

BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF NORTH DAKOTA

CASE NO. 27364  
ORDER NO. 29808

IN THE MATTER OF A HEARING CALLED ON  
A MOTION OF THE COMMISSION TO  
CONSIDER THE APPLICATION OF PETRO  
HARVESTER OPERATING CO., LLC FOR AN  
ORDER PURSUANT TO NDAC § 43-02-03-88.1  
AUTHORIZING THE FLARING OF GAS  
PRODUCED FROM THE AV-H OSBORN-163-93-  
0508H-1 WELL (FILE NO. 22147), LOT 2 OF  
SECTION 5, T.163N., R.93W., BURKE COUNTY,  
ND, PURSUANT TO THE PROVISIONS OF  
NDCC 38-08-06.4, OR FOR SUCH OTHER  
RELIEF AS MAY BE APPROPRIATE.

ORDER OF THE COMMISSION

THE COMMISSION FINDS:

- (1) This cause came on for hearing at 9:00 a.m. on the 20th day of March, 2019.
- (2) Petro Harvester Operating Company, LLC (Petro Harvester) provided exhibits and testimony in this matter by sworn affidavits.
- (3) The Commission received an application from Petro Harvester on February 19, 2019 for an order pursuant to North Dakota Administrative Code (NDAC) Section 43-02-03-88.1 authorizing the flaring of gas produced from the AV-H Osborn-163-93- 0508H-1 well (File No. 22147), Lot 2 of Section 5, Township 163 North, Range 93 West, Burke County, North Dakota, pursuant to the provisions of North Dakota Century Code (NDCC) Section 38-08-06.4, or for such other relief as may be appropriate.
- (4) Pursuant to NDAC Section 43-02-03-88.1, the Director is authorized, on behalf of the Commission, to grant or deny applications relating to, inter alia, flaring exemptions under NDCC Section 38-08-06.4 and under NDAC Section 43-02-03-60.2.
- (5) NDCC Section 38-08-06.4 states:

FLARING OF GAS RESTRICTED - IMPOSITION OF TAX -  
PAYMENT OF ROYALTIES - INDUSTRIAL COMMISSION AUTHORITY.

1. As permitted under rules of the industrial commission, gas produced with crude oil from an oil well may be flared during a one-year period from the date of first production from the well.
2. After the time period in subsection 1, flaring of gas from the well must cease and the well must be:
  - a. Capped;
  - b. Connected to a gas gathering line;
  - c. Equipped with an electrical generator that consumes at least seventy-five percent of the gas from the well;
  - d. Equipped with a system that intakes at least seventy-five percent of the gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting over fifty percent of the propane and heavier hydrocarbons; or
  - e. Equipped with other value-added processes as approved by the industrial commission which reduce the volume or intensity of the flare by more than sixty percent.
3. An electrical generator and its attachment units to produce electricity from gas and a collection system described in subdivision d of subsection 2 must be considered to be personal property for all purposes.
4. For a well operated in violation of this section, the producer shall pay royalties to royalty owners upon the value of the flared gas and shall also pay gross production tax on the flared gas at the rate imposed under section 57-51-02.2.
5. The industrial commission may enforce this section and, for each well operator found to be in violation of this section, may determine the value of flared gas for purposes of payment of royalties under this section and its determination is final.
6. A producer may obtain an exemption from this section from the industrial commission upon application that shows to the satisfaction of the industrial commission that connection of the well to a natural gas gathering line is economically infeasible at the time of the application or in the foreseeable future or that a market for the gas is not available and that equipping the well with an electrical generator to produce electricity from gas or employing a collection system described in subdivision d of subsection 2 is economically infeasible.

(6) Petro Harvester is the owner or operator of the following well in the Short Creek-Bakken Pool, Burke County, North Dakota:

<u>File #</u>	<u>Well Name &amp; Number</u>	<u>Location</u>
22147	AV-H Osborn-163-93- 0508H-1	Lot 2 Section 5-T163N-R93W

(7) By previous order of the Commission, said well is currently authorized to flare so that all owners of interests in the well herein described may receive the maximum benefits of the oil production in such a manner that will prevent waste and protect correlative rights.

(8) Short Creek-Bakken Pool is an oil reservoir, but gas is produced in association with the oil at the wellhead as a by-product of oil production.

(9) The AV-H Osborn-163-93- 0508H-1 well is not connected to a gas gathering facility.

(10) The applicant has submitted evidence that under current market conditions the surplus casinghead gas presently being produced by the AV-H Osborn-163-93- 0508H-1 well and the estimated recoverable reserves of surplus gas from the well is insufficient to recoup the costs of installing and operating a gas gathering facility.

(11) Petro Harvester has provided documentation that connection of the AV-H Osborn-163-93- 0508H-1 well to a natural gas gathering line is economically infeasible at the time of the application or in the foreseeable future.

(12) Petro Harvester has investigated the possibility of equipping the AV-H Osborn-163-93- 0508H-1 well with an electrical generator. It is not economic to purchase, install, connect and operate an electric generator fueled by produced casinghead gas. The Commission concludes that equipping the well with an electrical generator to produce electricity from the gas is economically infeasible.

(13) Petro Harvester has provided documentation that it is economically infeasible to equip the AV-H Osborn-163-93- 0508H-1 well with a collection system that intakes at least seventy-five percent of the gas and natural gas liquids volume from the well for beneficial consumption.

(14) If applicant's request is not granted, taxes and royalties must be paid on flared gas which will increase operating costs, raise the economic limit and cause premature abandonment of the AV-H Osborn-163-93- 0508H-1 well; or the well must be connected to a gas pipeline at an economic loss which would also cause premature abandonment, or flaring must cease and the wells must be "capped," resulting in the loss of oil production and the loss of the benefits of that production by all owners of interest in the AV-H Osborn-163-93- 0508H-1 well and the State of North Dakota.

(15) In order to prevent waste and protect correlative rights, Petro Harvester's request for an exemption from paying royalties and taxes on the flared gas from the AV-H Osborn-163-93- 0508H-1 well should be granted effective February 19, 2019.

(16) In order to prevent waste, and protect correlative rights this application should be granted.

**IT IS THEREFORE ORDERED:**

(1) Petro Harvester Operating Company, LLC, its assigns and successors, is hereby allowed to flare surplus casinghead gas produced with crude oil from the Short Creek-Bakken Pool through the well listed below under the exemption provided for under NDCC Section 38-08-06.4:

<u>File #</u>	<u>Well Name &amp; Number</u>	<u>Location</u>
22147	AV-H Osborn-163-93- 0508H-1	Lot 2 Section 5-T163N-R93W

(2) This order is effective as of February 19, 2019 and shall remain in full force and effect until further order of the Commission.

Dated this 2nd day of January, 2020.

INDUSTRIAL COMMISSION  
STATE OF NORTH DAKOTA

By the Director, on behalf of the Commission

/s/ Lynn D. Helms, Director