

**PUBLIC SERVICE COMMISSION**  
**Reclamation Division**  
\*\*\*\*\*

**Memorandum**

**TO:** Commissioners Fedorchak, Christmann and Kalk  
Darrell Nitschke  
Illona Jeffcoat-Sacco

**FROM:** Jim *JLD* Deutsch, Reclamation Division

**DATE:** May 11, 2016

**SUBJECT:** Submittal of the rule changes in Case No. RC-15-737 and SB 2377 law changes to OSM as State Program Amendment No. XLI

On April 25<sup>th</sup> we received a favorable legal opinion from the Attorney General on the leonardite related rule changes proposed in Case No. RC-15-737. Before the Commission can adopt these changes, we also need to receive the Office of Surface Mining's approval of the rule changes by the State Program Amendment process. The necessary documents have been prepared for a program amendment that also includes the reclamation law changes made by the 2015 Legislature. I respectfully recommend the Commission submit the law and proposed rule changes to OSM as State Program Amendment No. XLI (41).

Case No. RC-15-737 proposed leonardite related changes to North Dakota Administrative Code Article 69-05.2 that pertains to surface coal mining and reclamation operations. The rule changes are needed as the result of reclamation law changes made during the 2015 Legislative session by Senate Bill No. 2377. The law 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 law changes excluded leonardite, an oxidized form of lignite, from the definition of "coal". Due to these statutory changes, the corresponding rule changes were proposed in Case No. RC-15-737 and two cross-references also had to be changed. The hearing on the proposed rule changes was held February 18<sup>th</sup> and we recently received a favorable legal opinion from the Attorney General. The rule and law changes can now be submitted to OSM as a State Program Amendment.

The program amendment contains a cover letter to OSM, narrative describing the law and rule changes, the proposed rule changes, the final version of Senate Bill 2377, and a copy of the Attorney General's opinion. Attached is a motion for the May 18<sup>th</sup> Commission meeting to submit the changes to OSM and the transmittal letter to OSM that should be signed by all three Commissioners.

**Attachments**

Minedata/ProgramAmendments/AmendXLI(41)/Memo\_OSM\_Amend\_5-11-16

**24**    **RC-15-737**    Filed: 5/11/2016    Pages: 1  
**Memorandum**

Public Service Commission Staff

Jim Deutsch