

**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.