

## **Testimony for Case No. RC-05-591**

### **Proposed Changes to NDAC Article 69-05.2 Surface Coal Mining and Reclamation Operations**

**January 4, 2006**

I am Jim Deutsch, Director of the Public Service Commission's Reclamation Division. I will explain the rule changes in Case No. RC-05-591. The changes are proposed to North Dakota Administrative Code Article 69-05.2, rules for surface coal mining and reclamation operations. Some of the changes are based on suggestions from the Lignite Energy Council and others are staff initiatives.

Additional language is proposed to NDAC 69-05.2-06-03 containing right of entry requirements to allow a permittee to delete coal leases from the permit when mining on the tract covered by a lease is completed and the lease is no longer needed to show surface right of entry, or when a coal lease has been otherwise terminated. However, if the coal lease no longer provides the surface right of entry, other documents granting the permittee right of entry must be added to the permit.

One of the changes proposed to NDAC 69-05.2-10-01 deletes language that requires the newspaper notice for permit applications include a reference to the United States Geological Survey (USGS) map that contains the area and the other limits the listing of coal owners in the notice to those that will be affected by the mining activities.

A change to the bond release application requirements under NDAC 69-05.2-12-12 will require the filing of a copy of the newspaper advertisement within 30 days of submitting the application instead of requiring the submittal of affidavits of publication within 30 days of submittal of the application. This change is proposed since an affidavit cannot be provided until all publications (once a week for 4 consecutive weeks) are complete, which is almost always later than 30 days after the bond release application is filed. Another change adds a cross-reference to another rule that requires additional information if a final bond release application involves an area that contained a premine water supply that is not being replaced.

Changes are proposed to NDAC 69-05.2-16-09 on sedimentation pond inspection requirements to 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 a registered professional engineer. The changes will also eliminate the requirement that inspection reports prepared during pond construction be submitted to the Commission. However, reports for each of these inspections will still have to be prepared and maintained at or near the mine site.

The proposed changes to the revegetation success standards under NDAC 69-05.2-22-07 are similar to those proposed by the Office of Surface Mining in March of 2005 to the counterpart federal rule. The changes will allow data collected from native grassland, tame pastureland and cropland in any two years after year six of the ten-year revegetation liability period to be used for final bond release purposes. 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 used to demonstrate reclamation success. In addition, only one year of vegetation data would be needed to prove reclamation success on reclaimed woodlands, shelterbelts, and fish and wildlife habitat. New language is also proposed for woodland and shelterbelt standards that allow certain volunteer trees and shrubs to count towards meeting the revegetation standards. These changes should result in some reclaimed tracts being bond released sooner. OSM expects to issue its final rule in early 2006.

Also, a minor change is proposed to the road performance standards under NDAC 69-05.2-24-01 to correct a cross reference error.

Regulatory and takings assessments for these rule changes have been prepared and copies are available for review. This concludes my testimony on the mining and reclamation rule changes proposed in Case No. RC-05-591.