

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
2009 Gas Pipeline Safety Rules
Rulemaking**

Case No. GS-09-67

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-09-543

ORDER SUBMITTING RULES TO ATTORNEY GENERAL

October 14, 2009

Appearances

Commissioners Tony Clark, Kevin Cramer, and Brian P. Kalk

Preliminary Statement

On August 12, 2009, the North Dakota Public Service Commission (Commission) issued a formal Notice of Proposed Rulemaking and an Abbreviated Notice proposing to revise Articles 69-09 and 69-05.2 of the Administrative Code. The proposed amendments relate to the adoption by reference of federal gas safety requirements and surface coal mining and reclamation permit application requirements and revegetation success standards. The proposed rules are summarized as follows:

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In order to continue the Commission's role as an agent for the federal pipeline safety program, the proposed change to the North Dakota Administrative Code Section 69-09-03-02 adopts by reference changes made to federal pipeline safety regulations since December 31, 2006. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

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The Surface Coal Mining and Reclamation Law was amended by the 2009 Legislature to reduce the revegetation responsibility period from ten years to five years for eligible lands that are re-mined. The proposed changes to North Dakota Administrative Code Sections 69-05.2-09-02 and 69-05.2-22-07 will amend permit

application requirements and revegetation success standards to reflect this statutory change. The proposed amendment is not expected to have an impact on the regulated community in excess of \$50,000.

Public Hearing and Comments

The Abbreviated Notice was published once in all 52 official county newspapers the week of August 20 through August 26, 2009. The Notice of Intent to Amend Administrative Rules and Notice of Public Hearing and proposed rules were also sent to those identified as interested or affected parties. The notices were also forwarded on August 13, 2009 to the Legislative Council for publication.

A public hearing on the proposed rule changes was noticed for and held at 10:00 a.m. September 16, 2009. The hearing was held in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until September 26, 2009, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

The only written comments filed were received at the hearing and were those of Commission staff.

Discussion

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Staff prepared and filed a statement regarding the required regulatory analysis, takings assessment, and small entity regulatory analysis.

Staff testified that the proposed changes were intended to incorporate into state rules changes in federal rules that must also apply to the state program, and summarized these required changes.

No other comments were received and no changes are being made to the rules as originally proposed.

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Staff prepared and filed a statement regarding the required regulatory analysis, takings assessment, and small entity regulatory analysis.

Staff testified that the statutory changes to North Dakota's surface coal mining and reclamation law enacted by the 2009 Legislature reduces the revegetation responsibility period from 10 years to 5 years for eligible lands that are re-mined. Staff explained that lands disturbed by coal mining activities prior to January 1, 1970 are

eligible for the shortened responsibility period if they are re-mined or otherwise re-disturbed by permitted mining operations.

A new subsection is being proposed to North Dakota Administrative Code Section 69-05.2-09-02 to require a permit applicant to 1) clearly identify any previously mined lands that will be re-mined; 2) describe any potential environmental and safety problems related to the prior mining activities at the site and those that could be expected to occur with re-mining or re-affecting these lands; and, 3) if potential problems are anticipated, the applicant must describe the measures that will be taken to ensure the applicable reclamation requirements can be met.

Additional language is also being proposed in North Dakota Administrative Code Section 69-05.2-22-07 to reflect the shortened liability period of eligible lands that are re-mined. This rule contains the revegetation success standards that must be met prior to bond release.

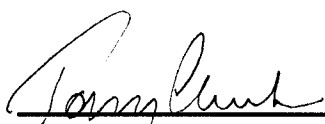
No other comments were received and no changes are being made to the rules as originally proposed.

Order

The Commission orders:

The proposed changes to Sections 69-09-03-02, 69-05.2-09-02, and 69-05.2-22-07 of the North Dakota Administrative Code, as attached to and made a part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to legality.

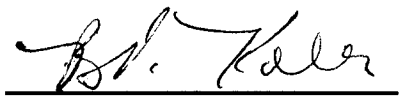
PUBLIC SERVICE COMMISSION



Tony Clark
Commissioner



Kevin Cramer
Chairman



Brian P. Kalk
Commissioner