



# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

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February 7, 2022

Mr. Dennis Neuberger  
417 Front St.  
Beulah, ND 58523

RE: Case No. RC-22-28

Dear Mr. Neuberger,

Enclosed are the proposed rule changes that you requested for Case No. RC-22-28. The proposed Rule changes implement 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 intent of the rules is not being changed. Only agency name changes are proposed to comply with bills passed by the 65<sup>th</sup> and 67<sup>th</sup> Legislative Sessions. References in our rules to the Department of Health are being changed to the Department of Environmental Quality, and references in our rules to the State Engineer and State Water Commission are being changed to the Department of Water Quality.

If you have any questions, please contact this office.

Sincerely,

Zanna A. Brinkman  
Director  
Reclamation Division

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**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 Water Quality
- 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
- 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