



North Dakota Legislative Council

STATE CAPITOL, 600 EAST BOULEVARD, BISMARCK, ND 58505-0360 (701) 328-2916 TTY: 1-800-366-6888

AL CARLSON
State Representative
Chairman

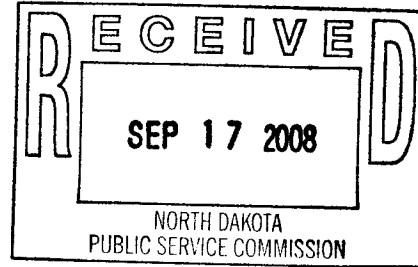
JIM W. SMITH
Director

JAY E. BURINGRUD
Assistant Director

ALLEN H. KNUDSON
Legislative Budget
Analyst & Auditor

JOHN WALSTAD
Code Revisor

September 17, 2008



Ms. Illona A. Jeffcoat-Sacco
Executive Secretary
Public Service Commission
State Capitol
Bismarck, ND 58505

Dear Ms. Jeffcoat-Sacco:

We have completed preparation of the North Dakota Administrative Code rules changes you recently submitted to our office for publication. Enclosed are copies of two different versions of those rules.

The first enclosed copy shows revised North Dakota Administrative Code sections as they will be published in the next supplement of the North Dakota Administrative Code. There is an instruction sheet for replacement of obsolete pages with these updated pages to be used if your agency maintains a full-sized set of your rules. If you maintain the published North Dakota Administrative Code in reduced size binders, the reduced size replacement pages will be sent to you soon.

The other enclosed copy shows our editorial changes to the rules as submitted. Please observe the style and grammar changes we have made.

Please contact this office if you have any questions regarding these rules. If these rules will be reviewed by the Administrative Rules Committee, we will contact you when the meeting is scheduled.

Sincerely,

John Walstad
Code Revisor

JW/JFB
Encs.

39 **PU-07-642** Filed: 9/17/2008 Pages: 9
**Administrative Rules - As Published and with
Editorial Changes**

Legislative Council

NORTH DAKOTA ADMINISTRATIVE CODE

Supplement 330

October 1, 2008

The North Dakota Administrative Code Supplement is published each month following the month that rules are filed with the Legislative Council office. A historical source note immediately follows an affected section and indicates the effective date of any amendment, creation, or repeal. A supplement change without any historical source note corrects a nonsubstantive error in the section.

This supplement instruction page should be retained and placed behind your "supplement instruction sheets" divider in Volume 1. **Before inserting any supplement into the code be sure the previous supplement has been inserted.** For those codes purchased after August 1, 1996, the first supplement is Supplement 207.

Instructions for integrating this supplement into the Administrative Code are as follows:

	Pages to be Removed	Pages to be Inserted
NDAC Table	9 - 22	9 - 22
Chapter 4-07-34.1	1 - 4	1 - 4
Article 12.5-02 (Chapter 12.5-02-01)	1 - 20	1 - 18
Chapter 13-03-02	1 - 3	1 - 3
Chapter 13-03-16	1 - 8	1 - 8
Article 43-02 (Chapter 43-02-01)	1 - 2	1 - 2
Chapter 43-02-02	1 - 17	1 - 17
Title 46	1	1
Article 46-04 (Chapter 46-04-01)		1 - 10
Article 54-07 (Chapter 54-07-01)	1 - 2	1 - 2
Chapter 54-07-02	1 - 3	1 - 3
Chapter 54-07-03.1	1 - 3	1 - 3
Article 54-09 (Chapter 54-09-01)	1	1
Chapter 69-09-09		1 - 3
Chapter 75-02-04.1	1 - 23	1 - 23

**CHAPTER 69-09-09
WIND TURBINE DECOMMISSIONING**

Section	
69-09-09-01	Definitions
69-09-09-02	Cost Responsibility
69-09-09-03	Useful Life
69-09-09-04	Decommissioning Period
69-09-09-05	Decommissioning Requirements
69-09-09-06	Decommissioning Plan
69-09-09-07	Existing Facilities
69-09-09-08	Financial Assurance
69-09-09-09	Failure to Decommission

69-09-09-01. Definitions.

1. "Commercial wind energy conversion facility" means a wind energy conversion facility of equal to or greater than five hundred kilowatts in total nameplate generating capacity.
2. "Commission" means the public service commission.
3. "Wind turbine" means a wind turbine of equal to or greater than five hundred kilowatts in total nameplate generating capacity.

History: Effective October 1, 2008.

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

69-09-09-02. Cost responsibility. The owner or operator of a commercial wind energy conversion facility is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.

History: Effective October 1, 2008.

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

69-09-09-03. Useful life. A commercial wind energy conversion facility or individual wind turbine is presumed to be at the end of its useful life if the facility or turbine generates no electricity for a continuous period of twelve months. The presumption may be rebutted by submitting to the commission for approval a plan outlining the steps and schedule for returning the commercial wind energy conversion facility or wind turbine to service.

History: Effective October 1, 2008.

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

69-09-09-04. Decommissioning period. The facility owner or operator shall begin decommissioning a commercial wind energy conversion facility or wind turbine within eight months after the time the facility or turbine reaches the end of its useful life, as determined in section 69-09-09-03. Decommissioning must be completed within eighteen months after the facility or turbine reaches the end of its useful life.

History: Effective October 1, 2008.

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

69-09-09-05. Decommissioning requirements. Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings, and ancillary equipment to a depth of four feet [1.22 meters] and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the commercial wind energy conversion facility or wind turbine. To the extent possible, the site must be restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine. Disturbed earth must be graded and reseeded, unless the landowner requests in writing that the access roads or other land surface areas be retained.

History: Effective October 1, 2008.

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

69-09-09-06. Decommissioning plan. Prior to commencement of operation of a commercial wind energy conversion facility or wind turbine, the facility or turbine owner or operator shall file with the commission the estimated decommissioning cost per turbine, in current dollars at the time of the application, for the proposed facility or turbine and a decommissioning plan that describes how the facility or turbine owner or operator will ensure that resources are available to pay for decommissioning the facility or turbine at the appropriate time. The commission shall review a plan filed under this section and shall issue an order approving or disapproving the plan within six months after the decommissioning plan was filed. The commission may at any time require the owner or operator of a commercial wind energy conversion facility or wind turbine to file a report with the commission describing how the facility or turbine owner or operator is fulfilling this obligation.

History: Effective October 1, 2008.

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

69-09-09-07. Existing facilities. Owners and operators of existing commercial wind energy conversion facilities shall file with the commission the information required in section 69-09-09-06 within one year after July 1, 2008.

History: Effective October 1, 2008.

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

69-09-09-08. Financial assurance. After the tenth year of operation of a commercial wind energy conversion facility or wind turbine, the commission by order may require a performance bond, surety bond, letter of credit, corporate guarantee, or other form of financial assurance that is acceptable to the commission to cover the anticipated costs of decommissioning the commercial wind energy conversion facility or turbine.

History: Effective October 1, 2008.

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

69-09-09-09. Failure to decommission. If the commercial wind energy conversion facility owner or operator does not complete decommissioning, the commission may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the commission may take such action as may be necessary to decommission a commercial wind energy conversion facility or wind turbine, including the exercise by the commission, commission staff, and their contractors of the right of ingress and egress for the purpose of decommissioning the commercial wind energy conversion facility.

History: Effective October 1, 2008.

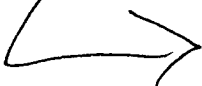
General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

Public Service Commission
Wind Turbine Decommissioning
Rulemaking

Add July 1 2008
to histories
JW

Chap. title



Proposed Rule

A new Chapter to Article 69-09:

⁰⁹
69-09-10-01. Definitions:

1. "Commercial wind energy conversion facility" means a wind energy conversion facility of equal to or greater than five hundred kilowatts in total nameplate generating capacity.
2. "Commission" means the public service commission.
3. "Wind turbine" means a wind turbine of equal to or greater than five hundred kilowatts in total nameplate generating capacity.

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

⁰⁹
69-09-10-02. Cost Responsibility: The owner or operator of a commercial

wind energy conversion facility is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

⁰⁹
69-09-10-03. Useful Life: A commercial wind energy conversion facility or

individual wind turbine is presumed to be at the end of its useful life if the facility or turbine generates no electricity for a continuous period of twelve (12) months. The

presumption may be rebutted by submitting to the commission for approval a plan outlining the steps and schedule for returning the commercial wind energy conversion facility or wind turbine to service.

General Authority: NDCC 49-02
Law Implemented: NDCC 49-02-27

⁰⁹
69-09-10-04. Decommissioning Period: The facility owner or operator shall begin decommissioning a commercial wind energy conversion facility or wind turbine within 8 months after the time the facility or turbine reaches the end of its useful life, as Section 69-09-~~09~~-03 determined in (#3). Decommissioning must be completed within 18 months after the facility or turbine reaches the end of its useful life.

General Authority: NDCC 49-02
Law Implemented: NDCC 49-02-27

⁰⁹
69-09-10-05. Decommissioning Requirements: Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of four feet, and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the commercial wind energy conversion facility or wind turbine. To the extent possible, the site must be restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine. Disturbed earth must

1.22 meters

be graded and reseeded, unless the landowner requests in writing that the access roads or other land surface areas be retained.

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

⁰⁹
69-09-10-06. Decommissioning Plan: Prior to commencement of operation of a commercial wind energy conversion facility or wind turbine, the facility or turbine owner or operator shall file with the commission the estimated decommissioning cost per turbine, in current dollars at the time of the application, for the proposed facility or turbine and a decommissioning plan that describes how the facility or turbine owner or operator will ensure that resources are available to pay for decommissioning the facility or turbine at the appropriate time. The commission shall review a plan filed under this section and shall issue an order approving or disapproving the plan within 6 months after the decommissioning plan was filed. The commission may at any time require the owner or operator of a commercial wind energy conversion facility or wind turbine to file a report with the commission describing how the facility or turbine owner or operator is fulfilling this obligation.

General Authority: NDCC 49-02

Law Implemented: NDCC 49-02-27

⁰⁹
69-09-10-07. Existing Facilities: Owners and operators of existing commercial wind energy conversion facilities shall file with the commission the information required in section ~~69-09-06~~ ⁶⁹⁻⁰⁹⁻⁰⁶ within one year ~~of the effective date of the rules.~~

after July 1, 2008

General Authority: NDCC 49-02.
Law Implemented: NDCC 49-02-27

⁰⁹
69-09-10-08. Financial Assurance. After the ^{10th} year of operation of a commercial wind energy conversion facility or wind turbine, the commission ^{by order} may require a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the commission to cover the anticipated costs of decommissioning the commercial wind energy conversion facility or turbine.

General Authority: NDCC 49-02
Law Implemented: NDCC 49-02-27

⁰⁹
69-09-10-09. Failure to Decommission. If the commercial wind energy conversion facility owner or operator does not complete decommissioning, the commission may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the commission may take such action as may be necessary to decommission a commercial wind energy conversion facility or wind turbine, including the exercise by the commission, commission staff, and their contractors of the right of ingress and egress for the purpose of decommissioning the commercial wind energy conversion facility.

General Authority: NDCC 49-02
Law Implemented: NDCC 49-02-27