

LETTER OPINION
95-L-33

February 10, 1995

Representative David Drovdal
North Dakota House of Representatives
State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

Re: House Bill 1406

Dear Representative Drovdal:

Thank you for your letter asking whether House Bill No. 1406, as amended by the House Natural Resources Committee on February 3, would require the Industrial Commission to take into account protests of residents or landowners when deciding whether to issue a permit to drill or reenter a well. You also asked whether House Bill 1406 as amended would mandate a change in the Industrial Commission's current procedure in issuing permits to drill or reenter a well.

House Bill 1406 as amended requires the mineral developer to give the surface owner written notice of drilling operations at least twenty days before (1) a permit to drill a new well may be issued or (2) a previously plugged well may be reentered. It also requires the mineral developer to give any person residing in a dwelling within one quarter mile of a proposed oil and gas well site notice, at least twenty days before a permit to drill is issued, that the mineral developer has applied for a permit to drill. If the mineral developer is reentering an existing well, the mineral developer must give any person residing within one quarter mile of the well site at least twenty days notice that the mineral developer is going to reenter the well. The notice of reentering a well is not tied to the issuance of the permit, even though a permit from the Commission is required to reenter a well.

While the bill requires notice to be given, it does not require the Industrial Commission to take into account or take any action with regard to protests of a surface owner or any other person. You stated in your letter that the twenty day notice would allow a resident or surface owner to protest the issuance of a permit at a hearing. No hearing is required by

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the Commission before it issues a permit to drill or reenter a well. Permits to drill or reenter are issued administratively by the director of the oil and gas division pursuant to N.D. Admin. Code ? 43-02-03-16 without a hearing. The bill does not require notice be given of a mineral developer's intent to reenter a well prior to the issuance of a permit. It is my opinion that House Bill No. 1406 as amended would not obligate the Industrial Commission to take into account protests of residents or landowners when issuing a permit.

N.D.C.C. ? 38-11.1-05 is part of the Surface Owner Protection Act. This section currently gives a surface owner a cause of action against a mineral developer for failing to give the required notice. House Bill 1406 would extend this cause of action to residents within one-quarter mile of a well site. Although the section as amended states that notice is required before a permit to drill may be issued, it is not clear whether the Commission has a duty to ensure notice has been given or whether it only creates a cause of action for the surface owner or other person residing near the well for failure to give the proper notice. Additionally, as I stated earlier, the notice of reentering a well is not tied to the issuance of a permit. Consequently, if there is a duty imposed on the Commission to ensure notice is given, it would only apply to permits to drill new wells and not to permits to reenter wells.

N.D.C.C. ? 38-11.1-05 as amended by House Bill 1406 would require mineral developers to give notice before a permit to drill is issued. While it is not clear whether this language imposes a duty on the Commission to ensure proper notice, the Commission could interpret this language to authorize the Commission to require mineral developers to submit a letter, affidavit, or other evidence to prove that proper notice has been given before it issues a permit to drill or reenter.

Sincerely,

Heidi Heitkamp
Attorney General

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