



# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

Kevin Cramer  
Tony Clark  
Brian P. Kalk

Executive Secretary  
Darrell Nitschke

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

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

Dear Mr. Walstad:

Enclosed for publication in the North Dakota Administrative Code please find a copy of an amendment to N.D. Admin. Code § 69-09-03-02 concerning gas pipeline safety.

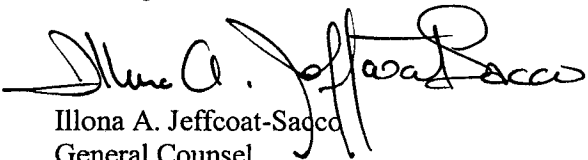
In support of this filing, enclosed please find copies of:

- The proposed amendment to N.D. Admin. Code § 69-09-03-02;
- Staff testimony/comments;
- The Commission's 14 October 2009 Order Submitting Rules to Attorney General, which includes a summary of all comments and is the written record of the agency's consideration of all comments for the captioned case and a companion rules case not being submitted at this time;
- Letter from the Attorney General dated 28 October 2009 approving the proposed rule as to legality; and
- 28 October 2009 Public Service Commission motion adopting the rule as approved.

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

Thank you for your attention to this matter.

Best regards,

  
Illona A. Jeffcoat-Sacco  
General Counsel

attachments

26 **GS-09-67** Filed: 10/28/2009 Pages: 12  
**Letter to Legislative Council Enclosing Proposed  
Rules for Publication**

**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

**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.

agm

**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.

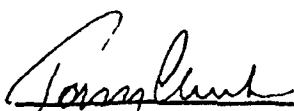
No other comments were received and no changes are being made to the rules as originally proposed.

#### **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



Wayne Stenehjem  
ATTORNEY GENERAL

STATE OF NORTH DAKOTA  
**OFFICE OF ATTORNEY GENERAL**

STATE CAPITOL  
600 E BOULEVARD AVE DEPT 125  
BISMARCK, ND 58505-0040  
(701) 328-2210 FAX (701) 328-2226  
www.ag.nd.gov

**RECEIVED**

OCT 28 2009

OPINION

October 28, 2009

**PUBLIC SERVICE COMMISSION**

Ms. Ilona A. Jeffcoat-Sacco  
General Counsel  
Public Service Commission  
State Capitol  
Bismarck, ND 58505

Dear Ms. Jeffcoat-Sacco:

The Office of Attorney General has examined the proposed amendments to N.D.A.C. § 69-09-03-02 concerning gas pipeline safety (Case No. GS-09-67) and proposed amendments to N.D.A.C. art. 69-05.2 concerning mining and reclamation (Case No. RC-09-543), along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was not issued or requested, 3) a takings assessment was not prepared, 4) a small entity regulatory analysis and an economic impact statement were not prepared for the proposed amendments to N.D.A.C. § 69-09-03-02 because they are required by federal law and a small entity regulatory analysis and an economic impact statement were prepared for the proposed amendments to N.D.A.C. art. 69-05.2, and 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Wayne Stenehjem  
Attorney General

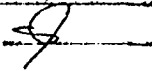
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cc: John Walstad, Legislative Council

19 RC-09-543 Filed: 10/28/2009 Pages: 1  
Letter Approving Administrative Rules

24 GS-09-67 Filed: 10/28/2009 Pages: 1  
Letter Approving Administrative Rules

APPROVED

DATE: 10-28-09  


**MOTION**

**October 28, 2009**

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

**Case No. GS-09-67**

Having been approved by the Attorney General, I move the Commission adopt the proposed amendment to Section 69-09-03-02 of the North Dakota Administrative Code, and forward the rule to the Legislative Council for publication, Case No. GS-09-67.