

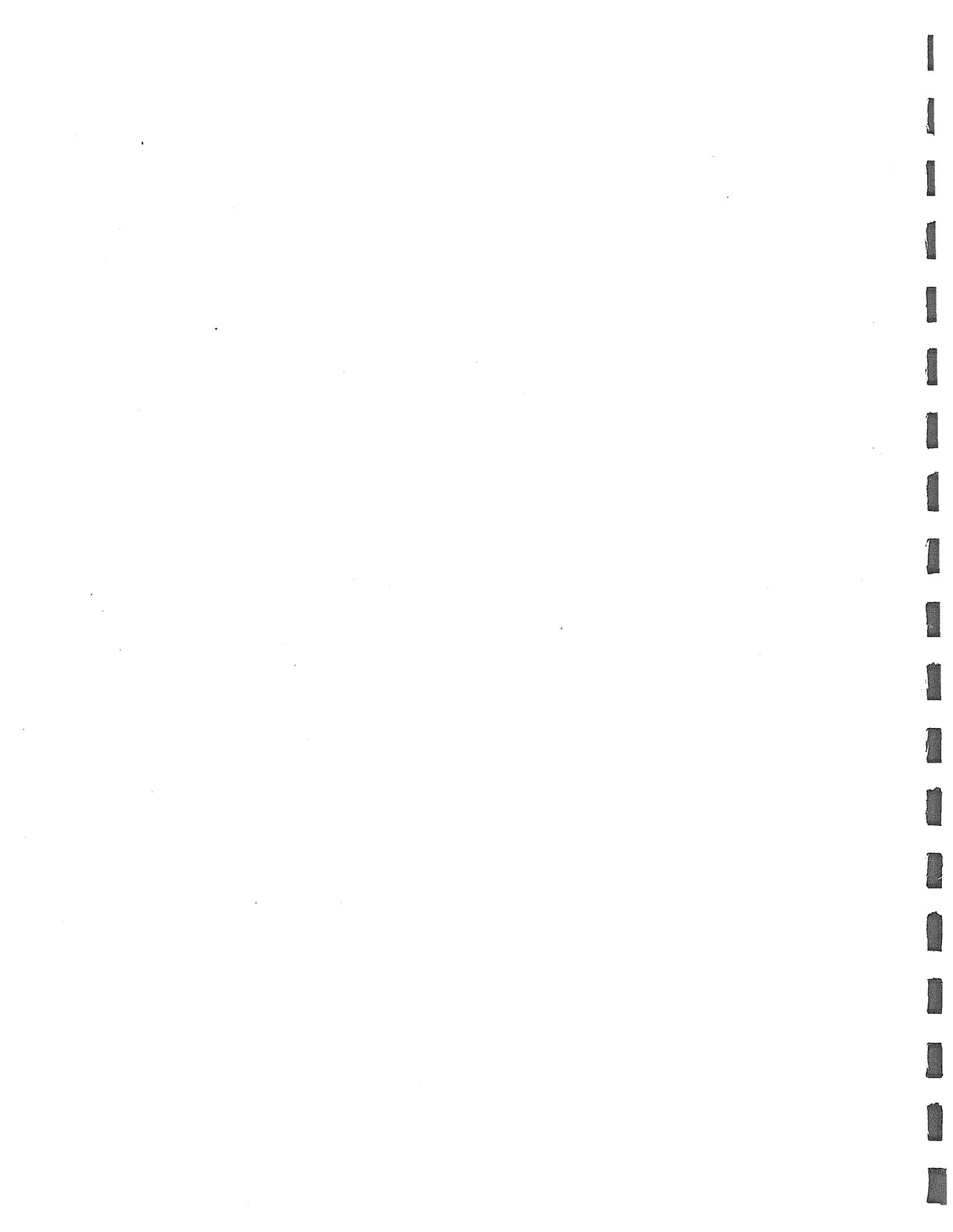
NORTH DAKOTA ADMINISTRATIVE CODE

VOLUME 3

Supplement 54 (Public Service Commission)

June 1983

Prepared by the Legislative Council staff
for the
Administrative Rules Committee



ARTICLE 69-05.2

SURFACE COAL MINING AND
RECLAMATION OPERATIONS

Chapter	
69-05.2-01	General Provisions
69-05.2-02	Restrictions on Financial Interests of Employees
69-05.2-03	Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction
69-05.2-04	Areas Unsuitable for Mining
69-05.2-05	Permit Applications - General Requirements
69-05.2-06	Permit Applications - Requirements for Legal, Financial, Compliance, and Related Information
69-05.2-07	Permit Applications - Extended Mining Plan - Requirements for Information on Environmental Resources
69-05.2-08	Permit Applications - Permit Area - Requirements for Information on Environmental Resources
69-05.2-09	Permit Applications - Permit Area - Requirements for Operation and Reclamation Plans
69-05.2-10	Permit Applications - Review, Public Participation, and Approval or Disapproval
69-05.2-11	Permit Reviews, Revisions, and Renewals - Transfer, Sale, or Assignment of Rights Granted Under Permits
69-05.2-12	Performance Bonds - Liability Insurance
69-05.2-13	Performance Standards - General Requirements
69-05.2-14	Performance Standards - Casing and Sealing of Drilled Holes
69-05.2-15	Performance Standards - Suitable Plant Growth Material
69-05.2-16	Performance Standards - Hydrologic Balance - General Requirements
69-05.2-17	Performance Standards - Use of Explosives
69-05.2-18	Performance Standards - Disposal of Excess Spoil
69-05.2-19	Performance Standards - Waste Materials
69-05.2-20	Performance Standards - Dams and Embankments Constructed of or Impounding Coal Processing Waste
69-05.2-21	Performance Standards - Backfilling and Grading
69-05.2-22	Performance Standards - Revegetation
69-05.2-23	Performance Standards - Postmining Land Use
69-05.2-24	Performance Standards - Roads - Other Transportation Facilities - Support Facilities
69-05.2-25	Performance Standards - Operations in Alluvial Valley Floors
69-05.2-26	Performance Standards - Prime Farmland
69-05.2-27	Requirements for Research Plots and Permits for Experimental Surface Coal Mining and Reclamation Operations

69-05.2-28
69-05.2-29
69-05.2-30

Inspection and Enforcement
Small Operator Assistance
Off-Permit Use of Other Minerals

CHAPTER 69-05.2-01
GENERAL PROVISIONS

Section	
69-05.2-01-01	Applicability of Article
69-05.2-01-02	Definitions
69-05.2-01-03	Promulgation of Regulations <u>Rules</u> - Notice - Hearing
69-05.2-01-04	Notice of Citizen Suits
69-05.2-01-05	Computation of Time
69-05.2-01-06	Intervention
69-05.2-01-07	<u>Petitions for Award of Costs and Expenses -</u> <u>Answer - Awards - Judicial Review</u>

69-05.2-01-01. APPLICABILITY OF ARTICLE. The requirements of this article apply to any person conducting surface coal mining operations; and to all surface coal mining operations conducted after August 1, 1980, on lands from which the coal had not yet been removed and to any other lands used, disturbed, or redisturbed in connection with or to facilitate mining or to comply with the requirements of North Dakota Century Code chapter 38-14.1 or of this article. The requirements of this article do not apply to any of the following activities:

1. The extraction of coal by a landowner for the landowner's own noncommercial use from land owned or leased by the landowner.
2. The extraction, for commercial purposes, of less than two hundred fifty tons [226.80 metric tons] of coal by surface mining activities within twelve consecutive calendar months at any one location and not affecting more than two acres [0.81 hectares] of land during the entire life of the mining operation.
3. The removal of any coal pursuant to reclamation operations under North Dakota Century Code chapter 38-14.2.
4. The extraction of coal as an incidental part of federal, state, or local government-financed highway or other construction, except as provided by chapter 69-05.2-03.

5. The extraction of two hundred fifty tons [226.80 metric tons] or less of coal pursuant to a coal exploration permit issued by the office of the state geologist.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-02,
38-14.1-10,
38-14.1-37

69-05.2-01-02. DEFINITIONS. The definitions contained in North Dakota Century Code section 38-14.1-02 shall apply to this article and, as used throughout this article, the following terms have the specified meaning except where otherwise indicated:

~~1- "Acid-test-ratio" means the relation of quick assets to current liabilities.~~

- 2- 1. "Adjacent area" means land located outside the affected area, ~~extended--mining--plan--area,~~ or permit area, depending on the context in which "adjacent area" is used, where air, surface or ground water, fish, wildlife, vegetation, alluvial valley floors, or other resources may be adversely impacted by surface coal mining and reclamation operations.
- 3- 2. "Affected area" means any land or water upon or in which surface coal mining and reclamation operations are conducted or located.
- 4- 3. "Agricultural activities" means, with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, where the use is enhanced or facilitated by subirrigation or flood irrigation associated with alluvial valley floors. These uses include, but are not limited to, the pasturing, grazing, or watering of livestock, and the cropping, cultivation, or harvesting of plants whose production is aided by the availability of water from subirrigation or flood irrigation. Those uses do not include agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation.
- 5- 4. "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing and watering of livestock, and the cropping, cultivation and harvesting of plants.

6- 5. "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

7- ~~"Asset--ratio"--means--the--relation--of--total--assets--to--total--liabilities-~~

8- 6. "Best technology currently available" means equipment, devices, systems, methods, or techniques which will:

a. Prevent, to the extent possible, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state law.

b. Minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable.

c. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the commission, even if they are not in routine use.

d. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities, and design of sedimentation ponds.

e. The commission shall have the discretion to determine the best technology currently available on a case-by-case basis.

9- ~~"Capital--assets"--means--those--assets--such--as--land; buildings; and equipment held for use in the--production or sale of other assets or services-~~

10- 7. "Cash" means:

a. All cash items except cash:

(1) Restricted by an agreement.

(2) Described as earmarked for a particular purpose.

b. Short-term investments such as stocks, bonds, notes, and certificates of deposit, where the intent and ability to sell them in the near future is established by the permittee.

- ~~11-~~ 8. "Cemetery" means any area of land where human bodies are interred.
- ~~12-~~ 9. "Coal mining operation" means, for purposes of restrictions on financial interests of employees, the business of developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.
- ~~13-~~ 10. "Coal processing plant" means a collection of facilities where run-of-the-mine coal is subjected to chemical or physical processing and separated from its impurities. The processing plant may consist of, but need not be limited to, the following facilities: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas; roads, railroads, and other transport facilities.
- ~~14-~~ 11. "Coal processing waste" means earth materials which are combustible, physically unstable, or toxic-forming, which are wasted or otherwise separated from product coal and slurried or otherwise transported from coal preparation plants after physical or chemical processing, cleaning, or concentrating of coal.
- ~~15-~~ 12. "Collateral bond" means an indemnity agreement in a sum certain payable to the state of North Dakota executed by the permittee and which is supported by the deposit with the commission of cash, negotiable bonds of the United States or of North Dakota, or negotiable certificates of deposit of any bank organized or transacting business in the state of North Dakota or a perfected lien or security interest in real property.
- ~~16-~~ 13. "Combustible material" means organic material that is capable of burning, either by fire or through a chemical process (oxidation), accompanied by the evolution of heat and a significant temperature rise.
- ~~17-~~ 14. "Common-size comparative balance sheet" means item amounts from a number of the permittee's or permit applicant's successive yearly balance sheets arranged side by side in a single statement followed by common-size percentages whereby:
- a. The asset total is assigned a value of one hundred percent.
 - b. The total of liabilities and owner equity is also assigned a value of one hundred percent.

c. Each individual asset, liability and owner equity item is shown as a fraction of one of the one hundred percent totals.

- 18- 15. "Common-size comparative income statement" means a permittee's income statement amounts for a number of successive yearly periods arranged side by side in a single statement followed by common-size percentages whereby net sales are assigned a one hundred percent value, and then each statement item is shown as a percentage of net sales.
- 19- 16. "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations, or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health, or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation, or sewage treatment.
- 20- 17. "Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.
- 21- 18. "Complete inspection" means an onsite review of a permittee's or operator's compliance with all permit conditions and requirements imposed under North Dakota Century Code chapter 38-14.1 and this article, within the entire area disturbed or affected by surface coal mining and reclamation operations and includes the collection of evidence with respect to every violation of those conditions or requirements.
- 22- 19. "Complete permit application" means an application for a surface coal mining and reclamation operations permit, which contains all information required by North Dakota Century Code chapter 38-14.1 and this article, to allow the commission to initiate the notice requirements of North Dakota Century Code section 38-14.1-18 and a technical review for the purpose of complying with the permit approval or denial standards of North Dakota Century Code section 38-14.1-21 and of this article.
- 23- 20. "Cooperative soil survey" means a field or other investigation that locates, describes, classifies and interprets for use the soils in a given area. Such survey must meet the standards of the national cooperative soil survey and is the type of survey that is usually made for counties by the United States department of agriculture soil conservation service in

cooperation with agencies of the state and, in some cases, other federal agencies. If such survey is not available and a permit applicant is required to cause such a soil survey to be made, the scale of the soils map produced shall be 1:20,000.

- 24- 21. "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included.
- 25- ~~"Current---assets"---means---cash---and---assets---that---are reasonably-expected-to-be-realized-in-cash---or---sold---or consumed-within-one-year-~~
- 26- ~~"Current--liabilities"--means-debts-or-other-obligations that-must-be-paid-or-liquidated-within-a-short-period-of time;-usually-a-year---This-shall-also-include-dividends payable-on-preferred-stock-within-one-year-~~
- 27- ~~Current--ratio"--means-the-relation-of-current-assets-to current-liabilities-~~
- 28- 22. "Developed water resources" means, for land use purposes, land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.
- 29- 23. "Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings, and also means any other arrangement where the employee may benefit from the employee's holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.
- 30- 24. "Disturbed area" means those areas that have been affected by surface coal mining and reclamation operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by North Dakota Century Code chapter 38-14.1 and this article is released.
- 31- 25. "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

- 32- 26. "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.
- 33- 27. "Emergency spillway" means the spillway designed to convey excess water through, over, or around a dam.
- 34- 28. "Employee" means, for purposes of restrictions on financial interests of employees: any person employed by the commission as a state employee who performs any function or duty under North Dakota Century Code chapter 38-14.1; advisory board, or commission members or consultants who perform any decisionmaking functions for the commission under authority of state law or regulations; and any other state employee who performs any decisionmaking function or duty under a cooperative agreement with the commission. This definition does not include: the public service commissioners, who file annually with the director of the office of surface mining reclamation and enforcement, United States department of the interior; ~~consultants~~; and members of advisory boards or commissions established in accordance with state laws or regulations to represent multiple interests, such as the North Dakota reclamation advisory committee.
- 35- 29. "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.
- 36- 30. "Essential hydrologic functions" means with respect to alluvial valley floors, the role of the valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, usefully available for agricultural activities, by reason of its position in the landscape and the characteristics of its underlying material. A combination of those functions provides a water supply during extended periods of low precipitation.
- a. The role of the valley floor in collecting water includes accumulating runoff and discharge from aquifers in sufficient amounts to make the water available at the alluvial valley floor greater than the amount available from direct precipitation.
 - b. The role of the alluvial valley floor in storing water involves limiting the rate of discharge of surface water, holding moisture in soils, and holding ground water in porous materials.

- c. The role of the alluvial valley floor in regulating the natural flow of surface water results from the characteristic configuration of the channel flood plain and adjacent low terraces.
- d. The role of the alluvial valley floor in regulating the natural flow of ground water results from the properties of the aquifers which control inflow and outflow.
- e. The role of the alluvial valley floor in making water usefully available for agricultural activities results from the existence of flood plains and terraces where surface and ground water can be provided in sufficient quantities to support the growth of agriculturally useful plants, from the presence of earth materials suitable for the growth of agriculturally useful plants, from the temporal and physical distribution of water making it accessible to plants throughout the critical phases of the growth cycle either by flood irrigation or by subirrigation, from the natural control of alluvial valley floors in limiting destructive extremes of stream discharge, and from the erosional stability of earth materials suitable for growth of agriculturally useful plants.

37- 31. "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction began prior to August 1, 1980.

38- 32. "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable government-financed construction to be accomplished. Only that coal extracted from within the right of way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right of way or boundary of the area directly affected by the construction shall be subject to the requirements of North Dakota Century Code chapter 38-14.1 and this article.

39- 33. "Fish and wildlife habitat" means lands or waters used partially or wholly for the maintenance, production, protection, or management of species of fish or wildlife.

40- 34. "Flood irrigation" means, with respect to alluvial valley floors, irrigation supplying water to plants by natural overflow, or the diversion of flows in which the

surface of the soil is largely covered by a sheet of water.

- 41- 35. "Fragile lands" means geographic areas containing natural, ecologic, scientific, or esthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, state and national natural landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under North Dakota Century Code section 38-14.1-07.
- 42- 36. "Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.
- 43- 37. "General area" means, with respect to hydrology, the topographic and ground water basin surrounding an extended mining plan area or permit area which is of sufficient size, including areal extent and depth, to include one or more watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins.
- 44- 38. "Government-financed construction" means construction funded fifty percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or other equivalent, or in-kind payments.
- 45- 39. "Government financing agency" means a federal, state, county, municipal, or local unit of government, or a department, bureau, agency, or office of the unit which, directly or through another unit of government, finances construction.
40. "Ground cover" means the area of ground covered by vegetation and the litter that is produced naturally

onsite, expressed as a percentage of the total area of measurement.

- 46- 41. "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.
- 47- 42. "Half-shrub" means a perennial plant with a woody base whose annually produced stems die back each year.
- 48- ~~"Hayland" means land used primarily for the long-term production of adapted, domesticated forage plants cut and cured for livestock feed. Land used for facilities in support of hayland which is adjacent to or an integral part of these operations is also included.~~
- 49- 43. "Historic lands" means historic or cultural districts, places, structures, or objects, including archeological and paleontological sites, national historic landmark sites, sites listed on or eligible for listing on the state historic sites registry or the national register of historic places, sites having religious or cultural significance to native Americans or religious groups or sites for which historic designation is pending.
- 50- 44. "Historically used for cropland" means:
- a. Lands that have been used for cropland for any five years or more out of the ten years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations;
 - b. Lands that the commission determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five-years-in-ten criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or
 - c. Lands that would likely have been used as cropland for any five out of the last ten years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.
- 51- 45. "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a

drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the quantity and quality relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

- 52- 46. "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.
- 53- 47. "Important farmland inventory map" means the map published by the soil conservation service, as required by 7 CFR 657, that identifies and locates prime farmland and other farmlands of statewide or local importance.
- 54- 48. "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.
- 55- 49. "Indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by the employee's spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.
- 56- 50. "Industrial and commercial" means, for land use purposes, land used for:
- a. Extraction or transformation of materials for fabrication of products, wholesaling of products, or for long-term storage of products. This includes all heavy and light manufacturing facilities such as chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to, all rail, road, and other transportation facilities.
 - b. Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations

is also included. Support facilities include, but are not limited to, parking, storage, or shipping facilities.

- 57- 51. "Intermittent stream" means a stream or part of a stream that flows continuously for at least one month of the calendar year as a result of ground water discharge or surface runoff.
- 58- 52. "Irreparable damage to the environment" means any damage to the environment that cannot be corrected by action of the permit applicant or the operator.
- 59- 53. "Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur.
- 60- 54. "Leachate" means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.
- ~~61- 55. "Liquidity ratio" means the relation of cash to current liabilities.~~
- 62- 55. "Materially damage the quantity or quality of water" means, with respect to alluvial valley floors, changes in the quality or quantity of the water supply to any portion of an alluvial valley floor where such changes are caused by surface coal mining and reclamation operations and result in changes that significantly and adversely affect the composition, diversity, or productivity of vegetation dependent on subirrigation, or which result in changes that would limit the adequacy of the water for flood irrigation of the irrigable land acreage existing prior to mining.
- 63- 56. "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.
- 64- 57. "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for the germination and growth of plants.
58. "Native grassland" means land on which the natural potential plant cover is principally composed of native grasses, grasslike plants, forbs, and shrubs valuable for forage and is used for grazing, browsing, or occasional hay production. Land used for facilities in support of ranching operations which is adjacent to or an integral part of these operations is also included.

- 65- 59. "Natural hazard lands" means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.
- 66- ~~"Net--profit"--means--the--bottom--line--of--the--income statement--after--taxes,--including--taxes--based--on--income, adjustments,--all--extraordinary--income--and--expense,--but before--preferred--and--common--stock--dividends.~~
- 67- ~~"Net--worth"--means--preferred--and--common--stock,--all surplus--accounts,--and--retained--earnings.~~
- 68- 60. "Noxious plants" means species as defined in North Dakota Century Code section 63-01.1-02 that have been included on the official state list of noxious weeds.
- 69- 61. "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.
- 70- 62. "Operation plan" means a plan submitted by a permit applicant which sets forth a detailed description of the surface coal mining operations proposed to be conducted during the term of the permit within the proposed permit area.
- 71- 63. "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.
- 72- 64. "Partial inspection" means an onsite review of a permittee's or operator's compliance with some of the permit conditions and requirements imposed under North Dakota Century Code chapter 38-14.1 and this article and includes the collection of evidence of any violation of those conditions or requirements.
- 73- ~~"Pastureland"--means--land--used--primarily--for--the--long-term--production--of--adapted,--domesticated--forage--plants to--be--grazed--by--livestock,--land--used--for--facilities--in support--of--pastureland--which--is--adjacent--to--or--an integral--part--of--these--operations--is--also--included.~~
- 74- 65. "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.
- 75- ~~"Performance--bond"--means--a--surety--bond,--collateral--bond, self--bond,--or--deposit,--or--a--combination--thereof,--by which--a--permittee--assures--faithful--performance--of--all~~

~~requirements--of--North--Dakota--Century--Code---chapter
38-14-1,--this--article,--and--the--requirements--of--the
permit-and-reclamation-plan-~~

- 76- 66. "Performing any function or duty" means those decisions or actions which, if performed or not performed by an employee, affect surface coal mining and reclamation operations under North Dakota Century Code chapter 38-14.1.
- 77- 67. "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations which has been approved for retention by the commission and other appropriate state agencies.
- 78- 68. "Person having an interest which is or may be adversely affected or person with a valid legal interest" includes:
- a. Any person who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by surface coal mining and reclamation operations or any related action of the commission.
 - b. Any person whose property is or may be adversely affected by surface coal mining and reclamation operations or any related action of the commission.
 - c. Any federal, state, or local governmental agency.
- 79- 69. "Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. "Precipitation event" also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.
- 80- 70. "Principal shareholder" means any person who is the record or beneficial owner of ten percent or more of any class of voting stock.
- 81- 71. "Principal spillway" means an ungated pipe conduit with minimum diameter of twelve inches [30.48 centimeters] constructed for the purpose of conducting water through the embankment back to streambed elevation without erosion.
- 82- 72. "Probable cumulative impacts" means the expected total qualitative and quantitative, direct and indirect effects of mining and reclamation activities on the hydrologic regime.

- 83- 73. "Probable hydrologic consequence" means the projected result of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the surface or ground water flow, timing, and pattern; the stream channel conditions; and the aquatic habitat on the permit area and adjacent areas.
- 84- 74. "Productivity" means the vegetative yield produced by a unit area for a unit of time.
- 85- 75. "Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.
- 86- 76. "Public building" means any structure that is owned by a public agency or used principally for public business, meetings, or other group gatherings.
- 87- 77. "Public office" means a facility under the direction and control of a governmental entity which is open to the public on a regular basis during reasonable business hours.
- 88- 78. "Public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.
- 89- 79. "Public road" means a public way for purposes of vehicular travel, including the entire area within the right of way, all public ways acquired by prescription as provided by statute, and all land located within two rods [10.06 meters] on each side of all section lines. This definition does not include those public ways or section lines which have been vacated as permitted by statute or abandoned as provided by statute.
- 90- 80. "Qualified laboratory" means a designated public agency, private consulting firm, institution, or analytical laboratory which can provide the required determination or statement under the small operator assistance program.
- 91- ~~"Quick-assets" means cash and current assets that can be quickly turned into cash.~~
- 92- ~~"Rangeland" means land on which the natural potential plant cover is principally native grasses, forbs, and shrubs valuable for forage and is used for grazing, browsing, or occasional hay production. Land used for facilities in support of ranching operations which is~~

~~adjacent-to-or-an-integral-part-of-these--operations--is
also-included-~~

- 93- 81. "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.
- 94- 82. "Recreation" means, for land use purposes, land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.
- 95- 83. "Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the ten-year, twenty-four-hour precipitation event would be that twenty-four-hour precipitation event expected to occur on the average once in ten years. Magnitude of such events are as defined by the national weather service technical paper no. 40, Rainfall Frequency Atlas of the United States, May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.
- 96- 84. "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the commission. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.
- 97- 85. "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.
- 98- 86. "Residential" means, for land use purposes, single- and multiple-family housing, mobile home parks and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.
- 99- ~~--"Retained--earnings"--means--stockholder's--equity--that--has
arisen--from--retained--assets--from--earnings--in--the
business---This--shall--include--only--earnings--from--normal
operations--and--not--gains--from--such--transactions--as--the
sale--of--plant--assets--or--investments-~~

100- 87. "Return on investment" means the relation of net profit for the last yearly period to ending net worth.

101- 88. "Road" means access and haul roads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations. A road consists of the entire area within the right of way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, and such contiguous appendages as are necessary for the total structure.

The term does not include:

a. Temporary nonsurfaced trails used for vehicle access or suitable plant growth material transport where such trails do not appreciably alter the original contour.

b. Coal haulage ramps within the pit area.

c. Public roads.

102- 89. "Safety factor" means the ratio of the available shear strength to the developed shear stress on a potential surface of sliding, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

103- 90. "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with this article and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

104- ~~"Self-bond" means an indemnity agreement in a sum certain payable to the state of North Dakota, executed by the permittee and by each individual and business organization capable of influencing or controlling the investment or financial practices of the permittee by virtue of his authority as an officer or ownership of all or a significant part of the permittee, and supported by agreements granting the state of North Dakota a security interest in real or personal property pledged to secure performance by the permittee.~~

105- 91. "Significant, imminent environmental harm to land, air, or water resources" is determined as follows:

- a. An environmental harm is any adverse impact on land, air, or water resources, including but not limited to plant and animal life.
 - b. An environmental harm is imminent if a condition, practice, or violation exists which is causing such harm or may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under North Dakota Century Code section 38-14.1-28.
 - c. An environmental harm is significant if that harm is appreciable and not immediately reparable.
- 106- 92. "Significant recreational, economic, or other values incompatible with surface coal mining operations" means those significant values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on offsite areas which could be affected by mining. Those values to be evaluated for their importance include:
- a. Recreation, including hiking, boating, camping, skiing, or other related outdoor activities.
 - b. Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce.
 - c. Scenic, historic, archeologic, esthetic, fish, wildlife, plants, or cultural interests.
- 107- 93. "Slope" means average inclination of a surface, measured from the horizontal. Normally expressed as a unit of vertical distance to a given number of units of horizontal distance, e.g., 1v to 5h = 20 percent = 11.3 degrees.
- 108- 94. "Soil horizons" means contrasting layers of soil lying one below the other, parallel, or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are:
- a. A horizon. The uppermost layer in the soil profile, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and where leaching of soluble or suspended particles is the greatest.

- b. B horizon. The layer immediately beneath the A horizon. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.
 - c. C horizon. The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.
- 109- 95. "Spoil" means overburden that has been disturbed during surface coal mining operations.
- 110- 96. "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties such as by providing a protective surface coating.
- 111- 97. "Subirrigation" means, with respect to alluvial valley floors, the supplying of water to plants ~~from underneath~~ or from a semisaturated or saturated subsurface zone where water is available for use by vegetation. Subirrigation may be identified by:
- a. Diurnal fluctuation of the water table, due to the differences in nighttime and daytime evapotranspiration rates;
 - b. Increasing soil moisture from a portion of the root zone down to the saturated zone, due to capillary action;
 - c. Mottling of the soils in the root zones;
 - d. Existence of an important part of the root zone within the capillary fringe or water table of an alluvial aquifer; or
 - e. An increase in streamflow or a rise in ground water levels, shortly after the first killing frost on the valley floor.
- 112- 98. "Substantial legal and financial commitments in a surface coal mining operation" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities.
- 113- 99. "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.
- 114- 100. "Surety bond" means an indemnity agreement in a sum certain payable to the state of North Dakota executed by

the permittee or permit applicant which is supported by the performance guarantee of a corporate surety licensed to do business in the state of North Dakota.

- ~~115-~~ 101. "Surface coal mining operations which exist on the date of enactment" means all surface coal mining operations which were being conducted on July 1, 1979.
- ~~116-~~ 102. "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, or by recovery of coal from a deposit that is not in its original geologic location.
- ~~117-~~ 103. "Suspended solids" means organic or inorganic materials carried or held in suspension in water that will remain on a forty-five hundredths micron filter.
104. "Tame pastureland" means land used for the long-term production of predominantly adapted, domesticated species of forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also included.
- ~~118-~~ 105. "Temporary diversion" means a diversion of a stream or overland flow which is used during surface coal mining and reclamation operations and not approved by the commission to remain after reclamation as part of the approved postmining land use.
- ~~119-~~ 106. "Ton" means two thousand pounds avoirdupois [0.90718 metric ton].
- ~~120-~~ 107. "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.
- ~~121-~~ 108. "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.
- ~~122-~~ 109. "Transfer, assignment, or sale of rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the commission.

~~123-~~ 110. "Unconsolidated streamlaid deposits holding streams" means, with respect to alluvial valley floors, all flood plains and terraces located in the lower portions of topographic valleys which contain perennial or other streams with channels that are greater than three feet [0.91 meters] in bankfull width and greater than six inches [15.24 centimeters] in bankfull depth.

~~124-~~ 111. "Undeveloped rangeland" means, for purposes of alluvial valley floors, lands generally used for livestock grazing where the such use is not specifically controlled and managed.

~~125-~~ 112. "Upland areas" means, with respect to alluvial valley floors, those geomorphic features located outside the flood plain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

~~126-~~ 113. "Valid existing rights" means:

a. Except for roads:

(1) Those property rights in existence on July 1, 1979, that were created by a legally binding conveyance, lease, deed, contract, or other document which authorizes the permit applicant to produce coal by a surface coal mining operation; and

(2) The person proposing to conduct surface coal mining operations on such lands either:

(a) Had been validly issued or had made a good faith attempt to obtain, on or before July 1, 1979, all state and federal permits necessary to conduct such operations on those lands; or

(b) Can demonstrate to the commission that the coal is both needed for, and is immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to July 1, 1979.

b. For roads:

(1) A recorded right of way, recorded easement, or a permit for a road recorded as of July 1, 1979; or

(2) Any other road in existence as of July 1, 1979.

c. Interpretation of the terms of the document relied upon to establish valid existing rights shall be based either upon applicable North Dakota case law concerning interpretation of documents conveying mineral rights or, where no applicable North Dakota case law exists, upon the usage and custom at the time and place where it came into existence, and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same surface mining activities for which the applicant claims a valid existing right.

d. "Valid existing rights" does not mean mere expectation of a right to conduct surface coal mining operations.

~~127-~~ 114. "Viable economic unit" means, with respect to prime farmland, any tract of land identified as prime farmland by the state conservationist of the soil conservation service that has been historically used for cropland.

~~128-~~ 115. "Violation notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

~~129-~~ 116. "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

~~130-~~ 117. "Willful violation" means an act or omission which violates North Dakota Century Code chapter 38-14.1, this article, or individual permit conditions, committed by a person who intends the result which actually occurs.

~~131-~~ 118. "Woodland" means land where the primary vegetation is trees or shrubs. This includes both natural wooded areas and shelterbelts and other woody plantings made by man.

119. "Woody plants" means trees, shrubs, half-shrubs, and woody vines.

132---"Working--capital"--means--the--excess--of--the--permittee's
current-assets-over-its-current-liabilities-

History: Effective August 1, 1980; *amended by statute June 1, 1985.*
Amended

General Authority
NDCC 38-14.1-03,
38-14.1-38

Law Implemented
NDCC 38-14.1-02,
38-14.1-03,
38-14.1-21,
38-14.1-38

69-05.2-01-03. PROMULGATION OF REGULATIONS RULES - NOTICE -
HEARING.

1. The commission may, at any time and on its own motion, propose to promulgate new regulations rules under this article or to amend or repeal any regulation rule under this article and shall hold a public hearing in accordance with the procedures of this section.
2. Any person or governmental agency may at any time petition the commission to adopt new regulations rules or to amend or repeal any regulation rule under this article. Upon receipt of the petition, the commission shall determine if the petition sets forth facts, technical justification, and law which may provide a reasonable basis for issuance, amendment, or repeal of a regulation.
3. If the commission determines that the petition has a reasonable basis, a public hearing shall be held on any proposed adoption, amendment, or repeal of regulations rules under this article.
4. The commission shall cause notice of the date, time, and place of the public hearing to be published in the official newspapers of each county in which surface coal mining operations occur and in other daily newspapers of general circulation in the general vicinity of such counties.
5. The notice of hearing shall be published once not less than twenty thirty days before the date set for hearing and shall advise all interested persons of the opportunity to submit written comments and to appear at the public hearing to offer oral testimony.
6. The period for public comment on the proposed adoption, amendment, or repeal of any regulation rule under this

article shall close at the end of the public hearing, unless extended by the commission.

7. The commission shall consider all written comments and oral testimony received before final adoption, amendment, or repeal of any regulation rule under this article.

History: Effective August 1, 1980; *Amended effective June 1, 1983.*
Amended —

General Authority
NDCC 28-32-02,
38-14.1-03

Law Implemented
NDCC 28-32-02,
38-14.1-34,
38-14.1-41

69-05.2-01-04. NOTICE OF CITIZEN SUITS.

1. A person who intends to initiate a civil action on one's own behalf under North Dakota Century Code section 38-14.1-40 shall give notice of intent to do so.
2. Notice shall be given by certified mail to the commission.
3. Notice shall be given by certified mail to the alleged violator, if the complaint alleges a violation of North Dakota Century Code chapter 38-14.1, this article, a permit condition, or any orders issued by the commission.
4. Service of notice under this section is complete upon mailing to the last known address of the person being notified.
5. A person giving notice regarding an alleged violation shall state, to the extent known:
 - a. Sufficient information to identify the provision of North Dakota Century Code chapter 38-14.1, this article, a permit or order allegedly violated.
 - b. The act or omission alleged to constitute a violation.
 - c. The name, address, and telephone numbers of the person or persons responsible for the alleged violation.

- d. The date, time, and location of the alleged violation.
 - e. The name, address, and telephone number of the person giving notice.
 - f. The name, address, and telephone number of legal counsel, if any, of the person giving notice.
6. A person giving notice of an alleged failure by the commission to perform a mandatory act or duty under North Dakota Century Code chapter 38-14.1 or this article shall state, to the extent known:
- a. The provision containing the mandatory act or duty allegedly not performed.
 - b. Sufficient information to identify the omission alleged to constitute the failure to perform a mandatory act or duty.
 - c. The name, address, and telephone number of the person giving notice.
 - d. The name, address, and telephone number of legal counsel, if any, of the person giving notice.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-40

69-05.2-01-05. COMPUTATION OF TIME.

1. Except as otherwise provided, computation of time under this article is based on calendar days.
2. In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday on which the commission is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

3. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of prescribed time is seven days or less.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-03

69-05.2-01-06. INTERVENTION.

1. Any person, including any department, agency, or instrumentality of the state, local, or federal government, may petition for leave to intervene at any stage of a proceeding conducted under North Dakota Century Code chapter 38-14.1 or this article.
2. A petitioner for leave to intervene shall incorporate in the petition a statement setting forth the interest of the petitioner and, where required, a showing of why his interest is or may be adversely affected.
3. The commission shall grant intervention where the petitioner:
 - a. Had a statutory right to initiate the proceeding in which he wishes to intervene; or
 - b. Has an interest which is or may be adversely affected by the outcome of the proceeding.
4. If neither subdivision a nor subdivision b of subsection 3 apply, the commission shall consider the following in determining whether intervention is appropriate:
 - a. The nature of the issues;
 - b. The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;
 - c. The ability of the petitioner to present relevant evidence and argument; and
 - d. The effect of intervention on the commission's implementation of its statutory mandate.
5. Any person, including any department, agency, or instrumentality of the state, local, or federal government, granted leave to intervene in a proceeding

may participate in such proceeding as a full party. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be in the discretion of the commission.

History: Effective *June 1, 1980.*

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-03

69-05.2-01-07. PETITIONS FOR AWARD OF COSTS AND EXPENSES - ANSWER - AWARDS - JUDICIAL REVIEW.

1. Any person may file a petition for an award of costs and expenses, including attorneys' fees, reasonably incurred as a result of that person's participation in any administrative proceeding under North Dakota Century Code chapter 38-14.1 or this article, which results in a final order being issued by the commission.
2. The petition for an award of costs and expenses, including attorneys' fees, must be filed with the commission within forty-five days of receipt of such order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.
3. A petition filed under this section shall include the name of the person from whom costs and expenses are sought, and the following shall be submitted in support of the petition:
 - a. An affidavit setting forth in detail all costs and expenses, including attorneys' fees, reasonably incurred for, or in connection with, the person's participation in the proceeding;
 - b. Receipts or other evidence of such costs and expenses; and
 - c. Where attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation, and ability of the individual or individuals performing the services.
4. Any person served with a copy of the petition shall have thirty days from service of the petition within which to file an answer to such petition.

5. Appropriate costs and expenses, including attorneys' fees, may be awarded:

- a. To any person from the permittee if the person initiates any administrative proceedings reviewing enforcement actions, upon a finding that a violation of North Dakota Century Code 38-14.1, this article, or the permit has occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made if the commission determines that the person made a substantial contribution to the full and fair determination of the issues.
- b. To any person, other than a permittee or his representative, from the commission if the person initiates or participates in any proceeding under North Dakota Century Code chapter 38-14.1 or this article upon a finding that the person made a substantial contribution to a full and fair determination of the issues.
- c. To a permittee from the commission when the permittee demonstrates that the commission or its authorized representative issued a cessation order, a notice of violation, or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee.
- d. To a permittee from any person where the permittee demonstrates that the person initiated a proceeding under North Dakota Century Code section 38-14.1-30 or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee.
- e. To the commission where it demonstrates that any person applied for review pursuant to North Dakota Century Code section 38-14.1-30 or that any person participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the government.

6. An award under this section may include:

- a. All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation or participation in a proceeding under North Dakota Century Code 38-14.1 or this article; and

b. All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award.

7. Any person aggrieved by a decision concerning the award of costs and expenses in an administrative proceeding under North Dakota Century Code chapter 38-14.1 or this article shall have the right to judicial review of such decision, pursuant to North Dakota Century Code section 38-14.1-35.

History: Effective *1/1/80*

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-35
NDCC 38-14.1-36

CHAPTER 69-05.2-05
PERMIT APPLICATIONS - GENERAL REQUIREMENTS

Section	
69-05.2-05-01	Permit Application Filing - Completeness Review - Review Period
69-05.2-05-02	Permit Applications - General Requirements for Format and Contents
69-05.2-05-03	Permit Applications - Fees
69-05.2-05-04	Permit Applications - Verification
69-05.2-05-05	Permit Applications - Reapplication for Permit Under Approved State Program
69-05.2-05-06	Permit Applications - Coordination with Requirements Under Other Laws
69-05.2-05-07	Permit Applications - Permit Area Determination - Porcelanite, Sand, and Gravel Borrow Pits
69-05.2-05-08	Permit Applications - Permit Term

69-05.2-05-01. PERMIT APPLICATION FILING - COMPLETENESS REVIEW - REVIEW PERIOD.

1. General. Each operator or permittee who conducts or expects to conduct surface coal mining and reclamation operations shall file a complete application for a permit and shall submit ten copies of the permit application and all required materials to the commission. For purposes of North Dakota Century Code section 38-14.1-18, the time of filing an application for a permit means the date on which the commission notifies the permit applicant that the application is complete.

a. Each operator or permittee who conducts or expects to conduct surface coal mining and reclamation operations shall file a complete application for a permit. For purposes of North Dakota Century Code section 38-14.1-18, the time of filing an application for a permit means the date on which the commission notifies the permit applicant that the application is complete.

b. Each permit applicant shall submit four copies of the complete permit application and all required materials to the commission, except when federal lands are in the proposed permit area. When federal lands are in the proposed permit area three copies shall be submitted to the commission and additional

copies shall be submitted to the office of surface mining reclamation and enforcement, United States department of interior, as required by that office. Each permit applicant shall also submit additional copies or portions of copies to the commission as determined necessary by the commission for review by the reclamation advisory committee.

2. Permit application completeness review. The commission shall review each permit application and determine whether the application is complete and acceptable for further review. The commission shall notify the permit applicant in writing, within thirty days, as to whether the permit application is complete and whether public notice required by North Dakota Century Code section 38-14.1-18 may be initiated or shall specify deficiencies which the permit applicant must correct in order to make the application complete and acceptable for further review. The thirty day completeness review period shall be counted as a part of the one hundred twenty day review period specified in subsection 3 of this section. If the permit application is substantially deficient, the application shall be rejected and returned to the permit applicant.
3. Permit application review period. The commission shall have one hundred twenty days to review and approve or disapprove and notify the permit applicant of the commission's action on each permit application.
 - a. The one hundred twenty day review period shall begin the day after submission of the permit application to the commission.
 - a- b. The one hundred twenty day review period shall be suspended during the period from the permit applicant's receipt of the commission's request for correction of application deficiencies in accordance with the completeness review procedures specified in subsection 2 or for other substantive information requested by the commission as the permit application review progresses, and shall remain suspended until the commission receives the permit applicant's subsequent response. The commission shall advise the permit applicant, in writing, of its decision to suspend the one hundred twenty day review period and shall specify the reason or reasons for the suspension, the number of days remaining in the review period and what measures must be undertaken by the permit applicant for the review period to be continued.
 - b- c. The commission shall not issue a decision on a permit application if an informal conference or

formal hearing has been requested or scheduled in accordance with the procedures of chapter 69-05.2-10 and North Dakota Century Code section 38-14.1-30 and such proceedings cannot be conducted and a decision issued within the scheduled one hundred twenty day review period.

4. Extension of permit application review period. The commission may extend the review period not to exceed an additional one hundred twenty days if:
 - a. The commission requires additional time to conduct an informal conference or a formal hearing or complete the decision process pursuant to such proceedings as provided by chapter 69-05.2-10 and North Dakota Century Code section 38-14.1-30.
 - b. A significant amendment to a previously filed permit application is submitted that in the judgment of the commission requires additional time to review beyond the original one hundred twenty day period. If necessary, the commission may require additional public notification and advisory committee review of the amended permit application in accordance with chapter 69-05.2-10.
5. Review period. Reapplication for a permit under approved state program. For all permit applications containing lands covered under an existing surface coal mining and reclamation operations permit that are submitted to the commission for reapplication under the approved state program in accordance with the requirements of section 69-05.2-05-05, the commission shall have one hundred eighty days to review and approve or disapprove such application in lieu of the one hundred twenty day review schedule specified by subsection 3.

History: Effective August 1, 1980 }
Amended

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-10,
38-14.1-20,
38-14.1-21

69-05.2-05-02. PERMIT APPLICATIONS - GENERAL REQUIREMENTS
FOR FORMAT AND CONTENTS.

1. Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the format required by the commission. Information set forth in the permit application shall be complete, current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the commission.
2. All technical data submitted in the permit application shall be accompanied by:
 - a. Names of persons or organizations which collected and analyzed such data.
 - b. Dates of the collection and analyses.
 - c. Descriptions of methodology used to collect and analyze the data.
3. The permit application shall state the name, address, and position of officials of each private or academic research organization or governmental agency consulted by the permit applicant in preparation of the application for information on land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archeological, cultural, and historic features.
4. The commission may, from time to time, alter the format of the application forms for mining permits, revisions, renewals, bonds, and operation and reclamation plans, and add or delete from the information required for such forms and plans consistent with the purposes of North Dakota Century Code chapter 38-14.1 and this article. Operators shall be given reasonable advance notice of any such changes.
5. Maps and plans - general requirements.
 - a. Maps submitted with permit applications shall be presented in a consolidated format, to the extent possible, and, when appropriate, shall include all the types of information that are set forth on topographic maps of the United States geological survey of 1:24,000 scale series. Maps of the permit area shall be at a scale of 1:4,800 or larger. Maps submitted to depict adjacent and general areas shall clearly show the lands and water within those areas and be in a scale approved by the commission but in no event smaller than 1:24,000.

- b. Change in map scales. The map scales called for in this article may be changed at the request of the permit applicant if such change is deemed proper by the commission.

- c. Each permit application filed with the commission for the purpose of requesting a new permit under North Dakota's approved state program in accordance with section 69-05.2-05-05 shall contain maps which clearly distinguish among each portion of the extended mining plan where surface coal mining operations were or will be conducted according to the following categories:
 - (1) Prior to May 3, 1978.
 - (2) After May 3, 1978, and prior to July 1, 1979.
 - (3) After July 1, 1979, and prior to the estimated date of issuance of the initial permit under the approved state program.
 - (4) After the estimated date of issuance of the initial permit under the approved state program.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-11,
38-14.1-13,
38-14.1-14,
38-14.1-15

69-05.2-05-03. PERMIT APPLICATIONS - FEES. A permit application filing fee shall be included with each application for a permit and shall be computed as follows: a nonrefundable filing fee in the amount of two hundred fifty dollars plus a refundable filing fee in the amount of ten dollars per acre [0.40 hectare] or fraction of an acre [0.40 hectare] for all lands included within the proposed permit area. Permit revision applications that propose additional acreage to be included within the permit area because of incidental boundary changes shall only be subject to the refundable ten dollar per acre [0.40 hectare] filing fee. All other permit revision applications shall not be assessed a filing fee. The ten dollar per acre [0.40 hectare] fee shall be refunded to the permit applicant in the event the permit application or any revisions thereto, for which such fee is required, is rejected by the commission or withdrawn by the permit applicant prior to approval by the commission.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-13

69-05.2-05-04. PERMIT APPLICATIONS - VERIFICATION. Applications for permits and permit revisions shall be verified under oath, by the permit applicant or an authorized representative of the permit applicant, that the information contained in the application is true and correct to the best of the applicant's or representative's information and belief.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-13,
38-14.1-14

69-05.2-05-05. PERMIT APPLICATIONS - REAPPLICATION FOR PERMIT UNDER APPROVED STATE PROGRAM.

1. All permittees who expect to continue to conduct surface coal mining operations on lands within existing permit boundaries after the expiration of eight months from the approval of the state program shall reapply for a new permit for such lands with the commission in accordance with the requirements of North Dakota Century Code section 38-14.1-11 and this article. Such application shall be prepared to cover those lands for which a

permit to conduct surface coal mining and reclamation operations was previously issued by the commission and shall include:

- a. Permit areas from which coal has not been removed but will be surface mined after the expiration of eight months from the approval of the state program.
 - b. Permit areas which are or will be utilized by surface coal mining and reclamation operations incidental to the extraction of the coal from those lands being surface mined after the expiration of eight months from the approval of the state program.
2. A permittee or operator conducting surface coal mining operations, under a permit issued by the commission prior to the approval of the state program, may conduct these previously approved operations beyond the period for reapplication for a new permit under the approved state program as prescribed in North Dakota Century Code section 38-14.1-11 and this section, if:
- a. Timely and complete application for a permit under the state program has been made to the commission in accordance with the provisions of North Dakota Century Code chapter 38-14.1 and this article;
 - b. The commission has not yet rendered an initial decision with respect to such permit application; and
 - c. The operations are conducted in compliance with all terms and conditions of the existing permit, the requirements of North Dakota Century Code chapter 38-14.1, and this article.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-10,
38-14.1-11

69-05.2-05-06. PERMIT APPLICATIONS - COORDINATION WITH REQUIREMENTS UNDER OTHER LAWS. The commission shall, to avoid duplication, coordinate review and issuance of permits for surface coal mining and reclamation operations with:

1. Any other state permit process applicable to the proposed operations, including, at a minimum, permits required under 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 (North Dakota Century Code chapter 61-03).
2. The appropriate state and federal agencies who administer other applicable natural resource and environmental protection acts.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-03,
38-14.1-42

69-05.2-05-07. PERMIT APPLICATIONS - PERMIT AREA DETERMINATION - PORCELANITE, SAND, AND GRAVEL BORROW PITS. In determining whether porcelanite (scoria), sand, and gravel borrow pits may be excluded from the surface coal mining and reclamation operations permit area where such pits are located on lands near areas upon which surface mining activities occur, the commission may consider the following factors, including, but not limited to:

1. Proximity of the pits to the surface coal mining and reclamation operations.
2. If the pits are adjacent to the surface coal mining operation, the acreage [hectarage] affected by the pits and the impact of the pits upon land, air, or water resources.
3. Degree of dependency of the surface coal mining operation on the pits.
4. Degree of control over the operation of the pits by the permittee or operator.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-05-08. PERMIT APPLICATIONS - PERMIT TERM.

1. A permit to conduct surface coal mining and reclamation operations shall be issued for a fixed term not to exceed five years. The permit area shall be no larger than the area from--which--the--permit--applicant--will--remove---coal--during--the--permit--term which can be considered a logical pit sequence and shall also include those lands upon which surface mining activities incidental to the extraction of coal occur during the permit term. The coal removal area within the permit area shall be a permit subarea which is no larger than the area from which the permit applicant will remove coal during the permit term. Additional subareas of the permit area shall be approved for coal removal only by obtaining a permit revision pursuant to section 69-05.2-11-02.
2. Upon expiration of the permit term, all lands within the permit area where surface coal mining and reclamation operations are not complete shall be successively renewed in accordance with the permit renewal requirements of section 69-05.2-11-03 until the final performance bond release criteria of section 69-05.2-12-11 have been met.
3. A permit term for a fixed period greater than five years may be approved if:
 - a. The permit applicant demonstrates that a specified longer term and a larger permit area are needed to give the permit applicant the ability to remove enough coal and to carry out activities incidental to coal removal so that necessary financing for equipment and the opening of the operation can be obtained, and this need is verified, in writing, by the permit applicant's proposed source for the financing; and
 - b. The permit application is accurate and complete for the specified longer term.

History: Effective August 1, 1980;
Amended

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-12

CHAPTER 69-05.2-06
PERMIT APPLICATIONS - REQUIREMENTS FOR
LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION

Section	
69-05.2-06-01	Permit Applications - Identification of Interests
69-05.2-06-02	Permit Applications - Compliance Information
69-05.2-06-03	Permit Applications - Right of Entry and Operation Information
69-05.2-06-04	Permit Applications - Identification of Other Licenses and Permits
69-05.2-06-05	Permit Applications - Relationship to Areas Designated Unsuitable for Mining

69-05.2-06-01. PERMIT APPLICATIONS - IDENTIFICATION OF INTERESTS. In addition to the applicable requirements of subsection 1 of North Dakota Century Code section 38-14.1-14, each permit application shall contain the following:

1. ~~Each--permit--application--shall--contain--the~~ The names and addresses of the owner of record of all surface areas and coal subsurface rights contiguous to any part of the proposed permit area extending to a distance of one-fourth quarter mile [402.33 meters] from the proposed permit boundary.
2. ~~Each--permit--application--shall--contain--the~~ The name of the proposed mine and the mine safety and health administration identification number for the mine and ~~all--sections,--if--any.~~
3. ~~Each--permit--application--shall--contain--a~~ A statement of all lands, interests in lands, options, or pending bids on interests held or made by the permit applicant for lands which are contiguous to the area to be covered by the permit extending to a distance of one-fourth mile [402.33 meters] from the proposed permit boundary.
4. ~~Each--permit--application--shall--contain--the--names--under--which--the--permit--applicant,--partner,--or--principal--shareholder--previously--operated--a--surface--coal--mining--operation--in--any--state--within--the--five--years--preceding--the--date--of--permit--application--~~

History: Effective August 1, 1980;
Amended

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-06-02. PERMIT APPLICATIONS - COMPLIANCE INFORMATION. In addition to the applicable requirements of subsection 1 of North Dakota Century Code section 38-14.1-14, each Each permit application shall contain:

1. A statement of any current or previous coal mining permits in any-state North Dakota held by the permit applicant subsequent to 1970 and by any person identified in paragraph 3 of subdivision e of subsection 1 of North Dakota Century Code section 38-14.1-14 ~~subsection-4-of-section-69-05-2-06-01~~, and of any pending permit application to conduct surface coal mining operations in any--state North Dakota. The information shall be listed by permit and each pending or permit application number and--shall--identify--the regulatory--authority for each of those coal mining operations.
2. The explanation required by subdivision h of subsection 1 of North Dakota Century Code section 38-14.1-14 shall include:
 - a. Identification number and date of issuance of the permit or date and amount of bond or similar security.
 - b. Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action.
 - c. The current status of the permit, bond, or similar security involved.
 - d. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture.
 - e. The current status of these proceedings.
3. ~~A schedule listing each violation notice received by the permit applicant in any state in connection with any surface coal mining operation during the three-year period prior to the date of application, for violations of any law, rule, or regulation of the United States, or of any state law, rule, or regulation enacted pursuant to federal law, rule, or regulation, or of any provision of the Surface Mining Control and Reclamation Act of 1977--{Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201, et seq.}--pertaining to air or water environmental protection.~~
4. 3. The A statement regarding each violation notice listed under subdivision g of subsection 1 of North Dakota

Century Code section 38-14.1-14 shall include subsection-3;-including:

- a. The date of issuance and identity of the issuing regulatory authority, department, or agency.
- b. A brief description of the particular violation alleged in the notice.
- c. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the violations.
- d. The current status of the proceedings and of the violation notice.
- e. The actions, if any, taken by the permit applicant to abate the violation.
- f. The final resolution of each violation notice, if any.

5. ~~A listing, as a part of the schedule required by subsection 3, of any determinations made by a state or federal regulatory authority having jurisdiction over surface coal mining and reclamation operations wherein the permit applicant was found to have engaged in a demonstrated pattern of willful violations of such nature and duration that result in irreparable damage to the environment as to indicate an intent not to comply with the provisions of the applicable state or federal surface coal mining and reclamation law.~~

History: Effective August 1, 1980; *Amended 1980*
Amended

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-06-03. PERMIT APPLICATIONS - RIGHT OF ENTRY AND OPERATION INFORMATION.

~~1. Each permit application shall contain certified copies of the documents upon which the permit applicant bases the applicant's legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation.~~

- 2- In addition to the requirements of subdivision k of subsection 1 of North Dakota Century Code section 38-14.1-14, the The permit application shall also contain a narrative and supporting certified copies of the appropriate documents which demonstrate that the permit applicant has complied with the requirements of the Surface Owner Protection Act, North Dakota Century Code chapter 38-18.

History: Effective August 1, 1980; *amended by rule - prom. 1, 1980*
Amended

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-06-04. PERMIT APPLICATIONS - IDENTIFICATION OF OTHER LICENSES AND PERMITS. Each permit application shall contain a list of all other licenses and permits needed by the permit applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

1. Type of permit or license.
2. Name and address of issuing authority.
3. Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses.
4. If a decision has been made, the date of approval or disapproval by each issuing authority.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-06-05. PERMIT APPLICATIONS - RELATIONSHIP TO AREAS DESIGNATED UNSUITABLE FOR MINING.

1. Each permit application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under North Dakota Century Code section 38-14.1-05 and chapter 69-05.2-04 or under study for designation in an administrative proceeding.

2. If a permit applicant claims the exemption in subdivision d of subsection 3 of North Dakota Century Code section 38-14.1-21, the permit application shall contain information supporting the permit applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-05,
38-14.1-14,
38-14.1-21

CHAPTER 69-05.2-07
PERMIT APPLICATIONS - EXTENDED MINING PLAN -
REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

Section	
69-05.2-07-01	Permit Applications - Extended Mining Plan - General Requirements
69-05.2-07-02	Permit Applications - Extended Mining Plan - Copies Required - Amendment
69-05.2-07-03	Permit Applications - Extended Mining Plan - General Map Requirements
69-05.2-07-04	Permit Applications - Extended Mining Plan - General Requirements for Description of Hydrology <u>[Repealed]</u>
69-05.2-07-05	Permit Applications - Extended Mining Plan - Alluvial Valley Floors <u>[Repealed]</u>
69-05.2-07-06	Permit Applications - Extended Mining Plan - Soil Resources Information <u>[Repealed]</u>
69-05.2-07-07	Permit Applications - Extended Mining Plan - Geologic Description <u>[Repealed]</u>
69-05.2-07-08	Permit Applications - Extended Mining Plan - Fish and Wildlife Information <u>[Repealed]</u>

69-05.2-07-01. PERMIT APPLICATIONS - EXTENDED MINING PLAN -
GENERAL REQUIREMENTS.

1--The Each permit application shall contain an extended mining plan identifying the lands subject to surface coal mining operations over the estimated life of the surface coal mining operation. ~~Once an extended mine plan has been filed by a permit applicant for a particular surface coal mining operation, subsequent permit applications for additional subareas within the extended mining plan area need only reference the previously submitted extended plan and incorporate the relevant data categories into the permit application.~~ Extended mining plans submitted for a surface coal mining operation must be complete, accurate, and updated annually in accordance with section 69-05.2-07-02 and ~~the other monitoring requirements of this chapter.~~

2--~~Other terms defined in section 69-05.2-01-02 which relate closely and which shall be considered when preparing an extended mining plan include:~~

a--~~Permit area, which will always be within the extended mining plan area.~~

b:--Affected--area;--which--will--always--be--within--the
permit-area:

c:--Adjacent--area;--which--may--surround--or--extend--beyond
the-affected-area;--permit-area;--or--extended--mining
plan-area:

d:--General--area;--which--will--always--be--limited--to--the
hydrology-of-topographic--and--ground--water--basins
surrounding-the-extended-mining-plan-area-which-will
provide---sufficient---quantities---and---kinds---of
hydrologic--data--for--the--permit-applicant-and-the
commission-to-make-an--assessment;--as--required--by
subdivision-o---of---subsection-1--of--North--Dakota
Century-Code-section--38-14.1-14;--of--the--probable
cumulative--impacts-of-all-anticipated-mining-in-the
extended-mining--plan--area--in--connection--with--a
particular-permit-application:

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-15

69-05.2-07-02. PERMIT APPLICATIONS - EXTENDED MINING PLAN -
COPIES-REQUIRED-- AMENDMENT. Ten-copies-of--the--extended--mining
plan--shall--be--submitted-to-the-commission. The permittee shall
annually advise the commission by the twenty-fifth day of January
of the status of the extended mining plan and shall submit ten two
copies of any amendments or additional data for the plan.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-15

69-05.2-07-03. PERMIT APPLICATIONS - EXTENDED MINING PLAN -
GENERAL MAP REQUIREMENTS. The permit applicant shall provide a
topographic map as a part of the extended mining plan which shall
be at a scale of 1:24,000 with an appropriate contour interval and
must show the following:

1. The scale, date, location, company name, legal
subdivision boundaries, and an appropriate legend.

2. The boundaries of the extended mining plan area and a legal description, to the nearest quarter section, of the lands enclosed by those boundaries.
 3. The size, sequence, and timing of the subareas of the extended mining plan area for which it is anticipated that individual permits for mining will be requested over the estimated total life of the proposed surface mining activities.
 4. ~~The location of state and federal surface and subsurface ownership within the extended mining plan area.~~
 5. ~~The location of structures, wells, springs, streams, natural drainageways, railroads, roads, highways, pipelines, and transmission lines.~~
 6. ~~The location of any drill holes used for collecting geologic and overburden information.~~
 7. ~~The existing land uses within the extended mining plan area.~~
 8. ~~The elevations and locations of existing monitoring stations used to gather data for water quality and quantity in preparation of the extended mining plan.~~
9. 4. The estimated crop lines and recovery lines within the extended mining plan area.

The above information may be contained on one map or on separate maps along with appropriate narratives where necessary.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
 NDCC 38-14.1-03

Law Implemented
 NDCC 38-14.1-14,
 38-14.1-15

69-05.2-07-04. PERMIT APPLICATIONS - EXTENDED MINING PLAN - GENERAL REQUIREMENTS FOR DESCRIPTION OF HYDROLOGY. ~~Repealed~~ *Repealed June 1, 1983*
~~The permit applicant shall provide a description of water quality and quantity of all lands within the extended mining plan area, the adjacent area, and the general area, based on existing data. To the extent that sufficient water quality and quantity data within the extended mining plan area, adjacent area, or general area are not available to describe the characteristics of surface and ground waters in the detail required by sections 69-05.2-08-06 and 69-05.2-08-07, the permit applicant shall submit an extended~~

mining--plan--hydrology--monitoring--program--which--includes--the
proposed:

1--Location-of-all-monitoring-sites:

2--Frequency-of-monitoring-for-each-site:

3--Schedules--for--data--collection--and--submittal--to--the
commission-in-relation-to-the-timeframes-for--initiating
the--surface--coal--mining--operations-in-the-respective
subareas-of-the-extended-mining-plan-area:

4--Monitoring-techniques-and-equipment:

Hydrologic-data-collected-pursuant-to-the-monitoring-program-shall
be-submitted-to-the-commission-on-an-annual-basis--in--accordance
with-the-requirements-of-section-69-05-2-07-02:

History: ~~Effective August 1, 1980.~~
Repealed

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14(1)(o),
38-14.1-15,
38-14.1-27)))

69-05.2-07-05. PERMIT APPLICATIONS - EXTENDED MINING PLAN -
ALLUVIAL VALLEY FLOORS. ~~Repealed~~ For-an-extended--mining--plan
area-that-may-contain-alluvial-valley-floors;-the-permit-applicant
shall-submit-an-estimated-timetable;-as-a-part--of--the--extended
mining--plan;-specifying-when-the-permit-applicant-proposes-to
comply-with-the-provisions-of-section-69-05-2-08-13:

History: ~~Effective August 1, 1980.~~
Repealed

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-15,
38-14.1-21)))

69-05.2-07-06. PERMIT APPLICATIONS - EXTENDED MINING PLAN -
SOIL RESOURCES INFORMATION. ~~Repealed~~ The--permit--applicant
shall-provide-soil-survey-information-for-the-extended-mining-plan
area-to-the-extent-that-it-is-available--from--the--United--States
department--of--agriculture--soil--conservation--service--or--other
sources--The-soil-survey-information-shall-include-the-following:

1--A--map--at--a--scale--of--1:20,000--or--1:15,840--delineating
different--soils--including--a--separate--delineation--of--the
soil--mapping--units--that--are--considered--prime--soils--by
the--soil--conservation--service--

2--Soil--identification--

((History: Effective August 1, 1980.
Repealed

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-15)))

69-05.2-07-07. PERMIT APPLICATIONS - EXTENDED MINING PLAN -
GEOLOGIC DESCRIPTION. ~~Repealed~~ The--permit--applicant--shall
provide--a--description--of--the--geology--within--the--extended--mining
plan--area--based--on--available--data--The--description--shall--include
the--lithologic--characteristics--and--the--thickness--of--each--stratum
encountered--down--to--and--including--the--stratum--immediately--below
the--lowest--coal--seam--to--be--mined--Geologic--cross--sections--may--be
included--as--a--part--of--this--description--

Effective June 1, 1983

((History: Effective August 1, 1980.
Repealed

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-15)))

69-05.2-07-08. PERMIT APPLICATIONS - EXTENDED MINING PLAN -
FISH AND WILDLIFE INFORMATION. ~~Repealed~~ The--permit--applicant
shall--delineate--and--identify--fish--and--wildlife--habitats--within--the
extended--mining--plan--area--on--1:24,000--scale--aerial--photographs--

Effective June 1, 1983

((History: Effective August 1, 1980.
Repealed

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-15)))

CHAPTER 69-05.2-08
PERMIT APPLICATIONS - PERMIT AREA - REQUIREMENTS
FOR INFORMATION ON ENVIRONMENTAL RESOURCES

Section	
69-05.2-08-01	Permit Applications - Permit Area - Environmental Resources Information
69-05.2-08-02	Permit Applications - Permit Area - General Map Requirements
69-05.2-08-03	Permit Applications - Permit Area - Description of the Cultural and Historic Resources
69-05.2-08-04	Permit Applications - Permit Area - Description of Hydrology and Geology - General Requirements
69-05.2-08-05	Permit Applications - Permit Area - Geology Description
69-05.2-08-06	Permit Applications - Permit Area - Ground Water Information
69-05.2-08-07	Permit Applications - Permit Area - Surface Water Information
69-05.2-08-08	Permit Applications - Permit Area - Vegetation and Land Use Information
69-05.2-08-09	Permit Applications - Permit Area - Prime Farmland Investigation <u>and Determination</u>
69-05.2-08-10	Permit Applications - Permit Area - Soil Resources Information
69-05.2-08-11	Permit Applications - Permit Area - Use of Other Suitable Strata
69-05.2-08-12	Permit Applications - Permit Area - Topographic Data
69-05.2-08-13	Permit Applications - Permit Area - Alluvial Valley Floor Determination
69-05.2-08-14	Permit Applications - Permit Area - Alluvial Valley Floor Resources
69-05.2-08-15	Permit Applications - Permit Area - Fish and Wildlife Resources

69-05.2-08-01. PERMIT APPLICATIONS - PERMIT AREA - ENVIRONMENTAL RESOURCES INFORMATION.

1. Each permit application shall, in accordance with the requirements of this chapter, include a description of the premining environmental resources within the proposed permit area and adjacent area that may be affected or impacted by the proposed surface mining activities.

~~1. The description shall identify the size, sequence, and timing of the subareas of the permit area for which it is anticipated that individual surface coal mining and~~

~~reclamation-operations-will-be-initiated-over--the--term
of-the-permit-~~

2. When the proposed permit area contains a logical pit sequence where the coal removal area is larger than that needed for the initial five-year term of the permit, the permit applicant shall identify the size, sequence, and timing for which it is anticipated that individual coal removal subareas will be mined.
- 2- 3. The lands included in the permit application shall be described so that they may be identified and distinguished from other lands (by metes and bounds or standard government land survey descriptions). If government lots are included as a part of a government land survey description, such lots shall be described further by metes and bounds.
- 3- 4. The description permit application shall also identify, by delineation on a 1:24,000 planimetric map, the following information:
 - a. The boundaries of the extended mining plan area.
 - b. The area being considered for permit.
 - c-~~The--size;--sequence;--and-timing-of-the-subareas-of
the-extended--mining--plan--area--for--which--it--is
anticipated--that-individual-permits-for-mining-will
be-requested-over-the-estimated-total--life--of--the
proposed-surface-mining-activities-~~
 - d- c. The boundaries of previously permitted areas.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

~~69-05.2-08-02. PERMIT APPLICATIONS - PERMIT AREA - GENERAL
MAP REQUIREMENTS. The permit application shall include a 1:4,800
planimetric mine map, together with as many separate detail maps
as necessary, to depict the following information regarding the
proposed permit area:~~

1. All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area extending

to a distance of one-fourth mile [402.23 meters] from the proposed permit boundary.

2. The scale, date, location, company name, legal subdivision boundaries, and an appropriate legend.
3. The delineation of the exact area being considered for permit.
4. The locations and elevations of drill holes used for collecting geologic, ground water and overburden information.
5. The location of all buildings on and within one-half mile [804.67 meters] of the proposed permit area, with identification of the current use of the buildings.
6. The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, agricultural drainage tile fields, wells, roads, highways, and railroads.
7. Each public road located in or within one hundred feet [30.48 meters] of the proposed permit area.
8. Each public or private cemetery or Indian burial ground located in or within one hundred feet [30.48 meters] of the proposed permit area.
9. Elevations and locations of monitoring stations used to gather environmental resource data for water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the permit application.
10. Location and extent of known workings of underground mines, including mine openings to the surface within the proposed permit area and adjacent areas.
11. Location and extent of existing or previously surface-mined areas within the proposed permit and adjacent area.
12. Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area.
13. Location, and depth if available, of gas and oil wells within the proposed permit area.

14. The boundaries of any public park within or adjacent to the permit area.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-08-03. PERMIT APPLICATIONS - PERMIT AREA - DESCRIPTION OF THE CULTURAL AND HISTORIC RESOURCES. Each permit application shall include: describe---and---identify---on---an appropriately-sealed-map---the---nature---of---cultural---and---historic resources---and---known---archeological---features---within---the---proposed permit---area---and---adjacent---areas;---The---description---and identification---shall---be---based---on---the---results---of---an---archeological and-historical-survey-conducted---in---accordance---with---the---survey requirements-developed-by-the-state-historical-board:

1. A cultural resource inventory covering the proposed permit and adjacent area conducted in accordance with inventory guidelines developed by the state historic preservation office and the superintendent of the state historical board of the state historic society of North Dakota.
2. An evaluation of all cultural resources which will be affected by any surface coal mining and reclamation operation. The evaluation must determine if the cultural resource is significant in accordance with national register criteria [36 CFR 60.6] and guidelines established by the superintendent of the state historical society of North Dakota.
3. An appropriately scaled map identifying the location of all significant known cultural resources within the proposed permit area and the adjacent area.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
Amended

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14,
38-14.1-21

69-05.2-08-04. PERMIT APPLICATIONS - PERMIT AREA -
DESCRIPTION OF HYDROLOGY AND GEOLOGY - GENERAL REQUIREMENTS.

1. Each permit application shall contain a description of the geology, hydrology, and water quality and quantity of all lands within the proposed permit area, the adjacent area, and the general area. The description shall include information on the characteristics of all surface and ground waters within the general area, and any water which will flow into or receive discharges of water from the general area. The permit shall not be approved by the commission until this information is made available in the permit application.
2. The use of modeling techniques may be included as part of the permit application, but the same surface and ground water information shall be required for each site as when models are not used.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14,
38-14.1-15

69-05.2-08-05. PERMIT APPLICATIONS - PERMIT AREA - GEOLOGY
DESCRIPTION.

1. The description shall include a general statement of the geology within the proposed permit area down to and including the first aquifer to be affected below the lowest coal seam to be mined.
2. Test borings or core samples from the proposed permit area shall be collected and analyzed down to and including the stratum immediately below the lowest coal seam to be mined. The minimum density shall be one drill hole per forty acres [16.19 hectares] or a comparable spacing or as otherwise specified by the commission. Overburden samples are to be taken at five-foot [1.52-meter] intervals and are to be taken dry whenever possible. Both dry and wet samples can be used for analysis. Laboratory analyses shall be made by the methods outlined in United States department of agriculture handbook 525, Laboratory Methods Recommended for Chemical Analyses of Mined Land Spoils and Overburden in Western United States, by Sandoval and Power, or United States department of agriculture handbook 60, Diagnosis and Improvement of Saline and Alkali Soils, by the United States salinity laboratory

staff, both available from the United States government printing office, Washington, D. C. The following information shall be provided:

- a. Location of subsurface water, if encountered.
- b. Logs of drill holes with gamma ray and density logs included as verification showing the lithologic characteristics and thickness of each stratum and each coal seam.
- c. Physical and chemical analyses of each overburden sample taken at five-foot [1.52-meter] intervals within the overburden and the stratum immediately below the lowest coal seam to be mined to identify, at a minimum, those horizons which contain potential toxic-forming materials. The analyses shall include:
 - (1) pH.
 - (2) Sodium adsorption ratio (include calcium, magnesium, and sodium cation concentrations).
 - (3) Electrical conductivity of the saturation extract.
 - (4) Texture (by pipette or hydrometer method). Include percentage breakdown of sand, silt, and clay along with a general description of the physical properties of each stratum within the overburden.
- d. Analyses of the coal seam, including, but not limited to, an analysis of the sodium, ash, British thermal unit, sulfur, and iron sulfide content.
- e. Cross sections sufficient to depict the major subsurface variations within the permit area down to the stratum immediately below the lowest coal seam to be mined. The horizontal scale shall be 1:4,800 and the vertical scale shall be one inch [2.54 centimeters] equals twenty feet [6.10 meters]. To assess the suitability of a pit selected for disposal of refuse, ash and other residue from coal utilization processes, the information presented in this subsection shall extend to a depth to be determined by the commission or to the base of the next confining clay stratum occurring beneath the lowest seam of coal to be mined.
- f. A thickness (isopach) map of the overburden to the top of the deepest seam to be mined. The contour

interval shall be ten feet [3.05 meters] and the horizontal scale shall be 1:4,800.

- g. All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area.
3. If required by the commission, test borings or core samplings shall be collected and analyzed to greater depths within the proposed permit area, or for areas outside the proposed permit area to provide for evaluation of the impact of the proposed activities on the hydrologic balance.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-08-06. PERMIT APPLICATIONS - PERMIT AREA - GROUND WATER INFORMATION.

1. Because water supplies may be affected several miles [kilometers] beyond the mined area, it is necessary to develop an analysis of the ground water hydrology and water resources of the potentially affected area prior to mining. The permit application shall contain a description of the ground water hydrology for the proposed permit area, adjacent area, and general area including:
 - a. A general account of the ground water hydrology (the water resources of the area).
 - b. Known uses of the water in the aquifers and water table and location of all water wells within the proposed permit area, adjacent area, and general area.
 - c. Sufficient information and narratives to adequately describe the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water according to the parameters and in the detail required by the commission. The narrative shall include a discussion of the ground water aquifers and hydrologic functions that are to be addressed in the operations and reclamation plan ground water monitoring plan required by section 69-05.2-09-12 in order to comply with the performance standards of sections 69-05.2-16-13 through 69-05.2-16-15.

d. Contour maps or maps showing the water table or piezometric surface of the water in each aquifer (including waterbearing coal seams) down to the next local aquifer beneath the lowest coal seam to be mined. These maps shall be prepared using a minimum of one data point (a piezometer nest) per four square miles [6.44 square kilometers], unless a greater density is required by the commission. The locations of data points shall be shown on the map and given to the nearest ten acres [4.05 hectares]. The scale of the map shall be 1:24,000. Data accompanying the map or maps should include the lithologic and geophysical (gamma ray and density) logs of the holes in which piezometers are installed, piezometer construction details, and elevations of the water level and land surface to the accuracy necessary for valid analysis of the ground water hydrology of the permit area and the general area. The area covered by the map or maps shall be the permit area, adjacent area, and the general area.

e. Water samples shall be collected from each of the data points for chemical analyses, if possible. The analyses shall include:

- (1) Total dissolved solids in milligrams per liter.
- (2) Hardness in milligrams per liter.
- (3) Sodium in milligrams per liter.
- (4) Iron in milligrams per liter.
- (5) Bicarbonate in milligrams per liter.
- (6) Nitrate in milligrams per liter.
- (7) Sulfate in milligrams per liter.
- (8) Chloride in milligrams per liter.
- (9) pH in standard units.
- (10) Sodium adsorption ratio (include calcium, magnesium, and sodium cation concentrations).
- (11) Electrical conductivity in micro mhos per centimeter.
- (12) Additional parameters which may be required by the commission on a site specific basis.

2. If the proposed permit area contains or is adjacent to an identified alluvial valley floor, the ground water information and data requirements for alluvial valley floors shall be met.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-08-07. PERMIT APPLICATIONS - PERMIT AREA - SURFACE WATER INFORMATION.

1. Surface water information shall be described and identified on an appropriate scale map, including the names and locations of watersheds which will receive water discharges and the location and classification of all streams within the permit area, and general area, as ephemeral, intermittent, or perennial. The description shall also include the location of all surface water bodies such as lakes, ponds, and springs, constructed or natural drains, the location of any water discharge into any surface body of water, and the locations of water supply intakes for current users of surface water flowing into, out of, and within the proposed permit area and general area. Descriptions of surface drainage systems shall be included in sufficient detail to identify the seasonal variations in water quantity and quality within the proposed permit area, adjacent areas, and general areas.
2. Surface water information shall include:
 - a. Minimum, maximum, and average discharge conditions which identify critical low flow and peak discharge rates of streams sufficient to identify seasonal variations.
 - b. Water quality data to identify the characteristics of surface waters in, discharging into, or which will receive flows from surface or ground water from affected areas within the proposed permit area, adjacent areas, and general areas, sufficient to identify seasonal variations, showing:
 - (1) Total dissolved solids in milligrams per liter.
 - (2) Total suspended solids in milligrams per liter.

- (3) Electrical conductivity in micro mhos per centimeter.
- (4) pH in standard units.
- (5) Total iron in milligrams per liter.
- (6) Additional parameters which may be required by the commission on a site specific basis.

c. A complete description of the monitoring procedures used to acquire surface water data including:

- (1) Location of all monitoring sites,
- (2) Frequency of monitoring for each site, and
- (3) Monitoring techniques and equipment utilized.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
 NDCC 38-14.1-03

Law Implemented
 NDCC 38-14.1-14

69-05.2-08-08. PERMIT APPLICATIONS - PERMIT AREA -
 VEGETATION AND LAND USE INFORMATION.

1. The permit application shall contain the following premining vegetation information:
 - a. A map or aerial photograph at a scale of 1:4,800 that delineates the existing major--soil--map--units for--cropland,--hayland,--and--pastureland,--existing range-sites-with-condition-class-for-rangeland,--and existing--vegetative-types-for-woodland-and-fish-and-wildlife--habitat. mapping units within each premining land use. The mapping units used for different land use categories are as follows:
 - (1) For cropland, each major soil type shall be considered a mapping unit.
 - (2) For tame pastureland, each major soil type shall be considered a mapping unit.
 - (3) For native grasslands, each range site shall be considered a mapping unit.

(4) For woodland and fish and wildlife habitat, each plant community within each vegetative type shall be considered a mapping unit.

b. A description of each ~~map--area~~ mapping unit delineated pursuant to subdivision a. This description shall include the following:

(1) The acreage [hectarage] of each ~~map--area~~ mapping unit for each surface owner within the permit area.

(2) A species list of higher plants and identification of any species ~~which--are~~ of rare, or endangered, poisonous, or noxious plants ;--or--key--food--species--for--domestic animals-or-wildlife.

(3) A quantitative assessment of, at a minimum, the following vegetation parameters:

(a) Productivity of on cropland ~~by-major-soil~~ map-unit.

(b) Productivity and ground cover ~~of-hayland and on tame~~ pastureland ~~by-major-soil--map~~ unit.

(c) Productivity and ground cover by important plant species and groups, and United States department of agriculture soil conservation service range condition in percent ~~by--range--site--for-rangeland~~ on native grassland.

(d) Density of trees, shrubs, and half-shrubs and ground cover of herbaceous species vegetation by important plant species and groups ~~by-vegetative-type-for~~ on woodland and fish and wildlife habitat.

c. A narrative describing the nature and variability of the vegetation in each mapping unit and land use category, based on a synthesis and summarization of the data obtained pursuant to this subsection. All data, analyses conducted on the data, and results shall be submitted as part of this discussion.

2. When the methods selected pursuant to subdivision f of subsection 5 6 of section 69-05.2-09-11 require the use of reference areas, the following requirements shall be met:

- a. The number of reference areas proposed shall be sufficient to adequately represent the permit area.
 - b. The location and boundaries of all proposed reference areas shall be located on a map of sufficient scale to accurately show the field location of each reference area. The boundaries of the ~~map--area~~ mapping unit in which the reference area is located shall also be delineated.
 - ~~e. The proposed reference areas shall be located on areas which have been properly managed for the appropriate land use.~~
 - d. c. The permittee shall demonstrate that the proposed reference areas adequately characterize the relevant ~~map--areas~~ mapping units for which they ~~are being proposed~~ propose to represent. This demonstration shall be done according to methods approved by the commission.
3. The commission may grant exception to parts of the map and vegetation data requirements of this section for operations where the extended mine plan is less than one hundred acres [40.5 hectares], if the permit applicant demonstrates to the commission that certain informational requirements of this section are not applicable on a site specific basis.
 4. The permit application shall contain, in addition to the requirements of subdivision a of subsection 2 of North Dakota Century Code section 38-14.1-14, the following:
 - a. A map and supporting narrative of the uses of the land existing at the time of the filing of the permit application. If the premining use of the land was changed within five years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described.
 - b. A narrative of land capability and productivity, which analyzes the land use description under subdivision a in conjunction with other environmental resources information required under this chapter.

5. The permit application shall contain a narrative description which shall include information adequate to predict the potential for reestablishing vegetation on all areas to be disturbed by surface coal mining and reclamation operations.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14,
NDCC 38-14.1-24

69-05.2-08-09. PERMIT APPLICATIONS - PERMIT AREA - PRIME FARMLAND INVESTIGATION AND DETERMINATION.

1. The permit applicant shall conduct a preapplication investigation of the proposed permit area to determine whether lands within such areas may be prime farmland.
2. Land shall not be considered prime farmland where the permit applicant can demonstrate one of the following:
 - a. The land has not been historically used as cropland.
 - b. The slope of the land is ten percent or greater.
 - c. The land is not irrigated or naturally subirrigated, has no developed water supply that is dependable or of adequate quality, and the average annual precipitation is fourteen inches [35.56 centimeters] or less.
 - d. Other factors exist, such as a very rocky surface, or the land is frequently flooded during the growing season, more often than once in two years, and the flooding has reduced crop yields.
 - e. On the basis of a cooperative soil survey of lands within the proposed permit area, there are not any ~~areas---identified---as---prime---soils~~ soil mapping units identified as prime farmland.
 - f. Following a review by the state conservationist, United States department of agriculture soil conservation service, of important farmland inventory maps published by the soil conservation service, or the cooperative soil survey if important farmland inventory maps are not available, by the

state conservationist that there are not any prime farmlands within the proposed permit area.

When an applicant demonstrates one of the above, a request for a negative determination based on that demonstration shall be submitted to the commission with the permit application.

3. If the investigation indicates that the proposed permit area may contain prime soils, the permit applicant shall contact the state conservationist of the United States soil conservation service for a determination in consultation with the commission, if any prime farmland exists in the proposed permit area based on important farmland inventory maps or a cooperative soil survey. If no cooperative soil survey has been made for the lands within the proposed permit area, the permit applicant shall cause such a survey to be made.
 - a. When the state conservationist of the United States soil conservation service identifies prime farmland within the proposed area to be mined, the permit applicant shall submit an application in accordance with section 69-05.2-09-15 for such designated land.
 - b. When the state conservationist of the United States soil conservation service does not identify any prime farmland within the proposed permit area, the permit applicant shall submit a request for negative determination in accordance with subsection 2.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
Amended

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-08-10. PERMIT APPLICATIONS - PERMIT AREA - SOIL RESOURCES INFORMATION. A soil survey shall be submitted for the proposed permit area and shall consist of a map and report prepared by a soil classifier as defined in subsection 28 of North Dakota Century Code section 38-14.1-02.

1. The map shall be made by accepted principles and methods and submitted on a scale of 1:4,800. The map shall show the following:
 - a. The location and the vertical and lateral (areal) extent of the ~~soil--material--and~~ suitable plant growth material (~~first--lift~~) (topsoil) within the

permit area that is considered best for topdressing the area to be reclaimed. ~~Soil--material--and suitable~~ Suitable plant growth material considered best for topdressing is based upon an electrical conductivity of less than two millimhos per centimeter ($EC \times 10^3$), a sodium adsorption ratio of less than four (exchangeable sodium percentage of less than five), a free lime percentage (calcium carbonate equivalent) of less than ten on medium to fine textured soils, and an organic matter percentage of one and one-half or more (unless this organic matter percentage is not available within the permit area). The ~~first--lift~~ topsoil should normally be made up of the dark-colored surface horizon materials.

- b. The location and the vertical and lateral (areal) extent of the remaining ~~soil--material--and suitable~~ plant growth material (~~second--lift~~) (subsoil)[#] within the permit area, based on electrical conductivity of the saturation extract of less than four millimhos per centimeter ($EC \times 10^3$), and sodium adsorption ratios of less than ten (exchangeable sodium percentage of less than twelve).
 - c. The location of any prime farmlands identified by the state conservationist of the soil conservation service within the proposed permit area pursuant to section 69-05.2-08-09.
2. The report shall contain the following:
- a. The results of any chemical and physical analyses made to determine the properties of ~~soil--material~~ and the suitable plant growth material. Textural analyses shall be included for all samples taken.
 - b. The volume of ~~soil--material--and suitable~~ plant growth material (~~first--lift~~) (topsoil) in the permit area by ownership which is considered best for topdressing the area being reclaimed.
 - c. The volume of ~~soil--material--and the remaining~~ suitable plant growth material (~~second--lift~~) (subsoil) in the permit area by ownership.
 - d. The description, classification, and interpretation for use of the soils and suitable plant growth material in the permit area.
3. ~~For--areas--identified--as--prime--farmland--that--will--be--disturbed--by--mining;--the--soil--survey--report--shall--include--a--map--unit--and--representative--soil--profile~~

~~description-for-each--prime--soil--within--the--proposed permit-area-~~

- 4- 3. Laboratory analyses will be made by the methods and procedures outlined in United States department of agriculture handbook 60, Diagnosis and Improvement of Saline and Alkali Soils, by the United States salinity laboratory staff, United States government printing office, Washington, D. C., or by other methods and procedures approved in writing by the commission.
- 5- 4. Prior to a soil classifier beginning work on the required soil survey, a meeting of the soil classifier, the operator, if the operator so desires, and the commission staff shall be held for the purpose of discussing proposed techniques, procedures for sampling and analyses and the area to be surveyed.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-08-11. PERMIT APPLICATIONS - PERMIT AREA - USE OF OTHER SUITABLE STRATA. Where the permit applicant proposes to use other suitable strata as a supplement for suitable plant growth materials or where the commission determines that it is necessary to meet the revegetation requirements, the application shall indicate the areal extent of other suitable strata within the proposed permit area and shall, on a sampling density determined by the commission in consultation with the permit applicant, provide results of the analysis analyses, trials, and tests required under subsection 4 of section 69-05.2-15-02.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-08-12. PERMIT APPLICATIONS - PERMIT AREA - TOPOGRAPHIC DATA. ~~To-determine-the-natural-slopes-of--the--permit area--before--mining;--the--permit--applicant--shall-submit-to-the commission-topographic-maps-with--five-foot--{1.52-meter}--contour intervals;--Sufficient--slope--measurements--shall-be-made-taking~~

~~into-account-natural-variations-in-slope-to--adequately--represent
the-existing-land-surface-configuration-and-reflect-the-geomorphic
differences-of-the-area-to-be-disturbed:---Gross--sections--or--an
area--slope--map-can-be-used-to-comply-with-the-slope-measurements
requirement:---If-cross-sections-are-used;--the--location--of--each
cross--section--submitted--should-be-identified-on-the-topographic
map:~~

1. The permit applicant shall submit to the commission topographic maps with five-foot [1.52-meter] contour intervals which adequately represent the land surface configuration before mining.
2. An area slope map shall be submitted which reflects the geomorphic differences of the areas to be disturbed. The slope percentage categories shall be in three percent intervals, unless otherwise approved by the commission.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended a~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14,
38-14.1-15

~~69-05.2-08-13. PERMIT APPLICATIONS - PERMIT AREA - ALLUVIAL
VALLEY FLOOR DETERMINATION.~~

1. Alluvial valley floor determination.
 - a. Before applying for a permit to conduct surface coal mining and reclamation operations within a valley holding a stream or in a location where the adjacent area includes any stream, the permit applicant shall either affirmatively demonstrate, based on available data, the presence of an alluvial valley floor, or submit to the commission the results of a field investigation of the permit area and adjacent area. The field investigations shall include sufficiently detailed geologic, hydrologic, land use, soils, and vegetation studies on areas required to be investigated by the commission, after consultation with the permit applicant, to enable the commission to make an evaluation regarding the existence of the probable alluvial valley floor in the permit area or adjacent area and to determine which areas, if any, require more detailed study in order to allow the commission to make a final determination regarding the existence of an alluvial valley floor. Studies

performed during the investigation by the permit applicant or subsequent studies as required of the permit applicant by the commission, shall include an appropriate combination, adapted to site-specific conditions, of:

- (1) Mapping of the probable alluvial valley floor including, but not limited to, geologic maps of unconsolidated deposits, delineating the streamlaid deposits, maps of streams; delineation of surface watersheds and directions of shallow ground water flows through and into the unconsolidated deposits, topography showing local and regional terrace levels, and topography of terraces, flood plains, and channels showing surface drainage patterns.
- (2) Mapping of all lands included in the area in accordance with this section and subject to agricultural activities, showing the area in which different types of agricultural lands, such as flood irrigated lands, pasturelands, and undeveloped rangelands exist and accompanied by measurements of vegetation in terms of productivity and type.
- (3) Mapping of all lands that are currently or were historically flood irrigated, showing the location of each diversion structure, ditch, dam and related reservoir, irrigated land, and topography of those lands.
- (4) Documentation that areas identified in this section are, or are not, subirrigated, based on ground water monitoring data, representative water quality, soil moisture measurements, and measurements of rooting depth, soil mottling, and water requirements of vegetation.
- (5) Documentation, based on representative sampling, that areas identified under this subdivision are, or are not, flood irrigable, based on streamflow, water quality, water yield, soils measurements, and topographic characteristics.
- (6) Analysis of a series of aerial photographs, including color infrared imagery flown at a time of year to show any late summer and fall differences between upland and valley floor vegetative growth and of a scale adequate for reconnaissance identification of areas that may be alluvial valley floors.

b. Based on the investigations conducted under subdivision a, the commission shall make a determination of the extent of any alluvial valley floors within the study area and whether any stream in the study area may be excluded from further consideration as lying within an alluvial valley floor. The commission shall determine that an alluvial valley floor exists if it finds that:

- (1) Unconsolidated streamlaid deposits holding streams are present; and
- (2) There is sufficient water to support agricultural activities as evidenced by:
 - (a) The existence of flood irrigation in the area in question or its historical use; or
 - (b) The capability of an area to be flood irrigated, based on streamflow water yield, soils, water quality, and topography; or
 - (c) Subirrigation of the lands in question, derived from the ground water system of the valley floor.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-21

69-05.2-08-14. PERMIT APPLICATIONS - PERMIT AREA - ALLUVIAL VALLEY FLOOR RESOURCES.

1. If land within the proposed permit area or adjacent area is identified as an alluvial valley floor and the proposed mining operation may affect an alluvial valley floor or waters that supply alluvial valley floors, the permit applicant shall submit a complete description of the alluvial valley floor resources and characteristics that provide sufficient baseline data to allow the commission to make a determination of:
 - a. The characteristics of the alluvial valley floor which are necessary to preserve the essential hydrologic functions during and after mining.
 - b. The significance of the area to be affected to agricultural activities.

- c. Whether the operation will cause, or presents an unacceptable risk of causing, material damage to the quantity or quality of surface or ground waters that supply the alluvial valley floor.
 - d. The effectiveness of proposed reclamation with respect to requirements of North Dakota Century Code chapter 38-14.1 and this article.
 - e. Specific environmental monitoring required to measure compliance with chapter 69-05.2-25 during and after mining and reclamation operations.
2. The alluvial valley floor baseline data required to make the determinations listed in section shall include, but not be limited to:
- a. Geologic data, including geologic structure, and surficial geologic maps, and geologic cross sections.
 - b. Soils and vegetation data, including a detailed soil survey and chemical and physical analyses of soils, a vegetation map and narrative descriptions of quantitative and qualitative surveys, and land use data, including an evaluation of crop yields.
 - c. Surveys and data required under this section for areas designated as alluvial valley floors because of their flood irrigation characteristics shall also include, at a minimum, surface hydrologic data, including streamflow, runoff, sediment yield, and water quality analyses describing seasonal variations, field geomorphic surveys and other geomorphic studies .
 - d. Surveys and data required under this section for areas designated as alluvial valley floors because of their subirrigation characteristics, shall also include, at a minimum, geohydrologic data including observation well establishment for purposes of water level measurements, ground water contour maps, testing to determine aquifer characteristics that affect waters supplying the alluvial valley floors, well and spring inventories, and water quality analyses describing seasonal variations, and of the same parameters specified in section 69-05.2-08-05 of overburden to determine the effect of the proposed mining and reclamation operations on water quality and quantity.
 - e. Plans showing how the operation will avoid, during mining and reclamation, interruption, discontinuance or preclusion of farming on the alluvial valley

floors unless the premining land use has been undeveloped rangeland which is not significant to farming and will not materially damage the quantity or quality of water in surface and ground water systems that supply these alluvial valley floors.

- f. Maps showing farms that could be affected by the mining and, if any farm includes an alluvial valley floor, or includes any portion thereof, statements of the type and quantity of agricultural activity performed on the alluvial valley floor and its relationship to the farm's total agricultural activity including an economic analysis.
3. The surveys required by this section should identify those geologic, hydrologic and biologic characteristics of the alluvial valley floor necessary to support the essential hydrologic functions of an alluvial valley floor. Characteristics which support the essential hydrologic functions and which must be evaluated in a complete application include, but are not limited to:
- a. Characteristics supporting the function of collecting water which include, but are not limited to:
 - (1) The amount and rate of runoff and a water balance analysis, with respect to rainfall, evapotranspiration, infiltration, and ground water recharge.
 - (2) The relief, slope, and density of the network of drainage channels.
 - (3) The infiltration, permeability, porosity, and transmissivity of unconsolidated deposits of the valley floor that either constitute the aquifer associated with the stream or lie between the aquifer and the stream.
 - (4) Other factors that affect the interchange of water between surface streams and ground water systems, including the depth to ground water, the direction of ground water flow, the extent to which the stream and associated alluvial ground water aquifers provide recharge to, or are recharged by bedrock aquifers.
 - b. Characteristics supporting the function of storing water which include, but are not limited to:
 - (1) Surface roughness, slope, and vegetation of the channel, flood plain, and low terraces that retard the flow of surface waters.

- (2) Porosity, permeability, water-holding capacity, saturated thickness, and volume of aquifers associated with streams, including alluvial aquifers, perched aquifers, and other water-bearing zones found beneath valley floors.
 - (3) Moisture held in soils or the plant growth medium within the alluvial valley floor, and the physical and chemical properties of the subsoil that provide for sustained vegetation growth or cover during extended periods of low precipitation.
- c. Characteristics supporting the function of regulating the flow of water which include, but are not limited to:
- (1) The geometry and physical character of the valley, expressed in terms of the longitudinal profile and slope of the valley and the channel, the sinuosity of the channel, the cross section, slopes, and proportions of the channels, flood plains, and low terraces, the nature and stability of the streambanks, and the vegetation established in the channels and along the streambanks and flood plains.
 - (2) The nature of surface flows as shown by the frequency and duration of flows of representative magnitude including low flows and floods.
 - (3) The nature of interchange of water between streams, their associated alluvial aquifers and any bedrock aquifers as shown by the rate and amount of water supplied by the stream to associated alluvial and bedrock aquifers (i.e., recharge) and by the rates and amounts of water supplied by aquifers to the stream (i.e., baseflow).
- d. Characteristics which make water available and which include, but are not limited to, the presence of land forms including flood plains and terraces suitable for agricultural activities.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-21

69-05.2-08-15. PERMIT APPLICATIONS - PERMIT AREA - FISH AND WILDLIFE RESOURCES.

1. Each permit application shall contain a description of the fish and wildlife resources and their habitats on the proposed permit area and on adjacent areas where effects on such resources may reasonably be expected to occur. The description shall be based upon inventories of fish and wildlife and their habitats on the permit area and adjacent areas. The habitats shall be delineated on 1:4800 scale aerial photographs.
2. The permit applicant shall determine the scope of work, level of detail and timetable for completion of fish and wildlife inventories in consultation with the commission and the state game and fish department and shall submit for approval by the commission a study plan by which fish and wildlife information will be acquired.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended 12~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14,
38-14.1-24

CHAPTER 69-05.2-09
PERMIT APPLICATIONS - PERMIT AREA - REQUIREMENTS
FOR OPERATION AND RECLAMATION PLANS

Section	
69-05.2-09-01	Permit Applications - Operation Plans - General Requirements
69-05.2-09-02	Permit Applications - Operation Plans - Maps and Plans
69-05.2-09-03	Permit Applications - Operation Plans - Existing Structures
69-05.2-09-04	Permit Applications - Operation Plans - Blasting
69-05.2-09-05	Permit Applications - Operation Plans - Air Pollution Control
69-05.2-09-06	Permit Applications - Operation Plans - Transportation Facilities
69-05.2-09-07	Permit Applications - Operation Plans - Relocation or Use of Public Roads
69-05.2-09-08	Permit Applications - Operation Plans - Protection of Public Parks and <u>Historic Places</u> <u>Significant Cultural Resources</u>
69-05.2-09-09	Permit Applications - Operation Plans - Surface Water Management - Ponds, Impoundments, Banks, Dams, Embankments, Diversions
69-05.2-09-10	Permit Applications - Operation Plans - Surface Mining Near Underground Mining
69-05.2-09-11	Permit Applications - Reclamation Plans - General Requirements
69-05.2-09-12	Permit Applications - Operation and Reclamation Plans - Surface and Ground Water Monitoring for Protection of the Hydrologic Balance
69-05.2-09-13	Permit Applications - Reclamation Plans - Postmining Land Use
69-05.2-09-14	Permit Applications - Reclamation Plans - Disposal of Initial Pit Spoil and Other Excess Spoil
69-05.2-09-15	Permit Applications - Operation and Reclamation Plans - Prime Farmlands
69-05.2-09-16	Permit Applications - Operation and Reclamation Plans - Alluvial Valley Floors
69-05.2-09-17	Permit Applications - Operation and Reclamation Plans - Fish and Wildlife Resources

~~69-05.2-09-01. PERMIT APPLICATIONS - OPERATION PLANS -
GENERAL REQUIREMENTS. Each permit application shall contain a
detailed description of the mining operations proposed to be
conducted during the term of the permit within the proposed permit
area, including, at a minimum, the following:~~

- ~~1. A narrative description of the type and method of coal
mining procedures and proposed engineering techniques,~~

anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of these operations.

2. A plan stating the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres [hectares] of land to be affected for each phase of mining over the total life of the permit.
3. A narrative for each proposed operations plan required by this chapter explaining the plan in detail and the construction, modification, use and maintenance of each mine facility, water and air pollution control facilities or structures, transportation and coal handling facilities, and other structures required for implementing the plans.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-09-02. PERMIT APPLICATIONS - OPERATION PLANS - MAPS AND PLANS. Each permit application shall contain an appropriate combination of 1:4,800 topographic maps, planimetric maps, and plans of the proposed permit area and adjacent areas as follows:

1. The maps shall show the scale, date, boundaries of the permit area, company name, legal subdivision boundaries, and an appropriate legend.
2. The maps and plans shall show the lands proposed to be affected throughout the surface coal mining and reclamation operation and any change in a facility or feature to be caused by the proposed operations, if the existing facility or feature was shown under chapter 69-05.2-08.
3. The boundary of all areas proposed to be affected over the term of the permit according to the sequence of mining and reclamation operations with a description of size and timing of operations for each coal removal subarea.
4. Pit layout and proposed sequence of mining operations, crop line, spoil placement areas, final graded spoil line, highwall areas proposed to be backsloped, and areas proposed for stockpiling suitable plant growth material or other suitable strata.

5. Location of all proposed sedimentation ponds, other water diversion, collection, conveyance, treatment, storage and discharge facilities, identification of permanent water impoundments or stream channel alignments.
6. Location of all coal processing waste dams and embankments in accordance with section 69-05.2-09-09, and fill area for the disposal of initial cut spoil and other excess spoil in accordance with section 69-05.2-09-14 and North Dakota Century Code section 38-14.1-24.
7. Buildings, utility corridors, proposed and existing haul roads, mine railways, and other facilities used to support the surface coal mining and reclamation operation.
8. Each coal storage, cleaning and loading area, coal waste and noncoal waste storage area.
9. Each explosive storage and handling facility.
10. Each air pollution collection and control facility.
11. Each habitat area to be used to protect and enhance fish and wildlife and related environmental values.
12. Each source of waste and each waste disposal facility relating to coal processing or pollution control.
13. Each area of land within the permit area for which a performance bond or other equivalent guarantee will be posted under chapter 69-05.2-12 scheduled according to the proposed sequence of mining and reclamation operations. Include the bond or guarantee amount for each respective area.
14. Maps and plans required under subsections 5, 6, and 12 shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture, except that maps, plans, and cross sections submitted in accordance with section 69-05.2-09-09 may only be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

History: Effective August 1, 1980; ~~Amended~~ *amended effective June 1, 1983;*

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-09-03. PERMIT APPLICATIONS - OPERATION PLANS -
EXISTING STRUCTURES.

1. Each permit application shall contain a description of each existing structure within the proposed permit area or adjacent permit areas that are proposed to be used in connection with or to facilitate the proposed surface coal mining and reclamation operation. The description shall include:
 - a. Location.
 - b. Plans of the structure which describe its current condition.
 - c. Approximate dates on which construction of the existing structure was begun and completed.
 - d. A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards and design requirements of this article and of North Dakota Century Code section 38-14.1-24.
2. An existing structure which does not meet the performance standards of this article and North Dakota Century Code section 38-14.1-24 shall be modified or reconstructed to meet the design standards of this article after approval of the compliance plan required in subsection 3 by the commission as a part of the permit application approval process.
3. Each permit application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:
 - a. Design specifications for the modification or reconstruction of the structure to meet the design and performance standards of this article and North Dakota Century Code section 38-14.1-24.
 - b. A construction schedule which shows dates for beginning and completing interim steps and final reconstruction.
 - c. Provisions for monitoring the structure during and after modification or reconstruction to ensure that

the performance standards of this article and North Dakota Century Code section 38-14.1-24 are met.

- d. A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.
4. An existing structure which meets the performance standards of this article and North Dakota Century Code section 38-14.1-24 but does not meet the design requirements of this article may be exempted from meeting those design requirements by the commission. The commission shall grant this exemption as part of the permit application process after obtaining the information required by this section and after making the finding required by section 69-05.2-10-04.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-09-04. PERMIT APPLICATIONS - OPERATION PLANS - BLASTING. Each permit application shall contain a blasting plan for the proposed permit area, explaining how the permit applicant intends to comply with the requirements of chapter 69-05.2-17 and subsection 4 of North Dakota Century Code section 38-14.1-14 and including the following:

1. Types and approximate amounts of explosives to be used for each type of blasting operation to be conducted. The maximum amount of explosives to be detonated within any eight millisecond period shall be stated.
2. Description of procedures and plans for recording and retention of information on the following during blasting:
 - a. Drilling patterns, including size, number, depths, and spacing of holes.
 - b. Charge and packing of holes.
 - c. Types of fuses and detonation controls.
 - d. Sequence and timing of firing holes.
3. Description of blasting warning and site access control equipment and procedures.

4. Description of types, capabilities, sensitivities, and locations of use of any blast monitoring equipment and procedures proposed to be used.
5. Description of plans for recording and reporting to the commission the results of preblasting surveys, if required.
6. Description of the public notice content, procedure for implementing changes to the public notice, and a listing of landowners, government agencies, and other interested parties that will receive the notices.
7. Description of unavoidable hazardous conditions for which deviations from the blasting schedule will be needed and a general procedure outlining the implementation of an emergency blasting process.
8. A map shall be submitted containing the following:
 - a. Delineation and identification of areas within the proposed pit area in which blasting is prohibited in accordance with section 69-05.2-17-05.
 - b. Delineation of areas within the proposed pit area in which the maximum permissible weight of explosives to be detonated is established by subsection ~~12~~ 10 of section 69-05.2-17-05. The maximum weight of explosives shall be indicated at intervals not exceeding four hundred feet [121.92 meters] and shall continue until the maximum amount of explosives specified in subsection 1 of this section has been reached.

History: Effective August 1, 1980; ~~Amended~~ *amended effective June 1, 1983.*

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-09-05. PERMIT APPLICATIONS - OPERATION PLANS - AIR POLLUTION CONTROL. The permit applicant shall specify the measures to be taken to comply with the air pollution control laws and regulations of the state department of health and any other measures necessary to effectively control wind erosion and attendant air pollution as required by section 69-05.2-13-07.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-09-06. PERMIT APPLICATIONS - OPERATION PLANS - TRANSPORTATION FACILITIES. Each permit application shall contain a detailed description of each road, conveyor, or rail system to be constructed, used, or maintained in connection with the surface coal mining and reclamation operations within the proposed permit area. The description shall include a map, appropriate profiles and cross sections, and the following:

1. Identification of all roads.
2. Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure to meet the design requirements set forth in chapter 69-05.2-24.
3. Specifications for stabilization and erosion prevention for road cut and fill embankments, ditches, drains, and other side slopes.
4. A report of appropriate geotechnical analysis, where approval of the commission is required for alternative specifications, or for steep cut slopes under section 69-05.2-24-03.
5. A description of measures to be taken to obtain approval of the commission for alteration or relocation of a natural drainageway under section 69-05.2-24-04.
6. Each plan shall contain a general operations description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-09-07. PERMIT APPLICATIONS - OPERATION PLANS - RELOCATION OR USE OF PUBLIC ROADS. Each permit application shall describe, with appropriate maps and cross sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under section 69-05.2-04-01, the permit applicant seeks to have the commission approve, with the approval of the proper road authority:

1. Conducting the proposed surface mining activities within one hundred feet [30.48 meters] of the right-of-way line of any public road, except where mine access or haul roads join that right of way; or
2. Relocating a public road.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-09-08. PERMIT APPLICATIONS - OPERATION PLANS - PROTECTION OF PUBLIC PARKS AND HISTORIC--PLACES SIGNIFICANT CULTURAL RESOURCES.

1. For any public parks or historic-places significant cultural resources as determined in section 69-05.2-08-03 that may be adversely affected by the proposed operations, each plan shall describe---the measures-to-be-used-to-minimize-or-prevent-these-impacts and-to-obtain--approval--of--the--commission--and--other agencies---as---required---in--subsection-6--of--section 69-05.2-04-01; provide a description of the type and extent of effect and the measures to be used to minimize or prevent adverse impacts.
2. Each plan shall include a statement that the permittee will inform the superintendent of the state historical board of the state historical society of North Dakota and the commission of any discovery within the permitted area of previously unrecorded archeological, cultural, or historic materials and allow reasonable time for either agency to investigate the discovery.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-09-09. PERMIT APPLICATIONS - OPERATION PLANS -
SURFACE WATER MANAGEMENT - PONDS, IMPOUNDMENTS, BANKS, DAMS,
EMBANKMENTS, AND DIVERSIONS.

1. Each permit application shall include a surface water management plan describing each sedimentation pond, impoundment, dam, embankment, diversion, or other water management structure proposed for the permit area to meet the requirements of chapter 69-05.2-16. Each surface water management plan shall:
 - a. Delineate the watershed boundaries within the proposed permit area, adjacent area, and general area.
 - b. Identify by watershed and delineate each proposed surface mining activity along with an estimate of the affected area associated with each disturbance type.
 - c. Identify the locations of all proposed sedimentation ponds or water impoundments, whether temporary or permanent, and include a plan containing, at a minimum, the following information:
 - (1) A statement of the purpose for which the structure will be used.
 - (2) The name and size in acres [hectares] of the watershed affecting the structure.
 - (3) A statement of the runoff and peak discharge rates attributable to the storm or storms for which the structure is designed, including supporting calculations. Baseflow should be specified if appropriate.
 - (4) A statement of the estimated sediment yield of the contributing watershed calculated according to the requirements of subsection 2 of section 69-05.2-16-09.
 - (5) Proposed operations and maintenance of the structure.
 - (6) Preliminary plan view and cross section of the proposed structure, to an appropriate scale, including anticipated spillway types and relative locations.
 - (7) Graphs showing elevation - area - capacity curves.

- (8) Proposed detention time to meet the criteria of subsection 3 of section 69-05.2-16-09, if applicable, including supporting calculations.
 - (9) A certification statement which includes a schedule setting forth the dates that detailed design plans, as required in subsection 2, will be submitted to the commission, provided that:
 - (a) Detailed design plans for structures scheduled for construction within the first year of the permit term shall be submitted with the permit application.
 - (b) Detailed design plans for a structure shall be approved by the commission prior to construction.
 - (10) Contain any other preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure.
- d. Identify the location of all proposed diversions along with the detailed design specifications, including maps, cross sections and longitudinal profiles which illustrate existing ground surface and proposed grade of all stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with sections 69-05.2-16-06 and 69-05.2-16-07.
 - e. Include a schedule setting forth the approximate dates of construction for each water management structure.
 - f. Identify the location of any proposed temporary coal processing waste disposal areas, along with the design specifications of such structures to meet the requirements set forth in section 69-05.2-19-03.
 - g. Identify the location of any proposed coal processing waste dams and embankments along with the design specifications of such structures to meet the requirements set forth in chapter 69-05.2-20, including at a minimum, the results of a geotechnical investigation of each proposed coal dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

- (1) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.
 - (2) The character of the overburden, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.
 - (3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.
 - (4) Consideration shall be given to the possibility of mudflows or other landslides into the dam, embankment, or impounded material.
- h. Be prepared by, or under the direction of, and certified by a qualified registered professional engineer.
2. Detailed design plans shall be submitted for each structure identified in subdivision c of subsection 1. These design plans shall, at a minimum:
- a. Meet all applicable requirements of sections 69-05.2-16-08, 69-05.2-16-09, 69-05.2-16-10, and 69-05.2-16-12.
 - b. Include, at an appropriate scale, detailed dimensional drawings of the impounding structure including a plan view and cross sections of the length and width of the impounding structure, showing all zones, foundation improvements, drainage provisions, spillways, outlets, instrument locations, and slope protection, in addition to the measurement of the minimum vertical distance between the crest of the impounding structure and the reservoir surface at present and under design storm conditions, sediment or slurry level, water level, and other information pertinent to the impoundment itself.
 - c. Include graphs showing elevation - area - capacity curves.
 - d. Include a description of the spillway features and capacities and calculations used in their determination.

- e. Include the computed minimum factor of safety range for the slope stability of each impounding structure which meets or exceeds the size criteria of subsection ~~17~~ 15 of section 69-05.2-16-09.
- f. Demonstrate that detention time criteria of section 69-05.2-16-09 can be met, if applicable.
- g. Describe any geotechnical investigations, design, and construction requirements of the structure including compaction procedures and testing.
- h. Describe the maintenance and operation requirements of each structure.
- i. Describe the timetable and plans to remove each structure, if appropriate.
- j. Include such additional information as may be necessary to enable the commission to make a complete evaluation of the structure.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
 NDCC 38-14.1-03

Law Implemented
 NDCC 38-14.1-14

~~69-05.2-09-10. PERMIT APPLICATIONS - OPERATION PLANS - SURFACE MINING NEAR UNDERGROUND MINING. For surface mining activities within the proposed permit area to be conducted within five hundred feet [152.04 meters] of an underground mine, the application shall describe the measures to be used to comply with section 69-05.2-13-06.~~

~~History: Effective August 1, 1980.~~

~~General Authority
 NDCC 38-14.1-03~~

~~Law Implemented
 NDCC 38-14.1-14~~

69-05.2-09-11. PERMIT APPLICATIONS - RECLAMATION PLANS - GENERAL REQUIREMENTS. Each permit application shall contain a plan for reclamation of the affected lands within the proposed permit area, showing how the permit applicant will comply with the performance standards of chapters 69-05.2-13 through 69-05.2-26 to include, at a minimum, the following information:

1. A discussion of how the scheduling of each reclamation phase meets the requirements for contemporaneous reclamation as required by subsection 14 of North Dakota Century Code section 38-14.1-24 and section 69-05.2-21-01.
2. A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under chapter 69-05.2-12, with supporting calculations for the estimates.
3. A plan for backfilling, soil stabilization, compacting, and grading, with ~~contour--maps--or--cross---sections~~ postmining topographic maps having five-foot [1.52-meter] contour intervals and area slope maps that show the anticipated final surface configuration of the proposed permit area, in accordance with chapter 69-05.2-21. Cross-sections and volumetric calculations or other appropriate information shall be provided demonstrating that there is sufficient material to achieve the proposed final surface configuration.
4. A plan for the removal, reshaping, and final reclamation of each of the facilities identified and discussed in this chapter.
5. A plan for the removal, storage, and redistribution of suitable plant growth material and other suitable strata to meet the requirements of chapter 69-05.2-15.
6. A plan for revegetation as required in chapter 69-05.2-22, including, but not limited to, descriptions of the:
 - a. Schedule of revegetation.
 - b. Species and amounts per acre [0.40 hectare] of seeds and seedlings to be used.
 - c. Methods to be used in planting and seeding.
 - d. Mulching techniques.
 - e. Irrigation, if appropriate, and pest and disease control measures, if any.
 - f. Methods proposed to be used to determine the success of revegetation as required in section 69-05.2-22-07.
 - g. Soil testing plan for evaluation of the results of suitable plant growth material handling and reclamation procedures related to revegetation.

7. A description of measures to be employed to ensure that all debris, toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with section 69-05.2-19-04 and section 69-05.2-21-03 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials.
8. A description, including appropriate cross sections and maps, of the measures to be used to manage mine openings, and to plug, case, or manage exploration holes, other boreholes, wells, and other openings within the proposed permit area, in accordance with chapter 69-05.2-14.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
 NDCC 38-14.1-03

Law Implemented
 NDCC 38-14.1-14

69-05.2-09-12. PERMIT APPLICATIONS - OPERATION AND RECLAMATION PLANS - SURFACE AND GROUND WATER MONITORING FOR PROTECTION OF THE HYDROLOGIC BALANCE.

1. The description required by subdivision i of subsection 2 of North Dakota Century Code section 38-14.1-14 shall cover the proposed permit area, adjacent area, and general area and shall include:
 - a. Appropriate maps and technical drawings.
 - b. A discussion of the control of surface and ground water drainage into, through, and out of the proposed permit area in accordance with the surface water management requirements of section 69-05.2-09-09 and its relation to the monitoring requirements of this section.
 - c. A plan for the treatment, where required under North Dakota Century Code section 38-14.1-24 and this article, of surface and ground water drainage from the area to be disturbed by the proposed activities, and proposed quantitative limits on pollutants in discharges subject to section 69-05.2-16-04, according to the more stringent of the following:
 - (1) North Dakota Century Code section 38-14.1-24 and this article; or

(2) Other applicable state laws.

d. A plan for the restoration of the approximate recharge capacity of the permit area in accordance with section 69-05.2-16-15.

e. A plan for the collection, recording, and reporting of ground and surface water quality and quantity data, according to sections 69-05.2-16-05, 69-05.2-16-13, and 69-05.2-16-14.

2. The determination required by subdivision o of subsection 1 of North Dakota Century Code section 38-14.1-14 shall include an analysis of the probable hydrologic consequences of the proposed surface mining activities on the extended mine plan area, proposed permit area, adjacent area, and general area with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions and shall make use of the water quality information obtained under sections 69-05.2-08-06 and 69-05.2-08-07.

History: Effective August 1, 1980; ~~Amended~~ *amended effective June 1, 1983.*

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-09-13. PERMIT APPLICATIONS - RECLAMATION PLANS - POSTMINING LAND USE.

1. Each reclamation plan shall contain a postmining land use map and detailed description of the proposed postmining land use which shall explain:

a. How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use.

b. Where rangeland native grassland or tame pastureland is the proposed postmining land use, the detailed management plan to be implemented during the bond liability period. This management plan shall include any plans for livestock grazing of the revegetated lands prior to final bond release.

c. Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under chapter 69-05.2-23.

2. The description shall be accompanied by a copy of the preference statement concerning the proposed use by the legal or equitable owner of record of lands within the proposed permit area and comments by the state and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

~~69-05.2-09-14. PERMIT APPLICATIONS - RECLAMATION PLANS -
DISPOSAL OF INITIAL PIT SPOIL AND OTHER EXCESS SPOIL.~~

- ~~1. Each permit application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal area according to chapter 69-05.2-18. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the site and structures.~~
- ~~2. Each permit application shall contain the results of a geotechnical investigation of the proposed disposal site including the following:
 - ~~a. The character of bedrock and any adverse geologic conditions in the disposal area.~~
 - ~~b. A survey identifying all springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the disposal site.~~
 - ~~c. A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations.~~
 - ~~d. A stability analysis including, but not limited to, strength parameters, pore pressures, and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods. The stability analysis may be waived by the commission, following analysis of the results of the geotechnical investigation~~~~

provisions in paragraphs a, b and c, if it is found that:

- (1) No adverse geologic conditions exist in the disposal area.
- (2) There are no springs, seepage, or ground water flow in the area of the disposal site.
- (3) There is no potential for subsidence of subsurface strata due to past and future mining operations.
- (4) The slope of the disposal area does not exceed twenty percent.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-09-15. PERMIT APPLICATIONS - OPERATION AND RECLAMATION PLANS - PRIME FARMLANDS. If land to be mined within the proposed permit area is identified as prime farmland under section 69-05.2-08-09, the permit applicant shall submit a plan for the mining and restoration of the land in accordance with the performance standards of chapter 69-05.2-26 which shall contain, at a minimum:

1. The cooperative soil survey that identified the prime farmland including soil mapping unit and representative soil profile descriptions for each prime farmland soil mapping unit.
- 1- 2. The proposed method and type of equipment to be used for removal, storage, and replacement of the suitable soil plant growth materials.
- 2- 3. The location of areas to be used for the separate stockpiling of the suitable soil plant growth materials and plans for soil stabilization before redistribution.
- 3- 4. A The postmining topographic map showing the areas where suitable plant growth material from prime farmland will be respread.
- 4- 5. If applicable, documentation such as agricultural school studies or other scientific data from comparable areas, that supports the use of other suitable strata, instead of the A, B, or C soil horizon, to obtain on the

restored area equivalent or higher levels of yield productivity as nonmined prime farmlands in the surrounding area under equivalent levels of management.

- 5- 6. Plans for seeding or cropping the final-graded-disturbed land area to be reestablished as prime farmland and the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime, during the period from completion of regrading until release of the performance bond or equivalent guarantee under chapter 69-05.2-12. Proper adjustments for seasons must be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions.
- 6- 7. Available agricultural school studies or other scientific data for areas with comparable soils, climate, and management (including water management) that affirmatively demonstrate that the proposed method of reclamation will achieve, within a reasonable time, equivalent or higher levels of yield productivity after mining as existed before mining.

~~7--Consultation--with--the--United--States--soil--conservation service--Before--any--permit--is--issued--for--areas--that include--prime--farmlands;--the--commission--shall--consult with--the--state--conservationist--of--the--United--States--soil conservation--service---The--state--conservationist--shall provide--for--review--and--comment--of--the--proposed--method--of soil--reconstruction--in--the--plan--submitted--under--this section---If--the--state--conservationist--considers--those methods--to--be--inadequate;--the--state--conservationist shall--suggest--revisions--resulting--in--more--complete--and adequate--reconstruction-~~

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-09-16. PERMIT APPLICATIONS - OPERATION AND RECLAMATION PLANS - ALLUVIAL VALLEY FLOORS. Each permit application shall contain operation and reclamation plans for those lands within the proposed permit area or adjacent area that have been identified as an alluvial valley floor. The plans shall contain a complete description of the mining and reclamation procedures that will protect or restore the alluvial valley floor characteristics or essential hydrologic functions identified

pursuant to section 69-05.2-08-14 and shall meet the performance standards of chapter 69-05.2-25. Additionally, an alluvial valley floor monitoring program shall be submitted pursuant to section 69-05.2-25-03 designed to collect sufficient information to demonstrate compliance with the approved operation and reclamation plans ~~and the performance standards of chapter 69-05.2-25~~. The proposed operation and reclamation plans, together with other relevant information, will be used by the commission as a basis for approval or denial of a permit within or adjacent to an alluvial valley floor.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

69-05.2-09-17. PERMIT APPLICATIONS - OPERATION AND RECLAMATION PLANS - FISH AND WILDLIFE RESOURCES.

1. Each permit application shall contain a fish and wildlife management plan for the proposed permit area and adjacent areas where impacts could reasonably be expected to occur. The plan shall contain a description of the mining and reclamation procedures to be used to comply with section 69-05.2-13-08 ~~including plans whereby selected indicator species of fish and wildlife are monitored to assess the effects of surface mining on fish and wildlife resources. Species to be monitored shall be selected by the permit applicant in consultation with the commission and the state game and fish department.~~
2. Each permit application shall contain a fish and wildlife monitoring plan whereby selected indicator species of fish and wildlife are monitored to assess the effects of surface mining on fish and wildlife resources. Species to be monitored shall be selected by the permit applicant in consultation with the commission and the state game and fish department.

2- 3. Results from implementing the fish and wildlife management plan;--including--information--gathered--in monitoring--selected--species; and data derived from the fish and wildlife monitoring plan for the calendar year shall be reported to the commission annually by February fifteenth every year.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
Amended

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14,
38-14.1-24

CHAPTER 69-05.2-10
PERMIT APPLICATIONS - REVIEW, PUBLIC PARTICIPATION,
AND APPROVAL OR DISAPPROVAL

Section	
69-05.2-10-01	Permit Applications - Public Notices of Filing
69-05.2-10-02	Permit Applications - Informal Conferences
69-05.2-10-03	Permit Applications - Criteria for Permit Approval or Denial
69-05.2-10-04	Permit Applications - Criteria for Permit Approval or Denial - Existing Structures
69-05.2-10-05	Permit Applications - Approval or Denial Actions
69-05.2-10-06	Permit Applications - Permit Approval for Surface Disturbances Over Federal Mineral Estates

69-05.2-10-01. PERMIT APPLICATIONS - PUBLIC NOTICES OF
FILING.

1. The permit application advertisement required by North Dakota Century Code section 38-14.1-18 shall also include:
 - a. The name and business address of the permit applicant.
 - b. A map or description which shall:
 - (1) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area.
 - (2) Clearly show or describe the exact location and boundaries of the proposed permit area.
 - (3) State the name of the United States geological survey 7.5-minute quadrangle map which contains the area shown or described.
 - (4) If a map is used, indicate the north point.
 - (5) State the name of the owner or owners of record of surface rights and coal mineral rights within the boundaries of the proposed permit area.

- c. The address of the commission, to whom written comments, objections, or requests for informal conferences on the permit application may be submitted.
- d. If an applicant seeks a permit to conduct surface coal mining operations within one hundred feet [30.48 meters] of the outside right of way of a public road or to relocate a public road, a concise statement describing the public road, the particular part to be relocated, if applicable, where the relocation is to occur, and the duration of the relocation.
2. The commission shall distribute copies appropriate portions of the permit application and---supporting materials to the state advisory committee specified in subsection 2 of North Dakota Century Code section 38-14.1-21 formed to aid the commission in evaluating the operations and reclamation plan. Members of the advisory committee shall forward their evaluation of the plan to the commission within forty-five days of receipt.
3. If the permit application contains prime farmlands that will be mined, the commission shall furnish the state conservationist of the United States soil conservation service with the portion of the permit application that pertains to the prime farmland reclamation plan. The state conservationist shall provide review and comment on the proposed method of soil reconstruction in the plan submitted under section 69-05.2-09-15. If the state conservationist considers those methods to be inadequate, the state conservationist shall suggest revisions resulting in more complete and adequate reconstruction.
- 3- 4. The permit applicant shall make a copy of the complete application for a permit available for the public to inspect and copy by filing a copy of the application submitted to the commission with the county auditor in the county where the mining is proposed to occur. The permit applicant shall file the copy of the permit application by the first date of the newspaper advertisement of the application. The applicant shall file any subsequent changes to the permit application at the same time they are submitted to the commission.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~ *2*

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-18

69-05.2-10-02. PERMIT APPLICATIONS - INFORMAL CONFERENCES.

1. A request for an informal conference pursuant to subsection 5 of North Dakota Century Code section 38-14.1-18 shall be in writing and shall:
 - a. Briefly summarize the issues to be raised by the requestor at the conference.
 - b. State whether the requestor desires to have the conference conducted in the locality of the proposed mining operations.
2. The commission shall appoint one or more hearing examiners to preside at informal conferences on permit applications held pursuant to this section. No commissioner shall preside at such informal conference. Hearing examiners appointed under this section shall have the authority delegated under section 69-02-04-07.
3. Informal conferences held in accordance with this section may be used by the commission as the public hearing opportunity required under section 69-05.2-04-01 on proposed uses or relocation of public roads.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-18

69-05.2-10-03. PERMIT APPLICATIONS - CRITERIA FOR PERMIT APPROVAL OR DENIAL.

1. If the commission determines from either the schedule submitted as part of the permit application or from other available information, that any surface coal mining operation owned or controlled by the permit applicant is currently in violation of any law, or rule ; ~~or-regulation~~ of this state, or of any law, or rule ; ~~or-regulation~~ in this state enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection or surface coal mining and reclamation, the commission shall require the permit applicant, before the issuance of the permit, to either:
 - a. Submit to the commission proof which is satisfactory to the regulatory authority, department, or agency which has jurisdiction over such violation, that the violation:

- (1) Has been corrected; or
 - (2) Is in the process of being corrected; or
- b. Establish to the commission that the permit applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. If the administrative or judicial hearing authority either denies a stay applied for in the appeal or affirms the violation, then any surface coal mining operations being conducted under permit issued according to this section shall be immediately terminated, unless and until the provisions of subdivision a are satisfied.
2. Before any final determination by the commission that the permit applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of North Dakota Century Code chapter 38-14.1 of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of North Dakota Century Code chapter 38-14.1, the permit applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination. Such hearing shall be conducted pursuant to North Dakota Century Code section 38-14.1-30.
3. In addition to the requirements of subsection 3 of North Dakota Century Code section 38-14.1-21, no No permit application shall be approved, unless the application affirmatively demonstrates and the commission finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval and made available to the permit applicant, that:
- a. The proposed permit area is not on any lands subject to the prohibitions or limitations of North Dakota Century Code section 38-14.1-07 or such permit areas have met the permit application review procedures of section 69-05.2-04-01.
 - b. For alluvial valley floors:
 - (1) The permit applicant has;~~with respect to alluvial valley floors~~ obtained either a an alluvial valley floor negative determination or if the proposed permit area or adjacent area contains lands identified as an alluvial valley floor:

- {1} (a) The proposed operations would be conducted in accordance with chapter 69-05.2-25 and all other applicable requirements of North Dakota Century Code chapter 38-14.1.
- {2} (b) Any change in the land use of the lands covered by the proposed permit area from its premining use in or adjacent to alluvial valley floors will not interfere with or preclude the reestablishment of the essential hydrologic functions of the alluvial valley floor.
- {3} (2) The significance of the impact of the proposed operations on farming will be based on the relative importance of the vegetation and water of the developed grazed or hayed alluvial valley floor area to the farm's production, or any more stringent criteria established by the commission as suitable for site-specific protection of agricultural activities in alluvial valley floors.
- {4} (3) Criteria for determining whether a surface coal mining operation will materially damage the quantity or quality of waters shall include, but are not limited to:

 - (a) Potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor, as measured by specific conductance in millimhos, to levels above the threshold value at which crop yields decrease, based on crop salt tolerance research studies approved by the commission, unless the permit applicant demonstrates compliance with subdivision e of subsection 3 of North Dakota Century Code section 38-14.1-21.
 - (b) Potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor in excess of the threshold value at which crop yields decrease shall not be allowed unless the permit applicant demonstrates, through testing related to the production of crops grown in the locality, that the proposed operations will not cause increases in total dissolved solids that will result in crop yield decreases.

- (c) For types of vegetation specified by the commission and not listed in approved crop tolerance research studies, a consideration shall be made of any observed correlation between total dissolved solid concentrations in water and crop yield declines, taking into account the extent of the correlation.
 - (d) Potential increases in the average depth to water saturated zones (during the growing season) located within the root zone of the alluvial valley floor that would reduce the amount of subirrigated land compared to premining conditions.
 - (e) Potential decreases in surface flows that would reduce the amount of irrigable land compared to premining conditions.
 - (f) Potential changes in the surface or ground water systems that reduce the area available to agriculture as a result of flooding or increased saturation of the root zone.
- {5} (4) For the purposes of this subsection, a farm is one or more land units on which agricultural activities are conducted. A farm is generally considered to be the combination of land units with acreage [hectarage] and boundaries in existence prior to July 1, 1979, or, if established after July 1, 1979, with those boundaries based on enhancement of the farm's agricultural productivity and not related to surface coal mining operations.
- c. The permit applicant has, with respect to prime farmland obtained either a negative determination or if the proposed permit area contains prime farmlands:
- (1) The proposed postmining land use of these prime farmlands will be cropland.
 - (2) The permit incorporates as specific conditions the contents of the plan submitted under section 69-05.2-09-15 after consideration of any revisions to that plan suggested by the United States soil conservation service under subsection 6 3 of section 69-05-2-09-15 69-05.2-10-01.

- (3) The proposed operations will be conducted in compliance with the requirements of chapter 69-05.2-26 and other environmental protection performance and reclamation standards for mining required by this article and North Dakota Century Code chapter 38-14.1.
 - d. The surface coal mining and reclamation operations will not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats.
 - e. The permit applicant has submitted proof that all reclamation fees required by 30 CFR subchapter R have been paid.
4. If the commission finds that surface coal mining and reclamation operations may adversely affect any publicly owned park or places included on the state historic sites registry or the national register of historic places, the commission may make such changes in the permit as it may deem necessary to avoid the adverse affect. Surface coal mining and reclamation operations that may adversely affect such parks or historic sites shall not be approved unless the federal, state, or local governmental agency with jurisdiction over the park or historic site agrees, in writing, that mining may be permitted.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
Amended 2

General Authority
NDCC 38-14.1-03 :

Law Implemented
NDCC 38-14.1-21

~~69-05.2-10-04. PERMIT APPLICATIONS - CRITERIA FOR PERMIT APPROVAL OR DENIAL - EXISTING STRUCTURES.~~

1. No application for a permit which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the permit applicant demonstrates and the commission finds in writing on the basis of information set forth in the complete application that:
 - a. If the permit applicant proposes to use an existing structure in accordance with the exemption provided in subsection 4 of section 69-05.2-09-03:

69-05.2-10-05. PERMIT APPLICATIONS - APPROVAL OR DENIAL ACTIONS. The commission shall approve, require modification of, or deny all applications for permits according to the following:

1. The commission shall not approve or disapprove a permit application prior to the expiration of the thirty-day period for requesting an informal conference or the filing of written comments or objections following the last publication of the public notice required by North Dakota Century Code section 38-14.1-18.
2. If no informal conference has been held in accordance with North Dakota Century Code section 38-14.1-19, the commission shall approve, require modification of, or deny all applications for permits within the review period specified in section 69-05.2-05-01.
3. If a permit application is approved, the permit issued by the commission shall contain the following specific conditions:
 - a. The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:
 - (1) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance.
 - (2) Immediate implementation of measures necessary to comply.
 - (3) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.
 - b. The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by North Dakota Century Code chapter 38-14.1 and this article and which prevents violation of any other applicable law.
 - c. The permittee shall conduct its operations:
 - (1) In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and

- (2) Utilizing any methods specified in the permit by the commission in approving alternative methods of compliance with the performance standards of North Dakota Century Code section 38-14.1-24 and this article, in accordance with the provisions of North Dakota Century Code chapter 38-14.1 and this article.
4. Upon the approval of a permit application, the commission shall publish notice of the decision in the official county newspapers and in daily newspapers of general circulation in the area of the proposed surface coal mining and reclamation operations. The publication shall provide a summary of the decision and notice that any person with an interest which is or may be adversely affected may request and initiate formal hearing procedures on the decision ~~to issue~~ issuing the permit and may request temporary relief from the issuance of the permit within thirty days of the publication of the notice. ~~The permit shall not be issued until this thirty-day period has elapsed or until a decision has been issued after formal hearing.~~
5. At the time of publication of the decision required by subsection 3 4, the commission shall:
- a. Provide copies of all commission findings, decisions, and orders on a permit application to:
- (1) Each person and government official who filed a written objection or comment with respect to the permit application.
 - (2) Each reclamation advisory committee member.
 - (3) The ~~regional director of the~~ office of surface mining reclamation and enforcement, United States department of interior together with a copy of the approved permit application materials.
- b. Notify the appropriate government officials in the county in which the area of land to be affected is located that a permit has been approved ~~and will be issued within thirty days~~ and describe the location of the lands.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended a~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-03,
38-14.1-21

69-05.2-10-06. PERMIT APPLICATIONS - PERMIT APPROVAL FOR SURFACE DISTURBANCES OVER FEDERAL MINERAL ESTATES. The commission may approve and issue permits, permit revisions, and permit renewals for surface coal mining and reclamation operations on lands where the surface estate is nonfederal and the mineral estate is federal, provided that:

1. The proposed surface disturbances are planned to support surface coal mining and reclamation operations on adjacent nonfederal lands.
2. The commission consults with ~~the regional director of~~ the office of surface mining reclamation and enforcement, United States department of interior, in order to ensure that actions are not taken which would substantially and adversely affect the federal mineral estate.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-21,
38-14.1-22,
38-14.1-23

CHAPTER 69-05.2-11
PERMIT REVIEWS, REVISIONS, AND RENEWALS - TRANSFER,
SALE, OR ASSIGNMENT OF RIGHTS GRANTED UNDER PERMITS

Section

69-05.2-11-01	Review of Approved Permits
69-05.2-11-02	Permit Revisions
69-05.2-11-03	Permit Renewals - Applications
69-05.2-11-04	Permit Renewals - Approval or Denial
69-05.2-11-05	Permit Renewal - Limitation
69-05.2-11-06	Transfer, Sale, or Assignment of Rights Granted Under Permit
69-05.2-11-07	Successor in Interest to Permittee - New Permit

~~69-05.2-11-01. REVIEW OF APPROVED PERMITS.~~

- ~~1. The commission shall review each permit issued, no less frequently than the permit midterm or every five years, whichever is more frequent.~~
- ~~2. After this review, the commission may, by order, require reasonable revision or modification of the permit provisions to ensure compliance with North Dakota Century Code chapter 38-14.1 and this article.~~
- ~~3. Copies of the decision of the commission shall be sent to the permittee.~~
- ~~4. Any order of the commission requiring revision or modification of permits shall be subject to the provisions for administrative review under North Dakota Century Code section 38-14.1-30 and judicial review under North Dakota Century Code section 38-14.1-35.~~

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-23

69-05.2-11-02. PERMIT REVISIONS.

1. A revision to a permit shall be obtained:
 - a. For changes in the surface coal mining or reclamation operations described in the permit

application and approved under the existing permit, when such changes constitute a departure from the method of conduct of mining or reclamation operations contemplated by the original permit.

- b. For those new surface coal mining and reclamation operations proposed to be initiated within a permit area that are not specified and approved in the existing permit for such area.
 - c. When a new coal removal subarea of the existing permit area, identified pursuant to subsection 1 of section 69-05.2-08-01, is proposed to be disturbed by mining in accordance with the timing and sequence of subareas approved in the permit. Such a revision shall be considered a significant alteration to the mining and reclamation plan as set forth in subdivision a of subsection 5 of this section.
 - d. For acreage changes proposed to add or delete lands to or from an existing permit area when necessary to accommodate revisions in the surface coal mining and reclamation operations and when submitted in accordance with subsection 2 or subsection 6.
 - e. When required by an order issued under section 69-05.2-11-01.
 - f. In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued.
 - g. When an extension of time is requested pursuant to subdivision a of subsection 3 of North Dakota Century Code section 38-14.1-12.
2. A permittee may request additional acreage [hectarage] to be included in a permit as a part of a permit revision application if in the judgment of the commission, such additional acreage [hectarage] is considered to be an incidental boundary change to the original permit area. Permit revision acreage [hectarage] approved by the commission as an extension to the original permit area because of incidental boundary revisions shall have the same permit term as the original permit.
 3. Any application for revision of a permit shall be filed with the commission and approved before the date on which the permittee expects to change the surface coal mining and reclamation operations or initiate new operations not previously approved.

4. An application for permit revision shall include:
 - a. A narrative describing the proposed permit revision.
 - b. Appropriate maps and legal descriptions, cross sections, graphs, construction details, procedures, revised reclamation plans, and other data which affirmatively demonstrate compliance with the applicable provisions of North Dakota Century Code sections 38-14.1-14, 38-14.1-16, and 38-14.1-24 and this article.
5. The commission shall review and issue a decision on each permit revision application according to the following:
 - a. The commission shall review an application for a permit revision and make a determination on the basis of the existing permit and the environmental resources of the permit area as to whether the proposed permit revision is a significant alteration or addition to the approved operations and reclamation plan. If the permit revision application is found to be a significant alteration in the existing permit, the commission shall notify the permittee in writing of the decision and, at a minimum, the application shall be subject to the notice, hearing, and procedural requirements of North Dakota Century Code sections 38-14.1-18, 38-14.1-19, and 38-14.1-20 and chapter 69-05.2-10.
 - b. Permit revision applications submitted to the commission that are found not to be a significant alteration to an existing permit are not subject to the notice, hearing, and procedural requirements of North Dakota Century Code chapter 38-14.1 and chapter 69-05.2-10.
 - c. The commission shall distribute copies of the permit revision application and supporting materials to the appropriate members of the state advisory committee specified in subsection 2 of North Dakota Century Code section 38-14.1-21 formed to aid the commission in evaluating the operations and reclamation plan. Members of the advisory committee shall forward their evaluation of the plan to the commission within forty-five days of receipt.
 - d. The commission shall, upon the basis of a complete application, approve, require modification of, or disapprove each permit revision application that is found to be a significant alteration in the existing permit, in accordance with the time periods and procedures contained in section 69-05.2-05-01. The director of the reclamation division of the North

Dakota public service commission shall approve, require modification of, or disapprove permit revision applications that do not constitute a significant alteration to a previously approved permit in a timely manner taking into account the complexity of the permit revision application.

- e. No permit revision application shall be approved unless the permittee affirmatively demonstrates and the commission finds in writing that all of the permit approval standards of North Dakota Century Code section 38-14.1-21 and sections 69-05.2-10-03, 69-05.2-10-04, and 69-05.2-10-06 are met in the application.
6. A permittee may file a permit revision application to withdraw any lands previously approved as a part of a permit area, except lands on which surface coal mining and reclamation operations have commenced as a part of the approved permit. The permittee shall demonstrate and certify as a part of the revision application that the proposed acreage [hectarage] to be deleted from the permit area has not been affected by the surface mining activities. Permit revision applications to delete undisturbed acreage [hectarage] from a surface coal mining and reclamation operations permit shall not be subject to the public notice, procedural, and approval or denial standards of North Dakota Century Code chapter 38-14.1 and chapter 69-05.2-10.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
Amended

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-23

69-05.2-11-03. PERMIT RENEWALS - APPLICATIONS.

1. Successive renewal shall be available only for those land areas within the boundaries of the approved permit and for any incidental boundary changes approved by the commission in accordance with the permit revision procedures of section 69-05.2-11-02. Permit areas that meet the final performance bond release requirements of North Dakota Century Code section 38-14.1-17 and section 69-05.2-12-11 and for which the entire performance bond has been released by the commission shall not be renewed upon expiration of the permit term.

2. Renewal applications shall be in a form required by the commission, and shall include, at a minimum, the following:
 - a. A statement of the name and address of the permittee, the term of the renewal requested, the permit number, and a description of any acreage [hectarage] changes or other changes to the matters set forth in the original application for a permit or prior permit renewal.
 - b. A statement of the reasons for requesting a permit renewal.
 - c. A copy of the text of the newspaper notice ~~and proof of publication~~ prepared according to requirements specified in this subsection 3 of this section. Proof of publication of this notice shall be furnished to the commission by the permit applicant after the last required publication date.
 - d. Evidence that liability insurance pursuant to subsection 3 of North Dakota Century Code section 38-14.1-14 and section 69-05.2-12-20 will be provided by the permit applicant for the proposed period of renewal.
 - e. Evidence that the performance bond pursuant to North Dakota Century Code section 38-14.1-16 and chapter 69-05.2-12 in effect for the permit area is of sufficient amount and will continue in full force for the proposed period of renewal.
3. Complete applications for permit renewal shall be subject to the requirements of public notification contained in North Dakota Century Code section 38-14.1-18.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-22

~~69-05.2-11-04. PERMIT RENEWALS - APPROVAL OR DENIAL. The commission shall send copies of its decision to approve or deny a permit renewal to the permit applicant, any persons who filed~~

objections or comments to the renewal, and to any persons who were parties to any informal conference held on the permit renewal.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-22

69-05.2-11-05. PERMIT RENEWAL - LIMITATION. Any surface coal mining permit issued by the commission prior to July 1, 1979, that expires prior to the reapplication requirements of North Dakota Century Code section 38-14.1-11 and section 69-05.2-05-05 may be renewed by the commission subject to the following conditions:

1. The term of the permit renewal for those lands submitted as a part of the state program permit reapplication shall continue only until such time as a new permit under the reapplication requirements of North Dakota Century Code section 38-14.1-11 and section 69-05.2-05-05 is approved by the commission;
2. The permit renewal shall apply only to those lands included within the original permit area and any amendments or revisions thereto; and
3. The surface coal mining operations must be conducted in compliance with North Dakota Century Code chapter 38-14.1 and this article.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-22

69-05.2-11-06. TRANSFER, SALE, OR ASSIGNMENT OF RIGHTS GRANTED UNDER PERMIT.

1. Any person seeking to succeed by transfer, sale, or assignment to the rights granted by a permit issued by the commission shall, prior to the date of such transfer, sale, or assignment:
 - a. Obtain the performance bond coverage of the original permittee by:

- (1) Obtaining transfer of the original bond;
 - (2) Obtaining a written agreement with the original permittee and all subsequent successors in interest, if any, that the bond posted by the original permittee and all successors shall continue in force on all areas affected by the original permittee and all successors, and supplementing such previous bonding with such additional bond as may be required by the commission. If such an agreement is reached, the commission may authorize for each previous successor and the original permittee the release of any remaining amount of bond in excess of that required by the agreement;
 - (3) Providing sufficient bond to cover the original permit in its entirety from inception to completion of reclamation operations; or
 - (4) Such other methods as would provide that reclamation of all areas affected by the original permittee is assured under bonding coverage at least equal to that of the original permittee.
- b. Provide the commission with an application for approval of such proposed transfer, sale, or assignment, including:
- (1) The name and address of the existing permittee;
 - (2) The name and address of the person proposing to succeed by such transfer, sale, or assignment and the name and address of that person's resident agent; or
 - (3) The same information as is required by subdivisions c, e, and h of subsection 1 and subsection 3 of North Dakota Century Code section 38-14.1-14 and sections 69-05.2-06-01, 69-05.2-06-02, and 69-05.2-06-03.
- c. Obtain the written approval of the commission for transfer, sale, or assignment of rights, according to subsection 4 of this section.
2. The person applying for approval of such transfer, sale, or assignment of rights granted by a permit shall advertise the filing of the application in accordance with North Dakota Century Code section 38-14.1-18 and section 69-05.2-10-01, indicating the name and address of the applicant, the original permittee, the number and

particular geographic location of the permit, and the address to which written comments may be sent.

3. Any person whose interests are or may be adversely affected, including, but not limited to, the head of any local or state government agency, may submit written comments on the application for approval to the commission, within the time periods and in accordance with the procedures specified in chapter 69-05.2-10.
4. The commission may, upon the basis of the applicant's compliance with the requirements of subsections 1 and 2, grant written approval for the transfer, sale, or assignment of rights under a permit, if it first finds, in writing, that:
 - a. The person seeking approval will conduct the operations covered by the permit in accordance with the requirements of North Dakota Century Code chapter 38-14.1 and this article.
 - b. The applicant has submitted a performance bond or other guarantee as required by chapter 69-05.2-12 and at least equivalent to the bond or other guarantee of the original permittee.
 - c. The applicant will continue to conduct the operations involved in full compliance with the terms and conditions of the original permit, unless and until it has obtained a new permit in accordance with section 69-05.2-11-07.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-23

69-05.2-11-07. SUCCESSOR IN INTEREST TO PERMITTEE - NEW PERMIT. Any successor in interest seeking to change the mining or reclamation operations, or any of the terms or conditions of the original permit shall, within thirty days after that succession is approved by the commission:

1. Make application for a new permit under chapters 69-05.2-05 through 69-05.2-09, if the change involves conducting operations outside the original permit area;
or

2. With the approval of the commission, make application for a revised permit under section 69-05.2-11-02.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-23

CHAPTER 69-05.2-12
PERFORMANCE BONDS - LIABILITY INSURANCE

Section	
69-05.2-12-01	Performance Bond - General Requirements
69-05.2-12-02	Performance Bond - Form of the Performance Bond
69-05.2-12-03	Performance Bond - Surety Bond
69-05.2-12-04	Performance Bond - Collateral Bond
69-05.2-12-05	Performance Bond - Self-Bond of Permit Applicant <u>[Repealed]</u>
69-05.2-12-06	Performance Bond - Replacement of Bonds
69-05.2-12-07	Performance Bond - Determination of Bond Amount
69-05.2-12-08	Performance Bond - Adjustment of Amount
69-05.2-12-09	Performance Bond - Period of Liability
69-05.2-12-10	Performance Bond - Request for Reduction
69-05.2-12-11	Release of Performance Bond - Criteria for Bond Release
69-05.2-12-12	Release of Performance Bond - Bond Release Application
69-05.2-12-13	Release of Performance Bond - Location of Hearing
69-05.2-12-14	Release of Performance Bond - Commission Inspection - Time of Release
69-05.2-12-15	Release of Performance Bond - Objections to the Decision and Request for a Public Hearing
69-05.2-12-16	Forfeiture of Performance Bond - Procedures
69-05.2-12-17	Forfeiture of Performance Bond - Criteria <u>[Repealed]</u>
69-05.2-12-18	Forfeiture of Performance Bond - Amount of Forfeiture
69-05.2-12-19	Permit Revocation - Forfeiture of Performance Bond <u>[Repealed]</u>
69-05.2-12-20	Liability Insurance

69-05.2-12-01. PERFORMANCE BOND - GENERAL REQUIREMENTS.

1. Applicants for permits, permit revisions, or permit renewals shall review the requirements for performance bond pursuant to section 69-05.2-12-07 considering the proposed surface coal mining and reclamation operations and shall submit ~~evidence--of--sufficient--existing performance-bond-or~~ an estimate of additional bond as is necessary to meet the requirements of this chapter. The estimate shall be for the entire permit area or that

area specified in subsection 5 when incrementing the bond.

2. The commission shall review the estimated amount of performance bond in accordance with section 69-05.2-12-07 and shall either approve or require modification of the amount of bond required. The commission shall notify the applicant of the bond amount determined to be sufficient so the applicant can secure performance bond.

3. Liability on the performance bond shall cover all surface coal mining and reclamation operations pursuant to subsection 3 of North Dakota Century Code section 38-14.1-16 to be conducted within the-permit--area that legally described area attached to each performance bond. The applicant shall attach to each performance bond that legally described area for which the bond is to be subject. The-permit-applicant-may-file-either:

~~a.--The-entire-performance-bond-required-during-the-term of-the-permit;-or~~

~~b.--An-incremental-bond-schedule-and-the-new-performance bond--required--for--the--first--increment--in--the schedule-~~

4. The applicant may file either:

a. The entire performance bond required during the term of the permit; or

b. An incremental bond schedule and the performance bond required for the first increment in the schedule.

~~4- 5. When-the-permittee-elects-to-increment-the-amount-of-the performance-bond-during-the--term--of--the--permit;--the permittee--shall--furnish--a--legal--description--of--the initial-and-successive-incremental--areas--for--bonding; identify--each-area-on-a-mine-map-of-the-proposed-permit area;-and-specify--the--proportion--of--the--total--bond amount--required--for--each--increment:---The--scheduled amount-of-each-performance-bond-increment-shall-be-filed with--the--commission--in--the--sequence--approved--in--the permit-at-least-thirty-days-prior-to-the-commencement-of surface--coal--mining--and-reclamation-operations: When the permittee elects to increment the amount of the performance bond during the term of the permit, the permittee shall:~~

a. Furnish a legal description of the initial and successive incremental areas for bonding.

b. Furnish a schedule for the dates when the successive increments will require bond.

c. Furnish with the application the estimated cost for the commission to complete the reclamation plan pursuant to section 69-05.2-12-07 for the initial increment.

d. Provide to the commission at least 90 days prior to the expected starting date for each successive increment the estimated cost to the commission to complete the reclamation plan pursuant to section 69-05.2-12-07 for each successive increment.

6. The commission shall notify the permittee of the amount of bond determined sufficient within 30 days of the commission receipt of a successive increment bond estimation.

5- 7. The permit applicant or permittee shall not disturb any areas within the permit area or incremental bond area prior to receipt of approval from the commission for the entire bond or incremental bond covering the area to be affected.

History: Effective August 1, 1980; amended effective June 1, 1983.
Amended

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-16

69-05.2-12-02. PERFORMANCE BOND - FORM OF THE PERFORMANCE BOND. The form for the performance bond shall be prescribed by the commission in accordance with this chapter. The commission shall allow for either:

1. A surety bond;
2. A collateral bond; or
3. A-self-bond: A combination of the above.

History: Effective August 1, 1980; amended effective June 1, 1983.
Amended

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-16

69-05.2-12-03. PERFORMANCE BOND - SURETY BOND. Surety bonds shall be subject to the conditions specified in subsections 6 and 7 of North Dakota Century Code section 38-14.1-16 and the following conditions:

isnt one " correct?
if so do change

1. The commission shall not accept the bond of a surety company unless the bond shall not be canceetable cancellable by the surety at any time for any reason including, but not limited to, nonpayment of premium or bankruptcy of the permittee during the period of liability, except as provided in subsection 6 of North Dakota Century Code section 38-14.1-16 and subsection 2 of this section.
2. The notice required by subsection 6 of North Dakota Century Code section 38-14.1-16 shall be given by certified mail to both the permittee and the commission and shall not be effective until received by both the permittee and the commission.
 - a. Cancellation shall not be effective for lands subject to bond coverage which are disturbed after receipt of notice, but prior to approval by the commission.
 - b. The commission may approve such cancellation only if a replacement bond is filed by the permittee prior to the cancellation date, or the permit is revised so that the surface coal mining operations approved under the permit are reduced to the degree necessary to cover all the costs attributable to the completion of reclamation operations on the reduced permit area in accordance with North Dakota Century Code section 38-14.1-16 and the remaining performance bond liability.

~~3- The commission shall not accept surety bonds in excess of ten percent of the surety company's capital surplus account as shown on a balance sheet certified by a certified public accountant.~~

- 4- 3. The bond shall provide that the surety and permittee shall be jointly and severally liable.
- 5- 4. The bond shall provide that:
 - a. The surety will give prompt notice to the permittee and the commission of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business.

- b. In the event the surety becomes unable to fulfill its obligations under the bond for any reason, notice shall be given immediately to the permittee and the commission.
- c. Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license to do business in North Dakota, the permittee shall be deemed to be without bond coverage thereafter, and shall, within thirty days after receiving notice from the commission, substitute for such surety, a good and sufficient corporate surety licensed to do business in North Dakota, or security in the form of a collateral bond as provided in section 69-05.2-12-04 ~~or self-bond as provided in 69-05.2-12-05.~~

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
 NDCC 38-14.1-03

Law Implemented
 NDCC 38-14.1-16

69-05.2-12-04. PERFORMANCE BOND - COLLATERAL BOND.
~~Collateral bonds shall be subject to the following conditions:~~ A collateral bond may be a cash deposit, negotiable bonds of the United States or of North Dakota, negotiable certificates of deposit of any North Dakota bank, or a perfected first-lien security interest on real property. The guarantor of a collateral bond may be the permit applicant or a qualified third party meeting the requirements of this section.

1. Collateral bonds, other than real property collateral, shall be subject to the following conditions:
 - 1- a. The commission shall obtain possession of and keep in custody all collateral deposited by the permit applicant guarantor, until authorized for release or replacement as provided in this chapter and in North Dakota Century Code sections 38-14.1-16 and 38-14.1-17.
 - 2- b. The commission shall value collateral at its market value, not face value.
 - 3- c. The commission shall require that certificates of deposit be assigned to the state of North Dakota, in writing, and upon the books of the bank issuing such certificates.

- 4- d. The commission shall not accept an individual certificate for a denomination in excess of one hundred thousand dollars, or the maximum insurable amount as determined by the federal deposit insurance corporation and the federal savings and loan insurance corporation, whichever is greater.
- 5- e. The commission shall require the banks issuing these certificates to waive all rights of setoff or liens which it has or might have against those certificates.
- 6- f. The commission shall only accept automatically renewable certificates of deposit.
- 7- g. The commission shall require the permit applicant to deposit sufficient amounts of certificates of deposit, to assure that the commission will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond.

2. A real property collateral bond shall be subject to the following conditions:

- a. The permit applicant shall designate the name and address of a suitable agent to receive service of process in the state of North Dakota.
- b. The guarantor shall grant the state of North Dakota a mortgage or security interest in real property located in the state of North Dakota which shall have a fair market value equal to or greater than the obligation created under the indemnity agreement.
- c. The instrument creating such mortgage or security interest shall vest such interest in the state of North Dakota so as to secure the right and power in the commission on behalf of the state of North Dakota to immediately attach said property concurrent with the issuance of a notice of forfeiture under section 69-05.2-12-16, and to sell or otherwise dispose of the property by a public or private transaction, and to establish the commission as the sole secured creditor with respect to such property, so as to assure the commission of a preferred claim over all other creditors in case of bankruptcy.
- d. The property subject to the security interest shall not be subject to any conflicting or prior security interest. The instrument creating the interest in real property shall be recorded as authorized for fee interests.

e. In order for the commission to evaluate the adequacy of the property offered to satisfy this requirement, the permit applicant shall submit a schedule of the real property which will be pledged to secure the obligations under the indemnity agreement.

(1) The schedule of the real property shall include:

(a) A description of the property.

(b) The value of the property.

[1] The property shall be valued at fair market value as determined by an appraisal conducted by appraisers appointed by the commission.

[2] The appraisal shall be expeditiously made, and a copy thereof furnished to the commission and the permittee.

[3] The reasonable expense of the appraisal shall be borne by the permittee.

(2) Proof of the mortgagor's possession of and title to the unencumbered real property within the state of North Dakota which is offered to secure the obligations under the bond. Such proof shall include:

(a) If the interest arises under a federal or state lease, a status report prepared by an attorney, satisfactory to the commission as disinterested and competent to so evaluate the asset, and an affidavit from the owner in fee establishing that the leasehold could be transferred to the commission upon forfeiture.

(b) If title is in fee, an abstract of title prepared by an abstract office authorized to transact business within the state of North Dakota and satisfactory to the commission.

(c) The property shall not include any lands in the process of being mined, reclaimed, or the subject of the permit application. The permit applicant may offer any lands for which the bonds have been released. In addition, any land used as a security shall not be mined while it is security.

f. If at any time the conditions upon which the property collateral bond was approved no longer prevail, the commission may require the posting of a surety or other collateral bond. The permittee shall have forty-five days from the date of receipt of the notice to substitute bond to deliver to the commission an acceptable replacement bond. In default thereof, the permittee must suspend all mining operations in accordance with section 38-14.1-28, ~~North Dakota Century Code.~~

*North
Dakota
Century
Code*

3. For all collateral bonds an indemnity agreement must be executed by the guarantor and:

a. If a corporation, then by two corporate officers who are authorized to sign the agreement by a resolution of the board of directors, a copy of which shall be provided.

b. To the extent the history or assets of a parent organization are relied upon to make the showings of this section, then the parent organization and every parent organization of which it is a subsidiary, whether first-tier, second-tier, or further removed, in the form of subdivision a.

c. If the guarantor is a partnership, all of its general and limited partners and their parent organization or principal investors.

d. If the guarantor is married, the permit applicant's spouse, if directly involved as part of the business on a regular basis or as an officer of the organization.

e. The name of each person who signs the indemnity agreement shall be typed or printed beneath the signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which that person signs the indemnity agreement.

f. The indemnity agreement shall be a binding obligation, jointly and severally, on all who execute it.

g. For purposes of this subsection, "principal investor" or "parent organization" means anyone with a ten percent or more beneficial ownership interest, directly or indirectly, in the permit applicant.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
Amended

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-16

69-05.2-12-05. PERFORMANCE BOND - SELF-BOND OF PERMIT APPLICANT. ~~The commission may accept a self-bond from the permit applicant under the following conditions:~~

- ~~1--The permit applicant shall designate the name and address of a suitable agent to receive service of process in the state of North Dakota.~~
- ~~2--The permit applicant, or the permit applicant's parent organization in the event the applicant is a subsidiary corporation, has a net worth, certified by a certified public accountant, of not less than six times the total amount of self-bond obligations on all permits issued to the permit applicant in the United States for surface coal mining and reclamation operations.~~
- ~~3--The permit applicant grants the state of North Dakota a mortgage or security interest in real or personal property located in the state of North Dakota which shall have a fair market value equal to or greater than the obligation created under the indemnity agreement.~~
- ~~4--The instrument creating such mortgage or security interest shall vest such interest in the state of North Dakota so as to secure the right and power in the commission on behalf of the state of North Dakota to immediately attach said property concurrent with the issuance of a notice of forfeiture under section 69-05.2-12-16, and to sell or otherwise dispose of the property by a public or private transaction, and to establish the commission as the sole secured creditor with respect to such property, so as to assure the commission of a preferred claim over all other creditors in case of bankruptcy. For classes of property with respect to which a preferred claim cannot be maintained against subsequent bona fide purchasers for value under North Dakota Century Code title 41, the instrument shall require possession of the property by the commission.~~

5.--The--property--subject--to--the--security--interest--shall--not
be--subject--to--any--conflicting--or--prior--security
interest.--The--instrument--creating--the--interest--in--real
property--shall--be--recorded--as--authorized--for--fee
interests.

6.--The--instrument--creating--the--security--interest--in
personal--property--shall--be--recorded--in--accordance--with
and--otherwise--conform--to--the--requirements--of--North
Dakota--Century--Code--title--41--for--perfecting--a--security
interest--in--the--state--of--North--Dakota.

7.--In--order--for--the--commission--to--evaluate--the--adequacy--of
the--property--offered--to--satisfy--this--requirement,--the
permit--applicant--shall--submit--a--schedule--of--the--real--or
personal--property--which--will--be--pledged--to--secure--the
obligations--under--the--indemnity--agreement.

8.--The--schedule--of--the--real--and--personal--property--shall
include:

a.--A--description--of--the--property:

b.--The--value--of--the--property:

(1)--The--property--shall--be--valued--at--fair--market
value--as--determined--by--an--appraisal--conducted
by--appraisers--appointed--by--the--commission.

(2)--The--appraisal--shall--be--expeditiously--made,--and
a--copy--thereof--furnished--to--the--commission--and
the--permittee.

(3)--The--reasonable--expense--of--the--appraisal--shall
be--borne--by--the--permittee.

c.--Proof--of--the--mortgagor's--possession--of--and--title--to
the--unencumbered--real--property--within--the--state--of
North--Dakota--which--is--offered--to--secure--the
obligations--under--the--bond.--Such--proof--shall
include:

(1)--If--the--interest--arises--under--a--federal--or--state
lease,--a--status--report--prepared--by--an--attorney,
satisfactory--to--the--commission--as--disinterested
and--competent--to--so--evaluate--the--asset,--and--an
affidavit--from--the--owner--in--fee--establishing
that--the--leasehold--could--be--transferred--to--the
commission--upon--forfeiture.

(2)--If--title--is--in--fee,--an--abstract--of--title
prepared--by--an--abstract--office--authorized--to
transact--business--within--the--state--of--North
Dakota--and--satisfactory--to--the--commission.

(3)--The property shall not include any lands in the process of being mined; reclaimed; or the subject of the permit application. The permit applicant may offer any lands the bonds for which have been released. In addition, any land used as a security shall not be mined while it is security.

d.--Proof that the person granting the security interest holds possession of the title to personal property within the state of North Dakota. Evidence of such ownership shall be submitted in a form satisfactory to the commission. The personal property offered shall not include:

(1)--Property in which a security interest is held by any person.

(2)--Goods which the permittee sells in the ordinary course of the permittee's business.

(3)--Fixtures.

(4)--Securities which are not negotiable bonds of the United States government or general revenue bonds of the state of North Dakota.

(5)--Certificates of deposit which are not federally insured or where the depository is unacceptable to the commission.

9.--The permit applicant, or the permit applicant's parent organization in the event the permit applicant is a subsidiary corporation, shall have demonstrated to the satisfaction of the commission a history of financial solvency and continuous operation as a business entity for ten years prior to filing the application. For purposes of this subsection, such demonstration shall include a financial statement in sufficient detail to allow the commission to determine whether it is reasonable to predict from the ownership patterns and financial history of the permit applicant that it will be financially capable of completing all reclamation requirements throughout the life of the surface coal mining and reclamation operations. Such statement shall include at a minimum:

a.--Identification of the permit applicant:

(1)--For corporations; name; address; telephone number; state of incorporation; principal place of business; principal office in the state of North Dakota where the operation is located; the name; title; and authority of persons

signing-the-permit-application;-and-a-statement
of--authority--to--do--business-in-the-state-of
North-Dakota:

(2)--For--all--other--forms-of-business-enterprises;
name;--address;--and---telephone---number---and
statement--of--how-the-enterprise-is-organized;
law-of-the-state--under--which--it--is--formed;
place---of---business;--and--relationship--and
authority-of--the--person--signing--the--permit
application;--and-principal-office-in-the-state
of-North-Dakota:

b.--Estimated--amount-of-bond-likely-to-be-required-as-a
part-of-the-permit-application;--and--the--estimated
maximum--liability--likely-to-be-required-during-the
life-of-the-mine:

c.--History--of--other--bonds--procured--by--the--permit
applicant--for--mining--operations--in--any---state;
including:

(1)--Names--of--sureties;--if--any;--for-outstanding
bonds:

(2)--Amounts-of-outstanding-bonds:

(3)--Name-of-any-surety-which-denied-any-bond:

(4)--Unsatisfied-claims-against-any-bond:

d.--Brief--chronological--history-of-business-operations
conducted--within--the--last--ten--years---including
information-showing:

(1)--Continuous-operations:

(2)--The---jurisdiction---within---which--each--such
operation-has-been-conducted:

e.--A-financial-statement;-including:

(1)--Audited---financial---statements--prepared--and
certified--by---a---disinterested---independent
certified--public--accountant:---All-statements
shall-be-prepared-following-generally--accepted
principles-of-accounting-and-shall-include:

(a)--A--common-size--comparative--balance-sheet
which--shows--assets;---liabilities;---and
owner's---equity---for---ten--years:---The
commission-shall-have--the--discretion--to
increase-this-length-of-time-to-any-period
which--is--necessary--to--show---financial

solvency--and--continuous--operation--The common-size-comparative-balance-sheet-must be-detailed-with-regard-to-owner's-equity, especially-retained-earnings,-so-as-to-set forth--a--series--of--retained--earning statements-showing-the-changes--that--have occurred--in--retained-earnings-during-the required-period-of-time-

(b)--A-common-size-comparative-income-statement which-shows-all-revenues-and-expenses--for ten--years--or--for-such-longer-time-as-is required-for-the--common-size--comparative balance-sheet-

(c)--A--statement--of--the--permit--applicant's working-capital-and-an-analysis-of--assets and--liabilities--which--shall-include-the following-calculated-for-each-year-covered by--the--common-size--comparative--balance sheet-and-income-statement-

[1]---A--schedule-showing-the-percentage-of each-classification-of-current-assets to-total-current-assets-

[2]---The-current-ratio-

[3]---The-acid-test-ratio-

[4]---The-liquidity-ratio-

[5]---The-asset-ratio-

[6]---The-return-on-investment-

(d)--In--addition-to-the-above,-all-ratios-must be-calculated-with-the-bond--amount--added to-the-permit-applicant's-current-or-total liabilities-

(e)--A--ratio-of-the-permit-applicant's-capital assets-subject-to-a-mortgage--or--security interest-to-those-liabilities-to-which-the assets-are-subject--If-the-offer-of--real property--or--collateral-for-the-bond-will alter--this--ratio,-this--must--be illustrated-

(2)--A--satisfactory--basis--to--compare--all-ratios submitted-pursuant-to-paragraph-1-

(3)--The--commission--shall--have--the--right--to challenge,-prohibit,-or-prescribe-the-inclusion

of--any--specific--item--or--the--value--thereof
within--any--of--the--above--statements--or--ratios.
If--the--value--is--challenged,--the--commission
shall--appoint--an--appraiser--or--appraisers--to
value--the--item.---Any--such--appraisal--shall--be
expeditiously--made,---and---a---copy---thereof
furnished--to--the--commission--and--the--permit
applicant.---The--reasonable--expense--of---the
appraisal---shall---be---borne--by--the--permit
applicant.---The--findings--of--the--appraisal--shall
be--final--and--binding.

(4)---A---final---determination--by--the--independent
certified--public--accountant---regarding---the
permit--applicant's--ability--to--satisfactorily
meet--all--obligations--and--costs--under---the
proposed--reclamation--plan--for--the--life--of--the
mine.

(5)---If--the--commission--deems--necessary,--evidence--of
financial--responsibility--through--letters--of
credit,--or--a--rating--of--securities--issued--to--the
permit--applicant--by--a--recognized---national
securities--rating--company.

f.---A--statement--listing--any--liens--filed--on--the--assets--of
the--permit--applicant--in--any--jurisdiction--in--the
United--States,--actions--pending--or--judgments--rendered
within--the--last--ten--years--against--the---permit
applicant---but--not--satisfied,--and--petitions--or
actions--in---bankruptcy---including---actions---for
reorganization.---Each--such--lien,--action,--petition,
or--judgment--shall--be--identified--by--the---named
parties,--the--jurisdiction--in--which--the--matter--was
filed,--the--case,--file--or--docket--number,--the--date--of
filing--and--final--disposition--or--current--status--of
any--action--still--pending.

g.---A--statement--listing--any--notices--issued--by--the
securities--and--exchange--commission--or--proceedings
initiated--by--any--party--alleging--a--failure--to--comply
with--any--public--disclosure--or--reporting--requirement
under--the--securities--laws--of--the--United--States.
Such--statement--shall--include--a--summary--of--each--such
allegation,--including--the--date,--the--requirement
alleged--to--be--violated,--the--party--making--the
allegation,--and--the--disposition--or--current--status
thereof.---This--statement--shall--also--include--similar
information--for--failures--to--comply--with--North--Dakota
securities--laws--and--regulations.

10.---The--indemnity--agreement--has--been--executed--by--the--permit
applicant--and--has--also--been--executed--by:

a.---If-a-corporation;--then-by-two-corporate-officers-who are-authorized-to-sign-the-agreement-by-a-resolution of--the-board-of-directors;--a-copy-of-which-shall-be provided:

b.---To--the--extent--the--history--or-assets-of-a-parent organization-are-relied-upon-to-make-the-showings-of this-section;--then-the-parent-organization-and-every parent-organization-of-which--it--is--a--subsidiary; whether-first-tier;--second-tier;--or-further-removed; in-the-form-of-subdivision-a:

c.---If-the-permit-applicant-is-a-partnership;--all-of-its general--and--limited--partners--and--their--parent organization-or-principal-investors:

d.---If--the--permit--applicant--is--married;--the-permit applicant's-spouse;--if-directly-involved-as-part--of the--business-on-a-regular-basis-or-as-an-officer-of the-organization:

e.---The--name--of--each--person--who-signs-the-indemnity agreement-shall-be--typed--or--printed--beneath--the signature;--Any-person-who-occupies-more-than-one-of the-specified-positions-shall-indicate-each-capacity in--which-that-person-signs-the-indemnity-agreement:

f.---The---indemnity---agreement---shall---be---a---binding obligation;--jointly--and--severally;--on--all---who execute-it:

g.---For---purposes---of---this---subsection;--"principal investor"--or--"parent-organization"--means-anyone-with a-ten-percent-or-more-beneficial-ownership-interest; directly-or-indirectly;--in-the-permit-applicant:

h.---If--at--any-time-the-conditions-upon-which-the-self-bond was-approved-no-longer--prevail;--the--commission--shall require--the--posting--of--a--surety--or-collateral-bond before-mining-operations-may-continue:

Repealed effective June 1980

(History: Effective August 1, 1980.
Repealed

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-16)))

69-05.2-12-06. PERFORMANCE BOND - REPLACEMENT OF BONDS.

1. The commission may allow permittees to replace existing surety or collateral bonds with other surety or collateral bonds, if the liability which has accrued against the permittee on the permit area is transferred to such replacement bonds.
- ~~2. The commission may allow the permittee to replace existing surety or collateral bonds with a self-bond, provided that the permittee meets the requirements of self-bonding as provided in section 69-05.2-12-05.~~
3. 2. The commission shall not release existing performance bonds shall remain in effect until the permittee has submitted and the commission has approved acceptable replacement performance bonds.
4. 3. A replacement of performance bonds pursuant to this section shall not constitute a release of bond under this chapter and North Dakota Century Code section 38-14.1-17.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-16

69-05.2-12-07. PERFORMANCE BOND - DETERMINATION OF BOND AMOUNT.

1. The standard applied by the commission in approving determining the amount of performance bond shall be the estimated cost to the commission if it had to perform the reclamation, restoration, and abatement work required of a person who conducts surface coal mining and reclamation operations under North Dakota Century Code chapter 38-14.1, this article, and the permit, and such additional work as would be required to achieve compliance with the general standards for revegetation in section 69-05.2-22-07 in the event the permittee fails to implement an approved alternative postmining land use plan within the two years required by subsection 4 of section 69-05.2-22-07.
2. The amount of performance bond shall be based on, but not limited to:

- a. The estimated costs submitted by the permit applicant pursuant to subsection 2 of section 69-05.2-09-11 including, but not limited to, cost estimates of:
 - (1) Backfilling and grading.
 - (2) Replacing suitable plant growth material.
 - (3) Revegetation.
- b. The additional estimated costs to the commission which may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee to perform reclamation, restoration, and abatement work.
- c. All additional estimated costs necessary, expedient, and incident to the satisfactory completion of the requirements identified in this subsection.
- d. An additional amount based on factors of cost changes during the preceding five years for the types of activities associated with the reclamation to be performed.
- e. Cost estimates for the reclamation of any unusual conditions known to exist in the proposed permit area, which shall be submitted to the commission and described in detail by the permit applicant.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
Amended

General Authority
 NDCC 38-14.1-03

Law Implemented
 NDCC 38-14.1-16

~~69-05.2-12-08. PERFORMANCE BOND - ADJUSTMENT OF AMOUNT.~~

- ~~1. The commission shall conduct a review of each performance bond or collateral at a frequency consistent with section 69-05.2-11-01 or, if necessary, on a more frequent basis and shall notify the permittee of any proposed bond adjustment following completion of the review.~~
- ~~2. The commission shall reevaluate performance bonds in accordance with the standards provided for in section 69-05.2-12-07.~~

3. If the commission determines that a performance bond adjustment is required, the commission shall provide the permittee with the opportunity for an informal conference on the adjustment in accordance with chapter 69-05.2-10 and North Dakota Century Code section 38-14.1-19.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-16

69-05.2-12-09. PERFORMANCE BOND - PERIOD OF LIABILITY.

1. The period of liability for the performance bond shall be that amount of time necessary to achieve compliance with the requirements of North Dakota Century Code chapter 38-14.1, this article, and the permit and shall continue a minimum of ten years beginning as specified in subsection 2 of section 69-05.2-22-07. The period of extended responsibility shall begin again whenever augmented seeding, fertilization, irrigation, or other work is required or conducted on the site prior to bond release, unless the management practice conducted is a part of normal management for that particular land use and is approved by the commission.
2. If the commission approves a long-term postmining land use of developed water resources, recreation, residential, or industrial/commercial, the commission may approve a liability period of less than ten years provided the other requirements of this subsection and the requirements of subsection 4 5 of section 69-05.2-22-07 have been complied with prior to the final release of bond.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
Amended

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-16

69-05.2-12-10. PERFORMANCE BOND - REQUEST FOR REDUCTION. A permittee may request reduction of the required performance bond amount upon submission of evidence to the commission proving that the permittee's method of operation or other circumstances will

reduce the maximum estimated cost to the commission to complete the reclamation responsibilities and therefore warrant a reduction of the bond amount. The request shall be considered as a request for partial bond release pursuant to North Dakota Century Code section 38-14.1-17 and this chapter.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-16

69-05.2-12-11. RELEASE OF PERFORMANCE BOND - CRITERIA FOR BOND RELEASE.

1. The commission shall not release any liability under a performance bond applicable to a permit if such a release would reduce the total remaining liability to an amount less than that necessary for the commission to complete the approved reclamation plan, achieve compliance with North Dakota Century Code chapter 38-14.1, this article, and abate any significant environmental harm to air, water, or land resources, or danger to the public health and safety which might occur prior to the release from performance bond of all lands within the permit area. Where the permit includes an alternative postmining land use plan approved pursuant to chapter 69-05.2-23, the commission shall also retain sufficient liability for the commission to complete any additional work which would be required to achieve compliance with subsection 3 of section 69-05.2-22-07 in the event the permittee fails to implement the approved alternative postmining land use plan within the two years required by subsection 4 of section 69-05.2-22-07.
2. Release of performance bond for any combination of release stages identified in subsection 7 of North Dakota Century Code section 38-14.1-17, shall require compliance with the reclamation standards established for each individual bond release stage.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-17

69-05.2-12-12. RELEASE OF PERFORMANCE BOND - BOND RELEASE APPLICATION.

1. The permittee may file a request with the commission for release of all or part of a performance bond furnished subsequent to July 1, 1975, as follows:
 - a. For lands disturbed between July 1, 1975, and June 30, 1979, the application shall be filed in accordance with the public notice and procedural requirements of subsection 1 of North Dakota Century Code section 38-14.1-17 and subsections 3 and 4 of this section. The criteria for release of all or part of the performance bond and the success of reclamation shall be determined according to the reclamation requirements in effect at the time of the disturbance.
 - b. For lands disturbed after June 30, 1979, the application shall be filed in accordance with the requirements of this section and section 69-05.2-12-11.
2. The permittee may only file performance bond release applications at times and seasons that allow the commission to properly evaluate the reclamation operations alleged to have been completed.
3. Within thirty days after filing a request for bond release, the permittee shall submit proof of publication of the advertisement required by North Dakota Century Code section 38-14.1-17. Such proof of publication shall be considered part of the bond release application.
4. Lands for which the permittee requests performance bond release shall be legally described and delineated on maps of the permit area.
5. When the permittee requests a partial release of performance bond after regrading pursuant to subdivision a of subsection 7 of North Dakota Century Code section 38-14.1-17, the application shall, unless otherwise waived by the commission, include surface profiles or topographic maps prepared in accordance with section 69-05.2-21-06.
6. When the permittee requests a partial release of performance bond after respreading suitable plant growth material pursuant to subdivision b of subsection 7 of North Dakota Century Code section 38-14.1-17, the application shall include the thickness of the respread first lift and second lift suitable plant growth materials.

7. When the permittee requests a partial release of performance bond after vegetation has been established pursuant to subdivision c of subsection 7 of North Dakota Century Code section 38-14.1-17, the application shall include the following:
 - a. The data collected, analyses conducted, and an appropriate narrative ~~detailing--compliance---with subsection-2--of-section-69-05-2-22-07~~ demonstrating vegetation establishment pursuant to the requirements of subsection 3 of section 69-05.2-22-07.
 - b. Documentation showing that the lands to which the release would be applicable are not contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 69-05.2-16-04.
 - c. A discussion of how the provisions of a plan approved by the commission for the sound future management of any permanent impoundment by the permittee or landowner have been implemented.
8. When the permittee is requesting final performance bond release pursuant to subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17, the application shall include:
 - a. The data collected, analyses conducted, and an appropriate narrative detailing compliance with subsection 3 4 of section 69-05.2-22-07.
 - b. The complete history of initial and subsequent seedings and fertilization (including mixtures and rates), appropriate soil tests, supplemental irrigation, or any other management practices employed.
 - c. Documentation showing that the reestablishment of essential hydrologic functions of alluvial valley floors has been achieved.
9. When the permittee requests release of performance bond for any combination of release stages detailed in subsection 7 of North Dakota Century Code section 38-14.1-17, the application shall contain all the information required at each bond release stage.

10. The commission may request any additional information as is necessary to properly evaluate the application for performance bond release.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-17

69-05.2-12-13. RELEASE OF PERFORMANCE BOND - LOCATION OF HEARING. Any formal hearing on the release of performance bond provided for in subsection 2 of North Dakota Century Code section 38-14.1-17 shall be held in the town or city nearest the permit area, or the state capitol, at the option of the objector. Any person having a valid legal interest which is or may be adversely affected by a proposed release from performance bond shall specify that person's preference for the place of hearing in that person's request for a formal hearing.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-17

69-05.2-12-14. RELEASE OF PERFORMANCE BOND - COMMISSION INSPECTION - TIME OF RELEASE.

1. The surface owner, agent, or lessee shall be given notice by the commission of the bond release inspection required by subsection 3 of North Dakota Century Code section 38-14.1-17 and may participate with the commission in making the inspection.
2. The commission shall not release performance bond until the time period to request a formal hearing pursuant to section 69-05.2-12-15 has expired, or a final decision on a formal hearing has been issued by the commission pursuant to North Dakota Century Code section 38-14.1-30.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-17

69-05.2-12-15. RELEASE OF PERFORMANCE BOND - OBJECTIONS TO THE DECISION AND REQUEST FOR A PUBLIC HEARING.

1. The permittee or any person having a valid legal interest which is or may be adversely affected by the decision to release or not release all or part of the performance bond, or the responsible officer or head of any state or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the surface coal mining operations, or is authorized to develop and enforce environmental standards with respect to such operations shall have the right to file written objections to the performance bond release decision with the commission and to request a formal hearing pursuant to the procedures established in subsection 3 of North Dakota Century Code section 38-14.1-30 within thirty days of the decision.
2. The location of the formal hearing shall be selected in accordance with section 69-05.2-12-13.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-17

69-05.2-12-16. FORFEITURE OF PERFORMANCE BOND - PROCEDURES.

1. In the event forfeiture of the bond is required by section 69-05.2-12-18, the commission shall:
 - a. Send written notification by certified mail to the permittee, and the surety on the bond, if applicable, of the commission's determination to require forfeiture of all or part of the performance bond and the reasons for the forfeiture, including a finding of the amount to be forfeited.
 - b. Advise the permittee and surety, if applicable, of the permittee's right to request judicial review pursuant to North Dakota Century Code section 38-14.1-35.
 - c. Proceed in an appropriate action for collection on the performance bond.
2. The written determination to require forfeiture of all or part of the performance bond, including the reasons

for forfeiture and the amount to be forfeited, shall be a final decision of the commission.

3:--The--commission--may--require--forfeiture--of--any--or--all--performance--bonds--deposited--for--an--entire--permit--area--in--order--to--satisfy--sections--69-05.2-12-17--and--69-05.2-12-18--Liability--under--any--performance--bond--which--has--not--previously--been--forfeited;--including--separate--bond--increments--or--indemnity--agreements--applicable--to--a--single--operation;--shall--extend--to--the--entire--permit--area:

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-16,
38-14.1-30,
38-14.1-33,
38-14.1-35

69-05.2-12-17. FORFEITURE OF PERFORMANCE BOND - CRITERIA.

1:--The--commission--shall--require--forfeiture--of--all--or--part--of--a--performance--bond;--if--the--commission--determines--that:

a:--The--permittee--has--violated--any--of--the--terms--or--conditions--of--the--performance--bond;

b:--The--permittee--has--failed--to--conduct--the--surface--coal--mining--and--reclamation--operations--in--accordance--with--North--Dakota--Century--Code--chapter--38-14.1;--this--article;--and--the--conditions--of--the--permit--within--the--time--required;

c:--The--permit--for--the--area--under--performance--bond--has--been--revoked;--unless--the--permittee--assumes--liability--and--assigns--sufficient--collateral--to--the--commission--to--guarantee--completion--of--reclamation--work;--or

d:--The--permittee--has--failed--to--comply--with--a--compliance--schedule--approved--pursuant--to--subsection--3:

2:--The--commission--may--require--forfeiture--of--all--or--part--of--a--performance--bond;--if--the--commission--determines--that:

a:--The--permittee--has--become--insolvent;--failed--in--business;--been--adjudicated--a--bankrupt;--filed--a

petition-in-bankruptcy-or-for-a-receiver,-or-has-had
a-receiver-appointed-by-any-court,-or

b---A-creditor-of-the-permittee-has-attached-or-executed
a-judgment--against--the---permittee's---equipment;
materials;--facilities-at-the-permit-area;-or-on-the
collateral-pledged-to-the-commission;-and

c---The---permittee--cannot--demonstrate--or--prove--the
ability-to-continue-to-operate--in--compliance--with
North--Dakota--Century--Code--chapter--38-14-1;-this
article;-and-the-permit-

3---The-commission-may-withhold-forfeiture;-if-the-permittee
and--surety;-if-applicable;-agree--to--a---compliance
schedule--to-comply-with-the-violations-of-the-permit-or
performance-bond-conditions: *Repealed effective June 1, 1983.*

((History: Effective August 1, 1980.
Repealed

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-16,
38-14.1-30,
38-14.1-33))

69-05.2-12-18. FORFEITURE OF PERFORMANCE BOND - AMOUNT OF
FORFEITURE. If the commission requires forfeiture of all or a
part of the performance bond, the commission shall either:

1. Determine the amount of the performance bond to be forfeited on the basis of the estimated cost to the commission or its contractor to complete the reclamation plan and other regulatory requirements in accordance with North Dakota Century Code chapter 38-14.1, this article, and the requirements of the permit; or
2. Require forfeiture of the entire amount of the performance bond for which liability is outstanding. Any performance bond proceeds remaining after the reclamation plan is completed shall be refunded to the permittee.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-16,
38-14.1-30

69-05.2-12-19. PERMIT REVOCATION - FORFEITURE OF PERFORMANCE BOND. ~~If the commission revokes a permit pursuant to North Dakota Century Code section 38-14.1-33, the commission may:~~

~~1. Require the permittee to complete reclamation within a period specified by the commission; or~~

~~2. Declare as forfeited the performance bonds for the surface coal mining operation.~~ *Repealed effective June 1, 1983.*

(((History: Effective August 1, 1980.

Repealed

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-33)))

69-05.2-12-20. LIABILITY INSURANCE. The permittee shall submit to the commission a public liability insurance policy in accordance with subsection 3 of North Dakota Century Code section 38-14.1-14. The minimum coverage of this policy shall be as follows:

1. For bodily injury, three-hundred-thousand one million dollars for each occurrence and five-hundred-thousand two million dollars aggregate.
2. For property damage, three-hundred-thousand one million dollars for each occurrence and five-hundred-thousand two million dollars aggregate.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
Amended

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-14

CHAPTER 69-05.2-13
PERFORMANCE STANDARDS - GENERAL REQUIREMENTS

Section	
69-05.2-13-01	Performance Standards - General Requirements - Coal Production and Reclamation Fee Report
69-05.2-13-02	Performance Standards - General Requirements - Annual Map
69-05.2-13-03	Performance Standards - General Requirements - Authorizations to Operate
69-05.2-13-04	Performance Standards - General Requirements - Signs and Markers
69-05.2-13-05	Performance Standards - General Requirements - Minimize Disturbances - Best Technology Currently Available
69-05.2-13-06	Performance Standards - General Requirements - Avoidance of Underground Mine Areas
69-05.2-13-07	Performance Standards - General Requirements - Air Resources Protection
69-05.2-13-08	Performance Standards - General Requirements - Protection of Fish, Wildlife, and Related Environmental Values
69-05.2-13-09	Performance Standards - General Requirements - Slides and Other Damage
69-05.2-13-10	Performance Standards - General Requirements - Cessation of Operations - Temporary
69-05.2-13-11	Performance Standards - General Requirements - Cessation of Operations - Permanent

~~69-05.2-13-01. PERFORMANCE STANDARDS - GENERAL REQUIREMENTS
- COAL PRODUCTION AND RECLAMATION FEE REPORT. A copy of the Coal
Production and Reclamation Fee Report (OSM Form 837-1) submitted
to the office of surface mining shall be submitted to the
commission no later than thirty calendar days after the end of
each calendar quarter.~~

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-03

69-05.2-13-02. PERFORMANCE STANDARDS - GENERAL REQUIREMENTS
- ANNUAL MAP. Two copies of an annual map shall be submitted to
the commission for each all permit area areas by February

fifteenth every year. The information to be shown on the map shall be reported for each calendar year of the permit term until the total bond amount has been released. The map shall be at a scale of 1:4,800 and shall show the following information-on-the mining-and-reclamation-activities-that-occurred--during--the--year being-reported:

1. Appropriate delineation of each permit area.
2. The mining and reclamation activities that occurred during the year being reported for each permit which shall include:
 - 1- a. Acreage [hectarage] affected within the permit areas.
 - 2- b. Acreage [hectarage] where suitable plant growth material removal operations have been completed.
 - 3- c. Acreage [hectarage] where surface coal mining operations are completed and the contemporaneous reclamation requirement pursuant to subsection 14 of North Dakota Century Code section 38-14.1-24 is initiated.
 - 4- d. Acreage [hectarage] shaped where grade approval has been obtained.
 - 5- e. Acreage [hectarage] respread--with where suitable plant growth material redistribution operations have been completed.
 - 6- f. Acreage [hectarage] planted where the 10-year revegetation period has been initiated.
 - 7- ~~Acreage---[hectarage]---stripped--of--suitable--plant growth-material-~~
 - 8- g. Acreage [hectarage] where bond has been partially released and indicating the proportion--released stage of release.
 - 9- h. Acreage [hectarage] where bond has been totally released.
- 9- 3. Location of suitable plant growth material stockpiles. Supporting information shall include ownership, date seeded, type of material in each stockpile (~~first-lift or-second-lift~~) (topsoil or subsoil), and estimated cubic yards [meters] for each stockpile.
4. Cumulative information on the mining and reclamation activities that have occurred within each permit area which include:

- a. Acreage [hectarage] planted where the 10-year revegetation period has been initiated and the year the revegetation period was initiated.
- b. Acreage [hectarage] where bond has been partially released and indicating the stage of release.
- c. Acreage [hectarage] where bond has been totally released pursuant to subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
Amended

General Authority
 NDCC 38-14.1-03

Law Implemented
 NDCC 38-14.1-27

~~69-05.2-13-03. PERFORMANCE STANDARDS - GENERAL REQUIREMENTS
 - AUTHORIZATIONS TO OPERATE. A copy of all current permits, licenses, approved plans, or other authorizations to operate the mine shall be available for inspection at or near the mine site.~~

~~History: Effective August 1, 1980.~~

~~General Authority
 NDCC 38-14.1-03~~

~~Law Implemented
 NDCC 38-14.1-27~~

~~69-05.2-13-04. PERFORMANCE STANDARDS - GENERAL REQUIREMENTS
 - SIGNS AND MARKERS.~~

- ~~1. Specifications. Signs and markers required under this section shall:

 - ~~a. Be posted and maintained by the operator.~~
 - ~~b. Be of a uniform design throughout the operation that can be easily seen and read.~~
 - ~~c. Be made of durable material.~~
 - ~~d. Conform to local ordinances and codes.~~~~
- ~~2. Duration of maintenance. Signs and markers shall be maintained during the conduct of all activities to which they pertain.~~

3. Mine and permit identification signs.
 - a. Identification signs shall be displayed at each point of access to the permit area from public roads.
 - b. Signs shall show the name, business address, and telephone number of the operator and the identification number of the current permit authorizing surface mining activities.
 - c. Signs shall be retained and maintained until after the release of all bonds for the permit area.
4. Perimeter markers. The perimeter of a permit area shall be clearly marked before the beginning of surface mining activities.
5. Buffer zone markers. Buffer zones shall be marked along their boundaries as required by section 69-05.2-16-20.
6. Blasting signs. If blasting is conducted incident to surface mining activities, the person who conducts these activities shall:
 - a. Conspicuously display signs reading "Blasting Area" along the edge of any blasting area that comes within fifty feet [15.24 meters] of any road within the permit area, or within one hundred feet [30.48 meters] of any public road right of way.
 - b. Conspicuously flag, or post within the blasting area, the immediate vicinity of charged holes as required by section 69-05.2-17-05.
 - c. Place at all entrances to the permit area from public roads or highways conspicuous signs which state "Warning! Explosives in Use!", which clearly explain the blast warning and all clear signals that are in use and which explain the marking of blast areas and charged holes within the permit area.
7. Suitable plant growth material markers. Where suitable plant growth material or other suitable strata are segregated and stockpiled as required by section 69-05.2-15-03, the stockpiled material shall be clearly marked.

8. Sedimentation pond markers. The design sediment storage volume, calculated according to the requirements of subsection 2 of section 69-05.2-16-09, shall be clearly marked at the appropriate pool elevation.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03,
38-14.1-24

Law Implemented
NDCC 38-14.1-24,
38-14.1-27

69-05.2-13-05. PERFORMANCE STANDARDS - GENERAL REQUIREMENTS - MINIMIZE DISTURBANCES - BEST TECHNOLOGY CURRENTLY AVAILABLE. All surface coal mining and reclamation operations shall be conducted in such a manner as to minimize the disturbances on lands where coal is not removed and to utilize the best technology currently available in order to maintain environmental integrity throughout the permit area.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-03,
38-14.1-24

69-05.2-13-06. PERFORMANCE STANDARDS - GENERAL REQUIREMENTS - AVOIDANCE OF UNDERGROUND MINE AREAS. No surface coal mining activities shall be conducted closer than five hundred feet [152.40 meters] of an underground mine, except to the extent that the nature, timing, and sequence of the operations are jointly approved by the commission, the mine safety and health administration, and the state agency, if any, responsible for the safety of mine workers.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-13-07. PERFORMANCE STANDARDS - GENERAL REQUIREMENTS - AIR RESOURCES PROTECTION. The permittee shall comply with all applicable air pollution control laws and regulations rules of the

state department of health and shall stabilize and protect all surface areas, including spoil piles resulting from the surface coal mining and reclamation operation, to effectively control wind erosion and attendant air pollution.

History: Effective August 1, 1980; ~~Amended~~ *amended effective June 1, 1983.*

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-13-08. PERFORMANCE STANDARDS - GENERAL REQUIREMENTS
- PROTECTION OF FISH, WILDLIFE, AND RELATED ENVIRONMENTAL VALUES.

1. The permittee shall affirmatively demonstrate how protection and enhancement of fish and wildlife resources will be achieved where practicable on the basis of information gathered and management plans developed in accordance with sections 69-05.2-08-15 and 69-05.2-09-17.
2. The permittee shall promptly report to the commission the presence in the permit area of any critical habitat of a threatened or endangered species, any plant or animal listed as threatened or endangered, or any bald or golden eagle, of which that permittee becomes aware and which was not previously reported to the commission.
3. The permittee shall ensure that the design and construction of electric powerlines and other transmission facilities used for or incidental to the surface mining activities on the permit area are in accordance with the guidelines set forth in Environmental Criteria for Electric Transmission Systems (U.S. department of the interior, U.S. department of agriculture (1970)), or in alternative guidance manuals approved by the commission. Distribution lines shall be designed and constructed in accordance with REA bulletin 61-10, Powerline Contacts by Eagles and Other Large Birds, or in alternative guidance manuals approved by the commission.
4. The permittee shall, to the extent possible using the best technology currently available:
 - a. Locate and operate haul and access roads, sedimentation ponds, diversions, stockpiles and other such structures so as to avoid or minimize impacts to important fish and wildlife species and

their habitats and to other species protected by state or federal law.

- b. Create no new barrier in known and important wildlife migration routes.
- c. Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.
- d. Reclaim, enhance where practicable or avoid disturbance to habitats of unusually high value for fish and wildlife.
- e. Reclaim, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetland areas.
- f. Afford protection to aquatic communities by avoiding stream channels as required in section 69-05.2-16-20 or reclaiming stream channels as required in section 69-05.2-16-07.
- g. Not use pesticides in the area during surface mining and reclamation activities, unless specified in the operation and reclamation plan or approved by the commission on a case-by-case basis.
- h. To the extent possible prevent, control, and suppress range, forest, and coal fires which are not approved by the commission as part of a management plan.
- i. If fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall in addition to the requirements of chapter 69-05.2-22:
 - (1) Select plant species to be used on reclaimed areas, based on the following criteria:
 - (a) Their proven nutritional value for fish and wildlife.
 - (b) Their uses as cover for fish and wildlife.
 - (c) Their ability to support and enhance fish and wildlife habitat after release of bonds.
 - (2) Distribute plant groupings to maximize benefits to fish and wildlife. Plants should be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits for fish and wildlife.

- j. Where cropland is to be the alternative postmining land use on lands diverted from a fish and wildlife premining land use and where appropriate for wildlife and crop management practices, intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. Wetlands shall be preserved when feasible or recreated consistent with the reclamation plan and the postmining land use.
- k. Where the primary land use is to be residential, public service, or industrial land use, intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for birds and small animals, unless such greenbelts are inconsistent with the approved postmining land use.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

~~69-05.2-13-09. PERFORMANCE STANDARDS - GENERAL REQUIREMENTS - SLIDES AND OTHER DAMAGE. Whenever a slide occurs which may potentially have an adverse effect on public property, health, safety, or the environment, the operator shall notify the commission expeditiously and comply with any remedial measures required by the commission.~~

~~History: Effective August 1, 1980.~~

~~General Authority
NDCC 38-14.1-03~~

~~Law Implemented
NDCC 38-14.1-24~~

~~69-05.2-13-10. PERFORMANCE STANDARDS - GENERAL REQUIREMENTS - CESSATION OF OPERATIONS - TEMPORARY.~~

- ~~1. Each permittee shall effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a permittee of obligation to comply with any provisions of the approved permit.~~

2. Before the temporary cessation of mining and reclamation operations for a period of time other than what may be specified in the permit application, the permittee shall submit to the commission, for approval, a notice of intention to temporarily cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of acres [hectares] which will have been affected in the permit area, prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-13-11. PERFORMANCE STANDARDS - GENERAL REQUIREMENTS
- CESSATION OF OPERATIONS - PERMANENT.

1. Upon permanent cessation of surface mining activities, the permittee shall close or backfill or otherwise permanently reclaim all affected areas, in accordance with this article and the permit approved by the commission.
2. All equipment, structures, or other facilities not required for monitoring, unless approved by the commission as suitable for the postmining land use or environmental monitoring, shall be removed and the affected land reclaimed.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

CHAPTER 69-05.2-14
PERFORMANCE STANDARDS - CASING
AND SEALING OF DRILLED HOLES

Section	
69-05.2-14-01	Performance Standards - Casing and Sealing of Drilled Holes - General Requirements
69-05.2-14-02	Performance Standards - Casing and Sealing of Drilled Holes - Temporary
69-05.2-14-03	Performance Standards - Casing and Sealing of Drilled Holes - Permanent

69-05.2-14-01. PERFORMANCE STANDARDS - CASING AND SEALING OF DRILLED HOLES - GENERAL REQUIREMENTS. Each drill hole, borehole, or well within the permit area shall be cased, sealed, or otherwise managed, as approved by the commission, to prevent toxic drainage from entering ground or surface waters, to minimize disturbance to the prevailing hydrologic balance, and to ensure the safety of people, livestock, fish and wildlife, and machinery in the extended-mining-plan permit area and adjacent area. If these openings are uncovered or exposed by surface mining activities within the permit area they shall be permanently closed, unless approved for water monitoring, or otherwise managed in a manner approved by the commission. Use of a drilled hole or borehole or monitoring well as a water well must meet the provisions of section 69-05.2-16-16. This section does not apply to holes drilled and used solely for blasting.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
Amended 2

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-14-02. PERFORMANCE STANDARDS - CASING AND SEALING OF DRILLED HOLES - TEMPORARY. Each drill hole or borehole identified in the approved permit application to be used to monitor ground water conditions shall be temporarily sealed before use and protected during use by barricades, or fences, or other protective devices approved by the commission. These devices shall be periodically inspected and maintained in good operating condition by the permittee or operator.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

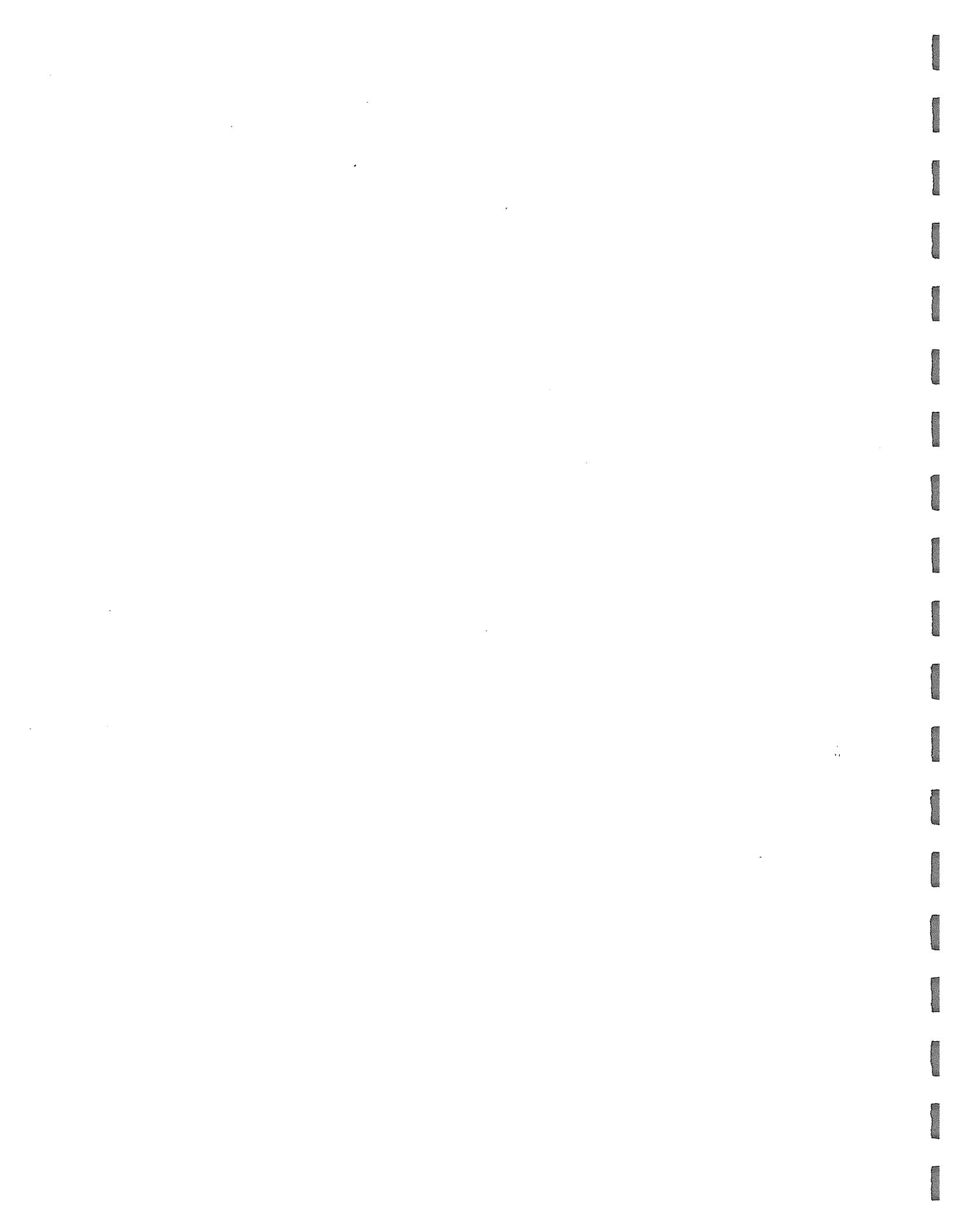
Law Implemented
NDCC 38-14.1-24

69-05.2-14-03. PERFORMANCE STANDARDS - CASING AND SEALING OF DRILLED HOLES - PERMANENT. When no longer needed for monitoring or other use approved by the commission upon a finding of no adverse environmental or health and safety effect, or unless approved for transfer as a water well under section 69-05.2-16-16, each drill hole or borehole, and well shall be capped, sealed, backfilled, or otherwise properly managed, as required by the commission, under section 69-05.2-14-01. Permanent closure measures shall be designed to prevent toxic drainage from entering ground or surface waters.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24



CHAPTER 69-05.2-15
PERFORMANCE STANDARDS - SUITABLE PLANT GROWTH MATERIAL

Section	
69-05.2-15-01	Performance Standards - Suitable Plant Growth Material - General Requirements
69-05.2-15-02	Performance Standards - Suitable Plant Growth Material - Removal
69-05.2-15-03	Performance Standards - Suitable Plant Growth Material - Storage and Protection
69-05.2-15-04	Performance Standards - Suitable Plant Growth Material - Redistribution
69-05.2-15-05	Performance Standards - Suitable Plant Growth Material - Nutrients and Soil Amendments
69-05.2-15-06	Performance Standards - Suitable Plant Growth Material - Stabilizing Rills and Gullies

~~69-05.2-15-01. PERFORMANCE STANDARDS - SUITABLE PLANT GROWTH MATERIAL - GENERAL REQUIREMENTS. To prevent suitable plant growth material from being mixed and contaminated with other materials, all suitable plant growth materials to be saved shall be separately removed and segregated from other materials as required by section 69-05.2-15-02 before disturbing an area. After removal, suitable plant growth material shall either be immediately redistributed as required by section 69-05.2-15-04 or stockpiled pending redistribution as required by section 69-05.2-15-03.~~

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-15-02. PERFORMANCE STANDARDS - SUITABLE PLANT GROWTH MATERIAL - REMOVAL.

1. Timing. Suitable plant growth material shall be removed after vegetative cover that would interfere with the use of the suitable materials is cleared from the areas to be disturbed, but before any mining or other surface disturbance.
2. Materials to be removed and saved. The suitable plant growth materials ~~that---are---considered---best---for topdressing-areas-to-be-reclaimed-(first-lift)~~, commonly

referred to as topsoil; (first lift suitable plant growth material) and ~~the remaining suitable materials (second lift)~~; ~~commonly referred to as~~ subsoil; (second lift suitable plant growth material) as identified by the soil survey required by section 69-05.2-08-10 shall be removed and segregated by two separate operations, unless otherwise approved required by the commission. Prior to beginning the removal of ~~second lift suitable materials~~ subsoil, the removal and segregation of the ~~first lift materials~~ topsoil must be approved by the commission. If use of other suitable strata is approved as a supplement to suitable plant growth material, all such materials to be saved shall be removed and segregated. Prior to ~~disturbing the overburden materials~~ further disturbance by surface coal mining operations which significantly alter the site, the removal and segregation of the ~~second lift material~~ subsoil or other suitable strata shall be approved by the commission.

3. Materials to be removed in shallow suitable plant growth material situations. If the thickness of suitable plant growth materials averages less than six inches [15.24 centimeters], a six-inch [15.24-centimeter] layer that includes the A horizon and the unconsolidated materials immediately below the A horizon, as specified by the commission, shall be removed, segregated, and redistributed as the topdressing layer, unless the commission approves the use of other suitable strata as a supplement to suitable plant growth materials pursuant to subsection 4.

4. Suitable plant growth material supplements.

a. ~~First lift suitable plant growth material~~ Topsoil supplements. Selected ~~second lift suitable plant growth materials~~ subsoil or other suitable strata may be used as a supplement to ~~first lift topdressing materials when~~ topsoil if the permittee or operator demonstrates that the resulting soil medium is equal to or more suitable for sustaining vegetation if ~~than~~ the available topsoil. This demonstration shall include:

- (1) The permittee or operator demonstrates that the selected materials to be mixed results in a soil medium that is more suitable than the first lift materials for restoring land capability and productivity based on the results of chemical and physical analyses. These analyses shall include determinations of pH, electrical conductivity, sodium adsorption ratio, percent organic matter, nitrogen, phosphorus, potassium, texture class, and

water-holding capacity. The commission may also require that results of field-site trials or greenhouse tests be used to demonstrate the feasibility of using a mixture of the selected materials. The chemical and physical analyses and the results of field-site trials and greenhouse tests shall be submitted to the commission accompanied by a certification from a qualified soil or plant scientist, stating that:

- (a) The proposed soil medium is equal to or more suitable for sustaining the vegetation than is the available first lift suitable plant growth material;
 - (b) The soil medium is the best available material to support the vegetation; and
 - (c) The trials and tests were conducted using standard testing procedures.
- (2) The permittee demonstrates that thorough mixing of the materials is technologically feasible.
- b. ~~Second--lift--suitable-plant-growth-material~~ Subsoil supplements. The permittee or operator may be required to use other suitable strata to supplement ~~second-lift-suitable-plant-growth--material~~ subsoil materials if the commission determines additional suitable materials for spreading over affected areas are necessary to meet the revegetation requirements, provided other suitable strata are available. Samples of the strata to be saved must be taken at sufficient locations to determine the areal extent of the suitable strata. The sampling locations must be approved by the commission. Chemical and physical analyses of the samples taken shall include pH, electrical conductivity, sodium adsorption ratio, and ~~particle-size-analysis~~ textural analysis as required by the commission.
- c. Supplemental materials shall be removed, segregated, and redistributed according to the applicable requirements for suitable plant growth material in this chapter.
5. Where the removal of vegetative material, suitable plant growth material, or other suitable strata may result in erosion which may cause air or water pollution:
- a. The size of the area from which suitable materials are removed at any one time shall be limited;

- b. The suitable materials shall be removed at a time when the physical and chemical properties of such materials can be protected and erosion can be minimized; and
- c. Such other measures shall be taken as the commission may approve or require to control erosion.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

~~69-05.2-15-03. PERFORMANCE STANDARDS - SUITABLE PLANT GROWTH MATERIAL - STORAGE AND PROTECTION.~~

- ~~1. Suitable plant growth materials removed as required by section 69-05.2-15-02 shall be stockpiled only when it is impractical to promptly redistribute such materials on regraded areas.~~
- ~~2. Stockpiled materials shall be selectively placed on a stable area within the permit area, not disturbed, and protected from wind and water erosion, unnecessary compaction, and contaminants which lessen the capability of the materials to support vegetation when redistributed. Protective measures shall be accomplished either by:
 - ~~a. An effective cover of nonnoxious, quick-growing annual and perennial plants, seeded or planted during the first normal period after removal for favorable planting conditions; or~~
 - ~~b. Other methods demonstrated to and approved by the commission to provide equal protection such as fences, chemical binders, and mulching.~~~~
- ~~3. Unless approved by the commission, stockpiled suitable plant growth materials shall not be moved until required for redistribution on a regraded area.~~

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-15-04. PERFORMANCE STANDARDS - SUITABLE PLANT GROWTH MATERIAL - REDISTRIBUTION.

1. After final grading is approved pursuant to section 69-05.2-21-06 and before the suitable plant growth material is replaced, regraded land shall be scarified or otherwise treated to eliminate slippage surfaces and to promote root penetration.
2. ~~Second-lift-suitable-plant-growth-material~~ Subsoil shall then be redistributed as approved by the commission in a manner that:
 - a. Achieves an approximate uniform thickness consistent with the postmining land use.
 - b. Prevents excess compaction of the spoil and ~~suitable material~~ subsoil.
3. Following commission approval of ~~second-lift-suitable-plant-growth-material~~ subsoil respreading, ~~first-lift-suitable-plant-growth-material~~ topsoil shall be redistributed as approved by the commission in a manner that:
 - a. Achieves an approximate uniform thickness consistent with the postmining land use.
 - b. Prevents excess compaction of the suitable plant growth materials.
 - ~~c. Protects the suitable-plant-growth-material from wind-and-water-erosion-before-sufficient-vegetative cover-is-established.~~
4. Following the respreading of suitable plant growth materials, appropriate measures shall be taken to protect the area from wind and water erosion.
- 4- 5. The suitable plant growth material saved from property owned by one party must be respread within the boundaries of that property if the surface ownership of the permit area is split between two or more parties, unless the parties otherwise agree.

History: Effective August 1, 1980; ~~amended~~ *amended effective June 1, 1983.*

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-15-05. PERFORMANCE STANDARDS - SUITABLE PLANT GROWTH MATERIAL - NUTRIENTS AND SOIL AMENDMENTS. Nutrients and soil amendments in the amounts determined by soil tests shall be applied to the redistributed surface soil layer when necessary so that it supports the approved postmining land use and meets the revegetation requirements of chapter 69-05.2-22. All soil tests shall be performed by a qualified laboratory using standard methods ~~approved-by-the-commission~~.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

~~69-05.2-15-06. PERFORMANCE STANDARDS - SUITABLE PLANT GROWTH MATERIAL - STABILIZING RILLS AND GULLIES. When rills and gullies deeper than nine inches [22.86 centimeters] form in areas that have been regraded and respread with suitable plant growth material, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded or replanted according to chapter 69-05.2-22. The commission shall require rills or gullies of lesser size to be filled, graded, or otherwise stabilized and the area reseeded or replanted if the rills or gullies would preclude the successful establishment of vegetation or the achievement of the postmining land use or if the rills or gullies may result in additional erosion and sedimentation.~~

~~History: Effective August 1, 1980.~~

~~General Authority
NDCC 38-14.1-03~~

~~Law Implemented
NDCC 38-14.1-24~~

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
69-05.2-16-03	Performance Standards - Hydrologic Balance - Compliance with the Standards of the State Engineer
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
69-05.2-16-10	Performance Standards - Hydrologic Balance - Discharge Structures
69-05.2-16-11	Performance Standards - 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
69-05.2-16-14	Performance 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

69-05.2-16-01. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE -
GENERAL REQUIREMENTS.

1. Surface mining activities shall be planned and conducted to minimize changes to the prevailing hydrologic balance in both the permit area and adjacent area, in order to prevent long-term adverse changes in that balance that could result from those activities.
2. Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.
3. Operations shall be conducted to minimize water pollution and, where necessary, treatment methods shall be used to control water pollution.
 - a. Each operator shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow of drainage shall be used in preference to the use of water treatment facilities.
 - b. Acceptable practices to control and minimize water pollution include, but are not limited to:
 - (1) Stabilizing disturbed areas through land shaping.
 - (2) Diverting runoff.
 - (3) Achieving quickly germinating and growing stands of temporary vegetation.
 - (4) Regulating channel velocity of water.
 - (5) Lining drainage channels with rock or vegetation.
 - (6) Mulching.
 - (7) Selectively placing and sealing toxic-forming materials.
 - (8) Selectively placing waste materials in backfill areas.

- c. If the practices listed in subdivision b are not adequate to meet the requirements of this article, the operator shall operate and maintain the necessary water treatment facilities for as long as treatment is required under this article.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-16-02. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE - COMPLIANCE WITH STATE DEPARTMENT OF HEALTH STANDARDS. Runoff water and pit water discharge shall meet the water quality requirements of the North Dakota state department of health, as well as the requirements of this article. No mining permit shall be issued or revised by the commission until the state department of health has had an opportunity to review the applicable application information and plans pertaining to surface water quality. No rights under the mining permit shall be exercised until the necessary permits are obtained from the state department of health.

History: Effective August 1, 1980.

General
NDCC 38-14.1-03,
38-14.1-42

Authority

Law Implemented
NDCC 38-14.1-21,
38-14.1-42

69-05.2-16-03. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE - COMPLIANCE WITH THE STANDARDS OF THE STATE ENGINEER. Any water impoundment, diversion, structure, or drainage ditch built as part of an approved mining and reclamation plan shall be constructed in accordance with the requirements of the North Dakota state engineer, as well as the requirements of this article. No mining permit shall be issued or revised by the commission until the state engineer has had an opportunity to review the applicable application information and plans pertaining to water impoundments, diversions, drainage ditches, or other structures. No rights under the mining permit shall be exercised until necessary permits are obtained from the state engineer.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03,
38-14.1-42

Law Implemented
NDCC 38-14.1-24,
38-14.1-42

69-05.2-16-04. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE - WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS.

1. The operator shall comply with the following water quality standards and effluent limitations:
 - a. All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted, shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area.
 - b. Sedimentation ponds and other treatment facilities shall be maintained until the disturbed area has been restored, the vegetation requirements of chapter 69-05.2-22 have been met, and the quality of the untreated drainage from the disturbed area meets the applicable state water quality standards requirements for the receiving stream.
 - c. The commission may grant exemptions from these requirements only when:
 - (1) The disturbed drainage area within the total disturbed area is small; and
 - (2) The permittee or operator demonstrates that sedimentation ponds and treatment facilities are not necessary for drainage from the disturbed drainage areas to meet the effluent limitations in the table included in subdivision g of this

subsection and the applicable state water quality standards for downstream receiving waters.

- d. For the purposes of this chapter only, "disturbed area" shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this article and the upstream area is not otherwise disturbed by the operator.
- e. Sedimentation ponds required by this section shall be constructed in accordance with the plans in the approved permit before beginning any surface mining activities in the drainage area to be affected.
- f. Where a sedimentation pond or series of sedimentation ponds is used so as to result in the mixing of drainage from the disturbed areas with drainage from other areas not disturbed by current surface coal mining and reclamation operations, the operator shall achieve the effluent limitations set forth in subdivision g for all of the mixed drainage when it leaves the permit area.
- g. Discharges of water from areas disturbed by surface mining activities shall be made in compliance with all state laws and regulations and, at a minimum, the following effluent limitations:

Effluent limitations, in milligrams per liter,
except for pH

Effluent characteristics	Maximum allowable*	Average of daily values for thirty consecutive discharge days*
Iron, total	7.0	3.5
Total suspended solids	45.0	30.0
pH	within the range 6.0 to 9.0	

* Based on representative sampling.

- 2. A discharge from the disturbed areas is not subject to the effluent limitations of this section, provided the operator has demonstrated to the commission that the following prerequisites have been met.

- a. The discharge is caused by precipitation or snowmelt; and
 - b. The discharge is from facilities designed, constructed, operated, and maintained in accordance with the requirements of this chapter.
3. Adequate facilities shall be installed, operated, and maintained to treat any water discharged from the disturbed area so that it complies with all state laws and regulations and the effluent limitations of this section.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-16-05. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE - SURFACE WATER MONITORING.

1. Surface water monitoring shall be conducted in accordance with the monitoring program submitted under section 69-05.2-09-12 and approved by the commission. The commission shall approve the nature of data, frequency of collection, and determine reporting requirements. Monitoring shall:
 - a. Be adequate to measure accurately and record water quantity and quality of the discharges from the permit area and to identify the extent which mining impacts the quality and quantity of water in the adjacent area .
 - b. Be conducted to assure reliable test data according to existing standard procedures and methods for analysis.
 - c. Result in notifying the commission within five days in any cases in which analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard. Where a North Dakota pollutant discharge elimination system permit effluent limitation noncompliance has occurred, the operator or permittee shall forward the analytical results concurrently with the written notice of noncompliance.
 - d. Result in quarterly reports to the commission, to include analytical results from each sample taken

during the quarter. Any sample results which indicate a permit violation will be reported to the commission as specified in subdivision c. In those cases where the discharge for which water monitoring reports are required is also subject to regulation by a North Dakota pollutant discharge elimination system permit issued in compliance with North Dakota Century Code chapter 61-28 and where such permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within ninety days or less of sample collection, the operator or permittee shall submit to the commission on the same time schedule as required by the North Dakota pollutant discharge elimination system permit or within ninety days following sample collection, whichever is sample collection, whichever is earlier, a copy of the completed reporting form filed to meet North Dakota pollutant discharge elimination system permit requirements along with analytical results from each sample taken during the quarter.

2. After disturbed areas have been regraded and stabilized in accordance with this article, the permittee shall continue to monitor surface water flow and quality within the permit and adjacent areas. Data from this monitoring may be used to demonstrate that the quality and quantity of runoff without treatment is consistent with the requirements of this chapter to minimize disturbance to the prevailing hydrologic balance and attain the approved postmining land use. This data may also provide a basis for approval by the commission for removal of water quality or flow control systems.
3. Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area shall be properly installed, maintained, and operated and shall be removed when no longer required.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-27

69-05.2-16-06. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE - DIVERSION OF OVERLAND FLOW. Overland flow, including flow through litter, shallow ground water flow from undisturbed areas, and flow in ephemeral streams, may be diverted away from disturbed areas by means of temporary or permanent diversions, if required or

approved by the commission as necessary to minimize erosion, to reduce the volume of water to be treated, and to prevent or remove water from contact with toxic-forming materials. The following requirements shall be met for all diversions and for all collection drains that are used to transport water into water treatment facilities and for all diversions of overland and shallow ground water flow and ephemeral streams:

1. Temporary diversions shall be constructed to pass safely the peak runoff from a ten-year, twenty-four-hour precipitation event, or a larger event as specified by the commission. A two-year recurrence interval may be used for design of collection drains used to transport water into water treatment facilities if:
 - a. The diversion is to be in use for less than one year; or
 - b. The commission determines that the design integrity of the water management plan is maintained during a ten-year, twenty-four-hour design storm.
2. Permanent diversions shall be constructed to pass safely the peak runoff from a ten-year, twenty-four-hour precipitation event; however, where necessary to protect fills and property and to avoid danger to public health and safety, permanent diversions shall be constructed to pass safely the peak runoff from a twenty-five-year, twenty-four-hour precipitation event, or a larger event as specified by the commission. Permanent diversions shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall be used only when approved by the commission to prevent seepage or to provide stability.
3. Diversions shall be designed, constructed, and maintained in a manner which prevents additional contributions of suspended solids to streamflow and to runoff outside the permit area, to the extent possible using the best technology currently available. Appropriate sediment control measures for these diversions may include, but are not limited to, maintenance of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.
4. No diversion shall be located so as to increase the potential for land slides. No diversion shall be constructed on existing land slides, unless approved by the commission.
5. When no longer needed, each temporary diversion shall be removed and the affected land regraded, suitable plant growth material respread, and revegetated in accordance

with the requirements of chapters 69-05.2-15, 69-05.2-21, and 69-05.2-22. When ephemeral stream channels are restored, the operator shall reestablish the channel to a longitudinal profile and cross section that approximate premining channel characteristics.

6. Diversion design shall incorporate the following:
 - a. Channel lining shall be designed using standard engineering practices to pass safely the design velocities.
 - b. Freeboard shall be no less than three-tenths of a foot [9.14 centimeters]. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the commission, the design freeboard may be increased.
 - c. Energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.
 - d. Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with chapter 69-05.2-18.
 - e. Suitable plant growth material shall be handled in compliance with chapter 69-05.2-15.
7. Diversions shall not be constructed or operated to divert water into underground mines or an abandoned surface mine without the approval of the commission under section 69-05.2-16-18.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-16-07. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE -
STREAM CHANNEL DIVERSIONS.

1. Flow from perennial and intermittent streams within the permit area may be diverted, if the diversions:

- a. Are approved by the commission after making the findings called for in section 69-05.2-16-20;
 - b. Comply with other requirements of this chapter; and
 - c. Comply with local and state laws and regulations.
2. When streamflow is allowed to be diverted, the stream channel diversion shall be designed, constructed, and removed, in accordance with the following:
- a. The longitudinal profile of the stream, the channel, and the flood plain shall be designed and constructed to remain stable and to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or to runoff outside the permit area. These contributions shall not be in excess of requirements of state law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used in diversions only when approved by the commission as being necessary to control erosion. These structures shall be approved for permanent diversions only where they are stable and will require infrequent maintenance.
 - b. The combination of channel, bank, and flood-plain configurations shall be adequate to pass safely the peak runoff of a ten-year, twenty-four-hour precipitation event for temporary diversions, a one hundred-year, twenty-four-hour precipitation event for permanent diversions, or larger events specified by the commission. However, the capacity of the channel itself should be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.
3. When no longer needed to achieve the purpose for which they were authorized, all temporary stream channel diversions shall be removed and the affected land regraded, respread with suitable plant growth material, and revegetated, in accordance with chapters 69-05.2-15, 69-05.2-21, and 69-05.2-22. At the time diversions are removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed to prevent overtopping or failure of the facilities. This requirement shall not relieve the operator from maintenance of a water treatment facility otherwise required under this chapter or the permit.

4. When permanent diversions are constructed or natural stream channels restored after being temporarily diverted, the operator shall:

- a. Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of the stream.
- b. Establish or restore the stream to its natural meandering shape at an environmentally acceptable gradient, as approved by the commission.
- c. Establish or restore the stream to a longitudinal profile and cross section, including aquatic habitats (usually a pattern of riffles, pools, and drops rather than uniform depth) that approximate premining stream channel characteristics.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24,
38-14.1-42

69-05.2-16-08. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE -
SEDIMENT CONTROL MEASURES.

1. Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:
 - a. Prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area.
 - b. Meet the more stringent of applicable state effluent limitations.
 - c. Minimize erosion to the extent possible.
2. Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed area shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination.

Sediment control methods include, but are not limited to:

- a. Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in chapter 69-05.2-22.
- b. Stabilizing the backfill material to promote a reduction in the rate and volume of runoff, in accordance with the requirements of chapter 69-05.2-21.
- c. Retaining sediment within disturbed areas.
- d. Diverting runoff away from disturbed areas.
- e. Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion.
- f. Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment.
- g. Treating with chemicals.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-16-09. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE -
SEDIMENTATION PONDS.

1. General requirements. Sedimentation ponds shall be used individually or in series and shall:
 - a. Be constructed before any disturbance of the undisturbed area to be drained into the pond.
 - b. Be located as near as possible to the disturbed area and out of perennial streams, unless approved by the commission.
 - c. Meet all the criteria of this section.
2. Sediment storage volume. Sedimentation ponds shall provide a minimum sediment storage volume equal to the

accumulated sediment volume from the drainage area to the pond for a minimum of three years. Sediment storage volume shall be determined using the Universal Soil Loss Equation, gully erosion rates, and the sediment delivery ratio converted to sediment volume, using either the sediment density or other empirical methods derived from regional sediment pond studies if approved by the commission.

3. Detention time. Sedimentation ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a ten-year, twenty-four-hour precipitation event (design event). The theoretical detention time shall be sufficient to achieve and maintain applicable effluent standards. The calculated theoretical detention time and all supporting documentation and drawings used to establish the required detention times shall be included in the permit application.
4. Dewatering. The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the commission, and shall have a discharge rate to achieve and maintain the required theoretical detention time. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sediment storage volume.
5. Each operator shall design, construct, and maintain sedimentation ponds to prevent short circuiting to the extent possible.
6. The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this section shall not relieve the operator from compliance with applicable effluent limitations as contained in section 69-05.2-16-04, subject to the exemption contained therein.
7. There shall be no outflow through the emergency spillway during the passage of the runoff resulting from the ten-year, twenty-four-hour precipitation event or lesser events through the sedimentation pond.
8. Sediment shall be removed from sedimentation ponds when the volume of sediment accumulates to sixty percent of the design sediment volume or sooner if required by the commission.
9. An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff from a twenty-five-year, twenty-four-hour precipitation event, or larger event specified by the

commission. Emergency spillway grades and allowable velocities shall be approved by the commission.

10. The minimum elevation at the top of the settled embankment shall be one foot [30.48 centimeters] above the surface water in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this one foot [30.48 centimeters] minimum elevation requirement shall apply at all times, including the period after settlement.
11. The constructed height of the dam shall be increased a minimum of five percent over the design height to allow for settlement, unless it has been demonstrated to the commission that the material used and the design will ensure against all settlement.
12. The minimum top width of the embankment shall not be less than the quotient of $(H+35)/5$, where H is the height, in feet, or $(H+10.7)/5$, where H is the height, in meters, of the embankment as measured from the upstream toe of the embankment.
13. The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h, with neither slope steeper than 1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.
14. The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.
15. The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal processing waste be used.
16. The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thicknesses as are required to facilitate compaction and meet the design requirements of this section. Compaction shall be conducted as specified in the design approved by the commission.
17. If a proposed impoundment can impound water to an elevation of five feet [1.52 meters] or more above the upstream toe of the structure and can have a storage volume greater than twenty acre-feet, [24,669.64 cubic meters] or can impound water to an elevation of twenty feet [6.10 meters] or more above the upstream toe of the structure, the following additional requirements shall be met:

- a. An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a one hundred-year, six-hour precipitation event, or a larger event as specified by the commission.
 - b. The embankment shall be designed and constructed with a static safety factor of at least 1.5, or a higher safety factor as designated by the commission to ensure stability.
 - c. Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.
 - d. The criteria of the mine safety and health administration as published in 30 CFR 77.216 shall be met.
18. Each pond shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer. In addition, all dams and embankments meeting the criteria of subsection ~~17~~ 15 shall be certified annually as having been maintained to comply with the approved plan. The certification shall meet all applicable requirements of the state engineer.
19. The entire embankment including the surrounding areas and diversion ditches disturbed or created by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas where the reestablishment of vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with section 69-05.2-15-06.
20. All ponds, including those not meeting the criteria of subsection 17 shall be examined for structural weakness, erosion, and other hazardous conditions, and reports and modifications shall be made in accordance with 30 CFR 77.216-3, except that dams not meeting the criteria of subsection 17 may be examined on a semiannual basis.
21. Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the commission. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the commission shall approve the plans before modification begins.

22. Sedimentation ponds shall not be removed until the disturbed area has been restored, the vegetation requirements of chapter 69-05.2-22 are met, and the drainage entering the pond has met the applicable state water quality requirements for the receiving stream. When the sedimentation pond is removed, the affected land shall be regraded, respread with suitable plant growth material, and revegetated in accordance with chapters 69-05.2-15, 69-05.2-21, and 69-05.2-22, unless the pond has been approved by the commission for retention as being compatible with the approved postmining land use under chapter 69-05.2-23. If the commission approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments of section 69-05.2-16-12.

History: Effective August 1, 1980; *amended effective June 1, 1983*

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-16-10. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE - DISCHARGE STRUCTURES. Discharges from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, where necessary using energy dissipators, riprap channels, surge ponds, and other devices to reduce erosion, to prevent deepening or enlargement of stream channels and to minimize disturbances to the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-16-11. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE - TOXIC MINE DRAINAGE. The discharge of toxic mine drainage into ground and surface water shall be avoided by:

1. Identifying, burying, and treating where necessary, spoil which, in the judgment of the commission, may be detrimental to vegetation or may adversely affect water quality if not treated or buried.

2. Preventing water from coming into contact with spoil material that causes toxic mine drainage in accordance with section 69-05.2-21-03, and other measures as required by the commission.
3. Burying or otherwise treating all spoil material that causes toxic mine drainage within thirty days after it is first exposed on the minesite, or within a lesser period required by the commission, except that temporary storage of the spoil may be approved by the commission upon a finding that burial or treatment within thirty days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible and such spoil material shall be placed on impermeable material and protected from erosion and contact with surface water.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-16-12. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE - PERMANENT AND TEMPORARY IMPOUNDMENTS.

1. In addition to the standards for permanent impoundments contained in subsection 7 of North Dakota Century Code section 38-14.1-24, the design, construction, and maintenance of structures in which water is impounded by a dam must utilize the best technology currently available and must, at a minimum, meet the requirements of subsections 9 through 21 of section 69-05.2-16-09.
2. Temporary impoundments of water in which the water is impounded by a dam shall meet the requirements of subsections 9 through 22 of section 69-05.2-16-09.
3. Excavations that will impound water during or after the mining operation shall have perimeter slopes that are stable and shall not be steeper than 1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required. Where surface runoff enters the impoundment area, the side slope shall be protected against erosion.
4. All dams and embankments shall be routinely maintained during the mining operations. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any

combustible material present on the surface, other than material such as mulch or dry vegetation used for surface stability, shall be removed and all other appropriate maintenance procedures followed.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-16-13. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE - GROUND WATER PROTECTION.

1. Backfilled materials shall be placed so as to minimize contamination of ground water systems with toxic or otherwise harmful mine drainage, to minimize adverse effects on ground water flow and quality, to minimize offsite effects, and to support approved postmining land uses.
2. To control the effects of mine drainage, pits, cuts, and other mine excavations or disturbances shall be located, designed, constructed, and utilized in such manner as to prevent or control discharge of toxic or otherwise harmful mine drainage waters into ground water systems and to prevent adverse impacts on such ground water systems or on approved postmining land uses.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-16-14. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE - GROUND WATER MONITORING.

1. Ground water monitoring shall be conducted in accordance with the monitoring program submitted under section 69-05.2-09-12 and approved by the commission. Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the commission to determine the effects of surface mining activities on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems in the extended-mining-plan-area; permit area;

and adjacent area. Groundwater monitoring systems shall be designed and maintained in a manner that will allow the commission to substantiate the determination of cumulative impacts of all surface mining activities on the ground water hydrology of the permit area, adjacent area, and general area.

2. When surface mining activities may affect the ground water systems which serve as aquifers that ensure the hydrologic balance of water use on or off the mine area, ground water levels and ground water quality shall be periodically monitored. Monitoring shall include measurements from a sufficient number of wells and mineralogical and chemical analyses of aquifer, overburden, and spoil that are adequate to reflect changes in ground water quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of surface mining activities, if necessary, to minimize disturbance of the prevailing hydrologic balance.
3. As specified and approved by the commission, the operator or permittee shall conduct additional hydrologic tests, including drilling, infiltration tests, and aquifer tests and shall submit the results to the commission, to demonstrate compliance with this chapter.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24,
38-14.1-27

~~69-05.2-16-15. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE - PROTECTION OF GROUND WATER RECHARGE CAPACITY. Surface mining activities shall be conducted in a manner that facilitates reclamation which will restore approximate premining recharge capacity, through restoration of the capability of the reclaimed areas as a whole, excluding coal processing waste and underground development waste disposal areas and fills, to transmit water to the ground water system. The recharge capacity shall be restored to a condition which:~~

1. Supports the approved postmining land use;
2. Minimizes disturbances to the prevailing hydrologic balance in the mine plan area and in adjacent areas; and

3. Provides a rate of recharge that approximates the premining recharge rate.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24,
38-14.1-27

69-05.2-16-16. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE -
TRANSFER OF WELLS.

1. An exploratory or monitoring well may only be transferred by the permittee for further use as a water well with the prior approval of the commission. The permittee and the surface owner of the lands where the well is located shall jointly submit a written request to the commission for that approval.
2. Upon an approved transfer of a well, the transferee shall:
 - a. Assume primary liability for damages to persons or property from the well.
 - b. Plug the well when necessary, but in no case later than abandonment of the well.
 - c. Assume primary responsibility for compliance with chapter 69-05.2-14 with respect to the well.
3. Upon an approved transfer of a well, the transferor shall be secondarily liable for the transferee's obligations under subsection 2, until release of the bond or other equivalent guarantee required by chapter 69-05.2-12, for the area in which the well is located.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-16-17. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE -
WATER RIGHTS AND REPLACEMENT. A permittee shall replace the water supply of an owner of interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural,

industrial, or other legitimate use from an underground or surface source, where the water supply has been affected by contamination, diminution, or interruption proximately resulting from the surface mining activities.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-16-18. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE - DISCHARGE OF WATERS INTO AN UNDERGROUND MINE. Surface water shall not be diverted or otherwise discharged into underground mine workings or abandoned surface mines, unless the operator or permittee demonstrates to the commission that the diversion or discharge will:

1. Abate water pollution or otherwise eliminate public hazards resulting from surface mining activities.
2. Not cause the discharge to result in or contribute to a violation of applicable water quality standards or effluent limitations.
3. Minimize disturbance to the hydrologic balance.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-16-19. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE - POSTMINING REHABILITATION OF SEDIMENTATION PONDS, DIVERSIONS, IMPOUNDMENTS, AND TREATMENT FACILITIES. Before abandoning the permit area, the operator shall renovate all permanent sedimentation ponds, diversions, impoundments, and treatment facilities to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-16-20. PERFORMANCE STANDARDS - HYDROLOGIC BALANCE -
STREAM BUFFER ZONES.

1. No land within one hundred feet [30.48 meters] of a perennial or intermittent stream shall be disturbed by surface mining activities, except in accordance with sections 69-05.2-16-06 and 69-05.2-16-07, unless the commission, after consultation with the state engineer, specifically authorizes surface mining activities closer to or through such a stream upon finding:
 - a. That the original stream channel will be restored; and
 - b. During and after the mining, the water quantity and quality from the stream section within one hundred feet [30.48 meters] of the surface mining activities will not be adversely affected.
2. The area not to be disturbed shall be designated a buffer zone and marked as specified in section 69-05.2-13-04.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

CHAPTER 69-05.2-17
PERFORMANCE STANDARDS - USE OF EXPLOSIVES

Section	
69-05.2-17-01	Performance Standards - Use of Explosives - General Requirements
69-05.2-17-02	Performance Standards - Use of Explosives - Preblasting Survey
69-05.2-17-03	Performance Standards - Use of Explosives - Public Notice of Blasting Schedule
69-05.2-17-04	Performance Standards - Use of Explosives - Public Notice of Changes to Blasting Schedules
69-05.2-17-05	Performance Standards - Use of Explosives - Surface Blasting Procedures
69-05.2-17-06	Performance Standards - Use of Explosives - Seismographic Measurements
69-05.2-17-07	Performance Standards - Use of Explosives - Records of Blasting Operations

~~69-05.2-17-01. PERFORMANCE STANDARDS - USE OF EXPLOSIVES -
GENERAL REQUIREMENTS.~~

- ~~1. Each operator shall comply with all applicable local and state laws in the use of explosives.~~
- ~~2. Blasts that use more than five pounds [2.27 kilograms] of explosive or blasting agent shall be conducted according to the schedule required by section 69-05.2-17-03.~~
- ~~3. All blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved. Each person responsible for blasting operations shall possess a valid certification as required by North Dakota Century Code section 38-14.1-24.~~

~~History: Effective August 1, 1980.~~

~~General Authority
NDCC 38-14.1-03~~

~~Law Implemented
NDCC 38-14.1-24~~

69-05.2-17-02. PERFORMANCE STANDARDS - USE OF EXPLOSIVES -
PREBLASTING SURVEY.

1. On request to the commission by a resident or owner of a dwelling or structure that is located within one-half mile [0.85 kilometers] of any part of the permit area, the operator shall promptly conduct a preblasting survey of the dwelling or structure and promptly submit a report of the survey to the commission and to the person requesting the survey. If a structure is renovated or added to subsequent to a preblasting survey, then upon request to the commission, a survey of such additions and renovations shall be performed in accordance with this section.
2. The survey shall determine the condition of the dwelling or structure and document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems shall be limited to surface condition and other readily available data. Special attention shall be given to the preblasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.
3. The written report of the survey shall be prepared and signed by the person who conducted the survey. The report may include recommendations of any special conditions or proposed adjustments to the blasting procedure which should be incorporated into the blasting plan to prevent damage. If the person who requested the survey disagrees with the results of the survey, that person may notify, in writing, both the permittee and the commission of the specific areas of disagreement.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-17-03. PERFORMANCE STANDARDS - USE OF EXPLOSIVES -
PUBLIC NOTICE OF BLASTING SCHEDULE.

1. Blasting schedule publication.
 - a. Each operator shall publish the blasting schedule required by subdivision a of subsection 13 of North Dakota Century Code section 38-14.1-24 at least ten days, but not more than twenty days, before

beginning a blasting program in which blasts that use more than five pounds [2.27 kilograms] of explosive or blasting agent are detonated.

b. Copies of the schedule shall be distributed by mail to local governments and public utilities. Copies sent to residents pursuant to subdivision a of subsection 13 of North Dakota Century Code section 38-14.1-24 may be delivered and shall be accompanied by information on how to request a preblasting survey.

c. The operator shall republish and redistribute the schedule every twelve months, or more frequently if necessary to meet the requirements of subsection 2.

2. Blasting schedule contents:

a. A blasting schedule shall not be so general as to cover the entire permit area or all working hours, but shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur.

b. The blasting schedule shall contain at a minimum:

(1) Identification of the specific areas in which blasting will take place. Each specific blasting area described shall be reasonably compact and not larger than three hundred acres [121.41 hectares].

(2) Days and time periods when explosives are to be detonated. These periods shall not exceed an aggregate of four hours in any one day.

(3) Methods to be used to control access to the blasting area.

(4) Types of audible warnings and all-clear signals to be used before and after blasting.

(5) A description of unavoidable hazardous situations referred to in section 69-05.2-17-05 which have been approved by the commission for blasting at times other than those described in the schedule.

3. Any revisions to the blasting notices from that specified in the permit application shall be submitted to the commission.

4. For the purposes of this section, the permit area does not include haul or access roads, coal preparation and

loading facilities, and transportation facilities between coal excavation areas and coal preparation or loading facilities, if blasting is not conducted in those areas.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-17-04. PERFORMANCE STANDARDS - USE OF EXPLOSIVES -
PUBLIC NOTICE OF CHANGES TO BLASTING SCHEDULES.

1. Before blasting in areas or at times not in a previous schedule, the operator shall prepare a revised blasting schedule according to the procedures contained in subdivision a of subsection 13 of North Dakota Century Code section 38-14.1-24 and in subsections 1 and 2 of section 69-05.2-17-03. Where notice has previously been mailed or delivered to a resident under subsection 1 of section 69-05.2-17-03 with advice on how to request a preblasting survey, the notice of change need not include information regarding preblasting surveys.
2. If there is a substantial pattern of deviation from the published blasting schedule as evidenced by the absence of blasting during scheduled periods, the commission may require that the operator prepare a revised blasting schedule according to the procedures in subsection 1.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-17-05. PERFORMANCE STANDARDS - USE OF EXPLOSIVES -
SURFACE BLASTING PROCEDURES.

1. All blasting shall be conducted between sunrise and sunset.
 - a. The commission may specify more restrictive time periods based on public requests or other relevant information in order to adequately protect the public from adverse noise.

b. Blasting may, however, be conducted between sunset and sunrise if:

- (1) A blast that has been prepared during the afternoon must be delayed due to the occurrence of an unavoidable hazardous condition and cannot be delayed until the next day because a potential safety hazard could result that cannot be adequately mitigated;
 - (2) In addition to the required warning signals, oral notices are provided to persons within one-half mile [0.85 kilometers] of the blasting site; and
 - (3) A complete written report of blasting at night is filed by the operator with the commission not later than three days after the night blasting. The report shall include a description in detail of the reasons for the delay in blasting, including why the blast could not be held over until the next day, when the blast was actually conducted, the warning notices given, and a copy of the blast report required by section 69-05.2-17-07.
2. Blasting shall be conducted at times announced in the blasting schedule, except in those unavoidable hazardous situations, previously approved by the commission in the permit application, where operator or public safety require unscheduled detonation.
 3. Warning and all-clear signals of different character that are audible within a range of one-half mile [0.85 kilometers] from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within one-half mile [0.85 kilometers] of the permit area shall be notified of the meaning of the signals through appropriate instructions. These instructions shall be periodically delivered or otherwise communicated in a manner which can be reasonably expected to inform such persons of the meaning of the signals. Each operator shall maintain signs in accordance with subsection 6 of section 69-05.2-13-04.
 4. Access to an area possibly subject to flyrock from blasting shall be regulated to protect the public and livestock. Access to the area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting and until an authorized representative of the operator has reasonably determined:

- a. That no unusual circumstances, such as imminent slides or undetonated charges, exist; and
 - b. That access to and travel in or through the area can be safely resumed.
5. Airblast shall be controlled so that it does not exceed the values specified in this subsection at any dwelling, public building, school, church, or commercial or institutional structure, unless such structure is owned by the operator or permittee and is not leased to any other person. If a building owned by the operator or permittee is leased to another person, the lessee may sign a waiver relieving the operator from meeting the airblast limitations of this subsection.

Lower frequency limit of measuring system, Hz (±3dB)	Maximum level in dB
0.1 Hz or lower - flat response . . .	135 peak.
2 Hz or lower - flat response . . .	132 peak.
6 Hz or lower - flat response . . .	130 peak.
C-weighted, slow response	109 C.

- a. In all cases except the C-weighted, slow response, the measuring systems used shall have a flat frequency response of at least two hundred Hz at the upper end. The C-weighted shall be measured with a type 1 sound level meter that meets the standard American national standards institute (ANSI) S1.4-1971 specifications.
 - b. The person who conducts blasting may satisfy the provisions of this subsection by meeting any of the four specifications in the chart in this subsection.
 - c. The commission may require an airblast measurement of any or all blasts, and may specify the location of such measurements.
6. Except where lesser distances are approved by the commission based upon a preblasting survey, seismic investigation, or other appropriate investigation, blasting shall not be conducted:
- a. Within five hundred feet [152.40 meters] of any occupied dwelling, nor within three hundred feet [91.44 meters] of any public building, school, church, community, or institutional building; nor

- b. Within five hundred feet [152.40 meters] of facilities including, but not limited to, disposal wells, petroleum or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines.
7. Flyrock, including blasted material traveling along the ground, shall not be cast from the blasting vicinity more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the line of property owned or leased by the permittee, or beyond the area of regulated access required under subsection 4.
8. In all blasting operations, except as otherwise authorized in this section, the maximum peak particle velocity shall not exceed ~~two-inches-{5.08-centimeters}~~ one inch [2.54 centimeters] per second at the location of any dwelling, public building, school, church, or commercial or institutional building. Peak particle velocities shall be recorded in three mutually perpendicular directions. The maximum peak particle velocity shall be the largest of any of the three measurements. The commission may reduce the maximum peak particle velocity allowed, if the commission determines that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts, or other factors.
9. If blasting is conducted to prevent changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation of subsection 8 shall not apply at the following locations:
- a. At structures owned by the operator or permittee, and not leased to another party; and
- b. At structures owned by the operator or permittee, and leased to another party, if a written waiver by the lessee is submitted to the commission prior to blasting.
10. The maximum weight of explosives to be detonated within any eight millisecond period may be determined by the formula:

$$W=(B/50)^2$$

$$W=(D/60)^2$$

where W = the maximum weight of explosives, in pounds, that can be detonated in any eight millisecond period,

and D = the distance, in feet, from the blast to the nearest dwelling, school, church, or commercial or institutional building. If blasting is conducted in accordance with this formula, the peak particle velocity shall be deemed to be within the ~~two--inch--~~~~{5-08 centimeter}~~ one inch [2.54 centimeters] per second limit. For distances between three hundred feet [91.44 meters] and five thousand feet [1524.00 meters], solution of the formula results in the following maximum weights:

Distance-(D)-----Maximum-weight-(W)
 Feet-----{Meters}-----Pounds----{Kilograms}

300-----{91.44}-----36-----{16.33}
350-----{106.68}-----49-----{22.23}
400-----{121.92}-----64-----{29.03}
500-----{152.40}-----100-----{45.36}
600-----{182.88}-----144-----{65.32}
700-----{213.36}-----196-----{88.90}
800-----{243.84}-----256-----{116.12}
900-----{274.32}-----324-----{146.96}
1,000-----{304.80}-----400-----{181.44}
1,100-----{335.28}-----484-----{219.54}
1,200-----{365.76}-----576-----{261.27}
1,300-----{396.24}-----676-----{306.63}
1,400-----{426.72}-----784-----{355.62}
1,500-----{457.20}-----900-----{408.23}
1,600-----{487.68}-----1,024-----{464.48}
1,700-----{518.16}-----1,156-----{524.35}
1,800-----{548.64}-----1,296-----{587.86}
1,900-----{579.12}-----1,444-----{654.99}
2,000-----{609.60}-----1,600-----{725.75}
2,500-----{762.00}-----2,500-----{1133.98}
3,000-----{914.40}-----3,600-----{1632.93}
3,500-----{1066.80}-----4,900-----{2222.60}
4,000-----{1219.20}-----6,400-----{2902.99}
4,500-----{1371.60}-----8,100-----{3674.10}
5,000-----{1524.00}-----10,000-----{4535.92}

Distance (D)		Maximum weight (W)	
Feet	[Meters]	Pounds	[Kilograms]
300	[91.44]	25	[11.34]
350	[106.68]	34	[15.42]
400	[121.92]	44	[19.96]
500	[152.40]	69	[31.30]
600	[182.88]	100	[45.36]
700	[213.36]	136	[61.69]
800	[243.84]	178	[80.74]
900	[274.32]	225	[102.06]
1,000	[304.80]	278	[126.10]
1,100	[335.28]	336	[152.41]
1,200	[365.76]	400	[181.44]
1,300	[396.24]	469	[212.73]
1,400	[426.72]	544	[246.75]
1,500	[457.20]	625	[283.50]
1,600	[487.68]	711	[322.50]
1,700	[518.16]	803	[364.23]
1,800	[548.64]	900	[408.23]
1,900	[579.12]	1,002	[454.50]
2,000	[609.60]	1,111	[503.94]
2,500	[762.00]	1,736	[787.44]
3,000	[914.40]	2,500	[1133.98]
3,500	[1066.80]	3,403	[1543.57]
4,000	[1219.20]	4,444	[2015.76]
4,500	[1371.60]	5,625	[2551.46]
5,000	[1524.00]	6,944	[3149.74]

History: Effective August 1, 1980; *amended effective June 1, 1983.*

~~Amended~~
 General Authority
 NDCC 38-14.1-03 :

Law Implemented
 NDCC 38-14.1-24

69-05.2-17-06. PERFORMANCE STANDARDS - USE OF EXPLOSIVES - SEISMOGRAPHIC MEASUREMENTS.

1. Where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit of ~~two---inches---~~~~[5-08---centimeters]~~ one inch [2.54 centimeters] per second is not exceeded, the formula in subsection 10 of section 69-05.2-17-05 need not be used. If that formula is not used by the operator, a seismograph record shall be obtained for each shot.
2. The use of a modified formula to determine maximum weight of explosives per delay for blasting operations at a particular site, may be approved by the commission,

on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. In no case shall the commission approve the use of a modified formula where the peak particle velocity limit of ~~two-inches-{5-08-centimeters}~~ one inch [2.54 centimeters] per second required in subsection 8 of section 69-05.2-17-05 would be exceeded.

3. The commission may require a seismograph record of any or all blasts and may specify the location at which such measurements are to be taken.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

~~69-05.2-17-07. PERFORMANCE STANDARDS - USE OF EXPLOSIVES - RECORDS OF BLASTING OPERATIONS. A log of each blast, including any seismograph reports, shall be retained at the minesite in accordance with the provisions of subdivision b of subsection 13 of North Dakota Century Code section 38-14.1-24. The log shall contain all of the following information:~~

1. Name of the operator conducting the blast.
2. Location, date, and time of blast.
3. Name, signature, and license number of blaster-in-charge.
4. Direction and distance, in feet [meters], to nearest dwelling, school, church, or commercial or institutional building:
 - a. Not located in the permit area; or
 - b. Not owned or leased by the person who conducts the surface mining activities.
5. Weather conditions, including temperature, wind direction and approximate velocity.
6. Type of material blasted.
7. Number of holes, burden, and spacing.
8. Diameter and depth of holes.

9. Types of explosives used.
10. Total weight of explosives used.
11. Maximum weight of explosives detonated within any eight millisecond period.
12. Maximum number of holes detonated within any eight millisecond period.
13. Initiation system.
14. Type and length of stemming.
15. Mats or other protections used.
16. Type of delay detonator and delay periods used.
17. Sketch of the delay pattern.
18. Number of persons in the blasting crew.
19. Seismograph reports, where required, which shall include:
 - a. The calibration signal of the gain setting.
 - b. Seismographic reading, including exact location of seismograph and its distance from the blast.
 - c. Name of the person taking the seismograph reading.
 - d. Name of the person and firm analyzing the seismograph report.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

CHAPTER 69-05.2-19
PERFORMANCE STANDARDS - WASTE MATERIALS

Section	
69-05.2-19-01	Performance Standards - Waste Materials - General Requirements [Repealed]
69-05.2-19-02	Performance Standards - Waste Materials - Permanent Disposal of Coal Wastes
69-05.2-19-03	Performance Standards - Waste Materials - Temporary Disposal of Coal Processing Wastes
69-05.2-19-04	Performance Standards - Waste Materials - Disposal of Noncoal Wastes

69-05.2-19-01. PERFORMANCE STANDARDS - WASTE MATERIALS - GENERAL REQUIREMENTS.

~~1. Disposal of all coal processing waste, waste materials from coal utilization processes, coal conversion facilities, and noncoal wastes shall be in accordance with the provisions of this chapter.~~

~~2. Any waste materials required to be permitted in accordance with the solid waste management regulations of the North Dakota state department of health shall be disposed of as set forth by those regulations. The disposal of waste materials regulated by the state department of health shall not be undertaken until the operator has furnished the commission with a copy of each solid waste permit issued and the commission has approved the disposal site within the permit area.~~

((History: Effective August 1, 1980.
Repealed

Repealed effective June 1, 19

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24)))

69-05.2-19-02. PERFORMANCE STANDARDS - WASTE MATERIALS - PERMANENT DISPOSAL OF COAL WASTES.

1. All coal processing waste and waste materials from coal utilization processes and coal conversion facilities that are to be permanently disposed of within a surface coal mining and reclamation operations permit area and

that are required to be permitted in accordance with the solid waste management rules of the North Dakota state department of health shall be disposed of as set forth by those rules and in accordance with the provisions of this chapter.

a. When coal processing wastes are to be permanently disposed of within the permit area, the permittee or operator shall file application for and design the disposal site as required by the North Dakota state department of health and shall concurrently submit a copy of such application to the commission.

b. The permittee or operator shall also submit to the commission a permit revision that will incorporate the disposal activities into the operations and reclamation plan for the permit area within which the disposal will occur. The commission shall not approve the permit revision until the North Dakota state department of health issues a solid waste permit for permanent disposal of coal processing wastes.

2. All coal processing waste, ash and other waste materials from coal utilization processes and coal conversion facilities shall--be--permanently--disposed--of that are permanently disposed of within a surface coal mining and reclamation operations permit area shall be placed only in ~~mined-out-pit~~ excavated pit areas approved by the commission. Prior to the disposal, the operator must demonstrate, using hydrologic, geotechnical, physical, and chemical analyses, that disposal of these materials will not:

- 1- a. Adversely affect ground water quality and flow;
- 2- b. Create public health hazards; and
- 3- c. Cause instability in the disposal areas.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-19-03. PERFORMANCE STANDARDS - WASTE MATERIALS - TEMPORARY DISPOSAL OF COAL PROCESSING WASTES. The commission may approve the temporary disposal of coal processing wastes in areas

other than mined-out excavated pits if the operator demonstrates that:

1. All surface drainage from the area above the temporary disposal site will be diverted as required by the commission.
2. Measures will be taken to minimize surface erosion at the disposal site.
3. All water discharged from the disposal site will comply with chapter 69-05.2-16.
4. No toxic mine drainage from the disposal site will degrade surface or ground water.
5. The disposal site will not create health hazards.
6. Coal processing waste fires can be extinguished in an approved manner.
7. The coal processing waste will be compacted to prevent spontaneous combustion.
8. Fugitive dust from the disposal site can be controlled.
9. The coal processing waste will be permanently disposed of in a timely manner in accordance with section 69-05.2-19-02.
10. The temporary disposal site will be restored in accordance with this article.
11. Dams and embankments constructed of or impounding coal processing waste as a temporary disposal method are in compliance with chapter 69-05.2-20.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
Amended

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-19-04. PERFORMANCE STANDARDS - WASTE MATERIALS -
DISPOSAL OF NONCOAL WASTES.

1. All noncoal waste materials that are disposed of within a surface coal mining and reclamation operations permit area and that are required to be permitted in accordance with solid waste management rules of the North Dakota

state department of health shall be disposed of as set forth in those rules and in accordance with the provisions of this chapter. Before the commencement of disposal operations, the commission shall be advised of plans to develop or modify a noncoal waste disposal site located within a surface coal mining and reclamation operations permit area.

- 1- 2. Noncoal wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber, and other combustibles generated during surface mining activities and noncoal waste materials from other activities conducted outside the permit area, such as municipal wastes, shall be placed and stored in a controlled manner in a designated portion of the permit area approved by the commission. Placement and storage shall ensure that leachate and surface runoff do not degrade surface or ground water, fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

- 2- 3. Final disposal of noncoal wastes shall be in a designated disposal site in the permit area. Disposal sites shall be designed and constructed with appropriate water barriers on the bottom and sides of the designated site. Wastes shall be routinely compacted and covered to prevent combustion and windborne waste. When the disposal is completed, two feet [60.96 centimeters] of cover or such greater thickness as may be required by the commission, shall be placed over the site, slopes stabilized, suitable plant growth material respread and revegetation accomplished in accordance with chapter 69-05.2-22. Operation of the disposal site shall be conducted in accordance with all local and state requirements.

- 3- 4. At no time shall any solid waste material be deposited at embankment or impoundment sites, nor shall any excavation for solid waste disposal be located within eight feet [2.44 meters] of any coal outcrop or coal storage area.

History: Effective August 1, 1980; *amended effective June 1, 1983.*

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

CHAPTER 69-05.2-21
PERFORMANCE STANDARDS - BACKFILLING AND GRADING

Section	
69-05.2-21-01	Performance Standards - Backfilling and Grading - Timing Requirements
69-05.2-21-02	Performance Standards - Backfilling and Grading - Grading Requirements
69-05.2-21-03	Performance Standards - Backfilling and Grading - Covering Coal and Toxic-Forming Materials - Stabilization - Using Waste Material as Fill
69-05.2-21-04	Performance Standards - Backfilling and Grading - Thin Overburden
69-05.2-21-05	Performance Standards - Backfilling and Grading - Slippage and Piping Zones
69-05.2-21-06	Performance Standards - Backfilling and Grading - Slope Measurements
69-05.2-21-07	Performance Standards - Backfilling and Grading - Stabilizing Rills and Gullies

~~69-05.2-21-01. PERFORMANCE STANDARDS - BACKFILLING AND
GRADING - TIMING REQUIREMENTS.~~

- ~~1. Area surface mining with thin overburden. Rough backfilling and grading shall occur in accordance with the time schedule approved by the commission, on the basis of the materials submitted under subsection 3 of section 69-05.2-09-11, which shall specifically establish in stated increments the period between removal of coal and completion of backfilling and grading.~~
- ~~2. Area surface mining. Rough backfilling and grading shall be completed within one hundred eighty days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The commission may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under subsection 3 of section 69-05.2-09-11, that additional time is necessary.~~

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-21-02. PERFORMANCE STANDARDS - BACKFILLING AND GRADING - GRADING REQUIREMENTS.

1. All disturbed areas shall be backfilled and graded in accordance with subsection 3 of North Dakota Century Code section 38-14.1-24, except that the commission may approve a different contour or topography if:
 - a. The different contour or topography is a lesser contour or topography consistent with the approximate original contour, with all highwalls, spoil piles, and depressions eliminated (unless small depressions are needed in order to retain moisture to assist vegetation or as otherwise authorized pursuant to North Dakota Century Code chapter 38-14.1 or this article);
 - b. The permittee affirmatively demonstrates in the permit application that the lesser contour or topography is necessary to better achieve the postmining land use; and
 - c. All applicable performance standards of North Dakota Century Code section 38-14.1-24 and this article will be met.

2. In order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed, if approved by the commission and if the terraces are compatible with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:
 - a. The width of the individual terrace bench shall not exceed twenty feet [6.10 meters], unless specifically approved by the commission as necessary for stability, erosion control, or roads included in the approved postmining land use plan.
 - b. The vertical distance between terraces shall be as specified by the commission, to prevent excessive erosion and to provide long-term stability.
 - c. The slope of the terrace outslope shall not exceed 1v:2h (fifty percent). Highwalls shall not be left as part of terraces.

- d. Culverts and underground rock drains shall be used on the terrace only when approved by the commission.
3. Small depressions may be constructed, if the depressions:
 - a. Are approved by the commission to minimize erosion, conserve soil moisture, or promote vegetation;
 - b. Do not restrict normal access over the area;
 - c. Are not inappropriate substitutes for lower grades on the reclaimed lands; and
 - d. Do not adversely affect the intended postmining land use.
 4. All final grading, preparation of overburden before replacement of suitable plant growth material, and placement of suitable plant growth material shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation, or placement along the contour is hazardous to equipment operators, then grading, preparation, or placement in a direction other than than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of suitable plant growth material which will minimize slippage.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
Amended

General Authority:
 NDCC 38-14.1-03

Law Implemented
 NDCC 38-14.1-24

~~69-05.2-21-03. PERFORMANCE STANDARDS - BACKFILLING AND GRADING - COVERING COAL AND TOXIC-FORMING MATERIALS - STABILIZATION - USING WASTE MATERIAL AS FILL.~~

1. All exposed coal seams remaining after mining and any toxic-forming, combustible materials, or any other waste materials identified by the commission that are exposed, used, or produced during mining shall be covered with a minimum of four feet [1.22 meters] of nontoxic and noncombustible material, or treated to neutralize toxicity in order to prevent water pollution and sustained combustion and to minimize adverse effects on plant growth and land uses. Spoil materials that are

found by the commission to be excessively saline, sodic, or both, are considered to be toxic-forming materials and shall be covered with a minimum of four feet [1.22 meters] of nontoxic material, provided four feet [1.22 meters] of such material is available; however, the thickness of cover shall not be less than the average amount of material that existed prior to mining in areas where the available nontoxic material averages less than four feet [1.22 meters] in depth. The availability and suitability of nontoxic materials shall be determined by the commission based on data provided by the permittee. Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the commission shall specify thicker amounts of cover using nontoxic material, provided more than four feet [1.22 meters] of nontoxic material is available. Toxic-forming materials shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution or otherwise violate the provisions of chapter 69-05.2-16.

2. Backfilled materials shall be selectively placed and compacted wherever necessary to prevent leaching of toxic-forming materials into surface or subsurface waters in accordance with chapter 69-05.2-16 and wherever necessary to ensure the stability of the backfilled materials. The method of compacting material and the design specifications shall be approved by the commission before the toxic materials are covered.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03 :

Law Implemented
NDCC 38-14.1-24

69-05.2-21-04. PERFORMANCE STANDARDS - BACKFILLING AND GRADING - THIN OVERBURDEN. The provisions of this section apply only to those surface mining activities where the final thickness of all available spoil and waste materials over the permit area is less than 0.8 of the initial thickness of the overburden and the coal prior to coal removal. The final thickness is the product of the overburden thickness prior to coal removal times the overburden swell factor. When this demonstration is made that thin overburden exists over the permit area, in addition to meeting the requirements of subdivision 3 of subsection 3 of North Dakota Century Code section 38-14.1-24, the operator shall, at a minimum, meet the following standards:

1--The--provisions--of--this--section--apply--only--where--the--final--thickness--is--less--than--0.8--of--the--initial--thickness--Initial--thickness--is--the--sum--of--the--overburden--thickness--and--coal--thickness--prior--to--removal--of--coal--Final--thickness--is--the--product--of--the--overburden--thickness--prior--to--removal--of--coal--times--the--bulking--factor--to--be--determined--for--each--permit--area--The--provisions--of--this--section--apply--only--when--surface--mining--activities--comply--with--the--requirement--of--subsection--3--of--North--Dakota--Century--Code--section--38-14-1-24--to--obtain--postmining--slopes--that--do--not--exceed--the--approximate--original--contour:

2--In--surface--mining--activities--carried--out--continuously--in--the--same--limited--pit--area--for--more--than--one--year--from--the--day--coal--removal--operations--begin--and--where--the--volume--of--all--available--spoil--and--suitable--waste--materials--over--the--permit--area--is--demonstrated--to--be--insufficient--to--achieve--slopes--more--gentle--than--the--approximate--original--contour--of--the--lands--disturbed,--surface--mining--activities--shall--be--conducted--to--meet,--at--a--minimum,--the--following--standards:

- a- 1. Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire permit mine area, to attain the lowest practicable stable grade, to achieve a static safety factor of 1.3 to provide adequate drainage and long-term stability of the regraded areas and to cover all toxic-forming materials.
- b- 2. Eliminate highwalls by grading or backfilling to stable slopes not exceeding thirty-five percent, or such lesser slopes as the commission may specify to reduce erosion, to maintain the hydrologic balance, or to achieve the approved postmining land use.
- e- 3. Transport, backfill, grade, and revegetate in accordance with chapter 69-05.2-22, to achieve an ecologically sound land use compatible with the prevailing use in unmined areas surrounding the permit area.
- d- 4. Transport, backfill, and grade, to ensure that impoundments are constructed only where:
 - (1) a. It has been demonstrated to the commission that all requirements of chapter 69-05.2-16 have been met; and
 - (2) b. The impoundments have been approved by the commission as suitable for the approved postmining land use and have been found to meet

the requirements of this article and all other applicable state laws and regulations.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended 9~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

~~69-05.2-21-05. PERFORMANCE STANDARDS - BACKFILLING AND GRADING - SLIPPAGE AND PIPING ZONES. The commission may require the operator to make full use of current research findings and the best technology currently available to minimize the development of subsurface piping in the overburden and slippage at the suitable plant growth material-overburden interface to ensure that the operator will achieve proper reclamation as required by this article.~~

~~History: Effective August 1, 1980.~~

~~General Authority
NDCC 38-14.1-03~~

~~Law Implemented
NDCC 38-14.1-24~~

69-05.2-21-06. PERFORMANCE STANDARDS - BACKFILLING AND GRADING - SLOPE MEASUREMENTS.

1. After the disturbed area has been graded, the final graded slope shall be measured at sufficient locations to provide ~~surface-profiles-or~~ a contour map that will accurately show the postmining topography. The ~~surface profiles--or contour maps~~ map shall be submitted as required by the commission for a determination that the grading requirements have been met prior to spreading suitable plant growth materials. Along with the contour map, the permittee shall specify the thickness of topsoil and subsoil intended to be respread over the graded area.

2. The commission shall approve or disapprove the postmining topography within thirty days and shall notify the permittee in writing of the decision. If the commission disapproves the final graded postmining topography, the reasons shall be stated in the written notification to the permittee.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
Amended

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

~~69-05-2-21-07. PERFORMANCE STANDARDS - BACKFILLING AND GRADING - STABILIZING RILLS AND GULLIES. When rills and gullies form in areas that have been regraded, the rills and gullies shall be filled, graded, or otherwise stabilized as may be required by the commission prior to respreading suitable plant growth material or when necessary to minimize erosion of the regraded spoil material.~~

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

CHAPTER 69-05.2-22
PERFORMANCE STANDARDS - REVEGETATION

Section	
69-05.2-22-01	Performance Standards - Revegetation - General Requirements
69-05.2-22-02	Performance Standards - Revegetation - Methods
69-05.2-22-03	Performance Standards - Revegetation - Use of Introduced Species
69-05.2-22-04	Performance Standards - Revegetation - Timing
69-05.2-22-05	Performance Standards - Revegetation - Mulching and Other Soil Stabilizing Practices
69-05.2-22-06	Performance Standards - Revegetation - Grazing
69-05.2-22-07	Performance Standards - Revegetation - Standards for Success
69-05.2-22-08	Performance Standards - Revegetation - Tree and Shrub Stocking for Woodlands

69-05.2-22-01. PERFORMANCE STANDARDS - REVEGETATION - GENERAL REQUIREMENTS. The permittee shall establish a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area for all disturbed areas, except water areas, surface areas of roads, and other facilities that are approved as a part of the postmining land use, or shall plant species that will support the approved postmining land use. The postmining vegetative cover shall be capable of stabilizing the soil surface from erosion and shall be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the approved postmining land use when compared to the utility of naturally-occurring vegetation existing prior to mining during each season of the year. If the postmining land use is cropland, planting of the crops normally grown will meet this requirement. Lands that have been approved for postmining agricultural uses must be returned to productivity levels equal to or exceeding that of unmined agricultural lands in the surrounding area under equivalent management practices.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-22-02. PERFORMANCE STANDARDS - REVEGETATION - METHODS.

1. All revegetation shall be in compliance with the approved reclamation plan and carried out in a manner that encourages a prompt vegetative cover and productivity levels compatible with the approved land use.
2. The permittee shall use technical publications or the results of laboratory and field tests approved by the commission to determine the varieties, species, seeding rates, and soil amendment practices essential for establishment and self-regeneration of vegetation. The commission shall approve species selection and planting plans.
3. When the approved postmining land use is hayland-or tame pastureland, the permittee shall seed or plant species of introduced grasses and legumes adapted to the local site conditions and capable of supporting haying--or grazing and occasional haying under proper management.
4. When the approved postmining land use is rangeland native grassland, the species of grasses, legumes, forbs, half-shrubs, or shrubs;-or-trees; for seeding or planting and their pattern of distribution shall be selected by the permittee to provide a diverse, effective, and permanent vegetative cover with seasonal variety, succession, and regenerative capabilities native to the area.
5. Where woodland-is-to-be the approved postmining land use is woodland, the permittee shall plant trees woody species adapted for local site conditions and climate, Trees-shall-be-planted in combination with a cover of grains, grasses, legumes, or forbs;-or-shrubs to provide a diverse, effective, and permanent vegetative cover with the seasonal variety, succession, and regenerative capabilities native to the area. When planting woody species and the cover of grains, grasses, legumes, and forbs, the permittee shall utilize local and regional recommendations regarding species composition, spacing, and planting arrangement.

6. Where fish and wildlife habitat is to be included in the postmining land use, the permittee shall consult with appropriate state wildlife and land management agencies and shall select those plant species that will fulfill the needs of wildlife for food and cover. Plant groupings and water resources shall be appropriately spaced and distributed.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
Amended

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24,
38-14.1-42

~~69-05.2-22-03. PERFORMANCE STANDARDS - REVEGETATION - USE OF INTRODUCED SPECIES. Introduced species may be substituted for native species only if approved by the commission, if appropriate field trials have demonstrated that the introduced species are desirable and necessary to achieve the approved postmining land use, if the introduced species are necessary to achieve a quick, temporary, and stabilizing cover that aids in controlling erosion, and if measures to establish permanent vegetation are included in the approved reclamation plan. Introduced species must be compatible with the plant and animal species of the region, must meet the requirements of applicable state seed or introduced species statutes, and must not be poisonous or noxious.~~

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-22-04. PERFORMANCE STANDARDS - REVEGETATION - TIMING. Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after suitable plant growth materials have been spread. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected. When necessary to control erosion, all disturbed areas which have been respread with suitable plant growth material shall be seeded as contemporaneously as practicable with the completion of respreading of suitable plant growth material, with a temporary cover of small grains, grasses, or legumes until an adequate permanent vegetative cover is established.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-22-05. PERFORMANCE STANDARDS - REVEGETATION - MULCHING AND OTHER SOIL STABILIZING PRACTICES.

1. Suitable mulch or other soil stabilizing practices shall be used on all regraded and topsoiled areas to control erosion, promote germination of seeds, or increase the moisture-retention capacity of the soil. The commission may, on a case-by-case basis, suspend the requirement for mulch if the permittee can demonstrate that alternative procedures will achieve the requirements of section 69-05.2-22-07 and do not cause or contribute to air or water pollution.
2. When required by the commission, mulches shall be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation.
3. Annual grasses and grains may be used alone, as in situ mulch, or in conjunction with another mulch, when the commission determines that they will provide adequate soil erosion control and will later be replaced by species approved for the postmining land use.
4. Chemical soil stabilizers alone, or in combination with appropriate mulches, may be used in conjunction with vegetative covers approved for the postmining land use.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-22-06. PERFORMANCE STANDARDS - REVEGETATION - GRAZING. ~~When the approved postmining land use is range land or pasture land, the revegetated land may be used for livestock grazing during the responsibility period required in section 69-05.2-22-07.~~ Grazing Livestock grazing will not be allowed on revegetated land until the seedlings are established and can sustain managed grazing. The commission, ~~in consultation with~~ the permittee, and the landowner or the governmental land managing agency having jurisdiction over the surface, shall determine agree on when the revegetated land is ready for livestock grazing and the stocking capacity of the revegetated land.

History: Effective August 1, 1980; *Amended effective June 1, 1983.*
Amended 2

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-22-07. PERFORMANCE STANDARDS - REVEGETATION - STANDARDS FOR SUCCESS.

1. Success of revegetation shall be measured by using statistically valid techniques approved by the commission. Comparison of ground cover and productivity may be made on the basis of reference areas, through the use of standards in technical guides published by the United States department of agriculture, or through the use of other approved standards. If reference areas are used, the management of the reference area during the responsibility period required in subsection 2 shall be comparable to that required for the approved postmining land use of the permit area. If standards are used, the standards must be approved by the commission ~~in consultation with the regional director of the~~ and the office of surface mining reclamation and enforcement, United States department of interior.
2. The period of responsibility under the performance bond requirements of section 69-05.2-12-09 shall begin when the requirements detailed below for each land use are achieved after the last year of augmented seeding, planting, fertilization, irrigation, or other work, except for cropland and prime farmland where the period of responsibility begins at the date of initial planting of the crop being grown or a precropland mixture of

grasses and legumes, and shall continue for not less than ten years.

a:--For--rangeland;--hayland;--and--pastureland;--the responsibility-period-begins-when-the--ground--cover of--seeded--perennial--species-on-the-permit-area-is equal-to--or--greater--than--fifty--percent--of--the approved--standard;--with-ninety-percent-statistical confidence--for--herbaceous--vegetation--and--eighty percent-statistical-confidence-for-woody-vegetation; after--the---last---year---of---augmented---seeding; fertilization;---irrigation;---or--other--work--that ensures-success-of-revegetation:

b:--For--cropland-and-prime-farmland;--the-responsibility period-begins-at-the-date-of-initial-planting-of-the crop-being-grown-or-a-mixture-of-grasses-and-legumes for-a-precropland-cover-crop:

c:--For--woodlands--and--fish--and-wildlife-habitat;--the responsibility-period-begins-when--the--stocking--of live--woody-plants-is-equal-to-or-greater-than;--with eighty-percent-statistical-confidence;--the--stocking of--woody--plants--of--the--same--life--form--of-the approved-standard--and--when--the--ground--cover--of seeded--perennial--herbaceous-species-is-equal-to-or greater-than-fifty-percent-of-the--ground--cover--of herbaceous--species--of--the--approved-standard-with ninety-percent--statistical--confidence;--after--the last---year---of---augmented---seeding;--planting; fertilization;--irrigation;--or--other--work---which ensures-success-of-revegetation:

d:--For--previously--mined-areas-that-were-not-reclaimed to---the---requirements---of---this---chapter;--the responsibility--period--begins--when--the-commission determines-the-ground-cover-is-adequate--to--control erosion:

e:--For--operations-where-the-extended-mine-plan-area-is less-than-one-hundred-acres--{40-50--hectares};--the methods--and-standards-used-to-determine-the-success of-revegetation--for--beginning--the--responsibility period--may--differ--from--those--required--by--this subsection-and-shall-be-approved-by-the--commission:

3. Vegetation establishment, for the purpose of the third stage bond release provided for in North Dakota Century Code subdivision c of subsection 7 of section 38-14.1-17, shall be determined for each postmining land use according to the following procedures:

a. For native grassland and tame pastureland, the ground cover on the permit area shall be equal to or

greater than that of the approved reference area or standard with ninety percent statistical confidence. All species used in determining ground cover shall be perennial species seeded or planted pursuant to the approved reclamation plan or other perennial species not detrimental to the approved postmining land use.

b. For cropland, vegetation shall be considered established after the successful seeding of the crop being grown or a precropland mixture of grasses and legumes.

c. For prime farmland, the productivity on the permit area shall be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence.

d. For woodland and fish and wildlife habitat, the ground cover shall be suitable for the postmining land use and shall be adequate to control erosion.

3- 4. The success of revegetation on the permit area shall be determined for each postmining land use according to the following procedures:

a. For ~~rangeland;--hayland;~~ native grassland and tame pastureland, the following requirement must be achieved for the last two consecutive years of the responsibility period:

(1) Ground cover and productivity of the permit area shall be equal to or greater than, with ninety percent statistical confidence for herbaceous vegetation and eighty percent statistical confidence for woody vegetation, the approved standard; and

(2) The diversity, seasonality, and permanence of the vegetation of the permit area, determined from the major species and groups, shall be equivalent to that of the approved standard.

b. For cropland ~~and--prime-farmlands~~, crop production from the permit area shall be equal to or greater than; that of the approved reference area or standard with ninety percent statistical confidence; ~~that--of--the--approved--standard~~ for the last two consecutive growing seasons of the responsibility period.

c. For prime farmlands, crop production from the permit area shall be equal to or greater than that of the approved reference area or standard with ninety

percent statistical confidence for the last three consecutive growing seasons of the responsibility period.

e- d. For woodlands and fish and wildlife habitat, the following requirements must be achieved during the last year of the responsibility period:

- (1) The stocking of woody plants shall meet the standards described in section 69-05.2-22-08. The woody plants established on the permit area shall be equal to or greater than the stocking of live woody plants of the same life form of the approved standard with eighty percent statistical confidence;
- (2) The ground cover shall be equal to or greater than seventy percent of the ground cover of the approved standard with ninety percent statistical confidence and shall be adequate to control erosion; and
- (3) Species diversity, seasonal variety, and regenerative capacity of the vegetation on the permit area shall be evaluated on the basis of the result which could reasonably be expected using the revegetation methods described in the reclamation plan.

d- e. For previously mined areas that were not reclaimed to the requirements of this chapter, the ground cover of living plants shall not be less than can be supported by the best available soil material in the reaffected area, shall not be less than the ground cover existing before redisturbance, and shall be adequate to control erosion, as determined and approved by the commission.

e- f. For operations where the extended mining plan is less than one hundred acres [40.50 hectares], the methods and standards used to determine the success of revegetation may differ from those of this subsection and shall be approved by the commission.

4- 5. ~~Exceptions--to--the--requirements--of--this--section--may--be--authorized--by--the--commission--for~~ For areas to be developed for recreation, water areas, residential, or industrial and commercial uses ~~less--than--two--years--after--regrading--is--completed---~~ The , the ground cover of living plants on these areas shall not be less than required to control erosion. If the postmining land use is not implemented within two years after regrading is complete, the premining land use or other approved land

use shall be implemented and the requirements of this section shall be met for the applicable land use.

5- 6. The permittee shall:

- a. Maintain any necessary fences and use proper management practices; and
- b. Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the commission, to identify conditions during the period of responsibility.

6- 7. For purposes of this section, "herbaceous species" means grasses, grasslike plants, legumes, and nonleguminous forbs; "woody plants" means trees, shrubs, half-shrubs, and woody vines; and "ground cover" means the area of ground covered by vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended 9~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

~~69-05.2-22-08. PERFORMANCE STANDARDS - REVEGETATION - TREE AND SHRUB STOCKING FOR WOODLANDS.~~

1. The stocking of trees, shrubs, half-shrubs, and the ground cover established on the permit area shall utilize local and regional recommendations regarding species composition, spacing, and planting arrangement.
2. The cover of trees, shrubs, or half-shrubs established shall be sufficient for adequate use of the available growing space. Stocking, i.e., the number of stems per unit area, will be used to determine the degree to which space is occupied by well-distributed, countable trees, shrubs, or half-shrubs.
 - a. Root crown or root sprouts over one foot [30.48 centimeters] in height shall count as one toward meeting the stocking requirements. Where multiple stems occur only the tallest stem will be counted.
 - b. A countable tree, shrub, or half-shrub means one that can be used in calculating the degree of stocking under the following criteria:

- (1) The tree, shrub, or half-shrub shall be in place at least two growing seasons;
- (2) The tree, shrub, or half-shrub shall be alive and healthy; and
- (3) The tree or shrub shall have at least one-third of its length in live crown.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

CHAPTER 69-05.2-23
PERFORMANCE STANDARDS - POSTMINING LAND USE

Section	
69-05.2-23-01	Performance Standards - Postmining Land Use - Determining Premining Land Use
69-05.2-23-02	Performance Standards - Postmining Land Use - Land Use Categories
69-05.2-23-03	Performance Standards - Postmining Land Use - Criteria for Approving Alternative Postmining Land Uses

69-05.2-23-01. PERFORMANCE STANDARDS - POSTMINING LAND USE
- DETERMINING PREMINING LAND USE.

1. The premining uses of land to which the postmining land use is compared shall be determined to be those uses which the land previously supported if-the-land-had-not-been-previously-mined-and--had--been--properly--managed- with the following exceptions:
 - 1- a. The If the land has been previously mined and not reclaimed, the postmining land use for-land-that-has-been--previously--mined--and--not-reclaimed shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas.
 - 2- b. The If the land has received improper management or use, the postmining land use for--land--that--has-received--improper-management shall be judged on the basis of the premining use of surrounding lands that have received proper management.
- 3- 2. If the premining use of the land was changed within five years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
Amended

General Authority
NDCC 38-14.1-03,
38-14.1-24

Law Implemented
NDCC 38-14.1-24

69-05.2-23-02. PERFORMANCE STANDARDS - POSTMINING LAND USE - LAND USE CATEGORIES. Land use is categorized in the following groups. Change from one to another land use category in premining to postmining constitutes an alternate land use and the permittee shall meet the requirements of section 69-05.2-23-03 and all other applicable environmental protection performance standards.

1. Agricultural land. Land used for:
 - a. Cropland.
 - b. Pastureland Tame pastureland.
 - c. ~~Hayland~~.
 - d. c. Rangeland Native grassland.
2. Woodland.
3. Fish and wildlife habitat.
4. Developed water resources.
5. Recreation.
6. Residential.
7. Industrial and commercial.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03,
38-14.1-24

Law Implemented
NDCC 38-14.1-24

~~69-05.2-23-03. PERFORMANCE STANDARDS - POSTMINING LAND USE - CRITERIA FOR APPROVING ALTERNATIVE POSTMINING LAND USES. An alternative postmining land use may be approved by the commission, after consultation with the landowner or the land management agency having jurisdiction over state or federal lands, if the following criteria are met:~~

1. The proposed postmining land use is compatible with adjacent land use and, where applicable, with existing local or state land use policies and plans. A written statement of the views of the authorities with statutory responsibilities for land use policies and plans must be submitted with the request for approval to the commission before any surface mining activities begin.

Any required approval, including any necessary zoning or other changes required for land use by local, state, or federal land management agencies, must be obtained and must remain valid throughout the surface mining activities.

2. Specific plans have been prepared and submitted to the commission which show the feasibility of the proposed land use as related to needs, projected land use trends, and markets, and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and will be sustained. The commission may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.
3. Provision is made for any necessary public facilities and is ensured.
4. Specific and feasible plans have been prepared and submitted to the commission which show that financing, attainment, and maintenance of the postmining land use are feasible.
5. The plans are designed under the general supervision of a registered professional engineer, or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, vegetative cover, and esthetic design appropriate for the postmining use of the site.
6. The proposed use will neither present actual or probable hazard to public health or safety nor will it pose any actual or probable threat of waterflow diminution or pollution.
7. The use will not involve unreasonable delays in reclamation.
8. Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants has been obtained from the commission and have been reviewed by the state game and fish department and the appropriate federal fish and wildlife management agencies.
9. Proposals to change premining land uses of range, fish and wildlife habitat, woodland, or pastureland to a postmining cropland or hayland use, where the cropland or hayland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other

similar practices to be practicable or to comply with applicable state and local laws shall be reviewed by the commission to ensure that:

- a. The proposed postmining cropland or hayland use is practical and reasonable.
 - b. There is sufficient water available to maintain crop production.
 - c. Suitable plant growth material quality and depth are shown to be sufficient to support the proposed use.
10. The commission has provided by public notice not less than sixty days for interested citizens and local, state, and federal agencies to review and comment on the proposed land use.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03,
38-14.1-24

Law Implemented
NDCC 38-14.1-24
38-14.1-42

CHAPTER 69-05.2-26
PERFORMANCE STANDARDS - PRIME FARMLAND

Section	
69-05.2-26-01	Performance Standards - Prime Farmland Special Requirements <u>[Repealed]</u>
69-05.2-26-02	Performance Standards - Prime Farmland - Soil Removal
69-05.2-26-03	Performance Standards - Prime Farmland - Soil Stockpiling
69-05.2-26-04	Performance Standards - Prime Farmland - Soil Replacement
69-05.2-26-05	Performance Standards - Prime Farmland - Revegetation
<u>69-05.2-26-06</u>	<u>Performance Standards - Prime Farmland - Exemptions</u>

69-05.2-26-01. PERFORMANCE STANDARDS - PRIME FARMLAND -
SPECIAL REQUIREMENTS. ~~For all prime farmlands to be mined and
reclaimed, the operator or permittee shall meet the following
special requirements~~

1. ~~All soil horizons or other suitable plant growth
materials to be used in the reconstruction of the soil
shall be removed as directed by the commission before
mining or other surface disturbances to prevent
contaminating the soil materials with undesirable
materials. Where removal of soil materials results in
erosion that may cause air and water pollution, the
commission shall specify methods of treatment to control
erosion of exposed overburden.~~

2. ~~Revegetation success on prime farmlands shall be
measured upon the basis of a comparison of actual crop
production from the disturbed area, compared to
standards approved by the commission pursuant to section
69-05-2-22-07.~~ *Repealed effective June 1, 1983.*

(((History: Effective August 1, 1980.
Repealed

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24)))

69-05.2-26-02. PERFORMANCE STANDARDS - PRIME FARMLAND - SOIL REMOVAL. In For all prime farmlands to be mined, in addition to meeting the requirements of subdivisions a and b of subsection 6 of North Dakota Century Code section 38-14.1-24;--the operator--or--permittee and the applicable requirements of section 69-05.2-15-02, the operator or permittee shall ensure that the minimum thickness of soil and soil material to be removed for use in reconstruction of prime farmland soils shall be sufficient to meet the soil replacement requirements of 69-05.2-26-04.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
Amended

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-26-03. PERFORMANCE STANDARDS - PRIME FARMLAND - SOIL STOCKPILING. If stockpiling of soil materials is approved by the commission in lieu of immediate redistribution, the first-lift and-second-lift-soil-materials prime farmland topsoil and subsoil must be stored stockpiled separately from each other. Stockpiles in-place-for-more-than-thirty-days-must-meet-the-storage must be protected in accordance with the requirements of section 69-05.2-15-03.

History: Effective August 1, 1980; *amended effective June 1, 1983.*
Amended

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-26-04. PERFORMANCE STANDARDS - PRIME FARMLAND - SOIL REPLACEMENT. The In addition to meeting the applicable requirements of section 69-05.2-15-04, the operator shall replace soil materials on areas being-returned-to to be reconstructed as prime farmland according to the following:

1. The suitable plant growth materials shall be respread over areas that have a landscape configuration similar to that which existed in the prime farmland areas prior to mining.
2. The minimum thickness of soil-and suitable plant growth material to be reconstructed for prime farmland shall be forty-eight inches [1.22 meters], or a thickness equal to-that-of which is equal to the depth of the original

soil profile up to a subsurface horizon ~~in-the-natural soil-that~~ which inhibits root penetration, whichever is shallower. The commission shall specify a thickness greater than forty-eight inches [1.22 meters]; wherever necessary to restore productive capacity due to uniquely favorable soil horizons at greater depths. Soil horizons shall be considered as inhibiting root penetration if their densities, chemical properties, or water supplying capacities restrict or prevent penetration by roots of plants common to the vicinity of the permit area and have little or no beneficial effect on soil productive capacity.

~~3--Replace--suitable--plant--growth--materials--only--on--land which--has--been--first--returned--to--final--grade--and scarified;--unless--site--specific--evidence--is--provided--and approved--by--the--commission--showing--that--scarification will--not--enhance--the--capability--of--the--reconstructed soil--to--achieve--equivalent--or--higher--levels--of--yield--~~

4- 3. Replace the soil suitable plant growth materials in a manner that avoids excessive compaction.

5- 4. Replace the ~~second--lift--suitable--plant--growth~~ subsoil materials specified in section 69-05.2-26-02 to the thickness needed to meet the requirements of subsection \pm 2.

6- 5. Replace the ~~first--lift--suitable--plant--growth~~ topsoil materials specified in section 69-05.2-26-02 as the final surface soil layer. The thickness of the surface soil topsoil layer shall be the approximate average of the materials saved. ~~These--soil--materials--shall--be placed--in--a--manner--that--protects--the--surface--layer--from wind--and--water--erosion--before--it--is--seeded--or--planted--~~

~~7--Apply--nutrients--and--soil--amendments--as--needed--to establish--quick--vegetative--growth--~~

History: Effective August 1, 1980; *amended effective June 1, 1983.*
~~Amended~~

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

~~69-05.2-26-05. PERFORMANCE STANDARDS - PRIME FARMLAND - REVEGETATION. The following revegetation requirements shall be met for areas being returned to prime farmland after mining:~~

1. Following soil replacement, the operator shall establish a vegetative cover capable of stabilizing the soil surface with respect to erosion. All vegetation shall be in compliance with the plan approved by the commission and carried out in a manner that encourages prompt vegetative cover and recovery of productive capacity. The timing and mulching provisions of sections 69-05.2-22-04 and 69-05.2-22-05 shall be met.
2. Measurement of success in prime farmland revegetation will be determined in accordance with section 69-05.2-22-07.

History: Effective August 1, 1980.

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

69-05.2-26-06. PERFORMANCE STANDARDS - PRIME FARMLAND - EXEMPTION. The provisions of this chapter do not apply to:

1. Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to July 1, 1979.
2. Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to July 1, 1979.
3. Lands included in any existing surface coal mining operations for which a permit was issued for all or any part thereof prior to July 1, 1979, provided that:
 - a. Such lands are part of a single continuous surface coal mining operation began under a permit issued before July 1, 1979.
 - b. The permittee had a legal right to mine the lands prior to July 1, 1979, through ownership, contract, or lease but not including an option to buy, lease, or contract.
 - c. The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining operation began under a permit issued prior to July 1, 1979.
4. For the purposes of this section, surface coal mining operation is presumed to consist only of a single continuous mining pit under permit prior to July 1,

1979, but may include non-contiguous parcels if the operator can prove by clear and convincing evidence that, prior to July 1, 1979, the non-contiguous parcels were part of a single permitted operation. Clear and convincing evidence includes, but is not limited to, contracts, leases, deeds, or other legal documents, excluding options, that specifically treat physically separate parcels as one surface coal mining operation.

History: Effective *June 1, 1983.*

General Authority
NDCC 38-14.1-03

Law Implemented
NDCC 38-14.1-24

