

ADMINISTRATIVE RULES COMMITTEE HEARING

TESTIMONY OF BRUCE E. HICKS - March 11, 2014

Chairman Devlin 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 following rule changes are related to statute changes made by the recent Sixty-Third Legislative Assembly.

<u>NDAC Sec.</u>	<u>Description</u>	<u>Page</u>	<u>Bill</u>
43-02-03-16	Permitting Requirements	115	HB1333,1348
43-02-03-19.5	Reserve Pit	122	SB2014
43-02-03-29	Well and Lease Equip—pipelines	127	HB1333
43-02-03-30	Notice of Spills	129	HB1149
43-02-03-51	Treating Plants—notice to County Auditor	132	HB1333
43-02-03-60.2	Flaring Exemption—additional exemptions	138	HB1134
43-02-03-60.3	Certification for Gas Tax Exemption	139	HB1134
43-02-03-88.1	SWD—notice to County Auditor	141	HB1333
43-02-05-04	SWD—proposed road access	143	HB1333
43-02-08-01	Stripper well—clarifies qualifying period	146	HB1198
43-02-08-02.1	Stripper well—requirements for determination	148	HB1198
43-02-08-03	Stripper well—qualifies max production	149	HB1198

2. **Federal changes:** The rule changes are not related to any federal statute or regulation.

3. **Procedure:** The rulemaking procedure consisted of the following:

- Aug 21, 2013—Received approval from Industrial Commission (IC) to adopt rules
- Aug 26, 2013—Filed rules with Legislative Council
- Aug 30, 2013—Reg analysis written for rules impacting industry > \$50,000
- Aug 30-Sep 11, 2013—Public notices were published in each county
- Sep 1, 2013—Notice given to all sponsors of recent legislation via email
- Oct 1, 2013—Hearing held on rules (Case No. 20853)
- Dec 18, 2013—Wrote responses to all comments received
- Dec 19, 2013—Received approval from IC to adopt rules (Order No. 23159)
- Dec 23, 2013—Wrote small entity regulatory analysis & small entity impact statement
- Jan 14, 2014—Received Attorney General's opinion that rules are legal
- Jan 31, 2014—Filed rules with Legislative Council

- Feb 14, 2014—Notified all parties of Adm Rules Comm hearing & posted on web
- Mar 11, 2014—Administrative Rules Committee hearing
- Apr 1, 2014—Rules become effective
- 223 days (7.3 months)—Agency approval to effective date of rules

4. **Oral and written comments:** Comments were received from 4 parties at the hearing and written comments were received from 17 parties during the 10-day comment period. The Consideration of Comments (see attached pages 5-18) explains our rationale and action for either modifying the proposed rules, leaving them as proposed, or withdrawing them.

The following rules received comments:

<u>NDAC Sec.</u>	<u>Description</u>	<u>Page</u>	<u>Change Made</u>
43-02-03-01	Definitions	106	Modified
43-02-03-11	Organization Reports	111	Leave as proposed
43-02-03-16	Permit to Drill	115	Modified
43-02-03-17	Sign on Well or Facility	120	Leave as proposed
43-02-03-19	Site Construction	120	Modified
43-02-03-19.3	Earthen Pits and Open Receptacles	----	Withdrawn
43-02-03-19.4	Drilling Pits	121	Modified
43-02-03-19.5	Reserve Pits	122	Modified
43-02-03-22	Defective Casing or Cementing	----	Withdrawn
43-02-03-27.1	Hydraulic Fracture Stimulation	123	Modified
43-02-03-28	Safety Regulation	126	Modified
43-02-03-29	Well and Lease Equipment	127	Modified
43-02-03-30	Notification of Fires, Leaks, Spills or Blowouts	129	Modified
43-02-03-34.1	Reclamation of Surface	130	Modified
43-02-03-38.1	Preservation of Cores and Samples	131	Leave as proposed
43-02-03-48	Measurement of Oil	132	Leave as proposed
43-02-03-51.2	Treating Plant Siting	134	Leave as proposed
43-02-03-51.3	Treating Plant Construction and Operation	134	Leave as proposed
43-02-03-51.4	Treating Plant Notice to Abandon	136	Leave as proposed
43-02-03-55	Temporary Abandonment of Wells and TPs	137	Leave as proposed
43-02-03-60.2	Flaring Exemption	138	Leave as proposed
43-02-03-60.3	Certification for Gas Tax Exemption	139	Leave as proposed
43-02-03-88.1	Special Procedures	141	Leave as proposed
43-02-05-04	UIC—Permit Requirements	143	Leave as proposed
43-02-05-05	UIC—Siting	145	Leave as proposed
43-02-08-02	Stripper Well Determination	147	Leave as proposed

5. **Cost:** The approximate cost of giving public notice and holding a hearing on the rules was \$1,390. 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 5-18) details the justification. The full notice also explains the subject matter of the rules and the reasons for adopting the rules (see attached pages 19-23). Find below additional justification on some key rule changes:

<u>NDAC Sec.</u>	<u>Description and Further Justification</u>
43-02-03-01	Definitions: Treating plants have increased in number and processes conducted, therefore redefinition was necessary

- 43-02-03-16 Permits: Legal street address has various issues across the oil producing counties, NDIC is working with the ND 9-1-1 Assoc to work out details
- 43-02-03-17 Signs: The legal street address must be posted on all wells and facilities to assist emergency personnel in locating the site
- 43-02-03-19 Site Construction: Stabilization materials must be noted in the well file to assure that future operators are aware of reclamation liabilities
- 43-02-03-19.5 Reserve Pits: Non-Bakken wells could be deemed uneconomic if rules are too stringent—changes still prevent pollution to land and waters
- 43-02-03-28 Safety Regulation: Simultaneous operations on a well site can create unsafe conditions and the changes are necessary to protect industry; the changes will also promote coordination between operators and allow wells offsetting hydraulic fracture stimulations to be protected
- 43-02-03-29 Pipelines: NDIC/PSC are jointly working to simplify jurisdictional issues
- 43-02-03-30 Report of Spills: Changes to the NDIC spill form have been made to comply with changes contained in HB1149
- 43-02-03-60.3 Gas Tax Exemption: NDDH has jurisdiction over ambient air quality standards—they could also consider rules on efficiency of flaring equip

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 24-25):

<u>NDAC Sec.</u>	<u>Description</u>
43-02-03-01	Treating Plant definition
43-02-03-29	Well and Lease Equipment

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 26-42):

<u>NDAC Sec.</u>	<u>Description</u>
43-02-03-01	Treating Plant definition
43-02-03-29	Well and Lease Equipment
43-02-03-51.1	Treating Plant Permit Requirements
43-02-03-51.3	Treating Plant Construction and Operation Requirements

9. **Fiscal note:** Amendments pursuant to HB1333 will require the creation of a GIS database to house and maintain pipeline data and utilization of field inspectors. Only first year costs were estimated.

<u>First Year Cost to Agency</u>	
Field Inspection-----	3hrs/wk x 3 inspectors @ \$23/hr = \$10,764 / yr
IT development of initial database-----	200hrs @ \$30/hr = \$ 6,000
IT maintenance-----	2hrs/wk @ \$30/hr = \$ 3,120 / yr
File Clerk-----	1hr/wk @\$15/hr = \$ 780 / yr
Total-----	\$20,664 / yr

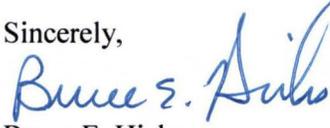
It is anticipated that an additional 30,000 miles of pipelines will be installed in the future. Additional staff and resources will be necessary in the future.

10. **Constitutional takings assessment:** A constitutional takings assessment was not required.

11. **Emergency rules:** None of the rules changes were emergency rules.

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

Sincerely,



Bruce E. Hicks

Assistant Director



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/

2014 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 2014 additions to and revisions of the North Dakota Administrative Code (NDAC) Chapters 43-02-03, 43-02-05, 43-02-08, and 43-02-12. The purpose of this record is to comply with North Dakota Century Code (NDCC) § 28-32-11.

I.

INTRODUCTION

On October 1, 2013, a public hearing under Case No. 20853 was held pursuant to NDCC § 28-32-11. Notice of the hearing was published between August 30, 2013 and September 11, 2013, 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.

Four persons gave oral testimony regarding the proposed rules at the hearing on October 1, 2013. Note all four parties also submitted oral comments in written form at the hearing. Oral comments were received from the following:

Ron Ness	- North Dakota Petroleum Council (NDPC)
Zac Weis	- WPX Energy Williston, LLC (WPX)
Robert Harms	- The Harms Group (Harms) & Environmental Defense Fund (EDF)
Andrew Williams	- EDF

In addition to the oral comments, the following seventeen parties submitted written comments:

Kathleen Spilman	- Keitu Engineers & Consultants, Inc. (Keitu)
Eric Dille	- EOG Resources, Inc. (EOG)
Richard George	- Luff Exploration Company (Luff)
Randall Maxey	- Halcon Resources Company (HRC)
Paul Giron	- Targa Badlands LLC (Targa)
Don Morrison	- Dakota Resource Council (DRC)
Jennifer Cassel	- Environmental Law & Policy Center (ELPC)
Ron Ness	- North Dakota Petroleum Council (NDPC)
Robert Harms	- The Harms Group (Harms)
Board of Directors	- Northwest Landowners Association (NWLA)
Larry Smith	- LKS Midstream Consulting LLC (LKS)
Carrie La Seur	- Baumstark Braaten Law Partners (Baumstark)
Dan Grossman	- Environmental Defense Fund (EDF)
Woody Barth	- North Dakota Farmers Union (Farmers Union)
Raymond Gorka	- Slawson Exploration Company, Inc. (Slawson)
Zac Weis	- WPX
Andrew Williams	- EDF

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

II.

COMMENTS

GENERAL RULES AND REGULATIONS CHAPTER 43-02-03

NDAC § 43-02-03-01. DEFINITIONS.

The proposed amendment changes the definition of treating plant to include operations such as recycling production water.

Comments: NDPC believes the definition is too broad. As proposed, it would discourage the onsite treatment of cuttings and drilling mud on a drilling site and discourage the use of recycling produced water. They also believe the NDIC staff is not staffed adequately to manage the increased workload from the proposed definition change.

Halcon had the same comments as the NDPC.

The EDF supports this definition but strongly recommends against limiting the definition to those treatment facilities that are "offsite" or exempting those that are located on a site with an active oil or gas well.

WPX opposes the definition and requests that recycling of drilling fluid mud, completion fluids, production water, and reclamation of drilling solids be removed from the definition.

Action Taken: The definition of a treating plant will be modified to clarify that recycling drilling mud/cuttings during drilling operations or flowback water during completion operations is not considered a treating plant.

Rationale: This process needs more guidance and supervision than it is currently receiving. NDIC staff may have to be increased to manage the additional work load. Processes for recycling drilling mud/cuttings during drilling operations or flowback water during completion operations should not be defined as a treating plant, although if these processes are conducted "offsite" they will likely recover oil during the process and must be included in the definition of a treating plant.

NDAC § 43-02-03-11. ORGANIZATION REPORTS

The proposed amendments require the operator of a treating plant to file an organization report.

Comments: NDPC is concerned with all rule changes regarding treatment plants if the definition is not modified as requested.

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

Rationale: It is important that the NDIC has business information on service companies doing oil and gas operations in North Dakota, therefore an organization report should be required for all types of operations regardless if they are considered a treating plant or not.

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

The proposed amendments require the ground elevation, legal street address, and proposed road access on the plat. They also allow OGD to consider landowner w/in 1000' of a well to have input on the location of flare and requires the permit applicant to notice the dwelling owner and to comment in 5 business days.

Comments: NDPC is concerned it can take 3 weeks to obtain a County 911 address and is not available in all Counties. They originally proposed adding a deadline for obtaining the address or substitute "location description" for "legal street address" and removing the County 911 address from the system upon reclamation or abandonment of the location, although they now accept that emergency services wants the legal street address and requests that the permit application only include confirmation that a legal street address has been requested.

WPX indicated the legal street address is not available on the Fort Berthold Indian Reservation and the rule should allow exceptions.

Farmers Union objects to the 5-day dwelling owner review period—they suggest a 20-day review and request dwelling owner notification to the Commission be accepted via electronic writing. They also want the permit applicant's notice to the landowner to state the owner has the right to request relocation of all flares, tanks, and treaters utilized in connection with the permitted well be located at the greater distance from the occupied dwelling than the oil and gas well bore. Farmers Union also identified a "typo" within the proposed amendment. "Landowner" should be replaced with "dwelling owner".

Action Taken: The proposed amendment will be modified to allow the applicant to indicate the legal street address has been requested and to correct the typo to change "landowner" to "dwelling owner".

Rationale: The applicant should be able to submit an APD without having to wait for a "legal street address" from the proper authority, although after receiving the address, the applicant should submit such information to the NDIC. It would be onerous to the permit applicant if untimely delays were implemented in our permitting process. Five business days gives the owner a minimum of seven calendar days to respond to the NDIC, which we believe is adequate. The permit applicant does not need to "state" the dwelling owner has the right to request relocation of equipment, since it is outlined in NDCC Sec 38-08-05 and is required to be sent to them. The NDIC plans to allow owner notification to the NDIC via electronic mail, but does not believe it has to be addressed in this rule. The reference to "landowner" was a typo and should be replaced with "dwelling owner".

NDAC § 43-02-03-17. SIGN ON WELL OR FACILITY.

The proposed amendments require signs on transportation, purchasing, and processing facilities, although they remove the requirement to be legible at distance of 50 feet.

Comments: NDPC believes the rule is too broad and each facility should be identified in the rule. They recommend referencing to production-related facilities within the jurisdiction of the Commission and stating if the sign must be posted at the time of spudding or well pad construction.

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

Rationale: A sign is necessary for safety concerns to identify all facilities associated with oil and gas operations and should be posted upon commencement of construction operations.

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

The proposed amendments allow liners and fabrics placed on sites only upon Director approval.

Comments: NDPC indicated the addition of fabric and stabilization additives are generally onsite spot decisions just prior to arrival of a drilling rig and lag time for approval is a concern. Also the term "site" is too broad and recommends retaining the word "drill".

Halcon indicated they are concerned about the word "fabric" and they do not think fabrics such as geo-textiles should need prior approval. They generally had the same comments as the NDPC, but suggest the rules allow operators to provide the information after application and not require prior approval.

WPX believes prior approval should not be required since it provides little added value and only adds more administrative duties upon the operator. They believe post notification of such material installed and final disposition during final reclamation should be required.

Action Taken: The proposed amendment will be further modified to allow the use of stabilization additives without prior approval. Subsequent notification including proposed reclamation of such additives will also be required.

Rationale: Stabilization additive utilization is often determined upon moving in rotary equipment and should be allowed prior to Director approval. Subsequent notification on a Sundry Notice will provide important information to assist future successors and the Commission to determine proper reclamation of such additives.

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

The proposed amendment removes OGD authority to extend the 30-day requirement to remove an open receptacle.

Comments: NDPC objects to this proposed amendment. Weather conditions can prevent the closure of a receptacle within the original thirty-day timeframe. They request the original language be reinstated with the language added "within reason".

Action Taken: The Commission's proposed amendment will be withdrawn.

Rationale: It is important to allow the Director to have the ability to grant an extension of the thirty-day requirement to remove reclaim the pit or remove the open receptacle.

NDAC § 43-02-03-19.4. DRILLING PITS.

The proposed amendment clarifies the operator must report reclamation work on a Sundry Notice.

Comments: NDPC supports the amendment but encourages the word "verbal" to assure that verbal approval to reclaim a pit can be obtained.

Action Taken: The proposed amendment will be further modified to clarify that verbal approval from the Director can be obtained for pit reclamation.

Rationale: The Director currently allows an operator to obtain verbal approval of the pit reclamation plan.

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

The proposed amendments allow reserve pits if the well is located outside of the Bakken/Three Forks development areas as long as separate reserve pits are utilized to segregate each mud system and cuttings.

Comments: NDPC supports the amendment but suggests using the phrase "formation other than the Bakken and Three Forks".

Luff supports the amendment but requests the segregated pits allow skim oil if removed ASAP after MORT.

Action Taken: The proposed amendment will be further modified to allow the use of reserve pits in fields where the Bakken and Three Forks Formations are unspaced and to allow any oil accumulating on the reserve pit to be removed after the drilling rig is released.

Rationale: Over 95% of drilling in North Dakota occurs in the Bakken and Three Forks Formations, which use a closed or semi-closed mud system. Drilling for formations in a field where the Bakken and Three Forks are not developed could prove to be onerous to the operator. Minor amounts of oil can accumulate on the reserve pit as the hydrocarbon-bearing zone is drilled. Reclamation of the reserve pit should not be hampered if the oil is removed as soon as possible after releasing the drilling rig.

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

The proposed amendment allows a waiver to be obtained on remedial work if casing can be protected from external corrosion.

Comments: NDPC believes the intent of this rule is already adequately covered by existing language. They also indicated industry does not agree that the use of cathodic protection is the proper solution. They further commented that this amendment should be under NDAC Section 43-02-03-21.

Action Taken: The Commission's proposed amendment will be withdrawn.

Rationale: Current language in the rule already allows the Director to allow defective casing or cementing to remain if the casing can be adequately protected from external corrosion.

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

The proposed amendment requires the remote frac valve to be located on the top of the Christmas tree and operated from a safe distance.

Comments: NDPC agrees the rule should be amended, but believes the language should be changed to allow the frac valve at any location on the Christmas tree that provides isolation of the well bore.

Halcon had the same comments as the NDPC.

Action Taken: The proposed amendment will be further modified to require the remote operated frac valve to be on the Christmas tree to isolate the well bore from the treating line.

Rationale: Industry agrees the remote frac valve needs to be on the Christmas tree, but does not agree that it needs to be positioned at the top of the Christmas tree.

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

The proposed amendment requires all electric generators to be 150 feet to a producing well or oil tank and also requires operators fracing a well to give notice to the offsetting operator if the laterals are within 1320 feet.

Comments: NDPC indicated the rule change is contrary to the current trend of minimizing pad size and suggests all existing pads be grandfathered in if constructed prior to April 1, 2014 and a spark or flame arrestor is utilized. In the alternative, if equipment utilized a "spark" arrestor, the 125 feet allowance should be given. NDPC is also concerned with the obligation to notify the operator of an offset well that is on confidential status and believes such notice should only be required if publicly available, although believes a maximum notification should be included.

Halcon had the same comments as the NDPC.

Action Taken: The proposed amendments will be further modified to allow a boiler, electric generator, or treater equipped with a spark arrestor to be as close as 125 feet to an oil tank or producing well. Further modification will also require an operator conducting any well stimulation to give at least 3 days notice, but not more than 7 days notice, to any operator of an offsetting well is aware that the lateral is within 1320 feet of one another.

Rationale: Allowing equipment to be placed next to the producing well or oil tank without a minimum distance could create a serious safety issue. The rule should be clarified to clearly state that either a spark arrestor or flame arrestor could be utilized. NDAC Section 43-02-03-16 accepts the NDPC's suggestion to allow a permit applicant to indicate the legal street address has been requested, although it is appropriate to require the legal street address to be reported after it is received. An operator fracture stimulating a well may be aware of the location of an offsetting lateral even if the well is on confidential status. Notice should allow adequate time for the operator to protect the offsetting well from the fracture stimulation.

NDAC § 43-02-03-29. WELL AND LEASE EQUIPMENT.

The proposed amendments outline general guidelines for installing pipelines. They require a GIS layer for new pipelines w/in 180 days of placing into service and must report to include size, operating pressure, fluid, composition, and depth of the pipeline. They also require purging of abandoned pipelines, leaving in a safe condition, and reporting a GIS layer in 180 days and submitting an affidavit to the OGD.

Comments: NDPC believes the GIS layer should not be required on lines buried if located entirely within the boundary of a well site or production facility. Also HB1333 addressed GIS requirements for pipelines installed after August 1, 2011 and should be reflected in these amendments. NDPC recommends the minimum pipeline depth at the time of construction be reported. NDPC believes "leave in a safe condition" should be deleted since the wording is vague and unnecessary since compliance with the other requirements ensures the abandoned pipelines are left in a safe condition.

Targa believes the GIS layer should be submitted quarterly or semiannually, not within 180 days of placing each segment of pipeline into service. Targa recommends the minimum pipeline depth at the time of construction be reported. Targa believes "leave in a safe condition" should be deleted since the wording is vague and unnecessary since compliance with the other requirements ensures the abandoned pipelines are left in a safe condition.

LKS, representing NWLA, requests that each operator be responsible to develop, implement, operate, maintain, and periodically self-audit a written plan of practices regarding SWD systems that include at least the following info (1) system design and construction criteria, (2) map and

identification of facilities, (3) operation and spill response plan, and (4) maintenance and recordkeeping.

Baumstark, also representing NWLA, requests amendments to improve the management of produced water, such as requiring pumping systems to include automated valve controls, alarms, and shutdown controls, permits should require operators to minimize produced water by reusing and recycling, the Commission should publish a spill prevention and response guidebook, the Commission should require operators to file spill contingency plans similar to federal SPCC requirements, increase coordination between the Department of Health and Oil and Gas Division, test composition of produced water on a regular basis, publish allowable concentration levels for soil and water contaminants, publish criteria to revoke disposal operations and invoke penalties, and require additional safeguards to be implemented on facilities where spills have occurred.

Farmers Union welcomes the new pipeline requirements, but requests a minimum burial depth of pipelines be reported to assure agriculture equipment will not encounter the pipeline. They also request that leak detection monitoring methods be required and identified and material should be resistant to not only the transported fluids, but the environmental impacts as well.

Action Taken: The proposed amendments will be further modified to exempt piping utilized to connect flares, tanks, treaters or other equipment located entirely within the boundary of a well site or production facility from sending in GIS information. It will also be modified to require the minimum pipeline burial depth, clarified to indicate the required abandonment procedures will leave the pipeline in a safe condition, require submittal of leak detection and monitoring methods, and require the pipe be made from materials resistant to external corrosion.

Rationale: The system design and construction criteria, map and identification of facilities, operation and spill response plan, and maintenance and recordkeeping are effectively covered by either additional amendments to this section or by current rules and regulations of the Commission. Requirements for automated valve controls, alarms, and shutdown controls are best decided on a case-by-case basis, not in a general rule. The Commission does not have authorization to "require" operators to minimize produced water use by reusing and recycling, although recycling is encouraged. Publishing a spill prevention and response guidebook is best left to internal policy of the agency, not in a rule. Virtually all facilities are required to file Spill Prevention, Control, and Countermeasure (SPCC) plans since almost all facilities have an above ground oil storage capacity greater than 1320 gallons and EPA believes there is a reasonable expectation of an oil discharge into navigable water with any spill, therefore, such documents already exist and state requirements requesting the same are unnecessary. The NDIC and NDDH have an MOU in place and interact on a routine basis. Testing the composition of produced water on a regular basis is unnecessary since the composition does not substantially change. Allowable concentration levels for soil and water contaminants should be published by the NDDH, not the NDIC. Criteria to revoke disposal operations and invoke penalties already exists in the rules and regulations of the Commission. The Director, pursuant to NDAC Section 43-02-03-28, already has the ability to require additional safeguards to be implemented on facilities where spills have occurred.

It is important to document the minimum burial depth of pipelines and require pipe be constructed from material resistant to external corrosion. Leak detection monitoring methods should also be required to assure the integrity of the pipeline system.

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

The proposed amendment requires reports to comply with NDCC Section 37-17.1-07.1.

Comments: NDPC supports the concept but are concerned about adopting reference to another section of code not specific to oil and gas, therefore they recommend retaining the stricken language and requiring information only if applicable.

Keitu's clients have indicated that our agency does not allow initial verbal spill reports and rather they have been informed to use the "on-line" reporting tool. Keitu suggests either removing the allowance for verbal in the rule or allow verbal communication. Keitu is also concerned about adopting reference to another section of code not specific to oil and gas and suggests leaving in the current requirements, but requiring additional information only if applicable.

Action Taken: The proposed amendments will be further modified to require the initial notice to include information pursuant to HB1149 and the follow-up report will require any additional information pursuant to NDCC section 37-17.1-07.1, if applicable.

Rationale: There could be unintended consequences to referring to another section of code not specific to oil and gas. The stricken language should be retained. Verbal notification allows the Commission to timely response to such incidents. The online report is also critical since it auto-generates the incident to other critical agencies.

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

The proposed amendments require reclamation of a treating plant after it is decommissioned and access road and site waivers to be recorded with County Recorder.

Comments: NDPC supports the amendment but recommends recording "documentation" of the waiver.

Action Taken: The proposed amendment will be further modified to allow "documentation" of the waiver to be recorded.

Rationale: The waiver may contain sensitive information therefore filing "documentation" of the waiver is acceptable.

NDAC § 43-02-03-38.1. PRESERVATION OF CORES AND SAMPLES.

The proposed amendments allow samples to be taken as prescribed by the State Geologist, not at regular intervals, requires sample box to include file and API numbers, increases core filing deadline from 90 to 180 days with additional time per Director exception, and allows the State Geologist to determine the standard size of sample and core boxes.

Comments: NDPC would like more specific language so less interpretation is needed.

WPX supports the amendments.

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

Rationale: The proposed amendments give the Commission flexibility to modify the sample frequency requirements due to the ever-increasing rate of penetration.

NDAC § 43-02-03-48. MEASUREMENT OF OIL.

The proposed amendment requires the volume of oil to be corrected to 14.73 psia per NDAC Sec 43-02-03-80 (Reports of Purchasers and Transporters).

Comments: WPX would like a little more clarification for needing to correct to 14.73 psia.

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

Rationale: Purchasers and transporters are required to correct oil volumes to 60 deg F and 14.73 psia. The proposed amendment will also require the producer to make the same oil volume corrections.

NDAC § 43-02-03-51.2. TREATING PLANT SITING.

The proposed addition prohibits locating a treating plant in a geologically or hydrologically sensitive area.

Comments: NDPC does not object as long as their definition of a treating plant is adopted.

WPX believes the phrase "geologically or hydrologically sensitive area" should be defined and there should be a standard by which such an area can be evaluated against.

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

Rationale: No type of treating plant facility, regardless of its definition should be located in geologically or hydrologically sensitive areas. The phrase gives the Commission flexibility in determining geologically or hydrologically sensitive areas on a case-by-case basis.

NDAC § 43-02-03-51.3. TREATING PLANT CONSTRUCTION AND OPERATION.

The proposed addition outlines treating plant construction and operational requirements typically placed in a Commission order.

Comments: NDPC supports this addition.

WPX believes the phrase "continuing surveillance" is too vague and needs to be clarified as to what surveillance would be required.

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

Rationale: Some type of "continuing surveillance" is necessary to prevent unauthorized deposits of wastes. The phrase gives the Commission flexibility in determining the type of surveillance necessary on a case-by-case basis.

NDAC § 43-02-03-51.4. TREATING PLANT NOTICE OF INTENT TO ABANDON.

The proposed addition outlines treating plant abandonment and reclamation requirements.

Comments: NDPC indicated the word "plant" was misspelled.

Action Taken: The Commission's proposed addition will be further modified to correct the spelling error.

Rationale: The spelling error will be corrected.

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

The proposed amendment considers a treating plant abandoned if unused for one year.

Comments: NDPC requests the Director be authorized to grant a waiver for valid reasons to be idle greater than one year.

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

Rationale: Relief could be granted by the Commission after due notice and hearing and the hearing would afford all stakeholders the opportunity to voice their opinion.

NDAC § 43-02-03-60.2. FLARING EXEMPTION.

The proposed amendment is pursuant to House Bill 1134 and requires operators seeking to obtain an exemption to NDCC Section 38-08-06.4 to document that it is economically infeasible to equip a well with a system that intakes 75% of the surplus gas for beneficial use or conversion to liquids.

Comments: NDPC supports the amendment.

DRC requests the rules include additional information and verification that it is economically infeasible for the companies to connect to a gas gathering system.

ELPC requests the rules define the term "economically infeasible" to ensure that waivers allowing flaring become a very limited exception to the rule and suggest a break-even project should qualify as economic.

Harms supports the amendment, but suggests it might be beneficial to define the term "economically infeasible". Harms also suggests it would be beneficial to publish a list of wells flaring (including volumes and list operator), publish a local estimate of market rates (to provide valuation of volumes flared), apply rigorous economic analysis when considering economic infeasibility, and require operators to justify flaring on a 6-month basis.

The EDF supports the amendments but suggests a 98% destruction efficiency on all flares should be mandated.

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

Rationale: The proposed amendments are the result of newly enacted legislation passed by the 63rd Legislative Assembly in House Bill 1134. Guidelines already exist in the rule to sufficiently determine if it is economically infeasible to connect a well to a natural gas gathering line. All determinations of economic infeasibility should not be required every 6 months, but rather should be on a case-by-case basis. It is not appropriate to require certain documents to be published by the Director, but rather, the Director's policy should address whether such documents are necessary. The request to require all flares to have a 98% destruction efficiency goes beyond the intent of the rule change and consideration should not be given at this time since comment was not afforded.

NDAC § 43-02-03-60.3. CERTIFY WELL FOR GAS TAX EXEMPTION.

The proposed addition outlines the application process to certify a well for a temporary gas tax exemption.

Comments: The EDF supports the amendments but suggests a 98% destruction efficiency on all flares should be mandated.

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

Rationale: The request to require all flares to have a 98% destruction efficiency goes beyond the intent of the rule change and consideration should not be given at this time since comment was not afforded.

NDAC § 43-02-03-88.1. SPECIAL PROCEDURES FOR HEARINGS.

The proposed amendment requires the Commission to give a 15-day notice of SWD hearings to the County Auditor.

Comments: NDPC supports the amendment.

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

Rationale: The proposed amendment is the result of newly enacted legislation passed by the 63rd Legislative Assembly in House Bill 1333.

UNDERGROUND INJECTION CONTROL

CHAPTER 43-02-05

NDAC § 43-02-05-04. PERMIT REQUIREMENTS.

The proposed amendments clarify an underground injection permit application must include the top and bottom of confining zones, schematics including location of liners and flowlines, the proposed access to the nearest public road and authority to build access, a diagram showing traffic flow and parking, and a review of all surficial aquifers within one mile of the facility. They also allow the Director to suspend any permit for good cause and prohibits site construction without Director approval.

Comments: NDPC supports the amendments as long as they apply only to new injection wells.

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

Rationale: The additional permit requirements have to be included in any injection well application and will not affect injection wells already permitted.

NDAC § 43-02-05-05. SITING.

The proposed amendment requires the confining zone within the area of review around any injection well to be free of faults.

Comments: NDPC opposes this amendment and does not want it to affect existing SWD wells.

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

Rationale: No injection well should be allowed to inject into a fault zone.

STRIPPER WELL AND STRIPPER WELL PROPERTY DETERMINATION

CHAPTER 43-02-08

NDAC § 43-02-08-02. APPLICATION FOR STRIPPER WELL OR STRIPPER WELL PROPERTY DETERMINATION.

The proposed amendment Clarifies that an application for a property determination can be submitted for a "well" and eliminates the requirement to submit an affidavit stating all working interest owners were notified of the application.

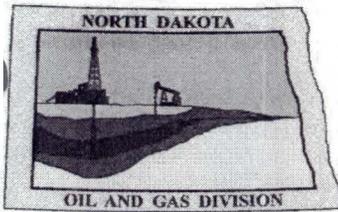
Comments: NDPC supports this rule change.

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

Rationale: No further discussion is necessary.

EOG, Halcon, Hess, and Slawson indicated they are members of the NDPC and concur with the comments made by them.

Luff indicated they concur with the comments made by the NDPC.



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) Chapter 43-02-03 (Oil & Gas), Chapter 43-02-05 (Underground Injection Control), Chapter 43-02-08 (Stripper Well Property Determination), and Chapter 43-02-12 (Geophysical Exploration) at 8:30am on October 1st, 2013 in the Conference Room of the Oil & Gas Division Building, 1000 E. Calgary Avenue, Bismarck, North Dakota. The proposals are summarized below:

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

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

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

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

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

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

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

The purpose of the proposed amendments to NDAC § 43-02-03-17 is to require identification on facilities. The proposed amendments require signage on transportation, purchasing, and processing facilities, but eliminates the requirement to be legible from a distance of 50 feet. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000.

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

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

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

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

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

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

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

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

The purpose of the proposed amendments to NDAC § 43-02-03-30 is to comply with the statute changes of reporting fires, leaks, spills, or blowouts pursuant to House Bill 1349. The proposed amendments require all such reports to include information required under North Dakota Century Code § 37-17.1-07.1, as provided in House Bill

1349. 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 § 43-02-03-34 is to correct the cite in the rule. The proposed amendment states sites must be reclaimed pursuant to NDAC § 43-02-03-34.1, which replaces the incorrect cite of NDAC § 43-02-03-19. The proposed amendment will not have an impact on the regulated community.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The purpose of the proposed amendments to NDAC § 43-02-08-03 is to clarify the rule and comply with the statute changes addressing changes in the stripper well determinations, pursuant to House Bill 1198. The proposed amendments clarify that the Director will consider applications for stripper well status and applications for stripper well property status. Pursuant to House Bill 1198, the amendments also state that to qualify for such stripper status, production from a well outside the Bakken and Three Forks Formations with a well depth of more than 10,000 feet must not exceed an average of 30 barrels of oil per day and production from a well in the Bakken and Three Forks Formations with a well depth of more than 10,000 feet must not exceed an average of 35 barrels of oil per day. The proposed amendments will provide an economic benefit to the regulated community.

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

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

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

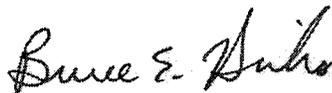
The purpose of the proposed amendment to NDAC § 43-02-12-04 is to update our rules with technology advances. The proposed amendment removes the need to include a description of the identifying marks the applicant will use on plugs placed in seismic shot holes since NDAC § 43-02-12-07 is being amended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

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

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

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

Dated this 26th day of August, 2013.



Bruce E. Hicks
Assistant Director

**REGULATORY ANALYSIS PURSUANT TO
NORTH DAKOTA CENTURY CODE 28-32-08
FOR CHANGES IN SECTION 43-02-03-01
DEFINITIONS**

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 reclaim, treat, or process drilling mud or produced water in the State. The proposed amendment will affect operators that currently have operations that recycling drilling mud or produced water. 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 some operators will have to obtain a bond for operations that currently do not require one. 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 43-02-03-29
WELL AND LEASE EQUIPMENT**

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 install pipelines in the State. The proposed amendment will affect companies installing pipelines that carry oil, produced water, or gas. The proposed amendment will benefit the State and general public.

II. PROBABLE IMPACT

The probable impact of the proposed amendment will be that companies installing pipelines will be subject to the proposed construction requirements in the rule. They will also be required to file geographical information showing the location and specification of such pipelines installed. 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

This amendment is necessary to comply with House Bill 1333. It is anticipated that there will only minor costs to the agency to implement and enforce the proposed amendments since agency employees currently inspect other oil and gas operations in the same area.

Costs to Agency

Field Inspection-----	3hrs/wk x 3 inspectors @ \$23/hr =	\$10,764 / yr
IT maintenance-----	2hrs/wk @ \$30/hr =	\$ 3,120 / yr
File clerk-----	1hr/wk @ \$15/hr =	\$ 780 / yr
Total-----		\$14,664 / yr

IV. ALTERNATIVE METHODS

No alternate methods were seriously considered.

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

None of the amendments or rules created under North Dakota Administrative Code Chapters 43-02-03, 43-02-05, 43-02-08, or 43-02-12 were mandated by Federal law.

SECTION 43-02-03-01 DEFINITIONS.

This amendment requires a plant constructed to recycle production water be considered a treating plant. The 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 addition requires the operator of a plant constructed to recycle production water to be considered a treating plant unless operations are conducted during completion operations at a well site. This operation could recover substantial amounts of hydrocarbons 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 monthly report 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 one-page form required to be filed monthly is not onerous 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 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 rule is to ensure that treating plants are being operated in a safe manner and small entities should not be exempt.

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

SECTION 43-02-03-11 ORGANIZATION REPORTS.

This amendment requires operators of disposal wells and treating plants to submit contact information to the Director. This amendment will not have an adverse impact on small entities.

SECTION 43-02-03-14 ACCESS TO RECORDS.

This amendment assures the Commission and Director have access to records of disposal and treating plant operators. This amendment will not have an adverse impact on small entities.

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

This amendment is a technical correction and corrects the cite referring to treating plant bonds. This amendment will not have an adverse impact on small entities.

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

These amendments require the permit applicant to include the legal street address of the location. This information is necessary for emergency services to respond to emergencies. They also incorporate changes pursuant to House Bills 1333 and 1348 allowing safe access to public roads and outlines a notification process to dwelling owners within 1000 feet of a location. These amendments will not have an adverse impact on small entities.

SECTION 43-02-03-16.1 DESIGNATION AND RESPONSIBILITIES OF OPERATOR.

These amendments clarify that the principal on the treating plant bond is the operator and addresses disputes over designation of a treating plant operator. These amendments will not have an adverse impact on small entities.

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

These amendments clarify the invitation to participate in drilling a well must include the approximate surface location of the well and the approximate completion location if other than a vertical well. These amendments will not have an adverse impact on small entities.

SECTION 43-02-03-17 SIGN ON WELL OR FACILITY.

These amendments require signage on transportation, purchasing, and processing facilities, but eliminates the requirement to be legible from a distance of 50 feet. These amendments will not have an adverse impact on small entities.

SECTION 43-02-03-19 SITE CONSTRUCTION.

These amendments require the operator to report the placement of fabrics and liners during construction of sites, roads, and facilities, although removes the need to obtain prior approval from the Director. They also require the operator to outline the plan to reclaim such materials. These amendments will not have an adverse impact on small entities.

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

The amendment was withdrawn and the rule will not be amended.

SECTION 43-02-03-19.4 DRILLING PITS.

These amendments clarify that verbal can be obtained to commence pit reclamation operations. They also require a notice to be filed with the Director detailing the reclamation performed.

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

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

The required information must include the name and address of the reclamation contractor, the name and address of the surface owner, and a description of the work completed. The required information typically is submitted on a one-page Sundry Notice and is not onerous for any operator, including small entities.

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

The one-time report is not onerous and must be filed within 30 days of completing the work. Small entities should not be exempted from the reporting requirement.

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

The one-page form required to be filed is not onerous 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 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 rule is to ensure that the reclamation of a drilling pit is documented in the well file. Small entities should not be exempt from this amendment.

The adoption of the rules will not have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was not prepared.

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

These amendments address the legislative intent of Senate Bill 2014 with reference to reserve pits. The amendments allow wells drilled and completed in fields not spaced for Bakken and Three Forks Formation to use separate reserve pits if utilized to segregate each mud system and associated drill cuttings. The amendment will provide an economic benefit to the regulated community.

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

The amendment was withdrawn and the rule will not be amended.

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

These amendments clarify that the required safety equipment must be installed on the Christmas tree to isolate the well bore from the treating line and be remotely operated from the edge of the location or other safe distance. They also require the relief valve to be set to limit line pressure to no more than eighty-five percent of the internal yield pressure of the frac string or no greater than the pressure test on the intermediate casing, less 100 pounds per square inch gauge, whichever is less.

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

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

The amendments are for the protection of the company performing the hydraulic stimulation and small entities should not be exempted from them.

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

The amendments do not impose any schedules, deadlines, or reporting requirements.

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

The amendments do not impose any reporting requirements.

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

The amendments do not impose any 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 rule is to ensure that fracture stimulations are conducted in a safe manner and small entities should not be exempt.

The adoption of the rules will not have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was not prepared.

SECTION 43-02-03-28 SAFETY REGULATION.

These amendments require all electric generators to be located 150 feet from any producing well or oil tank, although they can be located 125 feet away if a spark arrestor is utilized on the equipment. The amendments also require the legal street address of the well site, and well facility if separate from the well site. They also require the operator conducting any well stimulation to give prior written notice, up to seven days and not less than three business days, to any operator of a well completed in the same pool, if publicly available information indicates or if the operator is made aware, if the completion intervals are within 1320 feet of one another.

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

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

The amendments are for the protection of the operators of wells being hydraulic stimulated and offset wells and small entities should not be exempted from them.

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

The amendments do not impose any schedules, deadlines, or reporting requirements.

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

The amendments do not impose any reporting requirements.

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

The amendments are for the protection of the operators of wells being hydraulic stimulated and offset wells and small entities should not be exempted from them.

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

The purpose of the rule is to ensure that fracture stimulations are conducted in a safe manner and small entities should not be exempt.

The adoption of the rules will not have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was not prepared.

SECTION 43-02-03-29 WELL AND LEASE EQUIPMENT.

The amendments outline pipeline requirements and a procedure for reporting the location of pipelines installed pursuant to House Bill 1333. The amendments outline general installation and abandonment requirements, and requirements for reporting pipelines both installed and abandoned.

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

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

The amendments are pursuant to House Bill 1333 and do not allow any variance and small entities should not be exempted from them.

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

The amendments are pursuant to House Bill 1333 and do not allow any variance and small entities should not be exempted from them.

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

The amendments are pursuant to House Bill 1333 and do not allow any variance and small entities should not be exempted from them.

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

The amendments are pursuant to House Bill 1333 and do not allow any variance and small entities should not be exempted from them.

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

The purpose of the rule is to ensure that all pipelines are traceable and are installed and reclaimed in a safe manner, therefore small entities should not be exempt.

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

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

The amendments comply with the statute changes of reporting fires, leaks, spills, or blowouts pursuant to House Bill 1349. The amendments require all such reports to include information required under North Dakota Century Code § 37-17.1-07.1.

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

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

The amendments are pursuant to House Bill 1349 and do not allow any variance and small entities should not be exempted from them.

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

The amendments are pursuant to House Bill 1349 and do not allow any variance and small entities should not be exempted from them.

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

The amendments are pursuant to House Bill 1349 and do not allow any variance and small entities should not be exempted from them.

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

The amendments do not impose any design or operational standards.

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

The amendments are pursuant to House Bill 1349 and do not allow any variance and small entities should not be exempted from them.

The adoption of the rules will not have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was not prepared.

SECTION 43-02-03-34 METHOD OF PLUGGING.

This amendment is a technical correction and corrects the cite referring to the reclamation of sites. This amendment will not have an adverse impact on small entities.

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

The amendment requires all treating plants to be reclaimed within one after being decommissioned and all site and road reclamation waivers to be filed with the County Recorder's Office.

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

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

Reclamation of a site within one after being decommissioned is not onerous to small entities, although relief could be considered after due notice and hearing.

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

It is necessary to require the affidavit to be filed with the County Recorder's Office so proper documentation is filed with the appropriate authorities. Small entities should not be exempted from the reporting requirement.

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

The one-time form required to be filed is not onerous 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 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 rule is to ensure that the reclamation of a drilling pit is documented in the well file. Small entities should not be exempt from this amendment.

The adoption of the rules will not have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was not prepared.

SECTION 43-02-03-38.1 PRESERVATION OF CORES AND SAMPLES.

The amendments provide flexibility in obtaining samples and filing cores, requires the file and API numbers to be included on the sample boxes, allows a 30-day extension to file reports, and increases the time in which cores must be filed from 90 to 180 days. The amendments will provide an economic benefit to the regulated community. These amendments will not have an adverse impact on small entities.

SECTION 43-02-03-48 MEASUREMENT OF OIL.

The amendment clarifies that the producer must determine the volume of oil using the same method as transporters and purchasers. The amendment requires all volumes to be corrected to a base pressure of 14.73 pounds per square inch absolute. These amendments will not have an adverse impact on small entities.

SECTION 43-02-03-51 TREATING PLANT.

The amendments address notification requirements pursuant to House Bill 1333 and streamline the treating plant rules. The amendments require the Commission to give at least a 15-day notice to the County Auditor of any application in which a request for a treating plant is received, as provided in House Bill 1333. They also move the treating plant requirements to other newly created sections of the Administrative Code. The amendments are pursuant to House Bill 1333 and do not allow any variance and small entities should not be exempted from them.

The adoption of the rules will not have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was not prepared.

SECTION 43-02-03-51.1 TREATING PLANT PERMIT REQUIREMENTS.

The adoption is to clarify the treating plant rule currently under NDAC § 43-02-03-51 by addressing treating plant permit requirements in this new section. This section will ease confusion of what information is necessary to file a complete application. The addition outlines the general requirements to be included in a treating plant application. The 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 adoption addresses requirements necessary to complete an application, not reporting requirements.

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

The adoption addresses requirements necessary to complete an application, not reporting requirements.

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

The adoption addresses requirements necessary to complete an application, not reporting requirements.

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

The adoption 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 requirements are typically detailed in an order of the Commission after due notice and hearing. Placing them in the rules does not place any additional onus on the regulated community, although it does make sure information mandatory. The requested information is necessary for the Commission to determine if the treating plant will be constructed and operated in a safe manner and small entities should not be exempt.

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

SECTION 43-02-03-51.2 TREATING PLANT SITING.

The adoption is to clarify the treating plant rule currently under NDAC § 43-02-03-51 by addressing treating plant siting in this new section. The addition states a treating plant cannot be sited in a geologically or hydrologically sensitive area. This adoption will not have an adverse impact on small entities.

SECTION 43-02-03-51.3 TREATING PLANT CONSTRUCTION AND OPERATION REQUIREMENTS.

The adoption is to clarify the treating plant rule currently under NDAC § 43-02-03-51 by addressing treating plant permit requirements in this new section. These requirements are currently included in a Commission order approving a treating plant application. The addition outlines the general construction and operational requirements for a treating plant.

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

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

The adoption is necessary for the protection of the environment and small entities should not be exempted from them.

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

The operator of the treating plant is required to immediately notify the Commission upon commencing treatment operations. This is not onerous to the operator and it is essential that the Commission receives such information, therefore small entities should not be exempted from this requirement.

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

The one-page form required to be filed monthly is not onerous 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 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 rule is to ensure that treating plants are being operated in a safe manner and small entities should not be exempt.

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

SECTION 43-02-03-51.4 TREATING PLANT ABANDONMENT AND RECLAMATION REQUIREMENTS.

The adoption is to clarify the treating plant rule currently under NDAC § 43-02-03-51 by addressing abandonment and reclamation requirements in this new section.

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

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

The adoption is necessary for the protection of the environment and small entities should not be exempted from them.

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

The operator of the treating plant is required to obtain approval from the Director prior to abandoning a treating plant and must submit an account of work performed within 30 days of abandoning a treating plant. This is not onerous to the operator and it is essential that the Commission receives such information, therefore small entities should not be exempted from this requirement.

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

The one-time report cannot be consolidated or simplified.

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

The adoption 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 rule is to ensure that operators abandon and reclaim treating plants pursuant to regulations and small entities should not be exempt.

The adoption of the rules will not have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was not prepared.

SECTION 43-02-03-55 ABANDONMENT OF WELLS OR TREATING PLANTS AND – SUSPENSION OF DRILLING.

The amendment clarifies when a treating plant is considered abandoned. The amendment clarifies that the removal of treating plant equipment or the failure to use a treating plant for one year constitutes abandonment of the treating plant.

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

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

The amendment is necessary for the protection of the environment and small entities should not be exempted from them.

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

The amendment does not address schedules, deadlines, or reports.

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

The amendment does not address schedules, deadlines, or reports.

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 an abandoned treating plant is not allowed to become a threat to the environment and the general public and small entities should not be exempt.

The adoption of the rules will not have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was not prepared.

SECTION 43-02-03-60.2 FLARING EXEMPTION.

The amendments address requirements with reference to flaring exemptions. The amendments require documentation considering economic feasibility to use surplus gas for beneficial use. The amendments are pursuant to House Bill 1134 and do not allow any variance and small entities should not be exempted from them.

SECTION 43-02-03-60.3 APPLICATION TO CERTIFY WELL FOR TEMPORARY GAS TAX EXEMPTION.

The adoption outlines application requirements with reference to the temporary gas tax exemptions. The amendments are pursuant to House Bill 1134 and will provide an economic benefit to the regulated community.

The adoption of the rules will not have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was not prepared.

SECTION 43-02-03-80 REPORTS OF PURCHASERS AND TRANSPORTERS OF CRUDE OIL.

The amendment clarifies rail facility operators are subject to the rule. The amendment requires the operator of any oil rail facility to report the amount of oil received and shipped out of the facility monthly.

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 the operator of a rail facility to report monthly the amount of oil received and shipped out of such facility. Rail facilities ship over half the oil transported in North Dakota 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 monthly report 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 one-page form required to be filed monthly is not onerous 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 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 rule is to ensure that the Commission and Pipeline Authority can determine the importance of rail facilities. Rail facilities ship over half the oil transported in North Dakota and small entities should not be exempted from the reporting requirement.

The adoption of the rules will not have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was not prepared.

SECTION 43-02-03-81 AUTHORIZATION TO TRANSPORT OIL FROM A WELL, TREATING PLANT, OR CENTRAL PRODUCTION FACILITY.

The amendment clarifies treating plant operators are subject to the rule. The amendment requires the operator of a treating plant to obtain the Director's approval prior to transporting any oil from the facility.

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

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

Audits on oil purchasers and transporters cannot be conducted unless the operator of the treating plant informs the Commission of the same, therefore 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 amendment does not address schedule or deadlines requirement.

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

The one-page form required to be filed is not onerous 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 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.

Audits on oil purchasers and transporters cannot be conducted unless the operator of the treating plant informs the Commission of the same, therefore small entities should not be exempted from the reporting requirement.

The adoption of the rules will not have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was not prepared.

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 amendment concerns a notification requirement onus on the Commission pursuant to House Bill 1333 and does not place any requirements on the regulated community.

The adoption of the rules will not have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was not prepared.

SECTION 43-02-05-04 PERMIT REQUIREMENTS.

The amendment clarifies the permit requirements of a disposal well and implements requirements addressing safety concerns of disposal applications pursuant to House Bill 1333. The amendments clarify the top and bottom confining zones of the injection zone must be identified, requires the size and purpose of all tanks, location and height of all dikes, liner location, flowline location, and road access to nearest existing public road and the authority to build such access.

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 is necessary for the protection of the environment and small entities should not be exempted from them.

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

The amendment does not address schedules, deadlines, or reports.

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

The amendment does not address schedules, deadlines, or reports.

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 injection wells can be constructed and operated in a manner that is not a threat to the environment or the general public and small entities should not be exempt.

The amendment of the rules will not have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was not prepared.

SECTION 43-02-05-05 SITING.

The amendment clarifies that to protect the environment, all injection wells must be sited in a fashion that they inject into a formation which has confining zones that are free of known open faults or fractures. This amendment will not have an adverse impact on small entities.

SECTION 43-02-08-01 DEFINITIONS.

The amendments clarify that an application for either a stripper well or a stripper well property can be submitted and removes the requirement that all mineral interest owners be notified of the application. The amendment is pursuant to House Bill 1198 and does not place any requirements on the regulated community.

The adoption of the rules will not have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was not prepared.

SECTION 43-02-08-02 APPLICATION FOR STRIPPER WELL OR STRIPPER WELL PROPERTY DETERMINATION.

The amendments clarify the stripper well rules and remove the requirement of the applicant to notify all working interest owners of the stripper well application. The amendments clarify that an application for either a stripper well or a stripper well property can be submitted and removes the requirement that all mineral interest owners be notified of the application. The amendments will provide an economic benefit to small entities.

The adoption of the rules will not have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was not prepared.

SECTION 43-02-08-02.1 PROPERTY DETERMINATION.

The amendments clarify that a Unit, a spacing unit, contiguous tracts within a lease, and a single well completed prior to July 1, 2013 are all considered properties. The amendments also state a single well drilled and completed after June 30, 2013 is considered a single well stripper well, that any stripper well property status of a well previously qualified will expire upon reentry or recompletion, and additional wells can be added to a stripper property only if they were completed prior to July 1, 2013. The amendments are pursuant to House Bill 1198 and do not allow any variance and small entities should not be exempted from them.

The adoption of the rules will not have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was not prepared.

SECTION 43-02-08-03 DIRECTOR SHALL DETERMINE STRIPPER WELL OR STRIPPER WELL PROPERTY STATUS.

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

exceed an average of 35 barrels of oil per day. The amendments will provide an economic benefit to the regulated community.

The adoption of the rules will not have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was not prepared.

SECTION 43-02-08-04 APPLICANT ADVERSELY AFFECTED MAY SUBMIT AMENDED APPLICATION - PROCEDURE.

The amendment clarifies the Director will issue a determination of a stripper well or a stripper well property within 30 days of receiving an amended application. These amendments will not have an adverse impact on small entities.

SECTION 43-02-08-05 PERSON ADVERSELY AFFECTED MAY PETITION THE COMMISSION - PROCEDURE.

The amendment clarifies that any person adversely affected by a determination of the Director for a stripper well or stripper well property status may within 30 days, petition for a hearing. These amendments will not have an adverse impact on small entities.

SECTION 43-02-08-11 BOOKS AND RECORDS TO BE KEPT TO SUBSTANTIATE REPORTS.

The amendment clarifies that any operator desiring to classify a well or property as a stripper well property shall keep records for a period of at least 6 years. These amendments will not have an adverse impact on small entities.

SECTION 43-02-12-04 EXPLORATION PERMIT – APPLICATION - EXPIRATION.

The amendment removes the need to include a description of the identifying marks the applicant will use on plugs placed in seismic shot holes since NDAC § 43-02-12-07 is being amended to eliminate such identifying marks on the plugs. The amendment will provide an economic benefit to small entities.

The adoption of the rules will not have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was not prepared.

SECTION 43-02-12-07 DRILLING AND PLUGGING REQUIREMENTS.

The amendments remove the need to mark plugs placed in seismic shot holes with identifying marks, since the holes are now identified by latitude/longitude coordinates and filed with the Commission. The amendments also only allow dry cuttings to be utilized when plugging a shot hole since wet cuttings tend to bridge off and result in improper plugging.

The adoption of the rules will not have an adverse economic impact on small entities, therefore, a Small Entities Economic Impact Statement was not prepared.

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

SECTION 43-02-03-01 DEFINITIONS.

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 desire to recycle production water.

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 since the Commission is currently placing the requirements in an order of the Commission after notice and hearing. Costs required for compliance will include man-hours to complete paperwork and premiums to obtain bonds.

<u>Costs Required for Compliance</u>	
Administrative costs-----	8hrs @ \$15/hr = \$ 120
Surveyor costs-----	= \$ 5,000
Diagrams and drawings-----	= \$ 500
Total-----	= \$ 5,620

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 will promote greater compliance with plugging and reclamation 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 regulatory oversight to assure the environment is protected.

SECTION 43-02-03-29 WELL AND LEASE EQUIPMENT.

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 6 oil wells, gas wells, and injection wells in the State.

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

Costs associated with the adoption of this rule will dependent upon the number of pipelines installed by the company. Costs required for compliance will include man-hours to complete paperwork and to create the GIS map layer identifying the pipeline installed. It is anticipated that the cost of the proposed rule to the regulated community may 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. The amendment will provide a benefit to surface owners in the area since the amendments allow for the surface owner to obtain information concerning pipelines across their surface land.

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

The amendments were pursuant to requirements set forth in House Bill 1333. Costs associated with the adoption of the amendments include field inspections and the creation of a GIS database to house and maintain the data. It is anticipated that initially there will only minor costs to the agency to implement and enforce the proposed amendments since agency employees currently inspect other oil and gas operations in the same area and existing computer hardware and software will be utilized.

First Year Cost to Agency

Field Inspection-----	3hrs/wk x 3 inspectors @ \$23/hr =	\$10,764 / yr
IT development of initial database-----	200hrs @ \$30/hr =	\$ 6,000
IT maintenance-----	2hrs/wk @ \$30/hr =	\$ 3,120 / yr
File clerk-----	1hr/wk @ \$15/hr =	\$ 780 / yr
Total-----		\$20,664 / yr

It is anticipated that an additional 30,000 miles of pipelines will be installed in the future. Additional staff and resources will be required to maintain such a database.

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

No alternate methods were considered since amendments were mandated by House Bill 1333.

SECTION 43-02-03-51.1 TREATING PLANT PERMIT 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 desire to reclaim, treat, process or recycle tank bottoms, waste oils, drilling mud, waste from drilling operations, produced water, and other wastes related to crude oil and natural gas exploration and production.

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

We provide the following estimate of costs assuming the rules are new and will implement additional requirements. In reality, costs associated with the adoption of this rule will be minimal since the Commission is currently placing the requirements in an order of the Commission after notice and hearing. Costs required for compliance will include man-hours to complete paperwork, prepare a plat certified by a registered land surveyor, a schematic drawing of the site and road access, cut and fill diagrams, and diking and containment drawings.

<u>Costs Required for Compliance</u>	
Administrative costs-----	8hrs @ \$15/hr = \$ 120
Surveyor costs-----	= \$ 5,000
Diagrams and drawings-----	= \$ 500
Total-----	= \$ 5,620

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 and private persons since the treating plant site will be documented.

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 include the regulations in a rule and instead of agency policy.

SECTION 43-02-03-51.3 TREATING PLANT CONSTRUCTION AND OPERATION 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 desire to reclaim, treat, process or recycle tank bottoms, waste oils, drilling mud, waste from drilling operations, produced water, and other wastes related to crude oil and natural gas exploration and production.

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

We provide the following estimate of costs assuming the rules are new and will implement additional requirements. In reality, costs associated with the adoption of this rule will be minimal since the Commission is currently placing the requirements in an order of the Commission after notice and hearing. Costs required for compliance will include installation fencing around the perimeter of the treating plant, construction of dikes, and preparation of an annual report.

<u>Costs Required for Compliance</u>	
Administrative costs-----	= \$ 1,000
Fencing costs-----	= \$ 20,000
Dike construction-----	= \$ 15,000
Total-----	= \$ 36,000

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. The amendment will provide a benefit to surface owners and private persons since the treating plant site will be documented.

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 include the regulations in a rule and instead of agency policy.