

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.