

## **CHAPTER 69-05.2-13**

### **PERFORMANCE STANDARDS - GENERAL REQUIREMENTS**

#### Section

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#### **69-05.2-13-01. Performance standards - General requirements - Coal production and reclamation fee report.**

Repealed effective May 1, 1999.

#### **69-05.2-13-02. Performance standards - General requirements - Annual map.**

The permittee shall submit two copies of an annual map to the commission for all permit areas by each March fifteenth. The scale must be 1:4,800 or other scale approved by the commission. The information must be reported for each calendar year until all bond has been released. The map, or maps if necessary, must clearly show the following and include a legend specifying the number of acres [hectares] in each category:

1. Each permit area and section line.
2. Activities during the year for each permit, including:
  - a. Acreage [hectarage] affected.
  - b. Acreage [hectarage] where suitable plant growth material removal operations have been completed.
  - c. Acreage [hectarage] where coal mining operations are completed and the contemporaneous reclamation requirement of subsection 14 of North Dakota Century Code section 38-14.1-24 has been initiated.
  - d. Acreage [hectarage] where grade approval has been obtained.
  - e. Acreage [hectarage] where suitable plant growth material redistribution operations have been completed.

- f. Acreage [hectarage] planted where the ten-year revegetation period has been initiated.
  - g. Acreage [hectarage] where bond has been partially released and the stage of release.
  - h. Acreage [hectarage] where bond has been totally released.
3. Location of suitable plant growth material stockpiles. Supporting information must include ownership, date seeded, type of material in each stockpile (topsoil or subsoil), and estimated cubic yards [meters] for each stockpile.
  4. Cumulative information on the mining and reclamation activities that have occurred within each permit area which include:
    - a. Affected acreage where topsoil must be replaced. The acreage specified on the map legend must be listed separately for each surface owner unless the surface owner has agreed to soil mixing as allowed by subsection 6 of section 69-05.2-15-04. The combined acreage for all surface owners who have agreed to soil mixing must be specified on the map legend.
    - b. Affected acreage where subsoil must be replaced. The acreage specified on the map legend must be listed separately for each surface owner unless the surface owner has agreed to soil mixing as allowed by subsection 6 of section 69-05.2-15-04. The combined acreage for all surface owners who have agreed to soil mixing must be specified on the map legend.
    - c. Acreage [hectarage] planted where the ten-year revegetation period has been initiated and the year of initiation.
    - d. Acreage [hectarage] where bond has been partially released and the stage of release.
    - e. A tabular listing of acreage [hectarage] where bond has been totally released.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1994; June 1, 1997; May 1, 1999.

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

**Law Implemented:** NDCC 38-14.1-27

#### **69-05.2-13-03. Performance standards - General requirements - Authorizations to operate.**

A copy of all current permits, licenses, approved plans, or other authorizations to operate the mine must be available for inspection at or near the minesite.

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

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

**Law Implemented:** NDCC 38-14.1-27

#### **69-05.2-13-04. Performance standards - General requirements - Signs and markers.**

The permittee shall, at a minimum, comply with the following requirements for areas within a permit where a performance bond has been posted.

1. **Specifications.** Signs and markers must:
  - a. Be posted and maintained by the operator.
  - b. Be of a uniform design throughout the operation that can be easily seen and read.
  - c. Be made of durable material.

- d. Conform to local ordinances and codes.
- 2. **Duration of maintenance.** Signs and markers must be maintained during all pertinent activities.
- 3. **Mine and permit identification signs.**
  - a. Identification signs must be displayed at access to the permit area from public roads.
  - b. Signs must show the name, business address, and telephone number of the operator and the identification number of the current permit authorizing surface mining activities.
  - c. Signs must be maintained until bond is released.
- 4. **Perimeter markers.** The perimeter of a permit area must be clearly marked before the beginning of surface mining activities.
- 5. **Buffer zone markers.** Buffer zones must be marked along their boundaries as required by section 69-05.2-16-20.
- 6. **Blasting signs.** If blasting is conducted, the person who conducts these activities shall:
  - a. Conspicuously display signs reading "Blasting Area" along the edge of any blasting area that comes within fifty feet [15.24 meters] of any road within the permit area or within one hundred feet [30.48 meters] of any public road right of way.
  - b. Conspicuously flag, or post within the blasting area, the immediate vicinity of charged holes as required by section 69-05.2-17-05.
  - c. Place at all entrances to the permit area from public roads or highways conspicuous signs which state "Warning Explosives in Use!", which clearly explain the blast warning and all-clear signals and the marking of blast areas and charged holes.
- 7. **Suitable plant growth material markers.** Stockpiled suitable plant growth material must be clearly marked.
- 8. **Sedimentation pond markers.** The operator shall clearly mark the pool elevation that must be maintained for the pond to have sufficient storage capacity to contain the runoff from a ten-year, twenty-four-hour precipitation event (design event).

**History:** Effective August 1, 1980; amended effective May 1, 1988; May 1, 1990.

**General Authority:** NDCC 38-14.1-03, 38-14.1-24

**Law Implemented:** NDCC 38-14.1-24, 38-14.1-27

**69-05.2-13-05. Performance standards - General requirements - Minimize disturbances - Best technology currently available.**

All surface coal mining and reclamation operations must be conducted to minimize disturbances on lands where coal is not removed and utilize the best technology currently available.

**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

**69-05.2-13-06. Performance standards - General requirements - Avoidance of underground mine areas.**

Surface coal mining activities may not be conducted closer than five hundred feet [152.40 meters] of an underground mine, unless the activities result in improved resource recovery, abatement of water pollution, or elimination of hazards to public health and safety.

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

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

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

**69-05.2-13-07. Performance standards - General requirements - Air resources protection.**

The permittee shall comply with all applicable air pollution control laws and rules of the department of environmental quality and stabilize and protect all surface areas.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997.

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

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

**69-05.2-13-08. Performance standards - General requirements - Protection of fish, wildlife, and related environmental values.**

1. The permittee shall affirmatively demonstrate how protection and enhancement of fish and wildlife resources will be achieved where practicable on the basis of information gathered and management plans developed under sections 69-05.2-08-15 and 69-05.2-09-17. The permittee shall submit a report to the commission with management plan results and data derived from the monitoring plan for the two previous calendar years by March fifteenth in even-numbered years.
2. No surface mining activity may be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the secretary of the United States department of the interior or which is likely to result in the destruction or adverse modification of designated critical habitats of those species in violation of the Endangered Species Act of 1973, as amended [16 U.S.C. 1531 et seq.]. The permittee shall promptly report to the commission the presence in the permit area of any state-listed or federally listed endangered or threatened species of which the permittee becomes aware. Upon notification, the commission will consult the United States fish and wildlife service, the state game and fish department, and the operator, and then decide whether, and under what conditions, the operator may proceed.
3. No surface mining activity may be conducted in a manner that would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The permittee shall promptly report to the commission the presence in the permit area of any bald or golden eagle, or bald or golden eagle nest or eggs, of which the permittee becomes aware. Upon notification, the commission will perform the consultation and decision process specified in subsection 2.
4. Nothing in this article authorizes the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended [16 U.S.C. 1531 et seq.] or the Bald Eagle Protection Act, as amended [16 U.S.C. 668 et seq.].
5. The permittee shall ensure that the design and construction of electric powerlines and other transmission facilities used for or incidental to activities on the permit area follow the guidelines in Environmental Criteria for Electric Transmission Systems (United States department of the interior, United States department of agriculture (1970)), or in alternative guidance manuals approved by the commission. Design and construction of distribution lines

must follow REA bulletin 61-10, Powerline Contacts by Eagles and Other Large Birds, or in alternative guidance manuals approved by the commission.

6. The permittee shall, to the extent possible using the best technology currently available:
  - a. Locate and operate haul and access roads, sedimentation ponds, diversions, stockpiles, and other structures to avoid or minimize impacts to important fish and wildlife species and their habitats and to other species protected by state or federal law.
  - b. Create no new barrier in known and important wildlife migration routes.
  - c. Fence, cover, or use other appropriate methods to exclude wildlife from ponds containing hazardous concentrations of toxic-forming materials.
  - d. Reclaim, enhance where practicable, or avoid disturbance to habitats of unusually high value for fish and wildlife.
  - e. Reclaim, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetland areas.
  - f. Afford protection to aquatic communities by avoiding stream channels as required in section 69-05.2-16-20 or reclaiming stream channels as required in section 69-05.2-16-07.
  - g. Not use pesticides in the area during surface mining and reclamation activities, unless specified in the operation and reclamation plan or approved by the commission on a case-by-case basis.
  - h. To the extent possible prevent, control, and suppress range, forest, and coal fires not approved by the commission as part of a management plan.
  - i. If fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall in addition to the requirements of chapter 69-05.2-22:
    - (1) Select plant species to be used on reclaimed areas, based on the following criteria:
      - (a) Their proven nutritional value for fish and wildlife.
      - (b) Their uses as cover for fish and wildlife.
      - (c) Their ability to support and enhance fish and wildlife habitat after bond release.
    - (2) Distribute plant groupings to maximize benefits to fish and wildlife. Plants should be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits for fish and wildlife.
  - j. Where cropland is to be the postmining land use and where appropriate for wildlife and surface owner crop management practices, intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. Wetlands must be preserved when feasible or recreated consistent with the reclamation plan and the postmining land use.
  - k. Where the primary land use is to be residential, public service, or industrial, intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for birds and small animals, unless the greenbelts are inconsistent with the approved postmining land use.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; January 1, 1993; June 1, 1994; May 1, 1999.

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

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

**69-05.2-13-09. Performance standards - General requirements - Slides and other damage.**

The operator shall promptly notify the commission and comply with required remedial measures whenever a slide occurs which may potentially adversely affect public property, health, safety, or the environment.

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

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

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

**69-05.2-13-10. Performance standards - General requirements - Cessation of operations - Temporary.**

1. Each permittee shall effectively secure surface facilities in temporarily inactive areas. Temporary abandonment does not affect a permittee's obligation to comply with permit provisions.
2. Before temporarily ceasing or abandoning operations, the permittee shall submit for approval a notice of intention to that effect. The notice must include the exact number of acres [hectares] which will have been affected prior to cessation, the extent and kind of reclamation of those areas which will have been accomplished, and identify the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the cessation.

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

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

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

**69-05.2-13-11. Performance standards - General requirements - Cessation of operations - Permanent.**

The permittee shall:

1. Close, backfill, or otherwise permanently reclaim all affected areas where mining has permanently ceased in accordance with this article and the permit.
2. Remove equipment, structures, or other facilities not required for monitoring, unless approved by the commission as suitable for the postmining land use or environmental monitoring, and reclaim the affected land.

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

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

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

**69-05.2-13-12. Performance standards - General requirements - Auger mining.**

The operator shall:

1. Conduct auger mining to maximize the utilization and conservation of coal.
2. Conduct augering operations to:

- a. Prevent subsidence to the extent technologically and economically feasible by one of the following:
    - (1) Backfilling the auger holes to assure the long-term stability of the site.
    - (2) Utilizing known technology to assure the long-term structural stability of the augered area; or
  - b. Provide for planned subsidence in a predictable and controlled manner.
3. Correct material damage caused to surface lands.
  4. Either correct material damage resulting from subsidence caused to structures or facilities by repairing the damage, or compensate the owner of the structures or facilities in the full amount of the diminution in value. Repair includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase prior to mining of a noncancelable premium-prepaid insurance policy.
  5. Seal auger holes with an impervious noncombustible material as soon as practicable.
  6. Contain and treat auger hole drainage to meet water quality standards and effluent limitations of section 69-05.2-16-04.
  7. Not auger within five hundred feet [152.4 meters] of any underground mine workings, except as approved under section 69-05.2-13-06.

**History:** Effective September 1, 1984; amended effective June 1, 1986; May 1, 1990; May 1, 1992.

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

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

**69-05.2-13-13. Performance standards - General requirements - Coal preparation plants not located within the permit area of a mine.**

Each person who operates a coal preparation plant in connection with a coal mine but outside the permit area for a specific mine shall obtain a permit in accordance with section 69-05.2-09-19, obtain a bond in accordance with chapter 69-05.2-12, and comply with the following:

1. Signs and markers for coal preparation plants, coal processing waste disposal areas, and water treatment facilities must comply with section 69-05.2-13-04.
2. Stream channel diversions must comply with section 69-05.2-16-07.
3. Drainage from any disturbed areas related to coal preparation plants must comply with chapter 69-05.2-16.
4. Permanent impoundments associated with coal preparation plants must comply with section 69-05.2-16-12. Dams constructed of or impounding coal processing waste must comply with chapter 69-05.2-20.
5. Disposal of coal processing waste, noncoal mine waste, and excess spoil must comply with chapters 69-05.2-19 and 69-05.2-18, respectively.
6. Fish, wildlife, and related environmental values must be protected in accordance with section 69-05.2-13-08.
7. Support facilities related to coal preparation plants must comply with section 69-05.2-24-09.
8. Roads associated with coal preparation plants must comply with chapter 69-05.2-24.

9. Cessation of operations must be in accordance with sections 69-05.2-13-10 and 69-05.2-13-11.
10. Erosion and attendant air pollution must be controlled in accordance with sections 69-05.2-15-06 and 69-05.2-13-07, respectively.
11. Underground mine areas must be avoided in accordance with section 69-05.2-13-06.
12. Reclamation must follow proper suitable plant growth material handling, backfilling and grading, revegetation, and postmining land use procedures in accordance with chapters 69-05.2-15, 69-05.2-21, 69-05.2-22, and 69-05.2-23, respectively.

**History:** Effective January 1, 1987; amended effective May 1, 1990; May 1, 1992.

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

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