



INDUSTRIAL COMMISSION OF NORTH DAKOTA

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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**

Bureau of Land Management Hydraulic Fracturing 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) Supplemental proposed rule to regulate hydraulic fracturing on public land and Indian land. There are currently 185 rigs operating in North Dakota and production has increased to nearly 800,000 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 hydraulic fracturing and horizontal wells are key components of energy security and economic recovery for the United States. Therefore, North Dakota has a huge vested interest in this proposed rule and provides the following comments:

§ 3160.0-5 Definitions.

Revision of the definition of usable water is a significant improvement. However, this new term still uses the definition of "underground source of drinking water" under the Environmental Protection Agency (EPA) regulations thus creating an unnecessary inconsistency that does not comply with the President's order to coordinate. The NDIC continues to urge BLM to incorporate the EPA term rather than create this new and very complicated definition.

The elimination of the proposed definitions of "well stimulation" and "stimulation fluid" and replacing them with definitions of "hydraulic fracturing" and "hydraulic fracturing fluid" is also a significant improvement.

The addition of "type wells" to the proposed rule is a welcome improvement. However, the definition is too restrictive due to the use of the term "field". The NDIC recommends that "field" be replaced by "basin" since geology, drilling, cementing, and hydraulic fracturing are typically quite consistent across a basin and the "geologic characteristics are substantially similar" clause can capture any significant differences.

§ 3162.3-3 Subsequent Well Operations; Well stimulation.

The change from “well stimulation activities” to “hydraulic fracturing operations” and “refracturing operations” is a significant improvement.

§ 3162.3-3(c) 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 certain hydraulic fracturing operations. Elimination of the requirement that this sundry be submitted 30 days before the fracturing operations commence on each well is a significant improvement. However, the amount of information that must be submitted and reviewed could result in substantial processing time by BLM staff and be very burdensome for operators if approval is not timely. The rule needs to provide an explicit timeframe for NOI processing after which time BLM will be considered to have approved the NOI.

The NDIC applauds the BLM for accepting information required and approved by individual states on federal and Indian minerals in lieu of requiring the operator to submit duplicative information to BLM for approval.

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

§ 3162.3-3(d)(3)

The requirement to identify water sources on the NOI will be burdensome to operators and BLM. Water sources could change numerous times as changes occur in technology and availability, plus water often comes from multiple sources not under federal jurisdiction. An operator will not be able to accurately predict the access route or transportation method for moving water from a source to a well. If prior BLM approval is required, unnecessary delays will occur.

§ 3162.3-3(e)(2)

The NDIC continues to believe that the running of cement evaluation logs (CEL) on surface casing is unnecessary and burdensome. A CEL on the surface casing is usually only run in North Dakota if significant problems are encountered while cementing the surface casing. Requiring a CEL will result in additional drilling rig costs 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 quality CEL cannot be obtained until after the cement surrounding the surface casing has attained significant compressive strength. North Dakota’s regulations and API standards do not call for a CEL 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.

The acceptance of a CEL from a type well could reduce or remove this excessive burden if the definition of type well(s) is modified so it applies to a basin.

§ 3162.3-3(d)(4)

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. 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(d)(4)(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(d)(5)

The time period for hydraulic fracturing fluid recovery is highly variable and it is not uncommon for fluid recovery to take over one year in the North Dakota Bakken pool. The requirement to identify handling and disposal methods for recovered fluids on the NOI will be burdensome to operators and BLM. Handling and disposal methods could change numerous times as changes in technology and availability occur and recovered fluids often are taken to multiple disposal sites that are not under federal jurisdiction. If prior BLM approval is required, unnecessary delays will occur.

§ 3162.3-3(f) 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(g) 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(h)

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(i) Information that Must be Provided to the Authorized Officer After Completed Operations.

North Dakota regulations already address chemical disclosure, perforations, pump pressures, volumes, and disposal of recovered fluids. BLM regulations are unnecessary since North Dakota regulations already ensure protection of the environment. Since BLM is actively working to minimize any duplication in the reporting requirements, the rule should exempt states that have adopted hydraulic fracturing regulations.

These reporting requirements will also pose an additional burden on BLM, since it would review an additional number of sundry forms and additional information on each form. Since this will pose an

unnecessary additional burden on the BLM, it will further delay permitting by BLM and should not be implemented in states that have adopted hydraulic fracturing regulations.

§ 3162.3-3(i)(4)

Requiring the actual, estimated, or calculated fracture length and height of the stimulation would require either the release of proprietary fracture model results, or the use of micro-seismic to obtain this information. This expense and burden are not included in BLM's cost analysis.

§ 3162.3-3(i)(6)

This section requires the operator to submit documentation and an explanation if the actual operations deviate from the approved plan. Understanding the complexities of well stimulation, BLM should expect there to be numerous differences between the proposed plan and the actual operation. This is another reason why requiring pre-approval does not make sense.

§ 3162.3-3(i)(7)

BLM states, “[o]ne of BLM’s key goals in updating its regulation on hydraulic fracturing is to complement State efforts by providing a consistent standard across all public and Indian lands nationwide.” The requirement to comply with all tribal, state, and local laws makes such a goal impossible. Again the NDIC urges the BLM to exempt states that have adopted hydraulic fracturing regulations.

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

NDIC applauds BLM for choosing FracFocus as the primary method of chemical disclosure since North Dakota regulations require operators to report on FracFocus, which provides protection of proprietary information. However, this rule will allow BLM to release such information which might encourage operators to forego using the “newest” and “proprietary” chemicals on federal and Indian lands since no proprietary information protection is provided. Information needed to respond to incidents is already available through EPCRA and CERCLA laws and rules.

§ 3162.3-3(k) Requesting a Variance from the Requirements of this Section.

NDIC is pleased that BLM has proposed a process for application and approval of variances from sections of the requirements of this rule. However, this process appears to require each operator to make a written request in cooperation with a State or tribe. Again the NDIC urges the BLM to provide for statewide exemptions of all or portions of this rule within states that have adopted hydraulic fracturing regulations.

§ 3162.5–2 Control of wells.

North Dakota regulations already require water zones containing 5,000-10,000 ppm total dissolved solids 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. This rule does not provide for a waiver and untimely remedial work may make a project uneconomic.

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 is currently understaffed in North Dakota. The time for processing a permit on federal lands in North Dakota currently takes 180-290 days. BLM's analysis indicates significant additional man hours will be needed to implement these rules. Imposing additional permit tasks will only further delay the process.

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. The proposed rule treats Indian Trust Lands the same as public lands even though they are private, not public, property.

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.

BLM is considering inappropriate burdens; therefore, the analysis is skewed. The stated net benefit ranges from (-\$8,079) to \$1,855 per well stimulation basis are inaccurate because costs are extremely understated and benefits are extremely overstated. Therefore, the possible loss will be much greater than \$8,000 per well and the possible gain will be much 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 North Dakota 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 will never be developed. This has also resulted in an increased workload for the NDIC and with additional burdens on the BLM permit process 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 and because of development delays caused by the proposed rule.

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.

Sincerely,

North Dakota Industrial Commission


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Governor


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Doug Goehring
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