

## **CHAPTER 69-05.2-26**

### **PERFORMANCE STANDARDS - PRIME FARMLAND**

#### **Section**

69-05.2-26-01	Performance Standards - Prime Farmland - Special Requirements [Repealed]
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 and Restoration of Productivity
69-05.2-26-06	Performance Standards - Prime Farmland - Exemptions

#### **69-05.2-26-01. Performance standards - Prime farmland - Special requirements.**

Repealed effective June 1, 1983.

#### **69-05.2-26-02. Performance standards - Prime farmland - Soil removal.**

For all prime farmlands to be mined, in addition to satisfying subdivisions a and b of subsection 6 of North Dakota Century Code section 38-14.1-24 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 is sufficient to meet the soil replacement requirements of section 69-05.2-26-04.

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

**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 is approved in lieu of immediate redistribution, the prime farmland topsoil and subsoil must be stockpiled separately from each other. Stockpiles must be protected according to section 69-05.2-15-03.

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

**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.**

In addition to meeting the applicable requirements of section 69-05.2-15-04, the operator shall replace soil materials on areas to be reconstructed as prime farmland according to the following:

1. The suitable plant growth materials must 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 suitable plant growth material to be reconstructed for prime farmland must be forty-eight inches [1.22 meters], or a thickness which is equal to the depth of the original soil profile up to a subsurface horizon which inhibits root penetration, whichever is shallower. The commission will 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 are 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 the suitable plant growth materials in a manner that avoids excessive compaction.
4. Replace the subsoil materials specified in section 69-05.2-26-02 to the thickness needed to meet the requirements of subsection 2.
5. Replace the topsoil materials specified in section 69-05.2-26-02 as the final surface soil layer. The thickness of the topsoil layer must be the approximate average of the materials saved.

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

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

**Law Implemented:** NDCC 38-14.1-24

**69-05.2-26-05. Performance standards - Prime farmland - Revegetation and restoration of productivity.**

The following revegetation requirements must 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. All revegetation must comply with the plan approved by the commission and be 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 must be met.
2. Measurement of success in prime farmland revegetation will be determined in accordance with section 69-05.2-22-07.
3. Prime farmland productivity must be restored in accordance with the following:
  - a. Measurement of productivity must be initiated within ten years after completion of soil replacement.
  - b. Productivity must be measured on a representative sample or on all of the mined and reclaimed prime farmland area using the crop determined under subdivision f. The permittee shall use a statistically valid sampling technique approved by the commission. Approved techniques are found in the commission's Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments.
  - c. The measurement period for determining average annual crop production is specified in subdivision c of subsection 3 of section 69-05.2-22-07.
  - d. The level of management applied during the measurement period must be the same as that used on nonmined prime farmland in the surrounding area.
  - e. Restoration of prime farmland productivity will be considered achieved when the average yield equals or exceeds that of the crop established on nonmined prime farmland soils in the surrounding areas. The soil series, texture, and slope of the nonmined prime farmlands must be the same or similar to the prime farmlands that were mined and management practices must be equivalent.
  - f. The crop on which restoration of productivity is proven must be selected from the crops most commonly produced on the surrounding prime farmland. Where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth must be used as one of the crops.

- g. Crop yields for the same or similar nonmined prime farmland soils during a given crop season must be determined by methods contained in Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessment or other methods approved by the commission and the office of surface mining reclamation and enforcement.
- h. If a reclaimed tract contains a mixture of prime and nonprime farmlands, the commission may approve a single yield standard for the entire tract as allowed under subdivision I of subsection 4 of section 69-05.2-22-07.

**History:** Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992; June 1, 1997; May 1, 2001.

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

**Law Implemented:** NDCC 38-14.1-24

#### **69-05.2-26-06. Performance standards - Prime farmland - Exemptions.**

This chapter does not apply to:

- 1. Lands on which surface coal mining and reclamation operations are conducted under any permit issued before July 1, 1979.
- 2. Lands on which surface coal mining and reclamation operations are conducted under any renewal or revision of a permit issued before July 1, 1979.
- 3. Lands included in any existing surface coal mining operations for which a permit was issued for all or any part before July 1, 1979; provided that:
  - a. The lands are part of a single continuous mining operation begun under a permit issued before July 1, 1979.
  - b. The permittee had a legal right to mine the lands before 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 begun under a permit issued prior to July 1, 1979.
- 4. For the purposes of this section, a surface coal mining operation is presumed to consist only of a single continuous mining pit under permit before July 1, 1979, but may include noncontiguous parcels if the operator can prove by clear and convincing evidence that, before July 1, 1979, the parcels were part of a single permitted operation. Clear and convincing evidence includes 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; amended effective May 1, 1990.

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

**Law Implemented:** NDCC 38-14.1-24