

## N.D. Cent. Code, § 38-14.1-24

Current through all legislation from the 68th Legislative Assembly (2023) and the November 5, 2024, general election.

**North Dakota Century Code Annotated > TITLE 38 Mining and Gas and Oil Production (Chs. 38-01 — 38-25) > CHAPTER 38-14.1 Surface Mining and Reclamation Operations (§§ 38-14.1-01 — 38-14.1-42)**

### **38-14.1-24. Environmental protection performance standards.**

General performance standards are applicable to all surface coal mining and reclamation operations and must require the permittee at a minimum to:

1. Conduct surface coal mining operations so as to maximize the utilization and conservation of the coal or commercial leonardite being recovered so that re-affecting the land in the future through surface coal mining can be minimized.
  - 1.1. Conduct any auger mining associated with surface coal mining operations in a manner that will maximize recoverability of coal or commercial leonardite and other mineral reserves remaining after mining activities and reclamation operations are completed, and seal or fill all auger holes as necessary to ensure long-term stability of the area and minimize any adverse impact to the environment or hazard to public health or safety. The commission may prohibit auger mining if necessary to maximize the utilization, recoverability, or conservation of coal or commercial leonardite resources, to ensure long-term stability, or to protect against any adverse impact to the environment or hazard to public health or safety.
2. Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses approved by the commission, which may include industrial, commercial, agricultural, residential, recreational, or public facilities. In approving the postmining land use, or changes thereto, the commission shall establish by regulation postmining land use criteria that must be demonstrated by the permittee and considered by the commission in making its decision.
3. Backfill, compact (where advisable to ensure stability or to prevent leaching of toxic materials), and grade to reshape all areas affected by surface coal mining operations to the gentlest topography consistent with adjacent unmined landscape elements in order to develop a postmining landscape that will provide for maximum moisture retention, drainage that will complement the surrounding terrain, maximum stability, minimum soil losses from runoff and erosion, with all highwalls, spoil piles, and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this chapter), and with maximum postmining graded slopes that do not exceed the approximate original contour; provided, however, that:
  - a. A different contour or topography may be required by the commission to better achieve the approved postmining land use.
  - b. The permittee, at a minimum, shall backfill, grade, and compact (where advisable) using all available overburden and other spoil and waste materials to attain the lowest practicable grade (not to exceed the angle of repose), to provide adequate drainage, and to contain all toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region, in those instances where:
    - (1) Surface coal mining operations are carried out over a substantial period of time at the same location where the operation transects the coal or commercial leonardite deposit;

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- (2) The thickness of the coal or commercial leonardite deposits relative to the volume of overburden is large; and
- (3) The permittee demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area are insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour.
4. Stabilize and protect all surface areas, including spoil piles affected by the surface coal mining and reclamation operation, to effectively control erosion and attendant air and water pollution.
5. Remove, segregate, and respread suitable plant growth material as required by the commission within the permit area. The commission may require the permittee to segregate suitable plant growth material in two or more soil layers. The commission shall determine the soil layer or layers to be removed based upon the quality and quantity of suitable plant growth material inventoried by the soil survey required in subdivision t of subsection 1 of [section 38-14.1-14](#). Based on the soil survey, the commission shall also determine whether other suitable strata are necessary to meet revegetation requirements. If other strata can be shown to be suitable and necessary to meet revegetation requirements, the commission may require the permittee to determine the areal extent of other suitable strata within the proposed permit area, and to remove, segregate, protect, and respread such material. If the suitable plant growth material or other suitable strata cannot be replaced on an approved graded area within a time short enough to avoid deterioration of such material, the permittee shall stockpile and stabilize such materials by establishing a successful cover of quick-growing plants or by other means thereafter so that the suitable plant growth material or other suitable strata will be protected from wind and water erosion and will remain free from any contamination by toxic material. In the interest of achieving the maximum reclamation provided for in this chapter, the permittee may, or at the discretion of the commission shall, utilize such soil amendments as described in [section 38-14.1-02](#).
6. For all prime farmlands as identified in paragraph 3 of subdivision a of subsection 2 of [section 38-14.1-14](#) to be mined and reclaimed, the permittee shall, at a minimum, be required to:
- a. Segregate the A horizon of the natural soil or a combination of the A horizon materials and other available suitable plant growth materials that will create a final soil having a productive capacity equal to or greater than that which existed prior to mining; and if not utilized immediately, stockpile this material and provide needed protection from wind and water erosion or contamination;
  - b. Segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of such horizons or other strata that are shown to be physically and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil. If not utilized immediately, such material must be stockpiled and provided needed protection from wind and water erosion or contamination;
  - c. Replace the material described in subdivision b with proper compaction and uniform depth as determined by the commission over the regraded spoil material; and
  - d. Redistribute in a uniform manner as determined by the commission the surface soil described in subdivision a.
7. Create, if authorized in the approved mining and reclamation plan and permit, as part of reclamation activities, permanent water impoundments in accordance with the requirements of the department of water resources and all of the following standards:
- a. The size of the impoundment will be adequate for its intended purposes.
  - b. The impoundment dam construction will be designed to achieve necessary stability with an adequate margin of safety compatible with the requirements of applicable state law.

- c. The quality of impounded water will be suitable on a permanent basis for its intended use, and discharges from the impoundment will not exceed the quality limitations imposed by the North Dakota pollutant discharge elimination system or degrade the water quality below water quality standards established pursuant to this chapter, whichever is more stringent.
  - d. The level of water will be reasonably stable.
  - e. Final grading will provide adequate safety and access for maintenance and proposed water users.
  - f. The water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.
- 8.** Minimize the disturbances to the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation by:
- a. Avoiding toxic mine drainage by such measures as, but not limited to:
    - (1) Preventing water from coming in contact with, or removing water from, toxic producing deposits.
    - (2) Treating drainage to reduce toxic content which adversely affects downstream water upon being released to watercourses.
    - (3) Casing, sealing, or otherwise managing boreholes and wells to keep toxic drainage from entering ground and surface waters.
  - b. Conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow, or runoff outside the permit area, but in no event may contributions be in excess of requirements set by applicable state law.
  - c. Constructing any siltation structures pursuant to subdivision b prior to commencement of surface coal mining operations, such structures to be certified by a registered professional engineer to be constructed as designed and as approved in the reclamation plan.
  - d. Cleaning out and removing temporary settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the commission.
  - e. Restoring recharge capacity of the mined area to approximate premining conditions to the extent possible using the best technology currently available.
  - f. Avoiding natural channel deepening or enlargement in operations requiring the discharge of water from mines.
  - g. Preserving throughout the surface coal mining and reclamation process the essential hydrologic functions of alluvial valley floors.
  - h. Such other actions as the commission may prescribe.
- 9.** Make such repairs, alterations, or construction as necessary to ensure the delivery of that quality and quantity of water available prior to mining to a surface owner whose supply of water for domestic, agricultural, industrial, or other legitimate use has been disrupted or diminished in quality or quantity by the surface coal mining operation. Such repairs, alterations, or construction must be considered to be part of reclamation and must be made at no cost to the surface owner. Nothing in this chapter may be construed as affecting in any way the right of any person to enforce or protect, under applicable law, the person's interest in water resources affected by a surface coal mining operation.

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**10.** Remove or bury all debris and other similar material resulting from the operation and bury all mine wastes, coal, and commercial leonardite processing wastes unless the commission approves the surface disposal of such wastes. If the commission approves the surface disposal of such wastes, the permittee shall stabilize all waste piles in designated areas through construction in compacted layers, including the use of incombustible and impervious materials if necessary, to assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this chapter.

**11.** Refrain from surface coal mining within five hundred feet [152.4 meters] of underground mines in order to prevent breakthroughs; provided, that the commission shall allow a permittee to mine near, through, or partially through an underground mine if such operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

**12.** Ensure that all debris, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion. If a fire hazard exists, the commission has the authority to require the permittee to take such actions as are necessary to abate the hazard, both inside and outside the permit area.

**13.** Ensure that explosives are used only in accordance with existing state law and the regulations promulgated by the commission, which must include provisions to:

a. Provide adequate advance written notice to local governments and residents who might be affected by the use of such explosives by the publication of the planned blasting schedule in a newspaper of general circulation in the locality, by mailing a copy of the proposed blasting schedule to every resident living within one-half mile [804.67 meters] of the proposed blasting site, and by providing daily notice to residents in such areas prior to any blasting.

b. Maintain for a period of at least three years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts.

c. Limit the type of explosives and detonating equipment, the size, the timing, and the frequency of blasts based upon the physical conditions of the site so as to prevent:

(1) Injury to persons.

(2) Damage to public and private property outside the permit area.

(3) Change in the course, channel, or availability of ground or surface water outside the permit area.

d. Require that all blasting operations be conducted by trained and competent persons as certified by the commission.

e. Provide that upon the request of a resident or owner of a manmade dwelling or structure within one mile [1.61 kilometers] of any portion of the permitted area the permittee shall conduct a preblasting survey of such structures and submit the survey to the commission and a copy to the resident or owner making the request. The area of the survey must be decided by the commission and must include such provisions as the commission may promulgate.

**14.** Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations, provided that all reclamation through the initial planting on any land within the permit area must be completed by the operator no later than three years from completion of surface coal mining operations on such lands, unless otherwise prescribed by the commission.

**15.** Ensure that the construction, maintenance, and postmining conditions of haul roads and access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property.

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- 16.** Refrain from the construction of haul roads and access roads up a streambed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water.
- 17.** Restore lands affected by the surface coal mining operation which have been designated for postmining agricultural purposes to the level of productivity equal to or greater, under equivalent management practices, than nonmined agricultural lands of similar soil types in the surrounding area. For those lands which are to be rehabilitated to native grasslands, a diverse, effective, and permanent vegetative cover must be established of the same seasonal variety native to the area to be affected and capable of self-regeneration, plant succession, and at least equal in extent of cover and productivity to the natural vegetation of the area. The level of productivity and cover attained on disturbed lands within the permit area must be demonstrated by the permittee using comparisons with similar lands in the surrounding area having equivalent historical management practices and that are undisturbed by mining, or comparable disruptive activities.
- 18.** Assume the responsibility for successful revegetation, as required by subsection 17, for a period of ten full years after the last year of augmented seeding, fertilizing, irrigation, or other work, provided that, when the commission approves a long-term intensive agricultural postmining land use, the ten-year period of responsibility for revegetation commences at the date of initial planting. However, for previously mined areas that are affected by remining, the operator's responsibility for successful revegetation will extend for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, and other work in order to assure compliance with the applicable standards. For the purposes of this subsection, "previously mined areas" are lands that were affected by coal or commercial leonardite mining activities prior to January 1, 1970, and "augmented seeding, fertilizing, irrigation, or other work" does not include normal conservation practices recognized locally as good management for the postmining land use.
- 19.** Place all spoil material from the initial pit or other excess spoil material resulting from surface coal mining and reclamation activities in such a manner that all of the following requirements are met:
  - a.** Spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way so as to assure mass stability and to prevent mass movement.
  - b.** The areas of disposal are within the bonded permit areas.
  - c.** Appropriate surface and internal drainage systems and diversion ditches are used so as to minimize spoil erosion and movement.
  - d.** The disposal area does not contain springs, natural watercourses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented.
  - e.** If placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the commission, the spoil could be placed in compliance with all the requirements of this chapter.
  - f.** The final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses.
  - g.** Design of the spoil disposal area is certified by a registered professional engineer in conformance with professional standards.
  - h.** All other provisions of this chapter are met.
- 20.** Meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this chapter, taking into consideration the physical, climatological, and other characteristics of the site.
- 21.** To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the surface coal mining operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable.

## History

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S.L. 1979, ch. 399, § 1; 1981, ch. 374, §§ 1, 2; 1983, ch. 410, § 2; [1991, ch. 392, § 2](#); [1993, ch. 371, § 1](#); [2009, ch. 316, § 1](#); [2015, ch. 257, § 14](#), 15, 16, effective July 1, 2015; [2021, ch. 488, § 18](#), effective August 1, 2021.

Annotations

## Notes to Decisions

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### Mining Permit Revision.

Where the public service commission (PSC) made its own assessment of the effect of mining and reclamation operations on water quantity and quality and the rights of prior users, applying the same standards as the State Engineer and the additional standards listed under subsection (7), the assessment satisfied this section. [Coteau Props. Co. v. Oster, 2000 ND 23, 606 N.W.2d 876, 2000 N.D. LEXIS 27 \(N.D. 2000\)](#).

Although statutory law establish that restoring land to agricultural use was one purpose of the surface coal mining and reclamation program, that law did not mandate that agricultural use was the highest or best use, especially since neither [N.D.C.C. § 38-14.1-24\(2\)](#) nor its implementing regulations established a hierarchy of post-mining land uses. As a result, the Commission could find that the mining company's application for revision of its surface mining permit to allow for recreational post-mining use of certain land was the best approach under that statute, especially since [N.D.C.C. § 1-02-02](#) regarding statutory interpretation dictated that statutory language was to be given its plain meaning, [N.D.C.C. § 1-02-07](#) compelled a statute to be read as a whole, and [N.D.C.C. § 1-02-05](#) required that a court interpreting a statute such as the surface mining statute pursue the letter of the statute rather than its spirit. [Dakota Res. Council v. N.D. PSC, 2012 ND 72, 815 N.W.2d 286, 2012 N.D. LEXIS 79 \(N.D. 2012\)](#).

Commission could find that the substantial public benefit that would occur if the mining company's surface mining permit revision request was granted warranted a revision in that permit allowing a certain amount of post-mining land to be converted to recreational use rather than agricultural and industrial use. Under [N.D.C.C. § 38-14.1-24\(17\)](#), post-mining lands used for agriculture were subject to a minimum 10-year bond liability period and had to be restored to the level of productivity equal to or greater, under equivalent management practices, than non-mined agricultural lands of similar soil types in the surrounding area, while the mining company would have an easier time regarding post-mining revegetation if the permit revision was granted. [Dakota Res. Council v. N.D. PSC, 2012 ND 72, 815 N.W.2d 286, 2012 N.D. LEXIS 79 \(N.D. 2012\)](#).