

Policy Memorandum No. 8 to Mine Operators

DATE: March 8, 1995 (Revised)  
(Original Issue Date October 15, 1980, reissued August 10, 1984)

TO: All Mine Operators and Lignite Energy Council

FROM: Commissioners Wefald, Hagen and Reinbold

SUBJECT: Applicability of the Ten-Year Revegetation Liability Period Pursuant to NDCC 38-14.1-24(18)

The Reclamation Division was asked the following questions at the time operators were starting to prepare reapplication permits in anticipation of State Program approval: 1) What lands, if any, that were permitted and disturbed prior to July 1, 1979, but may still be under permit and utilized to support current surface mining and reclamation operations will be subject to the ten-year revegetation liability period? 2) What lands to be repermited under the state reapplication procedures specified by North Dakota Century Code (NDCC) 38-14.1-11 will be subject to the ten-year revegetation liability period? These questions were thoroughly reviewed by the Reclamation Division and legal counsel in 1980. The Commission decided upon the following interpretation and policy prior to State Program approval and the filing of reapplication permits.

- A. The ten-year revegetation liability period required by NDCC 38-14.1-24(18) applies to all lands:
1. Permitted before July 1, 1979, but from which coal was removed after that date;
  2. Permitted after July 1, 1979; and
  3. Repermited under North Dakota's approved state program pursuant to NDCC 38-14.1-11. This includes all lands upon which existing structures (haul roads, sediment ponds, etc.) were being utilized to support the current surface mining activities eight months after State Program approval.
- B. The ten-year revegetation liability period does **not** apply to lands:
1. Permitted prior to July 1, 1979, and from which the coal was removed by that date, even though the permit area may have been renewed after July 1979 to support other surface mining activities, except for those lands which fall into category A (3) above; and
  2. Permitted before July 1, 1979, and utilized after that date if such lands were permitted solely for the purpose of conducting associated disturbances in support

of the surface coal mining operations and the lands being utilized do not fall into category A (3) above.

In summary, all lands permitted after July 1, 1979, all lands where the coal was removed after July 1, 1979, and all lands upon which associated surface mining activities were conducted eight months after the approved State Program became effective are subject to the ten-year revegetation liability period.

The North Dakota law and rules do not allow any general exemptions from the bond liability period for lands permitted and disturbed prior to July 1, 1979 which were used in support of the surface coal mining operations under the approved state program. NDCC 38-14.1-16(4) provides that the bond liability is for the duration of the surface coal mining and reclamation operation and for a period coincident with the permittee's responsibility for revegetation requirements in NDCC 38-14.1-24(18). NDCC 38-14.1-24(18) requires a permittee to assume the responsibility for successful revegetation for a period of ten full years after vegetation has been established. NDAC 69-05.2-22-07(2) specifies when the period of responsibility under the performance bond requirements begins for various post-mining land uses and states that the period of responsibility must continue for not less than ten years. An exception to the ten year liability period is provided under NDAC 69-05.2-12-09(2) **only** when the post-mining land use approved by the Commission is for recreation, water areas, residential, or industrial and commercial uses.

Lastly, we want to point out requirements for revegetation success on lands that were disturbed prior to July 1, 1979 and re-permitted to support mining operations after July 1, 1979. These areas are subject to the ten-year responsibility period and the provisions of NDAC 69-05.2-22-07(4)(i). The success of revegetation on these areas must be determined based on any reclamation requirements in effect when the areas were mined. In addition, the ground cover on these areas must not be less than that which can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover that existed before redisturbance. Adequate measures must be in place to control erosion. For example, if a native grassland area was mined in 1976 under the 1975 reclamation law and it was re-permitted and used in support of mining after July 1, 1979, the requirements for restoring the premine productivity will apply to this area as well as showing that the ground cover is adequate to control erosion. Although data on species composition, cover and density must also be provided in a final bond release request, no specific standards for diversity, seasonality or permanence will apply to such an area.

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Bruce Hagen  
Commissioner

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Susan E. Wefald  
President

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Leo M. Reinbold  
Commissioner