

CHAPTER 69-05.2-27
REQUIREMENTS FOR RESEARCH PLOTS AND PERMITS FOR EXPERIMENTAL
SURFACE COAL MINING AND RECLAMATION OPERATIONS

Section

69-05.2-27-01 Research Plots

69-05.2-27-02 Variances for Experimental Surface Coal Mining and Reclamation Practices

69-05.2-27-01. Research plots.

Any agency or authorized organization wishing to establish experimental or evaluation plots of any kind on mined land prior to the release of bond shall obtain the written approval of the commission and the operator. Landowner approval need be obtained only if the anticipated life of the plot will extend beyond the time at which bond release for the permit area is sought. Applicants shall state the objectives sought, the methods proposed to be used, the amount of land required, and duration of the proposed research. The applicant shall also agree to submit a yearly progress report and a final report to both the commission and the operator. Once the experimental work has ended, the acreage must be returned to acceptable state reclamation requirements. The operator is to assume the costs of bringing the land used for experimental plots to a condition that will meet the reclamation requirements unless the operator obtains written assurance from the agency or organization of that entity's intent and ability to reclaim.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03, 38-14.1-24

69-05.2-27-02. Variances for experimental surface coal mining and reclamation practices.

1. In order to encourage advances in surface mining and reclamation practices, or to allow postmining land use for industrial, commercial, residential, or public use (including recreational facilities), on an experimental basis where the postmining land use proposed requires an experimental practice to demonstrate feasibility, the commission may, with the approval of the director of the office of surface mining reclamation and enforcement, authorize variances in individual cases from the standards of North Dakota Century Code section 38-14.1-24.
2. Variances will not be authorized for other than experimental practices. For the purpose of this section, "experimental practice" means the use of alternative surface coal mining and reclamation operation practices for experimental or research purposes.
3. No person shall engage in or maintain any experimental practice unless that practice has first been approved in a permit.
4. Each person who desires to conduct an experimental practice shall submit a permit or revision application to the commission and to the director of the office of surface mining reclamation and enforcement for approval. The application must contain appropriate descriptions, maps, plans, and data which show:
 - a. The nature of the experimental practice, including a description of the performance standards for which the variances are requested, the duration of the experimental practice, and any special monitoring which will be conducted.
 - b. How use of the experimental practice:
 - (1) Encourages advances in mining and reclamation technology; or

- (2) Allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities), on an experimental basis, when the results are not otherwise attainable under the standards.
 - c. That the operations proposed for using an experimental practice are not larger nor more numerous than necessary to determine the effectiveness and economic feasibility of the practice.
 - d. That the experimental practice:
 - (1) Is potentially more or at least as environmentally protective, during and after the proposed operations, as would be required under the standards.
 - (2) Will not reduce the protection afforded public health and safety below that provided by the standards.
 - e. That the applicant will conduct special monitoring with respect to the experimental practice during and after operations. The monitoring program must:
 - (1) Ensure the collection, analysis, and reporting of sufficient and reliable data to enable the commission and the director of the office of surface mining reclamation and enforcement to make adequate comparisons with other operations employing similar practices.
 - (2) Include requirements designed to identify, as soon as possible, potential risks to the environment and public health and safety from the use of the practice.
5. Each application must specify the environmental protection performance standards which will be implemented in the event the objective of the experimental practice is a failure.
6. All experimental practices for which variances are sought must be specifically identified through newspaper advertisements by the applicant and the written notifications by the commission required by North Dakota Century Code section 38-14.1-18.
7. No permit authorizing an experimental practice will be issued unless the commission first finds, in writing, upon the basis of both a complete application filed in accordance with the requirements of this section and the comments of the director of the office of surface mining reclamation and enforcement that:
 - a. The practice meets the requirements of subdivisions b through e of subsection 4.
 - b. The practice is based on a clearly defined set of objectives which can reasonably be expected to be achieved.
 - c. The practice has been specifically approved, in writing, by the director of the office of surface mining reclamation and enforcement.
 - d. The permit contains conditions which specifically:
 - (1) Limit the practice authorized to that granted by the commission and the director of the office of surface mining reclamation and enforcement.
 - (2) Impose enforceable alternative environmental protection requirements.
 - (3) Require the person conducting the periodic monitoring, recording, and reporting program to include additional requirements as the commission or the director of the office of surface mining reclamation and enforcement may require.

8. Each permit which authorizes the use of an experimental practice will be reviewed at least every two and one-half years by the commission, or at least once prior to the middle of the permit term. After review, the commission will, with the consent of the director of the office of surface mining reclamation and enforcement, require by order, supported by written findings, any reasonable revision or modification of the permit provisions. Copies of commission written findings will be sent to the permittee. Any person who is or may be adversely affected by the order has the opportunity for review under North Dakota Century Code sections 38-14.1-30 and 38-14.1-35.
9. Experimental practices granting variances from the special environmental standards of chapter 69-05.2-26, applicable to prime farmlands, will be approved only after consultation with the natural resource conservation service.
10. Revisions or modifications to an experimental practice will be processed in accordance with section 69-05.2-11-02. Any revisions which propose significant alterations to the experimental practice are subject to the notice, hearing, and procedural requirements contained in subdivision a of subsection 5 of section 69-05.2-11-02 and concurrence by the director of the office of surface mining reclamation and enforcement.

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