

July 30, 2013

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 Rules

Dear Bureau of Land Management:

The North Dakota Industrial Commission (NDIC) appreciates the opportunity to offer additional comments on the Bureau of Land Management's (BLM) supplemental proposed rule to regulate hydraulic fracturing on public and Indian lands. There are currently 189 rigs operating in North Dakota and production has increased to over 800,000 barrels of oil per day, due solely to hydraulically fractured horizontal wells, a significant amount of which 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.

The NDIC believes the proposed rule is unnecessary in North Dakota since the NDIC has already promulgated effective regulations requiring chemical disclosure and environmental protection. Therefore, North Dakota has an enormous interest in this proposed rule and provides the following comments:

§ 3160.0-5 Definitions.

The revised definition of usable water is a significant improvement. However, in North Dakota and Montana state rules currently require ground water to be protected to a depth below the Pierre Shale while the proposed rule, in some circumstances, could require an extra 3,800 feet of casing and cement in North Dakota. Using the cost of the additional casing alone would add more than \$140,000 to the cost of such Bakken and Three Forks wells while providing no additional drinking water protection. Again, the NDIC urges BLM to use "underground source of drinking water" as defined by the Environmental Protection Agency (EPA).

The addition of "type wells" to the proposed rule is a welcome improvement, but the definition of "type well" is too restrictive due to the use of the term "field". The NDIC recommends that "field" be replaced by "basin" since geologic characteristics are typically quite similar across a basin and operations such as

drilling, cementing, and hydraulic fracturing can be replicated using the same design across a basin as well.

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

The revised proposed rule still allows BLM to unilaterally determine that fracturing information considered to be exempt from public disclosure by the operator is not exempt, and to release such information after as little as 10 business days' notice. The risk of such action is likely to discourage operators from using the "newest" and "proprietary" chemicals on federal and Indian lands since no process for real proprietary information protection is provided.

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

NDIC is pleased that BLM has proposed allowing variances from sections of the requirements of this rule. However, the proposed rule does not provide a regulatory mechanism by which a State can apply for a variance. In addition, pursuant to the Rule, BLM reserves the right to rescind or modify any variance or condition of approval. Without notice, and with no real recourse, BLM can unilaterally revoke and rescind its previously approved variance. This uncertainty could have serious impacts to the development of public lands. 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.

Additional Comments

The BLM's analysis of costs and benefits does not take into consideration that many states, like North Dakota, already have similar requirements in their current rules that make the proposed revised rule duplicative and unnecessary. Since each sedimentary basin has unique deposits and geologic features which result in unique local environmental and geologic conditions regulating oil and gas development is a role best left to state regulation.

BLM's 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 never been a proven contamination case in the United States to date; nor has there been any occurrence of mechanical failures in North Dakota since NDIC hydraulic fracturing regulations were implemented.

Sincerely,

North Dakota Industrial Commission

Jack Dalrymple, Chairman
Governor

Wayne Stenehjem
Attorney General

Doug Goehring
Agriculture Commissioner