

## **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69-05.2-05-03	Permit Applications - Fees [Repealed]
69-05.2-05-04	Permit Applications - Verification
69-05.2-05-05	Permit Applications - Reapplication for Permit Under Approved State Program [Repealed]
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
69-05.2-05-09	Permit Applications - Consolidation for Multiple Permit Operations

#### **69-05.2-05-01. Permit application filing - Completeness review - Review period.**

##### **1. General.**

- a. Each operator or permittee who conducts or expects to conduct surface coal mining and reclamation operations shall file a complete permit application. For purposes of North Dakota Century Code section 38-14.1-18, the time of filing means the date on which the commission notifies the applicant the application is complete.
- b. Each applicant shall submit four copies of the complete application and all required materials to the commission. When federal lands are in the permit area, three copies shall be submitted to the commission and additional copies, as required, submitted to the office of surface mining reclamation and enforcement and bureau of land management. Each applicant shall also submit additional copies or portions of copies as necessary for reclamation advisory committee review. Applications may be submitted in an electronic format that has been approved by the commission.

2. **Completeness review.** The commission will determine whether the application is complete and acceptable for further review. The commission will notify the applicant in writing, within thirty days after the application is filed, as to whether the application is complete and whether public notice required by North Dakota Century Code section 38-14.1-18 may be initiated or specify deficiencies which must be corrected in order to make the application complete and acceptable for further review. The thirty-day completeness review period is counted as a part of the one hundred twenty-day period specified in subsection 3. If the application is substantially deficient, it will be rejected and returned.

3. **Review period.** The commission will have one hundred twenty days after the filing date to review and approve or disapprove the application and notify the applicant of the decision.
  - a. The review period will be suspended until application deficiencies are corrected. The commission will advise the applicant, in writing, of its decision to suspend the period, reasons for suspension, the number of days remaining in the period, and what must be done for the review to continue.
  - b. The commission will not issue a decision if an informal conference or formal hearing has been requested under chapter 69-05.2-10 and North Dakota Century Code section 38-14.1-30, and those proceedings cannot be conducted and a decision issued within the normal review period.

4. **Extension of review period.** The commission may extend the 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 under chapter 69-05.2-10 and North Dakota Century Code section 38-14.1-30.
  - b. Significant changes are submitted that in the commission's judgment require additional time to review. The commission may require additional public notification and advisory committee review of the amended application under chapter 69-05.2-10.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; March 1, 2004.

**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 mining permits must be filed in the format required by the commission. The applicant shall provide information that is complete, current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the commission.
2. All technical analyses must be planned by or under the direction of an individual qualified in that subject, and data submitted in the permit application shall be accompanied by:
  - a. Names of persons or organizations that collected and analyzed the data.
  - b. Dates of collection and analyses.
  - c. Descriptions of methodology used.
3. The application must provide the name, address, and position of officials of each private or academic research organization or governmental agency consulted in preparing information on land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archaeological, cultural, and historic features.
4. The commission may alter the application forms for permits, revisions, renewals, bonds, and operation and reclamation plans, and add to or delete from the information required, consistent with North Dakota Century Code chapter 38-14.1 and this article. Operators will be given reasonable advance notice of changes.
5. Maps and plans - general requirements.
  - a. Maps submitted with applications must be presented in a consolidated format, to the extent possible. When appropriate, the types of information found on 1:24,000 scale United States geological survey topographic maps must be included. Permit area map scales must be 1:4,800 or larger. Maps showing lands and water in adjacent areas must be at a scale no smaller than 1:24,000.
  - b. Change in map scales. The commission may approve requests for map scale changes.
6. Applications may be filed in an electronic format acceptable to the commission. All text, tables, spreadsheets, maps, and other information must be presented in a clear and concise manner and in a format that can be easily viewed using standard computer software. Changes to original and approved narratives must be displayed in an underline-strikethrough format until the application is approved by the commission. Similarly, tables that are revised must be highlighted or otherwise clearly marked to identify all changes. Maps included in an electronic

submittal must depict the entire permit area when the scale allows and include the dimensions at which it can be printed, the scale of the map, a scale bar, and north arrow. Details on the map must be legible at the printed size; however, if text is not legible, color coding or other means of identification may be used and represented in the legend. Print size should not exceed forty-eight inches in width. Each electronic document must also include a date stamp or other marking that clearly shows the date the document was last revised.

**History:** Effective August 1, 1980; amended effective May 1, 1990; April 1, 2013.

**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.**

Repealed effective September 1, 1984.

**69-05.2-05-04. Permit applications - Verification.**

Permit and revision applications must be verified by the applicant or an authorized representative of the applicant.

**History:** Effective August 1, 1980; amended effective May 1, 1990.

**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.**

Repealed effective May 1, 1990.

**69-05.2-05-06. Permit applications - Coordination with requirements under other laws.**

The commission will, to avoid duplication, coordinate permit review and issuance with:

1. Any other applicable state permit process including permits required by the:
  - a. Air Pollution Control Act (North Dakota Century Code chapter 23-25).
  - b. Solid Waste Management and Land Protection Act (North Dakota Century Code chapter 23-29).
  - c. Control, prevention, and abatement of pollution of surface waters (North Dakota Century Code chapter 61-28).
  - d. State engineer, state water commission, and water resource districts (North Dakota Century Code chapters 61-01, 61-02, 61-03, 61-04, 61-15, 61-16.1, 61-16.2, 61-31, and 61-32).
2. The appropriate state and federal agencies who administer other applicable natural resource and environmental protection acts.

**History:** Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992.

**General Authority:** NDCC 38-14.1-03

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

**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 permit area where the pits are located near mining activities, the commission may consider the following factors, including:

1. Proximity of the pits to the mining and reclamation operations.
2. The acreage [hectarage] affected by the pits and the impact of pits adjacent to the mining operation upon land, air, or water resources.
3. Degree of dependency of the 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; amended effective May 1, 1990.

**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 will be issued for a fixed term not to exceed five years except as provided in subsection 3. The permit area shall be no larger than a logical pit sequence and include lands used for activities incidental to coal extraction. Coal removal boundaries cannot go beyond those approved for the permit term without obtaining a revision under section 69-05.2-11-02.
2. Permitted acreage where surface coal mining operations are not complete shall be successively renewed under section 69-05.2-11-03 until final bond release.
3. A term for a fixed period greater than five years may be approved if:
  - a. The applicant needs a specified longer term and a larger permit area to make the showing necessary to obtain financing for equipment and opening the operation, and this need is verified, in writing, by the applicant's proposed financing source; and
  - b. The application is accurate and complete for the specified longer term.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993; April 1, 2013.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-12

**69-05.2-05-09. Permit applications - Consolidation for multiple permit operations.**

The commission may allow certain information and plans required by this article and North Dakota Century Code chapter 38-14.1 to be consolidated by the permittee into a single document for each surface coal mining and reclamation operation subject to the following requirements:

1. The consolidation of information and plans will be limited to sections of the permit application where the same information and plans cover more than one permit area. Each consolidated document is subject to the approval procedures established for permit revisions.
2. Each mining permit must be revised to describe the specific information and plans to be consolidated into a single document covering the entire surface coal mining and reclamation operation under permit.

3. Each consolidated document is subject to review by the commission at the time of midterm review or renewal for each permit covered by the consolidated document, in accordance with section 69-05.2-11-01.
4. A permittee may propose modifications to a consolidated document by filing a permit revision application relating to the most recently issued permit covered by the consolidated document.

**History:** Effective July 1, 1995; amended effective May 1, 1999.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-13