

DRAFT – November 2005

69-05.2-06-03. Permit applications - Right of entry and operation information.

1. In addition to satisfying subdivision k of subsection 1 of North Dakota Century Code section 38-14.1-14, the application must also contain a narrative and supporting certified copies of the appropriate documents which demonstrate that the applicant has complied with North Dakota Century Code section 38-18-06.
2. Following completion of coal removal operations on the lands covered by a coal lease, the copy of the lease may be deleted from an approved permit if:
 - a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or
 - b. The lease has expired or has been terminated.

If a coal lease is no longer provided for surface right of entry, other documents granting the permittee surface right of entry must be added to the permit.

69-05.2-10-01. Permit applications - Public notices of filing.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:
 - a. The applicant's name and business address.
 - b. A map or description which must:
 - (1) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the permit area.
 - (2) Clearly show or describe the exact location and boundaries of the permit area.
 - (3) ~~Name the United States geological survey 7.5-minute quadrangle map which contains the area shown or described.~~
 - (4) Show the north point (if a map).
 - (5 4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or conduct activities that may impact future coal recovery, the names of each owner of record of coal rights within the permit boundaries.

69-05.2-12-12. Release of performance bond - Bond release application.

3. Within thirty days after filing a request for bond release, the permittee shall submit ~~proof of the publication~~ a copy of the newspaper advertisement that was published as required by

North Dakota Century Code section 38-14.1-17. The advertisement published must include the permittee's name.

8. When the permittee requests final bond release under subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include:
 - a. The data collected, analyses conducted, and a narrative detailing compliance with subsection 4 of section 69-05.2-22-07.
 - b. The history of initial and subsequent seedings and fertilization, including mixtures and rates, appropriate soil tests, supplemental irrigation, or other management practices employed.
 - c. Documentation showing the reestablishment of essential hydrologic functions of alluvial valley floors.
 - d. If a premine water delivery system will not be replaced, the bond release application must address the requirements of subdivision b of subsection 90 of section 69-05.2-01-02.

69-05.2-16-09. Performance standards - Hydrologic balance -Sedimentation ponds.

19. Impoundment inspections.
 - a. A registered professional engineer, or other specialist under the direction of a registered professional engineer, shall inspect each impoundment as required under subdivision b, c and d. The registered professional engineer and specialist must be experienced in the construction of impoundments.
 - b. Inspections must be made regularly during construction, ~~upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.~~ Reports for each inspection during construction must be prepared and maintained at or near the minesite.
 - c. After each inspection impoundment construction is complete, the registered professional engineer shall promptly provide the commission a certified report that the impoundment has been inspected during construction on a regular basis and it has been constructed or maintained as designed and according to the approved plan and this chapter. The report must include discussion of any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability a summary of the construction inspections, final storage capacity, and if applicable, a discussion of any deviations from the approved plan.
 - d. After impoundments are operational, they shall be inspected at least yearly until removal of the structure or release of the performance bond. A registered professional engineer shall promptly provide the commission with an annual impoundment inspection report addressing any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any

other aspects of the structure affecting stability. A single report can address more than one impoundment; however, the condition of each impoundment must be noted separately.

- e. A copy of the inspection reports must be maintained at or near the minesite.

69-05.2-22-07. Performance standards - Revegetation - Standards for success.

4. The success of revegetation on the permit area at the time of final bond release must be determined for each postmining land use according to the following:
- a. For native grassland, the following must be achieved for ~~the last two consecutive~~ any two years after year six of the responsibility period:
 - (1) Ground cover and productivity of the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence; and
 - (2) Diversity, seasonality, and permanence of the vegetation of the permit area must equal or exceed the approved standard.
 - b. For tame pastureland, ground cover and productivity of the permit area must be equal to or greater than that of the approved standard with ninety percent statistical confidence for ~~the last two consecutive~~ any two years after year six of the responsibility period.
 - c. For cropland, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for ~~the last two consecutive~~ any two years after year six of the responsibility period.
 - d. For prime farmlands, a showing that the requirements for the restoration of productivity as specified in subdivision c of subsection 3 have been met and that the ten-year period of responsibility has elapsed.
 - e. For woodlands and fish and wildlife habitat where the vegetation type is woodland, the following must be achieved during the ~~last two consecutive years~~ growing season of the last year of the responsibility period:
 - (1) The number of woody plants established on the permit area must be equal to or greater than the number of live woody plants of the same life form of the approved standard with ninety percent statistical confidence. Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
 - (a) Be healthy;
 - (b) Be in place for at least two growing seasons; and
 - (c) At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that

no tree, shrub, or half-shrub replanting has occurred during the last six years of the revegetation responsibility period; and

(d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted towards meeting success standards. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.

(2) The ground cover must be equal to or greater than ninety percent of the ground cover of the approved standard with ninety percent statistical confidence and must be adequate to control erosion; and

(3) Species diversity, seasonal variety, and regenerative capacity of the vegetation on the permit area must be evaluated on the basis of species stocked and expected survival and reproduction rates.

f. For shelterbelts, the following must be achieved during the ~~last two consecutive years~~ growing season of the last year of the responsibility period:

(1) Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:

(a) Be healthy;

(b) Be in place for at least two growing seasons; ~~and~~

(c) At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half-shrub replanting has occurred during the last six years of the revegetation responsibility period; and

(d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted towards meeting success standards. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.

(2) Shelterbelt density and vigor must be equal to or greater than that of the approved standard; and

(3) Erosion must be adequately controlled.

g. For fish and wildlife habitat, where the vegetation type is wetland, vegetation zones and dominant species must be equal to those of the approved standard during the last two consecutive years growing season of the last year of the responsibility period. In addition, wetland permanence and water quality must meet approved standards.

h. For fish and wildlife habitat, where the vegetation type is grassland, the following must be achieved during the ~~last two consecutive years~~ growing season of the last year of the responsibility period:

- (1) Ground cover must be equal to or greater than that of the approved standard with ninety percent statistical confidence and must be adequate to control erosion.
 - (2) Species diversity, seasonal variety, and regenerative capacity of the vegetation must meet or exceed the approved standard.
- i. For previously mined areas that were not reclaimed to the requirements of this chapter, any reclamation requirements in effect when the areas were mined must be met. In addition, the ground cover may not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion as approved by the commission.
 - j. For areas to be developed for water, residential, or industrial and commercial uses within two years after the completion of grading or soil replacement, the ground cover on these areas may not be less than required to control erosion.
 - k. For areas to be developed for recreation, woody plants must meet or exceed the stocking and plant establishment standards for woodlands or shelterbelts found in paragraph 1 of subdivision e or in subdivision f as applicable. In addition, ground cover must not be less than required to achieve the approved postmining land use.
 - l. ~~As an alternative to meeting revegetation success standards for the last two consecutive growing seasons of the responsibility period, an operator may demonstrate that the applicable standards have been achieved for any three years starting no sooner than the sixth year of the responsibility period and with one year being the last year of the responsibility period. This alternative does not pertain to success standards for prime farmlands unless a reclaimed tract contains both prime and nonprime farmlands.~~ If a reclaimed tract contains a mixture of prime and nonprime farmlands, the commission may approve a single yield standard for the entire tract based on the soil types that occurred on the prime and nonprime areas prior to mining. The operator must provide a detailed description and comparison of the soil mapping units, acreages, and yield calculations in the reclamation plan as required by subsection 8 of section 69-05.2-09-15. When a single yield standard is approved, the operator must demonstrate that the standard has been achieved for any three years starting no sooner than the sixth year of the responsibility period ~~and with one year being the last year of the responsibility period~~. If this option is approved, the operator must also meet the applicable requirements of section 69-05.2-26-05 for the entire tract.

69-05.2-24-01. Performance standards - Roads - General requirements.

1. Each road, as defined in subsection ~~92~~ 93 of section 69-05.2-01-02, must be classified as either a primary or ancillary road.