

August 31, 2021

DELIVERED VIA EMAIL

Ms. Jill A. Grossman
North Dakota Legislative Council
State Capitol
600 E. Boulevard, 2nd Floor
Bismarck, ND 58505-0360
jillgrossman@nd.gov

RE: Adopted and Amended Rules

Dear Ms. Grossman:

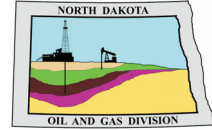
The Full Notice of Intent to Adopt and Amend Administrative Rules and a copy of the proposed rules are enclosed as required by North Dakota Century Code § 28-32-10.

If you have any questions or comments, do not hesitate to contact this office.

Sincerely,

A handwritten signature in blue ink that reads "Bruce E. Hicks".

Bruce E. Hicks
Assistant Director



FULL NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES

TAKE NOTICE that the North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division, will hold four public hearings to address proposed amendments and additions to the North Dakota Administrative Code (NDAC) Chapter 43-02-03 (Oil & Gas), Chapter 43-02-14 (Geological Storage of Oil or Gas), and Chapter 43-05-01 (Geologic Storage of Carbon Dioxide):

- October 11th, 2021 at 8 a.m. in the Conference Room of the Oil and Gas Division Building, 1000 E. Calgary Avenue, Bismarck, North Dakota
- October 11th, 2021 at 1 p.m. in the Conference Room of the Oil and Gas Division Dickinson Field Office, 926 East Industrial Drive, Dickinson, North Dakota
- October 12th, 2021 at 8:00 a.m. at Clarion Hotel and Suites, 1505 15th Avenue West, Williston, North Dakota
- October 12th, 2021 at 1:30 p.m. in the Conference Room of the Oil and Gas Division Minot Field Office, 7 Third Street SE, Suite 107, Minot, North Dakota

The proposals are summarized below:

The purpose of the proposed amendment to NDAC § 43-02-03-07 is to update the rule to be consistent with innovation. The proposed amendment clarifies that federal forms will no longer be allowed to be submitted since our new database through NorthSTAR requires online submittal. The proposed amendment will provide an economic benefit to the regulated community since it streamlines processes.

The purpose of the proposed amendment to NDAC § 43-02-03-09 is to update the rule to be consistent with innovation. The proposed amendment clarifies that most written forms currently provided by the Commission will no longer be available since our new database through NorthSTAR requires online submittal. The proposed amendment will provide an economic benefit to the regulated community since it streamlines processes.

The purpose of the proposed amendments to NDAC § 43-02-03-14.2 is to consider less onerous proving requirements for oil and gas meters used for allocation of production in a common ownership facility. The proposed amendments allow the owner of metering equipment to prove oil meters annually, instead of quarterly, and prove gas meters annually, instead of semiannually. The proposed amendment will provide an economic benefit to the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-03-15 is to update the rule pursuant to legislation recently passed by the Sixty-seventh Legislative Assembly. Pursuant to Senate Bill 2065, the rule provides for a geological storage facility bond after notice and hearing. The proposed amendment is not expected to have an impact on the regulated community since the bond was required in statute by the Legislative Assembly.

The purpose of the proposed amendments to NDAC § 43-02-03-16.1 is to clarify responsibilities of an operator. The proposed amendment clarifies the principal on the bond covering a facility is the operator and is responsible for compliance with all applicable laws. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-03-21 is to ensure freshwaters are protected and casing is cemented in a proper manner. The proposed amendments require surface casing cement to be displaced with fresh water and also clarifies that surface casing strings may be pressure tested immediately after cementing, while the cement is in a liquid state. The proposed displacement amendment is not expected to have an impact on the regulated community in excess of \$50,000 and the proposed pressure test amendment will provide an economic benefit to the regulated community.

The purpose of the proposed amendments to NDAC § 43-02-03-27.1 is to track fracture stimulation crews operating in North Dakota and to provide industry with relief from certain requirements. The proposed amendments require the operator to notify the Director approximately 48 hours prior to conducting operations; allow the Director to waive visual inspection and photograph of the top casing joint and the wellhead flange; and allows cement evaluation tools to be run only in affected casing strings. The proposed notification amendment is not expected to have an impact on the regulated community in excess of \$50,000 and the proposed visual inspection, photograph, and affected casing amendments will provide an economic benefit to the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-03-29 is to provide the Director the location of above ground pipeline equipment to aid in field inspections. The proposed amendment requires the operator of any underground gas gathering pipeline to submit the location of all associated above ground equipment and buried drip tanks. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendments to NDAC § 43-02-03-29.1 is to clarify that natural gas and carbon dioxide pipelines are not subject to the section; addresses federal requirements verses State regulations; inform landowners when a pipeline project commences; and ensure integrity during pipeline operations. The proposed amendments remove natural gas and carbon dioxide pipelines from the requirements; clarifies that federal requirements take precedence if in conflict with State regulations; requires the pipeline operator to notify landowners prior to commencing construction of a project; and requires the maximum operating pressure on any portion of pipeline to not exceed the test pressure for which it was tested. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-03-30 is to clarify facilities are subject to the section and provide electronic information to the Director. The proposed amendment clarifies the operator of a facility must notify the Director if a fire, leak, or spill occurs at the facility; and eliminates the need for an operator to sign the document, thus allowing electronic submission. The proposed amendment requiring a facility operator to notify the Director is not expected to have an impact on the regulated community in excess of \$50,000 and the proposed elimination of a signature requirement amendment will provide an economic benefit to the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-03-34.1 is for clarification purposes. The proposed amendment clarifies that the operator is required to document any waiver given by the Director with the County recorder. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-03-38.1 is to assure samples and cores collected will be preserved. The proposed amendment requires samples and cores of injection, disposal, storage operations, or geologic information are to be sent to the state core and sample library. The proposed amendment will provide an economic benefit to the regulated community.

The purpose of the proposed amendment to NDAC § 43-02-03-55 is to clarify what is considered an abandoned well and require inactive pipelines to be properly abandoned. The proposed amendment clarifies the removal of production equipment constitutes abandonment of a well and underground gathering pipelines that are inactive for extended periods of time can be required, after notice and hearing, to be properly abandoned. The proposed amendment is expected to have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-03-88.1 is to clarify duties of hearing examiners. The proposed amendment clarifies that the hearing examiner can continue a hearing upon written objections to an application. The proposed amendment will not have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-03-90.2 is to clarify duties of hearing examiners. The proposed amendment clarifies that the hearing examiner can exclude certain information from a case record. The proposed amendment will not have an impact on the regulated community in excess of \$50,000.

The purpose of the proposed amendment to NDAC § 43-02-03-90.4 is to implement changes from House Bill 1055, which was recently enacted by the Sixty-Seventh Legislative Assembly. The proposed amendment requires the Commission to give notice of an order to all parties pursuant to North Dakota Century Code Section 38-08-11. The proposed amendment will not have any economic impact on the regulated community.

Senate Bill 2065, which was recently enacted by the Sixty-Seventh Legislative Assembly, created NDCC Section 38-25-02, which grants the Commission authority to adopt reasonable rules, after notice and hearing, for the geological storage of oil or gas. The Commission is promulgating regulations for the geological storage of oil or gas, by the creation of NDAC Chapter 43-02-14, and the following proposed rules under Chapter 43-02-14 are hereby outlined.

The purpose of NDAC § 43-02-14-01 is to define terms used in Chapter 43-02-14 that could have a different meaning than other Commission rules. Definitions are included for “facility area” and “storage reservoir”. The proposed addition will not have any economic impact on the regulated community.

The purpose of NDAC § 43-02-14-02 is to define outline the scope of the chapter. The scope of the chapter pertains to the geological storage of hydrogen and produced oil or gas. The proposed addition will not have any economic impact on the regulated community.

The purpose of NDAC § 43-02-14-02.1 is to address the application of rules for geological storage facilities. The rule states such facilities are also subject to provisions of several other chapters under the Commission’s authority. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-14-02.2 is to protect underground sources of drinking water. The rule prohibits underground injection of oil or gas that allows movement of fluid into an underground source of drinking water. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-14-02.3 is to address transitioning from enhanced oil or gas recovery operations to geological storage. The rule outlines factors the Commission should be considering when determining risks to underground sources of drinking water. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-14-02.4 is to address unauthorized injection. The rule requires a permit prior to site construction and injection for the purpose of geological storage. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-14-02.5 is to allow well conversions. The rule allows the conversion of existing wells to an injection well. The proposed addition will provide an economic benefit to the regulated community.

The purpose of NDAC § 43-02-14-03 is to require records to be kept to substantiate reports. The rule requires persons engaged in geological storage to keep appropriate records until dissolution of the storage facility. The proposed addition will provide an economic benefit to the regulated community.

The purpose of NDAC § 43-02-14-04 is to address access to records. The rule allows the Commission to access all storage facility records wherever located. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-14-05 is to require a hearing prior to allowing geological storage. The rule outlines requirements including notice and verification of the amalgamation of pore space and unitization of minerals when proposing a geological storage facility. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000 since the amalgamation, unitization, and hearing were all required in statute by the Legislative Assembly under the requirements of Senate Bill 2065 (NDCC Chapter 38-25).

The purpose of NDAC § 43-02-14-05.1 is to review wells within and adjacent to the proposed geological storage facility. The rule outlines the procedure to follow when determining what corrective action may be required to prevent the movement of injectate or fluid into or between underground sources of drinking water or other unauthorized zones. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000 since this rule only outlines procedure, while the statute (NDCC Chapter 38-25) requires the Commission to find the injected oil or gas will not escape from the storage reservoir.

The purpose of NDAC § 43-02-14-06 is to allow the geological storage in an oil and gas reservoir. The rule outlines the information required in an application for a geological storage facility permit. The proposed addition could have an impact on the regulated community in excess of \$50,000. The Commission notes that many of the requirements under this section are necessary for the Commission to determine if the applicant has met the requirements of the statute (NDCC Chapter 38-25) therefore the impact on the regulated community could be less than \$50,000, but nevertheless, the Commission will perform a regulatory analysis on the proposed rule.

The purpose of NDAC § 43-02-14-07 is to allow the geological storage in a saline reservoir. The rule outlines the information required in an application for a geological storage facility permit. The proposed addition could have an impact on the regulated community in excess of \$50,000. The Commission notes that many of the requirements under this section are necessary for the Commission to determine if the applicant has met the requirements of the statute (NDCC Chapter 38-25) therefore the impact on the regulated community could be less than \$50,000, but nevertheless, the Commission will perform a regulatory analysis on the proposed rule.

The purpose of NDAC § 43-02-14-08 is to allow the geological storage in a salt cavern. The rule outlines the information required in an application for a geological storage facility permit. The proposed addition could have an impact on the regulated community in excess of \$50,000. The Commission notes that many of the requirements under this section are necessary for the Commission to determine if the applicant has met the requirements of the statute (NDCC Chapter 38-25) therefore the impact on the regulated community could be less than \$50,000, but nevertheless, the Commission will perform a regulatory analysis on the proposed rule.

The purpose of NDAC § 43-02-14-09 is to address siting of the storage facility. The rule requires all injection wells to inject into a formation which has confining zones free of open faults or fractures within the facility area and area of review. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-14-10 is to address construction requirements. The rule requires all injection wells to have casing cemented and quality of cement confirmed to prevent the movement of fluids into an unauthorized zone. The proposed addition could have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-14-11 is to address mechanical integrity. The rule outlines how to determine mechanical integrity in an injection well. The proposed addition could have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-14-12 is to address plugging injection wells. The rule requires injection wells to be plugged to prevent the movement of fluids into an underground source of drinking water and to obtain the Director's approval prior to the commencement of plugging operations. The proposed addition could have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-14-13 is to address injection well pressure restrictions. The rule requires injection wells to be operated below a maximum authorized injection pressure to prevent the initiation of fractures or cause the movement of fluids into an underground source of drinking water and also requires a minimum operating pressure when injecting into a salt cavern to assure cavern integrity. The proposed addition will provide an economic benefit to the regulated community.

The purpose of NDAC § 43-02-14-13.1 is to address salt cavern integrity. The rule requires the operator to execute the emergency and remedial response plan, pursuant to NDAC § 43-02-14-15, in the event of loss of integrity in a storage cavern. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-14-14 is to address bonding requirements. The rule states all storage facilities and wells must be bonded as provided in NDAC § 43-02-03-15. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-14-15 is to address an emergency and remedial response plan. The rule requires the storage facility operator to maintain a Commission-approved emergency and remedial response plan. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-14-16 is to address reporting, monitoring, and operating requirements. The rule requires the storage facility operator to meter volumes injected, place gauges on injection wells, notify the Director upon commencing and discontinuing injection operations, and report all work performed on the injection well. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-14-17 is to address leak detection and reporting. The rule requires the storage facility operator to utilize leak detectors, report any leak detected, or loss of storage integrity. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-14-18 is to address the transfer of a storage facility permit. The rule allows the transfer of a storage facility permit only after notice and hearing and Commission approval. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-14-19 is to address modification, revocation, and termination of a storage facility permit. The rule allows the Commission to schedule a hearing for the purpose of reviewing a storage facility permit. The proposed addition is not expected to have an impact on the regulated community in excess of \$50,000.

The purpose of NDAC § 43-02-14-19.1 is to address minor modification of a storage facility permit. The rule allows the Commission to modify a permit to correct errors, require more frequent monitoring or reporting, change injectate, and change construction requirements. The proposed addition will provide an economic benefit to the regulated community.

The purpose of the proposed amendment to NDAC § 43-05-01-11 is to allow flexibility in downhole equipment of an injection well. The proposed amendment allows the Director to allow the tubing packer of an injection well to be set higher than 50 feet above the uppermost perforation. The proposed addition will provide an economic benefit to the regulated community.

The purpose of the proposed amendment to NDAC § 43-05-01-17 is to implement changes from Senate Bill 2014, which was recently enacted by the Sixty-Seventh Legislative Assembly, addressing fees on each ton of carbon dioxide injected for storage. The proposed amendment requires the storage operator to pay fees based upon whether or not the carbon dioxide sources contribute to the energy and agriculture production economy of North Dakota. The proposed addition could have an impact on the regulated community in excess of \$50,000.

The proposed rules may be reviewed at the office of the Oil and Gas Division at 1016 East Calgary Avenue, Bismarck, ND, or online at www.dmr.nd.gov/oilgas. A copy of the proposed rules and/or a regulatory analysis may be requested by writing the Oil and Gas Division, 600 E Boulevard Ave, Dept 405, Bismarck, ND 58505-0840 or calling (701) 328-8020. Written comments on the proposed rules, sent to the Oil and Gas Division, 600 E Boulevard Ave, Dept 405, Bismarck, ND 58505-0840 or emailed to brkadrmas@nd.gov and received by 5pm, October 22nd, 2021, will be fully considered. Oral comments can be given at any public hearing listed above.

If you plan to attend a public hearing and will need special accommodations or assistance relating to a disability, please contact the North Dakota Industrial Commission at (701) 328-8020, or write the Oil and Gas Division, 600 E Boulevard Ave, Dept 405, Bismarck, ND 58505-0840, no later than September 27, 2021.

Dated this 31st day of August, 2021.

Bruce E. Hicks

Bruce E. Hicks
Assistant Director