



April 25, 2016

Assistant Director Bruce Hicks
NDIC, Department of Mineral Resources, Oil and Gas Division
600 E. Boulevard Ave.
Bismark, ND 58505
Submitted Electronically via E-Mail

Re: North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division Proposed Rule Change and Adoption of New Rules (February 29, 2016)

Dear Assistant Director Hicks:

The GPA Midstream Association (GPA Midstream) appreciates the opportunity to comment on the North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division's (NDIC) proposed amendments and additions to the North Dakota Administrative Code Chapter 43-02-03 (Oil & Gas), Chapter 43-02-05 (Underground Injection Control), and Chapter 43-02-08 (Stripper Well Property Determination) (February 29, 2016) (Proposed Amendments and Additions). GPA Midstream's comments relate specifically to the interests of its company members and the North Dakota communities in which its members operate. In short, GPA Midstream, and its members, look forward to a continued long, prosperous and cooperative relationship with North Dakota, its communities and the NDIC.

GPA Midstream has served the U.S. energy industry since 1921 as an incorporated non-profit trade association. GPA Midstream is composed of nearly 100 corporate members that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as "midstream activities." Such processing includes the removal of impurities from the raw gas stream produced at the wellhead, as well as the extraction of natural gas liquids (NGL's) such as ethane, propane, butane and natural gasoline. GPA Midstream members account for more than 90 percent of the NGLs produced in the United States.

GPA Midstream appreciates the NDIC's commitment to an effective and efficient oil and gas regulatory environment. With the incorporation of our four recommended adjustments and clarifications, GPA Midstream supports many of NDIC's Proposed Amendments and Additions. As you know, the oil and gas industry, and in particular the industry's midstream sector, is subject to multiple regulatory regimes. The comments listed herein are built to foster a continued workable North Dakota regulatory regime that dovetails with existing regulatory requirements.

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To that end, GPA Midstream proposes the following adjustments.

Support of NDPC Comment

GPA Midstream has closely reviewed the North Dakota Petroleum Council's (NDPC) April 20, 2016 comments (Comments). GPA Midstream supports fully the NDPC Comments and their suggested revisions.

Limit 43-02-03-29.1's Application to Oil and Produced Water Lines

GPA Midstream strongly suggests that NDIC apply Section 2 of House Bill 1358, titled, "Controls, inspections, and engineering design on crude oil and produced water underground gathering pipelines," (HB1358) to crude oil and produced water underground pipelines, only. By applying HB1358 Section 2's terms to natural gas and carbon dioxide lines, NDAC Section 43-02-03-29.1 goes beyond the intent of the legislature. HB1358, Section 2 states that, "[t]he application of this section is limited to an underground gathering pipeline that is designed or intended to transfer crude oil or produced water from a production facility for disposal, storage, or sale purposes and which was placed into service after August 1, 2015." *House Bill No. 1358 Section 2*, Sixty-fourth Legislative Assembly of North Dakota (January 6, 2015). Similarly, NDIC's Full Notice of Intent to Adopt and Amend Administrative Rules, states that "[t]he purpose of the adoption of NDAC Section 43-02-03-29.1 is necessary to improve underground pipeline safety and integrity pursuant to House Bill 1358." *Full Notice of Intent to Adopt and Amend Administrative Rules*, NDIC (February 29, 2016) page 2. Pursuant to NDIC's statement, the addition of Section 43-02-03-29.1 is intended to implement the authorizations described in HB1358 – an application that reaches crude oil and produced water lines, only.

In contrast, as written the NDIC Section 43-02-03-29.1 Proposed Amendment and Addition goes beyond HB1358's authorization. Specifically, NDIC's Section 43-02-03-29.1 addition applies to "all underground gathering pipelines designed for or capable of transporting crude oil, natural gas, carbon dioxide or produced water from an oil and gas production facility for the purpose of disposal storage, or for sale purposes." *Section 43-02-03-29.1 (1), Proposed Rule Changes and Adoption of New Rules*, NDIC (February 29, 2016). As proposed, this rule applies, not only to crude oil and produced water lines, but also to natural gas and carbon dioxide lines. Accordingly, since HB1358 states that this section should only apply to crude oil and produced water lines, it is without question that, should the NDIC adopt the proposed adjustments to Section 43-02-03-29.1, they will violate HB1358's legislative authorization. As a result, GPA Midstream suggests that the NDIC limit the application of Section 43-02-03-29.1 to underground crude oil and produced water lines.

NDIC's Associated Pipeline Facilities Regulation Should Expressly Preempt Political Subdivision Ordinances, Permitting or Other Regulations

NDIC's Proposed Amendments and Additions to Section 43-02-03-29.1 (7) should expressly preempt related regulatory requirements of the state's political subdivisions. As written, this section states, among other things, that "[n]o associated pipeline facilities and above ground

equipment shall be installed less than five hundred feet [152.40 meters] from an occupied dwelling unless agreed to in writing by the owner of the dwelling or authorized by order of the commission.” *Id.* at (7). Currently, many state political subdivisions apply their regulatory requirements, including but not limited to, planning and zoning criteria to above ground facilities regardless of their connection to NDIC regulations. In an effort to avoid dual and potential conflicting regulations and requirements, GPA Midstream recommends that the NDIC incorporate language at the end of Section 43-02-03-29.1 (7) that expressly preempts these requirements. This language could read as follows: “Associated pipeline facilities and above ground equipment that are otherwise subject to this section shall not fall within the regulatory jurisdiction of the state’s political subdivisions that would otherwise regulate the associated pipeline facility or above ground equipment.”

Data Sharing Should be Eliminated and If Not Discrepancies Submissions Should be Confidential

NDIC’s Proposed Amendment and Addition requiring data sharing is not needed, is overly burdensome and should be eliminated from the proposal. NDIC’s Section 43-02-03-29.1 (10) requires crude oil and produced water underground gathering pipeline owners to develop and maintain data sharing plans. The proposal states that the data sharing plan “must provide for real-time shared access to data between the operator of the production facility, the crude oil or produced water underground gathering pipeline owner, and the operator at the point or points of disposal, storage, or sale.” *Id.* at (10). Many North Dakota underground pipeline operators gather crude oil and production water from thousands of well sites. The connections tying these well sites into the downstream gathering systems, while safe and efficient, are manually gauged. This type of measurement is not real time and volumes are not, and cannot, be reported until the associated production tank has been emptied. Requiring the development of real time gauging systems would not only be overly burdensome (requiring the installation of, at a minimum, electronic meters, flow computers and communications equipment at thousands of locations), but also expensive and should be eliminated from the Proposed Amendments and Additions.

At a minimum, NDIC’s Proposed Amendments and Additions should state that data sharing discrepancy submissions will be kept confidential. As mentioned, NDIC’s Section 43-02-03-29.1 (10) Proposed Amendment and Addition requires crude oil and produced water underground gathering pipeline owners to develop and maintain data sharing plans. These data sharing plans are required to provide shared access to data between the production facility operator, pipeline operator and the operator at the point of disposal, storage, or sale. Records of data discrepancies, if requested, “must be filed with the commission.” *Id. at (10)*. GPA Midstream suggests that NDIC add a statement to the end of Section 43-02-03-29.1 (10) stating that “All copies of records so filed with the commission shall be maintained as confidential and proprietary and shall be afforded the protections of the State of North Dakota’s confidential document status.”

Integrity Test Notice Should be Eliminated

NDIC’s Proposed Amendments and Additions should not require notice prior to conducting pipeline integrity tests. NDIC’s Section 43-02-03-29.1 (13) (a) requires underground gathering

pipeline owners to “notify the commission at least forty-eight hours prior to commencement of any pipeline integrity test . . .” *Id. at (13) (a)*. In addition, subsection (b) requires the pipeline owner to submit “[a]n independent inspector’s certificate of hydrostatic or pneumatic testing . . . within sixty days of the test . . .” *Id. at (13) (b)*. As written, the rules require an NDIC mandated independent inspector to witness the underground gathering pipeline owner’s hydrostatic test along with an additional NDIC representative. These two rules, taken together, are redundant. Requiring forty-eight hour prior notice to allow for an NDIC representative to witness a test that is already witnessed by an independent inspector provides little if any additional security or integrity enhancement. In contrast, the notice provision will likely create unneeded service and repair delays. GPA Midstream suggests NDIC eliminate Section 43-02-03-29.1 (a) from its Proposed Amendments and Additions.

As noted, GPA Midstream welcomes the opportunity to comment on NDIC’s Proposed Amendments and Additions. GPA Midstream members who operate gas, oil and produced water gathering pipelines in North Dakota will be directly impacted by the proposed rule changes. We welcome and look forward to assisting the NDIC foster and develop a continued effective and efficient regulatory environment that promotes job creation, community safety, environmental protection and resource stewardship.

Sincerely,

Mark Sutton
President & CEO
GPA Midstream Association