

NORTH DAKOTA
STATE
PROGRAM
AMENDMENT XXXVI

SUBMITTED BY:
PUBLIC SERVICE COMMISSION
STATE CAPITOL
BISMARCK, NORTH DAKOTA

MAY 24, 2006

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Public Service Commission

State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: ndpsc@state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

May 24, 2006

Mr. Allen D. Klein
Western Regional Coordinating Center
Office of Surface Mining
1999 Broadway, Suite 3320
Denver, CO 80202-5733

Dear Mr. Klein:

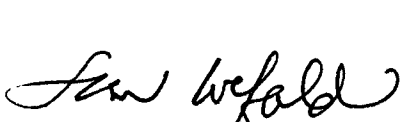
The Public Service Commission is submitting State Program Amendment XXXVI on behalf of the State of North Dakota in order to modify our approved coal regulatory program. The Amendment is submitted under the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87) and 30 CFR Chapter VII.


State Program Amendment XXXVI contains several revised rules under North Dakota Administrative Code Article 69-5.2. The most significant changes pertain to data requirements for proving reclamation success and adding new language to revegetation success standards on the counting of volunteer trees and shrubs. These changes are very similar to those proposed by OSM in March of 2005. We understand OSM will be soon issuing final revegetation rules that are based on the March 2005 proposals.

The other changes are more minor in nature. These include provisions that relate to lease documents in mining permits; newspaper notices for permit applications; copies of advertisements and other information needed for bond release applications; clarifying inspection requirements for sedimentation ponds and other impoundments; and correcting a cross reference error in a rule on roads.

The amendment contains a narrative, the proposed changes North Dakota Administrative Code Article 69-05.2, a copy of the Attorney General's opinion on the legality of the changes and a side-by-side comparison of the state rules to the counterpart federal rules. Please direct any questions you or your staff may have to the Commission's Reclamation Division.

Sincerely,


Susan E. Wefald
Commissioner


Tony Clark
President


Kevin Cramer
Commissioner

Narrative for North Dakota State Program Amendment XXXVI

State Program Amendment XXXVI contains revised rules in North Dakota Administrative Code Article 69-5.2, rules for surface coal mining and reclamation operations. The more significant changes pertain to revegetation success standards that are based on proposed federal rule changes and the others are more minor in nature.

Additional language is proposed to NDAC 69-05.2-06-03 containing right of entry requirements to allow a permittee to delete coal leases from the permit when mining on the tract covered by a lease is completed and the lease is no longer needed to show surface right of entry, or when a coal lease has been otherwise terminated. However, if the coal lease no longer provides the surface right of entry, other documents granting the permittee right of entry must be added to the permit.

One of the changes proposed to NDAC 69-05.2-10-01 deletes language that requires the newspaper notice for permit applications include a reference to the USGS map that contains the area and the other limits the listing of coal owners in the notice to those that will be affected by the mining activities.

A change to the bond release application requirements under NDAC 69-05.2-12-12 will require the filing of a copy of the newspaper advertisement within 30 days of submitting the application instead of requiring the submittal of affidavits of publication within 30 days of submittal of the application. This change is proposed since an affidavit cannot be provided until all publications (once a week for 4 consecutive weeks) are complete, which is almost always later than 30 days after the bond release application is filed. Another change adds a cross-reference to another rule that requires additional information if a final bond release application involves an area that contained a premine water supply that is not being replaced.

Changes are proposed to NDAC 69-05.2-16-09 on sedimentation pond inspection requirements to make a better distinction between inspections that must be conducted while a pond is being constructed versus annual inspection reports that must be prepared by a registered professional engineer. The changes will also eliminate the requirement that inspection reports prepared during pond construction be submitted to the Commission. However, reports for each of these inspections will still have to be prepared and maintained at or near the mine site.

The proposed changes to the revegetation success standards under NDAC 69-05.2-22-07 are similar to those proposed by OSM in March of 2005 to the counterpart federal rule. The changes will allow data collected from native grassland, tame pastureland and cropland in any two years after year six of the ten-year revegetation liability period to be used for final bond release purposes. Currently, data from the last two consecutive years of the liability period, or any three years starting no sooner than year six of the liability period (with one being the last year of the liability period), must be used to demonstrate reclamation success. In addition, only one year of vegetation data would be needed to prove reclamation success on reclaimed woodlands, shelterbelts, and fish and wildlife habitat. New language is also proposed for woodland and shelterbelt standards that addresses replanting of trees and shrubs during the liability period and to allow certain volunteer trees and shrubs to count towards meeting the revegetation standards.

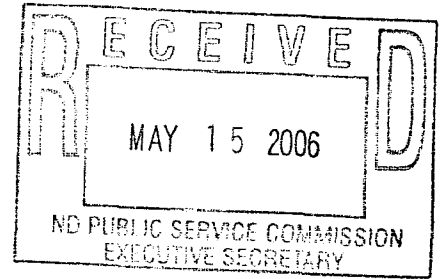
A minor change is proposed to the road performance standards under NDAC 69-05.2-24-01 to correct a cross reference error.



Wayne Stenehjem
ATTORNEY GENERAL

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL
600 E BOULEVARD AVE DEPT 125
BISMARCK, ND 58505-0040
(701) 328-2210 FAX (701) 328-2226



OPINION

May 15, 2006

Ms. Ilona Jeffcoat-Sacco
Executive Secretary
Public Service Commission
600 East Boulevard Avenue, Dept 408
Bismarck, ND 58505-0480

Dear Ms. Jeffcoat-Sacco:

The Office of Attorney General has examined the proposed amendments to N.D.A.C. art. 69-05.2 concerning reclamation, N.D.A.C. art. 69-06 concerning facilities siting, and N.D.A.C. art. 69-09 concerning the renewable electricity and recycled energy tracking system, telephone interconnection agreement filing, and telecommunications registration, along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was issued, 3) a takings assessment was prepared, 4) a small entity regulatory analysis and economic impact statement were prepared, 5) a stringency justification was not prepared, and 6) the proposed rules are within the agency's statutory authority. Further, as required by federal law, the proposed reclamation rules in N.D.A.C. art. 69-05.2 do not conflict with any provisions of existing state law or rules.

These administrative rules are in substantial compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Wayne Stenehjem
Attorney General

46 PU-05-364 Pages: 1

Opinion

42 PU-05-575 Pages: 1

Opinion

by Attorney General
05/15/2006: Comm Legal, Ilona Pat, Jerry, Annette . . .

26 RC-05-591 ✓ Pages: 1

23 PU-05-602 Pages: 1

Opinion

by Attorney General
05/15/2006: Comm Legal, Ilona Pat, Jerry, Annette . . .

**STATE PROGRAM AMENDMENT XXXVI
(PSC Case No. RC-05-591)**

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 mine site.
- 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 mine site.

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. If any replanting of woody plants took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; 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; however, volunteer trees must be at least thirty inches (76 centimeters) in height to be included in the count. 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. If any replanting of woody plants took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; 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; however, volunteer trees must be at least thirty inches (76 centimeters) in height to be included in the count. 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.

Comparison of Federal and State Rules

Federal Rule	State Rule	Comments
<p>30 CFR Sec. 773.6 Public participation in permit processing.</p> <p>(a) Filing and public notice. (1) Upon submission of an administratively complete</p>	<p>69-05.2-06-03. Permit applications - Right of entry and operation information.</p> <p>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.</p> <p>2. <u>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:</u></p> <p><u>a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or</u></p> <p><u>b. The lease has expired or has been terminated.</u></p> <p><u>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.</u></p> <p>69-05.2-10-01. Permit applications - Public notices of filing.</p> <p>1. The advertisement required by North Dakota Century Code section 38-14.1-18 must</p>	<p>There is no federal counterpart to the North Dakota rule that requires the permit applicant to submit certified copies of documents showing the right-to-mine or to otherwise disturb the surface of lands within the proposed permit area.</p>

Comparison of Federal and State Rules

Federal Rule	State Rule	Comments
<p>application, an applicant for a permit, significant revision of a permit under Sec. 774.13, or renewal of a permit under Sec. 774.15, shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper shall be submitted to the regulatory authority. The advertisement shall contain, at a minimum, the following:</p> <p>(i) The name and business address of the applicant.</p> <p>(ii) A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. If a map is used, it shall indicate the north direction.</p> <p>30 CFR Sec. 800.40 Requirement to release performance bonds.</p>	<p>also include:</p> <p>a. The applicant's name and business address.</p> <p>b. A map or description which must:</p> <p>(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.</p> <p>(2) Clearly show or describe the exact location and boundaries of the permit area.</p> <p>(3) Name the United States geological survey 7.5-minute quadrangle map which contains the area shown or described.</p> <p>(4) Show the north point (if a map).</p> <p>(5) <u>4</u> State the name of each owner of record of surface rights and, <u>if the applicant proposes to mine coal or conduct activities that may impact future coal recovery, the names of each owner of record</u> of coal rights within the permit boundaries.</p> <p>69-05.2-12-12. Release of performance bond - Bond release application.</p>	<p>Changes are proposed to North Dakota's rule to delete the reference to the USGS quadrangle map that contains the proposed permit area. The counterpart provision was deleted from the OSM rule several years ago.</p> <p>North Dakota's rule on newspaper notices for new applications includes language that requires the applicant to list surface and coal owners within the proposed permit area. The proposed changes limit the listing of coal owners to tracts that will be mined and those where mining activities may impact future coal recovery. There is no federal counterpart to this specific provision.</p>

Comparison of Federal and State Rules

Federal Rule	State Rule	Comments
<p>(a) Bond release application.</p> <p>(2) Within 30 days after an application for bond release has been filed with the regulatory authority, the permittee shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation.</p> <p>30 CFR Sec. 816.49 Impoundments.</p> <p>(11) Inspections. Except as provided in paragraph (a)(11)(iv) of this section, a qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in paragraph (a)(11)(i) of this section. The professional engineer or specialist shall be experienced in the construction of impoundments.</p>	<p>3. Within thirty days after filing a request for bond release, the permittee shall submit proof of the publication <u>a copy of the newspaper advertisement that was published as required by North Dakota Century Code section 38-14.1-17</u>. The advertisement published must include the permittee's name.</p> <p>.....</p> <p>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:</p> <p><u>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.</u></p> <p>69-05.2-16-09. Performance standards - Hydrologic balance -Sedimentation ponds.</p> <p>19. Impoundment inspections.</p> <p>a. A registered professional engineer, or other specialist under the direction of a registered professional engineer, shall inspect each impoundment as required under subdivision <u>b, c and d</u>. The registered professional engineer and specialist must be experienced in the construction of impoundments.</p>	<p>The North Dakota provision that currently requires the permittee to submit "proof of publication" for bond release advertisements is being changed to require a copy of the advertisement that was published in the newspaper. This is consistent with the current federal rule.</p> <p>A cross-reference to a provision not found in the federal rules is being added to North Dakota's rule that lists information that is needed in final bond release applications. This language is being added to help ensure permittees include the additional information when necessary.</p> <p>The proposed changes to North Dakota's rules on impoundment inspections are being made to clarify the inspection requirements that apply when ponds are being constructed, the post-construction certification by a registered professional engineer, and the annual inspection by a registered professional engineer.</p>

Comparison of Federal and State Rules

Federal Rule	State Rule	Comments
<p>(i) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.</p> <p>(ii) The qualified registered professional engineer, or qualified registered professional land surveyor as specified in paragraph (a)(11)(iv) of this section, shall promptly after each inspection required in paragraph (a)(11)(i) of this section provide to the regulatory authority a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter. The report shall include discussion of any appearance of instability, structural weakness or other hazardous condition, depth and elevation of any impounded waters, existing</p>	<p>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. <u>Reports for each inspection during construction must be prepared and maintained at or near the minesite.</u></p> <p>c. After each inspection <u>impoundment construction is complete</u>, the registered professional engineer shall promptly provide the commission a certified report that the impoundment has been <u>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.</u> 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 <u>a summary of the construction inspections, final storage capacity, and if applicable, a discussion of any deviations from the approved plan.</u></p> <p>d. <u>After impoundments are operational, they shall be inspected at least yearly until removal of the structure or release of the performance bond.</u> A registered</p>	

Comparison of Federal and State Rules

Federal Rule	State Rule	Comments
<p>storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.</p> <p>(iii) A copy of the report shall be retained at or near the minesite.</p> <p>Sec. 817.116 Revegetation: Standards for success.</p> <p>(b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:</p> <p><i>(As proposed March 17, 2005)</i></p> <p>(3) For areas to be developed for fish and wildlife habitat, recreation, undeveloped land, or forest products, success of vegetation shall be determined on the basis of tree and</p>	<p><u>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.</u></p> <p>e. A copy of the inspection reports must be maintained at or near the minesite.</p> <p>69-05.2-22-07. Performance standards - Revegetation - Standards for success.</p> <p>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:</p> <p>a. For native grassland, the following must be achieved for the last two consecutive <u>any two years after year six</u> of the responsibility period:</p> <p>(1) Ground cover and productivity of the permit area must be equal to or greater than that of the approved reference area</p>	<p>The proposed changes to North Dakota's rule containing revegetation success standards are very similar to some of those that were proposed by OSM in March of 2005. We understand OSM will issue a final rule based on these proposals. Assuming that OSM will adopt the proposed changes as final rules, North Dakota proposed some of the changes in order to expedite the rulemaking process. We hope this will result in some tracts receiving final bond release a year or two</p>

Comparison of Federal and State Rules

Federal Rule	State Rule	Comments
<p>shrub stocking and vegetative ground cover. * **</p> <p>(i) ***</p> <p>(ii) *** The requirements of this section apply to trees and shrubs that have been seeded or transplanted and can be met when records of woody vegetation planted show that no woody plants were planted during the last 2 growing seasons of the responsibility period and, if any replanting of woody plants took place during the responsibility period, the total number planted during the last 60% of that period is less than 20% of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking. This final accounting may include volunteer trees and shrubs of approved species. Volunteer trees and shrubs of approved species shall be deemed equivalent to planted specimens 2 years of age or older and can be counted towards success. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding. *****</p> <p>(c)(1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with paragraph (c)(4)</p>	<p>or standard with ninety percent statistical confidence; and</p> <p>(2) Diversity, seasonality, and permanence of the vegetation of the permit area must equal or exceed the approved standard.</p> <p>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 <u>any two years after year six</u> of the responsibility period.</p> <p>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 <u>any two years after year six</u> of the responsibility period.</p> <p>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.</p> <p>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 <u>growing season of the last year</u> of the responsibility period:</p>	<p>sooner. The North Dakota changes will allow data collected from native grassland, tame pastureland and cropland in any two years after year six of the ten-year revegetation liability period to be used for final bond release purposes. In addition, only one year of vegetation data will be needed to prove reclamation success on reclaimed woodlands, shelterbelts, and fish and wildlife habitat. New language also addresses replanting trees and shrubs during the liability period and allowing certain volunteer trees and shrubs to be counted for meeting revegetation standards.</p>

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<p>of this section.</p> <p>*****</p> <p>(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than:</p> <p><i>(As proposed March 17, 2005)</i></p> <p>(i) Ten full years, except as provided in paragraph (c)(3)(ii) of this section.</p> <p>The vegetation parameters identified in paragraph (b) of this section for grazingland, pastureland, or cropland shall equal or exceed the approved success standard during the growing season of any 2 years after year 6 of the responsibility period. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.</p> <p>(ii) Five full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.</p>	<p>(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:</p> <p>(a) Be healthy;</p> <p>(b) Be in place for at least two growing seasons; and</p> <p>(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. If any replanting of woody plants took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and</p> <p>(d) <u>Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted towards</u></p>	

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	<p><u>meeting success standards; however, volunteer trees must be at least thirty inches (76 centimeters) in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.</u></p> <p>(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</p> <p>(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.</p> <p>f. For shelterbelts, the following must be achieved during the last two consecutive years <u>growing season of the last year</u> of the responsibility period:</p> <p>(1) Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:</p> <p>(a) Be healthy;</p> <p>(b) Be in place for at least two growing seasons; and</p>	

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	<p>(c) <u>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. If any replanting of woody plants took place took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and</u></p> <p>(d) <u>Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted towards meeting success standards; however, volunteer trees must be at least thirty inches (76 centimeters) in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.</u></p> <p>(2) Shelterbelt density and vigor must be equal to or greater than that of the approved standard; and</p> <p>(3) Erosion must be adequately controlled.</p> <p>g. For fish and wildlife habitat, where the vegetation type is wetland, vegetation</p>	

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	<p>zones and dominant species must be equal to those of the approved standard <u>during the last two consecutive years growing season of the last year</u> of the responsibility period. In addition, wetland permanence and water quality must meet approved standards.</p> <p>h. For fish and wildlife habitat, where the vegetation type is grassland, the following must be achieved during the <u>last two consecutive years growing season of the last year</u> of the responsibility period:</p> <p>(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.</p> <p>(2) Species diversity, seasonal variety, and regenerative capacity of the vegetation must meet or exceed the approved standard.</p> <p>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.</p>	

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	<p>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.</p> <p>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.</p> <p>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</p>	

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	<p>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.</p> <p>69-05.2-24-01. Performance standards - Roads - General requirements.</p> <ol style="list-style-type: none"> 1. Each road, as defined in subsection 92 <u>93</u> of section 69-05.2-01-02, must be classified as either a primary or ancillary road. 	<p>The change to the general performance standards for roads corrects a cross reference error.</p>