibility.

"At this point we're focused on getting the impacts cleaned up," he said.

The 2,639-mile Keystone Pipeline is part of a system that also would have included the Keystone XL pipeline had President Barack Obama not rejected the project in November.

The conservation and family agriculture group Dakota Rural Action said after the spill that it raises questions about the company's ability to safely operate the pipeline.

TransCanada has said the leak is the first detected on the pipeline since it began operating six years ago, though there have been leaks at pumping stations.

"This is the safest way to transport oil to Americans for their everyday lives," Cooper said.

Oil, gas needs to be inclusive

JAMES MACPHERSON
ASSOCIATED PRESS

BISMARCK, N.D. (AP) — Citizens, lawmakers, environmentalists and labor groups on Monday blasted a proposal by North Dakota regulators that attempts to narrow the definition of an "interested party" who can testify on oil and gas proposals.

About a dozen people told the state Industrial Commission's Oil and Gas Division in Bismarck that a definition saying only "an individual or number of individuals that have a property ownership or management interest in or adjacent to the subject matter" can testify would limit citizen involvement and should be withdrawn.

"Public participation in the development of oil and gas in North Dakota should be more inclusive not more

exclusive," said Jan Swenson, executive director of the Badlands Conservation Alliance. "We would all benefit."

No one spoke in favor of the definition. Similar meetings are slated this week in Dickinson, Williston and Minot.

Department of Mineral Resources Director Lynn Helms, whose agency crafted the definition, said the intent is to clarify who is allowed to testify in oil and gas permitting cases, which are legal proceedings overseen by a hearing officer.

Helms said people who have no legal standing in permitting cases are appearing at hearings with "increasing frequency."

The definition is within a broader set of new rules

aimed at the oil industry, including a requirement to bond all crude and saltwater pipelines.

Another new rule would require berms of at least a foot high to be built around a well site.

No one spoke in opposition to the enhanced rules under consideration by regulators.

The agency will accept written comments on the proposals until April 25. The rules could be in place by October if approved by the state Industrial Commission, a three-member all-Republican panel led by Gov. Jack Dalrymple. Attorney General Wayne Stenehjem and Agriculture Commissioner Doug Goehring are its other members.

ND mother suing IHS over daughter's death

MINOT, N.D. (AP) — The mother of a North Dakota woman is suing the Indian Health Service's regional office in South Dakota and three of its doctors over what she alleges is her daughter's wrongful death.

Turtle Mountain Band of Chippewa member Shiree Wilson of Belcourt, 24, died about a week after she gave birth via Cesarean section in January 2014.

Her mother, Christine Fluhrer, alleges in court documents that the IHS and three doctors at the IHS hospital in Belcourt were negligent in Wilson's care. The lawsuit accuses them of failing to conduct tests to follow up on Wilson's high white blood cell count, which indicated a possible infection, and a cough.

A week after giving birth, Wilson went to the emergency room, where she reported shortness of breath that had started suddenly and was getting worse, as well as a persistent dry cough that was increasing in

frequency. She was discharged after one of the doctors named in the lawsuit told her she could be treated for "bilateral atypical pneumonia and treated as an outpatient with decongestants and oral antibiotics."

Wilson collapsed and died the following day. An autopsy showed that she had severe pulmonary congestion and edema.

Fluhrer alleges that should've ordered follow up tests, consulted with specialists and admitted her to the hospital. She is seeking at least \$75,000 in economic damages, plus non-economic damages and attorney fees.

The defendants' attorney, Tara Iversen, denies the allegations in a response filed with the court, the Minot Daily News reported.

Quality of care at IHS facilities has been an issue recently. IHS Principal Deputy Director Mary Smith told Great Plains tribal leaders last week that the agency will work to enact swift and long-lasting reforms.

• NORTH DAKOTA IN BRIEF

SETTLEMENT REACHED IN LAWSUIT OVER DEATH OF JAIL INMATE
MINOT, N.D. (AP) — The insurance carrier for the sheriff's departments in Ward and Burleigh counties has reached a settlement with the family of a jail inmate who died in October 2014.

Ward Sheriff's Maj. Bob Barnard confirmed the settlement but didn't release details. The Minot Daily News reports court records indicate the settlement is for \$230,000. North Dakota's Insurance Reserve Fund represented the counties.

Twenty-five-year-old Dustin Irwin, of Mandaree, died at a hospital after going into cardiac arrest. The sheriff's departments in both counties handled Irwin at some point.

The state Corrections Department determined that Ward jail officials failed to give Irwin proper supervision or medical treatment.

Ward Sheriff Steve Kulkowski and now-retired Capt. Michael Nason face misdemeanor criminal charges in Irwin's death. Defense attorneys have denied that their clients did anything wrong.

WEEKEND GRASS FIRE PROMPTS HOME EVACUATIONS NEAR NEW TOWN

NEW TOWN, N.D. (AP) — A weekend grass fire near New Town prompted the evacuation of some homes.

Residents of Four Bears Village were moved to the tribal casino on Saturday while firefighters battled the flames. They were allowed back home after about two hours.

State Highway 23 also was closed for a time. No buildings were impacted.

Authorities say the fire might have started at a nearby oil well.

GRAND FORKS POLICE INVESTIGATE CONVENIENCE STORE ROBBERY
GRAND FORKS, N.D. (AP) — Grand Forks police are investigating the robbery of a convenience store.

Authorities say a male wearing a mask on his face walked into the M&H Gas store Sunday afternoon and demanded money from employees.

The suspect said he had a weapon but didn't display one. He fled with an undetermined amount of money and merchandise.

No injuries were reported.

NORTH DAKOTA TRAVEL INDUSTRY CONFERENCE SET IN GRAND FORKS
GRAND FORKS, N.D. (AP) — More than 200 professionals are expected for

the 2016 North Dakota Travel Industry Conference this week in Grand Forks.

The event is Monday through Wednesday at the Alerus Center. Topics will include website trends, the use of drones in tourism and international marketing.

State Tourism Director Sara Otte (AW-tee) Coleman is scheduled to speak at a Tuesday luncheon. The Governor's Awards for Travel and Tourism will close out the conference Wednesday.

The event is sponsored by the state Tourism Division, the Greater Grand Forks Convention and Visitors Bureau and the Destination Marketing Association of North Dakota.

FARGO POLICE IDENTIFY MAN INJURED IN TRAIN ACCIDENT
FARGO, N.D. (AP) — Authorities have identified a Fargo man injured when he was struck by a train.

Fargo police say their initial investigation indicates that an eastbound train struck 48-year-old Gerald Todd Brown at about 2 a.m. Sunday as he was sitting on or next to the tracks in the 500 block of Roberts Street North. The man's condition was not available.

Police say the case remains under investigation.

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Oil regulators do more than just listen

Helms, others visit Blacktail Creek spill site amid hearing on tougher regulations

BY AMY DALRYMPLE
FORUM NEWS SERVICE

WILLISTON – Oil and gas regulators visiting Williston on Wednesday did more than listen to public comments about proposed pipeline rules. The Department of Mineral Resources contingent also visited the site of the state’s largest pipeline spill, an event that was the impetus for many of

the regulations now being considered. Director Lynn Helms and others from the department visited the Blacktail Creek spill cleanup site where a Meadowlark Midstream pipeline leaked an estimated 3 million gallons of produced water. That spill, which was discovered in January 2015 while North Dakota’s Legislature was in session, was one of the factors that led legislators to ask for new oil and gas rules and dedicate more staff to regulating gathering pipelines. “That drove the creation of the pipeline program and why I’m here in the position today,” said Kevin Connors,

who recently became the state’s pipeline program supervisor. Connors, who visited the Blacktail Creek site for the first time Wednesday, said seeing the cleanup site reinforced the need to prevent spills and to improve leak detection and spill response. “Looking at this, it helps me put in perspective what we’re trying to accomplish with the pipeline program and with the rules we’re adopting,” Connors said. Earlier Wednesday, the regulators held their third public hearing on the

SEE **REGULATORS**, PAGE A3



Assistant Attorney General Hope Hogan, from left, Department of Mineral Resources Director Lynn Helms and Pipeline Program Supervisor Kevin Connors listen to public comments.

Fairview grad to argue before Supreme Court

Case to question domestic violence recidivism statute

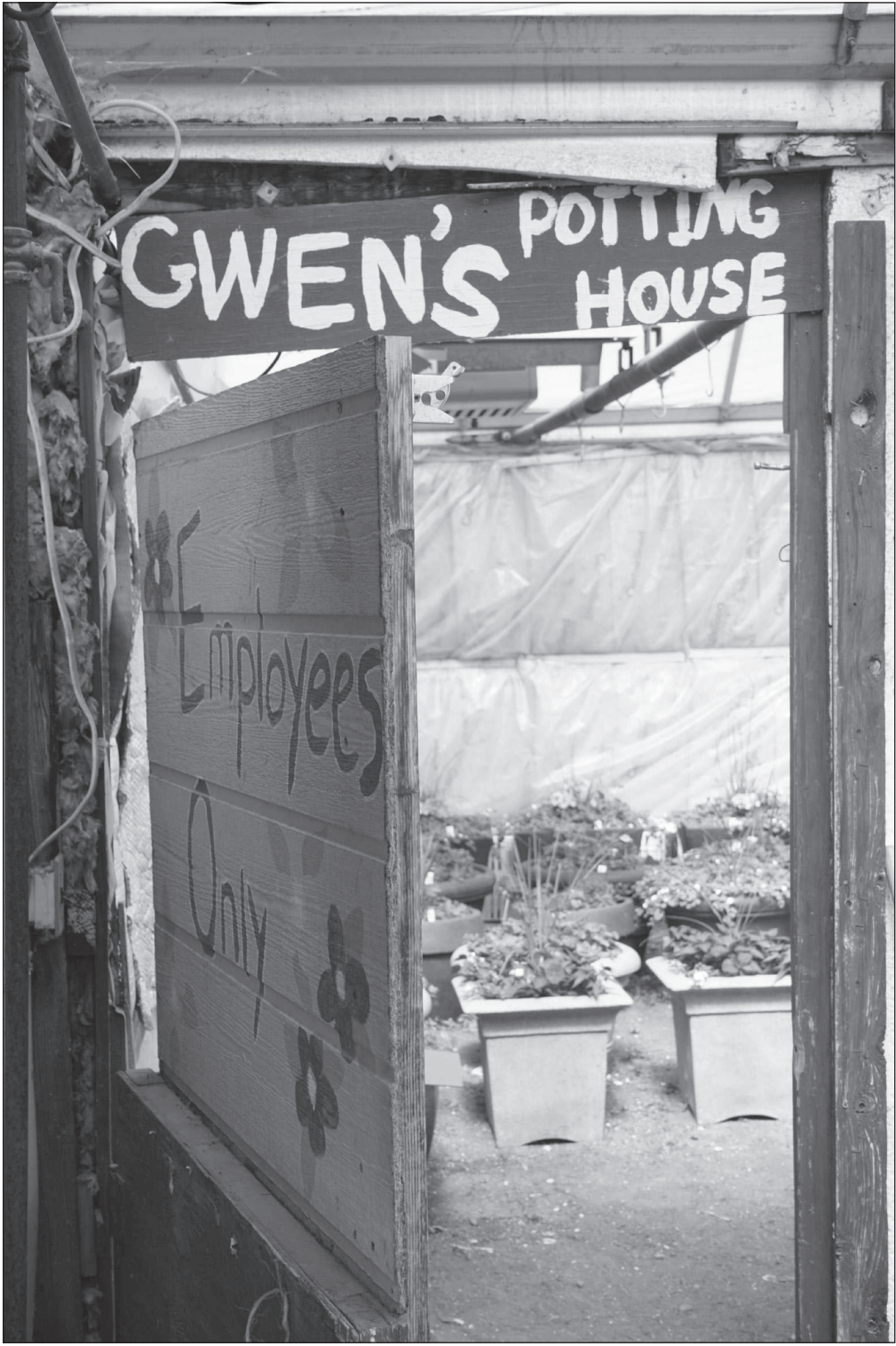
BY RENÉE JEAN
RJEAN@WILLISTONHERALD.COM

He never imagined for a minute that his career in law was going to take him to the highest court in the land. However, that is exactly where Steven Babcock, a 1993 Fairview graduate, is headed later this month. He’ll be arguing a case that explores whether tribal convictions can stand the test of fairness when it comes to the habitual domestic offender statute. To be charged as a habitual



Babcock offender in a federal court, an individual must have at least two prior convictions. “It’s a recidivist statute for repeat offenders,” Babcock says. “My issue with it was always that if they used tribal court convictions for it, they are not afforded the right to a lawyer in tribal court. So I moved to dismiss the case at the federal district court level here.” While his request to dismiss the case was denied, he was successful arguing

SEE **BABCOCK**, PAGE A8



FLOWER POWER

The Bloomin’ Shoppe to celebrate 40 years in business Friday

BY ALEXA ALTHOFF
AALTHOFF@WILLISTONHERALD.COM

WILLISTON — Some say love makes plants grow better. This may have something to do with the decades of success of The Bloomin’ Shoppe has seen. Gail Ferrell has tended to her business for over 40 years, and it continues to grow inch by inch. Originally, her main greenhouse was half the size it is now and there were few other spaces to work in. Her main greenhouse is now 150 square feet and her daughter Gwen has her own custom potting greenhouse, a large room specifically set aside for making soil. Many other spaces form a labyrinth of colorful plants. Although the doors to the greenhouse are about to open to the public for spring, they keep working

SEE **BLOOMIN’**, PAGE A8

Photo by Alexa Althoff • Williston Herald
The buildings have grown little by little throughout their time in business. This addition is specifically for Gwen Ferrell, daughter of Gail Ferrell, so that she may make planters specific to each customer who orders a custom planter.

Bird hunting guides charged with felonies

BY ELIZABETH HACKENBURG
EHACKENBURG@WILLISTONHERALD

WILLISTON — A father and son, who authorities say do not have North Dakota hunting licenses, are wanted in Williams County for allegedly serving as guides for bird hunters. Keith, 53, and Ryan Strand, 23, each face a charge of exploitation of wildlife, a Class C felony. Warrants for the two were

filed in district court this week. Both men are accused of guiding hunters without an outfitter’s license and hunting and taking birds without a license. Keith Strand also allegedly supplied incorrect hunting license numbers to officials on several occasions. Authorities allege that he

SEE **GUIDES**, PAGE A3

Kids learn all about health-related fields at Scrubs Camp

BY ELIZABETH HACKENBURG
EHACKENBURG@WILLISTONHERALD.COM

WILLISTON — A giant, inflatable colon sat on the gym floor inside The Well on Wednesday at Williston State College, where students ventured inside the huge organ as tour guides explained the ins and outs of a healthy digestive system. The huge visual was one stop in a round of health-centered stations set up for seventh-graders from across the region who gathered at the college for Scrubs Camp, which offers an interactive chance to find out what it’s like to work in health care. Participants were offered quick lessons from a local dentist’s office, eye care clinic and Williston EMTs, among numerous others, and got the chance for hands-on learning at each stop. Kids took each other’s blood pressure, examined a cataract removed from a 90-year-old woman’s eye, made molds of teeth and picked up a few basics on CPR, all as part of an initiative

offered by the Great Northwest Education Cooperative. The camp, in its third year in Williston, drew about 250 students, a significant increase over years past, said Melissa Meyer, the group’s career advisor. “The goal is to get them thinking about what maybe they want to do in life,” she said. Rural Collaborative Opportunities for Occupational Learning in Health, an arm of the University of North Dakota’s school of medicine, helped foot the bill for the event. “It’s a nice opportunity to use local folks (from various fields in health care,)” said Lynette Dickson, the organization’s associate director. Williston’s camp, which covers the northwest corner of North Dakota, is one of the largest in the state, she added. Although many kids said making molds of teeth was the most fun ac-

SEE **SCRUBS**, PAGE A2



PHOTO BY ELIZABETH HACKENBURG
Marion Elliot, 13, of Watford City High School, holds a dental mold she made with the help of Williston dentists during Scrubs Camp Wednesday at Williston State College.

Williston Municipal Ladies Golf Association

Hawaiian Spring Fling

5:30 - 7:00 p.m., Monday, April 18 Our Redeemers Lutheran Church Fellowship Hall.

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• OBITUARIES

Jeremiah Kelly

Jeremiah Patrick Kelly, 44, Grenora, formerly of Mohall, passed away unexpectedly on Sunday, April 10, 2016.

He was born May 17, 1971, in Mohall, to Ron and Jeanie (Braun) Kelly. Jeremiah brought to our world an infectious smile, heartfelt joy and tireless energy. Raised in Mohall, Jeremiah enjoyed football, bowling and golf. He graduated from Mohall High School in 1990.

Throughout his life, his love for fun and speed was evident by riding motorcycle, four-wheeler and snowmobile. Jeremiah was a great friend to those around him who shared many adventures and memories. He truly loved helping his friends, even in their struggles, and would speak words of encouragement and inspiration from his own life experiences.

Jeremiah loved to play and work hard. Moving to Elko, Nev., in the 1990s to live with his Uncle John and Aunt Priscilla Kraintz, Jeremiah began his career in construction as a roofer. Jeremiah took extreme pride in his work and continued his trade when he returned to North Dakota under his business, Kelly Construction. It was his inspiration and vision to restore the original Kelly homestead. The Kelly farm will carry the memory of his craftsmanship.

Love for his family and being a Dad was truly his pride and joy. Jeremiah raised Cody to become a great young man and now father. He became a grandfather to Samuel Jeremiah and Aerith Rose, children of Cody Kelly and Jessie Bohn. With his second son, Kaleb Kelly, he enjoyed teaching him how to ride dirt bikes and play Xbox. With the love of his life, Amber Zapf, Jeremiah loved and cherished each day they had with their children, MaKenzie, Blaike and Amber's daughter, Reigan. He laughed and played hard with the kids and his eyes twinkled when he was with them. He will forever be loved, missed and adored by Amber and his children.

Jeremiah always knew that Jesus and his Momma loved him! He understood



the faithfulness of God, forgiveness and unconditional love. He will be greatly missed by his mother, Jeanie Kelly-Stromswold, stepdad and friend, Loren Stromswold, and father, Ronald Kelly, plus his brothers and sister, nieces and nephews, plus many aunts, uncles and cousins. Jeremiah had a special love and connection with his siblings. He was always the first to call, lend a helping hand and make sure they were doing OK. He will also be remembered as "the fun" Uncle by his nieces and nephews. He knew them individually and loved to tease and have fun with each of them. We sure love and miss you Jeremiah! Siblings, Jacqueline (Kelly) Tisher (Victoria, Isaac and Tysen), Paul and Jen Kelly (Randy), Joel and Ronda Kelly (Matthew, Noah, Savannah and Elijah) and Richard and Melissa Larson (Lara and Macy); Stepsisters, Mandi and Cody Whitted (Seth, Hannah and Macy), Shawna and Roberto Mercado (Cadence and Dominic), Jessica and Derek Miller; and Ron Kelly's daughter, Naomi Kelly.

Jeremiah was warmly greeted by his grandparents; along with his niece, Acacia; cousins, Pam, Jimmy (son, Jessie) and Jared, in heaven. Jeremiah 29:11. For I know the plans I have for you, declares the Lord, plans to prosper you and not to harm you, plans to give you hope and a future.

Celebration of Life: 2 p.m., Saturday, April 16, 2016, at Zion Lutheran Church, Mohall.

Friends may sign the guestbook at the church two hours prior to the service.

• DEATH NOTICE

Sherry L Bummer

Sherry L Bummer, age 60, of Bismarck, ND passed away on Monday, April 11, 2016 at Sanford Health in Bismarck. Mass of Christian Burial will be 10:00 A.M., Saturday, April 16, 2016 at St. Patrick's Catholic Church in Crosby. Rite of Committal will follow at St. Patrick's Catholic Cemetery in Crosby.

BABCOCK: Will be practicing in front of 'moot' court next week

FROM PAGE A1
his point upon appeal in the Ninth Circuit in Portland. The government, however, then moved for and was granted a petition to have the matter heard elsewhere.

"It created a split," Babcock said. "The Ninth Circuit said I was right, but the Eighth and Tenth say I'm wrong. It's created a circuit split, and it is a constitutional issue, so it had all the makings of something the Supreme Court would want to hear, and that is how we got there."

The case is U.S. v Michael Bryant Jr., and Babcock is one of a three-person team handling the case for the Federal Defenders of Montana. It's not the only case Federal Defenders has had land in the Supreme Court, but it is still a rarity. Their last was in 1996, a case called "Old Chief," which was also a Native American issue. To prepare for his upcoming appearance in the highest court in the land, Babcock has been to Washington D.C. to watch a few Supreme Court arguments and tour the place, in hopes this would help him feel less intimidated, as well as helping him get familiar with procedures and protocols in the courtroom.

He's going a big step further than that, however, next week. He'll be arguing his case for three "moot" courts, who will grill him as if they are the Supreme Court justices.

"These are a dress rehearsal," Babcock explained. "You go in and a panel of people who know

the issue very well will grill me on all sorts of questions and help me prepare for what is going to happen on the 19th. They will come at me without mercy to try to get me ready to go."

While Babcock is now a Billings resident, he is also a proud 1993 graduate of Fairview High School. His favorite subject growing up was history, and he initially obtained a degree in teaching. After substitute teaching and further career exploration, however, he decided instead to return to law school in 1998.

"It was one of those things that I just somehow became very interested in, and the more I looked into it, the more I thought it was something that would fit with myself. I liked the fact of being able to talk for a living, because that is the one quality I have that I am good at, so I just kind of fell into it."

Starting out his law career, being a defense attorney wasn't necessarily what he thought he was going to focus on, either, but he's been at it for 15 years now and loves it. Babcock said he has been helped on his journey by the continued support of family and friends back home, and he pays tribute to the small town values that shaped his childhood.

"I'm very proud of Fairview," Babcock said. "A lot of people have supported me throughout the years and continue to do so during this process, so being from a small town has distinct advantages."

BLOOMIN': Celebrating 40 years with public Friday 1 to 5

FROM PAGE A1

year-round in their shop. In the winter months, they sell houseplants, order seeds, and make plans for the growing season.

With 40 years now behind them, four generations of the family tend to the plants. Deana Novak, granddaughter of Gail, is pleased to have kept it a family owned and operated business for so long. "This is a pretty big deal for us," Novak said. "There's not many businesses in Williston with the same original owner."

Their recipe for success is literally a recipe. Their soil is mixed with a specific amount of organic matter, vermiculite, and a time released fertilizer. This allows the soil to retain water better, have just the right nutrients, and give the plants a great start to growing. "It's a lot more work but it's a lot better for the plants," Novak said.

Her grandfather perfected the mixing process with what he had available at the time. "He had a very mechanical mind," Novak said.

His engineering prowess still reigns supreme at The Bloomin' Shoppe and they haven't needed to adjust the tools of their trade yet. The soil mixture is put through a grain cleaner first, then moved to a concrete mixer, then put in a large wooden bin where it awaits use. During the process, the soil is also cooked by heating coils located in another piece of equipment. "It kills bugs, weeds, seeds," Novak said. "Anything that harms plants."

These machines may not serve the purpose for which they were originally intended, but they now make the perfect soil for The Bloomin' Shoppe.

Their soil is just the beginning of the entire grow-



Photo by Alexa Althoff • Williston Herald

Deana Novak, granddaughter of owner Gail Ferrell, hand separates each plant to make it into what she calls a 'four pack' for customers to pick and purchase. This process takes her anywhere from two to three weeks to fully complete.

ing process. Each step has been carefully examined and developed by considering what is best for the plant.

Even watering has become a time-honored tradition.

"We don't believe in irrigation," Novak said. "Each plant has different needs and Gail knows exactly what they are. She gets in a zone and we don't interrupt her."

The focus and care of Gail takes many hours of checking and watering. The ladies say they will often feel like they don't see each other all day because of their busy schedules of tending to the plants.

Each woman has a specific role to fill at The Bloomin' Shoppe. Gwen Ferrell, daughter of Gail, makes custom planters unique to each home there are purchased for. Filled with colorful flowers, and bushy greens, she won't allow duplicates

"EACH PLANT HAS DIFFERENT NEEDS AND GAIL KNOWS EXACTLY WHAT THEY ARE. SHE GETS IN A ZONE AND WE DON'T INTERRUPT HER."

for different people. In other words, the Jones cannot have the same planters as the Smiths.

The planters are picked up in late fall, housed all winter, and then made ready for delivery in the spring. "Our growing season is so short, you want to make the most of it," Novak said. "We don't encourage people to put planters out until middle or late may."

They've planted plants in everything from stoves to dressers, and Novak makes a select few 'fairy gardens' each year. "Even if it's not meant to hold soil, we will make it hold soil," Novak said.

Although those are specialty items, the most common form of purchasing plants is in the small,

black, bundles of four plants. Those take Novak two to three weeks to hand separate and place in the bundles. They start seeding in December and planting in January. Every tiny bud that comes out of their homemade soil is grown on site.

After 40 years of business based on seasonal traditions, they are excited to share their history with the public on Friday. From 1:00 pm to 5:00 p.m., Gail, Deana, and Gwen, will host their Spring Sneak Peek event. Door prizes, goodies, and their vast knowledge of plants will be available.

For more information, call The Bloomin' Shoppe at (701) 572-8169, or stop by their location at 5220 2nd Avenue West in Williston.

REGULATORS: Final public meeting Thursday in Minot

FROM PAGE A1

proposed oil and gas rules.

Nearly 50 people attended the Williston hearing, but only a handful of people testified and the hearing concluded in less than 45 minutes.

Laura Erickson, who works for environmental services company Cardno, gave suggestions for clarifying some proposed rules related to saltwater handling facilities that she said were confusing to some in the industry.

After the hearing, Erickson said she thinks some regulations on gathering

pipelines are necessary, but "in some cases it's been a little bit of an overreach."

Randy Weaver, a pipeline worker from Watford City who attended the hearing, said he thinks the state should raise the standards for gathering pipeline installation.

"A lot of the good contractors follow the rules, but some of the lesser contractors are doing some pretty shoddy work," Weaver said.

Helms said the panel has received a lot of feedback on the definition of "interested party," but not much input yet on other rules.

A proposal to require 1-foot perimeter berms around all well sites is estimated to cost the industry \$14 million to implement but aims to reduce the number of spills that get off location and harm the environment.

Helms said Wednesday while talking to Williston community leaders that the industry is expected to produce 400 million barrels of oil next year, so the cost for the new berms will amount to about 4 cents per barrel next year.

"That doesn't seem like an outlandish number to fix a serious problem," he

said.

Helms said he expects to get a high volume of written comments, which will be accepted through 5 p.m. April 25.

"Part of the approach this time around has been to listen, like we are, and then submit written comments after the hearings," Helms said.

The final public hearing will be at 9 a.m. Thursday at the Oil and Gas Division Minot field office, 7 3rd St. S.E., Suite 107, Minot. For more information about how to submit comments, www.dmr.nd.gov/oilgas.

GUIDES: Believed to be the first charged under new law

FROM PAGE A1

committed 14 misdemeanors from October 2014 through last November, and say that Ryan Strand racked up 12 misdemeanors during the two-day trip last fall.

The number of offenses constitutes the felony charge of exploitation of wildlife, according to a relatively new statute under state law. The law states

that seven hunting-related misdemeanors accrued in a two-year period warrant the felony charge.

"As far as I know this is the first time somebody has been charged under that statute," Scott Winkelman, investigation supervisor for the Game and Fish Department, said.

The Strands were the subject of an investigation by the state Game and

Fish Department last year, when undercover game wardens booked hunting trips through Strand Outfitters, a northern Minnesota business run by the father and son.

The men, who according to the Game and Fish Department, have no North Dakota outfitter or guiding licenses, accompanied undercover officers in November on a duck hunt-

ing expedition northwest of Tioga in rural Williams County.

Investigators eventually executed a search warrant, which turned up a number of geese and more than 25 ducks, along with a large stockpile of hunting supplies in a truck and trailer that the pair brought along on the trip, court records say.

Proposed public input rule catches more angry protests

FORUM NEWS SERVICE

DICKINSON -- Mark Trechock, the former executive director of the Dakota Resource Council, used the word "ashamed" Tuesday when giving his testimony against a proposed North Dakota oil and gas regulatory rule that could limit public input on energy industry actions in the state.

Trechock and other southwest North Dakotans who are against the proposal to change the state Department of Mineral Resources rule spoke out Tuesday at a public hearing in Dickinson, the second of four scheduled public hearings in the state.

The proposed rule addresses a process by which an "interested party" may submit "written comments on or objections to the application" for projects. The contested proposal is the definition of an "interested party" as an individual or group that has a "property ownership or management interest in or adjacent" to the site in question.

Trechock, who is from Dickinson, testified that the slowdown in the oil economy provided a "reprieve" in which regulators could improve industry oversight. He said the proposed definition wouldn't do that and that he was "ashamed" to see it come forward.

"Making new rules to restrict our state citizens from bringing their knowledge and their insights and their

experience to oil and gas hearings based on where they live is nothing more than burying our heads in the sand," he said.

Valerie Naylor, the former superintendent of Theodore Roosevelt National Park, also spoke out against the proposal as a private consultant representing the National Parks Conservation Association.

She said the word "adjacent" is vague in a land of wide open spaces.

"I've never observed testimony from uninterested parties," she said. "Only from industry and a very limited number of agencies and nonprofit organizations."

The meeting was organized by the Department of Mineral Resources to gather input on a set of rules that also included revised bonding requirements and construction guidelines for saltwater gathering pipelines, as well as stipulations for third-party inspections. The first meeting, held Monday in Bismarck, drew similar objection to the proposed definition and little response to the other content. Moving on from Dickinson, the delegation from the department will hold similar hearings in Williston today and Minot on Thursday.

Department of Mineral Resources Director Lynn Helms said the definition of an interested party has so far

been the "No. 1 concern" at the hearings.

"We've been getting lots and lots of comments to the effect that we should not do anything that restricts the rights of the public to comment on the cases and work that we're considering," Helms said.

While there has been some feedback to the pipeline rules, he said the bulk of that commentary is expected to come in the form of written submissions.

The intent of the proposed "interested party" definition, he said, was to provide some indicator of "levels of legal standing" to be used when assessing applications by private parties to conduct development.

"Some parties are going to submit comments and are encouraging the commission to try to define levels, where if you're directly affected or directly an owner, your level of consideration should be higher than if you're a few miles away and just a member of the public," Helms said.

He noted the definition will ultimately be subject to the decision of the North Dakota Industrial Commission, made up of Gov. Jack Dalrymple, Attorney General Wayne Stenehjem and Agriculture Commissioner Doug Goehring—all elected officials who Helms noted could be "pretty responsive" to voter opinion.

Kadrmass, Bethany R.

From: Viv Hawbaker <curlnski@nccray.com>
Sent: Friday, April 22, 2016 12:01 PM
To: Hicks, Bruce E.
Subject: RE: Inquiry for Comment --FW: Proposed Definition 25 and case hearing attorney objection to testimony from mineral owner ...

Thanks so much for the reply while on vacation... enjoy what is left of it.

Viv Hawbaker

From: Hicks, Bruce E. [mailto:bhicks@nd.gov]
Sent: Thursday, April 21, 2016 12:53 PM
To: Viv Hawbaker
Subject: Re: Inquiry for Comment --FW: Proposed Definition 25 and case hearing attorney objection to testimony from mineral owner ...

Viv,
I'm off on annual leave until Monday, but I'm monitoring my email. We have to be very careful answering questions concerning pending cases, especially rule making, since other parties could claim we had an exparte communication. It would be best to refer to the cases in which the atty objected and we will take that into consideration--just make sure you are clear on what you want the rule to allow. I hope this helps.
Sincerely,
Bruce Hicks

On Apr 21, 2016, at 8:51 AM, Viv Hawbaker <curlnski@nccray.com> wrote:

Good morning, Bruce –
This is a follow up to last Friday's inquiry – which I can see may have just gone into a folder regarding comments on the Proposed Rules/Amendments.

To complete my comment on the Proposed Definition 25, I thought it would make sense to reference the basis for the company attorney to voice an objection to my testimony at two hearings over the past 1.5 years.
My original inquiry is below.

Viv Hawbaker
701.770.3890

From: Viv Hawbaker [mailto:curlnski@nccray.com]
Sent: Friday, April 15, 2016 2:32 PM
To: 'Hicks, Bruce E.'
Cc: 'Ted & Mary Hawbaker'
Subject: Proposed Definition 25 and case hearing attorney objection to testimony from mineral owner ...

Bruce –

Summary of Question: Basis/Procedural Rule for company attorney objection to testimony from a mineral owner in the field named in the case OR objection to testimony on behalf of an owner within the sections and/or field in a case.

I have appeared at two commission hearings regarding spacing requests from Petro Harvester.

- October, 2014 Case 23104—Order 25433
- January, 2016 Case 24741—Order 27104

The company attorneys, John Morrison and Wade Mann, each raised an objection to testimony from me and in January also from my brother. Fortunately, each time the hearing officer allowed me and/or my brother, Ted Hawbaker, to present our concerns.

After each hearing, I did a cursory search through the Rules & Regulations posted on the DMR website--
<https://www.dmr.nd.gov/oilgas/> looking for the basis of the attorneys' objection.

After not finding a basis/rule, I let each occurrence drop since I didn't anticipate needing to appear at another hearing and I didn't know who to contact with my question regarding the basis for each attorney's objection.

The reason for this inquiry about the rule/basis for the attorneys' objection [because I don't know who else to ask] is because of the following:

- Proposed Definition 25 of 43-02-03-01 has been receiving much negative press [three articles so far that I've read]
 - o When I read the proposed definition in March, I'd thought it would address and, therefore, eliminate the company attorney from objecting to testimony on behalf of an owner within the subject case sections
 - o I hoped that the word 'adjacent', in the proposed definition, would include owners within a field who are concerned about a precedent being set, as to spacing or other rule, regarding the field in which the owner has minerals
 - o When I read Mr. Helms' comment in the Apr 12 article [about half way down the page [second column of the article]], I thought that confirmed my take on the proposal and I planned to write a comment to that effect

Before I finish my written comment in support of the assumption I made and the way I read Mr. Helms' comment in the Apr 12 article, I think it would be helpful to know what was the basis for Mr. Morrison's and Mr. Mann's objections so I can address that issue as the basis for my support.

Viv Hawbaker
Williston, ND
701.770.3890

Please know that I appreciate the willingness of the staff to listen to concerns.

From: Hicks, Bruce E. [<mailto:bhicks@nd.gov>]

Sent: Friday, April 15, 2016 10:11 AM

To: Viv Hawbaker

Subject: RE: email address to send written comments regarding Proposed Rule Changes

Viv,

You can send your written comments to me. Please note we must receive them before 5pm on April 25, 2016.

Sincerely,

Bruce E. Hicks

Assistant Director
Oil and Gas Division
Dept of Mineral Resources
North Dakota Industrial Commission
701-328-8020
bhicks@nd.gov
www.dmr.nd.gov/oilgas
Bismarck, ND 58505-0840

From: Viv Hawbaker [<mailto:curlnski@nccray.com>]
Sent: Wednesday, April 13, 2016 9:12 PM
To: Hicks, Bruce E.
Subject: email address to send written comments regarding Proposed Rule Changes

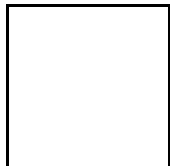
Bruce –

Can the written comments be **emailed** to the oil and gas division?

If so, what EMAIL address should be used?

Sorry, to bother you with this but would much prefer email to snail mail.

Viv Hawbaker
701.770.3890



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<2016 Apr 7--define interested party article.pdf>

<2016 Apr 12-interested party Rule 25.pdf>

<2016 Apr 14 interested party p1.pdf>

<2016 Apr 14 interested party.pdf>



Virus-free. www.avast.com

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Monday, April 25, 2016 11:15 AM
To: Kadrmass, Bethany R.
Subject: FW: 2016 New Rules Comments

For the record. Karlene

From: Haugen, Shelley K.
Sent: Monday, April 25, 2016 8:18 AM
To: Fine, Karlene K.
Subject: FW: 2016 New Rules Comments

From: Apache [<mailto:apache@itdapachep1.itd.nd.gov>] **On Behalf Of** Scott Lindgren
Sent: Friday, April 22, 2016 8:42 AM
To: -Info-Governor's Office
Subject: 2016 New Rules Comments

Contact Form Submission

Name

Scott Lindgren

Email Address

scottl@nspack.com

Phone Number

7017466867

Subject

2016 New Rules Comments

Comments

DO NOT LIMIT THOSE WHO CAN TESTIFY on the proposed oil and gas hearing rules regarding PUBLIC PARTICIPATION !!!!! so much for Transparency ! I'm outraged even at the thought ! this is not right and I'm appalled at even the suggestion of the subject Sincerely, Scott Lindgren 218 Seward Ave. Grand Forks, ND 58201

Submitted from governor.nd.gov on 04/22/2016 - 8:41am from IP address: [165.234.159.14]



Received
APR 22 2016
ND Oil & Gas Division

Thursday, April 21, 2016

NDIC Department of Mineral Resources
Oil and Gas Division
600 East Boulevard Ave
Bismarck, ND 58505
Attn: Mr. Bruce Hicks, Assistant Director

RE: Comments on Proposed Rule Changes

Dear Mr. Hicks:

Enduro Operating LLC thanks the NDIC for the opportunity to provide comments on the proposed Administrative Rules Changes. Enduro operates approximately 600 wells in North Dakota, including 17 EOR units, with all wells and units bonded under 43-02-03-15 of the General Rules.

Enduro recognizes the commissions need to adapt its rules and regulations to address changes with-in the oil and gas industry. However many of the proposed rule changes as written are broad and could be construed to include areas not intended by the legislature. For example Enduro interprets the amendments and additions to section 38-08 of the NDCC in House Bill No. 1358, as defining an underground gathering pipeline as a pipeline that is capable of transporting oil, gas, or produced water **from** a production facility for disposal, storage, or sale purposes, to clearly exclude an operators emulsion flow lines to, and injection flow lines from, a production or injection facility. However those same amendments could be construed to include in the underground gathering pipeline regulations, an operator's injection lines from an EOR production facility or CTB, to unit or lease SWD wells. Enduro does not believe that was the intent of the legislature in drafting HB 1358. Additional proposed changes for increased diking requirements and perimeter berms will add substantial construction and operational costs to wells, while not significantly reducing uncontained spills.

Enduro intends to abide by any rules enacted by the commission, however we believe that additional language should be added to many of the proposed rules to insure that conventional oil and gas operators are not unintentionally burdened by regulations without a substantial benefit to health and safety.

Sincerely,

A handwritten signature in black ink that reads "Zeno Farris". The signature is written in a cursive, flowing style.

Zeno Farris
Regulatory Manager
Enduro Operating LLC
777 Main Street, Suite 800
Fort Worth, TX 76102

enclosure

43-02-03 General Rules

43-02-03-01.45. Saltwater Handling Facility (page 4 of proposed rules)

Enduro recognizes that the commission considers EOR SWD facilities, and field SWD facilities as appurtenances to wells and therefore not subject to the Saltwater Handling Facility regulations. Enduro requests that the commission further clarify that understanding by adding language after appurtenances to wells "such as EOR and field SWD facilities".

43-02-03-15.8 Underground Gathering Pipeline Bonding (Page 9 of the proposed rules)

Enduro requests that emulsion and injection flow lines and SWD flow lines in currently bonded EOR units, commingled wells and field SWD's be differentiated from gathering pipelines and considered appurtenances to the EOR unit, commingled CTB or field SWD and therefore not bound by the proposed gathering pipeline bonding.

43-02-03-29.1 Underground Gathering Pipelines (Page 19 of the proposed rules)

Enduro requests that emulsion and injection flow lines and SWD flow lines in EOR units, commingled wells, and field SWD's be differentiated from gathering pipelines and considered appurtenances to the EOR unit, commingled CTB or field SWD and therefore not bound by the proposed gathering pipeline permitting, installation, and operational rules. Enduro believes the current permit requirements under UIC 43-02-05-04 are sufficient for permitting injection and SWD flow lines. In addition, Enduro asks that language be added to allow flow lines associated with EOR units, commingled wells, and field SWD's to be repaired, replaced or segments added, without the Directors approval, but with notification.

43-02-03-49 Oil Production Equipment, Dikes and Seals (page 35 of proposed rules)

Enduro believes the current policy of requiring berms or sloping on newly permitted wells when deemed necessary by the Director to prevent pollution of land surfaces and freshwaters is appropriate. The proposed rule requires a 1 foot perimeter berm on existing storage facilities and production sites to provide emergency containment with any grandfather language stricken.

Enduro believes this rule as written could be detrimental to the viability of conventional oil and gas producers. At an estimated cost of \$3,000 to \$15,000 for partial or full perimeter berms, Enduro could expend between \$1.8 and 9 million dollars to comply with this rule for its 600 wells. In addition the yearly costs associated with storm water capture and disposal, and additional berm maintenance, could be a significant portion of Enduro's yearly operational budget.

Since 2014 to present Enduro has had spills on approximately 9% of its properties, with 82% of those spills contained in existing berms or on well sites. Of the 18% off well site leaks, 8% were pipeline or treater spray leaks that would not have been prevented with perimeter dikes.

Enduro feels that uncontained spills are not going to be significantly reduced by the proposed site berm rule, and requests that the commission keep the current rule in place.

Oil & Gas Division
600 East Boulevard Ave
Dept. 405
Bismarck, ND 58505-0840

Received
APR 21 2016
ND Oil & Gas Division

Re: Comment on Proposed Amendments to NDAC

I am a landowner who lives in Dunn County.

I am asking you to vote no on the proposed amendment to NDAC 43-02-03-01 in regards to who can testify at a Commission hearing.

I believe that this amendment will limit the ability of landowners such as me to be able to testify in regards to projects that may be in close proximity to me.

In our rural areas there are more people that can be affected other than just the adjacent landowners to these projects.

We may have residents who live by the roads that are used by the industry to reach these projects. This will have impacts on the roads and on the residents, landowners, school buses, emergency services and others who also use them.

We have many sources of water that are used by many of the residents of North Dakota which have the potential to become contaminated. Citizens who use any water which may suffer any negative effects from a project should have the ability to speak of their concerns.

We also may have residents who have other livelihoods such as tourism businesses close to these or there may be residential subdivisions which are also close.

Landowners, businesses and residents no longer would have the ability to express their concerns if this proposed amendment was passed even if they are in close proximity. Acts of nature or accidents at these sites can possibly have consequences for more than just an adjacent landowner. Not allowing residents and citizens of North Dakota to testify would be very unfair to those of us who live here.

Please do not pass this amendment as these are just some of the examples of those who could possibly suffer negative impacts from not being able to testify.

Thank you.

The block contains two handwritten signatures. The first signature is in cursive and appears to be 'Monte Schmalz'. The second signature is also in cursive and appears to be 'Janet Schmalz'.

Monte & Janet Schmalz

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Monday, April 25, 2016 11:16 AM
To: Kadrmass, Bethany R.
Subject: FW: "2016 New Rules comments"

For the proposed rules record. Karlene

From: Haugen, Shelley K.
Sent: Monday, April 25, 2016 8:18 AM
To: Nisbet, Jason; Fine, Karlene K.
Subject: FW: "2016 New Rules comments"

From: Apache [<mailto:apache@itdapachep1.itd.nd.gov>] **On Behalf Of** Patricia Veitch Pascheke
Sent: Thursday, April 21, 2016 5:38 PM
To: -Info-Governor's Office
Subject: "2016 New Rules comments"

Contact Form Submission

Name

Patricia Veitch Pascheke

Email Address

jnpfarms@polarcomm.com

Phone Number

7018692835

Subject

"2016 New Rules comments"

Comments

Please remove the proposed definition for "Interested Party". The public has a right to comment. Everyone should have the opportunity to testify! The NDIC should reject the proposed rule.

Submitted from governor.nd.gov on 04/21/2016 - 5:38pm from IP address: [165.234.159.13]

Kadrmass, Bethany R.

From: Holly Pearen <hpearen@edf.org>
Sent: Thursday, April 21, 2016 2:22 PM
To: Hicks, Bruce E.
Cc: Helms, Lynn D.; Hogan, Hope L.
Subject: EDF Comments on NDAC 43-02-03
Attachments: EDF 43-02-03 Comments_4.21.16.pdf

Dear Mr. Hicks,

Attached please find comments prepared by the Environmental Defense Fund in response to proposed rulemaking at NDAC 43-02-03. If you have any comments or questions regarding the attached, or any problems opening the document, please do not hesitate to contact me.

Sincerely,

Holly Pearen

Holly Pearen
Senior Attorney
U.S. Climate and Energy

Environmental Defense Fund
2060 Broadway Ave, Suite 300
Boulder, CO 80302
O 303-447-7227
C 503-347-9970

hpearen@edf.org

This e-mail and any attachments may contain confidential and privileged information. If you are not the intended recipient, please notify the sender immediately by return e-mail, delete this e-mail and destroy any copies. Any dissemination or use of this information by a person other than the intended recipient is unauthorized and may be illegal.

April 21, 2016

Bruce Hicks, Assistant Director
NDIC Department of Mineral Resources, Oil and Gas Division
600 E. Boulevard Ave.
Bismarck, ND 58505

RE: Comments on Proposed Rule Changes to NDAC 43-02-03-et seq.

Dear Mr. Hicks:

Environmental Defense Fund (EDF) respectfully submits the following comments regarding the proposed changes to North Dakota Administrative Code (NDAC) 43-02-03-et seq. EDF is an environmental non-profit with over 1.5 million members worldwide, including many in North Dakota. Our goal is to enhance environmental performance through market-based solutions and private sector collaboration, as well as measured regulatory frameworks. We commend the North Dakota Industrial Commission (NDIC) for its efforts in drafting these proposed rules. The changes and additions are necessary, thorough and timely.

Crude oil and non-freshwater pipelines

The system of gathering pipelines servicing the oil and gas industry is rapidly expanding in North Dakota, and with it the potential for leaks and spills. Approximately 23,000 miles of gathering pipelines have been installed in North Dakota in order to transport fluids from the wellhead to various processing facilities.¹ Last year the Department of Mineral Resources projected that oil companies will build another 36,000 miles of gathering lines as the Bakken Shale is developed.² According to the Energy & Environmental Research Center (EERC), “the increasing size of the system means that even low incident rates may result in a greater number of spills and attendant volumes in a given year.”³

Spills and leaks from gathering pipelines carrying crude oil and non-fresh water to and from production wells threaten North Dakota’s communities, agriculture and environment. Pipeline spills that occur in relatively remote areas are particularly concerning because detection may take longer and substances can more easily escape containment onto working fields and water sources. Of the five biggest uncontained spills between October 2014 and 2015, three came from pipelines, according to North

¹ Energy & Environmental Research Center, University of North Dakota, *Liquids Gathering Pipelines: Comprehensive Analysis*, p. 15 (Dec. 1, 2015).

² Mike Lee, EnergyWire, EENews, *After Years of Spills, N.D. Still Deciding How to Handle Pipeline Leaks*, (Oct. 29, 2015), <http://www.eenews.net/stories/1060027102>.

³ Energy & Environmental Research Center, University of North Dakota, *Liquids Gathering Pipelines: Comprehensive Analysis*, p. 15 (Dec. 1, 2015). (EERC).

Dakota Department of Health records analyzed by EnergyWire.⁴ In fact, the number of uncontained oil and wastewater spills is increasing faster than contained spills: 20 percent of North Dakota's oilfield spills were uncontained in 2013, compared to 24 percent in 2014.⁵

While EDF recognizes that the oil and gas and midstream industries are experiencing economic difficulties associated with current low commodity prices, we also stress the continued and increasing need to prevent harm from leaks and spills. In 2014, clean-up costs for four major spills totaled roughly \$40 million dollars.⁶ Rules proposed at NDAC 43-02-03-29.1 represent a critical step towards avoiding those costs and improving the safety and reliability of gathering lines by ensuring that industry employs the best operational practices and technologies in installation and leak detection.

Many of the recommendations made by the EERC are reflected in the proposed rules, particularly with respect to leak detection, real-time data sharing, flow monitoring and inspection requirements. These recommendations are common sense best practices supported by detailed analysis tailored to the unique circumstances of the state and industry operating here, and should be adopted. Where NDIC proposals differ from the EERC recommendations, we suggest that NDIC adapt the rule or provide a justification for the departure.

In addition to proposed rules, NDIC may wish to consider supplementing proposed language that addresses inspections and integrity tests, details maintenance and servicing requirements, prohibits construction of associated facilities in 100-year flood plains and environmentally sensitive areas, and describes in more detail acceptable spill management programs.

Specific comments and detailed language suggestions pertaining to crude oil and non-freshwater pipeline systems are outlined in the enclosure.

Gas Gathering Lines

With respect to natural gas gathering pipelines, the proposed rules present practical and common sense revisions that will prevent unnecessary waste and enhance safety, economic and environmental outcomes. EDF's extensive analysis of the natural gas supply chain⁷ demonstrates that cost effective practices and operational protocols can diminish lost natural gas from the gathering system and improve responsiveness to leaks and operational events, when they occur.⁸

⁴ Mike Lee, EnergyWire, EENews, *After Years of Spills, N.D. Still Deciding How to Handle Pipeline Leaks*, (Oct. 29, 2015), <http://www.eenews.net/stories/1060027102>.

⁵ Pamela King and Mike Soraghan, EnergyWire, EENews, *U.S. Spill Count Rose 20% in 2014*, (Sept. 29, 2015), <http://www.eenews.net/energywire/stories/1060025432/>

⁶ Mike Lee, EnergyWire, EENews, *After Years of Spills, N.D. Still Deciding How to Handle Pipeline Leaks*, (Oct. 29, 2015), <http://www.eenews.net/stories/1060027102>.

⁷ See, e.g. <https://www.edf.org/climate/methane-studies>; <http://blogs.edf.org/energyexchange/2015/07/21/new-study-emphasizes-need-to-find-and-fix-methane-leaks-reveals-limits-of-voluntary-action/>

⁸ Mitchell, A. et al, *Measurements of Methane Emissions from Natural Gas Gathering Facilities and Processing Plants: Measurement Results*, Environ. Sci. Technol., 2015 49 (5), 3219-3227, DOI: 10.1021/es5052809; Zimmerle,

On the basis of such analysis we suggest several general enhancements to advance the objectives of the proposed rules, as follows:

- Leak detection and monitoring plans providing a regular schedule for leak surveys applicable to *all* in-service natural gas gathering pipelines should be required (NDAC 43-02-03-29.1(10));
- A timetable for filing geographic informational system data providing coordinates for *all* in service natural gas gathering pipeline locations outside the boundary of a wellsite or production facility should be included in the final rule (NDAC 43-02-03-29.1(8));
- Leak notification reports for natural gas gathering pipelines should provide the estimated date for repair of all leaks and the final rule should provide a maximum time – ideally 60 or fewer days – by which such repairs shall be completed after discovery. (NDAC 43-02-03-30)

EDF welcomes any questions or requests for clarification of these comments from the NDIC staff or other stakeholders.

Respectfully Submitted,

Holly Pearen
Environmental Defense Fund
2060 Broadway Ave, Suite 300
Boulder, CO 80302
303-447-7227
hpearen@edf.org

CC Lynn Helms

Enclosure

EDF COMMENTS ON PROPOSED CHANGES TO NDAC CHAPTER 43-03-02

NDAC 43-02-03-01. DEFINITIONS.

Subsection 25: Interested Party

NDIC should strike this proposed definition of interested party, at NDAC-02-03-01 (25), from the draft rule.⁹ If enacted, this provision would severely curtail public input regarding impacts of oil and gas development, and prevent NDIC from receiving fair and balanced information regarding pending “cases.” This dramatic change would not result in material benefit to NDIC or parties to the case.

Impacts of oil and gas development go far beyond the immediate and adjacent properties. For example, air emissions, truck traffic, potential ground and surface water contamination are effects of oil and gas development that extend outside the bounds of the well-pad. Evidence and testimony from community members or their representatives is the best source of information about how this type of impact will affect the public.

Although individuals with a property ownership or management interest in or adjacent to the subject matter of a “case” may also suffer these impacts, property owners also have a vested economic stake in development, which may narrow the focus of evidence and testimony offered. NDIC must allow the public to contribute in order to receive a balanced, accurate picture of the impacts of oil and gas activities under review.

Despite the many downsides created by this proposed language there is no meaningful benefit to the NDIC or parties with economic interests in the case to excluding the concerns of neighbors. Nothing binds the NDIC to adopting the position advocated by community members without a direct property interest in the case. Therefore, there is no harm in allowing evidence or testimony from impacted and concerned members of the public, and the proposed rule is unnecessary.

EDF recommends that the NDIC strike the proposed definition of “interested party.”

⁹ NDAC 43-02-03-01(25). “Interested party” means an individual or number of individuals that have a property ownership or management interest in or adjacent to the subject matter.

43-02-03-29.1. UNDERGROUND GATHERING PIPELINES.

Subsection 1: Application

EDF applauds the Commissions effort to reduce leaks and spills by promoting leading practices for the design, construction, installation and inspection of gathering pipelines. We respectfully recommend that NDIC clarify that this section applies not only to underground gathering pipeline systems designed for or capable of transporting all types of fluids brought to the surface in connection with oil and gas development, but also to reused and recycled produced water and other non-freshwater fluids transported to and used in the development and maintenance of oil and gas wells.

This clarification is consistent with statutory language in Chapter 38-08, Oil and Gas Control Act, and cited language in Chapter 49-22 Energy Conversion and Siting Act. Additionally, clarifying language to include pipeline systems, including flowlines, trunks and mains, accurately reflects standard industry practice and is more protective of public health and the environment.

Comment 1.1 Pipeline Systems

To avoid confusion regarding which pipelines and associated facilities are subject to the rules proposed at NDAC 43-02-03-29.1, NDIC should clarify that underground gathering pipeline systems include all pipelines and associated equipment and facilities that connect the lease to storage, disposal or processing sites, including flowlines, trunk lines, facility lines etc. In light of differing definitions and understandings pertaining to the meaning of “gas gathering lines,” we recommend this clarification particularly with respect to fluids pipeline systems.

NDCC 38-08-02 Section 18, defines “underground gathering pipeline” as

"an underground gas or **liquid pipeline with associated above ground equipment** which is designed for or capable of transporting crude oil, natural gas, carbon dioxide, or **water produced in association with oil and gas** which is not subject to chapter 49-22."

NDCC 38-08-02 Section 18 (emphasis added). Chapter 49-22 specifically excludes “an oil or gas gathering system,” which is defined to include “pipelines and associated facilities” that connect the lease to storage or processing sites. To avoid gaps in regulatory coverage, NDIC should specify that the oil and gas gathering pipeline systems are addressed in the proposed NDAC 43-02-03 Section 29.1.

Regulations applicable to gathering pipeline systems, including flowlines and trunk lines and other types of equipment connecting the lease to the first storage or processing facility are critically important and an essential regulatory step towards reducing spills and leaks. In its study, “Risk-Based Inspections: Strategies to Address Environmental Risk Associated with Oil and Gas Operations,” the Colorado Oil and Gas Conservation Commission Colorado Oil and Gas Conservation Commission (COGCC) identified

flowline failures as a frequent cause of reportable spills and releases.¹⁰ To reduce the risk of spills and releases resulting from flowline failures, the COGCC recommended improving the integrity of flowlines through appropriate construction standards, periodic testing and maintenance, and audits of required pressure testing. NDICs proposed regulations would address these suggested improvements, so long as the Commission clarifies that flowlines and other system components are covered under the proposed rule.

Suggested Edit

1. Application of section. This section is applicable to all underground gathering pipelines systems designed for or capable of....

Comment 1.2 Fluids Produced or Used in Association with Oil and Gas Well Development

EDF commends NDIC for its efforts to reduce produced water spills and leaks. Produced water from the Bakken has been found to contain extremely high TDS concentrations¹¹, major ions and organic constituents that, if released, may cause damage to working landscapes and the environment.¹² However, produced water collected from a well is not the only potentially deleterious fluid transported in underground gathering pipelines.

Underground pipelines may also be used to transport other fluids, including reused and/or recycled produced water, to the well for use during drilling and completion activities. These fluids may also contain concentrations of substances that could be damaging if released- particularly as innovative efforts to use minimally treated produced water for subsequent completions gain traction in the Bakken.¹³ The proposed regulatory language should be adjusted slightly to reflect the reality that fluids pipelines may be used to transport non-freshwater both to and from oil and gas wells.

EDF recommends that the phrase “produced water” be eliminated to avoid use of a term with many potential definitions, and to better reflect NDIC intent to address pipelines transporting other types of non-freshwater fluids.

¹⁰ Colorado Oil and Gas Conservation Commission, Risk Based Inspections: Strategies to Address Environmental risk Associated with Oil and Gas Operations OGCC-2014-PROJECT #7948 (Feb. 2014).

<https://cogcc.state.co.us/Announcements/RiskBasedInspection/RiskBasedInspectionStrategy.pdf>

¹¹ Shaffer, D. L.; et al., Desalinization and Reuse of High-Salinity Shale Gas Produced Water: Drivers, Technologies, and Future Directions. Environ. Sci. Technol. 2013, 47, 9569–9583; Vengosh, A.; Jackson, R. B.; Warner, N.; Darrah, T. H.; Kondash, A. A critical review of the risks to water resources from unconventional shale gas development and hydraulic fracturing in the United States. Environ. Sci. Technol. 2014, 48, 8334–8348.

¹² <http://www.nd.gov/ndic/ogrp/info/g-018-036-fi.pdf>

¹³ <http://www.shaleplaywatermanagement.com/2015/04/water-use-policies-vary-bakken-producers/> (Statoil pilot program in Williams County used 100-percent produced water to complete two wells); Geiver, L. Halliburton Unveils Frack Water Recycling Process for Bakken. The Bakken Magazine. August 14, 2013; <http://thebakken.com/articles/288/halliburton-unveils-frack-water-recycling-processfor-bakken>. (42) Shale Play Water Management, Statoil Water Recycling Program Moves Forward in Bakken, January 3, 2014; <http://www.shaleplaywatermanagement.com/2014/01/stateoil-recycling-movesforward-bakken>. (43) Shale Play Water Management, Water Use Policies Vary for Bakken Producers , April 22, 2015; <http://www.shaleplaywatermanagement.com/2015/04/water-use-policies-varybakken-producers/>.

Suggested Edit:

1. Application of section. This section is applicable to all underground gathering pipelines systems designed for or capable of transporting crude oil, natural gas, carbon dioxide, or ~~produced water~~ non-fresh water fluids used or produced in association with oil and gas activities to or from a production facility for the purpose of disposal, storage, or for sale or use ~~purposes~~.

Comment 1.3 Manufacturer's Specifications

EDF recognizes that manufacturer's specifications are important guideposts in the safe and effective construction, installation and handling of gathering pipelines and components, particularly in light of the rapid development of new and innovative pipeline materials and expanding use of pipelines for novel applications.

However, manufacturer's specifications should be viewed as a floor for performance standards rather than a ceiling. EDF respectfully suggests that NDIC allow operators to deviate from the proposed rules only when manufacturer's specifications create an operational conflict with the rules, and the manufacturer's specifications would result in a pipeline system more resistant to leaks and spills. It is recommended that if discrepancies exist between standards and manufactures recommendations, the more stringent installation and operation practices govern. Typically, manufacturers requirements are minimum standards.

Additionally, in order to keep abreast of changing industry practices and to verify that manufacturer's specifications are in fact more protective, NDIC should request notification and offer approval when an operator intends to deviate from applicable rules.

Suggested Edit:

1. ".....If these rules ~~differ~~ conflict with ~~from~~ the pipeline manufacturer's prescribed installation and operation practices, the operator shall notify the NDIC and shall follow the pipeline manufacturer's prescribed installation unless the manufacturer's specification is determined by the NDIC to be less protective than the rule." ~~the pipeline manufacturer's prescribed installation and operation practices take precedence."~~

Subsection 2: Definitions

Comment 2.1 Consistent definitions of fluids pipeline gathering systems

EDF recommends that the definition of "crude oil or produced water underground gathering pipeline" be adjusted to reflect changes discussed above, with respect to Subsection 1.

Suggested Edit

2. Definitions. The terms used throughout this section apply to this section only.
 - a. “Crude oil or ~~produced water~~ non-freshwater-pipeline system” means an underground gathering pipeline system designed or intended to transfer crude oil or non-freshwater fluids used or produced in association with oil and gas activities to or from a production facility for use, disposal, storage or sale purposes.”

[and conforming changes throughout]

Comment 2.2: Additional suggested definitions

In addition to conforming language pertaining to fluids pipeline systems, EDF recommends that the NDIC avoid confusion by inserting certain definitions applicable to this proposed Section 29.1.

Suggested Edit:

Dike means the perimeter of an impounding space forming a barrier to prevent liquid from flowing in an unintended direction.

Emergency means a deviation from normal operation, a structural failure, or severe environmental conditions that may cause harm to people or property.

Normal operation means functioning within ranges of pressure, temperature, flow, or other operating criteria required by this part.

Operator means a person who owns or operates a crude oil or fluids underground gathering pipeline.

Pipeline facility means new and existing piping, rights-of-way, and any equipment, facility, or building used in the transportation of crude oil or non-freshwater fluids.

Piping means pipe, tubing, hoses, fittings, valves, pumps, connections, safety devices or related components for containing the flow of crude oil or non-freshwater fluids.

Storage tank means a container for storing crude oil or non-freshwater fluids.

Subsection 3: Notification

Comment 3.1 EERC Recommendations for Pre-Construction Notification

In general, EDF strongly supports this notification requirement. Thoughtful and deliberate forward thinking is consistent with the critical first phase of API RP 1173's guiding philosophy of "plan, do, check and act."¹⁴ However, the proposed rules deviate from EERC recommendations in three important ways.

First, EERC proposed that a pipeline operator should provide notice to NDIC at least 30 days prior to commencing new construction.¹⁵ EDF suggests that NDIC adopt this recommendation, and require notice at least 30 days prior to construction commencing, rather than the proposed 7 days. This slightly longer time frame is more likely to allow NDIC a reasonable opportunity to review the significant and detailed information contained in the notice, and to allow adequate time for scheduling a site visit, if warranted.

Second, EERC recommended that any new rulemaking should include references to certain generally accepted corrosion control best practices or regulations. EDF suggests that NDIC's notification rules should require owners to articulate how their anticipated corrosion control plan reflects industry leading practices such as 49 CFR 195, ASME B31.3, ASME B31.4, ASME B31.8, and NACE Standard RP-01-69. This notification requirement would allow owners flexibility to adopt the corrosion control practices appropriate for their pipeline systems, but also provide NDIC with useful information and assurance that owners considered relevant best management practices.

Third, the EERC suggests that installation protocols should be disclosed in an advance notice. We support this recommendation.

EDF suggests that the NDIC adopt the EERC suggestions regarding notice, which are based on a thorough and comprehensive analysis of oil and gas gathering pipelines. Additionally, we offer several language changes for accuracy, clarity and completeness.

Suggested Edit:

3. Notification.

- a. The underground gathering pipeline owner must notify the commission, as provided by the director, at least ~~seven~~ thirty days prior to commencing new construction of any underground gathering pipeline.
 - i. The notice of intent to construct a crude oil or produced water underground gathering pipeline must include the following:
 1. The proposed date construction is scheduled to begin.
 2. A geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format

¹⁴ API Standard 1173, Pipeline Safety Management Systems.

¹⁵ EERC, at 21.

showing the proposed location of the pipeline centerline from the point of origin to the termination point.

3. The proposed underground gathering pipeline design drawings, including all associated pipeline facilities and above ground equipment.
 - a. The proposed pipeline material, specifications (i.e. size, weight, grade, wall thickness, coating (interior and exterior), and standard dimension ratio).
 - b. The type or types of fluid or gas to be transported.
 - c. The anticipated operating pressure of the pipeline and factor of safety of pipe design over anticipated surge pressures.
 - d. The method of testing pipeline integrity (e.g. hydrostatic or pneumatic test) prior to placing the pipeline into service, including the proposed test procedure and pressure.
 - e. Corrosion control methods to be employed, and an articulation of how such methods reflect standards referenced in 49 CFR 195, ASME B31.3, ASME B31.4, ASME B31.8, and NACE Standard RP-01-69, as amended.
4. A list of all third-party independent inspectors and a description of each independent inspector's qualifications, certifications, experience, or specific training.
5. Installation protocols and plans for the proposed fluids pipeline system.

Comment 3.2 Notification Requirements for Out of Service Pipelines

EDF respectfully recommends that the notification timeline for out of service gathering lines should be shortened. Out of service gathering lines present opportunities which would be more efficiently realized and risks that may be mitigated by more timely notification of out-of-service status. For example, out of service gathering lines may be useful to another operator in the area. Accessible and timely information could create opportunities for sale or repurposing of assets and reduce redundant infrastructure construction. EDF's proposed timeline of sixty days will accommodate normal construction and servicing activities, and be consistent with recommended abandonment practices.

EDF proposes additional changes to NDIC's draft language to provide NDIC with usable information regarding the ongoing status of the underground pipeline system.

Suggested Edit:

- b. The underground gathering pipeline owner shall provide written or electronic notification to the commission of any underground gathering pipeline system or portion thereof that has been out of service for more than ~~one year~~ sixty days, and indicate whether the pipeline system has been temporarily or permanently abandoned.

Comment 3.3. Notification of Damage to Pipeline systems

EDF favors the notification requirement at proposed subsection 3.d., and we note that it is generally consistent with the type of information gathering and collaborative efforts recommended by EERC to reduce the number and frequency of excavation strikes. Specifically, EERC recommended that the state continue to work with industry stakeholders to inventory and catalog existing pipeline locations and to develop a mechanism that allows for rapid acquisition of information about pipelines for use in construction such as 811/one call. Although this cataloging represents an ongoing process that is not necessarily best or entirely addressed in this NDIC rulemaking, EDF sees this proposed notification requirement as a positive step in the right direction.

Subsection 4: Design and Construction

Comment 4.1 Size of Acceptable Debris in Backfill

EDF concurs with NDIC regarding the importance of specifying that backfill materials be free of rocks and foreign debris, but suggests one modification to reflect guidance from the EERC and to set forth actionable expectations for backfill material quality.

According to the EERC, one of the “leading causes of pipeline leaks” is “attention to foreign debris in trenches and during backfill.”¹⁶ In common practice, maintaining good size and quality of initial backfill material is critically important to avoid rock impingements, stresses or other threats to pipeline integrity. To this end, EERC reported:

“In all cases, backfill material was described as excavated material free of rocks. Initial backfill material typically had smaller rocks removed than final backfill (if specified usually greater than 2 inches in diameter).”¹⁷

Therefore, EDF suggests that NDIC explicitly limit rocks and foreign debris in backfill to no larger than 2 inches in diameter.

Suggested Edit:

- e. Pipeline trenches must be constructed to allow for the pipeline to rest on undisturbed native soil and provide continuous support along the length of the pipe. Trench bottoms must be free of rocks, debris, trash, and other foreign material larger than 2” in diameter. If a trench bottom is over excavated, the trench bottom must be backfilled

¹⁶ EERC, at 20.

¹⁷ EERC, at 117.

with appropriate material and compacted prior to installation of the pipe to provide continuous support along the length of the pipe.

And

- i. When a trench for an underground gathering pipeline is backfilled, it must be backfilled in a manner that provides firm support under the pipe and prevents damage to the pipe and pipe coating from equipment or from the backfill material. Sufficient backfill material must be placed in the haunches of the pipe to provide long-term support for the pipe. Backfill material must be free of rocks and foreign debris larger than 2". Backfilling material must be compacted during placement in a manner that provides support for the pipe and reduces the potential for damage to the pipe and pipe joints.

Comment 4.2. Protective Systems for Trenches

EDF applauds NDICs efforts to ensure design and construction of fluids pipelines meet minimum established standards to prevent leaks and spills, and urges adoption of most proposed language in this section. We also recommend that NDIC include certain key worker safety requirements, such as appropriate cave-in protection for larger pipeline installations. Protection systems such as shoring, shielding and sloping for larger trenches could help protect workers, pipes and components during construction.

Suggested Edit:

e. The width of the trench must provide a minimum of 6 inches [15.24 centimeters] of clearance on each side of the pipe. Trenches 5 feet deep or greater shall have a protective system (benching, sloping, shoring, and shielding). Trenches 20 feet deep or greater require that the protective system be designed by a registered professional engineer. Trench walls must be excavated to ensure minimal sluffing of sidewall material into the trench.

Comment 4.3 Protection of Pipe at Graded Road Crossings

EDF supports the proposed language requiring that gathering pipelines be bored under graded roads. This practice will protect pipelines from damage and minimize interference with public infrastructure. EDF respectfully suggests that NDIC clarify that pipelines running underneath graded roads must be designed and constructed to withstand overburden stresses, and that such protections extend at least from one edge of the right of way to the other. Appropriate design protections can include greater strength materials or increased wall thickness, pipe casings, as well as other methods.

Suggested Edit:

- f. All underground gathering pipelines that cross a graded road must be bored, and designed and constructed to withstand live and dead load overburden stresses throughout the

right of way crossing, unless the responsible owner or governing agency specifically permits the owner to open cut the road.

Comment 4.4 Damage to Pipeline

Pipeline and components should be handled carefully throughout construction and installation. For example, in addition to potential problems that arise during stringing, joining or lowering in, abrasion caused by dragging pipes across the ground or sharp objects may also compromise pipeline integrity. EDF recommends that NDIC avoid unnecessarily limiting the requirement to avoid physical damage to the pipe.

Suggested Edit:

- h. The pipe shall be handled in a manner that minimizes stress and avoids physical damage to the pipe. ~~during stringing, joining, or lowering in.~~

Comment 4.5 Soil Depth and Thaw

NDIC is wise to include this requirement for cover depths due to North Dakota's prolonged and frigid winter weather. Extreme cold conditions can extend frozen soils to depths, and frozen soil depths of greater than 53 inches have been observed in the Williston Area and 49 inches in the Bismarck area.¹⁸

EERC emphasized the importance of appropriate depth of cover as one of the considerations that "warrant extra attention" in pipeline construction.

Cover depths should be a minimum of 4 feet from the top of the pipe to the finished grade, with a **preferred depth of cover more in the range of 6 to 8 feet**. Depth of cover is of importance for both impact to the pipe itself as well as insulation from freezing temperatures. This is especially important when a pipeline is transporting freshwater and brine but may also be an important consideration to reduce the exposure to freeze/thaw cycling conditions.¹⁹

To accommodate conditions in North Dakota, EDF recommends increasing the minimum burial depth of at least six feet to top of pipe, rather than 4 feet as proposed.

¹⁸ See, Dirk Lammers, Deep Dakota frost causes water main breaks, floods, Casper Star Tribune, (March 17, 2014); http://trib.com/business/deep-dakota-frost-causes-water-main-breaks-floods/article_9190af7c-d4cf-5901-acfb-3fb89e81e2f6.html

¹⁹ EERC, at 114 (emphasis added).

Suggested Edit:

- j. Cover depths must be a minimum of ~~four-six feet~~ [1.83 meters] from the top of the pipe to the finished grade. The cover depth for an undeveloped governmental section line must be a minimum of six feet [1.83] from the top of the pipe to the finished grade.

Comment 4.6 Pipeline Crossings of Environmentally Sensitive Areas

Due to significant negative ramifications to public health and the environment, as well as exacerbated costs and technical difficulties associated with clean-up of leaks and spills that impact environmentally sensitive areas such as water bodies, EDF strongly supports the inclusion of robust design and construction requirements for sections of crude oil and non-freshwater gathering systems that cross environmentally sensitive areas.²⁰ The EERC also identified the need for enhanced design, construction and installation requirements for pipelines that may impact environmentally sensitive areas.

Where pipelines are to be constructed in or near environmentally sensitive areas, such as wetlands and other small surface waterbodies, special consideration should be given to the construction of these pipelines. HDD may be the most appropriate construction method to reduce surface disturbances. In addition, other measures may be warranted to ensure the impact to these areas are minimized in the case of a leak.²¹

NDIC is justified in requiring the use of horizontal directional drilling (HDD) to avoid construction in or over environmentally sensitive areas such as waterways, lakes and wetlands. This practice is already widely used in the Williston Basin.²² In order to ensure that HDD pipeline crossings are sufficiently protective, EDF recommends that NDIC require pipeline owners to submit a pipeline crossing plan approved by registered professional engineer to not impair environmentally sensitive area.

Additionally, EDF suggests that NDIC incorporate other measures to minimize impacts from leaks. Such measures include requirements to case the pipeline throughout the environmentally sensitive area and install shut off valves on either side of the environmentally sensitive area. NDIC may also wish to prohibit the construction of associated facilities in environmentally sensitive areas to limit surface disturbance, minimize servicing requirements and reduce the potential for higher consequence releases.

Pennsylvania's Department of Environmental Protection recently promulgated rules governing fluid gathering systems, and included special provisions for pipelines crossing environmentally sensitive areas. For example, Pennsylvania's Chapter 78a.68b Section (d) provides that shut off valves must be

²⁰ For examples of significant pipeline leaks that impacted North Dakota's water bodies, see, e.g., http://billingsgazette.com/news/state-and-regional/montana/significant-oil-brine-spill-affects-north-dakota-river/article_d0c4fede-c1de-59de-b99f-39d058fbdcca.html; <http://www.pbs.org/newshour/rundown/fracking-brine-leak-north-dakota-reaches-missouri-river-prompts-state-democrats-call-regulation/>; <http://insideenergy.org/2015/01/28/in-north-dakota-oilfield-spill-problems-worsen/>

²¹ EERC, at 118.

²² EERC, at 118.

installed on both sides of a wetland or water body crossing.²³ EDF recognizes that North Dakota's regulations must reflect the state's unique environment, opportunities and constraints, but suggests that the need for special precautions in sensitive ecosystems is similar.

Suggested Edit:

k. Any underground gathering pipeline that traverses environmentally sensitive areas, such as wetlands, streams or other surface waterbodies shall be horizontal directionally drilled in a manner that minimizes impacts to these areas. Sections of gathering pipeline systems that cross environmentally sensitive areas must be installed within casing. Shut off valves shall be installed on both sides of the crossing. No associated facilities shall be installed in environmentally sensitive areas.

A proposed horizontal directional drilling plan shall include the following:

(1) A pipeline crossing plan approved by registered professional engineer to not impair environmentally sensitive area;

[and renumbering as required]

Subsection 6: Inspection

Comment 6.1 Inspection Authority for Pipelines and Associated Facilities

EDF strongly supports the proposed requirement for third-party independent inspections. According to EERC's analysis, lack of inspection is likely to be one of the primary causes of gathering line leaks.²⁴ Problems with inspectors, including lack of inspection supervision, poor performance of company inspectors and third-party independent inspectors, and unwillingness to self-report suspect joints and other pipe damage exacerbate the problem.²⁵ Post-construction inspections performed by independent third party inspectors that are appropriately trained and qualified will provide extremely valuable assurance that the leading construction practices outlined in this rule are followed. Because we believe this is incredibly important and will help prevent leaks and spills from underground gathering lines, we urge the timely adoption of this subsection.

In addition to the excellent currently proposed language, NDIC may wish to add language clarifying the role of state inspectors. Pursuant to NDCC 38-08-04, the commission is charged with making investigations in order to enforce oil and gas statutes and regulations. Chapter 38-08 provides:

²³ 25 Pa. Code 78a.68b (d) (Note: PA DEP's rules for Well Development pipelines for oil and gas operations allow burial of only pipelines containing fresh water. Pipelines transporting crude oil and wastewater must be aboveground, except where they travel beneath a body of water or watercourse.)

²⁴ EERC, at 17.

²⁵ EERC, at 20.

The commission has continuing jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of this chapter. The commission has authority, and it is its duty, to make such investigations as it deems proper to determine whether waste exists or is imminent or whether other facts exist which justify action by the commission.²⁶

To make clear the inspection obligations and expectations pertaining to underground gathering pipelines, EDF recommends that NDIC outline inspection activities to be performed by state pipeline inspectors.

Suggested Edit

Officers, employees, or agents authorized by the NDIC, upon presenting appropriate credentials, are authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of underground gathering system owners to the extent such records and properties are relevant to determining compliance with these rules.

State inspections will be conducted pursuant to one of the following:

- a. Compliance with NDIC rules;
- b. Submitted construction documents and specifications;
- c. Routine scheduling by agents;
- d. A complaint received from a member of the public;
- e. Information obtained from a previous inspection;
- f. Report from a State or municipality; or
- g. Pipeline accident or incident.

If, after an inspection, the inspector believes that further information is needed to determine appropriate action, the inspector may send the owner or operator a "Request for Specific Information" to be answered within 45 days after receipt of the letter.

To the extent necessary to carry out the responsibilities under 43-02-03-29.1, the inspector may require testing of portions of pipeline facilities that have been involved in, or affected by, an accident.

If a representative of the NDIC investigates an incident involving a pipeline, the inspector may request that the operator make available all records and information that pertain to the incident in any way, including integrity management plans and test results, and all that is reasonable for assistance in the investigation.

²⁶ NDCC 38-08-04.

Subsection 7: Associated Facilities

Comment 7.1

Subsection 7 of the proposed rule requires that “all associated pipeline facilities and above ground equipment used to store crude oil or produced water must be devoid of leaks and constructed of materials resistant to the effects of crude oil, produced water, brines, or chemicals that may be contained therein.” This materials requirement “may be waived by the director for tanks presently in service and in good condition.”

Tanks or associated facilities that are not constructed of proper materials are more likely to corrode or develop integrity failures than other equipment constructed of compatible materials. Therefore, equipment “waived by the director” should be inspected regularly- a minimum of monthly- for leaks and signs of integrity failure. Additionally, NDIC’s waiver should not last indefinitely. Associated facilities constructed of incompatible materials should be promptly replaced rather than repaired if any of these inspections reveal failures, compromised equipment or other infirmities. In this way, the use of sub-par materials will not be prolonged, and will be phased out at a reasonable pace as equipment ages.

Suggested Edit:

All associated pipeline facilities and associated above ground equipment used to store crude oil or ~~produced non-fresh~~ water must be devoid of leaks and constructed of materials resistant to the effects of crude oil, produced water, brines, or chemicals that may be contained therein. The above materials requirement may be waived by the director for tanks presently in service and in good condition provided the associated pipeline facility or aboveground equipment is inspected at least monthly by third-party independent inspectors. No repair of waived equipment is permitted: associated facilities and above ground equipment constructed of non-compliant materials shall be replaced with equipment constructed of materials resistant to the effects of crude oil, produced water, brines or chemicals in the event of discovery of leaks, corrosion, or other damage, infirmity or loss of integrity. Unused tanks and associated above ground equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year.

Comment 7.2 Secondary Containment for Tanks and Equipment at Associated Facilities

NDIC’s inclusion of secondary containment requirements for tanks and equipment at associated pipeline facilities is a thorough, straightforward approach to minimize leaks and spills associated with all components of pipeline gathering systems. EDF encourages adoption of these proposed rules, with some changes and additions for clarity and consistency with leading practices.

Specifically, the proposed rule requires secondary containment surrounding “all produced water or crude oil tanks at any new facility” and at “any above ground equipment” when “deemed necessary by the director.” This suggests that secondary containment is not required at non-freshwater water or crude oil tanks at existing associated facilities, but the risk of leaks and spills at new and old facilities is

the same- if not higher- at existing facilities. The proposed rule should be modified to ensure that secondary containment is required around all non-freshwater or crude oil tanks, new and existing.

To avoid leaks and spills from new and existing tanks at associated facilities, NDIC should require integrity testing, prior to placing new tanks into service or, for existing tanks, within a reasonable time after adoption of this rule.

NDIC may also wish to specify the type of dike required, to ensure the use of steel dikes. Steel dikes offer better protection to tanks, and are more robust to elements, settling, and accidental contact from trucks, cattle, and other foreign objects.²⁷ For example, in the 2013 floods, COGCC observed that “steel secondary containment protected tank batteries better than earthen berms.”²⁸

The proposed language uses the term “fluid throughput,” which is ambiguous for several reasons. EDF suggests that requirements in this section be modified for clarity, and to ensure that secondary containment is sufficient to accommodate a single tank, connected tanks, and precipitation events.

Suggested Edit:

Steel dikes must be erected around all ~~produced-non-fresh~~ water or crude oil tanks at any new facility prior to placing the associated underground gathering pipeline into service. New tanks shall be pressure tested prior to placing the associated underground gathering pipeline into service, and existing tanks shall be pressure tested within 6 months of the adoption of this Section. Pressure testing of tanks shall be conducted according to the following specifications:

- a. For aboveground breakout tanks built into API Specification 12F, a pneumatic testing must be in accordance with section 5.3 of API Specification 12 F.
- b. For aboveground breakout tanks built to API Standard 620, hydrostatic and pneumatic testing must be in accordance with section 7.18 of API Standard 620.
- c. For aboveground breakout tanks built to API Standard 650, testing must be in accordance with Section 5.2 of API Standard.
- d. For aboveground atmospheric pressure breakout tanks constructed of carbon and low alloy steel, welded or riveted, and non-refrigerated and tanks built to API Standard 650, the necessity for the hydrostatic testing of repair, alteration, and reconstruction is covered in section 10.3 of API Standard 653.
- e. For aboveground breakout tanks built to API Standard, pressure testing must be in accordance with ASME Boiler and Pressure Vessel Code, Section VIII, Division 1 or 2.

Steel dikes must be installed and maintained at existing facilities within 6 months of promulgation of this subsection unless this requirement waived by the director if design or right of way logistics prevent such secondary containment. Steel dikes must be erected and maintained around all crude oil or produced water tanks or above ground equipment. Dikes as well as the base material under the dikes and within the diked area must be constructed of

²⁷ COGCC, “Lessons Learned in the Front Range Flood of September 2013. (March 14, 2014)

http://cogcc.state.co.us/announcements/hot_topics/flood2013/finalstaffreportlessonslearned20140314.pdf

²⁸ *Id.*, at 44.

sufficiently impermeable material to provide emergency containment. ~~Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid throughput. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction.~~ Discharged crude oil, ~~or produced non-fresh~~ water must be properly removed and may not be allowed to remain standing within or outside of any diked areas. Accumulated precipitation must be promptly removed from within diked areas. Each secondary containment system serving storage tanks must have a minimum volumetric liquid impoundment capacity of: (i) the tank's maximum liquid capacity plus the precipitation volume for a 25-year 24-hour storm event for an impoundment serving a single tank; or (ii) the maximum liquid capacity of the largest tank or total maximum capacity of interconnected tanks that act as one tank, whichever is greater, plus volume for a 25-year 24-hour storm for impoundments serving more than one tank.

Comment 7.3 Associated Facilities Located in Floodplain

To minimize the potential impacts of leaks and spills from crude oil and fluids gathering pipeline systems, EDF recommends that NDIC prohibit the construction of associated facilities in floodplains, and require additional protections for the pipeline segments located within a 100-year floodplain. Associated facilities should be prohibited within designated 100-year floodplains in order to eliminate the creation of backwater effects and protect facilities from floodwaters and debris. Remote shut-in capabilities located on either side of a floodplain will allow pipeline operators to respond to emergencies and potentially catastrophic leaks rapidly and without endangering workers.

Suggested Edit:

Operators must notify the Director when a proposed pipeline is located within or crossing a defined 100-year floodplain. Sections of pipeline systems that cross a 100-year floodplain must have remote shut-in capabilities including, at a minimum, the ability to shut-down the pipeline flows from outside the relevant floodplain. All above ground associated facilities shall be outside of the defined floodplain.

Subsection 8: Underground gathering facilities as built

Comment 8.1: GIS Information for existing pipelines

EDF supports the retention of the rule requiring the owner of any underground gathering pipeline placed into service after July 31, 2011 to file a GIS layer and other information with the NDIC within 180 days of placing the pipeline into service. This useful information regarding the extent and location of the state's gathering pipeline system will markedly enhance NDICs ability to oversee these networks.

However, we note that the EERC recommended that the state increase its efforts to obtain information regarding pipelines constructed prior to August, 2011. EERC stated that "[t]he state should continue to

work with industry stakeholders to inventory and catalog existing pipeline locations for pipelines that were installed prior to new GIS rule. ²⁹

The proposed GIS rule does a good job of addressing the collection of pipeline information going forward, but does not remedy the lack of information on pipelines already in existence when the rule went into effect. While EDF acknowledges that information collection will be an ongoing effort, and need not necessarily be addressed through rulemaking, we nevertheless recommend that the NDIC use this opportunity to require that all operating underground pipelines placed into service prior to August, 2011 file GIS layers with NDIC according to a reasonable schedule.

Suggested Edit:

a. The owner of any underground gathering pipeline placed into service after July 31, 2011, shall file with the director....

- i. A statement that the pipeline was constructed and installed in compliance with section 43-02-03-29.1.
- ii. The outside diameter, minimum wall thickness, composition, internal yield pressure, and maximum temperature rating of the pipeline, or any other specifications deemed necessary by the director.
- iii. The maximum allowable operating pressure of the pipeline.
- iv. The specified minimum yield strength of the pipeline.
- v. The type or types of fluid or gas that will be transported in the pipeline and direction of fluid flow.
- vi. Pressure and duration to which the pipeline was tested prior to placing into service and meets manufacturer specifications and all design plans and specifications.
- vii. The minimum pipeline depth of burial from the top of the pipe to the finished grade.
- viii. In-service date.
- ix. Leak detection and monitoring methods that will be utilized after in-service date.
- x. The name of the pipeline gathering system and any other separately named portions thereof.
- xi. Accuracy of the geographical information system layer.

b. The requirement to submit a geographical information system layer is not to be construed to be required on buried piping utilized to connect flares, tanks, treaters, or other equipment located entirely within the boundary of a well site or production facility.

c. Owners of all in service underground pipeline systems shall file information required under subsection (a) with NDIC according to the following schedule:

- i. Pipelines constructed before July 31, 2011 within one year after adoption of this subsection;

²⁹ EERC, at

- ii. Pipelines constructed after July 31, 2011 within 180 days after placing pipeline into service;
- iii. Any pipeline placed into service after adoption of this subsection within 30 days.

Subsection 9 Operating Requirements

Comment 9.1 Ongoing Maintenance

Pipeline maintenance is a critical component of gathering pipeline system operations. According to EERC, spill statistics show that regular maintenance is one of the top three ways to minimize pipeline failures.

The 1999 and 2010 ADEC reviews on spill statistics and the NTSB report on the 2010 Enbridge incident reported a common theme that extensive operator training and proactive pipeline inspection and maintenance have the greatest impact on reducing pipeline leaks.³⁰

Accordingly, EERC recommended that NDIC should address maintenance in its rulemaking,³¹ and EDF concurs. This recommendation is consistent with the 2013 findings of the Pipeline Technology Working Group (Working Group), which stated that “a strong focus on incident prevention was paramount in North Dakota” and specified that incident prevention includes “strict operating and maintenance practices.”³² Basic maintenance is already required of pipeline systems under the jurisdiction of the U.S. Department of Transportation, which demonstrates that compliance with reasonable maintenance rules is currently feasible.³³

In light of the relative importance of ongoing maintenance and ease of compliance, EDF recommends that NDIC include requirements for maintenance in the proposed gathering pipeline system rules.

Suggested Edit:

9. Operating and maintenance requirements.

The maximum allowable operating pressure shall not exceed the manufacturer’s specifications of the pipe or the manufacturer’s specifications of any other component of the pipeline, whichever is less. The underground gathering pipeline must be equipped with ASME certified pressure-regulating devices to prevent the pipeline from operating above the maximum allowable pressure.

Underground gathering pipeline systems shall be regularly maintained according to manufacturers’ specifications, and at a minimum as provided by the following:

³⁰ EERC, at 25.

³¹ EERC, at 21

³² EERC, at 32.

³³ See, e.g. 49 CFR Part 195 Subchapter F.

- a. Each component in service, including its support system, must be maintained in a condition that is compatible with its operational or safety purpose by repair, replacement, or other means.
- b. An operator may not place, return, or continue in service any component which is not maintained in accordance with manufacturer recommendations.
- c. Each component taken out of service must be identified in the records kept on pipeline
- d. If a safety device is taken out of service for maintenance, the component being served by the device must be taken out of service unless the same safety function is provided by an alternate means.
- e. If the inadvertent operation of a component taken out of service could cause a hazardous condition, that component must have a tag attached to the controls bearing the words “do not operate” or words of comparable meaning.

Comment 9.2 Shut-off Valves to Limit Releases to 1,000 barrels

Shut-off valves, particularly those with remote operating capabilities, can limit the volume of fluid released into the environment in the event of a leak or spill if placed along regular intervals of a pipeline gathering system. In its recently promulgated pipeline regulations, Pennsylvania’s Department of Environmental Protection included a reasonable and protective requirement that pipeline operators install shut off valves capable of limiting a release to 1,000 barrels.

WELL DEVELOPMENT pipelines used to transport fluids other than fresh ground water, surface water, water from water purveyors or approved sources, must have shut off valves, check valves or other method of segmenting the pipeline placed at designated intervals, to be determined by the pipeline diameter, that prevent the discharge of [no] more than 1,000 barrels of fluid. Elevation changes that would effectively limit flow in the event of a pipeline leak shall be taken into consideration when determining the placement of shut off valves and be considered effective flow barriers.³⁴

This requirement accommodates site-specific information, and allows for pipeline system owners to make critical design decisions, while setting appropriate and protective boundaries for pipeline operation. EDF respectfully suggests that NDIC consider including a similar requirement in the proposed underground pipeline gathering system regulations.

Suggested Edit

Crude oil or non-freshwater underground gathering systems shall be equipped with shut off valves or other methods of segmenting the pipeline capable of preventing the discharge of more than 1,000 barrels of fluid. Elevation changes that would effectively limit flow in the event of a

³⁴ 25 Pa. Code 78a.68b(e)

pipeline leak shall be taken into consideration when determining the placement of shut off valves and be considered effective flow barriers.

Subsection 10 Leak Detection and Monitoring

Comment 10. 1. Leak detection plan

EDF strongly supports the NDIC in its efforts to promote the widespread use of leak detection and monitoring systems to minimize the impacts of leaks and spills. Of course, no pipeline gathering system will operate perfectly at all times. But when an inevitable leak occurs, leak detection systems increase the probability that the leak will be found.³⁵ NDIC's proposed leak detection and computational pipeline monitoring rules are progressive and represent a positive step towards leveraging best management practices to reduce the impacts of spills and leaks from crude oil and fluid pipelines.

Leak detection and monitoring systems are critical components of any underground gathering line,³⁶ and are necessary to maintain safe and efficient pipeline operations and to minimize impacts from leaks and spills. Accordingly, EERC made leak detection a focal point of their study. After consideration of reviews on spill statistics and evidence surrounding major spill incidents, EERC concluded that "improved leak detection and a well-planned spill response to an incident were found to decrease the severity of the release."³⁷ Despite the many benefits of leak detection systems, however, the EERC determined that operators are not certain to use leak detection systems if not required by regulation.

There are many reasons for investing in leak detection technology. The value of lost product, negative impacts to the environment, loss of pipeline functionality, spill remediation costs, and public perception all impact decisions regarding the implementation of leak detection. Some of these factors can be tied to an economic analysis, many cannot. Pipeline leaks are generally unpredictable; therefore, it is difficult to assign a cost to things like remediation, loss of product, or pipeline repairs. Other factors, such as public perception, cannot be evaluated on an economic basis. Nonetheless, bad publicity can lead to the promulgation of more regulations or changes in operational guidelines which can translate to cost. Ultimately, the extent to which monitoring and leak detection systems will be implemented beyond regulatory requirements will be decided by the individual company based on its operating paradigm and an analysis of risk.³⁸

³⁵ EERC, at 152.

³⁶ HB 1358, amendment to Subsection 18 of section 38-08-02 defined "associated equipment" to include leak detection. (As used in this subsection, "associated above ground equipment" means equipment and property located above ground level, which is incidental to and necessary for or useful for transporting crude oil, natural gas, carbon dioxide, or water produced in association with oil and gas from a production facility. As used in this subsection, "equipment and property" includes a pump, a compressor, storage, leak detection or monitoring equipment, and any other facility or structure.); <http://www.legis.nd.gov/assembly/64-2015/documents/15-0460-06000.pdf?20160417000536>

³⁷ EERC, at 152.

³⁸ EERC, at 158.

Given the importance of leak detection systems in minimizing impacts of inevitable leaks and spills, EDF strongly encourages NDIC to require operators to prepare and act upon effective leak detection plans. These plans can be adjusted to accommodate new information and technological developments.

However, as currently drafted, it is unclear whether operators must create and employ a leak detection system. It is also unclear whether operators must file a leak detection plan for every gathering system, or must only file if a plan is prepared or otherwise requested by the director. Due to the critical importance of leak detection systems, EDF urges NDIC to make clear that each operator should prepare and act in accordance with a leak detection and monitoring plans.

Suggested Edit:

All crude oil and ~~produced non-fresh~~ water underground gathering pipeline system owners must employ a leak detection and monitoring system, and file with the commission plans detailing the ~~any~~ leak detection and monitoring system ~~plan prepared by the owner or required by the~~ ~~director.~~

Comment 10.2 Leak detection methods for various types of pipelines

EDF again stresses the importance of robust and effective leak detection and monitoring in minimizing the impacts of leaks and spills from underground gathering pipeline systems. At the same time, we recognize that “robust and effective” may mean different things for different types of pipelines, or for various pipeline segments.

At a minimum, we recommend that computational pressure monitoring be required for transmission and collection mains, which tend to have higher operating pressures that are more conducive to CPM capabilities.

For flowlines and other small dimension pipeline segments servicing single facilities, operators may be able to design leak detection and monitoring systems that are similarly, or more effective than computational pipeline monitoring (CPM). In no circumstance, however, should flowlines go without leak detection and monitoring. As discussed above, the Colorado Oil and Gas Conservation Commission (COGCC) identified flowline failures as a frequent cause of reportable spills and releases.³⁹ The COGCC’s a “Risk-Based Inspections: Strategies to Address Environmental Risk Associated with Oil and Gas Operations” study recommended that operators and governing agencies take actions to reduce the risk of spills and releases resulting from flowline failures by improving the integrity of flowlines through periodic testing and maintenance and audits of required pressure testing.

³⁹ Colorado Oil and Gas Conservation Commission, Risk Based Inspections: Strategies to Address Environmental risk Associated with Oil and Gas Operations OGCC-2014-PROJECT #7948 (Feb. 2014).
<https://cogcc.state.co.us/Announcements/RiskBasedInspection/RiskBasedInspectionStrategy.pdf>

Suggested Edit:

Leak detection and monitoring system plans may distinguish between collection or transmission mains and flowlines, but must address all components of the system. NDIC shall, at the directors discretion, periodically audit the operators leak detection and monitoring plans.

Comment 10.3 Data sharing plan

EDF applauds NDIC for including in the proposed rule the requirement that operators develop a “real time data sharing plan.” Coordination and communication between adjacent, partnering entities on a gathering system can speed detection and minimize impacts of leaks and spills, and represents a leading practice in pipeline operation where there are multiple ownership interests.

EERC made real time data sharing across a given pipeline a key recommendation after observing the negative impacts of barriers communication.

Lack of communication and consequent awareness between a disposal well operator and a gathering line operator contributed to extending the duration of a spill when a leak occurred in a gathering line that fed a produced water disposal well. The disposal well operator was unaware of flow in the gathering line, so rationalized that the lack of flow from the line was expected. Conversely, the gathering line operator was unaware of the lack of flow at the disposal well.⁴⁰

The proposed rule should not be difficult to comply with. In fact, EERC observed that many pipeline operators in the state currently employ real time data sharing.⁴¹ Operators still without real-time measurement data communication capabilities can easily select from the numerous options available, including those outlined and evaluated in the study.

Section 11 Spill Response

Comment 11.1:

In general, the NDIC’s proposed spill response regulation is a strong, common sense requirement that will facilitate collaboration between entities likely to respond to spills and leaks. We recommend that the response plan should be updated bi-annually to accommodate changing circumstances, staff, and evolving best management practices.

⁴⁰ EERC, at 19.

⁴¹ EERC, at 253. (“Field visits to and surveys of gathering line operators indicate a range of attitudes and capabilities exist from 1) essentially no real-time measurement data communication to 2) gathering line operators actively developing and installing a SCADA systems to 3) fairly well-developed measurement, communication and SCADA systems with operating procedures that support a basic level of leak detection.”)

EDF also recommends that a final copy of the spill response plan should be provided to local emergency responders. Local emergency responders are often the first on the scene of a leak or spill, and operators should endeavor to maintain open lines of communication, beginning with up to date and collaboratively developed plans for handling emergencies. This is consistent with EERC recommendations, which suggests that local emergency managers “work closely with pipeline operators to tailor response capabilities for the specific risks in their jurisdiction.”⁴²

Suggested Edit:

All crude oil and produced water underground gathering pipeline owners must maintain a spill response plan, and update such plan at least once every two years during the service life of any crude oil or produced water underground gathering pipeline. The plan must detail the necessary steps for an effective and timely response to a pipeline spill. The spill response plan must be developed in conjunction with the local emergency manager and tailored to the specific risks in the localized area. A current copy of the spill response plan shall be provided to the local emergency manager. Response capabilities must address access to equipment and tools necessary to respond, as well as action steps to protect the health and property of impacted landowners, citizens, and the environment.

Section 13 Pipeline Integrity

Comment 13.1 Defining Success of Pipeline Integrity Tests

NDIC’s proposal to require pipeline integrity tests before service and after repairs or other alterations is consistent with best practices and will reduce leaks and spills from gathering pipeline systems. EDF supports this requirement, and respectfully suggests that NDIC add language to the rule to clarify what is considered a successful or passing test result.

Some oil and gas regulators specify passing results for required integrity tests to provide certainty to operators, contractors, inspectors and regulators about what is expected, and what is sufficient.⁴³ In the case of underground gathering pipeline systems, the variety of pipeline system designs, materials and functions, makes a single integrity test result unworkable.⁴⁴ However, testing methods for the various configurations and pipeline types are generally described in detail in industry standards, such as ASTM. Therefore, in specifying the use of an industry approved testing method, the state is also clarifying what is considered an acceptable test result.

Suggested Edit:

No underground gathering pipeline owner may operate a pipeline unless it has been pressure tested per ASTM, API or other industry standards approved by NDIC and demonstrated integrity. In addition, no owner may return to service a portion of pipeline that has been repaired, replaced, relocated, or otherwise changed until it has been pressure tested.

⁴² EERC, at 197.

⁴³ 25 Pa. Code 78a.68b. (“A passing test is holding 125% of the anticipated maximum pressure for 2 hours.”).

⁴⁴ EERC, at 84.

Comment 13.2 Handling and Disposal of Water Used in Hydrostatic Pressure Tests

To the extent that NDIC's proposed rule contemplates additional requirements to employ hydrostatic pressure tests, NDIC may consider mitigating the effects of water used in conducting these tests. EDF recommends the addition of guidance for handling and disposal of water used in hydrostatic pressure tests in compliance with state water quality regulations and all soil protection and erosion control requirements.

Suggested Edit:

No water used in hydrostatic pressure shall be discharged into waters of the state without NPDES permit issued by state, or in violation of any state or local soil protection or erosion control requirement.

Comment 13.3 Duties of Inspector

Subsection 13.b. requires an operator to submit an "independent inspector's certificate of hydrostatic or pneumatic testing of a crude oil or produced water underground gathering line." EDF supports this proposed regulation, but it is unclear whether the NDIC expects an inspector to witness the test. If this is the intention, the regulation should so specify.

Comment 13.4: Demonstrating Continual Pipeline Integrity

Requiring pipeline owners to demonstrate the continuous integrity of pipeline systems is an exemplary regulation and excellent forward progress towards reducing the likelihood of and reducing the potential impacts of leaks and spills from gathering pipeline systems. EDF vigorously encourages the adoption of this proposed rule.

Without detracting from our full support for this provision, EDF suggests that NDIC clarify the type of testing that will satisfy this requirement. We also note that to demonstrate "continual pipeline integrity," an operator would ideally utilize computational pipeline modeling or real-time data analysis. Without continuous monitoring systems, demonstration of continual integrity would need to entail frequent periodic pressure testing. Explaining what is intended by the terms "continual" and "periodic" (e.g. "periodic pressure testing") in this way will create certainty for the regulated community, Commission and other stakeholders.

Suggested Edit:

The underground gathering pipeline owner must demonstrate continual pipeline integrity for all in-service underground gathering pipelines. Pipeline integrity can be demonstrated through either:

(i) Computational pipeline monitoring or real time leak detection systems, with annual integrity testing (using smart pigs or similar devices) for steel lines or annual pressure testing for all other pipeline materials OR

(ii) Monthly internal integrity inspections for steel lines (using smart pigs or similar devices) and monthly pressure testing for all lines. ~~periodic pressure testing, computational pipeline monitoring and leak detection systems, or internal integrity inspections.~~

Pipeline pressure and integrity tests shall be conducted pursuant to ASTM, API or other industry standards approved by NDIC. Pipeline pressure and integrity test records shall be retained for the in-service life of the pipeline and made available upon request by the commission.

Subsection 14: Pipeline Repair

Comment 14.1: Robust and useful reporting requirements

EDF is strongly supportive of NDIC's proposed reporting requirements. When operators report the root causes of pipeline failures and the conditions that compromise integrity, all stakeholders – including NDIC, the industry and academia- can assess where the largest problems are and strategically assign resources to address them. Robust and comprehensive reporting rules that facilitate the collection and dissemination of critical information about the realistic strengths and weaknesses of various pipeline system design, construction and materials are essential for efficient operations and effective regulation.

However, currently information regarding the root cause of leaks and spills from pipelines in North Dakota is lacking. Accordingly, at numerous points in its comprehensive pipeline study, the EERC recommended that the state use its regulatory authority to facilitate collection and dissemination of failure analyses.

“The state should streamline the ways spill data are reported, processed, and analyzed to facilitate data analysis. Implementing such a data management function within the state will likely necessitate additional resources at North Dakota DMR.”⁴⁵

“After streamlining is achieved, North Dakota DMR should collect and analyze data continually to determine root causes of pipeline leaks and then continually refine regulatory language that addresses root cause determinations.”⁴⁶

...

It is, therefore, recommended that the state consider rule making that facilitates this participation and the dissemination of lessons learned from such failure analyses. This critical

⁴⁵ EERC, at 20.

⁴⁶ EERC, at 20.

recommendation will provide the state with a pathway to avoid repetition of critical failures among multiple operators.⁴⁷

In order to ensure that NDIC, academia and the regulated industry receive the best information about the causes of spills and leaks, NDIC should clarify language in this subsection requiring reporting of the causes of pipeline and component repairs and replacement. As currently written, the proposed reporting requirements may be satisfied by cursory responses that do not provide enough information to allow for informative failure analysis. We recommend that NDIC slightly modify language in this subsection to ensure sufficient data regarding pipeline integrity failures is collected, and for consistency with proposed modifications to NDAC 43-02-03-30.

Suggested Edit:

Within one hundred eighty days of repairing or replacing any underground gathering pipeline the owner of the pipeline shall file with the director ... an affidavit of completion containing the following information:

...

(2) The root cause of compromised pipeline integrity, and reason for the repair or replacement.

Comment 14.2 Sections of pipe clamped or squeezed during emergencies to be replaced

EDF concurs with NDICs proposal to prohibit clamping and squeezing during repair of certain underground gathering pipelines. Sections of the pipe that are clamped or squeezed may be damaged, and this damage may lead to future leaks and spills. Therefore, we recommend that clamping or squeezing be prohibited for any underground gathering line, including pipelines carrying crude oil as well as non-fresh water.

However, EDF acknowledges that squeezing and clamping may be useful in emergencies to rapidly stop flow from a compromised pipeline. We believe the proposed language accommodates this application, and would allow for clamping and squeezing as an emergency measure. To address potential damage to sections of a pipeline caused by this method of emergency flow management, we suggest that NDIC require that sections of pipe clamped or squeezed must be replaced before the pipe is placed back into service.

Suggested Edit:

c. Clamping or squeezing as a method of repair for any produced water underground gathering pipeline is prohibited. In the event an underground gathering pipeline is clamped or squeezed

⁴⁷ EERC, at 17.

during an emergency, the clamped or squeezed sections of pipe shall be replaced before placing the pipeline back into service.

Subsection 15: Pipeline Abandonment

Comment 15.1

EDF is pleased to see that NDIC included minimum standards and criteria for pipeline abandonment. To avoid confusion, we respectfully suggest that NDIC clarify that the proposed regulations apply to permanently abandoned gathering pipeline systems, as defined in NDCC 38-08-02. Definitions ("Abandoned pipeline" means an underground gathering pipeline that is no longer in service, is physically disconnected from in-service facilities, and is not intended to be reactivated for future use.)

Additionally, to minimize the risk of leaks and spills from temporarily abandoned pipeline systems, we urge NDIC to include regulations specifically addressing pipelines or pipeline segments temporarily out of service for longer than thirty days. Pressurized pipeline systems full of crude oil or non-fresh water may rupture whether the pipeline is in service or not. Minimal or reduced monitoring of temporarily out of service pipelines may result in longer detection times and larger volumes of leaks and spills. Thirty days is an appropriate "temporary abandonment" period because it is sufficient to accommodate most construction or repair activities along the pipeline or at facilities on either end of the system.

Suggested Edit:

15. Pipeline abandonment

a. When an oil and gas underground gathering pipeline or any part of such pipeline is abandoned as defined in NDCC 38-08-02, the owner shall leave such pipeline in a safe condition by conducting the following:

....

c. Temporarily abandoned pipelines. Crude oil and fluids gathering pipeline systems, or any part of that system, not used to transport crude oil or non-freshwater fluids for more than thirty consecutive calendar days must be depressurized and emptied.

43-02-03-30 Notification of Fires, Leaks, Spills or Blowouts.

Comment 1

While EDF is sympathetic to NDIC's efforts to clarify notification requirements to reflect the new regulations pertaining to underground gathering pipeline systems, proposed modifications to this Section would unnecessarily limit the notification requirements, and may create uncertainty regarding applicable spill requirements.

Underground gathering pipelines were covered under existing language. Unfortunately, language specifically including "underground gathering pipelines" would exclude from notification requirements any pipelines located at the surface. Spills and leaks from surface lines should be subject to the same notification rules as other oil and gas related fires, leaks, spills or blowouts. Different rules for surface pipelines are unnecessary and would cause confusion.

We respectfully urge NDIC to strike the proposed addition of “underground gathering” from this Subsection and retain the current rule.

Suggested Edit:

“All persons controlling or operating any well, ~~underground gathering~~ pipeline...”

Comment 2

For the reasons expressed in Comment 14.1, EDF commends NDIC on its modification of written follow up notification requirements to include a root cause of spills, leaks or releases. Obtaining this information is essential to facilitate continuous improvement in industry practices and responsive regulation. NDIC, pipeline owners and other stakeholders will benefit tremendously from this information.

April 21, 2016

Bruce Hicks, Assistant Director
NDIC Department of Mineral Resources, Oil and Gas Division
600 E. Boulevard Ave.
Bismarck, ND 58505



RE: Comments on Proposed Rule Changes to NDAC 43-02-03-et seq.

Dear Mr. Hicks:

Environmental Defense Fund (EDF) respectfully submits the following comments regarding the proposed changes to North Dakota Administrative Code (NDAC) 43-02-03-et seq. EDF is an environmental non-profit with over 1.5 million members worldwide, including many in North Dakota. Our goal is to enhance environmental performance through market-based solutions and private sector collaboration, as well as measured regulatory frameworks. We commend the North Dakota Industrial Commission (NDIC) for its efforts in drafting these proposed rules. The changes and additions are necessary, thorough and timely.

Crude oil and non-freshwater pipelines

The system of gathering pipelines servicing the oil and gas industry is rapidly expanding in North Dakota, and with it the potential for leaks and spills. Approximately 23,000 miles of gathering pipelines have been installed in North Dakota in order to transport fluids from the wellhead to various processing facilities.¹ Last year the Department of Mineral Resources projected that oil companies will build another 36,000 miles of gathering lines as the Bakken Shale is developed.² According to the Energy & Environmental Research Center (EERC), "the increasing size of the system means that even low incident rates may result in a greater number of spills and attendant volumes in a given year."³

Spills and leaks from gathering pipelines carrying crude oil and non-fresh water to and from production wells threaten North Dakota's communities, agriculture and environment. Pipeline spills that occur in relatively remote areas are particularly concerning because detection may take longer and substances can more easily escape containment onto working fields and water sources. Of the five biggest uncontained spills between October 2014 and 2015, three came from pipelines, according to North

¹ Energy & Environmental Research Center, University of North Dakota, *Liquids Gathering Pipelines: Comprehensive Analysis*, p. 15 (Dec. 1, 2015).

² Mike Lee, EnergyWire, EENews, *After Years of Spills, N.D. Still Deciding How to Handle Pipeline Leaks*, (Oct. 29, 2015), <http://www.eenews.net/stories/1060027102>.

³ Energy & Environmental Research Center, University of North Dakota, *Liquids Gathering Pipelines: Comprehensive Analysis*, p. 15 (Dec. 1, 2015). (EERC).

Dakota Department of Health records analyzed by EnergyWire.⁴ In fact, the number of uncontained oil and wastewater spills is increasing faster than contained spills: 20 percent of North Dakota's oilfield spills were uncontained in 2013, compared to 24 percent in 2014.⁵

While EDF recognizes that the oil and gas and midstream industries are experiencing economic difficulties associated with current low commodity prices, we also stress the continued and increasing need to prevent harm from leaks and spills. In 2014, clean-up costs for four major spills totaled roughly \$40 million dollars.⁶ Rules proposed at NDAC 43-02-03-29.1 represent a critical step towards avoiding those costs and improving the safety and reliability of gathering lines by ensuring that industry employs the best operational practices and technologies in installation and leak detection.

Many of the recommendations made by the EERC are reflected in the proposed rules, particularly with respect to leak detection, real-time data sharing, flow monitoring and inspection requirements. These recommendations are common sense best practices supported by detailed analysis tailored to the unique circumstances of the state and industry operating here, and should be adopted. Where NDIC proposals differ from the EERC recommendations, we suggest that NDIC adapt the rule or provide a justification for the departure.

In addition to proposed rules, NDIC may wish to consider supplementing proposed language that addresses inspections and integrity tests, details maintenance and servicing requirements, prohibits construction of associated facilities in 100-year flood plains and environmentally sensitive areas, and describes in more detail acceptable spill management programs.

Specific comments and detailed language suggestions pertaining to crude oil and non-freshwater pipeline systems are outlined in the enclosure.

Gas Gathering Lines

With respect to natural gas gathering pipelines, the proposed rules present practical and common sense revisions that will prevent unnecessary waste and enhance safety, economic and environmental outcomes. EDF's extensive analysis of the natural gas supply chain⁷ demonstrates that cost effective practices and operational protocols can diminish lost natural gas from the gathering system and improve responsiveness to leaks and operational events, when they occur.⁸

⁴ Mike Lee, EnergyWire, EENews, *After Years of Spills, N.D. Still Deciding How to Handle Pipeline Leaks*, (Oct. 29, 2015), <http://www.eenews.net/stories/1060027102>.

⁵ Pamela King and Mike Soraghan, EnergyWire, EENews, *U.S. Spill Count Rose 20% in 2014*, (Sept. 29, 2015), <http://www.eenews.net/energywire/stories/1060025432/>

⁶ Mike Lee, EnergyWire, EENews, *After Years of Spills, N.D. Still Deciding How to Handle Pipeline Leaks*, (Oct. 29, 2015), <http://www.eenews.net/stories/1060027102>.

⁷ See, e.g. <https://www.edf.org/climate/methane-studies>; <http://blogs.edf.org/energyexchange/2015/07/21/new-study-emphasizes-need-to-find-and-fix-methane-leaks-reveals-limits-of-voluntary-action/>

⁸ Mitchell, A. et al, *Measurements of Methane Emissions from Natural Gas Gathering Facilities and Processing Plants: Measurement Results*, Environ. Sci. Technol., 2015 49 (5), 3219-3227, DOI: 10.1021/es5052809; Zimmerle,

On the basis of such analysis we suggest several general enhancements to advance the objectives of the proposed rules, as follows:

- Leak detection and monitoring plans providing a regular schedule for leak surveys applicable to *all* in-service natural gas gathering pipelines should be required (NDAC 43-02-03-29.1(10));
- A timetable for filing geographic informational system data providing coordinates for *all* in service natural gas gathering pipeline locations outside the boundary of a wellsite or production facility should be included in the final rule (NDAC 43-02-03-29.1(8));
- Leak notification reports for natural gas gathering pipelines should provide the estimated date for repair of all leaks and the final rule should provide a maximum time – ideally 60 or fewer days – by which such repairs shall be completed after discovery. (NDAC 43-02-03-30)

EDF welcomes any questions or requests for clarification of these comments from the NDIC staff or other stakeholders.

Respectfully Submitted,

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CC Lynn Helms

Enclosure

EDF COMMENTS ON PROPOSED CHANGES TO NDAC CHAPTER 43-03-02

NDAC 43-02-03-01. DEFINITIONS.

Subsection 25: Interested Party

NDIC should strike this proposed definition of interested party, at NDAC-02-03-01 (25), from the draft rule.⁹ If enacted, this provision would severely curtail public input regarding impacts of oil and gas development, and prevent NDIC from receiving fair and balanced information regarding pending “cases.” This dramatic change would not result in material benefit to NDIC or parties to the case.

Impacts of oil and gas development go far beyond the immediate and adjacent properties. For example, air emissions, truck traffic, potential ground and surface water contamination are effects of oil and gas development that extend outside the bounds of the well-pad. Evidence and testimony from community members or their representatives is the best source of information about how this type of impact will affect the public.

Although individuals with a property ownership or management interest in or adjacent to the subject matter of a “case” may also suffer these impacts, property owners also have a vested economic stake in development, which may narrow the focus of evidence and testimony offered. NDIC must allow the public to contribute in order to receive a balanced, accurate picture of the impacts of oil and gas activities under review.

Despite the many downsides created by this proposed language there is no meaningful benefit to the NDIC or parties with economic interests in the case to excluding the concerns of neighbors. Nothing binds the NDIC to adopting the position advocated by community members without a direct property interest in the case. Therefore, there is no harm in allowing evidence or testimony from impacted and concerned members of the public, and the proposed rule is unnecessary.

EDF recommends that the NDIC strike the proposed definition of “interested party.”

⁹ NDAC 43-02-03-01(25). “Interested party” means an individual or number of individuals that have a property ownership or management interest in or adjacent to the subject matter.

43-02-03-29.1. UNDERGROUND GATHERING PIPELINES.

Subsection 1: Application

EDF applauds the Commissions effort to reduce leaks and spills by promoting leading practices for the design, construction, installation and inspection of gathering pipelines. We respectfully recommend that NDIC clarify that this section applies not only to underground gathering pipeline systems designed for or capable of transporting all types of fluids brought to the surface in connection with oil and gas development, but also to reused and recycled produced water and other non-freshwater fluids transported to and used in the development and maintenance of oil and gas wells.

This clarification is consistent with statutory language in Chapter 38-08, Oil and Gas Control Act, and cited language in Chapter 49-22 Energy Conversion and Siting Act. Additionally, clarifying language to include pipeline systems, including flowlines, trunks and mains, accurately reflects standard industry practice and is more protective of public health and the environment.

Comment 1.1 Pipeline Systems

To avoid confusion regarding which pipelines and associated facilities are subject to the rules proposed at NDAC 43-02-03-29.1, NDIC should clarify that underground gathering pipeline systems include all pipelines and associated equipment and facilities that connect the lease to storage, disposal or processing sites, including flowlines, trunk lines, facility lines etc. In light of differing definitions and understandings pertaining to the meaning of “gas gathering lines,” we recommend this clarification particularly with respect to fluids pipeline systems.

NDCC 38-08-02 Section 18, defines “underground gathering pipeline” as

“an underground gas or liquid pipeline with associated above ground equipment which is designed for or capable of transporting crude oil, natural gas, carbon dioxide, or water produced in association with oil and gas which is not subject to chapter 49-22.”

NDCC 38-08-02 Section 18 (emphasis added). Chapter 49-22 specifically excludes “an oil or gas gathering system,” which is defined to include “pipelines and associated facilities” that connect the lease to storage or processing sites. To avoid gaps in regulatory coverage, NDIC should specify that the oil and gas gathering pipeline systems are addressed in the proposed NDAC 43-02-03 Section 29.1.

Regulations applicable to gathering pipeline systems, including flowlines and trunk lines and other types of equipment connecting the lease to the first storage or processing facility are critically important and an essential regulatory step towards reducing spills and leaks. In its study, “Risk-Based Inspections: Strategies to Address Environmental Risk Associated with Oil and Gas Operations,” the Colorado Oil and Gas Conservation Commission Colorado Oil and Gas Conservation Commission (COGCC) identified

flowline failures as a frequent cause of reportable spills and releases.¹⁰ To reduce the risk of spills and releases resulting from flowline failures, the COGCC recommended improving the integrity of flowlines through appropriate construction standards, periodic testing and maintenance, and audits of required pressure testing. NDICs proposed regulations would address these suggested improvements, so long as the Commission clarifies that flowlines and other system components are covered under the proposed rule.

Suggested Edit

1. Application of section. This section is applicable to all underground gathering pipelines systems designed for or capable of....

Comment 1.2 Fluids Produced or Used in Association with Oil and Gas Well Development

EDF commends NDIC for its efforts to reduce produced water spills and leaks. Produced water from the Bakken has been found to contain extremely high TDS concentrations¹¹, major ions and organic constituents that, if released, may cause damage to working landscapes and the environment.¹² However, produced water collected from a well is not the only potentially deleterious fluid transported in underground gathering pipelines.

Underground pipelines may also be used to transport other fluids, including reused and/or recycled produced water, to the well for use during drilling and completion activities. These fluids may also contain concentrations of substances that could be damaging if released- particularly as innovative efforts to use minimally treated produced water for subsequent completions gain traction in the Bakken.¹³ The proposed regulatory language should be adjusted slightly to reflect the reality that fluids pipelines may be used to transport non-freshwater both to and from oil and gas wells.

EDF recommends that the phrase “produced water” be eliminated to avoid use of a term with many potential definitions, and to better reflect NDIC intent to address pipelines transporting other types of non-freshwater fluids.

¹⁰ Colorado Oil and Gas Conservation Commission, Risk Based Inspections: Strategies to Address Environmental risk Associated with Oil and Gas Operations OGCC-2014-PROJECT #7948 (Feb. 2014).

<https://cogcc.state.co.us/Announcements/RiskBasedInspection/RiskBasedInspectionStrategy.pdf>

¹¹ Shaffer, D. L.; et al., Desalinization and Reuse of High-Salinity Shale Gas Produced Water: Drivers, Technologies, and Future Directions. Environ. Sci. Technol. 2013, 47, 9569–9583; Vengosh, A.; Jackson, R. B.; Warner, N.; Darrah, T. H.; Kondash, A. A critical review of the risks to water resources from unconventional shale gas development and hydraulic fracturing in the United States. Environ. Sci. Technol. 2014, 48, 8334–8348.

¹² <http://www.nd.gov/ndic/ogrp/info/g-018-036-fi.pdf>

¹³ <http://www.shaleplaywatermanagement.com/2015/04/water-use-policies-vary-bakken-producers/> (Statoil pilot program in Williams County used 100-percent produced water to complete two wells); Geiver, L. Halliburton Unveils Frack Water Recycling Process for Bakken. The Bakken Magazine. August 14, 2013; <http://thebakken.com/articles/288/halliburton-unveils-frack-water-recycling-processfor-bakken>. (42) Shale Play Water Management, Statoil Water Recycling Program Moves Forward in Bakken, January 3, 2014; <http://www.shaleplaywatermanagement.com/2014/01/stateoil-recycling-movesforward-bakken>. (43) Shale Play Water Management, Water Use Policies Vary for Bakken Producers , April 22, 2015; <http://www.shaleplaywatermanagement.com/2015/04/water-use-policies-varybakken-producers/>.

Suggested Edit:

1. Application of section. This section is applicable to all underground gathering pipelines systems designed for or capable of transporting crude oil, natural gas, carbon dioxide, or ~~produced water~~ non-fresh water fluids used or produced in association with oil and gas activities to or from a production facility for the purpose of disposal, storage, or for sale or use ~~purposes~~.

Comment 1.3 Manufacturer's Specifications

EDF recognizes that manufacturer's specifications are important guideposts in the safe and effective construction, installation and handling of gathering pipelines and components, particularly in light of the rapid development of new and innovative pipeline materials and expanding use of pipelines for novel applications.

However, manufacturer's specifications should be viewed as a floor for performance standards rather than a ceiling. EDF respectfully suggests that NDIC allow operators to deviate from the proposed rules only when manufacturer's specifications create an operational conflict with the rules, and the manufacturer's specifications would result in a pipeline system more resistant to leaks and spills. It is recommended that if discrepancies exist between standards and manufactures recommendations, the more stringent installation and operation practices govern. Typically, manufacturers requirements are minimum standards.

Additionally, in order to keep abreast of changing industry practices and to verify that manufacturer's specifications are in fact more protective, NDIC should request notification and offer approval when an operator intends to deviate from applicable rules.

Suggested Edit:

1. ".....If these rules ~~differ conflict with—from~~ the pipeline manufacturer's prescribed installation and operation practices, the operator shall notify the NDIC and shall follow the pipeline manufacturer's prescribed installation unless the manufacturer's specification is determined by the NDIC to be less protective than the rule." ~~the pipeline manufacturer's prescribed installation and operation practices take precedence."~~

Subsection 2: Definitions

Comment 2.1 Consistent definitions of fluids pipeline gathering systems

EDF recommends that the definition of "crude oil or produced water underground gathering pipeline" be adjusted to reflect changes discussed above, with respect to Subsection 1.

Suggested Edit

2. Definitions. The terms used throughout this section apply to this section only.
 - a. “Crude oil or ~~produced water~~ non-freshwater-pipeline system” means an underground gathering pipeline system designed or intended to transfer crude oil or non-freshwater fluids used or produced in association with oil and gas activities to or from a production facility for use, disposal, storage or sale purposes.”

[and conforming changes throughout]

Comment 2.2: Additional suggested definitions

In addition to conforming language pertaining to fluids pipeline systems, EDF recommends that the NDIC avoid confusion by inserting certain definitions applicable to this proposed Section 29.1.

Suggested Edit:

Dike means the perimeter of an impounding space forming a barrier to prevent liquid from flowing in an unintended direction.

Emergency means a deviation from normal operation, a structural failure, or severe environmental conditions that may cause harm to people or property.

Normal operation means functioning within ranges of pressure, temperature, flow, or other operating criteria required by this part.

Operator means a person who owns or operates a crude oil or fluids underground gathering pipeline.

Pipeline facility means new and existing piping, rights-of-way, and any equipment, facility, or building used in the transportation of crude oil or non-freshwater fluids.

Piping means pipe, tubing, hoses, fittings, valves, pumps, connections, safety devices or related components for containing the flow of crude oil or non-freshwater fluids.

Storage tank means a container for storing crude oil or non-freshwater fluids.

Subsection 3: Notification

Comment 3.1 EERC Recommendations for Pre-Construction Notification

In general, EDF strongly supports this notification requirement. Thoughtful and deliberate forward thinking is consistent with the critical first phase of API RP 1173's guiding philosophy of "plan, do, check and act."¹⁴ However, the proposed rules deviate from EERC recommendations in three important ways.

First, EERC proposed that a pipeline operator should provide notice to NDIC at least 30 days prior to commencing new construction.¹⁵ EDF suggests that NDIC adopt this recommendation, and require notice at least 30 days prior to construction commencing, rather than the proposed 7 days. This slightly longer time frame is more likely to allow NDIC a reasonable opportunity to review the significant and detailed information contained in the notice, and to allow adequate time for scheduling a site visit, if warranted.

Second, EERC recommended that any new rulemaking should include references to certain generally accepted corrosion control best practices or regulations. EDF suggests that NDIC's notification rules should require owners to articulate how their anticipated corrosion control plan reflects industry leading practices such as 49 CFR 195, ASME B31.3, ASME B31.4, ASME B31.8, and NACE Standard RP-01-69. This notification requirement would allow owners flexibility to adopt the corrosion control practices appropriate for their pipeline systems, but also provide NDIC with useful information and assurance that owners considered relevant best management practices.

Third, the EERC suggests that installation protocols should be disclosed in an advance notice. We support this recommendation.

EDF suggests that the NDIC adopt the EERC suggestions regarding notice, which are based on a thorough and comprehensive analysis of oil and gas gathering pipelines. Additionally, we offer several language changes for accuracy, clarity and completeness.

Suggested Edit:

3. Notification.

- a. The underground gathering pipeline owner must notify the commission, as provided by the director, at least ~~seven~~ thirty days prior to commencing new construction of any underground gathering pipeline.
 - i. The notice of intent to construct a crude oil or produced water underground gathering pipeline must include the following:
 1. The proposed date construction is scheduled to begin.
 2. A geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format

¹⁴ API Standard 1173, Pipeline Safety Management Systems.

¹⁵ EERC, at 21.

showing the proposed location of the pipeline centerline from the point of origin to the termination point.

3. The proposed underground gathering pipeline design drawings, including all associated pipeline facilities and above ground equipment.
 - a. The proposed pipeline material, specifications (i.e. size, weight, grade, wall thickness, coating (interior and exterior), and standard dimension ratio).
 - b. The type or types of fluid or gas to be transported.
 - c. The anticipated operating pressure of the pipeline and factor of safety of pipe design over anticipated surge pressures.
 - d. The method of testing pipeline integrity (e.g. hydrostatic or pneumatic test) prior to placing the pipeline into service, including the proposed test procedure and pressure.
 - e. Corrosion control methods to be employed, and an articulation of how such methods reflect standards referenced in 49 CFR 195, ASME B31.3, ASME B31.4, ASME B31.8, and NACE Standard RP-01-69, as amended.
4. A list of all third-party independent inspectors and a description of each independent inspector's qualifications, certifications, experience, or specific training.
5. Installation protocols and plans for the proposed fluids pipeline system.

Comment 3.2 Notification Requirements for Out of Service Pipelines

EDF respectfully recommends that the notification timeline for out of service gathering lines should be shortened. Out of service gathering lines present opportunities which would be more efficiently realized and risks that may be mitigated by more timely notification of out-of-service status. For example, out of service gathering lines may be useful to another operator in the area. Accessible and timely information could create opportunities for sale or repurposing of assets and reduce redundant infrastructure construction. EDF's proposed timeline of sixty days will accommodate normal construction and servicing activities, and be consistent with recommended abandonment practices.

EDF proposes additional changes to NDIC's draft language to provide NDIC with usable information regarding the ongoing status of the underground pipeline system.

Suggested Edit:

- b. The underground gathering pipeline owner shall provide written or electronic notification to the commission of any underground gathering pipeline system or portion thereof that has been out of service for more than ~~one-year~~ sixty days, and indicate whether the pipeline system has been temporarily or permanently abandoned.

Comment 3.3. Notification of Damage to Pipeline systems

EDF favors the notification requirement at proposed subsection 3.d., and we note that it is generally consistent with the type of information gathering and collaborative efforts recommended by EERC to reduce the number and frequency of excavation strikes. Specifically, EERC recommended that the state continue to work with industry stakeholders to inventory and catalog existing pipeline locations and to develop a mechanism that allows for rapid acquisition of information about pipelines for use in construction such as 811/one call. Although this cataloging represents an ongoing process that is not necessarily best or entirely addressed in this NDIC rulemaking, EDF sees this proposed notification requirement as a positive step in the right direction.

Subsection 4: Design and Construction

Comment 4.1 Size of Acceptable Debris in Backfill

EDF concurs with NDIC regarding the importance of specifying that backfill materials be free of rocks and foreign debris, but suggests one modification to reflect guidance from the EERC and to set forth actionable expectations for backfill material quality.

According to the EERC, one of the “leading causes of pipeline leaks” is “attention to foreign debris in trenches and during backfill.”¹⁶ In common practice, maintaining good size and quality of initial backfill material is critically important to avoid rock impingements, stresses or other threats to pipeline integrity. To this end, EERC reported:

“In all cases, backfill material was described as excavated material free of rocks. Initial backfill material typically had smaller rocks removed than final backfill (if specified usually greater than 2 inches in diameter).”¹⁷

Therefore, EDF suggests that NDIC explicitly limit rocks and foreign debris in backfill to no larger than 2 inches in diameter.

Suggested Edit:

- e. Pipeline trenches must be constructed to allow for the pipeline to rest on undisturbed native soil and provide continuous support along the length of the pipe. Trench bottoms must be free of rocks, debris, trash, and other foreign material larger than 2” in diameter. If a trench bottom is over excavated, the trench bottom must be backfilled

¹⁶ EERC, at 20.

¹⁷ EERC, at 117.

with appropriate material and compacted prior to installation of the pipe to provide continuous support along the length of the pipe.

And

- i. When a trench for an underground gathering pipeline is backfilled, it must be backfilled in a manner that provides firm support under the pipe and prevents damage to the pipe and pipe coating from equipment or from the backfill material. Sufficient backfill material must be placed in the haunches of the pipe to provide long-term support for the pipe. Backfill material must be free of rocks and foreign debris larger than 2". Backfilling material must be compacted during placement in a manner that provides support for the pipe and reduces the potential for damage to the pipe and pipe joints.

Comment 4.2. Protective Systems for Trenches

EDF applauds NDICs efforts to ensure design and construction of fluids pipelines meet minimum established standards to prevent leaks and spills, and urges adoption of most proposed language in this section. We also recommend that NDIC include certain key worker safety requirements, such as appropriate cave-in protection for larger pipeline installations. Protection systems such as shoring, shielding and sloping for larger trenches could help protect workers, pipes and components during construction.

Suggested Edit:

- e. The width of the trench must provide a minimum of 6 inches [15.24 centimeters] of clearance on each side of the pipe. Trenches 5 feet deep or greater shall have a protective system (benching, sloping, shoring, and shielding). Trenches 20 feet deep or greater require that the protective system be designed by a registered professional engineer. Trench walls must be excavated to ensure minimal sluffing of sidewall material into the trench.

Comment 4.3 Protection of Pipe at Graded Road Crossings

EDF supports the proposed language requiring that gathering pipelines be bored under graded roads. This practice will protect pipelines from damage and minimize interference with public infrastructure. EDF respectfully suggests that NDIC clarify that pipelines running underneath graded roads must be designed and constructed to withstand overburden stresses, and that such protections extend at least from one edge of the right of way to the other. Appropriate design protections can include greater strength materials or increased wall thickness, pipe casings, as well as other methods.

Suggested Edit:

- f. All underground gathering pipelines that cross a graded road must be bored, and designed and constructed to withstand live and dead load overburden stresses throughout the

right of way crossing, unless the responsible owner or governing agency specifically permits the owner to open cut the road.

Comment 4.4 Damage to Pipeline

Pipeline and components should be handled carefully throughout construction and installation. For example, in addition to potential problems that arise during stringing, joining or lowering in, abrasion caused by dragging pipes across the ground or sharp objects may also compromise pipeline integrity. EDF recommends that NDIC avoid unnecessarily limiting the requirement to avoid physical damage to the pipe.

Suggested Edit:

- h. The pipe shall be handled in a manner that minimizes stress and avoids physical damage to the pipe. ~~during stringing, joining, or lowering in.~~

Comment 4.5 Soil Depth and Thaw

NDIC is wise to include this requirement for cover depths due to North Dakota's prolonged and frigid winter weather. Extreme cold conditions can extend frozen soils to depths, and frozen soil depths of greater than 53 inches have been observed in the Williston Area and 49 inches in the Bismarck area.¹⁸

EERC emphasized the importance of appropriate depth of cover as one of the considerations that "warrant extra attention" in pipeline construction.

Cover depths should be a minimum of 4 feet from the top of the pipe to the finished grade, with a **preferred depth of cover more in the range of 6 to 8 feet**. Depth of cover is of importance for both impact to the pipe itself as well as insulation from freezing temperatures. This is especially important when a pipeline is transporting freshwater and brine but may also be an important consideration to reduce the exposure to freeze/thaw cycling conditions.¹⁹

To accommodate conditions in North Dakota, EDF recommends increasing the minimum burial depth of at least six feet to top of pipe, rather than 4 feet as proposed.

¹⁸ See, Dirk Lammers, Deep Dakota frost causes water main breaks, floods, Casper Star Tribune, (March 17, 2014); http://trib.com/business/deep-dakota-frost-causes-water-main-breaks-floods/article_9190af7c-d4cf-5901-acfb-3fb89e81e2f6.html

¹⁹ EERC, at 114 (emphasis added).

Suggested Edit:

- j. Cover depths must be a minimum of ~~four-six feet~~ [1.83 meters] from the top of the pipe to the finished grade. The cover depth for an undeveloped governmental section line must be a minimum of six feet [1.83] from the top of the pipe to the finished grade.

Comment 4.6 Pipeline Crossings of Environmentally Sensitive Areas

Due to significant negative ramifications to public health and the environment, as well as exacerbated costs and technical difficulties associated with clean-up of leaks and spills that impact environmentally sensitive areas such as water bodies, EDF strongly supports the inclusion of robust design and construction requirements for sections of crude oil and non-freshwater gathering systems that cross environmentally sensitive areas.²⁰ The EERC also identified the need for enhanced design, construction and installation requirements for pipelines that may impact environmentally sensitive areas.

Where pipelines are to be constructed in or near environmentally sensitive areas, such as wetlands and other small surface waterbodies, special consideration should be given to the construction of these pipelines. HDD may be the most appropriate construction method to reduce surface disturbances. In addition, other measures may be warranted to ensure the impact to these areas are minimized in the case of a leak.²¹

NDIC is justified in requiring the use of horizontal directional drilling (HDD) to avoid construction in or over environmentally sensitive areas such as waterways, lakes and wetlands. This practice is already widely used in the Williston Basin.²² In order to ensure that HDD pipeline crossings are sufficiently protective, EDF recommends that NDIC require pipeline owners to submit a pipeline crossing plan approved by registered professional engineer to not impair environmentally sensitive area.

Additionally, EDF suggests that NDIC incorporate other measures to minimize impacts from leaks. Such measures include requirements to case the pipeline throughout the environmentally sensitive area and install shut off valves on either side of the environmentally sensitive area. NDIC may also wish to prohibit the construction of associated facilities in environmentally sensitive areas to limit surface disturbance, minimize servicing requirements and reduce the potential for higher consequence releases.

Pennsylvania's Department of Environmental Protection recently promulgated rules governing fluid gathering systems, and included special provisions for pipelines crossing environmentally sensitive areas. For example, Pennsylvania's Chapter 78a.68b Section (d) provides that shut off valves must be

²⁰ For examples of significant pipeline leaks that impacted North Dakota's water bodies, see, e.g., http://billingsgazette.com/news/state-and-regional/montana/significant-oil-brine-spill-affects-north-dakota-river/article_d0c4fede-c1de-59de-b99f-39d058fbdcca.html; <http://www.pbs.org/newshour/rundown/fracking-brine-leak-north-dakota-reaches-missouri-river-prompts-state-democrats-call-regulation/>; <http://insideenergy.org/2015/01/28/in-north-dakota-oilfield-spill-problems-worsen/>

²¹ EERC, at 118.

²² EERC, at 118.

installed on both sides of a wetland or water body crossing.²³ EDF recognizes that North Dakota's regulations must reflect the state's unique environment, opportunities and constraints, but suggests that the need for special precautions in sensitive ecosystems is similar.

Suggested Edit:

k. Any underground gathering pipeline that traverses environmentally sensitive areas, such as wetlands, streams or other surface waterbodies shall be horizontal directionally drilled in a manner that minimizes impacts to these areas. Sections of gathering pipeline systems that cross environmentally sensitive areas must be installed within casing. Shut off valves shall be installed on both sides of the crossing. No associated facilities shall be installed in environmentally sensitive areas.

A proposed horizontal directional drilling plan shall include the following:

(1) A pipeline crossing plan approved by registered professional engineer to not impair environmentally sensitive area;

[and renumbering as required]

Subsection 6: Inspection

Comment 6.1 Inspection Authority for Pipelines and Associated Facilities

EDF strongly supports the proposed requirement for third-party independent inspections. According to EERC's analysis, lack of inspection is likely to be one of the primary causes of gathering line leaks.²⁴ Problems with inspectors, including lack of inspection supervision, poor performance of company inspectors and third-party independent inspectors, and unwillingness to self-report suspect joints and other pipe damage exacerbate the problem.²⁵ Post-construction inspections performed by independent third party inspectors that are appropriately trained and qualified will provide extremely valuable assurance that the leading construction practices outlined in this rule are followed. Because we believe this is incredibly important and will help prevent leaks and spills from underground gathering lines, we urge the timely adoption of this subsection.

In addition to the excellent currently proposed language, NDIC may wish to add language clarifying the role of state inspectors. Pursuant to NDCC 38-08-04, the commission is charged with making investigations in order to enforce oil and gas statutes and regulations. Chapter 38-08 provides:

²³ 25 Pa. Code 78a.68b (d) (Note: PA DEP's rules for Well Development pipelines for oil and gas operations allow burial of only pipelines containing fresh water. Pipelines transporting crude oil and wastewater must be aboveground, except where they travel beneath a body of water or watercourse.)

²⁴ EERC, at 17.

²⁵ EERC, at 20.

The commission has continuing jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of this chapter. The commission has authority, and it is its duty, to make such investigations as it deems proper to determine whether waste exists or is imminent or whether other facts exist which justify action by the commission.²⁶

To make clear the inspection obligations and expectations pertaining to underground gathering pipelines, EDF recommends that NDIC outline inspection activities to be performed by state pipeline inspectors.

Suggested Edit

Officers, employees, or agents authorized by the NDIC, upon presenting appropriate credentials, are authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of underground gathering system owners to the extent such records and properties are relevant to determining compliance with these rules.

State inspections will be conducted pursuant to one of the following:

- a. Compliance with NDIC rules;
- b. Submitted construction documents and specifications;
- c. Routine scheduling by agents;
- d. A complaint received from a member of the public;
- e. Information obtained from a previous inspection;
- f. Report from a State or municipality; or
- g. Pipeline accident or incident.

If, after an inspection, the inspector believes that further information is needed to determine appropriate action, the inspector may send the owner or operator a "Request for Specific Information" to be answered within 45 days after receipt of the letter.

To the extent necessary to carry out the responsibilities under 43-02-03-29.1, the inspector may require testing of portions of pipeline facilities that have been involved in, or affected by, an accident.

If a representative of the NDIC investigates an incident involving a pipeline, the inspector may request that the operator make available all records and information that pertain to the incident in any way, including integrity management plans and test results, and all that is reasonable for assistance in the investigation.

²⁶ NDCC 38-08-04.

Subsection 7: Associated Facilities

Comment 7.1

Subsection 7 of the proposed rule requires that “all associated pipeline facilities and above ground equipment used to store crude oil or produced water must be devoid of leaks and constructed of materials resistant to the effects of crude oil, produced water, brines, or chemicals that may be contained therein.” This materials requirement “may be waived by the director for tanks presently in service and in good condition.”

Tanks or associated facilities that are not constructed of proper materials are more likely to corrode or develop integrity failures than other equipment constructed of compatible materials. Therefore, equipment “waived by the director” should be inspected regularly- a minimum of monthly- for leaks and signs of integrity failure. Additionally, NDIC’s waiver should not last indefinitely. Associated facilities constructed of incompatible materials should be promptly replaced rather than repaired if any of these inspections reveal failures, compromised equipment or other infirmities. In this way, the use of sub-par materials will not be prolonged, and will be phased out at a reasonable pace as equipment ages.

Suggested Edit:

All associated pipeline facilities and associated above ground equipment used to store crude oil or ~~produced non-fresh~~ water must be devoid of leaks and constructed of materials resistant to the effects of crude oil, produced water, brines, or chemicals that may be contained therein. The above materials requirement may be waived by the director for tanks presently in service and in good condition provided the associated pipeline facility or aboveground equipment is inspected at least monthly by third-party independent inspectors. No repair of waived equipment is permitted: associated facilities and above ground equipment constructed of non-compliant materials shall be replaced with equipment constructed of materials resistant to the effects of crude oil, produced water, brines or chemicals in the event of discovery of leaks, corrosion, or other damage, infirmity or loss of integrity. Unused tanks and associated above ground equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year.

Comment 7.2 Secondary Containment for Tanks and Equipment at Associated Facilities

NDIC’s inclusion of secondary containment requirements for tanks and equipment at associated pipeline facilities is a thorough, straightforward approach to minimize leaks and spills associated with all components of pipeline gathering systems. EDF encourages adoption of these proposed rules, with some changes and additions for clarity and consistency with leading practices.

Specifically, the proposed rule requires secondary containment surrounding “all produced water or crude oil tanks at any new facility” and at “any above ground equipment” when “deemed necessary by the director.” This suggests that secondary containment is not required at non-freshwater water or crude oil tanks at existing associated facilities, but the risk of leaks and spills at new and old facilities is

the same- if not higher- at existing facilities. The proposed rule should be modified to ensure that secondary containment is required around all non-freshwater or crude oil tanks, new and existing.

To avoid leaks and spills from new and existing tanks at associated facilities, NDIC should require integrity testing, prior to placing new tanks into service or, for existing tanks, within a reasonable time after adoption of this rule.

NDIC may also wish to specify the type of dike required, to ensure the use of steel dikes. Steel dikes offer better protection to tanks, and are more robust to elements, settling, and accidental contact from trucks, cattle, and other foreign objects.²⁷ For example, in the 2013 floods, COGCC observed that “steel secondary containment protected tank batteries better than earthen berms.”²⁸

The proposed language uses the term “fluid throughput,” which is ambiguous for several reasons. EDF suggests that requirements in this section be modified for clarity, and to ensure that secondary containment is sufficient to accommodate a single tank, connected tanks, and precipitation events.

Suggested Edit:

Steel dikes must be erected around all ~~produced-non-fresh~~ water or crude oil tanks at any new facility prior to placing the associated underground gathering pipeline into service. New tanks shall be pressure tested prior to placing the associated underground gathering pipeline into service, and existing tanks shall be pressure tested within 6 months of the adoption of this Section. Pressure testing of tanks shall be conducted according to the following specifications:

- a. For aboveground breakout tanks built into API Specification 12F, a pneumatic testing must be in accordance with section 5.3 of API Specification 12 F.
- b. For aboveground breakout tanks built to API Standard 620, hydrostatic and pneumatic testing must be in accordance with section 7.18 of API Standard 620.
- c. For aboveground breakout tanks built to API Standard 650, testing must be in accordance with Section 5.2 of API Standard.
- d. For aboveground atmospheric pressure breakout tanks constructed of carbon and low alloy steel, welded or riveted, and non-refrigerated and tanks built to API Standard 650, the necessity for the hydrostatic testing of repair, alteration, and reconstruction is covered in section 10.3 of API Standard 653.
- e. For aboveground breakout tanks built to API Standard, pressure testing must be in accordance with ASME Boiler and Pressure Vessel Code, Section VIII, Division 1 or 2.

Steel dikes must be installed and maintained at existing facilities within 6 months of promulgation of this subsection unless this requirement waived by the director if design or right of way logistics prevent such secondary containment. Steel dikes must be erected and maintained around all crude oil or produced water tanks or above ground equipment. Dikes as well as the base material under the dikes and within the diked area must be constructed of

²⁷ COGCC, “Lessons Learned in the Front Range Flood of September 2013. (March 14, 2014)

http://cogcc.state.co.us/announcements/hot_topics/flood2013/finalstaffreportlessonslearned20140314.pdf

²⁸ *Id.*, at 44.

sufficiently impermeable material to provide emergency containment. ~~Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid throughput. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction.~~ Discharged crude oil, ~~or produced non-fresh~~ water must be properly removed and may not be allowed to remain standing within or outside of any diked areas. Accumulated precipitation must be promptly removed from within diked areas. Each secondary containment system serving storage tanks must have a minimum volumetric liquid impoundment capacity of: (i) the tank's maximum liquid capacity plus the precipitation volume for a 25-year 24-hour storm event for an impoundment serving a single tank; or (ii) the maximum liquid capacity of the largest tank or total maximum capacity of interconnected tanks that act as one tank, whichever is greater, plus volume for a 25-year 24-hour storm for impoundments serving more than one tank.

Comment 7.3 Associated Facilities Located in Floodplain

To minimize the potential impacts of leaks and spills from crude oil and fluids gathering pipeline systems, EDF recommends that NDIC prohibit the construction of associated facilities in floodplains, and require additional protections for the pipeline segments located within a 100-year floodplain. Associated facilities should be prohibited within designated 100-year floodplains in order to eliminate the creation of backwater effects and protect facilities from floodwaters and debris. Remote shut-in capabilities located on either side of a floodplain will allow pipeline operators to respond to emergencies and potentially catastrophic leaks rapidly and without endangering workers.

Suggested Edit:

Operators must notify the Director when a proposed pipeline is located within or crossing a defined 100-year floodplain. Sections of pipeline systems that cross a 100-year floodplain must have remote shut-in capabilities including, at a minimum, the ability to shut-down the pipeline flows from outside the relevant floodplain. All above ground associated facilities shall be outside of the defined floodplain.

Subsection 8: Underground gathering facilities as built

Comment 8.1: GIS Information for existing pipelines

EDF supports the retention of the rule requiring the owner of any underground gathering pipeline placed into service after July 31, 2011 to file a GIS layer and other information with the NDIC within 180 days of placing the pipeline into service. This useful information regarding the extent and location of the state's gathering pipeline system will markedly enhance NDICs ability to oversee these networks.

However, we note that the EERC recommended that the state increase its efforts to obtain information regarding pipelines constructed prior to August, 2011. EERC stated that "[t]he state should continue to

work with industry stakeholders to inventory and catalog existing pipeline locations for pipelines that were installed prior to new GIS rule. “²⁹

The proposed GIS rule does a good job of addressing the collection of pipeline information going forward, but does not remedy the lack of information on pipelines already in existence when the rule went into effect. While EDF acknowledges that information collection will be an ongoing effort, and need not necessarily be addressed through rulemaking, we nevertheless recommend that the NDIC use this opportunity to require that all operating underground pipelines placed into service prior to August, 2011 file GIS layers with NDIC according to a reasonable schedule.

Suggested Edit:

a. The owner of any underground gathering pipeline placed into service after July 31, 2011, shall file with the director....

- i. A statement that the pipeline was constructed and installed in compliance with section 43-02-03-29.1.
- ii. The outside diameter, minimum wall thickness, composition, internal yield pressure, and maximum temperature rating of the pipeline, or any other specifications deemed necessary by the director.
- iii. The maximum allowable operating pressure of the pipeline.
- iv. The specified minimum yield strength of the pipeline.
- v. The type or types of fluid or gas that will be transported in the pipeline and direction of fluid flow.
- vi. Pressure and duration to which the pipeline was tested prior to placing into service and meets manufacturer specifications and all design plans and specifications.
- vii. The minimum pipeline depth of burial from the top of the pipe to the finished grade.
- viii. In-service date.
- ix. Leak detection and monitoring methods that will be utilized after in-service date.
- x. The name of the pipeline gathering system and any other separately named portions thereof.
- xi. Accuracy of the geographical information system layer.

b. The requirement to submit a geographical information system layer is not to be construed to be required on buried piping utilized to connect flares, tanks, treaters, or other equipment located entirely within the boundary of a well site or production facility.

c. Owners of all in service underground pipeline systems shall file information required under subsection (a) with NDIC according to the following schedule:

- i. Pipelines constructed before July 31, 2011 within one year after adoption of this subsection;

²⁹ EERC, at

- ii. Pipelines constructed after July 31, 2011 within 180 days after placing pipeline into service;
- iii. Any pipeline placed into service after adoption of this subsection within 30 days.

Subsection 9 Operating Requirements

Comment 9.1 Ongoing Maintenance

Pipeline maintenance is a critical component of gathering pipeline system operations. According to EERC, spill statistics show that regular maintenance is one of the top three ways to minimize pipeline failures.

The 1999 and 2010 ADEC reviews on spill statistics and the NTSB report on the 2010 Enbridge incident reported a common theme that extensive operator training and proactive pipeline inspection and maintenance have the greatest impact on reducing pipeline leaks.³⁰

Accordingly, EERC recommended that NDIC should address maintenance in its rulemaking,³¹ and EDF concurs. This recommendation is consistent with the 2013 findings of the Pipeline Technology Working Group (Working Group), which stated that “a strong focus on incident prevention was paramount in North Dakota” and specified that incident prevention includes “strict operating and maintenance practices.”³² Basic maintenance is already required of pipeline systems under the jurisdiction of the U.S. Department of Transportation, which demonstrates that compliance with reasonable maintenance rules is currently feasible.³³

In light of the relative importance of ongoing maintenance and ease of compliance, EDF recommends that NDIC include requirements for maintenance in the proposed gathering pipeline system rules.

Suggested Edit:

9. Operating and maintenance requirements.

The maximum allowable operating pressure shall not exceed the manufacturer’s specifications of the pipe or the manufacturer’s specifications of any other component of the pipeline, whichever is less. The underground gathering pipeline must be equipped with ASME certified pressure-regulating devices to prevent the pipeline from operating above the maximum allowable pressure.

Underground gathering pipeline systems shall be regularly maintained according to manufacturers’ specifications, and at a minimum as provided by the following:

³⁰ EERC, at 25.

³¹ EERC, at 21

³² EERC, at 32.

³³ See, e.g. 49 CFR Part 195 Subchapter F.

- a. Each component in service, including its support system, must be maintained in a condition that is compatible with its operational or safety purpose by repair, replacement, or other means.
- b. An operator may not place, return, or continue in service any component which is not maintained in accordance with manufacturer recommendations.
- c. Each component taken out of service must be identified in the records kept on pipeline
- d. If a safety device is taken out of service for maintenance, the component being served by the device must be taken out of service unless the same safety function is provided by an alternate means.
- e. If the inadvertent operation of a component taken out of service could cause a hazardous condition, that component must have a tag attached to the controls bearing the words "do not operate" or words of comparable meaning.

Comment 9.2 Shut-off Valves to Limit Releases to 1,000 barrels

Shut-off valves, particularly those with remote operating capabilities, can limit the volume of fluid released into the environment in the event of a leak or spill if placed along regular intervals of a pipeline gathering system. In its recently promulgated pipeline regulations, Pennsylvania's Department of Environmental Protection included a reasonable and protective requirement that pipeline operators install shut off valves capable of limiting a release to 1,000 barrels.

WELL DEVELOPMENT pipelines used to transport fluids other than fresh ground water, surface water, water from water purveyors or approved sources, must have shut off valves, check valves or other method of segmenting the pipeline placed at designated intervals, to be determined by the pipeline diameter, that prevent the discharge of [no] more than 1,000 barrels of fluid. Elevation changes that would effectively limit flow in the event of a pipeline leak shall be taken into consideration when determining the placement of shut off valves and be considered effective flow barriers.³⁴

This requirement accommodates site-specific information, and allows for pipeline system owners to make critical design decisions, while setting appropriate and protective boundaries for pipeline operation. EDF respectfully suggests that NDIC consider including a similar requirement in the proposed underground pipeline gathering system regulations.

Suggested Edit

Crude oil or non-freshwater underground gathering systems shall be equipped with shut off valves or other methods of segmenting the pipeline capable of preventing the discharge of more than 1,000 barrels of fluid. Elevation changes that would effectively limit flow in the event of a

³⁴ 25 Pa. Code 78a.68b(e)

pipeline leak shall be taken into consideration when determining the placement of shut off valves and be considered effective flow barriers.

Subsection 10 Leak Detection and Monitoring

Comment 10. 1. Leak detection plan

EDF strongly supports the NDIC in its efforts to promote the widespread use of leak detection and monitoring systems to minimize the impacts of leaks and spills. Of course, no pipeline gathering system will operate perfectly at all times. But when an inevitable leak occurs, leak detection systems increase the probability that the leak will be found.³⁵ NDIC's proposed leak detection and computational pipeline monitoring rules are progressive and represent a positive step towards leveraging best management practices to reduce the impacts of spills and leaks from crude oil and fluid pipelines.

Leak detection and monitoring systems are critical components of any underground gathering line,³⁶ and are necessary to maintain safe and efficient pipeline operations and to minimize impacts from leaks and spills. Accordingly, EERC made leak detection a focal point of their study. After consideration of reviews on spill statistics and evidence surrounding major spill incidents, EERC concluded that "improved leak detection and a well-planned spill response to an incident were found to decrease the severity of the release."³⁷ Despite the many benefits of leak detection systems, however, the EERC determined that operators are not certain to use leak detection systems if not required by regulation.

There are many reasons for investing in leak detection technology. The value of lost product, negative impacts to the environment, loss of pipeline functionality, spill remediation costs, and public perception all impact decisions regarding the implementation of leak detection. Some of these factors can be tied to an economic analysis, many cannot. Pipeline leaks are generally unpredictable; therefore, it is difficult to assign a cost to things like remediation, loss of product, or pipeline repairs. Other factors, such as public perception, cannot be evaluated on an economic basis. Nonetheless, bad publicity can lead to the promulgation of more regulations or changes in operational guidelines which can translate to cost. Ultimately, the extent to which monitoring and leak detection systems will be implemented beyond regulatory requirements will be decided by the individual company based on its operating paradigm and an analysis of risk.³⁸

³⁵ EERC, at 152.

³⁶ HB 1358, amendment to Subsection 18 of section 38-08-02 defined "associated equipment" to include leak detection. (As used in this subsection, "associated above ground equipment" means equipment and property located above ground level, which is incidental to and necessary for or useful for transporting crude oil, natural gas, carbon dioxide, or water produced in association with oil and gas from a production facility. As used in this subsection, "equipment and property" includes a pump, a compressor, storage, leak detection or monitoring equipment, and any other facility or structure.); <http://www.legis.nd.gov/assembly/64-2015/documents/15-0460-06000.pdf?20160417000536>

³⁷ EERC, at 152.

³⁸ EERC, at 158.

Given the importance of leak detection systems in minimizing impacts of inevitable leaks and spills, EDF strongly encourages NDIC to require operators to prepare and act upon effective leak detection plans. These plans can be adjusted to accommodate new information and technological developments.

However, as currently drafted, it is unclear whether operators must create and employ a leak detection system. It is also unclear whether operators must file a leak detection plan for every gathering system, or must only file if a plan is prepared or otherwise requested by the director. Due to the critical importance of leak detection systems, EDF urges NDIC to make clear that each operator should prepare and act in accordance with a leak detection and monitoring plans.

Suggested Edit:

All crude oil and ~~produced non-fresh~~ water underground gathering pipeline system owners must employ a leak detection and monitoring system, and file with the commission plans detailing the ~~any~~ leak detection and monitoring system ~~plan prepared by the owner or required by the~~ director.

Comment 10.2 Leak detection methods for various types of pipelines

EDF again stresses the importance of robust and effective leak detection and monitoring in minimizing the impacts of leaks and spills from underground gathering pipeline systems. At the same time, we recognize that “robust and effective” may mean different things for different types of pipelines, or for various pipeline segments.

At a minimum, we recommend that computational pressure monitoring be required for transmission and collection mains, which tend to have higher operating pressures that are more conducive to CPM capabilities.

For flowlines and other small dimension pipeline segments servicing single facilities, operators may be able to design leak detection and monitoring systems that are similarly, or more effective than computational pipeline monitoring (CPM). In no circumstance, however, should flowlines go without leak detection and monitoring. As discussed above, the Colorado Oil and Gas Conservation Commission (COGCC) identified flowline failures as a frequent cause of reportable spills and releases.³⁹ The COGCC’s a “Risk-Based Inspections: Strategies to Address Environmental Risk Associated with Oil and Gas Operations” study recommended that operators and governing agencies take actions to reduce the risk of spills and releases resulting from flowline failures by improving the integrity of flowlines through periodic testing and maintenance and audits of required pressure testing.

³⁹ Colorado Oil and Gas Conservation Commission, Risk Based Inspections: Strategies to Address Environmental risk Associated with Oil and Gas Operations OGCC-2014-PROJECT #7948 (Feb. 2014). <https://cogcc.state.co.us/Announcements/RiskBasedInspection/RiskBasedInspectionStrategy.pdf>

Suggested Edit:

Leak detection and monitoring system plans may distinguish between collection or transmission mains and flowlines, but must address all components of the system. NDIC shall, at the directors discretion, periodically audit the operators leak detection and monitoring plans.

Comment 10.3 Data sharing plan

EDF applauds NDIC for including in the proposed rule the requirement that operators develop a “real time data sharing plan.” Coordination and communication between adjacent, partnering entities on a gathering system can speed detection and minimize impacts of leaks and spills, and represents a leading practice in pipeline operation where there are multiple ownership interests.

EERC made real time data sharing across a given pipeline a key recommendation after observing the negative impacts of barriers communication.

Lack of communication and consequent awareness between a disposal well operator and a gathering line operator contributed to extending the duration of a spill when a leak occurred in a gathering line that fed a produced water disposal well. The disposal well operator was unaware of flow in the gathering line, so rationalized that the lack of flow from the line was expected. Conversely, the gathering line operator was unaware of the lack of flow at the disposal well.⁴⁰

The proposed rule should not be difficult to comply with. In fact, EERC observed that many pipeline operators in the state currently employ real time data sharing.⁴¹ Operators still without real-time measurement data communication capabilities can easily select from the numerous options available, including those outlined and evaluated in the study.

Section 11 Spill Response

Comment 11.1:

In general, the NDIC’s proposed spill response regulation is a strong, common sense requirement that will facilitate collaboration between entities likely to respond to spills and leaks. We recommend that the response plan should be updated bi-annually to accommodate changing circumstances, staff, and evolving best management practices.

⁴⁰ EERC, at 19.

⁴¹ EERC, at 253. (“Field visits to and surveys of gathering line operators indicate a range of attitudes and capabilities exist from 1) essentially no real-time measurement data communication to 2) gathering line operators actively developing and installing a SCADA systems to 3) fairly well-developed measurement, communication and SCADA systems with operating procedures that support a basic level of leak detection.”)

EDF also recommends that a final copy of the spill response plan should be provided to local emergency responders. Local emergency responders are often the first on the scene of a leak or spill, and operators should endeavor to maintain open lines of communication, beginning with up to date and collaboratively developed plans for handling emergencies. This is consistent with EERC recommendations, which suggests that local emergency managers “work closely with pipeline operators to tailor response capabilities for the specific risks in their jurisdiction.”⁴²

Suggested Edit:

All crude oil and produced water underground gathering pipeline owners must maintain a spill response plan, and update such plan at least once every two years during the service life of any crude oil or produced water underground gathering pipeline. The plan must detail the necessary steps for an effective and timely response to a pipeline spill. The spill response plan must be developed in conjunction with the local emergency manager and tailored to the specific risks in the localized area. A current copy of the spill response plan shall be provided to the local emergency manager. Response capabilities must address access to equipment and tools necessary to respond, as well as action steps to protect the health and property of impacted landowners, citizens, and the environment.

Section 13 Pipeline Integrity

Comment 13.1 Defining Success of Pipeline Integrity Tests

NDIC’s proposal to require pipeline integrity tests before service and after repairs or other alterations is consistent with best practices and will reduce leaks and spills from gathering pipeline systems. EDF supports this requirement, and respectfully suggests that NDIC add language to the rule to clarify what is considered a successful or passing test result.

Some oil and gas regulators specify passing results for required integrity tests to provide certainty to operators, contractors, inspectors and regulators about what is expected, and what is sufficient.⁴³ In the case of underground gathering pipeline systems, the variety of pipeline system designs, materials and functions, makes a single integrity test result unworkable.⁴⁴ However, testing methods for the various configurations and pipeline types are generally described in detail in industry standards, such as ASTM. Therefore, in specifying the use of an industry approved testing method, the state is also clarifying what is considered an acceptable test result.

Suggested Edit:

No underground gathering pipeline owner may operate a pipeline unless it has been pressure tested per ASTM, API or other industry standards approved by NDIC and demonstrated integrity. In addition, no owner may return to service a portion of pipeline that has been repaired, replaced, relocated, or otherwise changed until it has been pressure tested.

⁴² EERC, at 197.

⁴³ 25 Pa. Code 78a.68b. (“A passing test is holding 125% of the anticipated maximum pressure for 2 hours.”).

⁴⁴ EERC, at 84.

Comment 13.2 Handling and Disposal of Water Used in Hydrostatic Pressure Tests

To the extent that NDIC's proposed rule contemplates additional requirements to employ hydrostatic pressure tests, NDIC may consider mitigating the effects of water used in conducting these tests. EDF recommends the addition of guidance for handling and disposal of water used in hydrostatic pressure tests in compliance with state water quality regulations and all soil protection and erosion control requirements.

Suggested Edit:

No water used in hydrostatic pressure shall be discharged into waters of the state without NPDES permit issued by state, or in violation of any state or local soil protection or erosion control requirement.

Comment 13.3 Duties of Inspector

Subsection 13.b. requires an operator to submit an "independent inspector's certificate of hydrostatic or pneumatic testing of a crude oil or produced water underground gathering line." EDF supports this proposed regulation, but it is unclear whether the NDIC expects an inspector to witness the test. If this is the intention, the regulation should so specify.

Comment 13.4: Demonstrating Continual Pipeline Integrity

Requiring pipeline owners to demonstrate the continuous integrity of pipeline systems is an exemplary regulation and excellent forward progress towards reducing the likelihood of and reducing the potential impacts of leaks and spills from gathering pipeline systems. EDF vigorously encourages the adoption of this proposed rule.

Without detracting from our full support for this provision, EDF suggests that NDIC clarify the type of testing that will satisfy this requirement. We also note that to demonstrate "continual pipeline integrity," an operator would ideally utilize computational pipeline modeling or real-time data analysis. Without continuous monitoring systems, demonstration of continual integrity would need to entail frequent periodic pressure testing. Explaining what is intended by the terms "continual" and "periodic" (e.g. "periodic pressure testing") in this way will create certainty for the regulated community, Commission and other stakeholders.

Suggested Edit:

The underground gathering pipeline owner must demonstrate continual pipeline integrity for all in-service underground gathering pipelines. Pipeline integrity can be demonstrated through either:

(i) Computational pipeline monitoring or real time leak detection systems, with annual integrity testing (using smart pigs or similar devices) for steel lines or annual pressure testing for all other pipeline materials OR

(ii) Monthly internal integrity inspections for steel lines (using smart pigs or similar devices) and monthly pressure testing for all lines. ~~periodic pressure testing, computational pipeline monitoring and leak detection systems, or internal integrity inspections.~~

Pipeline pressure and integrity tests shall be conducted pursuant to ASTM, API or other industry standards approved by NDIC. Pipeline pressure and integrity test records shall be retained for the in-service life of the pipeline and made available upon request by the commission.

Subsection 14: Pipeline Repair

Comment 14.1: Robust and useful reporting requirements

EDF is strongly supportive of NDIC's proposed reporting requirements. When operators report the root causes of pipeline failures and the conditions that compromise integrity, all stakeholders – including NDIC, the industry and academia- can assess where the largest problems are and strategically assign resources to address them. Robust and comprehensive reporting rules that facilitate the collection and dissemination of critical information about the realistic strengths and weaknesses of various pipeline system design, construction and materials are essential for efficient operations and effective regulation.

However, currently information regarding the root cause of leaks and spills from pipelines in North Dakota is lacking. Accordingly, at numerous points in its comprehensive pipeline study, the EERC recommended that the state use its regulatory authority to facilitate collection and dissemination of failure analyses.

"The state should streamline the ways spill data are reported, processed, and analyzed to facilitate data analysis. Implementing such a data management function within the state will likely necessitate additional resources at North Dakota DMR.⁴⁵

"After streamlining is achieved, North Dakota DMR should collect and analyze data continually to determine root causes of pipeline leaks and then continually refine regulatory language that addresses root cause determinations.⁴⁶

...

It is, therefore, recommended that the state consider rule making that facilitates this participation and the dissemination of lessons learned from such failure analyses. This critical

⁴⁵ EERC, at 20.

⁴⁶ EERC, at 20.

recommendation will provide the state with a pathway to avoid repetition of critical failures among multiple operators.⁴⁷

In order to ensure that NDIC, academia and the regulated industry receive the best information about the causes of spills and leaks, NDIC should clarify language in this subsection requiring reporting of the causes of pipeline and component repairs and replacement. As currently written, the proposed reporting requirements may be satisfied by cursory responses that do not provide enough information to allow for informative failure analysis. We recommend that NDIC slightly modify language in this subsection to ensure sufficient data regarding pipeline integrity failures is collected, and for consistency with proposed modifications to NDAC 43-02-03-30.

Suggested Edit:

Within one hundred eighty days of repairing or replacing any underground gathering pipeline the owner of the pipeline shall file with the director ... an affidavit of completion containing the following information:

...

(2) The root cause of compromised pipeline integrity, and reason for the repair or replacement.

Comment 14.2 Sections of pipe clamped or squeezed during emergencies to be replaced

EDF concurs with NDIC's proposal to prohibit clamping and squeezing during repair of certain underground gathering pipelines. Sections of the pipe that are clamped or squeezed may be damaged, and this damage may lead to future leaks and spills. Therefore, we recommend that clamping or squeezing be prohibited for any underground gathering line, including pipelines carrying crude oil as well as non-fresh water.

However, EDF acknowledges that squeezing and clamping may be useful in emergencies to rapidly stop flow from a compromised pipeline. We believe the proposed language accommodates this application, and would allow for clamping and squeezing as an emergency measure. To address potential damage to sections of a pipeline caused by this method of emergency flow management, we suggest that NDIC require that sections of pipe clamped or squeezed must be replaced before the pipe is placed back into service.

Suggested Edit:

c. Clamping or squeezing as a method of repair for any produced water underground gathering pipeline is prohibited. In the event an underground gathering pipeline is clamped or squeezed

⁴⁷ EERC, at 17.

during an emergency, the clamped or squeezed sections of pipe shall be replaced before placing the pipeline back into service.

Subsection 15: Pipeline Abandonment

Comment 15.1

EDF is pleased to see that NDIC included minimum standards and criteria for pipeline abandonment. To avoid confusion, we respectfully suggest that NDIC clarify that the proposed regulations apply to permanently abandoned gathering pipeline systems, as defined in NDCC 38-08-02. Definitions ("Abandoned pipeline" means an underground gathering pipeline that is no longer in service, is physically disconnected from in-service facilities, and is not intended to be reactivated for future use.)

Additionally, to minimize the risk of leaks and spills from temporarily abandoned pipeline systems, we urge NDIC to include regulations specifically addressing pipelines or pipeline segments temporarily out of service for longer than thirty days. Pressurized pipeline systems full of crude oil or non-fresh water may rupture whether the pipeline is in service or not. Minimal or reduced monitoring of temporarily out of service pipelines may result in longer detection times and larger volumes of leaks and spills. Thirty days is an appropriate "temporary abandonment" period because it is sufficient to accommodate most construction or repair activities along the pipeline or at facilities on either end of the system.

Suggested Edit:

15. Pipeline abandonment

a. When an oil and gas underground gathering pipeline or any part of such pipeline is abandoned as defined in NDCC 38-08-02, the owner shall leave such pipeline in a safe condition by conducting the following:

....

c. Temporarily abandoned pipelines. Crude oil and fluids gathering pipeline systems, or any part of that system, not used to transport crude oil or non-freshwater fluids for more than thirty consecutive calendar days must be depressurized and emptied.

43-02-03-30 Notification of Fires, Leaks, Spills or Blowouts.

Comment 1

While EDF is sympathetic to NDIC's efforts to clarify notification requirements to reflect the new regulations pertaining to underground gathering pipeline systems, proposed modifications to this Section would unnecessarily limit the notification requirements, and may create uncertainty regarding applicable spill requirements.

Underground gathering pipelines were covered under existing language. Unfortunately, language specifically including "underground gathering pipelines" would exclude from notification requirements any pipelines located at the surface. Spills and leaks from surface lines should be subject to the same notification rules as other oil and gas related fires, leaks, spills or blowouts. Different rules for surface pipelines are unnecessary and would cause confusion.

We respectfully urge NDIC to strike the proposed addition of “underground gathering” from this Subsection and retain the current rule.

Suggested Edit:

“All persons controlling or operating any well, ~~underground-gathering~~ pipeline...”

Comment 2

For the reasons expressed in Comment 14.1, EDF commends NDIC on its modification of written follow up notification requirements to include a root cause of spills, leaks or releases. Obtaining this information is essential to facilitate continuous improvement in industry practices and responsive regulation. NDIC, pipeline owners and other stakeholders will benefit tremendously from this information.

Kadrmass, Bethany R.

From: Laura Schmidt-Dockter <laurajane@bis.midco.net>
Sent: Wednesday, April 20, 2016 8:24 PM
To: Kadrmass, Bethany R.
Subject: 2016 New Rules Comments

As a member of the Badlands Conservancy Alliance I believe there is no need to change the definition of the phrase "interested party" unless the change will increase, not limit, inclusion. Public participation in the development of oil and gas in North Dakota should be more inclusive not more exclusive, and absolutely so in the regulatory sphere of oil and gas hearings. We would all benefit. There is no need for a new definition of "Interested party" and this proposed rule change should be withdrawn.

Sincerely,
Laura Schmidt-Dockter
535 Assiniboin Drive
Bismarck, ND 58503-0212

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Monday, April 25, 2016 11:01 AM
To: Kadrmass, Bethany R.
Subject: FW: 2016 new rules comments

Bethany – for the record. Karlene

From: Haugen, Shelley K.
Sent: Thursday, April 21, 2016 9:35 AM
To: Fine, Karlene K.
Subject: FW: 2016 new rules comments

FYI

From: Apache [<mailto:apache@itdapachep1.itd.nd.gov>] **On Behalf Of** Laura Schmidt-Dockter
Sent: Wednesday, April 20, 2016 8:22 PM
To: -Info-Governor's Office
Subject: 2016 new rules comments

Contact Form Submission

Name

Laura Schmidt-Dockter

Email Address

laurajane@bis.midco.net

Phone Number

Subject

2016 new rules comments

Comments

As a member of the Badlands Consequency Alliance I believe there is no need to change the definition of the phrase "interested party" unless the change will increase, not limit, inclusion. Public participation in the development of oil and gas in North Dakota should be more inclusive not more exclusive, and absolutely so in the regulatory sphere of oil and gas hearings. We would all benefit. There is no need for a new definition of "Interested party" and this proposed rule change should be withdrawn.

Submitted from governor.nd.gov on 04/20/2016 - 8:22pm from IP address: [165.234.159.14]

Kadrmass, Bethany R.

From: Ellen Chaffee <ellen.chaffee@gmail.com>
Sent: Wednesday, April 20, 2016 7:35 PM
To: Kadrmass, Bethany R.
Subject: 2016 new rules comments

I attended the Bismarck hearing on the new rules and I agree 100% with those who spoke against including a definition of "interested party." The proposal is outrageous. The Industrial Commission and DMR have a fiduciary duty to the people of North Dakota. To deny them the opportunity to weigh in while engaging in unlimited communication with industry is undemocratic in the extreme. Citizens not only have rights, they have information and perspectives that can lead to the best solutions for all. Delete the definition of interested party.

--

Ellen Chaffee
9500 66th St NE, Bismarck ND 58503
<http://ellenchaffee.com>
701-840-1780 (M,Txt)

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Monday, April 25, 2016 11:03 AM
To: Kadrmass, Bethany R.
Subject: FW: 2016 new rules for oil and gas

[Bethany – More comments.](#) Karlene

From: Haugen, Shelley K.
Sent: Thursday, April 21, 2016 9:35 AM
To: Fine, Karlene K.
Subject: FW: 2016 new rules for oil and gas

FYI

From: Apache [<mailto:apache@itdapachep1.itd.nd.gov>] **On Behalf Of** Ellen Chaffee
Sent: Wednesday, April 20, 2016 7:37 PM
To: -Info-Governor's Office
Subject: 2016 new rules for oil and gas

Contact Form Submission

Name
Ellen Chaffee

Email Address
ellen.chaffee@gmail.com

Phone Number
7018401780

Subject
2016 new rules for oil and gas

Comments
Please delete the definition of "interested party" from the proposed new rules regarding oil and gas development. Industry has unlimited say - the citizens should have input, too.

Submitted from governor.nd.gov on 04/20/2016 - 7:37pm from IP address: [165.234.159.14]

Received
APR 20 2016
ND Oil & Gas Division

April 11, 2016

Bruce Hicks, Assistant Director
NDIC Department of Mineral Resources, Oil and Gas Division
600 E. Boulevard Ave.
Bismarck, ND 58505

RE: Comments on Proposed Rules Changes

Dear Mr. Hicks:

Thank you for the opportunity to provide comments on the proposed Administrative Rules changes. The North Dakota Petroleum Council (NDPC) is a trade association that represents more than 475 companies involved in all aspects of the oil and gas industry including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oil field service activities in North Dakota, South Dakota, and the Rocky Mountain Region.

We appreciate the time and effort these rules have required. With our recommended clarifications and suggested language, industry supports many of them. The oil and gas industry is heavily regulated and we recognize the need to adapt regulations to address issues as they arise. However, we must keep in mind that today's economics cannot absorb the great costs of increasing regulation without substantial increases in health and safety. To formulate comments on behalf of the industry, the NDPC solicited input from our member companies and formed a technical committee to develop the attached comprehensive comments on behalf of our membership. The proposed rules involve forty changes to the regulatory framework in North Dakota. Many of these changes are the result of the Energy and Environmental Research Center study and the 2015 legislative session, which many of our members provided countless hours of input. However, many changes, including the requirements for underground gathering pipelines and saltwater handling facilities are incredibly broad and go far beyond legislative intent and the recommendations of the EERC study. For example, legislation clearly limited its application to underground crude oil and produced water gathering lines. As written, sections 43-02-03-11, 43-02-03-14, 43-02-03-29.1 and 43-02-03-30 apply to gas gathering lines. Proposed changes should not apply to gas gathering lines, consistent with the legislation. Legislation was also very clear and purposeful in its use of the term 'leak protection' rather than 'leak detection'. The term 'leak detection' should not be used in the proposed rule changes, as there is no system that can detect leaks one hundred percent of the time, and the intent of statute is 'protection'. Other proposed changes, like increased dike and perimeter berm requirements, stipulate substantive changes for the industry and add to industry cost per well, with no clear benefit to health, safety and the environment. In fact, as noted in our comments, these berms can be detrimental to health and safety.

We believe many of these rules should be reevaluated for their necessity and effectiveness. We must remain cognizant that not all facets of industry are the same, and one-size-fits-all rules are not good practice. Many of the proposed rules are extremely proscriptive and limit the industry's ability to implement operational efficiencies developed through technological advances and hands-on experience. Overregulation and restrictive rules only add cost to those that follow the rules and limit the ability of those with the most expertise to develop effective solutions. With the next legislative session just eight months away, it may be more appropriate to defer some of these major policy decisions to the 2017 Legislature.

Thank you.

Sincerely,



Ron Ness

enclosure



43-02-03 General Rules

43-02-03-01 *Definitions* (page 1 of proposed rules)

43-02-03-01.25. Interested Party (page 3 of proposed rules)

Comment: NDPC supports public comment on specific issues at formal NDIC hearings. However, the Commission should consider developing a comment process that would give independent parties having no personal justiciable property ownership or management interest the ability to provide input, but give greater weight to comments from directly impacted parties such as land owners, mineral owners, royalty owners and the permittee.

43-02-03-01.4445. Saltwater Handling Facility (page 4 of proposed rules)

Comment: NDPC believes the intent of these changes is to allow the definition to be used for saltwater disposal facilities and gathering system facilities while still using the definition within the production and drilling rules. However, NDPC is concerned that as is, the definition unintentionally includes additional facilities and is unclear. NDPC recommends using the UIC application definition contained in 43-02-05-01. NDPC is also concerned that the application of this section is unclear because 'saltwater handling facility' has not been clearly defined. We believe the intention of the Commission is to only include commercial facilities that are neither on or part of well sites nor a treatment plant. We believe changing the term to 'saltwater handling and disposal facility' and using the suggested language below will accurately reflect that intent and clarify the full definition.

Suggested language: 4445. "Saltwater Handling and Disposal Facility" means and includes any container such as a pit, tank, or pool, whether covered or uncovered, and site used for the handling, storage, and disposal of ~~deleterious substances obtained, or used, in in connection with the drilling or operation of wells~~ fluids which are brought to the surface in connection with oil and gas exploration and development production.

43-02-03-11 *Organization Reports* (page 5 of proposed rules)

Comment: NDPC feels that identifying a period of time to file the organization report in would be helpful.

Suggested language: Insert following the final sentence of section 43-02-03-11 "Companies engaged in underground gathering pipeline operations on October 1, 2016, shall file an organization report within 60 days of the effective date of the 2016 amendments to this section."

43-02-03-14 *Access to Records* (page 6 of proposed rules)

Comment: NDPC is concerned with this section, and does not understand its necessity when right-of-way documents are already public and filed on record with the County. NDPC is also concerned that the

large amount of data this requirement would produce may create additional administrative burdens for NDIC staff and delay the construction process. If the change is necessary, NDPC suggests making it required only upon request of the Director rather than automatic. Not many underground gathering pipelines are going to have “well records” or “any and all records of wells”. NDPC feels it would be best to modify these phrases to better identify access to underground pipeline records.

Additionally, NDPC recommends inserting ‘underground gathering’ after ‘property,’ and prior to ‘pipeline right-of-way’ on line six of section 43-02-03-14 for consistency.

Suggested language: ...completing, producing, operation, or servicing oil and gas wells, underground gathering pipelines, injection wells, or treating plants shall permit the commission, director, and their representatives to come upon any lease, property, underground gathering pipeline right-of-way, well, or drilling rig operated or controlled by them, complying with state safety rules and to inspect the records and operation of such wells, and to have access at all times to any and all records of wells. If requested, copies of such records must be filed with the commission...

43-02-03-15 Bond and Transfer of Wells (page 6 of proposed rules)

43-02-03-15.1 Bond requirements. (page 6 of proposed rules)

Comment: NDPC questions the need for a bond for any source well. “Source well” refers to a “water source well,” and such a well is permitted by the State Engineer. NDPC recommends avoiding additional jurisdictional confusion.

43-02-03-15.7 Saltwater handling facility bond. (page 9 of proposed rules)

Comment: NDPC requests clarification on whether existing saltwater disposal well bonds cover the associated saltwater handling facility. Operators who operate a facility onsite with a saltwater well already have bonds in place to cover the reclamation costs associated with that location. NDPC encourages the Commission to look to the results of the ongoing IOGCC study when determining appropriate bond amounts.

43-02-03-15.8 Crude oil and produced water underground gathering pipeline bond. (page 9 of proposed rules)

Comment: NDPC is concerned that this section is overreaching. NDPC recommends a new definition be added to 43-02-03-01 to define production facility. This definition would provide needed clarity to this section. Additionally, NDPC suggests the terms ‘system’ and ‘flow lines’ also be defined or clarified. NDPC also requests clarity on whether a blanket bond is required if a crude oil or produced water underground gathering pipeline system is being built in sections. NDPC believes a system should include all sections of a pipeline.

NDPC also requests that any deadline to have all underground gathering lines bonded should take into account the date the rule goes into effect. If rules are not in place until October 1, 2016, the July 1st, 2017 deadline is burdensome and difficult to meet.

Suggested language: (added to 43-02-03-01. Definitions) 39. "Production facility" means any well pad as permitted pursuant to section 43-02-03-16 or any central production facility as permitted pursuant to section 43-02-03-48.1.

43-02-03-15.8.a(3) The pipeline composition material and design specifications;

43-02-03-15.8.b. Crude oil and produced water underground gathering pipeline bond. (page 10 of proposed rules)

Comment: As written this section does not have clear standards and gives the Commission an inappropriate amount of discretion. NDPC recommends adding 'physically isolated' to the proposed language of subsection 8.b.(1). While an underground gathering pipeline may not be technically in service, a tie-in may still be active and have pressure on it. In these situations, a line has not been physically isolated, should not be considered out of service or abandoned, and should not contribute to the aggregate. For this reason, NDPC recommends delineating between this type of line or system and those that have been truly abandoned. NDPC is concerned with the idea of relating additional bond amounts to the economic value of the underground gathering pipeline system as proposed in 8.b.(2), and recommends striking that language. NDPC feels the intent is to insure that the State has the funds available to abandon the pipeline safely and reclaim the right-of-way, so that should be the only consideration. The pipeline's value has no relevance in relation to higher bond amounts. NDPC also recommends striking the last sentence in subsection 8.b.(2), as it does not clearly define 'multiple', nor does it take into account damage or failures caused by a third party. We do not believe it is the Commission's intent, but want to clarify that if an operator has installed an underground gathering pipeline, but has not yet placed it into service, that line should not be considered abandoned.

Suggested language: 8.b.(1) Any portion of an underground gathering pipeline system that has been out of service for more than one year, is physically isolated, and is not properly abandoned pursuant to 43-02-03-29.1; and

8.b.(2) An underground gathering pipeline right-of-way, including associated pipeline facility and above ground equipment, that have not been properly reclaimed pursuant to 43-02-03-29.1.

If this aggregate of underground gathering pipeline systems is reached, the commission may refuse to accept additional pipeline systems on the bond until the aggregate is brought back into compliance. The commission may, after notice and hearing, require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the economic value of the underground gathering pipeline system and the expected cost of pipeline abandonment and right-of-way reclamation, as determined by the commission. ~~The commission may refuse to accept a bond or to add underground gathering pipeline systems to a blanket bond if the owner or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of underground gathering pipelines; if a civil or administrative action brought by the commission is pending against the owner or surety company; if an underground gathering pipeline system has exhibited multiple failures; or for other good cause.~~

43-02-03-16 Application for Permit to Drill and Recomplete (page 12 of proposed rules)

Comment: NDPC recommends the permit length be extended to two years on all new and existing permits. This will bring North Dakota in line with BLM policy, as federal APDs are in effect for two years and may be renewed for up to two years pursuant to Onshore Oil and Gas Order No. 1, Section III.G. This will allow for proper planning and better utilization of NDIC staff time. With the current reduced rig count, industry cannot drill all the permitted wells within one year. It is waste of time and resources to repeat the permit process.

43-02-03-17 Sign on Well or Facility (page 14 of proposed rules)

Comment: NDPC is concerned that the proposed language would bring about a glut of signage. Landowners, the public and industry would likely not appreciate unnecessary signs scattered across the landscape. This section needs to be clarified and limited to what is truly necessary for safety and identification purposes so that it does not create an eyesore and redundancy. To do so, NDPC recommends signage be only required on produced water facilities. Additionally, providing a definition for facility would limit unnecessary signage by clarifying things like compressor stations and pig stations or other multiple facilities on a single location need not be signed to this standard. NDPC is also concerned that, as written, this policy may be retroactive. Requiring new signs on all existing wells will be costly and burdensome.

Suggested language: Every well or facility associated with the production, transportation, purchasing, storage, treating or processing of oil, and gas, and produced water except plugged wells shall be identified by a sign.

43-02-03-19 Site Construction (page 14 of proposed rules)

Comment: NDPC suggests language clarifying the intent is for well sites and the term and intent for the word 'materials', which is being used to replace 'additives'. NDPC is concerned that 'materials' may refer to straw wattles and erosion control blankets. It does not seem appropriate to have to submit a sundry notice every time we perform erosion control maintenance. Additionally, thickness of the pile will vary. 'Volume' is more appropriate.

Suggested Language: In the construction of a well site, access road, and all associated facilities...

... Operators shall file a sundry notice (form 4) detailing the work that was performed and a current site diagram, which identifies the stockpiled topsoil location and ~~thickness~~ volume..

43-02-03-19.3 Earthen Pits and Open Receptacles (page 15 of proposed rules)

Comment: NDPC is concerned that the process for permitting portable-collapsible receptacles has not been clearly identified, and suggests only notification of use be required. NDPC also recommends exempting untreated fresh water from the permit or notification and other requirements. There is no benefit in NDIC overseeing the storage of fresh water.

43-02-03-28 Safety Regulation (page 16 of proposed rules)

Comment: NDPC suggests increasing the amount of time required for an operator to give notice prior to conducting well stimulation. This will provide operators with adjacent well activity with more time to appropriately react to activity taking place in the vicinity. This suggested change has been agreed to by NDPC operators.

Suggested language: The operator conducting any well stimulation shall give prior written notice, up to ~~seven~~ ten days and not less than ~~three~~ seven business days, to any operator of a well completed in the same pool, if publicly available information indicates or if the operator is made aware, if the completion intervals are within one thousand three hundred twenty feet [402.34 meters] of one another.

43-02-03-29 Well and Lease Equipment (page 17 of proposed rules)

No comments.

43-02-03-29.1 Underground Gathering Pipelines (page 19 of proposed rules)

Comment: NDPC believes this section goes far beyond what was intended by HB 1358 and the following EERC study. As currently drafted some of the proposed rules contained in this section apply to existing pipelines. It is impractical to apply many of the requirements contained in this section to existing lines and NDPC does not believe this was legislative intent. This issue was clearly discussed, debated and determined that this section NOT be retroactive. Section 2 of HB 1358 is expressly applicable only to pipelines placed into service after August 1, 2015. If this section must apply to lines placed into service before August 1, 2015, a reasonable period of time to bring existing lines into compliance should be identified. PHMSA 192 rulemaking gives two years for previously unregulated lines to get into compliance. Additionally, many of the requirements in this section appear to require approval from the Commission. This was also not legislative intent.

43-02-03-29.1.2 Definitions (page 19 of proposed rules)

Comment: NDPC specifically recommends striking a portion of 2.b, as the language clearly refers to a distribution line, not a gathering line, and is similar to distribution lines utilized by utilities to provide gas to commercial users.

Suggested language: ...2.b. "Underground gas gathering pipeline" means an underground gathering pipeline designed or intended to transfer associated or non-associated gas from a production facility to a gas processing facility; or an underground gathering pipeline designed or intended to transfer residue gas from a gas processing facility to an oil and gas production facility; or an underground gathering pipeline designed or intended to transfer carbon dioxide to or within an enhanced recovery project.

43-02-03-29.1.3 Notification (page 19 of proposed rules)

Comment: NDPC has a number of questions and issues with this subsection. Subsection 3.a. requires notice of the Commission, but the language is not clear as to how this notification is to be made, nor is it clear whether or not the Commission will respond. Additionally, there is question as to when the seven-day period begins and whether the period of time is in calendar or working days. The language 'notice of intent' suggests approval is required following notification, which makes much of this section go beyond legislative intent and the results of the EERC study. As such, we have a number of recommendations.

NDPC recommends changing the requirement in subsection 3.a.(1)b. to the proposed route. It is impossible to provide the detailed information required prior to completion, and submission of the shape files requested is required upon completion.

NDPC also recommends striking subsections 3.a(1)(c)iii, 3.a(1)(c)iv, 3.a(1)(c)v, 3.a(1)(c)vii, and 3.a(1)(c)viii. Many of these requirements are on par with the level of information required by the Public Service Commission for a much larger transmission line. NDPC believes this is inappropriate for gathering lines.

Subsection 3.a(1)(c)iii is unnecessary and impractical. The operating pressure of a pipeline differs from one end to the other, making this number imprecise at best.

Subsection 3.a(1)(c)iv requires submission of the proposed test procedure. This is unnecessary and impractical, considering the method has already been submitted. As noted above, we recommend striking this subsection.

Subsection 3.a(1)(c)v is unnecessary and again, a detail level beyond legislative intent. It is also a non-issue for non-metallic pipe. As noted above, we recommend striking this subsection. If retained, it should be reworded to exempt non-metallic pipe.

Subsection 3.a(1)(c)vii is impractical due to the use of the word "all". Depending on how large a project is and how far in advance the 'notice of intent to construct' is being filed, this may be impossible. As noted above, we recommend striking this subsection.

Subsection 3.a(1)(c)viii removes flexibility of an operator to adjust routes on site. Removing the flexibility could cause more damage than leaving the judgement to bore/avoid on site. Filing an in-depth plan is impractical due to the imaging files being outdated. Surveys are done quite far in advance with final staking done just prior to the job starting. This is done in an effort to minimize the impact to farming and reduce the risk of stakes being knocked over. In most situations, crews encountering a wet spot (often not even an "official" wetland), they will bore or avoid it all together. The landowner is contacted when the route veers too far off the pre-planned path. As noted above, we recommend striking this subsection.

NDPC also asks for clarification on subsection 3.b. It is unclear what is meant by 'out of service'. The Commission should clarify whether this is meant to address 'abandoned' or merely not

flowing for some period of time. We would also want to clarify that a newly installed line, but not yet commissioned, not be considered 'out of service'. It is also unclear what constitutes a 'portion' of an underground gathering pipeline, and no consideration has been taken for a line that is part of an active system and has pressure monitoring.

Subsection 3.c. is also ambiguous, and somewhat redundant as some damages are already reported to the One Call System. Multiple reporting procedures is inefficient. The term 'damage' also needs to be defined. Additionally, the expectation of 'immediately' is unreasonable. The immediate focus of the operator should be on securing the situation to ensure that safety and environmental risks are minimized. NDPC recommends striking this subsection, but if it is retained, the period of time should be changed to within 24 hours.

43-02-03-29.1.4 Design and construction (page 21 of proposed rules)

Comment: Subsection 4.a. discusses newly constructed underground gathering pipelines. The Commission should replace this with 'underground gathering pipelines constructed after October 1, 2016,' as newly constructed is too vague of terminology and doesn't allow for a specific timeframe moving forward.

NDPC is concerned with subsection 4.b., as these requirements are not practical nor necessary for non-metallic gathering systems. Internal inspection should be for steel lines only, with explanation for whether it applies to all steel lines, both in high and low pressure service, and at what interval. In addition, this subsection makes it seem as though all lines need to be pigged, which is impractical on a large system with varying diameters. NDPC would like the Commission to provide clarification on what they would like to achieve with this requirement.

Subsection 4.c. is vague and impossible to determine or enforce. It is unclear what the section means or entails, and what the intended compliance mechanism will be to prove that installation crews are trained. Additionally, requiring crews be trained in ALL manufacturer-prescribed installation practices is a broad statement and not practical nor enforceable. We suggest language clarifying training only for practices they are tasked to perform.

Suggested language: Installation crews must be ~~thoroughly~~ trained in all ~~manufacturer-prescribed~~ installation practices for which they are tasked to perform.

Section 4.d. indicates operators must limit impact to agriculture, road, and utility construction. This sentence is poorly structured and needs review. These requirements are already required in the North Dakota One-Call Law. In addition to complying with state law, operators already coordinate with external stakeholders to acquire permission for pipeline routes. In most cases, the long-term impact to the land is minimal as it is common practice for ROW contracts to require the pipeline ROW be reclaimed for future beneficial use. Again, operators already work to limit the impact to utility companies who own the lines impacting ROW plans by coordinating with North Dakota One-Call requirements. NDPC believes the checks and balances are already in place ensuring operators limit these impacts through coordination with all applicable

stakeholders leaving NDIC oversight unnecessary. Duplicating law under multiple jurisdictions is not beneficial. NDPC recommends striking this section.

In 4.e. the Commission requires 'undisturbed native soil' and in instances where the trench is over-excavated provide 'appropriate' material to provide continuous support of the pipe. Both terms are poorly defined and expectations are ambiguous. NDPC suggests reliance on some industry standard, such as ASME or API, that can be incorporated by reference to provide needed clarity. Additionally, it is common practice to use gravel to support pipelines. As gravel may be interpreted to be 'rocks', we suggest clarifying language, potentially with a 2 inch cutoff, as usage may vary based on the situation. In addition, the usage of trench breakers or sandbags should be allowed.

Subsection 4.e. also sets a minimum width of trenches to have 6" of clearance on either side of the pipe. This provision would restrict most (if not all) trenchers currently being utilized in ND for any pipe larger than 8". The rule as written may also block the use of plowing or knifing techniques which can result in less impact to the land and lower construction costs. NDPC recommends removing this requirement.

Suggested language: ...Trench bottoms must be free of rocks greater than 2 inches, debris, trash, and other foreign material not required for pipeline installation...

Subsection 4.f. is an impractical requirement. NDPC recommends only requiring county, state and township roads require boring.

Subsection 4.g. requires an inspection of all pipe and components before installation. Although this is typically the responsibility of the contractor and inspector, the proposed language does not specify who (DMR or the company) is responsible for this inspection. 'Visually inspected' is also an ambiguous term and it may not be practical to visually inspect every inch of the pipe prior to installation. NDPC also recommends striking the phrase 'in a pipeline system' and clarifying the term 'component'.

Suggested language: No pipe or other component may be installed in a pipeline system unless it has been visually inspected at the site of installation to ensure that it is not damaged in a manner that could impair its strength or reduce its serviceability.

NDPC has concerns as to what would constitute 'stresses' in subsection 4.h. and how these requirements could be documented or proved to the satisfaction of the State.

NDPC requests further clarification of the Commission's intent in subsection 4.i. Typically, trench settling issues that get so much attention occur due to frozen ground thawing after it is buried. Other settling issues are more minor and just require standard fill and packing. Care must be taken to not over compact the soil in an effort to allow crops to grow properly. Discing the soil to complete reclamation is common practice. Additionally, some of the comments in regard to subsection 4.e. also apply to this subsection. It is common practice to use gravel to support pipelines. As gravel may be interpreted to be 'rocks', we suggest clarifying language, potentially with a 2 inch cutoff, as usage may vary based on the situation.

Suggested language: ...Backfill material that will be within 2 feet of the pipe must be free of rocks greater than 2 inches and foreign debris. Backfilling material must be compacted as appropriate during placement...

The requirements in subsection 4.k. qualify as what would be required for permitting rather than gathering system construction notification. Again, legislative intent was not to require permitting. Requiring this level of pre-planning and documentation for a gathering system will remove all flexibility in on-site relationships with landowners. In current practices, the on-site foreman has the authorization to bore or avoid any additional wet areas and work with the landowner to achieve the most practical solution possible. NDPC recommends the underground gathering pipeline traverse an environmentally sensitive area for minimum distance of 150 feet before horizontal drilling be required. The proposed language also does not specify how, when or to whom the plan is to be submitted. Additionally, NDPC also objects to the requirement of a registered surveyor as companies have individuals qualified and experienced in these tasks and it was not required in statute.

43-02-03-29.1.5 Pipeline right-of-way (page 23 of proposed rules)

Comment: The proposed language in subsection 5.b. states that all markers must be removed from the ROW. It is assumed the Commission does not intend that pipeline markers be removed. The markers are usually posted within line of site to help in inspection and provide damage prevention precautions. The proposed language regarding 'markers' should be changed to either 'temporary' or 'construction'.

Suggested language: ...All stakes, construction markers, cables, ropes, skids, and any other debris or material not native to the area must be removed from the right-of-way and lawfully disposed of. Permanent pipeline markers should be set as necessary for safe operations...

Caution should be taken with the word "compacted" when used in reference to ROW reclamation as in subsection 5.d. NDPC suggests differentiating between subsoil and topsoil, as subsoil compaction is necessary to avoid settling of the pipeline, but over compaction of topsoil is a significant issue in proper regrowth of plant material and crops.

NDPC believes that subsections 5.e. and 5.f. are more appropriate in the abandonment subsection, and that the language in this section should clarify that maintenance of ROW is transferable upon sale and that reclamation lies with the owner of record at time of abandonment. It should also clarify that the right-of-way owner is not responsible for maintenance unrelated to their activities.

43-02-03-29.1.6 Inspection (page 23 of proposed rules)

Comment: Statute only requires a certificate of hydrostatic or pneumatic testing by a third party inspector. NDCC 38-08-27 states, "Upon request, the operator shall provide the commission the

underground gathering pipeline engineering construction design drawings and specifications, list of independent inspectors, and a plan for leak protection and monitoring for the underground gathering pipeline. Within sixty days of an underground gathering pipeline being placed into service, the operator of that pipeline shall file with the commission an independent inspector's certificate of hydrostatic or pneumatic testing of the underground gathering pipeline." Once again, the proposed language in subsection 6 reaches beyond legislative intent in requiring the inspector ensure the pipeline is installed as prescribed by the manufacturer's specifications and in accordance with the additional proposed requirements. NDPC recommends this section be struck, as statute is clear.

43-02-03-29.1.7 Associated pipeline facility (page 24 of proposed rules)

Comment: Subsection 7. also raises a number of questions of clarity. The terms 'associated pipeline facility' and 'above ground equipment' are undefined and could vary the interpreted intent of this section greatly and cause significant issues. Section 18 of 38-08-02 clearly defines 'associated above ground equipment' and is clear, and NDPC is unsure why the proposed language aims to create two separate things. NDPC recommends limiting the proposed language to 'associated above ground equipment' as defined in 38-08-02. This section also needs clarification that it is only applicable prospectively. All of the requirements of the second paragraph of this section should include the good-cause exemption at the Director's discretion due to market conditions. NDPC suggests accomplishing this by moving the second sentence in the paragraph to the end of the paragraph.

The dike requirements in the third paragraph of subsection 29.1.7 are also inappropriate, as state regulations already address dike requirements for oil production tanks. The practicality of much of this section will depend on the definitions of the terms described above. Additionally, the experience of NDPC members indicates the 'required capacity of the dike may be lowered by the director if the necessity thereof can be demonstrated to the director's satisfaction' is inconsistently applied. The final paragraph of the subsection prohibits storage of solids at pipeline facilities, but does not account for soils being treated. NDPC suggests excluding soils being treated using the language suggested below.

Suggested language: No associated ~~pipeline facilities and~~ above ground equipment shall be installed less than five hundred feet [152.40 meters] from an occupied dwelling unless agreed to in writing by the owner of the dwelling or authorized by order of the commission.

All associated ~~pipeline facilities and~~ above ground equipment used to store crude oil or produced water must be devoid of leaks and constructed of materials resistant to the effects of crude oil, produced water, brines, or chemicals that may be contained therein. ~~The above materials requirement may be waived by the director for tanks presently in service and in good condition.~~ Unused tanks and associated above ground equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year. ~~The above materials requirement may be waived by the director for tanks presently in service and in good condition.~~

Dikes must be erected around all produced water or crude oil tanks at any new facility prior to placing the associated underground gathering pipeline into service. Dikes must be erected and maintained around all crude oil or produced water tanks or above ground equipment, when deemed necessary by the director. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid throughput. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction. Discharged crude oil or produced water must be properly removed and may not be allowed to remain standing within or outside of any diked areas.

The storage of solids for a period of longer than 90 days is prohibited at any pipeline facility unless otherwise authorized. Any solids generated at a pipeline facility must be removed and properly disposed of in an authorized facility, or utilized in an approved treatment process such as land farming, in accordance with all applicable local, state, and federal laws and regulations.

43-02-03-29.1.8 Underground gathering pipeline as built (page 24 of proposed rules)

Comment: NDPC is also concerned with subsection 8. We believe the language proposed in this section goes far beyond the legislative intent of HB 1358. NDCC 38-08-27 clearly limits the application of requirements in this section to lines placed into service after August 1, 2015, and NDPC strongly objects to the proposed rules adding an additional four years by using August 1, 2011 as the cutoff. Again, NDCC 38-08-27 only requires engineering construction design drawing and a plan for leak detection and monitoring be submitted only upon request. The legislative committees discussed this requirement at length, and were clear in their intent. As written, this section requires automatic submission of information far beyond that requirement, creating a deluge of paperwork for both operators and DMR staff. Additionally, many of the requirements of the proposed language provide no benefit to preventing leaks or spills.

NDPC recommends striking the last sentence of subsection 8.a. and subsections 8.a.(1)-(8) and 8.a.(10)-(11). Subsection 8.a.(5) asks for the direction of fluid flow. NDPC believes this is not pertinent and has no value, as if a line is breached, the direction of flow will change toward the breach and not stay in the original direction of flow. Additionally, in a dynamic gathering system with multiple inlets and outlets, there can be segments of flow that are bi-directional by design. On complex gathering systems, it is common for segments to be activated as construction is completed and tested individually. The NDIC database would need to be able to accept a value of 'multi'.

Suggested language: ...(9) Leak ~~detection~~ protection and monitoring methods that will be utilized after in-service date....

Subsection 8.b. should clarify that this requirement is also not intended to cover flowlines, only gathering pipeline systems as was legislative intent. The language in this subsection creates

uncertainty and is contradictory to statutory definitions of gathering pipelines and systems. NDPC requests clear exclusion of all flowlines from the proposed rules.

43-02-03-29.1.9 Operating requirements (page 25 of proposed rules)

Comment: Without further definition, the use of the term ‘pressure-regulating devices’ in subsection 9. is inappropriate. PHMSA uses the term ‘pressure limiting device, relief valve, pressure regulator, or other item of pressure control equipment’ in their section titled ‘Overpressure safety devices and overfill equipment’ which encompasses a large variety of options. ‘Pressure regulating devices’ can insinuate an automated control device that is not necessarily appropriate nor practical on all systems. In some cases you may protect your pipeline from being over pressured by installing pumps which cannot develop a pressure beyond what your pipe can withstand. The lack of definition on this term leaves this regulation open to potential misinterpretation and expectations of technology that is unnecessary or possibly inappropriate. NDPC recommends using the PHMSA term as it leaves the options of relief devices, regulating devices, pump limitations or pressure control valves all in the scope and allows engineering to drive the best solution for the application. In addition, PHMSA acknowledges that in instances where there is no potential for over-pressurization, pressure-regulating devices are unnecessary.

43-02-03-29.1.10 Leak detection and monitoring (page 25 of proposed rules)

Comment: NDPC also has a number of objections to subsection 10. First, it should be said that the term ‘leak detection’ should not be used in the title and the following subsection, as there is no system that can detect leaks 100 percent of the time, and the intent of statute is ‘protection’. The first statement in this subsection is ambiguous – there is uncertainty as to whether a plan is required, or just required to be submitted if an operator has a plan. It also seems unnecessary to file a leak detection and monitoring plan with the director, as this creates yet another pile of paperwork without any benefit. Second, NDPC is concerned with the language regarding computational pipeline monitoring leak detection systems. These systems are not appropriate for gathering lines, as they are intended for transmission lines. CPM models are generally considered to be algorithm based models for pipeline monitoring. Note that they are not leak detection systems despite commonly being referenced as such. According to API RP 1130, “CPM systems that use algorithmic approach to detect hydraulic anomalies in pipeline operating parameters.” “The primary purpose of these systems is to provide tools that assist pipeline controllers in detecting commodity releases that are within the sensitivity of the algorithm.” It is concerning that CPM is referenced without caution, thus insinuating that it is applicable and potentially expected to be applied on a broad range of crude oil and produced water gathering systems in North Dakota, even though it is not appropriate for all gathering systems. Language in this subsection should be altered so that it is clear that a CPM program is not required.

NDPC is also concerned with the language in this subsection referencing data sharing plans. First, ‘real-time shared access’ is commonly considered a serious data security risk and threat to the nation’s energy supply. There are options for data sharing within reasonable periods of time

that are not 'real-time.' Additionally, these sharing plans should only be required when the leak detection system requires multiple party input to correctly detect leaks. This is not clear in the currently proposed language. NDPC also recommends removing crude oil from the final paragraph of subsection 10. Oil shippers are already monitoring volumes due to the nature of oil sales.

Suggested language: 10. Leak ~~detection~~ protection and monitoring...

...tested in accordance with American Petroleum Institute's recommended practice...

...All ~~crude oil or~~ produced water underground gathering pipeline owners must develop and maintain a data sharing plan. The plan must provide for ~~real-time~~ shared access to data between the operator of the production facility, ~~the crude oil or~~ produced water underground gathering pipeline owner, and the operator at the point or points of disposal, storage or sale. If a discrepancy in the shared data is observed, all parties involved in the data sharing shall be notified immediately and action shall be taken to determine the cause. A record of all data discrepancies shall be retained by the ~~crude oil or~~ produced water underground gathering pipeline owner. If requested, copies of such records must be filed with the commission.

43-02-03-29.1.11 Spill response (page 26 of proposed rules)

Comment: Some of the proposed language in subsection 11 is inappropriate, as the North Dakota Department of Health has jurisdiction over spills that occur offsite, and each company's spill plan may differ. Additionally, requiring local emergency managers to work on every spill plan will overwhelm the local agencies and bombard them with paperwork. This is extremely onerous and will significantly slow down the process. NDPC recommends striking the last two sentences of this subsection.

43-02-03-29.1.12 Corrosion control (page 26 of proposed rules)

Comment: NDPC requests clarification as to when corrosion control must be installed as required in subsection 12.b. NDPC recommends using PHMSA's requirement of within one year post construction (192.455(a)(2)). NDPC is also concerned that as written, the language in subsection 12.e.(1) does not allow for a number of industry standard methods. For example, sampling for iron levels is an acceptable method of evaluation corrosion.

Suggested language: ...Coupons or other monitoring equipment ~~or methods~~ must be used to determine the effectiveness of the inhibitors in mitigating internal corrosion. The coupons ~~or other monitoring equipment or methods~~ must be examined at least twice a year, but with intervals not exceeding six months. Operators may demonstrate that an alternative examination period greater than six months is acceptable based on prior long term testing which can demonstrate that a longer timeframe for testing is reasonable.

43-02-03-29.1.13 Pipeline integrity (page 27 of proposed rules)

Comment: Language proposed in subsection 13 is also problematic. It is not practical to leave a gathering system shut-in for 48 hours to wait for testing. Many small repairs can be made in the same day they are discovered. Requiring a 48 hour delay would cause unnecessary shut ins of the gathering system. DOT does not require 48 hours notice, so it seems inappropriate for the Commission to do so. If the Commission is concerned with operators conducting a valid test, then requiring a certification of calibrated gauges and a signed chart or downloaded data would be more appropriate. Delaying the repair of a leak is counter to the intent of the rulemaking, which is to proactively prevent spills. Pressure testing is also not typical for minor repairs. Other forms of non-destructive examination can be used in lieu of pressure testing and are acceptable by industry standards. Additionally, this delay would increase flaring, which is also counter to the Commission's goals. NDPC suggests striking subsection 13.a.

In subsection 13.c. the phrase 'computational pipeline monitoring and leak detection systems' should be changed to 'leak protection and monitoring systems'. Statutory language is specifically 'leak protection and monitoring', NOT leak detection. In addition the first statement in this subsection is too broad and should be removed or the NDIC should provide clarification on 'continual pipeline integrity'.

Suggested language: The underground gathering pipeline owner of record must demonstrate continual pipeline integrity for all in-service underground gathering pipelines. Pipeline integrity can be demonstrated through periodic pressure testing, computational pipeline monitoring and leak-detection protection and monitoring systems, or internal integrity inspections. Pipeline integrity records shall be retained for the in-service life of the pipeline and made available upon request by the commission.

43-02-03-29.1.14 Pipeline repair (page 28 of proposed rules)

Comment: It is inappropriate to require an operator to wait 48 hours to repair or replace their gathering system as in subsection 14.a. An operator will commence repairs as close to immediately as possible upon discovery of the situation to ensure that minimal damage is done. Waiting 48 hours would risk further environmental damage and economic harm to an operator. If necessary to retain this subsection, it should make a distinction from an emergency situation where 48 hour prior notification is not feasible. NDPC recommends striking subsection 14.a.

During emergency conditions or after third party damage has occurred, the temporary use of clamps or squeezing is an accepted best practice in mitigating further damage to the environment. The NDIC should make a distinction or take into account these factors when prohibiting the use of such measures for permanent repair as in subsection 14.c.

Suggested language: ...No owner may use any pipe, valve, or fitting, for replacement in repairing an underground gathering pipeline, unless it is designed and constructed to meet the pipeline manufacturer's design specifications maximum allowable pipeline pressure...

43-02-03-29.1.15 Pipeline abandonment (page 29 of proposed rules)

Comment: Subsection 15.a. requires purging of pipeline in a manner that effectively removes all fluid. This is impractical because the methods used to purge a line may leave behind acceptable, harmless fluids, such as water. The rule needs to accommodate for this, and clarify that the line should be void of produced fluid. NDPC also requests language that limits this requirement to only lines being permanently abandoned, not those that are temporarily out of service.

Suggested language: ...a. When an oil and gas underground gathering pipeline or any part of such pipeline is permanently abandoned, the owner shall...

... (3) Purge the pipeline with fresh water, air, or inert gas in a manner that effectively removes all produced fluid...

43-02-03-30 Notification of Fires, Leaks, Spills or Blowouts (page 30 of proposed rules)

Comment: NDPC objects to the addition of 'root' to this section. To most operators, 'root cause' is a term indicating that a full official root cause analysis must be performed. This is not a reasonable requirement for small spills. Fresh water should be exempted from this section. The addition of gathering pipelines to this section brings about the question of what defines 'onsite' when dealing with a gathering pipeline leak. Unless the leak occurs on a well site, a release would fall under the jurisdiction of the North Dakota Department of Health.

In addition to our concerns about root cause analysis and gathering line leaks, the NDPC believes the reporting requirement of spills greater than one barrel onsite included in this section is extreme. Pads are designed for containment and efficient cleanup. Requiring reporting of this type of spill is a waste of agency resources and staff time, when emphasis and time should be spent on larger and uncontained spills that pose a threat to the health and safety of the environment. Comparable states set the minimum reporting requirement much higher. Federal law sets the bar at 10 bbl. NDPC encourages you to adopt key finding and recommendation 5 of the EERC study, *Liquids Gather Pipelines: A Comprehensive Analysis* and 'recognize the impact the minimum reporting threshold has on spill statistics and evaluate accordingly how to interpret and report these data. North Dakota has among the lowest minimum reporting thresholds of the top seven oil-producing states. This creates the potential to skew the comparison of spills between states with higher reporting thresholds, making it appear that North Dakota has more spills than other oil-producing states.' Paralleling North Dakota's reporting requirements with federal on other states' requirements will result in more accurate and consistent reporting. The Bureau of Land Management separates spills into two categories: Major Spills and Other-Than-Major Spills (aka Minor). Minor spills or discharges in non-sensitive areas involving less than 10 bbl of liquid or 50 MCF of gas do not require oral or written reports. NDPC strongly suggests increasing the reporting requirement contained within this section to 10 bbl or greater, especially when considering the potential of the new requirements proposed in 43-02-03-49. Attached is a recent presentation given by the Bureau of Land Management on their spill reporting requirements.

43-02-03-30.1 Leak and Spill Cleanup (page 31 of proposed rules)

Comment: NDPC objects to the addition of 'responsible parties.' This broad term needs further definition if it is to be included.

43-02-03-31 Well Log, Completion & Workover Reports (page 31 of proposed rules)

No comments.

43-02-03-34 Method of Plugging (page 33 of proposed rules)

No comments.

43-02-03-34.1 Reclamation of Surface (page 33 of proposed rules)

Comment: The term facilities needs to be defined.

43-02-03-40 Gas-Oil Ratio Test (page 34 of proposed rules)

Comment: NDPC suggests striking or providing a clearer definition of the term 'significant'. As is, the term is ambiguous, and may cause operators to continuously resubmit form 9 since the gas-oil ratio can continually increase up to the bubble point.

Suggested language: Subsequent gas-oil ratio tests shall be performed on producing wells when the producing pool appears to have reached bubble point ~~or there is a significant change.~~

43-02-03-48 Measurement of Oil (page 35 of proposed rules)

No comments.

43-02-03-49 Oil Production Equipment, Dikes and Seals (page 35 of proposed rules)

Comment: As written, the proposed changes in this section expand the authority of the director to require dikes and appear to require new dikes on any existing wells and tanks at any production facility built or rebuilt on or after July 1, 2000. The Director already has the authority to require dikes and berms when deemed necessary. Conditional usage of dikes and berms has become common practice over the past several years and is supported by industry where appropriate. This process has been used wisely and effectively. The expanded requirements would greatly increase costs to operators, and at current prices would likely result in a large number of wells being plugged and abandoned. The cost of building a berm on each pad will range from \$12,000-30,000 per pad on new wells plus maintenance costs. Operators will also incur the additional expense of dealing with the storm-water captured on site, which may exceed \$35,000/year per company. We don't believe the intent was to apply to existing wells, and recommend the rules include language stating as such.

NDPC believes the current policy of requiring berms only when necessary is effective, and statistics show the policy is working. As such, we suggest the requirement be struck. The Commission has expressed concerns that the rate of uncontained spills is increasing at a troubling rate, but data shows the containment rate only appears to have decreased one to two percent between 2014 and 2015, and no more than five percent since 2013. The containment rate has varied from about 70 to 80 percent in the last decade, even as wells and production have increased dramatically, and recent years are well within that range. In addition, of the approximately 25 percent of uncontained spills, 25 percent of those are attributed to pipeline leaks. It seems highly illogical to include pipeline leaks in containment statistics as a pipeline leak is most likely to occur offsite. Additionally, the statistics do not clearly indicate most of the spills would be contained by berms. Many of the spills being deemed uncontained are the result of things like vapor release or a blow out, where the uncontained fluid is carried offsite by the wind. It's clear to see that adding perimeter berms would not affect a majority of uncontained spills and only provide benefit to an incredibly small number of spills and leaks. The cost to benefit ratio in this situation is incredibly disproportionate. In addition, the use of berms can cause a number of unintended consequences. Federal agencies typically don't use berms due to the unavoidable accumulation of runoff water from rain or snow. This accumulation can result in standing pools of water, which create safety risks of their own and are expensive to collect and dispose of. The use of perimeter berms can also limit an operator's ability to lessen its footprint and leave more land for agricultural or other uses by reclaiming unused portions of an active well pad. It is for these reasons that we request the requirements contained in this section be struck. NDPC believes the Commission is doing a good job determining when perimeter berms are truly necessary, but they may consider a requirement for berms around heater treaters when appropriate going forward. Again, we recommend striking this requirement.

While we do not agree with the need for perimeter berms, we also strongly object to retroactively applying this rule to existing pads. NDPC also suggests striking the requirement of 'sufficiently impermeable material.' The remaining language already requires the berm to provide 'emergency containment', which implies some level of impermeability.

Additionally, should any of this section be retained, we request additional language to be added explaining how the Commission interprets how to calculate the required capacity of the dikes. It is industry's understanding that when calculating capacity that the Commission does not factor in freeboard from precipitation and displacement from other obstructions, as is required under the SPCC Program through the EPA. Currently when preparing SPCC Plans and determining containment calculations, industry must request a case-by-case determination from the NDIC on how to calculate the required berm capacity under this provision. It would be helpful, transparent and more efficient to have more details in the rule in the NDICs interpretation of required dike capacity, as the default interpretation of the Federal SPCC requirement is different than the verbal NDIC interpretation provided in the past.

Suggested language: Storage of oil in underground or partially buried tanks or containers is prohibited. Surface oil tanks and production equipment must be devoid of leaks and in good condition constructed of materials resistant to the effects of produced fluids or chemicals that may be contained therein. Unused tanks and production equipment must be removed from the site or placed into service, within a

reasonable time period, not to exceed one year. ~~Dikes must be erected and maintained around oil tanks at any production facility built or rebuilt on or after July 1, 2000.~~ Dikes must be erected and maintained around oil tanks at any production facility built or rebuilt on or after July 1, 2000. Dikes may be erected and maintained around heater treaters at any production facility built or rebuilt on or after August 1, 2016 if the necessity therefor can be demonstrated to the director's satisfaction.

Dikes must be erected around oil tanks at any new production facility ~~within thirty days after the well has been completed~~ prior to completing any well placing tanks into service. Dikes must be erected and maintained around oil tanks at ~~production~~ all production facilities ~~built prior to July 1, 2000, when deemed necessary~~ built prior to July 1, 2000, when deemed necessary ~~unless a waiver is granted~~ by the director. Dikes as well as the base material under the dikes and within the diked area must be constructed ~~of sufficiently impermeable material~~ to provide emergency containment. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid production. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction.

~~A perimeter berm, at least one foot [30.48 centimeters] in height, shall be constructed of sufficiently impermeable material to provide emergency containment around all storage facilities and production sites and to divert surface drainage away from the site, unless waived by the director.~~

Numbered ~~metal~~ weather-resistant security seals shall be properly utilized on all oil access valves and access points to secure the tank or battery of tanks.

43-02-03-51.1 Treating Plant Permit Requirements (page 36 of proposed rules)

No comments.

43-02-03-51.3 Treating Plant Construction and Operation Requirements (page 37 of proposed rules)

Comment: As drafted, the requirement of perimeter berms would apply to existing treating plants. While we do not agree with the need for perimeter berms, we would suggest, at a minimum, the requirement only apply to new treating plants. In lieu of berms, sloping could prevent a lot of offsite drainage. Additionally, the term 'sufficiently impermeable material' does not have any practical application and likely requires further definition.

Suggested language: A perimeter berm, at least one foot [30.48 centimeters] in height, shall be constructed of sufficiently impermeable material to provide emergency containment around ~~the newly~~ constructed treating plants and to divert surface drainage away from the site, unless waived by the director.

43-02-03-52 Report of Oil Production (page 39 of proposed rules)

Comment: NDPC requests further clarification of the term 'could occur'. NDPC is unsure what the Commission hopes to learn with this proposed change, as it essentially is asking operators to make up a number.

43-02-03-52.1 Report of Gas Produced in Association with Oil (page 40 of proposed rules)

Comment: NDPC requests further clarification of the term 'could occur'. NDPC is unsure what the Commission hopes to learn with this proposed change, as it essentially is asking operators to make up a number.

43-02-03-53 Saltwater Handling Facilities (page 40 of proposed rules)

Comment: NDPC is concerned that the application of this section is unclear because 'saltwater handling facility' has not been clearly defined. We believe the intention of the Commission is to only include commercial facilities that are neither on or part of well sites nor a treatment plant. We believe changing the term to 'saltwater handling and disposal facility' as described in our comments on section 43-02-03-1 accurately reflects this intent.

43-02-03-53.1 Saltwater Handling Facility Permit Requirements (page 41 of proposed rules)

Comment: NDPC believes existing saltwater handling and disposal facilities should be grandfathered in to the new requirements, with the original UIC permit acting as the permit. Additionally, NDPC is concerned that subsections 2 and 5 are very open-ended. We suggest striking these sections. We also recommend striking subsection 1.e., as the information it would obtain is already required in subsection 1.c.

Prior to the rule change proposed in subsection 6, operators have been able to request a renewal for a second year on permits. We request that this practice continue and suggest the inclusion of an exemption if authorized by the director in this subsection.

43-02-03-53.2 Saltwater Handling Facility Siting (page 42 of proposed rules)

Comment: NDPC is concerned the term 'hydrologically sensitive area' is broad and needs clarification as suggested below.

Suggested language: All saltwater handling and disposal facilities shall be sited in such a fashion that they are not located in a geologically or hydrologically sensitive area unless otherwise supported by a hydrogeological study.

43-02-03-53.3 Saltwater Handling Facility Construction and Operation Requirements (page 43 of proposed rules)

Comment: NDPC would like further clarification on what the Commission hopes the requirement in subsection 2 will accomplish.

NDPC is concerned that the containment capacity required in subsection 5 is too great. Facilities connected to gathering systems tend to have a larger throughput than traditional trucked

facilities. These gathering system associated facilities then end up having extremely large dike capacities that become impractical. Considering that many operators have SCADA monitoring or manned operations at these larger facilities, consideration should be given to re-evaluate this rule. Additionally, these facilities are visited frequently or have personnel on-site when active. This reduces the risks associated with releases not being identified in a 24-hour period.

Suggested language: ...Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid throughput. An exception will be granted for sites that are manned twenty-four hours or that are monitored remotely with shut-down capabilities. For sites with continual monitoring, the dikes must be of sufficient dimension to contain the total capacity of two times the largest tank within the facility. The required capacity of...

Comment: NDPC is concerned that the berm requirement in subsection 6 will be impractical due to the volume of truck traffic.

NDPC requests clarification of the intent of subsection 9.

NDPC recommends striking subsection 12. The intent of this section seems to be to allow a process for a hazardous determination for any waste on an E&P site. E&P waste has already been deemed RCRA-exempt, making this requirement inappropriate and unnecessary.

NDPC feels that sections 14 and 15 are overreaching and inappropriate. Operators should not be required to seek approval for changes in valves, controls, piping configurations, pumps, motors, etc. If changes do not change the volumetric capacity of the tanks, they should not fall under the jurisdiction of the Commission.

43-02-03-53.4 Saltwater Handling Facility Abandonment and Reclamation Requirements (page 45 of proposed rules)

Comment: NDPC believes a job 'receipt' would not accomplish what the Commission is looking for, and suggests the term 'record' be used instead.

Suggested language: ...and if requested, a copy of any job ~~receipt~~ record setting forth in detail the method and operations used in abandoning the saltwater handling facility.

***43-02-03-55 Abandonment of Wells ~~or~~, Treating Plants, or Saltwater Handling Facilities – Suspension of Drilling* (page 45 of proposed rules)**

Comment: NDPC recommends the addition of an exemption at the discretion of the director to 43-02-03-55.1 Additionally, NDPC suggests a change of the language in subsection 2 for clarity. As currently written, it could be interpreted to mean a surface owner may request a review each of seven years.

Suggested language: ...~~A surface owner may request a review of~~ After a well has been temporarily abandoned for at least seven years, a surface owner may request a review pursuant to subsection 1 of North Dakota Century Code section 38-08-04.

43-02-03-80 Reports of Purchasers and Transporters of Oil (page 46 of proposed rules)

No comments.

43-02-03-81 Authorization to Transport Oil (page 47 of proposed rules)

No comments.

43-02-03-90 Hearings, Complaints and Other Proceedings (page 47 of proposed rules)

Comment: NDPC strongly questions the necessity of the proposed change, as well as the need for the fee at all. These hearings are a primary role of the Department of Mineral Resources, which is funded through a general fund appropriation. Hearings are often continued for good cause by the applicant or the agency. We object to the new fee. If the fee stands, it must be billed in a timely manner so that it is able to be billed to applicant.

Suggested language: Any person moving for a continuance of a hearing, and who is granted a continuance, shall submit a twenty-five dollar fee, or the estimated cost of republication if the cost exceeds fifty dollars, if billed within 30 days, to the commission to pay the cost of the republication of notice of the hearing.

43-02-03-90.2 Official Record (page 48 of proposed rules)

Suggested language: Settlement negotiations between parties to a contested case are only ~~permissible~~ admissible as governed by North Dakota Century Code section 28-32-24, although the hearing officer may strike such testimony from the record for good cause.

43-02-05 Underground Injection Control

43-02-05-04 Permit Requirements (page 49 of proposed rules)

Comment: NDPC recommends changing the automatic expiration to a period of two years in subsection 10 to be consistent with other oil and gas permits.

43-02-05-07 Mechanical Integrity (page 51 of proposed rules)

Comment: NDPC understands the desire of the Commission to ensure mechanical integrity of wells, however, we do not feel an operator should be required to obtain permission to work on their own wells. We suggest the requirement be of notification rather than approval. Additionally, NDPC seeks guidance on what the Commission considers a 'workover project' and recommends the insertion of 'injection' for clarity.

Suggested language: Prior to performing any workover project on an existing injection well during which it is anticipated that the packer or other means of annular isolation will be disrupted, the operator must ~~obtain approval from~~ notify the director by means of a sundry.

43-02-05-11 Bonding Requirements (page 52 of proposed rules)

No comments.

43-02-08 Stripper Well Property Determination

43-02-08-02.1 Property Determination (page 53 of proposed rules)

No comments.

43-02-08-03 Director to Determine Stripper Well Status (page 53 of proposed rules)

No comments.

April 15, 2016

Oil and Gas Division
600 E Boulevard Ave., Dept. 405
Bismarck, N.D. 58505-0840

Received
APR 20 2016
Oil and Gas Division

Dear N.D. Industrial Commission members and representatives:

I want to express my disagreement with the proposed rule change that narrows the definition of an interested party and restricts the input that anyone can have by testifying and submitting information. North Dakota is best served by bringing a diversity of experience and knowledge to hearings. Narrowing the number of people that can testify does not bring the most diverse range of experience and knowledge to all hearings. This proposed rule change is an unnecessary restriction since individuals naturally exclude themselves from hearings if they are not interested in the impact of the hearing. Only parties that feel they are or will be impacted by issues being addressed at hearings come to testify since there is a cost in time and money to be present to testify. The impacts of hearings can be wide ranging and don't just affect owners or managers. There is not a benefit to the citizenry of North Dakota to limit testimony. This proposal to further define interested party should not be enacted.

I also want to stress the importance of the surface being returned to as good or better of a condition compared to how it was prior to being disturbed to lay pipelines, construct sites, etc. The surface condition is the livelihood of North Dakota residents after the oil and gas industry ends their activity on the land. Thus, the attention to the surface should be paramount. The coal industry's current level of reclamation of land is one example of how important regulation of the industry is in this respect. Parts of the state are still scarred by coal mine spoil piles just like they are scarred by pipeline and other oil industry reclamation activities that have been insufficiently monitored and regulated in the past. Please see the attached pictures of a modern well site that had inferior reclamation where the land around it is not restored to its prior production capability and only weeds grow in abundance now. These pictures show the long lasting impacts of not setting high enough reclamation standards. The wording of the regulation needs to enforce a higher level of reclamation than what "closely as practicable" means.

Sincerely,



Landon Kimball



Kochia (Green Weeds) on "Reclaimed" land
undisturbed land
with ripe crop



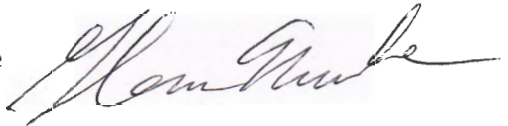
NDIC Oil and Gas Division
600 East Boulevard Ave Dept 405
Bismarck, ND 58505-0840

Received
APR 20 2016
ND Oil & Gas Division

Re: Definition of Interested Party – GENERAL RULES AND REGULATIONS CHAPTER 43-02-03

I cannot support your proposed change for defining "interested party." Aren't all North Dakota citizens interested parties in terms of what happens to our natural resources, our air, our water and our land. Our state needs to continue a position of being inclusive, not exclusive. Let everyone be heard and take all of those comments seriously.

Glenn Muske
419 E Wachter Ave
Bismarck, ND

A handwritten signature in blue ink, appearing to read "Glenn Muske", is written over a light purple rectangular background.

April 17, 2016

Received
APR 20 2016
ND Oil & Gas Division

North Dakota Industrial Commission
Oil and Gas Division
600 East Boulevard Ave Dept. 405
Bismarck, ND 58505-0840

Dear Mr. Helms,

This letter is to urge the rejection of the proposed rule regarding "interested party", the prime subject of the recent hearings.

In the words of the late and esteemed US Supreme Court Justice Louis Brandeis, "**sunlight is the best disinfectant**". That says it all.

Please do not go counter to the long-held, proud North Dakota tradition of open government.

Sincerely,

A handwritten signature in black ink, appearing to read "Lillian Crook", with a stylized, flowing script.

Lillian Crook

920 Arthur DR
Bismarck, ND 58501

4-18-2016

Received
APR 20 2016
ND Oil & Gas Division

To whom it may concern,

As a taxpayer and property owner in North Dakota, I am greatly concerned about the proposed NDIC rule defining "interested party" (CHAPTER 42-02-03-01).

I feel strongly that oil + gas exploration and production and any other such operations affect many more people than just those "in or adjacent to the subject matter."

If this rule is approved it would mean negative impacts could be ignored along with our rights as citizens.

I cite for example the recent "bore hole" project in Pierce County which was opposed by most citizens.

This rule seems unfair and unconstitutional and a first step in "steam rolling" over us and our rights.

I strongly oppose it.

Sincerely,
Robert P. Olin

413 3rd St. S.E.

Rugby, ND 58368

Kadrmass, Bethany R.

From: -Info-Industrial Commission of ND
Sent: Monday, April 25, 2016 12:26 PM
To: Kadrmass, Bethany R.
Subject: FW: McKenzie County Commission - Comment Letter - Proposed Rule Changes
Attachments: NDIC Proposed Rules Comment Letter - 04192016.pdf

For the administrative rules record. I see they also mailed a copy. Karlene

From: Linda Svihovec [<mailto:lsvihovec@co.mckenzie.nd.us>]
Sent: Wednesday, April 20, 2016 10:39 AM
To: -Info-Industrial Commission of ND
Subject: McKenzie County Commission - Comment Letter - Proposed Rule Changes

Please forward the attached letter from the McKenzie County Board of Commissioners to Assistant Director, Mr. Bruce E. Hicks. The original letter will be mailed today.

Linda Svihovec
McKenzie County Auditor/Treasurer
201 5th St NW, Ste 543
Watford City, ND 58854
Phone: (701)444-3616 Ext. 3
Fax: (701)444-4113

Comments by McKenzie County

Prepared for the North Dakota Industrial Commission, Department of Mineral Resources,
Oil and Gas Division's intent to adopt and amend North Dakota administrative rules
Chapter 43-02-03, Chapter 43-02-05 and Chapter 43-02-08

April 19, 2016

Commissioners and staff,

Thank you for the opportunity to submit written comments. McKenzie County currently has within its borders nearly 100 Saltwater disposals and approximately 7,500 oil wells (+/- 33% of the oil wells in North Dakota on roughly 1,300 production locations), according to McKenzie County GIS records. The County produces 35% of North Dakota's oil and 45% of North Dakota's natural gas (McKenzie County Farmer, January, 2016). The County Commission desires to have to following concerns placed on record and to be considered on behalf of the County's citizens and the local political subdivision.

NDACA 43-02-03-01

"Interested party" definition (on page 3, General Rules and Regulations)

As the proposed amendments stand today, with the task of managing local impacts amongst oil and gas development, McKenzie County would not be considered an "*Interested party*" in all application hearings before your Commission. We feel that due to the extent of our impact, the County and its residents should be allowed to comment on any public hearings before the NDIC related to oil and gas development. In conducting a google search of the definition of "*Interested party*", the proposed definition is more restrictive than those provided by Translegal.com, the Cambridge English Dictionary (online version), adviser.com, Venturline.com or equavet.eu. A less restrictive definition of "***Interested party***" might mean(s) any stakeholder in the state of North Dakota or **be removed from the definition amendments entirely**. In the April 6, 2016 Oil Patch Dispatch article written by Amy Dalrymple titled: *Defining 'interested party' Could Affect Oil Hearing*, Attorney General Wayne Stenehjem was quoted as saying "I favor a wide and robust public involvement when the government is taking any kind of action." McKenzie County agrees with that comment in an open Quasit-judicial public hearing process with an agenda and public testimony which abides by hearing rules.

"Saltwater handling facility" (on page 4, General Rules and Regulations).

Due to concerns over how this definition change could potentially impact county property

tax collections and our local Comprehensive Land Use plan (our tool for growth and development management) the county does not support amendments in general that would create additional difficulty in managing and maintaining our road infrastructure. Saltwater handling facilities, due to their unrelated relationship with oil production, and therefore Gross Production Tax (GPT), can create an industrial impact burden on County roads without a future funding path for road maintenance. We are not sure how this definition change might impact our county, but do to concern that there may be negative impact, we would like to be on record with that concern.

NDAC 43-02-03-16 (on page 12, General Rules and Regulation, Chapter 43-02-03-16)

As proposed amendments stand, striking "confirmation that a legal street address has been requested for the well site, and well facility if separate from the well site", would eliminate the County's opportunity to review the proposed location of well sites and facilities within the County. It would be onerous for the County to participate in the public hearing process as it is currently structured every month to conduct the review that now is conducted by the County through the address request process. As the language currently stands, applicants are obligated to provide confirmation of REQUEST of a legal street address. It does not require the 911 coordinator to provide a legal street address. For that reason, McKenzie County is recommending that the NDIC does not remove this requirement to request a legal street address, but possibly clarify the language that this is a requirement to request and address, but not a requirement to attain an address.

The following are comments from McKenzie County GIS Coordinator, Aaron Chisholm: 911 addressing of Oil and Gas locations is extremely important to McKenzie County for several reasons. We believe it is more accurate when dispatching EMS during emergency responses for off location fire protection of neighboring public and private property. Example: There are 35 wells in McKenzie County starting with the name 'Stenehjem'. Seven of them are on 34th St NW, 12 miles northwest of Watford City. Twenty three of them are on Beaver Creek Road and they are approximately 5 miles east and 5 to 8 miles south of Watford City. Five of them are 9 miles south of Watford City off of Hwy 85 south on 18th St. Those three different 'clusters' of wells and their associated production pads are over 20 miles apart. Our 100% volunteer fire departments rely heavily on accurate and unique 911 addressing. Now, apply the 'Stenehjem' well naming example to the 198 wells in McKenzie County that start with USA (such as the USA 34-5 and the USA 34-20 which are ten mile apart) as their well name and can be located 70 miles apart from each other. During emergency situations, these locations with similar names AND unique 911 addresses decrease the margin of error and reduce the frequency of error. In sending out a response to the eight volunteer fire districts that serve McKenzie County, as of 4/17/16, four of the districts had responded and all four of them wanted to see the continued addressing of 911 addresses of oil and gas developments including oil wells and salt water disposals.

Again, our Commission thanks that NDIC, Division of Oil and Gas for the opportunity to submit written comments. We look forward to working with the Commission in the development of the oil and gas in our County in a way that served both the state and the county well, long into the future.

Sincerely,



Richard Cayko, Chairman
McKenzie County Commission

Comments by McKenzie County

Prepared for the North Dakota Industrial Commission, Department of Mineral Resources,
Oil and Gas Division's intent to adopt and amend North Dakota administrative rules
Chapter 43-02-03, Chapter 43-02-05 and Chapter 43-02-08

April 19, 2016

Received
APR 25 2016
ND Oil & Gas Division

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As the proposed amendments stand today, with the task of managing local impacts amongst oil and gas development, McKenzie County would not be considered an "*Interested party*" in all application hearings before your Commission. We feel that due to the extent of our impact, the County and its residents should be allowed to comment on any public hearings before the NDIC related to oil and gas development. In conducting a google search of the definition of "*Interested party*", the proposed definition is more restrictive than those provided by Translegal.com, the Cambridge English Dictionary (online version), adviser.com, Venturline.com or equavet.eu. A less restrictive definition of "*Interested party*" might mean(s) any stakeholder in the state of North Dakota or be removed from the definition amendments entirely. In the April 6, 2016 Oil Patch Dispatch article written by Amy Dalrymple titled: *Defining 'interested party' Could Affect Oil Hearing*, Attorney General Wayne Stenehjem was quoted as saying "I favor a wide and robust public involvement when the government is taking any kind of action." McKenzie County agrees with that comment in an open Quasit-judicial public hearing process with an agenda and public testimony which abides by hearing rules.

"Saltwater handling facility" (on page 4, General Rules and Regulations).

Due to concerns over how this definition change could potentially impact county property

tax collections and our local Comprehensive Land Use plan (our tool for growth and development management) the county does not support amendments in general that would create additional difficulty in managing and maintaining our road infrastructure. Saltwater handling facilities, due to their unrelated relationship with oil production, and therefore Gross Production Tax (GPT), can create an industrial impact burden on County roads without a future funding path for road maintenance. We are not sure how this definition change might impact our county, but do to concern that there may be negative impact, we would like to be on record with that concern.

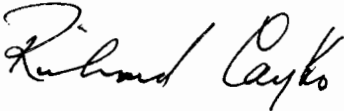
NDAC 43-02-03-16 (on page 12, General Rules and Regulation, Chapter 43-02-03-16)

As proposed amendments stand, striking “confirmation that a legal street address has been requested for the well site, and well facility if separate from the well site”, would eliminate the County’s opportunity to review the proposed location of well sites and facilities within the County. It would be onerous for the County to participate in the public hearing process as it is currently structured every month to conduct the review that now is conducted by the County through the address request process. As the language currently stands, applicants are obligated to provide confirmation of REQUEST of a legal street address. It does not require the 911 coordinator to provide a legal street address. For that reason, McKenzie County is recommending that the NDIC does not remove this requirement to request a legal street address, but possibly clarify the language that this is a requirement to request and address, but not a requirement to attain an address.

The following are comments from McKenzie County GIS Coordinator, Aaron Chisholm: 911 addressing of Oil and Gas locations is extremely important to McKenzie County for several reasons. We believe it is more accurate when dispatching EMS during emergency responses for off location fire protection of neighboring public and private property. Example: There are 35 wells in McKenzie County starting with the name ‘Stenehjem’. Seven of them are on 34th St NW, 12 miles northwest of Watford City. Twenty three of them are on Beaver Creek Road and they are approximately 5 miles east and 5 to 8 miles south of Watford City. Five of them are 9 miles south of Watford City off of Hwy 85 south on 18th St. Those three different ‘clusters’ of wells and their associated production pads are over 20 miles apart. Our 100% volunteer fire departments rely heavily on accurate and unique 911 addressing. Now, apply the ‘Stenehjem’ well naming example to the 198 wells in McKenzie County that start with USA (such as the USA 34-5 and the USA 34-20 which are ten mile apart) as their well name and can be located 70 miles apart from each other. During emergency situations, these locations with similar names AND unique 911 addresses decrease the margin of error and reduce the frequency of error. In sending out a response to the eight volunteer fire districts that serve McKenzie County, as of 4/17/16, four of the districts had responded and all four of them wanted to see the continued addressing of 911 addresses of oil and gas developments including oil wells and salt water disposals.

Again, our Commission thanks that NDIC, Division of Oil and Gas for the opportunity to submit written comments. We look forward to working with the Commission in the development of the oil and gas in our County in a way that served both the state and the county well, long into the future.

Sincerely,

A handwritten signature in cursive script, reading "Richard Cayko". The signature is written in black ink and is positioned above the printed name.

Richard Cayko, Chairman
McKenzie County Commission

&n

Kadrmass, Bethany R.

From: DeWitt Burdeaux <dewitt.burdeaux@flexsteelpipe.com>
Sent: Friday, April 15, 2016 9:35 AM
To: Kadrmass, Bethany R.
Cc: Hicks, Bruce E.; Connors, Kevin C.; Andy Ethridge
Subject: FlexSteel comments to proposed rules
Attachments: Response to NDIC Proposed Amendements to Gathering Lines Filed.docx

Ms. Kadrmass,

Please find attached FlexSteel Pipeline Technologies comments to proposed amendments to NDAC § 43-02-03-29 and the proposal to create NDAC § 43-02-03-29.1.

We appreciate the opportunity to comment.

Respectfully,

DeWitt Burdeaux
Regulatory Compliance

FlexSteel Pipeline Technologies, Inc.

500 Dallas St.
Suite 500
Houston, TX 77002
MOBILE 817.739-4142
Dewitt.burdeaux@flexsteelpipe.com



www.flexsteelpipe.com

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North Dakota Industrial Commission
Department of Mineral Resources
Oil & Gas Division
600 East Boulevard Ave
Bismarck, ND 58505

**Re; NDIC Proposed Rulemaking to Amend North Dakota Administrative Code (NDAC)
Chapter 43-02-03 (Oil & Gas)**

To Whom It May Concern;

FlexSteel Pipeline Technologies, as a manufacturer whose clients have a significant interest in several key aspects of the proposal, appreciates the opportunity to comment on the proposed rules for gathering lines used to transport products associated with oil & gas operations in the State of North Dakota. FlexSteel has some concerns regarding the possible unintended effect of some of these proposals as written, as well as, questions about the expectations NDIC anticipates using to evaluate and enforce a couple of the proposals. To address the concerns we have identified, we offer proposed alternative or supplemental language.

In an effort to eliminate any possible confusion in our intended suggestions, we have copied the section, paragraph, or sentence which is the subject of our focus and added suggested additional language in **bold underlined**, proposed deletions using ~~strike through~~, or posed questions for clarifications following in *italics*. We hope this approach is satisfactory.

43-02-03-29.1. UNDERGROUND GATHERING PIPELINES.

1. *****

2. *****

3. Notificationss - (We suggest adding an "s" as the notices required by a, b, & c are unique and independent events as proposed)

(1) *****

(c) *****

v. Type of external and internal corrosion control (e.g. cathodic protection and corrosion inhibitors), **if applicable.**

4. Design and construction.

a. All newly constructed underground gathering pipelines must be devoid of leaks and constructed of materials resistant to external corrosion and to the effects of transported fluids. **Coatings which can be verified post-construction to be holiday free are considered to be sufficiently protected.**

b. *****

c. *****

d. *****

e. **Unless the manufacturers' installation procedures and practices provide guidance,** pipeline trenches must be constructed to allow for the pipeline to rest on undisturbed native soil and provide continuous support along the length of the pipe. Trench bottoms must be free of rocks, debris, trash, and other foreign material.....

f. *****

g. *****

h. *****

i. When a trench for an underground gathering pipeline is backfilled, it must be backfilled in a manner that provides firm support under the pipe and prevents damage to the pipe and pipe coating from equipment or from the backfill material. **Backfill shall be conducted in accordance with manufacturers' practices or** sufficient backfill material must be placed in the haunches of the pipe to provide long-term support for the pipe.....

With respect to Section "6. Inspection", we pose the following question: *Can a manufacturers' representative serve as the independent inspector provided that individual is only responsible for supervising the installation and possibly, performing the installation of the manufacturer provided fittings and the individual is delegated the authority to stop work for non-conforming activities?*

8. Underground gathering pipeline as built.

a. *****

(2) The outside diameter, minimum wall thickness, composition, internal yield pressure **or nominal pressure rating established by the manufacturer**, and maximum temperature rating of the pipeline, or any other specifications deemed necessary by the director.

(3) *****

(4) **If applicable**, the specified minimum yield strength of the pipeline.

12. Corrosion Control.

a. *****

b. All metallic underground gathering pipelines installed must have sufficient corrosion control. **External corrosion control may be achieved through the application of cathodic protection or demonstration of coating integrity post construction.**

c. *****

d. **Where installed**, cathodic protection systems....

FlexSteel appreciates the opportunity to submit these comments to the NDIC. Please contact me if FlexSteel can be of assistance to NDIC as this effort moves forward. I can be reached at (817) 739-4142 or dewitt.burdeaux@flexsteelpipe.com.

DeWitt Burdeaux
Regulatory Compliance

Kadrmars, Bethany R.

From: Helms, Lynn D.
Sent: Thursday, April 14, 2016 9:07 PM
To: Hicks, Bruce E.; Kadrmars, Bethany R.
Subject: FW: Definitions

From: Mike Donohue [<mailto:miked@mainstreamnd.com>]
Sent: Thursday, April 14, 2016 10:44 AM
To: Helms, Lynn D.
Cc: miked@mainstreamnd.com; Ron Ness
Subject: Definitions

Hi Lynn –

I wanted to express my concern about the definition of “Interested Party”. I may be in the minority but I fully support the definition proposed in 43-02-03-01. As we are seeing across the country and in multitudes of venues such as college campuses, conventions, “peaceful” marches, demonstrations and the list goes on, “groups” of people, some professional, most not, are being “hired” or at the very least STRONGLY encouraged by their political deities to attend various events with the sole purpose of disrupting if not sabotaging the event. Obviously, there are extreme elements that are against oil drilling and production of any kind (see recent comments by Hillary and Bernie, to name but a few), especially fracing. If “interested Party” did not have reasonable limitations, what would keep such groups or individuals from attending NDIC Hearings with the sole purpose of disrupting the orderly process we now enjoy? With the NDIC hearing testimony from legitimate sources and ruling on several applications, permits, etc., in any given session, it would only take a small number of “anti’s” to demand to be able to “testify” at those hearings to needlessly prolong and disrupt a hearing to the point of rendering the process untenable and ineffective. That would slow the process to an unacceptable level.

So – I suggest either keeping the proposed definition that requires property ownership or management interest or loosening it slightly to include RESIDENTS within a fixed radius of a site under review, perhaps 5 miles. Regardless, there MUST be restrictions/limits in place to keep such representatives of anti-oil and gas development entities from taking advantage of the process with the sole intent of destroying it.

Respectfully,
Mike

Mike Donohue
MAINSTREAM INVESTORS
Vice President/COO



Mainstream Investors, LLC • P.O. Box 4448 • Minot, ND 58702 • (701) 852-9444 • Mobile 541-410-6242 • [Visit our website](#)

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TALKING POINTS FOR NWLA HEARING COMMENTS

- The “interested party” definition is unconstitutional and illegal. We have had private attorneys analyze this issue, and we will be submitting detailed comments in writing on why the definition is unconstitutional. The basic problem is that the definition conflicts with court doctrines and constitutional rules.
- The definition of “saltwater gathering facilities” is too vague and broad. By defining them as “sites,” the definition covers any place “used for the handling, storage, disposal of deleterious substances obtained, or used, in connection with oil and gas exploration and development.” This is unconstitutional because it can be read to cover oilfield special waste facilities regulated by the North Dakota Department of Health. It is also concerning because with such a broad definition, the NDIC may be taking power and jurisdiction away from local governments, and we believe in local control.
- Bond amounts are inadequate, but NWLA commends the NDIC for the new rules and bond requirements.
- NWLA would ask the NDIC to revise its rules on surface reclamation while it is making these changes. Currently, the NDIC requires a site to be “reclaimed as closely as practicable to original condition.” It is common for pipeline easements and surface use agreements to include language requiring reclamation of cropland to pre-disturbance soil productivity measured by yields on adjacent undisturbed lands, and for pasture land, native prairie, and hay land, for the type and density of vegetation to be equal to that of adjacent undisturbed lands. This standard is a simple recognition that the land should be restored to its pre-disturbed condition, and not “as close as reasonably practicable.” The standard NDIC uses should match the standards regularly required by landowners in pipeline easement and surface use agreements.
- The NDIC should be commended for the new rules requiring design and construction standards along with third party inspections. This is something NWLA has pushed for in the past. The other requirements for spill response plans, corrosion testing, and other additional requirements are very positive improvements and these ideas have had support from NWLA in the past and NWLA continues to support these regulations and the diligent enforcement of the regulations.

INDUSTRIAL COMMISSION

STATE OF NORTH DAKOTA

DATE 4/14/16 CASE NO. 24957

Introduced By Northwest Landowners

Exhibit 1

Identified By Coons

Enduro Operating LLC currently operates approximately 600 wells in North Dakota, including 17 EOR units. Enduro is currently bonded to the State of North Dakota as obligee for (1) \$100,000 Blanket Bond and (178) \$100,000 Unit Bonds for a total of 1.8 million dollars.

43-02-03-01.45. Saltwater Handling Facility (page 4 of proposed rules)

Enduro request that the commission clarify that EOR injection facilities, associated injection wells and field SWD wells are bonded under the operators blanket or unit bonds.

43-02-03-15.8 Underground Gathering Pipeline Bonding (Page 9 of the proposed rules)

Enduro requests that flow lines in currently bonded EOR units and commingled leases be differentiated from gathering pipelines and therefore not bound by the proposed gathering line bonding.

If flow line bonds are deemed necessary and a blanket bond with designated flow line systems is acceptable, Enduro asks that the commission also accept a single blanket unit bond with designated units assigned.

43-02-03-29.1 Underground Gathering Pipelines (Page 19 of the proposed rules)

Enduro requests that flow lines in EOR units and commingled leases be differentiated from gathering pipelines and therefore not bound by the proposed gathering pipeline permitting, installation, and operational rules.

If underground pipeline regulations are deemed necessary for flow lines, Enduro asks that language be added to allow flow lines in EOR units and commingled leases to be repaired, replaced or segments added, without the Directors approval, but with notification.

43-02-03-49 Oil Production Equipment, Dikes and Seals (page 35 of proposed rules)

Enduro believes the current policy of requiring berms on newly permitted wells when deemed necessary is appropriate. The proposed rule requires a 1 foot perimeter berm on existing storage facilities and production sites to provide emergency containment with any grandfather language stricken.

Enduro believes this rule as written would be detrimental to the viability of conventional oil and gas producers. At an estimated average cost of \$20,000 per perimeter berm, Enduro would expend approximately \$12,000,000 to comply with this rule for its 600 wells. In addition the yearly costs associated with storm water capture and disposal are unknowable at this time, and could be a significant portion of a yearly operational budget.

Enduro requests that the commission keep the current rule in place.

INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA
DATE 4/14/16 CASE NO. 24957
Introduced By Enduro Operating
Exhibit 1
Identified By Ferris



NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Marvin E. Nelson

District 9
P.O. Box 577
Rolla, ND 58367-0577

Residence: 701-477-3422
Cell: 701-550-9731
menelson@nd.gov

COMMITTEES:

Industry, Business and Labor
Transportation

INDUSTRIAL COMMISSION

STATE OF NORTH DAKOTA

DATE 4/14/16 CASE NO. 24957

Introduced By Rep. Nelson

Exhibit 1

Identified By Rep. Nelson

4/14/2016

Gentlemen:

I find the definition of "interested party" to be needlessly narrow and believe such a rule would potentially have detrimental effects on the relationship between the government and the citizens of North Dakota. For instance someone who relies on tourism might want to comment on something impacting an area that he or she does not own or manage. By not being able to even comment, resentment would build and he would likely feel he wasn't really represented. I'm sure you've had lots of comment on that rule by now so I won't go into further detail, but advise you to delete that change.

It is a good step to require notification and mapping of gathering lines before installation. There are, for instance, many landslide areas in western ND and it doesn't help anyone to put a pipeline into a landslide.

The requirement of berms on pretty much all facilities is long overdue; we have had way too many spills needlessly escape the pad areas over the years. Containment of a much higher percentage of spills will improve landowner relations.

The repeating of the NDCC in the rules is needless and creates potential problems and confusion. For instance a law is passed and goes into effect, but the rule, which repeats the law will still be in the NDAC until the rule is changed. It also adds to costs since each change in the Century Code would result in changes in the Administrative Code.

Sincerely,

DATE 4/13/16 CASE NO. 24957Introduced By VentschExhibit 1Identified By Ventsch

April 13, 2016
NDIC Hearing--Williston, ND

The proposed amendment to NDAC 43-02-03-01 is unnecessary because "interested" and "party" already have definitions. I checked a Webster International Dictionary from the early 1900s and also a current one. The definitions have not changed. "Interested" means having an interest, concerned in a cause or in consequences, having a right or share in. "Party" means one concerned or interested in an occurrence, one who takes part with others, having a concern or wish for something, a person. In Webster's International, there is a page which states, "All state Supreme Courts defer to the authority of the International" and in May 1904, North Dakota Supreme Court wrote, in reference to Webster's International, "Our standard authority. The most complete and up-to-date dictionary in existence." By definition, it seems pretty clear that "interested party" includes more than property owners and managers. Why rewrite the dictionary that was good enough for the state Supreme Court?

I also question what happened between February 2, 2016 and now. On that date at a landowner meeting, I asked Wayne Stenehjem about the accuracy of reported flaring numbers. He didn't have an immediate answer but Alison Ritter sought me out to try to explain the flaring calculations. I told her I did not agree with that or with other decisions made by the Industrial Commission. Her response was, "Then you comment" to which I replied that I do, but it doesn't make any difference. She assured me it DOES make a difference and implied all comments are welcomed. So why aren't they anymore?

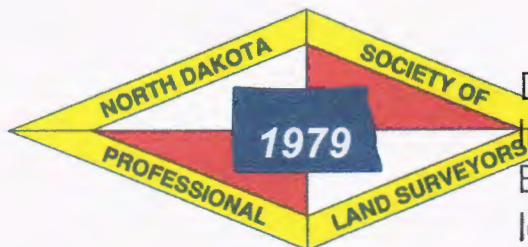
I don't know of any spill, toxin, or airborne VOC that knows to stop at the edge of one's property. They can, and will, have much more far-reaching effects. For example, why shouldn't everyone be able to comment on volatility of oil transported by rail since trains were exploding along their routes across the country and into Canada? Illegal dumpings or spills into Lake Sakakawea affects recreation, wildlife, and drinking water for more than just the landowner. Many landowners will allow anything to be placed on their land for money and feel no impact because they do not live on or near that parcel of land.

To conclude, under the new amendment, I assume anything proposed on public lands or lands adjacent to it would then be open for everyone's comments, as it is publicly owned. Likewise, anything proposed on private land could not be commented on by Lynn Helms or Ron Ness and the Petroleum Council staff since they would not be the landowner nor the managing company.

I would like to believe that three state officials would not be willing to take a constitutional right away from the very people who elected them.

Thank you for taking my comments.

Shelly Ventsch
New Town, ND



INDUSTRIAL COMMISSION

STATE OF NORTH DAKOTA

DATE 4/13/16 CASE NO. 24957

Introduced By NDSPLS

Exhibit 1

Identified By Rintamaki

NDSPLS ADMINISTRATIVE OFFICE

1811 East Thayer Avenue
Bismarck, ND 58501

Phone: 701-222-3499

Fax: 701-222-0103

E-mail: info@ndspls.org

Website: www.ndspls.org

April 13, 2016

Director Lynn Helms, Committee Members of the North Dakota Industrial Commission, Department of Mineral Resources - Oil and Gas Division.

My name is Ed Rintamaki. I am a Professional Licensed Surveyor in North Dakota, Washington and Montana. I am representing the North Dakota Society of Professional Land Surveyors (NDSPLS) as their Vice-President and Industry Committee Chairman. NDSPLS is made up of over 330 members, of which some 185 are Professional Land Surveyors, who live and practice in this state. There are approximately 500 Registered Land Surveyors who are licensed to practice in ND. We are licensed and regulated by the North Dakota State Board of Registration for Professional Engineers and Professional Land Surveyors. Our Mission and objective is: to unite all of the Professional Land Surveyors in the State of North Dakota; to elevate the standards of the surveying profession; to establish basic minimum standards and requirements for surveys; to assist in promoting legislative and educational programs to improve the professional status of the Land Surveyor; to work in cooperation with local, county, state, federal and tribal governments in our field of endeavor; to uphold a rigid code of ethics; to strive to improve our relations with our clients and the public by doing our work with precision and integrity; to maintain a good relationship between Land Surveyors and Engineers.

Proposed NDAC 43-02-03-29.1 UNDERGROUND GATHERING PIPELINES Rule Change

I am here to testify in favor of the proposed NDAC 43-02-03-29.1 Underground Gathering Pipelines Rule Change. First, in Part 3. Notification, in (a) (1) (b), I would recommend adding the proper GIS realization reporting requirements to comply with NDCC 38-08-26 and NDCC 47-20.2-03 describing the North Dakota Coordinate System. The amended wording would read as follows: "for GIS reporting, the operator of any underground pipeline placed into service after August 1, 2011, shall file with the Director of the North Dakota Industrial Commission- Oil and Gas Division, a Geographic Information System (GIS) digital file in Environmental System Research Institute, Inc. (Esri) line Shapefile (SHP) along with the associated spatial realization reference/map projection information describing the North Dakota Coordinate System (NDCC 47-20.2-03) locating the centerline of the pipeline as constructed from origin to terminating point. The submitted Shapefile must have a completed attribute table, datum realization listing [NAD 83 (1996) (NSRS2007) (2011) or most recent listing] with the proposed NDAC 43-02-03-29.1 required data."

Second I would like to recommend in the same Chapter in Part 4. Design and construction, in (k) (1) to amend the wording to "(1) An accurate plat certified by a North Dakota registered surveyor" showing the locations of the entry and exit points.....

We believe these requirements are needed to help define the various works being done by many registered individuals and companies in and out of state who may use other NAD83 systems of information with different projections/realizations. With the advent of GPS technologies and the varied GIS providers throughout the country, a standard needs to be stated for reporting this information to the appropriate agencies that use the information. Without mention of these requirements, varied results can and will happen for the location and referencing of items. The NAD 83 requirements need to have the specified projections/realizations used for a particular project stated, as these spatial references and projections change over time and as the National Geodetic Survey (NGS) information improves with new collected, accepted, distributed and published information. On behalf of the NDSPLS, I therefore urge this Committee to approve with the additions stated above for the Proposed NDAC 43-02-03-29.1 Rule. There are other references in Chapter 43-02-03 that should have this reporting information stated also that are not listed under current Proposed Rule Changes.

Thank You.

Ed Rintamaki, PLS – ND PLS #7664

NDSPLS Vice-President

NDSPLS Industry Committee Chairman

Kadrmass, Bethany R.

From: Bohrer, Mark F.
Sent: Saturday, April 23, 2016 10:41 AM
To: Helms, Lynn D.; Hicks, Bruce E.; Hogan, Hope L.; Connors, Kevin C.
Subject: FW: 1804 Operating insurance levels

From: Nick Johnson [<mailto:njohnson@1804operating.com>]
Sent: April 22, 2016 4:50 PM
To: Bohrer, Mark F.
Cc: Robert Rubey
Subject: 1804 Operating insurance levels

Mark,

Hope you are well. I'd like to answer the question you posed to Robert at the Dickinson hearing on April 12. 1804 Operating presently has \$25,000,000.00 of insurance coverage.

Thanks,

Nick Johnson
Director of Land
1804 Operating, LLC
214-699-4820

Bridger Pipeline LLC

455 NORTH POPLAR
P.O. BOX 2360
CASPER, WY 82602
307-237-9301
307-237-3164 FAX

INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA

DATE 4/12/14 CASE NO. 24957
Introduced By Bridger Pipeline, LLC
Exhibit 1
Identified By Dockweiler

April 12, 2016

Bruce Hicks, Assistant Director
NDIC Department of Mineral Resources, Oil and Gas Division
600 E. Boulevard Ave.
Bismarck, ND 58505

Re: Comments on Proposed NDIC Rules Changes

Dear Mr. Hicks:

Thank you for the opportunity to provide comments on the proposed Administrative Rules changes. Bridger Pipeline LLC and Belle Fourche Pipeline Company are proud to have been a part of the energy industry in N. Dakota for the past half a century and look forward to continuing to be involved in the safe gathering and transportation of N. Dakota crude oil for the next 50 years and beyond.

We commend the NDIC for seeking input and for their efforts in putting these rules together and we commend the Energy and Environmental Research Center in the work they did in studying gathering lines in order to assist in putting ~~the~~ useful rules in place. We are somewhat concerned that in some cases the proposed rules go beyond what was intended by the legislature and don't always seem to reflect what the EERC study found. The EERC report noted that "In the end, pipelines will undoubtedly always be safer and more economical than truck transport or other alternatives to transporting energy product to market". We agree that pipelines continue to be the safest mode of transportation, but through this process it is important that the NDIC carefully consider the cost to benefit ratio of each of the proposed rules or pipelines will not continue to be the economical choice and as such more energy products will find their way back onto trucks as the preferred mode of transportation.

A general concern we have regarding the proposed rules is that there are several dates or timeframes dictated in the proposed rules including terms such as "immediately". We proposed that all compliance dates be triggered upon final adoption of these proposed rules and provide adequate time for operators in existence at the time of adoption to comply with new requirements. For example in section "43-02-03-11 Organization Reports" the proposed language requires operators to "immediately file" organization reports. We suggest the NDIC allow 60 days after the rules adoption for operators who are in existence at the time of the rules being adopted.

Bridger and Belle Fourche Pipeline will be providing some additional more specific written comments on the different sections in the coming days.

It is our belief that where safety is concerned, pipelines continue to be the clear choice in transportation of energy products and we look forward to working with the commission and others in the industry to continue to improve on our safety as an industry. Thanks again for this opportunity to provide input into the process.

Sincerely,

Ken Dockweiler
Director, Land, Government and Compliance
Bridger Pipeline LLC



INDUSTRIAL COMMISSION

STATE OF NORTH DAKOTA

DATE 4/12/16 CASE NO. 24957

Introduced By NDSPLS

Exhibit 1

Identified By Glasoe

NDSPLS ADMINISTRATIVE OFFICE

1811 East Thayer Avenue

Bismarck, ND 58501

Phone: 701-222-3499

Fax: 701-222-0103

E-mail: info@ndspls.org

Website: www.ndspls.org

April 12, 2016

Director Lynn Helms, Committee Members of the North Dakota Industrial Commission, Department of Mineral Resources - Oil and Gas Division.

My name is Curtis Glasoe. I was born and raised in North Dakota, graduated from NDSU, home of the five time National Champion football team. I am a veteran of the US Army during the Viet Nam era. I have practiced surveying in ND, SD, and Montana for over 45 years through two oil booms in the State. I am licensed in each of those states. I am representing the North Dakota Society of Professional Land Surveyors (NDSPLS) as their Legislative Chairman and National Society of Professional Surveyors (NSPS) Director. NDSPLS is made up of over 330 members, of which some 185 are Professional Land Surveyors, who live and practice in this state. There is approximately 500 Registered Land Surveyors who are licensed to practice in ND. We are licensed and regulated by the North Dakota State Board of Registration for Professional Engineers and Professional Land Surveyors. Our main Mission and objective is to establish basic minimum standards and requirements for surveys in the Great State of North Dakota.

Proposed NDAC 43-02-03-29.1 UNDERGROUND GATHERING PIPELINES Rule Change

I am here to testify in favor of the proposed NDAC 43-02-03-29.1 Underground Gathering Pipelines Rule Change. First, in Part 3. Notification, in (a) (1) (b), I would recommend adding the proper GIS realization reporting requirements to comply with NDCC 38-08-26 and NDCC 47-20.2-03 describing the North Dakota Coordinate System. The amended wording would read as follows: "for GIS reporting, the operator of any underground pipeline placed into service after August 1, 2011, shall file with the Director of the North Dakota Industrial Commission- Oil and Gas Division, a Geographic Information System (GIS) digital file in Environmental System Research Institute, Inc. (Esri) line Shapefile (SHP) along with the associated spatial realization reference/map projection information describing the North Dakota Coordinate System (NDCC 47-20.2-03) locating the centerline of the pipeline as constructed from origin to terminating point. The submitted Shapefile must have a completed attribute table, datum realization listing [NAD 83 (1996) (NSRS2007) (2011) or most recent listing] with the proposed NDAC 43-02-03-29.1 required data."

Second I would like to recommend in the same Chapter in Part 4. Design and construction, in (k) (1) to amend the wording to "(1) An accurate plat certified by a North Dakota registered surveyor" showing the locations of the entry and exit points.....

We, as surveyors, have a lot of discussions with surveyors registered in other states on various pipeline projects. We always have to tell them, this is not Louisiana, Wyoming or Oklahoma. If the project is in North Dakota, they have to meet North Dakota requirements on pipeline survey data.

We think these requirements are needed to help define the various works being done by many registered individuals and companies in and out of state who may use other NAD83 systems of information with different projections/realizations. With the advent of GPS technologies and the varied GIS providers throughout the country, a standard needs to be stated for reporting this information to the appropriate agencies that use the information. Without mention of these requirements, varied results can and will happen for the location and referencing of items. The NAD 83 requirements need to have the specified projections/realizations used for a particular project stated, as these spatial references and projections change over time and as the National Geodetic Survey (NGS) information improves with new collected, accepted, distributed and published information. On behalf of the NDSPLS, I therefore urge this Committee to approve with the additions stated above for the Proposed NDAC 43-02-03-29.1 Rule. There are other references in Chapter 43-02-03 that should have this reporting information stated also that are not listed under current Proposed Rule Changes.

Thank You.

Curtis W. Glasoe PE/PLS #2439 ND
Legislative Chair and NSPS Director

Don't bar public from speaking at public hearings

Reason No. 26 to regret the Democratic Party's weakness in today's North Dakota: Because Republicans in power need a watchdog, exactly as Democrats do in states where they have control.

Case in point: the proposed North Dakota Industrial Commission rule that would block most of the public from participating in public hearings on oil and gas issues.

Marvin Nelson, the state legislator from Rolla, N.D., who's now the Democratic candidate for North Dakota governor, called attention to the proposed rule this week.

He was right to do so:

The proposal would define an "interested party" in oil and gas statutes as a landowner or property manager, Nelson told Forum News Service staff writer Amy Dalrymple.

"Years ago, people were required to own land to vote, and we thought those days were past," Nelson said. "Now, the Industrial Commission says people can't even comment without owning land."

Nelson's got a point. Here's hoping the commission takes note — even though that be may a forlorn hope, given the commission's all-Republican membership in a state in which Democrats hold so little political power.

"In North Dakota oil and gas statutes, there are several references to an 'interested party' in the context of appearing at hearings or submitting comments," the Forum story continues.

"But the statutes don't define interested party.

"Nelson said the policy change would prevent North Dakotans from commenting on oil and gas proposals that affect the state's land, water and air.

"To me, it seems like such a huge limitation on the public," Nelson said."

And it's a limitation that would poorly serve the state.

That's because "interested parties" who have no ownership rights still may have useful information to offer. Conservationists might alert the commission that a proposal would threaten a Wild and Scenic Rivers bill pending in Congress. Park officials could ask that a proposed well site be relocated so as not to industrialize a Badlands view.

Townpeople who live nearby might ask whether truck traffic could be limited through their downtown.

True, if the Industrial Commission opens the floor to such testimony, that means the commissioners would be acknowledging that the surface- and mineral-owners' rights aren't absolute. But federal, state and local laws already recognize this in countless ways. One of these, for example, is the North Dakota law that bars landowners from selling to nonprofits without the state's approval.

If the entire state is an "interested party" in such routine, willing-buyer/willing-seller land sales, then conservation and other interests can be acknowledged in oilfield-development hearings, especially those in a region known for the Little Missouri National Grassland and Theodore Roosevelt National Park.

Those interests need not be *heeded*; that's up to the commissioners.

But at least they should be *heard*. Because there will be times when those parties will have something useful, important for North Dakota and entirely beneficial to say.

To his credit, Industrial Commission member and current Republican candidate for governor Wayne Stenehjem seems to agree. "I favor a wide and robust public involvement when the government is taking any kind of action," Stenehjem told Forum News Service.

That's all any citizen could ask for. Now, Stenehjem and the other commissioners should make sure that any new rule reflects that thoughtful, good-government stance.

— Tom Dennis for the Herald



"It will be the people's paper, run strictly in their interests, guarding jealously their rights and maintaining boldly their cause."

George Winship, Herald founder

INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA

DATE 4-11-16 CASE NO. 24957

Introduced By Triplett

Exhibit 1

Identified By Triplett

Grand Forks Herald
April 9, 2016
p. A 4

Eric Thompson
4110 Chestwood Drive
Bismarck, N.D. 58503

Why? That is the question that needs to be asked if one wants to limit comments from "interested parties" on oil and gas issues.

If a party drinks water, oil and gas development could make him an interested party because water is required for life and oil and gas development can threaten water supplies.

If a party breaths air, oil and gas development could make him an interested party because air is changed by oil and gas development and air is another requirement for life.

If a party is a parent or grandparent or intends to become either of those; they are interested parties if they intend to be good parents or grandparents because oil and gas developments could threaten the lives of their progeny because of the water and air issues above.

If a party has any interest in the God created lives of being^s other than humans; they would be interested parties because of the water and air issues above.

Basically, anything that relies on water or air for life is qualified as an interested party. That would mean that about the only things that shouldn't be allowed to testify as interested parties in these hearings would be rocks. Rocks should definitely not be allowed to testify.

Questions? Thank you.

INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA
DATE 4-11-16 CASE NO. 24957
Introduced By Thompson
Exhibit 1
Identified By Thompson

**Comments of Sarah Vogel to the
North Dakota Industrial Commission**

April 11, 2016

I am Sarah Vogel, a former member of the Industrial Commission and an attorney and landowner.

I am submitting comments regarding the proposed amendment to Section 43-02-03-01 regarding the meaning of "interested party." (In the remaining time available to submit comments, I may also submit supplementary comments on other issues in the proposed regulations.)

I am surprised that the Industrial Commission allowed this provision to go forward to the public for comment. It reflects poorly on every member of the Industrial Commission, each of whom presumably read the proposed definition of "interested party" before voting to send the regulations forward for public comment.

The law under which the Industrial Commission is authorized to regulate oil and gas issues specifically mentions the interests of the "general public." Section 38-08-01 states "It is hereby declared to be in the public interest to foster, to encourage, and to promote the development, production and utilization of natural resources of oil and gas in the state in such a manner that ... the landowners, the royalty owners, the producers and the general public realize and enjoy the greatest possible good from these vital natural resources." N.D.C.C. Section 38-08-01, Declaration of Policy, emphasis added. Excluding all members of the public who do not have a property ownership or management interest in or adjacent to the subject matter, as proposed by Section 43-02-03-01(25) flies in the face of this law.

This definition of "interested party" also cuts at the heart of the so-called Extraordinary Places policy, pursuant to which certain organizations are notified if special lands are on the agenda. As a landowner in Mountrail County, I very much rely on the Sierra Club, Friends of Lake Sakakawea, the Badlands Conservation Alliance and similar organizations to watch the agendas of the Oil and Gas Division for developments that might affect my land in Mountrail County. Indeed, I heard about this proposal from BCA and the Sierra Club.

This new definition also cuts into the authority and powers of county, township, and tribal governments and would prevent them from providing much needed local knowledge of the terrain.

INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA
DATE 4-11-16 CASE NO. 24957
Introduced By Vogel
Exhibit 1
Identified By Vogel

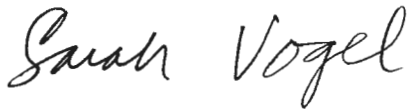
I am particularly concerned because I own land in Mountrail County which is in a pristine, scenic area overlooking Lake Sakakawea. It has virgin prairie and many cultural sites (which I am trying to protect from destruction by oil development). I would welcome input from the Tribe, of naturalists, of fishermen who would be concerned about the potential for spills into Lake Sakakawea and others if it would protect my land and adjoining lands which are fragile and unique.

Several years ago while walking down to the Lake from my cabin I was shocked to see that there had been a huge slump from the side of a bluff into the canyon. Had an oil well or pipeline been located near that slump, it would have caused significant damage to the bay and to the Lake. I firmly believe that oil development should not occur in the future in the random and haphazard way that it has in the past where development has occurred in areas that can cause significant damage to critical features of the western landscape, such as Lake Sakakawea.

This is not a speculative concern. I recently received an invitation to the Heritage Foundation's Donor Recognition Event in May. It features a picture of two huge oil well pads on the bluffs overlooking the shores of Lake Sakakawea and I have attached a copy. I find this picture horrifying – oil pads have no business whatsoever being so close to the lake, on land prone to slumping, where a spill could cause drastic impacts on the drinking water of many communities and recreation opportunities (fishing, swimming) for many other people. The value of my property would be affected even if a spill occurred miles away. Surely, the Industrial Commission wants to have the views of the Friends of Lake Sakakawea, geologists who know the features of these bluffs, and others who love and use the Lake even if they don't "own" the land or minerals under the oil pads.

Based on my experience in recent years, I believe the Industrial Commission's oil and gas hearing process needs many reforms (I'd recommend exclusive use of hearing officers from the Office of Administrative Hearings, drastically fewer matters on each agenda, and requiring that applicants for action by the Industrial Commission and the Oil and Gas Division submit documents within a reasonable time before a hearing is held). However, this new definition of Interested Party does not improve the process and should be scrapped.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sarah Vogel". The ink is black and the signature is fluid and legible.

Sarah Vogel

Attachment

Celebrating the Rebirth of the Great Western Spirit

Re.





North Dakota Senate

State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0360

Senator

Erin Oban
District 35
1319 Apache Street
Bismarck, ND 58501-2632

Residence: 701-955-3188
eoban@nd.gov

Committees:

Agriculture
Education

April 11, 2016

Office of ND Oil and Gas Division
Mr. Lynn Helms, Director
600 E Boulevard Ave, Dept 405
Bismarck, ND 58505-0840

Mr. Helms,

My name is Sen. Erin Oban, and I'm here today representing myself and my constituents from District 35 here in Bismarck.

My comments today are strictly limited to the proposed amendment, which would add the definition of "interested party" in NDAC § 43-02-03-01, and specifically, the restrictions that the definition change would place on likely most of the nearly 15,000 North Dakotans who live as my neighbors in District 35.

As someone who has now had the experience of sitting through hearings on the other side of the table, I can acknowledge the frustration and lengthy discussions that sometimes comes from having an open process. There were times during legislative hearings that we would have a line out the door of individuals or organizations wanting to rightly express their opinions – some of which I most certainly did not agree – and share why a decision we were about to make on behalf of the public mattered to them. It would have been easier, I suppose, to limit that process to only allow a select few to testify, but my job as a public servant is not to make things easier for me. It's to make it open and accessible to the public.

I don't care if adopting this proposed definition would quiet the voices of one specific group over another. It doesn't matter to me if it would limit an energy developer, or a farmer or rancher ten miles down the road, or an environmental advocate, or my neighbor on Apache St. The effect would still be the same – the quieting of the public's voice – and that's an effect none of us should accept.

Please strike the proposed definition of "interested party" from your list of proposed rule changes. If we've been able to do business for decades without this restrictive definition, we can continue to do business without it in the future.

Thank you for your consideration,

Erin Oban

INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA
DATE 4-11-16 CASE NO. 24957
Introduced By Oban
Exhibit 1
Identified By Oban



INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA

DATE 4-11-16 CASE NO. 24957 NDSPLS ADMINISTRATIVE OFFICE
Introduced By Johnson 1811 East Thayer Avenue
Exhibit 1 Bismarck, ND 58501
Identified By Johnson Phone: 701-222-3499
Fax: 701-222-0103
E-mail: info@ndspls.org
Website: www.ndspls.org

Proposed NDAC 43-02-03-29.1 UNDERGROUND GATHERING PIPELINES Rule Change

April 11, 2016

Director Helms and Committee Members of the North Dakota Industrial Commission, Department of Mineral Resources Oil and Gas Division.

My name is Gregory Johnson, as a licensed and registered Professional Land Surveyor in North Dakota, I have practiced surveying for over 40 years through 2 oil booms in the state. I was born and raised in North Dakota and I am a veteran of the US Army 84th Artillery 1970-72. I have practiced surveying in ND, SD, MT, WY, CO, and WI and was licensed in each of those states. I am representing the North Dakota Society of Professional Land Surveyors as an Industry Committee member to help educate both Land Owners, Industry agencies, and Businesses who work in the Energy business in North Dakota, on easements and rights of way rules, regulations and codes. Our Society is made up of over 300 members, of which some 185 are Registered Professional Land Surveyors, who live and practice in this state. There is approximately 500 Registered Land Surveyors who are licensed to practice in ND. We are licensed and regulated by the North Dakota State Board of Registration for Professional Engineers and Professional Land Surveyors. Our Mission and objective is: to unite all of the Professional Land Surveyors in the State of North Dakota; to elevate the standards of the surveying profession; to establish basic minimum standards and requirements for surveys; to assist in promoting legislative and educational programs to improve the professional status of the Land Surveyor; to work in cooperation with local, county, state, federal and tribal governments in our field of endeavor; to uphold a rigid code of ethics; to strive to improve our relations with our clients and the public by doing our work with precision and integrity; to maintain a good relationship between Land Surveyors and Engineers.

I and the Society of Professional Land Surveyors are here to testify in favor of the proposed NDAC 43-02-03-29.1 Underground Gathering Pipelines Rule Change, with the addition to correcting the proper GIS datum realization reporting requirements to comply with NDCC 38-08-26 and NDCC 47-20.2-03 describing the North Dakota Coordinate System. The amended wording would read as follows: "for GIS reporting, the operator of any underground pipeline placed into service after August 1, 2011, shall file with the Director of the North Dakota Industrial Commission- Oil and Gas Division, a Geographic Information System (GIS) digital file in Environmental System Research Institute, Inc. (Esri) line Shapefile (SHP) along with the associated spatial realization reference/map projection information describing the North Dakota Coordinate System (NDCC 47-20.2-03) locating the centerline of the pipeline as constructed from origin to terminating point. The submitted Shapefile must have a completed attribute table, datum realization listing [NAD 83 (1996) (NSRS2007) (2011) or most recent listing] with the proposed NDAC 43-02-03-29.1 required data." Also in 43-02-03-29.1.4.k(1) amend wording to "(1) An accurate plat certified by a North Dakota registered surveyor" showing the locations of the entry and exit points.....

We think these requirements are needed to help define the various works being done by many individuals and companies in and out of state who may use other NAD83 systems of information with different projections/realizations. It is also important to have the registered surveyor be licensed in North Dakota. With the advent of GPS technologies and the varied GIS providers throughout the country, a standard needs to be stated for reporting this information to the appropriate agencies who use the information. Without mention of these requirements, varied results can and will happen for the location and referencing of items. The NAD 83 requirements need to have the specified projections/realizations used for a particular project stated, as these spatial references and projections change over time and as the National Geodetic Survey (NGS) information (GIS) improves with new information collected, accepted, distributed and published. On behalf of the North Dakota Society of Professional Land Surveyors, I therefore urge this Committee to approve with the recommendations stated above for the Proposed NDAC 43-02-03-29.1 Rule. There are other references in Chapter 43-02-03 that should have this reporting information stated also that are not under current Proposed Rules Change listed.

Thank You.

Gregory L. Johnson PLS #2356 ND

47-19-03.1. Deeds and contracts for deeds to include name and address of drafter of legal description.

The recorder may not record a deed or contract for deed containing a metes and bounds legal description which affects the title to or possession of real property that otherwise may be recorded under this chapter unless the name and address of the individual who drafted the legal description contained in the deed or contract for deed appears on the instrument in a legible manner. A deed or contract for deed complies with this section if it contains a statement substantially in the following form: "The legal description was prepared by _____ (name) _____ (address) or obtained from a previously recorded instrument." This section does not apply to any instrument executed before January 1, 2000, or any instrument executed or acknowledged outside the state. The validity and effect of the record of any instrument in a recorder's office may not be lessened or impaired by the fact the instrument does not contain the statement required by this section.

Page No.

CHAPTER 47-20.2

PLANE COORDINATES

47-20.2-01. North Dakota coordinate system zones defined.

The systems of plane coordinates which have been established by the national oceanic and atmospheric administration national ocean survey/national geodetic survey or its successors for defining and stating the geographic positions or locations of points on the surface of the earth within this state are, as of July 1, 1989, to be known and designated as the North Dakota coordinate system of 1927 and the North Dakota coordinate system of 1983. For the purpose of the use of these systems, the state is divided into a north zone and a south zone:

1. The area now included in the following counties constitutes the north zone: Divide, Williams, McKenzie, Mountrail, Burke, Renville, Ward, McLean, Bottineau, McHenry, Sheridan, Pierce, Rolette, Towner, Benson, Wells, Foster, Eddy, Ramsey, Cavalier, Pembina, Walsh, Nelson, Grand Forks, Griggs, Steele, Traill.

2. The area now included in the following counties constitutes the south zone: Dunn, Golden Valley, Slope, Bowman, Adams, Hettinger, Stark, Mercer, Oliver, Morton, Grant, Sioux, Emmons, Burleigh, Kidder, Logan, McIntosh, Stutsman, Barnes, LaMoure, Dickey, Cass, Ransom, Sargent, Richland.

47-20.2-02. North Dakota coordinate system names defined.

As established for use in the north zone, the North Dakota coordinate system of 1927 or the North Dakota coordinate system of 1983 is named, and in any land description in which it is used it must be designated the North Dakota coordinate system of 1927, north zone, or the North Dakota coordinate system of 1983, north zone. As established for use in the south zone, the North Dakota coordinate system of 1927 or the North Dakota coordinate system of 1983 is named, and in any land description in which it is used it must be designated the North Dakota coordinate system of 1927, south zone, or the North Dakota coordinate system of 1983, south zone.

47-20.2-03. North Dakota coordinate system defined.

The plane coordinate values for a point on the earth's surface, used in expressing the geographic position or location of such point in the appropriate zone of this system, shall consist of two distances, expressed in United States survey feet [meters] and decimals of a foot [meter] when using the North Dakota coordinate system of 1927. One of these distances, to be known as the X-coordinate, shall give the position in an east-west direction; the other, to be known as the Y-coordinate, shall give the position in a north-south direction. These coordinates shall be made to depend upon and conform to plane rectangular coordinate values for the monumented points of the North American horizontal geodetic control network as published by the national ocean survey/national geodetic survey, or its successors, and the plane coordinates which have been computed on the systems defined in this chapter. Any such station may be used for establishing a survey connection to either North Dakota coordinate system. For the purposes of converting coordinates of the North Dakota coordinate system of 1983 from meters to feet, the

international survey foot must be used. The conversion factor is: one foot equals 0.3048 meter exactly.

47-20.2-04. Federal and state coordinate description same tract - Federal precedence.

Whenever coordinates based on the North Dakota coordinate system are used to describe any tract of land which in the same document is also described by reference to any subdivision, line, or corner of the United States public land surveys, the description by coordinates must be construed as supplemental to the basic description of each subdivision, line, or corner contained in the official plats and field notes filed of record, and, in the event of any conflict, the description by reference to the subdivision, line, or corner of the United States public land surveys prevails over the description by coordinates, unless the coordinates are upheld by adjudication, at which time the coordinate description will prevail. This chapter does not require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the North Dakota coordinate system, unless the description has been adjudicated as provided in this section.

47-20.2-05. North Dakota coordinate system origins defined.

1. For the purposes of more precisely defining the North Dakota coordinate system of 1927, the following definitions by the United States coast and geodetic survey are adopted:

a. The North Dakota coordinate system of 1927, north zone, is a Lambert conformal conic projection of the Clarke spheroid of 1866, having standard parallels at north latitudes, forty-seven degrees twenty-six minutes and forty-eight degrees forty-four minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian one hundred degrees thirty minutes west of Greenwich and the parallel forty-seven degrees zero minutes north latitude. This origin is given the coordinates: $x = 2,000,000$ feet [609.6 kilometers], and $y = 0$ feet [0 kilometers].

b. The North Dakota coordinate system of 1927, south zone, is a Lambert conformal conic projection of the Clarke spheroid of 1866, having standard parallels at north latitudes forty-six degrees eleven minutes and forty-seven degrees twenty-nine minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian one hundred degrees thirty minutes west of Greenwich and the parallel forty-five degrees forty minutes north latitude. This origin is given the coordinates: $x = 2,000,000$ feet [609.6 kilometers], and $y = 0$ feet [0 kilometers].

2. For the purposes of more precisely defining the North Dakota coordinate system of 1983, the following definition by the national ocean survey/national geodetic survey is adopted:

a. The North Dakota coordinate system of 1983, north zone, is a Lambert conformal conic projection of the North American datum of 1983, having standard parallels at north latitude of forty-seven degrees twenty-six minutes and forty-eight degrees forty-four minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian one hundred degrees thirty minutes west of Greenwich and the parallel forty-seven degrees zero minutes north latitude. This origin is given the coordinates: $x = 600,000.0000$ meters, and $y = 00.0000$ meters.

b. The North Dakota coordinate system of 1983, south zone, is a Lambert conformal conic projection of the North American datum of 1983, having standard parallels at north latitude of forty-six degrees eleven minutes and forty-seven degrees twenty-nine minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian one hundred degrees thirty minutes west of Greenwich and the parallel forty-five degrees forty minutes north latitude. This origin is given the coordinates: $x = 600,000.0000$ meters, and $y = 00.0000$ meters.

47-20.2-06. North Dakota coordinate system - Use of term.

The use of the North Dakota coordinate system of 1927 north zone or south zone or the North Dakota coordinate system of 1983 north zone or south zone on any map, report of survey,

2641 108th Ave. NW
Watford City, ND 58854
April 8, 2016

Received
APR 13 2016
ND Oil & Gas Division

Oil and Gas Division
600 E. Boulevard Ave. Dept. 405
Bismarck, ND 58505-0840

RE: Proposed Rule Changes

Let me be clear that I don't think the Industrial Commission should limit comments to land owners or property managers.

It seems suspect that the Industrial Commission would seek such a limitation from the public on oil and gas issues at a time when grassroots organizations and environmental groups are strengthening their efforts. What are you afraid of?

Maybe "a landed gentry" was appropriate in the days of Thomas Jefferson but what North Dakota needs in 2016 is transparency in our oil and gas dealings. We also need the foresight Gov. Art Link had, that our land would be cared for in a respectful way.

I own land in eastern McKenzie County and I live here. I know first-hand the demands of the oil industry. I see the rigs, the storage depots, and the attendant electrical substations. I hear the noise of the rigs and the traffic. I smell the diesel. I breathe in the dust from the road by my house. I drive on the congested roads (though it's much better now that we have more adequate roads and the oil industry is slower). I hear my phone ringing with another request for yet another pipeline or water line or another offer to buy my land for a storage depot.

We haven't done a stellar job in the past controlling the effects of this huge industry. Maybe we're smarter now than we were in 2008. Consequently, I think we should welcome anyone willing to share their ideas before the commission whether they own land or not. Don't non-land owners count? Isn't there a ripple effect from this oil industry that affects them, too?

Please use some common sense here and let anyone communicate with you on these issues.

Sincerely,



Rose Veeder

Kadrmass, Bethany R.

From: Peter Mueller <petermueller@ecovaporrs.com>
Sent: Monday, April 11, 2016 8:41 AM
To: Hicks, Bruce E.; Helms, Lynn D.
Cc: Jeff Lints
Subject: Proposed NDIC rules

Dear Sirs,

In reading the changes proposed in 43-02-03-52.1, I wanted to clarify if all gas produced at the lease, whether it comes directly off the well, the treaters or separators, vapor towers, or tanks, is to be reported on Form 5b.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

43-02-03-52.1. REPORT OF GAS PRODUCED IN ASSOCIATION WITH OIL.

The operator of each well ~~in every~~ completed in any pool shall, on or before the fifth day of the second month succeeding the month in which production occurs or could occur, file with the director the amount of gas produced by each such well upon form 5b or approved computer sheets no larger than eight and one-half by eleven inches [21.59 by 27.94 centimeters]. The report shall be signed by both the person responsible for the report and the person witnessing the signature. The printed name and title of both the person signing the report and the person witnessing the signature shall be included. Wells for which reports of production are not received by the close of business on said fifth day of the month may be shut in for a period not to exceed thirty days. The director shall notify, by certified mail, the operator and authorized transporter of the shut-in period for such wells. Any gas produced during such shut-in period must be deemed illegal gas and subject to the provisions of North Dakota Century Code section 38-08-15.

History: Effective May 1, 1992; amended effective December 1, 1997; September 1, 2000; ____.

General Authority
NDCC 38-08-04

Law Implemented
NDCC 38-08-04

~~29-30.~~ "Natural gas or gas" means and includes all natural gas and all other fluid hydrocarbons not herein defined as oil.

Regards,

Peter M. Mueller
CEO & Co-Founder
EcoVapor Recovery Systems
(844) NoFlare
(303) 877-6417
www.ecovaporrs.com



Kadrmas, Bethany R.

From: David Copeland <dcopeland@oasispetroleum.com>
Sent: Friday, April 08, 2016 4:35 PM
To: Hicks, Bruce E.
Cc: Regulatory
Subject: Oasis Comment on Proposed Rule Changes
Attachments: Submitted_NDIC Ltr_Proposed Rule Changes_2016-signed.pdf

Good Afternoon Mr. Hicks,

Attached is a copy of the letter being mailed to the NDIC with our comments on the proposed rule changes. Oasis appreciates the opportunity to provide feedback on the prospective changes and their impact on our industry. We hope that you and your staff will take them into consideration as the process move forward. Again, thank you for your time and have a wonderful evening.

Best Regards,

David Copeland
Regulatory Specialist
Oasis Petroleum
713.770.6430
dcopeland@oasispetroleum.com



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4/8/2016

Oasis Petroleum
1001 Fannin St.
Suite 1500
Houston, TX 77002

Bruce Hicks
Assistant Director
North Dakota Industrial Commission
600 East Boulevard Avenue Dept. 405
Bismarck, ND 58505-0840

RE: **NDIC Proposed Administrative Rules Chapter 43-02-03, 43-02-05, & 43-02-08**

Dear Mr. Hicks:

Thank you for the opportunity to comment on the subject administrative rule changes proposed on February 29, 2016. Although a majority of Oasis's concerns have been addressed via the NDPC, Oasis requests clarification on a few key points.

First, under **NDAC § 43-02-03-19**, the proposed rule indicates that operators must reclaim the well site within six months after the completion of a well or construction of a facility. Oasis asks the NDIC to clarify that the subject time frame does not begin until the last well on a pad is completed. In addition, Oasis requests that the NDIC clarify that this section only applies to interim reclamation.

Second, according to the NDIC the purpose of the proposed amendments to **NDAC § 43-02-03-49** is to increase environmental protection around oil tanks and allow oil seal flexibility. Although Oasis generally agrees with the intent and purpose of these amendments, we do have concerns over specific parts as currently written. Specifically, Oasis is concerned with the requirement that all facilities be constructed with a one foot high perimeter berm. Oasis currently constructs its facilities with perimeter dikes and will continue to do so. However, older locations are not equipped with the proposed subject requirement. Due in part to current economic conditions, Oasis is concerned with the burden placed on it by the NDIC if we were to retrofit older assets to meet the new standard. At an estimated \$12,000 construction cost per location, Oasis assumes the total cost to install perimeter berms to its older facilities would be approximately \$4,200,000. For these reasons, Oasis requests the NDIC grandfather in existing locations, and that the proposed requirement be applicable to new facilities constructed after the effective date.

Finally, Oasis requests the NDIC consider two key issues regarding the proposed Underground Gathering Pipeline Rules under **NDAC § 43-02-03-29.1**. House Bill 1358 amended the definition of "Underground Gathering Pipeline" in **NDCC § 38-08-02 (18)** to include "associated above ground equipment", define the term, and provide examples for clarity. The legislature made this change while preserving the distinction of gathering pipelines from those under the jurisdiction of the Public Service Commission ("PSC"); **NDCC § 49-22**. Oasis mentions this fact to highlight its two main concerns with the incorporation this definition into the proposed Underground Gathering Pipeline Rules:

- 1.) What Constitutes "associated above ground equipment"? – If all terms have the same meaning as found in **NDCC § 38-08-02**, other than those identified in the administrative code, than Oasis requests the NDIC adopt similar language when identifying concepts that are substantively the same.

Otherwise, it can be increasingly difficult to accurately infer a term's intended meaning. Within the proposed rules, the NDIC adopts the terminology "associated pipeline facilities and above ground equipment". This term of art appears throughout the new rules. Intended or unintended, the change from statute broadens its meaning beyond what was initially intended, and at the same time increases ambiguity on what type of above ground equipment is "incidental to and necessary for or useful for transporting". (See, **NDCC § 38-08-02**) Unless a clear distinction exists, Oasis requests that terminology be consistent with statute, and that "associated above ground equipment" be limited to what is defined therein.

- 2.) The NDIC's departure from statute is too broad to accurately determine what is or is not an underground gathering pipeline. Statute and legislative intent, along with input from the EERC study, clearly show that flow lines were not intended to be part of proposed regulation. However, by not adopting similar language and by incorporating broad gathering definitions only applicable to **NDAC § 43-02-03-29.1**, Oasis feels that the NDIC is providing contradictory terminology for gathering throughout **NDAC § 43-02-03**, as well as providing a regulatory framework where its proposed rules are applicable to flow lines that run between production facilities.

NDCC § 38-08-02 (18) limits the NDIC's jurisdiction to those pipelines not subject to **NDCC § 49-22**. In that statute gathering pipelines are defined with clear origination and termination points. Liquid gathering is limited to facilities that "...used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or in the case of gas, those pipelines used to collect gas from the well to a gas processing facility..." (See, **NDCC §49-22-03 (12)(b)**). However, by not adopting similar language, or providing clarification within the rule, it is unclear whether the NDIC is attempting to include flow lines that exist between facilities. Though the proposed language clearly states that flow lines within the boundary of a production facility are exempt, the NDIC make no mention of the alternative. This lack of clarity and departure from statute leaves the question open-ended. Here again, Oasis requests that terminology and language be consistent with statute unless a clearly defined distinction exists.

Oasis makes these points because on the whole it agrees with the intended purpose of House Bill 1358 and the NDIC's attempt to draft safety rules for liquid underground gathering pipeline systems; that it is necessary to improve pipeline safety and integrity in the state. However, Oasis feels that clear distinctions exist between upstream, midstream, and downstream activity, and that those distinctions require clear demarcations within rule and statute where practical. Again, Oasis thanks the NDIC for the opportunity to comment and participate in the process.

Respectfully,

David Copeland

David Copeland
Regulatory Specialist
713.770.6430
Oasis Petroleum



Received
APR 11 2016
ND Oil & Gas Division

4/8/2016

Oasis Petroleum
1001 Fannin St.
Suite 1500
Houston, TX 77002

Bruce Hicks
Assistant Director
North Dakota Industrial Commission
600 East Boulevard Avenue Dept. 405
Bismarck, ND 58505-0840

RE: **NDIC Proposed Administrative Rules Chapter 43-02-03, 43-02-05, & 43-02-08**

Dear Mr. Hicks:

Thank you for the opportunity to comment on the subject administrative rule changes proposed on February 29, 2016. Although a majority of Oasis's concerns have been addressed via the NDPC, Oasis requests clarification on a few key points.

First, under **NDAC § 43-02-03-19**, the proposed rule indicates that operators must reclaim the well site within six months after the completion of a well or construction of a facility. Oasis asks the NDIC to clarify that the subject time frame does not begin until the last well on a pad is completed. In addition, Oasis requests that the NDIC clarify that this section only applies to interim reclamation.

Second, according to the NDIC the purpose of the proposed amendments to **NDAC § 43-02-03-49** is to increase environmental protection around oil tanks and allow oil seal flexibility. Although Oasis generally agrees with the intent and purpose of these amendments, we do have concerns over specific parts as currently written. Specifically, Oasis is concerned with the requirement that all facilities be constructed with a one foot high perimeter berm. Oasis currently constructs its facilities with perimeter dikes and will continue to do so. However, older locations are not equipped with the proposed subject requirement. Due in part to current economic conditions, Oasis is concerned with the burden placed on it by the NDIC if we were to retrofit older assets to meet the new standard. At an estimated \$12,000 construction cost per location, Oasis assumes the total cost to install perimeter berms to its older facilities would be approximately \$4,200,000. For these reasons, Oasis requests the NDIC grandfather in existing locations, and that the proposed requirement be applicable to new facilities constructed after the effective date.

Finally, Oasis requests the NDIC consider two key issues regarding the proposed Underground Gathering Pipeline Rules under **NDAC § 43-02-03-29.1**. House Bill 1358 amended the definition of "Underground Gathering Pipeline" in **NDCC § 38-08-02 (18)** to include "associated above ground equipment", define the term, and provide examples for clarity. The legislature made this change while preserving the distinction of gathering pipelines from those under the jurisdiction of the Public Service Commission ("PSC"); **NDCC § 49-22**. Oasis mentions this fact to highlight its two main concerns with the incorporation this definition into the proposed Underground Gathering Pipeline Rules:

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Otherwise, it can be increasingly difficult to accurately infer a term's intended meaning. Within the proposed rules, the NDIC adopts the terminology "associated pipeline facilities and above ground equipment". This term of art appears throughout the new rules. Intended or unintended, the change from statute broadens its meaning beyond what was initially intended, and at the same time increases ambiguity on what type of above ground equipment is "incidental to and necessary for or useful for transporting". (See, **NDCC § 38-08-02**) Unless a clear distinction exists, Oasis requests that terminology be consistent with statute, and that "associated above ground equipment" be limited to what is defined therein.

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Oasis makes these points because on the whole it agrees with the intended purpose of House Bill 1358 and the NDIC's attempt to draft safety rules for liquid underground gathering pipeline systems; that it is necessary to improve pipeline safety and integrity in the state. However, Oasis feels that clear distinctions exist between upstream, midstream, and downstream activity, and that those distinctions require clear demarcations within rule and statute where practical. Again, Oasis thanks the NDIC for the opportunity to comment and participate in the process.

Respectfully,

David Copeland

David Copeland
Regulatory Specialist
713.770.6430
Oasis Petroleum

Kadrmass, Bethany R.

From: Fine, Karlene K.
Sent: Thursday, April 07, 2016 9:20 AM
To: Kadrmass, Bethany R.
Subject: FW: proposed rules

For the hearing record. Karlene

From: Mark Mazaheri [<mailto:absoluteservice@cablone.net>]
Sent: Wednesday, April 06, 2016 5:44 PM
To: Fine, Karlene K.; Helms, Lynn D.; -Info-Governor's Office; -Info-Dept. of Agriculture; Stenehjem, Wayne K.
Cc: Johnson, Mary C.; Kading, Tom; Sorvaag, Ronald G.; Carlson, Al H.; Rauschenberger, Ron W.; teamdoug@doughburgum.com; Wardner, Rich P.; Murphy, Philip M.; Mock, Corey R.; Steinwand, Terry R.; Nelson, Marvin E.; Delmore, Lois M.
Subject: proposed rules

Good afternoon,

The ND Oil and Gas Division of the ND Department of Minerals under the ND Industrial Commission (NDIC) will be holding hearings on Proposed Rule Changes for oil and gas regulation, many of which are a commendable move in the right direction. As I am unable to attend the meetings next week, I would to express my concerns.

An arbitrary and vague "new definition" aimed at who can testify at regular monthly hearings is of great concern to me and many others. This appears to be an attempt to use unclear language to exclude public comment entirely and restrict state and federal management agencies. My own personal experiences have shown that NDIC/O&G does not want to hear concerns from the general public, other organizations, or government agencies. Such concerns generally run contrary to your "drill baby drill" philosophy, which has sent ND from a \$2 billion surplus to a \$1 billion+ deficit in under two years.

Many individuals, organizations, and government agencies including Theodore Roosevelt National Park and Badlands Coalition have testified in hearings related to development of mineral resources in North Dakota. NDIC orders that come out of these hearings repeatedly state that TRNP and BCA concerns are "no different than the general public's interest in minimizing view, impacts, and is something the Commission already strives to protect to the extent possible." This is a condescending tone that stinks of arrogance. **Federal and state lands belong to us, the citizens and the organizations which we comprise. We have ownership and are thus entitled to meaningful input regarding their management. The attempt to exclude us is not acceptable.**

I would argue that BCA, TRNP, ND Game & Fish, State Health Department, other organizations and memberships' personal knowledge, concerns and investment in the surface value far exceed that of either industry or the Commission. The goal should always be to have an informed decision made during the hearing process. The proposed rule would make that impossible because it directly excludes valuable information.

This "new definition" is exclusionary and limiting. It is applicable to all members of the public and denies the public's right to speak on behalf of our natural resources. This proposed rule is an outright effort to stifle the citizens of North Dakota and the agencies which exist to support the people while protecting the environment.

Your time and service to the people of North Dakota are appreciated, as is your thoughtful consideration on this issue.

Mark Mazaheri
2709 N. 10th St.

Fargo, ND
701-799-2525

Received

MAR 22 2016

Affidavit of Publication

ND Oil & Gas Division

Colleen Park, being duly sworn, states as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.

2. The newspapers listed on the exhibits published the advertisement of:
Oil & Gas Division – Administrative Rules relating to ND Oil, Gas, UIC, Pipeline, and Stripper Well Property; 1 as required by law or ordinance.

3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

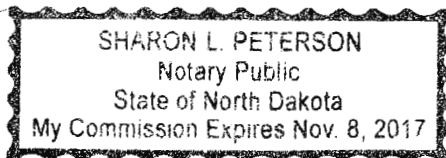
Signed: Colleen Park

State of North Dakota

County of Burleigh

Subscribed and sworn to before me this 21 day of March, 2016.

Sharon L. Peterson



County.
**THE BOARD OF
COUNTY, NORTH**

ember, 2015.

ATTN:

by Auditor/Treasurer
- 20832224

NOTICE FOR BIDS

Commissioners of the
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BISMARCK

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February, 2016.

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**ABBREVIATED
NOTICE OF INTENT TO
ADOPT AND AMEND
ADMINISTRATIVE
RULES**

relating to ND Oil, Gas, UIC,
Pipeline, and Stripper Well
Property Administrative Rules.

**North Dakota
Oil and Gas
Division**

will hold public hearings to
address proposed changes to
the N.D. Admin. Code.

**Oil and Gas Division
1000 E Calgary Avenue
Bismarck, ND
Mon., Apr. 11, 2016
9:00 a.m.**

**Dickinson Field Office
926 E Industrial Drive
Dickinson, ND
Tue., Apr. 12, 2016
9:00 a.m.**

**Williston Community Library
1302 Davidson Drive
Williston, ND
Wed., Apr. 13, 2016
9:00 a.m.**

**Minot Field Office
7 3rd St SE, Suite 107
Minot, ND
Thur., Apr. 14, 2016
9:00 a.m.**

Copies of the proposed rules may be
obtained by writing the Oil and Gas Division
at 600 E. Blvd, Dept. 405, Bismarck, ND
58505-0840, or by calling (701) 328-8020.
View changes at www.dmr.nd.gov/oilgas.
Comment in writing by 5pm Apr 25. If you
plan to attend the public hearing and will
need special facilities or assistance relating
to a disability, please contact the Oil and
Gas Division at the above address or
phone number by Mar 28.

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