

CHAPTER 43-02-10
CERTIFICATION OF SECONDARY AND TERTIARY RECOVERY PROJECTS -
DETERMINATION OF INCREMENTAL PRODUCTION

Section

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43-02-10-01. Definitions.

The terms used throughout this chapter have the same meaning as in chapter 43-02-03 and North Dakota Century Code chapters 38-08 and 57-51.1 except:

1. "New secondary recovery project" means a secondary recovery project which results in incremental production.
2. "Normal production" means production from a unit obtained in the same manner and from the same wells which produce approximately the same amount of time.

History: Effective May 1, 1992; amended effective May 1, 1994.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 57-51.1-03

43-02-10-02. Application to certify a qualifying secondary recovery project.

Any unit operator desiring to certify a secondary recovery project as a "qualifying secondary recovery project" for purposes of eligibility for the tax incentive provided in North Dakota Century Code chapter 57-51.1 shall submit to the director an application for certification of a qualifying secondary recovery project. The unit operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether the project is a qualifying secondary recovery project, and is entitled to the tax exemption provided in North Dakota Century Code section 57-51.1-03.

History: Effective May 1, 1992; amended effective July 1, 1996; July 1, 2002; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 57-51.1-03

43-02-10-03. Commission certification of secondary recovery project.

Upon the filing of an application for certification of a qualifying secondary recovery project, the commission shall promptly set a date for hearing. In determining whether a secondary recovery project shall be certified as a "qualifying secondary recovery project", the commission shall determine:

1. The amount of crude oil which would have been recovered from the unit source of supply if the secondary recovery project had not been commenced; and
2. Whether, for the purposes of a tax exemption and subsequent thereto the tax reduction, there has been incremental production.

History: Effective May 1, 1992; amended effective April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 57-51.1-03

43-02-10-04. Application to certify a qualifying tertiary recovery project.

Any unit operator desiring to certify a tertiary recovery project as a "qualifying tertiary recovery project" for purposes of eligibility for the tax incentive provided in North Dakota Century Code chapter 57-51.1 shall submit to the director an application for certification of a qualifying tertiary recovery project. The unit operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether the project is a qualifying tertiary recovery project, and is entitled to the tax exemption provided in North Dakota Century Code section 57-51.1-03.

History: Effective May 1, 1992; amended effective July 1, 1996; July 1, 2002; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 57-51.1-03

43-02-10-05. Commission certification of tertiary recovery project.

Upon the filing of an application for certification of a qualifying tertiary recovery project, the commission shall promptly set a date for hearing. In determining whether a tertiary recovery project shall be certified as a "qualifying tertiary recovery project", the commission shall determine:

1. Whether the tertiary recovery project meets the requirements of the tertiary recovery methods specified in subsection 6 of North Dakota Century Code section 57-51.1-01;
2. The amount of crude oil which would have been recovered from the unit source of supply if the tertiary recovery project had not been commenced;
3. Whether the tertiary recovery project has achieved for at least one month an average production level of at least fifteen percent above the amount of production which would have been recovered from the unit source of supply (as determined in subsection 2) if the tertiary recovery project had not been commenced; and
4. Whether, for the purposes of the tax exemption, there has been incremental production.

The commission shall, upon application or its own motion, have a hearing to determine whether the project operator continues to operate the unit as a qualifying tertiary recovery project.

History: Effective May 1, 1992; amended effective September 1, 2000; April 1, 2024.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 57-51.1-01

43-02-10-06. Incremental production determination for a secondary recovery project.

1. a. In a unit where there has not been a secondary recovery project, the commission will establish a primary production decline curve. In such instance, incremental production is the production above the established primary production decline curve which production is a result of the secondary recovery project.
- b. The total amount of primary production from the unit will be determined by the commission through the use of a computer-generated production decline curve developed by software used by the commission at the time of certification. The decline curve will be a production versus time plot. The oil production and the time used to develop the curve will be that production occurring and period of time from the latest peak in production through the last month of oil production prior to the month in which secondary recovery project operations commence. However, the director shall have discretionary authority to select a different period of time to establish the decline curve if

deemed necessary to obtain a more accurate estimate of the ultimate primary production.

- c. The production decline curve established in subdivision b of this subsection is projected from the end of the last month in which production was used to develop the primary decline curve to a producing rate of one barrel of oil per well per day, but no projection shall be made greater than fifty years in duration. All production above the projected decline curve is incremental production and production below the decline curve is primary production. The total projected primary production, on a monthly basis in numerical form, is derived from the projected primary production decline curve. A copy of the projected monthly primary production, in numerical form, will be furnished to the unit operator and the tax commissioner.
 - d. For purposes of determining the primary production provided for in this subsection, where practices and procedures used by the commission cannot be used because production has been restricted due to the prolific nature of the reservoir (such as a Lodgepole reservoir), where unitization is accomplished early in the life of the reservoir, and sufficient primary production history does not exist for decline curve analysis, the commission will have the authority to determine an alternate method using fundamental reservoir engineering principles. One example the commission might use is a pressure decline versus cumulative production plot to estimate the ultimate primary production. Based on available data and reservoir characteristics an initial rate and decline percent would be extrapolated to match the estimated ultimate recovery. In this case the operating company would be required to monitor the reservoir pressure and production and coordinate all activities and measurements with the commission.
2. In a unit which commences a new secondary recovery project where a secondary recovery project was in existence prior to July 1, 1991, and the commission cannot establish an accurate production decline curve, incremental production will be determined pursuant to paragraph 2 of subdivision c of subsection 5 of North Dakota Century Code section 57-51.1-03.
 3.
 - a. In a unit which commences a new secondary recovery project where a secondary recovery project was in existence before July 1, 1991, and where the commission can establish an accurate production decline curve, incremental production is the production above the established production decline curve which production is a result of the new secondary recovery project.
 - b. The total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced will be determined by the commission through the use of a computer-generated production decline curve developed by software used by the commission at the time of certification. The decline curve will be a production versus time plot. The oil production and the time used to develop the curve will be that production occurring and period of time from the latest peak in production through the last month of oil production prior to the month in which the new secondary recovery project operations commence. However, the director shall have discretionary authority to select a different period of time to establish the decline curve if deemed necessary to obtain a more accurate estimate of the ultimate production that would have been produced if the new secondary recovery project had not been commenced.
 - c. The production decline curve established in subdivision b of this subsection is projected from the end of the last month in which production was used to develop the decline curve to a producing rate of one barrel of oil per well per day. All production above the projected decline curve is incremental production and production below the decline curve is production which would have occurred in the absence of the new secondary recovery

project. The total projected production below the curve, on a monthly basis in numerical form, is derived from the projected production decline curve. A copy of the projected monthly production below the curve, in numerical form, will be furnished to the unit operator and the tax commissioner.

4. The commission will hold a hearing to establish a decline curve and a projection of the curve from which incremental production can be determined. At the hearing the project operator of a secondary recovery project or a new secondary recovery project must introduce evidence regarding the work proposed or accomplished which will result in incremental production, and evidence showing that the project is a qualifying project. Application for the hearing may, at the discretion of the project operator, be made prior or subsequent to the commencement of a secondary recovery project or commencement of a new secondary recovery project.

History: Effective May 1, 1992; amended effective February 1, 1998; July 1, 2002.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 57-51.1-01

43-02-10-07. Incremental production determination for a tertiary recovery project.

1.
 - a. In a unit where there has not been a secondary recovery project and a tertiary project is commenced, the commission will establish a primary production decline curve. In such instance, incremental production is the production above the established primary production decline curve which production is a result of the tertiary recovery project.
 - b. The total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced will be determined by the commission through the use of a computer-generated production decline curve developed by software used by the commission at the time of certification. The decline curve will be a production versus time plot. The oil production and the time used to develop the curve will be that production occurring and period of time from the latest peak in production through the last month of oil production prior to the month in which the tertiary recovery project operations commence. However, the director shall have discretionary authority to select a different period of time to establish the decline curve if deemed necessary to obtain a more accurate estimate of the ultimate primary production.
 - c. The production decline curve established in subdivision b of this subsection is projected from the end of the last month in which production was used to develop the primary decline curve to a producing rate of one barrel of oil per well per day. All production above the projected decline curve is incremental production and production below the decline curve is primary production. The total projected primary production, on a monthly basis in numerical form, is derived from the projected primary production decline curve. A copy of the projected monthly primary production, in numerical form, will be furnished to the unit operator and the tax commissioner.
2. In a unit which commences a tertiary recovery project where there is or has been a secondary recovery project and the commission cannot establish an accurate production decline curve, incremental production will be determined pursuant to paragraph 5 of subdivision c of subsection 5 of North Dakota Century Code section 57-51.1-03.
3.
 - a. In a unit which commences a tertiary recovery project where there is or has been a secondary recovery project and where the commission can establish an accurate production decline curve, incremental production is the production above the established production decline curve which production is a result of the tertiary recovery project.
 - b. The total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced will be determined by the commission

through the use of a computer-generated production decline curve developed by software used by the commission at the time of certification. The decline curve will be a production versus time plot. The oil production and the time used to develop the curve will be that production occurring and period of time from the latest peak in production through the last month of oil production prior to the month in which the tertiary recovery project operations commence. However, the director shall have discretionary authority to select a different period of time to establish the decline curve if deemed necessary to obtain a more accurate estimate of the ultimate production that would have been produced if the tertiary recovery project had not been commenced.

- c. The production decline curve established in subdivision b of this subsection is projected from the end of the last month in which production was used to develop the decline curve to a producing rate of one barrel of oil per well per day. All production above the projected decline curve is incremental production and production below the decline curve is production which would have occurred in the absence of the tertiary recovery project. The total projected production below the curve, on a monthly basis in numerical form, is derived from the projected production decline curve. A copy of the projected monthly production below the curve, in numerical form, will be furnished to the unit operator and the tax commissioner.
4. The commission will hold a hearing to establish a decline curve and a projection of the curve from which incremental production can be determined. At the hearing the project operator of a tertiary recovery project must introduce evidence regarding the work proposed or accomplished which will result in incremental production, and evidence showing that the project is a qualifying project. Application for the hearing may, at the discretion of the project operator, be made prior or subsequent to the commencement of a tertiary recovery project.

History: Effective May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 57-51.1-03

43-02-10-08. Books and records to be kept to substantiate reports.

Any unit operator desiring to certify a secondary recovery project shall make and keep appropriate books and records for a period of not less than six years, covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

History: Effective September 1, 2000.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04