



# INDUSTRIAL COMMISSION OF NORTH DAKOTA

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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

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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.

Sincerely,

North Dakota Industrial Commission

  
Doug Burgum, Chairman  
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Wayne Stenehjem  
Attorney General

  
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