

FISCAL NOTE
Requested by Legislative Council
02/04/2015

Amendment to: HB 1187

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill would void orders that may be adopted without the rulemaking procedures in Chapter 28-32 after July 31, 2015.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Unable to determine as this relates to actions that may be taken.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Karlene Fine

Agency: Industrial Commission

Telephone: 701-328-3722

Date Prepared: 02/05/2015

FISCAL NOTE
Requested by Legislative Council
01/12/2015

Bill/Resolution No.: HB 1187

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$(5,928,163)	\$(106,723,664)	\$(5,928,163)	\$(106,723,664)	\$(5,928,163)	\$(106,723,664)
Expenditures	\$0	\$0	\$0	\$0		
Appropriations	\$0	\$0	\$0	\$0	\$0	

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1187 would void two Industrial Commission orders - Order 24665 which implemented gas capture plans and goals and Order 25417 which implemented crude oil conditioning standards.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Prior to the adoption of Order 24665 gas flaring reached 38% of gas production due to large value differentials between crude oil and natural gas that is expected to continue. Current flaring is 24% of gas production. Crude oil production is expected to remain constant at 1.2 million barrels per day yielding constant natural gas production of 1.4 billion cubic feet per day. 2/3 of gas flared is exempt from tax and royalties because it is flared from wells that are connected to undersized low priority gathering lines. Gas gross production tax is \$0.0982 per MCF (thousand cubic feet); Gas value if sold based on sworn testimony given at 2014 oil hearings is \$4.17 per MCF; Average royalty rate based on sworn testimony given at 2014 oil hearings is 16%; Average state income tax rate is 2.52%. If Order 24665 is voided the best case scenario is continued flaring at 24% of produced gas with 2/3 of the flared volume exempt from tax and royalties:

Gross production tax impact: $1,400,000,000 / 1,000 \times 365 \text{ days} \times 2 \text{ years} \times 24\% \times 2/3 \times \$0.0982 = \$16,057,664$ per biennium.

Income tax impact: $1,400,000,000 / 1,000 \times 365 \text{ days} \times 2 \text{ years} \times 24\% \times 2/3 \times \$4.17 \times 16\% \times 2.52\% = \$2,749,334$ per biennium

Total fiscal impact = \$18,806,998 per biennium.

Prior to the adoption of Order 25417, the USDOT indicated their intent to require crude oil stabilization at rail transload stations unless oil was conditioned at well sites. Based on sworn testimony at 2014 oil hearings crude oil stabilization costs are \$1 to \$2 per barrel. This would be a transportation deduction and reduce well head price. For the purposes of this analysis we have calculated a cost of \$1.50 per barrel. Order 25417 is estimated to cost \$.10 per barrel for oil conditioning. Current rail transportation volume is 60% of state crude oil production. Crude oil production is expected to remain constant at 1.2 million barrels per day. Average royalty rate based on sworn testimony at 2014 oil hearings is 16%. Average state income tax rate is 2.52%.

If Order 25417 is voided, 60% of crude oil will continue to move by rail and it is anticipated the cost of USDOT regulations on oil stabilization will result in an average additional \$1.50 per barrel transportation deduction.

Gross Production Tax impact: $1,200,000 \text{ barrels per day} \times 365 \text{ days} \times 2 \text{ years} \times 60\% \times \$1.50 \times 5\% = \$39,420,000$ per biennium.

Oil Extraction Tax impact: $1,200,000 \text{ barrels per day} \times 365 \text{ days} \times 2 \text{ years} \times 60\% \times \$1.50 \times 6.5\% = \$51,246,000$ per biennium.

Income Tax impact: $1,200,000 \text{ barrels} \times 365 \text{ days} \times 2 \text{ years} \times 60\% \times \$1.50 \times 16\% \times 2.52\% = \$3,178,829$ per biennium.

Total fiscal impact = \$93,844,829

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

See detail provided above.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

No impacts to expenditures.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

No impacts to agency appropriations

Name: Karlene Fine

Agency: Industrial Commission

Telephone: 701-328-3722

Date Prepared: 01/16/2015

2015 HOUSE BUSINESS, INDUSTRY AND LABOR

HB 1187

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1187
1/19/2015
22126

- ☐ Subcommittee
☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Orders of the industrial commission; & to provide an effective date.

Minutes:

Attachment 1 & 2

Chairman Keiser: Opens the hearing on HB 1187.

Representative Kempenich~District 39: (Attachment 1). Introduces the bill. Policy was being made. The dates are arbitrary; this isn't an onerous process to run it through the administrative rules process it gives them a year to go through the administrative rules process.

Representative Kasper: If this bill passed, is it ok?

Representative Kempenich: I'm not arguing the orders I'm arguing the process of how the orders came about. There wasn't an emergency, did it need to be done, yes, but I'm not going to argue about it. The processes needed to take the policy making branch instead of reading about it in the paper.

Representative Kasper: Can you explain how the fiscal note comes to where we are going to lose 106 million dollars? What would we have to give back?

Representative Kempenich: You know that if a branch or agency doesn't like a bill, they are going to put fiscal note on it that will choke a horse. This assumes that this bill is not going to do anything in the year, and that would go back to the way it was. My question is, there's plants coming on line continually, do you need a stick, I didn't want to argue that process. I think there is some arbitrariness in both the orders. What this does is puts it out into the process, the policy making branch in government is involved in.

Representative Kasper: How are they saying that the state is going to lose 106 million dollars? Who do we give this money back to if this bill passed and we don't abide by the bill?

Representative Kempenich: They say it goes up in the air and I question any company that will let a hundred some million dollars go up in smoke.

Representative Kasper: If we go back to the old percentage where we are flaring amount allowed was here and now it's there, we're potentially going to flare more gas, therefore we are going to potentially going to lose 106 million dollars if we go back to that percentage. Is that what they are using to get to this fiscal note?

Representative Kempenich: That's what they are using.

Representative Hanson: I don't understand the problem this bill is trying to fix. Why stop on June 30? What brought you to that stop date?

Representative Kempenich: There were a lot of orders that NDIC can do. They have the ability to issue orders that are specific on a field or location. They were getting general in nature and this was getting too broad and legislature should be involved.

Representative Hanson: The real problem didn't start until recently?

Representative Kempenich: You can't constrain to the point of where we are going to be up here all day, all year. I don't want to get into past orders that have been in effect for a long time but they have never gotten this broad as far as how they are implemented. So, that's why this bill is in front of us.

Representative Hanson: Is the answer is yes?

Representative Kempenich: That's coming from the federal level all the way down. A lot more policy is being made on the executive branch.

Chairman Keiser: Anyone else here to testify in support, opposition?

Lynn Helms~Director: (Attachment 2).

16:06

Chairman Keiser: Do we have a distinction between an emergency rule making and standard rule making?

Helm: Yes we do, the industrial commission has the authority to implement an emergency rule or order, but it can stay in effect for 40 days. This is not enough time.

Representative Laning: Regarding the emergency rule, can you renew it?

Helm: I asked the assistant attorney general and she said no.

18:30

Representative Becker: Can you recap the justification of the fiscal note?

Helm: The vast majority of the fiscal note has to do with the problem of the oil stabilization, 93 million out of the 106 million, if we step aside and allow USDOT to put a crude oil stabilization rule on our rail transporters. Sixty percent of our crude oil leaving the state is going to be impacted between one & two dollars per barrel, which will translate back to the well head price, which reduces the taxes and income to our royalty owners.

Representative Ruby: You gave the justification for the deadline for the emergency, then at some point you should be required to form some administrative rules. Yet the order process doesn't have any deadline to have any scrutiny to it. If you are not comfortable with elimination that would you be more favorable of having a deadline on it to go through some kind of process similar to the administrative rules process?

Helm: No not at all.

22:32

Representative Ruby: Other agencies would love to have that kind of authority.

Helm: There are some significant differences. I would agree that this authority lies within the industrial commission is unique. The differences are that the industrial commission is composed of three state wide elected officials. The agencies your are talking about, sit on the governor's cabinet and are appointed officials. The other difference is the speed at which the oil industry moves.

Representative M Nelson: Why did they not go through administrative rule process with their permit policy?

Helm: The permitting policy was designed to be specific to the geographical areas of the state. It has a great deal of variation and because the commission has authority to place stipulations on drilling permits, it did not need to write a state wide rule or industrial commission order. It could put a policy in place directing me, under certain circumstances, to put specific stipulations on certain permits. We have issued 3,030 in 2014 in the state of North Dakota. The permitting policy or special places policy impacted 8. Do you do a state wide rule for something like that; the commission's feeling is that's not something of general applicability.

Representative M Nelson: As I understand, the administrative portion of the law, the legislature said that rule making authority shall be granted and use this any time it affects someone. Why does the industrial commission feels they can use a different standard than someone. If it affects someone, it should go through the rule making process.

Helm: I understand the message. The commission was granted authority to do what you just described because they are dealing with very specific individual localized issues that moves at lightning speed. I would disagree with the contention that administrative rule is required any time you affect someone. That our position.

Chairman Keiser: Anyone else here to testify in opposition to HB 1187, neutral? Closes the hearing.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1187
2/2/2015
22959

☐ Subcommittee
☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Orders of the industrial commission & to provide an effective date.

Minutes:

Attachment 1

Chairman Keiser: (Attachment 1). Passed out an amendment. This is simple and that it just changes the effective dates. This removes the fiscal note because it's not implemented. I think there is distinction that should be made between administrative rules and regulatory action.

Representative Ruby: Did he consider amending to say the orders must go through the administrative rules process?

Chairman Keiser: I think that is what the bill does.

Representative Ruby: Moves to adopt the 15.0506.01001.

Representative Becker: Second.

Chairman Keiser: Further discussion?

Representative Laning: If the commissioner doesn't use the administrative rules and uses the regulatory, what is the difference?

Chairman Keiser: The primary difference is that they don't have to go through the lengthy process of administrative rules.

Voice vote on 15.0506.01001, motion carries.

Representative Devlin: Is the emergency important to anybody and do you want to wait?

Representative Laning: Would the industrial commission view this as a severe encumbrance on their activities or do you feel that they might be neutral. I would think that they would be opposed.

Chairman Keiser: I think the Governor will veto this bill.

Representative Devlin: There has been frustration among legislators that industrial commission has been writing policy, which legislature strongly feels it's their purview.

Chairman Keiser: No agency issues an order lightly, they take it under all legal consideration but on the other hand, this is policy issues. This says "all orders", that the problem. You may have a situation that the order, even under the emergency condition, they can issue it but I can't think of an order that the agency has issued that I haven't agreed with.

Representative Ruby: As long as we have steps were they can put in an emergency situation; I like the idea that the legislature has more control over policies. I move a **Do Pass as Amended**.

Representative Becker: Second.

Chairman Keiser: Further discussion? Take the roll call for a Do Pass.

Roll call was taken for a Do Pass on HB 1187 with 4 yes, 7 no, 4 neutral, motion fails.

Chairman Keiser: The motion fails, is there further motion?

Representative Laning: Moves a **Do Not Pass as Amended** on HB 1187.

Representative Boschee: Second.

Roll call was taken for a Do Not Pass on HB 1187 with 7 yes, 4 no, 4 absent and Representative Laning is the carrier.

15.0506.01001
Title.02000

Prepared by the Legislative Council staff for
Representative Kempenich
January 27, 2015

2-2-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1187

Page 1, line 2, remove "; and to provide an effective date"

Page 1, line 9, replace "June 30" with "July 31"

Page 1, line 9, replace "2014" with "2015"

Page 1, remove line 10

Renumber accordingly

Date: Feb 2

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1187

House Industry, Business & Labor Committee

☐ Subcommittee

☐ Conference Committee

Amendment LC# or Description: 15.0506.01001

Recommendation: ☒ Adopt Amendment

☐ Do Pass

☐ Do Not Pass

☐ Without Committee Recommendation

☐ As Amended

☐ Rerefer to Appropriations

Other Actions:

☐ Reconsider

☐ _____

Motion Made By Rep Ruby Seconded By Rep Becker

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Lefor		
Vice Chairman Sukut			Representative Louser		
Representative Beadle			Representative Ruby		
Representative Becker			Representative Amerman		
Representative Devlin			Representative Bosch		
Representative Frantsov			Representative Hanson		
Representative Kasper			Representative M Nelson		
Representative Laning					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

voice vote, motion carries

Date: Feb 2,

Roll Call Vote: 2

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1187**

House Industry, Business & Labor Committee

☐ Subcommittee

☐ Conference Committee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment

☒ Do Pass

☐ Do Not Pass

☐ Without Committee Recommendation

☒ As Amended

☐ Rerefer to Appropriations

Other Actions:

☐ Reconsider

☐ _____

Motion Made By Rep Ruby Seconded By Rep Becker

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Representative Lefor		X
Vice Chairman Sukut		X	Representative Louser	X	
Representative Beadle		X	Representative Ruby	X	
Representative Becker	X		Representative Amerman		X
Representative Devlin	X		Representative Boschee		X
Representative Frantsovog	Ab		Representative Hanson	Ab	
Representative Kasper	Ab		Representative M Nelson	Ab	
Representative Laning		X			

Total (Yes) 4 No 7

Absent 4

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Motion Fails

Date: Feb 2

Roll Call Vote: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1187

House Industry, Business & Labor Committee

☐ Subcommittee

☐ Conference Committee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment

☐ Do Pass ☒ Do Not Pass

☐ Without Committee Recommendation

☒ As Amended

☐ Rerefer to Appropriations

Other Actions: ☐ Reconsider

☐ _____

Motion Made By Rep Laning Seconded By Rep Bos

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Representative Lefor	X	
Vice Chairman Sukut	X		Representative Louser		X
Representative Beadle	X		Representative Ruby		X
Representative Becker		X	Representative Amerman	X	
Representative Devlin		X	Representative Boschee	X	
Representative Frantsvog	AB		Representative Hanson	AB	
Representative Kasper	AB		Representative M Nelson	AB	
Representative Laning	X				

Total (Yes) 7 No 4

Absent 4

Floor Assignment Rep Laning

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1187: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO NOT PASS (7 YEAS, 4 NAYS, 4 ABSENT AND NOT VOTING). HB 1187 was
placed on the Sixth order on the calendar.

Page 1, line 2, remove "; and to provide an effective date"

Page 1, line 9, replace "June 30" with "July 31"

Page 1, line 9, replace "2014" with "2015"

Page 1, remove line 10

Renumber accordingly

2015 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1187

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1187 Engrossed
3/25/2015
Job Number 25404

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to orders of the industrial commission

Minutes:

Attachments

Chairman Klein: Called the committee back to order.

Representative Streyle: Written Testimony Attached, Testimony (1), Oil Patch Hotline (2), Bismarck Tribune (3), Dickinson Press Article (4), Special Places Memo (5), Orders #24665 (6) and Orders #25417 (7). (1:13-11:30)

Chairman Klein: Said there have been a lot of accusations that the industrial commission and especially the cheerleader for the oil industry here has leaned over, tipped over to the oil industry. Haven't they been working to develop a balance? I think overall we heard you talk about flexibility and the need to move quickly but we still are looking for that balance. How would we address those folks who think we are not doing enough?

Representative Streyle: Said that he feels they are definitely doing enough. He said just look at the actions and the rules compared to the federal government. In most cases we are more stringent then the federal government. What I am saying is that in some of these big issues the legislature has been cut out completely and they have been done, I believe through the wrong mechanism. If you are going to put in some of these tough standards that obviously have an effect on revenue and jobs. It should take longer. It shouldn't take a month or two to do these types of orders or three. We should have a longer look at some of these orders that will help the whole development not just specific companies. (12:32-13:45)

Lynn D. Helms, Director of the Oil and Gas Division of the North Dakota Department Industrial Commission: In opposition to the bill. Written Testimony Attached (8) and (9). (14:32-20:52)

Chairman Klein: As I recalled the Senate passed a bill that would require some sort of fiscal effect on some of the actions because of the actions how many barrels are shut in?

We pass legislation for the common good but it does affect the State and certainly the folks that are looking forward to the revenue that would be generated from that.

Lynn Helms: We do carefully track that because we want to be able to inform the public and the elected officials of the impact of these orders and so we meet with the mid-stream gathering companies twice a year and we meet with operators on a quarterly basis and we talk about oil conditioning and flaring reduction. As of the month of March it is approximately 12,000 barrels a day for each one of those orders that is restricted or curtailed in order to comply with those orders. Essentially you are talking about 24,000 barrels a day. I realize that is a large number and potentially a lot of revenue to the State. The alternative of course is not conditioning the oil or going back to thirty eight percent of the gas being flared. No one should be surprised as we went into that process that it was going to change production and it was going to cost money. You cannot reduce flaring from thirty eight percent down to our current twenty two percent without changing production and costing money. You cannot change the character of the oil, leaving sixty percent of it in rail cars without costing money and without imposing some changes on production for the State. To answer your question, right in the neighborhood today of 24,000 barrels a day. About the speed of action of those two orders, we spent six months in hearings and public meetings on the flaring order. It wasn't like it just popped into my head, working with the industry. We worked with the industry work group for three months before we started the six month process of coming up with the order. On the oil conditioning we spent about three months with the industry and then went into a five month process of public meetings and hearings. (21:37-24:30)

Senator Campbell: Said he agreed with Representative Streyle on numbers 1 and 3 where some of those things are kind of unrealistic and if you look at the big picture do you feel instead of saying no to this do you think there could be some sort of a compromise? I hear both sides but I also do realize other than the second one, the conditioning which I probably agree with, that there could be some compromises made or amendments that could sacrifice some of your specifics of all of these thousands of regulations. I think we are over regulating and looking at the ends the means aren't justifying it. Especially the flaring where it is costing our State developing natural resources.

Lynn Helms: The many months process that these orders go through before I put them in front of the commission for their signature are all about compromise. In fact the goals that are now being called unrealistic were generated by industry. They came straight from the industry task force to the industrial commission and were adopted in total without any change. In answer to your question, under the current situation with oil prices where they are and industry success and some of the right-away problems that have reared their head this year, are the eighty five percent goals on January 1, 2016 realistic? It might be and we are urging industry to do everything they can but we will looking at that goal as it comes up and it is actually set out in a separate document and voted on by the commission and put in place so that it could be modified without having to go back and write a new sweeping order. That order looks to that document and that document does have the flexibility in it to compromise and change if we get down the road and we see that we can't get there. It has always been a process of give and take and compromise. (25:31-27:02)

Chairman Klein: Said that he had read in the paper today that they listed a number of exceptions should we not be able to make it. Was that yesterday's meeting that created some exceptions that if they didn't make it they wouldn't be fined?

Lynn Helms: Said that was correct. He talked about what had happened and the different kinds of events they have run into. The commission had him go back and have staff write a guidance document. (27:24-29:40)

Chairman Klein: With the decrease of rigs will it make it easier to get to that percentage or as you are working the numbers does it make it more difficult?

Lynn Helms: Yes and the reason the answer is yes is in the outlying areas where the rigs have left they are catching up very rapidly. In meetings with some companies that are operating in those areas I am hearing of gas capturing numbers of 85 and 90%. In the core area you would see the traffic is as intense as it always was and all hundred rigs are right in that little triangle and that little triangle represents enormous right of way issues. They are actually losing it in that area. In the core area it is going to be an incredible challenge.

Chairman Klein: Do we have oversight of the federal lands or do we have to follow a different set of rules there?

Lynn Helms: Said it is a patchwork and that in there lays the problem. Roughly forty five percent of what lays within the reservation boundaries is fee land. It was allotted to Indian families and then sold. It is under the jurisdiction of the North Dakota Industrial Commission. Then there are allotted lands where there is a mixture of jurisdictions. Where we have to share jurisdiction with the bureau of land management and the bureau of Indian Affairs and the Tribal Authorities and then there are tribal lands where it is there jurisdiction. (31:20-32:30)

Senator Burckhard: In your business and industry, talk about Monday morning quarterbacking. You've got everybody and their brother second guessing whatever you are doing. I admire what you do and keep on doing it.

Senator Sinner: The language in the bill as it passed the House if this is to pass the Senate as it is, would you have to increase staff to handle these division orders?

Lynn Helms: There is no question that would have to take place if this passes as it is written and general applicability is defined as it is in the federal code. The truth of the matter is this is going to go to court and the federal definition is the one that is going to rule.

Chairman Klein: We have adopted some sort of special places legislation. Will that slow down the ability to get those permits on those particular properties?

Lynn Harms: In the approximately, one year since that policy was adopted and it is important to note that this bill would not change that policy one bit. That policy impacted seventeen drilling permits in the one year that it was put in place, out of a total of 2,642 and they have all been approved. I don't see it as having a large impact and it hasn't significantly slowed any drilling activity on those lands. (35:52-37:58)

Ron Ness, President of the North Dakota Petroleum Council: In opposition to the bill. He said that it continues to be challenging and they had told the industrial commission that they would need help from all of the stake holders, the Forest Service, the Tribes, the State and the Landowners and essentially they have gotten no help from anybody. However they have met the targets and it is incredible that they have met the targets. They have spent 13 billion dollars since 2007 meeting those targets. These are significant issues and it is extremely challenging for operators especially right now when you want to drill your wells in the best areas because you have critical income needs and you are going to be restricted for potential reasons. He said there is so much more to the oil and gas industry and he feels that people have a general lack of understanding of the details in these orders. He said that the orders that Lynn spoke to are critical. This bill is problematic going forward. (38:22-42:32)

Chairman Klein: Asked if they are at the table when the commission is working through these.

Ron Ness: We are in the room but not at the industrial commission table when they make these decisions.

Chairman Klein: When they are working on some of these ideas are you part of that?

Ron Ness: We brought forth flaring task force recommendations but on an order, they came up with a draft order after they had the hearings. It would be like you guys drafting a bill after you take the testimony and then that bill goes to a vote. They order guidelines initiated by what the staff has derived of information and then it is put forth. There were hearing held on the topic so you got to bring your ideas on the topic.

Chairman Klein: We include the tribal lands or do we sort that out by the fee land or the trust land and sometimes three authorities in there but when we are getting down to that last flaring percentage do we include those?

Ron Ness: The State does include those and we have gotten the flaring percentage lower on the tribal lands right now then it is off. I am concerned it is going to go the other way because we are not getting the right away and the approvals and the things done to develop the infrastructure on the tribal lands. (44:54-45:45)

Senator Campbell: Asked if he feels of the three policies, the number one and three, the flaring and the special places are kind of unrealistic in obtaining.

Ron Ness: I would say that the industrial commission has an extremely difficult job and I would agree with Senator Burckhard and they have done their best to try to balance this to some extent. He commented on the 14.7 vapor pressure and that they went one below that. (46:16-48:56)

Senator Murphy: One of the points it seems to me is legislative oversight given the time that we meet and the expertise that would be needed, it just seems very unwieldy to me.

Ron Ness: It is always a challenge whether you are dealing with at budget or dealing with issues like this. I generally think the industrial commission is comprised of three of our highest elected officials and we have to put the trust in them that they are going to do the right thing. We certainly do not want to take away their flexibility to do the things that they do every single day whether you are here or not here and I think this bill would do that. (50:04-51:10)

Senator Murphy: To the flaring issue and taking the lights off of the crude so it is safer to ship. That's a real push on the flaring issue as well. What are we doing? We have to find some place to put those gases we are extracting isn't that forcing a little more flaring, that is the downside to this one right?

Ron Ness: Those two policies directly conflict for various reasons but if you are going to light hands off of the oil you generate more in your gas stream. Hence you have generated more flaring if you don't have the infrastructure. I think their actions yesterday was a part of recognition of that. Which of these two is more critical in terms of safety and all of those things but we are getting squeezed pretty significantly and just do the math. It is pretty significant if you look at the stocks and the value of some of these companies. It's just not them but all of the mineral owners and all of the participating interests. That revenue stream is critical at this point. (51:44-52:40)

Chairman Klein: Said to every small business that has just been recently established in those small communities. He called for opposition and closed the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee

Roosevelt Park Room, State Capitol

HB 1187 Engrossed

3/25/2015

Job Number 25406

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature

Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to orders of the industrial commission

Minutes:

No Attachments

Chairman Klein: Called the committee back to order. He said that he understands where the sponsors wanted to be and after yesterday's industrial commission meeting there was some exceptions given so that hopefully addressed some concerns. He said listening to the oil industry and how quickly that things move and that they're opposed to the bill hinted to him that they may be going on the wrong tracks.

Senator Miller: I don't think we have the ability to move properly to address the issues of the oil industry in a timely fashion. If the industrial commission steps out of line we can pass a law and bring them back. The other side of this is I don't know if I feel comfortable giving the administrative rule committee that latitude and that authority either. That is a very select group and in my opinion I would support a do not pass.

Senator Miller: Moved a do not pass.

Senator Murphy: Seconded the motion.

Senator Sinner: Said he wanted to remind the committee that the bill before them does not just apply to the oil industry but it applies to every bit of business that the industrial commission does. Whether it is the Bank of North Dakota or the State Mill, everything that goes on is in this bill.

Chairman Klein: I think the question you asked is what is this going to cost to get done and it sounded like anything we do when we create a little burden it's one thing you can maybe split but what I heard I think it a tremendous amount of paperwork.

Senator Sinner: A tenfold increase in employees alone and I don't know what five employees cost but I am sure these are not secretary positions. These are high level, a hundred thousand dollars a year people. We would be increasing their budget not to mention we have slowed down the process.

Chairman Klein: Any other discussion on the do not pass on Engrossed HB 1187, hearing none the clerk will call the roll.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Murphy will carry the bill.

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
HB 1187 *Engrossed***

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations

Other Actions: ☐ Place on Consent Calendar
☐ Reconsider ☐ _____

Motion Made By Senator Miller Seconded By Senator Murphy

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Murphy

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1187, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1187 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1187

4. ~~After the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment must be rendered against the agency for court costs. These court costs must include a reasonable attorney's fee and must be payable from the appropriation of the agency which adopted the rule in question.~~

28-32-18. Administrative rules committee may void rule - Grounds - Amendment by agreement of agency and committee.

1. The legislative management's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee not later than the fifteenth day of the month before the date of the administrative code supplement in which the rule change is scheduled to appear. The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:
 - a. An absence of statutory authority.
 - b. An emergency relating to public health, safety, or welfare.
 - c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
 - d. A conflict with state law.
 - e. Arbitrariness and capriciousness.
 - f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under section 28-32-11.
2. The administrative rules committee may find a rule void at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. If no representative of the agency appears before the administrative rules committee when rules are scheduled for committee consideration, those rules are held over for consideration at the next subsequent committee meeting. Rules are not considered initially considered by the committee under this subsection until a representative of the agency appears before the administrative rules committee when the rules are scheduled for committee consideration. If no representative of the agency appears before the administrative rules committee meeting to which rules are held over for consideration, the rules are void if the rules were adopted as emergency rules and for rules not adopted as emergency rules the administrative rules committee may void the rules, allow the rules to become effective, or hold over consideration of the rules to the next subsequent committee meeting. Within three business days after the administrative rules committee finds that a rule is void, the legislative council shall provide written notice of that finding and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency and to the chairman of the legislative management. Within fourteen days after receipt of the notice, the adopting agency may file a petition with the chairman of the legislative management for review by the legislative management of the decision of the administrative rules committee. If the adopting agency does not file a petition for review, the rule becomes void on the fifteenth day after the notice from the legislative council to the adopting agency. If within sixty days after receipt of the petition from the adopting agency the legislative management has not disapproved by motion the finding of the administrative rules committee, the rule is void.
3. An agency may amend or repeal a rule or create a related rule if, after consideration of rules by the administrative rules committee, the agency and committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be published by the legislative council as amended, repealed, or created. If requested by the agency or any interested party, a rule amended, repealed,

or created under this subsection must be reconsidered by the administrative rules committee at a subsequent meeting at which public comment on the agreed rule change must be allowed.

28-32-18.1. Administrative rules committee review of existing administrative rules.

1. Upon request by the administrative rules committee, an administrative agency shall brief the committee on its existing administrative rules and point out any provisions that appear to be obsolete and any areas in which statutory authority has changed or been repealed since the rules were adopted or amended.
2. An agency may amend or repeal a rule without complying with the other requirements of this chapter relating to adoption of administrative rules and may resubmit the change to the legislative council for publication provided:
 - a. The agency initiates the request to the administrative rules committee for consideration of the amendment or repeal;
 - b. The agency provides notice to the regulated community, in a manner reasonably calculated to provide notice to those persons interested in the rule, of the time and place the administrative rules committee will consider the request for amendment or repeal of the rule; and
 - c. The agency and the administrative rules committee agree the rule amendment or repeal eliminates a provision that is obsolete or no longer in compliance with law and that no detriment would result to the substantive rights of the regulated community from the amendment or repeal.

28-32-19. Publication of administrative code and code supplement.

1. The legislative council shall compile, index, and publish all rules filed pursuant to this chapter in a publication which must be known as the North Dakota Administrative Code, in this chapter referred to as the code. The code also must contain all objections filed with the legislative council by the administrative rules committee pursuant to section 28-32-17. The legislative council shall revise all or part of the code as often as the legislative council determines necessary.
2. The legislative council may prescribe a format, style, and arrangement for rules which are to be published in the code and may refuse to accept the filing of any rule that is not in substantial compliance therewith. In arranging rules for publication, the legislative council may make such corrections in spelling, grammatical construction, format, and punctuation of the rules as determined proper. The legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which must be open to public inspection during office hours.
3. The legislative council shall compile and publish the North Dakota Administrative Code supplement according to the schedule of effective dates of rules in section 28-32-15.
 - a. The code supplement must contain all rules that have been filed with the legislative council or which have become effective since the compilation and publication of the preceding issue of the code supplement.
 - b. The code supplement must contain all objections filed with the legislative council by the administrative rules committee pursuant to section 28-32-17.
4. The legislative council, with the consent of the adopting agency, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.
5. The code must be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions thereof relating to individual agencies. An agency may print as many copies of such separate portions of the code as it may require. If the legislative council does not publish the code supplement due to technological problems or lack of funds, the agency whose rules would have been published in the

38-08-09.16. Appeals.

Any person adversely affected by an order of the commission made under sections 38-08-09.1 through 38-08-09.16 may appeal from such order to the district court of the county in which the land or a part thereof involved in the unit lies, in the manner provided in section 38-08-14.

38-08-09.17. Unit of more than one pool - Unit source of supply.

The commission upon its own motion may, and upon petition of any interested person shall, after notice therefor, hold a hearing to consider the need for the operation as a unit of two or more pools or parts thereof separated vertically in one field, and has the power to create such a unit and provide for the unitization and unitized operation of the unit source of supply. "Unit source of supply" means those pools or parts thereof to be produced by such unit operation as designated by order of the industrial commission. The petition, the hearing, the commission's findings and order, and all other matters must be in the form and manner and in accordance with the procedure and requirements hereinabove set forth in sections 38-08-09.1 through 38-08-09.16; provided, however, whenever and wherever the words "common source of supply" appear in said sections, the words "unit source of supply" must be substituted in lieu thereof and all other provisions of the sections shall otherwise apply.

38-08-10. Development and operating costs of integrated fractional tracts.

A person to whom another is indebted for expenses incurred in drilling and operating a well on a drilling unit required to be formed as provided for in section 38-08-08, may, in order to secure payment of the amount due, fix a lien upon the interest of the debtor in the production from the drilling unit or the unit area, as the case may be, by filing for record, with the recorder of the county where the property involved, or any part thereof, is located, an affidavit setting forth the amount due and the interest of the debtor in such production. The person to whom the amount is payable may, at the expense of the debtor, store all or any part of the production upon which the lien exists until the total amount due, including reasonable storage charges, is paid or the commodity is sold at foreclosure sale and delivery is made to the purchaser. The lien may be foreclosed as provided for with respect to foreclosure of a lien on chattels.

38-08-11. Rules covering practice before commission.

1. The commission may adopt rules governing the practice and procedure before the commission, which rules must be adopted pursuant to the provisions of chapter 28-32.
2. When an emergency requiring immediate action is found to exist, the commission may issue an emergency order without notice or hearing, reciting the existence of the emergency and requiring that necessary action be taken to meet the emergency, which order is effective upon issuance. No emergency order may remain in effect for more than forty days.
3. Any notice required by this chapter must be given at the election of the commission either in accordance with chapter 28-32 or by one publication in a newspaper of general circulation in the state capital and in a newspaper of general circulation in the county where the land affected, or some part thereof, is situated. The notice must issue in the name of the state, must be signed by the chairman or secretary of the commission, and must specify the style and number of the proceeding, the time and place of the hearing, and must briefly state the purpose of the proceeding. Should the commission elect to give notice by personal service, such service may be made by any officer authorized to serve process, or by any agent of the commission, in the same manner as is provided by law for the service of summons in civil actions in the courts of the state. Proof of the service by such agent must be by the affidavit of the person making personal service. In proceedings that do not involve a complaint and a specifically named respondent, including agency hearings on applications seeking some right or authorization from the commission, the notice of hearing must be given at least fifteen days before the hearing, except in cases of emergency.

4. The commission may act upon its own motion or upon the petition of any interested person. On the filing of a petition concerning any matter within the jurisdiction of the commission, the commission must fix a date for a hearing and give notice. Upon the filing of a petition of any interested party, the commission must enter its order within thirty days after a hearing. A copy of any order of the commission must be mailed to all the persons filing written appearances at the hearing.

38-08-12. Commission has power to summon witnesses, administer oaths, and to require production of records.

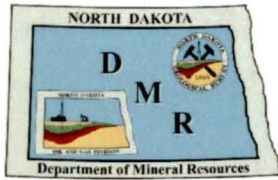
1. The commission has the power to summon witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by it. No person may be excused from attending and testifying, or from producing books, papers, and records before the commission or a court, or from obedience to the subpoena of the commission or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture; provided, that nothing herein contained may be construed as requiring any person to produce any books, papers, or records, or to testify in response to any inquiry not pertinent to some question lawfully before such commission or court for determination. No natural person may be subjected to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which, in spite of the person's objection, the person may be required to testify or produce evidence, documentary or otherwise, before the commission or court, or in obedience to its subpoena; provided, that no person testifying may be exempted from prosecution and punishment for perjury committed in so testifying.
2. In case of failure or refusal on the part of any person to comply with the subpoena issued by the commission, or in case of the refusal of any witness to testify as to any matter regarding which the person may be interrogated, any court in the state, upon the application of the commission, may in termtime or vacation issue an attachment for such person and compel the person to comply with such subpoena, and to attend before the commission and produce such records, books, and documents for examination, and to give the person's testimony. Such court has the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

38-08-13. Party adversely affected may apply for reconsideration.

Any party adversely affected by any order of the commission may file a written petition for reconsideration in accordance with section 28-32-40. The commission shall grant or deny any such petition in whole or in part in accordance with the provisions of section 28-32-40 and rules adopted pursuant to it.

38-08-14. Party adversely affected may appeal to district court.

1. Any party adversely affected by an order entered by the commission may appeal, pursuant to chapter 28-32, from the order to the district court for the county in which the oil or gas well or the affected property is located. However, if the oil or gas well or the property affected by the order is located in or underlies more than one county, any appeal may be taken to the district court for any county in or under which any part of the affected property is located.
2. At the time of filing of the notice of appeal, if an application for the suspension of the order is filed, the commission may enter an order suspending the order complained of and fixing the amount of a supersedeas bond. Within ten days after the entry of an order by the commission which suspends the order complained of and fixes the amount of the bond, the appellant shall file with the commission a supersedeas bond in the required amount and with proper surety. Upon approval of the bond, the order of



House Bill 1187
House Industry Business and Labor Committee
January 19, 2015

Testimony of Lynn D. Helms, Director

The North Dakota Industrial Commission – Department of Mineral Resources – Oil and Gas Division has had jurisdiction since 1981, and the Geological Survey from 1951-1981, over the drilling, producing, and plugging of wells, the restoration of drilling and production sites, and all other operations for the production of oil or gas.

This bill appears to be intended to void two Commission orders issued in 2014. Industrial Commission Order 24665 implemented gas capture plans and goals and Industrial Commission Order 25417 implemented crude oil conditioning standards.

The Commission does not agree with characterizing these two orders as “rules of general applicability”. There are 2,819 field-pool combinations in North Dakota each with a set of field rules that govern field boundaries, stratigraphic limits, well spacing, spacing unit set back distances, casing, tubing, and cement standards, gas oil ratio tests, reservoir pressure tests, and flaring restrictions. Commission Orders 24665 and 25417 affect only 426 or 15% of the Commission’s field rule orders.

The Commission regulates such matters through field rule orders in order to provide the flexibility necessary to allow for geographical, infrastructure, production, and many other factors that vary tremendously from Bowman to Watford City to Bottineau.

Field rules for a pool often start out very similar or identical, but provide the flexibility to adjust to changing needs over time through a single hearing and amended order for any number of fields. The Commission is convinced that Order 24665 and Order 25417 both received extensive due process through multiple days of public hearings with large numbers of attendees and witnesses. Hearings for Order 24665 resulted in 24 parties appearing and 45 submitting written testimony. Hearings for Order 25417 resulted in 20 parties appearing and 39 submitting written testimony. Commission practice is to allow a broad spectrum of stakeholders to provide input and the input period for both of these orders extended over several months.

The voiding of these Commission Orders will have significant fiscal impacts to the mineral owners and the state during the time period necessary to adopt replacement rules. The previous flaring / production restriction orders that will go back into effect were not working and had resulted in hundreds of applications for exemptions that have all now expired. Those rules without exemptions will have a much greater financial impact on well economics than Order 24665. Federal transportation regulators are reviewing the crude oil by rail industry very closely and are more than willing to step into any space created by voiding Order 25417 with substantially more onerous requirements.

Finally, future decisions by the commission could be void if they are perceived as generally applicable. Situations often arise unpredictably that do not allow for a timely response using the administrative rules process. If a significant threat to public health and safety, the environment, correlative rights, or waste were to arise due to a common operating practice or use of a product this statute change would severely limit the Commission's ability to respond.

Mr. Chairman and members of House Industry Business and Labor Committee, the North Dakota Industrial Commission urges a do not pass for House Bill 1187.

15.0506.01001
Title.

Feb 2, 2015

Prepared by the Legislative Council staff for
Representative Kempenich
January 27, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1187

Page 1, line 2, remove "; and to provide an effective date"

Page 1, line 9, replace "June 30" with "July 31"

Page 1, line 9, replace "2014" with "2015"

Page 1, remove line 10

Renumber accordingly

HB 1187

Rep. Roscoe Streytle, District 3

Senate IBL 3/25/15 @ 10:00am

"Orders" from the Industrial Commission should be used on specific companies and situations not broadly across the development. The effects of orders are limited input, oversight, and discussion. "Rules" involve Legislative oversight and "Orders" are an overhanded way to get around involving the legislature. The reason NDIC is using "orders" instead of "rules" is because of speed and flexibility you will be told. The Administrative Rules process does take long and requires more steps, but the development of broad based restrictions (orders/rules) like what NDIC has implemented over the past year should take longer and require more input. The flaring, oil conditioning, and special places initiatives are large in scope and the impact on the state and industry are tremendous.

The Industrial Commission has over stepped its authority and went around the legislative process. The legislature must regain some authority and oversight, that's the intent of this bill. There are some unintended consequences however to the language in this bill.

"Orders" in general aren't a bad thing, many are necessary and critical to address specific, unique, and time sensitive issues on specific wells, permits, procedures, and companies.

Orders Examples

- 1) Used on individual spacing units for drills permits
- 2) Used to set field practices for creating uniform spacing units (1280 acres units)

Orders/Policies that should've went through the "Rule" making process.

- 1) Flaring Restrictions and Targets – Order # 24665
 - a. 74% - 9/1/14
 - b. 77% - 1/1/15
 - c. 85% - 1/1/16
 - d. 90% - 9/1/20
 - e. Infrastructure, gathering lines (1/3 of total), zoning issues, permit delays, easements, low price of natural gas, landowner permission, mergers, and pipeline capacity.
 - f. More Stringent than Federal Government
 - g. Order date March 2014
- 2) Oil Conditioning Vapor Pressure Standards – Order #25417
 - a. 13.7 pounds per square (psi)
 - b. 14.7 psi is national standard for oil stability
 - c. \$12,500 per day fine
 - d. Approved December 2014, effected date April 1, 2015
- 3) Special Places – March 3, 2014 – Effective May 1, 2014
 - a. How many permits are in limbo because of this requirement?
 - b. No legislative input, pure policy decision.

Attached is some more information for review: Oil Patch Hotline, Bismarck Tribune, and Dickinson Press articles, Special Places memo, Orders #24665 and #25417.

Questions for NDIC

What's the cost of each "order" to the state?

What's the cost of each "order" to the company?

How many barrels of production are curtailed with each "order"?

What's the cost/benefit analysis of each "order"?

Who decides what should be an order vs. rule?

How many jobs are affected by mentioned and other excessive regulations?

Why hasn't the NDIC used the rule making process instead of orders?

Why hasn't the NDIC eased flaring requirements in light of weak prices for gas and oil?

Why are the reservations flaring numbers included in the state's goal?

Whiting Spending See Page 12**\$3.00**

OIL PATCH HOTLINE

www.oph.hotlineprinting.com • March 5, 2015 • Vol. 19, No. 5

INSIDE THE PATCH

by Dennis Blank, Editor



If I was to fault the oil and gas industry for anything, it would be the **failure to tell its story often**. Let's take flaring, for example. The ND Industrial Commission last month reluctantly approved a flaring extension for Hess Corp. because it was delayed in building its Hawkeye compressor station and pipeline that runs under Lake Sakakawea. **Hess as well as many other operators have been forced to curtail production to meet the 74% gas capture goals.** Hess has been dealing with pipeline right of way delays and other issues but the commission didn't really care about their side of the story. So leave it to the Republican governor, Jack Dalrymple, who sounds more like a Democrat, to take the bully pulpit and propose more fines and regulations. **"Really, anytime there is surplus gas being flared, it should be initially a violation,"** he said. "We should

(Continued on page 3)

UP, UP, UP Refinery Costs Soar

The construction costs of the Dakota Prairie Refinery have soared \$100 million higher than originally anticipated and selling refined product will not happen until later in the second quarter.

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Calumet Specialty Products, the 50-50 partner with MDU Resources in the 20,000 BOPD diesel refinery in Dickinson, disclosed the higher costs in a conference call with analysts in February.

Jennifer Straumins, executive vice president for strategy, said the actual costs now will range between

(Continued on page 3)

Cold weather and additional plant modifications pushed up the cost of construction on the Dakota Prairie Refinery in Dickinson.



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Hess Flares 60 Wells Until Pipeline Is Built

The ND Industrial Commission Feb. 25 allowed Hess Corp. to flare 60 wells in Mountrail and McKenzie counties while the 12-inch Hawkeye gas pipeline that goes under Lake Sakakawea is being built.

Once the line is completed in October, it will increase the throughput to the gas processing plant in Tioga from 42 Million cubic feet a day to 100 Mmcf a day. It is also building a new compressor station in the Hawkeye Field that will have a capacity of 50,000 Mmcf a day.

Putting a rental compressor on line has been delayed several times, and Hess has restricted production from different wells. Many of the wells are flowing without the use of artificial lift, and shutting in the wells can have a detrimental effect on the ultimate production, Hess said.

Hess had a gas capture of 72% in December, slightly under the state goal of 74%.

The commission order allows the wells to continue flaring as an exception to its regulation that require wells to be restricted to 200 BOPD if 60% of the associated gas is captured and if not, production must be limited to 100 BOPD.

Top Execs Featured At ManLog

Several top company officials including Scott Johnson with True North Steel and Carter Hansen, president of Heartland Precision, will speak at the two-day ManLog conference in Williston March 25-26 which will address manufacturing and logistics issues.

The conference gets underway at The Well at Williston State College and kicks off with a discussion of supply chain initiatives in the oilfield and opportunities to partner with Bakken companies.

Also on the program is Jason Tveter with Production Service Company; Chuck Black with Flowcore System; Mihir Varia with Petroleum Services; Rob Malo with Cadorath Coating; Tony Richards, CEO of Impact Dakota MEP; Todd Mayer, Steffes Corp.; Curtis Shuck, Red River Oilfield Services; Tony Palmer, VP Chemical Consulting Americas, HIS; and Larry Oswald, MDU business development manager.

For more information about registration and exhibits go to: www.manlognd.com.

Diesel Output Delayed Until June

(Continued from Page 1)

\$425 and \$435 million. MDU originally estimated the cost at \$300 million.

MDU had originally said the refinery would be completed at the end of 2014, however, cold weather and construction delays pushed it up until spring.

Crude oil will start moving into the refinery in April, and Straumins estimated that the refinery will be paying low prices for crude oil. "On a trailing 12-month basis, the Bakken Clearbrook discount to WTI has been about \$6 a barrel," she said. "So we do expect to see several dollars per barrel better than this discount to WTI on a delivered basis."

The new refinery will sell diesel fuel in the North Dakota market only where there has been a long-standing shortage of the fuel.

INSIDE THE PATCH

(Continued from Page 1)



set a policy on exactly who we would penalize for that and then you can hear what the mitigating circumstances are." **This is about as one-sided as you can get and yet no one from Hess or the ND Petroleum Council was invited to the public meeting to explain what is happening in the field.** XTO Energy appealed to the ND Dept. of Mineral Resources last month to allow flaring from four wells because a natural gas line connected to the wells had been washed out in a rugged area of Dunn County. **XTO's story is compelling.** ONEOK Partners is still struggling to get final right of way approval from a hold-out surface owner because it has to reroute the eight-inch line. Having to shut in the wells can cause severe damage to the wells, and the company needs only 60 days to continue flaring until the wells are connected to a gas line again. **The company is using field compressors from GTUIT at a financial loss because of low NGL prices and using on site gas for the flares and heater treaters.** This story needs to be told to the public. Companies are losing money to comply with statewide flaring restrictions and scrambling to do everything they can to comply. The reaction from the state is an uneducated governor who wants to impose even more fines.

The US Forest Service and its mother ship, the US Dept. of Interior, is gradually pushing harder and harder in North Dakota to tell individuals and companies by implication that they should not be interfering with the "view" of Theodore National Park in Medora. In its latest letter to the industrial commission, the Park Service

(Continued on page 28)

39/23
Details, 6B



WEDNESDAY,
MARCH 25, 2015

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State may challenge fracking rules

N.D. Industrial Commission votes to consider legal action

NICK SMITH
Bismarck Tribune

North Dakota's attorney general will be looking at the possibility of challenging new rules concerning fracking that were issued last week by the U.S. Department of the Interior's Bureau of Land Management.

"We need to take action," said Gov. Jack Dalrymple, adding that the fracking rules are an overreach that could interfere with the work of the state's water commission and health department.

The three-member North Dakota Industrial Commission, of which Attorney General Wayne Stenehjem is a member, voted unanimously to move forward in its consideration of legal action.

"I think we ... need to explore options. The real problems with the rules are the overreach," said Lynn Helms, director of the state Department of Mineral Resources. "We're talking over 40 percent of our 1.2 million barrels per day is

INSIDE:

Flaring penalties approved,
administration to be flexible, **Page 9A**

at risk."

The U.S. Bureau of Land Management rules, which go into effect June 1, come after review of more than 1.5 million submitted comments and are meant to address energy development on public and tribal lands.

The rules include requirements for
Continued on 9A

RIG NUMBERS DROP BELOW 100

Rigs drilling in the oil patch reached a landmark number of 100 Tuesday, continuing a downward slide that started late last year.

The number of rigs drilling is down by nearly 90 since Christmas and is nearly half the number drilling a year ago at this time, according to statistics maintained by the state's Oil and Gas Division.

Oil companies are stacking rigs in response to months of sagging oil prices, with Bakken crude selling this week at \$31 a barrel, reflecting the substantial transportation discount applied to Bakken oil compared to other domestic sources. Last year at this time, there were 197 rigs drilling.

— Lauren Donovan

German jetliner crashes, kills 150

GREG KELLER AND
ANGELA CHARLTON
Associated Press

SEYNE-LES-ALPES, France — A black box recovered from the scene and pulverized pieces of debris strewn across Alpine mountainsides held clues to what caused a German jetliner to take an unexplained eight-

MIXED WEATHER:

Snowflakes were falling like confetti on the Memorial to the Fallen outside Fraine Barracks in Bismarck on Tuesday afternoon as a spring rain mixed with snow passed through central North Dakota. Bismarck-Mandan residents will see cooler temperatures in Bismarck today with the highs in the mid to upper 30s, which is

SNOW LIGHTLY DUSTS MEMORIAL



Ballot language for Mandan Parks project approved

KAREE MAGEE
Bismarck Tribune

In 4-1 vote, the Mandan City Commission approved the June 9 ballot language Tuesday for funding of a \$22 million project for the Mandan Park District.

The ballot will ask residents whether they will approve an amendment to the Mandan Code of Ordinances to allow the city to charge a 75 percent sales

Officials clarify when cos. are exempt from flaring rule

By Katherine Lymn on Mar 24, 2015 at 7:54 p.m.

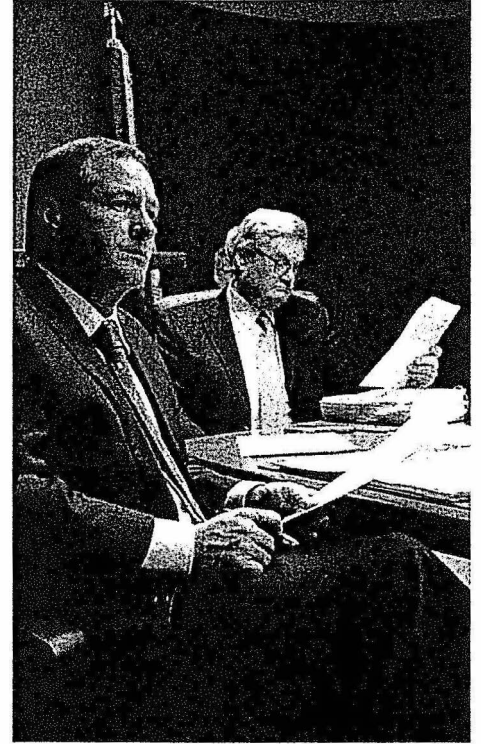
BISMARCK -- They always said rules are made to be broken.

North Dakota officials on Tuesday clarified when oil companies are exempt from anti-flaring gas capture rules, with right-of-way delays, safety issues and system upgrades qualifying as “extenuating circumstances.”

Companies can also avoid production curtailments if flaring is caused by upgrades to improve gas capture in the future, like shutting down a gas plant in order to expand it.

In the face of mounting criticism and concern of the runaway gas that companies were flaring as they raced to get more valuable oil, the North Dakota Industrial Commission last year adopted new goals for how much of the gas is captured. Industry captured 78 percent of gas in January, exceeding the 2015 goal of 77 percent. It must next capture 85 percent beginning Jan. 1, 2016, and 90 percent starting Oct. 1, 2020.

But since the policy went into effect, companies have requested permission to flare for various reasons, causing the Industrial Commission, made of Gov. Jack Dalrymple, Attorney General Wayne Stenehjem and Agriculture Commissioner



North Dakota Agriculture Commissioner Doug Goehring, left, and Gov. Jack Dalrymple look over guidance on the enforcement of the state's flaring rule at the North Dakota Industrial Commission meeting at the Capitol on Tuesday. (Katherine Lymn/The Dickinson Press)

Doug Goehring, to seek clarification from on when to authorize it.

Last month in Lignite, N.D., a power surge caused a two-day shutdown of ONEOK Inc.'s gas plant there, which processes 6 million cubic feet a day. In that case, ONEOK sent the Department of Mineral Resources a letter explaining the incident and its effect on gas capture.

The "force majeure gas" flared during that time, under the guidelines, would not count for or against ONEOK's calculations, DMR Director Lynn Helms said.

In another case, Hess Corp. increased capacity at its Hawkeye Compressor Station but was down for 24 days for upgrades and delivery delays.

"There are sometimes unforeseen circumstances in anything and I think the NDIC just needs to weigh them ..." Hess spokesman John Roper said of the Hawkeye expansion. "We were trying to do all the right things."

When companies don't meet the goals and the Industrial Commission doesn't authorize the excess flaring, the wells are restricted to producing 200 barrels a day if 60 percent or more of gas is captured, or to 100 barrels a day if it captures less than that percentage.

The guidance Helms presented rewrites a paragraph in the original order to outline six causes of flaring in which the Industrial Commission would likely grant relief from the production restrictions penalty: right-of-way delays, midstream downtime for system upgrades or maintenance, federal regulatory delays, safety issues, delayed access to electrical power and possible reservoir damage.

In all cases, the company would have to notify the Industrial Commission within the month after the goal wasn't achieved, and the commission would then hold a hearing to verify the company's excuse.

The guidance also leaves open the option of seeking an exemption for unlisted “extenuating circumstances.” In those cases, Helms said, the flaring would occur in the process of upgrading a system to, within a year, capture more gas than ever.

“If you don’t allow the companies to shut down ... for the issues listed, then we’re never gonna be able to further expand our ability to capture more gas,” said Ron Ness, president of the North Dakota Petroleum Council. “As a producer, you’re at the mercy of the electric company, you’re at the mercy of the processing company. ... I think those made sense.”

Zavanna LLC’s 1804 Ltd. gas plant northeast of Williston is an example of the open-ended exemption, Helms said. The Industrial Commission granted its first exemption to the rule for flaring relief December through March for the company’s gathering line and plant to get up and running.

“Coming out, gas capture will be far better than it was going in, so we would lean toward approving those,” Helms said.

The plant will be selling gas starting April 15, and their flaring has gone from 75 percent to 12 percent, Helms said.

Helms also outlined the penalties for when companies don’t report their violation of the flaring requirements within the month month after the violation occurred.

“If a company is a bad actor, if they’ve had a bad month and they know that they weren’t meeting the gas capture goals but they delay in coming to ask for relief, there could be a penalty,” Helms said.

The penalty starts at \$1,000 a month and doubles every month up to \$12,500 a month. If a company doesn’t curtail production after found to be flaring too much, the commission would issue a verbal notice the first month, a written

notice the second month and then a fine of up to \$12,500 per well per day starting the third month.

Stenehjem questioned the impact of the fines for not reporting in time: "Is that gonna be adequate?"

But Helms said so far companies are getting in touch with his department when they don't meet the capture requirements within the required month, or in advance.

Put into action

One of the orders before the commission showed that the commission still considers some excess flaring unacceptable.

Commissioners denied Whiting Petroleum Corp.'s request for an exemption for flaring in a situation where, Helms said, the company knew the gathering system that it relied on to avoid flaring would not be up and running in time.

"Whiting went ahead and fracked these wells in February, two months after they knew the compressor wasn't going to be up and running at full capacity ... We don't believe that this application meets one of the six mitigating circumstances," Helms said.

The company will have to restrict production for about a month in its Sand-Creek Bakken Pool in McKenzie County to get back in line with gas capture requirements.

Ness said he was frustrated the commission ruled against Whiting, noting the company has "gone above and beyond" to try and capture the gas in this case, like with remote capture units.

"I think they have done everything they can to try and get that gas in that field,"

he said.

Additionally, in taking over Kodiak Oil and Gas -- a company that had "substantial flaring challenges" -- late last last year, Whiting had to race to meet the gas capture goals, Ness said.

"They've done a tremendous job, I think, in terms of doing everything they possibly can to every extent possible ... there's not consideration to them for doing that today."

Whiting spokesman John Kelso didn't immediately return a call for comment Tuesday afternoon.

The commission did approve exemptions for XTO Energy Inc., which dealt with a poster-child example of the extenuating circumstances.

Part of the ONEOK gathering pipeline, which XTO relied on for capturing the gas, eroded out of a hill after heavy rains.

"It was a nature event, unpredictable and unstoppable. The line's exposed and it's not safe to keep operating it so they shut it down," Helms said. ONEOK has also struggled to obtain right-of-way for looping around the obstruction.

Commissioners unanimously approved the flaring.

ADVERTISEMENT

**NORTH DAKOTA INDUSTRIAL COMMISSION
AREA OF INTEREST REVIEW POLICY**

NDIC-PP 2.01. After May 1, 2014, any application for a permit within the following areas of interest that relates to public lands, shall comply with NDIC-PP 2.02 through NDIC-PP 2.04.

1. Black Butte - two miles from the maximum elevation of the butte.
2. Bullion Butte - two miles from the maximum elevation of the butte.
3. Camel's Hump Butte - two miles from the maximum elevation of the butte.
4. Columnar Junipers (Limber Pines) and Burning Coal Vein - one mile from the exterior boundary of the former Dakota National Forest.
5. Confluence of the Yellowstone and Missouri Rivers - two miles from the intersection of the centerline of the riverbeds.
6. Elkhorn Ranch - two miles from the exterior boundary of the National Park and State Park sites.
7. Killdeer Mountain Battlefield State Historic Site - one mile from the exterior boundary of each site.
8. Lake Sakakawea - one half mile from the shoreline at 1850' msl elevation (i.e., the spillway elevation).
9. Little Missouri River - one mile from the centerline of the riverbed as it is determined at the time of the application.
10. Little Missouri River National Grasslands that are designated by the United States Forest Service as backcountry recreation areas;
11. Little Missouri State Park as of 1/1/2014 - one mile from the park's exterior boundary.
12. Pretty Butte - two miles from the maximum elevation of the butte.
13. Sentinel Butte - two miles from the maximum elevation of the butte.
14. Theodore Roosevelt National Park - two miles from the park's exterior boundaries.
15. Tracy Mountain - two miles from the maximum elevation of the mountain.
16. West Twin Butte - two miles from the maximum elevation of the butte.
17. White Butte in Slope County - two miles from the maximum elevation of the butte.
18. Wildlife Management Area not located within any other area of interest - one mile from the exterior boundary.

The director shall maintain a database with the GPS coordinates or legal description of these areas of interest and post a list of the datasets utilized on the Department of Mineral Resources website.

NDIC-PP 2.02. The director shall, within five calendar days after receiving an application to drill a well on public land within an area of interest identified under NDIC-PP 2.01:

- A. Post on the daily activity reports section of the Department of Mineral Resources website a notice including all non-confidential permit application information. The posted notice shall include all supporting information or records provided by the applicant which are not confidential. Public comments about public lands within the areas of interest regarding such issues as access road and well location, reclamation plans and timing, noise, traffic, and visual impact mitigation, will be accepted by the Industrial Commission executive director's designee for 10 calendar days after the notice is posted.
- B. Forward the portions of the application that are not confidential to the Director of North Dakota Game and Fish Department, the State Historical Preservation Officer, the Director of North Dakota Parks and Recreation Department, the Director of North Dakota Department of Transportation, the Commissioner of North Dakota Department of Trust Lands, the State Engineer of the North Dakota Water Commission, the State Director of the Bureau of Land Management, the Park Superintendent of Theodore Roosevelt National Park, the Supervisor of Dakota Prairie Grasslands, the Field Supervisor of United States Fish and Wildlife Service North Dakota Field Office and the county auditor of the affected county. Any comments regarding the permit application may be accepted by the Industrial Commission executive director's designee within 10 calendar days after the information is sent.

NDIC-PP 2.03. All comments shall be reviewed by the Industrial Commission executive director's designee who shall summarize any comments received for the director of the Division of Mineral Resources. However, the Mineral Resources director is not bound to act upon any comments.

NDIC-PP 2.04. The director may consider the comment summaries for the purposes of attaching conditions to any permit pursuant to NDAC 43-02-02, 43-02-02.2, 43-02-02.3, 43-02-02.4, 43-02-03 and 43-02-05 to mitigate potential impacts to the sites listed in NDIC-PP 2.01.

Adopted March 3, 2014

North Dakota Industrial Commission Order 24665 Policy/Guidance

Policy Goals:

- 1) reduce the flared volume of gas
- 2) reduce the number of wells flaring
- 3) reduce the duration of flaring from wells

Action items:

- 1) require Gas Capture Plans for increased density, temporary spacing, and proper spacing cases
- 2) require Gas Capture Plans for all applications for a permit to drill
- 3) semi-annual meetings with midstream gas gathering companies
- 4) develop a web-based pipeline incident report form to better assess right-of-way issues
- 5) direct the Pipeline Authority to track flaring on/off the Fort Berthold Indian Reservation
- 6) report capture status versus goals
- 7) conduct a hearing to review and revise Bakken, Bakken/Three Forks, and/or Three Forks Pool rules governing production curtailment

The initial horizontal well drilled in each spacing unit should be allowed to produce at its maximum efficient rate, regardless if the well is connected to a gas gathering system. Allowing such wells to produce at a maximum efficient rate will allow valuable information to be obtained in order to make decisions regarding future well and infrastructure requirements in the spacing unit.

Commission production records indicate the majority of gas flared in North Dakota is from wells already connected to a gas gathering system. Such wells should not be excluded from gas capture goals adopted by the Commission.

Well payout and economics should not be used to determine production restrictions.

Some spacing units are being developed where the operator is aware that the existing gas gathering infrastructure is insufficient to allow surplus gas to be processed through the gas gathering system. In instances where significant amounts of surplus gas are flared due to the insufficient collection system, production should be restricted unless significant amounts of surplus gas are captured for beneficial consumption, or utilized in a value-added process.

Some flared gas contains components that if improperly combusted could cause air quality degradation and health issues.

On the Fort Berthold Indian Reservation, many Bakken Pools are also within the jurisdiction of the Mandan Hidatsa and Arikara (MHA) Nation and Bureau of Land Management (BLM). In some cases, companies must comply with MHA Nation, BLM, and Commission rules. The Commission should work with federal and tribal authorities to ensure that restrictions imposed herein provide clarity and protection of correlative rights for the oil and gas companies operating in the respective jurisdictions.

The Commission has established the following gas capture goals:

- 74% October 1, 2014 through December 31, 2014
- 77% January 1, 2015 through December 31, 2015
- 85% January 1, 2016 through September 30, 2020
- 90% beginning October 1, 2020
- 95% future potential

The gas capture percentage is calculated by summing monthly gas sold plus monthly gas used on lease plus monthly gas processed in a Commission approved beneficial manner, divided by the total monthly volume of associated gas produced.

In order to allow operators the maximum flexibility to manage their drilling, operation, and gas capture plans within the gas capture goals established by the Commission, the Commission will evaluate compliance with the gas capture goals statewide, by county, by field, then by well for each operator.

- 1) All infill horizontal wells, including overlapping spacing units, completed in a Bakken, Bakken/Three Forks, and/or Three Forks Pool are allowed to produce at a maximum efficient rate for 90 days.
- 2) The operator is allowed to remove the initial 14 days of flowback gas from the total monthly volume calculation.
- 3) The operator is allowed to remove from the total monthly volume calculation gas volumes flared from wells already drilled and completed on the date a force majeure event occurs if the event is properly documented in writing by the gas gathering company.
- 4) The Commission recognizes the following as surplus gas being utilized in a beneficial manner that may be considered as captured gas:
 - a. Equipping the well(s) with an electrical generator that consumes surplus gas from the well
 - b. Equipping the well(s) with a system that intakes the surplus gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting the propane and heavier hydrocarbons
 - c. Equipping the well(s) with other value-added processes as approved by the Director which reduce the volume or intensity of the flare by more than 60%.

If an operator is unable to attain the Commission's gas capture goals at maximum efficient rate, well(s) will be restricted to 200 barrels of oil per day if at least 60% of the monthly volume of associated gas produced from the well is captured, otherwise oil production from such wells shall not exceed 100 barrels of oil per day.

Flexibility will be provided in the form of temporary exemptions from production restrictions after notice and hearing if the following extenuating circumstances are validated:

- 1) surface landowner, tribal, or federal government right-of-way delays
- 2) temporary midstream down-time for system upgrades and/or maintenance
- 3) federal regulatory restrictions or delays
- 4) safety issues
- 5) delayed access to electrical power
- 6) possible reservoir damage

Flexibility in the form of temporary exemptions from production restrictions may be considered for other types of extenuating circumstances after notice and hearing if the effect of such flexibility is a significant net increase in gas capture within one year of the date such relief is granted.

Penalty provisions:

Production and flaring data is two months old when filed (Jan 2014 data filed Mar 2014) and data is frequently amended.

Timely communication between operators and midstream companies as well as with the Commission is of the essence. Lack of compliance with the following requirements will be considered violations:

- 1) Failure to file an application for hearing with the Commission within the month following the month in which the operator was unable to attain the Commission's gas capture goals and oil production exceeded production restrictions may result in a civil penalty of \$1,000 per month up to a maximum of \$12,500 per month beginning at \$1,000 the first month and doubling each additional month that the operator is in violation.
- 2) Failure to implement production restrictions within the month following the month in which the operator was notified by Commission staff that gas capture goals were not attained and oil production from listed well(s) is to be restricted will result in a verbal notice of violation. The Commission will issue a written notice of violation with a compliance deadline if an operator fails to implement production restrictions for a second month. A third month in violation of production restrictions may result in a civil penalty of up to \$12,500 per well for each day the well has been in violation.

BEFORE THE INDUSTRIAL COMMISSION
OF THE STATE OF NORTH DAKOTA

CASE NO. 23084
ORDER NO. 25417

IN THE MATTER OF A HEARING CALLED ON
A MOTION OF THE COMMISSION TO
CONSIDER AMENDING THE BAKKEN,
BAKKEN/THREE FORKS, THREE FORKS,
AND/OR SANISH POOL FIELD RULES TO
ESTABLISH OIL CONDITIONING STANDARDS
AND/OR IMPOSE SUCH PROVISIONS AS
DEEMED APPROPRIATE TO IMPROVE THE
TRANSPORTATION SAFETY AND
MARKETABILITY OF CRUDE OIL.

ORDER OF THE COMMISSION

THE COMMISSION FINDS:

- (1) This cause came on for hearing at 9:00 a.m. on the 23rd day of September, 2014.
- (2) This special hearing was called on a motion of the Commission to consider amending the Bakken, Bakken/Three Forks, Three Forks, and/or Sanish Pool field rules to establish oil conditioning standards and/or impose such provisions as deemed appropriate to improve the transportation safety and marketability of crude oil.
- (3) Prior to the hearing, the Commission indicated it was seeking testimony of technical nature for input on the following:
 - (a) Typical operating temperature, pressure, and retention time of gas/liquid separators;
 - (b) Optimum operating gas/liquid separator temperature, pressure, and retention time to effectively remove light hydrocarbons;
 - (c) Typical operating temperature, pressure, and retention time of treaters;
 - (d) Optimum operating treater temperature, pressure, and retention time to effectively remove light hydrocarbons;
 - (e) Optimum oil stock tank pressure to effectively operate vapor collection equipment;

- (f) Optimum oil tank settling time prior to shipment;
- (g) Capital costs of typical gas/liquid separator and treating equipment;
- (h) Operating costs of typical gas/liquid separator and treating equipment;
- (i) Other field operation methods to effectively reduce the light hydrocarbons in crude oil; and
- (j) Crude oil quality and safety studies including but not limited to those conducted by American Fuel & Petrochemical Manufacturers, PHMSA & FRA Operation Classification, Transportation Safety Board of Canada, and Turner Mason & Company.

Written comments were allowed no later than 5:00 p.m., Monday, September 22, 2014.

(4) The Commission received written comments from Joel Noyes of Hess Corporation, Phillip Steck with the New York Legislature, Don Morrison of Dakota Resource Council, John Zellitti of Triangle USA Petroleum Corporation including video, Ron Day of Tesoro, Kari Cutting of the North Dakota Petroleum Council (NDPC) including slides, and Tony Lucero of Enerplus Resources USA Corporation.

The record in this case was left open to allow American Fuel & Petrochemical Manufacturers to submit written comments. Comments were received October 1, 2014 and the record was closed.

The following concerned land/royalty owners also submitted written comments: R.J. Larsen, Edward Decker, Paul Hanson, Nancy Casler, and Timothy Lane.

The Commission also received written comments from Ron Schallow.

(5) The Commission received oral comments at the hearing from Jon Ramer of Terrenus Resources, Hal Cooper of CP&Y Engineering, Kari Cutting of NDPC, Jeff Hume on behalf of the NDPC, Brent Lohnes of Hess Corporation, Roger Kelley of Continental Resources, Inc., Keith Lilie of Statoil Oil & Gas LP, Eric Bayes of Oasis Petroleum North America LLC, Jeff Hume of Continental Resources, Inc., Phil Archer of Whiting Oil and Gas Corporation, Wayne King of Grit Industries, Inc., Tony Lucero of Enerplus Resources USA Corporation, Colin Nikiforuk of CRNG Energy Inc., Theodora Bird Bear, Scott Skokos, Marie Hoff, and Lynn Wolff of the Dakota Resource Council, Connie Triplett, a North Dakota State Legislator, John Fanto of True Oil LLC, and Darrell Graf with the Fire Academy of North Dakota.

(6) The Commission reopened the record in this matter on November 13, 2014 to allow additional public comment until 5 p.m., Wednesday November 19, 2014, to specifically address technical corrections within the Commission's working draft order.

Subsequently the Commission received written comments from Brian Wold of WPX Energy Williston LLC, Brent Lohnes of Hess Corporation, Tony Lucero of Enerplus Resources USA Corporation, Matthew Gusdorf of XTO Energy Inc., Ron Ness of the North Dakota Petroleum

Council, Nathan Savage of Savage Services Corporation, Christy Williamson of ONEOK Rockies Midstream, Terry Kovacevich of Marathon Oil Company, Robert Greco with the American Petroleum Institute, David Friedman with the American Fuel & Petrochemical Manufacturers, Taylor Reid of Oasis Petroleum North America LLC, Dennis Lindberg of SM Energy Company, Jon Ramer of Catalytic Resources LLC, Lawrence Bender representing EOG Resources Inc., Scott Skokos of the Dakota Resource Council, Jeff Hume of Continental Resources Inc., Dennis Sutton of PetroQual LLC, Brent Miller of Whiting Petroleum Corporation, Colin Nikiforuk of CRNG Energy Inc., and Bret Wolz of HyCap Energy LLC.

Nancy Casler, Paul Hanson, Randy Olson, Jeffrey Rodacker, and Gordon Schwallie also submitted written comments as concerned citizens.

(7) Some of the written comments indicated that this matter should be conducted under administrative rulemaking. The Commission finds that matters such as this one are intended to address field operating practices for a limited number of producing pools and should be handled as has been done previously with subject matter similar in nature, as in: (1) Commission Order No. 14496 which set requirements for 2560-acre drilling and spacing units; (2) Commission Order No. 14497 which established 1280-acre drilling units within the Bakken Pool; (3) Commission Order No. 14498 which established a 200-foot setback relative to the heel and toe of horizontal Bakken Pool wells; and (4) Commission Order No. 24665 which modified flaring regulations for Bakken, Bakken/Three Forks, and Three Forks Pools.

(8) Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all testimony and evidence presented, and the subsequent comments received on the working draft order, the Commission makes the following conclusions. Much of the testimony and comments were relevant, but did not address the requested topics on which the Commission sought testimony and comments.

IT IS THEREFORE ORDERED:

- (1) No well shall be hereafter produced in a Bakken, Bakken/Three Forks, Three Forks, and/or Sanish Pool (the Bakken Petroleum System), except in conformity with the regulations below without special order of the Commission after due notice and hearing.
- (2) All wells completed in the Bakken Petroleum System must be produced through equipment utilizing the following conditioning standards to improve the marketability and safe transportation of the crude oil:
 - (a) A gas-liquid separator and/or emulsion heater-treater of ample capacity and in good working order that effectively separates the production into gaseous and liquid hydrocarbons, must be operated within manufacturer's recommended operating limits;
 - (b) Production facilities utilizing a gas-liquid separator and/or an emulsion heater-treater operating at a pressure of no more than 50 psi on the final stage of separation prior to the crude oil storage tanks must heat the produced fluids to a temperature of no less than 110 degrees Fahrenheit. Such temperature may be

applied in the emulsion heater-treater or prior to the fluids entering the separator if no emulsion heater-treater is utilized; or

- (c) Production facilities utilizing a gas-liquid separator and/or an emulsion heater-treater operating at a pressure greater than 50 psi on the final stage of separation prior to the vapor recovery system or crude oil storage tanks must heat the produced fluids to a temperature of no less than 110 degrees Fahrenheit and shall also be required to install a vapor recovery system on or immediately upstream of the crude oil storage tanks; or
 - (d) Production facilities utilizing gas-liquid separator(s) and/or emulsion heater-treater(s) operating at pressures and temperatures other than those provided in (b) or (c) above shall be allowed only upon the operator demonstrating that the operating pressures and temperatures of the separator(s) and/or emulsion heater-treater(s) are producing crude oil with a Vapor Pressure of Crude Oil (VPCR_x) no greater than 13.7 psi or 1 psi less than the vapor pressure of stabilized crude oil as defined in the latest version of ANSI/API RP3000 whichever is lower. Such test must be performed by a person sufficiently trained to perform the test. All VPCR_x tests shall be performed in accordance with the latest version of ASTM D6377 and shall be conducted quarterly. Samples for testing must be collected in accordance with ASTM D3700 or ASTM D5842 at the point of custody transfer. A Sundry Notice (Form 4) shall be submitted to the Director within 15 days of the test date which includes a screen shot and/or printout of the VPCR_x test conducted and details the operating capacities, pressures, and temperatures of all well site conditioning equipment at the time of the test; or
 - (e) Production facilities utilizing an alternative oil conditioning method other than a gas-liquid separator(s) and/or an emulsion heater-treater(s) will only be approved by the Commission after due notice and hearing, and must: (a) be capable of delivering crude oil with a VPCR_x no greater than 13.7 psi at custody transfer; or (b) provide safe transportation of marketable crude oil to a crude oil conditioning or stabilization plant.
 - (f) Commission personnel will periodically inspect production facilities and records to confirm operator compliance with the standards and requirements contained herein. Noncompliance could result in the Commission issuing civil and criminal penalties pursuant to North Dakota Century Code § 38-08-16.
- (3) The following practices are hereby prohibited:
- (a) Blending crude oil produced from the Bakken Petroleum System with liquids recovered from gas pipelines prior to custody transfer; and
 - (b) Blending crude oil produced from the Bakken Petroleum System with natural gas liquids (i.e. condensate, pentanes, butanes, or propane) prior to custody transfer.

Case No. 23084
Order No. 25417

(4) The operator of any transload rail facility shall notify the Director of discovering that any crude oil received from the Bakken Petroleum System violates federal crude oil safety standards. The notice shall indicate: (a) the federal standard violated and the date; (b) the probable source of such crude oil, if known; and (c) an outline on the final disposition of such crude oil and the process subsequently utilized to provide the safe transportation of such crude oil.

(5) The Commission shall have continuing jurisdiction in this matter and specifically reserves the authority, upon its own motion or the motion of any interested party, to: (a) review such requirements outlined herein; (b) determine whether additional requirements are warranted; and (c) make such further amendments or modifications as the Commission deems appropriate.

(6) This order is hereby effective April 1, 2015, shall cover all wells completed in the Bakken Petroleum System, and shall continue in full force and effect until further order of the Commission.

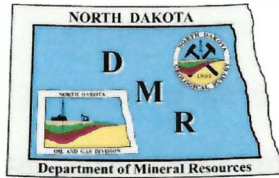
Dated this 9th day of December, 2014.

INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA

/s/ Jack Dalrymple, Governor

/s/ Wayne Stenehjem, Attorney General

/s/ Doug Goehring, Agriculture Commissioner



House Bill 1187 FIRST ENGROSSMENT
Senate Industry Business and Labor Committee

March 25, 2015

Testimony of Lynn D. Helms, Director

The North Dakota Industrial Commission – Department of Mineral Resources – Oil and Gas Division has had jurisdiction since 1981, and the Geological Survey from 1951-1981, over the drilling, producing, and plugging of wells, the restoration of drilling and production sites, and all other operations for the production of oil or gas.

The Commission regulates many matters through field rule orders to provide the flexibility necessary to allow for geographical, infrastructure, production, and many other factors that vary tremendously from Bowman to Watford City to Bottineau. Field rules for a pool often start out very similar, but provide the flexibility to adjust to changing needs over time through a single hearing and amended order for any number of fields.

Future decisions by the commission could be void if they are defined as generally applicable. There is no definition of the term in North Dakota statute or administrative code. Even if the legislature were to define the term it is likely the federal code definition (on page 2) would prevail in any resulting litigation. Under this bill and the federal definition two options would remain for all future Oil and Gas Division decisions:

- 1) Every action, such as spacing, would have to be done one spacing unit at a time (there are 8,894 Bakken spacing units) with every working and mineral interest owner explicitly named.
- 2) Every action, such as spacing, would have to be done by administrative rule (there are 2,000-3,000 such decisions per year).

Finally, situations often arise unpredictably that do not allow for a timely response using the administrative rules process. If a significant threat to public health and safety, the environment, correlative rights, or waste were to arise due to a common operating practice or use of a product this statute change would severely limit the Commission's ability to respond.

Mr. Chairman and members of Senate Industry Business and Labor Committee, the North Dakota Industrial Commission urges a do not pass for House Bill 1187.

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR Data is current as of March 20, 2015

Title 1 → Chapter I → Subchapter A → Part 1

Title 1: General Provisions

PART 1—DEFINITIONS

Contents

[§ 1.1 Definitions.](#)

AUTHORITY: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

[Back to Top](#)

§1.1 Definitions.

As used in this chapter, unless the context requires otherwise—

Administrative Committee means the Administrative Committee of the Federal Register established under section 1506 of title 44, United States Code;

Agency means each authority, whether or not within or subject to review by another agency, of the United States, other than the Congress, the courts, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

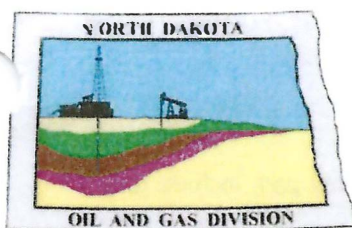
Document includes any Presidential proclamation or Executive order, and any rule, regulation, order, certificate, code of fair competition, license, notice, or similar instrument issued, prescribed, or promulgated by an agency;

Document having general applicability and legal effect means any document issued under proper authority prescribing a penalty or course of conduct, conferring a right, privilege, authority, or immunity, or imposing an obligation, and relevant or applicable to the general public, members of a class, or persons in a locality, as distinguished from named individuals or organizations; and

Filing means making a document available for public inspection at the Office of the Federal Register during official business hours. A document is filed only after it has been received, processed and assigned a publication date according to the schedule in part 17 of this chapter.

Regulation and rule have the same meaning.

[37 FR 23603, Nov. 4, 1972, as amended at 50 FR 12466, Mar. 28, 1985]



Oil and Gas Division

Lynn D. Helms - Director Bruce E. Hicks - Assistant Director

Department of Mineral Resources

Lynn D. Helms - Director

North Dakota Industrial Commission

www.oilgas.nd.gov

October 1, 2014

RE: APD GAS CAPTURE PLAN REQUIRED

To all Operators:

Note this letter is a revision to the Commission's previous Gas Capture Plan (GCP) letter dated May 8, 2014.

A GCP must accompany every Application for a Permit to Drill (APD) and permit renewal request to complete any well within any target in the Bakken petroleum system. The plan is required as part of the North Dakota Industrial Commission's policy to reduce gas flaring which was adopted on March 3, 2014 and revised by Commission Order No. 24665 effective July 1, 2014.

The GCP must contain the following information:

1. An affidavit signed by a company representative indicating:
 - a. The name of the gas gatherer the company met with.
 - b. That the company supplied the gas gatherer with the following information:
 - i. Anticipated completion date of well(s).
 - ii. Anticipated production rates of well(s).
2. A detailed gas gathering pipeline system location map which depicts the following information.
 - a. Name and location of the destination processing plant.
 - b. Name of gas gatherer and location of lines for each gas gatherer in the map vicinity.
 - c. The approximate route to connect the subject well(s) to an existing gas line.
3. Information on the existing gas gathering system, to which operator proposes to connect to, including:
 - a. Maximum current daily capacity of the existing gas line or compressor.
 - b. Current throughput of the existing gas line or compressor.
 - c. Anticipated daily capacity of existing gas line or compressor at date of first gas sales.
 - d. Anticipated throughput of existing gas line or compressor at date of first gas sales.
 - e. Gas gatherer issues or expansion plans for the area.

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4. A detailed flowback strategy including:
 - a. Anticipated date of first production.
 - b. Anticipated oil and gas rates and duration. If well is on a multi-well pad, include total for all wells being completed.
5. Amount of gas the company is currently flaring:
 - a. State-wide percentage of gas flared (total gas flared/total gas produced) for existing wells producing from the Bakken petroleum system. Note the Commission's approved gas capture goals are to reduce flaring to 26% by October 1, 2014, 23% by January 1, 2015, 15% by January 1, 2016, and 10% by October 1, 2020.
 - b. Field-wide percentage of gas flared.
6. Alternatives to flaring (if the operator is not meeting the gas capture goal):
 - a. Explain specific alternate systems the company is considering.
 - b. Detail expected flaring reductions if such plans are implemented.

Permit consideration may be delayed or stipulations imposed if applicant is unable to timely connect the subject well(s) and alternatives to reduce the amount of flared gas will not be implemented.

The NDIC believes a concerted effort by operators in North Dakota is necessary to reduce the volume of flared gas, reduce the number of wells flaring, and reduce duration of flaring of wells, which will ultimately meet our goal to encourage and promote the development, production, and utilization of oil and gas in the state in such a manner as will prevent waste, maximize economic recovery, and fully protect the correlative rights of all owners to the end that the landowners, the royalty owners, the producers, and the general public realize the greatest possible good from these vital natural resources.

If you have any questions or comments, please contact our office.

Sincerely,

Todd L. Holweger

DMR Permit Manager

BEFORE THE INDUSTRIAL COMMISSION
OF THE STATE OF NORTH DAKOTA

CASE NO. 22058
(CONTINUED)
ORDER NO. 24665

IN THE MATTER OF A HEARING CALLED ON
A MOTION OF THE COMMISSION TO
CONSIDER AMENDING THE CURRENT
BAKKEN, BAKKEN/THREE FORKS, AND/OR
THREE FORKS POOL FIELD RULES TO
RESTRICT OIL PRODUCTION AND/OR
IMPOSE SUCH PROVISIONS AS DEEMED
APPROPRIATE TO REDUCE THE AMOUNT OF
FLARED GAS.

ORDER OF THE COMMISSION

THE COMMISSION FINDS:

- (1) This cause originally came on for hearing at 9:00 a.m. on the 22nd day of April, 2014.
- (2) North Dakota Industrial Commission (Commission) Order No. 24392, signed May 14, 2014 continued the decision in this matter for an additional ninety days.
- (3) This hearing was called on a motion of the Commission to consider amending the current Bakken, Bakken/Three Forks, and/or Three Forks Pool field rules to restrict oil production and/or impose such provisions as deemed appropriate to reduce the amount of flared gas.

This special hearing was scheduled to address the Commission's newly-adopted policy on reducing gas flaring. The policy goals were to reduce the flared volume of gas, reduce the number of wells flaring, and reduce the duration of flaring from wells.

Action items to reach the policy goals included requiring Gas Capture Plans for increased density, temporary spacing, and proper spacing cases; requiring Gas Capture Plans for all applications for a permit to drill; schedule semi-annual meetings with midstream gas gathering companies to gauge the effect of Gas Capture Plans, production curtailments, contracts, and service interruptions; dedicate information technology resources to develop a web-based pipeline incident report form to better assess right-of-way issues; direct the Pipeline Authority to track flaring on/off the Fort Berthold Indian Reservation and report capture status versus goals; and docket this hearing to review and revise Bakken, Bakken/Three Forks, and/or Three Forks Pool rules governing production curtailment.

(4) Prior to the hearing, the Commission indicated it was seeking testimony of technical nature for input on the following:

- a. Length of time wells should be allowed to produce at maximum while flaring?
- b. What production rate restrictions are appropriate for wells connected to gas gathering or beneficial uses?
- c. What types of administrative approval of exemptions from production restrictions are appropriate?
- d. What consideration should be given to ambient air quality regarding production rates or restrictions?
- e. Should production rates and restrictions be adjusted for well economics and percentage of gas captured by well site, field-pool, region or operator?
- f. Should production rates for wells not connected to gas gathering or beneficial uses be reduced in stages or set at a low rate after payout?

Written comments were allowed no later than 5:00 p.m., Monday, April 21, 2014.

(5) The Commission received written comments from Toby Schweitzer of Bakken Frontier LLC, Caleb Young employed in the oil and gas industry, Srini Raghavan of Navi Reliance Group LLC, Gary Preszler of the North Dakota Chapter of the National Association of Royalty Owners, Alexis Brinkman of the North Dakota Petroleum Council, Roger Kelley of Continental Resources Inc. representing the Domestic Energy Producers Alliance, Tex Hall of the Mandan Hidatsa and Arikara Nation, Gordon Vaskey of Zavanna LLC, Taylor Reid of Oasis Petroleum North America LLC, Kenneth Klanika of Statoil Oil and Gas LP, Danette Welsh of ONEOK Inc., Dominic Spencer of Triangle USA Petroleum Corporation, Andrew Logan of Ceres, Mark Borla of SM Energy Company, Lisa Casarez a member of the Fort Berthold Indian Reservation, Adam Bishop of Hunt Oil Company, Abby Sharp and Kimberly Croll of Caliber Midstream Partners LP, Mark Wald of Blaise Energy, Jeremy Conger of WPX Energy Williston LLC, James Kennedy of Fidelity Exploration & Production Company, Ralph Castille of ConocoPhillips Company, Jeff Herman of Petro-Hunt LLC, Joel Noyes of Hess Corporation, Don Morrison of the Dakota Resource Council, Brent Miller of Whiting Oil and Gas Corporation, Stephanie Chase of the Environmental Law & Policy Center, and Wessel Nel of Hatch Ltd.

The following concerned land/royalty owners also submitted written comments: Tim Stroh and Eugene Bardal.

The following concerned citizens also submitted written comments: Wally Stephens, Peggy Klein, Al Coen, Susan and Paul Bultsma, Carol Nelson, Lyle and Susan Best, Pete and Vawnita Best, Galen Grote, Norma Stenslie, Joletta Bird Bear, James Stewart, Corinne L., Shelly Ventsch, Candance Kraft, Rose Veeder, Cedar Gillette, and Curtis Bardal.

(6) The Commission received oral comments at the hearing from Lyle Best a landowner near Watford City, Ron Ness of the North Dakota Petroleum Council, Brad Aman of Continental Resources Inc., Roger Kelley of Continental Resources Inc. representing the Domestic Energy Producers Alliance, Jeremy Conger of WPX Energy Williston LLC, Brent Miller of Whiting Oil and Gas Corporation, Danette Welsh of ONEOK Inc., Brian Cebull of GUIT LLC, Ralph Castille of ConocoPhillips Company, Theodora Bird Bear of the Dakota Resource Council, Scott Skokos of the Dakota Resource Council, Lance Langford of Statoil Oil & Gas LP, Tony Lucero of

Enerplus Resources USA Corporation, Tom Wheeler of Northwest Landowners Association, Mark Borla of SM Energy Company, Bryant Winn of Petro-Hunt LLC, Dan Grossman of the Environmental Defense Fund, Jerrold Mayer of Zavanna LLC, Walter Breidenstein of Gas Technologies, Wayde Schafer of the Sierra Club, Andy Peterson of the Greater North Dakota Chamber, Toby Schweitzer of Bakken Frontier LLC, Carey Doyle of the Mandan Hidatsa and Arikara Nation, and William McCabe of Missouri River Resources.

(7) Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes the following conclusions. Much of the testimony was relevant, but did not address the six topics on which the Commission sought testimony.

(8) The typical Bakken, Bakken/Three Forks, and/or Three Forks Pool is defined as that accumulation of oil and gas found in the interval from 50 feet above the Bakken Formation to above the top of the Birdbear Formation within the limits of any given field. To ease confusion, the Pool will collectively be hereinafter referred to as the Bakken Pool.

(9) Development of Bakken Pools in North Dakota is currently ongoing and encompasses over 15,000 square miles of land. Total gas plant capacity in North Dakota exceeds total gas production in the state although many bottlenecks exist in the current gas gathering infrastructure due to the high liquid content of the gas, the prolific volumes of oil and gas during initial production, increasing pipeline pressure that requires installation of additional compressors, and in some cases undersized pipe. Most operators are prudently attempting to connect their wells to a gas gathering system, but due to many aforementioned constraints in the gas gathering systems, much of the gas is not processed.

(10) Bakken Pools producing in North Dakota are oil reservoirs and gas is produced in association with the oil at the wellhead as a by-product of oil production. The value of the oil produced far exceeds the value of any gas produced in association with the oil.

(11) Leasehold interests in some Bakken Pool spacing units are not yet held by production. The initial horizontal well drilled in such spacing units should be allowed to produce at its maximum efficient rate, regardless if the well is connected to a gas gathering system. Allowing such wells to produce at a maximum efficient rate will allow valuable information to be obtained in order to make decisions with regard to future wells and infrastructure requirements in the spacing unit.

(12) Some Bakken Pool spacing units are being developed where the operator is aware that the existing gas gathering infrastructure is insufficient to allow surplus gas to be processed through the gas gathering system. In instances where significant amounts of surplus gas is flared due to the insufficient collection system, production should be restricted unless significant amounts of surplus gas is captured for beneficial consumption, or utilized in a value-added process.

(13) Some Bakken Pools could have up to five separate horizontal targets, resulting in as many as twenty-eight wells within the same spacing unit.

(14) Various time frames for maximum efficient rates were suggested. North Dakota's production of Bakken Pool associated gas is typically associated with an unusually high

temperature, pressure, and liquid content. Initial production decline is also very rapid, due to the highly fractured nature of the completion interval.

(15) The Commission believes the North Dakota Petroleum Council's Flaring Task Force's targets of capturing 74% of the gas by October 1, 2014; 77% by January 1, 2015; 85% by January 1, 2016; and 90% by October 1, 2020 with potential for 95% capture are attainable and should be adopted as gas capture goals by the Commission. The restrictions imposed by this order will strive to meet such goals.

(16) Production restrictions imposed by the Commission will constitute force majeure in most producer/gas gatherer contracts and excuse parties from performing certain parts of the contract while production restrictions are imposed.

(17) Delineation drilling activity versus multi-well development requires separate and unique solutions.

(18) Pipeline construction across rough topography or around surface waters causes delays in connecting wells to a gas gathering system.

(19) Flexibility is required due to surface landowner, tribal, and federal government right-of-way delays; temporary midstream down-time for system upgrades and maintenance; federal regulatory restrictions or delays; safety issues; delayed access to electrical power; and possible reservoir damage.

(20) Well payout and economics should not be used to determine production restrictions.

(21) Some well site value-added processes that utilize the surplus gas in a beneficial manner are economic.

(22) Commission production records indicate the majority of gas flared in North Dakota is from wells already connected to a gas gathering system. Such wells should not be excluded from gas capture goals adopted by the Commission.

(23) Some flared gas contains components that if improperly combusted could cause air quality degradation and health issues.

(24) On the Fort Berthold Indian Reservation, many Bakken Pools are also within the jurisdiction of the Mandan Hidatsa and Arikara (MHA) Nation and Bureau of Land Management (BLM). In some cases, companies must comply with MHA Nation, BLM, and Commission rules. The Commission should work with federal and tribal authorities to ensure that restrictions imposed herein provide clarity and protection of correlative rights for the oil and gas companies operating in the respective jurisdictions.

(25) The production allowances and restrictions imposed herein will provide for the effective and efficient recovery of oil from the Bakken Pool, encourage rapid development, avoid the drilling of unnecessary wells, and prevent waste in a manner that will protect correlative rights.

Case No. 22058
(Continued)
Order No. 24665

IT IS THEREFORE ORDERED:

(1) All Commission orders allowing wells completed in a Bakken, Bakken/Three Forks, and/or Three Forks Pool to produce at a maximum efficient rate shall remain in full force and effect through September 30, 2014. All wells completed in a Bakken, Bakken/Three Forks, and/or Three Forks Pool are hereafter allowed to produce at a maximum efficient rate through September 30, 2014. After September 30, 2014, the gas capture from all existing wells shall be evaluated and oil production from all existing and future wells shall not exceed the production allowances herein.

(2) The first horizontal well completed in a Bakken, Bakken/Three Forks, and/or Three Forks Pool non-overlapping spacing unit shall be allowed to produce at a maximum efficient rate.

(3) All wells completed in a Bakken, Bakken/Three Forks, and/or Three Forks Pool that have received an exemption to North Dakota Century Code Section 38-08-06.4 shall be allowed to produce at a maximum efficient rate.

(4) All infill horizontal wells, including overlapping spacing units, completed in a Bakken, Bakken/Three Forks, and/or Three Forks Pool, shall be allowed to produce at a maximum efficient rate for a period of 90 days commencing on the first day oil is produced through well-head equipment into tanks from the ultimate producing interval after casing has been run; after that, such wells shall be allowed to continue to produce at a maximum efficient rate if the well or operator meets or exceeds the Commission approved gas capture goals. The gas capture percentage shall be calculated by summing monthly gas sold plus monthly gas used on lease plus monthly gas processed in a Commission approved beneficial manner, divided by the total monthly volume of associated gas produced by the operator. The operator is allowed to remove the initial 14 days of flowback gas in the total monthly volume calculation. The Commission will accept compliance with the gas capture goals by well, field, county, or statewide by operator. If such gas capture percentage is not attained at maximum efficient rate, the well(s) shall be restricted to 200 barrels of oil per day if at least 60% of the monthly volume of associated gas produced from the well is captured, otherwise oil production from such wells shall not exceed 100 barrels of oil per day.

The Commission will recognize the following as surplus gas being utilized in a beneficial manner:

- a. Equipped with an electrical generator that consumes surplus gas from the well;
- b. Equipped with a system that intakes the surplus gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting the propane and heavier hydrocarbons; and
- c. Equipped with other value-added processes as approved by the Director which reduce the volume or intensity of the flare by more than 60%.

(5) If the flaring of gas produced with crude oil from a Bakken, Bakken/Three Forks, and/or Three Forks Pool is determined by the North Dakota Department of Health as causing a

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(Continued)

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violation of the North Dakota Air Pollution Control Rules (North Dakota Administrative Code Article 33-15), production from the respective pool may be further restricted.

(6) This order shall remain in full force and effect until further order of the Commission.

Dated this 1st day of July, 2014.

INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA

/s/ Jack Dalrymple, Governor

/s/ Wayne Stenehjem, Attorney General

/s/ Doug Goehring, Agriculture Commissioner