



Public Service Commission

State of North Dakota

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11 March 2016

The Honorable Wayne Stenehjem
North Dakota Attorney General
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0040

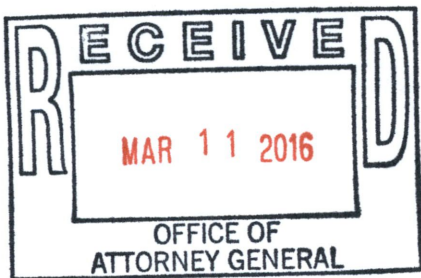
RE: Public Service Commission Gas Pipeline Safety and Reclamation Rulemakings
Case No. GS-15-187 and Case No. RC-15-737

Dear Attorney General Stenehjem:

Enclosed please find proposed amendments to the North Dakota Administrative Code by the North Dakota Public Service Commission. In accordance with N.D.C.C. § 28-32-14, the North Dakota Public Service Commission requests your examination of these rules as to their legality so they may be considered for formal adoption and publication in the North Dakota Administrative Code.

Enclosed for purposes of review is a copy of each of the following:

- The 9 March 2016 Public Service Commission Order Submitting Rules to Attorney General. The Order summarizes the written and oral comments received, the Commission's consideration of the comments, and the Commission's conclusions. The hearing prompted minor changes to the Reclamation rules, but no changes to the Gas Safety rules. Consequently, the proposed rules as ordered include the changes made to the Reclamation rules following consideration of the comments, and these revised rules (as well as the Gas Safety rules as originally proposed) are attached to the Commission's 9 March 2016 Order;
- Full Notice of Intent to Amend Administrative Rules;
- Abbreviated Notice of Intent to Amend Administrative Rules;
- Affidavit of Publication from the North Dakota Newspaper Association;
- A copy of one of the actual notices, as published (others are available if you want them);
- North Dakota Newspaper Association invoice showing the names of the newspapers in which the abbreviated Notice was published;
- A copy of the cover letter filing the Notice and Administrative Rules with the Legislative Council, with the filing acknowledgment;



The Honorable Wayne Stenehjem


11 March 2016

Page 2

- A statement for each rule case regarding the required regulatory analyses, takings assessments, and small entity regulatory analyses; and
- Testimony from the public hearing and other written comments received.
- A copy of the rules as originally proposed, and a version indicating revisions made to the Reclamation rules due to consideration of the comments.

Thank you for your consideration of the rules. If you have any questions please do not hesitate to call or email.

Best regards,



Illona A. Jeffcoat-Sacco
General Counsel

enclosures

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Gas Pipeline Safety
Rulemaking**

Case No. GS-15-187

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-15-737

ORDER SUBMITTING RULES TO ATTORNEY GENERAL

March 9, 2016

Appearances

Commissioners Julie Fedorchak, Randy Christmann, and Brian P. Kalk

Preliminary Statement

On January 5, 2016 the North Dakota Public Service Commission (Commission) issued a formal Notice of Proposed Rulemaking and an Abbreviated Notice in the two captioned cases, proposing to revise several sections of the North Dakota Administrative Code.

Also on January 5, 2016, a Statement on the Regulatory Analysis, Small Entity Analysis and Impact and Takings Assessment was filed in each case.

Also on January 5, 2016 the notices were forwarded to the Legislative Council for publication at least 30 days in advance of the hearing.

The Abbreviated Notice was published once in 52 official county newspapers (covering 53 counties) the week of January 13 through January 18, 2016.

On February 2, 2016 the Notice of Intent to Amend Administrative Rules and Notice of Public Hearing, as well as a copy of the proposed rules, were mailed electronically to the sponsors of 2015 Senate Bill 2377.

A public hearing was noticed for and held at 10:00 a.m. CST, on February 18, 2016. 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 February 29, 2016, 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 rules as originally proposed are summarized as follows:

Gas Pipeline Safety – Case No. GS-15-187 – Section 69-09-03-02

The purpose of this rulemaking is to adopt by reference the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA).

This rule change adopts amendments to safety regulations that have been adopted by PHMSA since November 6, 2014, current to December 31, 2015.

For Title 49 Code of Federal Regulations Part 194 – Response Plans for Onshore Oil Pipelines, the Public Service Commission currently has statutory authority concerning pipeline safety of hazardous liquids pipelines, but hasn't initiated that safety program agreement with PHMSA. In order to implement such a program, the Public Service Commission must adopt all pipeline safety rules adopted by PHMSA. The Commission is proposing to adopt all PHMSA regulations for hazardous liquids pipeline safety in effect as of December 31, 2015, including adoption of Part 194.

Reclamation - Case No. RC-12-166 - Article 69-05.2

Numerous provisions of North Dakota Administrative Code Article 69-05.2 pertaining to surface coal mining and reclamation operations must amended as a result of statutory changes made during the 2015 Legislative session by Senate Bill No. 2377. The statutory changes added a definition of "commercial leonardite" to the list of definitions in the code, and also added this phrase to other sections of the reclamation law as appropriate. In addition, the statutory changes excluded leonardite, an oxidized form of lignite, from the definition of "coal." Due to these statutory changes, numerous changes need to be made throughout the Commission's surface coal mining and reclamation rules.

The proposed rule changes primarily consist of adding the phrase "or commercial leonardite" immediately after the word "coal" when commercial leonardite is not part of a definition or a phrase that doesn't otherwise include commercial leonardite. No new or additional requirements are proposed for these or other mining activities.

Public Hearing and Comment Discussion

At the hearing, Commission staff testified and filed written testimony in Case No. GS-15-187 and Case No. RC-15-737. In addition, other written comments were received as discussed below.

Case No. GS-15-187

Commission staff testimony was the only testimony received. The Commission agrees with the rules as originally proposed.

Case No. RC-15-737

Commission staff testified at the hearing and filed written testimony. In addition to explaining the changes and the reasons for proposing them, Staff also indicated there should be two minor corrections made to the Reclamation rules as originally proposed. Cherie Harms, President of Leonardite Products LLC., filed written comments on behalf of her company in support of the proposed rule. Ms Harms' comments also noted that American Colloid of Gascoyne, ND, another company engaged in leonardite mining, also supports the proposed rule changes.

The two cross reference corrections recommended by staff are in the definition of "valid existing rights" contained in North Dakota Administrative Code Section 69-05.2-01-02 and in the soil resources information for permit applications under North Dakota Administrative Code Section 69-05.2-08-10. These corrections are needed due to the new definition that was added to the reclamation law and the renumbering of subsequent statutory definitions that followed.

In North Dakota Administrative Code section 69-05.2-01-02(120)(c), the "valid existing rights definition," the cross reference to subsection 33 of North Dakota Century Code section 38-14.1-02 should be changed to cross reference subsection 34 of that code section instead.

In addition, an additional rule provision must be added to the proposed rules package to include a change to North Dakota Administrative Code section 69-05.2-08-10. No change to North Dakota Administrative Code section 69-05.2-08-10 was included in the rules as originally proposed. However, this was in error. In the first few lines of North Dakota Administrative Code section 69-05.2-08-10, the pre-mine soil resources section, the cross reference to subsection 28 of North Dakota Century Code section 38-14.1-02 should be changed to cross reference subsection 30 of that code section instead.

The Commission agrees that the two corrections to the Reclamation rules noted by staff should be made. The rules attached to this order incorporate these two changes.

Having reviewed the proposed rules, and the testimony and comments received, the Commission finds good cause for submitting the revised proposed rules, attached to and made a part of this order, to the Attorney General for an opinion as to legality.

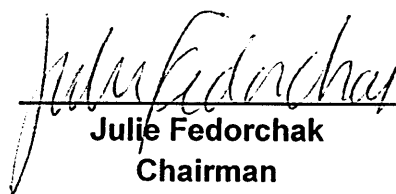
Order

The Commission orders the proposed changes to 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



Randy Christmann
Commissioner



Julie Fedorchak
Chairman



Brian P. Kalk
Commissioner

**State of North Dakota
Public Service Commission**

**Public Service Commission
Gas Pipeline Safety
Rulemaking**

Case No. GS-15-187

January 5, 2016

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of ~~November 6, 2014~~December 31, 2015, are adopted by reference:

1. Part 190 - Pipeline Safety Programs and Rulemaking
Procedures.
2. Part 191 - Transportation of Natural Gas and Other Gas by
Pipeline, Annual Reports, Incident Reports, and Safety-
Related Condition Reports.
3. Part 192 - Transportation of Natural and Other Gas by
Pipeline:
Minimum Federal Safety Standards.
4. Part 194 – Response Plans for Onshore Oil Pipelines
45. Part 195 - Transportation of Hazardous Liquids by Pipeline.
56. Part 199 - Drug and Alcohol Testing.

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; January 1, 2010; April 1, 2012; April 1, 2015; _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

**State of North Dakota
Public Service Commission**

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-15-737

March 9, 2016

**ARTICLE 69-05.2
SURFACE COAL MINING AND RECLAMATION OPERATIONS**

69-05.2-01-01. Applicability of article. This article applies to any person conducting surface coal mining operations; and to all surface coal mining operations conducted after August 1, 1980, on lands from which the coal or commercial leonardite had not yet been removed and to any other lands subject to North Dakota Century Code chapter 38-14.1 or this article.

1. This article does not apply to:
 - a. The extraction of coal or commercial leonardite by a landowner for the landowner's own noncommercial use from land owned or leased by the landowner.
 - b. Coal or commercial leonardite removal for reclamation operations under North Dakota Century Code chapter 38-14.2.
 - c. Coal or commercial leonardite extraction as an incidental part of federal, state, or local government-financed highway or other construction, except as provided by chapter 69-05.2-03.
 - d. Coal or commercial leonardite extraction of two hundred fifty tons [226.80 metric tons] or less under a coal exploration permit issued by the office of the state geologist.

History: Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993: _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-02, 38-14.1-10, 38-14.1-37

69-05.2-01-02. Definitions. The definitions in North Dakota Century Code section 38-14.1-02 apply to this article and the following terms have the specified meaning except where otherwise indicated:

9. "Coal mining operation" means, for purposes of restrictions on financial interests of employees, the business of developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite, or lignite or commercial leonardite, or of reclaiming the areas upon which such activities occur.
10. "Coal preparation" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal or commercial leonardite.
11. "Coal preparation plant" means a facility where coal or commercial leonardite is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities, storage and stockpile facilities, sheds, shops and other buildings, water treatment and water-storage facilities, settling basins and impoundments, and coal or commercial leonardite processing and other waste disposal areas.
12. "Coal processing waste" means earth materials which are wasted and separated from product coal or commercial leonardite during cleaning, concentrating, or other processing or preparation of coal or commercial leonardite.
32. "Extraction of coal or commercial leonardite as an incidental part" means the extraction of coal or commercial leonardite which is necessary to enable government-financed construction to be accomplished. Only that coal or commercial leonardite extracted from within the right of way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal or commercial leonardite outside the right of way or boundary of the area directly affected by the construction shall be subject to the requirements of North Dakota Century Code chapter 38-14.1 and this article.
64. "Owned or controlled" and "owns or controls" mean any one or a combination of the relationships specified in subdivisions a and b:
 - a. Being a permittee of a surface coal mining operation; based on instrument of ownership or voting securities, owning of record in excess of fifty percent of an entity; or having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant,

operator, or other entity conducts surface coal mining operations.

b. The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

- (1) Being an officer or director of an entity;
- (2) Being the operator of a surface coal mining operation;
- (3) Having the ability to commit the financial or real property assets or working resources of an entity;
- (4) Being a general partner in a partnership;
- (5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten through fifty percent of the entity; or
- (6) Owning or controlling coal or commercial leonardite to be mined by another person under a lease, sublease or other contract and having the right to receive the coal or commercial leonardite after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

88. "Refuse pile" means a surface deposit of coal or commercial leonardite mine waste that does not impound water, slurry, or other liquid or semiliquid material.

93. "Road" means a surface right of way used, constructed, reconstructed, improved, or maintained for travel by land vehicles for use in surface coal mining and reclamation operations. The term includes access and haul roads used in surface coal mining and reclamation operations, including use by coal or commercial leonardite hauling vehicles to and from transfer, processing, or storage areas. A road consists of the entire area within the right of way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term does not include ramps and routes of travel within the immediate mining area

or within spoil or coal or commercial leonardite mine waste disposal areas.

104. "Substantial legal and financial commitments in a surface coal mining operation" means significant investments that have been made on the basis of a long-term coal or commercial leonardite contract in power plants, railroads, coal or commercial leonardite handling, preparation, extraction or storage facilities, and other capital-intensive activities.
108. "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal or commercial leonardite from the earth by removing the materials over a coal or commercial leonardite seam, before recovering the coal or commercial leonardite, or by recovery of coal or commercial leonardite from a deposit that is not in its original geologic location.
120. "Valid existing rights" means: a set of circumstances under which a person, subject to commission approval, may conduct surface coal mining operations on lands where North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 would otherwise prohibit such operations. Possession of valid existing rights confers an exception from these prohibitions. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of North Dakota Century Code chapter 38-14.1 and this article.
- a. Property rights demonstration. Except as provided in subdivision c, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. Applicable state statutory or case law will govern interpretation of documents relied upon to establish property rights, unless federal law provides otherwise. If no applicable state law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.
- b. Except as provided in subdivision c, a person claiming valid existing rights must also demonstrate compliance with one of the following standards:

- (1) All permits or good-faith standard. All permits and other authorizations required to conduct surface coal mining operations had been obtained or a good-faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-1.1. At a minimum, an application must have been submitted for the permit required under this article.

- (2) Needed for and adjacent standard. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained or a good-faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. Except for operations in existence before August 3, 1977, or for which a good-faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 when the commission approved the permit for the original operation or when the good-faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the commission may consider factors such as:
 - (a) The extent to which coal or commercial leonardite supply contracts or other legal and business commitments that predate the time that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 depend upon use of that land for surface coal mining operations.

- (b) The extent to which plans used to obtain financing for the operation before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 rely upon use of that land for surface coal mining operations.
 - (c) The extent to which investments in the operation before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 rely upon use of that land for surface coal mining operations.
 - (d) Whether the land lies within the area identified on the life-of-mine map submitted under chapter 69-05.2-07 before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.
- c. Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 must demonstrate that one or more of the following circumstances exist if the road is included within the definition of "surface coal mining operations" in subsection ~~3334~~ of North Dakota Century Code section 38-14.1-02:
 - (1) The road existed when the land upon which it is located came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 and the person has a legal right to use the road for surface coal mining operations.
 - (2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1, and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations.

- (3) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.
- (4) Valid existing rights exist under subdivisions a and b.

History: Effective August 1, 1980; amended effective June 1, 1983; April 1, 1985; June 1, 1986; January 1, 1987; May 1, 1990; May 1, 1992; June 1, 1997; May 1, 1999; March 1, 2004:_____.

General Authority: NDCC 38-14.1-03, 38-14.1-38

Law Implemented: NDCC 38-14.1-02, 38-14.1-03, 38-14.1-21, 38-14.1-38

69-05.2-02-06. Gifts and gratuities.

- 1. Except as provided in subsection 2, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a coal or commercial leonardite company which:
 - a. Conducts, or is seeking to conduct, operations or activities regulated by the commission; or
 - b. Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

History: Effective August 1, 1980; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-38

Law Implemented: NDCC 38-14.1-38

69-05.2-03-01. Incidental coal or commercial leonardite extraction - Possession of documents. Any person conducting coal or commercial leonardite extraction as an incidental part of government-financed construction is responsible for possessing, onsite, the documentation required by section 69-05.2-03-02.

History: Effective August 1, 1980; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-37

69-05.2-03-02. Incidental coal or commercial leonardite extraction - Information to be maintained onsite. Any person extracting coal or commercial leonardite incident to government-financed highway or other

construction who extracts more than two hundred fifty tons [226.80 metric tons] shall maintain, onsite, documents which:

1. Describe the project.
2. Show the exact location of the construction, right of way, or the boundaries of the area which will be directly affected.
3. Identify the government agency providing the financing and the kind and amount of public financing, including the percentage of all costs represented by the government financing.

History: Effective August 1, 1980; amended effective May 1, 1990; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-37

69-05.2-04-01.5. Areas unsuitable for mining - Submission of requests for valid existing rights determinations.

2. A request for a valid existing rights determination may be submitted before preparing and submitting an application for a permit or incidental boundary revision for the land. The request must include the following:
 - a. A property rights demonstration under subdivision a of the definition of valid existing rights of section 69-05.2-01-02 if the request relies upon the "all permits or good-faith standard" or the "needed for and adjacent standard" in subdivision b of that definition. The demonstration must include the following items:
 - (1) A legal description of the land to which the request pertains.
 - (2) Complete documentation of the character and extent of the applicant's current interests in the surface and mineral estates of the land to which the request pertains.
 - (3) A complete chain of title for the surface and mineral estates of the land to which the request pertains.
 - (4) A description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or

method of mining or mining-related surface disturbances and facilities.

- (5) A description of the type and extent of surface coal mining operations that the applicant claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with state property law.
- (6) Complete documentation of the nature and ownership, as of the date that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1, of all property rights for the surface and mineral estates of the land to which the request pertains.
- (7) Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains.
- (8) If the coal or commercial leonardite interests have been severed from other property interests, documentation that the applicant has notified and provided reasonable opportunity for the owners of other property interests in the land to which the request pertains to comment on the validity of claimed property rights.
- (9) Any comments that the applicant receives in response to the notification provided under paragraph 8.

History: Effective March 1, 2004; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-02, 38-14.1-04, 38-14.1-07

69-05.2-04-04. Areas unsuitable for mining - Initial processing - Recordkeeping - Notification requirements for designating lands unsuitable.

2. The commission will determine whether any identified coal or commercial leonardite resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the commission finds no identified coal or commercial leonardite resources in that area, it will return the petition with a statement of findings.

History: Effective August 1, 1980; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04, 38-14.1-06, 38-14.1-09, 38-14.1-18

69-05.2-04-07. Areas unsuitable for mining - Data base and inventory system for designating lands unsuitable.

3. The commission will add to the data base and inventory system information:
 - a. On potential coal or commercial leonardite resources of the state, demand for those resources, the environment, the economy, and the supply of coal or commercial leonardite, sufficient to enable the commission to prepare the statements required by subsection 3 of North Dakota Century Code section 38.14.1-05; and
 - b. That becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

History: Effective August 1, 1980; amended effective May 1, 1990; July 1, 1995;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04

69-05.2-04-09. Areas unsuitable for mining - Commission responsibility for implementation for designating lands unsuitable. The commission will:

3. Make available to any person information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment, but excepting proprietary information on the chemical and physical properties of the coal or commercial leonardite according to subsection 3 of North Dakota Century Code section 38-14.1-13.

History: Effective August 1, 1980; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04

69-05.2-05-08. Permit applications - Permit term.

1. A permit will be issued for a fixed term not to exceed five years except as provided in subsection 3. The permit area shall be no larger than a logical pit sequence and include lands used for activities incidental to coal or commercial leonardite extraction. Coal or commercial leonardite removal boundaries cannot go beyond those approved for the permit term without obtaining a revision under section 69-05.2-11-02.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993; April 1, 2013;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-12

69-05.2-06-01. Permit applications - Identification of interests.

1. In addition to satisfying the applicable requirements of subsection 1 of North Dakota Century Code section 38-14.1-14, each application must contain:
 - a. The names and addresses of the owner of record of surface and coal or commercial leonardite subsurface rights contiguous to the permit area extending one-fourth mile [402.33 meters] from the permit boundary.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; July 1, 1995; April 1, 2013;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-06-03. Permit applications - Right of entry and operation information.

2. Following completion of coal or commercial leonardite removal operations on the lands covered by a coal or commercial leonardite lease, the copy of the lease may be deleted from an approved permit if:
 - a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or
 - b. The lease has expired or has been terminated.

If a coal or commercial leonardite lease is no longer provided for surface right of entry, other documents granting the permittee surface right of entry must be added to the permit.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; April 1, 2007;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-01. Permit applications - Permit area - Environmental resources information.

2. When the permit area contains a logical pit sequence where the coal or commercial leonardite removal area is larger than that needed for the initial five-year term, the applicant shall identify the size, sequence, and timing of mining individual coal or commercial leonardite removal subareas.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-02. Permit applications - Permit area - General map requirements.

1. The application must include a 1:4,800 planimetric mine map, together with as many separate detail maps as necessary, to show:
 - I. Location and dimensions of existing areas of spoil, coal, commercial leonardite and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the permit area.

History: Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-04. Permit applications - Permit area - Description of hydrology and geology - General requirements.

3. Enough detailed geologic information must be included to determine:
 - a. The probable hydrologic consequences (PHC) of the operation on the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface and ground water monitoring is necessary;

- b. All potentially toxic-forming strata down through the lowest coal or commercial leonardite seam to be mined; and
- c. Whether reclamation can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

History: Effective August 1, 1980; amended effective May 1, 1990; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-14.1-15

69-05.2-08-05. Permit applications - Permit area - Geology description.

1. The description must include a general statement of the geology within the permit area down through the deeper of either the stratum immediately below the deepest coal or commercial leonardite seam to be mined or any lower aquifer which may be adversely affected by mining.
2. Test borings or core samples from the permit area must be collected and analyzed down through the deeper of either the stratum immediately below the lowest coal or commercial leonardite seam to be mined or any lower aquifer which may be adversely affected by mining. The minimum density is one drill hole per forty acres [16.19 hectares] or a comparable spacing, or as specified by the commission. Overburden samples must be taken at five-foot [1.52-meter] intervals and taken dry whenever possible. Laboratory analyses must be made by the methods in United States department of agriculture handbook 525, Laboratory Methods Recommended for Chemical Analyses of Mined Land Spoils and Overburden in Western United States, by Sandoval and Power, or United States department of agriculture handbook 60, Diagnosis and Improvement of Saline and Alkali Soils, by the United States salinity laboratory staff, both available from the United States government printing office, Washington, D. C. The following information must be provided:
 - a. Location of subsurface water encountered.
 - b. Drill hole logs with gamma ray and density logs included as verification showing the lithologic characteristics and thickness of each stratum and coal or commercial leonardite seam.

- c. Physical and chemical analyses of each overburden sample taken at five-foot [1.52-meter] intervals to identify horizons containing potential toxic-forming materials. Physical and chemical analyses of strata below the lowest coal or commercial leonardite seam to be mined must include one sample from each stratum. The analyses must include:
- (1) pH.
 - (2) Sodium adsorption ratio (include calcium, magnesium, and sodium cation concentrations).
 - (3) Electrical conductivity of the saturation extract.
 - (4) Texture (by pipette or hydrometer method). Include percentage of sand, silt, and clay along with a general description of the physical properties of each stratum within the overburden.
 - (5) Saturation percentage if the sodium adsorption ratio is greater than twelve and less than twenty.
- d. Coal or commercial leonardite seam analyses including sodium, ash, British thermal unit, and sulfur content.
- e. Cross sections sufficient to show the major subsurface variations within the permit area down through the deeper of either the stratum immediately below the lowest coal or commercial leonardite seam to be mined or any lower aquifer which may be adversely affected by mining. The horizontal scale must be 1:4,800 and the vertical scale one inch [2.54 centimeters] equals twenty feet [6.10 meters]. To assess pit suitability for disposal of refuse, ash and other residue from coal or commercial leonardite utilization processes, the information presented in this subsection must extend to a depth determined by the commission or to the base of the next confining clay stratum beneath the lowest coal or commercial leonardite seam to be mined.
- f. A thickness (isopach) map of the overburden to the top of the deepest seam to be mined. The contour interval must be ten feet [3.05 meters] and the horizontal scale 1:4,800.
- g. All coal or commercial leonardite crop lines and the strike and dip of the coal or commercial leonardite to be mined.

History: Effective August 1, 1980; amended effective January 1, 1987; May 1, 1990; May 1, 1992: _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-06. Permit applications - Permit area - Ground water information.

1. The applicant shall analyze the ground water hydrology and ground water resources of the potentially affected area. The application must contain a description of the ground water hydrology for the permit and adjacent areas including:
 - d. Contour maps or maps showing the water table or piezometric surface in each aquifer (including water-bearing coal and commercial leonardite seams) down to and including the lowest water-bearing coal or commercial leonardite seam to be mined and any lower aquifer which may be adversely affected by mining. The applicant shall prepare 1:24,000 scale maps covering the permit and adjacent areas, using at least one data point (a piezometer nest) per four square miles [6.44 square kilometers], unless the commission requires a greater density. Data points must be shown on the map to the nearest ten acres [4.05 hectares]. Accompanying data should include lithologic and geophysical (gamma ray and density) logs of the piezometer holes, piezometer construction details, and water level and land surface elevations to the accuracy necessary for valid analysis of the ground water hydrology of the permit and adjacent areas.

History: Effective August 1, 1980; amended effective May 1, 1990; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-10. Permit applications - Permit area - Soil resources information. The applicant shall submit a soil survey for the permit area consisting of a map and report prepared by a soil classifier as defined in subsection 2830 of North Dakota Century Code section 38-14.1-02.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-01. Permit applications - Operation plans - General requirements. Each application must contain a detailed description of the proposed mining operations, including:

1. A narrative of mining procedures and engineering techniques, anticipated annual and total coal or commercial leonardite production, and major equipment.
2. A plan stating the anticipated or actual starting and termination date of each phase of mining activities and the amount of land to be affected for each phase over the life of the permit.
3. A narrative for each operations plan explaining the plan in detail and the construction, modification, use and maintenance of each mine facility, water and air pollution control facilities or structures, transportation and coal or commercial leonardite handling facilities, and other structures required for implementing the plans.
4. A plan for each support facility to be constructed, used, or maintained within the permit area including maps, appropriate cross sections, design drawings, and specifications of each facility sufficient to demonstrate compliance with section 69-05.2-24-08 or 69-05.2-24-09 as applicable.
5. If coal or commercial leonardite removal areas are proposed within five hundred feet [152.40 meters] of any farm building, the applicant must provide documentation showing compliance or plans to comply with North Dakota Century Code section 38-18-07.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992; June 1, 1994; March 1, 2004;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-18-07

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:

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 or commercial leonardite removal subarea.

6. Location of coal or commercial leonardite 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.
8. Each coal or commercial leonardite storage, cleaning and loading area, and each coal or commercial leonardite 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.
12. Each source of waste and each waste disposal facility relating to coal or commercial leonardite processing or pollution control.
14. If an applicant proposes to remine or otherwise disturb lands that were affected by coal or commercial leonardite 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 of any sinkholes and other features that are the result of any past underground coal or commercial leonardite 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.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; June 1, 1997; April 1, 2011; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-09. Permit applications - Operation plans - Surface water management - Ponds, impoundments, banks, dams, embankments, and diversions.

1. Each application must include a surface water management plan describing each water management structure intended to meet the requirements of chapter 69-05.2-16. Each plan must:
 - f. Identify the location of proposed temporary coal or commercial leonardite processing waste disposal areas, along with design specifications to meet the requirements in section 69-05.2-19-03.
 - g. Identify the location of proposed coal or commercial leonardite processing waste dams and embankments along with design specifications to meet the requirements in chapter 69-05.2-20. The plan must include the results of a geotechnical investigation of each proposed coal or commercial leonardite dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment and the impounded material. The geotechnical investigation must be planned and supervised by an engineer or engineering geologist, as follows:
 - (1) Determine the number, location, and depth of borings and test pits using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.
 - (2) Consider the character of the overburden, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site.
 - (3) Identify springs, seepage, and ground water flow observed or anticipated during wet periods in the proposed dam or embankment area.
 - (4) Consider the possibility of mudflows or other landslides into the dam, embankment, or impounded material.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; January 1, 1993; May 1, 1999;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-18. Permit applications - Operation and reclamation plans - Auger mining. If applicable, the applicant shall submit a plan explaining how the applicant intends to comply with section 69-05.2-13-12 and subsection 1.1 of North Dakota Century Code section 38-14.1-24. This plan must contain:

3. A description of how the applicant intends to ensure the long-term stability of the augered area. This description should contain specific engineering designs ensuring that:
 - a. Material backfilled into the holes can be compacted to provide sufficient strength to prevent subsidence;
 - b. The coal or commercial leonardite remaining between the auger holes and the overlying overburden is sufficiently strong to prevent subsidence; or
 - c. The auger mined area can be collapsed in a controlled manner through the use of explosive or other techniques to eliminate future subsidence.

History: Effective September 1, 1984; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-14.1-24

69-05.2-09-19. Permit applications - Operation and reclamation plans - Coal preparation plants not located within the permit area of a mine.

1. This section applies to any person who operates or intends to operate a coal preparation plant in connection with a coal or commercial leonardite mine but outside the permit area mine for a specific mine. A permit to operate must be obtained from the commission.

History: Effective January 1, 1987; amended effective May 1, 1990; May 1, 1992;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-10-01. Permit applications - Public notices of filing and entering data into the applicant violator system.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:
 - b. A map or description which must:
 - (4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or commercial leonardite or conduct activities that may impact future coal or commercial leonardite recovery, the names of each owner of record of coal or commercial leonardite rights within the permit boundaries.
6. The commission will provide notice and opportunity for hearing for persons seeking and opposing disclosure prior to declaring any permit information confidential. Notice will be published in the official county newspaper of the county where the proposed operations will be located at least fifteen days prior to the hearing. Information requested to be held confidential must be clearly identified by the applicant and submitted separately. Confidential information is limited to:
 - a. Analysis of the chemical and physical properties of the coal or commercial leonardite to be mined, except information on coal or commercial leonardite components potentially toxic in the environment.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; April 1, 2007; April 1, 2013; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-18

69-05.2-11-02. Permit revisions.

1. A permit revision is required:
 - c. When a new coal or commercial leonardite removal subarea of the existing permit area is proposed to be disturbed in accordance with the timing and sequence approved in the permit. The revision is considered a significant alteration to the mining and reclamation plan.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990, May 1 1992; January 1, 1993; July 1, 1995;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-23

69-05.2-13-05. Performance standards - General requirements - Minimize disturbances - Best technology currently available. All surface coal mining and reclamation operations must be conducted to minimize disturbances on lands where coal or commercial leonardite is not removed and utilize the best technology currently available.

History: Effective August 1, 1980; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03, 38-14.1-24

69-05.2-13-08. Performance standards - General requirements - Protection of fish, wildlife, and related environmental values.

6. The permittee shall, to the extent possible using the best technology currently available:

h. To the extent possible prevent, control, and suppress range, forest, and coal or commercial leonardite fires not approved by the commission as part of a management plan.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990, May 1, 1992; January 1, 1993; June 1, 1994; May 1, 1999;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-13-12. Performance standards - General requirements - Auger mining. The operator shall:

1. Conduct auger mining to maximize the utilization and conservation of coal or commercial leonardite.

History: Effective September 1, 1984; amended effective June 1, 1986; May 1, 1990; May 1, 1992;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-13-13. Performance Standards - General requirements - Coal preparation plants not located within the permit area of a mine. Each person who operates a coal preparation plant in connection with a coal or

commercial leonardite mine but outside the permit area for a specific mine shall obtain a permit in accordance with section 69-05.2-09-19, obtain a bond in accordance with chapter 69-05.2-12, and comply with the following:

1. Signs and markers for coal preparation plants, coal processing waste disposal areas, and water-treatment facilities must comply with section 69-05.2-13-04.
2. Stream channel diversions must comply with section 69-05.2-16-07.
3. Drainage from any disturbed areas related to coal preparation plants must comply with chapter 69-05.2-16.
4. Permanent impoundments associated with coal preparation plants must comply with section 69-05.2-16-12. Dams constructed of or impounding coal processing waste must comply with chapter 69-05.2-20.
5. Disposal of coal processing waste, non-coal mine waste and excess spoil must comply with chapters 69-05.2-19 and 69-05.2-18, respectively.
6. Fish, wildlife and related environmental values must be protected in accordance with section 69-05.2-13-08.
7. Support facilities related to coal preparation plants must comply with section 69-05.2-24-09.
8. Roads associated with coal preparation plants must comply with chapter 69-05.2-24.
9. Cessation of operations must be in accordance with sections 69-05.2-13-10 and 69-05.2-13-11.
10. Erosion and attendant air pollution must be controlled in accordance with sections 69-05.2-15-06 and 69-05.2-13-07, respectively.
11. Underground mine areas must be avoided in accordance with section 69-05.2-13-06.
12. Reclamation must follow proper suitable plant growth material handling, backfilling and grading, revegetation, and postmining land use procedures in accordance with chapters 69-05.2-15, 69-05.2-21, 69-05.2-22 and 69-05.2-23, respectively.

History: Effective January 1, 1987; amended effective May 1, 1990 May 1, 1992;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-18-01. Performance standards - Disposal of excess spoil - Requirements. In addition to satisfying subsection 19 of North Dakota Century Code section 38-14.1-24, the operator shall:

13. Provide an underdrain system, if required by subsection 19 of North Dakota Century Code section 38-14.1-24, that is protected by an adequate filter and designed and constructed using standard geotechnical engineering methods. Underdrains must consist of nondegradable, non-toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, commercial leonardite, clay, or shale.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-19-02. Performance standards - Waste materials - Permanent disposal of coal or commercial leonardite wastes.

1. All coal processing waste and waste materials from coal or commercial leonardite utilization processes and coal conversion facilities to be permanently disposed of within a permit area and that are required to be permitted under the solid waste management rules of the North Dakota state department of health must be disposed of according to those rules and this chapter.
 - a. The permittee or operator shall file application for and design the disposal site as required by the state department of health and concurrently submit a copy of the application to the commission.
 - b. The permittee or operator shall also submit to the commission a permit revision that will incorporate the disposal activities into the operations and reclamation plan. The commission will not approve the revision until the state department of health issues a solid waste permit.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-19-04. Performance standards - Waste materials - Disposal of noncoal wastes.

4. At no time may any solid waste material be deposited at embankment or impoundment sites, nor may any excavation for solid waste disposal be located within eight feet [2.44 meters] of any coal or commercial leonardite outcrop or coal or commercial leonardite storage area.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; May 1, 1999; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-21-01. Performance standards - Backfilling and grading - Timing requirements.

2. Area surface mining. Rough backfilling and grading must be completed within one hundred eighty days following coal or commercial leonardite removal and may not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The commission may grant additional time or distance for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under subsection 3 of section 69-05.2-09-11, that additional time or distance is necessary.

History: Effective August 1, 1980; amended effective May 1, 1990; July 1, 1995; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-21-03. Performance standards - Backfilling and grading - Covering coal, commercial leonardite and toxic-forming materials. All exposed coal seams, commercial leonardite seams, and toxic-forming and combustible materials exposed, used, or produced during mining must be adequately covered with nontoxic and noncombustible materials, or treated, to control the impact on surface and ground water in accordance with chapter 69-05.2-16, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

History: Effective August 1, 1980; amended effective January 1, 1987; May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-21-04. Performance standards - Backfilling and grading - Thin overburden. The provisions of this section apply only to mining activities where the final thickness of all available spoil and waste materials over the permit area is less than 0.8 of the initial thickness of the overburden and the coal or commercial leonardite prior to coal or commercial leonardite removal. The final thickness is the product of the overburden thickness prior to coal or commercial leonardite removal times the overburden swell factor. When the demonstration is made that thin overburden exists over the permit area, in addition to meeting subdivision b of subsection 3 of North Dakota Century Code section 38-14.1-24, the operator shall:

1. Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire permit area, to attain the lowest practicable stable grade, to achieve a static safety factor of 1.3 to provide adequate drainage and long-term stability of the regraded areas, and to cover all toxic-forming materials.
2. Eliminate highwalls by grading or backfilling to stable slopes not exceeding thirty-five percent, or lesser slopes as the commission may specify to reduce erosion, maintain the hydrologic balance, or achieve the approved postmining land use.
3. Transport, backfill, grade, and revegetate to achieve an ecologically sound land use compatible with the prevailing use in unmined areas surrounding the permit area.
4. Transport, backfill, and grade to ensure that impoundments are constructed only where:
 - a. It has been demonstrated to the commission that all requirements of chapter 69-05.2-16 have been met; and
 - b. The impoundments have been approved by the commission as suitable for the approved postmining land use and meet the requirements of this article and all other applicable state laws and regulations.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-22-07. Performance standards - Revegetation - Standards for success.

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:
 - 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 or commercial leonardite 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.

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; April 1, 2011; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-24-01. Performance standards - Roads - General requirements.

1. Each road, as defined in subsection 93 of section 69-05.2-01-02, must be classified as either a primary or ancillary road.
 - a. A primary road is any road which is:
 - (1) Used for transporting coal or commercial leonardite or spoil;
 - (2) Frequently used for access or other purposes for a period in excess of six months; or
 - (3) To be retained for an approved postmining land use.

- b. An ancillary road is any road not classified as a primary road.

History: Effective August 1, 1980; amended effective May 1, 1992; April 1, 2007;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-24-09. Performance standards – Support facilities and utility installations.

- 1. Support facilities required for, or used incidentally to, the operation of the mine, including mine buildings, coal or commercial leonardite loading facilities at or near the minesite, coal or commercial leonardite storage facilities, equipment storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops, and other buildings, must be designed, constructed or reconstructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property.

History: Effective August 1, 1980; amended effective; May 1, 1992;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-25-04. Performance standards – Alluvial valley floors – Protection of farming and water supplies.

- 2. Paragraphs 1 and 2 of subdivision e of subsection 3 of North Dakota Century Code section 38-14.1-21 do not apply to lands identified in a reclamation plan approved by the commission prior to July 1, 1979, for any operation that, in the year preceding July 1, 1979:
 - a. Produced coal or commercial leonardite in commercial quantities and was located within or adjacent to an alluvial valley floor; or
 - b. Obtained specific permit approval to conduct operations within an alluvial valley floor.

History: Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-24, 38-14.1-28

69-05.2-26-06. Performance standards - Prime farmland - Exemptions. This chapter does not apply to:

3. Lands included in any existing surface coal mining operations for which a permit was issued for all or any part before July 1, 1979; provided that:
 - c. The lands contain part of a continuous recoverable coal or commercial leonardite seam that was being mined in a single continuous mining operation begun under a permit issued prior to July 1, 1979.

History: Effective June 1, 1983; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-31-01. Training of blasters.

3. Training courses must be given by competent, experienced persons at a frequency not to exceed one every three months. Courses developed and taught by coal or commercial leonardite mining industry personnel may be approved by the commission for training persons seeking to become certified blasters.

History: Effective April 1, 1985; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Gas Pipeline Safety
Rulemaking**

Case No. GS-15-187

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-15-737

**NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES
AND NOTICE OF PUBLIC HEARING**

January 5, 2016

PLEASE TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to North Dakota Administrative Code Section 69-09-03-02 and Article 69-05.2. The hearing will be held at **10:00 a.m., CST on February 18, 2016, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.** The proposed revisions to the North Dakota Administrative Code are as follows:

Gas Pipeline Safety – Case No. GS-15-187 – Section 69-09-03-02

The purpose of this rulemaking is to adopt by reference the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA).

This rule change adopts amendments to safety regulations that have been adopted by PHMSA since November 6, 2014, current to December 31, 2015.

For Title 49 Code of Federal Regulations Part 194 – Response Plans for Onshore Oil Pipelines, the Public Service Commission currently has statutory authority concerning pipeline safety of hazardous liquids pipelines, but hasn't initiated that safety program agreement with PHMSA. In order to implement such a program, the Public Service Commission must adopt all pipeline safety rules adopted by PHMSA. The Commission is proposing to adopt all PHMSA regulations for hazardous liquids pipeline safety in effect as of December 31, 2015, including adoption of Part 194.

Reclamation - Case No. RC-12-166 - Article 69-05.2

- 4 RC-15-737 Filed 01/05/2016 Pages: 2
Notice of Intent to Amend Administrative Rules and Notice of Public Hearing
Public Service Commission
- 4 GS-15-187 Filed 01/05/2016 Pages: 2
Notice of Intent to Amend Administrative Rules and Notice of Public Hearing
Public Service Commission

Numerous provisions of North Dakota Administrative Code Article 69-05.2 pertaining to surface coal mining and reclamation operations must be amended as a result of statutory changes made during the 2015 Legislative session by Senate Bill No. 2377. The statutory changes added a definition of "commercial leonardite" to the list of definitions in the code, and also added this phrase to other sections of the reclamation law as appropriate. In addition, the statutory changes excluded leonardite, an oxidized form of lignite, from the definition of "coal." Due to these statutory changes, numerous changes need to be made throughout the Commission's surface coal mining and reclamation rules.

The proposed rule changes primarily consist of adding the phrase "or commercial leonardite" immediately after the word "coal" when commercial leonardite is not part of a definition or a phrase that doesn't otherwise include commercial leonardite. No new or additional requirements are proposed for these or other mining activities.

The proposed rule changes and the statements concerning the Regulatory Analysis, Small Entity Regulatory Analysis and Economic Impact, and Takings Assessment may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed rule changes or the statements contact the Public Service Commission at 600 East Boulevard Avenue, Dept. 408, Bismarck, North Dakota 58505-0480, 701-328-2400, toll free 1-877-245-6685, Relay North Dakota TTY 1-800-366-6888, or ndpsc@nd.gov. This information is also available to view on the Commission's web site at www.psc.nd.gov under "Formal Notices".

Interested persons may submit written comments on the proposed rules. Written comments should be filed with Darrell Nitschke, Executive Secretary, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, or ndpsc@nd.gov. The comment period closes 10 days after the hearing. Comments must be received by the close of business on February 29, 2016.

If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify the Commission at least 24 hours in advance.

PUBLIC SERVICE COMMISSION


Randy Christmann
Commissioner


Julie Fedorchak
Chairman


Brian P. Kalk
Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Gas Pipeline Safety
Rulemaking

Case No. GS-15-187

Public Service Commission
Reclamation
Rulemaking

Case No. RC-15-737

NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES
NOTICE OF PUBLIC HEARING

January 5, 2016

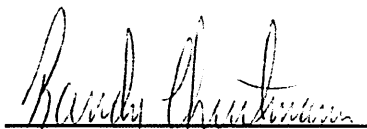
TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to the North Dakota Administrative Code relating to gas pipeline safety and surface coal mining and reclamation operations.

The public hearing will be held at **10:00 a.m., CST on February 18, 2016, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.** Written comments may be submitted to the Public Service Commission until the close of business on February 29, 2016.

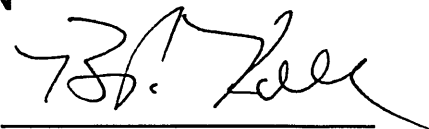
A copy of the proposed rules and statements concerning the Regulatory Analysis, Small Entity Regulatory Analysis and Economic Impact, and Takings Assessment may be obtained from the Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400, toll free 1-877-245-6685, Relay North Dakota TTY: 1-800-366-6888, or ndpsc@nd.gov. This information is also available to view on the Public Service Commission's web site at www.psc.nd.gov under "Formal Notices".

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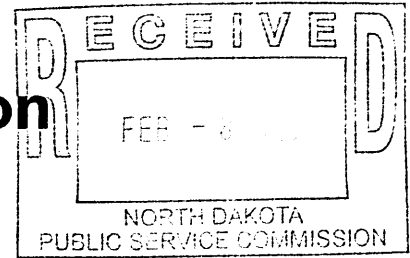
PUBLIC SERVICE COMMISSION


Randy Christmann
Commissioner


Julie Fedorchak
Chairman


Brian P. Kalk
Commissioner

Affidavit of Publication



Colleen Park, being duly sworn, states as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.
2. The newspapers listed on the exhibits published the advertisement of: **Public Service Commission – Administrative Rules relating to Gas Pipeline Safety & Reclamation; 1 time(s)** as required by law or ordinance.
3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

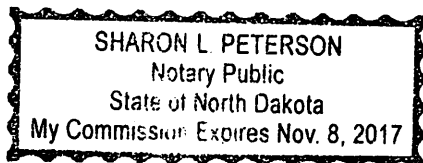
Signed: Colleen Park

State of North Dakota

County of Burleigh

Subscribed and sworn to before me this 3 day of Feb., 2016.

Sharon L. Peterson



Wilson was able to draw a pass interference penalty before catching a 24 yard reception to put the Vikings into field goal range.

Defensively, the Vikings did a much better job of limiting Russell Wilson and company when compared to the last game these two teams played. With no Marshawn Lynch or Thomas Rawls, it was up to Wilson and Seattle's receivers to carry the offense. However, it was the Vikings defense that got the better of them, limiting Wilson to only 142 yards, one touchdown and one interception.

Everson Griffen was all over the place, racking up six tackles, four quarterback hits and a sack. Eric Kendricks led the team with eight tackles, and even more impressively, was tied for the team lead with two passes broken up. Terence Newman left the game early with an injury, opening the door for first round pick Trae Waynes to see some playing time and he didn't disappoint. Wilson attempted to pick on Waynes many times, but Waynes held his own and was far from a liability on the field.

Special teams will be the unit that is scrutinized the most, but that's not entirely fair. Blair Walsh scored every point for the Vikings and was the reason they were in the ball game. Jeff Locke put the ball down with the laces facing the kicker a couple times today, but that was the plan coming into the game since the frozen field would make it very difficult to spin the ball successfully. There is no doubt Blair Walsh should have been able to make that field goal, but had the offense scored a

players and will be getting help along the offensive line when Sullivan and Loadholt come back. Defensively, this team is very good and should only get better as the younger players get more experience.

It was not a fluke that Minnesota finished the season 11-5 and the NFC North champions. Sure, there were some embarrassing losses (San Francisco and Seattle), but there was a lot more to be positive about. I am sad that the season is over, but like every Vikings fan knows all too well, there's always next year!

As always, if you have any questions, comments or suggestions, please feel free to reach out to me at facebook.com/skoljwright, or on Twitter @skoljwright. Skoll!

the producer decides to look up.

For simplicity and relevance to the commercial world of cattle, I look to cattle in the top 30 percent of the breed and cattle in the top 50 percent of the breed. The 50 percentile row for the Red Angus breed is as follows: The EPD value is minus 1.3 pounds for birth weight, 59 pounds for weaning weight, 91 pounds for yearling weight, 20 pounds for maternal milk, 0.48 unit for marbling and .12 square inch for rib-eye area.

These values determine what level of performance one wants. For example, the center desires that the Red Angus bulls simply rank in the upper 50 percent of the breed for the desired traits. Reviewing the 50 percentile values allows the center to limit selec-

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Gas Pipeline Safety
Rulemaking

Case No. GS-15-187

Public Service Commission
Reclamation
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NOTICE OF INTENT TO AMEND
ADMINISTRATIVE RULES
NOTICE OF PUBLIC HEARING

January 5, 2016

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PUBLIC SERVICE COMMISSION

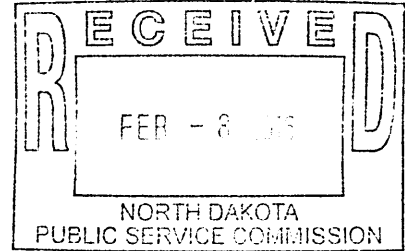
Randy Christmann
Commissioner

Julie Fedorchak
Chairman

Brian P. Kalk
Commissioner

North Dakota Newspaper Association

1435 Interstate Loop
Bismarck, North Dakota 58503
Phone: 1-701-223-6397 Fax: 1-701-223-8185



INVOICE

February 03, 2016

Order: 16014PP0 Invoice# 5189

Attn: Darrell Nitschke
Public Service Commission
600 E. Blvd Ave. Dept 408
Bismarck, North Dakota 58505

Advertiser: Public Service Commission
P.O.#: Administrative Rules
Brand:
Campaign:
Amount Due: \$3,732.40

Voice: 1-701-328-4076 Fax:

Please detach and return this portion with your payment

Public Service Commission Invoice# 5189 P.O.#: Administrative Rules

Run Date	Ad Size	Rate Type	Rate	Color Rate	Total	Discount	(%)	Amount after Discount	Page
Ashley Tribune (Ashley, North Dakota)									
01/13/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Beach, Golden Valley News (Beach, North Dakota)									
01/14/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Beulah Beacon (Beulah, North Dakota)									
01/14/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Bismarck Tribune (Bismarck, North Dakota)									
01/13/2016	10.00	Notice Display	\$13.03		\$130.30	\$0.00	(0.00%)	\$130.30	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$13.03	\$0.00	\$130.30	\$0.00		\$130.30	
Bottineau Courant (Bottineau, North Dakota)									
01/19/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Bowbells, Burke County Tribune (Bowbells, North Dakota)									
01/13/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Bowman County Pioneer (Bowman, North Dakota)									
01/15/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Cando, Towner County Record Herald (Cando, North Dakota)									
01/16/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Carrington, Foster County Independent (Carrington, North Dakota)									

Public Service Commission Invoice# 5189 P.O.#: Administrative Rules

Run Date	Ad Size	Rate Type	Rate	Color Rate	Total	Discount	(%)	Amount after Discount	Page
01/18/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Carson Press (Elgin, North Dakota)									
01/13/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Cavaller Chronicle (Cavaller, North Dakota)									
01/13/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Center Republican (Hazen, North Dakota)									
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Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Cooperstown, Griggs County Courier (Cooperstown, North Dakota)									
01/15/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Crosby, The Journal (Crosby, North Dakota)									
01/13/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Devils Lake Journal (Devils Lake, North Dakota)									
01/13/2016	10.00	Notice Display	\$8.86		\$88.60	\$0.00	(0.00%)	\$88.60	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$8.86	\$0.00	\$88.60	\$0.00		\$88.60	
Dickinson Press (Dickinson, North Dakota)									
01/13/2016	10.00	Notice Display	\$8.86		\$88.60	\$0.00	(0.00%)	\$88.60	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$8.86	\$0.00	\$88.60	\$0.00		\$88.60	
Elgin, Grant County News (Elgin, North Dakota)									
01/13/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Ellendale, Dickey County Leader (Ellendale, North Dakota)									
01/14/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Fargo, The Forum (Fargo, North Dakota)									
01/18/2016	10.00	Notice Display	\$13.03		\$130.30	\$0.00	(0.00%)	\$130.30	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$13.03	\$0.00	\$130.30	\$0.00		\$130.30	
Finley, Steele County Press (Finley, North Dakota)									
01/15/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Garrison, McLean County Independent (Garrison, North Dakota)									
01/14/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	

Public Service Commission Invoice# 5189 P.O.#: Administrative Rules

Run Date	Ad Size	Rate Type	Rate	Color Rate	Total	Discount	(%)	Amount after Discount	Page
Grafton, Walsh County Record (Grafton, North Dakota)									
01/13/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Grand Forks Herald (Grand Forks, North Dakota)									
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Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$13.03	\$0.00	\$130.30	\$0.00		\$130.30	
Harvey, The Herald-Press (Harvey, North Dakota)									
01/16/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Hettinger, Adams County Record (Hettinger, North Dakota)									
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Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Jamestown Sun (Jamestown, North Dakota)									
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Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$8.86	\$0.00	\$88.60	\$0.00		\$88.60	
Killdeer, Dunn County Herald (Killdeer, North Dakota)									
01/15/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
LaMoure Chronicle (LaMoure, North Dakota)									
01/13/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Lakota American (Lakota, North Dakota)									
01/13/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Langdon, Cavalier County Republican (Langdon, North Dakota)									
01/18/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Linton, Emmons County Record (Linton, North Dakota)									
01/14/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Lisbon, Ransom County Gazette (Lisbon, North Dakota)									
01/18/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Mandan News (Mandan, North Dakota)									
01/15/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Mayville, Traill Co Tribune (Mayville, North Dakota)									
01/16/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									

Public Service Commission Invoice# 5189 P.O.#: Administrative Rules

Run Date	Ad Size	Rate Type	Rate	Color Rate	Total	Discount	(%)	Amount after Discount	Page
Subtotal:		10.00	\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
McClusky Gazette (McClusky, North Dakota)									
01/14/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:		10.00	\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Medora, Billings County Pioneer (Beach, North Dakota)									
01/14/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:		10.00	\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Milnor The Sargent County Teller (Milnor, North Dakota)									
01/15/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:		10.00	\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Minnewaukan Benson County Farmers Press (Minnewaukan, North Dakota)									
01/14/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:		10.00	\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Minot Daily News (Minot, North Dakota)									
01/13/2016	10.00	Notice Display	\$13.03		\$130.30	\$0.00	(0.00%)	\$130.30	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:		10.00	\$13.03	\$0.00	\$130.30	\$0.00		\$130.30	
Mohall Renville County Farmer (Mohall, North Dakota)									
01/13/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:		10.00	\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Napoleon Homestead (Napoleon, North Dakota)									
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Caption: ... relating to Gas Pipeline Safety & Reclamation									
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New England Herald (New England, North Dakota)									
01/15/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:		10.00	\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
New Rockford Transcript (New Rockford, North Dakota)									
01/18/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:		10.00	\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Rolla Turtle Mountain Star (Rolla, North Dakota)									
01/18/2016	10.00	printed incorrectly	\$0.00		\$0.00	\$0.00	(0.00%)	\$0.00	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
01/25/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:		20.00	\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Rugby Pierce County Tribune (Rugby, North Dakota)									
01/16/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:		10.00	\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Stanley Mountrail County Promoter (Stanley, North Dakota)									
01/13/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:		10.00	\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	

Public Service Commission Invoice# 5189 P.O.#: Administrative Rules

Run Date	Ad Size	Rate Type	Rate	Color Rate	Total	Discount	(%)	Amount after Discount	Page
Steele Ozone & Kidder County Press (Steele, North Dakota)									
01/13/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Towner Mouse River Journal (Towner, North Dakota)									
01/13/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Valley City Times-Record (Valley City, North Dakota)									
01/13/2016	10.00	Notice Display	\$8.86		\$88.60	\$0.00	(0.00%)	\$88.60	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$8.86	\$0.00	\$88.60	\$0.00		\$88.60	
Wahpeton, The Daily News (Wahpeton, North Dakota)									
01/13/2016	10.00	Notice Display	\$8.86		\$88.60	\$0.00	(0.00%)	\$88.60	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$8.86	\$0.00	\$88.60	\$0.00		\$88.60	
Watford City McKenzie County Farmer (Watford City, North Dakota)									
01/13/2016	10.00	Notice Display	\$6.38		\$63.80	\$0.00	(0.00%)	\$63.80	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$6.38	\$0.00	\$63.80	\$0.00		\$63.80	
Williston Herald (Williston, North Dakota)									
01/13/2016	10.00	Notice Display	\$8.86		\$88.60	\$0.00	(0.00%)	\$88.60	
Caption: ... relating to Gas Pipeline Safety & Reclamation									
Subtotal:	10.00		\$8.86	\$0.00	\$88.60	\$0.00		\$88.60	

Gross Advertising	\$3,732.40	Total Misc	\$0.00	Amount Paid	\$0.00
Agency Discount	\$0.00	Tax	\$0.00	Adjustments	\$0.00
Other Discount	\$0.00	Total Billed	\$3,732.40	Payment Date	
Service Charge	\$0.00	Unbilled	\$0.00	Balance Due	\$3,732.40

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Public Service Commission
State of North Dakota

COMMISSIONERS

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6 January 2016

Vonette Richter
Assistant Code Reviser
North Dakota Legislative Council
State Capitol
600 East Boulevard, 2nd Floor
Bismarck, ND 58505-0360

Re: Notice of Intent to Amend Administrative Rules
PSC Case No. GS-15-187 and Case No. RC-15-737

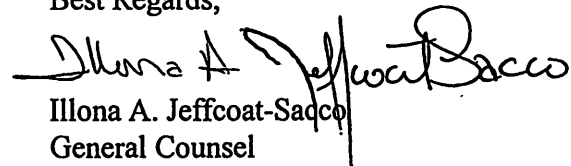
Dear Ms. Richter:

The Public Service Commission recently passed a motion to propose changes to its administrative rules. Consequently, enclosed please find copies of:

- Commission Motion Proposing Amendments, Scheduling Hearing, Issuing Notice of Intent to Amend Rules and Notice of Public Hearing, and Issuing an abbreviated Notice
- Proposed rule changes that were the subject of the Motion:
 - Chapter 69-09-03, Pipeline Safety, Section 69-09-03-02, Adoption of Regulations
 - Article 69-05.2, Surface Coal Mining and Reclamation Operations
- Notice of Intent to Amend Administrative Rules and Notice of Public Hearing
- Abbreviated Notice of Intent to Amend Administrative Rules and Notice of Public Hearing

If you have any questions please do not hesitate to call.

Best Regards,


Illona A. Jeffcoat-Sacco
General Counsel

enclosures

Received by the office of the Legislative Council this 6 day of January, 2016

By: Della Schick

7 RC-15-737 Filed 01/06/2016 Pages: 35
Letter to Legislative Council with enclosures

7 GS-15-187 Filed 01/06/2016 Pages: 35
Letter to Legislative Council with enclosures

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Gas Pipeline Safety
Rulemaking**

Case No. GS-15-187

**Statement Regarding
Regulatory Analysis, Small Entity Analysis and Impact, and
Takings Assessment**

January 5, 2016

The purpose of this rulemaking is to adopt, by reference in state administrative rule, the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA).

For gas pipeline safety, this rule change adopts amendments to safety regulations that have been adopted by PHMSA since November 6, 2014, current to December 31, 2015. A summary/explanation of the specific changes to be adopted by reference for pipeline safety is attached.

For Title 49 Code of Federal Regulations Part 194 – Response Plans for Onshore Oil Pipelines, the Public Service Commission currently has statutory authority concerning pipeline safety of hazardous liquids pipelines, but hasn't initiated that safety program agreement with PHMSA. In order to implement such a program, the Public Service Commission must adopt all pipeline safety rules adopted by PHMSA. The Commission is proposing to adopt all PHMSA regulations for hazardous liquids pipeline safety in effect as of December 31, 2015, including adoption of Part 194.

Regulatory Analysis

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars, or if one is requested as provided in the law. 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.

North Dakota system operators subject to Commission jurisdiction who may be affected by the federal regulations proposed to be adopted by reference for the state gas pipeline safety program include intrastate natural gas transmission pipeline operators, intrastate natural gas distribution system operators, and certain natural gas gathering system operators. North Dakota system operators subject to Commission jurisdiction who may be affected by the federal regulations proposed to be adopted by reference for the state hazardous liquids pipeline safety program include intrastate hazardous liquids transmission system operators and certain intrastate hazardous liquids gathering system operators.

The Commission acts as agent for the United States 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 a 601055(a) Title 49 agreement with the United States Department of Transportation which requires North Dakota to adopt all of the federal gas safety standards, along with any future amendments to those standards. This rulemaking is a part of that ongoing agreement.

The intrastate natural gas transmission pipeline operators and intrastate natural gas distribution system operators must comply with the federal amendments and therefore were impacted financially as a result of PHMSA's adoption of the amendments. Adoption of these amendments for the state gas pipeline safety program will have no additional impact on the regulated community.

A regulatory analysis has not been requested, and the proposal is not expected to impact the regulated community by an amount in excess of fifty thousand dollars (\$50,000.00). Consequently, no regulatory analysis has been prepared.

Small Entity Regulatory Analysis

N.D.C.C. § 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.

A small entity regulatory analysis and an economic impact statement are not required because the proposed amendments to existing rule for both the natural gas and hazardous liquids pipeline systems are mandated by federal law.

Takings Assessment

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The law provides, in part:

The proposed rules should not limit the use of private property so a takings assessment has not been made.

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-15-737

**Statement Regarding
Regulatory Analysis, Small Entity Analysis and Impact, and
Takings Assessment**

January 5, 2016

The Commission is proposing to amend numerous sections in North Dakota Administrative Code Article 69-05.2 pertaining to surface coal mining and reclamation operations. The proposed changes are needed as the result of statutory changes made during the 2015 Legislative session by Senate Bill No. 2377. The statutory changes added a definition of "commercial leonardite" to the list of definitions and also added this phrase to other sections of the reclamation law, as appropriate. In addition, the statutory changes excluded leonardite, an oxidized form of lignite, from the definition of "coal.". Due to these statutory changes, numerous changes need to be made to the Commission's surface coal mining and reclamation rules.

The proposed rule changes primarily consist of adding the phrase "or commercial leonardite" immediately after the word "coal" when commercial leonardite is not part of a definition or a phrase that doesn't otherwise include commercial leonardite. No new or additional requirements are proposed for these or other mining activities.

Also, it should be noted that mining and reclamation rule changes 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.

Regulatory Analysis

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars, or if one is requested as provided in the law. 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.

The proposed rules are not expected to have an impact on the regulated community in excess of fifty thousand dollars, and no regulatory analysis has been requested; therefore, a regulatory analysis has not been prepared.

Small Entity Regulatory Analysis

N.D.C.C. § 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.

The proposed rule changes will not impose any additional compliance or reporting requirements or performance standards on small entities.

Small Entity Economic Impact Statement

N.D.C.C. § 28-32-08.1(3) requires that before adoption of any proposed rule that may have an adverse impact on small entities, the adopting agency shall prepare an economic impact statement that includes consideration of:

- a. The small entities subject to the proposed rule;
- b. The administrative and other costs required for compliance with the proposed rule;
- c. The probable cost and benefit to private persons and consumers who are affected by the proposed rule;
- d. The probable effect of the proposed rule on state revenues; and
- e. Any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

The proposed rule changes will not have an adverse impact on small entities since no additional requirements are being imposed on them as stated above.

Takings Assessment

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real 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.

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

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Gas Pipeline Safety
Rulemaking**

Case No. GS-15-187

PUBLIC SERVICE COMMISSION STAFF TESTIMONY

February 18, 2016

My name is Craig Reamann. I am a Gas Pipeline Safety Inspector in the Compliance and Competitive Markets Division of the Public Service Commission. I have been asked to read the following testimony of Patrick Fahn for this proceeding. He is the Director of the Compliance and Competitive Markets Division of the Public Service Commission.

The purpose of this testimony is to describe the proposed administrative rule changes pertaining to pipeline safety. Under North Dakota Administrative Code chapter 69-09-03, the Commission adopts by reference the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA).

For gas pipeline safety, this proposed rule change adopts, by reference, amendments to safety regulations that have been adopted by PHMSA since November 6, 2014, current to December 31, 2015.

For hazardous liquids pipeline safety, the Public Service Commission currently has statutory authority but hasn't initiated a hazardous liquids safety program agreement with PHMSA. With Legislative budget approval, the

Commission could implement a hazardous liquids safety program in the future and therefore is continuing to adopt updated PHMSA hazardous liquids pipeline safety rules.

A description of PHMSA rule amendments since November 6, 2014, current to December 31, 2015 is attached.

This concludes the testimony.

Thank you.

GS-15-187 Pipeline Safety Rulemaking

Adoption of Title 49 Code of Federal Regulations Part 194 – Response Plans for Onshore Oil Pipelines

SUMMARY: In its last Pipeline Safety Rulemaking (Case No. GS-14-761), the Commission adopted 49 CFR Part 195 -- Transportation of Hazardous Liquids by Pipeline by reference. The Commission now realizes that, implementation of a hazardous liquids pipeline safety program requires that 49 CFR Part 194 also be adopted. Part 194 contains requirements for oil spill response plans to reduce the environmental impact of oil discharged from onshore oil pipelines.

Summary of Amendments to the Code of Federal Regulations after November 6, 2014 through December 31, 2015

Federal Register 80 FR 12762: amendment to various sections of 49 CFR 191 – Transportation of Natural and Other Gas by Pipeline: Annual Reports Incident Reports, and Safety-Related Condition Reports

PHMSA SUMMARY: Amended the pipeline safety regulations to make miscellaneous changes that update and clarify certain regulatory requirements. These amendments address several subject matter areas including the performance of post-construction inspections, leak surveys of Type B onshore gas gathering lines, qualifying plastic pipe joiners, regulation of ethanol, transportation of pipe, filing of offshore pipeline condition reports, and calculation of pressure reductions for hazardous liquid pipeline anomalies.

PHMSA (Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation)

Federal Register 80 FR 163: amendment to several sections of 49 CFR 192 – Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards

PHMSA SUMMARY: Amended the Federal pipeline safety regulations to incorporate by reference new, updated or reaffirmed editions of the voluntary consensus standards that are applicable to pipelines subject to the requirements of the Federal pipeline safety regulations.

Voluntary consensus standards are technical standards developed or adopted by domestic and international organizations. These organizations use agreed-upon

procedures to update and revise their published standards every three to five years to reflect modern technology and best technical practices.

Federal Register 80 FR 12762: amendment to several sections of 49 CFR 192 – Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards

PHMSA SUMMARY: Amended the pipeline safety regulations to make miscellaneous changes that update and clarify certain regulatory requirements. These amendments address several subject matter areas including the performance of post-construction inspections, leak surveys of Type B onshore gas gathering lines, qualifying plastic pipe joiners, regulation of ethanol, transportation of pipe, filing of offshore pipeline condition reports, and calculation of pressure reductions for hazardous liquid pipeline anomalies.

Federal Register 80 FR 168: amendment to various sections of 49 CFR 195 – Transportation of Hazardous Liquids by Pipeline

PHMSA SUMMARY: Amended the Federal pipeline safety regulations to incorporate by reference new, updated or reaffirmed editions of the voluntary consensus standards that are applicable to pipelines subject to the requirements of the Federal pipeline safety regulations.

Federal Register 80 FR 12762: amendment to various sections of 49 CFR 195 – Transportation of Hazardous Liquids by Pipeline

PHMSA SUMMARY: Amended the pipeline safety regulations to make miscellaneous changes that update and clarify certain regulatory requirements. These amendments address several subject matter areas including the performance of post-construction inspections, leak surveys of Type B onshore gas gathering lines, qualifying plastic pipe joiners, regulation of ethanol, transportation of pipe, filing of offshore pipeline condition reports, and calculation of pressure reductions for hazardous liquid pipeline anomalies.

Federal Register 80 FR 168: amendment to 49 CFR 199.11

PHMSA SUMMARY: Amended the Federal pipeline safety regulations to incorporate by reference new, updated or reaffirmed editions of the voluntary consensus standards that are applicable to pipelines subject to the requirements of the Federal pipeline safety regulations.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-15-737

PUBLIC SERVICE COMMISSION STAFF TESTIMONY

February 18, 2016

I am Jim Deutsch, Director with the Reclamation Division of the Public Service Commission.

The Commission is proposing some rule changes to North Dakota Administrative Code Article 69-05.2 covering surface coal mining and reclamation operations. The proposed rule changes are needed as the result of statutory changes made by Senate Bill No. 2377 during the 2015 Legislative Session. The statutory changes added a definition of "commercial leonardite"; excluded leonardite, an oxidized form of lignite, from the definition of "coal"; and also added the phrase "or commercial leonardite" to other sections of the reclamation law as appropriate. Similarly, the proposed rule changes primarily consist of adding the phrase "or commercial leonardite" immediately after the word "coal" when it is not part of a definition or other phrase that doesn't otherwise include commercial leonardite. No new or additional requirements are proposed by this rulemaking.

However, just prior to this hearing I noticed that two cross references to statutory definitions in the mining and reclamation rules need to be corrected due to the addition of the "Commercial Leonardite" definition to the reclamation law

and subsequent renumbering of other definitions. These are in the definition of "valid existing rights" contained in N.D. Administrative Code Section 69-05.2-01-02 and in the soil resources information for permit applications under N.D. Administrative Code Section 69-05.2-08-10. In the 'valid existing right definition', the cross reference to subsection 33 of N.D. Century Code section 38-14.1-02 needs to be changed to subsection 34. In the pre-mine soil resources section, the cross reference to subsection 28 of N.D. Century Code section 38-14.1-02 needs to be changed to subsection 30.

The mining and reclamation rule changes adopted by the Commission must be as effective as the counterpart federal rules that have issued by the federal Office of Surface Mining (OSM) within the Department of the Interior. Reclamation Division staff does not believe OSM will have any concerns with these rule changes based on their informal review of the proposed changes.

The Commission has not received any written comments concerning this rulemaking case.

This concludes my testimony.

LEONARDITE PRODUCTS-LLC

February 18, 2016

Julie Fedorchak
Randy Christmann
Brian Kalk
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

Dear Commissioners:

Leonardite Products has been in operation since 2008. We took over the facility and mine in Williston started by GeoResources in 1964.

We support the rule change adding the term "commercial leonardite" in accordance with the changes made to the ND Century Code during the last legislative session. This change distinguishes leonardite from coal.

American Colloid based out of Gascoyne, ND mines leonardite in southwestern North Dakota and is also supportive of this rule change.

This change was made to address federal regulations affecting leasing and royalty charges. Commercial leonardite and coal have different uses, processing methods and business models. Imposing federal coal leasing and royalties to leonardite mining and processing companies is not viable and creates a competitive disadvantage in the US and global market.

Thank you for your consideration.

Regards,



Cherie Harms
President

15 RC-15-737 Filed 02/18/2016 Pages: 1
Letter in support of proposed rules
Leonardite Products LLC
Cherie Harms, President

**State of North Dakota
Public Service Commission**

**Public Service Commission
Gas Pipeline Safety
Rulemaking**

Case No. GS-15-187

January 5, 2016

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of ~~November 6, 2014~~ December 31, 2015, are adopted by reference:

1. Part 190 - Pipeline Safety Programs and Rulemaking
Procedures.
2. Part 191 - Transportation of Natural Gas and Other Gas by
Pipeline, Annual Reports, Incident Reports, and Safety-
Related Condition Reports.
3. Part 192 - Transportation of Natural and Other Gas by
Pipeline:
Minimum Federal Safety Standards.
4. Part 194 – Response Plans for Onshore Oil Pipelines
45. Part 195 - Transportation of Hazardous Liquids by Pipeline.
56. Part 199 - Drug and Alcohol Testing.

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; January 1, 2010; April 1, 2012; April 1, 2015; _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

**State of North Dakota
Public Service Commission**

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-15-737

January 5, 2016

**ARTICLE 69-05.2
SURFACE COAL MINING AND RECLAMATION OPERATIONS**

69-05.2-01-01. Applicability of article. This article applies to any person conducting surface coal mining operations; and to all surface coal mining operations conducted after August 1, 1980, on lands from which the coal or commercial leonardite had not yet been removed and to any other lands subject to North Dakota Century Code chapter 38-14.1 or this article.

1. This article does not apply to:
 - a. The extraction of coal or commercial leonardite by a landowner for the landowner's own noncommercial use from land owned or leased by the landowner.
 - b. Coal or commercial leonardite removal for reclamation operations under North Dakota Century Code chapter 38-14.2.
 - c. Coal or commercial leonardite extraction as an incidental part of federal, state, or local government-financed highway or other construction, except as provided by chapter 69-05.2-03.
 - d. Coal or commercial leonardite extraction of two hundred fifty tons [226.80 metric tons] or less under a coal exploration permit issued by the office of the state geologist.

History: Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993:_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-02, 38-14.1-10, 38-14.1-37

69-05.2-01-02. Definitions. The definitions in North Dakota Century Code section 38-14.1-02 apply to this article and the following terms have the specified meaning except where otherwise indicated:

9. "Coal mining operation" means, for purposes of restrictions on financial interests of employees, the business of developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite, or lignite or commercial leonardite, or of reclaiming the areas upon which such activities occur.
10. "Coal preparation" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal or commercial leonardite.
11. "Coal preparation plant" means a facility where coal or commercial leonardite is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities, storage and stockpile facilities, sheds, shops and other buildings, water treatment and water-storage facilities, settling basins and impoundments, and coal or commercial leonardite processing and other waste disposal areas.
12. "Coal processing waste" means earth materials which are wasted and separated from product coal or commercial leonardite during cleaning, concentrating, or other processing or preparation of coal or commercial leonardite.
32. "Extraction of coal or commercial leonardite as an incidental part" means the extraction of coal or commercial leonardite which is necessary to enable government-financed construction to be accomplished. Only that coal or commercial leonardite extracted from within the right of way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal or commercial leonardite outside the right of way or boundary of the area directly affected by the construction shall be subject to the requirements of North Dakota Century Code chapter 38-14.1 and this article.
64. "Owned or controlled" and "owns or controls" mean any one or a combination of the relationships specified in subdivisions a and b:
 - a. Being a permittee of a surface coal mining operation; based on instrument of ownership or voting securities, owning of record in excess of fifty percent of an entity; or having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant,

operator, or other entity conducts surface coal mining operations.

b. The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

- (1) Being an officer or director of an entity;
- (2) Being the operator of a surface coal mining operation;
- (3) Having the ability to commit the financial or real property assets or working resources of an entity;
- (4) Being a general partner in a partnership;
- (5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten through fifty percent of the entity; or
- (6) Owning or controlling coal or commercial leonardite to be mined by another person under a lease, sublease or other contract and having the right to receive the coal or commercial leonardite after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

88. "Refuse pile" means a surface deposit of coal or commercial leonardite mine waste that does not impound water, slurry, or other liquid or semiliquid material.

93. "Road" means a surface right of way used, constructed, reconstructed, improved, or maintained for travel by land vehicles for use in surface coal mining and reclamation operations. The term includes access and haul roads used in surface coal mining and reclamation operations, including use by coal or commercial leonardite hauling vehicles to and from transfer, processing, or storage areas. A road consists of the entire area within the right of way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term does not include ramps and routes of travel within the immediate mining area

or within spoil or coal or commercial leonardite mine waste disposal areas.

104. "Substantial legal and financial commitments in a surface coal mining operation" means significant investments that have been made on the basis of a long-term coal or commercial leonardite contract in power plants, railroads, coal or commercial leonardite handling, preparation, extraction or storage facilities, and other capital-intensive activities.
108. "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal or commercial leonardite from the earth by removing the materials over a coal or commercial leonardite seam, before recovering the coal or commercial leonardite, or by recovery of coal or commercial leonardite from a deposit that is not in its original geologic location.
120. "Valid existing rights" means: a set of circumstances under which a person, subject to commission approval, may conduct surface coal mining operations on lands where North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 would otherwise prohibit such operations. Possession of valid existing rights confers an exception from these prohibitions. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of North Dakota Century Code chapter 38-14.1 and this article.
- a. Property rights demonstration. Except as provided in subdivision c, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. Applicable state statutory or case law will govern interpretation of documents relied upon to establish property rights, unless federal law provides otherwise. If no applicable state law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.
- b. Except as provided in subdivision c, a person claiming valid existing rights must also demonstrate compliance with one of the following standards:

- (1) All permits or good-faith standard. All permits and other authorizations required to conduct surface coal mining operations had been obtained or a good-faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-1.1. At a minimum, an application must have been submitted for the permit required under this article.

- (2) Needed for and adjacent standard. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained or a good-faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. Except for operations in existence before August 3, 1977, or for which a good-faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 when the commission approved the permit for the original operation or when the good-faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the commission may consider factors such as:
 - (a) The extent to which coal or commercial leonardite supply contracts or other legal and business commitments that predate the time that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 depend upon use of that land for surface coal mining operations.

- (b) The extent to which plans used to obtain financing for the operation before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 rely upon use of that land for surface coal mining operations.
 - (c) The extent to which investments in the operation before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 rely upon use of that land for surface coal mining operations.
 - (d) Whether the land lies within the area identified on the life-of-mine map submitted under chapter 69-05.2-07 before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.
- c. Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 must demonstrate that one or more of the following circumstances exist if the road is included within the definition of "surface coal mining operations" in subsection 33 of North Dakota Century Code section 38-14.1-02:
 - (1) The road existed when the land upon which it is located came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 and the person has a legal right to use the road for surface coal mining operations.
 - (2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1, and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations.

- (3) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.
- (4) Valid existing rights exist under subdivisions a and b.

History: Effective August 1, 1980; amended effective June 1, 1983; April 1, 1985; June 1, 1986; January 1, 1987; May 1, 1990; May 1, 1992; June 1, 1997; May 1, 1999; March 1, 2004; _____.

General Authority: NDCC 38-14.1-03, 38-14.1-38

Law Implemented: NDCC 38-14.1-02, 38-14.1-03, 38-14.1-21, 38-14.1-38

69-05.2-02-06. Gifts and gratuities.

1. Except as provided in subsection 2, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a coal or commercial leonardite company which:
 - a. Conducts, or is seeking to conduct, operations or activities regulated by the commission; or
 - b. Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

History: Effective August 1, 1980; amended effective May 1, 1990; _____.

General Authority: NDCC 38-14.1-38

Law Implemented: NDCC 38-14.1-38

69-05.2-03-01. Incidental coal or commercial leonardite extraction - Possession of documents. Any person conducting coal or commercial leonardite extraction as an incidental part of government-financed construction is responsible for possessing, onsite, the documentation required by section 69-05.2-03-02.

History: Effective August 1, 1980; amended effective May 1, 1990; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-37

69-05.2-03-02. Incidental coal or commercial leonardite extraction - Information to be maintained onsite. Any person extracting coal or commercial leonardite incident to government-financed highway or other

construction who extracts more than two hundred fifty tons [226.80 metric tons] shall maintain, onsite, documents which:

1. Describe the project.
2. Show the exact location of the construction, right of way, or the boundaries of the area which will be directly affected.
3. Identify the government agency providing the financing and the kind and amount of public financing, including the percentage of all costs represented by the government financing.

History: Effective August 1, 1980; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-37

69-05.2-04-01.5. Areas unsuitable for mining - Submission of requests for valid existing rights determinations.

2. A request for a valid existing rights determination may be submitted before preparing and submitting an application for a permit or incidental boundary revision for the land. The request must include the following:
 - a. A property rights demonstration under subdivision a of the definition of valid existing rights of section 69-05.2-01-02 if the request relies upon the "all permits or good-faith standard" or the "needed for and adjacent standard" in subdivision b of that definition. The demonstration must include the following items:
 - (1) A legal description of the land to which the request pertains.
 - (2) Complete documentation of the character and extent of the applicant's current interests in the surface and mineral estates of the land to which the request pertains.
 - (3) A complete chain of title for the surface and mineral estates of the land to which the request pertains.
 - (4) A description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or

method of mining or mining-related surface disturbances and facilities.

- (5) A description of the type and extent of surface coal mining operations that the applicant claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with state property law.
- (6) Complete documentation of the nature and ownership, as of the date that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1, of all property rights for the surface and mineral estates of the land to which the request pertains.
- (7) Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains.
- (8) If the coal or commercial leonardite interests have been severed from other property interests, documentation that the applicant has notified and provided reasonable opportunity for the owners of other property interests in the land to which the request pertains to comment on the validity of claimed property rights.
- (9) Any comments that the applicant receives in response to the notification provided under paragraph 8.

History: Effective March 1, 2004; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-02, 38-14.1-04, 38-14.1-07

69-05.2-04-04. Areas unsuitable for mining - Initial processing - Recordkeeping - Notification requirements for designating lands unsuitable.

2. The commission will determine whether any identified coal or commercial leonardite resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the commission finds no identified coal or commercial leonardite resources in that area, it will return the petition with a statement of findings.

History: Effective August 1, 1980; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04, 38-14.1-06, 38-14.1-09, 38-14.1-18

69-05.2-04-07. Areas unsuitable for mining - Data base and inventory system for designating lands unsuitable.

3. The commission will add to the data base and inventory system information:
 - a. On potential coal or commercial leonardite resources of the state, demand for those resources, the environment, the economy, and the supply of coal or commercial leonardite, sufficient to enable the commission to prepare the statements required by subsection 3 of North Dakota Century Code section 38.14.1-05; and
 - b. That becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

History: Effective August 1, 1980; amended effective May 1, 1990; July 1, 1995;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04

69-05.2-04-09. Areas unsuitable for mining - Commission responsibility for implementation for designating lands unsuitable. The commission will:

3. Make available to any person information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment, but excepting proprietary information on the chemical and physical properties of the coal or commercial leonardite according to subsection 3 of North Dakota Century Code section 38-14.1-13.

History: Effective August 1, 1980; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04

69-05.2-05-08. Permit applications - Permit term.

1. A permit will be issued for a fixed term not to exceed five years except as provided in subsection 3. The permit area shall be no larger than a logical pit sequence and include lands used for activities incidental to coal or commercial leonardite extraction. Coal or commercial leonardite removal boundaries cannot go beyond those approved for the permit term without obtaining a revision under section 69-05.2-11-02.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993; April 1, 2013; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-12

69-05.2-06-01. Permit applications - Identification of interests.

1. In addition to satisfying the applicable requirements of subsection 1 of North Dakota Century Code section 38-14.1-14, each application must contain:
 - a. The names and addresses of the owner of record of surface and coal or commercial leonardite subsurface rights contiguous to the permit area extending one-fourth mile [402.33 meters] from the permit boundary.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; July 1, 1995; April 1, 2013; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-06-03. Permit applications - Right of entry and operation information.

2. Following completion of coal or commercial leonardite removal operations on the lands covered by a coal or commercial leonardite lease, the copy of the lease may be deleted from an approved permit if:
 - a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or
 - b. The lease has expired or has been terminated.

If a coal or commercial leonardite lease is no longer provided for surface right of entry, other documents granting the permittee surface right of entry must be added to the permit.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; April 1, 2007;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-01. Permit applications - Permit area - Environmental resources information.

2. When the permit area contains a logical pit sequence where the coal or commercial leonardite removal area is larger than that needed for the initial five-year term, the applicant shall identify the size, sequence, and timing of mining individual coal or commercial leonardite removal subareas.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-02. Permit applications - Permit area - General map requirements.

1. The application must include a 1:4,800 planimetric mine map, together with as many separate detail maps as necessary, to show:
 - I. Location and dimensions of existing areas of spoil, coal, commercial leonardite and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the permit area.

History: Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-04. Permit applications - Permit area - Description of hydrology and geology - General requirements.

3. Enough detailed geologic information must be included to determine:
 - a. The probable hydrologic consequences (PHC) of the operation on the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface and ground water monitoring is necessary;

- b. All potentially toxic-forming strata down through the lowest coal or commercial leonardite seam to be mined; and
- c. Whether reclamation can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

History: Effective August 1, 1980; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-14.1-15

69-05.2-08-05. Permit applications - Permit area - Geology description.

1. The description must include a general statement of the geology within the permit area down through the deeper of either the stratum immediately below the deepest coal or commercial leonardite seam to be mined or any lower aquifer which may be adversely affected by mining.
2. Test borings or core samples from the permit area must be collected and analyzed down through the deeper of either the stratum immediately below the lowest coal or commercial leonardite seam to be mined or any lower aquifer which may be adversely affected by mining. The minimum density is one drill hole per forty acres [16.19 hectares] or a comparable spacing, or as specified by the commission. Overburden samples must be taken at five-foot [1.52-meter] intervals and taken dry whenever possible. Laboratory analyses must be made by the methods in United States department of agriculture handbook 525, Laboratory Methods Recommended for Chemical Analyses of Mined Land Spoils and Overburden in Western United States, by Sandoval and Power, or United States department of agriculture handbook 60, Diagnosis and Improvement of Saline and Alkali Soils, by the United States salinity laboratory staff, both available from the United States government printing office, Washington, D. C. The following information must be provided:
 - a. Location of subsurface water encountered.
 - b. Drill hole logs with gamma ray and density logs included as verification showing the lithologic characteristics and thickness of each stratum and coal or commercial leonardite seam.

- c. Physical and chemical analyses of each overburden sample taken at five-foot [1.52-meter] intervals to identify horizons containing potential toxic-forming materials. Physical and chemical analyses of strata below the lowest coal or commercial leonardite seam to be mined must include one sample from each stratum. The analyses must include:
- (1) pH.
 - (2) Sodium adsorption ratio (include calcium, magnesium, and sodium cation concentrations).
 - (3) Electrical conductivity of the saturation extract.
 - (4) Texture (by pipette or hydrometer method). Include percentage of sand, silt, and clay along with a general description of the physical properties of each stratum within the overburden.
 - (5) Saturation percentage if the sodium adsorption ratio is greater than twelve and less than twenty.
- d. Coal or commercial leonardite seam analyses including sodium, ash, British thermal unit, and sulfur content.
- e. Cross sections sufficient to show the major subsurface variations within the permit area down through the deeper of either the stratum immediately below the lowest coal or commercial leonardite seam to be mined or any lower aquifer which may be adversely affected by mining. The horizontal scale must be 1:4,800 and the vertical scale one inch [2.54 centimeters] equals twenty feet [6.10 meters]. To assess pit suitability for disposal of refuse, ash and other residue from coal or commercial leonardite utilization processes, the information presented in this subsection must extend to a depth determined by the commission or to the base of the next confining clay stratum beneath the lowest coal or commercial leonardite seam to be mined.
- f. A thickness (isopach) map of the overburden to the top of the deepest seam to be mined. The contour interval must be ten feet [3.05 meters] and the horizontal scale 1:4,800.
- g. All coal or commercial leonardite crop lines and the strike and dip of the coal or commercial leonardite to be mined.

History: Effective August 1, 1980; amended effective January 1, 1987; May 1, 1990; May 1, 1992:_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-06. Permit applications - Permit area - Ground water information.

1. The applicant shall analyze the ground water hydrology and ground water resources of the potentially affected area. The application must contain a description of the ground water hydrology for the permit and adjacent areas including:
 - d. Contour maps or maps showing the water table or piezometric surface in each aquifer (including water-bearing coal and commercial leonardite seams) down to and including the lowest water-bearing coal or commercial leonardite seam to be mined and any lower aquifer which may be adversely affected by mining. The applicant shall prepare 1:24,000 scale maps covering the permit and adjacent areas, using at least one data point (a piezometer nest) per four square miles [6.44 square kilometers], unless the commission requires a greater density. Data points must be shown on the map to the nearest ten acres [4.05 hectares]. Accompanying data should include lithologic and geophysical (gamma ray and density) logs of the piezometer holes, piezometer construction details, and water level and land surface elevations to the accuracy necessary for valid analysis of the ground water hydrology of the permit and adjacent areas.

History: Effective August 1, 1980; amended effective May 1, 1990:_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-01. Permit applications - Operation plans - General requirements. Each application must contain a detailed description of the proposed mining operations, including:

1. A narrative of mining procedures and engineering techniques, anticipated annual and total coal or commercial leonardite production, and major equipment.

2. A plan stating the anticipated or actual starting and termination date of each phase of mining activities and the amount of land to be affected for each phase over the life of the permit.
3. A narrative for each operations plan explaining the plan in detail and the construction, modification, use and maintenance of each mine facility, water and air pollution control facilities or structures, transportation and coal or commercial leonardite handling facilities, and other structures required for implementing the plans.
4. A plan for each support facility to be constructed, used, or maintained within the permit area including maps, appropriate cross sections, design drawings, and specifications of each facility sufficient to demonstrate compliance with section 69-05.2-24-08 or 69-05.2-24-09 as applicable.
5. If coal or commercial leonardite removal areas are proposed within five hundred feet [152.40 meters] of any farm building, the applicant must provide documentation showing compliance or plans to comply with North Dakota Century Code section 38-18-07.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992; June 1, 1994; March 1, 2004; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-18-07

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:

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 or commercial leonardite removal subarea.
6. Location of coal or commercial leonardite 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.
8. Each coal or commercial leonardite storage, cleaning and loading area, and each coal or commercial leonardite 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.

12. Each source of waste and each waste disposal facility relating to coal or commercial leonardite processing or pollution control.
14. If an applicant proposes to remine or otherwise disturb lands that were affected by coal or commercial leonardite 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 of any sinkholes and other features that are the result of any past underground coal or commercial leonardite 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.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; June 1, 1997; April 1, 2011; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-09. Permit applications - Operation plans - Surface water management - Ponds, impoundments, banks, dams, embankments, and diversions.

1. Each application must include a surface water management plan describing each water management structure intended to meet the requirements of chapter 69-05.2-16. Each plan must:

- f. Identify the location of proposed temporary coal or commercial leonardite processing waste disposal areas, along with design specifications to meet the requirements in section 69-05.2-19-03.

- g. Identify the location of proposed coal or commercial leonardite processing waste dams and embankments along with design specifications to meet the requirements in chapter 69-05.2-20. The plan must include the results of a geotechnical investigation of each proposed coal or commercial leonardite dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment and the impounded material. The geotechnical investigation must be planned and supervised by an engineer or engineering geologist, as follows:
 - (1) Determine the number, location, and depth of borings and test pits using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.
 - (2) Consider the character of the overburden, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site.
 - (3) Identify springs, seepage, and ground water flow observed or anticipated during wet periods in the proposed dam or embankment area.
 - (4) Consider the possibility of mudflows or other landslides into the dam, embankment, or impounded material.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; January 1, 1993; May 1, 1999; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-18. Permit applications - Operation and reclamation plans - Auger mining. If applicable, the applicant shall submit a plan explaining how the applicant intends to comply with section 69-05.2-13-12 and subsection 1.1 of North Dakota Century Code section 38-14.1-24. This plan must contain:

3. A description of how the applicant intends to ensure the long-term stability of the augered area. This description should contain specific engineering designs ensuring that:
 - a. Material backfilled into the holes can be compacted to provide sufficient strength to prevent subsidence;
 - b. The coal or commercial leonardite remaining between the auger holes and the overlying overburden is sufficiently strong to prevent subsidence; or
 - c. The auger mined area can be collapsed in a controlled manner through the use of explosive or other techniques to eliminate future subsidence.

History: Effective September 1, 1984; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-14.1-24

69-05.2-09-19. Permit applications - Operation and reclamation plans - Coal preparation plants not located within the permit area of a mine.

1. This section applies to any person who operates or intends to operate a coal preparation plant in connection with a coal or commercial leonardite mine but outside the permit area mine for a specific mine. A permit to operate must be obtained from the commission.

History: Effective January 1, 1987; amended effective May 1, 1990; May 1, 1992;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-10-01. Permit applications - Public notices of filing and entering data into the applicant violator system.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:
 - b. A map or description which must:
 - (4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or commercial leonardite or conduct activities that may

impact future coal or commercial leonardite recovery, the names of each owner of record of coal or commercial leonardite rights within the permit boundaries.

6. The commission will provide notice and opportunity for hearing for persons seeking and opposing disclosure prior to declaring any permit information confidential. Notice will be published in the official county newspaper of the county where the proposed operations will be located at least fifteen days prior to the hearing. Information requested to be held confidential must be clearly identified by the applicant and submitted separately. Confidential information is limited to:
 - a. Analysis of the chemical and physical properties of the coal or commercial leonardite to be mined, except information on coal or commercial leonardite components potentially toxic in the environment.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; April 1, 2007; April 1, 2013; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-18

69-05.2-11-02. Permit revisions.

1. A permit revision is required:
 - c. When a new coal or commercial leonardite removal subarea of the existing permit area is proposed to be disturbed in accordance with the timing and sequence approved in the permit. The revision is considered a significant alteration to the mining and reclamation plan.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990, May 1 1992; January 1, 1993; July 1, 1995; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-23

69-05.2-13-05. Performance standards - General requirements - Minimize disturbances - Best technology currently available. All surface coal mining and reclamation operations must be conducted to minimize disturbances on lands where coal or commercial leonardite is not removed and utilize the best technology currently available.

History: Effective August 1, 1980; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03, 38-14.1-24

69-05.2-13-08. Performance standards - General requirements - Protection of fish, wildlife, and related environmental values.

6. The permittee shall, to the extent possible using the best technology currently available:
 - h. To the extent possible prevent, control, and suppress range, forest, and coal or commercial leonardite fires not approved by the commission as part of a management plan.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990, May 1, 1992; January 1, 1993; June 1, 1994; May 1, 1999;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-13-12. Performance standards - General requirements - Auger mining. The operator shall:

1. Conduct auger mining to maximize the utilization and conservation of coal or commercial leonardite.

History: Effective September 1, 1984; amended effective June 1, 1986; May 1, 1990; May 1, 1992;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-13-13. Performance Standards - General requirements - Coal preparation plants not located within the permit area of a mine. Each person who operates a coal preparation plant in connection with a coal or commercial leonardite mine but outside the permit area for a specific mine shall obtain a permit in accordance with section 69-05.2-09-19, obtain a bond in accordance with chapter 69-05.2-12, and comply with the following:

1. Signs and markers for coal preparation plants, coal processing waste disposal areas, and water-treatment facilities must comply with section 69-05.2-13-04.
2. Stream channel diversions must comply with section 69-05.2-16-07.

3. Drainage from any disturbed areas related to coal preparation plants must comply with chapter 69-05.2-16.
4. Permanent impoundments associated with coal preparation plants must comply with section 69-05.2-16-12. Dams constructed of or impounding coal processing waste must comply with chapter 69-05.2-20.
5. Disposal of coal processing waste, non-coal mine waste and excess spoil must comply with chapters 69-05.2-19 and 69-05.2-18, respectively.
6. Fish, wildlife and related environmental values must be protected in accordance with section 69-05.2-13-08.
7. Support facilities related to coal preparation plants must comply with section 69-05.2-24-09.
8. Roads associated with coal preparation plants must comply with chapter 69-05.2-24.
9. Cessation of operations must be in accordance with sections 69-05.2-13-10 and 69-05.2-13-11.
10. Erosion and attendant air pollution must be controlled in accordance with sections 69-05.2-15-06 and 69-05.2-13-07, respectively.
11. Underground mine areas must be avoided in accordance with section 69-05.2-13-06.
12. Reclamation must follow proper suitable plant growth material handling, backfilling and grading, revegetation, and postmining land use procedures in accordance with chapters 69-05.2-15, 69-05.2-21, 69-05.2-22 and 69-05.2-23, respectively.

History: Effective January 1, 1987; amended effective May 1, 1990 May 1, 1992; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-18-01. Performance standards - Disposal of excess spoil - Requirements. In addition to satisfying subsection 19 of North Dakota Century Code section 38-14.1-24, the operator shall:

13. Provide an underdrain system, if required by subsection 19 of North Dakota Century Code section 38-14.1-24, that is protected by an adequate filter and designed and constructed using standard geotechnical engineering methods. Underdrains must consist of nondegradable, non-toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, commercial leonardite, clay, or shale.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-19-02. Performance standards - Waste materials - Permanent disposal of coal or commercial leonardite wastes.

1. All coal processing waste and waste materials from coal or commercial leonardite utilization processes and coal conversion facilities to be permanently disposed of within a permit area and that are required to be permitted under the solid waste management rules of the North Dakota state department of health must be disposed of according to those rules and this chapter.
 - a. The permittee or operator shall file application for and design the disposal site as required by the state department of health and concurrently submit a copy of the application to the commission.
 - b. The permittee or operator shall also submit to the commission a permit revision that will incorporate the disposal activities into the operations and reclamation plan. The commission will not approve the revision until the state department of health issues a solid waste permit.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-19-04. Performance standards - Waste materials - Disposal of noncoal wastes.

4. At no time may any solid waste material be deposited at embankment or impoundment sites, nor may any excavation for solid waste disposal be located within eight feet [2.44 meters] of

any coal or commercial leonardite outcrop or coal or commercial leonardite storage area.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; May 1, 1999; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-21-01. Performance standards - Backfilling and grading - Timing requirements.

2. Area surface mining. Rough backfilling and grading must be completed within one hundred eighty days following coal or commercial leonardite removal and may not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The commission may grant additional time or distance for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under subsection 3 of section 69-05.2-09-11, that additional time or distance is necessary.

History: Effective August 1, 1980; amended effective May 1, 1990; July 1, 1995; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-21-03. Performance standards - Backfilling and grading - Covering coal, commercial leonardite and toxic-forming materials. All exposed coal seams, commercial leonardite seams, and toxic-forming and combustible materials exposed, used, or produced during mining must be adequately covered with nontoxic and noncombustible materials, or treated, to control the impact on surface and ground water in accordance with chapter 69-05.2-16, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

History: Effective August 1, 1980; amended effective January 1, 1987; May 1, 1990; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-21-04. Performance standards - Backfilling and grading - Thin overburden. The provisions of this section apply only to mining activities where the final thickness of all available spoil and waste materials over the permit area is less than 0.8 of the initial thickness of the overburden and the coal or commercial leonardite prior to coal or commercial leonardite removal. The final thickness is the product of the overburden thickness prior to coal or commercial leonardite

commercial leonardite removal times the overburden swell factor. When the demonstration is made that thin overburden exists over the permit area, in addition to meeting subdivision b of subsection 3 of North Dakota Century Code section 38-14.1-24, the operator shall:

1. Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire permit area, to attain the lowest practicable stable grade, to achieve a static safety factor of 1.3 to provide adequate drainage and long-term stability of the regraded areas, and to cover all toxic-forming materials.
2. Eliminate highwalls by grading or backfilling to stable slopes not exceeding thirty-five percent, or lesser slopes as the commission may specify to reduce erosion, maintain the hydrologic balance, or achieve the approved postmining land use.
3. Transport, backfill, grade, and revegetate to achieve an ecologically sound land use compatible with the prevailing use in unmined areas surrounding the permit area.
4. Transport, backfill, and grade to ensure that impoundments are constructed only where:
 - a. It has been demonstrated to the commission that all requirements of chapter 69-05.2-16 have been met; and
 - b. The impoundments have been approved by the commission as suitable for the approved postmining land use and meet the requirements of this article and all other applicable state laws and regulations.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-22-07. Performance standards - Revegetation - Standards for success.

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:
 - 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 or commercial leonardite 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.

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; April 1, 2011; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-24-01. Performance standards - Roads - General requirements.

1. Each road, as defined in subsection 93 of section 69-05.2-01-02, must be classified as either a primary or ancillary road.
 - a. A primary road is any road which is:
 - (1) Used for transporting coal or commercial leonardite or spoil;
 - (2) Frequently used for access or other purposes for a period in excess of six months; or
 - (3) To be retained for an approved postmining land use.
 - b. An ancillary road is any road not classified as a primary road.

History: Effective August 1, 1980; amended effective May 1, 1992; April 1, 2007; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-24-09. Performance standards – Support facilities and utility installations.

1. Support facilities required for, or used incidentally to, the operation of the mine, including mine buildings, coal or commercial leonardite loading facilities at or near the minesite, coal or commercial leonardite storage facilities, equipment storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops, and other buildings, must be designed, constructed or reconstructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property.

History: Effective August 1, 1980; amended effective; May 1, 1992; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-25-04. Performance standards – Alluvial valley floors – Protection of farming and water supplies.

2. Paragraphs 1 and 2 of subdivision e of subsection 3 of North Dakota Century Code section 38-14.1-21 do not apply to lands identified in a reclamation plan approved by the commission prior to July 1, 1979, for any operation that, in the year preceding July 1, 1979:
 - a. Produced coal or commercial leonardite in commercial quantities and was located within or adjacent to an alluvial valley floor; or
 - b. Obtained specific permit approval to conduct operations within an alluvial valley floor.

History: Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-24, 38-14.1-28

69-05.2-26-06. Performance standards - Prime farmland - Exemptions. This chapter does not apply to:

3. Lands included in any existing surface coal mining operations for which a permit was issued for all or any part before July 1, 1979; provided that:
 - c. The lands contain part of a continuous recoverable coal or commercial leonardite seam that was being mined in a

single continuous mining operation begun under a permit issued prior to July 1, 1979.

History: Effective June 1, 1983; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-31-01. Training of blasters.

3. Training courses must be given by competent, experienced persons at a frequency not to exceed one every three months. Courses developed and taught by coal or commercial leonardite mining industry personnel may be approved by the commission for training persons seeking to become certified blasters.

History: Effective April 1, 1985; amended effective May 1, 1990;_____.

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-15-737

March 8, 2016

**ARTICLE 69-05.2
SURFACE COAL MINING AND RECLAMATION OPERATIONS**

REVISED with CHANGES HIGHLIGHTED

69-05.2-01-01. Applicability of article. This article applies to any person conducting surface coal mining operations; and to all surface coal mining operations conducted after August 1, 1980, on lands from which the coal or commercial leonardite had not yet been removed and to any other lands subject to North Dakota Century Code chapter 38-14.1 or this article.

1. This article does not apply to:
 - a. The extraction of coal or commercial leonardite by a landowner for the landowner's own noncommercial use from land owned or leased by the landowner.
 - b. Coal or commercial leonardite removal for reclamation operations under North Dakota Century Code chapter 38-14.2.
 - c. Coal or commercial leonardite extraction as an incidental part of federal, state, or local government-financed highway or other construction, except as provided by chapter 69-05.2-03.
 - d. Coal or commercial leonardite extraction of two hundred fifty tons [226.80 metric tons] or less under a coal exploration permit issued by the office of the state geologist.

History: Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993: _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-02, 38-14.1-10, 38-14.1-37

69-05.2-01-02. Definitions. The definitions in North Dakota Century Code section 38-14.1-02 apply to this article and the following terms have the specified meaning except where otherwise indicated:

9. "Coal mining operation" means, for purposes of restrictions on financial interests of employees, the business of developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite, or lignite or commercial leonardite, or of reclaiming the areas upon which such activities occur.
10. "Coal preparation" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal or commercial leonardite.
11. "Coal preparation plant" means a facility where coal or commercial leonardite is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities, storage and stockpile facilities, sheds, shops and other buildings, water treatment and water-storage facilities, settling basins and impoundments, and coal or commercial leonardite processing and other waste disposal areas.
12. "Coal processing waste" means earth materials which are wasted and separated from product coal or commercial leonardite during cleaning, concentrating, or other processing or preparation of coal or commercial leonardite.
32. "Extraction of coal or commercial leonardite as an incidental part" means the extraction of coal or commercial leonardite which is necessary to enable government-financed construction to be accomplished. Only that coal or commercial leonardite extracted from within the right of way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal or commercial leonardite outside the right of way or boundary of the area directly affected by the construction shall be subject to the requirements of North Dakota Century Code chapter 38-14.1 and this article.
64. "Owned or controlled" and "owns or controls" mean any one or a combination of the relationships specified in subdivisions a and b:

- a. Being a permittee of a surface coal mining operation; based on instrument of ownership or voting securities, owning of record in excess of fifty percent of an entity; or having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, operator, or other entity conducts surface coal mining operations.
 - b. The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:
 - (1) Being an officer or director of an entity;
 - (2) Being the operator of a surface coal mining operation;
 - (3) Having the ability to commit the financial or real property assets or working resources of an entity;
 - (4) Being a general partner in a partnership;
 - (5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten through fifty percent of the entity; or
 - (6) Owning or controlling coal or commercial leonardite to be mined by another person under a lease, sublease or other contract and having the right to receive the coal or commercial leonardite after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.
88. "Refuse pile" means a surface deposit of coal or commercial leonardite mine waste that does not impound water, slurry, or other liquid or semiliquid material.
93. "Road" means a surface right of way used, constructed, reconstructed, improved, or maintained for travel by land vehicles for use in surface coal mining and reclamation operations. The term includes access and haul roads used in surface coal mining and reclamation operations, including use by coal or commercial leonardite hauling vehicles to and from transfer, processing, or

storage areas. A road consists of the entire area within the right of way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal or commercial leonardite mine waste disposal areas.

104. "Substantial legal and financial commitments in a surface coal mining operation" means significant investments that have been made on the basis of a long-term coal or commercial leonardite contract in power plants, railroads, coal or commercial leonardite handling, preparation, extraction or storage facilities, and other capital-intensive activities.
108. "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal or commercial leonardite from the earth by removing the materials over a coal or commercial leonardite seam, before recovering the coal or commercial leonardite, or by recovery of coal or commercial leonardite from a deposit that is not in its original geologic location.
120. "Valid existing rights" means: a set of circumstances under which a person, subject to commission approval, may conduct surface coal mining operations on lands where North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 would otherwise prohibit such operations. Possession of valid existing rights confers an exception from these prohibitions. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of North Dakota Century Code chapter 38-14.1 and this article.
 - a. Property rights demonstration. Except as provided in subdivision c, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. Applicable state statutory or case law will govern interpretation of documents relied upon to establish property rights, unless federal law provides otherwise. If no applicable state law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

b. Except as provided in subdivision c, a person claiming valid existing rights must also demonstrate compliance with one of the following standards:

(1) All permits or good-faith standard. All permits and other authorizations required to conduct surface coal mining operations had been obtained or a good-faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-1.1. At a minimum, an application must have been submitted for the permit required under this article.

(2) Needed for and adjacent standard. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained or a good-faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. Except for operations in existence before August 3, 1977, or for which a good-faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 when the commission approved the permit for the original operation or when the good-faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the commission may consider factors such as:

(a) The extent to which coal or commercial leonardite supply contracts or other legal and business commitments that predate the time that the land came under the protection of North Dakota Century Code section 38-14.1-07

and section 69-05.2-04-01.1 depend upon use of that land for surface coal mining operations.

- (b) The extent to which plans used to obtain financing for the operation before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 rely upon use of that land for surface coal mining operations.
 - (c) The extent to which investments in the operation before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 rely upon use of that land for surface coal mining operations.
 - (d) Whether the land lies within the area identified on the life-of-mine map submitted under chapter 69-05.2-07 before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.
- c. Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 must demonstrate that one or more of the following circumstances exist if the road is included within the definition of "surface coal mining operations" in subsection 3334 of North Dakota Century Code section 38-14.1-02:
- (1) The road existed when the land upon which it is located came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 and the person has a legal right to use the road for surface coal mining operations.
 - (2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1, and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road

across the right of way or easement for surface coal mining operations.

- (3) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.
- (4) Valid existing rights exist under subdivisions a and b.

History: Effective August 1, 1980; amended effective June 1, 1983; April 1, 1985; June 1, 1986; January 1, 1987; May 1, 1990; May 1, 1992; June 1, 1997; May 1, 1999; March 1, 2004:_____.

General Authority: NDCC 38-14.1-03, 38-14.1-38

Law Implemented: NDCC 38-14.1-02, 38-14.1-03, 38-14.1-21, 38-14.1-38

69-05.2-02-06. Gifts and gratuities.

1. Except as provided in subsection 2, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a coal or commercial leonardite company which:
 - a. Conducts, or is seeking to conduct, operations or activities regulated by the commission; or
 - b. Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

History: Effective August 1, 1980; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-38

Law Implemented: NDCC 38-14.1-38

69-05.2-03-01. Incidental coal or commercial leonardite extraction - Possession of documents. Any person conducting coal or commercial leonardite extraction as an incidental part of government-financed construction is responsible for possessing, onsite, the documentation required by section 69-05.2-03-02.

History: Effective August 1, 1980; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-37

69-05.2-03-02. Incidental coal or commercial leonardite extraction - Information to be maintained onsite. Any person extracting coal or commercial leonardite incident to government-financed highway or other construction who extracts more than two hundred fifty tons [226.80 metric tons] shall maintain, onsite, documents which:

1. Describe the project.
2. Show the exact location of the construction, right of way, or the boundaries of the area which will be directly affected.
3. Identify the government agency providing the financing and the kind and amount of public financing, including the percentage of all costs represented by the government financing.

History: Effective August 1, 1980; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-37

69-05.2-04-01.5. Areas unsuitable for mining - Submission of requests for valid existing rights determinations.

2. A request for a valid existing rights determination may be submitted before preparing and submitting an application for a permit or incidental boundary revision for the land. The request must include the following:
 - a. A property rights demonstration under subdivision a of the definition of valid existing rights of section 69-05.2-01-02 if the request relies upon the "all permits or good-faith standard" or the "needed for and adjacent standard" in subdivision b of that definition. The demonstration must include the following items:
 - (1) A legal description of the land to which the request pertains.
 - (2) Complete documentation of the character and extent of the applicant's current interests in the surface and mineral estates of the land to which the request pertains.
 - (3) A complete chain of title for the surface and mineral estates of the land to which the request pertains.

- (4) A description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities.
- (5) A description of the type and extent of surface coal mining operations that the applicant claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with state property law.
- (6) Complete documentation of the nature and ownership, as of the date that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1, of all property rights for the surface and mineral estates of the land to which the request pertains.
- (7) Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains.
- (8) If the coal or commercial leonardite interests have been severed from other property interests, documentation that the applicant has notified and provided reasonable opportunity for the owners of other property interests in the land to which the request pertains to comment on the validity of claimed property rights.
- (9) Any comments that the applicant receives in response to the notification provided under paragraph 8.

History: Effective March 1, 2004; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-02, 38-14.1-04, 38-14.1-07

69-05.2-04-04. Areas unsuitable for mining - Initial processing - Recordkeeping - Notification requirements for designating lands unsuitable.

2. The commission will determine whether any identified coal or commercial leonardite resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the

commission finds no identified coal or commercial leonardite resources in that area, it will return the petition with a statement of findings.

History: Effective August 1, 1980; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04, 38-14.1-06, 38-14.1-09, 38-14.1-18

69-05.2-04-07. Areas unsuitable for mining - Data base and inventory system for designating lands unsuitable.

3. The commission will add to the data base and inventory system information:
 - a. On potential coal or commercial leonardite resources of the state, demand for those resources, the environment, the economy, and the supply of coal or commercial leonardite, sufficient to enable the commission to prepare the statements required by subsection 3 of North Dakota Century Code section 38.14.1-05; and
 - b. That becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

History: Effective August 1, 1980; amended effective May 1, 1990; July 1, 1995;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04

69-05.2-04-09. Areas unsuitable for mining - Commission responsibility for implementation for designating lands unsuitable. The commission will:

3. Make available to any person information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment, but excepting proprietary information on the chemical and physical properties of the coal or commercial leonardite according to subsection 3 of North Dakota Century Code section 38-14.1-13.

History: Effective August 1, 1980; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04

69-05.2-05-08. Permit applications - Permit term.

1. A permit will be issued for a fixed term not to exceed five years except as provided in subsection 3. The permit area shall be no larger than a logical pit sequence and include lands used for activities incidental to coal or commercial leonardite extraction. Coal or commercial leonardite removal boundaries cannot go beyond those approved for the permit term without obtaining a revision under section 69-05.2-11-02.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993; April 1, 2013;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-12

69-05.2-06-01. Permit applications - Identification of interests.

1. In addition to satisfying the applicable requirements of subsection 1 of North Dakota Century Code section 38-14.1-14, each application must contain:
 - a. The names and addresses of the owner of record of surface and coal or commercial leonardite subsurface rights contiguous to the permit area extending one-fourth mile [402.33 meters] from the permit boundary.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; July 1, 1995; April 1, 2013;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-06-03. Permit applications - Right of entry and operation information.

2. Following completion of coal or commercial leonardite removal operations on the lands covered by a coal or commercial leonardite lease, the copy of the lease may be deleted from an approved permit if:
 - a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or
 - b. The lease has expired or has been terminated.

If a coal or commercial leonardite lease is no longer provided for surface right of entry, other documents granting the permittee surface right of entry must be added to the permit.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; April 1, 2007;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-01. Permit applications - Permit area - Environmental resources information.

2. When the permit area contains a logical pit sequence where the coal or commercial leonardite removal area is larger than that needed for the initial five-year term, the applicant shall identify the size, sequence, and timing of mining individual coal or commercial leonardite removal subareas.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-02. Permit applications - Permit area - General map requirements.

1. The application must include a 1:4,800 planimetric mine map, together with as many separate detail maps as necessary, to show:
 - l. Location and dimensions of existing areas of spoil, coal, commercial leonardite and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the permit area.

History: Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-04. Permit applications - Permit area - Description of hydrology and geology - General requirements.

3. Enough detailed geologic information must be included to determine:

- a. The probable hydrologic consequences (PHC) of the operation on the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface and ground water monitoring is necessary;
- b. All potentially toxic-forming strata down through the lowest coal or commercial leonardite seam to be mined; and
- c. Whether reclamation can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

History: Effective August 1, 1980; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-14.1-15

69-05.2-08-05. Permit applications - Permit area - Geology description.

1. The description must include a general statement of the geology within the permit area down through the deeper of either the stratum immediately below the deepest coal or commercial leonardite seam to be mined or any lower aquifer which may be adversely affected by mining.
2. Test borings or core samples from the permit area must be collected and analyzed down through the deeper of either the stratum immediately below the lowest coal or commercial leonardite seam to be mined or any lower aquifer which may be adversely affected by mining. The minimum density is one drill hole per forty acres [16.19 hectares] or a comparable spacing, or as specified by the commission. Overburden samples must be taken at five-foot [1.52-meter] intervals and taken dry whenever possible. Laboratory analyses must be made by the methods in United States department of agriculture handbook 525, Laboratory Methods Recommended for Chemical Analyses of Mined Land Spoils and Overburden in Western United States, by Sandoval and Power, or United States department of agriculture handbook 60, Diagnosis and Improvement of Saline and Alkali Soils, by the United States salinity laboratory staff, both available from the United States government printing office, Washington, D. C. The following information must be provided:
 - a. Location of subsurface water encountered.

- b. Drill hole logs with gamma ray and density logs included as verification showing the lithologic characteristics and thickness of each stratum and coal or commercial leonardite seam.
- c. Physical and chemical analyses of each overburden sample taken at five-foot [1.52-meter] intervals to identify horizons containing potential toxic-forming materials. Physical and chemical analyses of strata below the lowest coal or commercial leonardite seam to be mined must include one sample from each stratum. The analyses must include:
 - (1) pH.
 - (2) Sodium adsorption ratio (include calcium, magnesium, and sodium cation concentrations).
 - (3) Electrical conductivity of the saturation extract.
 - (4) Texture (by pipette or hydrometer method). Include percentage of sand, silt, and clay along with a general description of the physical properties of each stratum within the overburden.
 - (5) Saturation percentage if the sodium adsorption ratio is greater than twelve and less than twenty.
- d. Coal or commercial leonardite seam analyses including sodium, ash, British thermal unit, and sulfur content.
- e. Cross sections sufficient to show the major subsurface variations within the permit area down through the deeper of either the stratum immediately below the lowest coal or commercial leonardite seam to be mined or any lower aquifer which may be adversely affected by mining. The horizontal scale must be 1:4,800 and the vertical scale one inch [2.54 centimeters] equals twenty feet [6.10 meters]. To assess pit suitability for disposal of refuse, ash and other residue from coal or commercial leonardite utilization processes, the information presented in this subsection must extend to a depth determined by the commission or to the base of the next confining clay stratum beneath the lowest coal or commercial leonardite seam to be mined.

- f. A thickness (isopach) map of the overburden to the top of the deepest seam to be mined. The contour interval must be ten feet [3.05 meters] and the horizontal scale 1:4,800.
- g. All coal or commercial leonardite crop lines and the strike and dip of the coal or commercial leonardite to be mined.

History: Effective August 1, 1980; amended effective January 1, 1987; May 1, 1990; May 1, 1992:_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-06. Permit applications - Permit area - Ground water information.

- 1. The applicant shall analyze the ground water hydrology and ground water resources of the potentially affected area. The application must contain a description of the ground water hydrology for the permit and adjacent areas including:
 - d. Contour maps or maps showing the water table or piezometric surface in each aquifer (including water-bearing coal and commercial leonardite seams) down to and including the lowest water-bearing coal or commercial leonardite seam to be mined and any lower aquifer which may be adversely affected by mining. The applicant shall prepare 1:24,000 scale maps covering the permit and adjacent areas, using at least one data point (a piezometer nest) per four square miles [6.44 square kilometers], unless the commission requires a greater density. Data points must be shown on the map to the nearest ten acres [4.05 hectares]. Accompanying data should include lithologic and geophysical (gamma ray and density) logs of the piezometer holes, piezometer construction details, and water level and land surface elevations to the accuracy necessary for valid analysis of the ground water hydrology of the permit and adjacent areas.

History: Effective August 1, 1980; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-10. Permit applications - Permit area - Soil resources information. The applicant shall submit a soil survey for the permit area

consisting of a map and report prepared by a soil classifier as defined in subsection ~~2830~~ of North Dakota Century Code section 38-14.1-02.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-01. Permit applications - Operation plans - General requirements. Each application must contain a detailed description of the proposed mining operations, including:

1. A narrative of mining procedures and engineering techniques, anticipated annual and total coal or commercial leonardite production, and major equipment.
2. A plan stating the anticipated or actual starting and termination date of each phase of mining activities and the amount of land to be affected for each phase over the life of the permit.
3. A narrative for each operations plan explaining the plan in detail and the construction, modification, use and maintenance of each mine facility, water and air pollution control facilities or structures, transportation and coal or commercial leonardite handling facilities, and other structures required for implementing the plans.
4. A plan for each support facility to be constructed, used, or maintained within the permit area including maps, appropriate cross sections, design drawings, and specifications of each facility sufficient to demonstrate compliance with section 69-05.2-24-08 or 69-05.2-24-09 as applicable.
5. If coal or commercial leonardite removal areas are proposed within five hundred feet [152.40 meters] of any farm building, the applicant must provide documentation showing compliance or plans to comply with North Dakota Century Code section 38-18-07.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992; June 1, 1994; March 1, 2004;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-18-07

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:

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 or commercial leonardite removal subarea.
6. Location of coal or commercial leonardite 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.
8. Each coal or commercial leonardite storage, cleaning and loading area, and each coal or commercial leonardite 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.
12. Each source of waste and each waste disposal facility relating to coal or commercial leonardite processing or pollution control.
14. If an applicant proposes to remine or otherwise disturb lands that were affected by coal or commercial leonardite 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 of any sinkholes and other features that are the result of any past underground coal or commercial leonardite 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.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; June 1, 1997; April 1, 2011; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-09. Permit applications - Operation plans - Surface water management - Ponds, impoundments, banks, dams, embankments, and diversions.

1. Each application must include a surface water management plan describing each water management structure intended to meet the requirements of chapter 69-05.2-16. Each plan must:
 - f. Identify the location of proposed temporary coal or commercial leonardite processing waste disposal areas, along with design specifications to meet the requirements in section 69-05.2-19-03.
 - g. Identify the location of proposed coal or commercial leonardite processing waste dams and embankments along with design specifications to meet the requirements in chapter 69-05.2-20. The plan must include the results of a geotechnical investigation of each proposed coal or commercial leonardite dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment and the impounded material. The geotechnical investigation must be planned and supervised by an engineer or engineering geologist, as follows:
 - (1) Determine the number, location, and depth of borings and test pits using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.
 - (2) Consider the character of the overburden, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site.

- (3) Identify springs, seepage, and ground water flow observed or anticipated during wet periods in the proposed dam or embankment area.
- (4) Consider the possibility of mudflows or other landslides into the dam, embankment, or impounded material.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; January 1, 1993; May 1, 1999;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-18. Permit applications - Operation and reclamation plans - Auger mining. If applicable, the applicant shall submit a plan explaining how the applicant intends to comply with section 69-05.2-13-12 and subsection 1.1 of North Dakota Century Code section 38-14.1-24. This plan must contain:

3. A description of how the applicant intends to ensure the long-term stability of the augered area. This description should contain specific engineering designs ensuring that:
 - a. Material backfilled into the holes can be compacted to provide sufficient strength to prevent subsidence;
 - b. The coal or commercial leonardite remaining between the auger holes and the overlying overburden is sufficiently strong to prevent subsidence; or
 - c. The auger mined area can be collapsed in a controlled manner through the use of explosive or other techniques to eliminate future subsidence.

History: Effective September 1, 1984; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-14.1-24

69-05.2-09-19. Permit applications - Operation and reclamation plans - Coal preparation plants not located within the permit area of a mine.

1. This section applies to any person who operates or intends to operate a coal preparation plant in connection with a coal or commercial leonardite mine but outside the permit area mine for a

specific mine. A permit to operate must be obtained from the commission.

History: Effective January 1, 1987; amended effective May 1, 1990; May 1, 1992;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-10-01. Permit applications - Public notices of filing and entering data into the applicant violator system.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:
 - b. A map or description which must:
 - (4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or commercial leonardite or conduct activities that may impact future coal or commercial leonardite recovery, the names of each owner of record of coal or commercial leonardite rights within the permit boundaries.
6. The commission will provide notice and opportunity for hearing for persons seeking and opposing disclosure prior to declaring any permit information confidential. Notice will be published in the official county newspaper of the county where the proposed operations will be located at least fifteen days prior to the hearing. Information requested to be held confidential must be clearly identified by the applicant and submitted separately. Confidential information is limited to:
 - a. Analysis of the chemical and physical properties of the coal or commercial leonardite to be mined, except information on coal or commercial leonardite components potentially toxic in the environment.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; April 1, 2007; April 1, 2013;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-18

69-05.2-11-02. Permit revisions.

1. A permit revision is required:

- c. When a new coal or commercial leonardite removal subarea of the existing permit area is proposed to be disturbed in accordance with the timing and sequence approved in the permit. The revision is considered a significant alteration to the mining and reclamation plan.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990, May 1 1992; January 1, 1993; July 1, 1995;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-23

69-05.2-13-05. Performance standards - General requirements - Minimize disturbances - Best technology currently available. All surface coal mining and reclamation operations must be conducted to minimize disturbances on lands where coal or commercial leonardite is not removed and utilize the best technology currently available.

History: Effective August 1, 1980; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03, 38-14.1-24

69-05.2-13-08. Performance standards - General requirements - Protection of fish, wildlife, and related environmental values.

6. The permittee shall, to the extent possible using the best technology currently available:

- h. To the extent possible prevent, control, and suppress range, forest, and coal or commercial leonardite fires not approved by the commission as part of a management plan.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990, May 1, 1992; January 1, 1993; June 1, 1994; May 1, 1999;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-13-12. Performance standards - General requirements - Auger mining. The operator shall:

1. Conduct auger mining to maximize the utilization and conservation of coal or commercial leonardite.

History: Effective September 1, 1984; amended effective June 1, 1986; May 1, 1990; May 1, 1992; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-13-13. Performance Standards - General requirements - Coal preparation plants not located within the permit area of a mine. Each person who operates a coal preparation plant in connection with a coal or commercial leonardite mine but outside the permit area for a specific mine shall obtain a permit in accordance with section 69-05.2-09-19, obtain a bond in accordance with chapter 69-05.2-12, and comply with the following:

1. Signs and markers for coal preparation plants, coal processing waste disposal areas, and water-treatment facilities must comply with section 69-05.2-13-04.
2. Stream channel diversions must comply with section 69-05.2-16-07.
3. Drainage from any disturbed areas related to coal preparation plants must comply with chapter 69-05.2-16.
4. Permanent impoundments associated with coal preparation plants must comply with section 69-05.2-16-12. Dams constructed of or impounding coal processing waste must comply with chapter 69-05.2-20.
5. Disposal of coal processing waste, non-coal mine waste and excess spoil must comply with chapters 69-05.2-19 and 69-05.2-18, respectively.
6. Fish, wildlife and related environmental values must be protected in accordance with section 69-05.2-13-08.
7. Support facilities related to coal preparation plants must comply with section 69-05.2-24-09.
8. Roads associated with coal preparation plants must comply with chapter 69-05.2-24.
9. Cessation of operations must be in accordance with sections 69-05.2-13-10 and 69-05.2-13-11.
10. Erosion and attendant air pollution must be controlled in accordance with sections 69-05.2-15-06 and 69-05.2-13-07, respectively.

11. Underground mine areas must be avoided in accordance with section 69-05.2-13-06.
12. Reclamation must follow proper suitable plant growth material handling, backfilling and grading, revegetation, and postmining land use procedures in accordance with chapters 69-05.2-15, 69-05.2-21, 69-05.2-22 and 69-05.2-23, respectively.

History: Effective January 1, 1987; amended effective May 1, 1990 May 1, 1992;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-18-01. Performance standards - Disposal of excess spoil - Requirements. In addition to satisfying subsection 19 of North Dakota Century Code section 38-14.1-24, the operator shall:

13. Provide an underdrain system, if required by subsection 19 of North Dakota Century Code section 38-14.1-24, that is protected by an adequate filter and designed and constructed using standard geotechnical engineering methods. Underdrains must consist of nondegradable, non-toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, commercial leonardite, clay, or shale.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-19-02. Performance standards - Waste materials - Permanent disposal of coal or commercial leonardite wastes.

1. All coal processing waste and waste materials from coal or commercial leonardite utilization processes and coal conversion facilities to be permanently disposed of within a permit area and that are required to be permitted under the solid waste management rules of the North Dakota state department of health must be disposed of according to those rules and this chapter.
 - a. The permittee or operator shall file application for and design the disposal site as required by the state department of health and concurrently submit a copy of the application to the commission.

- b. The permittee or operator shall also submit to the commission a permit revision that will incorporate the disposal activities into the operations and reclamation plan. The commission will not approve the revision until the state department of health issues a solid waste permit.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-19-04. Performance standards - Waste materials - Disposal of noncoal wastes.

4. At no time may any solid waste material be deposited at embankment or impoundment sites, nor may any excavation for solid waste disposal be located within eight feet [2.44 meters] of any coal or commercial leonardite outcrop or coal or commercial leonardite storage area.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; May 1, 1999; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-21-01. Performance standards - Backfilling and grading - Timing requirements.

2. Area surface mining. Rough backfilling and grading must be completed within one hundred eighty days following coal or commercial leonardite removal and may not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The commission may grant additional time or distance for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under subsection 3 of section 69-05.2-09-11, that additional time or distance is necessary.

History: Effective August 1, 1980; amended effective May 1, 1990; July 1, 1995; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-21-03. Performance standards - Backfilling and grading - Covering coal, commercial leonardite and toxic-forming materials. All

exposed coal seams, commercial leonardite seams, and toxic-forming and combustible materials exposed, used, or produced during mining must be adequately covered with nontoxic and noncombustible materials, or treated, to control the impact on surface and ground water in accordance with chapter 69-05.2-16, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

History: Effective August 1, 1980; amended effective January 1, 1987; May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-21-04. Performance standards - Backfilling and grading - Thin overburden. The provisions of this section apply only to mining activities where the final thickness of all available spoil and waste materials over the permit area is less than 0.8 of the initial thickness of the overburden and the coal or commercial leonardite prior to coal or commercial leonardite removal. The final thickness is the product of the overburden thickness prior to coal or commercial leonardite removal times the overburden swell factor. When the demonstration is made that thin overburden exists over the permit area, in addition to meeting subdivision b of subsection 3 of North Dakota Century Code section 38-14.1-24, the operator shall:

1. Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire permit area, to attain the lowest practicable stable grade, to achieve a static safety factor of 1.3 to provide adequate drainage and long-term stability of the regraded areas, and to cover all toxic-forming materials.
2. Eliminate highwalls by grading or backfilling to stable slopes not exceeding thirty-five percent, or lesser slopes as the commission may specify to reduce erosion, maintain the hydrologic balance, or achieve the approved postmining land use.
3. Transport, backfill, grade, and revegetate to achieve an ecologically sound land use compatible with the prevailing use in unmined areas surrounding the permit area.
4. Transport, backfill, and grade to ensure that impoundments are constructed only where:
 - a. It has been demonstrated to the commission that all requirements of chapter 69-05.2-16 have been met; and
 - b. The impoundments have been approved by the commission as suitable for the approved postmining land use and meet

the requirements of this article and all other applicable state laws and regulations.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-22-07. Performance standards - Revegetation - Standards for success.

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:
 - 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 or commercial leonardite 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.

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; April 1, 2011; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-24-01. Performance standards - Roads - General requirements.

1. Each road, as defined in subsection 93 of section 69-05.2-01-02, must be classified as either a primary or ancillary road.
 - a. A primary road is any road which is:

- (1) Used for transporting coal or commercial leonardite or spoil;
 - (2) Frequently used for access or other purposes for a period in excess of six months; or
 - (3) To be retained for an approved postmining land use.
- b. An ancillary road is any road not classified as a primary road.

History: Effective August 1, 1980; amended effective May 1, 1992; April 1, 2007; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-24-09. Performance standards – Support facilities and utility installations.

1. Support facilities required for, or used incidentally to, the operation of the mine, including mine buildings, coal or commercial leonardite loading facilities at or near the minesite, coal or commercial leonardite storage facilities, equipment storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops, and other buildings, must be designed, constructed or reconstructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property.

History: Effective August 1, 1980; amended effective; May 1, 1992; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-25-04. Performance standards – Alluvial valley floors – Protection of farming and water supplies.

2. Paragraphs 1 and 2 of subdivision e of subsection 3 of North Dakota Century Code section 38-14.1-21 do not apply to lands identified in a reclamation plan approved by the commission prior to July 1, 1979, for any operation that, in the year preceding July 1, 1979:
 - a. Produced coal or commercial leonardite in commercial quantities and was located within or adjacent to an alluvial valley floor; or

- b. Obtained specific permit approval to conduct operations within an alluvial valley floor.

History: Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-24, 38-14.1-28

69-05.2-26-06. Performance standards - Prime farmland - Exemptions. This chapter does not apply to:

3. Lands included in any existing surface coal mining operations for which a permit was issued for all or any part before July 1, 1979; provided that:
 - c. The lands contain part of a continuous recoverable coal or commercial leonardite seam that was being mined in a single continuous mining operation begun under a permit issued prior to July 1, 1979.

History: Effective June 1, 1983; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-31-01. Training of blasters.

3. Training courses must be given by competent, experienced persons at a frequency not to exceed one every three months. Courses developed and taught by coal or commercial leonardite mining industry personnel may be approved by the commission for training persons seeking to become certified blasters.

History: Effective April 1, 1985; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24