

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/

September 18, 2012

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

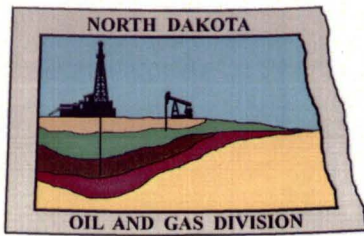
Dear Mr. Walstad:

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,

Kevin C. Connors
Carbon Capture and Storage Supervisor



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FULL NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES

TAKE NOTICE

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) relating to the geologic storage of carbon dioxide at 9:00 am on October 22, 2012 in the Conference Room of the Oil and Gas Division Building, 1000 East Calgary Avenue, Bismarck, North Dakota.

BRIEF OVERVIEW

On December 10, 2010 the United States Environmental Protection Agency (EPA) finalized minimum federal requirements under the Safe Drinking Water Act for underground injection of carbon dioxide (CO₂) establishing a new class of wells, Class VI. The Class VI rule is based on Underground Injection Control (UIC) regulatory framework, with modifications to address the unique nature of CO₂ injection. The purpose for the Class VI rule is to ensure that geologic storage of CO₂ is conducted in a manner that protects underground sources of drinking water (USDWs).

As of September 7, 2011 the EPA is the acting authority for Class VI injection wells in North Dakota. In order to gain primacy enforcement responsibility for Class VI injection wells, North Dakota must demonstrate to the EPA that its UIC program is at least as stringent as the federal standards. In an effort to meet the federal stringency standard the Oil and Gas Division is proposing amendments and additions to NDAC chapter 43-05-01.

Federal Requirements for the underground injection of CO₂ can be found using the following link.

<http://www.federalregister.gov/articles/2010/12/10/2010-29954/federal-requirements-under-the-underground-injection-control-uic-program-for-carbon-dioxide-co2>

SUMMARY OF PROPOSED AMENDMENTS AND ADDITIONS

The purpose of the proposed amendments to NDAC §43-05-01-01 is to define terms meant solely for NDAC chapter 43-05-01, add terms required by federal rule, and remove terms that appear in North Dakota Century Code (NDCC) chapter §38-22-02. The proposed amendments allow for the defined terms to be used for the purpose of this chapter and not be applied to other administrative chapters. The proposed addition of terms meets EPA stringency requirements pursuant to Parts 144 and 146-Underground Injection Control Program §144.3, §146.3, and §146.81 (d) (Definitions). The proposed amendments are not expected to impact the regulated community.

The purpose of the proposed amendment to NDAC §43-05-01-02 is to eliminate ambiguity in the rule. The proposed amendment clearly differentiates between the geologic storage of CO₂ as being regulated under chapter 43-05-01 and enhanced oil or gas recovery using CO₂ as being regulated under chapter 43-02-05. The proposed amendment is not expected to impact the regulated community.

The purpose of the proposed adoption of NDAC §43-05-01-02.1 is to combine appropriate regulations from NDAC chapters 43-02-03 and 43-02-05 for a more consistent rule. The proposed addition allows for certain provisions to be subject to NDAC chapters 43-02-03 and 43-02-05, where applicable. The proposed adoption is not expected to impact the regulated community.

The purpose of the proposed adoption of NDAC §43-05-01-02.2 is to protect underground sources of drinking water. The proposed addition meets EPA stringency requirements pursuant to Part 144-Underground Control Program Subpart A-General Provisions §144.1 (g) (Scope of the Permit or Rule Requirements) and Subpart B-General Program Requirements §144.12 (a), (b), and (e) (Prohibition of Movement of Fluid into Underground Sources of Drinking Water). The proposed adoption is not expected to impact the regulated community.

The purpose of the proposed adoption of NDAC §43-05-01-02.3 is to address the transition from an enhanced oil or gas recovery project to geologic sequestration. The proposed addition meets EPA stringency requirements pursuant to Part 144-Underground Injection Control Program Subpart B-General Program Requirements §144.19 (Transitioning from Class II to Class VI). The proposed adoption is not expected to impact the regulated community.

The purpose of the proposed adoption of NDAC §43-05-01-02.4 is to address aquifer exemptions and expansions of existing aquifer exemptions. The proposed addition meets EPA stringency requirements pursuant to Part 144-Underground Injection Control Program Subpart A-General Provisions §144.7 (Identification of Underground Sources of Drinking Water and Exempted Aquifers) and §144.7 (d) (Expansion to the Areal Extent of Existing Class II Aquifer Exemptions for Class VI Wells). The proposed adoption is not expected to impact the regulated community.

The purpose of the proposed adoption of NDAC §43-05-01-02.5 is to address unauthorized injection and unauthorized well construction. The proposed addition meets EPA stringency requirements pursuant to Part 144-Underground Injection Control Program Subpart B-General Program Requirements §144.11 (Prohibition of Unauthorized Injection). The proposed adoption is not expected to impact the regulated community.

The purpose of the proposed adoption of NDAC §43-05-01-02.6 is to address well conversion. The proposed addition allows for the conversion of an existing well to a CO₂ injection well as long as the operator can demonstrate to the Commission that underground sources of drinking water are protected. The proposed adoption is not expected to impact the regulated community.

The purpose of the proposed amendment to NDAC §43-05-01-03 is to create a consistent requirement throughout the rule. The proposed amendment requires all records used to substantiate reports be retained until project completion. The proposed amendment is not expected to impact the regulated community.

The purpose of the proposed amendments to NDAC §43-05-01-05 is to comply with federal requirements. The proposed amendments meet EPA stringency requirements pursuant to Part 146-Underground Injection Control Program: Criteria and Standards Subpart H-Criteria and Standards Applicable to Class VI Wells §146.82 (Required Class VI Permit Information). The proposed amendments are not expected to impact the regulated community in excess of \$50,000.

The purpose of the proposed adoption of NDAC §43-05-01-05.1 is to comply with federal requirements. The proposed addition meets federal stringency requirements pursuant to Part 146-Underground Injection Control Program: Criteria and Standards Subpart H-Criteria and Standards Applicable to Class VI Wells §146.84 (Area of Review and Corrective Action). The proposed adoption is expected to impact the regulated community in excess of \$50,000.

The purpose of the proposed amendments to NDAC §43-05-01-06 is to promote consistency throughout the rule. The proposed amendments require a description of the land within the storage facility and a demonstration of financial responsibility when considering storage facility permit transfer. The proposed addition meets federal stringency requirements pursuant to Part 144-Underground Injection Control Program Subpart D-Authorization by Permit §144.38 (Transfer of Permits). The proposed amendments are not expected to impact the regulated community.

The purpose of the proposed amendments to NDAC §43-05-01-07 is to move language to a more appropriate rule. The proposed amendment deletes and moves the language to section §43-05-01-12 Modification, Revocation and Reissuance or Termination of Permits. The proposed amendments are not expected to impact the regulated community.

The purpose of the proposed adoption of NDAC §43-05-01-07.1 is to comply with federal requirements. The proposed addition meets federal stringency requirements pursuant to Part 124-Procedures for Decision Making Subpart A-General Program Requirements §124.3 (Application for a Permit) and Part 144-Underground Injection Control Program Subpart D-Authorization by Permit §144.31 (Application for a Permit; Authorization by Permit) and §144.32 (Signatories to Permit Application and Reports). The proposed adoption is not expected to impact the regulated community.

The purpose of the proposed adoption of NDAC §43-05-01-07.2 is to comply with federal requirements. The proposed addition meets federal stringency requirements pursuant to Part 124-Procedures for Decision Making Subpart A-General Program Requirements §124.6 (Draft Permits) and §124.8 (Fact Sheet). The proposed adoption is not expected to impact the regulated community.

The purpose of the proposed adoption of NDAC §43-05-01-07.3 is to comply with federal requirements. The proposed addition meets federal stringency requirements pursuant to Part 144-Underground Injection Control Program Subpart E-Permit Conditions §144.51 (Conditions Applicable to All Permits). The proposed adoption is not expected to impact the regulated community.

The purpose of the proposed adoption of NDAC §43-05-01-07.4 is to comply with federal requirements. The proposed addition meets federal stringency requirements pursuant to Part 144-Underground Injection Control Program Subpart E-Permit Conditions §144.52 (Establishing Permit Conditions). The proposed adoption is not expected to impact the regulated community.

The purpose of the proposed amendments to NDAC §43-05-01-08 is to allow the storage operator additional time to give required notice that a storage facility permit application has been submitted and to clarify the required content of that notice. The proposed amendments clearly state the information required in both the operator's notice to all parties involved and the Commission's notice to the public. The proposed amendment meets EPA stringency requirements pursuant to Part 124-Procedures for Decision Making Subpart A-General Program Requirements §124.10 (Public Notice of Permit Actions and Public Comment Period), §124.11 (Public Comments and Requests for Public Hearing), §124.12 (Public Hearings), and §124.17 (Response to Comments). The proposed amendments are not expected to impact the regulated community.

The purpose of the proposed amendments to NDAC §43-05-01-09 is to comply with federal requirements. The proposed amendments meet federal stringency requirements pursuant to Part 146-Underground Injection Control Program: Criteria and Standards Subpart H-Criteria and Standards Applicable to Class VI Wells §146.82 (Required Class VI Permit Information). The proposed amendments are not expected to impact the regulated community in excess of \$50,000.

The purpose of the proposed adoption to NDAC §43-05-01-09.1 is to comply with federal requirements. The proposed addition meets federal stringency requirements pursuant to Part 146-Underground Injection Control Program: Criteria and Standards Subpart H-Criteria and Standards Applicable to Class VI Wells §146.85 (Financial Responsibility). The proposed adoption is expected to impact the regulated community in excess of \$50,000.

The purpose of the proposed amendments to NDAC §43-05-01-10 is to comply with federal requirements. The proposed amendments meet federal stringency requirements pursuant to Part 144-Underground Injection Control Program Subpart D-Authorization by Permit §144.36 (Duration of Permits) and §144.53 (a) (Schedule of Compliance). The proposed amendments are not expected to impact the regulated community.

The purpose of the proposed amendments to NDAC §43-05-01-11 is to eliminate ambiguity in the rule. The proposed amendments clarify construction and completion requirements while meeting federal stringency requirements pursuant to Part 146-Underground Injection Control Program: Criteria and Standards Subpart H-Criteria and Standards Applicable to Class VI Wells §146.86 (Injection Well Construction Requirements). The proposed amendments are expected to impact the regulated community in excess of \$50,000.

The purpose of the proposed adoption to NDAC §43-05-01-11.1 is to comply with federal requirements. The proposed addition meets federal stringency requirements pursuant to Part 146-Underground Injection Control Program: Criteria and Standards Subpart H-Criteria and Standards Applicable to Class VI Wells §146.89 (Mechanical Integrity). The proposed adoption is not expected to impact the regulated community in excess of \$50,000.

The purpose of the proposed adoption to NDAC §43-05-01-11.2 is to comply with federal requirements. The proposed additions meet federal stringency requirements pursuant to Part 146-Underground Injection Control Program: Criteria and Standards Subpart H-Criteria and Standards Applicable to Class VI Wells §146.87 (Logging, Sampling, and Testing Prior to Injection Well Operation). The proposed adoption is expected to impact the regulated community in excess of \$50,000.

The purpose of the proposed adoption to NDAC §43-05-01-11.3 is to comply with federal requirements. The proposed additions meet federal stringency requirements pursuant to Part 146-Underground Injection Control Program: Criteria and Standards Subpart H-Criteria and Standards Applicable to Class VI Wells §146.88 (Injection Well Operating Requirements). The proposed adoption is not expected to impact the regulated community in excess of \$50,000.

The purpose of the proposed adoption to NDAC §43-05-01-11.4 is to comply with federal requirements. The proposed additions meet federal stringency requirements pursuant to Part 146-Underground Injection Control Program: Criteria and Standards Subpart H-Criteria and Standards Applicable to Class VI Wells §146.90 (Testing and Monitoring Requirements). The proposed adoption is expected to impact the regulated community in excess of \$50,000.

The purpose of the proposed adoption to NDAC §43-05-01-11.5 is to comply with federal requirements. The proposed additions meet federal stringency requirements pursuant to Part 146-Underground Injection Control Program: Criteria and Standards Subpart H-Criteria and Standards Applicable to Class VI Wells §146.92 (Injection Well Plugging). The proposed adoption is not expected to impact the regulated community.

The purpose of the proposed adoption to NDAC §43-05-01-11.6 is to comply with federal requirements. The proposed additions meet federal stringency requirements pursuant to Part 146-Underground Injection Control Program: Criteria and Standards Subpart H-Criteria and Standards Applicable to Class VI Wells §146.95 (Class VI Injection Depth Waiver Requirements). The proposed adoption is not expected to impact the regulated community.

The purpose of the proposed amendments to NDAC §43-05-01-12 is to eliminate ambiguity in rule. The proposed amendment deletes language and appropriately creates an all-encompassing requirement for modifying or revoking permits. The proposed amendments include language moved from deleted §43-05-01-07. The proposed amendments meet federal stringency requirements pursuant to Part 124-Procedures for Decision Making Subpart A-General Program Requirements §124.5 (Modification, Revocation and Reissuance, or Termination of Permits) and Part 144-Underground Injection Control Program Subpart D-Authorization by Permit §144.39 (Modification or Revocation and Reissuance of Permits) and §144.40 (Termination of Permits). The proposed amendments are not expected to impact the regulated community.

The purpose of the proposed adoption to NDAC §43-05-01-12.1 is to comply with federal requirements. The proposed addition meets federal stringency requirements pursuant to Part 144-Underground Injection Control Program Subpart D-Authorization by Permit §144.41 (Minor Modifications of Permits). The proposed adoption is not expected to impact the regulated community.

The purpose of the proposed amendments to NDAC §43-05-01-13 is to comply with federal requirements. The proposed amendments meet federal stringency requirements pursuant to Part 146-Underground Injection Control Program: Criteria and Standards Subpart H-Criteria and Standards Applicable to Class VI Wells §146.94 (Emergency and Remedial Response). The proposed amendments are not expected to impact the regulated community in excess of \$50,000.

The purpose of the proposed amendments to NDAC §43-05-01-14 is to promote consistency throughout the rule. The proposed amendments replace “must” with “shall” when imposing a duty on the storage operator. The proposed amendments will not have any impact on the regulated community.

The purpose of the proposed amendments to NDAC §43-05-01-15 is to promote consistency throughout the rule. The proposed amendments clarify the requirement for corrosion monitoring and prevention. The proposed amendments will not have any impact on the regulated community.

The purpose of the proposed amendments to NDAC §43-05-01-17 is to establish a collaborative effort to ensure sufficient funds will be available to cover postclosure long term monitoring. The proposed amendments allow the storage operator to rely on the carbon dioxide storage facility trust fund as part of its financial responsibility demonstration. The proposed amendments require, if necessary, the storage operator to make additional payments into the carbon dioxide storage facility trust fund to ensure that North Dakota will have sufficient funds for the postclosure long term monitoring. The proposed amendments are not expected to impact the regulated community in excess of \$50,000.

The purpose of the proposed amendments to NDAC §43-05-01-18 is to comply with federal requirements. The proposed amendments meet federal stringency requirements pursuant to Part 146-Underground Injection Control Program: Criteria and Standards Subpart H-Criteria and Standards Applicable to Class VI Wells §146.91 (Reporting Requirements). The proposed amendments are not expected to impact the regulated community in excess of \$50,000.

The purpose of the proposed adoption of NDAC §43-05-01-18.1 is to address well abandonment. The proposed adoption gives the Commission the authority to decide the status of a well. The proposed adoption allows for the temporary abandonment of a well or the abandonment and plugging of a well. The proposed adoption is not expected to impact the regulated community.

The purpose of the proposed amendments to NDAC §43-05-01-19 is to comply with federal requirements. The proposed amendments meet federal stringency requirements pursuant to Part 146-Underground Injection Control Program: Criteria and Standards Subpart H-Criteria and Standards Applicable to Class VI Wells §146.93 (Post-Injection Site Care and Site Closure). The proposed amendments are expected to impact the regulated community in excess of \$50,000.

The purpose of the proposed amendments to NDAC §43-05-01-20 is to limit who can apply for a determination of storage amounts of injected CO₂. The proposed amendments identify who exactly can apply for this determination. The proposed amendments are not expected to impact the regulated community.

The proposed rules may be reviewed at the office of the Oil and 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 comments on the proposed rules, sent to the above address, and received by 5:00 pm, November 1, 2012, will be fully considered. Oral comments can be given at the public hearing at 9:00 am on October 22, 2012.

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 and Gas Division at the above address, no later than October 15, 2012.

Dated this 18th day of September, 2012.

Kevin C. Connors - Carbon Capture and Storage Supervisor