

Policy Memorandum No. 22 to Mine Operators

Date: June 9, 2004

To: Mine Operators and Lignite Council

From: Commissioners Clark, Wefald and Cramer

Subject: Re-permitting Reclaimed Lands that have received Final Bond Release

**BACKGROUND:** A few mining companies have indicated that one of the reasons they have not been pursuing final bond release on some reclaimed lands is due to the possibility of needing those lands to support future mining operations. It is possible that some reclaimed lands may be needed for a future haulroad, access road, conveyor route, or other support facility. The purpose of this policy is to provide guidance on re-permitting bond released lands if that need arises following Commission approval of final bond release.

**POLICY:** The Commission will allow a mining company to re-permit bond released lands in the event a bond released tract is needed for facilities or structures that will be used to support continuing or future mining operations. While mining companies are reminded of the statutory provision [NDCC 38-14.1-24(1)] that requires surface coal mining operations be conducted in a manner that minimizes the need for re-affecting the land in the future, the Commission understands there are situations where re-affecting reclaimed lands will be more environmentally sound and economical than disturbing other lands. When proposing to re-permit bond released lands, a mining company must consider other alternatives and discuss the ramifications of those options in comparison to re-permitting a bond released tract.

If the best option is to re-permit a bond released tract, the following summarizes the permitting procedure that will apply. Unless the original permit is no longer under an active permit term, the bond released tract should be added to the permit that it was originally under. A revision application to add the acreage to that permit must be submitted to the Commission along with all other pertinent information, including a discussion of the other options that were considered. Except for minimal acreage additions, revision applications to re-permit bond released lands will be considered a significant revision subject to the public notice requirements. The acreage fee will be assessed for each acre that will be re-permitted and the area must be added to the appropriate bond, with the bond amount increased as necessary. The appropriate legal descriptions of the tract being added must be provided along with new right of entry

documents if the previous leases or right of entry documents are no longer valid or included in the permit being revised.

If the bond released tract to be re-permitted will be added to the permit that it was originally permitted under, the baseline environmental resource information will already be in that permit. However, if the bond released tract is added to another permit, include a reference to the permit(s) containing the baseline information. A summary of the reclamation activities that were previously carried out in the bond released tract will need to be provided. This includes the land use when final bond release was approved, topsoil and subsoil thicknesses that were respread, the specific revegetation success standards that the tract had to meet when bond release was granted, and the final postmining topographic map of the tract. While the final bond release application(s) can be referenced for more detailed information, the summary information will have to be incorporated into the appropriate section(s) of the permit document.

Operation and reclamation plans will have to be provided in the revision for mining related activities that will be conducted on areas to be re-disturbed. This should clearly show the extent of all proposed disturbances and describe plans for saving, storing and respreading the topsoil and subsoil that was initially used to reclaim the lands. If necessary for the planned disturbances, sediment controls and NDPDES discharge points will have to be re-established. Any probable hydrologic consequences of operations on the re-permitted acreage must be addressed. If changes to the previously approved postmining topography and/or land use are proposed, those changes will have to be explained and justified. The appropriate revegetation plans and methods to prove reclamation success will need to be provided. The unadjusted revegetation success standards that applied to the tract when it was initially bond released will again have to be used after the tract is re-disturbed and reclaimed. The 10-year revegetation liability period will be initiated after the areas are seeded.

Before submitting a revision application that proposes to re-permit bond released lands, the mining company is strongly encouraged to meet with Reclamation Division staff to discuss those plans and the specific information that will need to be included in the revision application.

PUBLIC SERVICE COMMISSION

---

Susan E. Wefald  
Commissioner

---

Tony Clark  
President

---

Kevin Cramer  
Commissioner