

Hamre, John G.

From: Hamre, John G.
Sent: Wednesday, January 19, 2022 1:44 PM
To: Kempenich, Keith A.; Porter, Todd K.; Bell, Jessica K.; Wardner, Rich P.
Cc: Schuh, John M.; Brinkman, Zanna A.
Subject: PSC Rules regarding SB-2327
Attachments: Page 1 only - Enrolled Senate Bill No. 2327.pdf; proposed Rules with Full Notice.pdf

Attached are the Public Service Commission proposed Rules and Notice regarding enrolled Senate Bill No. 2327.

Best regards,
John

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**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

SENATE BILL NO. 2327
(Senators Unruh, Armstrong, Wardner)
(Representatives Carlson, Kempenich, Porter)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24, title 23.1, and subdivision v of subsection 1 of section 54-06-04 of the North Dakota Century Code, 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; to amend and reenact section 4-35.2-01, subdivision b of subsection 5 of section 6-09.4-03, sections 11-33-01, 11-33-02.1, and 11-33-22, subdivision d of subsection 2 of section 12.1-06.1-01, sections 15-05-16, 20.1-13-05, 20.1-17-01, and 23-01-02, subsection 8 of section 23-01.3-01, sections 23-20.2-02, 23-20.2-03, and 24-03-23, subsection 5 of section 28-32-50, sections 38-08-04.5, 38-11.1-03.1, 38-11.1-04.1, and 38-11.2-02, subsection 12 of section 38-14.1-03, subsection 2 of section 38-14.1-21, sections 38-22-07, 38-22-12, 40-47-01, 43-18-02, 43-18-09, 43-35-03, 43-35-19, 43-35-19.1, 43-35-19.2, 43-35-20, and 43-35-23, subsection 11 of section 43-48-03, sections 43-62-01 and 43-62-03, subsection 1 of section 43-62-15, subsection 3 of section 44-04-18.4, section 44-04-32, subsection 1 of section 54-07-01.2, subsection 3 of section 54-12-08, section 54-44.3-30, subsection 33 of section 57-43.2-01, sections 58-03-11, 58-03-11.1, and 58-03-17, subsection 13 of section 58-06-01, section 61-04.1-04, subsections 1 and 2 of section 61-28-02, subsection 2 of section 61-28.1-02, subsection 15 of section 61-28.1-03, subsection 2 of section 61-28.2-01, and sections 61-29-04, 61-33-09, and 61-35-24 of the North Dakota Century Code, relating to the transfer of duties and responsibilities of the state department of health to the department of environmental quality and the regulation of x-ray operators; to repeal chapters 19-10 and 19-16.1, sections 23-01-01.2, 23-01-04.1, 23-01-23, 23-01-30, and 23-01-36, chapters 23-20, 23-20.1, 23-20.3, 23-20.5, 23-25, 23-26, 23-29, 23-29.1, 23-31, 23-32, 23-33, 23-37, and 39-26, and sections 61-28-03 and 61-28-05 of the North Dakota Century Code, relating to the transfer of duties and responsibilities of the state department of health to the department of environmental quality; to provide a penalty; to provide a continuing appropriation; to provide for transition; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. STATE DEPARTMENT OF HEALTH TRANSITION OF ENVIRONMENTAL QUALITY FUNCTIONS. Notwithstanding any other provision of law, during the 2017-18 interim, the state department of health shall take all necessary and appropriate steps to transfer the authority, powers, and duties of the department related to environmental quality, as provided in this Act, to the department of environmental quality before the start of the sixty-sixth legislative assembly. Before July 1, 2019, the state department of health shall obtain the required approvals from, and amend the necessary agreements with, federal agencies and other public and private entities to ensure the state will continue to meet all primacy requirements. When the chief of the environmental health section of the state department of health has assurance from the necessary federal agencies that the state will meet all the primacy requirements after the transfer of authority, powers, and duties to the new department, the chief shall certify the same to the legislative management. Until the time of the certification, the chief of the environmental health section of the state department of health has the authority to operate, administer, manage, and restructure the environmental health section, reassign employees of the section, and control the funds appropriated for the section, to operate the section in the most efficient manner possible. To the extent required by the environmental health section, the state department of health shall continue to provide support and administrative services to the section. The chief of the environmental health section may adopt rules under this Act contingent and effective upon the establishment of the department of environmental quality.

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 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 |

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 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.

The proposed rules and amendments may be reviewed at the Public Service Commission's offices on the 12th 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, 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 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