Northwest Landowners Association
Comments to ND Oil and Gas Division
October 18, 2019

Via Email Only

Oil and Gas Division
600 E Boulevard Ave, Dept 405
Bismarck, ND 58505-0840
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Re: Comments of Northwest Landowners Association
Proposed amendments and additions to NDAC ch. 43-02-03 (Oil & Gas), ch. 43-02-05 (Underground Injection Control), and ch. 43-02-06 (Royalty Statements)

Oil and Gas Division:

Thank you for the opportunity to provide comments on the proposed amendments and additions to certain chapters of the North Dakota Administrative Code. Northwest Landowners Association appreciates the time and effort that the Oil and Gas Division puts into developing a comprehensive regulatory structure, some of which is focused on protecting North Dakota's natural resources and ensuring that its mineral resources are developed responsibly. We offer the following comments on the specific amendments proposed:

Section 43-02-03-15

We support the new language requiring a bond prior to "construction of a site or appurtenance or road access." The removal of the reference to "drilling operations" may, however, have an unintended effect. Many wells are currently being drilled on multi-well pads, so there will be numerous wells drilled after the initial construction. Some operators may not know how many additional wells will be drilled on a large pad. We suggest retaining the phrase "drilling operations" after the new language with the addition of "on existing sites", so that it states "Prior to commencing construction of a site or appurtenance or road access, or prior to commencing drilling operations on existing sites…"

We appreciate and support the increase in bonds for commercial injection operations up to one hundred thousand dollars, but believe that this amount is not yet high enough, and that the bonding for single oil wells and blanket bonds must also be increased. According to professionals with whom we have consulted on this issue, the bond amounts for single wells and blanket bonds is still too low to ensure successful reclamation of well sites. Should an operator fail to reclaim a well site, whether because it is insolvent or has left the state, these bonds are the only financial assurance the reclamation will occur. In our experience, wells that end up being reclaimed with resources from a bond are not generally the most well-maintained wells and well

sites, meaning that the cost of reclaiming these sites is higher than a typical well site. Regardless, our concern is that wells with insufficient bonding may become a liability for landowners, who will be left holding the bag if these bonds are insufficient to adequately reclaim the well sites.

The Public Service Commission requires decommissioning plans for wind facilities and solar facilities, and also requires bonding and financial guarantees for coal mines. The financial assurances for these other energy industries are based on actual engineering plans, and projections and estimates of the actual cost to reclaim. We see no reason to treat oil and gas development differently than coal, wind, and solar development. Additionally, if bond amounts are based on actual cost to reclaim, this will create a policy incentive for operators to minimize the disturbance to the land, and to plan the construction and operation of their facilities to maximize the likelihood of successful reclamation with excessive cost. Although we recognize that N.D.A.C. § 43-02-02-11 creates some discretion for the commission to consider "the expected cost of plugging and well site reclamation," we ask that this be the rule, rather than the exception. We propose and request that the rules should require bonds to be based on engineering plans for the total cost of for full reclamation following the plugging and abandoning of the wells. Additionally, until more is known about cement modification, we request that bonding for well sites utilizing the procedure be required to have a higher bond to account for increased costs of reclamation.

We support the inclusion of wells on TA status regarding the wells limited for purposes of a blanket bond, particularly because in our experience wells on TA status are often likely candidates for permanent abandonment by insolvent operators. For this same reason, however, we ask that operators with wells on TA status for more than *three* years have those wells aggregated under §2d. of this provision.

With respect to §5b. of this rule, we request that the language be changed to state "The director shall refuse to transfer any well from a bond if the any well on the bond is in violation of a statute, rule, or order, unless good cause is shown after notice and hearing."

With respect to §8, no bonding is required for flow lines, injection pipelines, pipelines operated by an enhanced recovery unit for enhanced recovery unit operations. While we understand that flow lines or piping used to connect facilities on the wellpad would be covered by the operator's bond for that well pad, many of these other pipelines can at times run for significant distances across a landowner's property. They are also the source of spills, leaks, and other damage. Significantly, they should also be reclaimed. There is a regulatory gap that exists right now in this section and numerous other areas of the rules, and we request that the Oil and Gas Division fill it by regulating these types of pipeline whenever they are off location, and subject them to the same bonding and reclamation requirements as other pipelines.

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Section 43-02-03-16
Similar to the issue raised above, while we agree with the added language, it could create ambiguity if there is an existing well pad for which an operator seeks to obtain a drilling permit for an additional well on a multi-well pad. We suggest a change similar to that suggested above.

Section 43-02-03-28
We support adding the term "flare" here and this is a common-sense addition to the rule.

Section 43-02-03-29.1
We support the inclusion of lines that are associated with CO_2 in this section. While the substance being transported through the lines is important for a number of reasons, the presence of any lines should be documented so that there is a record of their location to avoid accidental interference.

We request that the definition in section 2(d) be more specific. The rules should more specifically identify what a gathering system consists of so that it can be discerned what the rules apply to, and what is being regulated. While we propose and request that all lines outside of production facilities be regulated in this chapter, to the extent they are not, greater specificity as to what is would be beneficial.

In section 3(a)(1)(b), we support the addition, but request that the notification be in writing so that compliance with this section can later be verified. Email communications and other instantaneous electronic forms of communication ensure that this is not a significant burden for operators.

We support the addition of the terms "operation" and "maintenance" in subsection (3)(c). We again request that the notification be in writing, and additionally, that the notification require the location and nature of the damages that have occurred. We do suggest that this notification be followed with a certification of the corrective action taken that can be included in the appropriate associated well file.

We support the clarifying language that has been added to subsection (4) regarding design and construction requirements. There appears to be some ambiguity in this language, mainly whether these requirements will apply to replacements within existing systems. We suggest that these requirements be explicitly required at the discretion of the Director for significant repair or reconstruction projects as well.

While not the subject of an existing amendment, we request that subsection 4(j) be amended to require six feet of cover for all pipelines in all areas.

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To the extent clamping and squeezing is allowed, we support the addition of subsection (4)(l) regarding the requirements surrounding the proposed use of clamping and squeezing of produced water lines. There have been numerous instances of the improper use of this practice that has resulted in significant damages that could have been easily avoided by using materials consistently with their specifications and intended uses. Generally speaking, however, we do not believe that clamping and squeezing is an appropriate practice. While we understand that engineers have claimed that it is safe if conducted properly, the reality is that is often is not conducted properly, and when it is not, it is highly likely to lead to future spills. If this practice is to be allowed, we request an addition to this rule requiring a written report to be submitted to the commission whenever it is used specifying the location, using GIS coordinates, of the clamping and squeezing operation, and describing the purpose of the operation, and the specific practices and procedures used. A copy of this report should be filed with the commission and should also be provided to the surface owner. To the extent that operators believes this practice is safe, this should not be a burden, but it will protect surface owners in the future if there are spills and leaks from the locations of prior clamp and squeeze operations.

While no proposal has been advanced to amend subsection (5)(a), we suggest that the Commission revisit this section, as well as N.D.A.C. § 43-02-03-19. We do appreciate and commend the Commission for its past changes further defining topsoil, but believe the rule still needs to go further. "Topsoil" has been defined to be of a depth no greater than 12 inches in an uncultivated area. Topsoil is a valuable resource (especially in western North Dakota), and it should be protected whether it is in a cultivated area or currently being used as pasture, fallow, or native prairie. The future uses of land should not be precluded by our present actions, and we should recognize topsoil as a valuable resource and protect its potential as well as current uses. Additionally, we are aware that a practice known as "cement modification" is and has been used in North Dakota for energy development. In a recent case by a wind developer before the ND Public Service Commission, a wind developer proposed using cement modification on roads. We have attached a staff report from the proceeding which indicates that this practice is harmful to the topsoil and should not be used. The ND Public Service Commission ultimately agreed. If all topsoil is not being stripped, this is an even greater concern. Even if cement modification is used in subsoil, the impact on soil chemistry can be detrimental and problematic, and the process is not recommended by soils experts. We understand that there are recommendations form an engineering firm for addition of fertilizer and acids, but we have reviewed a white paper from other experts who have indicated, in part, as follows:

- The amount of acid in the recommended fertilizer application step is very much less than what would be needed to permanently restore the soil pH (pH reduction from pH 12-13 to pH 7-8 requires a 10,000 X increase in the H+ ion concentration in the soil).
- Applying sufficient acid to permanently restore the pH of cement-modified soil would dissolve the cement solids, generate large quantities of salt ions and salinize the soil.

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Based on data from the North Dakota Petroleum Council used during the legislative session, the fate of 45,500 to 80,000 acres of cement-modified soil is at stake. We are asking that the commission disallow this practice or consider strictly limiting it until it is proven that soils and subsoils that are cement modified can be reclaimed.

As landowners, we understand that one of the most precious natural resources we have is our soil, and soil health forms the basis of our livelihoods. We ask that this is recognized, and just as soil is treated with the utmost respect when other energy industries develop our resources, we ask that it be treated with the greatest respect in your rules, and that *all* topsoil be segregated and stockpiled. Additionally, we ask that you disallow the use of cement modification as a practice as explained above.

We support the addition of the clarifying language in subsection (6) regarding independent inspectors. This language requires that a third-party inspector will be independent of the owner/operator and contractor, this is the tautological definition of the term "third-party."

We support the deletion of subsection (8)(b) and would also request that the second paragraph of subsection (1) be stricken as well. As was discussed with the bonding of all pipelines, these requirements should apply to all pipelines other than those located entirely on the well site or production facility. It is important that all lines be located and regulated in a consistent manner. This concern is especially acute in the context of unitized fields in which lines traverse many miles between surface facilities. Additionally, there is some ambiguity that should be resolved. The first paragraph indicates that the section is applicable to "pipelines…designed for or capable of transporting carbon dioxide for the purpose of storage or enhanced oil recovery" and the second paragraph then excludes "pipelines operated by an enhanced recovery unit for enhanced recovery unit operations." This could lead to confusion, and we suggest a clarification.

We support the amendments to subsection (13) regarding Pipeline Integrity. The collection of this information will provide assurance that newly operational lines are functioning properly and placing this responsibility on the operator instead of the inspector will provide consistency in reporting and communication between the Commission and operators.

We support the addition of subsection (15)(a). An additional requirement that the notification be in writing (perhaps a form 4) would be helpful to the Commission and the public in keeping records of these actions.

We suggest that subsection 15(b)(7) should require removal for bury depths less than six feet, unless otherwise agreed to by the surface owner (and below three feet, regardless). Farmers in many parts of the state may eventually want to use drain tile, and many landowners would like to construct other buildings and improvements on their land. They should not be burdened with removal of abandoned pipelines they had no choice but to accept.

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Section 43-02-03-30

We support the addition of "associated above ground equipment" to this section. This is a common-sense addition that will ensure that all fires, leaks, spills, or blowouts will be reported regardless of the source of the event. This is particularly important because in our experience, many leaks occur due to the failure of valves above the surface that freeze or fail for other reasons. It is important that the Commission be notified so that these events can be assessed, mitigated, and restored no matter where in the chain of production the breakdown occurred.

Section 43-02-03-34.1

We support the change in subsection (1)(d) on the understanding that the term "all pipelines" includes flow lines. It is important that all underground facilities be purged and abandoned in order to limit the potential for any adverse impacts after a site has concluded production. As indicated previously, we also request that all lines be removed down to a depth of six feet, or at least greater than three feet, unless otherwise agreed to by the surface owner.

We also want to take this opportunity to commend the commission for the previous amendments to this rule requiring notice to be sent to surface owners. We request that this notice be provided thirty days in advance, rather than ten, as we have found that with only ten days of notice surface owners have a difficult time responding and hiring necessary consultants if necessary.

Finally, with respect to the requirement to conduct a site assessment, we would like to reiterate our prior comments and requests and ask again that baseline soils and water testing be conduced before construction of well sites, treatment facilities, pipelines, and other similar regulated facilities. We have recommended and lobbied for legislation in the past legislative sessions, and we believe that this goal can also be accomplished through your rulemaking procedures. We ask that new rules be adopted along the lines of the legislation proposed in recent legislative sessions.

Section 43-02-03-48.1

We would like to note that the section uses the term "diverse ownership" in subsection (2)(a) and the term "different mineral ownership" in subsection (2)(b). It is assumed that these terms were meant to be synonymous. The same term should be used in both instances.

Section 43-02-03-51

While we support the addition of the phrase "or site or access road construction commenced," we suggest that the Commission also add the phrase "or on-site operations commenced" in order to fully capture the intent of the regulation, which is to ensure that a plan is approved before any surface disturbance occurs. In other words, a treating plant could be located on an existing site, and we believe it is the intent of the Commission to cover this as well, which would be clearer with our proposed additional language.

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Section 43-02-03-51.1
We support the addition to subsection (1)(f). The ability of the natural surface to contain fluids should be a concern, but it is a failsafe that is secondary to an impermeable pad and liner that is the subject of subsection (g). The structures referred to in subsection (h) should be required to be above the liners referred to in subsection (g) in order to protect the area surrounding the site, should a leak occur. We support the additions to this section in general, but also want to specifically commend the Commission for the inclusion of a review of surficial aquifers within one mile of the proposed treating plant or surface facilities. This is a common-sense requirement for protecting critical water resources which are of significant important to our rural members (and all North Dakota citizens).

Section 43-02-03-51.3
We support the amendment to subsection (1). We agree that a site should be bonded at an appropriate amount before surface disturbance occurs.

We have concerns with the possibility of open tanks being permitted under subsection (3). Open tanks will need sufficient freeboard to ensure that they do not overflow during precipitation events. Any precipitation that does enter these tanks will no longer be able to be put to a beneficial use. Open tanks should only be granted in exceptional circumstances and will need excess capacity to accommodate non system inputs.

Initially, subsections (10) and (11) seem at odds with each other. It is our understanding that subsection (10) refers to temporary storage as per subsection (12), but this also begs the question of whether "temporary" in this context means "until the site is reclaimed," because at that point, the pits would presumably be excavated so that no waste was buried in violation of subsection (11). This would presumably add significant costs to reclamation, and in the event the director approves such pits, it should be a consideration in the appropriate bond amount.

Section 43-02-03-53.1
We support the additional language added to this section. A project should be approved prior to land disturbance. As indicated previously, we support the inclusion of the review of surficial aquifers in subsection(g). Subsection (1) (h) is warranted due to the potential for unique conditions that may be present at a particular site that require consideration. These requests and additional materials should be noted and included within the well file.

Section 43-02-03-53.3
We support the additional language in subsection (1). We reiterate that bonding requirements should be commensurate with the estimated costs of decommissioning and site reclamation without regard to the economic value of the facility. Bonding should be an up-front fixed cost that can be factored into the economic value of a facility, and not the other way around.

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Section 43-02-03-55

While we support the additional language requiring good cause for an extension of TA status for beyond one year, we suggest that the timeframe referred to in subsection (2) be reduced from seven to three or five years. A limitation of seven years allows for speculation instead of concrete plans related to the production of oil and gas. We also request that this provision require notice to the landowner and a hearing, and submission of a detailed plan for the future use of the well for which TA status is being requested, so that these requests can be vetted and objections heard from all stakeholders. Similarly, we request that section 3 require notice and hearing, and submission of a detailed plan.

Section 43-02-05-04

We are supportive of the amendments to this section, especially subsection (s). Ensuring the landowners are notified of proceedings before the commission that affect them is very important to a transparent and open government, and this is greatly appreciated by our organization and its members. We suggest that the Commission also require data related to the capacity of the receiving zone and the rate at which it can receive fluids and remain within a range of static pressure. Additionally, the Commission should require estimates of truck traffic and consultation with local authorities to determine whether a plan designed to mitigate dust and road impacts is appropriate. In general, we would like to again state our support for the additions made to this section – acquiring additional information is critical to the Commission's duties and responsibilities under North Dakota law, and these amendments go a long way toward accomplishing the goals of the relevant laws.

Section 43-02-05-07

We support the inclusion of standards for the performance of mechanical integrity tests. While not the subject of a specific amendment, we believe that requiring a mechanical integrity test every five years is not always sufficient. We also recognize that it is not always necessary to require these tests more frequently, As a compromise, we suggest the following: MIT tests should be conducted every five years, but if an operator's well fails on MIT test, then such tests should be conducted on an annual basis until the well passes the MIT on the first attempt for three consecutive years, at which time it reverts to being tested every five years. We believe this is a reasonable compromise that will also help ensure that aging injection wells subject to failure will be discovered before significant contamination events.

Additionally, we request removal of the word "significant" in subsections 1(a) and 1(b). No casing leaks, and no fluid movement into underground sources of drinking water should be accepted. Alternatively, if the use of the term "significant" is intended merely to allow for the fact that an MIT test will allow for some degree of pressure loss, we suggest specifying this and providing clarification on the meaning of the term "significant" as used in this section. We do recognize and support the inclusion of subsection 4, which addresses the primary concern we

have. We want to ensure that nothing in the prior language we pointed out can be read to contradict this clear statement.

Section 43-02-05-12
We have concerns regarding what the "format provided by the director" entails. Whatever form or requirement is decided upon should, at a minimum, be publicly available and contain a written certification of its accuracy by the operator. It is important that the public, and in particular, interest landowners have access to the information actually reported by the operator, and to which the operator itself certified accuracy.

With respect to subsection 5, we request that this report be in writing.

Section 43-02-05-13
This amendment appears to restrict access to records to only the director. We urge that agents of the director and commission also be given authority to inspect records under this section. Field inspectors should have the authority to inspect records when performing their duties which include "com[ing] onto any lease, property, well, or drilling rig."

Section 43-02-05-14
We generally support the amendments to this section and believe that the requirements listed here are appropriate for individual as well as area permits. We especially support the inclusion of subsection (2) (n). Additional language should be added to this section requiring the notification to include either a weblink or copy of the materials referenced in subsections (3) (f) – (3) (i) and (3) (m) so that the notified parties can determine whether the proposed use may impact existing uses.

Section 43-02-06-01.1
We strongly support this amendment. It is important that mineral owners be notified of a change in the computation of their mineral interests so that they can assess the operator's reasoning and validity for making such a change.

Thank you again for the opportunity to comment on these proposed rules. It is clear that the Oil and Gas Division has put a lot of work and effort into further amending its rules in order to accomplish its mission. Northwest Landowners Association appreciates that the Division takes seriously its policy of regulating oil and gas development "in order that the greatest possible economic recovery of oil and gas be obtained within the state to the end that the landowners, the royalty owners, the producers, and the general public realize and enjoy the greatest possible good from these vital natural resources."

Sincerely,

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Northwest Landowners Association
By: Troy Coons, President