



INDUSTRIAL COMMISSION OF NORTH DAKOTA

Doug Burgum
Governor

Wayne Stenehjem
Attorney General

Doug Goehring
Agriculture Commissioner

March 9, 2020

Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503
Attn: Docket No. CEQ-2019-0003

RE: Notice of Proposed Rulemaking: "Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act", Docket ID No. CEQ-2019-0003

The North Dakota Industrial Commission (NDIC), consisting of three state-wide elected officials Governor Doug Burgum, Attorney General Wayne Stenehjem and Agriculture Commissioner Doug Goehring, has jurisdiction to administer North Dakota's comprehensive oil and gas regulations found at North Dakota Administrative Code Chapter 43-02-03. These regulations include regulating the drilling, producing, and plugging of wells; the restoration of drilling and production sites; the perforating and chemical treatment of wells, including hydraulic fracturing; the spacing of wells; operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the Underground Injection Control Program; and all other operations for the production of oil or gas.

NDIC respectfully submits the following comments in response to the Notice of Proposed Rulemaking to update regulations implementing provisions of the National Environmental Policy Act (NEPA). NDIC supports modernizing and clarifying NEPA regulations, which have too often been used in the past to delay or block projects. Specifically, NDIC supports the following provisions of the proposed rulemaking:

NEPA Timeline Clarification

- NDIC strongly supports the clarification of "timely decision making" in § 1501.10, specifically the one-year time limit to complete Environmental Assessments (EAs) and the two-year time limit to complete Environmental Impact Statements (EISs). Numerous projects in North Dakota have been delayed beyond the proposed time limit, increasing project costs and delaying public benefits. The revised time limits will allow for fair review while preventing projects from being vetoed through delay tactics.
- NDIC supports the development of schedules and milestones for environmental reviews included in § 1501.7. This will provide transparency on the status of environmental review and ensure lead agencies remain accountable.
- NDIC supports the page limits for EAs and EISs in § 1501.5 and § 1501.7. This will reduce costs and ensure NEPA documents remain focused on relevant project impacts.
- NDIC supports the joint record of decision requirement in § 1501.7. This will streamline project review and remove ambiguity for projects with multiple federal agency involvement.

Clarification of Scope of NEPA Review

- NDIC supports the NEPA threshold applicability analysis included in § 1501.1. Additionally, NDIC strongly supports the clarified definition of “Major Federal action” included in § 1508.1. Past projects in North Dakota have been subject to significant costs and delays because of federal involvement, even at minimal levels. This has incited project sponsors to avoid a federal nexus which, among other things, has delayed or prevented public benefits. The revised definition will clarify that projects with a minor federal nexus will not be subject to additional regulatory burden.
- NDIC appreciates the addition of “reasonable alternatives” to the definitions in § 1508.1. This definition will clarify that reasonable alternatives considered as part of the NEPA process need to meet the purpose and need of the project and must be technically and economically feasible. This will prevent wasted effort in the consideration of unfeasible alternatives.

NEPA Review Efficiencies

- NDIC supports allowing the adoption of existing NEPA documents included in § 1506.3, specifically the adoption of EAs and Categorical Exclusions for proposed actions which are substantially the same as previous actions. This will prevent unnecessary duplication of NEPA review.
- Likewise, NDIC supports the requirement in § 1506.4 for agencies to combine NEPA documents to reduce duplication of paperwork.
- NDIC supports the flexibility provided in § 1506.1 which allows authorization of certain activities such as acquisition of land interests during the environmental review process. This will allow project schedules to proceed in parallel to the NEPA process and prevent costly delays.

Enhanced Public Engagement

- NDIC supports the addition of “other opportunities for public engagement” in § 1506.6. This will allow flexibility for incorporating the latest technology in engaging the public and not unnecessarily limit the public to traditional meetings and hearings.

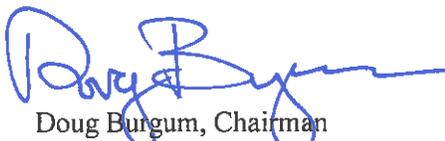
Enhanced Coordination with States, Tribes and Local Governments

- NDIC supports the inclusion of Tribal coordination throughout the proposed rulemaking. This will ensure North Dakota’s tribal nations are included in government-to-government consultations.
- NDIC supports allowing State, Tribal and local agencies to become cooperating agencies as included in § 1501.8. Local governments have the expertise and inherent interest in preserving their local environmental quality.

The ultimate purpose of NEPA is to consider a reasonable range of project alternatives to provide for fully informed decision-making. Since its inception in 1978, the NEPA process has too often been used contrary to its original intent to delay or block vital infrastructure projects. NDIC believes that the proposed rulemaking will return the process to the original spirit of NEPA by removing ideology and preordained, narrow consideration of alternatives. Thank you for this opportunity to provide comments on the Notice of Proposed Rulemaking.

Sincerely,

North Dakota Industrial Commission


Doug Burgum, Chairman
Governor


Wayne Stenehjem
Attorney General


Doug Goehring
Agriculture Commissioner