



# INDUSTRIAL COMMISSION OF NORTH DAKOTA

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## FACT SHEET for DRAFT North Dakota Industrial Commission Drilling Permit Review Policy

The Industrial Commission is currently reviewing a draft Drilling Permit Policy (see draft policy dated 01/27/2014 p.m.). The following information is being provided regarding this draft version of the policy:

Sections 1.01, 1.02, 1.03 and 1.04 outline the review that drilling permits currently receive on all lands - private, public and tribal.

Sections 1.05, 1.06 outline some additional steps that the Department of Mineral Resources (DMR) would implement for drilling permits on all lands--private, public and tribal. Currently, DMR staff contacts the permit applicant and suggests that the permit applicant contact the appropriate entity regarding the location of the proposed permit. DMR currently requires documentation for military installations, section lines, and offsite cuttings burial. This draft policy would add the requirement that the permit applicant document that it made contact with the appropriate entity for well head protection areas and state or federal highways.

Section 2.01 identifies Areas of Interest. This is a new designation. A map of these Areas of Interest is available on the Industrial Commission website at <http://www.nd.gov/ndic/Drill.htm>. DMR has calculated that the listed Areas of Interest total 1,236,210 acres\*. DMR staff would maintain a database of the Areas of Interest and post on its website the datasets it is utilizing. Areas of Interest include both private and public lands.

Section 2.02 is a new requirement that DMR would implement as it relates to acreage contained within an Area of Interest. It provides that after May 1, 2014 any permit with a proposed location in an Area of Interest must be noticed to the public. This would be done by DMR in the following manner:

- 1) Post on the daily activity report, available daily on DMR website, (within five calendar days) a notice that a permit application has been received for a specific location. The posted notice shall include all supporting information or records provided by the applicant which are not confidential.
- 2) Forward (within five calendar days) the portions of the application that are not confidential to the following entities:
  - Director of Game and Fish Department
  - State Historical Preservation Officer
  - Director of North Dakota Parks and Recreation
  - Director of the Department of Transportation
  - Commissioner of North Dakota Department of Trust Lands
  - State Engineer of the North Dakota Water Commission

- State Director of the Bureau of Land Management
- Park Superintendent of Theodore Roosevelt National Park
- Supervisor of Dakota Prairie Grasslands
- Field Supervisor of U. S. Fish and Wildlife Service North Dakota Field Office
- County Auditor of the affected county.

Public comments regarding such issues as:

- Access road and well location
- Reclamation plans and timing
- Noise
- Traffic
- Visual impact mitigation

would be accepted by the Industrial Commission's Executive Director's designee (Designee) for 10 calendar days after the notice is posted or the information forwarded to the parties listed.

Under Section 2.03, the Designee would summarize the comments and provide them to the Director of DMR. The DMR Director is not bound to act upon any comments.

Under Section 2.04, the DMR Director may consider the comment summaries provided by the Designee for the purpose of attaching conditions to any permit to mitigate potential impacts to Areas of Interest.

Some frequently asked questions about this draft policy include:

Q: How long will this delay an applicant from getting a drilling permit?

A: Because the comment period will be going on while other steps of the permit review process are being conducted it is anticipated that a permit would be delayed no more than 5 to 10 days, and only for those permits within an Area of Interest. Permit applications for locations outside the Areas of Interest will not be delayed.

Q: Can a drilling permit be denied based solely on public comments?

A: No, current rules provide that the DMR Director can only deny a permit for any one of the following reasons:

- Proposal would cause waste,
- Proposal would violate correlative rights,
- Proposal would block natural drainages, or
- Proposal is less than 500 feet from an occupied dwelling (unless agreed to in writing by the owner of the dwelling).

Q: Who will determine what conditions should be placed on a drilling permit?

A: Currently the DMR Director has the authority to place conditions on any permit that the DMR Director deems necessary. For example, these conditions may address location of a road, off-site tank batteries, placement of the drilling unit on the drilling pad, or painting of tanks. Under current practices, the DMR Director works with the operator to minimize impacts. If a new location is a result of those discussions, the permit review process starts over. This could result in a longer delay in getting a permit -- up to 30 days.

Under the draft policy all public comments will be summarized and presented to the DMR Director. The DMR Director will still determine whether any conditions will be

placed on the permit application. This process will allow others to make comments about a proposed location but not limit the authority of the DMR Director to place conditions (if any) on a drilling permit.

Q: Will submitted comments be available to the public?

A: All comments and the summary prepared by the Designee will be open records and available to the public.

Q: Can a private landowner ask that his surface lands that are within an Area of Interest be withheld from public comment?

A: This draft policy provides that all lands, public, private or tribal will be subject to comment if they are located within an Area of Interest.

Q: If a person owns minerals under the lands that are in the Areas of Interest, will this process prevent the minerals from being developed?

A: No, there may be a 5 to 10 day delay in obtaining a drilling permit but this policy does not stop any person who owns minerals from having the minerals developed. However, if the location is moved, the permit review process starts over and the delay may be up to 30 days.

#### \*Statistics regarding the Areas of Interest<sup>1</sup>

There are a total of 20.5 million acres in the 21 counties that are identified on the map. Of those acres approximately 1,236,210 are within the Areas of Interest. There are approximately 677,856 acres that are held by private landowners or political subdivisions; and approximately 558,354 acres of state and federal lands (federal lands include tribal lands).

<sup>1</sup> These statistics do not include the acreage (1) within the Theodore Roosevelt National Park Unit and (2) any Lake Sakakawea elevations under 1854' msl,