

LEGISLATIVE COUNCIL
ADMINISTRATIVE RULES COMMITTEE

March 8, 2007

N.D. Admin. Code Art. 69-05.2 (Surface Coal Mining and Reclamation Operations)

Mr. Chairman and committee members, my name is Dean Moos, I am the Assistant Director of the Reclamation Division of the Public Service Commission. I am here to respond to the questions posed concerning a rulemaking proceeding involving surface coal mining and reclamation operations, PSC Case No. RC-05-591.

The responses to the questions posed to us by the Legislative Council's staff are presented below. In each case, the question is restated prior to the response.

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.

No

2. Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.

Mining and reclamation rules adopted by the Commission must be as effective as counterpart regulations adopted by the Office of Surface Mining Reclamation and Enforcement (OSM) within the Department of the Interior. North Dakota's reclamation law is based on the federal Surface Mining Control and Reclamation Act of 1977. However, the changes proposed in this rulemaking proceeding were not mandated by OSM.

3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.

On November 17, 2005, the Commission issued a Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing. On November 22, 2005, the Commission issued an Amended Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing. The amended notice of the rulemakings was published in daily newspapers throughout the state as required by North Dakota Century Code Chapter 28-32. A public hearing was held at 1:00 p.m., CST, January 4, 2006, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. The deadline for comments was January 17,

2006. Following receipt of the Attorney General's opinion on the rule changes on May 15, 2006, the proposed rule changes were submitted to OSM for its approval. OSM published notice of the proposed rule changes in the Federal Register in the summer of 2006 and the approval notice was published in the December 20, 2006 Federal Register.

- 4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.**

Other than staff testimony explaining the proposed rule changes at the hearing, no comments or testimony were received before, at, or after the hearing. The rules were adopted as proposed.

- 5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.**

Legal notices associated with this rulemaking proceeding cost \$1,540. Other than staff time, no other significant costs were incurred.

- 6. An explanation of the subject matter of the rules and the reasons for adopting those rules.**

The amended rules contain changes that will allow some lease documents to be deleted from a mining permit once mining is completed or when a lease is otherwise terminated. The name of the United States Geological Survey map containing the proposed permit area and the names of subsurface owners who are not affected by mining activities will no longer have to be included in newspaper notices for permit applications. A change was made with regard to submitting copies of newspaper notices for bond release applications. Periodic inspection requirements for sedimentation ponds and other impoundments are being clarified. These changes were recommended by the mining industry.

The rule changes also will give mining companies more flexibility in deciding which two years of vegetation data is provided when proving reclamation success for final bond release. New language is also added to revegetation success standards on the counting of volunteer trees and shrubs to prove reclamation success. In addition, data is needed from only the last year of the revegetation liability period for tree and shrub plantings. These were based on similar changes that were made to the counterpart federal rules by OSM.

In addition, a cross reference was added to the rule containing bond release requirements to refer to the water supply replacement definition that also includes a bond release requirement. A cross reference error was also corrected in the general road requirements.

- 7. Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.**

A copy of the Regulatory and Takings Assessment for the proposed rules is attached. The proposed rules are not expected to have an impact on the regulatory community in excess of \$50,000.

- 8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide a copy.**

Yes, the regulatory analysis is attached as noted above.

- 9. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. Please provide a copy if one was prepared.**

Yes, that assessment is part of the attached Regulatory and Takings Assessment.

- 10. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.**

These rules were not adopted as emergency rules.

Mr. Chairman, that completes my testimony. I would be happy to respond to any questions that committee members might have.

Attachment

caselib\050591\Testimony for Admin Rule Committee