

## **CHAPTER 69-05.2-29 SMALL OPERATOR ASSISTANCE**

### **Section**

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### **69-05.2-29-01. Small operator assistance - Responsibilities of the commission.**

The commission will:

1. Review requests for assistance and determine qualified operators.
2. Develop and maintain a list of qualified public or private entities as required by 30 CFR 795.10 and pay them for services rendered.
3. Conduct periodic onsite evaluations of program activities with participating operators.
4. Participate in data coordination with the office of surface mining reclamation and enforcement, United States geological survey, United States environmental protection agency, and other appropriate agencies or institutions.
5. Ensure that applicable equal opportunity in employment provisions are included in contract or other procurement documents.

**History:** Effective August 1, 1980; amended effective May 1, 1990; October 1, 1994.

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

**Law Implemented:** NDCC 38-14.1-03, 38-14.1-37

### **69-05.2-29-02. Small operator assistance - Program services.**

To the extent possible with available funds, the commission will for qualified small operators who request assistance:

1. Select and pay a qualified public or private entity to perform the activities described under subsection 2 of North Dakota Century Code section 38-14.1-37 including:
  - a. A determination of the probable hydrologic consequences of the mining and reclamation operations both on and off the proposed permit area according to section 69-05.2-29-06.
  - b. The preparation of a statement of the results of test borings or core samplings according to section 69-05.2-29-06.
2. Collect and provide general hydrologic information on the basin or subbasin areas within which the anticipated mining will occur. The information provided will be limited to that required to relate the basin or subbasin hydrology to the hydrology of the proposed permit area.

**History:** Effective August 1, 1980; amended effective May 1, 1990; October 1, 1994.

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

**Law Implemented:** NDCC 38-14.1-03, 38-14.1-37

### **69-05.2-29-03. Small operator assistance - Eligibility for assistance.**

An applicant is eligible for assistance if the applicant:

1. Intends to apply for a permit under North Dakota Century Code chapter 38-14.1.
2. Establishes that the probable total actual and attributed production for each year of the permit will not exceed three hundred thousand tons [272155.41 metric tons]. Production from the following will be attributed to the permittee:
  - a. All coal produced by operations beneficially owned entirely by the applicant or controlled, by reason of ownership, direction of the management or in any other manner, by the applicant.
  - b. The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the applicant owns more than a ten percent interest.
  - c. All coal produced by persons who own more than ten percent of the applicant or who, directly or indirectly, control the applicant by reason of stock ownership, direction of the management, or in any other manner.
  - d. The pro rata share of coal produced by operations owned or controlled by the person who owns or controls the applicant.
  - e. All coal produced by operations owned by members of the applicant's family or relatives unless it is established that there is no direct or indirect business relationship between or among them.
3. Is not restricted in any manner from receiving a permit.
4. Does not organize or reorganize the applicant's company solely for the purpose of obtaining assistance under the small operator assistance program.
5. Will be required to pay reclamation fees under the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1202 et seq.].

**History:** Effective August 1, 1980; amended effective May 1, 1990; October 1, 1994; May 1, 2001.

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

**Law Implemented:** NDCC 38-14.1-03, 38-14.1-37

### **69-05.2-29-04. Small operator assistance - Filing for assistance.**

Each applicant for the small operator assistance program shall submit to the commission:

1. A statement of intent to file a permit application.
2. The names and addresses of:
  - a. The potential applicant.
  - b. The potential operator if different from the applicant.
3. A schedule of the estimated total coal production from the proposed permit area and all other locations from which production is attributed to the applicant under section 69-05.2-29-03. Include for each location:
  - a. The name under which coal is or will be mined.
  - b. The permit number.

- c. The actual coal production for the year preceding the application for assistance and that portion of the production attributed to the applicant.
  - d. The estimated coal production for each year of the proposed permit and that portion attributed to the applicant.
- 4. A description of:
  - a. The surface coal mining operation.
  - b. The anticipated starting and termination dates of mining operations.
  - c. The number of acres [hectares] of land to be affected by the proposed mining.
  - d. A general statement on the probable depth and thickness of the coal resource , including a determination of reserves in the permit area and how they were calculated.
- 5. A topographic map of 1:24,000 scale or larger which clearly shows:
  - a. The area to be affected and the natural drainage above and below it.
  - b. The names of property owners within and adjacent to the area to be affected.
  - c. The location of existing structures and developed water sources within and adjacent to the area to be affected.
  - d. The location of existing and proposed test boring or core samplings.
  - e. The location and extent of known abandoned underground mines.
- 6. Copies of documents which show that:
  - a. The applicant has a legal right to enter and commence mining within the permit area.
  - b. A legal right of entry has been obtained for the commission and personnel from a qualified public or private entity to inspect the lands to be mined and adjacent lands which may be affected to collect environmental data or install necessary instruments.

**History:** Effective August 1, 1980; amended effective May 1, 1990; October 1, 1994.

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

**Law Implemented:** NDCC 38-14.1-03, 38-14.1-37

**69-05.2-29-05. Small operator assistance - Application approval - Notice of denial.**

- 1. If the commission finds the applicant eligible, and it does not have information readily available which would preclude issuance of a mining permit, it will:
  - a. Determine the minimum data requirements necessary to meet the provisions of section 69-05.2-29-06.
  - b. Select the services of one or more qualified public or private entities to perform the required work. A copy of the contract or other appropriate work order and the final approved report will be provided to the applicant.
- 2. The commission will inform the applicant in writing if the application is denied and shall state the reasons for denial.
- 3. The granting of assistance under this part will not be a factor in commission decisions on a subsequent permit application.

**History:** Effective August 1, 1980; amended effective May 1, 1990; October 1, 1994.

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

**Law Implemented:** NDCC 38-14.1-03, 38-14.1-37

**69-05.2-29-06. Small operator assistance - Data requirements.**

1. The commission will determine the minimum data collection requirements for each applicant or group of applicants. Data collection and analysis may proceed concurrently with the development of mining and reclamation plans. The data requirements will be based on:
  - a. The extent of currently available hydrologic, geologic, and other information described under subsection 2 of North Dakota Century Code section 38-14.1-37.
  - b. The data collection and analysis guidelines developed and provided by the commission.
2. A determination of the probable hydrologic consequences of the mining and reclamation operations, both onsite and offsite, shall be made by a qualified public or private entity. The data for this determination shall include the following:
  - a. The existing and projected surface and ground water seasonal flow regime, including water level and water table evaluations. The commission will specify duration and return frequencies to be used in the determination.
  - b. The existing and projected seasonal quality of the surface and ground water regime. This must include measurements and estimates of dissolved and suspended solids, pH, iron, manganese, surface and channel erosion, and other water quality parameters specified by the commission.
3. A statement of the result of test borings or core samplings from the proposed permit area including:
  - a. Logs from any drill holes including identification of each stratum and water level penetrated.
  - b. The coal seam thickness and its chemical analysis including sulfur content.
  - c. The chemical analysis of potentially toxic or toxic-forming sections of the overburden, and the chemical analysis of the stratum lying immediately underneath the coal to be mined.
4. The statement by a qualified public or private entity under subsection 3 may be waived by the commission by a written determination that the requirements are unnecessary with respect to the specific application.
5. Data collected under the small operator assistance program will be made available to all interested persons, except information related to the chemical and physical properties of coal. Information regarding the mineral or elemental content of the coal which is potentially toxic in the environment will be made available.

**History:** Effective August 1, 1980; amended effective May 1, 1990; October 1, 1994.

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

**Law Implemented:** NDCC 38-14.1-03, 38-14.1-37

**69-05.2-29-07. Small operator assistance - Assistance funding.**

1. Funds authorized for the small operator assistance program may not be used to cover state administrative costs.

2. The commission will, to the extent practicable, establish a formula for allocating funds among eligible small operators if available funds are insufficient. This formula will include such factors as the applicant's:
  - a. Anticipated date of filing a permit application.
  - b. Anticipated date for commencing mining.
  - c. Performance history.

**History:** Effective August 1, 1980; amended effective May 1, 1990; October 1, 1994.

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

**Law Implemented:** NDCC 38-14.1-03, 38-14.1-37

**69-05.2-29-08. Small operator assistance - Applicant liability.**

1. The applicant shall reimburse the commission for the cost of all services rendered under this chapter if:
  - a. The applicant submits false information.
  - b. The applicant fails to submit a permit application within one year after receiving the approved report from the qualified public or private entity.
  - c. The applicant fails to mine after obtaining a permit.
  - d. The commission finds that the operator's actual and attributed annual production of coal for all locations exceeds three hundred thousand tons [272155.41 metric tons] during the twelve months immediately following the date the operator is issued a surface coal mining and reclamation permit.
  - e. The applicant sells, transfers, or assigns the permit to another person and the transferee's total actual and attributed production exceeds the three hundred thousand-ton [272155.41 metric-ton] annual production limit during any consecutive twelve-month period of the remaining permit term. Under this subdivision, the applicant and successor are jointly and severally obligated to reimburse the commission.
2. The commission may waive the reimbursement obligation under the conditions described in subdivisions b and c of subsection 1 if it finds that the applicant at all times acted in good faith.

**History:** Effective August 1, 1980; amended effective May 1, 1990; October 1, 1994.

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

**Law Implemented:** NDCC 38-14.1-03, 38-14.1-37