

Policy Memorandum No. 7 to Mine Operators

DATE: March 8, 1995 (Revised)
(Original Issue Date August 2, 1979, revised August 10, 1984)

TO: All Coal Mine Operators and Lignite Energy Council

FROM: Commissioners Wefald, Hagen and Reinbold

SUBJECT; Coordination of State Regulatory Program Surface Coal Mining Operation Communications with the Public Service Commission (PSC), State Department of Health (SDH), and State Water Commission (SWC)

The PSC entered into cooperative agreements with the SWC and SDH for the purpose of coordinating the responsibilities of the respective agencies during the administration of the State Regulatory Program pursuant to NDCC Chapter 38-14.1. The administration and management procedures outlined in the agreements are intended to increase cooperation among the agencies, avoid duplication of effort, promote the efficient use of personnel, and to assure effective reclamation of surface mined lands in the State of North Dakota.

The purpose of this memorandum is to eliminate any confusion that may exist with respect to agency responsibilities, correspondence submittals, and regulatory approvals.

- A. The PSC has been designated the "State Regulatory Authority" for the purpose of administering and enforcing North Dakota's Mine Reclamation Law and the Permanent Regulatory Program pursuant to P.L. 95-87. Specific areas of regulatory responsibility that overlap with the SWC and the SDH are the Surface Water Management and Monitoring Plans required by Chapter 69-05.2-16 of the North Dakota Administrative Code. These PSC rules emphasize surface coal mining and reclamation practices that will prevent or minimize water pollution and changes in water flows in order to prevent long-term adverse changes in the hydrologic balance due to mining.
- B. The SWC requires a water management plan for all surface coal mining operations as detailed by the regulations contained in North Dakota Administrative Code Article 89-04. The water management plan required by the SWC must be submitted to the SWC at the time of application to the PSC for a surface mining permit (Section 89-04-01-01) and must be in the same form required by the PSC for water management related

aspects of the total mining plan (Section 89-04-01-05). The SWC's primary responsibility is to review any surface coal mining activities that may affect either the ground and/or surface water hydrology of the mine and adjacent area as well as the engineering and safety requirements of impoundments, stream channel diversions, and drainage of water. The SWC is also responsible for identifying the acreage of wetlands in permit areas that must be replaced under the state wetlands drainage law, NDCC 61-32.

- C. The SDH is responsible for administering the North Dakota Pollution Discharge Elimination System (NDPDES) pursuant to Chapter 61-28, NDCC. Prior to any discharge taking place from a surface coal mining operation, the permittee must have an approved discharge permit covering all discharge points as required by the above-stated authority. Additionally the SDH administers Chapter 23-20, NDCC, which is the Solid Waste Management and Land Protection Act. Pursuant to this authority a surface coal mine operator must acquire the appropriate permit from the SDH prior to the disposal of solid wastes within a surface mine pit.

The various regulatory responsibilities of the three agencies as they relate to surface coal mining operations are interdependent. Pursuant to the state reclamation law, the SWC and SDH are members of the advisory committee formed for the purpose of assisting the PSC in the technical review of mine plans. Copies of all permit applications and revisions that affect the water management plan are forwarded to these agencies as necessary when received by the PSC.

Forwarding copies of the above documents by the PSC to SWC is considered to be the first step toward meeting the requirements of Section 89-04-01-01 which requires that a water management plan be submitted to the SWC at the same time an application for a surface mining permit is submitted to the PSC.

The permit application review process often leads to modifications of the original mine plan as proposed by the applicant. As changes are made, the modified plans must also be forwarded by the PSC to the SWC and SDH as necessary. The SWC, pursuant to Section 89-04-02-03 will approve the water management plan when it is finalized. Likewise, the SDH will issue permits for all of the water discharge points once the plans are finalized. All coal mine operators should be fully aware of Sections 69-05.2-16-03 and -04, which state that no rights under the mining permit issued by the PSC shall be exercised until the necessary permits are obtained from the SWC and the SDH.

The above-outlined procedures also apply to proposed permit revisions. The applicant should submit to the PSC at least four copies of all revisions that affect water management plans so that sufficient copies are available for distribution to the SWC and SDH as necessary.

None of the above procedures should be construed to mean that surface coal mining operators can make application through the PSC for NDPDES permits, solid waste disposal permits, water permits, drainage permits, dike permits, construction permits or any other permits required by the SWC or the SDH. Rather, it should be recognized that

surface coal mining and reclamation operations reviewed and approved by the PSC for the entire permit area determine to a certain extent the input required for the SWC and SDH permits. For this reason, coordination among these three agencies is mandatory during any permit review.

Finally, approval of a properly submitted water management plan to the SWC satisfies all permit requirements for those activities included within the plan pursuant to Section 61-16.1-38 of the North Dakota Century Code as they pertain to dam and dike construction permits for temporary structures used in support of mining operations. Submittal of the water management plan will not constitute application for a water permit under Chapter 61-04 of the North Dakota Century Code or construction permits for permanent dams and diversions that impound more than twelve and one-half acre feet of water under Section 61-16.1-38. Application for these permits will have to be made separately to the SWC.

Also, mine operators should apply to the SWC for drainage permits prior to submitting the mining permit application for the purpose of identifying wetlands included in the proposed permit area. This procedure is encouraged by the attached memorandum that was sent to mine operators on December 28, 1989 by the State Engineer.

Bruce Hagen
Commissioner

Susan E. Wefald
President

Leo M. Reinbold
Commissioner

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Attachment