

PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

TO: Commissioners Clark, Wefald and Cramer
Illona A. Jeffcoat-Sacco
Bill Biniek

FROM: Jim Deutsch

DATE: October 31, 2005

SUBJECT: Proposed reclamation rule changes

Attached are the proposed changes that the Reclamation Division recommends be included as part of the Commission's next rulemaking proceeding. Some of the changes are based on suggestions from the Lignite Energy Council (see the LEC's October 27th letter that is also attached) and others are staff initiatives. We have had several discussions with LEC task members on these proposals over the past several months. The following is a summary of the proposed changes:

NDAC 69-05.2-06-03 – Additional language is being proposed that would allow a permittee to delete a coal lease from the permit when mining on the tract covered by the lease is completed and the lease is no longer needed to show surface right of entry or the lease has been terminated. However, if the coal lease no longer provides surface right of entry, other documents granting the permittee right of entry must be added to the permit. This change is being proposed due to concerns raised by Coteau and Falkirk on the time and cost of recordkeeping associated with outdated lease documents.

NDAC 69-05.2-10-01 – Changes recommended by the LEC are included that propose 1) to delete a provision that requires the newspaper notice for permit applications include a reference to the United States Geological Survey (USGS) map that contains the area and 2) limit the listing of coal owners in the notice to those that will be affected by the mining activities. The corresponding OSM rule has been revised to delete the reference to the USGS map. We believe the proposed change on the listing of coal owners is reasonable.

NDAC 69-05.2-12-12 – Changes to information required for bond release applications include a LEC proposal to change the requirement that the permittee submit proof (an affidavit) of publication within 30 days of submitting the application to submitting a copy of the advertisement that was published. This change is reasonable since an affidavit cannot be provided until all publications (once a week for 4 consecutive weeks) are complete. The change is also consistent with OSM rules. The Reclamation Division also recommends adding a cross-reference to information that is required by the "replacement of water supply" definition in another section of the rules.

NDAC 69-05.2-16-09 – Changes to sedimentation pond inspection requirements are based on the LEC proposal. The proposed changes made better distinction between inspections that must be conducted while a pond is being constructed versus annual inspection reports that must be prepared by registered professional engineer. The changes also eliminate the requirement that inspection reports prepared during pond construction be submitted to the Commission. However, reports for each of these inspections would have to be prepared and maintained at or near the mine site.

NDAC 69-05.2-22-07 – Changes to revegetation success standards are recommended by the Reclamation Division that are similar to those proposed by OSM earlier this year. The changes will allow the use of data collected in any two years following year six of the ten-year revegetation liability period for native grassland, tame pastureland and cropland uses. Currently, data from the last two consecutive years of the liability period or any three years starting no sooner than year six of the liability period (with one being the last year of the liability period) must be provided to demonstrate reclamation success. Also, for woodlands, shelterbelts and fish and wildlife habitat, only one year of data would be needed to prove reclamation success on these land uses. Additional language is proposed for woodland and shelterbelt standards that clearly allow the counting of volunteer trees and shrubs for meeting the standards. Similar changes should be approved by OSM within the next couple of months. These changes may result in some reclaimed tracts being bond released sooner.

NDAC 69-05.2-24-01 – A change to the road performance standards is proposed by the Reclamation Division to correct a cross reference error.

The LEC also recommended that we propose a change to NDAC 69-05.2-16-14 to change the annual ground water monitoring report to a biennial report. The LEC letter indicated the Reclamation Division would accept this proposal; however, this was tied to adding a similar requirement for a biennial surface water report. Industry opposes that requirement and we do not recommend any change to the ground water rule at this time. This matter will be discussed further with LEC task force members in the future.

An item will be added to the administrative agenda for the November 2 Commission meeting to discuss these proposed rule changes.

Attachments