



Public Service Commission  
State of North Dakota

COMMISSIONERS

Julie Fedorchak  
Randy Christmann

*hand delivered*

19 January 2022

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Jill Grossman  
Administrative Rules Code Reviser  
North Dakota Legislative Council  
State Capitol  
600 East Boulevard, 2<sup>nd</sup> Floor  
Bismarck, ND 58505-0360

Re: Notice of Intent to Amend Administrative Rules  
PSC Case Numbers GS-21-442 and RC-22-28

Dear Ms. Grossman:

The Public Service Commission recently passed a motion to propose changes to its administrative rules and issue notices. The RC-22-28 proposed Rules implements House Bill 1353 enacted by the 67th Legislative Session, relating to the establishment of the department of water resources, and the powers and duties of the department of water resources and the state engineer, and implements Senate Bill 2327 enacted by the 65th Legislative Session relating to the creation of the department of environmental quality.

The GS-21-442 proposed Rule is to adopt by reference the most recent amendments to pipeline safety regulations adopted by the U.S. Dept. of Transportation, Pipeline and Hazardous Materials Safety Administration.

Consequently, enclosed please find copies of:

- Commission Motion to Propose Revisions to the North Dakota Administrative Code and Issue Notices;
- Proposed Rule changes that were the subject of the Motion; and
- (Full) Notice of Intent to Amend Administrative Rules and Notice of Public Hearing.

If you have any questions, please do not hesitate to contact me.

Best Regards,

John Schuh  
General Counsel

**JAN 19 2022**

attachments

- 6 RC-22-28 Filed 01/19/2022 Pages: 11  
Letter to Leg. Council enclosing Commission Motion, proposed Rules, and full Notice  
Public Service Commission  
John Schuh, General Counsel
- 6 GS-21-442 Filed 01/19/2022 Pages: 11  
Letter to Leg. Council enclosing Commission Motion, proposed Rules, and full Notice  
Public Service Commission  
John Schuh, General Counsel

**APPROVED**

DATE: 01/18/2022  
RJT

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission  
Pipeline Safety  
Rulemaking

Case No. GS-21-442

Public Service Commission  
Surface Coal Mining and Reclamation Operations  
Rulemaking

Case No. RC-22-28

**MOTION**

**January 18, 2022**

I move the Commission propose to adopt and amend the North Dakota Administrative Code as attached, issue a Notice of Intent to Amend Administrative Rules and Notice of Public Hearing, and issue an abbreviated Notice of Intent to Amend Administrative Rules and Notice of Public Hearing for publication in each official county newspaper throughout the state as required by law, in Public Service Commission, Pipeline Safety, Rulemaking, PSC Case No. GS-21-442 and Surface Coal Mining and Reclamation Operations, Rulemaking, PSC Case No. RC-22-28.

- |                       |  |
|-----------------------|--|
| Section 69-09-03-02   | Adoption of Regulations  |
| Section 69-05.2-05-06 | Permit applications - Coordination with requirements under other laws.   |
| Chapter 69-05.2-16    | Performance Standards - Hydrologic Balance - General Requirements (Index/Table of Contents)                                      |
| Section 69-05.2-16-03 | Performance Standards - Hydrologic Balance - Compliance with the requirements of the state engineer and water resource district. |
| Section 69-05.2-16-20 | Performance Standards - Hydrologic Balance - Stream Buffer zones.  |
| Section 69-05.2-20-01 | Performance Standards - Dams and Embankments Constructed for Impounding Coal Processing Waste - General Requirements             |
- 1 RC-22-28 Filed 01/18/2022 Pages: 1  
Commission Motion to propose revisions to ND Admin. Code and issue Notices Public Service Commission
  - 1 GS-21-442 Filed 01/18/2022 Pages: 1  
Commission Motion to propose revisions to ND Admin. Code and issue Notices Public Service Commission

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Pipeline Safety  
Rulemaking

Case No. GS-21-442

CHAPTER 69-09-03  
PIPELINE SAFETY

Section  
69-09-03-01 Safety  
69-09-03-02 Adoption of Regulations

**69-09-03-01. Safety.**

Pipeline facilities used for the intrastate distribution and transmission of natural and other gas, liquefied natural gas, or hazardous liquids shall be designed, constructed, and operated to meet the safety standards set forth in regulations of the United States department of transportation adopted in section 69-09-03-02. The commission may require such proof of compliance as it deems necessary.

**History:** Amended effective July 1, 1986; January 1, 1988; April 1, 2015; \_\_\_\_\_.

**General Authority:** NDCC 28-32-02, 49-02-04

**Law Implemented:** NDCC 49-02-01.2, 49-02-04

**69-09-03-02. Adoption of regulations.**

The following parts of title 49, Code of Federal Regulations in effect as of August 20, 2020 ~~December 1, 2021~~, 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 193 - Liquefied Natural Gas Facilities: Federal Safety Standards.
5. Part 194 - Response Plans for Onshore Oil Pipelines.
6. Part 195 - Transportation of Hazardous Liquids by Pipeline.



7. 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; October 1, 2016; July 1, 2018; July 1, 2020; \_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-02-01.2



**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission**  
**Surface Coal Mining and Reclamation Operations**  
**Rulemaking**

**Case No. RC-22-28**

**Proposed Rules (as originally proposed)**

**January 18, 2022**

**69-05.2-05-06. Permit applications - Coordination with requirements under other laws.**

The commission will, to avoid duplication, coordinate permit review and issuance with:

1. Any other applicable state permit process including permits required by the:
  - a. Air Pollution Control Act (North Dakota Century Code chapter 23-25).
  - b. Solid Waste Management and Land Protection Act (North Dakota Century Code chapter 23-29).
  - c. Control, prevention, and abatement of pollution of surface waters (North Dakota Century Code chapter 61-28).
  - d. ~~State engineer, state water commission,~~ Department of Water Resources and water resource districts (North Dakota Century Code chapters 61-01, 61-02, 61-03, 61-04, 61-15, 61-16.1, 61-16.2, 61-31, and 61-32).
2. The appropriate state and federal agencies who administer other applicable natural resource and environmental protection acts.

**History:** Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992;\_\_\_\_\_.

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

**Law Implemented:** NDCC 38-14.1-03, 38-14.1-42

**CHAPTER 69-05.2-16**  
**PERFORMANCE STANDARDS - HYDROLOGIC BALANCE - GENERAL REQUIREMENTS**

Section	
69-05.2-16-01	Performance Standards - Hydrologic Balance - General Requirements
69-05.2-16-02	Performance Standards - Hydrologic Balance - Compliance With State Department of Health Standards <u>Water Quality</u>
69-05.2-16-03	Performance Standards - Hydrologic Balance - Compliance With the Requirements of the <del>State Engineer</del> <u>Department of Water Resources</u> and Water Resource District
69-05.2-16-04	Performance Standards - Hydrologic Balance - Water Quality Standards and Effluent Limitations
69-05.2-16-05	Performance Standards - Hydrologic Balance - Surface Water Monitoring
69-05.2-16-06	Performance Standards - Hydrologic Balance - Diversion of Overland Flow
69-05.2-16-07	Performance Standards - Hydrologic Balance - Stream Channel Diversions
69-05.2-16-08	Performance Standards - Hydrologic Balance - Sediment Control Measures
69-05.2-16-09	Performance Standards - Hydrologic Balance - Sedimentation Ponds Performance
69-05.2-16-10	Standards - Hydrologic Balance - Discharge Structures Performance Standards -
69-05.2-16-11	Hydrologic Balance - Toxic Mine Drainage
69-05.2-16-12	Performance Standards - Hydrologic Balance - Permanent and Temporary Impoundments
69-05.2-16-13	Performance Standards - Hydrologic Balance - Ground Water Protection Performance
69-05.2-16-14	Standards - Hydrologic Balance - Ground Water Monitoring
69-05.2-16-15	Performance Standards - Hydrologic Balance - Protection of Ground Water Recharge Capacity
69-05.2-16-16	Performance Standards - Hydrologic Balance - Transfer of Wells
69-05.2-16-17	Performance Standards - Hydrologic Balance - Water Rights and Replacement
69-05.2-16-18	Performance Standards - Hydrologic Balance - Discharge of Waters Into an Underground Mine
69-05.2-16-19	Performance Standards - Hydrologic Balance - Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities
69-05.2-16-20	Performance Standards - Hydrologic Balance - Stream Buffer Zones

**69-05.2-16-03. Performance standards - Hydrologic balance - Compliance with the requirements of the ~~state engineer~~ Department of Water Resources and water resource district.**

Any water impoundment, diversion, structure, or drainage ditch built as part of an approved mining and reclamation plan must be constructed to meet the requirements of the North Dakota ~~state engineer~~ Department of Water Resources and the appropriate water resource district, as well as those of this article. The commission will not issue or revise a mining permit until the ~~state engineer~~ Department of Water Resources and the water resource district have had an opportunity to review the applicable information and plans. No rights under the mining permit shall be exercised until the necessary ~~state engineer~~ Department of Water Resources and water resource district permits are obtained.

**History:** Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03, 38-14.1-42

**Law Implemented:** NDCC 38-14.1-24, 38-14.1-42



**69-05.2-16-20. Performance standards - Hydrologic balance - Stream buffer zones.**

1. The operator may not disturb land within one hundred feet [30.48 meters) of an intermittent or perennial stream unless the commission, after consulting the ~~state engineer~~ Department of Water Resources and the department of environmental quality, specifically authorizes surface mining activities closer to, or through, the stream, after finding that:
  - a. Surface mining activities will not cause or contribute to the violation of applicable state or federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and
  - b. If there will be a temporary or permanent stream channel diversion, it will comply with section 69-05.2-16-07.
2. Areas not to be disturbed must be designated buffer zones and marked according to section 69-05.2-13-04.

**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

**69-05.2-20-01. Performance standards - Dams and embankments constructed of or impounding coal processing waste - General requirements.**

Dams and embankments constructed of or impounding coal processing waste as a temporary disposal method must comply with this chapter and permanent disposal of the waste must comply with section 69-05.2-19-02. Waste may not be used to construct the dams and embankments unless it has been demonstrated to the commission that the stability of the structure conforms to the requirements of subsection 1 of section 69-05.2-20-03. It must also be demonstrated that the use of waste material will not have a detrimental effect on downstream water quality or the environment due to toxic seepage through the dam or embankment. All demonstrations must be approved by the commission. Prior to commission approval, the state engineer Department of Water Resources will have an opportunity to review the plans and design of the structures.

**History:** Effective August 1, 1980; amended effective May 1, 1990; \_\_\_\_\_.

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

**Law Implemented:** NDCC 38-14.1-24, 38-14.1-25

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Pipeline Safety  
Rulemaking

Case No. GS-21-442

Public Service Commission  
Surface Coal Mining and Reclamation Operations  
Rulemaking

Case No. RC-22-28

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

January 18, 2022

PLEASE TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to the North Dakota Administrative Code to amend Section 69-09-03-02, to amend Section 69-05.2-05-06, to amend Chapter 69-05.2-16 index, to amend Section 69-05.2-16-03, to amend Section 69-05.2-16-20, and to amend Section 69-05.2-20-01.

A public hearing will be held on the proposed rules at 1:30 p.m. Central Time on 9 March 2022, 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 21 March 2022.

The proposed adoption and revisions to the North Dakota Administrative Code are as follows:

**Case No. GS-21-442 - Section 69-09-03-02 – Pipeline Safety**

The purpose of this amendment 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 August 20, 2020, current to December 1, 2021. The proposed change is not expected to have an impact on the regulated community in excess of \$50,000.

**Case No. RC-22-28 - Section 69-05.2-05-06, Chapter 69-05.2-16 index, Section 69-05.2-16-03, Section 69-05.2-16-20, and Section 69-05.2-20-01. – Surface Coal Mining and Reclamation Operations**

- 4 RC-22-28 Filed 01/18/2022 Pages: 2  
(Full) Notice of Intent to Adopt and Amend Admin. Rules and Notice of Public Hearing  
Public Service Commission 1
- 4 GS-21-442 Filed 01/18/2022 Pages: 2  
(Full) Notice of Intent to Adopt and Amend Admin. Rules and Notice of Public Hearing  
Public Service Commission



The purpose of this amendment is to change all state engineer and water commission references to the department of water resources and to change one state department of health reference to the department of environmental quality.

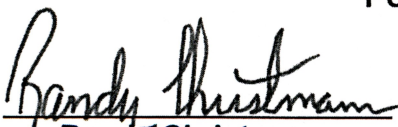

The proposed rulemaking implements House Bill 1353 enacted by the 67<sup>th</sup> Legislative Session, relating to the establishment of the department of water resources, and the powers and duties of the department of water resources and the state engineer, and implements Senate Bill 2327 enacted by the 65<sup>th</sup> Legislative Session relating to the creation of the department of environmental quality, the transfer of duties and responsibilities of the state department of health relating to environmental quality to the department of environmental quality, and biennial reports of the department of environmental quality.

The proposed rules and amendments may be reviewed at the Public Service Commission's offices on the 12<sup>th</sup> floor of the State Capitol, 600 East Boulevard Ave, Dept. 408, Bismarck, North Dakota. A copy of the proposed rules or amendments and/or a regulatory analysis may be requested by writing the above address, emailing [ndpsc@nd.gov](mailto:ndpsc@nd.gov), or calling 701-328-2400, toll free 1-877-245-6685, Relay North Dakota TTY 1-800-366-6888. This information is also available on the Commission's web site at [www.psc.nd.gov](http://www.psc.nd.gov) under "Formal Actions/Case Search".

Interested persons may attend and submit comments at the hearing. Oral or written comments on the proposed rules may be submitted to the above address, email and phone numbers. Oral and written comments received by the close of business on **21 March 2022** will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please notify the Public Service Commission at the above telephone number or address at least 24 hours prior to the public hearing.

**PUBLIC SERVICE COMMISSION**

 Randy Christmann Commissioner	 Julie Fedorchak Chairman	Vacant
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