

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69-05.2-11-05	Permit Renewal - Limitation [Repealed]
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 will review each permit at midterm or every five years, whichever is more frequent.
2. After permit review, the commission may require reasonable revision or modification to ensure compliance with North Dakota Century Code chapter 38-14.1 and this article.
3. Copies of the commission's decision will be sent to the permittee.
4. Any required permit revision or modification is subject to review under North Dakota Century Code sections 38-14.1-30 and 38-14.1-35.
5. The commission will review under chapter 69-05.2-32 any permit it has reason to believe was improvidently issued.

History: Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-23

69-05.2-11-02. Permit revisions.

1. A permit revision is required:
 - a. For changes from mining or reclamation methods approved in the permit.
 - b. For new operations not specified and approved in the existing permit.
 - c. When a new coal removal subarea of the existing permit area is proposed to be disturbed in accordance with the timing and sequence approved in the permit. The revision is considered a significant alteration to the mining and reclamation plan.
 - d. For acreage changes proposed to add or delete lands to or from an existing permit area under subsection 2 or 6.
 - e. When required 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 is requested under subsection 3 of North Dakota Century Code section 38-14.1-12.

2. A permittee may request additional acreage [hectarage] if the commission considers the addition an incidental boundary change to the original permit area. This acreage [hectarage] will have the same term as the original permit.
3. Revision applications must be filed and approved before the date the permittee expects to change operations or initiate operations not previously approved.
4. A revision application must include:
 - a. A narrative describing the proposed 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 will review and issue a decision on each revision application according to the following:
 - a. The commission will determine on the basis of the existing permit and the environmental resources of the permit area whether the proposed revision is a significant alteration or addition to the approved operations and reclamation plan. If the proposed revision is significant, the commission will notify the permittee in writing. A proposed revision found to be significant is subject to the notice, hearing, and procedural requirements of chapter 69-05.2-10 and North Dakota Century Code sections 38-14.1-18, 38-14.1-19, and 38-14.1-20. Insignificant revisions are not subject to these notice, hearing, and procedural requirements.
 - b. The commission will distribute copies of the application and supporting materials to the appropriate members of the advisory committee. Committee members shall forward their evaluation to the commission within twenty days of receipt.
 - c. The commission will issue a decision on each significant application in accordance with the time periods and procedures in section 69-05.2-05-01. The director of the commission's reclamation division will issue a decision on insignificant applications as soon as practicable.
 - d. No revision will be approved unless the permittee affirmatively demonstrates and written findings are made that all of the permit approval standards of subsection 6 of section 69-05.2-10-03, section 69-05.2-10-04, and subsection 3 of North Dakota Century Code section 38-14.1-21 are met.
6. A permittee may file an application to withdraw any lands previously approved as a part of a permit area, except lands on which operations have commenced. The permittee shall demonstrate and certify that the proposed acreage [hectarage] to be deleted has not been affected by mining activities. Applications to delete undisturbed acreage [hectarage] are not subject to the public notice, procedural, and approval or denial standards of chapter 69-05.2-10 and North Dakota Century Code chapter 38-14.1.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; January 1, 1993.

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 is available only for lands within permit boundaries and for incidental boundary changes approved under section 69-05.2-11-02.
2. Obligations established under a surface coal mining and reclamation operations permit continue until completion of all operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.
3. A permittee need not renew a permit for surface coal mining and reclamation operations if no surface coal mining operations remain to be conducted and only reclamation remains to be done.
4. Permits for areas released from all bond will not be renewed.
5. Renewal applications must be in a form required by the commission, and include:
 - a. 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 original permit application or prior renewal.
 - b. The reasons for requesting renewal.
 - c. A copy of the text of the newspaper notice prepared according to requirements in subsection 6. The applicant shall furnish proof of publication to the commission after the last required publication date.
 - d. Evidence that adequate liability insurance will be provided for the proposed renewal period.
 - e. Evidence that bond is sufficient and will continue in full force for the proposed renewal period.
6. Complete renewal applications are subject to the public notification requirements in section 69-05.2-10-01 and North Dakota Century Code section 38-14.1-18.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; July 1, 1995.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-23

69-05.2-11-04. Permit renewals - Approval or denial.

The commission will send copies of its decision to approve or deny a renewal to the applicant, any persons who filed objections or comments, and any persons who were parties to any informal conference held on the renewal.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-22

69-05.2-11-05. Permit renewal - Limitation.

Repealed effective May 1, 1990.

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 shall, prior to 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 that the bond will continue in force and be supplemented as the commission requires. If agreement is reached, the commission may authorize release of bond in excess of that required by the agreement; or
 - (3) Providing sufficient bond or acceptable alternative to cover the original permit in its entirety from inception to completion of reclamation operations.
 - b. Provide the commission with an application for approval of 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 transfer, sale, or assignment and the name and address of that person's resident agent;
 - (3) A brief description of the proposed action requiring approval; and
 - (4) The information required by sections 69-05.2-06-01, 69-05.2-06-02, and 69-05.2-06-03 and subdivisions c, e, and h of subsection 1 and subsection 3 of North Dakota Century Code section 38-14.1-14.
 - c. Obtain the commission's written approval for transfer, sale, or assignment of rights, according to subsection 4.
2. The person applying for approval of transfer, sale, or assignment of rights granted by a permit shall advertise the filing of the application according to section 69-05.2-10-01 and North Dakota Century Code section 38-14.1-18, 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 the head of any local or state government agency, may submit written comments to the commission on the application under the procedures in chapter 69-05.2-10.
4. The commission may, based on the applicant's compliance with 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 applicant will conduct the operations in accordance with North Dakota Century Code chapter 38-14.1 and this article.
 - b. The applicant has submitted a bond or other guarantee at least equivalent to the original.
 - c. The applicant will continue to conduct operations in compliance with the terms and conditions of the original permit, until it has obtained a new permit under section 69-05.2-11-07.
 - d. The applicant is eligible to receive a permit under section 69-05.2-10-03.

5. The commission will notify the permittee, successor, commentors, and the office of surface mining reclamation and enforcement of its findings.
6. The successor shall immediately notify the commission of the consummation of the transfer, assignment, or sale of permit rights.

History: Effective August 1, 1980; amended effective May 1, 1990; July 1, 1995.

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 succession is approved:

1. Apply 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. Apply for a revised permit under section 69-05.2-11-02.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-23