

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-15-737

**Statement Regarding
Regulatory Analysis, Small Entity Analysis and Impact, and
Takings Assessment**

January 5, 2016

The Commission is proposing to amend numerous sections in North Dakota Administrative Code Article 69-05.2 pertaining to surface coal mining and reclamation operations. The proposed changes are needed as the result of statutory changes made during the 2015 Legislative session by Senate Bill No. 2377. The statutory changes added a definition of "commercial leonardite" to the list of definitions and also added this phrase to other sections of the reclamation law, as appropriate. In addition, the statutory changes excluded leonardite, an oxidized form of lignite, from the definition of "coal.". Due to these statutory changes, numerous changes need to be made to the Commission's surface coal mining and reclamation rules.

The proposed rule changes primarily consist of adding the phrase "or commercial leonardite" immediately after the word "coal" when commercial leonardite is not part of a definition or a phrase that doesn't otherwise include commercial leonardite. No new or additional requirements are proposed for these or other mining activities.

Also, it should be noted that mining and reclamation rule changes adopted by the Commission must be as effective as counterpart federal rules issued by the federal Office of Surface Mining within the Department of the Interior.

Regulatory Analysis

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars, or if one is requested as provided in the law. The law provides, in part:

2. The regulatory analysis must contain:
 - a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear

the costs of the proposed rule and classes that will benefit from the proposed rule;

- b. A description of the probable impact, including economic impact, of the proposed rule;
- c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
- d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

The proposed rules are not expected to have an impact on the regulated community in excess of fifty thousand dollars, and no regulatory analysis has been requested; therefore, a regulatory analysis has not been prepared.

Small Entity Regulatory Analysis

N.D.C.C. § 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

- 2. . . . The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
 - a. Establishment of less stringent compliance or reporting requirements for small entities;
 - b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
 - c. Consolidation or simplification of compliance or reporting requirements for small entities;
 - d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
 - e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

The proposed rule changes will not impose any additional compliance or reporting requirements or performance standards on small entities.

Small Entity Economic Impact Statement

N.D.C.C. § 28-32-08.1(3) requires that before adoption of any proposed rule that may have an adverse impact on small entities, the adopting agency shall prepare an economic impact statement that includes consideration of:

- a. The small entities subject to the proposed rule;
- b. The administrative and other costs required for compliance with the proposed rule;
- c. The probable cost and benefit to private persons and consumers who are affected by the proposed rule;
- d. The probable effect of the proposed rule on state revenues; and
- e. Any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

The proposed rule changes will not have an adverse impact on small entities since no additional requirements are being imposed on them as stated above.

Takings Assessment

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The law provides, in part:

1. . . . The agency's assessment must:
 - a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
 - b. Clearly and specifically identify the purpose of the proposed rule.
 - c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.

- d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
- e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
- f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

The proposed rules do not limit the use of private real property; therefore, a written assessment of constitutional takings is not required.