

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Surface Coal Mining and Reclamation Operations
Rulemaking

Case No. RC-22-28

**Statements on Regulatory Analysis, Small Entity Analysis,
and Takings Assessment**

January 18, 2022

The Commission is proposing changes to North Dakota Administrative Code, Section 69-05.2-05-06, Chapter 69-05.2-16, Sections 69-05.2-16-03, 69-05.2-16-20, and 69-05.2-20-01.

The Commission proposes to change all state engineer/state water commission references in the existing rules to the department of water resources to be consistent with House Bill 1353 enacted by the 67th Legislative Session; and to change one state department of health reference to the department of environmental quality to be consistent with Senate Bill 2327 enacted by the 65th Legislative Session.

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:

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 or commission 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 or commission and the reasons why the methods were rejected in favor of the proposed rule.

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 is required.

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 proposed rules should not limit the use of private property, so a takings assessment is not required.

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:

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 is not required because the proposed amendments implement name changes from state engineer/state water

commission to the department of water resources, and from the state department of health to the department of environmental quality to be consistent with statutory changes. The proposed changes will not adversely affect small entities.

Small Entity Economic Impact Statement

No adverse economic impact is expected for small entities, consumers or private persons, or state revenues.

Statement of No Fiscal Impact

The rules have no fiscal effect.