



INDUSTRIAL COMMISSION OF NORTH DAKOTA

Jack Dalrymple
Governor

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December 4, 2015

Air and Radiation Docket and Information Center
Environmental Protection Agency
Mail code 28221T
1200 Pennsylvania Ave, NW
Washington, DC 20460

Dear Sirs:

Re: 2015 PROPOSED RULES AND DRAFT CONTROL TECHNIQUE GUIDELINES FOR THE OIL AND NATURAL GAS INDUSTRY

- Proposed Oil and Natural Gas Sector: Emission Standards for New and Modified Sources - Docket ID number **EPA-HQ-OAR-2010-0505**

The North Dakota Industrial Commission (NDIC) appreciates this opportunity to comment on the 2015 Proposed Rules and Draft Control Technique Guidelines for the Oil and Natural Gas Industry as follows:

The State of North Dakota is ranked 2nd in the United States among all states in the production of oil and gas. North Dakota produces approximately 400 million barrels of oil per year and 465 billion cubic feet of natural gas per year.

The NDIC, Department of Mineral Resources, Oil and Gas Division administers North Dakota's comprehensive oil and gas regulations found at N.D. Admin. Code Chapter 43-02-03. These regulations include regulation of 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 ND Underground Injection Control Program; and all other operations for the production of oil or gas.

The proposed rule could have significant impacts on North Dakota's ability to administer its oil and gas regulatory program. The State of North Dakota intends to defend its sovereign jurisdiction over oil and gas regulation in any manner necessary.

The impacts of the proposed rule on North Dakota's ability to administer its oil and gas regulatory program are explained below:

Operational standard versus NDIC defined numeric standard: North Dakota regulations for gas capture clearly define the initial flowback stage of well completions as 14 days. The proposed rule defines the flowback stage as the time when it is "technically infeasible" for a separator to function. In addition, North Dakota regulations for gas capture clearly define the separator flowback stage for a well completion as 90 days. The proposed rule defines this stage as the time when it is "technically infeasible" to route the recovered gas into a gas flow line or collection system, re-inject the recovered gas, use the recovered gas as an on-site fuel source, or use the recovered gas for another useful purpose. The proposed rule does not define "technically infeasible." This results in a clear conflict between the proposed rule which contains undefined operational standards and existing North Dakota rules which contain a clearly defined numerical standard.

Wildcat well, delineation well, non-wildcat well, non-delineation well, non-wildcat low pressure well, non-delineation low pressure well: North Dakota regulations for gas capture clearly define the first well in the spacing unit as exempt from the gas capture and production requirements imposed by NDIC Order No. 24665. The proposed rule defines two subcategories of hydraulically fractured wells: (1) Nonexploratory and non-delineation wells, also known as development wells; and (2) exploratory (also known as wildcat wells) and delineation wells. An exploratory well is the first well drilled to determine the presence of a producing reservoir and the well's commercial viability. A delineation well is a well drilled to determine the boundary of a field or producing reservoir. This results in a clear conflict between the proposed rule which contains well definitions that are logical for conventional resource development, but not for unconventional development and existing North Dakota rules which contain a clearly defined standard.

Compliance required within 60 days of publication of the final rule in the Federal Register and the first survey of equipment required within 30 days of well completion: The time frame is too short. The well completions covered in the proposed rule are spread over thousands of square miles and weather conditions in North Dakota can be very severe and dangerous for extended periods of time.

Federalism: The proposed rule states that it does not have federalism implications. The federalism analysis states the rule will have no substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The analysis further alleges these final rules primarily affect private industry and would not impose significant economic costs on state or local governments. This conclusion is incorrect. As explained in these comments, the proposed rule will conflict with the NDIC's current regulations.

The NDIC recommends the following:

- 1) Allow each state to develop clear numerical standards to define completion stages and impose appropriate gas capture requirements for each stage.
- 2) Eliminate the well definitions in the proposed rule or provide additional definitions that are appropriate for unconventional resources like the Bakken and Three Forks formations.
- 3) Amend the compliance deadline from within 60 days to within 180 days of publication of the final rule in the Federal Register.
- 4) Amend the first survey requirement from within 30 days to within 90 days of well completion.
- 5) EPA should withdraw the rule or postpone implementation until the required consultation with state and tribal governments can be conducted and properly documented in the administrative record.

Sincerely,

North Dakota Industrial Commission



Jack Dalrymple, Chairman
Governor



Wayne Stenehjem
Attorney General



Doug Goehring
Agriculture Commissioner