



North Dakota Legislative Council

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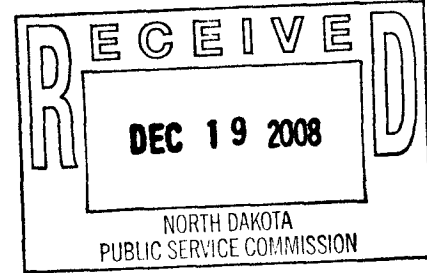
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December 18, 2008



Ms. Ilona A. Jeffcoat-Sacco
Executive Secretary
Public Service Commission
State Capitol
Bismarck, ND 58505-

Dear Ms. Jeffcoat-Sacco:

We have completed preparation of the North Dakota Administrative Code rules changes you recently submitted to our office for publication. Enclosed are copies of two different versions of those rules.

The first enclosed copy shows revised North Dakota Administrative Code sections as they will be published in the next supplement of the North Dakota Administrative Code. There is an instruction sheet for replacement of obsolete pages with these updated pages to be used if your agency maintains a full-sized set of your rules. If you maintain the published North Dakota Administrative Code in reduced size binders, the reduced size replacement pages will be sent to you soon.

The other enclosed copy shows our editorial changes to the rules as submitted. Please observe the style and grammar changes we have made.

Please contact this office if you have any questions regarding these rules. If these rules will be reviewed by the Administrative Rules Committee, we will contact you when the meeting is scheduled.

Sincerely,

John Walstad
Code Revisor

JW/CS
Encs.

27 RC-07-163 Filed: 12/19/2008 Pages: 70
Administrative Rules - As Published and with
Editorial Changes

Legislative Council

NORTH DAKOTA ADMINISTRATIVE CODE

Supplement 331

January 1, 2009

The North Dakota Administrative Code Supplement is published each month following the month that rules are filed with the Legislative Council office. A historical source note immediately follows an affected section and indicates the effective date of any amendment, creation, or repeal. A supplement change without any historical source note corrects a nonsubstantive error in the section.

This supplement instruction page should be retained and placed behind your "supplement instruction sheets" divider in Volume 1. **Before inserting any supplement into the code be sure the previous supplement has been inserted.** For those codes purchased after August 1, 1996, the first supplement is Supplement 207.

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CHAPTER 69-05.2-08
PERMIT APPLICATIONS - PERMIT AREA - REQUIREMENTS FOR
INFORMATION ON ENVIRONMENTAL RESOURCES

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69-05.2-08-03	Permit Applications - Permit Area - Description of the Cultural and Historic Resources [Repealed]
69-05.2-08-04	Permit Applications - Permit Area - Description of Hydrology and Geology - General Requirements
69-05.2-08-05	Permit Applications - Permit Area - Geology Description
69-05.2-08-06	Permit Applications - Permit Area - Ground Water Information
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69-05.2-08-11	Permit Applications - Permit Area - Use of Other Suitable Strata
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69-05.2-08-01. Permit applications - Permit area - Environmental resources information.

1. Each application must include a description of the premining environmental resources of the permit and adjacent areas that may be affected by mining.
2. When the permit area contains a logical pit sequence where the coal removal area is larger than that needed for the initial five-year term, the applicant shall identify the size, sequence, and timing of mining individual coal removal subareas.

3. Lands in the application must be described by metes and bounds or standard government land survey descriptions, except that government lots must be described only by metes and bounds.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-02. Permit applications - Permit area - General map requirements.

1. The application must include a 1:4,800 planimetric mine map, together with as many separate detail maps as necessary, to show:
 - a. Land boundaries and names of present surface and subsurface owners of record in the permit area and contiguous lands extending one-fourth mile [402.23 meters] from the permit boundary.
 - b. The scale, date, location, company name, legal subdivision boundaries, and legend.
 - c. The exact area being considered for permit.
 - d. The locations and elevations of drill holes used for collecting geologic, ground water, and overburden information.
 - e. The location and current use of all buildings on and within one-half mile [804.67 meters] of the permit area.
 - f. The location of surface and subsurface manmade features within, passing through, or passing over the permit area, including major electric transmission lines, pipelines, agricultural drainage tile fields, wells, roads, highways, and railroads.
 - g. Each public road in or within one hundred feet [30.48 meters] of the permit area.
 - h. Each public or private cemetery or native American burial ground in or within one hundred feet [30.48 meters] of the permit area.
 - i. Elevations and locations of monitoring stations used to gather environmental resource data for water quality and quantity, fish and wildlife, and air quality.
 - j. Location and extent of known underground mines, including openings to the surface within the permit and adjacent areas.

- k. Location and extent of existing or previously surface-mined areas within the permit and adjacent area.
 - l. Location and dimensions of existing areas of spoil, coal and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the permit area.
 - m. Location, and depth if available, of gas and oil wells within the permit area.
 - n. The boundaries of any public park within or adjacent to the permit area.
2. The application must contain a 1:24,000 planimetric map showing:
 - a. The boundaries of the extended mining plan area.
 - b. The area being considered for permit.
 - c. The boundaries of previously permitted areas.
 3. The application must include:
 - a. Five-foot [1.52-meter] contour interval topographic maps of the permit area.
 - b. An area slope map showing three percent intervals, unless otherwise approved by the commission.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-03. Permit applications - Permit area - Description of the cultural and historic resources. Repealed effective June 1, 1986.

69-05.2-08-04. Permit applications - Permit area - Description of hydrology and geology - General requirements.

1. Each application must describe the geology, hydrology, and water quality and quantity of the permit and adjacent area. The description must include information on the characteristics of all surface and ground waters within the permit and adjacent areas, and any water which will flow into or receive discharges from these areas. The permit will not be approved until this information is in the application.

2. All water quality sampling and analyses must be conducted according to the most recent edition of Standard Methods for the Examination of Water and Wastewater or those in 40 CFR parts 136 and 434 or other methods approved by the commission and the office of surface mining reclamation and enforcement.
3. Enough detailed geologic information must be included to determine:
 - a. The probable hydrologic consequences (PHC) of the operation on the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface and ground water monitoring is necessary;
 - b. All potentially toxic-forming strata down through the lowest coal seam to be mined; and
 - c. Whether reclamation can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.
4. The applicant shall determine the probable hydrologic consequences of the operation on the quality and quantity of surface and ground water under seasonal flow conditions for the permit and adjacent areas. The probable hydrologic consequences determination must be based on baseline hydrologic, geologic, and other information collected for the application and, if appropriate, data statistically representative of the site. Include findings on:
 - a. Whether adverse impacts occur to the hydrologic balance.
 - b. Whether toxic-forming materials are present that could contaminate surface and ground water supplies.
 - c. Whether the operation may contaminate, diminish, or interrupt an underground or surface water source within the permit or adjacent areas used for domestic, agricultural, industrial, or other legitimate purpose.
 - d. What impact the operation will have on:
 - (1) Sediment yield from the disturbed area.
 - (2) Acidity, total suspended and dissolved solids, and other important water quality parameters of local impact.
 - (3) Flooding or streamflow alteration.
 - (4) Ground water and surface water availability and other characteristics as required by the commission.

5. The applicant shall provide supplemental information to evaluate the hydrologic consequences based on drilling, aquifer tests, geohydrologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics if:
 - a. Toxic-forming material is present; or
 - b. The probable hydrologic consequences determination indicates adverse impacts on or off the permit area may occur to the hydrologic balance.
6. The applicant shall provide information on the availability and suitability of alternate water sources for existing premining and approved postmining land uses if the probable hydrologic consequences determination shows the mining operation may contaminate, diminish, or interrupt a water source used for domestic or other legitimate purpose in the permit or adjacent areas.
7. Modeling techniques may be used if they furnish the required information.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-14.1-15

69-05.2-08-05. Permit applications - Permit area - Geology description.

1. The description must include a general statement of the geology within the permit area down through the deeper of either the stratum immediately below the deepest coal seam to be mined or any lower aquifer which may be adversely affected by mining.
2. Test borings or core samples from the permit area must be collected and analyzed down through the deeper of either the stratum immediately below the lowest coal seam to be mined or any lower aquifer which may be adversely affected by mining. The minimum density is one drill hole per forty acres [16.19 hectares] or a comparable spacing, or as specified by the commission. Overburden samples must be taken at five-foot [1.52-meter] intervals and taken dry whenever possible. Laboratory analyses must be made by the methods in United States department of agriculture handbook 525, Laboratory Methods Recommended for Chemical Analyses of Mined Land Spoils and Overburden in Western United States, by Sandoval and Power, or United States department of agriculture handbook 60, Diagnosis and Improvement of Saline and Alkali Soils, by the United States salinity laboratory staff, both available from the United States government printing office, Washington, D. C. The following information must be provided:
 - a. Location of subsurface water encountered.

- b. Drill hole logs with gamma ray and density logs included as verification showing the lithologic characteristics and thickness of each stratum and coal seam.
 - c. Physical and chemical analyses of each overburden sample taken at five-foot [1.52-meter] intervals to identify horizons containing potential toxic-forming materials. Physical and chemical analyses of strata below the lowest coal seam to be mined must include one sample from each stratum. The analyses must include:
 - (1) pH.
 - (2) Sodium adsorption ratio (include calcium, magnesium, and sodium cation concentrations).
 - (3) Electrical conductivity of the saturation extract.
 - (4) Texture (by pipette or hydrometer method). Include percentage of sand, silt, and clay along with a general description of the physical properties of each stratum within the overburden.
 - (5) Saturation percentage if the sodium adsorption ratio is greater than twelve and less than twenty.
 - d. Coal seam analyses including sodium, ash, British thermal unit, and sulfur content.
 - e. Cross sections sufficient to show the major subsurface variations within the permit area down through the deeper of either the stratum immediately below the lowest coal seam to be mined or any lower aquifer which may be adversely affected by mining. The horizontal scale must be 1:4,800 and the vertical scale one inch [2.54 centimeters] equals twenty feet [6.10 meters]. To assess pit suitability for disposal of refuse, ash, and other residue from coal utilization processes, the information presented in this subsection must extend to a depth determined by the commission or to the base of the next confining clay stratum beneath the lowest coal seam to be mined.
 - f. A thickness (isopach) map of the overburden to the top of the deepest seam to be mined. The contour interval must be ten feet [3.05 meters] and the horizontal scale 1:4,800.
 - g. All coal crop lines and the strike and dip of the coal to be mined.
3. If required by the commission, the applicant shall collect and analyze test borings or core samplings to greater depths within or outside

the permit area if needed for evaluating the impact of mining on the hydrologic balance.

History: Effective August 1, 1980; amended effective January 1, 1987; May 1, 1990; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-06. Permit applications - Permit area - Ground water information.

1. The applicant shall analyze the ground water hydrology and ground water resources of the potentially affected area. The application must contain a description of the ground water hydrology for the permit and adjacent areas including:
 - a. A general account of the ground water hydrology (the water resources of the area).
 - b. Known uses of the water in the aquifers and water table and location of all water wells within the permit and adjacent areas.
 - c. Sufficient information and narratives to adequately describe the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water according to the parameters and in the detail required by the commission. The narrative must discuss the aquifers and hydrologic functions that are addressed in the ground water monitoring plan required by section 69-05.2-09-12 in order to comply with sections 69-05.2-16-13 through 69-05.2-16-15.
 - d. Contour maps or maps showing the water table or piezometric surface in each aquifer (including water-bearing coal seams) down to and including the lowest water-bearing coal seam to be mined and any lower aquifer which may be adversely affected by mining. The applicant shall prepare 1:24,000 scale maps covering the permit and adjacent areas, using at least one data point (a piezometer nest) per four square miles [6.44 square kilometers], unless the commission requires a greater density. Data points must be shown on the map to the nearest ten acres [4.05 hectares]. Accompanying data should include lithologic and geophysical (gamma ray and density) logs of the piezometer holes, piezometer construction details, and water level and land surface elevations to the accuracy necessary for valid analysis of the ground water hydrology of the permit and adjacent areas.
 - e. Results of water samples collected from each data point, if possible, analyzed for:

- (1) Total dissolved solids in milligrams per liter.
 - (2) Hardness in milligrams per liter.
 - (3) Sodium in milligrams per liter.
 - (4) Iron, bicarbonate, nitrate, sulfate, and chloride in milligrams per liter.
 - (5) pH in standard units.
 - (6) Sodium adsorption ratio (include calcium, magnesium, and sodium cation concentrations).
 - (7) Electrical conductivity in micro mhos per centimeter.
 - (8) Additional parameters required by the commission on a site-specific basis.
2. If necessary, the applicant shall provide additional ground water information required by subsections 5 and 6 of section 69-05.2-08-04.
 3. The applicant shall meet the alluvial valley floor ground water information and data requirements if the permit area contains or is adjacent to an identified alluvial valley floor.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-07. Permit applications - Permit area - Surface water information.

1. The applicant shall provide a map for the permit and adjacent areas showing:
 - a. Names and locations of watersheds receiving mine water discharges.
 - b. Ephemeral, intermittent, and perennial streams.
 - c. Lakes, ponds, wetlands, springs, drains, and water discharges into surface water bodies.
 - d. Water supply intakes for current surface water users.
2. The applicant shall describe surface drainage systems in sufficient detail to identify seasonal water quality and quantity variations in the permit and adjacent areas.

3. Surface water information must include:
 - a. Minimum, maximum, and average discharge conditions which identify critical low flow and peak discharge stream rates sufficient to identify seasonal variations.
 - b. Water quality data to identify the characteristics of surface waters related to the permit and adjacent areas, sufficient to identify seasonal variations. The data must include:
 - (1) Total dissolved solids in milligrams per liter.
 - (2) Total suspended solids in milligrams per liter.
 - (3) pH in standard units.
 - (4) Total iron in milligrams per liter.
 - (5) Additional parameters the commission may require on a site-specific basis.
 - c. A complete description of the monitoring procedures used including:
 - (1) Site locations.
 - (2) Monitoring frequency for each site.
 - (3) Techniques and equipment.
4. If necessary, the applicant shall provide additional surface water information required by subsections 5 and 6 of section 69-05.2-08-04.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-08. Permit applications - Permit area - Vegetation and land use information.

1. The application must contain the following premining vegetation information:
 - a. A map or aerial photograph at a scale of 1:4,800 that delineates the existing mapping units within each premining land use. The mapping units for different land use categories are:
 - (1) For cropland, each soil mapping unit.

- (2) For tame pastureland, each soil mapping unit.
 - (3) For native grasslands, each ecological site. The soil mapping unit in each ecological site must also be delineated.
 - (4) For woodland, each woodland type, i.e., trees, tall shrubs, and low shrubs.
 - (5) For fish and wildlife habitat, each vegetation type as further specified in subparagraphs a, b, and c.
 - (a) For woodland, each woodland type, i.e., trees, tall shrubs, and low shrubs;
 - (b) For wetlands, wetland classes based on ecological differentiation as set forth in Classification of Natural Ponds and Lakes in the Glaciated Prairie Region (United States department of the interior (1971)) or other approved classification system.
 - (c) For grasslands (native or introduced), each soil mapping unit.
 - (6) For shelterbelts, the entire planting.
- b. For each land use, a comprehensive species list of higher plants and identification of any species of rare, endangered, poisonous, or noxious plants, developed by a thorough reconnaissance of all mapping units.
- c. A description of each mapping unit delineated under subdivision a. This description must include:
- (1) The acreage [hectarage] of each mapping unit for each surface owner within the permit area.
 - (2) An assessment of the productivity of cropland, tame pastureland, and native grassland based on published data, historic data, or quantitative data.
 - (3) Natural resource conservation service similarity index in percent for native grassland.
 - (4) A detailed description of number and arrangement of trees and shrubs, probable age of trees, height of trees, and characteristics of understory vegetation for woodland and fish and wildlife habitat where woodland is the vegetation type.

- (5) A detailed description of community structure, assemblages of plant species, water conditions, and size for fish and wildlife habitat where wetlands are the vegetation type.
 - (6) A description of number and arrangement of trees and shrubs, length and number of rows, and associated plant species for shelterbelts.
 - (7) When required for the proposed success standard, a quantitative assessment of applicable vegetation parameters using methods approved by the commission.
 - d. A detailed narrative describing the nature and variability of the vegetation in each mapping unit and land use category, based on a thorough reconnaissance and qualitative assessment.
2. When the methods selected for subdivision g of subsection 6 of section 69-05.2-09-11 require the use of reference areas:
 - a. The number of reference areas proposed must be sufficient to adequately represent the permit area.
 - b. The location, approximate size, and boundaries of all proposed reference areas must be located on a map of sufficient scale to accurately show the field location of each. The boundaries of the mapping unit in which the reference area is located must also be delineated.
 - c. The permittee shall demonstrate that the proposed reference areas adequately characterize the relevant mapping units which they propose to represent. This demonstration must be done according to methods approved by the commission.
3. The application must contain, in addition to materials satisfying subdivision a of subsection 2 of North Dakota Century Code section 38-14.1-14:
 - a. A map and supporting narrative of the uses of the land existing at the time the application is filed. If the premining use of the land was changed within five years before the anticipated date of beginning the proposed operations, the historic use must also be described.
 - b. A narrative of land capability and productivity, which analyzes the land use description under subdivision a in conjunction with other environmental resources information required under this chapter.

4. The application must contain a narrative description which includes information adequate to predict the potential for reestablishing vegetation on all areas to be disturbed.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; January 1, 2009.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-14.1-24

69-05.2-08-09. Permit applications - Permit area - Prime farmland - Reconnaissance investigation.

1. All applications must include the results of a reconnaissance investigation of the proposed permit area to indicate whether prime farmland exists. The commission in consultation with the natural resource conservation service will determine the nature and extent of the required reconnaissance investigation.
2. If the reconnaissance investigation establishes that no land within the proposed permit area is prime farmland historically used for cropland, the applicant shall submit a statement that no prime farmland is present. The statement must identify how the conclusion was reached.
3. If the reconnaissance investigation indicates that land within the proposed permit area may be prime farmland historically used for cropland, the applicant shall determine if a cooperative soil survey exists for those lands and whether soil mapping units in the permit area have been designated as prime farmland. If no cooperative soil survey exists, the applicant shall have one made of the lands which the reconnaissance investigation indicates could be prime farmland.
 - a. If the cooperative soil survey indicates that no prime farmland soil mapping units are present within the permit area, subsection 2 applies.
 - b. If the cooperative soil survey indicates that prime farmland soil mapping units are present within the permit area, section 69-05.2-09-15 applies, unless the applicant presents other information which demonstrates to the satisfaction of the state conservationist of the natural resource conservation service that no prime farmland mapping units are present.

4. This section does not apply to lands which qualify for the exemption in section 69-05.2-26-06. However, the application must show that all exemption criteria are met.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; June 1, 1997.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-10. Permit applications - Permit area - Soil resources information. The applicant shall submit a soil survey for the permit area consisting of a map and report prepared by a soil classifier as defined in subsection 28 of North Dakota Century Code section 38-14.1-02.

1. The map must be at a 1:4,800 scale and show:
 - a. The location and the vertical and lateral (areal) extent of the suitable plant growth material (topsoil) within the permit area that is considered best for topdressing the area to be reclaimed. Suitable plant growth material considered best for topdressing is the noncalcareous surface horizon material that is dark-colored due to organic staining, has an electrical conductivity of less than two millimhos per centimeter ($EC \times 10^3$), a sodium adsorption ratio of less than four (exchangeable sodium percentage of less than five) and an organic matter percentage of one or more.
 - b. The location and the vertical and lateral (areal) extent of the remaining suitable plant growth material (subsoil) within the permit area, based on electrical conductivity of the saturation extract of less than four millimhos per centimeter ($EC \times 10^3$), and sodium adsorption ratios of less than ten (exchangeable sodium percentage of less than twelve).
 - c. The location of any prime farmlands identified under section 69-05.2-08-09.
2. The report must contain:
 - a. The results of any chemical and physical analyses made to determine the properties of the suitable plant growth material. Textural analyses must be included for all samples taken.
 - b. The description, classification, and interpretation for use of the soils and suitable plant growth material in the permit area.
3. Laboratory analyses must be made by the methods and procedures in United States department of agriculture handbook 60, Diagnosis and Improvement of Saline and Alkali Soils, by the United States salinity laboratory staff, United States government printing office,

Washington, D. C., or by other methods and procedures approved in writing by the commission.

4. Prior to a soil classifier beginning work on the required soil survey, a meeting of the soil classifier, the operator, if the operator so desires, and the commission staff will be held for the purpose of discussing proposed techniques, procedures for sampling and analyses, and the area to be surveyed.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-11. Permit applications - Permit area - Use of other suitable strata. Where the applicant proposes to use other suitable strata as a supplement for suitable plant growth materials or where the commission determines that it is necessary to meet the revegetation requirements, the application must indicate the areal extent of other suitable strata within the proposed permit area and must, on a sampling density determined by the commission in consultation with the applicant, provide results of the analyses, trials, and tests required under subsection 5 of section 69-05.2-15-02.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-12. Permit applications - Permit area - Topographic data.
Repealed effective January 1, 1993.

69-05.2-08-13. Permit applications - Permit area - Alluvial valley floor determination.

1. Before applying for a permit to conduct operations within a valley holding a stream or in a location where the adjacent area includes any stream, the applicant shall either affirmatively demonstrate, based on available data, the presence of an alluvial valley floor, or submit the results of a field investigation of the permit and adjacent areas. The investigations must include sufficiently detailed geologic, hydrologic, land use, soils, and vegetation studies on areas required to be investigated by the commission, after consultation with the applicant, to enable the commission to make an evaluation regarding the existence of the probable alluvial valley floor in the permit or adjacent area and to determine which areas, if any, require more detailed study in order to make a final determination regarding the existence of an alluvial valley floor. Studies performed during the investigation by the applicant or subsequent studies required of the applicant must include an appropriate combination, adapted to site-specific conditions, of:

- a. Mapping of the probable alluvial valley floor including geologic maps of unconsolidated deposits, delineating the streamlaid deposits, maps of streams, delineation of surface watersheds and directions of shallow ground water flows through and into the unconsolidated deposits, topography showing local and regional terrace levels, and topography of terraces, floodplains, and channels showing surface drainage patterns.
 - b. Mapping of all lands included in the area used for agricultural activities, showing the different types of agricultural lands and accompanied by measurements of vegetation productivity and type.
 - c. Topographic maps of all lands that are or were historically flood-irrigated, showing the location of each diversion structure, ditch, dam, and related reservoir.
 - d. Documentation that areas identified in this section are, or are not, subirrigated, based on ground water monitoring data, representative water quality, soil moisture measurements, and measurements of rooting depth, soil mottling, and water requirements of vegetation.
 - e. Documentation, based on representative sampling, that areas identified under this subdivision are, or are not, flood irrigable, based on streamflow, water quality, water yield, soils measurements, and topographic characteristics.
 - f. Analysis of a series of aerial photographs, including color infrared imagery capable of showing any late summer and fall differences between upland and valley floor vegetative growth and of a scale adequate for reconnaissance identification of areas that may be alluvial valley floors.
2. Based on the investigations conducted under subsection 1, the commission will determine the extent of any alluvial valley floors within the study area and whether any stream in the study area may be excluded from further consideration. The commission will determine that an alluvial valley floor exists if:
 - a. Unconsolidated streamlaid deposits holding streams are present; and
 - b. There is sufficient water to support agricultural activities as shown by:
 - (1) The existence of flood irrigation in the area or its historical use;

- (2) The capability to be flood-irrigated, based on streamflow water yield, soils, water quality, and topography; or
- (3) Subirrigation of the lands from the ground water system of the valley floor.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21

69-05.2-08-14. Permit applications - Permit area - Alluvial valley floor resources.

1. If land within the permit or adjacent area is identified as an alluvial valley floor and mining may affect it or waters that supply alluvial valley floors, the applicant shall submit a complete description of the alluvial valley floor resources and characteristics that allow the commission to determine:
 - a. The characteristics necessary to preserve essential hydrologic functions during and after mining.
 - b. The significance of the area to agricultural activities.
 - c. Whether the operation will cause, or presents an unacceptable risk of causing, material damage to the quantity or quality of surface or ground waters that supply the alluvial valley floor.
 - d. The effectiveness of proposed reclamation under North Dakota Century Code chapter 38-14.1 and this article.
 - e. Specific environmental monitoring required to measure compliance with chapter 69-05.2-25 during and after mining and reclamation operations.
2. The alluvial valley floor baseline data required to make the determinations listed in subsection 1 must include:
 - a. Geologic data, including structure and surficial maps, and cross sections.
 - b. Soils and vegetation data, including a detailed soil survey and chemical and physical analyses, a vegetation map and narrative descriptions of quantitative and qualitative surveys, and land use data, including an evaluation of crop yields.
 - c. Surveys and data for areas designated as alluvial valley floors because of their flood irrigation characteristics must also include

streamflow, runoff, sediment yield, and water quality analyses describing seasonal variations, field geomorphic surveys, and other geomorphic studies.

- d. Surveys and data for areas designated as alluvial valley floors because of their subirrigation characteristics, must also include geohydrologic data including observation well establishment for water level measurements, ground water contour maps, testing to determine aquifer characteristics that affect waters supplying the alluvial valley floors, well and spring inventories, and water quality analyses describing seasonal variations, and of the same overburden parameters specified in section 69-05.2-08-05 to determine the effect of the operations on water quality and quantity.
 - e. Plans showing how the operation will avoid, during mining and reclamation, interruption, discontinuance, or preclusion of farming on the alluvial valley floors unless the premining land use has been undeveloped rangeland which is not significant to farming and will not materially damage the quantity or quality of water in surface and ground water systems that supply these alluvial valley floors.
 - f. Maps showing farms that could be affected by the mining and, if any farm encompasses all or part of an alluvial valley floor, statements of the type and quantity of agricultural activity on the alluvial valley floor and its relationship to the farm's total agricultural activity including an economic analysis.
3. The surveys should identify those geologic, hydrologic, and biologic characteristics of the alluvial valley floor necessary to support essential hydrologic functions. Characteristics which must be evaluated in a complete application include:
- a. Characteristics supporting the function of collecting water which include:
 - (1) The amount and rate of runoff and a water balance analysis, with respect to rainfall, evapotranspiration, infiltration, and ground water recharge.
 - (2) The relief, slope, and density of the network of drainage channels.
 - (3) The infiltration, permeability, porosity, and transmissivity of unconsolidated deposits of the valley floor that either constitute the aquifer associated with the stream or lie between the aquifer and the stream.

- (4) Other factors that affect the interchange of water between surface streams and ground water systems, including the depth to ground water, the direction of ground water flow, the extent to which the stream and associated alluvial ground water aquifers provide recharge to, or are recharged by bedrock aquifers.
- b. Characteristics supporting the function of storing water which include:
- (1) Surface roughness, slope, and vegetation of the channel, floodplain, and low terraces that retard flow.
 - (2) Porosity, permeability, water-holding capacity, saturated thickness, and volume of aquifers associated with streams, including alluvial aquifers, perched aquifers, and other water-bearing zones found beneath valley floors.
 - (3) Moisture held in soils within the alluvial valley floor, and the physical and chemical properties of the subsoil that provide for sustained vegetation growth or cover during extended periods of low precipitation.
- c. Characteristics supporting the function of regulating the flow of water which include:
- (1) The geometry and physical character of the valley, expressed in terms of the longitudinal profile and slope of the valley and the channel, the sinuosity of the channel, the cross section, slopes, and proportions of the channels, floodplains, and low terraces, the nature and stability of the streambanks, and the vegetation established in the channels and along the streambanks and floodplains.
 - (2) The nature of surface flows as shown by the frequency and duration of flows of representative magnitude including low flows and floods.
 - (3) The nature of interchange of water between streams, their associated alluvial aquifers and any bedrock aquifers as shown by the rate and amount supplied by the stream to associated alluvial and bedrock aquifers (i.e., recharge) and by the rates and amounts supplied by aquifers to the stream (i.e., baseflow).

- d. Characteristics which make water available and which include the presence of land forms including floodplains and terraces suitable for agricultural activities.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21

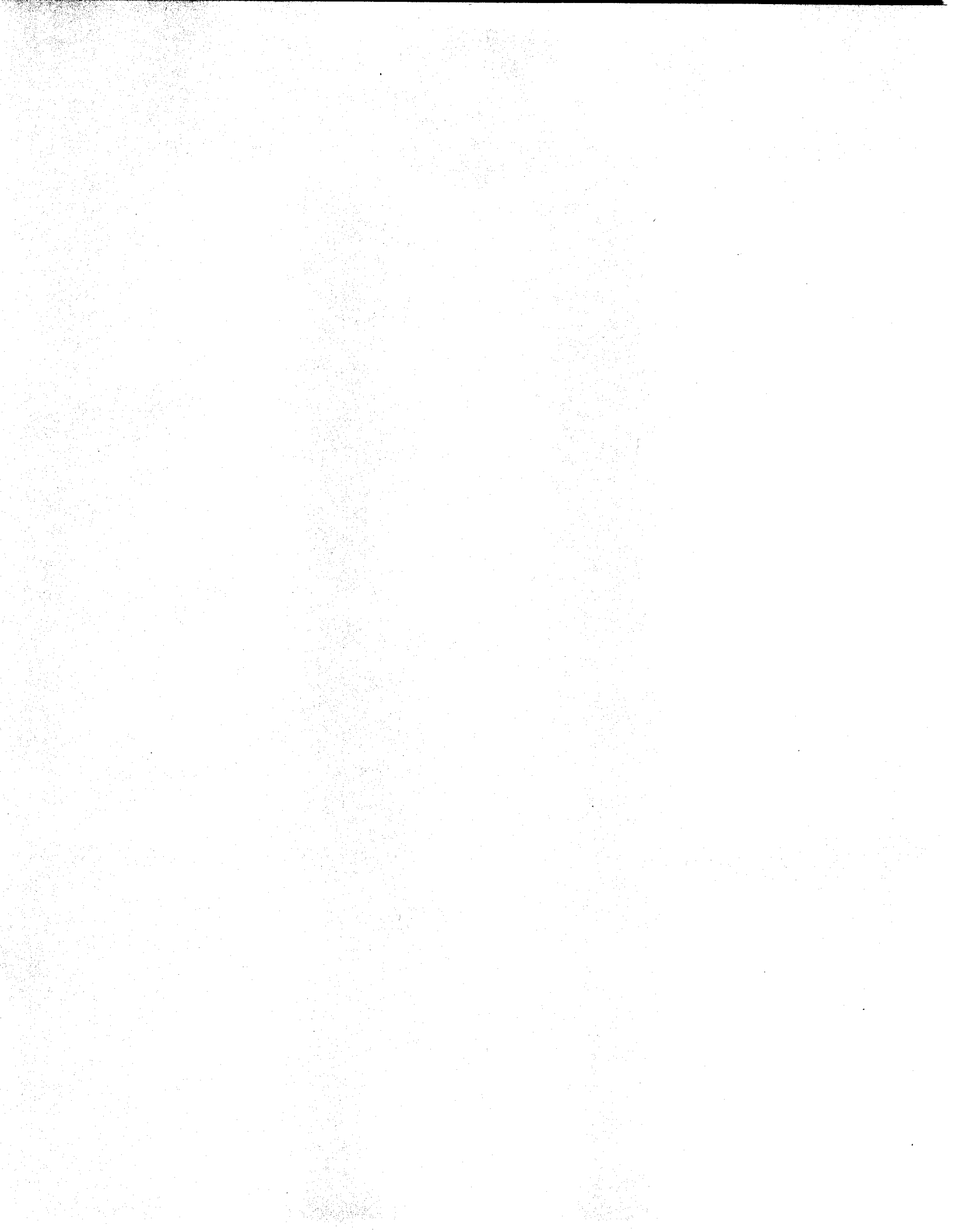
69-05.2-08-15. Permit applications - Permit area - Fish and wildlife resources. Each application must include fish and wildlife resource information for the permit and adjacent area.

1. The applicant shall submit for commission approval a study plan for acquiring fish and wildlife information which must include the scope of work, level of detail, and timetable for completing fish and wildlife inventories. The commission, in consultation with the state and federal agencies responsible for fish and wildlife, will ensure that the study plan is sufficient to design the protection and enhancement plan required in section 69-05.2-09-17.
2. The study report must be included in the application and fish and wildlife habitats must be delineated on 1:4,800 scale aerial photographs.
3. Site-specific resource information necessary to address the respective species or habitats is required when the permit or adjacent area is likely to include:
 - a. Listed or proposed endangered or threatened plant or animal species or their critical habitats listed by the secretary of the United States department of the interior under the Endangered Species Act of 1973, as amended [16 U.S.C. 1531 et seq.];
 - b. Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or
 - c. Other species or habitats identified through agency consultation as requiring special protection under state or federal law.
4. Within ten days of the request, the commission will provide the resource information required under subsection 1 to the United States department of the interior, fish and wildlife service regional or field office for their review.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-14.1-24



CHAPTER 69-05.2-10
PERMIT APPLICATIONS - REVIEW, PUBLIC PARTICIPATION, AND
APPROVAL OR DISAPPROVAL

Section	
69-05.2-10-01	Permit Applications - Public Notices of Filing
69-05.2-10-02	Permit Applications - Informal Conferences
69-05.2-10-03	Permit Applications - Criteria for Permit Approval or Denial
69-05.2-10-04	Permit Applications - Criteria for Permit Approval or Denial - Existing Structures
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69-05.2-10-06	Permit Applications - Permit Approval for Surface Disturbances Over Federal Mineral Estates

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) Show the north point (if a map).
 - (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.
 - c. The address of the commission, to whom written comments, objections, or requests for informal conferences on the application may be submitted.
 - d. If an applicant seeks a permit to conduct operations within one hundred feet [30.48 meters] of the outside right of way of a public road or to relocate a public road, a concise statement describing the road, the particular part to be relocated, where the relocation is to occur, and its duration.

2. The commission will distribute appropriate portions of the application to the state advisory committee specified in subsection 2 of North Dakota Century Code section 38-14.1-21 formed to aid the commission in evaluating the operations and reclamation plan. Members of the committee shall forward their evaluation to the commission within forty-five days of receipt.
3. If the application contains prime farmlands to be mined, the commission will furnish the state conservationist of the natural resource conservation service with the prime farmland reclamation plan submitted under section 69-05.2-09-15. The state conservationist shall provide review and comment on the proposed method of soil reconstruction and suggest remedial revisions if the plan is considered inadequate.
4. The applicant shall make a copy of the complete application available for the public to inspect and copy by filing it with the county auditor in the county where the mining is proposed. The applicant shall file the copy by the first date of the newspaper advertisement and any subsequent changes at the same time they are submitted to the commission.
5. In addition to the requirements of subsection 3 of section 38-14.1-18 of the North Dakota Century Code, the commission will notify all federal or state government agencies with authority to issue permits and licenses applicable to the proposed operations as part of the permit coordinating process and those with an interest in the proposed operations. These agencies include the soil conservation district office, the local United States army corps of engineers district engineer, the national park service, and the United States fish and wildlife service.
6. The commission will provide notice and opportunity for hearing for persons seeking and opposing disclosure prior to declaring any permit information confidential. Notice will be published in the official county newspaper of the county where the proposed operations will be located at least fifteen days prior to the hearing. Information requested to be held confidential must be clearly identified by the applicant and submitted separately. Confidential information is limited to:
 - a. Analysis of the chemical and physical properties of the coal to be mined, except information on coal components potentially toxic in the environment.
 - b. The nature and location of archaeological resources on public land and Indian land as required by the Archaeological Resources Protection Act of 1979.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; April 1, 2007.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-18

69-05.2-10-02. Permit applications - Informal conferences.

1. A request for an informal conference under subsection 5 of North Dakota Century Code section 38-14.1-18 must be in writing and:
 - a. Briefly summarize the issues the requester will raise.
 - b. State whether the requester desires to have the conference in the locality of the operations.
2. The commission will appoint one or more hearing examiners to preside at informal conferences on applications held under this section. No commissioner may preside at such informal conference. Hearing examiners shall have the authority delegated under section 69-02-04-07.
3. Informal conferences held under this section may be used by the commission as the public hearing opportunity required under section 69-05.2-04-01 on proposed uses or relocation of public roads.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-18

69-05.2-10-03. Permit applications - Criteria for permit approval or denial.

1. The commission will not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of any law or rule of this state, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.], or any law or rule in any state enacted under federal law or regulation pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation, or if any of the following are outstanding:
 - a. Delinquent civil penalties under North Dakota Century Code sections 38-12.1-08 and 38-14.1-32, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.], or any law or rule in any state enacted under federal law or regulation pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation.
 - b. Bond forfeitures where violations upon which the forfeitures were based have not been corrected.
 - c. Delinquent abandoned mine reclamation fees.

- d. Unabated violations of federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining and reclamation operation.
 - e. Unresolved federal and state failure-to-abate cessation orders.
 - f. Unresolved imminent harm cessation orders.
2. If a current violation exists, the commission will require the applicant or person who owns or controls the applicant, before the permit is issued, to:
 - a. Submit proof that the violation has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation; or
 - b. Establish that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. If the administrative or judicial authority either denies a stay applied for in the appeal or affirms the violation, then any operations being conducted under a permit issued under this section must immediately cease, until the provisions of subdivision a are satisfied.
 3. Any permit issued on the basis of proof submitted under subdivision a of subsection 2 that a violation is being corrected, or pending the outcome of an appeal under subdivision b of subsection 2, will be conditionally issued.
 4. The commission will not issue a permit if it finds the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of any law or rule of this state, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.], or any state or federal program approved under the Surface Mining Control and Reclamation Act of 1977, of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws, rules, or programs. The applicant, anyone who owns or controls the applicant, or the operator must be given an opportunity for hearing on the determination under North Dakota Century Code section 38-14.1-30.
 5. After an application is deemed ready for approval, but before the permit is issued, the commission's decision to approve or disapprove the application will be made, based on the compliance review required by subsection 1, in light of any new information submitted under

subsection 2 of section 69-05.2-06-01 and subsection 6 of section 69-05.2-06-02.

6. In addition to the requirements of subsection 3 of North Dakota Century Code section 38-14.1-21, no permit or significant revision will be approved, unless the application affirmatively demonstrates and the commission finds, in writing, on the basis of information in the application or otherwise available, which is documented in the approval and made available to the applicant, that:
 - a. The permit area is not on any lands subject to the prohibitions or limitations of North Dakota Century Code section 38-14.1-07 or the area has met the application review procedures of section 69-05.2-04-01.1.
 - b. For alluvial valley floors:
 - (1) The applicant has obtained either a negative determination; or
 - (2) If the permit area or adjacent area contains an alluvial valley floor:
 - (a) The operations would be conducted according to chapter 69-05.2-25 and all applicable requirements of North Dakota Century Code chapter 38-14.1.
 - (b) Any change in the use of the lands covered by the permit area from its premining use in or adjacent to alluvial valley floors will not interfere with or preclude the reestablishment of the essential hydrologic functions of the alluvial valley floor.
 - (3) The significance of the impact of the operations on farming will be based on the relative importance of the vegetation and water of the developed grazed or hayed alluvial valley floor area to the farm's production, or any more stringent criteria established by the commission as suitable for site-specific protection of agricultural activities in alluvial valley floors.
 - (4) Criteria for determining whether a mining operation will materially damage the quantity or quality of waters include:
 - (a) Potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor to levels above the threshold value at which crop yields decrease, based on crop salt tolerance research studies approved by the commission, unless the applicant demonstrates compliance with subdivision e

of subsection 3 of North Dakota Century Code section 38-14.1-21.

- (b) The increases in subparagraph a will not be allowed unless the applicant demonstrates, through testing related to local crop production that the operations will not decrease crop yields.
 - (c) For types of vegetation specified by the commission and not listed in approved crop tolerance research studies, a consideration must be made of any observed correlation between total dissolved solids concentrations in water and crop yield declines.
 - (d) Potential increases in the average depth to water saturated zones (during the growing season) within the root zone that would reduce the amount of subirrigated land compared to premining conditions.
 - (e) Potential decreases in surface flows that would reduce the amount of irrigable land compared to premining conditions.
 - (f) Potential changes in the surface or ground water systems that reduce the area available to agriculture as a result of flooding or increased root zone saturation.
- (5) For the purposes of this subsection, a farm is one or more land units on which agricultural activities are conducted. A farm is generally considered to be the combination of land units with acreage [hectarage] and boundaries in existence prior to July 1, 1979, or, if established after July 1, 1979, with boundaries based on enhancement of the farm's agricultural productivity not related to mining operations.
- (6) If the commission determines the statutory exclusions of subsection 3 of North Dakota Century Code section 38-14.1-21 do not apply and that any of the findings required by this section cannot be made, the commission may, at the applicant's request:
- (a) Determine that mining is precluded and deny the permit without the applicant filing any additional information required by this section; or
 - (b) Prohibit surface coal mining and reclamation operations in all or part of the area to be affected by mining.

- c. The applicant has, with respect to prime farmland, obtained either a negative determination or if the permit area contains prime farmlands:
 - (1) The postmining land use will be cropland.
 - (2) The permit specifically incorporates the plan submitted under section 69-05.2-09-15 after consideration of any revisions suggested by the natural resource conservation service.
 - (3) The operations will be conducted in compliance with chapter 69-05.2-26 and other standards required by this article and North Dakota Century Code chapter 38-14.1.
 - (4) The permit demonstrates that the applicant has the technological capability to restore prime farmland, within a reasonable time, to equivalent or higher yields as nonmined prime farmland in the surrounding area under equivalent management practices.
 - (5) The aggregate total prime farmland acreage will not be decreased from that which existed prior to mining based on the cooperative soil survey. Any postmining water bodies that are part of the reclamation must be located within the nonprime farmland portions of the permit area. If any such water bodies reduce the amount of prime farmland that a surface owner had before mining, the affected surface owners must consent to the creation of the water bodies and the plans must be approved by the commission.
 - d. The operations will not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats.
 - e. The applicant has submitted proof that all reclamation fees required by 30 CFR subchapter R have been paid.
 - f. The applicant has, if applicable, satisfied the requirements for approval of a cropland postmining land use under section 69-05.2-22-01.
7. The commission may make necessary changes in the permit to avoid adverse effects on finding that operations may adversely affect any publicly owned park or places included on the state historic sites registry or the national register of historic places. Operations that may adversely affect those parks or historic sites will not be approved

unless the federal, state, or local governmental agency with jurisdiction over the park or site agrees, in writing, that mining may be allowed.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; June 1, 1994; July 1, 1995; June 1, 1997; May 1, 2001; January 1, 2009.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-33

69-05.2-10-04. Permit applications - Criteria for permit approval or denial - Existing structures.

1. No application which proposes to use an existing structure will be approved, unless the applicant demonstrates and the commission finds in writing that:
 - a. If the applicant proposes to use an existing structure under the exemption provided in subsection 4 of section 69-05.2-09-03:
 - (1) The structure meets the performance standards of North Dakota Century Code chapter 38-14.1 and this article.
 - (2) There will be no significant harm to the environment or public health or safety.
 - b. If the commission finds that an existing structure does not meet the performance standards, the applicant shall submit a compliance plan for modifying or rebuilding the structure. The permit will not be issued unless the commission finds that:
 - (1) The modification or reconstruction will bring the structure into compliance with the design and performance standards of this article and North Dakota Century Code section 38-14.1-24 as soon as possible, but not later than six months after permit issuance;
 - (2) The risk to the environment or to public health or safety is not significant during modification or reconstruction; and
 - (3) The applicant will monitor the structure to determine compliance with this article and North Dakota Century Code section 38-14.1-24.
2. Should the commission find that the existing structure cannot be reconstructed without causing significant harm to the environment or public health or safety, the applicant shall abandon the existing structure. The structure must not be used after the effective date of the

permit. Structure abandonment must proceed on a schedule approved by the commission under section 69-05.2-13-11.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-14.1-21

69-05.2-10-05. Permit applications - Approval or denial actions. The commission will approve, require modification of, or deny all applications for permits according to the following:

1. The commission will not approve or disapprove a permit application prior to the expiration of the thirty-day period for requesting an informal conference or the filing of written comments or objections following the last publication of the public notice required by North Dakota Century Code section 38-14.1-18.
2. If no informal conference has been held under North Dakota Century Code section 38-14.1-19, the commission will approve, require modification of, or deny all permit applications within the review period specified in section 69-05.2-05-01.
3. If an application is approved, the permit will contain the following conditions:
 - a. The permittee shall minimize adverse impacts to the environment or public health and safety resulting from noncompliance with any term or condition, including:
 - (1) Accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance.
 - (2) Immediate implementation of compliance measures.
 - (3) Warning, as soon as possible after learning of noncompliance, any person whose health and safety is in imminent danger.
 - b. The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the treatment or control of waters or atmospheric emissions as required by North Dakota Century Code chapter 38-14.1, this article, and any other applicable law.
 - c. The permittee shall conduct operations:
 - (1) To prevent significant, imminent environmental harm to public health or safety; and

- (2) Utilizing methods specified in the permit if the commission approves alternative methods of compliance with the performance standards of North Dakota Century Code section 38-14.1-24 and this article.
 - d. The operator shall pay all reclamation fees required by 30 CFR subchapter R for coal produced under the permit for sale, transfer, or use.
 - e. Within thirty days after a cessation order is issued under North Dakota Century Code section 38-14.1-28, except where a stay of the cessation order is granted and remains in effect, the permittee shall either submit the following information, current to the date the cessation order was issued, or notify the commission in writing that there has been no change since the last submittal:
 - (1) Any new information needed to correct or update the information previously submitted under subdivision e of subsection 1 of section 69-05.2-06-01; or
 - (2) If not previously submitted, the information required from a permit applicant by subdivision e of subsection 1 of section 69-05.2-06-01.
4. When the application is approved, the commission will publish notice in the official county newspapers and in daily newspapers of general circulation in the area of the proposed operations. The publication will provide a summary of the decision and notice that any person with an interest which is or may be adversely affected may request and initiate formal hearing procedures on the decision and may request temporary relief from permit issuance within thirty days of the publication of the notice.
5. At the time of publication of the decision required by subsection 4, the commission will:
 - a. Provide copies of all findings, decisions, and orders on an application to:
 - (1) Each person and government official who filed a written objection or comment.
 - (2) Each reclamation advisory committee member.
 - (3) The office of surface mining reclamation and enforcement, together with a copy of the approved application materials.

- b. Notify the appropriate government officials in the relevant county that a permit application has been approved and describe the location of the lands.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03, 38-14.1-21

69-05.2-10-06. Permit applications - Permit approval for surface disturbances over federal mineral estates. The commission may approve and issue permits, revisions, and renewals for operations on lands where the surface estate is nonfederal and the mineral estate is federal, if:

1. The proposed surface disturbances support operations on adjacent nonfederal lands.
2. The commission consults with the office of surface mining reclamation and enforcement, to ensure that actions are not taken which would substantially and adversely affect the federal mineral estate.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-22, 38-14.1-23

CHAPTER 69-05.2-12
PERFORMANCE BONDS - LIABILITY INSURANCE

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69-05.2-12-01. Performance bond - General requirements.

1. Permit applicants shall submit an estimate of bond for the entire permit area or that area specified in subsection 5.
2. The commission will review the estimated bond amount, approve or modify the required amount and notify the applicant.
3. Liability on the bond must cover all surface coal mining and reclamation operations to be conducted within the legally described area attached to the bond.
4. The applicant may file either the entire bond for the permit term or an incremental bond schedule and bond required for the first scheduled increment. Increments must be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the regulatory authority become necessary under section 69-05.2-12-18.

5. When the permittee elects to increment the amount of the bond, the permittee shall:
 - a. Furnish a legal description of each incremental area.
 - b. Furnish a schedule when each increment will require bond.
 - c. Furnish with the application the estimated costs for the commission to complete the reclamation plan for the initial increment.
 - d. Provide the estimated cost to complete the reclamation plan for the next increment at least ninety days prior to the expected starting date of mining.
6. The permittee will be notified of the commission's bond determination within thirty days of receipt of the permittee's reclamation cost estimate for the next bond increment.
7. The permittee shall not disturb the bond area prior to commission approval of the entire bond or incremental bond covering the area to be affected.
8. Once surface coal mining operations have begun within the bond area, adequate bond coverage must be in effect at all times. Except as provided by subsection 3 of section 69-05.2-12-03, operating without a bond is a violation of a permit condition.
9. The indemnity agreement for a collateral bond or self-bond must be executed according to the following:
 - a. If a corporation or rural electric cooperative:
 - (1) By two officers authorized to sign the agreement by a resolution of the board of directors, a copy of which must be provided; and
 - (2) To the extent the history or assets of a parent organization are relied upon to make the required showings for a collateral bond or self-bond, by every parent organization at any tier.
 - b. If a partnership, each general partner and each parent organization or principal investor. "Principal investor" or "parent organization" means anyone with a ten percent or more beneficial ownership interest, directly or indirectly, in the applicant.
 - c. If married, the permit applicant's spouse, if directly involved as part of the business on a regular basis or as an officer of the organization.

10. The name of each person who signs the indemnity agreement must be typed or printed beneath the signature. The agreement is binding jointly and severally on all who execute it.
11. The commission may allow the posting of more than one bond to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under sections 69-05.2-12-07 and 69-05.2-12-08. The scope of work to be guaranteed and the liability assumed under each phase bond must be specified in detail and approved by the commission before posting the bonds.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1992; January 1, 1993; March 1, 2004.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-02. Performance bond - Form of the performance bond. The form for the performance bond shall be either:

1. A surety bond;
2. A collateral bond;
3. A self-bond; or
4. A combination of the above.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-03. Performance bond - Surety bond. Surety bonds shall be subject to the conditions of subsections 6 and 7 of North Dakota Century Code section 38-14.1-16 and the following conditions:

1. The notice required by subsection 6 of North Dakota Century Code section 38-14.1-16 shall be by certified mail to the permittee and the commission and is not effective until received by both.
 - a. Cancellation is not effective for lands subject to bond coverage which are disturbed after receipt of notice, but prior to approval by the commission.
 - b. The commission may approve cancellation if a replacement bond is filed by the permittee prior to the cancellation date, or the permit is revised so that the surface coal mining operations approved under the permit are reduced to cover all the costs for completion of reclamation operations.

2. The bond must provide that:
 - a. The surety will promptly notify the permittee and the commission of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business.
 - b. If the surety becomes unable to fulfill its obligations under the bond, it shall immediately notify the permittee and the commission.
 - c. The surety and permittee are jointly and severally liable.
 - d. The surety may not cancel the bond during the period of liability, except as provided in subsection 6 of North Dakota Century Code section 38-14.1-16 and subsection 1 of this section.
3. Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license to do business in North Dakota, the permittee is deemed to be without bond coverage and shall, after receiving notice from the commission, substitute for that surety, a surety licensed to do business in North Dakota, or provide a substitute performance bond. If substitution is not made within thirty days, the commission may suspend the permit. If substitution is not made within ninety days, the commission will suspend the permit, and the operator shall cease surface mining activities and comply with section 69-05.2-13-11.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-04. Performance bond - Collateral bond. The guarantor of a collateral bond may be the permit applicant or a qualified third party.

1. Collateral bonds are subject to the following conditions:
 - a. All collateral must be kept in the commission's custody until authorized for release or replacement.
 - b. Collateral must be valued at market value.
 - c. Certificates of deposit must be assigned to the state, in writing, and upon the books of the issuer.
 - d. Except for certificates issued by the Bank of North Dakota, the commission will not accept an individual certificate in excess of one hundred thousand dollars, or the maximum amount insured by the

federal deposit insurance corporation and the federal savings and loan insurance corporation, whichever is greater.

- e. An issuer shall waive all rights of setoff or lien against the certificate.
 - f. The commission will accept only automatically renewable certificates of deposit.
 - g. The permit applicant shall deposit sufficient collateral to assure the commission will be able to liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond.
2. A collateral bond pledging a letter of credit may be approved by the commission subject to the following conditions:
- a. The permit applicant has obtained prior commission approval for the bank issuing the letter of credit.
 - b. The commission may accept a letter of credit which is irrevocable for a term of at least one year if:
 - (1) The letter of credit is automatically renewable for additional terms unless the bank gives at least ninety days prior written notice to the commission and the permittee of its intent to terminate the letter of credit at the end of the current term.
 - (2) The commission has the right to draw upon the letter of credit before the end of its term and convert it into a cash collateral bond if the permittee fails to replace the letter of credit with other acceptable bond within thirty days of the bank's notice to terminate the credit.
 - c. The letter of credit must be payable to the commission in part or in full upon demand and receipt from the commission of a notice of forfeiture issued in accordance with sections 69-05.2-12-16 and 69-05.2-12-18 or demand for payment under paragraph 2 of subdivision b.
 - d. The commission will not accept letters of credit from a bank for a permittee, on permits held by that permittee, in excess of ten percent of the bank's total equity (stock, surplus capital, and retained earnings) as shown on a balance sheet certified by a certified public accountant. A copy of the bank's most recent balance sheet must be provided with the letter of credit and updated balance sheets must be submitted annually to the commission within ninety days after the close of the bank's fiscal year.

- e. A letter of credit is governed by:
 - (1) The laws of the state of North Dakota.
 - (2) The current version of the uniform customs and practices for documentary credits, published by the international chamber of commerce.
 - f. Letters of credit shall provide that the bank will give prompt notice to the permittee and the commission of notices received or actions filed alleging the insolvency or bankruptcy of the bank or alleging violations of regulatory requirements that could result in suspension or revocation of the bank's charter or license to do business. In the event of actions which could result in suspension or revocation of the bank's charter or license, the commission has the right to draw upon the letter of credit before the end of its term and convert it into a cash collateral bond if the permittee fails to replace the letter of credit with a substitute bond within thirty days after receipt of such a notice from the commission. If a substitute bond is not filed and the commission is unable to draw on the letter of credit, the commission will suspend the permit and the operator shall cease surface coal mining activities and comply with section 69-05.2-13-11.
- 3. For a collateral bond the guarantor shall execute an indemnity agreement according to subsections 9 and 10 of section 69-05.2-12-01.
 - 4. Persons with an interest in collateral posted as a bond, who desire notice of actions relating to the bond, shall request the notice in writing to the commission when collateral is offered.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1990; March 1, 2004.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-05. Performance bond - Self-bond of permit applicant.
Repealed effective June 1, 1983.

69-05.2-12-05.1. Performance bond - Self-bond of permit applicant.

- 1. The commission may accept a self-bond if the following conditions are met:
 - a. The applicant designates an agent for service of process in the state.
 - b. The applicant has been in continuous operation as a business entity the five years preceding the application. The commission may allow a joint venture with less than five years of continuous

operation if each member has been in continuous operation for the five years preceding the application.

- c. The applicant submits financial information in sufficient detail to show one of the following:
 - (1) The applicant has a current rating of "A" or higher for its most recent bond issuance as issued by Moody's Investors Service, Standard and Poor's Corporation, or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States securities and exchange commission, that is acceptable to the commission.
 - (2) The applicant has a tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liabilities of 1.2 or greater.
 - (3) The applicant's fixed assets in the United States total at least twenty million dollars and the applicant has a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liabilities of 1.2 or greater.
 - d. The applicant submits:
 - (1) Financial statements for the last complete fiscal year audited by an independent certified public accountant, and a report containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion; and
 - (2) Financial statements for completed quarters in the current fiscal year and additional information requested by the commission.
 - e. "Tangible net worth" means net worth less intangibles.
2. The commission may accept a written guarantee for an applicant's self-bond from any third-party guarantor, whenever the applicant meets the provisions of subdivisions a, b, and d of subsection 1 and the guarantor meets the provisions of subdivisions a, b, c, and d of subsection 1. The commission may require the applicant to submit information pertaining to the provisions of subdivision c of subsection 1 in order to determine the financial capabilities of the applicant. The written guarantee must provide that:
- a. If the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide to the commission funds, up to the bond amount, sufficient to complete the reclamation plan.

- b. The guarantee must remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the commission at least ninety days in advance of the cancellation date, and the commission accepts the cancellation.
 - c. The cancellation may be accepted by the commission if the applicant obtains suitable replacement bond before the cancellation or if the covered lands have not been disturbed.
 3. The total amount of the outstanding and proposed self-bonds for surface coal mining and reclamation operations may not exceed twenty-five percent of the applicant's or third-party guarantor's tangible net worth in the United States.
 4. If the commission accepts a self-bond, an indemnity agreement executed by the applicant and any third-party guarantor must be submitted subject to the following:
 - a. The indemnity agreement is executed according to subsections 9 and 10 of section 69-05.2-12-01.
 - b. An affidavit is submitted certifying that such an agreement is valid under all applicable federal and state laws.
 - c. The guarantor provides a copy of the corporate authorization demonstrating that it may guarantee the self-bond and execute the indemnity agreement.
 - d. In the event of forfeiture, the applicant or third-party guarantor will complete the approved reclamation plan for the land in default or pay to the commission an amount necessary to complete the approved reclamation plan, not to exceed the bond amount.
 5. Self-bonded permittees and third-party guarantors shall submit an update of the information required under subdivisions c and d of subsection 1 within ninety days after the close of their fiscal years.
 6. If the financial conditions of the permittee or the third-party guarantor change so that the criteria of this section are not satisfied, the permittee shall notify the commission immediately and post an alternate bond in the same amount as the self-bond. If substitution is not made within thirty days, the commission may suspend the permit. If substitution is not made within ninety days, the commission shall suspend the permit

and the operator shall cease surface mining activities and comply with section 69-05.2-13-11.

History: Effective May 1, 1988; amended effective January 1, 1993; January 1, 2009.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-06. Performance bond - Replacement of bonds.

1. The commission may allow permittees to replace one form of bond with another, if the liability is transferred to the replacement bonds.
2. Bonds must remain in effect until the commission has approved replacement bonds.
3. Bond replacement is not a release of bond.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-07. Performance bond - Determination of bond amount.

1. The amount of bond required is the estimated cost for the commission to perform the reclamation, restoration, and abatement work required.
2. The amount of bond required for each bonded area will:
 - a. Be determined by the commission;
 - b. Depend upon the requirements of the approved permit and reclamation plan;
 - c. Reflect the probable difficulty of reclamation considering topography, geology, hydrology, and revegetation potential; and
 - d. Consider the estimated cost submitted by the permit applicant.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-08. Performance bond - Adjustment of amount.

1. The commission will review each bond consistent with section 69-05.2-11-01 or more frequently and notify the permittee of any proposed bond adjustment.
2. The commission will reevaluate bonds with the standards in section 69-05.2-12-07.
3. If the commission determines a bond adjustment is required, the permittee is entitled to an informal conference on the adjustment under chapter 69-05.2-10 and North Dakota Century Code section 38-14.1-19.
4. A permittee may request reduction of the required bond amount upon submission of evidence showing the permittee's operations or other circumstances will reduce the maximum estimated cost for the commission to complete reclamation. Bond reductions which involve undisturbed land or revision of the cost estimate of reclamation are not bond releases. A request for reduction in bond for reclamation work performed on disturbed areas is a request for bond release.

History: Effective August 1, 1980; amended effective May 1, 1988; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-09. Performance bond - Period of liability.

1. The bond liability period is the time necessary to meet the requirements of North Dakota Century Code chapter 38-14.1, this article, and the permit and shall continue a minimum of ten years as specified in subsection 2 of section 69-05.2-22-07. The period of extended responsibility begins again whenever augmented seeding, fertilization, irrigation, or other work is required or conducted on the site prior to bond release, unless the management practice conducted is a part of normal management for that particular land use and is approved by the commission.
2. If the commission approves a long-term postmining land use of developed water resources, recreation, residential, industrial, or commercial, the commission may approve a liability period of less than ten years if the other requirements of this subsection and the

requirements of subdivisions j and k of subsection 4 of section 69-05.2-22-07 are met prior to the final release of bond.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; July 1, 1995; May 1, 2001.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-10. Performance bond - Request for reduction. Repealed effective May 1, 1988.

69-05.2-12-11. Release of performance bond - Criteria for bond release.

1. The commission will not release any bond liability if the release would reduce the total remaining liability to less than that necessary for the commission to complete the required reclamation.
2. Release of bond for any combination of release stages identified in subsection 7 of North Dakota Century Code section 38-14.1-17 requires compliance with the reclamation standards established for each individual bond release stage.

History: Effective August 1, 1980; amended effective May 1, 1988; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-17

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

1. The permittee may request the commission release all or part of a bond for lands disturbed after July 1, 1975, as follows:
 - a. For lands disturbed between July 1, 1975, and June 30, 1979, the application must comply with subsection 1 of North Dakota Century Code section 38-14.1-17 and subsections 3 and 4. The criteria for release of all or part of the bond will be according to the reclamation requirements in effect at the time of the disturbance.
 - b. For lands disturbed after June 30, 1979, the application must comply with the requirements of this section and section 69-05.2-12-11.
2. The permittee may file bond release applications only at times and seasons that allow the commission to properly evaluate the completed reclamation operations. Each application for bond release shall include a notarized statement by the permittee which certifies that all applicable reclamation activities have been accomplished in accordance with this

article, North Dakota Century Code chapter 38-14.1, and the approved reclamation plan.

3. Within thirty days after filing a request for bond release, the permittee shall submit 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.
4. Lands for which the permittee requests final bond release must be legally described and delineated on maps of the permit area. Lands requested for partial bond release may be either legally described or otherwise clearly depicted and identified on maps of the permit area so the bond release tracts can be distinguished from other lands.
5. When the permittee requests a partial release of bond after regrading under subdivision a of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must, unless waived by the commission, include surface profiles or topographic maps in accordance with section 69-05.2-21-06.
6. When the permittee requests a partial release of bond after respreading suitable plant growth material under subdivision b of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include the thickness of the respread first lift and second lift suitable plant growth materials.
7. When the permittee requests a partial release of bond after vegetation has been established under subdivision c 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 demonstrating vegetation establishment as required by subsection 3 of section 69-05.2-22-07.
 - b. Documentation that the lands to which the release would be applicable are not contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 69-05.2-16-04.
 - c. A discussion of how the provisions of a plan approved by the commission for the sound future management of any permanent impoundment by the permittee or landowner have been implemented.
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.
9. When the permittee requests release of bond for any combination of release stages detailed in subsection 7 of North Dakota Century Code section 38-14.1-17, the application must contain all the information required at each bond release stage.
 10. Requests for a reduction in bond amount for reclamation work performed according to subsection 4 of section 69-05.2-12-08 must include a detailed description of the work performed and a new reclamation cost estimate.
 11. The commission may request any additional information necessary to evaluate the bond release application.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1992; January 1, 1993; May 1, 2001; March 1, 2004; April 1, 2007.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-17

69-05.2-12-13. Release of performance bond - Location of hearing. Any formal hearing on the release of bond under subsection 2 of North Dakota Century Code section 38-14.1-17 shall be held in the city nearest the permit area, or the state capitol, at the option of the objector. Any person having a valid legal interest in a proposed release from bond shall specify preference for the place of hearing in the request for a formal hearing.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-17

69-05.2-12-14. Release of performance bond - Commission inspection - Time of release.

1. The surface owner, agent, or lessee will be notified by the commission of the bond release inspection and may participate in the inspection. If requested by a person with an interest in the bond release, the

commission may arrange with the permittee access to the permit area for that person to gather relevant information within the time specified by subsection 3 of North Dakota Century Code section 38-14.1-17.

2. The commission will not release bond until the time to request a formal hearing has expired, or the commission has issued a final decision after a formal hearing.

History: Effective August 1, 1980; amended effective May 1, 1988; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-17

69-05.2-12-15. Release of performance bond - Objections to the decision and request for a public hearing.

1. The permittee or any person having a valid legal interest in the decision to release all or part of the performance bond shall have the right to file written objections to the release and to request a formal hearing under subsection 3 of North Dakota Century Code section 38-14.1-30 within thirty days of the decision.
2. The location of the formal hearing shall be selected in accordance with section 69-05.2-12-13.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-17

69-05.2-12-16. Forfeiture of performance bond - Procedures. If forfeiture of the bond is required by section 69-05.2-12-18, the commission will:

1. Send notice by certified mail to the permittee and any surety of the commission's final decision to require forfeiture of the bond, the reasons for forfeiture, and the amount to be forfeited.
2. Advise the permittee and any surety of the permittee's right to request judicial review under North Dakota Century Code section 38-14.1-35.
3. Proceed to collect on the bond.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; January 1, 1993.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16, 38-14.1-30, 38-14.1-33, 38-14.1-35

69-05.2-12-17. Forfeiture of performance bond - Criteria. Repealed effective June 1, 1983.

69-05.2-12-18. Forfeiture of performance bond - Amount of forfeiture.

If the commission requires performance bond forfeiture, the total amount of all bonds for the bonded area for which liability is outstanding must be forfeited. Any bond proceeds remaining after reclamation is completed will be refunded. If there is more than one bond for a bonded area, including collateral bonds and self-bonds, any proceeds remaining after reclamation work is completed will be refunded proportionately.

History: Effective August 1, 1980; amended effective May 1, 1988; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16, 38-14.1-30

69-05.2-12-19. Permit revocation - Forfeiture of performance bond.

Repealed effective June 1, 1983.

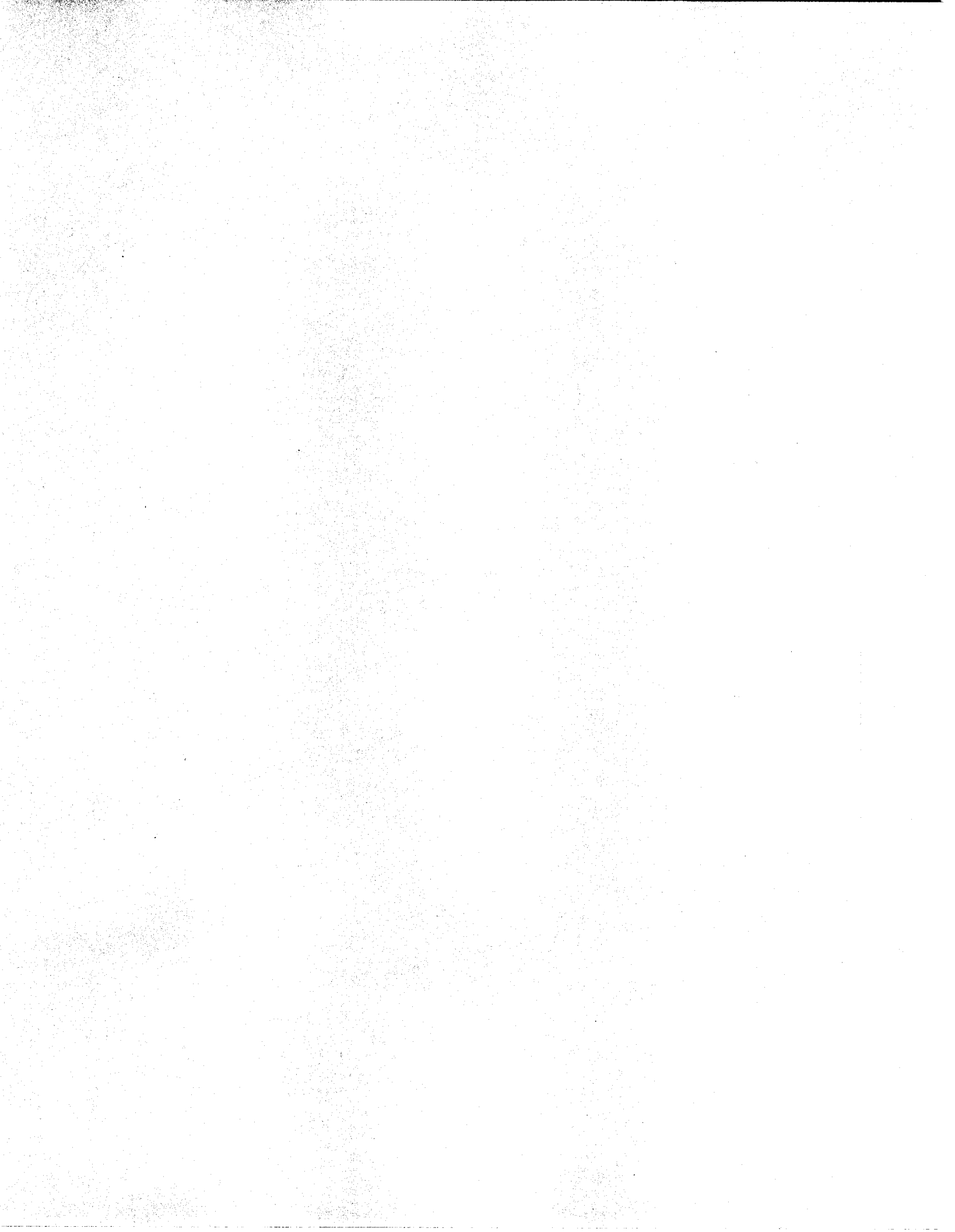
69-05.2-12-20. Liability insurance.

1. The permittee shall submit to the commission a certificate of public liability insurance in accordance with subsection 3 of North Dakota Century Code section 38-14.1-14. Minimum coverage for bodily injury and property damage must be one million dollars for each occurrence and two million dollars aggregate.
2. The policy must be maintained in full force during the life of the permit or any renewal, as well as the liability period necessary to complete all reclamation operations under this article.

History: Effective August 1, 1980; amended effective June 1, 1983; March 1, 1987; May 1, 1990; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16, 38-14.1-30



**CHAPTER 69-09-09
WIND TURBINE DECOMMISSIONING**

Section	
69-09-09-01	Definitions
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69-09-09-07	Existing Facilities
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69-09-09-09	Failure to Decommission

69-09-09-01. Definitions.

1. "Commercial wind energy conversion facility" means a wind energy conversion facility of equal to or greater than five hundred kilowatts in total nameplate generating capacity.
2. "Commission" means the public service commission.
3. "Wind turbine" means a wind turbine of equal to or greater than five hundred kilowatts in total nameplate generating capacity.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-02. Decommissioning responsibility. The owner or operator of a commercial wind energy conversion facility is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-03. Useful life. A commercial wind energy conversion facility or individual wind turbine is presumed to be at the end of its useful life if the facility or turbine generates no electricity for a continuing period of twenty-four months. The presumption may be rebutted by submitting to the commission for approval a plan outlining the steps and schedule for returning the commercial wind energy conversion facility or wind turbine to service.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-04. Decommissioning period. The facility owner or operator shall begin decommissioning a commercial wind energy conversion facility or wind turbine within eight months after the time the facility or turbine reaches the end of its useful life, as determined in section 69-09-09-03. Decommissioning must be completed within eighteen months after the facility or turbine reaches the end of its useful life.

History: Effective October 1, 2008.
General Authority: NDCC 28-32-02, 49-02-27
Law Implemented: NDCC 49-02-27

69-09-09-05. Decommissioning requirements. Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, and overhead cables; removal of underground cables to a depth of twenty-four [60.96 centimeters] inches; removal of foundations, buildings, and ancillary equipment to a depth of three feet [91.44 centimeters] and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the commercial wind energy conversion facility or wind turbine. The site must be restored and reclaimed to the same general topography that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine and with topsoil respread over the disturbed areas at a depth similar to that in existence prior to the disturbance. Areas disturbed by the construction of the facility and decommissioning activities must be graded, topsoiled, and reseeded according to natural resource conservation service technical guide recommendations and other agency recommendations, unless the landowner requests in writing that the access roads or other land surface areas be retained.

History: Effective October 1, 2008.
General Authority: NDCC 28-32-02, 49-02-27
Law Implemented: NDCC 49-02-27

69-09-09-06. Decommissioning plan. Prior to commencement of operation of a commercial wind energy conversion facility or wind turbine, the facility or turbine owner or operator shall file for commission review the estimated decommissioning cost per turbine, in current dollars at the time of filing, for the proposed facility or turbine and a comprehensive decommissioning plan that describes how the facility or turbine owner or operator plans to pay for decommissioning the facility or turbine as required by section 69-09-10-05 at the appropriate time. The commission may at any time require the owner or operator of a commercial wind energy conversion facility or wind turbine to file a report with the commission describing how the facility or turbine owner or operator is fulfilling this obligation.

History: Effective October 1, 2008.
General Authority: NDCC 28-32-02, 49-02-27
Law Implemented: NDCC 49-02-27

69-09-09-07. Existing facilities. Owners and operators of existing commercial wind energy conversion facilities shall file with the commission the information required in section 69-09-09-06 within one year after July 1, 2008.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-08. Financial assurance. After the tenth year of operation of a commercial wind energy conversion facility or wind turbine, the commission by order may require the owner or operator to secure a performance bond, surety bond, letter of credit, corporate guarantee, or other form of financial assurance that is acceptable to the commission to cover the anticipated costs of decommissioning the commercial wind energy conversion facility or turbine. The commission may accept a corporate guarantee if the corporation has a tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liabilities of 1.2 or greater; or if it has an investment grade current rating for its most recent bond issuance of "Baa" or higher as issued by Moody's Investors Service "BBB" or higher as issued by Standard and Poor's Corporation, or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States securities and exchange commission.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-09. Failure to decommission. If the commercial wind energy conversion facility owner or operator does not complete decommissioning, the commission may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the commission may take such action as may be necessary to decommission a commercial wind energy conversion facility or wind turbine, including the exercise by the commission, commission staff, and their contractors of the right of ingress and egress for the purpose of decommissioning the commercial wind energy conversion facility.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

Add Summary/2009
to histories

Public Service Commission
Reclamation
Rulemaking

Case No. RC-07-163

69-05.2-08-08. Permit applications - Permit area - Vegetation and land use information.

1. The application must contain the following premining vegetation information:
 - a. A map or aerial photograph at a scale of 1:4,800 that delineates the existing mapping units within each premining land use. The mapping units for different land use categories are:
 - (1) For cropland, each soil mapping unit.
 - (2) For tame pastureland, each soil mapping unit.
 - (3) For native grasslands, each range ecological site. The soil mapping unit in each range ecological site must also be delineated.
 - (4) For woodland, each woodland type, i.e., trees, tall shrubs, and low shrubs.
 - (5) For fish and wildlife habitat, each vegetation type as further specified in subparagraphs a, b, and c.
 - (a) For woodland, each woodland type, i.e., trees, tall shrubs, and low shrubs;
 - (b) For wetlands, wetland classes based on ecological differentiation as set forth in Classification of Natural Ponds and Lakes in the Glaciated Prairie Region (United States department of the interior (1971) or other approved classification system.
 - (c) For grasslands (native or introduced), each soil mapping unit.
 - (6) For shelterbelts, the entire planting.
 - b. For each land use, a comprehensive species list of higher plants and identification of any species of rare, endangered, poisonous, or noxious plants, developed by a thorough reconnaissance of all mapping units.

- c. A description of each mapping unit delineated under subdivision a. This description must include:
- (1) The acreage [hectarage] of each mapping unit for each surface owner within the permit area.
 - (2) An assessment of the productivity of cropland, tame pastureland, and native grassland based on published data, historic data, or quantitative data.
 - (3) Natural resource conservation service range—condition similarity index in percent for native grassland.
 - (4) A detailed description of number and arrangement of trees and shrubs, probable age of trees, height of trees, and characteristics of understory vegetation for woodland and fish and wildlife habitat where woodland is the vegetation type.
 - (5) A detailed description of community structure, assemblages of plant species, water conditions, and size for fish and wildlife habitat where wetlands are the vegetation type.
 - (6) A description of number and arrangement of trees and shrubs, length and number of rows, and associated plant species for shelterbelts.
 - (7) When required for the proposed success standard, a quantitative assessment of applicable vegetation parameters using methods approved by the commission.
- d. A detailed narrative describing the nature and variability of the vegetation in each mapping unit and land use category, based on a thorough reconnaissance and qualitative assessment.

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 38-14.1-14, 38-14.1-24

69-05.2-10-03. Permit applications - Criteria for permit approval or denial.

6. In addition to the requirements of subsection 3 of North Dakota Century Code section 38-14.1-21, no permit or significant revision will be

approved, unless the application affirmatively demonstrates and the commission finds, in writing, on the basis of information in the application or otherwise available, which is documented in the approval and made available to the applicant, that:

- a. The permit area is not on any lands subject to the prohibitions or limitations of North Dakota Century Code section 38-14.1-07 or the area has met the application review procedures of section ~~69-05.2-04-01~~ 69-05.2-04-01.1.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; June 1, 1994; July 1, 1995; June 1, 1997; May 1, 2001:

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-33

69-05.2-12-05.1. Performance bond - Self-bond of permit applicant.

1. The commission may accept a self-bond if the following conditions are met:
 - a. The applicant designates an agent for service of process in the state.
 - b. The applicant has been in continuous operation as a business entity the five years preceding the application. The commission may allow a joint venture with less than five years of continuous operation if each member has been in continuous operation for the five years preceding the application.
 - c. The applicant submits financial information in sufficient detail to show one of the following:
 - (1) The applicant has a current ~~Moody's Investor Service or Standard and Poor's~~ rating for its most recent bond issuance (of "A" or higher) as issued by Moody's Investors Service, Standard and Poor's Corporation, or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States securities and exchange commission, that is acceptable to the commission.
 - (2) The applicant has a tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of 2.5 or less,

of "A" or higher

and a ratio of current assets to current liabilities of 1.2 or greater.

- (3) The applicant's fixed assets in the United States total at least twenty million dollars and the applicant has a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liabilities of 1.2 or greater.

d. The applicant submits:

- (1) Financial statements for the last complete fiscal year audited by an independent certified public accountant, and a report containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion; and
- (2) Financial statements for completed quarters in the current fiscal year and additional information requested by the commission.

e. "Tangible net worth" means net worth less intangibles.

History: Effective May 1, 1988; amended effective January 1, 1993;

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

add July, 2008
to history

Public Service Commission
Reclamation
Rulemaking

Case No. RC-07-163

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1. The application must contain the following premining vegetation information:
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 - (1) For cropland, each soil mapping unit.
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 - (3) For native grasslands, each ~~range~~ ecological site. The soil mapping unit in each ~~range~~ ecological site must also be delineated.
 - (4) For woodland, each woodland type, i.e., trees, tall shrubs, and low shrubs.
 - (5) For fish and wildlife habitat, each vegetation type as further specified in subparagraphs a, b, and c.
 - (a) For woodland, each woodland type, i.e., trees, tall shrubs, and low shrubs;
 - (b) For wetlands, wetland classes based on ecological differentiation as set forth in Classification of Natural Ponds and Lakes in the Glaciated Prairie Region (United States department of the interior (1971)) or other approved classification system.
 - (c) For grasslands (native or introduced), each soil mapping unit.
 - (6) For shelterbelts, the entire planting.
 - b. For each land use, a comprehensive species list of higher plants and identification of any species of rare, endangered, poisonous, or noxious plants, developed by a thorough reconnaissance of all mapping units.

- c. A description of each mapping unit delineated under subdivision a. This description must include:
- (1) The acreage [hectarage] of each mapping unit for each surface owner within the permit area.
 - (2) An assessment of the productivity of cropland, tame pastureland, and native grassland based on published data, historic data, or quantitative data.
 - (3) Natural resource conservation service ~~range—condition~~ similarity index in percent for native grassland.
 - (4) A detailed description of number and arrangement of trees and shrubs, probable age of trees, height of trees, and characteristics of understory vegetation for woodland and fish and wildlife habitat where woodland is the vegetation type.
 - (5) A detailed description of community structure, assemblages of plant species, water conditions, and size for fish and wildlife habitat where wetlands are the vegetation type.
 - (6) A description of number and arrangement of trees and shrubs, length and number of rows, and associated plant species for shelterbelts.
 - (7) When required for the proposed success standard, a quantitative assessment of applicable vegetation parameters using methods approved by the commission.
- d. A detailed narrative describing the nature and variability of the vegetation in each mapping unit and land use category, based on a thorough reconnaissance and qualitative assessment.

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 38-14.1-14, 38-14.1-24

69-05.2-10-03. Permit applications - Criteria for permit approval or denial.

6. In addition to the requirements of subsection 3 of North Dakota Century Code section 38-14.1-21, no permit or significant revision will be

approved, unless the application affirmatively demonstrates and the commission finds, in writing, on the basis of information in the application or otherwise available, which is documented in the approval and made available to the applicant, that:

- a. The permit area is not on any lands subject to the prohibitions or limitations of North Dakota Century Code section 38-14.1-07 or the area has met the application review procedures of section ~~69-05.2-04-01~~ 69-05.2-04-01.1.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; June 1, 1994; July 1, 1995; June 1, 1997; May 1, 2001: □□□□□□□□□□□□□□□□

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-33

69-05.2-12-05.1. Performance bond - Self-bond of permit applicant.

1. The commission may accept a self-bond if the following conditions are met:
 - a. The applicant designates an agent for service of process in the state.
 - b. The applicant has been in continuous operation as a business entity the five years preceding the application. The commission may allow a joint venture with less than five years of continuous operation if each member has been in continuous operation for the five years preceding the application.
 - c. The applicant submits financial information in sufficient detail to show one of the following:
 - (1) The applicant has a current ~~Moody's Investor Service or Standard and Poor's~~ rating for its most recent bond issuance of "A" or higher as issued by Moody's Investors Service, Standards and Pools Corporation, or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States securities and exchange commission, that is acceptable to the commission.
 - (2) The applicant has a tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of 2.5 or less,

and a ratio of current assets to current liabilities of 1.2 or greater.

- (3) The applicant's fixed assets in the United States total at least twenty million dollars and the applicant has a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liabilities of 1.2 or greater.

d. The applicant submits:

- (1) Financial statements for the last complete fiscal year audited by an independent certified public accountant, and a report containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion; and
- (2) Financial statements for completed quarters in the current fiscal year and additional information requested by the commission.

e. "Tangible net worth" means net worth less intangibles.

History: Effective May 1, 1988; amended effective January 1, 1993; □□□□□□□□□□

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

Proposed Rule Change

69-09-02-35. Installation and maintenance - Conformance to National Electrical Safety Code. The installation and maintenance of electric supply and communication lines shall conform to rules and regulations established in the 2002 2007 edition of the National Electrical Safety Code, issued August 1, ~~2004~~ 2006, which is adopted by reference. Copies of these regulations may be obtained from the public service commission, state capitol, Bismarck, North Dakota 58505-0480.

History: Amended effective September 1, 1984; January 1, 1988; December 1, 1990; August 1, 1993; July 1, 1997; March 1, 2003.

General Authority: NDCC 28-32-02, 49-02-04

Law Implemented: NDCC 49-02-04, 49-20-02

69-0 5.2-13-13

- a. Mapping of the probable alluvial valley floor including geologic maps of unconsolidated deposits, delineating the streamlaid deposits, maps of streams, delineation of surface watersheds and directions of shallow ground water flows through and into the unconsolidated deposits, topography showing local and regional terrace levels, and topography of terraces, floodplains, and channels showing surface drainage patterns.
 - b. Mapping of all lands included in the area used for agricultural activities, showing the different types of agricultural lands and accompanied by measurements of vegetation productivity and type.
 - c. Topographic maps of all lands that are or were historically flood irrigated, showing the location of each diversion structure, ditch, dam and related reservoir. ? ^
Y ^
? ^
Y ^
 - d. Documentation that areas identified in this section are, or are not, subirrigated, based on ground water monitoring data, representative water quality, soil moisture measurements, and measurements of rooting depth, soil mottling, and water requirements of vegetation.
 - e. Documentation, based on representative sampling, that areas identified under this subdivision are, or are not, flood irrigable, based on streamflow, water quality, water yield, soils measurements, and topographic characteristics.
 - f. Analysis of a series of aerial photographs, including color infrared imagery capable of showing any late summer and fall differences between upland and valley floor vegetative growth and of a scale adequate for reconnaissance identification of areas that may be alluvial valley floors.
2. Based on the investigations conducted under subsection 1, the commission will determine the extent of any alluvial valley floors within the study area and whether any stream in the study area may be excluded from further consideration. The commission will determine that an alluvial valley floor exists if:
- a. Unconsolidated streamlaid deposits holding streams are present; and
 - b. There is sufficient water to support agricultural activities as shown by:
 - (1) The existence of flood irrigation in the area or its historical use;

3A
tech?
Y

- (2) The capability to be flood irrigated, based on streamflow water yield, soils, water quality, and topography; or
- (3) Subirrigation of the lands from the ground water system of the valley floor.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21

69-05.2-08-14. Permit applications - Permit area - Alluvial valley floor resources.

- 1. If land within the permit or adjacent area is identified as an alluvial valley floor and mining may affect it or waters that supply alluvial valley floors, the applicant shall submit a complete description of the alluvial valley floor resources and characteristics that allow the commission to determine:
 - a. The characteristics necessary to preserve essential hydrologic functions during and after mining.
 - b. The significance of the area to agricultural activities.
 - c. Whether the operation will cause, or presents an unacceptable risk of causing, material damage to the quantity or quality of surface or ground waters that supply the alluvial valley floor.
 - d. The effectiveness of proposed reclamation under North Dakota Century Code chapter 38-14.1 and this article.
 - e. Specific environmental monitoring required to measure compliance with chapter 69-05.2-25 during and after mining and reclamation operations.
- 2. The alluvial valley floor baseline data required to make the determinations listed in subsection 1 must include:
 - a. Geologic data, including structure and surficial maps, and cross sections.
 - b. Soils and vegetation data, including a detailed soil survey and chemical and physical analyses, a vegetation map and narrative descriptions of quantitative and qualitative surveys, and land use data, including an evaluation of crop yields.
 - c. Surveys and data for areas designated as alluvial valley floors because of their flood irrigation characteristics must also include

This is the correct version PSC adopted

**CHAPTER 69-09-09
WIND TURBINE DECOMMISSIONING**

revise current copy 69-09-09 to match — see attached copy of current rules w/changes by profiles

<u>Section</u>	
<u>69-09-09-01</u>	<u>Definitions</u>
<u>69-09-09-02</u>	<u>Decommissioning Responsibility</u>
<u>69-09-09-03</u>	<u>Useful Life</u>
<u>69-09-09-04</u>	<u>Decommissioning Period</u>
<u>69-09-09-05</u>	<u>Decommissioning Requirements</u>
<u>69-09-09-06</u>	<u>Decommissioning Plan</u>
<u>69-09-09-07</u>	<u>Existing Facilities</u>
<u>69-09-09-08</u>	<u>Financial Assurance</u>
<u>69-09-09-09</u>	<u>Failure to Decommission</u>

69-09-09-01. Definitions.

1. "Commercial wind energy conversion facility" means a wind energy conversion facility of equal to or greater than five hundred kilowatts in total nameplate generating capacity.
2. "Commission" means the public service commission.
3. "Wind turbine" means a wind turbine of equal to or greater than five hundred kilowatts in total nameplate generating capacity.

History: Effective October 1, 2008.
 General Authority: NDCC 28-32-02, NDCC 49-02-27
 Law Implemented: NDCC 49-02-27

69-09-09-02. Decommissioning responsibility. The owner or operator of a commercial wind energy conversion facility is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.

History: Effective October 1, 2008.
 General Authority: NDCC 28-32-02, NDCC 49-02-27
 Law Implemented: NDCC 49-02-27

69-09-09-03. Useful life. A commercial wind energy conversion facility or individual wind turbine is presumed to be at the end of its useful life if the facility or turbine

graded, topsoiled, and reseeded according to Natural Resource Conservation Service technical guide recommendations and other agency recommendations, unless the landowner requests in writing that the access roads or other land surface areas be retained.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, NDCC 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-06. Decommissioning plan. Prior to commencement of operation of a commercial wind energy conversion facility or wind turbine, the facility or turbine owner or operator shall file for commission review the estimated decommissioning cost per turbine, in current dollars at the time of filing, for the proposed facility or turbine and a comprehensive decommissioning plan that describes how the facility or turbine owner or operator plans to pay for decommissioning the facility or turbine as required by section 69-09-10-05 at the appropriate time. The commission may at any time require the owner or operator of a commercial wind energy conversion facility or wind turbine to file a report with the commission describing how the facility or turbine owner or operator is fulfilling this obligation.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, NDCC 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-07. Existing facilities. Owners and operators of existing commercial wind energy conversion facilities shall file with the commission the information required in section 69-09-09-06 within one year after July 1, 2008.

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, NDCC 49-02-27

Law Implemented: NDCC 49-02-27

History: Effective October 1, 2008.

General Authority: NDCC 28-32-02, ~~NDCC~~ 49-02-27

Law Implemented: NDCC 49-02-27