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NDIC To Hold Special Hearing on Potential Output Restrictions

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Last month, North Dakota adopted a waiver program that allowed O&G producers to keep wells in non-completed or inactive status longer than regulations typically permitted. The policy was designed to prevent producers from either bringing more unwanted crude to market or being forced to abandon wells.

Now, North Dakota is looking into requiring oil and natural gas production cuts. The North Dakota Industrial Commission ("NDIC") has announced the Oil and Gas Division of the Department of Mineral Resources has scheduled a special hearing for May 20 on whether or not the current production of oil and natural gas at low prices is a waste of energy pursuant to North Dakota Century Code § 38-08-02(19); the consequences of determining that waste is occurring, and what relief may be appropriate and necessary to prevent the waste of North Dakota crude oil production.

Under N.D.C.C. § 38-08-03, waste of oil and gas is prohibited. Section § 38-08-04, N.D.C.C., provides that the commission has authority to determine whether waste exists or is imminent, and to limit and allocate production of oil and gas from any field, pool, or area and to establish and define as separate marketing districts those contiguous areas within the state which supply oil and gas to different markets, and to limit and allocate the production of oil and gas for each separate marketing district. Section § 38-08-06 provides further guidelines for determining market demand and regulate the amount of production in marketing districts:

> The commission shall determine market demand for each marketing district and regulate the amount of production as follows:
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> 1. The commission shall limit the production of oil and gas within each marketing district to that amount which can be produced without waste, and which does not exceed the reasonable market demand.
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> 2. Whenever the commission limits the total amount of oil or gas which may be produced in the state or a marketing district, the commission shall allocate or distribute the allowable production among the pools therein on a reasonable basis, giving, where reasonable under the circumstances to each pool with small wells of settled production, an allowable production which prevents the general premature abandonment of such wells in the pool.
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> 5. . . . The commission shall allocate the total allowable for the state in such manner as prevents undue discrimination between marketing

districts, fields, pools, or portions thereof resulting from selective buying or nomination by purchasers.

In the past, the above statutes have rarely been utilized by the NDIC; however, the May 20 special hearing by the NDIC could potentially lead to output restrictions. Lynn Helms, director of the Oil and Gas Division of the state's Department of Mineral Resources, previously advised against a decision to order output pro-rationing. The commission has asked oil and natural gas producers to weigh in on a wide array of oil market issues and the challenges of cutting or shutting in production. Written comments are due to the commission by May 15.

North Dakota will join Oklahoma in considering a similar proposal. Oklahoma regulators have enabled producers to voluntarily shut in their wells, but will revisit that decision and consider issuing an additional order in May that could force operators to limit oil production rates to prevent waste. A similar order was proposed in Texas that would have required oil companies operating in Texas to cut production by 20 percent, but after a month-long debate, Texas energy regulators on Tuesday said they will not wade into global oil politics to mandate oil production cuts for the first time in 50 years, despite crude oil's plummet to historic lows.