



INDUSTRIAL COMMISSION OF NORTH DAKOTA

Doug Burgum
Governor

Wayne Stenehjem
Attorney General

Doug Goehring
Agriculture Commissioner

April 17, 2018

U.S. Department of the Interior
Director (630), Bureau of Land Management
Mail Stop 2134LM, 1849 C St., N.W.
Washington, D.C. 20240
Attention: 1004-AE53.

Dear Bureau of Land Management:

The North Dakota Industrial Commission (NDIC) appreciates this opportunity to provide comments on the Bureau of Land Management proposal to revise the Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule (2016 final rule).

The NDIC specifically comments in support of the proposal as follows:

43 CFR 3162.3–1(j)—Drilling Applications and Plans

The NDIC **supports the proposal to rescind 43 CFR 3162.3–1(j)**. The NDIC already has rules to regulate gas capture, therefore the BLM is correct in concluding that there is limited (if any) benefit to the waste minimization plan requirement of § 3162.3–1(j).

43 CFR 3179.7—Gas Capture Requirement

The NDIC **supports the proposal to rescind 43 CFR 3179.7 and replace** the 2016 final rule's capture percentage requirements and address the routine flaring of associated gas by deferring to State or tribal regulations where possible and codifying the familiar NTL–4A standard for royalty free flaring as a backstop where no applicable state or tribal regulation exists. The NDIC already has rules to regulate routine flaring of associated gas.

43 CFR 3179.8—Alternative Capture Requirement

The NDIC **supports the proposal to rescind 43 CFR 3179.8**. The NDIC already has rules to regulate gas capture. The BLM is correct in concluding that if § 3179.7 is rescinded, there is no need for § 3179.8

43 CFR 3179.11—Other Waste Prevention Measures

The NDIC **supports the proposal to rescind 43 CFR 3179.11**. The NDIC already has rules for limiting production in order to prevent waste. The BLM is correct that § 3179.11 could easily be misread to indicate that the BLM has plenary authority to curtail production or delay or condition APDs regardless of the circumstances.

43 CFR 3179.12—Coordination with State Regulatory Authority

The NDIC **supports the proposal to rescind 43 CFR 3179.12**. Because the BLM is proposing to revise part 3179 in a manner that defers to state and tribal requirements with respect to the routine flaring of associated gas, there is less concern that part 3179 could be applied in ways that state regulatory agencies find to be inappropriate. The NDIC appreciates that the BLM recognizes the value of coordinating with state regulatory agencies, and agrees that it is no longer necessary to include a coordination requirement in part 3179.

43 CFR 3179.101—Well Drilling

The NDIC **supports the proposal to rescind 43 CFR 3179.101**. The NDIC already has rules for safely controlling gas reaching the surface as a normal part of drilling operations. The BLM is correct that § 3179.101 would be duplicative under revised part 3179.

43 CFR 3179.102—Well Completion and Related Operations

The NDIC **supports the proposal to rescind 43 CFR 3179.102**. The NDIC already has rules for safely controlling gas reaching the surface during well completion, post-completion, and fluid recovery operations after a well has been hydraulically fractured or refractured. The NDIC agrees with the BLM that applicable EPA regulations adequately address the loss of gas associated with unconventional well completions.

43 CFR 3179.201—Equipment Requirements for Pneumatic Controllers

The NDIC **supports the proposal to rescind 43 CFR 3179.201**. The NDIC agrees with the BLM that analogous EPA regulations will adequately address the loss of gas from pneumatic controllers, many operators will adopt low-bleed pneumatic controllers even in the absence of §3179.201 requirements, and the oil and gas exploration and production industry continues to pursue reductions in methane emissions on a voluntary basis.

43 CFR 3179.202—Requirements for Pneumatic Diaphragm Pumps

The NDIC **supports the proposal to rescind 43 CFR 3179.201**. The NDIC agrees with the BLM that the analogous EPA regulations in 40 CFR part 60, subpart OOOOa, will adequately address the loss of gas from pneumatic diaphragm pumps and industry is reportedly making ongoing efforts to retire old leak-prone equipment, including pneumatic pumps, on a voluntary basis.

43 CFR 3179.203—Storage Vessels

The NDIC **supports the proposal to rescind § 3179.203**. The NDIC agrees with the BLM that the analogous EPA regulations in 40 CFR part 60, subparts OOOO and OOOOa, will adequately address the loss of gas from storage vessels on Federal and Indian leases as more and more of them are covered by the EPA regulations over time.

43 CFR 3179.301 Through 3179.305—Leak Detection and Repair

The NDIC **supports the proposal to rescind §§ 3179.301 to 3179.305**. The NDIC agrees with the BLM that the analogous EPA regulations in 40 CFR part 60, subpart OOOOa, will adequately address the loss of fugitive gas on Federal and Indian leases over time, as new facilities come online and more and more existing facilities are reconstructed or modified and

become covered by the EPA regulations. The NDIC also agrees that it is inappropriate to apply §§ 3179.301 to 3179.305 to all wellsites equally because wellsites that are not connected to deliver gas to market would not achieve any waste reduction because sales from the recovered gas would not be realized. The NDIC agrees with the BLM that the potential fugitive gas losses from marginal oil wells (with production rates fewer than 10 bbl per day or 15 bbl per day) would be substantial enough to warrant maintaining a LDAR program with semi-annual inspection frequencies.

43 CFR 3179.401—State or Tribal Requests for Variances from the Requirements of This Subpart

The NDIC supports the proposal to rescind § 3179.401 because it believes that the variance process established by this section will no longer be necessary in light of the BLM's proposal to codify NTL-4A standards and the NDIC strongly supports the BLM proposal to defer to State and tribal regulations for the routine flaring of associated gas, as explained in the discussion of proposed § 3179.201.

43 CFR 3179.2 Scope

The NDIC strongly recommends that this section of the proposed rule be rewritten to exclude: "State or private tracts in a federally approved unit or CA". 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 in North Dakota upon which oil and gas development has occurred are split estate lands, with more than 30% of the potential development on private surface involving federal minerals and therefore subject to 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. However, 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 to private parties with some or all of the mineral estates retained by the federal government. This resulted in a very large number of small federally-owned mineral estate tracts scattered throughout western North Dakota. Those small 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. There are a few large blocks of federal mineral ownership, for which the federal government has trust responsibility and also manages the surface estate through the U.S. Forest Service or Bureau of Indian Affairs. These are on the Dakota Prairie Grasslands in southern McKenzie County and northern Billings County as well as on the Fort Berthold Indian Reservation. See map, Exhibit 1. Even within those areas, federal mineral ownership is interspersed with a "checkerboard" of 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. Because most wells in North Dakota's unconventional Bakken play have a two-mile horizontal lateral, the production of oil and gas from the various tracts is commingled down hole, and many have central tank batteries which commingle the production from the

private, state, and federal mineral interests contained within the spacing unit. Under the proposed revision, many wells in established spacing units with minority federal interests in approved CA will continue to be subject to the rule.

43 CFR 3179.3 Definitions and Acronyms

The NDIC supports the proposal to keep, in their entirety, four of the 18 definitions that appear in existing § 3179.3: “Automatic ignition system,” “gas-to-oil ratio,” “liquids unloading,” and “lost oil or lost gas.” The NDIC also supports: changing “re injection” to “injection” in the definition for capture; changes to the definition for “gas well;” adding a new definition for “oil well;” adding a new definition of “waste of oil or gas;” and removing the following 12 definitions from the existing regulations because they are no longer needed because they pertain to requirements in existing part 3179 that the BLM is proposing to rescind: “Accessible component,” “capture infrastructure,” “compressor station,” “continuous bleed,” “development oil well,” “high pressure flare,” “leak,” “leak component,” “liquid hydrocarbon,” “pneumatic controller,” “storage vessel,” and “volatile organic compounds (VOC).”

43 CFR 3179.6 Venting Limitations

The NDIC recommends that this section of the proposed rule be withdrawn and BLM work within NDIC regulations to prevent venting as an active participant in any hearings scheduled for venting exceptions on federal wells. The proposed rule revision duplicates, in part, North Dakota's prohibition of venting natural gas. However, the proposed rule revision allows venting in several explicit circumstances. The NDIC's regulations do not provide explicit exceptions when venting is allowed but allow the NDIC to grant an exception after notice and public hearing. Any exception granted by the BLM will likely create a direct conflict with North Dakota's ability to administer its oil and gas regulatory program.

Other Venting or Flaring

43 CFR 3179.201 Oil Well Gas

The NDIC supports proposed § 3179.201(a) intention to defer to state and tribal statutes and regulations that provide a reasonable assurance to the BLM that operators will not be permitted to engage in the flaring of associated gas without limitation and that the waste of associated gas will be controlled. The NDIC commends the BLM for analyzing the statutory and regulatory restrictions on venting and flaring in the 10 states constituting the top eight producers of Federal oil and the top eight producers of Federal gas, which collectively produce more than 99 percent of Federal oil and more than 98 percent of Federal gas and the explicit recognition of North Dakota's gas capture efforts. The NDIC agrees with the BLM finding that each of these states have statutory or regulatory restrictions on venting and flaring that are expected to constrain the waste of associated gas. The NDIC believes that the language of proposed § 3179.201(a) achieves that intent.

43 CFR 3179.301 Measuring and Reporting Volumes of Gas Vented and Flared

The NDIC supports proposed § 3179.301(a) that would require operators to estimate or measure all volumes of lost oil and gas, whether avoidably or unavoidably lost, from wells, facilities, and equipment on a lease, unit PA, or CA and report those volumes under applicable Office of Natural Resources Revenue (ONRR) reporting requirements. **The NDIC supports**

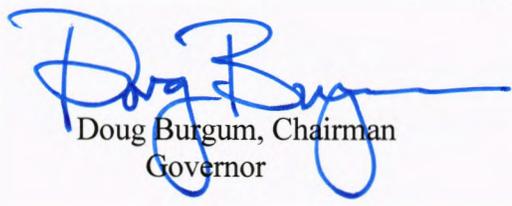
proposed § 3179.301(b), which would permit the operator to: (1) estimate or measure the vented or flared gas in accordance with applicable rules, regulations, or orders of the appropriate state or tribal regulatory agency; (2) estimate the volume of the vented or flared gas based on the results of a regularly performed GOR test and measured values for the volume of oil production and gas sales, to allow BLM to independently verify the volume, rate, and heating value of the flared gas; or (3) measure the volume of the flared gas. **The NDIC believes proposed § 3179.301(c) which would allow the BLM to require the installation of additional measurement equipment whenever it determines that the existing methods are inadequate to meet the purposes of part 3179 is too broad and vague, and is unnecessary.**

The State of North Dakota is ranked 2nd in the United States in production of oil and gas. North Dakota produces approximately 350 million barrels of oil per year and 400 billion cubic feet of natural gas per year.

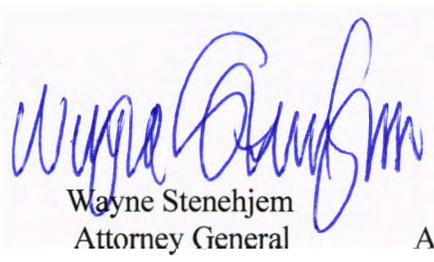
The NDIC has jurisdiction to administer North Dakota’s comprehensive oil and gas regulations found in North Dakota Administrative Code chap. 43-02-03. These rules include regulation of the drilling, producing, and plugging of wells; the restoration of drilling and production sites; the perforating and 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 UIC Program; and all other operations for the production of oil or gas.

As noted, the NDIC is supportive of many of the proposed changes. However, the potential adverse impacts of three of the provisions of the proposed rule on North Dakota’s ability to administer its oil and gas regulatory program are significant and the State of North Dakota intends to defend its sovereign jurisdiction over oil and gas regulation in any manner necessary.

Sincerely,
North Dakota Industrial Commission



Doug Burgum, Chairman
Governor



Wayne Stenehjem
Attorney General



Doug Goehring
Agriculture Commissioner

Northwest North Dakota Federal Minerals and Affected Drilling/Spacing Units

