



Public Service Commission

State of North Dakota

COMMISSIONERS

Kevin Cramer
Tony Clark
Brian P. Kalk

Executive Secretary
Darrell Nitschke

The Honorable Wayne Stenehjem
North Dakota Attorney General
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0040

16 October 2009

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
Web: www.nd.gov/psc
E-mail: ndpsc@nd.gov
Phone 701-328-2400
Toll Free 1-877-245-6685
Fax 701-328-2410
TDD 800-366-6888 or 711

RE: Public Service Commission
2009 Gas Pipeline Safety Rules
Rulemaking
Case No. GS-09-67

Public Service Commission
Reclamation
Rulemaking
Case No. RC-09-543

Dear Mr. Stenehjem:

Enclosed please find proposed amendments to N.D. Administrative Code Sections 69-09-03-02, 69-05.2-09-02 and 69-05.2-22-07 by the North Dakota Public Service Commission. In accordance with N.D.C.C. § 28-32-14, the North Dakota Public Service Commission requests your examination of these rules as to their legality so they may be considered for formal adoption and publication in the North Dakota Administrative Code.

Attached for purposes of review is a copy of the following:

- The proposed rule changes and rule summaries in the captioned cases;
- Full Notice of Intent to Amend Administrative Rules;
- Abbreviated Notice of Intent to Amend Administrative Rules;
- Affidavit of Publication from the North Dakota Newspaper Association;
- North Dakota Newspaper Association invoice showing the names of the newspapers where the abbreviated Notice was published;
- A copy of one of the actual notices as published (others are available if you want them);
- A copy of the cover letter filing the Notice and Administrative Rules with the Legislative Council with the filing acknowledgment;
- Statements regarding the required regulatory analyses, takings assessments, and small entity regulatory analyses;
- Staff testimony/comments for each case; and
- The October 14, 2009 Public Service Commission Order Submitting Rules to the Attorney General which summarizes the comments and the Commission's consideration of them.

18 **RC-09-543** Filed: 10/16/2009 Pages: 39
Letter to Attorney General Requesting Examination
of Rules for Legality

Public Service Commission

23 **GS-09-67** Filed: 10/16/2009 Pages: 39
Letter to Attorney General Requesting Examination
of Rules for Legality

Public Service Commission

No regulatory analysis was required as the proposed rules are not expected to have an impact on the regulated community in excess of \$50,000, and neither the Governor nor any member of the Legislative Assembly requested a regulatory analysis. No takings assessment was required because the proposed rules do not effect a regulatory taking. No small entity analyses needed to be done for the Gas Safety rules because they are required by federal law. A small entity analyses for the Reclamation rules is included in the relevant statement.

The Gas Pipeline Safety proposed rules, Case No. GS-09-67, do not implement legislation from the most recent legislative session. The only written comments filed were received at the hearing and were those of Commission staff and copies are attached.

The proposed Reclamation rules, Case No. RC-09-543, do implement legislation from the most recent legislative session introduced at the request of the Public Service Commission. Consequently, the requirement to send to the sponsors of the legislation does not apply. The only written comments filed were received at the hearing and were those of Commission staff and copies are attached. No other oral or written comments were received on the rules.

As I previously discussed with Assistant Attorney General Edward Erickson, we would appreciate your opinion on the rules proposed in Case No. GS-09-67 prior to the next regular Commission meeting scheduled for 28 October 2009. Our reason for requesting expedited action on the Gas Safety rules is so the rules can be filed with the Legislative Council by 1 November 2009 in order to meet an effective date of 1 January 2010. If your office could approve the proposed Gas Safety rules in time for the meeting on the 28th it would be most appreciated.

Thank you for your consideration of the rules, and our request for expedited review of the Gas Safety rules. If you have any questions please do not hesitate to call or email.

Best regards,



Illona A. Jeffcoat-Sacco
General Counsel

enclosures

**CHAPTER 69-09-03
GAS PIPELINE SAFETY**

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of ~~December 31, 2006~~ August 1, 2009 are adopted by reference:

1. Part 190 - Department of Transportation Pipeline Safety Enforcement Procedures.
2. Part 191 - Department of Transportation Regulations for Transportation of Natural Gas by Pipeline; Reports of Leaks.
3. Part 192 - Transportation of Natural Gas and Other Gas by Pipeline: Minimum Safety Standards.
4. Part 199 - Control of Drug Use in Natural Gas; Liquefied Natural Gas, and Hazardous Liquids Pipelines.

Copies of these regulations may be obtained from:

Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002, November 1, 2003; May 1, 2005; July 1, 2006; April 1, 2008; _____, 2009.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

North Dakota Public Service Commission
Testing and Safety Division

2008/2009 Proposed Gas Pipeline Safety Amendments
GS-09-67

Amended Rule Summary

July 29, 2009

49 CFR Part 192 - Amendment No. FR 20055 - This final rule requires operators to use design and construction features in new and replaced gas transmission pipelines to reduce the risk of internal corrosion and related pipeline failures. This is accomplished by reducing the potential for accumulation of liquids and facilitating operation and maintenance practices that address internal corrosion.

Effective date of final rule: May 23, 2007.

49 CFR Part 192 - Amendment No. 104 – This final rule amends the existing integrity management regulations for both hazardous liquid and natural gas transmission pipelines. The modifications include changing the notification requirements for operators of hazardous liquid and natural gas pipelines; and repealing a requirement for gas operators to notify local authorities. This action is intended to improve pipeline safety by clarifying the integrity management regulations and providing operators with increased flexibility in implementing their integrity management (IM) programs.

Effective date of final rule: August 16, 2007.

49 CFR Part 192 - Amendment No. 105 – This final rule relaxes regulatory requirements governing public awareness programs conducted by operators of master meter systems and certain operators of petroleum gas systems. These operators typically manage property and incidentally provide gas service to customers located on the property. The change provides a less burdensome means for these operators to satisfy public awareness needs.

Effective date of final rule: January 14, 2008.

49 CFR Part 192 - Amendment No. 106 – This final rule adopts, with minor modifications, an interim final rule issued by PHMSA on March 28, 2008, conforming PHMSA's administrative procedures with the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 by establishing the procedures PHMSA will follow for issuing safety orders and handling requests for special permits, including emergency special permits. The rule also notifies operators about electronic docket information availability; updates addresses for filing reports, telephone numbers, and routing symbols; and clarifies the time period for processing requests for written interpretations of the regulations. This final rule

makes minor amendments and technical corrections to the regulatory text in response to written public comments received after issuance of the interim final rule.

Effective Date of final rule: February 17, 2009.

49 CFR Part 192 - Amendment No. 107 – This final rule amends the existing pipeline safety regulations to prescribe safety requirements for the operation of certain gas transmission pipelines at pressures based on higher operating stress levels. The result is an increase of maximum allowable operating pressure (MAOP) over that currently allowed in the regulations. Improvements in pipeline technology assessment methodology, maintenance practices, and management processes over the past twenty-five years have significantly reduced the risk of failure in pipelines and necessitate updating the standards that govern the MAOP. This rule will generate significant public benefits by reducing the number and consequences of potential incidents and boosting the potential capacity and efficiency of pipeline infrastructure, while promoting rigorous life-cycle maintenance and investment in improved pipe technology.

Effective date of final rule: November 17, 2008. **Note:** A notice published in the Federal Register on December 1, 2008 stays the effective date of this final rule, published on October 17, 2008 (73 FR 62148). In accordance with the Congressional Review Act, this final rule will now become effective on **December 22, 2008**, 60 days after the final rule was transmitted to Congress

49 CFR Part 192 - Amendment No. 108 – This final rule amends the design factor and design pressure limits for natural gas pipelines made from new Polyamide-11 (PA-11) thermoplastic pipe. Together, these two changes in the regulations allow pipeline operators to operate certain pipelines constructed of new PA-11 pipe at higher operating pressures than is currently allowed for other plastic pipe materials.

Effective date of final rule: January 23, 2009.

49 CFR Part 192 – Amendment No. 109 - This direct final rule incorporates by reference the most recent editions of API Specification 5L “Specification for Line Pipe” and API 1104 “Welding of Pipelines and Related Facilities.” The purpose of this update is to enable pipeline operators to utilize current technology, materials, and practices to help maintain a high level of safety relative to their pipeline operations. PHMSA is not eliminating the use of the current referenced standards but simply allowing the additional use of these new standards. PHMSA may in the future propose to eliminate the incorporation of the existing referenced standards.

Effective date of final rule: April 14, 2009

49 CFR Part 199 - Amendment No. 24 – This final rule conforms PHMSA's administrative procedures with the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act) by establishing the procedures PHMSA will follow in issuing safety orders and handling requests for special permits, including emergency special permits. This interim final rule also notifies operators about electronic docket information availability; updates addresses, telephone numbers, and routing symbols; and clarifies the time period for processing requests for written interpretations of the regulations. This interim final rule does not impose any new operating, maintenance, or other substantive requirements on pipeline owners or operators.

Effective date of final rule: March 28, 2008.

CHAPTER 69-05.2-09
PERMIT APPLICATIONS - PERMIT AREA - REQUIREMENTS FOR
OPERATION AND RECLAMATION PLANS

69-05.2-09-02. Permit applications - Operation plans - Maps and plans. Each application must contain an appropriate combination of 1:4,800 scale topographic maps, planimetric maps, and plans of the proposed permit and adjacent areas showing:

1. Scale, date, permit boundaries, company name, legal subdivision boundaries, and legend.
2. Lands to be affected throughout the operation and any change in a facility or feature caused by the operations, if the existing facility or feature was shown under chapter 69-05.2-08.
3. The boundaries of areas to be affected during the permit term according to the sequence of mining and reclamation operations and a description of size and timing of operations for each coal removal subarea.
4. Pit layout and proposed sequence of mining operations, crop line, spoil placement areas, final graded spoil line, highwall areas to be backslotted, and areas for stockpiling suitable plant growth material or other suitable strata.
5. Location of proposed surface water management structures and identification of permanent water impoundments or stream channel alignments.
6. Location of coal processing waste dams and embankments under section 69-05.2-09-09, and fill areas for the disposal of initial cut and other excess spoil under section 69-05.2-09-14 and North Dakota Century Code section 38-14.1-24.
7. Buildings, utility corridors, proposed and existing haul roads, mine railways, and other support facilities.
8. Each coal storage, cleaning and loading area, and each coal waste and noncoal waste storage area. For noncoal wastes that will be disposed of in the proposed permit area, the applicant must provide a description of any wastes listed under subdivision i of subsection 2 of section 33-20-02.1-01 and any other wastes requiring a permit from the state department of health. The location of any such disposal areas must be shown on a map of the permit area.
9. Each explosive storage and handling facility.

10. Each air pollution collection and control facility.
11. Each habitat area to be used to protect and enhance fish and wildlife and related environmental values.
12. Each source of waste and each waste disposal facility relating to coal processing or pollution control.
13. Each bond area, scheduled according to the proposed sequence of operations. Include the bond or guarantee amount for each area.
14. If an applicant proposes to remine or otherwise disturb lands that were affected by coal mining activities prior to January 1, 1970:
 - a. Detailed maps and other available information that clearly depicts the boundaries of the site that was previously affected by mining activities before January 1, 1970. This includes the identification any sinkholes and other features that are the result of any past underground coal mining activities.
 - b. The applicant must identify and describe potential environmental and safety problems related to prior mining activity at the site and those that could be reasonably anticipated to occur. This identification must be based on a due diligence investigation which includes visual observations at the site, a record review of past mining at the site, and any necessary environmental sampling tailored to the current condition of the site.
 - c. With regard to potential environmental and safety problems referred to in subdivision b, a description of the mitigative measures that will be taken to ensure that the applicable reclamation requirements can be met.

Maps and plans required under subsections 5, 6, and 12 must be prepared by, or under the direction of, and certified by a qualified registered professional engineer, a qualified registered land surveyor, or qualified professional geologist with assistance from experts in related fields. However, maps, plans, and cross sections submitted according to section 69-05.2-09-09 may only be prepared by, or under the direction of, and certified by a qualified registered professional engineer or qualified registered land surveyor.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; June 1, 1997: _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-22-07. Performance standards - Revegetation - Standards for success.

1. Success of revegetation must be measured by using statistically valid techniques approved by the commission. Comparison of ground cover and productivity may be made on the basis of reference areas, through the use of standards in technical guides published by the United States department of agriculture, or through the use of other approved standards. If reference areas are used, the management of the reference area during the responsibility period required in subsection 2 must be comparable to that required for the approved postmining land use of the permit area. If standards are used, they must be approved by the commission and the office of surface mining reclamation and enforcement. Approved standards are contained in the commission's Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments.
2. The period of responsibility under the performance bond requirements of section 69-05.2-12-09 will begin following augmented seeding, planting, fertilization, irrigation, or other work, except for cropland and prime farmland where the period of responsibility begins at the date of initial planting of the crop being grown or a precropland mixture of grasses and legumes, and must continue for not less than ten years. However, for eligible lands that are remined, the revegetation responsibility period must continue for not less than five years.
3. Vegetation establishment, for the purpose of the third stage bond release provided for in subdivision c of subsection 7 of North Dakota Century Code section 38-14.1-17, will be determined for each postmining land use according to the following procedures:
 - a. For native grassland, tame pastureland, and fish and wildlife habitat where the vegetation type is grassland, ground cover on the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence. All species used in determining ground cover must be perennial species not detrimental to the approved postmining land use.
 - b. For cropland, vegetation will be considered established after the successful seeding of the crop being grown or a precropland mixture of grasses and legumes.
 - c. For prime farmland, annual average crop production from the permit area must be equal to or greater than that of the approved

reference area or standard with ninety percent statistical confidence for a minimum of three crop years.

- d. For woodland, shelterbelts, and fish and wildlife habitat where the vegetation type is woodland, the number of trees and shrubs must be equal to or greater than the approved standard. Understory growth must be controlled. Erosion must be adequately controlled by mulch or site characteristics.
 - e. For fish and wildlife habitat where the vegetation type is wetland, the basin must exhibit the capacity to hold water and support wetland vegetation. Ground cover of the contiguous areas must be adequate to control erosion.
4. The success of revegetation on the permit area at the time of final bond release must be determined for each postmining land use according to the following:
- a. For native grassland, the following must be achieved for any two years after year six of the responsibility period:
 - (1) Ground cover and productivity of the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence; and
 - (2) Diversity, seasonality, and permanence of the vegetation of the permit area must equal or exceed the approved standard.
 - b. For tame pastureland, ground cover and productivity of the permit area must be equal to or greater than that of the approved standard with ninety percent statistical confidence for any two years after year six of the responsibility period.
 - c. For cropland, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for any two years after year six of the responsibility period.
 - d. For prime farmlands, a showing that the requirements for the restoration of productivity as specified in subdivision c of subsection 3 have been met and that the ten-year period of responsibility has elapsed.

- e. For woodlands and fish and wildlife habitat where the vegetation type is woodland, the following must be achieved during the growing season of the last year of the responsibility period:
 - (1) The number of woody plants established on the permit area must be equal to or greater than the number of live woody plants of the same life form of the approved standard with ninety percent statistical confidence. Trees, shrubs, half-shrubs, root crowns or root sprouts used in determining success of stocking must meet the following criteria:
 - (a) Be healthy;
 - (b) Be in place for at least two growing seasons; and
 - (c) If any replanting of woody plants took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and
 - (d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted toward meeting success standards; however, volunteer trees must be at least thirty inches (76 centimeters) in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding;
 - (2) The ground cover must be equal to or greater than ninety percent of the ground cover of the approved standard with ninety percent statistical confidence and must be adequate to control erosion; and
 - (3) Species diversity, seasonal variety, and regenerative capacity of the vegetation on the permit area must be evaluated on the basis of species stocked and expected survival and reproduction rates.
- f. For shelterbelts, the following must be achieved during the growing season of the last year of the responsibility period:

- (1) Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
 - (a) Be healthy;
 - (b) Be in place for at least two growing seasons; and
 - (c) If any replanting of woody plants took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and
 - (d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted toward meeting success standards; however, volunteer trees must be at least thirty inches (76 centimeters) in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding;
 - (2) Shelterbelt density and vigor must be equal to or greater than that of the approved standards; and
 - (3) Erosion must be adequately controlled.
- g. For fish and wildlife habitat, where the vegetation type is wetland, vegetation zones and dominant species must be equal to those of the approved standard during the growing season of the last year of the responsibility period. In addition, wetland permanence and water quality must meet approved standards.
- h. For fish and wildlife habitat, where the vegetation type is grassland, the following must be achieved during the growing season of the last year of the responsibility period:
- (1) Ground cover must be equal to or greater than that of the approved standard with ninety percent statistical confidence and must be adequate to control erosion.
 - (2) Species diversity, seasonal variety, and regenerative capacity of the vegetation must meet or exceed the approved standard.

- i. For previously mined areas that were not reclaimed to the requirements of this chapter, any reclamation requirements in effect when the areas were mined must be met. In addition, the ground cover must not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion as approved by the commission. If lands affected by coal mining activities prior to January 1, 1970 are remined or otherwise redisturbed, the applicable standard must be met for the last two consecutive years of the minimum five year responsibility period that applies to remined lands. However, if the postmining land use for the remined area is woodlands, shelterbelts or fish and wildlife habitat, the applicable standard must be met for just the last year of the responsibility period.
 - j. For areas to be developed for water, residential, or industrial and commercial uses within two years after the completion of grading or soil replacement, the ground cover on these areas must not be less than required to control erosion.
 - k. For areas to be developed for recreation, woody plants must meet or exceed the stocking and plant establishment standards for woodlands or shelterbelts found in paragraph 1 of subdivision e or in subdivision f as applicable. In addition, ground cover must not be less than required to achieve the approved postmining land use.
 - l. If a reclaimed tract contains a mixture of prime and nonprime farmlands, the commission may approve a single yield standard for the entire tract based on the soil types that occurred on the prime and nonprime areas prior to mining. The operator must provide a detailed description and comparison of the soil mapping units, acreages, and yield calculations in the reclamation plan as required by subsection 8 of section 69-05.2-09-15. When a single yield standard is approved, the operator must demonstrate that the standard has been achieved for any three years starting no sooner than the sixth year of the responsibility period. If this option is approved, the operator must also meet the applicable requirements of section 69-05.2-26-05 for the entire tract.
5. Throughout the liability period the permittee must:
- a. Maintain any necessary fences and use proper management practices; and

- b. Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the commission.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; January 1, 1993; June 1, 1997; May 1, 1999; May 1, 2001; March 1, 2004; April 1, 2007; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

**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

**NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES
AND NOTICE OF PUBLIC HEARING**

August 12, 2009

PLEASE TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to three sections of the North Dakota Administrative Code. The hearing will be held at **10:00 a.m., on September 16, 2009, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.** The proposed revisions to the North Dakota Administrative Code are as follows:

Reclamation: Case No. RC-09-543

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 the 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.

Gas Safety – Gas Pipeline Safety: Case No. GS-09-67

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.

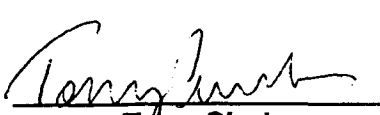
All of the proposed rule changes and any statements concerning Regulatory Analyses, Small Entity Analyses and Takings Assessments may be reviewed at the

Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed rule changes, or any statements concerning the Regulatory Analyses, Small Entity Analyses and Takings Assessments contact the Public Service Commission at 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, or 701-328-2400, toll free 1-877-245-6685. This information is also available to view on our web site at www.psc.state.nd.us under Formal Actions/Case Search.

Interested persons may submit written comments on the proposed rules. Written comments should be filed with Darrell Nitschke, Executive Secretary, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480. The comment period closes 10 days after the hearing. Comments received by September 26th will be considered.

If individuals require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify, Darrell Nitschke, Executive Secretary, at least 24 hours prior to the hearing. He can be contacted at the following numbers: 701-328-2400 and Relay North Dakota TTY: 1-800-366-6888.

PUBLIC SERVICE COMMISSION



Tony Clark
Commissioner



Kevin Cramer
Chairman



Brian P. Kalk
Commissioner

NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES AND NOTICE OF PUBLIC HEARING

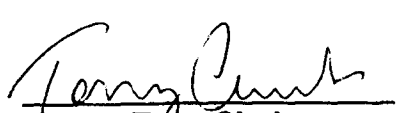
August 12, 2009

TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to the N.D. Admin. Code, relating to surface coal mining and reclamation permit application requirements and revegetation success standards, and the adoption by reference of federal gas safety requirements, at 10:00 a.m., September 16, 2009, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

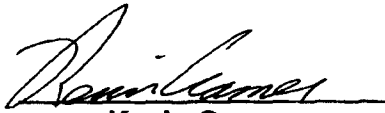
A copy of the proposed rules may be obtained by writing the Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480 or by calling 701-328-2400, toll free 1-877-245-6685 or Relay North Dakota TTY: 1-800-366-6888. This information is also available to view on our web site at www.psc.state.nd.us under Formal Actions/Case Search. Also, written comments may be submitted to the Public Service Commission at the above address, until September 26, 2009.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Public Service Commission by telephone or by writing to the address above at least 24 hours prior to the public hearing.

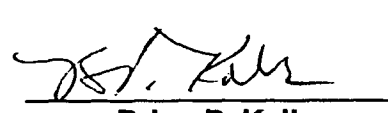
PUBLIC SERVICE COMMISSION



Tony Clark
Commissioner



Kevin Cramer
Chairman



Brian P. Kalk
Commissioner

Affidavit of Publication

RECEIVED

SEP 22 2009

Colleen Park, being duly sworn, states as follows:

PUBLIC SERVICE COMMISSION

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.
2. The newspapers listed on the exhibits published the advertisement of: **Public Service Commission – surface coal mining, reclamation permit application requirements, revegetation success standards, and the adoption by reference of federal gas safety requirements; 1 time(s)** as required by law or ordinance.
3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

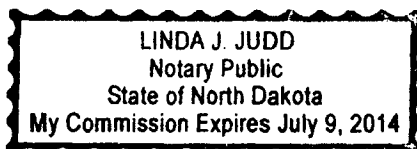
Signed: Colleen Park

State of NORTH DAKOTA

County of BURLEIGH

Subscribed and sworn to before me this 18th day of Sept, 2009.

Linda J. Judd



17 GS-09-67 Filed: 9/22/2009 Pages: 53
Affidavit of Publication with Tear Sheets

North Dakota Newspaper Association

13 RC-09-543 Filed: 9/22/2009 Pages: 53
Affidavit of Publication with Tear Sheets

North Dakota Newspaper Association



North Dakota Newspaper Association

1435 Interstate Loop
Bismarck, ND 58503-0567
Ph (701) 223-6397 • Fax (701) 223-8185

RECEIVED

SEP 22 2009

INVOICE

PUBLIC SERVICE COMMISSION

Order 26845-09085PPO

Invoice # 120158

September 21, 2009

Advertiser: Public Service Commission

Attn: JOHNG. HAMRE
PUBLIC SERVICE COMMISSION
600 E. BOULEVARD AVE.
STATE CAPITOL
BISMARCK, ND 58505
Voice: 701-328-4076

P.O.#:

Amount Due

\$1,887.60

Amount Paid

Please detach and return this portion with your payment

When placing an administrative rule notice, please fax or email your request. Regular mail is not always reliable when a deadline must be met. Thank you.

Public Service Commission Invoice # 26845-09085PPO-120158

Table with columns: Ad Size, Rate Type, Rate, Total, Discount (%), Caption, Page, Run Date

COUNTY

Main table listing newspaper ads by county (Ashley, Beach, Bismarck, Bottineau, Bowbells, Bowman, Cando, Carrington, Carson, Cavalier, Center, Cooperstown, Crosby, Devils Lake) with columns for Ad Size, Rate Type, Rate, Total, Discount (%), Caption, Page, Run Date.

18 GS-09-67 Filed: 9/22/2009 Pages: 3
Invoice #120158 - Order 26845-09085PPO \$1,887.60

14 RC-09-543 Filed: 9/22/2009 Pages: 3
Invoice #120158 - Order 26845-09085PPO \$1,887.60

<i>Ad Size</i>	<i>Rate Type</i>	<i>Rate</i>	<i>Total</i>	<i>Discount (%)</i>	<i>Caption</i>	<i>Page</i>	<i>Run Date</i>
COUNTY							
Dickinson Press (Dickinson ND)							
6.00	SPR1	7.35	44.10	0.00	Surface Mining & Recl		08/25/09
Elgin Grant County News (Elgin ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/26/09
Ellendale Dickey Co Leader (Ellendale ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/20/09
Fargo, The Forum (Fargo ND)							
6.00	SPR1	10.82	64.92	0.00	Surface Mining & Recl		08/24/09
Finley Steele County Press (Finley ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/21/09
Garrison McLean Co Independent (Garrison ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/20/09
Grafton * Walsh County Record (Grafton ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/26/09
Grand Forks Herald (Grand Forks ND)							
6.00	SPR1	10.82	64.92	0.00	Surface Mining & Recl		08/22/09
Harvey The Herald-Press (Harvey ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/22/09
Hazen Star (Hazen ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/20/09
Hettinger Adams Co Record (Hettinger ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/21/09
Jamestown Sun (Jamestown ND)							
6.00	SPR1	7.35	44.10	0.00	Surface Mining & Recl		08/24/09
Killdeer Dunn County Herald (Killdeer ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/21/09
Lakota American (Lakota ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/26/09
LaMoure Chronicle (LaMoure ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/26/09
Langdon Cavalier Co Republican (Langdon ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/24/09
Linton Emmons County Record (Linton ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/20/09
Lisbon Ransom County Gazette (Lisbon ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/24/09
Mandan News (Bismarck ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/21/09
Mayville * Traill County Tribune (Mayville ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/22/09
McClusky Gazette (McClusky ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/20/09
Medora Billings County Pioneer (Beach ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/20/09
Milnor Sargent County Teller (Milnor ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/21/09
Minnewaukan Benson Co Farmers Press (Minnewaukan ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/26/09
Minot Daily News (Minot ND)							
6.00	SPR1	10.82	64.92	0.00	Surface Mining & Recl		08/24/09

<i>Ad Size</i>	<i>Rate Type</i>	<i>Rate</i>	<i>Total</i>	<i>Discount (%)</i>	<i>Caption</i>	<i>Page</i>	<i>Run Date</i>
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COUNTY

Mohall Renville County Farmer (Mohall ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/26/09
Napoleon Homestead (Napoleon ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/26/09
New England The Herald (New England ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/21/09
New Rockford Transcript (New Rockford ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/24/09
Rolla Turtle Mountain Star (Rolla ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/24/09
Rugby Pierce County Tribune (Rugby ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/22/09
Stanley Mountrail Co Promoter (Stanley ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/26/09
Steele Ozone & Kidder Co. Press (Steele ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/26/09
Towner Mouse River Journal (Towner ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/26/09
Valley City Times-Record (Valley City ND)							
6.00	SPR1	7.35	44.10	0.00	Surface Mining & Recl		08/24/09
Wahpeton Daily News (Wahpeton ND)							
6.00	SPR1	7.35	44.10	0.00	Surface Mining & Recl		08/25/09
Watford City McKenzie Co Farmer (Watford City ND)							
6.00	SPR1	5.41	32.46	0.00	Surface Mining & Recl		08/26/09
Williston Herald (Williston ND)							
6.00	SPR1	7.35	44.10	0.00	Surface Mining & Recl		08/24/09

Gross Advertising	1,887.60	Total Misc	0.00	Amount Paid	0.00
Agency Discount		Tax	0.00	Adjustments	0.00
Other Discount	0.00	Total Billed	1,887.60	Payment Date	
Service Charge	0.00	Unbilled	0.00	Balance Due	1,887.60

Your payment is due upon receipt. Thank you in advance for your prompt payment!

Transportation/Public Relations: Larry Brooks, Paul Olson, Kenny Fix
 A motion was made by Artz and seconded by Brooks to approve the committee assignments as presented by Mr. Kersten. MCU.

New Business:
 PTO: They will be electing new officers and Mr. Forsberg has been working with the company about the playground equipment.

NCACTC report was given by Larry Brooks. CTE could have up to \$30,000 to \$40,000 through Stimulus dollars to be distributed to Centers throughout the state. Rodney Schmidt had four students during the summer in Rugby. The class went really well.

A motion was made by Fix and seconded by Milbrath to designate First National Bank, Security State Bank, North Star Credit Union and State Bank as the depositories. MCU.

A motion was made by Syvertson and seconded by Brooks to designate the Bottineau Courant as the official newspaper. MCU.

A motion was made by Milbrath and seconded by Fix to approve the 2009-10 consolidated application as presented. Fix-yes, Artz-yes, Milbrath-yes, Syvertson-yes, Pewe-yes. Abstained: Larry Brooks.

A motion was made by Fix and seconded by Artz to appoint Debra Syvertson as the REA Board Representative for the Governing Board. MCU.

A motion was made by Artz and seconded by Syvertson to designate Jason Kersten as the Title I authorized representative. MCU.

A motion was made by Artz and seconded by Syvertson to designate Jason Kersten as the authorized representative for Title II, Title IV, Surplus Property, Food Service, Institutional Immunization, ADA, Title IX Coordinator and 21st Century and the Bottineau School as the fiscal agent. MCU.

A motion was made by Artz and seconded by Syvertson to designate Vickie Metcalfe as the Elementary Section 504 Coordinator. MCU.

A motion was made by Artz and seconded by Syvertson to designate Nara Glasner as the Junior/Senior Section 504 Coordinator. MCU.

A motion was made by Artz and seconded by Syvertson to leave the Season Ticket Prices as presented with no changes. MCU.

A motion was made by Milbrath and seconded by Fix to leave the hot lunch prices the same and to offer a discount of one month free if paid at the beginning of the year. MCU.

A motion was made by Artz and seconded by Syvertson to approve the tuition fee agreements for two students to attend school in Bottineau from Dunseith School's district. MCU.

A motion was made by Milbrath and seconded by Artz to approve a flat rate of \$50.00 per month for board meetings. MCU.

A motion was made by Fix and seconded by Artz to approve the open enrollment application due to a family moving for two students to attend school in Bottineau from the TGU School District. MCU.

Discussion was held about the Hiring Procedure Policy that was adopted on 4-12-05. All agreed that Mr. Kersten should also be part of the elementary teacher hiring.

Discussion was held on items to be on the agenda for the Board Retreat. The Board decided to have the retreat on August 5th at 6:30 P.M. Some topics to be added to the agenda are: Conflict of Interest Policy, School Board Policy Handbook, Strategic Planning Meeting, and Central School. Mr. Kersten suggested for the board members

to full time.

A motion was made by Fix and seconded by Artz to hire Lori Fecho as a full time teacher. MCU.

A motion was made by Artz and seconded by Syvertson to designate Kari Ann Dunderkand as the Peace Garden Board Member. MCU.

A motion was made by Artz and seconded by Brooks to approve Kristen Alford as the Kindergarten teacher. MCU.

A motion was made by Fix and seconded by Milbrath to approve Codi Rybchinski as the First Grade Teacher. MCU.

Administrative Reports:
 Athletic Director's report will be given by Dave Hoff next month.

Mr. Jason Kersten reported the following. Curriculum Committee meeting was held on July 7.

Mr. Kersten discussed hiring an intervention coach for students falling under the category of non-proficient or novice.

Mr. Kersten discussed the RTI that was presented by Mark Volmer here in Bottineau on July 8 and July 10.

Smart board training will be on August 13.

A motion was made by Syvertson and seconded by Artz to hire an intervention coach with Stimulus AARA Title I funds. This would only be a two year position. MCU.

THE NEXT REGULAR MEETING IS SCHEDULED FOR AUGUST 11th, 2009, 8:00 p.m. in the Bottineau School Conference Room. President Pewe adjourned the meeting.

Mark Pewe
 President

Deborah Nelson
 Business Manager
 8-25

**LAND FOR SALE
 SERGIUS TOWNSHIP**

Parcel no. 1:
 Township 182 North of Range 80 West
 Section 07: SE1/4SW1/4, Lots 3 and 4

Parcel no. 2:
 Township 182 North of Range 80 West
 Section 32: SE1/4

Parcel no. 3:
 Parcel no. 1 and Parcel no. 2 combined

Written bids will be accepted in sealed envelopes with "Sergius Township land sale" and the parcel number of the bid on the face of the envelope. Bids should be delivered or mailed to the Gregg Law Office, 416 Sinclair Street, P.O. Box 26, Bottineau, North Dakota, on or before September 15, 2009, at 11 a.m.

The five (5) highest bidders will be notified to attend a meeting at the Gregg Law Office that will take place on Thursday, September 17, 2009, at 8:30 a.m. At the meeting the bidders will be given an opportunity to orally raise their bids.

TERMS: 10% down on acceptance of bid as earnest money. Balance due in 30 days. Abstract of Title to be furnished. Sellers retain all 2009 CRP Payments. Sellers pay 2009 property taxes.

SELLERS RESERVE THE RIGHT TO REJECT ANY AND ALL BIDS.

SELLERS RESERVE ALL MINERAL RIGHTS.

For further information and additional terms call 228-3646. 8-25, 9-1

NOTICE OF LAPSE OF MINERAL INTERESTS

Pursuant to Chapter 38-18.1 of North

road material, building stone, chemical substances, metallic ores, uranium ores, and colloidal or other clays.

Dated this 13 day of August, 2009.
 Larry A. Gunning
 STATE OF ARIZONA)
) ss.
 COUNTY OF Maricopa)

Larry A. Gunning, being first duly sworn, deposes and says: That he is the surface owner of the above-described real estate, that he has read the within and foregoing Notice of Lapse of Mineral Interest by him subscribed and know the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief; as to such matters, he believes it to be true.
 LARRY A. GUNNING

On this 13 day of August, 2009, before me, a notary public, personally appeared Larry A. Gunning, known to me to be the same person described in and who executed the within and foregoing instrument and acknowledged that he executed the same.
 MARY L. CASTRO
 Notary public - State of Arizona
 Maricopa County
 My commission expires April 18, 2012
 8-25, 9-1, 8

NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES

relating to surface coal mining and reclamation permit application requirements and reclamation success standards, and the adoption by reference of federal gas safety requirements.

Public Service Commission
 will hold a public hearing to address proposed changes to the N.D. Admin. Code.
**Commission Hearing Rm.
 12th Floor
 State Capitol
 Bismarck, ND
 Wed., Sept. 16, 2009
 10:00 a.m.**

A copy of the proposed rules may be obtained by writing the Public Service Commission, 600 E. Boulevard Ave., Dept. 406, Bismarck, ND 58505-0480 or by calling (701) 328-2400, toll free 1-877-245-6885 or Relay North Dakota TTY: 1-800-366-6888. This information is also available to view on our web site at www.psc.state.nd.us under Formal Actions/Case Search. Also, written comments may be submitted to the Public Service Commission at the above address, until September 26, 2009. If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Public Service Commission by telephone or by writing to the address above at least 24 hours prior to the public hearing.
 Tony Clark, Commissioner
 Kevin Cramer, Chairman
 Brian P. Kalk, Commissioner

BOTTINEAU GIRL SCOUTS TROOP 322 is collecting OUR FAMILY UPC BARCODES
 If you can help, please drop off at Jerry's Jack & Jill and Bottineau Courant.
 tfpd

Lake Region State College Devils Lake, ND Wed., Oct. 7, 2009 2:00 p.m.

A copy of the proposed rule is available on the Department's website at www.ndhealth.gov or a copy may be obtained by calling the Health Department at (701) 328-5210. Also, written comments may be submitted to ND Dept. of Health, 918 E. Divide Ave., Bismarck, ND 58501-1947 until Oct. 16, 2009. If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Department of Health at the above phone number or address at least 10 days prior to the public hearing.
 Dated this 12th day of August 2009.
 L. David Gatt
 Environmental Chief

ABBREVIATED NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES

relating to N.D.A.C. Chapter 75-02-02.1, Eligibility for Medicaid
North Dakota Department of Human Services
 will hold a public hearing to address proposed changes to the N.D. Admin. Code.
**AV Room, Room 210
 Second Floor
 Judicial Wing
 State Capitol, Bismarck
 Thurs., Sept. 24, 2009
 1:30 p.m. CT**

Copies of the proposed rules are available for review at county social services offices and human service centers. Copies of the proposed rules and the regulatory analysis relating to these rules may be requested by telephoning (701) 328-2311. Written or oral data, views, or arguments may be entered at the hearing or sent to: Rules Administrator, North Dakota Department of Human Services, State Capitol - Judicial Wing, 600 East Boulevard Ave., Dept. 325, Bismarck, ND 58505-0250. Written data, views, or arguments must be received no later than 5:00 p.m. on October 5, 2009. If you plan to attend the hearing and will need special facilities or assistance relating to a disability, please contact the Department of Human Services at the above telephone number or address at least two weeks prior to the hearing.
 Dated this 20th day of August, 2009.

COURANT
 419 MAIN ST
 PO BOX 29
 BOTTINEAU, ND 58318
 PHONE: 228-2605
 FAX: 228-5864

CLASSIFIED RATES: \$5 for first 25 words; additional 15¢ per word over 25 words. Minimum \$5 per week.

CLASSIFIED RATES: \$5 for first 25 words; additional 15¢ per word over 25 words. Minimum \$5 per week.

FOR SALE ON BID

2008 Dodge Avenger SE cylinder, very low miles, n be seen at Security St Bank, Dunseith.

Inspect and/or submit w ten bids to Chuck or Meir at:

**Security State Bank
 P.O. Box 719
 Dunseith, ND 58329**

Bid opening at Noon on Se 4, 2009. We reserve the ri to reject any and all bids. 8-18, 25, 9-1

NOTICE

To anyone having furnit or any other property at home, please contact me c will be sold at a sale. As I disposing of everything, number is 701-228-3459. Thank you very much.
 Verna Evens
 8-18, 25pd

YARD SAL

**723 5th St, East
 Thurs. Aug. 27th ~ 5-8
 Fri., Aug. 28th ~ 6-2 p**

Animals

FOR SALE: Organic and n beef for sale: antibiotic and none free, Angus beef w/ bill of health. Certified organi natural beef raised cowside on grass fed and finished on alfa grain. Steers and heifers b: quarters, sides, or whole. 1 average. Delivery available to meat processor. Beginning Sep ber 1. Call 701-228-3338 or ; eoseorganicfarm@gmail.com. 8-25, 9-1pd

Autos

FOR ALL YOUR AUTO glas: body repair, contact: D & B Wfs, phone 228-3072. tf

FOR SALE: 2005 Honda C dirtbike \$1500.00; 1982 Ya Virago 920 w/fulldress only 1 miles \$1400.00. Both in exc condition. Call 263-3283 or 0844. 8-11, 18, 25pd

FOR SALE: 2001 Buick Ce Custom, "Astrostart", cruise, i seat, power windows, very 115,540 miles. \$3,895.00. 263-7588 or 263-6737. 8-18, 25 pd

FOR SALE: 1992 Mercury 2 dr, new windshield, starter lens, battery. Trans problem. - obo. Call 263-3495 8-25, 9-1pd

FOR SALE: 1994 Cadillac Dev dr, runs good, \$900 OBO. Cal

8/25 Bottineau



Public Service Commission
State of North Dakota

AUG 13 2009

COMMISSIONERS

Kevin Cramer
Tony Clark
Brian P. Kalk

Executive Secretary
Darrell Nitschke

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
Web: www.nd.gov/psc
E-mail: ndpsc@nd.gov
TDD 800-366-6888 or 711
Fax 701-328-2410
Phone 701-328-2400

13 August 2009

Mr. John Walstad
Code Revisor
North Dakota Legislative Council
State Capitol
600 East Boulevard, 2nd Floor
Bismarck, ND 58505-0360

Re: Notice of Intent to Amend Administrative Rules
Case Nos. GS-09-67 and RC-09-543

Dear Mr. Walstad:

Enclosed please find:

- Commission Motion Proposing Amendments, Scheduling Hearing, Issuing Notice of Intent to Amend Rules and Notice of Hearing, and Issuing an abbreviated Notice
- Notice of Intent to Amend Administrative Rules and Notice of Hearing
- Abbreviated Notice of Intent to Amend Administrative Rules and Notice of Hearing
- Proposed Gas Pipeline Safety administrative rule changes
- Proposed Reclamation administrative rule changes

If you have any questions please do not hesitate to call.

Best Regards,

Illona A. Jeffcoat-Sacco
General Counsel

Received in the office of the
Legislative Council this 13th day of August, 2009

By: *Philip R. Markey*

Enclosures

8 RC-09-543 Filed: 8/13/2009 Pages: 14
Letter to Legislative Council Enclosing Notice of
Intent to Amend Administrative Rules

12 GS-09-67 Filed: 8/13/2009 Pages: 14
Letter to Legislative Council Enclosing Notice of
Intent to Amend Administrative Rules

State of North Dakota

Public service Commission

**Public Service Commission
Gas Pipeline Safety
Rulemaking**

Case No. GS-09-67

Amended Statement on Regulatory Analysis and Takings Assessment

29 July, 2009

The purpose of the 2009 Gas Pipeline Safety rule amendments, enacted by the federal government and to be adopted by reference into state administrative rule, consist of the following: requires operators to use design and construction features in new and replaced gas transmission pipelines to reduce the risk of internal corrosion and related pipeline failures; amends the notification requirements in existing integrity management regulations for both hazardous liquid and natural gas transmission pipelines; relaxes regulatory requirements governing public awareness programs conducted by operators of master meter systems and certain operators of petroleum gas systems; adopts, with minor modifications, an interim final rule issued by PHMSA on March 28, 2008, conforming PHMSA's administrative procedures with the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006; amends the existing pipeline safety regulations to prescribe safety requirements for the operation of certain gas transmission pipelines at pressures based on higher operating stress levels; and, incorporates by reference the most recent editions of API Specification 5L "Specification for Line Pipe" and API 1104 "Welding of Pipelines and Related Facilities."

Regulatory Analysis

North Dakota Century Code Section 28-32-08 requires an agency to prepare a regulatory analysis if the proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The analysis must contain:

- a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
- b. Description of the probable impact, including economic impact, of the proposed rule;
- c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
- d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

Individuals within this State who may be affected by these proposed federal amendments consists of both intrastate and interstate hazardous liquid and natural gas operators.

None of the above proposed federal amendments is expected to have an impact on the State's regulated community in excess of fifty thousand dollars.

Any costs associated with the enforcement of the above proposed federal amendments will be taken from the Commission's ongoing gas pipeline safety budget with little or no affect upon that budget.

The Commission acts as agent for the U.S. Department of Transportation, PHMSA, in the enforcement of the minimum gas pipeline safety standards on all gas distribution and intrastate transmission facilities within the State. This is accomplished by entering into a 601055(a) Title 49 agreement with the U.S. Department of Transportation which requires North Dakota to adopt all of the Federal gas safety standards, along with any future amendments to those standards. This rulemaking is a part of that ongoing agreement.

Takings Assessment

North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The assessment must:

- a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
- b. Clearly and specifically identify the purpose of the proposed rule.
- c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
- d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
- e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
- f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

None of the above proposed federal amendments will result in a regulatory taking.

The purpose of the proposed federal amendments are stated above.

We do not expect any impact on private property owners as a result of the proposed federal amendments. The proposed rules should not limit the use of private property.

The proposed amendments will not limit the use of private real property and estimated compensation costs will be zero.

Small Entity Regulatory Analysis

This regulatory analysis is not required under Chapter 28-32-08.1, N.D.C.C. because the proposed amendments to existing rules are mandated by federal law.

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-09-543

**Statements Regarding Regulatory Analysis, Takings Assessment, and
Small Entity Analysis**

July 20, 2009

The rule changes proposed in Case No. RC-09-543 are due to a statutory change to North Dakota's surface coal mining and reclamation law that was enacted by the 2009 Legislature. The statutory change reduces the revegetation responsibility period from ten years to five years for eligible lands that are re-mined. 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. The proposed rule changes require a permit applicant to clearly identify any previously mined lands that will be permitted and to describe and address any special environmental and safety problems that may be associated with the re-mining of these areas. Two provisions in the rule containing revegetation success standards are also being amended due to the statutory change. It should be noted that any mining and reclamation rules adopted by the Commission must be as effective as the counterpart federal rules that have issued by the federal Office of Surface Mining within the Department of the Interior.

Statement Regarding Regulatory Analysis

North Dakota Century Code Section 28-32-08 requires that an agency issue a regulatory analysis if the proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars or if a written request for the analysis is filed by the governor or a member of the legislative assembly.

The additional information that will be required in permit applications for the previously mined areas as proposed by the rule changes is not expected to have an impact on the regulated community in excess of fifty thousand dollars and no regulatory analysis is necessary.

Statement Regarding Takings Assessment

North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private property. The assessment must:

- a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
- b. Clearly and specifically identify the purpose of the proposed rule.

- c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
- d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
- e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
- f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

This proposed rule changes do not affect place any limits for the use of private real property and therefore will not result in any taking.

The proposed rule changes will not constitute a taking; therefore, there should be no cost to the state.

Subsection e is not applicable because the proposed rule changes will not limit the use of private real property.

Subsection f is not applicable because the proposed rule changes will not limit the use of private real property.

Statement Regarding Small Entity Regulatory Analysis

An economic impact analysis under North Dakota Century Code Section 28-32-08.1 requires a regulatory analysis which considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. Small entities employ fewer than 25 full-time employees or have gross annual revenue sales of less than \$2.5 million dollars. The proposed rule changes only apply to persons or companies that conduct surface coal mining operations and it is possible that a mine could be owned or operated by a small entity. The following addresses the provisions of subsection 2 of NDAC 28-32-08.1 with regard to the rule changes proposed in Case No. RC-09-543:

NDCC 28-32-08.1(2)(a) – Establishment of less stringent compliance or reporting requirements for small entities.

No additional compliance standards or reporting requirements are proposed by the rule changes.

NDCC 28-32-08.1(2)(b) – Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities.

No additional compliance standards or reporting requirements are proposed by the rule changes.

NDCC 28-32-08.1(2)(c) – Consolidation or simplification of compliance or reporting requirements for small entities.

No additional compliance standards or reporting requirements are proposed by these rule changes. However, since the Commission's mining and reclamation rules must be consistent with and as effective as counterpart federal rules, we cannot consolidate or simplify the requirements for small entities and maintain an approved state regulatory program for surface coal mining and reclamation operations.

NDCC 28-32-08.1(2)(d) – Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.

No additional performance standards are proposed by these rule changes. The performance standard being changed reduces the revegetation responsibility period for eligible lands that are re-mined as allowed by the recent statutory change. Also, since the Commission's mining and reclamation rules must be consistent with and as effective as counterpart federal rules, we cannot adopt special performance standards for small entities and maintain an approved state regulatory program for surface coal mining and reclamation operations.

NDCC 28-32-08.1(2)(e) – Exemption of small entities from all or any part of the requirements contained in the proposed rule.

No additional compliance standards or reporting requirements are proposed by these rule changes. Since the Commission's mining and reclamation rules must be consistent with and as effective as counterpart federal rules, we cannot exempt small entities from the rules that are being modified and maintain an approved state regulatory program for surface coal mining and reclamation operations.

The proposed rule changes will not have an adverse impact on small entities; therefore an economic impact statement has not been prepared.

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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

Case No. GS-09-67

STAFF TESTIMONY

September 16, 2009

Good morning! My name is Alan Moch. I am employed by the Public Service Commission as Director of its Testing and Safety Division. I am also designated as one of the State's two Gas Pipeline Safety Inspectors.

The North Dakota Public Service Commission participates in, and receives some funding from the Federal/State Gas Pipeline Safety Program. The Commission acts as agent for the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), in the enforcement of the minimum gas pipeline safety standards on all gas distribution and intrastate transmission facilities within the State. This is accomplished by entering into an agreement with the U.S. Department of Transportation which requires North Dakota to adopt all of the Federal gas safety standards, along with any future amendments to those standards. The initial adoption took place on June 1, 1984, with additional rulemaking proceedings, such as this, held annually, if necessary, to continue to amend the standards. The rules offered here today come to the Commission as Final Rules from the U.S. Department of

Transportation, Pipeline and Hazardous Material Safety Administration's Office of Pipeline Safety rulemaking proceedings.

The 2008/2009 Gas Pipeline Safety rule amendments enacted by the federal government and to be adopted by reference into state administrative rule, consist of the following changes to the federal gas safety standards:

49 CFR Part 192 - Amendment No. FR 20055 - This final rule requires operators to use design and construction features in new and replaced gas transmission pipelines to reduce the risk of internal corrosion and related pipeline failures. This is accomplished by reducing the potential for accumulation of liquids and facilitating operation and maintenance practices that address internal corrosion. The effective date of this final rule was May 23, 2007.

49 CFR Part 192 - Amendment No. 104 – This final rule amends the existing integrity management regulations for both hazardous liquid and natural gas transmission pipelines. The modifications include changing the notification requirements for operators of hazardous liquid and natural gas pipelines; and repealing a requirement for gas operators to notify local authorities. This action is intended to improve pipeline safety by clarifying the integrity management regulations and providing operators with increased flexibility in implementing their integrity management (IM) programs. The effective date of this final rule was August 16, 2007.

49 CFR Part 192 - Amendment No. 105 – This final rule relaxes regulatory requirements governing public awareness programs conducted by operators of master meter systems and certain operators of petroleum gas systems. These operators

typically manage property and incidentally provide gas service to customers located on the property. The change provides a less burdensome means for these operators to satisfy public awareness needs. The effective date of this final rule was January 14, 2008.

49 CFR Part 192 - Amendment No. 106 – This final rule adopts, with minor modifications, an interim final rule issued by PHMSA on March 28, 2008, conforming PHMSA's administrative procedures with the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 by establishing the procedures PHMSA will follow for issuing safety orders and handling requests for special permits, including emergency special permits. The rule also notifies operators about electronic docket information availability; updates addresses for filing reports, telephone numbers, and routing symbols; and clarifies the time period for processing requests for written interpretations of the regulations. This final rule makes minor amendments and technical corrections to the regulatory text in response to written public comments received after issuance of the interim final rule. The effective date of this final rule was February 17, 2009.

49 CFR Part 192 - Amendment No. 107 – This final rule amends the existing pipeline safety regulations to prescribe safety requirements for the operation of certain gas transmission pipelines at pressures based on higher operating stress levels. The result is an increase of maximum allowable operating pressure (MAOP) over that currently allowed in the regulations. Improvements in pipeline technology assessment methodology, maintenance practices, and management processes over the past twenty-five years have significantly reduced the risk of failure in pipelines and

necessitate updating the standards that govern the MAOP. This rule will generate significant public benefits by reducing the number and consequences of potential incidents and boosting the potential capacity and efficiency of pipeline infrastructure, while promoting rigorous life-cycle maintenance and investment in improved pipe technology. The effective date of this final rule was November 17, 2008. However, a notice published in the Federal Register on December 1, 2008 stays the effective date of this final rule, published on October 17, 2008 (73 FR 62148). In accordance with the Congressional Review Act, this final rule became effective on December 22, 2008, 60 days after the final rule was transmitted to Congress

49 CFR Part 192 - Amendment No. 108 – This final rule amends the design factor and design pressure limits for natural gas pipelines made from new Polyamide-11 (PA-11) thermoplastic pipe. Together, these two changes in the regulations allow pipeline operators to operate certain pipelines constructed of new PA-11 pipe at higher operating pressures than is currently allowed for other plastic pipe materials. The effective date of this final rule was January 23, 2009.

49 CFR Part 192 – Amendment No. 109 - This final rule incorporates by reference the most recent editions of API Specification 5L “Specification for Line Pipe” and API 1104 “Welding of Pipelines and Related Facilities.” The purpose of this update is to enable pipeline operators to utilize current technology, materials, and practices to help maintain a high level of safety relative to their pipeline operations. PHMSA is not eliminating the use of the current referenced standards but simply allowing the additional use of these new standards. PHMSA may in the future propose to eliminate

the incorporation of the existing referenced standards. The effective date of this final rule is April 14, 2009

49 CFR Part 199 - Amendment No. 24 – This final rule conforms PHMSA's administrative procedures with the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act) by establishing the procedures PHMSA will follow in issuing safety orders and handling requests for special permits, including emergency special permits. This interim final rule also notifies operators about electronic docket information availability; updates addresses, telephone numbers, and routing symbols; and clarifies the time period for processing requests for written interpretations of the regulations. This interim final rule does not impose any new operating, maintenance, or other substantive requirements on pipeline owners or operators. The effective date of this final rule was March 28, 2008.

A Statement on Regulatory Analysis, Takings Assessment, and Small Entity Regulatory Analysis was prepared and submitted on July 22, 2009, for this gas pipeline safety rulemaking proceeding. A preliminary analysis of the Amendments, as outlined above, showed that the impact to the State's regulated community would be less than \$50,000, and have no affect on takings.

The Commission has not received any written comments concerning this proceeding.

This concludes my testimony. I would be happy to answer any questions on the above rules at this time.

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-09-543

STAFF TESTIMONY

September 16, 2009

I am Jim Deutsch, Director of the Public Service Commission's Reclamation Division, and I will discuss the rule changes in Case No. RC-09-543. A few changes are proposed to North Dakota Administrative Code Article 69-05.2, rules for surface coal mining and reclamation operations. The rule changes are due to a statutory change to North Dakota's surface coal mining and reclamation law that was enacted by the 2009 Legislature. The statutory change reduces the revegetation responsibility period from ten years to five years for eligible lands that are re-mined. 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. The rules adopted by the Commission must be as effective as counterpart federal rules issued by the federal Office of Surface Mining.

A new subsection is being added to NDAC 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 added to subsection 2 and subdivision i of subsection 4 of NDAC 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.

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-09-543.

**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:

Gas Safety/Gas Pipeline Safety: Case No. GS-09-67

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.

Reclamation: Case No. RC-09-543

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

Gas Safety/Gas Pipeline Safety: Case No. GS-09-67

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.

Reclamation: Case No. RC-09-543

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.

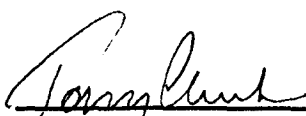
No other comments were received and no changes are being made to the rules as originally proposed.

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