

Testimony of the North Dakota Public Service Commission

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Representative Jim Schmidt, Chairman

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Chairman Schmidt and Members of the Interim Agriculture Committee, my name is Dean Moos and I am the Assistant Director of the Reclamation Division of the North Dakota Public Service Commission. I am also a registered Professional Soil Classifier. Today I will provide testimony of how the Reclamation Division utilizes information provided by Professional Soil Classifiers.

The Public Service Commission is the agency that has been delegated the responsibility of administering and enforcing the state's surface mining and reclamation laws and rules. North Dakota passed its first reclamation law in 1969 and amended it every two years thereafter until passage of the Federal Surface Mining Control and Reclamation Act of 1977. The Federal act allows for the states to take the lead in regulating coal mining in their respective states provided that their regulatory program is as stringent as the Federal program.

North Dakota enacted a new reclamation law in 1979 that is similar to the Federal act and we received Federal approval of our program in 1980.

Before mining can commence, the mining companies must submit a mining permit application to the Public Service Commission for review and approval. The mining permit consists of 5 major sections:

- 1) legal and financial information;
- 2) pre-mine environmental resource information;
- 3) mining and operations plans;
- 4) reclamation plans; and
- 5) performance bond.

With regard to pre-mine environmental resource information, the mining companies are required to document pre-mine baseline conditions of the permit area including soils, geology, surface and groundwater hydrology, vegetation and land use, fish and wildlife resources, and cultural resources. Having this information documented prior to mining disturbance and reclamation is important because it establishes the baseline condition or standard that the land must be reclaimed to.

Professional Soil Classifiers are utilized by mining companies to prepare the detailed pre-mine soil survey. The purpose of the soil survey is to document the

soil resources within the permit area. The soil survey information is used to identify the soils that are present in the permit area, the suitability (quality) of those soil resources for reclamation, the volumes of soil materials (topsoil and subsoil) that will be available for reclamation, and lastly the productive capability of those soils. Determining the productive capability of the pre-mine soils is especially important since the North Dakota law requires 100% restoration of productivity of lands that have been mined and reclaimed for agricultural purposes. Thus the baseline soil survey provides the basis for determining reclamation success of reclaimed agricultural lands in North Dakota. The soil survey information is also utilized in a number of other baseline inventories and surveys including wetlands, range site identification, and in identifying any potential alluvial valley floors.

The pre-mine soil survey prepared by a Professional Soil Classifier is more detailed than the county soil survey that is published by the Natural Resources Conservation Service. In addition, it provides a number of data sets or interpretations that are not available in the standard published soil surveys such as projected depths of topsoil and subsoil available for salvage and respread.

North Dakota's reclamation law (NDCC 38-14.1-14[1][t]) requires that the mine permit soil survey be prepared by a Professional Soil Classifier. The term "soil classifier" is further defined in subsection 28 of NDCC 38-14.1-02 to be a Professional Soil Classifier as defined in subsection 4 of NDCC 43-36-01. Our law and rules clearly state that the mine permit soil survey must be prepared by a Professional Soil Classifier. This requirement has been part of our law and rules since 1975.

Even if our law and rules did not specifically reference that the mine permit soil survey had to be prepared by a Professional Soil Classifier, it would still need to be prepared by a Professional Soil Classifier per the requirements of NDCC 43-36-01.

Currently there are about 117,000 acres under mining permit in North Dakota. In addition, the Commission is currently reviewing applications to permit approximately an additional 26,600 acres. To date approximately 26,900 acres has been bond released. The soil surveys for all the acreage currently under permit and under review as well as the entire bond released acreage that was permitted after 1973 were prepared by Professional Soil Classifiers. In other words, Professional Soil Classifiers have been utilized to prepare coal mine soil surveys for nearly 170,000 acres.

That concludes my testimony. I would happy to answer any questions that you may have.