



INDUSTRIAL COMMISSION OF NORTH DAKOTA

Jack Dalrymple
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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 Source Determination for Certain Emission Units in the Oil and Natural Gas Sector Rule – Docket ID number: **EPA-HQ-OAR-2013-0685**

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:

Definition of source: The proposed rule offers two options for defining emissions source. The definitions describe how sources could be aggregated to increase permitting requirements. The

first option “functional interrelatedness” combines all operations from the well head to the processing plant into one source. Those operations are often performed by multiple non-related parties. In addition, the interrelatedness proposal will require a Prevention of Significant Deterioration (PSD) permit for any set of three or more well pads that are functionally interrelated. This would require a PSD permit modification for every application for permit to drill which would constitute a clear conflict with North Dakota jurisdiction over oil and gas resources within the state. The second option, “adjacency”, combines pollutant emitting activities separated by a distance of ¼ mile or less. Those operations may be performed by multiple non-related parties. For an unconventional play like the Bakken and Three Forks formations, wells need to be located in close proximity along energy corridors to reduce environmental footprint. In addition, the adjacency proposal will require a Title V permit for any two well pads within ¼ mile of each other, and will require a Prevention of Significant Deterioration (PSD) permit for any set of three or more well pads that are within ¼ mile of each other. This would require a Title V or PSD permit modification for every application for permit to drill which would constitute a clear conflict with North Dakota jurisdiction over oil and gas resources within the state and with the requirements under NDIC Order Nos. 14497 and 14498 which establish well spacing requirements that reduce environmental footprint through the creation of energy corridors.

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, as specified in Executive Order 13132. The requirement to obtain permits for new major sources is imposed by the Clean Air Act. This proposed rule, if made final, would interpret those requirements as they apply to the oil and natural gas sector. Thus, Executive Order 13132 does not apply to these proposed regulation revisions. In the spirit of Executive Order 13132 and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comments on this proposed action from state and local officials. As discussed above this conclusion is incorrect.

The NDIC recommends that EPA withdraw the proposed rule and: 1) adhere to the statutory language in the Clean Air Act section 111(a)(3) to define source for the Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Major Source (Title V) programs, and 2) conduct the required consultation with state and tribal governments and properly document such consultation in the administrative record.

Sincerely,

North Dakota Industrial Commission



Jack Dalrymple, Chairman
Governor



Wayne Stenehjem
Attorney General



Doug Goehring
Agriculture Commissioner