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Policy Memorandum No. 19 to Mine Operators

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(Original Issue Date July 15, 1987; Revised May 18, 1988; March 8, 1995 and July 30, 1997)

TO: All Mine Operators and Lignite Energy Council

FROM: Commissioners Clark, Wefald and Cramer
Division of Water Quality, State Department of Health

SUBJECT: Guidelines for Sedimentation Pond Removal and Pond Site Reclamation

This policy memorandum provides guidance to mine operators for sedimentation pond removal and pond site reclamation under the requirements of North Dakota Administrative Code (NDAC) 69-05.2-16-09(23). Under this provision, mine operators have the opportunity to remove sedimentation ponds, including those that are North Dakota Pollutant Discharge Elimination System (NDPDES) points, and associated treatment facilities prior to the expiration of the revegetation liability period.

For the purposes of this policy memo, other sediment control measures and best management practices (BMP) are used interchangeably and mean the same. "Other sediment control measures" or "BMP" means the use of the best technology currently available to meet applicable effluent limitations and, to the extent possible, minimize erosion and prevent additional contributions of sediment to streamflow or to runoff outside the permit area. These measures include sumps, check dams, berms, silt fences, bale dikes, sediment filters, riprap, mulches, and other measures to reduce runoff, trap sediment, or treat runoff water. Other sediment control measures also include normal husbandry practices used locally for management of cropland.

The following guidelines accommodate both Public Service Commission (PSC) and State Department of Health (SDH) policies and requirements.

1. A sedimentation pond and any associated diversions may not be removed sooner than two years following the last augmented seeding unless the last augmented seeding is a supplemental seeding into an established vegetation stand that is effectively controlling

erosion (NDAC 69-05.2-16-09(23)) or if other sediment control measures have been approved for primary sediment control as allowed under NDAC 69-05.2-16-04(1)(c). In addition, a sedimentation pond may not be removed if the discharge point has experienced any major violations during the past 24-month period.

A sedimentation pond and any associated diversions may be replaced by "other sediment control measures" which have been approved for primary sediment control. In such cases a sedimentation pond removal plan must be submitted as outlined in item 4. In addition, the other sediment control measures must remain in place and be properly maintained for at least two years following the last augmented seeding in the reclaimed tracts that drained to the sedimentation pond. In these cases, the other sediment control measures used in the watershed must include measures that are installed immediately downstream of the pond location.

2. The portion of the watershed disturbed by mining activities, with the exception of permanent roads, suitable plant growth material (SPGM) stockpiles, and structures remaining to be reclaimed (haulroads, diversions, pond sites, etc.) must meet erosion control cover requirements. For reclaimed native grasslands and tame pastureland, the reclaimed areas must have adequate vegetative cover to control erosion and have no signs of recent erosion. The vegetative cover must be dominated by seeded species and all seeded species should be present. Erosion control and species establishment will be determined based on a visual assessment of the area during an inspection conducted by PSC and SDH. As an alternative to the visual assessment, the operator may submit data to document a minimum of 73 percent live basal and litter cover or 83 percent first hit cover (Hofmann *et. al.*, 1983 and Ries and Hofmann, 1986). For reclaimed cropland, the operator must demonstrate that normal agricultural management and conservation practices are being employed, or that a pre-cropland grass and legume mixture is established.
3. Any SPGM stockpiles in the watershed must have either in-place sediment control measures (strawbale dikes, berms, silt fences, etc.) or be well vegetated with the specific understanding that upon disturbance, appropriate control measures will be taken to prevent sediment from leaving the stockpile area. The PSC and/or SDH may also require that appropriate sediment control measures be implemented for other structures within the watershed.
4. The operator must submit a pond removal request and site specific reclamation plan to both the PSC and the SDH. The reclamation plan must include appropriate maps of the ponds, watersheds and all structures (SPGM stockpiles, haulroads, diversions, etc.), and clearly identify those ponds which will be reclaimed and those which will remain as permanent structures. The plan must also contain proposed best management practices (BMP) for erosion and sediment control, to be implemented throughout the reclamation process, along with any vegetative cover data for the watershed, plans for equipment access through the reclaimed watershed to the reclamation site, a timetable for reclamation, and plans for maintaining the BMP. Reclamation of structures should be accomplished in as short a period as possible. The PSC and/or SDH will make a field review and evaluate the reclamation plan within 30 days of receiving a pond removal request, or as time and seasonal limits otherwise allow. The PSC will respond in writing to the operator, following consultation with the SDH, approving or denying the request, or requiring changes to the proposed reclamation plan.

5. A discharge point assigned to a sedimentation pond may be released from the NDPDES permit based on the conditions present in the contributing watershed. The following outlines the considerations for releasing a discharge point for a sedimentation pond removed in accordance with the conditions described in this policy.
 - a. For ponds removed two or more years after the last augmented seeding in the contributing watershed, the discharge point will be released from the NDPDES permit during the course of removal. The permit limits and monitoring requirements for the discharge point will remain in effect until final dewatering of the pond is completed and reclamation begins. When pond reclamation begins, the permit provisions for pond removal activities and adherence to the BMP specified in the approved pond reclamation plan will become the NDPDES requirement for the discharge point. Pond removal areas are considered in compliance with discharge requirements when the BMP are in place and all procedures outlined in the reclamation plan are followed. The operator must notify the SDH and PSC of the start date and completion date. The PSC and/or SDH will conduct an on-site inspection when reclamation is completed. The SDH will remove the discharge point from the NDPDES permit upon completion of the reclamation plan.
 - b. For ponds removed sooner than two years after the last augmented seeding and replaced with other sediment control measures (NDAC 69-05.2-16-04(1)(c)), the discharge point will not be released from the NDPDES permit. The limitations applicable to the discharge point will be based on the conditions present in the watershed. Drainage from areas defined as "active areas" will be subject to the limitations and monitoring requirements described in the NDPDES permit. The alternate limitations afforded for discharges due to precipitation events will be allowed provided the alternative measures are designed to function during a 10-year, 24-hour design storm. If the approved pond removal plan involves a change in discharge point status from "active" to "reclamation", the change to reclamation area limits will begin once final dewatering of the pond is completed and reclamation begins.

The limitations for drainage from "reclamation areas" shall be as provided in the NDPDES permit. Where sample-based monitoring of discharges from reclamation areas is impractical due to inaccessibility or sheet flow, compliance shall be determined by inspection and maintenance of the approved BMP plan. The discharge point assigned to the pond being replaced will apply to the drainage area controlled by the former pond. The discharge point will be considered in compliance with permit requirements when the BMP are in place and all procedures outlined in the reclamation plan are followed.

The NDPDES discharge point for other sediment control measures and any sedimentation pond that will be left as a permanent pond will not be released sooner than two years following the last augmented seeding as outlined in NDAC 69-05.2-16-09(23). The NDPDES point will be dropped following a written application to the SDH, with a copy to the PSC, documenting that the contributing watershed meets the requirements of items 2 and 3. Plans to remove the other sediment control measures and/or modify the sedimentation pond to function as a permanent impoundment, including the removal of associated diversions, need to be addressed in the application.

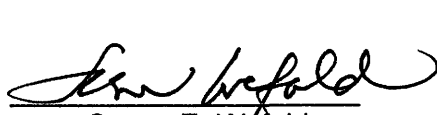
in the application. Following a joint review by the SDH and PSC, a written approval or denial of the application will be made by the SDH

6. Following release of a NDPDES discharge point, the PSC will re-evaluate the watershed throughout the liability period and may require, if necessary, the implementation of additional sediment and/or erosion control measures.

This policy memorandum does not change the SDH guidelines relating to release of discharge points where all drainage has been re-routed to another NDPDES discharge point or where there is no longer a contributing watershed. Reclamation of ponds in these categories will be coordinated with the PSC only, following a formal request to the SDH to release the discharge point from the operator's NDPDES permit.

In addition, the procedure for requesting changes in discharge point status will remain the same. It is not necessary to change a pond's status from active to reclamation area prior to requesting pond removal.

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