

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Pipeline Safety
Rulemaking**

Case No. GS-21-442

PUBLIC SERVICE COMMISSION STAFF TESTIMONY

September 12, 2022

My name is John Schuh appearing on behalf of the Public Service Commission. I am here to provide testimony regarding the administrative rule changes pertaining to pipeline safety.

As requested by the committee, the agency provides the following:

1. The rules did not result from statutory changes of the legislative assembly.
2. The amendment adopts the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline Hazardous Materials Safety Administration.
3. Attached to my testimony is the Commission order that discusses the rulemaking procedure and the public hearings held on the rules.
4. No objections to the amendment were presented.
5. The cost was \$4,694.64 to give a public notice.
6. This proposed rule change adopts, by reference, amendments to safety regulations that have been adopted by PHMSA from August 20, 2020, current to December 1, 2021, for gas pipeline safety, liquefied natural gas facility safety and hazardous liquids pipeline safety.

7. A regulatory analysis was not required under NDCC Section 28-32-08.1.
8. A small entity regulatory analysis and economic impact analysis were not required.
9. There are no fiscal impacts on State expenditures or revenues.
10. The amendment does not limit the use of the private property.
11. The amendment was not adopted as emergency interim rules.

This concludes my testimony.

Thank you.

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

AMENDED ORDER SUBMITTING RULES TO ATTORNEY GENERAL

April 13, 2022

Appearances

Commissioners Julie Fedorchak, Randy Christmann, and Sheri Haugen-Hoffart

Preliminary Statement

On January 18, 2022, the North Dakota Public Service Commission (Commission) issued a formal Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing and an Abbreviated Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing, proposing 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.

Also on January 18, 2022, Commission Staff (Staff) filed statements regarding the required regulatory analysis, small entity analysis, and takings assessments for the captioned two cases.

On January 19, 2022, the Commission forwarded the notices to the North Dakota Newspaper Association for publication at least 30 days in advance of the hearing and a copy of the Notices and proposed Rules were sent to the Legislative Council.

The Abbreviated Notice was published in each of the 50 official county newspapers in the state during the weeks of January 26 through January 31, 2022.

On March 9, 2022, the Commission held the public hearing as noticed, beginning at 1:30 p.m. in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Commission allowed a comment period until March 21, 2022, during which the Commission received and considered data, views, or written and oral comments concerning the proposed rulemaking as part of the rulemaking record.

The proposed rules and amendments are summarized 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

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 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 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.

Public Hearing and Comments

The Commission reviewed and considered all comments. The written and oral comments that were received are summarized and discussed below by case number.

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

Caleb Simburger, the Program Manager of the Public Service Commission's Gas Pipeline Safety Program provided testimony on behalf of staff to the effect of this amendment. No other comments or testimony were received.

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

Zanna Brinkman, Director of the Reclamation Division provided testimony on behalf of staff to the effect of this amendment. No other comments were received in writing or at the hearing.

After the hearing, the commission found an error in the drafted rules. The proposed chapter 69-05.2-16 is corrected from the Department of Water Quality to the Department of Environmental Quality.

Discussion

Having reviewed the proposed rules, and considered the testimony and comments received, the Commission finds good cause for submitting the proposed rule in Case No. GS-21-442 and the proposed rules in Case No. RC-22-28 as revised after comment, attached to, and made a part of this order, to the Attorney General for an opinion as to legality.

ORDER

The Commission orders that the proposed rules in Case No. GS-21-442, attached to, and made part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to their legality.

The Commission orders that the proposed rules as revised in Case No. RC-22-28, attached to, and made part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to their legality.

PUBLIC SERVICE COMMISSION


Randy Christmann
Commissioner


Julie Fedorchak
Chair


Sheri Haugen-Hoffart
Commissioner

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 revised)

April 13, 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>Environmental Quality Standards</u>
69-05.2-16-03	Performance Standards - Hydrologic Balance - Compliance With the Requirements of the State Engineer <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