

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Reclamation  
Rulemaking**

**Case No. RC-12-166**

**Statements on Regulatory Analysis, Small Entity Regulatory Analysis and  
Economic Impact, and Takings Assessment**

**May 30, 2012**

The Commission is proposing to amend the several existing rules and add three new sections to North Dakota Administrative Code Article 69-05.2 pertaining to surface coal mining and reclamation operations. The federal Office of Surface Mining is requiring that provisions be added for the Commission's use of the Applicant Violator System prior to the approval of mining permits, renewals and certain revisions. While the Commission has been using the Applicant Violator System for many years pursuant to a written agreement, the Office of Surface Mining is now requiring that the procedures be incorporated into rules.

The Applicant Violator System is a national database of mining companies that have unabated violations or unpaid civil penalties. A mining company that is linked to an entity in this database may be ineligible to receive a new mining permit, renewal, or revision that proposes to permit or mine additional lands. The new provisions also contain procedures for companies to use if they want to challenge information or links in the Applicant Violator System. Two other rule changes are also being proposed. One adds a new subsection to an existing rule on the format of electronic permit applications and the other modifies an existing provision to make it consistent with another rule that was previously amended. It should also be noted that mining and reclamation rules adopted by the Commission must be as effective as counterpart federal rules issued by the federal Office of Surface Mining within the Department of the Interior.

**Statement on 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 law provides, in part:

2. The regulatory 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. A 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.

These proposed changes primarily pertain to the Commission's use of the federal Application Violator System before approving mining permits, renewals and certain permit revisions. In addition, a new subsection will be added to recognize that most permit application are now being submitted in an electronic format and the new subsection contains general formatting requirements for these submittals.

These revisions and additions are not expected to have an impact on the regulated community in excess of fifty thousand dollars and to date, there has not been a request for a regulatory analysis. Consequently, a regulatory analysis is not required at this time.

#### **Statement on Small Entity Regulatory Analysis and Economic Impact**

North Dakota Century Code section 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

- 2. . . . The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
  - a. Establishment of less stringent compliance or reporting requirements for small entities;
  - b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
  - c. Consolidation or simplification of compliance or reporting requirements for small entities;

- d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
- e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

See the discussion above. For the same reasons, the proposed rule changes are not expected to have an adverse effect on small entities.

### **Statement on 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 law provides, in part:

1. . . . The agency's 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.

Given that the proposed rules do not limit the use of private real property, a written assessment of the constitutional takings is not required.