



# INDUSTRIAL COMMISSION OF NORTH DAKOTA

Jack Dalrymple  
Governor

Wayne Stenehjem  
Attorney General

Doug Goehring  
Agriculture Commissioner

June 25, 2012

U.S. Department of the Interior  
Director (630)  
Bureau of Land Management  
Mail Stop 2134 LM, 1849 C St., NW  
Washington, DC 20240  
Attention: 1004-AE26

RE: **COMMENTS**  
**BLM HF Rule**

Dear Bureau of Land Management:

The North Dakota Industrial Commission (NDIC) appreciates the opportunity to offer comments on the Bureau of Land Management's (BLM) rule to regulate hydraulic fracturing on public land and Indian land. There are currently 214 rigs operating in North Dakota and production has increased to over 600,000 barrels of oil per day, due solely to hydraulically fractured horizontal wells of which a significant amount are located on public and Indian lands. The NDIC believes the United States' lifeline to domestic energy independence is hydraulic fracturing and horizontal wells and North Dakota is part of the energy equation. Therefore, North Dakota has a huge vested interest in this proposed rule and provides the following comments:

## **§ 3160.0-5 Definitions.**

It is very disconcerting that the definition of "fresh water" is being deleted and replaced with "usable" water. The new definition will require the surface hole to be drilled down through all "usable" waters prior to setting surface casing. This would cause possible contamination of uphole fresh water zones since usable water is defined as water containing up to 10,000 total dissolved solids (tds) and all water zones could be in communication while drilling the surface hole.

"Usable water" is a new term that uses the same definition as "underground source of drinking water" under the EPA regulations. This inconsistency does not comply with the President's order to coordinate. The EPA term should be incorporated rather than this new term.

The proposed definition of "well stimulation" includes both acidizing and hydraulic fracturing operations. BLM publicizes this proposed rule as a hydraulic fracturing rule, but in essence it is a well stimulation rule that imposes the same rules on acidizing and hydraulic fracturing activities. Acidizing should not be subject to this proposed rule.

**§ 3162.3-3 Subsequent Well Operations; Well stimulation.**

Under the proposed rule, all well stimulation must have prior BLM approval and a simple, routine acid treatment of an injection well would be subject to the same approval procedure as a hydraulic fracturing stimulation, even though the acid treatment is applied well below the fracture gradient of the treated reservoir. Acidizing should not be subject to this proposed rule.

**§ 3162.3-3(b) When an Operator Must Submit Notification for Approval of Well Stimulation.**

This section would require operators to submit a Notice of Intent (NOI) Sundry and obtain prior approval by BLM for proposed well stimulation operations. The NOI must be submitted at least 30 days before the stimulation operations commence. This could be very burdensome for operators if approval is not timely. The rule needs to provide an explicit timeframe for when the NOI will be considered and approved.

To avoid delays in BLM processing time, information required and approved by individual states on federal and Indian minerals should be accepted in lieu of requiring the operator to submit duplicative information to BLM for approval.

**§ 3162.3-3(c) What the Notice of Intent Sundry Must Include.**

**§ 3162.3-3(c)(2)**

The running of cement bond logs (CBL) on surface casing, which is currently an optional practice in North Dakota, would now be required for new wells. A CBL on the surface casing is usually only run in North Dakota if significant problems are encountered while cementing the surface casing. Requiring a CBL on the surface casing of every new well is unnecessary and very burdensome.

A quality CBL can be obtained only after the cement surrounding the surface casing has attained a certain compressive strength. North Dakota's regulations and API standards do not call for a CBL on the surface casing. The API standards for surface casing include drilling with air or freshwater-based drilling fluid to below the freshwater aquifers, cementing from bottom to top, and completely isolating groundwater aquifers. If cement cannot be circulated back to the surface using ordinary pumping methods, then it is acceptable to run a small diameter pipe between the hole and the surface casing which will allow cement to be pumped around the outside of the surface pipe to the surface of the ground. Prior to drilling out the shoe, the surface casing is then pressure tested to ensure casing integrity.

Requiring a CBL will result in additional drilling rig costs being incurred while the rig is idle and waiting on the cement to adequately cure which will be monetarily burdensome for operators. It appears that BLM neglected to include the \$50,000 per day for rig time in their cost analysis. A waiver should be allowed if the surface casing was installed in accordance with API standards.

**§ 3162.3-3(c)(3)**

Proppant and water sources could change numerous times as changes in technology and availability occur and would be both burdensome to operators and BLM. Water often comes from multiple sources. An operator will not be able to accurately predict the access route for trucking water from a source to a well. If prior BLM approval is required, unnecessary delays will occur.

**§ 3162.3-3(c)(4)**

BLM states, "[o]ne of BLM's key goals in updating its regulation on hydraulic fracturing is to complement these state efforts by providing a consistent standard across all public and Indian lands." An operator cannot

comply with these proposed regulations and comply with all applicable federal, tribal, state, and local laws at the same time. Additionally, some local laws might be unenforceable due to lack of jurisdiction and definitely will not be consistent across all states.

#### **§ 3162.3-3(c)(5)**

The time it takes for BLM to process a permit has increased over the past three years. Imposing additional permit tasks will only further delay the process. To avoid delays in BLM processing time, information required by individual states on federal and Indian minerals should be accepted in lieu of requiring duplicative information to be submitted to BLM by the operators. North Dakota regulations require certain criteria be followed when performing hydraulic fracturing stimulation. Service companies incorporate these requirements into their designs, therefore requiring a detailed description of the well stimulation engineering design for approval is unnecessary.

#### **§ 3162.3-3(c)(5)(iv)**

In North Dakota, the potable waters are located at least one mile above the fracture stimulation zone. Operators are utilizing multi-stage fractures, which are designed to frac hundreds of feet from the wellbore and are not capable of propagating fractures vertically over thousands of feet. North Dakota is also fortunate to have several thick salt zones present which prevent fractures from propagating through them. There is no need to require expensive studies and computer software to estimate the fracture length and height.

#### **§ 3162.3-3(c)(6)**

BLM has specifically requested comments on whether the operator should be required to submit as part of the Sundry Notice application additional information about how it will dispose of waste streams not specifically addressed in this proposal. This rule cannot be finalized unless BLM provides an additional comment period after providing any additional proposed waste streams language.

#### **§ 3162.3-3(c)(6)(i)**

The time period for such recovery is not identified. It is not uncommon for fluid recovery to take over one year in the North Dakota Bakken pool. Also, who will decide if equipment on site can contain the fluid volume and for how long? This information seems unnecessary. If available tankage is not available on location, the well would be shut-in.

#### **§ 3162.3-3(d) Mechanical Integrity Testing Prior to Well Stimulation.**

This duplicates North Dakota regulations (N.D.A.C. § 43-02-03-27.1). North Dakota regulations already address mechanical integrity testing prior to well stimulation. BLM regulations are unnecessary since North Dakota regulations already ensure protection of the environment and other resources.

#### **§ 3162.3-3(e) Monitoring and Recording During Well Stimulation.**

This duplicates North Dakota regulations (N.D.A.C. § 43-02-03-27.1). North Dakota regulations already address monitoring and recording during well stimulation. BLM regulations are unnecessary since North Dakota regulations already ensure protection of the environment and other resources.

#### **§ 3162.3-3(f)**

This duplicates North Dakota regulations (N.D.A.C. § 43-02-03-19.3 and § 43-02-03-53). North Dakota regulations already require recovered fluids to be produced into tanks or lined pits. BLM regulations are unnecessary since North Dakota regulations already ensure protection of the environment and other resources.

**§ 3162.3-3(g) Information that Must be Provided to the Authorized Officer After Completed Operations.**

BLM specifically requested comments on whether this rule should require tanks or lined pits for drilling fluids and any other fluids associated with well stimulation operations. This rule cannot be finalized unless BLM provides an additional comment period after providing any additional proposed language.

North Dakota regulations already address disposal of flowback. BLM regulations are unnecessary since North Dakota regulations already ensure protection of the environment. Source water is the jurisdiction of the state and should not be monitored by BLM. Since BLM is actively working to minimize any duplication in the reporting requirements, the rule should exempt states that have adopted hydraulic fracturing regulations.

BLM states, “[t]he reporting requirements would also pose an additional burden on BLM, since it would review an additional number of sundry forms and additional information per form.” Since this will pose an additional burden on the BLM, it will further delay permitting by BLM.

**§ 3162.3-3(g)(6)**

Requiring the actual, estimated, or calculated fracture length and height of the stimulation would require either the release of proprietary fracture models, or that micro-seismic projects be conducted on hydraulic stimulations to obtain this information. This would be expensive and burdensome, and is not included in BLM’s cost analysis.

**§ 3162.3-3(g)(8)**

BLM states, “[o]ne of BLM’s key goals in updating its regulation on hydraulic fracturing is to complement these state efforts by providing a consistent standard across all public and Indian lands.” An operator cannot comply with this proposed regulation and comply with all local laws.

**§ 3162.3-3(g)(11)**

This section requires the operator to submit documentation and an explanation if the actual operations deviated from the approved plan. Understanding the complexities of well stimulation, BLM should expect there to be slight differences between the proposed plan and the actual operation. Deciding what is a slight difference versus an actual deviation from the plan will result in confusion. This is why requiring pre-approval does not make sense.

**§ 3162.3-3(h) Identifying Information Claimed to be Exempt from Public Disclosure.**

BLM states, “[t]he proposed rule seeks to achieve benefits by making more information available to the public about the chemicals injected in well stimulation fluids, while protecting trade secrets and confidential business information,” and further states “[u]nder existing law, BLM may nonetheless make that information available to the public...” This requirement will be an additional burden on BLM and increase the review time to issue a permit. North Dakota regulations require operators to report on FracFocus, which provides protection of proprietary information. It appears BLM rule will allow releasing such information which might encourage operators to forego using the “newest” and “proprietary” chemicals on federal and Indian lands since no proprietary protection is provided. Information needed to respond to incidents is already available through EPCRA and CERCLA laws and rules. Therefore, the rule does not require any additional information with which to respond to incidents.

**§ 3162.5-2 Control of wells.**

North Dakota regulations already require water zones containing 5,000-10,000 ppm tds to be isolated with cement, although the North Dakota regulations allow for waivers and postponement of remedial work upon showing that no contamination will occur. BLM rules do not provide for a waiver and untimely remedial work may leave a project uneconomic.

North Dakota regulations require these zones to be isolated, although the North Dakota regulations allow for waivers and postponement of remedial work upon showing that no contamination will occur. BLM indicates this revision does not set a new standard in BLM's regulations, but it certainly appears that it does since the tds of protected water zones increased from 5,000 to 10,000 ppm.

### **Additional Comments**

The BLM's analysis of costs and benefits do not take into consideration that some states, like North Dakota, already have the same requirements in their current rules and BLM's rule is duplicative and unnecessary.

BLM indicates it is attempting to provide a consistent standard across all public and Indian lands and working to minimize any duplication between the reporting required for state regulations. It is not possible to create a consistent nationwide standard that complies with all federal, tribal, state, and local laws, rules, and regulations. It is also not practical to apply one standard across all public and Indian lands in the United States. Each sedimentary basin has unique deposits and geologic features which result in unique local environmental and geologic conditions which must be taken into consideration when regulating oil and gas development.

BLM requested public comment on how to avoid duplication with existing state requirements. To date, BLM has not contacted the NDIC in an attempt to minimize any duplication. BLM is currently understaffed in North Dakota. The time for the BLM to process a permit currently takes 180-290 days. BLM's analysis indicates an additional 28,560 man hours per year will be needed to implement these rules. Imposing additional permit tasks will only further delay the process. To avoid duplication and undue delays in BLM processing time, information required by individual states on federal and Indian minerals should be accepted in lieu of requiring duplicative information to be submitted to BLM by operators. The rule must contain such language to ensure there will be collaboration between BLM and the state to accomplish this goal.

BLM intends to implement whichever rules, state or federal, are most protective of federal lands and resources and the environment, although BLM also states, "[o]ne of BLM's key goals in updating its regulation on hydraulic fracturing is to complement these state efforts by providing a consistent standard across all public and Indian lands." This cannot be accomplished if BLM intends to implement whichever rules are more protective.

The Indian Mineral Leasing Act assigns regulatory authority to the Secretary over Indian oil and gas leases on trust lands (except those excluded by statute). BLM does not identify the lands in which the Secretary has no regulatory authority. Documentation is necessary to identify what public lands are excluded from this proposed rule.

BLM's benefit analysis assumes that, absent this regulation, a certain number of well stimulation events may result in contamination and pose a cost to society. This is not a valid assumption since there has been no proven contamination case to date; nor has there been any occurrence of mechanical failures in North Dakota since industry self-imposed the NDIC regulations prior to them becoming law. The analysis considers

an alternative to the proposed regulation which would remove the requirement for operators to use lined pits if they choose to use pits to store hydraulic fracturing fluids. This analysis is not applicable in North Dakota since our regulations do not allow the storage of fluids in unlined pits. BLM is considering inappropriate burdens; therefore, the analysis is skewed. The net benefit ranges from (-\$8,079) to \$1,855 per well stimulation basis. Costs are extremely understated and benefits are extremely overstated, therefore, the possible loss will be greater than \$8,000 per well and the possible gain will be less than \$1,800 per well.

BLM believes that the proposed rule would result in a small additional cost per well stimulation and it will not alter the investment or employment decisions of firms. The proposed rule will definitely alter the investment and employment decisions of firms. Imposing additional permit tasks will only further delay the BLM's burdensome process. Several operators have already eliminated federal and Indian mineral ownership from some spacing units to allow the timely development of fee leases that were about to expire. It is likely some of the acreage removed from such spacing units may never be developed. This has also resulted in an increased workload for the NDIC. With additional burdens on the BLM permit process, this will only increase such requests.

Executive Order 13132 requires a Federalism assessment if the proposed rule would have a substantial direct effect on the states. BLM has determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. The NDIC disagrees since the proposed rule will negatively affect the royalties and taxes paid to the state of North Dakota because of development delays caused by the proposed rule.

Executive Order 13175 requires consultation and coordination with Indian tribal governments. Tex Hall, chairman of the Three Affiliated Tribes in North Dakota, indicated during recent congressional testimony that there was no consultation with the Three Affiliated Tribes. BLM held tribal consultation meetings in Tulsa, OK; Billings, MT; Salt Lake City, UT; and Farmington, NM. Being invited to a meeting almost 500 miles away does not constitute consultation. BLM indicated they will further discuss the tribal concerns during the drafting of the final rule. This rule cannot be finalized unless BLM provides an additional comment period after providing any additional proposed language.

The NDIC believes the proposed rule is unnecessary in North Dakota since the NDIC has already promulgated regulations requiring chemical disclosure and environmental protection. Also, there are no known environmental contamination incidents cited in the United States. If hydraulic fracturing rules are to be considered, they should only be proposed after the EPA has completed their current studies on hydraulic fracturing sites.

Sincerely,

North Dakota Industrial Commission



Jack Dalrymple, Chairman  
Governor



Wayne Stenehjem  
Attorney General



Doug Goehring  
Agriculture Commissioner