

## **Memorandum**

**TO:** Mine Operators and Other Interested Parties

**FROM:** Jim Deutsch, Reclamation Division

**DATE:** November 18, 2005

**SUBJECT:** Proposed mining and reclamation rule changes, Case No. RC-05-591

Enclosed are copies of the hearing notice and proposed rule changes affecting surface coal mining and reclamation operations. Some of the changes are based on suggestions from the Lignite Energy Council and others are staff initiatives. 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 otherwise 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.

NDAC 69-05.2-10-01 – Changes are proposed to 1) 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.

NDAC 69-05.2-12-12 – Changes are proposed to change the existing 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 proposed since an affidavit cannot be provided until all publications (once a week for 4 consecutive weeks) are complete. Another change adds a cross-reference to information that is required in certain final bond release applications by the “replacement of water supply” definition.

NDAC 69-05.2-16-09 – The proposed changes to sedimentation pond inspection requirements make a 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 – Proposed changes to revegetation success standards are similar to those proposed by the Office of Surface Mining to the counterpart federal rules 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 to allow the counting of volunteer trees and shrubs for meeting the standards. 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 to correct an existing cross reference error.

The hearing on these proposed rule changes will be held at 1:00 p.m. on January 4, 2006 in the Commission Hearing Room at the State Capitol. The deadline for submitting written comments is January 17, 2006. If you have any questions, please contact the Reclamation Division.

#### Attachments

jrd\2005 bonding rule changes\MemoProposedRules.doc