

Oil and Gas Division

Lynn D. Helms - Director Bruce E. Hicks - Assistant Director

Department of Mineral Resources

Lynn D. Helms - Director

North Dakota Industrial Commission

www.dmr.nd.gov/oilgas

August 26, 2013

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HAND-DELIVERED

Mr. John Walstad
Code Revisor
North Dakota Legislative Council
State Capitol
600 E. Boulevard, 2nd Floor
Bismarck, ND 58505-0360

RE: **Amended Rules**

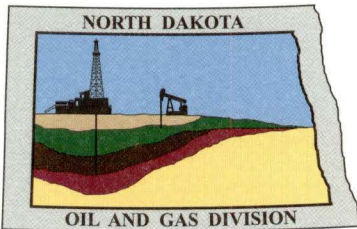
Dear Mr. Walstad:

The Full Notice of Intent to Adopt and Amend Administrative Rules and a copy of the proposed rules are enclosed as required by North Dakota Century Code § 28-32-10.

If you have any questions or comments, do not hesitate to contact this office.

Sincerely,

Bruce E. Hicks
Assistant Director



Lynn D. Helms - Director Bruce E. Hicks - Assistant Director

Department of Mineral Resources

Lynn D. Helms - Director

North Dakota Industrial Commission

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FULL NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES

TAKE NOTICE that the North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division, will hold a public hearing to address proposed amendments and additions to the North Dakota Administrative Code (NDAC) Chapter 43-02-03 (Oil & Gas), Chapter 43-02-05 (Underground Injection Control), Chapter 43-02-08 (Stripper Well Property Determination), and Chapter 43-02-12 (Geophysical Exploration) at 8:30am on October 1st, 2013 in the Conference Room of the Oil & Gas Division Building, 1000 E. Calgary Avenue, Bismarck, North Dakota. The proposals are summarized below:

The purpose of the proposed amendment to NDAC § 43-02-03-01 is to require a plant constructed to recycle production water be considered a treating plant. The proposed amendment requires all such plants to follow all provisions of treating plants. The proposed amendment is expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-03-11 is to require operators of disposal wells and treating plants to submit contact information to the Director. The proposed amendment requires the operators of disposal wells and treating plants to file an organization report. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-03-14 is to assure the Commission and Director have access to records of disposal and treating plant operators. The proposed amendment authorizes the Commission and Director to have access to all records wherever located. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-03-15 is to correct the site referring to bonds. The proposed amendment identifies the bonding requirements in 43-02-03-51.3. The proposed amendment will not have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendments to NDAC § 43-02-03-16 is to provide emergency services with a legal street address and incorporate changes pursuant to House Bills 1333 and 1348. The proposed amendments would require an operator to include the legal street address and road access. They also outline a procedure for the permit applicant to notify offsetting landowners 1000 feet from their proposed well and sets a deadline for landowner comments. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendments to NDAC § 43-02-03-16.1 is to designate the operator of a treating plant and to address disputes over designation of a treating plant operator. The proposed amendments clarify that the principal on the bond is the operator of the treating plant and 43-02-03-16.2 applies to disputes over a treating plant operator. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendments to NDAC § 43-02-03-16.3 is to eliminate ambiguity in the rule. The proposed amendments clarify the invitation to participate in drilling a well must include the approximate surface location of the well and the approximate completion location if other than a vertical well. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendments to NDAC § 43-02-03-17 is to require identification on facilities. The proposed amendments require signage on transportation, purchasing, and processing facilities, but eliminates

the requirement to be legible from a distance of 50 feet. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendments to NDAC § 43-02-03-19 is to require operators to seek authorization prior to installing liners and fabric and document use of such items in the well file. The proposed amendments require approval from the Director prior to using fabrics and liners during construction of sites, roads, and facilities. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-03-19.3 is to allow the earthen pits or open receptacles to remain for more than 30 days after the operations have ceased, only after a public hearing. The proposed amendment removes the authority for the Director to allow earthen pits or open receptacles to remain for up to one year. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-03-19.4 is to assure that the reclamation of a drilling pit is documented in the well file. The proposed amendment requires a notice to be filed with the Director detailing the reclamation performed. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-03-19.5 is to meet the legislative intent of Senate Bill 2014 with reference to reserve pits. The proposed amendment would allow wells drilled and completed outside the Bakken and Three Forks Formation development areas to use separate reserve pits if utilized to segregate each mud system and associated drill cuttings. The proposed amendment will provide an economic benefit to the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-03-22 is to allow an operator to protect casing from external corrosion, that could develop if defective casing or cementing existed, by installing mitigation measures such as cathodic protection. The proposed amendment allows defective casing or cementing to remain if the casing can be adequately protected from external corrosion. The proposed amendment will provide an economic benefit to the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-03-27.1 is to provide additional safety to the hydraulic stimulation operation. The proposed amendment requires safety equipment to be installed at the top of the Christmas tree and be remotely operated from the edge of the location or other safe distance. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendments to NDAC § 43-02-03-28 is to provide additional protection and safety. The proposed amendment requires all electric generators to be 150 feet from any producing well or oil tank. Operators will also be required to notify the operators of offsetting wells when fracture stimulating their wells. The proposed adoption is not expected to have an impact on the regulated community in excess of \$50,000 and might actually provide an economic benefit to the regulated community.

The purpose of the proposed amendments to NDAC § 43-02-03-29 is to outline pipeline requirements and a procedure for reporting the location of pipelines installed pursuant to House Bill 1333. The proposed amendments outline general installation and abandonment requirements, and requirements for reporting pipelines both installed and abandoned. The proposed amendments are expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendments to NDAC § 43-02-03-30 is to comply with the statute changes of reporting fires, leaks, spills, or blowouts pursuant to House Bill 1149*. The proposed amendments require all such reports to include information required under North Dakota Century Code § 37-17.1-07.1, as provided in House Bill 1149*. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000.

*Originally stated 1349

The purpose of the proposed amendment to NDAC § 43-02-03-34 is to correct the cite in the rule. The proposed amendment states sites must be reclaimed pursuant to NDAC § 43-02-03-34.1, which replaces the incorrect cite of NDAC § 43-02-03-19. The proposed amendment will not have an impact on the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-03-34.1 is to clarify that treating plants must be reclaimed when decommissioned and document why certain roads and sites are allowed to remain. The proposed amendment requires all decommissioned treating plants to be reclaimed and all site and road reclamation waivers to be filed with the County Recorder's Office. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendments to NDAC § 43-02-03-38.1 is to provide flexibility in obtaining samples and filing cores. They also require additional information to be filed in standard boxes. The proposed amendments provide that the State Geologist can set sampling requirements, requires the file and API numbers to be included on the sample boxes, allows a 30-day extension to file reports, and increases the time in which cores must be filed from 90 to 180 days. The proposed amendments will provide an economic benefit to the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-03-48 is to clarify that the producer must determine the volume of oil using the same method as transporters and purchasers. The proposed amendment requires all volumes to be corrected to a base pressure of 14.73 pounds per square inch absolute. The proposed amendment will not have an impact on the regulated community.

The purpose of the proposed amendments to NDAC § 43-02-03-51 is to comply with the statute changes addressing notification requirements pursuant to House Bill 1333 and to streamline the treating plant rules. The proposed amendments require the Commission to give at least a 15-day notice to the County Auditor of any application in which a request for a treating plant is received, as provided in House Bill 1333. They also move the treating plant requirements to other newly created sections of the Administrative Code. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the adoption of NDAC § 43-02-03-51.1 is to clarify the treating plant rule currently under NDAC § 43-02-03-51 by addressing treating permit requirements in this new section. This section will ease confusion of what information is necessary to file a complete application. The proposed addition outlines the general requirements to be included in a treating plant application. The proposed adoption is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the adoption of NDAC § 43-02-03-51.2 is to clarify the treating plant rule currently under NDAC § 43-02-03-51 by addressing treating permit siting in this new section. The proposed addition states a treating plant cannot be sited in a geologically or hydrologically sensitive area. The proposed adoption is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the adoption of NDAC § 43-02-03-51.3 is to clarify the treating plant rule currently under NDAC § 43-02-03-51 by addressing treating permit requirements in this new section. These requirements are currently included in a Commission order approving a treating plant application. The proposed addition outlines the general construction and operational requirements for a treating plant. The proposed adoption is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-03-55 is to clarify when a treating plant is considered abandoned. The proposed amendment clarifies that the removal of treating plant equipment or the failure to use a treating plant for one year constitutes abandonment of the treating plant. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendments to NDAC § 43-02-03-60.2 is to comply with the statute changes addressing gas flaring pursuant to House Bill 1134. The proposed amendments require an applicant seeking an exemption to NDCC § 38-8-06.4 to document that it is economically infeasible to equip the well with a system that intakes 75% of the gas and natural gas liquids volume for beneficial consumption, as provided in House Bill 1134. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000 and actually could provide an economic benefit to the regulated community if found feasible.

The purpose of the adoption of NDAC § 43-02-03-60.3 is to comply with the statute changes addressing gas flaring pursuant to House Bill 1134. The proposed addition outlines the application procedure to certify a well for a temporary gas tax exemption, as provided in House Bill 1134. The proposed adoption will provide an economic benefit to the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-03-80 is to clarify rail facility operators are subject to the rule. The proposed amendment requires the operator of any oil rail facility to report the amount of oil received and shipped out of the facility monthly. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-03-81 is to clarify treating plant operators are subject to the rule. The proposed amendment requires the operator of a treating plant to obtain the Director's approval prior to transporting any oil from the facility. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-03-88.1 is to comply with the statute changes addressing notification requirements of disposal applications, pursuant to House Bill 1333. The proposed amendment requires the Commission to give at least a 15-day notice to the County Auditor of any application in which a request for a disposal application is received, as provided in House Bill 1333. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendments to NDAC § 43-02-05-04 is to clarify the permit requirements of a disposal well and pursuant to House Bill 1333, to comply with the statute changes addressing safety concerns of disposal applications. The proposed amendments clarify the top and bottom confining zones of the injection zone must be identified, requires the size and purpose of all tanks, location and height of all dikes, liner location, flowline location, and proposed road access to nearest existing public road and the authority to build such access. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-08-01 is to comply with the statute changes addressing changes in the stripper well determinations, pursuant to House Bill 1198. The proposed amendment acknowledges that a well can have a "qualifying period". The proposed amendment will not have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendments to NDAC § 43-02-08-02 is to clarify the stripper well rules and remove the requirement of the applicant to notify all working interest owners of the stripper well application. The proposed amendments clarify that an application for either a stripper well or a stripper well property can be submitted and removes the requirement that all mineral interest owners be notified of the application. The proposed amendments will provide an economic benefit to the regulated community.

The purpose of the proposed amendments to NDAC § 43-02-08-02.1 is to clarify the rule and comply with the statute changes addressing changes in the stripper well determinations, pursuant to House Bill 1198. The proposed amendments clarify that a Unit, a spacing unit, contiguous tracts within a lease, and a single well completed prior to July 1, 2013 are all considered properties. Pursuant to House Bill 1198, the amendments also state a single well drilled and completed after June 30, 2013 is considered a single well stripper well, that any stripper well property status of a well previously qualified will expire upon reentry or recompletion, and additional wells can be added to a stripper property only if they were completed prior to July 1, 2013. The proposed amendment will not have an impact on the regulated community in excess of \$50,000 since it is being amended to comply with the change in the statute.

The purpose of the proposed amendments to NDAC § 43-02-08-03 is to clarify the rule and comply with the statute changes addressing changes in the stripper well determinations, pursuant to House Bill 1198. The proposed amendments clarify that the Director will consider applications for stripper well status and applications for stripper well property status. Pursuant to House Bill 1198, the amendments also state that to qualify for such stripper status, production from a well outside the Bakken and Three Forks Formations with a well depth of more than 10,000 feet must not exceed an average of 30 barrels of oil per day and production from a well in the Bakken

and Three Forks Formations with a well depth of more than 10,000 feet must not exceed an average of 35 barrels of oil per day. The proposed amendments will provide an economic benefit to the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-08-04 is to clarify the stripper well rules. The proposed amendment clarifies the Director will issue a determination of a stripper well or a stripper well property within 30 days of receiving an amended application. The proposed amendment will not have an impact on the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-08-05 is to clarify the stripper well rules. The proposed amendment clarifies that any person adversely affected by a determination of the Director for a stripper well or stripper well property status may within 30 days, petition for a hearing. The proposed amendment will not have an impact on the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-08-11 is to clarify the stripper well rules. The proposed amendment clarifies that any operator desiring to classify a well or property as a stripper well property shall keep records for a period of at least 6 years. The proposed amendment will not have an impact on the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-12-04 is to update our rules with technology advances. The proposed amendment removes the need to include a description of the identifying marks the applicant will use on plugs placed in seismic shot holes since NDAC § 43-02-12-07 is being amended to eliminate such identifying marks on the plugs. The proposed amendment will provide an economic benefit to the regulated community.

The purpose of the proposed amendments to NDAC § 43-02-12-07 is to update our rules with technology advances and to assure the seismic shot holes are properly plugged. The proposed amendment removes the need to mark plugs placed in seismic shot holes with identifying marks, since the holes are now identified by latitude/longitude coordinates and filed with the Commission. The proposed amendments also only allow dry cuttings to be utilized when plugging a shot hole since wet cuttings tend to bridge off and result in improper plugging. The proposed amendments will not have an impact on the regulated community in excess of \$50,000.

The proposed rules may be reviewed at the office of the Oil & Gas Division at 1016 East Calgary Avenue, Bismarck, ND, or online at <https://www.dmr.nd.gov/oilgas/>. A copy of the proposed rules and/or a regulatory analysis may be requested by writing the above address or calling (701) 328-8020. Written and oral comments on the proposed rules sent to the above address and phone number and received by 5pm, October 11th, 2013, will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the North Dakota Industrial Commission at (701) 328-8020, or write the Oil & Gas Division at the above address, no later than September 17, 2013.

Dated this 3rd day of September, 2013.



Bruce E. Hicks
Assistant Director