

November 24, 2015

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

Attention: Regulatory Affairs - 1004-AE16
Federal eRulemaking Portal: <http://www.regulations.gov>.

Dear Bureau of Land Management:

The North Dakota Industrial Commission (NDIC) appreciates this opportunity to provide comments on the Bureau of Land Management proposed rule to replace Onshore Oil and Gas Order No. 4, Measurement of Oil.

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 North Dakota Administrative Code (NDAC) Chapter 43-02-03. These regulations include requirements for the drilling, producing, and plugging of wells; restoration of drilling and production sites; perforating and chemical treatment of wells, including hydraulic fracturing; spacing of wells; operations to increase ultimate recovery such as cycling of gas, maintenance of pressure, and introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the ND UIC Program; Oil and Gas Metering systems, measurement of oil, and all other operations for the production of oil or gas.

Mineral ownership of North Dakota lands upon which oil and gas development has occurred consists of approximately 85% private lands, 9% federal lands, and 6% state lands. Many of the private lands are split estate lands with more than 30% of potential development on lands where the surface is privately owned underlain by federal minerals and therefore affected by the proposed rule.

North Dakota has a unique history of land ownership that has resulted in a significant portion of the state consisting of split estate lands that could be adversely affected by the proposed rule. Unlike many western states that contain large blocks of unified federal surface and federal mineral ownership, the surface and mineral estates in North Dakota were at one time more than 97% private and state owned as a result of the railroad and homestead acts of the late 1800s. During the depression and drought years of the 1930s, numerous small tracts in North Dakota went through foreclosure. The federal government through the Federal Land Bank and the Bankhead Jones Act foreclosed on many farms taking ownership of both the mineral and surface estates. Many of the surface estates were later sold back to private parties, but some or all of the mineral estates were retained by the federal government. This resulted in a

large number of small federally-owned mineral estate tracts scattered throughout western North Dakota. Federal mineral estates impact more than 30% of the oil and gas spacing units that are typically recognized as a communitized area (CA) by the BLM. In North Dakota, there are a few large blocks of federal mineral ownership or trust responsibility where the federal government also manages the surface estate through the U.S. Forest Service or Bureau of Indian Affairs; such as on the Dakota Prairie Grasslands in southern McKenzie and northern Billings Counties as well as on the Fort Berthold Indian Reservation. However, even within those areas federal mineral ownership is interspersed with private and state mineral or surface ownership. Therefore, virtually all federal management of North Dakota's oil and gas producing region consists of some form of split estate.

Given North Dakota's unique land ownership situation, the proposed rule to replace Onshore Oil and Gas Order No. 4 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:

Excessive length, detail, and lack of flexibility: North Dakota regulations for metering oil and gas (NDAC 43-02-03-14.2) and for oil measurement (NDAC 43-02-03-48) apply to private, state and federal wells, but give precedence to federal rules on federal oil and gas wells if federal rules differ from state rules. Both state rules and federal rules reference American Petroleum Institute (API) standards for oil measurement. However, the proposed rule incorporates very specific references to 21 sections of those standards and then proceeds to repeat all, or nearly all, of the standard in the text of the proposed rule. The resulting rule contains unnecessary detail making it too long and filled with too much technical language. As a result the requirements of the proposed rule may be contradictory and will frequently be out of date when new oil measurement technologies develop, and oil measurement standards are improved or modified.

The North Dakota Industrial Commission recommends that the following repetitive, detailed, and potentially contradictory or conflicting sections of the proposed rule, along with references to them, be eliminated:

- 3174.6
- 3174.8
- 3174.10
- 3174.11

Sincerely,

North Dakota Industrial Commission



Jack Dalrymple, Chairman
Governor



Wayne Stenehjem
Attorney General



Doug Goehring
Agriculture Commissioner

Cc: *Electronic mail:* OIRA_Submission@omb.eop.gov
"Attention: OMB Control Number 1004-AE16"