COMMENTS ON NEGOTIATED RULEMAKING
IDAPA 20.07.02

August 1, 2014

Dear Mr. Johnson,

Thank you for the opportunity to comment on the Oil and Commission's proposed rulemaking. We appreciate the ability to review the Department's most recent draft of the proposed rules, dated July 25, 2014.

In these comments, *Rule numbers are italicized* and **our proposed language or modification to the current draft is presented in bold.**

Public Participation

Before proceeding to our substantive comments, we once again object to the short time period made available to us in which to comment on the proposed revisions. There is a lot of technical and scientific information for the public to learn. This does not give the public sufficient time to educate themselves about the technical and scientific aspects of oil and gas drilling and gives industry an unfair advantage over the public. In addition, many people are out of town, occupied with visiting relatives, or occupied with agricultural responsibilities during the summer.

Moreover, many of our members, neighbors, and friends were unable to attend the negotiated rulemaking sessions. The meetings were all held during regular business hours. Not everyone is able to take time off from work to attend public meetings. In addition, because these rules will affect all of Idaho for the foreseeable future, many individuals interested in the rulemaking were unable to attend because they live hundreds of miles away.

We understand that the Oil and Gas Commission has given you a deadline for submission of proposed language. This deadline preferences bureaucratic convenience (and possible industry concerns) over the public's interest in effective rules.

We are aware that the public will have another opportunity to comment once IDL officially publishes the draft rules in the Idaho Administrative Bulletin. As you are no doubt aware, inertia sets in once a document is drafted, resulting in institutional reluctance to make changes. If the public's views are to be reflected in the language of the new regulations, it must happen during, not after, the drafting.

In addition to the foregoing, we would also like to voice our agreement with the comments offered by Craig Tartan addressing:

- The necessity for a full disclosure document that must be presented to landowners before they lease their mineral rights;

- Agents for multiple companies that are owned by the same corporation creating a false appearance of competition;
- Agents failing to provide complete information, including about how leasing affects one's neighbors;
- Agents pressuring owners to lease;
- Agents making false statements to owners, including about which other owners have signed.

We also agree with Mr. Tartan's statement:

"The current Rules in effect and the abuses by Agents of the Leasing Companies indicate that Idaho is NOT doing its job as a Government. This is no different than the US Government allowing banks to use "Predatory Loans" and ensnare citizens in loans they could not afford because it provided them with financial gains. Furthermore, if the rules for Integration are changed, I believe that leases in the Sections at the current 55% should be rescinded and redone under full disclosure by the State and the Oil & Gas Agents."

In addition, we fully support the comments offered by Ms. Lura J. Morgan, Ph.D.

Our comments on the Draft #5 of the proposed Rules Governing Oil and Gas Conservation in State of Idaho:

We can find no setback requirements from wells or pits. We suggest that the minimum setback from both a well or a wastewater pit should be AT LEAST one thousand (1,000) feet. No variances should be granted from these setbacks.

Rule 6. Public Records Act Compliance

IDL represents that it cannot mandate disclosure of documents exempt from disclosure under the Idaho Public Records law. IDL should, however, make as much information as possible available to the public. Also, use of the term "unreasonable" is ambiguous and so creates potential for confusion and abuse.

Accordingly, we propose the following language:

"All records relating to this chapter are public records, e**xcept those records exempted from disclosure by Title 9, Chapter 3, Idaho Code, which may be withheld in response to public records requests filed pursuant to that statute.** Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Title 9, Chapter 3, Idaho Code. Upon request in any application or material submitted to the Department, **the Department may provide confidentiality protection for information exempted from disclosure by Title 9, Chapter 3, Idaho Code,** and only those parts of an application or other materials that are by law exempt from disclosure can be held as confidential. The owner or operator shall not designate other parts of their application or other materials as confidential **unless necessary to protect the interests that justify the exemptions in the Idaho Public Records Law**."

Rule 10-- Definitions

02. Active Well. This definition seems ambiguous, as gas and oil wells are both individually defined. Other well types, such as abandoned/plugged wells, disposal, injection or storage should also each have their own definitions. In no case should a well continue to be classified as active if it has been idled for twelve months. We propose:

> "A permitted **oil or gas** well used for production, disposal, or injection that is not idled for more than **twelve (12) continuous** months."

21. Fresh Water: As currently written, this definition is vague, confusing, and does not provide enough protection for public health or environment. Limiting the definition "fresh water" based on the uses of water is arbitrary and risks omitting water that is technically fresh from protection. The Commission's definition of "fresh water" should be rewritten to be consistent with, and be approved by, the Idaho Department of Environmental Quality.

23. Gas Processing Facility. This definition does not provide enough protection for the public. IDL needs to redraft this definition to provide more protection to the public.

27. Inactive Well. The time period specified is too long. We propose:

" An unplugged well that has no reported production, disposal, injection, or other permitted activity for a period of greater than **twelve (12)** continuous months, and for which no extension has been granted."

9. Junk. "Debris" should be defined. Would a radioactive tool that gets lost downhole constitute "debris"?

31. Mechanical Integrity Test. Use of the word "significant" makes this definition ambiguous. Why are only "significant" leaks of interest? Who determines what is significant? The definition should be clarified.

32. Oil Well. Use of the term "paying quantifies" makes this definition amiguous. Is this an API definition? "Paying quantities" should be defined. If the definition is based on a reference to an industry standard, IDL's definition should quote from the industry standard instead of just referring to the general principle.

35. Operator. Under this definition, a landman would be classified as an "operator", as he/she is "in charge of the development of a lease".

36. Owner. Shouldn't this definition be further defined, i.e., a well owner, an "intact" property owner or landowners?

38. Pit. This definition is overly narrow, counter-intuitive, and insufficiently protective of the public. It is also ambiguous; what are "reserved fluids"? We suggest:

"Any **above-ground** excavated or constructed depression or reservoir used to contain, reserve, **or store** drilling **wastes**, well treatment, produced water, **flowback water**, or other fluids at the drill site **or at dehydration, compression, or refrigeration stations associated with oil and gas production.** This does not include enclosed, mobile, or portable tanks used to contain fluids."

39. Pollution. This definition is inappropriately narrow. Soil and air contamination are also forms of pollution that threaten public health, private property rights, and the environment. The definition should be revised to include reference to these forms of pollution in addition to water pollution.

The definition also inappropriately omits materials that are produced by or result from oil and gas exploration, well preparation, drilling, well plugging. Accordingly, we suggest:

"Constituents of oil, gas, salt water, produced water, flowback water or other materials used in oil and gas **exploration, drilling, well preparation, or oil and gas** extraction, occurring in fresh water supplies, **the air, or the soil at levels exceeding those that were present prior to the exploration, drilling, well preparation, or extraction.**"

40. Pool or Reservoir. This definition is counterintuitive, confusing, and inappropriately narrow. The definition of "pit" also includes the word "reservoir." Why is this definition limited to "underground" reservoirs? It should be redrafted to increase clarity and provide greater protection for the public.

43. Producer. Under this definition, if there is a Joint Operating Agreement, would that mean that both the oil and gas company AND the mineral rights owner/s were "producers"?

45. Proppant: Proppants are used in other methods of oil and gas extraction in addition to hydraulic fracturing. The definition should be revised to apply to proppants used in any process.

46. Release. The definition is counterintuitive and does not protect the public enough. Who determines whether a release is "intentional"? What about discharges into the air? Where would we find the definition for intentional dumping? We propose:

"Any spilling, leaking, emitting, discharging, escaping, leaching, or disposing into **the air,** soil, ground water, or surface water.

49. Surface Water: This definition should be revised to be consistent with the Idaho Department of Water Quality's definition and to include wetlands, ponds, irrigation canals and returns.

"Rivers, streams, lakes, and springs when flowing in their natural channels, **wetlands, ponds, irrigation canals and returns."**

54: Volatile Organic Compound. This term should be defined to be consistent with that of the U.S. Environmental Protection Agency in Chapter 1, Subchapter C, Part 51, Subpart F, 51100:

"Volatile organic compounds (VOC) means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, except those designated by EPA as having negligible photochemical reactivity."

59. Well Site: The current definition is unclear. We propose: **A well site is defined as those surface areas which include the surface location of the well, the surface above any and all horizontal or vertical legs of the well, and that area occupied by equipment and/or facilities necessary for, or incidental to, construction, drilling, drilling operations, production, or plugging a well. This definition does *not* include Gas Processing Facilities.**

60. Well Treatment. This definition is unacceptable because it does not include hydraulic fracturing. "Hydraulic fracturing" should be added to the definition.

Rule 15-- Protection of Correlative Rights

We object to this rule because it prioritizes the property rights of those who wish to drill in the near future over the property rights of those who do not, for whatever reason. This rule should be removed.

Rule 30-- Notices - General

01. Written Notices General. As currently worded, this is not sufficiently protective of the public. The public, local governments, and the Department need advance notice of imminent work. We suggest the following, including the addition of 20.07.02.30.04:

"Any written notice of intention to **begin** work or to change plans previously approved**,** must be filed with the Department **and** must be approved before the work is begun. Such approval may be given orally and, if so given, shall thereafter be confirmed by the Department in writing **within three (3) business days**. Written notices may be submitted to the Department by e-mail or facsimile."

02. Emergency Authorization: The rule as currently worded appears to prioritize the operators' interest in making a profit quickly over the interests of the public in adequate notice. The rule should be rewritten to omit the reference to "a situation where operations may be unduly delayed" and to specify a deadline by which the Department shall put the authorization in writing.

04. Upon receipt of a notice required by this rule, the Department shall promptly send a copy to the Department of Environmental Quality, the Department of Water Resources, and the county in which the work is to take place.

Rule 31: Forms:

The department should provide examples of the forms it adopts in order to facilitate public awareness and requests for public records. It is easier for department staff to respond to a request that specifies the desired forms than to respond to generic requests. We suggest language similar to the following:

"The Department shall adopt such forms of notices, requests, permits, and reports as it may deem advisable or necessary in carrying out the provisions of law and its rules and regulations. E**xamples of the forms, notices, requests and permits used by the Department shall be posted on its website. This section of the website will be kept up to date.**"

Rule 32. Organization Reports.

01. In order to respond to emergency situations, organizations should be required to provide the contact information of an individual who can be contacted in case of emergency. The emergency contact should have sufficient authority to make decisions about how to respond to the emergency. Emergency contact information should be kept up to date.

Also, does a mineral rights owner/landowner who has entered into a Joint Operating Agreement have to submit this information as well?

02. Updates: Thirty days is too long. We suggest:

"Updates. A supplementary report shall be filed with the Department within **fifteen (15) business** days of any change to facts stated in a previously-filed organization report."

Rule 40. Public Comment. We appreciate the Department's recognition that the opportunity for public comment is important. Fifteen days is too short a time period. Also, it is the county where the proposed operation is seeking to locate, not where its business address may be located, that will be affected. In addition, posting relevant comments as soon as they are received will facilitate open discussion. The rule should be amended and expanded

" **The purpose of the comment period is to receive written comments on whether a proposed application complies with these rules.**

a. Applications submitted under Sections 100, 050200, 055210, 085230, and 170330 of these rules will be posted on the Department's website for a written comment period of, at a minimum, thirty (30) days. The Department will also send an electronic copy of the application to the respective county, and city if applicable, where the proposed operation is seeking to locate.

b. Public comments will be considered by the Department prior to permit approval or denial. The department will address relevant comments in a written decision posted on the website as soon as the Department grants or denies the requested permit."

c. Relevant comments will be posted on the Department's website **within three business days of their receipt.**"

Rule 110. Surface Owner Protections[1]

01. Surface Use Agreement. Limiting compensable losses to "agricultural uses" and preexisting improvements would not adequately compensate the surface owners for the lost value of his or her property, impacts to his or her health, or the lost use and enjoyment of the property.

We suggest the following language to better respect property rights:

"If the mineral estate has been severed from the surface estate where an oil or gas well is to be located, the owner or operator shall attempt a good faith negotiation of a surface use agreement with the surface owner. The surface use agreement must address how the surface owner will be compensated for lost **value, use, and enjoyment of his or her property, including, but not limited to,** agricultural income and lost value of improvements directly caused by oil and gas exploration and production.

02. Surface Owner Notification. Any agreements between the owner/operator and surface owner MUST be in writing, and a copy must be provided to the Dept.

03. Surface Owner Objection. If the surface owner has a mortgage that has a Uniform Deed of Trust then the surface owner should be given the opportunity to contact his/her mortgage company, and his/her insurance company to ensure that they will not find the surface owner in default and/or cancel insurance coverage. This may take longer than thirty, or even sixty days. The proposed surface use bond amount will probably also reflect any answers received from lenders/insurers, so how can the surface owner know what to ask for before all their questions are answered?

Also, beginning surface disturbing activities prior to resolving the surface bond does not show due regard for private property rights. Under no circumstances should any surface disturbing activities occur prior to consultations/answers from lenders and insurance companies nor should any activities occur prior to a hearing before the IOGCC on the surface owners objection.

Accordingly, we propose the following amended language:

"If the surface owner disagrees with the owner's or operator's proposed surface use bond amount, the surface owner must send a written objection to the Department within thirty (30) days of receiving the notification from the owner or operator. **This period will be extended to**

[1] While Rule 110 was not listed on any of the Department's agendas for the negotiated rulemaking sessions, Mr. Johnson repeatedly responded to our questions and comments by referring us to the Surface Owner Protections rule. Accordingly, we address them here.

ninety (90) days if the surface estate is subject to a mortgage or insured by a policy with exclusions for hazardous materials.

i. The objection must contain the owner's or operator's proposed surface use bond amount.

ii. Any surface owner who files an objection is entitled to a hearing.

iii. Any objection will delay the owner's or operator's proposed start of surface disturbing activities."

04. Surface Use Bond. In no case should any work be allowed to move forward until twenty-eight (28) days after the Department has issued its final order establishing the amount of the bond.

While we agree that there should be a minimum bond amount, $5,000 is insufficient. In other states, surface owners have lost structures due to accidents and fires. **The minimum surface use bond shall be twenty-five thousand dollars ($25,000).**

In addition, a subsection should be added establishing a special account where all bonds will be held in trust for the surface owners, providing for stringent accounting practices, and setting up the process whereby the surface owner may seek restitution.

05. Hearing to Determine Surface Use Bond.

Expediting the hearing to determine the amount of the surface bond puts the surface owner at a disadvantage. Hearings should be scheduled a minimum of thirty (30) days after the filing of the objection and an opportunity for discovery provided so that the surface owner can retain expert assistance and review the basis for the owner or operators' claims. The reference to judicial review is redundant of the Idaho APA's language. Accordingly, we propose the following amended language:

"When the owner, operator, or surface owner objects to the Department's proposed surface use bond, a hearing will be scheduled **no less than thirty (30) days after the filing of the objection** to determine the final bond amount. **The surface owner shall have the opportunity to conduct discovery into the basis for the bond amounts proposed by the owner or operator and the Department.** The owner, operator, surface owner, and Department may offer testimony to the hearing officer. The hearing officer will recommend a final bond amount to the Commission."

07. Forfeiture of Surface Use Bond: Is this wording correct? Shouldn't it read, "the Owner/Operator shall forfeit this bond upon failure of the owner/operator to reclaim the disturbed area etc? Also, the phrase "in a timely manner" is too vague to protect the rights of the surface owner. We propose the following amended language:

"The owner or operator **forfeits** this bond upon the failure to reclaim the disturbed area **within sixty (60) days of the completion of drilling operations,** or upon failure of the parties to reach a surface use agreement, upon the completion of drilling operations**.**"

Rule 130. Integration— We object to forced integration of any kind. However, if there is to be a rule permitting forced integration, it must go further to protect the rights and interests of affected individuals than the current draft or Rule 130 does.

Integration orders must be final before drilling occurs and integration application must also contain detailed information about where the various components of the drilling and processing operations will be located. Absent a detailed integration order, the owners/operators may read the rule to allow them to construct structures and drill before integration is complete, without giving the wishes of the surface or mineral owner any consideration, and without appropriate safeguards for health, safety or the environment.

We suggest the following language:

"When two or more separately owned tracts or interests are within a spacing unit, the owners of the tracts or interests may voluntarily integrate their tracts or interests for the development and operation of the spacing unit. In the absence of voluntary integration and upon an application by an owner within a spacing unit, the Commission may make, **before drilling**, an order integrating all tracts or interests within the spacing unit for the development and operation of the spacing unit."

01. Integration Application.

The percentage of owners who consent to the forced integration must be increased to **at least seventy-five percent (75%).** To allow a lower percentage would strongly weight the process in favor of large, absentee mineral rights owners who will not have to live with the impacts of oil and gas drilling, processing, or mineral depletion.

In addition, IDL must provide procedural protections for property owners and other affected individuals. The absence of specific, procedural requirements puts citizens at a distinct disadvantage, weighing the process in favor of drilling proponents. The absence of specific requirements may result in uneven application of the regulations, such as one property owner being allowed sufficient time to prepare his case for hearing while another must proceed without the benefit of expert assistance or discovery.

"c. Plat of the subject spacing unit identifying the proposed locations of well location, tank battery location, **roads, pipelines**, **production facilities, processing facilities, and other structures, as well as** ownerships of tracts and interests within the spacing unit;

g. A proposed Joint Operating Agreement, **complete with business plan, showing estimated project costs**.

h. Affidavits indicating that **at least seventy-five percent (75%)** of the owners in the spacing unit support the integration application."

i. A list of bonus premiums paid to leased mineral interest owners **in the spacing unit** prior to filing the integration application, **including the date when these premiums were paid**.

02. "The Commission will schedule a formal hearing no less than sixty (60) days after receipt of the integration application. If the home/land owner has a mortgage that has a Uniform Deed of Trust then the home/land owner should be given the opportunity to contact his/her mortgage company, and his/her insurance company to ensure that they will not find the home/land owner in default and/or cancel insurance coverage. This may take longer than sixty days. **This timeframe may be extended to allow homeowners additional time, if necessary, to get written opinions from their mortgage lender and insurance companies.**

a. Notice of the hearing will be sent to the applicant and all owners to be integrated under the application by certified mail to the last known address.

b. The hearing will be presided over by a hearing officer appointed by the Commission. No individual who has leased his or her mineral rights or who has an ownership interest in an oil or gas company shall serve as a hearing officer.

c. The hearing officer shall ensure that all owners in the spacing unit receive:

i. A complete copy of the integration application;

ii. A resume of the geologist who prepared the geological report, including disclosure of how the study was funded; and

iii. An opportunity to conduct discovery.

Rule 131. Integration Orders—

We again object to forced integration. A property owner should have the opportunity to opt out entirely.

Integration orders should specify how integration will occur so that the Department can accurately assess the interests of the various parties involved and set forth appropriate protections in the integration order. Again, the failure to specify which terms must be included in an integration order risks uneven application of the law. Integration orders will also provide property owners, as well as owners and operators, certainty about how operations will proceed, enabling them to make informed choices about operations, future use of their property, etc.

Language also needs to be added to this section that provides for an expiration date of the integration order. The situation on the ground may change, property or mineral rights may be sold to a new owner, and property owners have the right to be certain about what will happen to their property. An integration order that is granted and not acted upon would create needless uncertainty and stress.

In addition, language needs to be added prohibiting the owner or operator from creating a surface disturbance on the land of anyone who has been "deemed to be leased."

Accordingly, we propose the following language, including the addition of Rule 22.05.02.131.05:

"**If the Commission approves an application for integration**, the Commission will issue an integration order. The integration order will authorize the drilling and operation of a well in a spacing unit, prescribe the time and manner in which all owners in the spacing unit may elect to participate therein, and prescribe the manner for the payment of the costs of drilling and

operating the well upon terms that are just and reasonable pursuant to Section 47-322, Idaho Code. **The integration order will either approve the statement of proposed operations (Rule 130.01(f)) and the locations for various structures approved in the plat of the subject spacing unit (Rule 130.01(c)), or prescribe appropriate modifications to protect property rights, privacy interests, human health, and/or the environment. All construction, drilling, and operations within the spacing unit must thereafter comply with the integration order.**

01. Participation Terms. Upon issuance of an integration order by the Commission, the operator of the integrated spacing unit must issue an elections form to all non-leased owners in the spacing unit by certified U.S. mail, return receipt requested. **The response deadline shall be no sooner than thirty (30) days from date of receipt of the elections form.** The election form must clearly identify the participation terms, the course of action if an owner does not respond to the election form, and a response deadline. The terms in Subsections 131.02, 03, and 04 of these rules are available to non-leased owners in an integrated spacing unit.

04. Lease. An owner may enter into a lease with the operator of the integrated spacing unit under the terms and conditions in the integration order. The owner will receive one-eighth (1/8) royalty. The operator of an integrated spacing unit must pay a leasing mineral owner the same bonus premium per acre as the operator originally paid to other owners in the spacing unit prior to the issuance of the integration order. If an owner fails to make an election within the election period set forth in the integration order, such owner's interest will be deemed leased under the terms and conditions in the integration order. **An owner or operator shall not cause any surface disturbance on the property of a surface owner who has been deemed to be leased**.

05. Integration orders shall expire automatically one year from the date of their issuance. Should the owner or operator fail to commence drilling operations within that time period, he, she or it will need to reinitiate the integration process and acquire a new integration order."

Rule 210. Well treatments—

01. Application required. As currently proposed, this regulation does not provide sufficient protection for public health, safety, property rights, or the environment. Operators should be required to disclose the well stimulation techniques that they believe they will be using on the original application. Any changes to this plan that may become necessary can then be addressed through an application to amend. In addition, cleaning the casing should be considered a well treatment. Such cleaning may involve the use of Hydrochloric Acid-HCL in a process that has been called, "mini-fracking." We suggest:

"An Application for Permit to Drill required by Section 050200 must include any plans for well treatment. **Operators may thereafter apply to amend the permit with an application fee. The Operator must provide the public notice of an application to amend in the same manner as if it were a new Application for Permit to Drill.** Approval by the Department **and**

public notice is required prior to **any** well treatments being implemented. Actions to clean the casing or perforations **are** considered to be well treatments. Applications for well treatments must include the permit number, well name, well location, as-built description if drilling has been completed, and

g. Method and timeline for the management.

Our comments: The reference to an "anticipated" disposal method is inappropriate here. As a matter of public health and safety, an operator should not be allowed to conduct a well treatment unless they have provided a complete, thorough, and documentable way to track the waste products from the well site to where it will be disposed of in an approved facility. The Department of Environmental Quality should be provided with a bill of lading for each and every truck that leaves the site with waste products. The party receiving the waste should then be required to provide DEQ with a signed document verifying receipt of the waste.

k. Fresh water protection plan.

The Department must consult with DEQ and DEQ must have the final authority over any fresh water protection plan. The terms of the plan as currently proposed do not provide enough protection for public health, private property rights or the environment. We suggest:

"**A fresh water protection plan that has been approved by DEQ. The fresh water protection plan must** describe the proposed site specific measures to protect water quality from activities associated with well treatments, and include:

ii. A **sworn statement signed by both the owner or operator and any subcontractor charged with hauling waste certifying that the owner or operator is complying with Spill Prevention, Control, and Countermeasures (SPCC) requirements administered by the EPA**

iii. A preconstruction topographic site map or aerial photos identifying all habitable structures, **active wells, plugged wells, abandoned wells**, perennial and intermittent springs, surface waters, **irrigation ditches, and any other water source** within **one (1) mile** of **any surface and below-ground well activities, be it a vertical, diagonal, or horizontal well**.

220. Bonding "The Department shall, accept as hereinafter provided require from the owner or operator a good and sufficient bond in the sum of not less than ten thousand dollars ($10,000) plus one dollar ($1.00) for each foot of planned well length in favor of the Department. The bond shall be conditioned upon the performance of the owners or operators duty to comply with the requirements of the Act and the rules of the Commission, with respect to the drilling, maintaining, operating, and plugging of each well drilled for oil and gas and the reclamation of surface disturbance associated with these activities. Said bond shall remain in force and effect until the plugging of said well is approved by the Department and the well site is reclaimed as described in Section 510 of these rules, or the bond is released by the Department."

Our proposed language: **The Department shall, require from the owner or operator, a valid bond in a minimum amount of twenty five thousand dollars ($25,000), plus eight dollars**

($8.00), for each foot of planned well length in favor of the Department. The bond shall be conditioned upon the performance of the owners or operators duty to comply with the requirements of the Act and the rules of the Commission, with respect to the drilling, maintaining, operating, and plugging of each well drilled for oil and gas and the reclamation of surface disturbance associated with these activities. Said bond shall remain in force and effect until the plugging of said well is approved by the Department, and **said plugging is completed,** well site is reclaimed as described in Section 510 of these rules, or the bond is released by the Department."

02. Blanket Bond

a. Up to ten (10) wells, **two hundred fifty thousand dollars ($250,000.)**
b. Eleven (11) to thirty (30) wells, **seven hundred fifty thousand dollars ($750,000);**
c. More than thirty (30) wells, **five million dollars ($5,000,000.)**

03. Inactive Well Bond. An owner or operator must provide the Department with a bond of at least **twenty five thousand dollars ($25,000**.), plus eight dollars ($8.00) for each foot of planned well length for each inactive well conditioned upon the performance of the duty to comply with the requirements of the Act and the rules of the Commission, with respect to the drilling, maintaining, operating, and plugging of each well drilled for oil and gas.

301. Well Site Operations

01. Fencing. We would include one additional sentence, **"In the event that a mutual agreement cannot be made, the landowner will make the final determination as to what type of fencing shall be constructed."**

302. Accidents and Fire. Our suggested language: **The owner or operator shall take all precautions to prevent accidents and fires.**

310. General Drilling Rule

12.Well Control (cable tools) Fluid Containment.

e. Bi-annual inspections shall be conducted by the Department.

413. Gas Utilization. After a well is completed and while it is being tested, the owner or operator may flare gas for no more than fourteen (14) days without paying royalties and severance taxes on the flared gas. Under no conditions may gas be flared for more than sixty (60) days, after a well is completed or recompleted. Prior to flaring gas, owner or operators must notify the county in which the well is located and all owners of occupied structures within one-quarter (1/4) mile radius of the well. After the owner or operator has tested a well no gas from such well shall be permitted to escape into the air, and all gas produced therefrom shall be utilized without waste.

Our comments: In order to protect private property rights, the public's health and the environment, **the notification requirements should extend for AT LEAST one mile from the actual well site. Unless a bona fide emergency situation exists, and has been verified by the Department, under no circumstances should flaring occur for more than thirty days in a twenty four (24) month period. This twenty four (24) month period would begin on the following calendar day after flaring ends**.

Rule 420. Tank batteries—

The location of surface waters needs to be identified specifically and in a manner consistent with the practices of the Department of Environmental Quality.

01. Location of Tank Batteries—

"No tank batteries may be constructed within **five hundred (500)** feet of existing occupied structures, water wells, and the **ordinary high water mark** of surface waters, or within fifty (50) feet of highways, as measured from the outermost portion of the tank dike. The owner of a water well or existing occupied structure may provide express written permission to construct a tank battery closer than **five hundred (500)** feet , but in no event may a tank battery be constructed within **three hundred (300)** feet of a water well or existing occupied structure."

02. Containment Requirements

a. Tank dikes must be designed to have a capacity of **1-1/2 times the TOTAL capacity of ALL tanks on site.**

b. We feel this is a good description and strongly object to the proposed language submitted by Mr. Peiserich.

430. Gas Processing Facilities

01. Location of Gas Processing Facilities. No gas processing facility may be constructed within **one thousand (1,000)** feet of existing occupied structures, water wells, canals and ditches, the natural or ordinary high water mark of surface waters, or within fifty (50) feet of highways, as measured from the outermost portion of the gas processing facility. The owner of a water well or existing occupied structure may provide express written permission to construct a gas processing facility closer than **one thousand (1,000)** feet, but in no event may a gas processing facility be constructed within **five hundred (500)** feet of a water well or existing occupied structure.

03. Meters and Facility Plans. Gas processing facilities must account for all liquids and gas entering and leaving the facility with accurate meters. **All meters must be inspected bi-annually by a qualified, independent testing firm**.

04. Flaring. A gas processing facility not constructed on a well site may release gas by flaring for a period not to exceed twenty-four (24) hours due to maintenance needs or emergency situations. The operator of a gas processing facility must notify the Department when gas is flared at the facility as soon as reasonably possible after flaring begins. The Department may administratively approve flaring for a period greater than twenty-four (24) hours, but no longer than sixty (60) days, per event if the operator of the facility presents information that shows the necessity for flaring. If gas will be flared for more than **twelve (12)** hours, operators of gas processing facilities must notify the county in which the gas processing facility is located, and all owners of occupied structures within one-quarter (1/4) mile radius of the gas processing facility.

Our comments: In order to protect private property rights, the public's health and the environment, **the notification requirements should extend for AT LEAST one mile from the**

actual gas processing facility. Unless a bona fide emergency situation exists, and has been verified by the Department, under no circumstances should flaring occur for more than thirty days in a twenty four (24) month period. This twenty four (24) month period would begin on the following calendar day after flaring ends.

In response to Mr. Peiserich's emailed comment that, "as you probably know, in processing and transportation facilities flares are used as pollution control devices. In particular, I expect to operate flares to destroy emissions from tanks and railcars to avoid unnecessary emissions. I think it would be appropriate to add a provision that says flaring for the purposes of emission control is not limited to sixty days."

We find this suggestion highly offensive and vehemently object to flaring as a means of emission control. Emission control technology exists that prevents the need for flaring, other than under emergency situations. The public's health should not have to suffer because an oil or gas company does not want to invest in the most current and best technology.

Thank you for your thoughtful and careful consideration of our comments on these draft rules.

Sincerely,

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