



JAN 10 2011

# Public Service Commission

## State of North Dakota

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](http://www.nd.gov/psc)  
E-mail: [ndpsc@nd.gov](mailto:ndpsc@nd.gov)  
Phone 701-328-2400  
Toll Free 1-877-245-6685  
Fax 701-328-2410  
TDD 800-366-6888 or 711

10 January 2011

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

RE: Proposed mining and reclamation rule changes  
PSC Case No. RC-09-543

Dear Mr. Walstad:

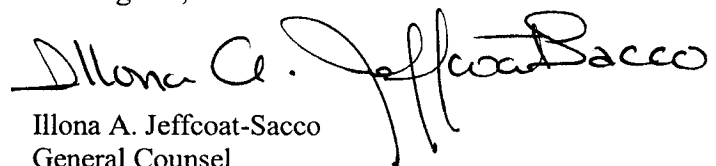
Enclosed for publication in the North Dakota Administrative Code please find a copy of amendments to N.D. Admin. Code Article 69-05.2 relating to a modification of the coal regulatory program Amendment XXXVIII that allow the revegetation responsibility period to be reduced from ten years to five years for eligible lands that are re-mined.

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

- 30 December 2010 Public Service Commission Motion, with the amendments as adopted and approved;
- Copy of 27 December 2010 *Federal Register* showing ND rule changes approved by Federal Office of Surface Mining
- Letter from the Attorney General dated 28 October 2009 approving the proposed rules as to legality;
- The Public Service 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; and
- 16 September 2009 Commission staff testimony presented at the hearing, which were the only comments received.

Thank you for your attention to this matter.

Best regards,

  
Illona A. Jeffcoat-Sacco  
General Counsel

attachments

31 RC-09-543 Filed: 1/10/2011 Pages: 27  
Letter to Legislative Council enclosing proposed rules for publication

Public Service Commission

Illona Jeffcoat-Sacco

APPROVED

DATE: 12-30-10



**MOTION**

**December 30, 2010**

**Public Service Commission  
Reclamation  
Rulemaking**

**Case No. RC-09-543**

Having been approved by the North Dakota Attorney General and the Federal Office of Surface Mining, I move the Commission adopt the proposed amendments to Article 69-05.2 of the North Dakota Administrative Code, and forward the rules to the Legislative Council for publication, Case No. RC-09-543, Reclamation Rulemaking.

**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 backsloped, 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

[FR Doc. 2010-32418 Filed 12-23-10; 8:45 am]  
 BILLING CODE 4310-05-P

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 934**

[SATS No. ND-051-FOR; Docket ID No. OSM-2009-0013]

**North Dakota Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving an amendment to the North Dakota regulatory program (the “North Dakota program”) under the Surface Mining Control and Reclamation Act of 1977 (“SMCRA” or “the Act”). North Dakota proposes revisions to rules and statutes that will allow the revegetation responsibility period to be reduced from ten years to five years for lands eligible for re-mining. North Dakota intends to revise its program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

**DATES:** *Effective Date:* December 27, 2010

**FOR FURTHER INFORMATION CONTACT:** Jeffery Fleischman, Field Office Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 150 East B Street, Room 1018, Casper, Wyoming 82604-1018, 307-261-6552, [jfleischman@osmre.gov](mailto:jfleischman@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the North Dakota Program
- II. Submission of the Proposed Amendment
- III. Office of Surface Mining Reclamation and Enforcement’s (OSM’s) Findings
- IV. Summary and Disposition of Comments
- V. OSM’s Decision
- VI. Procedural Determinations

**I. Background on the North Dakota Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C.

1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary’s findings, the disposition of comments, and conditions of approval in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota’s program and program amendments at 30 CFR 934.15, 934.16, and 934.30.

**II. Submission of the Proposed Amendment**

By letter dated November 12, 2009, North Dakota sent us an amendment to its program (Amendment number XXXVIII, Administrative Record Docket ID: OSM-2009-0013) under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota submitted the amendment on its own accord. The amendment reduces the reclamation liability period on previously mined areas from ten full years to five full years. The Federal regulations at 30 CFR 816.116 provide incentives for eligible re-mining operations including reduced revegetation responsibility periods (2 years in the East and 5 years in the West).

Specifically, North Dakota proposes revisions to the North Dakota Century Code at Chapter 38-14.1-24(18) (Environmental protection performance standards) and to the North Dakota Administrative Code at Article 69-05.2-09-02(14) (Permit applications—operation plans—maps and plans) and Article 69-05.2-22-07(2) and (4)(i) (Performance standards—Revegetation—Standards for success).

North Dakota proposes to reduce the reclamation liability period on previously mined areas from ten years to five years. This change will apply to the North Dakota Century Code as well as the North Dakota Administrative Code. North Dakota defines previously mined areas as “lands that were affected by coal mining activities prior to January 1, 1970.” North Dakota also proposes to require permit applications that include previously mined areas to include additional maps and information addressing potential environmental and safety problems that might occur at the mining site.

We announced receipt of the proposed amendment in the February 9, 2010, **Federal Register** (Vol. 75, No. 26, FR page number 6330). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment’s adequacy

(Administrative Record Docket ID: OSM-2009-0013).

We did not receive any comments. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on March 11, 2010.

**III. OSM’s Findings**

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

*A. Revisions to North Dakota’s Rules and Statutes That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations and/or SMCRA*

North Dakota proposed revisions to the following rules containing language that is the same as or similar to the corresponding section of the Federal regulations. North Dakota Administrative Code (NDAC) 69-05.2-22-07 (30 CFR 816.116), Performance standards—Revegetation—Standards for success.

North Dakota proposes for areas meeting the definition of previously mined area to require a five year liability period for revegetation success. All other areas in North Dakota have a ten year liability period. The Federal regulations at 30 CFR 818.116 allow the same five year period.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations and we approve it.

*B. Revisions to North Dakota’s Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations*

North Dakota Century Code Chapter (NDCC) 38-14.1-24(18) (SMCRA Section 515(20)(B)), Environmental Protection Performance Standards.

North Dakota proposes to add a definition for “previously mined areas.” The definition would adopt January 1, 1970, the effective date of North Dakota’s first reclamation law, as the cut-off eligibility date for lands eligible for re-mining. Previously mined areas are those that were mined prior to January 1, 1970. The Federal definition of previously mined areas are those mined prior to August 3, 1977, and for which investigation reveals, are not reclaimed to the standards of SMCRA. Under North Dakota’s proposed definition far fewer lands would be considered but

there is no determination as to their condition.

This date is more restrictive than SMCRA as clarified by the State. North Dakota states, "North Dakota's definition of lands eligible for re-mining will apply to fewer lands as compared to the SMCRA provisions. Since North Dakota's first reclamation law went into effect on January 1, 1970, we will only apply the special performance standard (the reduced revegetation liability period) to lands that were mined prior to that date. Therefore, for the purposes of re-mining under the coal regulatory program, land must have been mined prior to January 1, 1970, and be left in an inadequate reclamation status. Any lands that were mined in North Dakota between January 1, 1970, and August 3, 1977, are subject to certain reclamation standards as required by the pre-SMCRA State reclamation laws and will not be eligible for the reduced 5-year revegetation liability period. However, under the SMCRA provisions, the special re-mining standards can be applied to lands that were mined prior to August 3, 1977. We consider North Dakota's re-mining provisions to be more stringent than SMCRA since fewer lands are eligible for the special performance standards. In North Dakota, lands mined between January 1, 1970, and August 3, 1977, that are proposed to be re-mined or re-disturbed will be subject to the 10-year revegetation liability period, whereas under SMCRA they could qualify for the 5-year liability period."

North Dakota's explanation that the special performance standard (the 5-year revegetation liability period) will only apply to lands that were mined prior to January 1, 1970, but not to those lands mined between January 1, 1970, and August 3, 1977, that are proposed to be re-mined or re-disturbed, clarifies which lands qualify for the shorter responsibility period under its revised statute at NDCC Chapter 38, Section 14.1-24, subsection 18. North Dakota's adoption of the January 1, 1970, date rather than August 3, 1977, (the effective date of SMCRA) renders its definition no less stringent than the Act and we approve it.

#### *C. Revisions to North Dakota's Rules With No Corresponding Federal Regulation*

NDAC 69-05.2-09-02, Permit applications—Operation plans—Maps and plans.

This addition to North Dakota's rules does not have a Federal Counterpart. It requires the permit application under the re-mining provision to include potential environmental and safety hazards that could be reasonably

anticipated to occur as well as include the mitigative measures that will be taken to ensure that the applicable reclamation requirements can be met. It is more stringent than the Federal rules since the Federal rules have no such requirement and we approve it.

#### **IV. Summary and Disposition of Comments**

##### *Public Comments*

We asked for public comments on the amendment (Administrative Record Docket ID: OSM-2009-0013), but did not receive any.

##### *Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the North Dakota program (Administrative Record Docket ID: OSM-2009-0013).

##### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

We note that none of the proposed changes relate to air or water quality standards. Nevertheless, under 30 CFR 732.17(h)(11)(ii), OSM requested comments on the amendment from EPA (Administrative Record Docket ID: OSM-2009-0013). EPA did not respond to our request.

##### *State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On November 25, 2009, we requested comments on North Dakota's amendment (Administrative Record Docket ID: OSM-2009-0013), but neither responded to our request.

#### **V. OSM's Decision**

Based on the above findings, we approve North Dakota's November 12, 2009, amendment.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 934, which codify decisions concerning the North Dakota program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's

program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

#### **VI. Procedural Determinations**

##### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

##### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

##### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

##### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

**Executive Order 13175—Consultation and Coordination With Indian Tribal Governments**

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

**Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy**

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

**National Environmental Policy Act**

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq.*).

**Paperwork Reduction Act**

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Regulatory Flexibility Act**

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

**Small Business Regulatory Enforcement Fairness Act**

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the

fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

**Unfunded Mandates**

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 934**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 12, 2010.

**Allen D. Klein,**  
Regional Director, Western Region.

- For the reasons set out in the preamble, 30 CFR part 934 is amended as set forth below:

**PART 934—NORTH DAKOTA**

- 1. The authority citation for part 934 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

- 2. Section 934.15 is amended in the table by adding a new entry in chronological order by “Date of Final Publication” to read as follows:

**§ 934.15 Approval of North Dakota regulatory program amendments**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
November 12, 2009	December 27, 2010	NDCC 38–14.1–24(18). NDAC 69–05.2–09–2. 2NDAC 69–05.2–22–07.

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 943**

[SATS No. TX–059–FOR; Docket No. OSM–2010–0001]

**Texas Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposed revisions to its regulations regarding annual permit fees. Texas revised its



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. Illona 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

eee/vkk

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

Attorney General

Attorney General

**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.

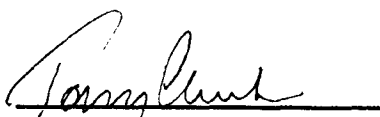
No other comments were received and no changes are being made to the rules as originally proposed.

### **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.

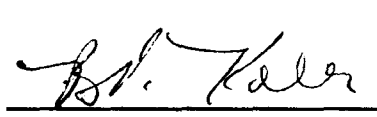
### **PUBLIC SERVICE COMMISSION**



**Tony Clark**  
**Commissioner**



**Kevin Cramer**  
**Chairman**



**Brian P. Kalk**  
**Commissioner**

**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 backsloped, 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  
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.