



Public Service Commission

State of North Dakota

COMMISSIONERS

Brian P. Kalk
Randy Christmann
Julie Fedorchak

Executive Secretary
Darrell Nitschke

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

May 10, 2013

Mr. Jeff Fleischman, Director
OSM Casper Field Office
PO Box 11018
150 East B Street
Casper, WY 82601-7032

Dear Mr. Fleischman:

Enclosed is a modification to the rule changes that we have proposed as North Dakota State Program Amendment XL. This amendment contains new and revised rules in North Dakota Administrative Code (NDAC) Article 69-5.2 pertaining to Surface Coal Mining and Reclamation Operations. Most of these proposed rule changes (PSC Case No. RC-12-166) relate to our use of the Applicant Violator System prior to the approval of permits, renewals and certain revisions.

The modification to Program Amendment XL corrects a drafting error in NDAC Section 69-05.2-10-09 that was noted during OSM's review of this amendment. Attached is a copy of the proposed rule that shows the modifications we have made to Subsection 3(b). The modifications are highlighted in red and depicted in an underline/strikethrough format. This should adequately address the issue that was noted in the March 13th e-mail message that we received from your staff. Also attached is a copy of the updated Attorney General's opinion on the legality of the modified rule changes proposed in Case No. RC-12-166.

If you or your staff have any questions, please contact me.

Sincerely,

James R. Deutsch
Director
Reclamation Division

Enclosures

cc: Flynn Dickinson/with enclosures

Minedata/ProgramAmendments/AmendXL(40)/Ltr_OSM_CFO_5-10-13.doc

69-05.2-10-09. Permit Applications – Ownership and control requirements for permittees after permit issuance.

1. Within thirty days of being issued a cessation order under subdivision b of subsection 1 North Dakota Century Code section 38-14.1-28, the permittee must provide or update all the information required under section 69-05.2-06-01.
2. A permittee does not have to submit information under section 1 if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.
3. Within sixty days of any addition, departure, or change in position of any person identified in subdivision e of section 1 of section 69-05.2-06-01, the permittee must provide:
 - a. The date of any departure; and
 - b. ~~A certification, under oath, from the natural person with the greatest level of effective control over the entire proposed surface coal mining operation that he or she controls the proposed surface coal mining operation. The following for that person:~~
 1. The person's name, address and phone number.
 2. The person's position title and relationship to you, including percentage of ownership and location in the organizational structure.
 3. The date the person began functioning in that position.

History: Effective 20122013.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-22, 38-14.1-23



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

OPINION

April 30, 2013



Ms. Illona A. Jeffcoat-Sacco
General Counsel
Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck, ND 58505-0480

Dear Ms. Jeffcoat-Sacco:

The Office of Attorney General has examined the proposed amendments to N.D.A.C. Art. 69-05.2¹ concerning surface coal mining and reclamation operations (Case No. RC-12-166), 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 issued, 3) a takings assessment was prepared, 4) a small entity regulatory analysis and an economic impact statement were prepared, 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

vkk

cc: John Walstad, Legislative Council

¹ This opinion addresses amendments to these rules, including an additional amendment ordered by the Commission on April 10, 2013, in regard to a further amendment requested by a federal office of Surface Mining Reclamation and Enforcement.