

Lynn D. Helms - Director

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Department of Mineral Resources

Lynn D. Helms - Director

North Dakota Industrial Commission

www.oilgas.nd.gov

ADMINISTRATIVE RULES COMMITTEE HEARING

TESTIMONY OF BRUCE E. HICKS - DECEMBER 12, 2007

Administrative Rules Committee Chairman and Committee Members:

Following please find my written testimony concerning the adoption of administrative rules by the Oil and Gas Division of the North Dakota Industrial Commission. The items listed are pursuant to Mr. John Walstad's (Code Revisor for the Legislative Council) request.

1. **Statutory changes:** The Legislative Assembly passed House Bill No. 1229 which requires the applicant to provide notice of a proposed oil or gas well to the owner of any permanently occupied dwelling located within one-quarter mile of such well. The bill further prohibits a well from being located within five hundred feet of an occupied dwelling unless waived by the owner or allowed by the Commission after hearing. Rule changes were made to NDAC Sections 43-02-03-01 (Definitions) and 43-02-03-28 (Safety Regulation) as the result of House Bill No. 1229. Sponsors of the bill were notified of our proposed rule changes pursuant to NDCC Section 28-32-10. They also received notice of this hearing.
2. **Federal changes:** The rule changes are not related to any federal statute or regulation.
3. **Procedure:** The rulemaking procedure consisted of the following:
 - August 1, 2007---Received approval from Industrial Commission to adopt rules
 - August 2, 2007---Filed rules with Legislative Council
 - August 3, 2007---Reg analysis written for rules impacting industry > \$50,000
 - August 5-13, 2007---Public notices were published in each county
 - August 6, 2007---Notified all sponsors of HB 1226 of proposed rule changes
 - August 10, 2007---Wrote small entity regulatory analysis & small entity impact statement
 - September 4, 2007---Hearing held on rules
 - October 16, 2007---Wrote responses to all comments received
 - October 17, 2007---Received approval from Industrial Commission to adopt rules
 - November 8, 2007---Received Attorney General's opinion that rules are legal
 - November 9, 2007---Filed rules with Legislative Council
 - November 29, 2007---Notified all parties of Adm Rules Comm hearing & posted on web
 - December 12, 2007---Administrative Rules Committee hearing
 - January 1, 2008---Rules become effective
 - 153 days---Agency approval to effective date of rules
4. **Oral and written comments:** Comments were received from 3 parties at the hearing and written comments were received from 4 parties during the 10-day comment period (see attached pages 3-9). The following rules received comments:

| <u>NDAC Sec.</u> | <u>Description</u> | <u>Page</u> | <u>Change Made</u> |
|------------------|---|-------------|--------------------|
| 43-02-03-01 | Definitions | 286 | Leave as proposed |
| 43-02-03-16.3 | Recovery of a risk penalty | 288 | Leave as proposed |
| 43-02-03-18.1 | Exception Location | 291 | Leave as proposed |
| 43-02-03-22 | Defective Casing or Cementing | 293 | Leave as proposed |
| 43-02-03-28 | Safety Regulation | 294 | Leave as proposed |
| 43-02-03-30 | Notification of Fires, Leaks and Spills | 294 | Leave as proposed |
| 43-02-03-31 | Well log, completion, and workover reports | 295 | Modified |
| 43-02-03-55 | Temporary Abandonment of Wells | 296 | Modified |
| 43-02-03-66 | Appl f/Allowable on New Wells | 300 | Leave as proposed |
| 43-02-04.1 | Create new Chapter f/Storage of CO ₂ | --- | Withdrawn |
| 43-02-12-06 | Notification of Seismic Work Performed | 305 | Modified |

5. **Cost:** The approximate cost of giving public notice and holding a hearing on the rules was \$1,347.96. The cost was shared with the Geological Survey Division, since we are both under the Department of Mineral Resources. This does not include staff time for developing and adopting the rules.
6. **Justification of changes:** The full notice explains the subject matter of the rules and the reasons for adopting the rules (see attached pages 12-14).
7. **Regulatory analysis:** A regulatory analysis was not requested by the Governor or an agency. An analysis was done on the following rule that was expected to have an impact on the regulated community in excess of \$50,000 (see attached page 15), although the proposed rule has been withdrawn:


| <u>NDAC Sec.</u> | <u>Description</u> | <u>Page</u> |
|------------------|----------------------------|-------------|
| 43-02-04.1 | Storage of CO ₂ | --- |

8. **Small entity regulatory analysis and impact statement:** A small entity regulatory analysis was done on each proposed rule and an impact statement was done on the following rule that will have an adverse impact on small entities (see attached pages 16-19):

| <u>NDAC Sec.</u> | <u>Description</u> | <u>Page</u> |
|------------------|----------------------------|-------------|
| 43-02-04.1 | Storage of CO ₂ | --- |

9. **Constitutional takings assessment:** A constitutional takings assessment was not required.
10. **Emergency rules:** None of the rules changes were emergency rules.

Thank you for consideration of the Oil and Gas Division's rule changes.

Sincerely,

Bruce E. Hicks
Assistant Director

SUMMARY OF COMMENTS ON PROPOSED 2008 RULES - NDIC - DEPT OF MINERAL RESOURCES - OIL AND GAS DIVISION

| NDAC | PROPOSED AMENDMENT | COMMENT RECEIVED | ACTION TAKEN |
|--|--|--|--|
| 43-02-03 GENERAL RULES | Delete references to proration that are being stricken from the rules | none | The proposed amendments will be adopted without any further modifications. |
| 43-02-03-01 Definitions | Define "Permanently Occupied Dwelling" and "Occupied Dwelling" as lived in 6 months | NDPC Opposes--wants lived in 8 months. DRC Opposes--wants the definition to be same as Surface Coal Mining and Reclamation Operations, which states "any building that is currently being used on a regular or temporary basis for human habitation", also they want "in good faith" defined in reference to a surface use agreement by requiring a property appraisal and allow landowner to request 5 prior offers in the area. | The proposed amendments will be adopted without any further modifications. |
| 43-02-03-16.3 Recovery of a Risk Penalty | Clarify risk penalty can be obtained if well has already spud or is producing | DRC Opposes--they feel this section is an assault on private property rights and the section should be repealed. | The proposed amendments will be adopted without any further modifications. |
| 43-02-03-18.1 Exception Location | Allow notice to affected parties by regular, not certified or register mail | DRC Opposes--they believe the cost is minimal to use certified mail and not a burden to industry | The proposed amendment will be adopted without any further modifications. |
| 43-02-03-19 Reserve Pit | Clarify rule: Director may require stringent pit construction as deemed necessary Require waiver to leave road after well plugged, not upon well completion | none | The proposed amendments will be adopted without any further modifications. |
| 43-02-03-22 Defective Casing or Cementing | Allows Director to require press test to verify casing integrity if it's questionable | NDPC--will not oppose if add "if there is reasonable evidence present to indicate that a threat to potable water exists". DRC Supports this amendment. | The proposed amendment will be adopted without any further modifications. |
| 43-02-03-28 Safety Regulation | Allow treater 125' to well if utilizing flame arrestor on stack Require well to be 500' from occupied dwelling, not 330' from bldg or residence | NDPC--requests 100' allowance be granted which is allowed by BLM. DRC Supports this amendment. | The proposed amendments will be adopted without any further modifications. |
| 43-02-03-30 Notification of Fires, Leaks, Spills or Blowouts | Followup verbal notification by written report 10 days after cleanup, not notification | DRC Opposes--they believe more stringent rules should be proposed. They suggest schematics of systems be required and all fluid be metered at the pipeline entry point and at the injection well. | The proposed amendment will be adopted without any further modifications. |
| 43-02-03-31 Well Log, Completion and Workover Reports | Clarify rule: Open hole logs required--note waiver can still be obtained Allow spacing and drilling unit description to public on confidential wells | Luff Opposes--wants log waiver automatically granted if well design or downhole problems warrants it also objects to requiring the "quality" of cement be determined, indicating this is impossible. | The proposed amendment will be modified to require the "quality of bonding" of cement be determine. The proposed amendment will be adopted without any further modifications. |
| 43-02-03-55 Abandonment of Wells | Charge \$100 fee to TA a well or extend TA (every year) | NDPC Opposes--this is an additional tax and recent legislation in HB1060 removed the Plugging Fund cap and HB1511 allows single well bonding on AB wells. DRC Supports this amendment, but believes it should be amended to require a well TA'd for 5 years to be placed on a single well bond. | The proposed amendment will be modified to require the \$100 fee to be submitted only upon requesting to extend the TA status of a well. |
| 43-02-03-63 Regulation of Pools | Hearing if total prod significantly exceeds demand+undue discrimination occurring | none | The proposed amendments will be adopted without any further modifications. |
| 43-02-03-64 Rate of Producing Wells | Delete ref to underproduction & fractional units+designate sp on the proration unit | none | The proposed amendments will be adopted without any further modifications. |
| 43-02-03-65 Authorization f/Prod, Pur&Trans | Delete ref to marginal unit & back allowables | none | The proposed amendments will be adopted without any further modifications. |
| 43-02-03-66 Appl f/Allowable on New Wells | Allows WC well @ MER f/18mths, not 1st 4 wells up to 200bopd f/18mths | NDPC Opposes--adverse to allowing discovery well to produce @ max efficient rate f/18 months since could lead to correlative rights issues and encourages operators to seek new field f/every well. | The proposed amendments will be adopted without any further modifications. |

| NDAC | PROPOSED AMENDMENT | COMMENT RECEIVED | ACTION TAKEN |
|--|---|--|--|
| 43-02-03-67 Oil Proration | Eliminates proportional factor set by depth of well | none | The proposed amendments will be adopted without any further modifications. |
| 43-02-03-68 Gas-Oil Ratio Limitation | Delete ref to fractional units, marginal units and top allowable | none | The proposed amendments will be adopted without any further modifications. |
| 43-02-03-69 Allocation of Gas Production | Delete ref to fractional units | none | The proposed amendments will be adopted without any further modifications. |
| 43-02-04.1 CREATE NEW CHAPTER | | | |
| 43-02-04.1 GEOLOGIC STORAGE OF CARBON DIOXIDE | Create new chapter | IC's counsel indicates the IC does not currently have the authority to regulate the storage of CO2. NAIP and EERC both support the creation of the carbon storage rule. DRC Opposes carbon storage rules unless long term net reductions in carbon dioxide emissions can be demonstrated. NDLEC believes the rules need additional modification after further study. | The proposed chapter was withdrawn. |
| 43-02-12 GEOPHYSICAL EXPLORATION REQUIREMENTS | | | |
| 43-02-12-06 Notification of Work Performed | Allows Director to cease field operations if causing excessive damage to land | NDPC—will not oppose if add "after notice and a reasonable opportunity to address the problem" and allow the landowner to allow work to continue. DRC Supports this amendment | The proposed amendment will be modified to remove the reference to "irreparable" damage, change lease to suspend, and include language indicating the activity may continue upon the Director approving a plan to mitigate the damage. |

CONSIDERATION OF ORAL AND WRITTEN COMMENTS

The following is a written record of the Industrial Commission's consideration of all oral and written comments received regarding its proposed 2008 additions to and revisions of the North Dakota Administrative Code (NDAC) Chapters 43-02-03, 43-02-04.1 and 43-02-12. The purpose of this record is to comply with North Dakota Century Code (NDCC) § 28-32-11.

I.

INTRODUCTION

On September 4, 2007, a public hearing was held pursuant to NDCC § 28-32-11. Notice of the hearing was published between August 5, 2007 and August 13, 2007, both inclusive, in the Ashley Tribune, Golden Valley News, Billings County Pioneer, The Bismarck Tribune, Bottineau Courant, Burke County Tribune, Bowman County Pioneer, Towner County Record-Herald, Foster County Independent, Cavalier Chronicle, Griggs County Courier, The Journal, Devils Lake Journal, Dickinson Press, Carson Press, Grant County News, Dickey County Leader, Fargo Forum, Steele County Press, McLean County Independent, Walsh County Record, Grand Forks Herald, Herald-Press, Hazen Star, Adams County Record, Jamestown Sun, Dunn County Herald, LaMoure Chronicle, Lakota American, Cavalier County Republican, Emmons County Record, Ransom County Gazette, Mandan News, Traill County Tribune, McClusky Gazette, The Teller, Benson County Farmers Press, Minot Daily News, Renville County Farmer, Napoleon Homestead, The Herald, New Rockford Transcript, Turtle Mountain Star, Pierce County Tribune, Mountrail County Promoter, Steele Ozone & Kidder County Press, Mouse River Journal, Valley City Times-Record, The Daily News, Center Republican, McKenzie County Farmer, and the Williston Daily Herald. The hearing was properly noticed pursuant to said rule.

Three persons gave oral testimony regarding the proposed rules at the hearing on September 4, 2007. Note all three persons submitted their oral comments in written form at the hearing. Oral comments were received from the following:

| | |
|---------------|---|
| Ron Ness | – North Dakota Petroleum Council (NDPC) |
| Mary Mitchell | – Dakota Resource Council (DRC) |
| Sandi Tabor | – North Dakota Lignite Energy Council (NDLEC) |

In addition to the oral comments, written comments were received from the following:

| | |
|--------------|---|
| Cindy Klein | – DRC |
| John Harju | – Energy & Environmental Research Center (EERC) |
| Kenneth Luff | – Luff Exploration Co. (Luff) |
| Robert Harms | – Northern Alliance of Independent Producers (NAIP) |

The comments received and the responses to those comments are as follows:

II.**COMMENTS****GENERAL RULES AND REGULATIONS
CHAPTER 43-02-03****NDAC § 43-02-03-01. DEFINITIONS.**

The proposed amendments remove definitions to proration terms and phrases that are proposed to be removed from the rules and also defines occupied dwelling and permanently occupied dwelling, which is a new term introduced by the past legislature.

Comments: The NDPC opposes defining occupied dwelling and permanently occupied dwelling as a residence which is lived in by a person at least six months throughout a calendar year. They believe the legislature did not intend to include lake cabins and trailers in the definition and urges the Commission to adopt eight months instead of six months.

The DRC also opposes the proposed definition of occupied dwelling and permanently occupied dwelling. They suggest using the definition used by the Surface Coal Mining and Reclamation Operations which states, "any building that is currently being used on a regular or temporary basis for human habitation". They also indicate "good faith" should be defined in reference to a surface use agreement.

Action Taken: The Commission's proposed amendments will be adopted without any further modifications.

Rationale: The Commission believes the legislature intended to include homes of persons traveling to warmer climates during North Dakota's inclement winter weather and seasonal homes that have a fixed location such as lake cabins and trailers as occupied dwellings, if occupied by a person at least six months throughout a calendar year. A more objective definition, than that used by the Surface Coal Mining and Reclamation Operations and one that does not use the word "temporary", is needed. Definitions significantly different than advertised should not be considered since proper notice was not given and due process would not be achieved.

NDAC § 43-02-03-16.3. RECOVERY OF A RISK PENALTY.

The proposed amendment clarifies that a risk penalty can be obtained if a well has already spud or is producing.

Comments: DRC opposes any change except abolishing the risk penalty since they feel this section is an assault on private property rights and the section should be repealed.

Action Taken: The Commission's proposed amendments will be adopted without any further modifications.

Rationale: The Commission has the obligation to clarify the statute and no authority to abolish it. A risk penalty requested on a well that has already spud or is producing does not harm working interest owners, in fact, it may actually benefit such owners.

NDAC § 43-02-03-18.1. EXCEPTION LOCATION.

The proposed amendment eliminates the requirement to notice all affected parties by certified or registered mail.

Comments: The DRC opposes this proposed amendment. They believe the cost to use certified mail is minimal and is not a burden to industry.

Action Taken: The Commission's proposed amendments will be adopted without any further modifications.

Rationale: There is a presumption that a party receives mail sent via the US Postal Service. The Commission has observed that some parties actually refuse to accept certified mail because it requires a signature. Large spacing and drilling units can result in monetary burdens when numerous mineral owners exist.

NDAC § 43-02-03-22. DEFECTIVE CASING OR CEMENTING.

The proposed amendment authorizes the Director to require a pressure test to verify casing integrity if it is questionable.

Comments: The NDPC will not oppose if language is added to indicate reasonable evidence must be present to indicate that a threat to potable water exists.

The DRC supports this proposed amendment.

Action Taken: The Commission's proposed amendments will be adopted without any further modifications.

Rationale: There may be other reasons for a pressure test beyond a threat to potable waters, such as safety, preventing waste, and protecting correlative rights.

NDAC § 43-02-03-28. SAFETY REGULATION.

The proposed amendments allow a treater to be placed 125 feet to a producing well or oil tank if utilizing a flame arrestor on the flare stack and also requires wells to be 500 feet from an occupied dwelling.

Comments: The NDPC does not oppose the proposed amendment, but requests a 100 feet allowance be granted, which they indicated is allowed by the Bureau of Land Management (BLM) and United States Forest Service (USFS).

The DRC supports this proposed amendment for a well to be 500 feet from an occupied dwelling.

Action Taken: The Commission's proposed amendments will be adopted without any further modifications.

Rationale: Documentation at Commission hearings indicate the BLM and USFS allow a treater to be located 125 feet from a producing well or oil tank, not 100 feet.

NDAC § 43-02-03-30. NOTIFICATION OF FIRES, LEAKS, SPILLS, OR BLOWOUTS.

The proposed amendment requires a written report to be submitted within 10 days following cleanup of an incident. Previously, the written report was to be submitted within 10 days after notifying the Commission of the incident.

Comments: The DRC opposes this proposed amendment since they believe more stringent rules should be proposed. They suggest schematics of systems be required and all fluid be metered at the pipeline entry point and at the injection well.

Action Taken: The Commission's proposed amendments will be adopted without any further modifications.

Rationale: The DRC suggestions go well beyond the scope of the proposed amendment and the purpose of the rule. Their suggestions would modify Underground Injection Control regulations found under NDAC § 43-02-05, which are not proposed to be amended.

NDAC § 43-02-03-31. WELL LOG, COMPLETION, AND WORKOVER REPORTS.

The proposed amendments clarify that open hole logs are required, requires the quality of cement be determined, and allows the spacing and drilling unit description to be released to the public on confidential wells.

Comments: Luff opposes the proposed amendment concerning the log waiver and quality of cement. They believe the log waiver should be automatically granted if the well design or downhole problems warrant it. They also indicate the "quality" of cement can not be detected, but do not propose any replacement language.

Action Taken: The Commission's proposed amendment will be modified to require the "quality of bonding" of cement be determined.

Rationale: The Commission routinely grants log waivers prior to drilling certain wells. Verbal requests are also obtainable. The Commission agrees the "quality" of cement can not be determined and the proposed rule should be changed to require the "quality of bonding" be determined.

NDAC § 43-02-03-55. ABANDONMENT OF WELLS – SUSPENSION OF DRILLING.

The proposed amendment charges a \$100 fee to temporarily abandon (TA) a well or to extend such status.

Comments: The NDPC opposes this proposed amendment. They view this as an additional tax and cite recent legislation in House Bill 1060 that removed the Abandoned Oil and Gas Well Plugging and Site Reclamation Fund cap and House Bill 1511 that allows single well bonding on abandoned wells.

The DRC supports this amendment, but believes it should be amended to require a well that is in TA status for a period of 5 years to be placed on a single well bond.

Action Taken: The Commission's proposed amendment will be modified to require the \$100 fee to be submitted only upon requesting to extend the TA status of a well.

Rationale: The Oil and Gas Division (OGD) requested the 60th Legislative Session remove the cap on the Plugging and Abandonment Fund because we were expecting a large donation to the fund and also because Federal legislation is being considered that may provide additional funds. Costs of plugging wells and reclaiming sites have doubled over the past few years and an additional funding source will help offset the higher costs to perform work. House Bill 1511 addresses abandoned wells, while the proposed amendment addresses TA wells. The NDPC indicates TA wells "are very simple for the Division staff to evaluate and require virtually no staff resources". This conclusion is not correct. An operator request for a TA in many cases is the result of an inspector's letter to the operator indicating that a certain well is in violation of our rules and suggesting a TA may be an option. A TA can only be granted upon the operator isolating the down hole perforations in the well and subsequently pressure testing the casing to assure a competent well bore. The OGD inspectors witness many of the well bore isolations and all of the pressure tests. Upon receiving a Sundry Notice requesting a TA or extension, the OGD staff must review the well file, verify an acceptable pressure test has been performed, and process the Sundry Notice. Pursuant to NDCC § 38-08-04(j), a higher fee could be justified, although the Commission will not pursue a higher fee at this time.

The DRC suggestion goes well beyond the scope of the proposed amendment and the purpose of the rule. Their suggestions would modify bonding regulations found under NDAC § 43-02-03-15, which are not proposed to be amended.

NDAC § 43-02-03-66. APPLICATION FOR ALLOWABLE ON NEW OIL WELLS.

The proposed amendment allows a discovery well to produce unrestricted, during a proration period, until the proper spacing is set for the pool.

Comments: The NDPC opposes this proposed amendment since it would allow the discovery well to produce for 18 months unrestricted, which could create correlative rights issues and encourage operators to seek new pool discoveries for every well drilled.

Action Taken: The Commission's proposed amendments will be adopted without any further modifications.

Rationale: Pursuant to NDAC § 43-02-03-18, the proper spacing could be heard prior to 18 months. Restricting the production of the discovery well would prevent the Commission from properly evaluating the well for consideration of the proper spacing for the pool and discourage exploration drilling.

GEOLOGIC STORAGE OF CARBON DIOXIDE
CHAPTER 43-02-04.1
(create new chapter)

NDAC Chapter 43-02-04.1

The new chapter outlines the Commission's proposed rules on the geologic storage of carbon dioxide.

Comments: The Commission's legal counsel indicates the Commission does not currently have the authority to regulate the storage of carbon dioxide.

The DRC opposes carbon storage rules unless long term net reductions in carbon dioxide emissions can be demonstrated.

The NDLEC believes the rules need additional modification after further study.

Action Taken: The proposed chapter will be withdrawn.

Rationale: The Commission does not currently have the authority to regulate the storage of carbon dioxide, therefore, the Commission can not promulgate rules.

GEOPHYSICAL EXPLORATION REQUIREMENTS
CHAPTER 43-02-12

NDAC § 43-02-12-06. NOTIFICATION OF WORK PERFORMED.

The proposed amendment allows the Director to cease geophysical exploration field operations if such actions cause excessive or irreparable damage to the surface of the land.

Comments: The NDPC will not oppose the proposed amendments if language is added to give the contractor notice and a reasonable opportunity to address the problem. They also believe the landowner should have the authority to let the action continue without the Director's approval.

The DRC supports this proposed amendment.

Action Taken: The Commission's proposed amendment will be modified to remove the reference to "irreparable" damage, change "cease" to "suspend", and include language indicating the activity may continue upon the Director approving a plan to mitigate the damage.

Rationale: The Director intends to make an informed decision if it is necessary to suspend such operations. Decisive action may have to be taken and requiring notice and additional time for the contractor to respond may not be practical. The landowner should not have the authority to let the action continue, since such action may be adverse to other parties.

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) at 9am on September 4th, 2007 in the Conference Room of the Oil & Gas Division Building, 1016 E. Calgary Avenue, Bismarck, North Dakota. The proposals are summarized below:

The purpose of the proposed amendments to NDAC § 43-02-03-01 is to remove definitions that are proposed to be removed from the rules and also define a new term introduced by the past legislature. The proposed amendments remove definitions to proration terms and phrases and defines occupied and permanently occupied dwelling. The proposed amendment will not have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-03-16.3 is to eliminate ambiguity in the rule. The proposed amendment clarifies the risk penalty can be obtained if a well has already spud or is completed. The proposed amendment will provide an economic benefit to the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-03-18.1 is to reduce the financial burden of notifying all affected parties of an exception location. The proposed amendment eliminates the requirement of notifying affected parties by certified or registered mail, but still requires notice to such affected parties. The proposed amendment will provide an economic benefit to the regulated community.

The purpose of the proposed amendments to NDAC § 43-02-03-19 is to eliminate ambiguity in the rule and to require waiver from surface owners at the time the well site is reclaimed. The proposed amendments allow the Director to require more stringent pit construction and require a waiver to leave road after the well is plugged, not upon completing the well. 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 § 43-02-03-22 is to eliminate ambiguity in the rule. The proposed amendment clarifies the Director can require a pressure test to verify casing integrity if it's questionable. 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 flexibility in locating equipment on production sites and to comply with recent legislation passed. The proposed amendments allow treaters to be located as close as 125 feet to a well if a flame arrestor is utilized on the flare stack and requires wells to be located at least 500 feet from occupied dwellings pursuant to recently passed legislation in House Bill 1229. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000 and the treater allowance will actually provide an economic benefit to the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-03-30 is to require written reports when details of the cleanup are available. The proposed amendment requires the written report to follow-up verbal notification within 10 days after cleanup. 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 § 43-02-03-31 is to eliminate ambiguity in the rule and allow more information to the legislature and general public on confidential wells. The proposed amendment clarifies that open-hole logs are required and provides that the spacing or drilling unit is not subject to the six-month confidentiality period. 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 § 43-02-03-55 is to provide industry an incentive to plug wells they do not plan to utilize. The proposed amendment imposes a \$100 fee to temporarily abandon a well or renew such status. 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 § 43-02-03-63 is to outline circumstances that would warrant state-wide oil proration. The proposed amendment allows an oil proration hearing if total production significantly exceeds demand and undue discrimination is occurring. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000 and will actually benefit the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-03-64 is to update rules that will provide necessary curtailment of production, if oil proration is deemed necessary. The proposed amendment removes underproduction, fractional units and designates the spacing unit as the proration unit. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000 and will actually benefit the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-03-65 is to update rules that will provide necessary curtailment of production, if oil proration is deemed necessary. The proposed amendment removes marginal units and back allowables. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000 and will actually benefit the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-03-66 is to update rules that will provide necessary curtailment of production, if oil proration is deemed necessary. The proposed amendment allows discovery wells to produce at a maximum efficient rate for 18 months, instead of the first four wells being allowed to produce at a rate of up to 200 barrels of oil per day for 18 months. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000 and will actually benefit the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-03-67 is to update rules that will provide necessary curtailment of production, if oil proration is deemed necessary. The proposed amendment eliminates proportional factors set by the depth of a well. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000 and will actually benefit the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-03-68 is to update rules that will provide necessary curtailment of production, if oil proration is deemed necessary. The proposed amendment eliminates fractional units, marginal units and top allowables. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000 and will actually benefit the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-03-69 is to update rules that will provide necessary curtailment of production, if gas proration is deemed necessary. The proposed amendment eliminates fractional units. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000 and will actually benefit the regulated community.

The purpose of the adoption of NDAC Chapter 43-02-04.1 is to provide for rules and regulations pertaining to the geologic storage of carbon dioxide. The proposed rules provide for a declaration of policy, definitions, general requirements, protection for carbon dioxide escape, eminent domain, cooperative agreements with other governmental agencies, site access, a storage project permit, amendments to project permits, subsurface rights of the operator, well permit applications, permit expiration, well operational standards, amendments to well permits, safety plans, leak detection and reporting, project requirements, and the project closure and well plugging. The proposed adoption is expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-12-06 is to eliminate ambiguity in the rule. The proposed amendment clarifies the Director has authority to cease field geophysical exploration operations if such actions are causing excessive or irreparable damage to the surface of the land. The proposed adoption is not expected to 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, September 14th, 2007, 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) 328-8038, or write the Oil & Gas Division at the above address, no later than August 21st, 2007.

Dated this 2nd day of August, 2007.

Bruce E. Hicks
Assistant Director

**REGULATORY ANALYSIS PURSUANT TO
NORTH DAKOTA CENTURY CODE 28-32-08
FOR ADOPTION OF CHAPTER 43-02-04.1
GEOLOGIC STORAGE OF CARBON DIOXIDE**

I. CLASS OF PERSONS AFFECTED BY THE AMENDMENT

The classes of persons who probably will be affected by the adoption of the proposed rules are companies who plan to operate carbon dioxide storage projects. There are not any current carbon dioxide storage projects in the State, but the adoption of the proposed rules will affect operators that plan to construct and operate projects to store carbon dioxide, most likely, oil and gas or coal fired electrical generator operators. The proposed amendment will benefit the State and surety companies that issue well bonds.

II. PROBABLE IMPACT

The probable impact of the adoption of the proposed rules will be that operators will have to obtain a bond prior to initiating a project and apply to the Commission for approval of each project and every individual well they propose to utilize in the project. It is anticipated that the cost of the proposed rules to the regulated community may exceed \$50,000.

III. COST TO AGENCY AND EFFECT ON STATE REVENUES

There will be an additional cost to the agency to implement and enforce the adoption of the proposed rules. The initial cost to implement the proposed rules will be negligible, although the commencement of one or more carbon dioxide storage projects will be burdensome to our present staff since other regulated activities are currently at historic high levels.

IV. ALTERNATIVE METHODS

No alternate methods were seriously considered since the Interstate Oil and Gas Compact Commission, of which the North Dakota Commission is a very active participant, recommends each State adopt the proposed rules.

**SMALL ENTITY REGULATORY ANALYSIS
PURSUANT TO NORTH DAKOTA CENTURY CODE 28-32-08.1**

None of the proposed amendments or rules created under North Dakota Administrative Code Chapters 43-02-03, 43-02-04.1, or 43-02-12 were mandated by Federal law.

SECTION 43-02-03-01 DEFINITIONS.

The amendments remove definitions that are proposed to be removed from the rules and also define a new term introduced by the past legislature. The amendments will not have an adverse impact on small entities.

SECTION 43-02-03-16.3 RECOVERY OF A RISK PENALTY.

This amendment clarifies the risk penalty can be obtained if a well has already spud or is completed and will not have an adverse impact on small entities.

SECTION 43-02-03-18.1 EXCEPTION LOCATION.

This amendment reduces the financial burden of notifying all affected parties of an exception location by eliminating the requirement of notifying by certified or registered mail and will provide an economic benefit to small entities.

SECTION 43-02-03-19 RESERVE PIT FOR DRILLING MUD AND DRILL CUTTINGS - RECLAMATION OF SURFACE.

The amendments eliminate ambiguity in the rule and requires waivers from surface owners to be filed at the time the well site is reclaimed and will not have an adverse impact on small entities.

SECTION 43-02-03-22 DEFECTIVE CASING OR CEMENTING.

This amendment eliminates ambiguity in the rule and allows the Director to require a pressure test to verify casing integrity and will not have an adverse impact on small entities.

SECTION 43-02-03-28 SAFETY REGULATION.

One amendment provides additional flexibility in locating equipment on production sites and will provide an economic benefit to small entities. Another amendment requires wells to be located at least 500 feet from occupied dwellings and will not have an adverse impact on small entities.

SECTION 43-02-03-30 NOTIFICATION OF FIRES, LEAKS, SPILLS, OR BLOWOUTS.

This amendment changes to time in which the required written report is to be filed and will not have an adverse impact on small entities.

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SECTION 43-02-03-31 WELL LOG, COMPLETION, AND WORKOVER REPORTS.

The amendments clarify that open-hole logs are required and provides that the spacing and drilling unit is not subject to the six-month confidentiality period and will not have an adverse impact on small entities.

SECTION 43-02-03-55 ABANDONMENT OF WELLS-SUSPENSION OF DRILLING.

This amendment imposes a \$100 fee to temporarily abandon a well or renew such status and will not have an adverse impact on small entities.

SECTION 43-02-03-63 REGULATION OF POOLS.

This amendment outlines circumstances that would warrant state-wide oil proration and will not have an adverse impact on small entities.

SECTION 43-02-03-64 RATE OF PRODUCING WELLS.

The amendments remove underproduction, fractional units and designates the spacing unit as the proration unit and will not have an adverse impact on small entities.

SECTION 43-02-03-65 AUTHORIZATION FOR PRODUCTION, PURCHASE, AND TRANSPORTATION.

The amendments removes marginal units and back allowables and will not have an adverse impact on small entities.

SECTION 43-02-03-66 APPLICATION FOR ALLOWABLE ON NEW OIL WELLS.

The amendments allows discovery wells to produce at a maximum efficient rate for 18 months, instead of the first four wells being allowed to produce at a rate of up to 200 barrels of oil per day for 18 months and will not have an adverse impact on small entities.

SECTION 43-02-03-67 OIL PRORATION.

This amendment eliminates the current proportional factors set by the depth of a well and will not have an adverse impact on small entities.

SECTION 43-02-03-68 GAS-OIL RATIO LIMITATION.

This amendment eliminates fractional units, marginal units and top allowables and will not have an adverse impact on small entities.

SECTION 43-02-03-69 ALLOCATION OF GAS PRODUCTION.

This amendment eliminates fractional units for gas wells and will not have an adverse impact on small entities.

CHAPTER 43-02-04.1 GEOLOGIC STORAGE OF CARBON DIOXIDE.

The adoption of the proposed rules provide for a declaration of policy, definitions, general requirements, protection for carbon dioxide escape, eminent domain, cooperative agreements with other governmental agencies, site access, a storage project permit, amendments to project permits, subsurface rights of the operator, well permit applications,

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permit expiration, well operational standards, amendments to well permits, safety plans, leak detection and reporting, project requirements, and the project closure and well plugging. The proposed adoption is expected to have an impact on the regulated community in excess of \$50,000.

It is unlikely that a small entity would undertake the geologic storage of carbon dioxide, but nevertheless, the following methods were considered for reducing impact on small entities:

1. Establishment of less stringent compliance or reporting requirements for small entities.

The CO₂ volume injected, withdrawn, injection pressure, composition and temperature are required to be reported quarterly. Also leaks and indications of the lack of containment must immediately be reported. Less stringent compliance to small entities may result in compromising the general public's health, safety and welfare.

2. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities.

Quarterly reports are required to be filed. Reporting less frequently would harm the Commission's ability to monitor reports to detect leaks within the injection project. Less stringent schedules or deadlines for small entities may result in compromising the general public's health, safety and welfare.

3. Consolidation or simplification of compliance or reporting requirements for small entities.

Quarterly reports are required to be filed reporting the volume injected, withdrawn, injection pressure, composition and temperature of each well. The consolidation of wells would harm the Commission's ability to monitor reports to detect leaks within the injection project. Such consolidation for small entities may result in compromising the general public's health, safety and welfare.

4. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.

The design and operational standards established by the proposed rules are for the protection of potable waters and the confinement of injections into the permitted reservoir. Establishing different performance standards for small entities to replace design or operational standards required in the proposed rule may result in compromising the general public's health, safety and welfare.

5. Exemption of small entities from all or any part of the requirements contained in the proposed rules.

Small entities should not be exempt from this amendment since exempting small entities from all or any part of the requirements contained in the proposed rules would make it extremely difficult to determine if environmental damage was occurring from such operations and may result in compromising the general public's health, safety and welfare.

The adoption of the proposed rules will have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was prepared.

SECTION 43-02-12-06 NOTIFICATION OF WORK PERFORMED.

This clarifies the Director has authority to cease field geophysical exploration operations if such actions are causing excessive or irreparable damage to the surface of the land and will not have an adverse impact on small entities.

**SMALL ENTITY IMPACT STATEMENT
PURSUANT TO NORTH DAKOTA CENTURY CODE 28-32-08.1**

CHAPTER 43-02-04.1 GEOLOGIC STORAGE OF CARBON DIOXIDE.

Find the following information as required by NDCC Section 28-32-08.1:

1. The small entities subject to the proposed rule.

The classes of persons who probably will be affected by the adoption of the proposed rules are companies who plan to operate carbon dioxide storage projects. There are not any current carbon dioxide storage projects in the State, but the adoption of the proposed rules will affect operators that plan to construct and operate projects to store carbon dioxide, most likely, oil and gas or coal fired electrical generator operators. The proposed amendment will benefit the State and surety companies that issue well bonds.

2. The administrative and other costs required for compliance with the proposed rule.

Administrative costs associated with the adoption of this rule will be minimal. Costs required for compliance will include obtaining a bond to operate injection wells. It is anticipated that the cost of the proposed rule to the regulated community may exceed \$50,000, although no carbon dioxide storage projects currently exist in the State. The carbon dioxide storage projects must be regulated and since the process is very similar to enhanced recovery projects, which the Commission already regulates, the Commission can provide the most cost-effective regulation.

3. The probable cost and benefit to private persons and consumers who are affected by the proposed rule.

There is no cost to private persons and consumers affected by the amendment. There is an environmental value to storing carbon dioxide in underground reservoirs since this will reduce the emissions into the atmosphere which will provide a benefit to all private persons and consumers.

4. The probable effect of the proposed rule on state revenues.

There will be an additional cost to the agency to implement and enforce the adoption of the proposed rules. The initial cost to implement the proposed rules will be negligible, although the commencement of one or more carbon dioxide storage projects will be burdensome to our present staff since other regulated activities are currently at historic high levels.

5. Any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

The only less intrusive or less costly alternative would be to withdraw the adoption of the proposed rules and not regulate the geologic storage of carbon dioxide, which may result in compromising the general public's health, safety and welfare. No alternate methods were seriously considered since the Interstate Oil and Gas Compact Commission, of which the North Dakota Commission is a very active participant, recommends each State adopt the proposed rules.

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