

Oil and Gas Division

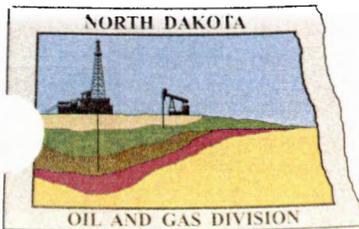
Lynn D. Helms - Director Bruce E. Hicks - Assistant Director

Department of Mineral Resources

Lynn D. Helms - Director

North Dakota Industrial Commission

www.oilgas.nd.gov



ADMINISTRATIVE RULES COMMITTEE HEARING

TESTIMONY OF BRUCE E. HICKS - March 14, 2012

Chairman Koppelman 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 rule changes are not related to any statute changes made by the Legislative Assembly.
2. **Federal changes:** The rule changes are not related to any federal statute or regulation.
3. **Procedure:** The rulemaking procedure consisted of the following:
 - Sep 20, 2011---Received approval from Industrial Commission to adopt rules
 - Sep 23, 2011---Filed rules with Legislative Council
 - Sep 29, 2011---Reg analysis written for rules impacting industry > \$50,000
 - Sep 30-Oct 6, 2011---Public notices were published in each county
 - Note: The proposed rules do not affect any sponsored bill from past legislation
 - Dec 30, 2011---Wrote small entity regulatory analysis & small entity impact statement
 - Nov 1, 2011---Hearing held on rules (Case No. 15869)
 - Dec 16, 2011---Wrote responses to all comments received
 - Jan 23, 2011---Received approval from Industrial Commission to adopt rules
 - Jan 31, 2012---Received Attorney General's opinion that rules are legal
 - Jan 31, 2012---Filed rules with Legislative Council
 - Feb 10, 2012---Notified all parties of Adm Rules Comm hearing & posted on web
 - Mar 14, 2012---Administrative Rules Committee hearing
 - Apr 1, 2012---Rules become effective
 - 194 days---Agency approval to effective date of rules
4. **Oral and written comments:** Comments were received from 8 parties at the hearing and written comments were received from 19 parties during the 10-day comment period. The consideration of comments is attached (see attached pages 5-29) explaining our rationale and action for either modifying the proposed rules or leaving them as proposed.

The following rules received comments:

<u>NDAC Sec.</u>	<u>Description</u>	<u>Page</u>	<u>Change Made</u>
43-02-03-05	Enforcement of Rules	104	Leave as proposed
43-02-03-15	Bonds	104	Leave as proposed
43-02-03-16	Permit to Drill	107	Modified
43-02-03-16.3	Recovery of a Risk Penalty	108	Leave as proposed
43-02-03-18	Drilling Units	111	Leave as proposed
43-02-03-19	Site Construction	113	Modified
43-02-03-19.1	Fencing and Netting of Reserve Pits	116	Leave as proposed
43-02-03-19.2	Disposal of Waste Material	116	Modified
43-02-03-19.3	Earthen Pits and Open Receptacles	116	Modified
43-02-03-19.4	Drilling Pits	117	Leave as proposed
43-02-03-19.5	Reserve Pits	118	Modified
43-02-03-21	Casing, Tubing, and Cementing	119	Modified
43-02-03-27.1	Hydraulic Fracture Stimulation	121	Modified
43-02-03-28	Safety Regulation	124	Leave as proposed
43-02-03-30.1	Leak and Spill Cleanup	124	Modified
43-02-03-31	Well Log, Completion, and Workover Reports	125	Leave as proposed
43-02-03-34.1	Reclamation of Surface	126	Leave as proposed
43-02-03-49	Oil Production Equipment, Dikes, & Seals	127	Leave as proposed
43-02-03-53	Saltwater Handling Facilities	129	Leave as proposed
43-02-03-54	Investigative Powers	130	Leave as proposed
43-02-03-55	Temporary Abandonment of Wells	130	Modified
43-02-03-88.1	Special Procedures	131	Leave as proposed
43-02-03-90.2	Official Record	132	Leave as proposed

5. **Cost:** The approximate cost of giving public notice and holding a hearing on the rules was \$1,319. This does not include staff time for developing and adopting the rules.
6. **Justification of changes:** The rationale in the Consideration of Comments (see attached pages 5-29) details the justification. The full notice also explains the subject matter of the rules and the reasons for adopting the rules (see attached pages 30-33). Find below additional justification on some key rule changes:

<u>NDAC Sec.</u>	<u>Description and Further Justification</u>
43-02-03-15	Bonds: New bond limits are 2 ½ times that of most states—ND could be compromising the attractive business climate we currently have
43-02-03-19.3	Earthen Pits and Open Receptacles: OGD oversee frac water pits currently not permitted through the Water Comm
43-02-03-19.4	Drilling Pits: Will reduce surface footprint; New Mexico prohibited pits & decimated industry—amending in progress; note hauling cuttings to special landfill adds 40-50 semi-loads/well or 100,000 loads/year
43-02-03-19.5	Reserve Pits: Will reduce reserve pits by 95%; FW cuttings used as fertilizer in Canada; all cuttings possible road base potential in ND
43-02-03-27.1	Hydraulic Fracture Stimulation: Requirements are becoming a National Standard—no failures since voluntary adoption by industry in April 2011
43-02-03-28	Safety Regulation: Many diesel generators on wells—requiring automatic shut-down equip will reduce the number of spills

- 43-02-03-30.1 Leak & Spill Cleanup: Implements more stringent cleanup requirements; \$12,500/day if no immediate cleanup; note Charbonneau Creek pics demonstrate that even major spills can be remediated
- 43-02-03-34.1 Reclamation of Surface: This is an excellent reclamation rule—purge flowlines + remove if < 3’ deep, remove gravel, remediate stabilized soil, distribute stockpiled topsoil; notice to landowner required; Construction of a well site and reserve pit that disturbs 5-10 acres to a maximum depth of 20’ is vastly different than a coal mining operation that disturbs the entire ground water system over 1000s of acres to a depth of 150’
- 43-02-03-49 Oil Production Equipment, Dikes, and Seals: Keeps site junk-free
- 43-02-03-53 Saltwater Handling Facilities: Meters not accurate enough to detect pinhole leaks, in sensitive areas we require testing buried injection lines annually + monitoring pressure
- 43-02-03-54 Investigative Powers: Amendment still requires a response to reports, but allows discretion on use of staff for investigations; previously required immediate investigation on all written complaints
- 43-02-03-55 Abandonment of Wells: Unused water source wells must be plugged/TA’d
- 43-02-03-88.1 Administrative Hearings: Numerous emails/faxes are received during hearings or minutes before—impossible to provide due process since parties can not address the comments at the hearing

7. **Regulatory analysis:** A regulatory analysis was not requested by the Governor or an agency. An analysis was done on the following rules that were expected to have an impact on the regulated community in excess of \$50,000 (see attached pages 34-42):

<u>NDAC Sec.</u>	<u>Description</u>
43-02-03-15	Bonds
43-02-03-16	Permit to Drill
43-02-03-19.5	Reserve Pits
43-02-03-21	Casing, Tubing, and Cementing Requirements
43-02-03-27.1	Hydraulic Fracture Stimulation
43-02-03-28	Safety Regulation
43-02-03-34.1	Reclamation of Surface
43-02-03-49	Oil Production Equipment, Dikes, and Seals
43-02-03-53	Saltwater Handling Facilities

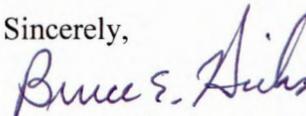
8. **Small entity regulatory analysis and impact statement:** A small entity regulatory analysis was done on each proposed rule and an impact statement was done on the following rule that will have an adverse impact on small entities (see attached pages 43-59):

<u>NDAC Sec.</u>	<u>Description</u>
43-02-03-15	Bonds
43-02-03-16	Permits
43-02-03-19.5	Reserve Pits
43-02-03-21	Casing, Tubing, and Cementing Requirements
43-02-03-27.1	Hydraulic Fracture Stimulation
43-02-03-28	Safety Regulation
43-02-03-34.1	Reclamation of Surface
43-02-03-49	Oil Production Equipment, Dikes, and Seals
43-02-03-53	Saltwater Handling Facilities

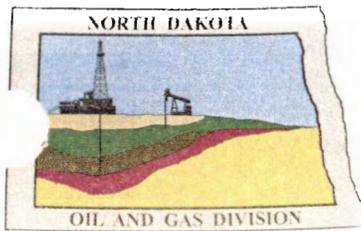
9. **Constitutional takings assessment:** A constitutional takings assessment was not required.
10. **Fiscal note:** The OGD does not anticipate any negative fiscal effect on State revenues and expenditures. Some rule changes will require additional workload for OGD staff (bonds, hydraulic fracture stimulation, and casing rules), but some rule changes will actually cut workload (reserve pit).
11. **Emergency rules:** None of the rules changes were emergency rules.
12. **Administrative Rules Committee Objection:** Pursuant to NDCC Section 28-32-18, the ARC can object to any rule if the committee finds the following:
 - Absence of statutory authority
 - Favorable Attorney General opinion;
 - Failure to comply with legislative intent or to substantially comply with rulemaking procedure
 - Rules not pursuant to legislation
 - Favorable Attorney General opinion;
 - Conflict with state law
 - Favorable Attorney General opinion;
 - Arbitrariness and capriciousness
 - No rules were determined by impulse or one individual's opinion;
 - Failure to make a written record of its consideration of comments
 - Full written record was completed;
 - An emergency relating to public health, safety, or welfare
 - The justification of changes clearly indicates the public's health, safety, and welfare were all taken into consideration during this monumental rulemaking.

The 2012 Final Rules being adopted by the Commission are truly a historical event. Industry has accepted dramatic changes in bonds, reserve pits, and hydraulic fracturing regulation, which will add a very significant cost to doing business in North Dakota. These rule changes are the most significant changes we have made in the 31 years that I've been with the Commission. We do not want to regulate the oil and gas industry out of North Dakota, but rather we must provide an attractive business climate in an environmentally sound manner. We believe the 2012 Final Rules will ensure the oil industry remains good stewards to our land. Thank you for consideration of the Oil and Gas Division's rule changes.

Sincerely,



Bruce E. Hicks
Assistant Director



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

2012 PROPOSED RULES

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 2012 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 November 1, 2011, a public hearing under Case No. 15869 was held pursuant to NDCC § 28-32-11. Notice of the hearing was published between September 30, 2011 and October 6, 2011, 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 Sargent County 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.

Eight persons gave oral testimony regarding the proposed rules at the hearing on November 1, 2011. Note Ron Ness and John Morrison also submitted oral comments in written form at the hearing. Oral comments were received from the following:

- | | |
|----------------|--|
| Ron Ness | - North Dakota Petroleum Council (NDPC) |
| Doug McCrady | - XTO Energy Inc. (XTO) |
| Mike Ashton | - XTO Energy Inc. (XTO) |
| John Morrison | - Counsel for Luff Exploration Company (Luff) |
| Myron Hanson | - Northwest Landowners Association (NWLA) |
| Galen Peterson | - Northwest Landowners Association (NWLA) |
| Janelle Combs | - Counsel for Dakota-3 E&P Company, LLC (Dakota-3) |
| Ladd Erickson | - McLean County State's Attorney (McLean State's Atty) |

In addition to the oral comments, the following nineteen persons submitted written comments:

Jan Swenson	– Badlands Conservation Alliance (BCA)
Randy Maxey	– Chesapeake Operating, Inc. (Chesapeake)
Mark Mathis	– Confluence Energy (Confluence)
Rick Muncrief	– Continental Resources, Inc. (Continental)
Ann Lane	– Dakota-3
Mark Trechock	– Dakota Resource Council (DRC)
Whitney Honstein	– EOG Resources, Inc. (EOG)
Laura Koval	– Fidelity Exploration & Production Company (Fidelity)
Ladd Erickson	– McLean State’s Atty
Rodney Conway	– Ward-Williston Company (WWC)
James Cron	– WWC
Shelley Ventsch	– North Dakota Citizen
Leo Walker	– North Dakota Citizen
Sandy Clark	– North Dakota Farm Bureau (Farm Bureau)
Kari Cutting	– NDPC
Myron Hanson	– NWLA
Galen Peterson	– NWLA
Elizabeth Bush-Ivie	– OXY USA Inc. (OXY)
Ron Shupe	– North Dakota Chapter of The Wildlife Society (Chapter)

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

II.

COMMENTS

GENERAL RULES AND REGULATIONS CHAPTER 43-02-03

NDAC § 43-02-03-05. ENFORCEMENT OF LAWS, RULES, AND REGULATIONS DEALING WITH CONSERVATION OF OIL AND GAS.

The proposed amendment deletes language that more appropriately should be in our safety regulation under NDAC § 43-02-03-28.

Comments: The Chapter believes rule should reference the section of the Administrative Code that contains the procedures for administering fines and penalties.

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

Rationale: The purpose of the proposed amendment is to delete language that more appropriately belongs under the safety regulation. The amendment suggested by the Chapter is

beyond the scope of the published rule change, was not proposed by the Commission and industry and the general public had no opportunity to address it, therefore it should not be considered at this time. The Commission notes that civil and criminal penalties are addressed in the statutes under North Dakota Century Code Section 38-08-16.

NDAC § 43-02-03-15. BOND AND TRANSFER OF WELLS

The proposed amendments increase the single well bond requirement from \$20,000 to \$50,000 and eliminate the ability to obtain a \$50,000 blanket bond.

Comments: The NDPC supports the proposed amendments, although they do not support any additional increases beyond what the Commission is proposing.

The BCA supports the proposed amendments.

The DRC supports the proposed amendments, but believes the single bond rate should be increased from \$20,000 to \$100,000 and blanket bonds should be increased from \$100,000 to \$250,000. They also believe separate bonding should be required for oil and saltwater pipelines.

The NWLA supports the proposed amendments, but believes the \$100,000 blanket bond is insufficient to cover the cost of the reclamation of a multiple well site. They also believe pipeline companies should have similar bonding requirements for the remediation of abandoned pipelines.

WWC supports the proposed amendments, although they do suggest bond amounts determined by the depth of the well should be considered since shallow wells have lower costs of burden associated with them.

The Chapter believes the proposed amendments to increase bonding are insufficient to cover the cost of plugging and reclaiming a well. They believe the number of problem wells (a dry hole that is not properly plugged, a plugged well not properly reclaimed, and an abandoned well) allowed on a blanket bond should be reduced from 6 to only 3. They also recommend prohibiting an operator from obtaining an additional bond if the maximum allowed number of problem wells have been reached on the current bond. Lastly, they recommend prohibiting to accept a bond or additional wells on a bond, if the operator or surety company has failed in the past to comply with the Commission's statutes, rules, or orders; if a civil or administrative action brought by the Commission is pending, or for other good cause.

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

Rationale: Plugging and reclamation costs have risen significantly over the past several years and the Commission has experienced an increase in the default rate of operators holding single well and ten-well blanket bonds. The Commission's goal is to require a substantial incentive for operators to comply with rules adopted, but yet foster, encourage, and promote the development, production, and utilization of natural resources of oil and gas in the State. The Commission believes the proposed amendments are warranted, although to preserve the attractive business environment that currently exists in North Dakota, no additional bonding increases or requirements should be implemented at this time. The amendment suggestions by the DRC, NWLA, WWC, and the Chapter were not proposed by the Commission and industry and the

general public had no opportunity to address them, therefore they should not be considered at this time.

NDAC § 43-02-03-16. APPLICATION FOR PERMIT TO DRILL AND RECOMPLETE.

The proposed amendments would require the weight and grade of all casing currently installed in any well to be included in the application for permit to recomplete. The risk of casing embrittlement due to the presence of hydrogen sulfide gas would then be considered when reviewing the application for recompletion. They would also require the plat, accompanying the permit to drill, to depict the well with reference to true north.

Comments: The NDPC believes the NDIC should provide guidelines on hydrogen sulfide levels for embrittlement concern and measurement standards. They note embrittlement generally occurs when the partial pressure of H₂S goes above 1% in the gas phase and since the Bakken worst case scenario contains only 0.25% H₂S, embrittlement should not be an issue.

The BCA supports the proposed amendments.

Ms. Shelley Ventsch doesn't feel there should ever be a need for the Director to waive the proposed amendment to require the operator to submit the weight and grade of all casing currently installed in the well.

WWC believes the NDIC should provide guidelines on hydrogen sulfide levels for embrittlement concern and measurement standards.

The Chapter believes the operator should be required to submit information on environmental parameters such as proximity to streams, drainages, floodplains, and surface water since the Commission is proposing additional regulations that restrict construction in those locations. They also believe drilling permit applications should be reviewed by other agencies with expertise in environmental review and well siting guidelines be developed to aid the review process since such a proactive effort would help keep operators in compliance with environmental regulations and reduce the potential for future spills to reach surface and subsurface waters.

Action Taken: The Commission's proposed amendment will be modified to clarify how the Director will consider casing embrittlement caused by the presence of hydrogen sulfide.

Rationale: The Commission requested the NDPC to provide American Petroleum Institute specs and/or standards on casing embrittlement caused by the presence of hydrogen sulfide, although they failed to provide the same. The amendments suggested by the Chapter are beyond the scope of the published rule change, were not proposed by the Commission and industry, and the general public had no opportunity to address them, therefore they should not be considered at this time.

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

The proposed amendments clarify the invitation to participate in drilling a well must include only the approximate location of the well and also must include a description of the drilling or spacing.

Comments: The NDPC supports the proposed amendments.

Chesapeake supports the proposed amendments.

The DRC opposes the 150% risk penalty, although they understand since it is allowed in a statute, changing it would require legislative action. They believe the rule should address what constitutes a good-faith attempt to have the unleased owner execute a lease and should at least require a written offer, delivery in person or by certified mail, prior to the establishment of a spacing unit.

EOG supports the proposed amendments.

OXY supports the proposed amendments.

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

Rationale: The amendments suggested by the DRC were not proposed by the Commission and industry and the general public had no opportunity to address them, therefore they should not be considered at this time. The Commission notes that although DRC refers to a 150% penalty that can be assessed against an unleased mineral interest owner, it is actually only a 50% penalty.

NDAC § 43-02-03-18. DRILLING UNITS – WELL LOCATIONS.

The proposed amendment continues the temporary spacing order of the Commission for a period of not more than three years instead of 18 months, at which time the proper spacing for the pool would be heard.

Comments: The NDPC supports the proposed amendments.

Chesapeake supports the proposed amendments.

EOG supports the proposed amendments.

OXY supports the proposed amendments.

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

Rationale: Many hearings to amend spacing are held during the first 3 years after the discovery of a Bakken Pool. Allowing development of the pool under the temporary spacing rules for 3 years will allow a more thorough review at the proper spacing hearing.

NDAC § 43-02-03-19. SITE CONSTRUCTION.

The proposed amendments remove all language that does not pertain to site construction and requires approval from the Director prior to using soil stabilization additives and materials.

Comments: The NDPC opposes the requirement from the Director to have approval for soil additives or materials prior to application and believes approval should be granted on a general rather than location specific basis and the Commission should maintain an approved list of additives and materials, although at the hearing they did indicate that there may be some additional remediation required if soil stabilization additives and materials were used. They also believe the terms “hazardously near” and “bodies of water” are ambiguous and should be defined by the NDIC. They also indicated fencing requirements are often addressed in the surface use agreement and the Director should only require fencing if needed. Lastly the NDPC indicated that interim site reclamation and location reduction should be subject to the surface use agreement and future development plans since operators may design a location with multiple wells planned and reducing the site would re-disturb the same site several times.

The BCA supports the proposed amendments requiring Director approval prior to utilizing soil stabilization additives and diverting surface drainage from the well site, although they believe all well sites should be fenced.

Chesapeake suggests removal of the requirement to have approval for soil additives since this will slow down the approval process with unnecessary authorizations. They also believe the terms “hazardously near” and “bodies of water” are subjective in nature and should be defined. They also indicated fencing requirements should be as deemed necessary by the Director or in accordance with any surface use agreement. Lastly Chesapeake indicated that interim site reclamation and location reduction should be subject to the surface use agreement and future development plans of the current operator.

Confluence wants to verify that above ground cutting containment areas for the bioremediation of drilling cuttings will still be allowed under the proposed rules.

Dakota-3 encourages the Commission not to set a minimum requirement for 8 inches of top soil. They stockpile all available topsoil, but in some instances 8 inches is not present.

The DRC opposes the current language in the rule that defines topsoil as to no more than the top 8 inches of soil. They believe all topsoil should be stockpiled based upon its actual thickness.

Fidelity opposes the requirement from the Director to have approval for soil additives or materials prior to application and believes approval should be granted on a general rather than location specific basis. They believe the materials and additives need to be pre-approved so operators can plan well site construction accordingly. They also indicated that future development plans should be taken into consideration when determining location reduction and noted such matters should be subject to a surface use agreement.

Ms. Shelley Ventsch believes that in some cases it is not possible to divert surface drainage from entering well sites and production facilities and also require the site and facilities to not block natural drainages. She also believes within 3 months the operator should reclaim the portion of the well site not being used since the proposed language does not require a time frame. She also believes the Director should always require the drill site to be sloped and diked to prevent pollution.

The NWLA indicated it was their believe that surface use agreements between companies and the North Dakota State Land Department covering State-owned land requires at least 8 inches of topsoil be stockpiled. They feel that topsoil stockpile requirements should be uniform for both the State-owned land and for land held by a private citizen of the State, therefore the current language in the rule should be amended.

OXY believes the terms “hazardously near” and “bodies of water” are very broad and open to interpretation and should be further identified. They also indicated that well sites and facilities should be fenced as deemed reasonably needed by the Director or in accordance with any surface use agreement. They also indicated that interim site reclamation and location reduction should be subject to the surface use agreement and future development plans of the current operator.

The Chapter believes the Commission must perform a review of all new proposed drilling sites in consultation with other agencies with expertise in wetland ecology, wildlife biology, water quality, and toxicology and the Director should have the authority to require the location to be moved. They also believe the phrase “in or hazardously near bodies of water” is too vague and “associated production facilities” could be interpreted to include wareyards, compressor stations, and centralized batteries, therefore both should be defined. Lastly, they believe within 3 months the operator should reclaim the portion of the well site not being used since the proposed language does not require a time frame.

Action Taken: The Commission’s proposed amendment will be modified to require the unused portion of the well site to be reclaimed within six months, unless waived by the Director.

Rationale: The Director should have the ability to grant a waiver from requiring the reduction of the well site, especially for the drilling of timely infill wells or agreements previously made with the surface owner. Requiring the site to be reduced within 3 months could require extensive work if performed during the winter months and a 6-month requirement would allow the operator to better evaluate the spacing unit for possible further development. Stabilization materials and additives must be identified and documented so any future remediation measures can be addressed during the reclamation process. It is not practical to list the approved materials and additives in the rule since there may be frequent additions to the list. The terms “hazardously near” and “bodies of water” are subject to interpretation and that is exactly why they are not defined. The Director must have some discretion and flexibility since an on-site inspection is necessary in many instances to properly discern (identify) them. The Director should also have the discretion to require a site be fenced and not depend upon the surface use agreement, which might not even address the issue. Requiring the fencing of every location would be onerous and a financial burden since it is deemed that most sites do not need to be fenced. The Commission notes the proposed rules do not affect the current practice of allowing above ground cutting containment areas for the bioremediation of drilling cuttings. The Commission also notes that the Director currently has the authority to require the location of a proposed well to be moved. The amendments suggested by the Dakota-3, DRC, and the NWLA pertaining to stockpiling topsoil, the Chapter’s suggestion that the Commission should perform reviews of all new drilling sites with other agencies, and Shelley Ventsch’s suggestion that the Director should always require the drill site to be sloped and diked are beyond the scope of the published rule change, were not proposed by the Commission and industry and the general public had no opportunity to address them, therefore they should not be considered at this time.

NDAC § 43-02-03-19.1. FENCING, SCREENING, AND NETTING OF DRILLING AND RESERVE PITS.

The proposed amendments clarify when drilling and reserve pits must be fenced, screened, and netted.

Comments: The BCA believes the rule should be further amended to require the fencing, screening, or netting of a drilling and reserve pits if not reclaimed within 10 days after completion of drilling operations.

Fidelity opposes the current language in the rule that requires all pits and ponds which contain oil to be fenced, screened, and netted. They believe it is not operationally reasonable to do all three and that if oil is present either fencing, screening, or netting will be sufficient.

Ms. Shelley Ventsch believes the rule should be further amended to require pit containing saltwater be netted since saltwater is not safe for wildlife.

WWC is uncertain why the rule refers to “reserve pits” if they are being prohibited, although they do suggest they should not be required to be fenced, screened, or netted unless not reclaimed within 180 days since they will be used during the completion which may be longer than 90 days after drilling the well.

The Chapter stated drinking concentrated salts found in reserve pits can result in significant bird mortality from salt toxicosis, therefore they believe all pits containing saltwater or oil should be fenced, screed, and netted as soon as possible after the completion of drilling operations.

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

Rationale: The amendments are needed only to clarify that this rule applies to both drilling and reserve pits and the Commission is not proposing any additional requirements. Suggestions to amend the time frame to reclaim and additional fencing, netting, and screening requirements were addressed by previous rulemaking and were not proposed by the Commission and industry and the general public had no opportunity to address them, therefore they should not be considered at this time.

NDAC § 43-02-03-19.2. DISPOSAL OF WASTE MATERIAL.

The proposed amendments clarify that waste material is that which is recovered from spills, leaks, and other events and that such material must be disposed of immediately in an authorized facility.

Comments: The NDPC suggests the reference to undesirable events should be stricken from the rule since all such events could be considered either leaks or spills. They also believe other options to handle waste material should be considered and the rule should be amended to allow other remediation methods to be implemented.

The BCA believes rig explosions might not be covered under the rule if “undesirable events” were not included, therefore they support the amendment.

Chesapeake believes other options to handle waste material should be considered and the rule should be amended to allow other remediation methods to be implemented.

Confluence suggests the waste material should be allowed to be bioremediated on site.

OXY believes all undesirable events are included under leaks and spill and is unsure why it appears in the rule. They also believe other options to handle waste material should be considered and the rule should be amended to allow “other approved remediation methods implemented as soon as practicably after discovery”.

WWC believes the rule needs clarification and “waste material” and “authorized facility” should both be defined. They also suggest that the disposal of such material should be as soon as possible, not immediately, since that might not be possible due to weather conditions or lack of resources.

The Chapter believes that all exploration and production wastes should be prohibited at all future oil and gas wells and recommends deleting existing language in the rule that currently allows it.

Action Taken: The Commission’s proposed amendment will be further amended to address spills, leaks, and other such events, rather than undesirable events. It will also clarify that on-site remediation of discharged fluids could be requested.

Rationale: The Commission’s proposed amendment will be clarified to indicate that on-site remediation of waste material could be requested. The Commission believes “waste material” and “authorized facility” are adequately defined in the rule and no further definition is needed. The Commission believes waste material should be disposed of immediately, although Commission enforcement would certainly take into consideration obstacles out of the control of the party responsible for the cleaned.

NDAC § 43-02-03-19.3. EARTHEN PITS AND OPEN RECEPTACLES.

The proposed amendments clarify that wells can be flowed back into a lined pit during the completion of a well. The amendments further allow the director to permit freshwater pits to be used in completion and well servicing operations.

Comments: The NDPC indicated earthen pits and open receptacles should be allowed for batch operations such as multi-well locations where surface casing is being set back-to-back on all wells and should allow introduction of cement during cementing operations. They suggest the pit should be reclaimed no more than ninety days after completion. They also suggest a clarification is needed to indicated only flare pits must be located at least one hundred and fifty feet from the vicinity of wells and tanks.

The BCA believes freshwater pits should be fenced to discourage wildlife and also clarification if they are to be used solely on site at a later date for additional bores, although they oppose their use as water depots which would increase truck traffic.

Chesapeake believes indicated earthen pits and open receptacles should be allowed for batch operations such as multi-well locations where surface casing is being set back-to-back on all wells and should allow introduction of cement during cementing operations. They suggest the pit should be reclaimed no more than ninety days after completion. They also suggest a clarification is needed to indicated only flare pits must be located at least one hundred and fifty feet from the vicinity of wells and tanks.

Dakota-3 believes the rule should be clarified so cuttings and other pits, which are customarily adjacent to the well and tanks, are not required to be 150 feet away.

The Chapter believes that all earthen pits should be prohibited from being used to temporarily store exploration and production wastes since other safer alternatives are readily available such as tanks and containers.

Action Taken: The Commission's proposed amendment will be modified to allow cement to be introduced into the earthen pit or open receptacle.

Rationale: The Commission believes the freshwater pits in the proposed amendment will actually reduce, not increase truck traffic as suggested by BCA, since they can be located closer to completion operations than current water sources. The Commission believes the proposed amendment makes it very clear that only flare pits have to be located 150 feet from wells and tanks, not pits used for other operations. Suggestions to amend the time frame to reclaim and prohibiting earthen pits from being used to temporarily store wastes are beyond the scope of the published rule change, were not proposed by the Commission and industry and the general public had no opportunity to address them, therefore they should not be considered at this time.

NDAC § 43-02-03-19.4. DRILLING PITS.

The proposed addition allows drill cuttings and solids, generated during well drilling and completion operations, to be buried in a pit as long as they are stabilized in a manner approved by the Director. The addition further allows the use of a small lined pit for trench water and rig wash, if reclaimed prior to the rig leaving the site.

Comments: The NDPC believes the NDIC should allow for the accumulation of water fluids in the drilling pit to account for rain, snow melt, and fluids that settle out from the cuttings, by requiring such fluids to be removed prior to closing the pit, but no later than thirty days after releasing the drilling rig. They also suggest the small lined temporary pit should be reclaimed within thirty days of the rig leaving the site and the term "hazardously near" should be clearly defined. Lastly, the NDPC indicates it may not be practically achievable to remove all liquid from the pit and only "free water" should be required to be removed, that is, water that is removeable without further chemical treatment or mechanical processing.

The BCA supports the proposed amendments.

Chesapeake believes all pit locations, lining, and use, shall be approved by the Director prior to excavation, rather than requiring Director approval prior to their use and the pit should be reclaimed no more than thirty days after rig release. They also believe the terms "hazardously near" and "bodies of water" are subjective in nature and should be defined. Chesapeake also

believes the NDIC should allow for the accumulation of water fluids in the drilling pit to account for rain, snow melt, and fluids that settle out from the cuttings, by requiring such fluids to be removed prior to closing the pit.

Confluence believes liquid accumulating in the cuttings pit should be allowed to remain if promptly solidified and the cuttings should be allowed to be bioremediated in the drilling pit.

EOG requests the rule be amended to allow circulation into the drilling pits during the drilling and completion of the surface hole, as long as the freshwater liquid was removed from the pit shortly after the cementing operation was complete.

The McLean State's Atty supports the new section addressing drilling pits, but would like the Commission to continue moving in the direction of eliminating pits.

Ms. Shelley Ventsch opposes the language of the new section that allows the Director to grant an extension of the thirty day time period to reclaim a drilling pit. She believes such extensions should be no longer than 60 days, not the one year extension allowed in the rules.

The NWLA opposes allowing operators to bury cuttings in pits and believes the North Dakota Industrial Commission and the State of North Dakota should accept responsibility of future financial and/or environmental damage that may be incurred because of the burying and encapsulation of drill cuttings and oil field waste on private land after oil exploration. They suggest the North Dakota Industrial Commission should accept the responsibility for the costs of locating and removing debris left from oil field operations that may interfere with tiling, trenching, and construction on private lands.

OXY believes fresh water pits used to drill the surface hole on multi-well pads should be allowed to remain open until the surface hole of the last well is drilled, if the surface hole is being drilled consecutively without leaving the location. They also suggest only "free water" should be required to be removed from the pit.

The Chapter applauds the Commission's efforts to reduce and potentially eliminate the traditional use of reserve pits, they would prefer requiring a closed-loop drilling stem with mandatory recycling of drilling fluids and offsite disposal of drill cuttings at a licensed facility. They believe the Director should only be allowed to grant a 30-day extension to reclaim the drilling pit, since the Commission believes it can be accomplished in 30 days, a one year extension seems excessive. They also believe the Director should not grant a waiver for reserve and circulation of the mud system through earthen pits unless the specific reasons for the waiver can be defined and included in the rule. Lastly, they believe the phrases "in or hazardously near bodies of water" and "shall be promptly removed" should be more clearly defined.

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

Rationale: The accumulation of water in stabilized cuttings pits results in similar winter weather reclamation limitations as do conventional reserve pits. Provisions for a separate reserve pit for surface hole drilling are provided in 43-02-03-19.5. Suggestions to amend 43-02-03-19.4 by NWLA and Chapter are beyond the scope of the published rule change, were not proposed by the

Commission and industry and the general public had no opportunity to address them, therefore they should not be considered at this time.

NDAC § 43-02-03-19.5. RESERVE PIT FOR DRILLING MUD AND DRILL CUTTINGS FROM SHALLOW WELLS.

The proposed addition allows reserve pits for only wells drilled less than five thousand feet below the surface or above the top of the Rierdon Formation.

Comments: The NDPC is concerned that the proposed amendments prohibiting reserve pits on most wells might significantly reduce oil and gas activity if oil prices drop appreciably since they estimate an additional \$50,000 to \$400,000 cost per well to comply with the proposed rules. They also indicate most wells drilled less than 7,000 feet in depth typically contain no hydrocarbons in the mud system and wells drilled in the northeast flank of the Williston Basin do not have the economics to support the elimination of a reserve pit. The NDPC proposes to change the language to allow all wells to utilize a reserve pit system.

Luff believes the proposed amendment should include an acknowledgement that a waiver could be considered by the Commission after hearing when no fracture stimulation will occur, the total depth of the well is less than 15,000 feet, and the well is not located in the flood plains of significant rivers.

The BCA encourages the Commission to transition to completely closed loop systems that would eliminate the use of reserve pits.

The DRC opposes allowing wells less than 5000 feet to use a reserve pit. They believe even if they do not contain hydraulic fracturing fluids, they still may contain saltwater and other materials that could contaminate soil and surface water.

The McLean State's Atty is opposed to the use of reserve pits except in limited and defined situations where they can be justified, such as to make a well economically viable. He explained the Falkirk Mine has installed several hundred ground water monitoring sites in McLean County that are tested quarterly to ensure that mining activity is not impacting ground water or water bodies adjacent to mine land. He believes a similar performance program is necessary to protect surface and ground water around reserve pits. He also believes it is not realistic to truck wastes from the oil patch to distant Hazmat sites and proper waste disposal sites should be approved that would eliminate extensive travel.

The NWLA opposes allowing any wells in the state to use a reserve pit. They believe such pits have the potential to contaminate ground water sources. They also oppose allowing operators to bury cuttings in pits and believes the North Dakota Industrial Commission and the State of North Dakota should accept responsibility of future financial and/or environmental damage that may be incurred because of the burying and encapsulation of drill cuttings and oil field waste on private land after oil exploration. They suggest the North Dakota Industrial Commission should accept the responsibility for the costs of locating and removing debris left from oil field operations that may interfere with tiling, trenching, and construction on private lands.

WWC believes prohibiting reserve pits and requiring a closed loop system will add an additional \$250,000 to \$400,000 cost per well to comply with the proposed rules, which will cause them to abandon their plans to further develop secondary recovery projects in Bottineau and Renville Counties since such projects are usually very marginal. They suggest wells drilled less than 7,000 feet in depth and those drilled within enhanced oil recovery projects should be allowed if the drilling mud and cuttings are solidified to eliminate any future problems.

The Chapter recommends that the Commission prohibit reserve pits for all future oil and gas wells, regardless of depth since they believe salts buried in reserve pits can migrate and contaminate surface and subsurface waters and prior to closure, reserve pits frequently contain hydrocarbons which have resulted in bird and wildlife mortalities.

Action Taken: The Commission's proposed amendment will be modified to provide for an exemption for wells deeper than 5,000 feet after notice and hearing.

Rationale: The proposed state wide depth rule will assure buried drill cuttings have a very low salt and oil content. The construction of a drilling location and reserve pit that disturbs five to ten acres to a maximum depth of twenty feet is vastly different than a coal mining operation that disturbs the entire ground water system over thousands of acres to a depth of up to 150 feet. Suggestions to amend 43-02-03-19.5 by NWLA and Chapter are beyond the scope of the published rule change, were not proposed by the Commission and industry and the general public had no opportunity to address them, therefore they should not be considered at this time.

NDAC § 43-02-03-21. CASING, TUBING, AND CEMENTING REQUIREMENTS.

The proposed amendments require a log to be run, prior to remedial work, to identify the presence of cement behind the surface casing when it is not adequately filled with cement, and also requires Director approval prior to performing such remedial work. The amendments further require the surface casing to be pressure tested to prove mechanical integrity of the casing string.

Comments: The NDPC opposes the amendment to require running a log from which the presence of cement can be determined on surface casing. They indicate it is not practical to run a cement bond log immediately after setting surface casing since the cement must first cure for 48 to 80 hours to obtain accurate data and will drive the industry to utilize smaller surface casing rigs to mitigate the significant lost time. They also contend temperature surveys utilized to determine cement top have been extremely inaccurate in the past and would result in properly cemented casing being perforated for no apparent reason. They also indicated it is not uncommon for the cement behind the surface casing to drop up to 100 feet after cementing it in place and it is standard industry practice to perform a "top job", where smaller diameter tubing, such as 1 inch diameter, is run between the casing and open hole to find the top of cement, and then fill that annular space with cement all the way back to the surface of the ground. They questioned if the amendment would require the operator to notify the Commission prior to performing a routine "top-job". Lastly, they believe the rule should be clarified to state the "vertical portion of the casing" in a horizontal well may be tested by use of a mechanical tool set near the casing shoe after the horizontal section has been drilled.

The BCA supports the proposed amendments.

Chesapeake believes all reference to horizontal casing should be deleted since many horizontal sections are not cemented and after they are perforated, will not be able to hold any pressure.

Dakota-3 indicated they used a 1" tube for tagging the top of cement and for topping off cement behind surface casing.

WWC believes operators should not be required to obtain approval from the Director prior to performing remedial work for inadequate surface casing cement since this wait period could become a health and safety risk.

Action Taken: The Commission's proposed amendment will be modified to eliminate the need to run a log from which the presence of cement can be determined.

Rationale: The main purpose of the surface casing is to protect potable waters and the Commission needs to be notified whenever such casing is not properly cemented. Remedial work should not be performed unless the Commission approves it as an accepted method.

NDAC § 43-02-03-25. DEVIATION TESTS AND DIRECTIONAL SURVEYS.

The proposed amendment clarifies that directional surveys must be in reference to true north.

Comments: There were no comments received on this proposed amendment.

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

Rationale: The proposed amendment will clarify that directional surveys must be in reference to true north.

NDAC § 43-02-03-27.1. HYDRAULIC FRACTURE STIMULATION.

The proposed addition outlines the requirements to perform a hydraulic fracture stimulation.

Comments: The NDPC urges the Commission to require all hydraulic fracture stimulations be posted on the FracFocus Chemical Disclosure Registry and suggests a definition of such stimulation to clarify what activities must be posted, although they believe the specific items to be reported should not be in the rule, but rather generic language referring to the FracFocus disclosure template prescribed as of July 1, 2011 should be incorporated. They indicated at the hearing that they would not oppose being required to disclose information that was in any future templates. They also indicated rupture disks can not be used after being pressure tested to their activation pressure without being replaced and the line can develop an ice block upstream during cold weather operations. They also indicated pressure relief valves have a tendency to activate at pressures above and below their design pressure. They further stated all frac pump trucks have pressure trip-outs that reliably perform the same function as pressure relief valves. They support the current requirement of leaving an open diversion line on the surface casing rigged to a pit or containment vessel, although they indicated at the hearing maybe some allowance should be granted by the Director for requests to apply some back pressure. They also believe a cement sheath does not

increase the burst strength of the casing and a frac string should not be required when surface casing cementing did not result in full returns, when inadequate cement exists behind the intermediate casing, or when the top of cement behind the intermediate casing is below the surface casing shoe. They also request casing and cement evaluation tools be run in the well as deep as they will go unassisted, instead of within 100 feet above the completion formation.

The BCA supports the proposed amendments.

Chesapeake's comments were almost identical to the NDPC's and therefore will not be repeated.

Dakota-3 agrees with the comments offered by the NDPC. They also agree with the recommendations of XTO and believe the pressure kick-outs on the pump trucks are superior to a pressure relief valve, which are often temperamental and can give false readings, and if the Commission is going to require them in the rule they should require pressure kick-outs instead. Moreover, the rule does not take into account that such pressure relief valves are only appropriate during water-based fracturing, but not appropriate when used with other types of fracturing fluid such as gas, propane, CO₂, or nitrogen. They also request that the reference to running cement evaluation tools be either clarified as to when and where they should be run, or deleted since it is impossible to run the tools after the rig is gone, which will effectively require all companies to run a frac string since it will be cost-prohibitive to run the cement evaluation tools with the drilling rig. They also request casing and cement evaluation tools be eliminated, or required to be run in the well as deep as they will go unassisted, but not deeper than the top of the liner or closer than 100 feet of the completion formation. They also believe their present use of a master valve at ground level and a back-up valve provides more protection than the remote operated frac valve required in the rule. The remote valve would also add \$2,500 to \$10,000 to the cost of each well and cause an immediate equipment shortage as they are not currently being used in the field. They also oppose the disclosure of fracturing fluids by posting on FracFocus. Tying the reporting requirements for disclosure of fracturing fluids to the requirements that FracFocus provides as of a certain date is problematic since as FracFocus evolves, the current requirements in the rules may not be available on the website. They suggest the rule list all items required to be submitted directly to the Commission and allow companies to use FracFocus voluntarily. They ideally do not want pressure on the surface casing while fracturing and believe use of rupture disks should be deleted from the rule.

The DRC supports the proposed amendments, but they are unsure who will have access to FracFocus and believes state agencies and the general public should have access to it.

OXY suggests that defining "Hydraulic Fracturing Fluid" as "the fluid, including the applicable base fluid and all additive, used to perform a hydraulic fracturing stimulation". They also suggest defining "Hydraulic Fracturing Stimulation" as "the treatment of a well by the application of hydraulic fracturing fluid under pressure for the purpose of initiating or propagating a fracture in a target geologic formation to enhance production of oil and/or natural gas". They support using FracFocus as the reporting mechanism in an effort to maintain reporting consistency nationwide.

XTO believes the new rules will require frac strings to be run during almost all hydraulic fracture stimulation since the cement frequently falls back after cementing surface casing and it can be difficult to raise the cement into the surface casing when cementing the intermediate string. XTO opposes the use of frac strings because they believe it will significantly increase treating pressures due to additional friction, it will increase the time required to complete a plug and perf operation as much as 2 days, and there will also be additional safety, environmental, and health risks. Such

risks could stem from operators using lower-grade casing in the intermediate hole to keep costs down, many operators may be tempted to run 24-hour operations to compensate for additional time required which will increase safety, health, and environmental risks, frac strings will generally be laid down by workover crews unfamiliar with handling casing size pipe, increase truck traffic will occur since frac strings will require more water, and also increased friction pressure will case fracs to be pumped at higher pressures with will place additional stress on equipment.

The Chapter recommends that earthen pits be eliminated for storage of all oilfield exploration and production waste, including hydraulic fracturing fluids and associated by-products. They support the decision to require disclosure of the chemical components used in specific hydraulic treatments on the FracFocus Chemical Disclosure Registry.

Action Taken: The Commission's proposed amendment will be modified to eliminate the need to utilize rupture disks, all stimulations will be required to be posted on FracFocus, cement evaluation tools will have to be run as close as practicable to 100 feet above the completion formation, and frac string will not be required if intermediate casing is not cemented to the surface casing shoe.

Rationale: Posting all hydraulic fracture treatments on Frac Focus in the required format by reference will provide sufficient definition of what is fracturing fluid and greater transparency desired by the public. The cementing requirements of the original rule proposal increase well cementing complexity without increasing ground water protection. Hydraulic fracturing pump kickouts, wellhead master valves, pressure relief valves, and remote operated frac valves, all used in concert, provide the maximum amount of reliability in controlling well bore pressure. Perforating and chemical treatments performed vary widely throughout the state and in some instances may be performed while exerting significant pressure on casing strings, therefore, it is necessary for the Director to have the authority to require the pre-treatment testing and protection of casing prior to all treatment operations.

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

The proposed amendment requires remote operated or automatic shut-down equipment to be installed on any well that is likely to cause a serious threat of pollution or injury to the public health or safety and requires injection well equipment to be located at least five hundred feet from an occupied dwelling.

Comments: The DRC generally agrees with the proposed amendments, but believes the Director's authority to require remote operated or automatic shut-down equipment should not be limited to any well that is likely to cause a serious threat of pollution or injury to the public health or safety since they do not believe the Director's decision should be able to be challenged. They urge the adoption of rules requiring operators to install flow line monitors to facilitate early discovery of pipeline leaks.

Ms. Shelley Ventsch opposes current language in the rule that allows the Commission to allow a well site to be closer than 500 feet from an occupied dwelling. She believes only the owners of the dwelling should have such authority.

The NWLA supports the installation of automatic shutdown and metering equipment and feels that these requirements should be extended to all saltwater flow line and gathering or injection sites to aid in the prevention of spills. They also believe the current language in the rule should be amended to require a well and production equipment to be located no closer than 1320 feet from an occupied dwelling.

The Chapter believes there should not be a mandated time limit for shutting in a well that poses a serious threat of pollution, injury, or impacts to public health and recommends the rule be further amended to require the Director to leave such wells shut-in until the threat has been resolved, or the safety measure he deems necessary have been taken.

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

Rationale: The Commission can currently require automatic shutdown and metering equipment on flow lines and gathering lines pursuant to NDAC Sections 43-02-03-16, 43-02-05-04, and 43-02-05-12. Section 43-02-03-16 allows the Director to impose such terms and conditions on any well permit as the Director deems necessary, Section 43-02-05-04 allows the Director to include such terms and conditions in an injection permit as the Commission deems necessary, and Section 43-02-05-12 requires the operator of an injection well to keep the well and injection system under continuing surveillance and conduct such monitoring and sampling as the Commission may require. Current law limits the time a well can be shut in by the director without notice and hearing to 40 days. The Commission notes that NDCC Section 38-08-05 states an oil or gas well must be located at least 500 feet from an occupied dwelling, unless waived by the owner or approved by the Commission, therefore any modifications to the statute must be made through legislation. Suggestions to prohibit the Commission from allowing a well site closer than 500 feet from an occupied dwelling or requiring wells and sites to be no closer than 1320 feet from an occupied dwelling are beyond the scope of administrative rule making, were not proposed by the Commission and industry and the general public had no opportunity to address them, therefore they should not be considered at this time.

NDAC § 43-02-03-30.1. LEAK AND SPILL CLEANUP.

The proposed addition requires operators to respond with appropriate resources to contain and clean up spills.

Comments: The NDPC indicates it is impossible to comply with the rule since a spill or leak will flow over the ground and they suggest the language be changed to "Any spills or leaks shall be promptly contained and cleaned up in a manner which will prevent pollution of the land surface and fresh waters".

The BCA supports the proposed amendments although they believe the rule should be further amended to require a comprehensive mandatory hazardous materials plan that puts needed equipment and associated cleanup immediately at hand.

Confluence suggests discharged fluids should not be required to be removed if treated on site and operators should pre-stage spill response supplies.

The Chapter believes the rule should be strengthened by stating “the operator must prevent any spill or leak from reaching drainages, creeks, streams, marshes, or lakes whenever possible and must remove any oil or other materials reaching wetland sites”. They also suggest the rule should state “unless the Commission determines otherwise, the operator is responsible for all cleanup costs associated with leaks and spills originating from their facilities. For spills that affect property beyond the well pad, the operator shall contact the affected surface owners as soon as possible after the spill is discovered”.

Action Taken: The Commission’s proposed amendment will be clarified to indicate that remediation of discharged fluids could be requested.

Rationale: The Commission believes it is possible to comply with the rule since it states at no time shall any spill or leak “be allowed” to flow over, pool, or rest on the surface of the land or infiltrate the soil and such language requires the party to promptly mitigate the incident. The Commission’s proposed amendment will be clarified to indicate that on-site remediation of discharged fluids may be requested. The Commission believes the rule currently requires the operator to prevent any spill or leak from reaching waterways and cleanup of such incidents would fall under the jurisdiction of the North Dakota Department of Health. The Commission notes that pursuant to NDAC Section 43-02-03-30, the person responsible for the incident is required to notify the surface owners upon whose land the incident occurred or traveled. Requiring a comprehensive mandatory hazardous materials plans is beyond the scope of the regulation and was not proposed by the Commission and industry and the general public had no opportunity to address it, therefore it should not be considered at this time.

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

The proposed amendment requires a digital TIFF copy, instead of the current paper copy, of all logs run. The amendments further require that, prior to completing a well, the cement bond log be run and that confidential completion and production data may be released to certain officials if deemed necessary to protect the public’s health, safety, and welfare.

Comments: The NDPC believes the Commission should notify the operator of any release of confidential information to protect the public’s health, safety, and welfare.

The BCA supports the proposed amendments.

Ms. Shelley Ventsch opposes the amendment that the Director may release such confidential completion and production data to certain officials if the Director deems it necessary to protect the public’s health, safety, and welfare. She doesn’t believe the Director is qualified or concerned enough to have the authority to decide when to protect the public, therefore she believes it should be mandatory for the Director to release such information if deemed necessary by the health care professionals, emergency responders, and state, federal, or tribal environmental and public health regulators.

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

Rationale: In most cases the confidential information would have already been released by the operator, but assurance is needed that the Director is authorized to release it if deemed necessary.

NDAC § 43-02-03-34.1. RECLAMATION OF SURFACE.

The proposed addition includes site reclamation requirements previously under NDAC § 43-02-03-19. The addition further requires stabilized soil to be remediated.

Comments: The McLean State's Atty opposes the amendments and indicated it is not realistic to expect that after years of fully loaded trucks driving on well site, that scraping off gravel and scoria and re-spreading topsoil will adequately reclaim the land to being productive for the surface owner. He explains the process used in reclaiming coal mine sites where equipment is used to rip the soils and up to ten years of growing alfalfa and crops is necessary to properly restore the land back to productivity. He suggests technical documents and expertise of the North Dakota Public Service Commission should be utilized in the reclamation of oil and gas well sites. He believes the sites can not be properly reclaimed unless post-well site crop performance measures are not considered.

The BCA supports recommendation made by Ladd Erickson, the McLean County State's Attorney, with regard to applying reclamation procedures similar to those imposed upon the coal industry.

The NWLA believes all flow lines should be removed when reclaiming the surface, not just those buried less than 3 feet below the final contour. They believe the presence of the pipeline could hinder future surface owner plans to develop the area if not removed. They are also concerned with soil contamination caused by residual fluids left in lines due to inadequate purging. They suggest the North Dakota Industrial Commission should accept the responsibility for the costs of locating and removing abandoned pipelines and debris left from oil field operations that my interfere with tiling, trenching, and construction on private lands.

The Chapter is concerned that the surface owner is not given formal input into the reclamation plan or its approval. They believe the landowner should be given an opportunity to indicate if they approve the plan and if not, to explain why they feel the plan is deficient or could be improved. The company should be required to address the landowner concerns before the Commission considers the company's reclamation proposal. They also believe scoria and soils contaminated by oil, saltwater or other wastes should be required to be removed from the site during the reclamation of the site.

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

Rationale: The construction of a drilling location and reserve pit that disturbs five to ten acres to a maximum depth of twenty feet is vastly different than a coal mining operation that disturbs the entire ground water system over thousands of acres to a depth of up to 150 feet. Current rules require removal of waste materials from sites. NWLA recommended amendment regarding financial assurance for abandoned pipelines is beyond the scope of the proposed rule and should not be considered at this time.

NDAC § 43-02-03-49. OIL PRODUCTION EQUIPMENT, DIKES, AND SEALS.

The proposed amendment requires unused tanks and production equipment to be removed from the site or placed into service. The proposed amendments also remove some language that will now be included under NDAC § 43-02-03-30.1.

Comments: The NDPC opposes the amendment. They believe unused equipment should be allowed on the site if it is in usable condition, although they would support amending the rule to state “unused tanks and production equipment must be removed as soon as practicable after drilling operations on the well pad are complete.

The BCA supports the proposed amendments.

Chesapeake confirmed they support the comments provided by the NDPC.

OXY opposes the amendment to remove equipment from a site if unused for one year since a well may be temporarily shut-in for a number of reasons and suggest removal after 5 years is more reasonable.

The Chapter believes dikes should be required around all oil tanks to contain potential spills at all well sites, not just those constructed after July 1, 2000. They also suggest the deleting current language that allows the Director to lower the required capacity of the dike.

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

Rationale: The Commission believes unused tanks and production equipment should not remain on any site beyond one year since it increases the footprint and could create safety issues, but moreover such equipment should be located at an operator’s yard constructed for that purpose. The suggested amendment by the NDPC addresses only equipment on the well pad after drilling and changes the Commission’s intent of the rule, which is to address well sites and production facility sites. Requiring dikes around all oil tanks and the Director’s authorization to lower the dike capacity were addressed by previous rulemaking and was not proposed by the Commission and industry and the general public had no opportunity to address it, therefore it should not be considered at this time.

NDAC § 43-02-03-51. TREATING PLANT.

The proposed amendments increase the minimum amount of a bond from \$20,000 to \$50,000.

Comments: There were no comments received on the proposed amendment.

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

Rationale: The Commission believes the proposed amendments are warranted, although to preserve the attractive business environment that currently exists in North Dakota, no additional bonding increases or requirements should be implemented at this time

NDAC § 43-02-03-53. SALTWATER HANDLING FACILITIES.

The proposed amendment requires unused tanks and injection equipment to be removed from the site or placed into service. The proposed amendments also remove some language that will now be included under NDAC § 43-02-03-30.1 and requires all crude oil recovered from the facility to be reported to the Commission.

Comments: The BCA supports the proposed amendments.

OXY opposes the amendment to remove equipment from a site if unused for one year since a well may be temporarily shut-in for a number of reasons and suggest removal after 5 years is more reasonable.

The Chapter believes dikes should be required around all saltwater tanks to contain potential spills at all well sites, not just those constructed after July 1, 2000. They also suggest the deleting current language that allows the Director to lower the required capacity of the dike.

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

Rationale: The Commission believes unused tanks and injection equipment should not remain on any site beyond one year since it increases the footprint and could create safety issues, but moreover such equipment should be located at an operator's yard constructed for that purpose. Requiring dikes around all saltwater tanks and the Director's authorization to lower the dike capacity were addressed by previous rulemaking and was not proposed by the Commission and industry and the general public had no opportunity to address it, therefore it should not be considered at this time.

NDAC § 43-02-03-54. INVESTIGATIVE POWERS.

The proposed amendments allow the Director a reasonable time to respond to a written complaint.

Comments: The NDPC supports the proposed amendments.

The BCA opposes the proposed amendment that removes "any other interested party" from filing a written complaint since they believe it minimizes the public's vested interest in the well-being of the state of North Dakota.

The DRC opposes the proposed amendment to remove other interested parties from being able to file a complaint. They believe many parties may not know the correct procedure and may approach a trusted independent organization to assist in filing a complaint. They also believe the rule change might delay the response time of the Oil and Gas Division in addressing serious violations.

Ms. Shelley Ventsch opposes the proposed amendment to remove other interested parties from being able to file a complaint. She also opposes deletion of the requirement for the Director to immediately cause an investigation of all written complaints received since quicker response time would result in less damage.

The NWLA opposes the proposed amendment to remove other interested parties from being able to file a complaint. They believe any citizen of the state should be free to file a written complaint upon witnessing a violation of the rules, although if the

OXY supports the proposed amendments.

WWC supports the proposed amendments.

The Chapter opposes the proposed amendment to remove other interested parties from being able to file a complaint. They believe the amendment should not be adopted since it would prohibit neighbors, downstream landowners or even an ethical industry employee from filing a complaint unless they did it through a qualified person.

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

Rationale: The proposed amendments do not prohibit a concerned citizen from reporting violations to the Commission. Such reports will be investigated by the Commission. The proposed amendments will eliminate the need for the Director to "immediately" cause an investigation of any complaint filed by any party. Timely investigation and reply will be made to stakeholders.

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

The proposed amendments clarify that water source wells, stratigraphic test wells, and a shut-in gas well will be in abandonment status if unused for one year.

Comments: The NDPC indicated they oppose considering a shut-in gas well as an abandoned well and indicated oil and gas leases typical allow for gas wells to be shut in beyond one year upon payment by the operator to the mineral owner of shut-in royalties, therefore, they suggest the Commission should allow for shut-in status in accordance with lease agreements.

The BCA supports the proposed amendments.

Chesapeake opposes considering a shut-in gas well as an abandoned well since typical oil and gas leases allow for gas wells to be shut-in beyond one year upon payment of the operator to the mineral owner of shut-in royalties. The Division should allow for shut-in status of these wells in accordance with lease agreements.

The DRC opposes the inclusion of "or water" since they believe a well that only produces water should be considered an abandoned well. If a well is converted to a water production well only, the operator should have to follow requirements under the North Dakota State Water Commission.

Ms. Shelley Ventsch opposes the inclusion of “or water” since she believes wells that only produce water should be under the North Dakota State Water Commission.

The NWLA opposes the inclusion of “or water” since they believe a well that only produces water should not be able to hold a lease and should be considered an abandoned well. They believe clarification is needed if such water production was intended to cover water source wells.

OXY indicated they oppose considering a shut-in gas well as an abandoned well since it might be shut-in while progress is being made in the construction of a gas gathering and processing facility. They indicated some lease agreements allow for gas wells to be shut-in up to 2 years and the Commission should allow such shut-in status in accordance with the lease agreements.

The Chapter believes that stricter standards should be required to keep a well operational and recommends the Commission adopt more rigorous standards for what constitutes a producing well such as some threshold quantity of oil and/or gas that must be produced and require plugging and reclamation of wells if the standards are not met. They also believe current language in the rule should be deleted that allows the Director to waive the duty to plug and reclaim an abandoned well for any good cause found by the Director, unless there is some overriding major public health and safety issue.

Action Taken: The Commission’s proposed amendments will be modified to clarify that an inactive water supply wells constitutes an abandoned well.

Rationale: The Commission’s purpose for the proposed amendment was to consider a shut-in water source well abandoned if production equipment is removed or water is not produced. Suggestions by NDPC and OXY to amend NDAC Section 43-02-30-55 would result in conflict with statute and suggestions by Chapter are beyond the scope of the published rule change, were not proposed by the Commission and industry and the general public had no opportunity to address them, therefore they should not be considered at this time.

NDAC § 43-02-03-88.1. SPECIAL PROCEDURES FOR INCREASED DENSITY WELLS, POOLING, FLARING EXEMPTION, UNDERGROUND INJECTION, COMMINGLING, CONVERTING MINERAL WELLS TO FRESHWATER WELLS, AND CENTRAL TANK BATTERY OR CENTRAL PRODUCTION FACILITIES APPLICATIONS.

The proposed amendments allow testimony via affidavit and clarifies when written comments or objections must be received by the Commission.

Comments: The NDPC supports the proposed amendment.

The BCA opposes the proposed amendment that would allow written comments or objections to become part of a record only if allowed by the hearing examiner.

Chesapeake supports the proposed amendment.

EOG supports the proposed amendments.

OXY supports the proposed amendments.

The Chapter suggests amending the proposed language to read “such submissions will become part of the record in the case if the hearing examiner determines they are credible and germane to the case”.

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

Rationale: The hearing examiner on occasion needs to rule if such documents should become part of the record, although timely received documents will always be placed in the case file. The hearing examiner’s decision should not be limited to only if the documents are credible and germane to the case.

NDAC § 43-02-03-90.2. OFFICIAL RECORD.

The proposed amendment clarifies when written comments or objections must be received by the Commission.

Comments: The BCA opposes the proposed amendment that would allow written comments or objections to become part of a record only if allowed by the hearing examiner.

Ms. Shelley Ventsch opposes the proposed amendment that would allow written comments or objections to become part of a record only if allowed by the hearing examiner since not allowing them would result in an incomplete record.

The Chapter suggests amending the proposed language to read “such submissions will become part of the record in the case if the hearing examiner determines they are credible and germane to the case”.

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

Rationale: The hearing examiner on occasion needs to rule if such documents should become part of the record, although timely received documents will always be placed in the case file. The hearing examiner’s decision should not be limited to only if the documents are credible and germane to the case.

EXPLORATION REQUIREMENTS

CHAPTER 43-02-12

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

The proposed amendment allows the Director to require progress reports prior to the completion of a project.

Comments: There were no comments received on the proposed amendment.

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

Rationale: The proposed amendment will allow the Director to get updates on any project that is suspended.

The BCA made several additional comments concerning limiting the use of potable water in hydraulic fracturing processes, minimizing the flaring of natural gas, and slowing down the permit process.

Chesapeake indicated they are a member of the NDPC and concur with the oral and written comments made by them.

Continental indicated they are a member of the NDPC and also concur with the comments made by them.

Dakota-3 is in support of the NDPC's comments. They also indicated they encourage the Commission to consider, in a future rulemaking, the possibility of allowing permits to remain in effect for 2 years.

EOG indicated they participated in the NDPC's technical advisory board and regulatory committee that prepared comments submitted by the NDPC and also concur with them.

Fidelity supports and endorses the comments made by the NDPC.

Mr. Leo Walker believes, due to the voluminous nature of the data involved and the complexity of the amendments and additions being proposed, the comment period should be extended at least 180 days to allow the public to make relevant legal, scientific, fact-based comments.

The Farm Bureau supports reasonable science-based regulation that does not limit the exploration and recovery of oil resources in North Dakota and does not want the oil industry over-regulated to the point it moves its operations from North Dakota.

OXY indicated they are a member of the NDPC and participated in the discussions and preparation of the NDPC's comments.



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

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 November 1st, 2011 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 amendment to NDAC § 43-02-03-05 is to move language to a more appropriate rule. The proposed amendment deletes language that more appropriately should be in our safety regulation under NDAC § 43-02-03-28. The proposed amendment will not have any impact on the regulated community.

The purpose of the proposed amendments to NDAC § 43-02-03-15 is to provide additional assurance that adequate bonding is required for operators of oil, gas, and commercial disposal wells. The proposed amendments increase the single well bond requirement from \$20,000 to \$50,000 and eliminate the ability to obtain a \$50,000 blanket bond. 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 § 43-02-03-16 is to avoid the recompletion of a well if such recompletion was likely to cause a serious threat of pollution or injury to the public health or safety. The proposed amendments would require the weight and grade of all casing currently installed in any well to be included in the application for permit to recomplete. The risk of casing embrittlement due to the presence of hydrogen sulfide gas would then be considered when reviewing the application for recompletion. 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 § 43-02-03-16.3 is to eliminate ambiguity in the rule. The proposed amendments clarify the invitation to participate in drilling a well must include only the approximate location of the well and also must include a description of the drilling or spacing. 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 § 43-02-03-18 is to provide operators with additional time to develop a pool prior to considering the proper spacing. The proposed amendment continues the temporary spacing order of the Commission for a period of not more than three years instead of 18 months, at which time the proper spacing for the pool would be heard. 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 by only addressing site construction operations. The proposed amendments remove all language that does not pertain to site construction and requires approval from the Director prior to using soil stabilization additives and materials. 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 § 43-02-03-19.1 is to clarify the rule. The proposed amendments clarify when drilling and reserve pits must be fenced, screened, and netted. 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 § 43-02-03-19.2 is to eliminate ambiguity in the rule and protect the environment. The proposed amendments clarify that waste material is that which is recovered from spills, leaks, and undesirable events and that such material must be disposed of immediately in an authorized facility. 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 § 43-02-03-19.3 is to eliminate ambiguity in the rule and allow freshwater pits. The proposed amendments clarify that wells can be flowed back into a lined pit during the completion of a well. The amendments further allow the director to permit freshwater pits to be used in completion and well servicing operations. The proposed amendments will provide an economic benefit to the regulated community.

The purpose of the adoption of NDAC § 43-02-03-19.4 is to eliminate ambiguity in NDAC § 43-02-03-19 by addressing drilling pits in this new section. The proposed addition allows drill cuttings and solids, generated during well drilling and completion operations, to be buried in a pit as long as they are stabilized in a manner approved by the Director. The addition further allows the use of a small lined pit for trench water and rig wash, if reclaimed prior to the rig leaving the site. 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 § 43-02-03-19.5 is to eliminate ambiguity in NDAC § 43-02-03-19 by addressing reserve pits in this new section and restricting the use of reserve pits. The proposed addition allows reserve pits for only wells drilled less than five thousand feet below the surface or above the top of the Rierdon Formation. The proposed adoption is expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendments to NDAC § 43-02-03-21 is to ensure remedial work on surface casing is adequate to properly protect all freshwater-bearing strata. The proposed amendments require a log to be run, prior to remedial work, to identify the presence of cement behind the surface casing when it is not adequately filled with cement, and also requires Director approval prior to performing such remedial work. The amendments further require the surface casing to be pressure tested to prove mechanical integrity of the casing string. The proposed amendments are expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-03-25 is to eliminate ambiguity in the rule. The proposed amendment clarifies that directional surveys must be in reference to true north. The proposed amendment will not have an impact on the regulated community in excess of \$50,000.

The purpose of the adoption of NDAC § 43-02-03-27.1 is to address hydraulic fracture stimulation procedures. The proposed addition outlines the requirements to perform a hydraulic fracture stimulation. The proposed adoption is 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 eliminate ambiguity in NDAC § 43-02-03-05 and to protect public health or safety. The proposed amendment requires remote operated or automatic shut-down equipment to be installed on any well that is likely to cause a serious threat of pollution or injury to the public health or safety and requires injection well equipment to be located at least five hundred feet from an occupied dwelling. The proposed amendments are expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the adoption of NDAC § 43-02-03-30.1 is to address leaks and spill cleanup. The proposed addition requires operators to respond with appropriate resources to contain and clean up spills. The proposed adoption 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 provide industry and the public with digital well log information and provide information to certain officials when deemed necessary to protect the public. The proposed amendment requires a digital TIFF copy, instead of the current paper copy, of all logs run. The amendments further require that, prior to completing a well, the cement bond log be run and that confidential completion and production data may be released to certain officials if deemed necessary to protect the public's

health, safety, and welfare. 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 § 43-02-03-34.1 is to eliminate ambiguity in NDAC § 43-02-03-19 by addressing the reclamation of a well site in this new section. The proposed addition includes site reclamation requirements previously under NDAC § 43-02-03-19. The addition further requires stabilized soil to be remediated. The proposed adoption is expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendments to NDAC § 43-02-03-49 is to keep the footprint of a well site or production facility as small as possible. The proposed amendment requires unused tanks and production equipment to be removed from the site or placed into service. The proposed amendments also remove some language that will now be included under NDAC § 43-02-03-30.1. The proposed amendments are expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-03-51 is to provide additional assurance that adequate bonding is required for operators of treating plants. The proposed amendments increase the minimum amount of a bond from \$20,000 to \$50,000. 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 § 43-02-03-53 is to keep the footprint of a saltwater handling facility as small as possible and to address oil recovered from such facilities. The proposed amendment requires unused tanks and injection equipment to be removed from the site or placed into service. The proposed amendments also remove some language that will now be included under NDAC § 43-02-03-30.1 and requires all crude oil recovered from the facility to be reported to the Commission. 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 § 43-02-03-54 is to allow a reasonable time-frame to complete investigations. The proposed amendments allow the Director a reasonable time to respond to a written complaint. 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 § 43-02-03-55 is to eliminate ambiguity in the rule. The proposed amendments clarify that water source wells and stratigraphic test wells will be in abandonment status if unused for one year. 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 § 43-02-03-88.1 is to eliminate ambiguity in the rule, expedite the hearing process, and make more efficient use of man-hours. The proposed amendments allow testimony via affidavit and clarifies when written comments or objections must be received by the Commission. The proposed amendments will provide an economic benefit to the regulated community.

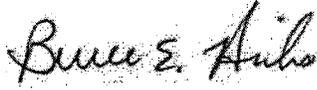
The purpose of the proposed amendment to NDAC § 43-02-03-90.2 is to eliminate ambiguity in the rule. The proposed amendment clarifies when written comments or objections must be received by the Commission. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-12-06 is to allow the Director to get periodic updates on large or suspended geophysical exploration projects. The proposed amendment allows the Director to require progress reports prior to the completion of a project. The proposed amendment 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 comments on the proposed rules, sent to the above address, and received by 5pm, November 14th, 2011, will be fully considered. Oral comments can be given at the public hearing at 9am on November 1st, 2011.

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 October 18, 2011.

Dated this 23rd day of September, 2011.

A handwritten signature in black ink that reads "Bruce E. Hicks". The signature is written in a cursive style with a large, stylized initial "B".

Bruce E. Hicks
Assistant Director

**REGULATORY ANALYSIS PURSUANT TO
NORTH DAKOTA CENTURY CODE 28-32-08
FOR CHANGES IN SECTION 43-02-03-15
BOND AND TRANSFER OF WELLS**

I. CLASS OF PERSONS AFFECTED BY THE AMENDMENT

The classes of persons who probably will be affected by the proposed amendment to the rule are individuals and companies who operate oil wells, gas wells, injection wells, and treating plants in the State. The proposed amendment will affect operators that currently have single well bonds, \$50,000 blanket bonds, and treating plant bonds. The proposed amendment will benefit the State and surety companies that issue well bonds.

II. PROBABLE IMPACT

The probable impact of the proposed amendment will be that operators will have increase their single well bond amounts or possibly be required to acquire additional bonding. It is anticipated that the cost of the proposed rule to the regulated community may exceed \$50,000.

III. COST TO AGENCY AND EFFECT ON STATE REVENUES

It is anticipated that there will not be any costs to the agency to implement and enforce the proposed amendments, in fact, there will probably be a positive impact on State revenues.

IV. ALTERNATIVE METHODS

No alternate methods were seriously considered.

**REGULATORY ANALYSIS PURSUANT TO
NORTH DAKOTA CENTURY CODE 28-32-08
FOR CHANGES IN SECTION 43-02-03-16
APPLICATION FOR PERMIT TO DRILL AND RECOMPLETE**

I. CLASS OF PERSONS AFFECTED BY THE AMENDMENT

The classes of persons who probably will be affected by the proposed amendment to the rule are individuals and companies who operate oil and gas wells in the State. The proposed amendment will affect operators that plan to recomplete existing wells. The proposed amendment will benefit the State and general public.

II. PROBABLE IMPACT

The probable impact of the proposed amendment will be that operators will not be allowed to complete their well in a hydrocarbon zone if it contains hydrogen sulfide gas, if the integrity of the casing utilized could be compromised. It is anticipated that the cost of the proposed rule to the regulated community may exceed \$50,000.

III. COST TO AGENCY AND EFFECT ON STATE REVENUES

It is anticipated that there will not be any costs to the agency to implement and enforce the proposed amendments.

IV. ALTERNATIVE METHODS

No alternate methods were seriously considered.

**REGULATORY ANALYSIS PURSUANT TO
NORTH DAKOTA CENTURY CODE 28-32-08
FOR ADOPTION OF SECTION 43-02-03-19.5
RESERVE PIT FOR DRILLING MUD AND DRILL CUTTINGS FROM SHALLOW WELLS**

I. CLASS OF PERSONS AFFECTED BY THE AMENDMENT

The classes of persons who probably will be affected by the proposed amendment to the rule are individuals and companies who will be drilling oil and gas wells in the State. The proposed amendment will affect operators that plan drill oil and gas wells deeper than 5000 feet. The proposed amendment will benefit the State and general public.

II. PROBABLE IMPACT

The probable impact of the proposed amendment will be that many operators will not be allowed to utilize a reserve pit when drilling an oil or gas well. It is anticipated that the cost of the proposed rule to the regulated community may exceed \$50,000.

III. COST TO AGENCY AND EFFECT ON STATE REVENUES

It is anticipated that there will not be any costs to the agency to implement and enforce the proposed amendments.

IV. ALTERNATIVE METHODS

No alternate methods were seriously considered.

**REGULATORY ANALYSIS PURSUANT TO
NORTH DAKOTA CENTURY CODE 28-32-08
FOR CHANGES IN SECTION 43-02-03-21
CASING, TUBING, AND CEMENTING REQUIREMENTS**

I. CLASS OF PERSONS AFFECTED BY THE AMENDMENT

The classes of persons who probably will be affected by the proposed amendment to the rule are individuals and companies who will be drilling oil, gas, and injection wells in the State. The proposed amendment will affect operators that need to perform remedial work on oil, gas, or injection wells. The proposed amendment will benefit the State and general public.

II. PROBABLE IMPACT

The probable impact of the proposed amendment will be that many operators will have to get approval from the Commission prior to performing remedial work on an oil, gas, or injection well. It is anticipated that the cost of the proposed rule to the regulated community may exceed \$50,000, although in some cases it may actually save the company money since they might perform remedial work that would not be approved by the Commission.

III. COST TO AGENCY AND EFFECT ON STATE REVENUES

It is anticipated that there will not be any costs to the agency to implement and enforce the proposed amendments.

IV. ALTERNATIVE METHODS

No alternate methods were seriously considered.

**REGULATORY ANALYSIS PURSUANT TO
NORTH DAKOTA CENTURY CODE 28-32-08
FOR ADOPTION OF SECTION 43-02-03-27.1
HYDRAULIC FRACTURE STIMULATION**

I. CLASS OF PERSONS AFFECTED BY THE AMENDMENT

The classes of persons who probably will be affected by the proposed amendment to the rule are individuals and companies who will be completing oil and gas wells in the State. The proposed amendment will affect operators that plan to complete oil and gas wells utilizing a hydraulic fracturing stimulation. The proposed amendment will benefit the State and general public.

II. PROBABLE IMPACT

The probable impact of the proposed amendment will be that many operators will have to disclose the chemicals they are using in their frac fluid and some will not be allowed to frac down the intermediate casing if casing integrity is in doubt. It is anticipated that the cost of the proposed rule to the regulated community may exceed \$50,000.

III. COST TO AGENCY AND EFFECT ON STATE REVENUES

It is anticipated that there will not be any costs to the agency to implement and enforce the proposed amendments.

IV. ALTERNATIVE METHODS

No alternate methods were seriously considered.

**REGULATORY ANALYSIS PURSUANT TO
NORTH DAKOTA CENTURY CODE 28-32-08
FOR CHANGES IN SECTION 43-02-03-28
SAFETY REGULATION**

I. CLASS OF PERSONS AFFECTED BY THE AMENDMENT

The classes of persons who probably will be affected by the proposed amendment to the rule are individuals and companies who will be operating oil and gas wells in the State. The proposed amendment will affect operators that plan to operate oil and gas wells in environmentally sensitive areas. The proposed amendment will benefit the State and general public.

II. PROBABLE IMPACT

The probable impact of the proposed amendment will be that some operators will have to install remote operated or automatic shut-down equipment on wells or facilities if they are located in environmentally sensitive areas. It is anticipated that the cost of the proposed rule to the regulated community may exceed \$50,000.

III. COST TO AGENCY AND EFFECT ON STATE REVENUES

It is anticipated that there will not be any costs to the agency to implement and enforce the proposed amendments.

IV. ALTERNATIVE METHODS

No alternate methods were seriously considered.

**REGULATORY ANALYSIS PURSUANT TO
NORTH DAKOTA CENTURY CODE 28-32-08
FOR ADOPTION OF SECTION 43-02-03-34.1
RECLAMATION OF SURFACE**

I. CLASS OF PERSONS AFFECTED BY THE AMENDMENT

The classes of persons who probably will be affected by the proposed amendment to the rule are individuals and companies who drill oil, gas, and injection wells in the State. The proposed amendment will affect operators that plan to utilize soil stabilization material when constructing lease facilities to oil, gas, and injection wells. The proposed amendment will benefit the State and general public.

II. PROBABLE IMPACT

The probable impact of the proposed amendment will be that operators will have to outline what measures will have to be taken to properly reclaim the soils to remediate soil stabilization materials used. It is anticipated that the cost of the proposed rule to the regulated community may exceed \$50,000, although allowing the use of the soil stabilization materials should actually benefit operators much more than the cost to remediate it.

III. COST TO AGENCY AND EFFECT ON STATE REVENUES

It is anticipated that there will not be any costs to the agency to implement and enforce the proposed amendments.

IV. ALTERNATIVE METHODS

No alternate methods were seriously considered.

**REGULATORY ANALYSIS PURSUANT TO
NORTH DAKOTA CENTURY CODE 28-32-08
FOR CHANGES IN SECTION 43-02-03-49
OIL PRODUCTION EQUIPMENT, DIKES, AND SEALS**

I. CLASS OF PERSONS AFFECTED BY THE AMENDMENT

The classes of persons who probably will be affected by the proposed amendment to the rule are individuals and companies who operate oil, gas, and injection wells in the State. The proposed amendment will affect operators that currently have unused tanks and production equipment on oil, gas, and injection well sites. The proposed amendment will benefit the State and general public.

II. PROBABLE IMPACT

The probable impact of the proposed amendment will be that operators will not be allowed to store unused equipment on the well site location and such unused equipment would have to be removed. It is anticipated that the cost of the proposed rule to the regulated community may exceed \$50,000.

III. COST TO AGENCY AND EFFECT ON STATE REVENUES

It is anticipated that there will not be any costs to the agency to implement and enforce the proposed amendments.

IV. ALTERNATIVE METHODS

No alternate methods were seriously considered.

**REGULATORY ANALYSIS PURSUANT TO
NORTH DAKOTA CENTURY CODE 28-32-08
FOR CHANGES IN SECTION 43-02-03-53
SALTWATER HANDLING FACILITIES**

I. CLASS OF PERSONS AFFECTED BY THE AMENDMENT

The classes of persons who probably will be affected by the proposed amendment to the rule are individuals and companies who operate oil, gas, and injection wells in the State. The proposed amendment will affect operators that currently have unused tanks and production equipment on oil, gas, and injection well sites. The proposed amendment will benefit the State and general public.

II. PROBABLE IMPACT

The probable impact of the proposed amendment will be that operators will not be allowed to store unused equipment on the well site location and such unused equipment would have to be removed. It is anticipated that the cost of the proposed rule to the regulated community may exceed \$50,000.

III. COST TO AGENCY AND EFFECT ON STATE REVENUES

It is anticipated that there will not be any costs to the agency to implement and enforce the proposed amendments.

IV. ALTERNATIVE METHODS

No alternate methods were seriously considered.

**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 or 43-02-04.1 were mandated by Federal law.

43-02-03-05. ENFORCEMENT OF LAWS, RULES, AND REGULATIONS DEALING WITH CONSERVATION OF OIL AND GAS.

This amendment deletes language that more appropriately should be in another section of the rules. This amendment will not have an adverse impact on small entities.

SECTION 43-02-03-15 BOND AND TRANSFER OF WELLS.

This amendment increases the single well bond requirement from \$20,000 to \$50,000 and eliminates the ability to obtain a \$50,000 blanket bond. The proposed adoption is expected to have an impact on the regulated community in excess of \$50,000.

The following methods were considered for reducing impact on small entities:

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

The amendment does not require additional reporting requirements.

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

The amendment does not require additional reporting requirements.

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

The amendment does not require additional reporting requirements.

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

The amendment does not address design or operational standards.

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

The purpose of the amendment is to provide additional assurance that adequate bonding is obtained from operators of oil, gas, and commercial disposal wells. Small entities should not be exempt from this amendment since less stringent compliance could result in higher default rates, which would leave the responsibility to plug and reclaim the well with the State of North Dakota.

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 43-02-03-16 APPLICATION FOR PERMIT TO DRILL AND RECOMPLETE.

This amendment would require the weight and grade of all casing currently installed in any well to be included in the application for permit to recomplete. The risk of casing embrittlement due to the presence of hydrogen sulfide gas would then be considered when reviewing the application for recompletion. The amendments further clarifies that the required certified location plat must be in reference to true north. The proposed adoption is expected to have an impact on the regulated community in excess of \$50,000.

The following methods were considered for reducing impact on small entities:

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

The amendment does not require additional reporting requirements.

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

The amendment does not require additional reporting requirements.

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

The amendment does not require additional reporting requirements.

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

The amendment does not address design or operational standards.

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

The purpose of the amendment is to ensure that if a well is proposed to be recompleted, that the casing will not be subject to casing embrittlement due to the presence of hydrogen sulfide gas, which could cause well bore integrity issues.

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

The proposed amendments clarify the invitation to participate in drilling a well must include only the approximate location of the well and also must include a description of the drilling or spacing. The proposed amendments will not have an adverse impact on small entities.

SECTION 43-02-03-18 DRILLING UNITS – WELL LOCATIONS.

The proposed amendment continues the temporary spacing order of the Commission for a period of not more than three years instead of 18 months, at which time the proper spacing for the pool would be heard. The amendment will provide an economic benefit to small entities.

SECTION 43-02-03-19 SITE CONSTRUCTION.

The proposed amendments remove all language that does not pertain to site construction, requires approval from the Director prior to using soil stabilization additives, and requires the unused portion of the well site to be reclaimed after six months of completing the well. The proposed amendments will not have an adverse impact on small entities.

SECTION 43-02-03-19.1 FENCING, SCREENING, AND NETTING OF DRILLING AND RESERVE PITS.

The proposed amendments clarify when drilling and reserve pits must be fenced, screened, and netted. The amendments will not have an adverse impact on small entities.

SECTION 43-02-03-19.2 DISPOSAL OF WASTE MATERIAL.

The proposed amendments clarify that waste material is that which is recovered from spills, leaks, and such other events and must be disposed of immediately in an authorized facility, although remediation of such material is allowed. The amendments will not have an adverse impact on small entities.

SECTION 43-02-03-19.3 EARTHEN PITS AND OPEN RECEPTACLES.

The proposed amendments clarify that wells can be flowed back into a lined pit during the completion of a well. The amendments further allow the director to permit freshwater pits to be used in completion and well servicing operations. The amendment will provide an economic benefit to small entities.

SECTION 43-02-03-19.4 DRILLING PITS.

The proposed addition allows drill cuttings and solids, generated during well drilling and completion operations, to be buried in a pit as long as they are stabilized in a manner approved by the Director. The addition further allows the use of a small lined pit for trench water and rig wash, if reclaimed prior to the rig leaving the site. The amendment will not have an adverse impact on small entities.

SECTION 43-02-03-19.5 RESERVE PIT FOR DRILLING MUD AND DRILL CUTTINGS FROM SHALLOW WELLS.

The proposed addition allows reserve pits for only wells drilled less than five thousand feet below the surface or above the top of the Rierdon Formation, although an exception can be considered after notice and hearing. The proposed adoption is expected to have an impact on the regulated community in excess of \$50,000.

The following methods were considered for reducing impact on small entities:

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

The amendment does not require additional reporting requirements.

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

The amendment does not require additional reporting requirements.

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

The amendment does not require additional reporting requirements.

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

The amendment does not address design or operational standards.

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

The purpose of the amendment is to reduce the surface and environmental impact of drilling wells in North Dakota. Small entities could request relief from the requirements after due notice and hearing.

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 43-02-03-21 CASING, TUBING, AND CEMENTING REQUIREMENTS.

The proposed amendments require Director approval prior to an operator performing remedial work when adequate cement does not exist behind the surface casing. The amendments further require the surface casing to be pressure tested to prove mechanical integrity of the casing string. The amendment will not have an adverse impact on small entities since the proposed amendment to require a log on the surface casing, from which the presence of cement could be determined, was withdrawn.

SECTION 43-02-03-25 DEVIATION TESTS AND DIRECTIONAL SURVEYS.

The proposed amendment clarifies that directional surveys must be in reference to true north. The amendment will not have an adverse impact on small entities.

SECTION 43-02-03-27.1 HYDRAULIC FRACTURE STIMULATION.

The proposed addition outlines the requirements to perform a hydraulic fracture stimulation. The proposed adoption is expected to have an impact on the regulated community in excess of \$50,000. The Commission notes the economic impact of the proposed addition on the regulated community was substantially reduced when the Commission withdrew the requirements to use a frac string in the event remedial work was required to properly cement the surface casing and to require a frac string in the event the intermediate casing string was not cemented to the base of the surface casing.

The following methods were considered for reducing impact on small entities:

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

The proposed addition requires each hydraulic fracture stimulation to be posted on FracFocus, a national registry of chemical disclosure. This “one-time” posting is becoming widely accepted across the United States and is supported by the North Dakota Petroleum Council. This chemical disclosure to the general public is necessary and small entities should not be exempted from the reporting requirement.

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

The “one-time” posting is not onerous and small entities should not be exempted from the reporting requirement.

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

The chemical disclosure to the general public is necessary and small entities should not be exempted from the reporting requirement.

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

The proposed addition outlines certain minimum standards that are necessary to protect the environment and for the safety and welfare of industry and the general public. Small entities should conform to the standards.

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

The purpose of the proposed rule is to ensure that hydraulic fracture stimulations are being performed in a safe manner and the stimulation is posted on the national registry of chemical disclosure. Small entities should not be exempt.

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 43-02-03-28 SAFETY REGULATION.

The proposed amendment requires remote operated or automatic shut-down equipment to be installed on any well that is likely to cause a serious threat of pollution or injury to the public health or safety and requires injection well equipment to be located at least five hundred feet from an occupied dwelling. The proposed adoption is expected to have an impact on the regulated community in excess of \$50,000.

The following methods were considered for reducing impact on small entities:

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

The amendment does not require additional reporting requirements.

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

The amendment does not require additional reporting requirements.

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

The amendment does not require additional reporting requirements.

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

The amendment does not address design or operational standards.

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

The purpose of the amendment is to protect public health and safety. A small entity should not be allowed to operate a well that is likely to cause a serious threat of pollution or injury to the public without installing safety equipment required in the amendment.

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 43-02-03-30.1 LEAK AND SPILL CLEANUP.

The proposed addition requires operators to respond with appropriate resources to contain and clean up spills. The amendments will not have an adverse impact on small entities.

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

The proposed amendment requires a digital TIFF copy, instead of the current paper copy, of all logs run. The amendments further require that, prior to completing a well, the cement bond log be run and that confidential completion and production data may be released to certain officials if deemed necessary to protect the public's health, safety, and welfare. The amendments will not have an adverse impact on small entities.

SECTION 43-02-03-34.1 RECLAMATION OF SURFACE.

The proposed addition includes site reclamation requirements previously under NDAC § 43-02-03-19. The addition further requires stabilized soil to be remediated. The proposed adoption is expected to have an impact on the regulated community in excess of \$50,000, although allowing the use of the soil stabilization materials should actually benefit operators much more than the cost to remediate it.

The following methods were considered for reducing impact on small entities:

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

The proposed addition does not require additional reporting requirements since they were previously under NDAC Section 43-02-03-19.

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

The proposed addition does not require additional reporting requirements.

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

The proposed addition does not require additional reporting requirements.

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

The proposed addition does not address design or operational standards.

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

The purpose of the proposed addition is to ensure that if stabilization materials are utilized, measures are taken to properly remediate the soils to permit suitable vegetative growth. Small entities should not be exempt.

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 43-02-03-49 OIL PRODUCTIN EQUIPMENT, DIKES, AND SEALS.

The proposed amendment requires unused tanks and production equipment to be removed from the site or placed into service. The proposed amendments also remove some language that will now be included under NDAC § 43-02-03-30.1. The proposed adoption is expected to have an impact on the regulated community in excess of \$50,000.

The following methods were considered for reducing impact on small entities:

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

The amendment does not require additional reporting requirements.

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

The amendment does not require additional reporting requirements.

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

The amendment does not require additional reporting requirements.

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

The amendment does not address design or operational standards.

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

The purpose of the amendment is to keep the surface footprint of a well site or production facility as small as possible. A small entity should not be allowed to store unused tanks and equipment on a well site, therefore small entities should not be exempt.

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 43-02-03-51 TREATING PLANT.

The proposed amendment increases the minimum amount of a treating plant bond from \$25,000 to \$50,000. It is anticipated that no treating plants will be operated by small entities, therefore, the proposed amendment will not have an adverse impact on small entities.

SECTION 43-02-03-53 SALTWATER HANDLING FACILITIES.

The proposed amendment requires unused tanks and injection equipment to be removed from the site or placed into service. The proposed amendments also remove some language that will now be included under NDAC § 43-02-03-30.1 and requires all crude oil recovered from the facility to be reported to the Commission. The proposed adoption is expected to have an impact on the regulated community in excess of \$50,000.

The following methods were considered for reducing impact on small entities:

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

The amendment requires all crude oil recovered from a saltwater handling facility to be reported monthly to the Commission. It is necessary for the Commission and Tax Department to track and identify saleable crude oil, therefore, small entities should be required to report such oil.

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

The amendment requires all crude oil recovered from a saltwater handling facility to be reported monthly to the Commission. It is necessary for the Commission and Tax Department to track and identify saleable crude oil, therefore, small entities should be required to report such oil monthly.

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

The amendment requires all crude oil recovered from a saltwater handling facility to be reported monthly on Form 5-SWD, a one-page form. Small entities should be required to file the Form 5-SWD.

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

The amendment does not address design or operational standards.

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

The purpose of the amendment is to ensure that all crude oil recovered from a saltwater handling facility is properly tracked and identified, therefore, it is necessary for the operator of saltwater handling facilities to report to the Commission. Small entities should not be exempt.

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 43-02-03-54 INVESTIGATIVE POWERS.

The proposed amendments allow the Director a reasonable time to respond to a written complaint. This amendment will not have an adverse impact on small entities.

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

The proposed amendments clarify that water source wells and stratigraphic test wells will be in abandonment status if unused for one year. This amendment will not have an adverse impact on small entities.

SECTION 43-02-03-88.1 SPECIAL PROCEDURES FOR INCREASED DENSITY WELLS, POOLING, FLARING EXEMPTION, UNDERGROUND INJECTION, COMMINGLING, CONVERTING MINERAL WELLS TO FRESHWATER WELLS, AND CENTRAL TANK BATTERY OR CENTRAL PRODUCTION FACILITIES APPLICATIONS.

The proposed amendments allow testimony via affidavit and clarifies when written comments or objections must be received by the Commission. The amendment will provide an economic benefit to small entities.

SECTION 43-02-03-90.2 OFFICIAL RECORD.

The proposed amendment clarifies when written comments or objections must be received by the Commission. This amendment will not have an adverse impact on small entities.

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

The proposed amendment allows the Director to require progress reports prior to the completion of a project. This amendment will not have an adverse impact on small entities.

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

SECTION 43-02-03-15 BOND AND TRANSFER OF WELLS.

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

1. The small entities subject to the proposed rule.

The small entities who probably will be affected by the proposed amendment to the rule are individuals and companies who operate less than 15 oil wells, gas wells, and injection wells in the State. The proposed amendment will small entities that currently have single well bonds and \$50,000 blanket 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 man-hours to complete paperwork and additional premiums to increase bonds. It is anticipated that the cost of the proposed rule to the regulated community may exceed \$50,000, although the Commission has not changed the requirements for \$100,000 bonds and the regulated community may actually benefit by obtaining a \$100,000 bond since additional wells can be placed on them.

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. The amendment will provide a benefit to surface owners in the area since increased bonding requirements will promote greater compliance with plugging requirements.

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

There will be a minimal cost to the agency and a negligible effect on state revenues.

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 proposed amendment. No alternate methods were seriously considered since the purpose is to provide better security for assuring timely plugging of wells.

SECTION 43-02-03-16 APPLICATION FOR PERMIT TO DIRLL AND RECOMPLETE.

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

1. The small entities subject to the proposed rule.

The small entities who probably will be affected by the proposed amendment to the rule are individuals and companies who operate less than 15 oil wells, gas wells, and injection wells in the State. The proposed amendment will affect small entities that plan to recomplete existing wells. The proposed amendment will benefit the State and general public.

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 man-hours to complete paperwork and an additional well may be necessary in some instances if the wellbore integrity has been compromised by the presence of hydrogen sulfide. It is anticipated that the cost of the proposed rule to the regulated community may exceed \$50,000, although in some instances, the small entity may actually benefit since casing embrittlement could cause casing collapse in a well where expensive workover projects had recently been completed.

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. The amendment will provide a benefit to surface owners in the area since a well with insufficient well bore integrity would be an environmental concern.

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

There will be a minimal cost to the agency and a negligible effect on state revenues.

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 proposed amendment. No alternate methods were seriously considered since the purpose is to provide better security for assuring only mechanically sound wellbores are utilized for recompletions.

SECTION 43-02-03-19.5 RESERVE PITS FOR DRILLING MUD AND DRILL CUTTINGS FROM SHALLOW WELLS.

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

1. The small entities subject to the proposed rule.

The small entities who probably will be affected by the proposed amendment to the rule are individuals and companies who plan to drill oil and gas wells in the State and operate less than 15 oil wells, gas wells, and injection wells in the State. The proposed amendment will affect operators that plan to drill oil and gas wells deeper than 5000 feet.

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 utilizing a drilling pit and circulation of a drilling mud system through the use of tanks. It is anticipated that the cost of the proposed rule to the regulated community may exceed \$50,000, although in some instances there may not be any additional costs incurred by the small entity since lower construction costs will be incurred and a smaller surface footprint will be realized. Small entities drilling less than 5000 feet will not be affected by the amendment.

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. The amendment will provide a benefit to surface owners in the area since the surface footprint will be reduced.

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

There will be no cost to the agency.

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 proposed amendment. No alternate methods were seriously considered since the purpose is to reduce the environmental impact of drilling a well.

SECTION 43-02-03-21 CASING, TUBING, AND CEMENTING REQUIREMENTS.

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

1. The small entities subject to the proposed rule.

The small entities who probably will be affected by the proposed amendment to the rule are individuals and companies who operate less than 15 oil wells, gas wells, and injection wells in the State who will be drilling oil, gas, and injection wells in the State. The proposed amendment will affect small entities that need to perform remedial work on oil, gas, or injection wells.

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 no longer anticipated that the cost of the proposed rule to the regulated community will exceed \$50,000. The proposed amendment requiring a log be run to determine cement was withdrawn by the Commission, therefore, the cost to the regulated community is minimal. In some cases it may actually save the small entity money since they might perform remedial work that would not be approved by the Commission.

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.

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

There will be no cost to the agency.

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 proposed amendment. No alternate methods were seriously considered since the purpose is to confirm the well has mechanical integrity.

SECTION 43-02-03-27.1 HYDRAULIC FRACTURE STIMULATION.

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

1. The small entities subject to the proposed rule.

The small entities who probably will be affected by the proposed new rule are individuals and companies who operate less than 15 oil wells, gas wells, and injection wells in the State and are working interest owners in wells that will be completed utilizing a hydraulic fracturing stimulation.

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

Administrative costs associated with the adoption of this rule should be minimal. Costs required for compliance will include developing a format to submit to FracFocus. It is anticipated that the cost of the proposed rule to small entities will exceed \$50,000, although in some cases it may actually save the small entity money since the amendments include wellbore failure preventative measures.

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.

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

There will be no cost to the agency.

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 proposed amendment. No alternate methods were seriously considered since the purpose is to assure the well has mechanical integrity while performing the hydraulic fracture stimulation.

SECTION 43-02-03-28 SAFETY REGULATION.

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

1. The small entities subject to the proposed rule.

The small entities who probably will be affected by the proposed new rule are individuals and companies who operate less than 15 oil wells, gas wells, and injection wells in the State and operate wells located in environmentally sensitive areas.

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

Administrative costs associated with the adoption of this rule should be minimal. Costs required for compliance will include installing equipment that will allow the operator to shut-in operations if there is a threat to public health or safety. It is anticipated that the cost of the proposed rule to small entities will exceed \$50,000, although in some cases it may actually save the small entity money since cleanup costs could easily exceed the cost to implement preventative measures.

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.

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

There will be no cost to the agency.

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 proposed amendment. No alternate methods were seriously considered since the proposed amendments are necessary to protect the environment.

SECTION 43-02-03-34.1 RECLAMATION OF SURFACE.

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

1. The small entities subject to the proposed rule.

The small entities who probably will be affected by the proposed new rule are individuals and companies who operate less than 15 oil wells, gas wells, and injection wells in the State and are working interest owners in wells that utilize soil stabilization materials.

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 remediation of the soils upon reclamation of the surface. It is anticipated that the cost of the proposed rule to small entities might exceed \$50,000, although utilization of stabilization materials will be cost effective even when considering the proposed remediation rules.

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.

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

There will be no cost to the agency.

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 proposed amendment. No alternate methods were seriously considered since leaving the soil stabilization material on the site without remediating it would render the soil unsuitable for vegetative growth.

SECTION 43-02-03-49 OIL PRODUCTION EQUIPMENT, DIKES, AND SEALS.

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

1. The small entities subject to the proposed rule.

The small entities who probably will be affected by the proposed new rule are individuals and companies who operate less than 15 oil wells, gas wells, and injection wells in the State and are storing unused tanks and equipment on well sites.

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 removal of unused tanks and equipment and storage costs in an equipment yard. It is anticipated that the cost of the proposed rule to small entities might exceed \$50,000.

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.

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

There will be no cost to the agency.

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 proposed amendment. No alternate methods were seriously considered since the purpose of the amendment is to reduce the size of the surface footprint.

SECTION 43-02-03-53 SALTWATER HANDLING FACILITIES.

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

1. The small entities subject to the proposed rule.

The small entities who probably will be affected by the proposed new rule are individuals and companies who operate less than 15 oil wells, gas wells, and injection wells in the State and are storing unused tanks and equipment on saltwater handling facilities.

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 removal of unused tanks and equipment and storage costs in an equipment yard. It is anticipated that the cost of the proposed rule to small entities might exceed \$50,000.

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.

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

There will be no cost to the agency.

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 proposed amendment. No alternate methods were seriously considered since the purpose of the amendment is to reduce the size of the surface footprint.