

Minutes of a Meeting of the Industrial Commission of North Dakota
Held on November 25, 2019 beginning at 12:00 p.m.
Governor's Conference Room - State Capitol

Present: Governor Doug Burgum, Chairman
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Also Present: Other attendees are listed on the attendance sheet available in the Commission files
Members of the Press

Governor Burgum called the Industrial Commission meeting to order at approximately 12:00 p.m. and the Commission took up Department of Mineral Resources Business.

DEPARTMENT OF MINERAL RESOURCES (DMR)

Mr. Lynn Helms, DMR Director, and Mr. Bruce Hicks, Oil and Gas Division Assistant Director, presented the following orders for consideration.

Case 27829, Order 30279 – Unitization of the Chatfield-Madison Unit Area

Order 30279 would approve the unitization of the Chatfield-Madison Unit Area, including: unitized formation, unit formulas and phase changes, unit agreement, unit operating agreement, accounting procedures, plan of development, and unit economics. The three largest working interest owners have agreed to this unitization. The Oil and Gas Division staff noted that some corrections are needed such as the type log definition, primary recoveries calculations, and estimated ultimate recoveries. The recommendation is to approve the unit with the stipulations as stated in Order 30279.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 30279, issued in Case 27829 approving the unitized management, operation, and further development of the Chatfield-Madison Unit Area, consisting of lands within the Chatfield Field in Bottineau County, ND, approving the unit agreement and unit operating agreement constituting the plan of unitization for the Chatfield-Madison Unit Area with the stipulations as stated in Order 30279; approving the plan of operation; and vacating the applicable spacing orders, be approved this 25th day of November, 2019.

In response to a question, Mr. Helms indicated that the significance of this field is a small percentage of statewide production, but it is significant to the working interest owners. Mr. Hicks indicated that this will account for approximately 10,000 barrels per month.

On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 27830, Order 30280 – Ratifications of the Chatfield-Madison Unitization

It was requested that the DMR Director be authorized to sign Order 30280 dependent upon receiving the corrected unit agreement and the submission of the appropriate number of ratifications as required by law.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Department of Mineral Resources Director be authorized to sign Order 30280, issued in Case 27830 regarding the establishment of the Chatfield-Madison Unit Area upon receipt of required

amendments pursuant to Order 30279 and review of sufficient ratifications as required by law. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 27836, Order 30288 – Injection approval for a pilot EOR project (Mountrail County)

Proposed Order 30288 would authorize Hess to begin a two-year enhanced oil recovery pilot project. Hess was a participant in the Liberty project in Tioga and they would like to apply some lessons learned from that project over a two-year time period by injecting produced gas, of which the taxes and royalties have already been paid, to supplement the gas produced in the spacing unit. Hess wants to use a surfactant and also inject a foam to help build pressure more rapidly. This will be a “huff and puff” project, meaning that each well will be cycled through an injection period, soak period and production period. In order to cycle through all the wells at least twice, two years will be needed. Hess expects to learn things by monitoring injection tracers and pressure rates. Enhanced oil recovery would address the flaring issue in the Bakken and increase the recovery factor.

In response to a question, Mr. Helms indicated that Hess will make monthly reports to DMR on the progress with a final report. If successful, the information will be made public. The foam is proprietary throughout the two-year timeframe.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 30288, issued in Case 27836 amending the applicable orders for the Big Butte-Bakken Pool to authorize the injection of fluids in the EN-Ortloff-156-94-2635H-4, EN-Ortloff-156-94-2635H-5, EN-Ortloff-156-94-2635H-6, and EN-Ortloff-156-94-2635H-7 wells on a spacing unit consisting of Sections 26 and 35, T.156N., R.94W., Mountrail County, ND, for the purpose of conducting a pilot enhanced oil recovery project, be approved this 25th day of November, 2019. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 28005, Order 30458 – Petition regarding risk penalty

This case involves a dispute regarding unleased mineral owners. Petro Hunt made two offers to lease the minerals and both times the mineral owners refused, indicating they did not want to participate in the well. Petro Hunt is now charging a risk penalty. The mineral owners have stated that they do not believe Petro Hunt’s offer was fair and brought up information from a state lease sale, a Bureau of Land Management sale, and a private sale that occurred more than a year prior to Petro Hunt’s offer. However, at that time oil was \$100/barrel and at the time of Petro Hunt’s final offer, oil was \$44/barrel. Additionally, state and federal leases are for very large tracts of land. Based on this information, the Oil and Gas Division staff determined that Petro Hunt did make a good faith offer. The unleased mineral owners could have counter offered but did not and chose to say no.

The recommended order determines that Petro Hunt did make a good faith offer to lease and that Rusty Investments, LLC’s petition denying Petro-Hunt LLC’s ability to impose a risk penalty is denied.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 30458, issued in Case 28005 denying Rusty Investments, LLC’s petition and allowing Petro-Hunt, LLC to impose a risk penalty related to wells owned by Petro-Hunt LLC in the spacing unit described as Sections 18 and 19, T.145N., R.97W., Little Knife-Bakken Pool, Dunn County, ND pursuant to NDCC § 38-08-08, be approved this 25th day of November, 2019.

In response to a question, Mr. Helms indicated that Rusty Investments next option would be to appeal the Commission's determination in District Court. Rusty Investments will not become a working interest owner until the well pays for itself 1.5 times according to state law.

On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 28050, Order 30503 and Case 28051, Order 30504 – Gas flaring exemptions

Enerplus Resources has wells with hydrogen sulfide (H₂S) production, which has resulted in the wells being kicked out of the gathering system from July-September 2019. Enerplus Resources has purchased and installed sulfur treatment equipment and are requesting to flare the gas unrestricted anytime the equipment is down.

The recommendation is to grant ability to flare for two years, and flare only when equipment fails. Reports to DMR about the efficiency of the equipment would also be required because it is a growing problem. EERC is working on a report to provide additional information about this issue. However, this would be a good way to understand how well site sulfur removal works.

Currently, sulfur is selling for a loss of \$50/ton at the gas plant. However, there is a shortage for agriculture inputs, and it is expensive when it is obtained. We need to research if it could be utilized as an agriculture input, which is another reason why two years would be beneficial.

Hopefully, this will become a research project. Midstream companies are getting out of sulfur recovery business and may result in companies wanting to flare the gas. Approval of this order could turn this situation into a value-added project.

Mr. Helms indicated that the current understanding is that the Lodgepole Formation contains hydrogen sulfite and wells that have H₂S have fracked into it. Additional information about this will be in the EERC report. Midstream companies have the ability in contracts to turn down this gas as it's too corrosive to their systems. The equipment to treat hydrogen sulfite is expensive and new plants and gathering systems do not have this equipment installed in their facilities.

Burning H₂S converts it from a toxic material to an air quality issue. It becomes sulfur dioxide which is regulated under air permits. Because of this, the Oil and Gas Division wants to get away from the potential to flare. There is a need to investigate how to collect the sulfur and add value to it because this is a temporary situation at best. The current method of treating it at the gas plant is a money loser and collecting at a well site may make a difference.

The question was raised regarding how it would be ensured that there is a research component rather than just an exemption if it moves forward. Mr. Helms indicated that it could be brought up with the Oil and Gas Research Council. Another option would be to add a requirement that Enerplus participates in a research project.

Governor Burgum indicated that he would be more inclined to support the exemption if it was known that work is moving towards identifying solutions. Mr. Helms indicated that this is the second time the issue has come up. A solution needs to be found in order to ensure that these resources are being turned into a value-added product.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that Order 30503, issued in Case 28050 granting Enerplus Resources (USA) Corp.'s application authorizing the flaring of gas from certain wells completed in the McGregory Buttes-Bakken Pool, and that Order 30504, issued in Case 28051 granting Enerplus Resources (USA) Corp.'s application authorizing the flaring of gas from certain wells completed in the Eagle Nest-Bakken Pool, Dunn County, ND, for July – September 2019 and to allow the volumes of flared gas to be excluded from the calculations of statewide and county wide flare volumes for July – September 2019 plus two additional years ending 9-30-2021 as an exception to the provisions of Commission Order No. 24665, be approved this 25th day of November, 2019 and further requiring that Enerplus Resources (USA) Corp. participate in a research project to identify solutions to this issue including a valued added component identifying beneficial use of products generated in its hydrogen sulfide removal process. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Case 27828, Order 30278 – Proposed Amendments to General Rules and Regulations

Mr. Hicks provided a detailed overview of the proposed amendments summary for each of the changes. (A copy of the summary is available in the Commission files.) In total, there are 98 proposed amendments to 37 sections of rules. The Commission and staff discussed the various changes that had been offered during the hearing process. Staff provided background information on why certain amendments were proposed. It was stated that several of the amendments were made for clarification – rewording of a rule or providing more specifics on a rule.

NDAC CITE	RULE	pg	PROPOSED CHANGE
43-02-03 GENERAL RULES			
43-02-03-10	Authority to Cooperate with Agencies	1	Clarify the Commission can enter into agreements with tribal authorities
		3	Paragraph (6)(a) Clarify any meter failing a proving test must not be used until repaired & retested
		4	Paragraph (6)(b) Outlines oil custody transfer meter factor requirements
		4	Paragraph (6)(e) Require well file/CTB number on proving reports, not lease name
		5	Paragraph (6)(g) Require failed proving test to be submitted to Comm. 7 days from fail date. Based on comments, it was further modified to clarify that failed meter reports must be submitted within 30 days.
43-02-03-15	Bond and Transfer of Wells	6	Clarify bond required f/construction of TP, SWHF, well site and road access
		6	Increases bond limits on commercial injection wells
		6	Consider wells on TA status > 7 years as liability on bond
		8	Require full single-well bond on any AB well prior to transfer

43-02-03-16	Application for Permit to Drill & Recomplete	12	Clarify Director approval needed to commence dirtwork on site or road access
43-02-03-16.2	Revocation and Limitation of Drilling Permits	15	Clarify when a permit can be suspended or revoked
43-02-03-16.3	Recovery of a Risk Penalty	16	Election to decline an invitation binding only if spud within 90 days of election and based on comments, it was further modified to require a subsequent invitation to participate if the Unit expense has not commenced within 90 days of the election deadline.
43-02-03-19.3	Earthen Pits and Receptacles	18	Clarify earthen pits may be considered at TP
43-02-03-21	Casing, Tubing, and Cementing Requirements	20	Clarify cement blend must address strength regression due to excess temp
		20	Allows pressure test on casing when tail cement achieves 500 psi compressive strength. Based on comments, it was further modified to require casing strings to be pressure tested immediately after cementing, while the cement is in a liquid state, or the pressure test should occur only after all cement behind the casing has achieved a compressive strength of 500 psi.
		20	Clarify 30-min pressure test w/10% loss is acceptable
43-02-03-23	Blowout Prevention (BOP)	20	Require BOP on workover operations. Based on comments, it will be further modified to address the BOP requirement on workover operations in a separate paragraph.
		21	Eliminate full BOP test on each well being drilled on a pad. Based on comments, it will be further modified require any component to be pressure tested if it appears to be damaged or compromised when being moved to another drilling well site on the pad.
43-02-03-27.1	Hydraulic Fracture Stimulation	21	Clarify re-frac requirements when stimulating through frac string or casing
		21	Clarify liner hanger must be located with cement behind casing
		22	Clarify frac string not required when formations are properly cemented
43-02-03-28	Safety Regulation	23	Clarify flare must be 150' from well and oil tank
		24	Consider 25-30 day frac notice if offset well is 5280' away & in/adj to frac pool. Based on comments, it will be further modified to require operator notification only when conducting a hydraulic fracture stimulation completion and a 21-31 day operator notice will be required when a hydraulic fracture stimulation within 2640 feet of another completion interval within the same or adjacent pool.
43-02-03-29.1	Oil & Prod Water Underground Gathering Pipelines	24	29.1 (1) Require CO ₂ pipelines to comply w/43-02-03-29.1

		25	29.1 (2)(b thru e) Define "new construction" , "pipeline repair", "gathering system", and "in-service date." Based on comments, it will be further modified to clarify the Commission has jurisdiction over carbon capture facilities for the purpose of storage or enhanced oil recovery, to incorporate additional verbage in the definitions of "gathering system" and "in-service date", and to clarify the rule is not applicable to piping located entirely within the well production site or facility.
		25	29.1 (3)(a)(1)(b) Require verbal notice on new construction
		26	29.1 (3)(a)(1)(d)(3) Clarify method of testing pipeline integrity includes the test procedure. Based on comments, the proposed amendment will be withdrawn and the requirement will be addressed in paragraph 29.1 (13)(a) that addresses the 48-hour notice of a pressure integrity test.
		26	29.1 (3)(b) Acknowledge the Commission's database may eliminate certain forms
		26	29.1 (3)(c) Clarify pipeline damage during operation and maintenance must be reported
		26	29.1 (3)(d)Require notice of in-service date. Based on comments, it will be further modified to require the in-service date to be reported within 30 days.
		26	29.1 (4) Clarify tie-ins to existing pipeline systems is considered newly constructed
		28	29.1 (4)(1) Clarify clamping/squeezing any produced water lines requires Director approval
		29	29.1 (6) Require 3rd party inspector independent of owner and contractor
		29	29.1 (8)(a) Allow pipeline data to be submitted other than by attribute table
		30	29.1 (8)(a)(1) Clarify the 3rd party inspector must certify the pipeline complies w/43-02-03-29.1
		30	29.1 (8)(b) Remove duplicative requirements concerning pipelines exempted from submitting certain GIS

			information. Based on comments, it will be further modified in paragraph 29.1 (1) to clarify piping to connect wells, tanks, treaters, flares, or other equipment "located entirely within the boundary of a well site or" production facility are not subject to Section 29.1.
		32	29.1 (13)(a) Require 48-hr notice of any integrity press test. Based on comments, it will be further modified to require the procedure when giving 48-hour notice of the pipeline integrity test due to comments received on proposed modification in paragraph 29.1 (3)(a)(1)(d)(3)
		32	29.1 (13)(b) Clarify who and what must be submitted subsequent to a pipeline integrity test
		33	29.1 (13)(b)(7) Require digital log results in the integrity test submittal. Based on comments, it will be further modified to allow either the chart recorder or the digital log results to be submitted to the Commission.
		33	29.1 (13)(b)(9) Require a copy of the test procedure used.
		33	29.1 (13)(b)(10) Third party inspector certificate summarizing the pressure test and any issues
		34	29.1 (15)(a) Require 48-hr notice of any pipeline abandonment
		35	29.1 (15)(b)(7) Require removal of pipeline at abandonment if buried < 3' final grade
43-02-03-30	Notification of Fires, Leaks, Spills, or Blowouts	35	Clarify pipeline above ground equipment is subject to the rule
43-02-03-31	Well Log, Completion, and Workover Reports	36	Acknowledge the Commission's database may eliminate certain forms
		37	Reduce number of copies of certain reports to be submitted
		37	Clarify the confidentiality period. Based on comments, it will be further modified to clarify the confidential period starts when the operator's request is received.
43-02-03-34.1	Reclamation of Surface	39	Clarify all pipeline must be purged and abandoned pursuant to 43-02-03-29.1
43-02-03-38.1	Preservation of Cores and Samples	39	Require geologist or mudlogger on 1st well f/samples+mudlog when pad drilling
43-02-03-40	Gas-Oil Ratio Test	40	Acknowledge the Commission's database may eliminate certain forms
43-02-03-48.1		41	Allow Director to impose terms as necessary

	Central Production Facility- Commingling of Prod	41	Define "common and diverse ownership" when considering commingling. Based on comments, it will be further modified to remove the reference of "working interests, royalty interests, and overriding royalties" with respect to common ownership in paragraph 48.1 (2)(a).
43-02-03-49	Oil Production Equip, Dikes, and Seals	43	Require perimeter berms to be maintained
		43	Require Director approval prior to removing perimeter berms
43-02-03-51	Treating Plant	43	Clarify Director approval needed to commence dirtwork on site or road access
43-02-03-51.1	Treating Plant Permit Requirements	44	Consider additional application requirements
43-02-03-51.3	Treating Plant Construction and Operation Requirements	45	Consider additional application requirements
		46	Allow Director to approve use of open-top tanks
43-02-03-53	Saltwater Handling Facilities	48	Clarify role of Director and Commission
43-02-03-53.1	Saltwater Handling Facilities Permit Requirements	48	Clarify Director approval needed to commence dirtwork on site or road access
		49	Consider additional application requirements
43-02-03-53.3	Saltwater Handling Facilities Construction and Operating Requirements	50	Clarify Director approval needed to commence dirtwork on site or road access
		51	Clarify role of Director and Commission
43-02-03-55	TA and AB of Wells, TP, SWHF	52	Require future well plans when considering approval for TA
		52	Future well plans must be contemplated within seven years
43-02-03-66	Application for Allowable on New Oil Wells	53	Acknowledge the Commission's database may eliminate certain forms
43-02-05 UNDERGROUND INJECTION CONTROL			
43-02-05-04	Permit Requirements	54	Paragraph (1) Site and access road construction needs permit from Director.
		54	Paragraph (1) Acknowledge the Commission's database may eliminate certain forms
		54	Paragraph (1)(i)Require cement specifications
		54	Paragraph (1)(j) Include water bodies, residences, and roads on maps
		54	Paragraph (1)(k) Review surficial aquifers w/in 1 mile
		55	Paragraph (1)(l) Include additional information on wells in area of review
		55	Paragraph (1)(m) Show faults on cross-section

		55	Paragraph (1)(n) Include transportation method of injection fluid
		55	Paragraph (1)(o) Include freshwater data on all wells within area of review
		55	Paragraph (1)(s) Submit proof of service for landowner and operator notice of hearing
		56	Paragraph (1)(t) Requires notice to all owners or operators of any usable oil and gas well or permit within the area of review.
		57	Paragraph (1)(aa) Information to demonstrate injection will not migrate out of the injection zone
		57	Paragraph (3) Outline all corrective action needed on wells within area of review
		57	Paragraph (6) Clarify Director approval needed to commence dirtwork on site or road access
43-02-05-06	Construction Requirements	58	Paragraph (1)(a) Require casing set into injection zone
		59	Paragraph (3) Set packer within 100 feet of top perforation
43-02-05-07	Mechanical Integrity	59	MIT requirements after completing remedial work
		60	Director authorized to shut in injection well if fluids not contained in authorized zone
43-02-05-08	Plugging of Injection Wells	60	Acknowledge the Commission's database may eliminate certain forms
43-02-05-09	Pressure Limitations	61	Clarify injection fluids must be contained within authorized zones
43-02-05-10	Corrective Action	61	Director can require remedial work if injection fluids move beyond authorized zones
43-02-05-12	Reporting, Monitoring, and Operating Requirements	61	Require documenting average and maximum injection pressure and rate
		61	Acknowledge the Commission's database may eliminate certain forms
		61	Clarify Director must be notified of first injection date verbally and in writing
		62	Clarify all injection equipment must be continuously monitored to ensure surface and subsurface waters are protected. Based on comments, it will be further modified to indicate the integrity of the surface facility, gathering system, and injection well is required to "protect" surface and subsurface waters.
43-02-05-13	Access to Records	63	Clarify the Director is an authorized agent of the Commission
43-02-05-14	Area Permits	63	Include water bodies, occupied dwellings, and roads on maps
		64	Show faults on cross-section

		64	Include transportation method of injection fluid
		64	Submit proof of service for operator notice to landowner of hearing
		64	Clarify information required for the proposed injection well schematic
		65	Require cement specifications
		65	Include additional information on wells in area of review
		65	Include freshwater data on all wells within area of review
		66	Traffic flow diagram of site
		67	Outline all corrective action needed on wells within area of review
43-02-06 ROYALTY STATEMENTS			
43-02-06-01	Royalty Owner Information Statement	69	Paragraph (4) Remove inappropriate language referring to owner's deductions
		69	Paragraph (6) Require producer's net value of total sales after deducts & taxes
		69	Paragraph (7) Clarifies the amount and purpose of each "owner" deduction must be identified
		69	Paragraph (8) Clarify the amount and purpose of each "owner" adjustment or correction must be identified
		70	Paragraph (10) Consider owner's value prior to removing taxes, but <u>after removing deducts</u> . Based on comments, it will be further modified to allow the owner's share of the total value of sales prior to taxes to be listed on the royalty statement, as long as it is indicated on the royalty statement or an attachment whether the value is calculated "before or after" removing the owner's deductions.
		70	Paragraph (10) Consider owner's value of sales less deducts <u>and taxes</u>
43-02-06-01.1	Ownership Interest Information Statement	70	Require statement when owner's decimal interest changes

It was noted that more policies are being added than removed. It was the consensus of the Commission that DMR staff should complete a rule review for rules that are obsolete and could be removed. In a future meeting, the Commission would like DMR to report on the process of ensuring that regulations are being reviewed for efficacy.

A question was raised about how many individuals testified as DMR made the effort to go around the state. Mr. Hicks indicated the following:

- Minot: 2 attended and no one testified,
- Bismarck: 13 attended and 3 individuals testified,
- Williston: 12 attended and 2 individuals testified,
- Dickinson: 6 attended and 1 individual testified.

In total, 33 people attended the meetings. DMR received 25 comments and 276 pages of written comments.

Governor Burgum noted that North Dakota competes with other states daily. It is important to create an environment to attract capital, of which the tax and regulatory structure plays an important part. It was noted that regulations should be streamlined so that they make sense to everyone. There are several rules with different timing requirements. Software could allow DMR to be proactive instead of putting the burden on industry to memorize different regulations. Business processes could be simplified to allow for the collection of needed data and, at the same time, eliminate steps in that process. The budget should be reviewed to determine if there are any needs for process improvements. Mr. Hicks noted that Northstar, the new software system DMR is in the process of installing, will help in improving business processes.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that Order 30278, issued in Case 27828 amending the General Rules and Regulations for the Conservation of Crude Oil and Natural Gas codified as Article 43-02 North Dakota Administrative Code be approved this 25th day of November, 2019. (A copy of Order 30278 with the appendix is available in the Commission files.) On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Ed Murphy, State Geologist, provided the Geological Survey Division Quarterly Report. (A copy of the report is available in the Commission files.) A total of 1,984 feet of core was photographed, generating 3,100 photographs for the subscription site. Whiting Petroleum provided 1,300 thin sections to the Core Library.

Helium concentrations in North Dakota were reviewed regarding rare earth elements. Concentrations above .3% are considered economic. There are currently two wells located in northwest North Dakota which exceeded this level of helium concentration.

The Public Fossil Dig Program started utilizing Eventbrite for registration, which improved the process. Digs were held in four locations: Medora, Dickinson, Bismarck, and Pembina Gorge. A total of 407 individuals participated in 2019 and 55% of participants came from out of state. The Bismarck Dig filled within 8 minutes of going on line. The Dig Supporter Program has helped reduce registration costs for everyone by ~40%. In 2020, there will be 41 days of digs at three locations. Dickinson will be dropped due to logistic challenges.

The following permits were issued this quarter:

- Coal Exploration Program – 3
- Geothermal Program – 11 (7 residential, 4 commercial)
- Paleontological Resource Program – 3

A number of publications and presentations were generated this quarter.

Mr. Helms presented the 2020 Oil and Gas Division hearing schedule for consideration.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the 2020 Oil and Gas Division Hearing Schedule be approved as follows:

TENTATIVE Schedule for Oil & Gas Hearings 2020

Hearing Date
January 15, 2020

Docket Closing Date
December 13, 2019

January 16, 2020

**February 19, 2020
February 20, 2020**

**March 25, 2020
March 26, 2020**

**April 22, 2020
April 23, 2020**

**May 27, 2020
May 28, 2020**

**June 24, 2020
June 25, 2020**

**July 29, 2020
July 30, 2020**

**August 26, 2020
August 27, 2020**

**September 16, 2020
September 17, 2020**

**October 21, 2020
October 22, 2020**

**November 18, 2020
November 19, 2020**

**December 16, 2020
December 17, 2020**

**January 20, 2021
January 21, 2021**

January 17, 2020

February 21, 2020

March 20, 2020

April 24, 2020

**May 21, 2020
THURSDAY**

June 19, 2020

July 24, 2020

August 14, 2020

September 18, 2020

October 16, 2020

November 13, 2020

December 11, 2020

On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2 the Industrial Commission close the meeting to the public and enter executive session for the purpose of attorney consultation. The purpose of the executive session will be to consult with the Commission's attorney(s) regarding current adversarial proceedings in:

- **Supreme Court Case No. 20190203/Case No. 09-2018-cv-00089/Sorum, et al vs. State of North Dakota et al**
- **Case No. 27985 – NDIC v. Samson Oil and Gas USA, Inc.**
- **Case No. 28074 – NDIC v. Henry Hill Oil Services, LLC**

On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum reminded the Commission members and those present in the executive session that the discussion during executive session must be limited to the announced purpose which is anticipated to last between 15 and 30 minutes.

Governor Burgum stated that the Commission is meeting in executive session to consult with the Commission's attorney(s) regarding Supreme Court Case No. 20190203 and Complaint Cases 27985 and 28074. He noted that any formal action by the Commission will occur after it reconvenes in open session.

Commission members, staff, DMR staff, and Special Assistant Attorney General(s) and counsel with the Attorney General staff remained, but the public was asked to leave the room. The executive session began at 1:43 p.m.

DMR EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Commissioner Doug Goehring

Others in Attendance:

Lt. Governor Brent Sanford
Leslie Bakken Oliver Governor's Office
Reice Haase Governor's Office
Jessie Pfaff Department of Agriculture
Dan Gaustad Special Assistant Attorney General, Attorney General's Office (for the Sorum Case discussion)
Lynn Helms Department of Mineral Resources
Bruce Hicks Department of Mineral Resources
Ed Murphy Department of Mineral Resources
Karlene Fine Industrial Commission Office
Andrea Pfennig Industrial Commission Office

The Industrial Commission reconvened in open session at 2:30 p.m. and the public was invited to return to the meeting room. Governor Burgum noted that during the executive session the Commission consulted with its attorneys regarding Supreme Court Case No. 20190203/Case No. 09-2018-cv-00089 and Complaint Cases 27985 and 28074.

Mr. Helms provided comments on EPA Proposed Amendments to the 2016 New Source Performance Standards for the Oil and Natural Gas Industry for consideration.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission approve the following Comments on EPA Proposed Amendments to the 2016 New Source Performance Standards for the Oil and Natural Gas Industry.

Environmental Protection Agency
EPA Docket Center (EPA/DC)
Mail Code 28221T
Attention Docket ID No. EPA-HQ-OAR-2017-0757
1200 Pennsylvania Avenue, NW

Washington, DC 20460

Dear Sirs:

Re: EPA Proposed Amendments to the 2016 New Source Performance Standards for the Oil and Natural Gas Industry

The North Dakota Industrial Commission (NDIC) appreciates this opportunity to comment on the Proposed Amendments as follows:

The State of North Dakota is ranked 2nd in the United States among all states in the production of oil and gas. North Dakota produces more than 525 million barrels of oil and 1 trillion cubic feet of natural gas per year.

The NDIC, Department of Mineral Resources, Oil and Gas Division administers North Dakota's comprehensive oil and gas regulations under North Dakota Century Code Title 38 and N.D. Administrative Code Chapter 43-02-03. These regulations include regulation of the drilling, producing, and plugging of wells; the restoration of drilling and production sites; the perforating and chemical treatment of wells, including hydraulic fracturing; the spacing of wells; operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the ND Underground Injection Control Program; and all other operations for the production of oil or gas.

Of particular note is NDAC 43-02-03-45. VENTED CASINGHEAD GAS which states in part "Pending arrangements for disposition for some useful purpose, all vented casinghead gas shall be burned. Each flare shall be equipped with an automatic ignitor or a continuous burning pilot, unless waived by the director for good reason."

To illustrate the effectiveness of North Dakota's comprehensive oil and gas regulatory program, in calendar year 2018 the NDIC, Department of Mineral Resources, Oil and Gas Division conducted 184,809 well and facility inspections, identified and resolved 4,317 incidents of noncompliance, and issued one civil complaint.

The North Dakota Department of Environmental Quality (NDDEQ) administers North Dakota's comprehensive regulations for protecting the air quality of North Dakota under North Dakota Century Code Title 23.1 and N.D. Admin. Code Chapter 33.1-15-01 through 33.1-15-25. These regulations include regulation of Ambient Air Standards 40 CFR 50, Restriction of Emission of Visible Air Contaminants, Open Burning Restrictions, Emissions of Particulate Matter Restricted, Emissions of Sulfur Compounds Restricted, Control of Organic Compounds Emissions, Control of Air Pollution From Vehicles and Other Internal Combustion Engines, Control of Pesticides, Prevention of Air Pollution Emergency Episodes, Standards of Performance for New Stationary Sources 40 CFR 60.1 to 60.499, 40 CFR 60.500 to 60.5880, 40 CFR 60 Appx., Emission Standards for Hazardous Air Pollutants 40 CFR 61, Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate, Prevention of Significant Deterioration of Air Quality 40 CFR 52, NSR, Restriction of Odorous Air Contaminants, Restriction of Fugitive Emissions, Stack Heights, Visibility Protection, Control of Emissions From Oil and Gas Well Production Facilities, Acid Rain Program 40 CFR 72 – 77, Title IV, Emissions Standards for Hazardous Air Pollutants for Source Categories 40 CFR 63, Fees, Standards for Lead-Based Paint Activities 40 CFR 745 & 24 CFR 35, and Regional Haze Requirements Regional Haze Program.

To illustrate the effectiveness of North Dakota's comprehensive regulations for protecting the air quality of North Dakota, in calendar year 2018 the NDDEQ conducted 1,596 inspections of 1,006 active facilities, identified and resolved 86 incidents of noncompliance, and maintained 100% attainment of air quality standards.

The NDIC in cooperation with the NDDEQ utilize North Dakota's comprehensive oil and gas regulatory programs to reduce greenhouse gas (GHG) emissions. One part of emission reduction is flaring which also is subject to and being reduced under North Dakota's comprehensive oil and gas regulatory programs. Flares

are an important safety device. In an emergency situation where equipment or piping becomes over-pressured, special valves on the equipment automatically release gas through piping to flare stacks. In the absence of safety flares, facilities would be at higher risk for fires and explosions. Flares are also used as an outlet for gas during maintenance and equipment repairs temporarily until maintenance activities have been completed. Flare gas systems are used to manage waste gas that cannot be efficiently captured and returned to the system for processing. Pure natural gas is mostly methane, a clean-burning fuel, but also a GHG that is 25 or more times as effective as carbon dioxide at trapping heat in the atmosphere. The best option is to capture gas from wells, compressors and processing operations for use. However, in situations where capturing the gas is not possible, it is better from an air quality perspective to burn the gas through a high destructive efficiency flare system rather than vent it directly into the atmosphere.

In addition, in 2019 North Dakota House Bill No. 1024 Section 6 appropriated \$1,040,000, or so much of the sum as may be necessary, to the Department of Environmental Quality from the Strategic Investment and Improvements Fund for one-time funding of air pollution program equipment related to the establishment of federal program supremacy of the EPA 0000 and 0000a programs, for the biennium beginning July 1, 2019, and ending June 30, 2021.

The proposed amendments could have significant beneficial impacts on North Dakota's ability to administer its oil and gas regulatory programs. The State of North Dakota intends to defend its sovereign jurisdiction over oil, gas, and environmental regulation in any manner necessary.

The NDIC supports the proposed amendments because they adhere to the statutory language in the Clean Air Act (CAA) section 111(a)(3) to define source for the Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Major Source (Title V) programs.

The NDIC strongly supports the conclusion that the interpretation of CAA section 111(b)(1)(A) that the EPA set forth in the 2016 NSPS OOOOa rule is not correct, and instead, that provision should be interpreted to require that the EPA make a significant contribution finding (SCF) on a pollutant-specific basis for a source category as a prerequisite for regulating emissions of that pollutant from the source category. The CAA requires EPA to make a pollutant-specific SCF under section 111(b), as well as, in light of the statutory term “significantly contributes to,” the level of contribution that methane from oil and natural gas sources makes to GHG air pollution; the CAA section 111 requires the EPA to make a pollutant-specific SCF for GHG emissions (again, primarily methane) from the source category as a prerequisite to regulating those emissions; the SCF for methane emissions from the source category that the EPA made in the alternative in the 2016 NSPS OOOOa rule does not properly satisfy that requirement; and (1) it was necessary as a matter of law for the EPA to have made a pollutant-specific SCF finding for GHG emissions, (2) that the SCF for methane emissions from the source category that the EPA made in the alternative in the 2016 NSPS OOOOa rule did not properly satisfy that requirement, and those determinations, in and of themselves, compel and authorize the EPA to repeal the 2016 NSPS OOOOa rule.

The NDIC believes as a matter of law, under CAA section 111, the EPA is obligated to identify the standard by which it determines whether a source category's emissions “contribute significantly”.

The NDIC concludes that North Dakota's air quality regulatory program under the CAA section 111 program, including the current NSPS and CAA section 111(d) guideline documents and state plans, is based on interpreting CAA section 111(b)(1)(A) to require a pollutant-specific SCF. The EPA's past practice has been to list a source category and to propose NSPS for pollutants from the source category at the same time as, or shortly after the listing, and to finalize the NSPS shortly after that. This consideration indicates that CAA section 111(b)(1)(A) should be interpreted to require a pollutant-specific SCF as a prerequisite for promulgating an NSPS for a pollutant that the EPA did not identify when it made the initial source category SCF or promulgated the initial regulations for the source category.

The NDIC disagrees with the conclusion that CAA section 111(b)(1)(A) explicitly phrases the requisite finding in terms of “causes, or contributes significantly to, air pollution [that meets the endangerment criteria]”

provides any basis for interpreting the provision to require the EPA to make only a “cause or contribute” finding, of the type required under, for example, CAA section 202(a).

The NDIC concludes that the proposed amended rule will regulate the vast majority of emissions from all wells over a short period of time due to the rapid decline in production rate of new wells that share well sites with existing wells. In North Dakota the production rate from new wells declines 59% in the first year of production and is less than ten percent of initial production rate by year 5. The amended rule should focus on regulating natural gas and VOC volumes rather than numbers of wells or facilities.

The NDIC concludes that current regulations of volatile organic compound (VOC) emissions in North Dakota and the other top oil and gas producing states will be sufficient to reduce methane emissions from the oil and natural gas industry, and that the participation of those states in national organizations such as the Environmental Council of the States (ECOS) are generating increasingly consistent state requirements that will meaningfully reduce emissions should the proposed amendments be finalized.

The NDIC agrees with the EPA’s basis for proposing to rescind the applicability to methane of the NSPS for all sources in the source category because they are wholly redundant with the existing VOC requirements. The targeted improvements to the 2016 New Source Performance Standards (NSPS) for the Oil and Natural Gas Industry, including amendments to the fugitive emissions monitoring requirements in the rule would significantly reduce regulatory burdens, streamline requirements, and improve alignment between EPA’s rule and North Dakota’s existing state programs as well as addressing a range of technical issues, and clarifying certain requirements in the rule.

The NDIC specifically supports the proposed changes to the:

- **frequency for monitoring fugitive emissions (also known as “leaks”) at well sites and compressor stations;**
- **requirements for pneumatic pumps at well sites;**
- **requirements that a professional engineer certify when meeting those requirements is technically infeasible;**
- **requirements that a professional engineer certify the design of closed vent systems;**
- **requirements for requesting alternative means of emissions limitations;**
- **clarifying the acceptable location of separators used during well completions;**
- **clarifying the definition of “well site” to avoid unintended burdens on third parties; and**
- **correcting the definition of “capital expenditure” for onshore natural gas processing plant requirements.**

On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

PIPELINE AUTHORITY

Mr. Justin Kringstad, Pipeline Authority Director, provided the FY 2019 annual report as required by law. (A copy is available in the Commission files.)

Mr. Kringstad provided a quarterly report and provided a Natural Gas Update which included information on Production – Technology and Markets; Gathering – Capacity and Connections; Processing – Capacity and Location; and Transmission – Dry Gas and Natural Gas Liquids. (A copy of the slide presentation is available in the Commission files.)

In response to a question, Mr. Kringstad indicated that his modeling is based off EIA’s forecasted pricing because of their transparency regarding methodologies and all the considerations made in preparing forecasts. He believes this is the appropriate source to use rather than another third party.

Production – Technology and Markets:

Mr. Kringstad stated that although he is presenting a natural gas update, oil is what drives gas production and price drives oil production. He provided information on current crude oil prices, statewide oil performance for the past eight years and his forecast for oil production assuming current technology. Currently the forecast shows oil production peaking in 2032 at 2.2 million barrels a day which was higher than industry's forecast. He noted that oil priced at \$40-\$50 per barrel slows down growth.

In response to a discussion on how other alternative sources of energy will impact production it was stated that peak demand is more of a risk than peak supply for the Bakken.

The gas oil ratio is climbing in 2019. It is climbing both higher and faster than prior years. His forecast for gas production, assuming current technology, shows it peaking in 2037 at 6,000 MMCFD.

Gathering – Capacity and Connections

Mr. Kringstad presented slides regarding the flaring challenge. The amount of gas flared from wells not connected compared to connected wells decreased from August to September. Additionally, the number of new wells selling gas exceeded the amount of new producing wells.

It was noted that if the flaring challenges were solved, the State would see higher oil production.

Processing – Capacity and Location

Mr. Kringstad discussed gas processing expansions that recently took place (670 MMCFD) and the expansions planned (825 MMCFD), and capture targets compared to processing capacity. In the past, industry has reached 9% flaring with 24% excess plant capacity. There is a very narrow window of time forecasted in which there will be enough capacity to meet capture targets. There is a possibility that the gas capture targets will be met, but it will not be easy.

Mr. Kringstad clarified that this is just an analysis of midstream processing. It does not consider EOR, greenhouses, petrochemical industry or other strategies. Because of the time requirement to develop other strategies, midstream will be relied on for near term. However, 2023 and beyond would be a timeframe in which other strategies may be deployed, such as petrochemical industry and power generation.

Transmission – Dry Gas and Natural Gas Liquids

The WBI Energy North Bakken Expansion will add at least 250,000 MCFD of capacity, alleviating congestion north of Lake Sakakawea. Currently, any natural gas plant located north of Lake Sakakawea cannot expand because of a lack of capacity on the WBI system.

Currently, the Northern Border Pipeline does not have a Btu limit but does have downstream customers and interconnects that have a limit. Because of this, there is a plan to formalize a 1,100 Btu limit in the next year, which would negatively impact North Dakota gas as it is normally above that limit. Up to 80,000 barrels of ethane would need to be removed from North Dakota's gas plants to accommodate the 1,100 Btu limit. The amount of ethane will increase as time goes on.

There is a possibility that by 2024, the Northern Border pipeline could be at full capacity of North Dakota gas and Canadian gas would have to seek other gas markets and transmission options. There will be competition to get on the pipeline and price will be a factor. There are two expansion options for Northern Border. The Bison line, currently idle, would push gas to Wyoming markets and eventually get to the west coast. The other option is Watford City to Ventura.

Also noted was that WBI operates a gas storage field in Baker, Montana which has a much larger capacity and could provide some cushion.

The Elk Creek pipeline is coming online in the next few weeks and will provide some options for NGL pipeline takeaway.

In response to a question, Mr. Kringstad indicated that the expectation is that individual wells will always grow in gas production. Statewide aggregate gas-oil ratio numbers may slow down as the fringe area of the Bakken has less gas.

HOUSING FINANCE AUTHORITY (HFA)

Mr. Dave Flohr, Interim HFA Executive Director, presented the HFA Advisory Board's recommendation regarding the Continuum of Care opportunity.

In July, the North Dakota Coalition of Homeless People (NDCHP) requested the HFA assume responsibility as the Collaborative Applicant (CA) for the ND Continuum of Care (CoC) grant through HUD. This program provides funds to organize and deliver housing and services to meet the specific needs of people who are homeless as they move to stable housing and maximize self-sufficiency. The North Dakota CoC encompasses the entire state, where other states may have multiple CoCs based on geography and population. NDCHP is no longer able to operate the program due to staffing issues. In 2019, North Dakota received \$1.8 million.

The continuing appropriation language in statute allows HFA to take on new programs and receive grant funds without specific approval from the legislature. Based on the cost analysis that was conducted, the CoC program could be added with a minimal strain on HFA resources.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accept the recommendation of the Housing Finance Agency Advisory Board and authorize the Housing Finance Agency to become the Collaborative Applicant to apply for ND Continuum of Care grant funding and to administer the ND Continuum of Care program conditional upon the Agency's ability to hire a ND Continuum of Care manager. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Flohr and Ms. Jennifer Henderson, HFA Division Director, provided a report on the Low Income Housing Tax Credit (LIHTC), Housing Trust Fund (HTF) and Housing Incentive Fund (HIF) awards. The application round was competitive and each program was oversubscribed. The funds available for each program were as follows: LIHTC – \$3,217,500, HTF – \$3,000,000, HIF – \$7,500,000. HFA received applications for thirteen projects, of which nine were funded and factors considered included: low income allocation, infill development, redevelopment, opportunity zones, and supportive services.

The following projects received funding awards:

- Elliot Place, Fargo – New construction of 84 units of senior housing with supportive services.
- Eagle Flats, Jamestown – New construction of 33 units of family/general occupancy housing with 7 units of supportive housing for families at risk of homelessness.
- IOOF Retirement Village I and II, Devils Lake – Rehabilitation of 78 units of senior housing with supportive services.
- Sierra Townhomes, West Fargo – The new construction of 38 units in 9 buildings on Housing Authority of Cass County's property in order to replace existing obsolete units.

- Souris Heights, Minot – New construction of 54 units of senior housing with services for the frail, elderly, and physically disabled.
- Boulevard Avenue Apartments, Bismarck – Final redevelopment of a former nursing home and senior living campus.
- Lakeland Court Apartments, Devils Lake – Phase 2 new construction of 24 units.
- Courtyard Apartments, Rugby – Rehabilitation of 20-unit USDA Rural Development affordable rental housing project.
- Homefield 3, Fargo – New construction of 39 units (33 one-bedroom and 6 two-bedroom) including 8 units of long-term supportive services for frail elderly.

It was noted that the Homefield 3 project was at risk of losing \$3 million in project-based rental assistance if the project was not able to move forward. Because of this, HFA made an exception to forward commit LIHTCs. This commitment will reduce the LIHTCs available for the next application year in 2020.

Mr. Flohr reported that HFA has been awarded a \$1.14 million settlement in a multi-state class action lawsuit. The lawsuit alleged that from 2005 to 2009, certain banks colluded to manipulate the LIBOR rate, artificially reporting the rate for their own benefit. Mr. Flohr indicated that HFA is examining options with bond counsel for utilization of the funds.

HFA's internal auditor, Randy Nelson, took on the task of providing the documents and financial records needed for HFA to receive a settlement. The Commission commended Mr. Nelson for his efforts on this case.

Mr. Flohr distributed a quarterly report for the Commission's information.

Under other business, Ms. Fine presented a resolution for the Government National Mortgage Association for consideration. This action was needed with Mr. Flohr being named as Interim Executive Director.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission adopt the following Resolution for the Government National Mortgage Association (Ginnie Mae) and authorize the Commission's Executive Director and Secretary to certify the signatures of the Housing Finance Agency staff named in the Resolution:

**Resolution of Board of Directors
And Certificate of Authorized Signatures**

Resolved First, that David A. Flohr, Interim Executive Director, and Patrick Nagel, Chief Financial Officer of this corporation, or any one or more of them, be and each of them is hereby authorized and empowered in the name of and on behalf of this corporation and under its corporate seal, from time to time while these resolutions are in effect, to execute and deliver to the Government National Mortgage Association, in the form prescribed by said Association, with respect to the issue(s) by this corporation, under Section 306(g) of the National Housing Act and the Regulations pertaining thereto, of mortgage-backed securities to be guaranteed by the Association, any documents required to: (a) make applications to Ginnie Mae in the name of and on behalf of this corporation for approval to become an issuer and for Ginnie Mae commitments to guarantee such mortgage-backed securities issued by this corporation; (b) enter into contracts with Ginnie Mae for the latter's guaranty of mortgage-backed securities issued in accordance with the terms and conditions of commitments to guarantee, issued by the Association to this corporation; (c) merge mortgage notes, deeds of trust and bonds now owned or hereafter acquired by this corporation into pools or loan packages, against which this corporation may issue mortgage-backed securities; (d) enter into any agreements, execute any documents or papers, and furnish any information required or deemed necessary or proper by the Association

in connection with any of the foregoing, and (e) abide by all the terms and conditions set forth in the Ginnie Mae Mortgage-Backed Securities Guide.

Resolved Second, that the above named officers, be and they are hereby authorized and empowered in their discretion and as occasion may arise to receive and endorse the name of this corporation on any checks or drafts representing the proceeds from collections made by servicers of mortgages pertaining to pools or loan packages, and to issue and sign any checks or drafts issued to pay to the security holders their pro rata shares in these proceeds, and to do and perform any and all acts and to execute any and all additional instruments or agreements, from time to time, in the name of and on behalf of this corporation under the corporate seal or otherwise, deemed necessary or proper by the Association in connection with the formation of mortgage pools or loan packages, the issuance of mortgage-backed securities, the guaranty of mortgage-backed securities by the Association and the discharge of the duties and obligations of this corporation, as issuer, until the proceeds of the last maturing mortgage in any pool or loan package is remitted to registered security holders.

Resolved Third, that any contracts or agreements heretofore made with said Association on behalf of this corporation, and all acts of officers or agents of this corporation in connection with any contracts to be entered into for the guaranty by the Association of mortgage-backed securities to be issued by this corporation are hereby ratified and confirmed.

Resolved Fourth, that Ginnie Mae is authorized to rely upon the aforesaid resolution until receipt by it of written notice thirty days in advance of any proposed change therein.

On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

LIGNITE RESEARCH DEVELOPMENT & MARKETING PROGRAM

Ms. Fine provided the Lignite Research Fund financial report. There is currently \$21,525,862 available for commitment.

Ms. Fine provided the Lignite Research Council recommendation regarding the 2019-2021 Lignite Research Fund Budget for consideration. In response to a question, Ms. Fine stated that there is the ability to reallocate the funds later in the biennium as needed. Having the allocation provides guidelines for the program during the biennium.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the recommendation of the Lignite Research Council and establishes the 2019-2021 Lignite Research Program budget as follows:

Administration	\$ 875,000
Non-Matching Studies	\$ 3,031,250
Marketing Project	\$ 1,800,000
LV 21 Demonstration Projects	\$ 1,367,678
Small Research/Education/Demonstration	\$10,426,991
Advanced Energy Technology Projects	\$30,645,000
Litigation Costs	<u>\$ 1,500,000</u>
	\$49,645,919

On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Fine presented the Lignite Research Council recommendation regarding the following Grant Round 91 application.

LRP-XCI (91) A – Annual Lignite Energy Council Education Program; Submitted by Lignite Energy Council; Total Project Costs: \$207,800; Request: \$100,000; Project Duration: 1 year

The objective of the project is to educate teachers, students, and members of the general public about career opportunities, economic benefits, and operations of the Lignite Industry. Tasks include: annual 4-day Lignite Education Seminar; program management; professional services provided by the North Dakota Energy Career Coordinator; and website/E-campus/video development.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the recommendation of the Lignite Research Council to fund the grant application “Annual Lignite Energy Council Education Program” and authorizes the Industrial Commission Executive Director/Secretary to execute an agreement with Lignite Energy Council to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$100,000. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Mike Holmes, Lignite Research Program Director and Industrial Commission Technical Advisor, presented the Lignite Research Council recommendations regarding the remaining Grant Round 91 applications.

LRP-XCI (91) B – Preliminary Front End Engineering and Design (pre-FEED) Study for a full-scale carbon dioxide capture system at Coal Creek Station (CCS2); Submitted by Great River Energy (GRE); Total Project Costs: \$8,478,000; Request: \$4,239,000; Project Duration: 14 months

The goal of this project is to better quantify the costs, benefits and operational issues of integrating a system to capture and store carbon dioxide from the Coal Creek Energy Park, which includes both the Coal Creek Station and the Blue Flint Ethanol Plant. GRE is in the early stages of evaluating a potential carbon capture and storage project to determine if it is an economically feasible means of reducing carbon emissions at Coal Creek Station. The study would include five different objectives necessary to provide information related to overall costs, benefits, operational issues and opportunities associated with integrating a carbon dioxide capture system. The project is expected to take approximately one-year commencing in January 2020. The benefits to North Dakota include continued operation of the state’s largest lignite-based plant by identifying technologies that significantly reduce the carbon dioxide footprint in a cost-effective manner. In addition, the project’s technology and information development could benefit other lignite-based generating stations.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Lignite Research Council to fund the grant application “Preliminary Front End Engineering and Design (pre-FEED) Study for a full-scale carbon dioxide capture system at Coal Creek Station (CCS2)” and authorizes the Industrial Commission Executive Director/Secretary to execute an agreement with Great River Energy to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$4,239,000 with the following contingencies:

- **Technical Advisor participates in project reviews.**
- **Technical Advisor reviews the project management plan with the project team.**

On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

LRP-XCI (91) C – Wastewater Recycling Using a Hygroscopic Cooling System; Submitted by: Energy and Environmental Research Center (EERC); Total Project Costs: \$820,675; Request: \$100,000; Project Duration: 3 years

The EERC is teaming with GRE and a product provider, Baltimore Aircoil Company, on a proposed three-year study to reduce water usage at power plants. Hygroscopic cooling has been developed at EERC and would be demonstrated at a coal-based generation station to improve the plant's overall water efficiency, thus reducing costs and the amount of water required for cooling purposes. While GRE's Coal Creek Station will be the host site for the study, the technology would be applicable to all North Dakota power plants. The primary benefits to the state and industry is the reduced amount of water used by the power plants, which helps both with costs and reduced regulatory burdens.

It was moved by Commissioner Goehring and seconded by Attorney General Stenehjem that the Industrial Commission accepts the recommendation of the Lignite Research Council to fund the grant application “Wastewater Recycling Using a Hygroscopic Cooling System” and authorizes the Industrial Commission Executive Director/Secretary to execute an agreement with Energy and Environmental Research Center to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$100,000 with the following contingencies:

- **Technical Advisor participates in project reviews.**
- **Technical Advisor reviews the project management plan with the project team.**

On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

LRP-XCI (91) D – PCOR Initiative to Accelerate CCUS Deployment; Submitted by: Energy and Environmental Research Center; Total Project Costs: \$6,254,617; Request: \$2,000,000 (\$500,000 current and additional \$1,500,000 contingent on future incremental DOE award); Project Duration: 5 years

The EERC – through its Plains CO₂ Reduction (PCOR) Partnership – is working with partners in the lignite industry to secure \$500,000 initially from the Lignite Research Council with another \$1.5 million set aside for anticipated increased funding from the U.S. Department of Energy (DOE). The goal of this project is to accelerate and facilitate the buildout of CCUS infrastructure in North Dakota and neighboring states. The PCOR Partnership includes the primary players in North Dakota's lignite industry who have been working with the EERC over the last 16 years to validate the technical and economic viability of CCUS technology. This new project – which will be largely funded by the DOE – will benefit North Dakota by working towards monetizing recently passed Federal legislation that provides tax credits for energy companies to capture and geologically store CO₂. This phase of the project is planned for a five-year time frame.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the recommendation of the Lignite Research Council to fund the grant application “PCOR Initiative to Accelerate CCUS Deployment” and authorizes the Industrial Commission Executive Director/Secretary to execute an agreement with Energy and Environmental Research Center to provide a total of Industrial Commission Lignite Research Program funding in an amount not to exceed \$2,000,000 with the following contingencies:

- **Technical Advisor participates in project reviews.**
- **Technical Advisor reviews the project management plan with the project team.**
- **Initial funds of \$500,000 with an incremental \$1.5 million contingent upon receipt of additional DOE and industry funding at the initial match rate.**

The question was raised if the State is investing enough in lignite research and development. Mr. Jason Bohrer, Chairman of the Lignite Research Council, indicated that current investment is enough, but there needs to be awareness that activities might need to scale up quickly. The Program and industry have large scale feed studies going on. If those studies come back positive, the Program may not have the resources to scale up quickly. The Clean Power Plan was cited as an example of a time that quick action was needed.

On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Mr. Bohrer reported on the election of the LRC Chairman, LRC Vice Chairman and LRC Executive Committee as follows.

Chairman: Jason Bohrer
Vice Chairman: Randel Christmann

Members of the Executive Committee in addition to the Chairman and Vice Chairman are:

- Gavin McCollam, Basin Electric Power Cooperative
- John Bauer, Great River Energy
- Ed Murphy, ND Geological Survey
- Jay Kost, The Falkirk Mining Company
- Tim Rogelstad, The Otter Tail Power Company

The role of the Executive Committee, as outlined in the Governor's Executive Order, is to act on behalf of the Lignite Research Council between Council meetings. The Executive Committee shall meet at the request of the Chairman.

In response to a question, Mr. Bohrer indicated that the chairman does not rotate, but the vice chair does.

STUDENT LOAN TRUST

Ms. Fine, Student Loan Trust Authorized Officer, introduced Mr. Jared Mack, Eide Bailly, to present the Student Loan Trust Audits for June 30, 2018 and June 30, 2019. Mr. Mack stated that both audits were clean audits with an unmodified opinion. There were no findings and no instances of noncompliance were identified.

Ms. Fine noted that \$16 million was appropriated out of the Trust in the 2017-2019 biennium so the balance in the Trust had been significantly reduced.

BANK OF NORTH DAKOTA (BND)

Mr. Eric Hardmeyer, BND President, noted that Mr. Mack was available to review the following audits:

- Ag PACE Fund – June 30, 2019
- PACE Fund – June 30, 2019
- Medical Facility Infrastructure Loan Fund – June 30, 2019
- Rebuilders Loan Program – June 30, 2019
- Addiction Counselors Internship Loan Program – June 30, 2019
- Infrastructure Revolving Loan Fund – June 30, 2019
- School Construction Revolving Loan Fund – June 30, 2019

Mr. Mack stated that all the audits were clean audits with an unmodified opinion. There were no findings and no instances of noncompliance were identified.

In response to a question, Mr. Mack stated that the teams completing the audits were made up of mostly the same individuals. The audits were conducted onsite.

Mr. Eric Hardmeyer, BND President, reported that Bank management has approved moving forward with IT unification. There are many expected benefits, such as enhanced services. It is important to pursue cyber security before it becomes an issue. The unification will be cost neutral. It is anticipated that the MOU will be executed in December-January.

Mr. Hardmeyer provided a farm & ranch update indicating that BND staff is continuing to monitor harvest progress. A meeting has been set up for December 5th with representations from the banking groups, agriculture trade associations, the Agriculture Department, USDA FSA, NDSU Extension, Stockman's Association, and the crop insurance industry. Based on the information gathered at that meeting the Bank will develop needed loan programs for the Commission's consideration.

Mr. Hardmeyer presented the BND Advisory Board September 19, 2019 nonconfidential meeting minutes.

Pursuant to N.D.C.C. 6-09-35, the Industrial Commission entered executive session. Governor Burgum reminded the Commission members and those present in the executive session that the discussion during executive session must be limited to those items listed on the agenda which is anticipated to last between 20 and 30 minutes. It was noted that any formal action by the Commission would occur after it reconvened in open session. Commission members, their staff, and BND staff remained but the public was asked to leave the room. Governor Burgum closed the meeting at 4:17 p.m. to discuss the following items:

- Consideration of loan applications
- Concentrations of Credit as of 9/30/2019
- Problem Loans
- Presentation of Bank of North Dakota Advisory Board September 19, 2019 confidential meeting minutes
- Other Bank of North Dakota confidential (as defined under N.D.C.C. 6-09-35) business

BND EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Bank of North Dakota Personnel Present:

Eric Hardmeyer	Bank of North Dakota
Todd Steinwand	Bank of North Dakota
Kirby Evanger	Bank of North Dakota
Andrew Tweet	Bank of North Dakota

Others in Attendance:

Leslie Oliver	Governor's Office
Reice Haase	Governor's Office
Jessie Pfaff	Department of Agriculture
Karlene Fine	Industrial Commission Office
Andrea Pfennig	Industrial Commission Office

The meeting reconvened in open session at 4:55 p.m. and Governor Burgum invited the public to return to the meeting room. He noted that during its executive session, the Commission made a motion regarding two Bank of North Dakota loan applications. **On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.**

STATE MILL

Mr. Donald LaFleur, State Auditor’s Office, reported on the North Dakota Mill and Elevator Association Audit – FY 2019. It was a clean audit with an unmodified opinion. There were no internal control deficiencies identified.

Mr. Vance Taylor, Mill President, provided the first quarter report as follows.

**North Dakota Mill
Review of Operations
1st Qtr. Ended
September 30, 2019**

Summary

The Mill experienced a profit of \$3,122,191 in the first quarter compared to a profit of \$3,852,696 last year.

	<u>9/19</u>	<u>9/18</u>
Profits	\$ 3,122,191	\$ 3,852,696
Sales	76,975,187	78,999,318
Cwt Shipped:		
Spring	3,481,316	3,455,421
% to Total	93.4%	93.7%
Durum	<u>244,653</u>	<u>233,641</u>
Total	<u>3,725,969</u>	<u>3,689,062</u>
Bulk Shipments	3,055,988	3,005,173
% to Total	82.0%	81.5%
Bag Shipments	635,308	643,469
% to Total	17.1%	17.4%
Tote Shipments	34,673	40,420
% to Total	0.9%	1.1%
Family Flour	101,026	82,853
% to Total	2.7%	2.2%
Organic Flour	28,026	35,355
% to Total	0.8%	1.0%
Wheat/Durum Bought:		
Spring/Winter	7,449,458	7,530,120
Durum	<u>496,939</u>	<u>474,643</u>
Total	<u>7,946,397</u>	<u>8,004,763</u>

Sales

Sales for the first quarter were \$76,975,187 compared to \$ 78,999,318 last year, a decrease of 2.6%. The price of grain settled with suppliers at the Mill for the first quarter of the year is \$0.71 per bushel lower than last year. Shipments of 3,725,969 cwts. in the first quarter are 36,907 cwts. above last year. Bag shipments of 669,981 cwts. are 1.3% below last year. Family flour shipments reached 101,026 cwts., an increase from last year's first quarter shipments of 18,174 cwts. Organic flour shipments were 28,026 cwts., a decrease of 7,329 cwts.

Operating Costs

Operating costs for the first quarter were \$8,778,444 compared to \$8,677,461 last year, an increase of 1.2%. Total flour production for the first quarter was 1.3% below last year's first quarter. Operating cost per cwt. of production was \$2.38 per cwt., compared to \$2.32 last year, an increase of 2.6%.

Profits

The Mill had profits of \$3,122,191 in the first quarter compared to \$3,852,696 last year. This is a decrease of 19.0%. Gross margins as a percent of gross sales for the quarter was 16.1% compared to 16.3% last year.

Risk Management Position

The table below shows the Mill's hedge ratio by futures month going forward. As the table indicates, the Mill continues to be closely matched in the overall net position with some slight variations in monthly positions.

Position Report

30-Sep-19

Period	Hedge Ratio
Dec-19	1.1
Mar-20	1.0
May-20	0.8
Jul-20	1.6
Sep-20	0.8
Dec-20	1.0
Net Position	1.1

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that under the provisions of N.D.C.C. § 44-04-18.4 the Industrial Commission proceed into executive session to discuss commercial information including the North Dakota Mill's marketing strategies and sales strategies. On a roll call vote, Governor Burgum, Attorney General Stenehjem, and Commissioner Goehring voted aye. The motion carried unanimously.

Governor Burgum reminded the Commission members and those present in the executive session that the discussion during executive session must be limited to those items listed on the agenda which is anticipated to last between 15 and 20 minutes. It was noted that following that executive session the Committee would reconvene in open session. Commission members, their staff, and employees of the North Dakota Mill remained but the public was asked to leave the room. Governor Burgum closed the meeting at 5:10 p.m.

MILL EXECUTIVE SESSION

Members Present:

Governor Doug Burgum
Attorney General Wayne Stenehjem
Agriculture Commissioner Doug Goehring

Mill Personnel Present:

Vance Taylor North Dakota Mill
Ed Barchenger North Dakota Mill

Others in Attendance:

Leslie Oliver	Governor's Office
Reice Haase	Governor's Office
Andrea Pfennig	Industrial Commission Office
Karlene Fine	Industrial Commission Office

The meeting reconvened in open session at 5:36 p.m. and Governor Burgum invited the public to return to the meeting room.

ADMINISTRATIVE BUSINESS

Ms. Fine presented a recommendation for North Dakota Mill President compensation for consideration.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the Industrial Commission accepts the recommendation of the Industrial Commission Executive Director and in accordance with the Mill President's contract provisions approve a bonus of \$94,693.24 for FY2019 for North Dakota Mill President Vance Taylor. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

Ms. Fine presented the draft October 22, 2019 non-confidential meeting minutes for consideration.

It was moved by Attorney General Stenehjem and seconded by Commissioner Goehring that the October 22, 2019 non-confidential meeting minutes be approved. On a roll call vote, Governor Burgum, Attorney General Stenehjem and Commissioner Goehring voted aye. The motion carried unanimously.

With no further Industrial Commission business, Governor Burgum adjourned the meeting at 5:37 p.m.

North Dakota Industrial Commission



Karlene Fine, Executive Director and Secretary