

**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**

**ORDER SUBMITTING RULES TO ATTORNEY GENERAL**

**March 30, 2022**

**Appearances**

Commissioners Julie Fedorchak and Randy Christmann.

**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.

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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 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.

**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 was 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 with 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.

**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 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 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