



November 1, 2023

DELIVERED VIA EMAIL

Ms. Liz Fordahl
North Dakota Legislative Council
State Capitol
600 E. Broadway, 2nd Floor
Bismarck, ND 58505-0360
lizfordahl@ndlegis.gov

RE: Adopted and Amended Rules

Dear Ms. Fordahl:

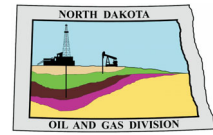
The Full Notice of Intent to Adopt and Amend Administrative Rules and a copy of the proposed rules are enclosed as required by North Dakota Century Code § 28-32-10.

If you have any questions or comments, do not hesitate to contact this office.

Sincerely,

A handwritten signature in blue ink that reads "Mark Bohrer".

Mark F. Bohrer
Assistant Director



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 four public hearings to address proposed amendments and additions to the North Dakota Administrative Code (NDAC) Chapter 43-02-03 (Oil & Gas Regulations):

- October 9, 2023 at 8 a.m. (CDT) in the Conference Room of the Oil and Gas Division Building, 1000 East Calgary Avenue, Bismarck, North Dakota
- October 9, 2023 at 1 p.m. (MDT) in the Conference Room of the Oil and Gas Division Dickinson Field Office, 926 East Industrial Drive, Dickinson, North Dakota
- October 10, 2023 at 8:00 a.m. (CDT) at Clarion Hotel and Suites, 1505 15th Avenue West, Williston, North Dakota
- October 10, 2023 at 1:30 p.m. (CDT) in the Conference Room of the Oil and Gas Division Minot Field Office, 7 Third Street SE, Suite 107, Minot, North Dakota

TAKE NOTICE that the North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division, will hold one additional public hearing to address proposed amendments and additions to the North Dakota Administrative Code (NDAC) Chapter 43-02-03 (Oil & Gas Regulations), Chapter 43-02-08 (Stripper Well and Stripper Well Property Determination), Chapter 43-02-10 (Certification of Secondary and Tertiary Recovery Projects-Determination of Incremental Production), and Chapter 43-02-15 (Certification of Restimulation Wells):

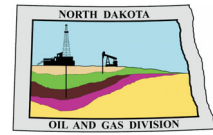
- November 17, 2023 at 9 a.m. (CDT) in the Conference Room of the Oil and Gas Division Building, 1000 East Calgary Avenue, Bismarck, North Dakota

The additional hearing is a continuance of the rule making process to consider proposed amendments to NDAC Chapter 43-02-03, in particular NDAC § 43-02-03-19.3, amendments to Chapter 43-02-08 and Chapter 43-02-10 resulting from an amendment to North Dakota Century Code (NDCC) Chapter 57-51.1 during the Sixty-Fourth Legislative Assembly (HB 1476), and promulgation of rules pursuant to House Bill 1427, recently enacted by the Sixty-Eighth Legislative Assembly, creating a tax incentive for restimulation wells.

The proposals are summarized below:

The purpose of the proposed amendments to NDAC § 43-02-03-01 is to add definitions for inactive pipeline and subsurface observation well and clarify the definitions of stratigraphic test well and treating plant. The proposed amendments acknowledge inactive pipeline is referred to in NDAC § 43-02-03-55 but was not defined; acknowledge subsurface observation wells have been regulated but are not defined; amends stratigraphic test well definition to allow for such wells under all regulatory programs administered by the Oil and Gas Division, not just the oil and gas program, and clarify such wells cannot be injected into; and amend the treating plant definition to clarify that routine solids recovery at a saltwater disposal site is not considered a treating plant operation. The proposed inactive pipeline and subsurface observation well amendments are not expected to have an impact on the regulated community in excess of \$50,000 since they are currently regulated. The proposed stratigraphic test well amendment will provide an economic benefit to the regulated community since such wells can be permitted and utilized for all programs under the Oil and Gas Division jurisdiction. The proposed treating plant amendment will provide an economic benefit to the regulated community since it allows for routine solids control at saltwater disposal sites without obtaining a treating plant permit.

The purpose of the proposed amendment to NDAC § 43-02-03-14 is to affirm all well types regulated by the Oil and Gas Division are subject to the regulation. The proposed amendment adds stratigraphic test wells and



subsurface observation wells allowing the director access to all records for all well types. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000 since these types of wells are currently regulated.

The purpose of the proposed amendments to NDAC § 43-02-03-14.2 is to change the focus of the regulation from all meters to meter proving equipment used to test the accuracy of oil meters. The proposed amendments require owners of meter proving equipment to file an inventory with the director and the previous meter inventory required is now at the request of the director; require test reports to include the meter owner name since it can be different from the system it is connected to; clarify that certificates of accuracy for equipment used to test gas meters must be available upon request; require the owner of a conventional pipe prover or master meter to notify the director at least ten days prior to testing; clarify that test reports must be filed for all custody transfer meters, conventional pipe provers, and master meter provers; clarify that the paper form previously provided is no longer available since our NorthSTAR database requires online submittal; and clarify the role of the director and the commission. The proposed amendments will provide an economic benefit to a portion of the regulated community but are not expected to have an impact on the remainder in excess of \$50,000.

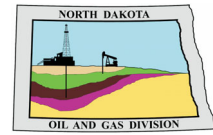
The purpose of the proposed amendments to NDAC § 43-02-03-15 is to provide clarity and establish a new well status type bond. The proposed amendments clarify the role of the director and the commission; affirm that the transferee of any well type transferred is responsible for the plugging and reclamation of any such well and appurtenance thereto where the reclamation and restoration status of land and water resources impacted by oil and gas development is in an inadequate restoration status; and establish an enhanced oil recovery potential well bond subject to annual review resulting from the new well status type established pursuant to legislation passed by the Sixty-eighth Legislative Assembly (HB1272). The proposed amendment relative to bonding is not expected to have an impact on the regulated community in excess of \$50,000 since bonding of wells is currently required. The proposed amendment relative to well transfers is not expected to have an impact on the regulated community in excess of \$50,000 since this is currently required.

The purpose of the proposed amendments to NDAC § 43-02-03-16 is to provide clarity and provide relief to the regulated community. The proposed amendments clarify the role of the director and the commission; clarify that the paper form previously provided is no longer available since our NorthSTAR database requires online submittal; clarify what extenuating circumstances are for the director to grant verbal approval to begin site preparation; eliminated a duplicative form; and allow the director to extend a permit to drill, recomplete, or drill horizontally for up to one year. The proposed amendments relative to verbal approval to begin site construction and permit extensions will provide an economic benefit to the regulated community since site construction can begin before a permit is issued and a permit can be extended rather than reapplied for, and the remainder 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 clarify certain language. The proposed amendments provide consistent language. The proposed amendments will have no economic impact on the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-03-17 is to enhance safety. The proposed amendment adds current emergency phone number to the requirements to be posted on the well or facility sign. 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 § 43-02-03-19.3 is to provide clarity and relief to the regulated community. The proposed amendments specify the form to be used to permit freshwater pits and portable-collapsible receptacles used in completion and well servicing operations; and allow the director to permit portable-collapsible single sidewall, double liner open top receptacles used solely for storage of fluids used in completion and well servicing operations, specifying the information to be included in a permit application, allowing an application to be docketed for hearing, authorizing the commission to revoke such permit, and authorizing the director to modify or suspend such permit and approve a transfer. The proposed amendments relative freshwater pits and portable-collapsible receptacles are not expected to have an impact on the regulated community in excess of \$50,000 and the proposed amendment relative to director approval of portable-collapsible single sidewall, double liner



open top receptacles will provide an economic benefit to the regulated community since it allows director approval rather than a hearing.

The purpose of the proposed amendments to NDAC § 43-02-03-20 is to affirm all well types regulated by the Oil and Gas Division are subject to the regulation and provide clarity. The proposed amendments remove the limited descriptive well types; require all necessary oil, gas, and water bearing strata are sealed or separated to prevent migration; and clarify the role of the director and the commission. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000 since they are currently in practice.

The purpose of the proposed amendments to NDAC § 43-02-03-21 is to affirm all well types regulated by the Oil and Gas Division are subject to the regulation, provide clarity, ensure freshwaters are protected and casing is cemented in a proper manner, and enhance environmental protection. The proposed amendments remove the limited descriptive well types; clarify the regulation applies to all wells constructed; require cementing of casing strings while the drilling rig is on the well; require a gauge on all surface casing strings to detect and monitor pressure buildup; specify the pressure for testing casing strings; and clarify the director is the appropriate authority to provide a waiver from setting a packer in a flowing well. The proposed amendment requiring a surface casing gauge and monitoring on all wells is expected to have an impact on the regulated community in excess of \$50,000 while the others will not since they are currently in practice.

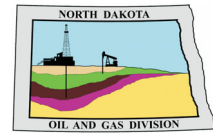
The purpose of the proposed amendment to NDAC § 43-02-03-24 is to affirm all well types regulated by the Oil and Gas Division are subject to the regulation. The proposed amendment removes the limited descriptive well types. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000 since this is currently in practice.

The purpose of the proposed amendments to NDAC § 43-02-03-27.1 is to remove an inappropriate casing descriptor and a misplaced requirement, correct verbiage, and enhance environmental protection. The proposed amendments remove the intermediate casing descriptor making the regulation applicable to the subject casing string; remove a misplaced requirement that is covered in another portion of the regulation; affirm and require remedial casing work to be performed prior to hydraulic fracture stimulation operations at the discretion of the director; change "adequate" to "adequately"; and require the operator to notify the director as soon as practicable of any suspected frac string or casing failure. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000 since the remedial work requirement is currently addressed in NDAC § 43-02-03-22.

The purpose of the proposed amendments to NDAC § 43-02-03-28 is to provide clarity, provide relief to the regulated community, and enhance safety. The proposed amendments clarify which types of oil tanks must be at least 125 feet from an ignition source; which type of oil processing vessels must be at least 65 feet from an ignition source; and prohibit plumbing of the surface casing into the production line without approval of the director. The proposed amendments relative to the oil tanks and prohibition of plumbing the surface casing into the production line are not expected to have an impact on the regulated community in excess of \$50,000 and the proposed amendment relative to the oil processing vessels will provide an economic benefit to the regulated community since it allows director approval rather than a hearing and can result in smaller locations.

The purpose of the proposed amendments to NDAC § 43-02-03-29 is to correct an acronym and enhance public safety. The proposed amendments correct the Esri acronym and require above ground pipeline markers at the discretion of the director to protect public health and safety. 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 § 43-02-03-29.1 is to provide clarity, ensure the director is provided timely notice and accurate and meaningful information, add language consistent with other sections, require timely reclamation, ensure proper pipeline installation, protect the environment, and enhance public safety. The proposed amendments clarify the role of the director and the commission; require a new notice of intent to construct for projects not built within one year; add acronyms to be consistent with other sections; require right-of-way reclamation within 180 calendar days with extension allowed at the director's discretion; require third-party inspectors during all aspects of construction in sufficient numbers for the size of the project to ensure proper installation; require



the graphical information system layer filed to be within twenty feet of horizontal accuracy; ensure owners develop and maintain a data sharing plan with operators; require an appropriately scaled chart recorder if utilized; and require above ground pipeline markers at the discretion of the director to protect public health and safety. The proposed amendment relative to right-of-way reclamation is not expected to have an impact on the regulated community in excess of \$50,000 since most companies already follow this. The proposed amendment relative to accuracy of the graphical information system layer is not expected to have an impact on the regulated community in excess of \$50,000 since this is within the tolerance of today's technology. The proposed amendment relative to a data sharing plan is not expected to have an impact on the regulated community in excess of \$50,000 since development of the plan is required by this section. The remainder of the proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000.

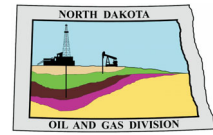
The purpose of the proposed amendments to NDAC § 43-02-03-31 is to provide clarity, ensure accurate data is provided, add restimulation wells to the confidentiality provisions resulting from the new well completion type established pursuant to legislation passed by the Sixty-eighth Legislative Assembly (HB1427); and provide consistency. The proposed amendments clarify the role of the director and the commission; clarify the log from which the presence and quality of bonding of cement must be a cement evaluation log; require the initial cement evaluation log to be run without the addition of pressure at surface; clarify the confidentiality period begins on the date received, not the time received; adds completions of restimulation wells to the types that can be granted a confidentiality period; changes the confidentiality period for recompletions, restimulation wells, and reentries to mimic that of new wells completed; and clarify that the paper form previously provided is no longer available since our NorthSTAR database requires online submittal. The proposed amendment relative to the cement evaluation log is not expected to have an impact on the regulated community in excess of \$50,000 since most operators already follow this. The proposed amendment relative to the cement evaluation log run without the addition of surface pressure is not expected to have an impact on the regulated community in excess of \$50,000 since the running of the log is currently required. The remainder of 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 § 43-02-03-34.1 is to provide clarity. The proposed amendments clarify that the paper form previously provided is no longer available since our NorthSTAR database requires online submittal; and clarify it is the commission that files a reclamation waiver with the county recorder, not the 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 amendment to NDAC § 43-02-03-35 is to acknowledge the renaming of a state agency. The proposed amendment acknowledges the renaming of the State Water Commission to the Department of Water Resources. 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 § 43-02-03-41 is to ensure the director is provided more meaningful information. The proposed amendment changes the datum of the subsurface pressure test conducted on the discovery well of a new pool to the top of the formation containing the productive reservoir rather than the midpoint eliminating the need to establish a less reliable gradient. 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 § 43-02-03-44 is to provide timely information and provide relief to the regulated community. The proposed amendments clarify that notice of connection to a gas gathering system is required within thirty days, not open-ended; and removes the requirement that gas used on lease or flared must be estimated, allowing the operator to choose estimation or measurement. If measurement is chosen, the regulation suggests meters be installed and calibrated in accordance with relevant specifications or recommendations. The proposed amendment relative to gas connection notification is not expected to have an impact on the regulated community in excess of \$50,000 since notification is currently required and the proposed amendment relative to gas used on lease or flared will provide an economic benefit to the regulated community since some operators are requesting to measure rather than estimate and this provides flexibility.



The purpose of the proposed amendments to NDAC § 43-02-03-48.1 is to provide clarity, ensure the director is provided meaningful information, and provide relief to the regulated community. The proposed amendments clarify commingling of production means oil and gas; clarify commingling may be authorized for oil, gas, or both; requires listing of all allocation meters and the meter type; clarify that the paper form previously provided is no longer available since our NorthSTAR database requires online submittal; and allow commingling of water production with approval of the director. The proposed amendment relative to listing of all allocation meters is not expected to have an impact on the regulated community in excess of \$50,000 since most operators already provide this; the proposed amendment relative to director approval of water commingling will provide an economic benefit to the regulated community since it can be approved without a hearing; and the remainder of 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 § 43-02-03-51.1 is to provide relief to the regulated community. The proposed amendment allows the director to extend a treating plant permit for up to one year. The proposed amendment will provide an economic benefit to the regulated community since a permit can be extended rather than reapplied for.

The purpose of the proposed amendment to NDAC § 43-02-03-51.3 is to provide relief to the regulated community. The proposed amendment allows the director to grant a waiver to the requirement for a synthetic liner within diked areas. The proposed amendment will provide an economic benefit to the regulated community since it provides flexibility.

The purpose of the proposed amendments to NDAC § 43-02-03-53.1 is to provide clarity and provide relief to the regulated community. The proposed amendments clarify that the paper form previously provided is no longer available since our NorthSTAR database requires online submittal; and allows the director to extend a saltwater handling facility permit for up to one year. The proposed amendment relative to a permit extension will provide an economic benefit to the regulated community since a permit can be extended rather than reapplied for and the other is not expected to have an impact on the regulated community in excess of \$50,000.

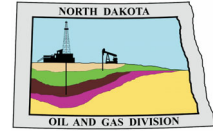
The purpose of the proposed amendments to NDAC § 43-02-03-55 is to affirm all well types regulated by the Oil and Gas Division are subject to the regulation, provide clarity, and establish a new well status type. The proposed amendments add subsurface observation wells to the types of wells that can be considered abandoned; clarify a hearing is required for the commission to review the temporarily abandoned status of a well at the request of the surface owner; clarify temporarily abandoned status may only be given to oil and gas wells; and establish an enhanced oil recovery potential well status pursuant to legislation passed by the Sixty-eighth Legislative Assembly (HB1272). 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 correct the General Authority cite and the Law Implemented cite for the rule. The Sixty-Fourth Legislative Assembly (HB 1476) repealed certain tax reductions among other things and renumbered NDCC Chapter 57-51.1 changing the cites referenced. The proposed amendment is not expected to have an impact on the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-08-02 is to correct the General Authority cite and the Law Implemented cite for the rule. The Sixty-Fourth Legislative Assembly (HB 1476) repealed certain tax reductions among other things and renumbered NDCC Chapter 57-51.1 changing the cites referenced. The proposed amendment is not expected to have an impact on the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-08-02.1 is to correct the General Authority cite and the Law Implemented cite for the rule. The Sixty-Fourth Legislative Assembly (HB 1476) repealed certain tax reductions among other things and renumbered NDCC Chapter 57-51.1 changing the cites referenced. The proposed amendment is not expected to have an impact on the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-08-03 is to correct the General Authority cite and the Law Implemented cite for the rule. The Sixty-Fourth Legislative Assembly (HB 1476) repealed certain tax



reductions among other things and renumbered NDCC Chapter 57-51.1 changing the cites referenced. The proposed amendment is not expected to have an impact on the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-08-04 is to correct the General Authority cite and the Law Implemented cite for the rule. The Sixty-Fourth Legislative Assembly (HB 1476) repealed certain tax reductions among other things and renumbered NDCC Chapter 57-51.1 changing the cites referenced. The proposed amendment is not expected to have an impact on the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-08-05 is to correct the General Authority cite and the Law Implemented cite for the rule. The Sixty-Fourth Legislative Assembly (HB 1476) repealed certain tax reductions among other things and renumbered NDCC Chapter 57-51.1 changing the cites referenced. The proposed amendment is not expected to have an impact on the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-10-02 is to delete a reference to a tax reduction that was repealed. The proposed amendment is pursuant to legislation passed by the Sixty-Fourth Legislative Assembly (HB 1476) that repealed the tax reduction provided for a certified qualifying secondary recovery project that achieved for six consecutive months an average production level of at least twenty-five percent above the level that would have been recovered under normal recovery operations. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000 since the tax reduction was repealed by the Legislative Assembly.

The purpose of the proposed amendment to NDAC § 43-02-10-03 is to delete a tax reduction that was repealed. The proposed amendment is pursuant to legislation passed by the Sixty-Fourth Legislative Assembly (HB 1476) that repealed the tax reduction provided for a certified qualifying secondary recovery project that achieved for six consecutive months an average production level of at least twenty-five percent above the level that would have been recovered under normal recovery operations. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000 since the tax reduction was repealed by the Legislative Assembly.

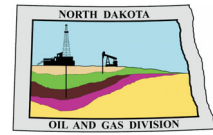
The purpose of the proposed amendment to NDAC § 43-02-10-04 is to delete a reference to a tax reduction that was repealed. The proposed amendment is pursuant to legislation passed by the Sixty-Fourth Legislative Assembly (HB 1476) that repealed the tax reduction provided for a certified qualifying tertiary recovery project that continued to operate the unit as a qualifying tertiary recovery project and the project operator achieved for at least one month a production level of at least fifteen percent above the level that would have been recovered under normal recovery operations. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000 since the tax reduction was repealed by the Legislative Assembly.

The purpose of the proposed amendments to NDAC § 43-02-10-05 is to delete an incorrect reference and reference to a tax reduction. The proposed amendments are pursuant to legislation passed by the Sixty-Fourth Legislative Assembly (HB 1476) that repealed certain portions of North Dakota Century Code § 57-51.1-01 and renumbered and to delete reference to a tax reduction that was repealed. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000 since the tax reduction was repealed by the Legislative Assembly.

House Bill 1427, recently enacted by the Sixty-Eighth Legislative Assembly, created a tax incentive for restimulation wells. The Commission is promulgating rules for the certification of restimulation wells by the creation of NDAC Chapter 43-02-15 and the following proposed rules under Chapter 43-02-15 are outlined.

The purpose of NDAC § 43-02-15-01 is to define terms used in Chapter 43-02-15. The proposed addition will not have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-15-02 is to address applications for certification of restimulation wells. The rule outlines items that must be included in the application. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000.



The purpose of NDAC § 43-02-15-03 is to address reviews of applications for certification of restimulation wells. The rule requires the director to review relevant information, addresses qualifying production, addresses the timeline for director review, requires the director to enter written approval or denial of the application, requires the director to notify the applicant of the approval or denial, and requires the director to forward a copy of the approval to the tax commissioner. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-15-04 is to address adversely affected applicants for certification of restimulation wells. The rule allows adversely affected applicants to amend the application within thirty days and requires the director to enter written approval or denial of the amended application. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-15-05 is to address adversely affected applicants for certification of restimulation wells. The rule allows adversely affected applicants to petition the commission for a hearing within thirty days of the adverse determination by the director. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-15-06 is to require records to be kept to substantiate reports. The rule requires operators to keep appropriate records to make and substantiate reports. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000.

The proposed rules may be reviewed at the office of the Oil and Gas Division at 1016 East Calgary Avenue, Bismarck, ND, or online at www.dmr.nd.gov/oilgas. A copy of the proposed rules and/or a regulatory analysis may be requested by writing the Oil and Gas Division, 600 E Boulevard Ave, Dept 474, Bismarck, ND 58505-0840 or calling (701) 328-8020. Written comments on the proposed rules, sent to the Oil and Gas Division, 600 E Boulevard Ave, Dept 474, Bismarck, ND 58505-0840 or emailed to oilandgasinfo@nd.gov and received by 5pm, November 27, 2023, will be fully considered. Oral comments can be given at any public hearing listed above.

If you plan to attend a public hearing and will need special accommodations or assistance relating to a disability, please contact the North Dakota Industrial Commission at (701) 328-8020, or write the Oil and Gas Division, 600 E Boulevard Ave, Dept 474, Bismarck, ND 58505-0840, no later than November 2, 2023.

Dated this 1st day of November, 2023.

Mark Bohrer

Mark Bohrer
Assistant Director