



STATE CAPITOL
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SENT VIA EMAIL

January 14, 2014

Hon. Jack Dalrymple, Governor
Hon. Wayne Stenehjem, Attorney General
Hon. Doug Goehring, Agriculture Commissioner
North Dakota Industrial Commission
600 E Boulevard Ave. Dept. 405
Bismarck, ND 58505-0840

Dear Governor Dalrymple, Attorney General Stenehjem, and Agriculture Commissioner Goehring:

We are writing with serious concerns regarding the Industrial Commission's oversight of the Department of Mineral Resources and ask that you take steps to restore public trust that has been shaken by recent events related to the development of our state's oil resources.

Specifically, it has become clear that current law and Industrial Commission practices, which vest the Director of Mineral Resources ("Director") with the dual role of promoter and regulator of the state's oil industry, present an irreconcilable conflict of interest that undermines public health, safety and, potentially, continued public support for oil development.

As you are aware, N.D.C.C. § 38-08-01 declares it the policy of the state "to promote the development, production, and utilization of natural resources of oil and gas" for the sake of various ends, including providing for "a greater ultimate recovery" of these resources. On the other hand, the Industrial Commission is responsible for regulating all "operations for the production of oil and gas" under N.D.C.C. § 38-08-04. The Industrial Commission has delegated virtually all of its powers under this chapter of the Code to the Director, Mr. Lynn Helms, pursuant to N.D.C.C. § 38-08-04.2.

For all practical purposes, the Industrial Commission's broad delegation of authority has tasked Director Helms with promoting oil development while simultaneously regulating it. Recent, high-profile incidents across the state confirm the public is ill-served by a Director who is charged with regulating the development he is duty-bound to promote.

Take last fall's spill of over 20,000 barrels of oil from a pipeline near Tioga, for example. The public, and legislators like ourselves, were initially kept in the dark about the existence of the spill and later became anxious for updates after learning of this extraordinary failure. However, an open-records request by a member of the media revealed that while the rest of us scrambled for answers, Director Helms had shared detailed opinions on the cause of the spill with a relative in a private email message. Even accounting for the Director's lack of jurisdiction over pipelines, we believe our state's oil

regulator should have first shared that information with legislators and the public. Perhaps fearful that doing so would detract from his statutory duty to promote oil development, Director Helms stayed silent.

In contrast to Director Helms' silence on this issue was his outspokenness on the matter of shipping the vast majority of North Dakota's oil by rail using existing rail cars. Just weeks before a train derailment caused a horrific explosion and evacuation of the city of Casselton, Director Helms was working to craft a white paper that would "dispel this myth that [Bakken crude] is somehow an explosive, really dangerous thing to have travelling up and down rail lines." This lays bare the moral and actual hazard of vesting both the promotion and regulatory functions in the Director position.

The siting of oil drilling waste on top of the city of Ross' water supply by Director Helms, under authority delegated to him by the Industrial Commission, is also cause for concern. While we understand Director Helms has pled human error with regard to the siting of these waste pits, we believe the chances for such human error would be meaningfully diminished if the role of promoting oil development were separated from the regulation of such development.

In consideration of the above, we respectfully request that you take the following steps. First and in the near term, we believe it is necessary for the Industrial Commission to separate and clarify the roles of promoter and regulator using its broad authority under Chapter 38-08 of the Code. Second, we ask for your support of legislation we intend to introduce next legislative session that would once and for all separate these two important – but incompatible – functions. We intend to base this legislation on a concept identified by Governor Dalrymple in the 2011-2013 executive budget, which would have established "a new division within the North Dakota Department of Commerce" with the sole focus of "promoting the development of all of North Dakota's energy resources," including oil and gas. We agree that "[t]he potential for energy development in our state is so great that we need a full-time director leading the energy effort." We also believe that this tremendous potential for further development requires a full-time Director charged with the exclusive duty of protecting the public.

To be clear, we deeply value the oil industry's impact on North Dakota's economy. In fact, it is because of the importance of the industry to the state that we must take steps to restore citizens' faith that we need not trade public health and safety for the sake of development. Such a result will also send a message nationally and ensure North Dakota is able to stave off any attempts by the federal government to increase its regulatory role within our state.

It is apparent there is no longer any viable policy rationale for having our state's oil regulator also be the lead promoter of oil development, if such a rationale ever existed. We thank you for your consideration and look forward to working with you on this issue.

Sincerely,



Mac Schneider
Senate Minority Leader



Kenton Onstad
House Minority Leader