

**PUBLIC SERVICE COMMISSION**  
**Reclamation Division**  
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**Memorandum**

**TO:** Commissioners Fedorchak, Christmann and Haugen-Hoffart  
Steve Kahl  
Jack Schuh  
*ZAB*

**FROM:** Zanna Brinkman, Reclamation Division

**DATE:** November 30, 2022

**SUBJECT:** Submittal of the rule changes in Case No. RC-22-28 and law changes resulting from HB 1061, SB 2327, and HB 1353 to OSM as State Program Amendment No. XLIII (43)

On April 29<sup>th</sup> we received a favorable legal opinion from the Attorney General on the rule changes proposed in Case No. RC-22-28. Before the Commission can adopt these changes, we also need to receive the Office of Surface Mining's approval of the rule changes by the State Program Amendment process. The necessary documents have been prepared for a program amendment that includes amendments to North Dakota Century Code Chapter 38-14.1 that were made by House Bill No. 1061 during the 2021 Legislative Session. Amendment XLIII also includes law changes to North Dakota Century Code 38-14.1 and rule changes to North Dakota Administrative Code Article 69-5.2 as a result of Senate Bill No. 2327 from North Dakota's 2017 Legislative Session and House Bill No. 1353 from North Dakota's 2021 Legislation Session. I respectfully recommend the Commission submit the law and proposed rule changes to OSM as State Program Amendment No. XLIII (43).

House Bill No. 1061 was submitted at the request of the Public Service Commission during the 2021 Legislative Session and amended two sections of North Dakota's Surface Mining and Reclamation Law. The first amendment changed Subsection 1 of Section 38-14.1-19 to increase the time for scheduling an informal conference on a permit, significant permit revision, or permit renewal application from 30 days to 45 days. Subsection 2 of Section 38-14.1-19 requires that notice of the informal conference be published at least two weeks prior to the scheduled conference in the official county newspaper and newspapers of general circulation in the area. If we receive a request for an informal conference on the last day of the public comment period, we have less than 10 days to schedule the informal conference and meet the official county newspaper publication schedule. Increasing this time to 45 days will allow more flexibility in scheduling the informal conference and still meet the required public notice requirements. The second amendment changed Subsection 3 of Section 38-14.1-22 and specifically changes the time that a mining company must submit an application for permit renewal from 120 days prior to permit expiration to 180 days prior to permit expiration. The 120 day requirement is adequate if there are no requests for an informal conference on the renewal application by an interested party, but it is not adequate if there is a request for an informal conference. A side-by-side comparison of the state rules to the counterpart federal rules is included in this program amendment package. No rule changes to North Dakota Administrative Code Article 69-5.2 were required for House Bill No. 1061.

Senate Bill No. 2327 created the North Dakota Department of Environmental Quality and transferred the duties and responsibilities of the North Dakota Department of Health relating to environmental quality to the Department of Environmental Quality during the 2017 Legislative Session. House Bill No. 1353 established the North Dakota Department of Water Resources, and the powers and duties of the Department of Water Resources and the state engineer during the 2021 Legislative Session. These two bills basically shifted the environmental regulation duties from the Department of Health to the Department of Environmental Quality, changed the name of the State Water Commission to the Department of Water Resources, and changed some of the duties of the state engineer to the Department of Water Resources. As a result of these two bills, references to these agencies in North Dakota's Surface Mining and Reclamation laws and rules must be updated to the Department of Environmental Quality and the Department of Water Resources. The Public Service Commission proposed the rule changes in Case No. RC-22-28. We issued the notice of intent to amend administrative rules and the public hearing notice on January 18, 2022. The public hearing for the rule changes was held on March 9, 2022. No one opposed the proposed rule changes, and they were sent to North Dakota's Attorney General for a legal review. On April 29, 2022, the Commission received the Attorney General's opinion finding that the rule changes proposed in Case No. RC-22-28 are legal.

North Dakota State Program Amendment No. XLIII (43) includes a narrative, changes to North Dakota Century Code Chapter 38-14.1 resulting from House Bill No. 1061, a side-by-side comparison of the state rules to the counterpart federal rules for House Bill No. 1061, changes to North Dakota Century Code Chapter 38-14.1 and proposed rule changes to North Dakota Administrative Code Article 69-5.2 resulting from Senate Bill No. 2327 and House Bill No. 1353, and a copy of the Attorney General's opinion on the legality of the rule changes.

Attached is a motion for the November 30<sup>th</sup> Commission meeting to submit the changes to OSM and the transmittal letter to OSM that should be signed by all three Commissioners.

#### Attachments

Program Amendments\Amend XLIII (43)\Memo\_OSM\_Amend43\_11-30-22