

**Thompson, Pamela J.**

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# Filing Accepted

Envelope Number: 5616687  
Case Number: 08-2024-CV-00694  
Case Style: Casey Voigt, et al. vs. North Dakota Public Service Commission, et al.



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Filing Details	
<b>Court</b>	Burleigh County
<b>Case Number</b>	08-2024-CV-00694
<b>Case Style</b>	Casey Voigt, et al. vs. North Dakota Public Service Commission, et al.
<b>Date/Time Submitted</b>	4/9/2024 6:23 PM CST
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<b>Filing Description</b>	CR Exhibit 77 - Exhibit 104 - N.D.A.C. 69-05.2-15-04
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<b>Lead Document</b>	CR Exhibit 77 - Exhibit 104 - N.D.A.C. § 69-05.2-15-04.pdf
<b>Lead Document Page Count</b>	3
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North Dakota Administrative Code  
Title 69. Public Service Commission  
Article 69-05.2. Surface Coal Mining and Reclamation Operations  
Chapter 69-05.2-15. Performance Standards - Suitable Plant Growth Material

NDAC 69-05.2-15-04

69-05.2-15-04. Performance standards - Suitable plant growth material - Redistribution.

Currentness

1. After final grading is approved under section 69-05.2-21-06 and before the suitable plant growth material is replaced, regraded land must be scarified or otherwise treated, if necessary, to eliminate slippage surfaces or to promote root penetration.
2. Subsoil must then be redistributed as approved by the commission in a manner that:
  - a. Achieves an approximate uniform thickness consistent with the postmining land use and meets the requirements of subsection 4.
  - b. Prevents excess compaction of the spoil and subsoil.
3. Following subsoil respreading, topsoil must be redistributed as approved by the commission in a manner that:
  - a. Achieves an approximate uniform thickness consistent with the postmining land use and meets the requirements of subsection 4.
  - b. Prevents excess compaction of the suitable plant growth materials.
4. Amount of suitable plant growth materials to be redistributed.
  - a. In areas where the graded spoil materials occur:
    - (1) All suitable plant growth material inventoried and removed according to the soil survey and any other suitable strata required to satisfy section 69-05.2-21-03 must be uniformly redistributed; or
    - (2) The amount of redistributed suitable plant growth material must be based on the graded spoil characteristics as follows:

79 RC-23-348 Filed: 12/27/2023 Pages: 3  
Exhibit 104 - N.D.A.C. § 69-05.2-15-04  
Coyote Creek Mining Company, L.L.C.  
Wade Mann, Crowley Fleck, PLLP



**Suitable Plant Growth Material Redistribution Thickness**

<b>Spoil Properties</b>		<b>Total Redistribution Thickness</b>	
<b>Texture</b>	<b>Sodium Adsorption Ratio (SAR)</b>	<b>(Topsoil Plus Subsoil)</b>	
		<b>Average in Inches</b>	<b>(Centimeters)</b>
Medium *	< 12	24	(61)
Coarse **	< 12	36	(91)
***	12 - 20	36	(91)
aa1	> 20	48	(122)

\* Loam or finer

\*\* Sandy loam or coarser

\*\*\* Not applicable

(a) The minimum thickness of redistributed suitable plant growth material in any random location must be within six inches [15.24 centimeters] of the average thickness required for an area based on the graded spoil characteristics as determined by representative sampling. However, the commission may approve redistribution thicknesses less than those listed in the table if chemical and physical analyses and any available field trials, greenhouse test results or current research findings demonstrate that the overburden materials are equal to or more suitable than the subsoil for sustaining vegetation. In addition, the commission may approve a lesser redistribution thickness if an insufficient amount of material exists based on the results of the soil survey and the availability of other suitable strata pursuant to subdivision b of subsection 5 of section 69-05.2-15-02.

(b) The texture, sodium adsorption ratio, and saturation percentage of the graded spoil materials will be determined by a commission evaluation of the premine overburden data, sample analyses of the graded spoil conducted by the operator, or by a combination of these methods.

b. The amount of redistributed suitable plant growth materials in associated disturbance areas where graded spoil materials do not occur must be based on the amount removed under subsection 2 of section 69-05.2-15-02.

5. Following the respreading of suitable plant growth materials, appropriate measures must be taken to protect the area from wind and water erosion.

6. The suitable plant growth material and other suitable strata and substitutes saved from property owned by one party must be respread within the boundaries of that property if the surface ownership of the permit area is split between two or more parties, unless the parties otherwise agree.

**Credits**

**History:** Effective August 1, 1980; amended effective June 1, 1983; January 1, 1987; May 1, 1990; May 1, 1992; June 1, 1994; June 1, 1997; May 1, 1999.

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

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

Current through Supplement 390 (October 2023) as reviewed by the Administrative Rules Committee on September 6, 2023. Some sections may be more current, see credits for details.

N.D. Admin. Code § 69-05.2-15-04, ND ADC 69-05.2-15-04

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