

**State of North Dakota
Public Service Commission**

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-15-737

January 5, 2016

**ARTICLE 69-05.2
SURFACE COAL MINING AND RECLAMATION OPERATIONS**

69-05.2-01-01. Applicability of article. This article applies to any person conducting surface coal mining operations; and to all surface coal mining operations conducted after August 1, 1980, on lands from which the coal or commercial leonardite had not yet been removed and to any other lands subject to North Dakota Century Code chapter 38-14.1 or this article.

1. This article does not apply to:
 - a. The extraction of coal or commercial leonardite by a landowner for the landowner's own noncommercial use from land owned or leased by the landowner.
 - b. Coal or commercial leonardite removal for reclamation operations under North Dakota Century Code chapter 38-14.2.
 - c. Coal or commercial leonardite extraction as an incidental part of federal, state, or local government-financed highway or other construction, except as provided by chapter 69-05.2-03.
 - d. Coal or commercial leonardite extraction of two hundred fifty tons [226.80 metric tons] or less under a coal exploration permit issued by the office of the state geologist.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-02, 38-14.1-10, 38-14.1-37

69-05.2-01-02. Definitions. The definitions in North Dakota Century Code section 38-14.1-02 apply to this article and the following terms have the specified meaning except where otherwise indicated:

9. "Coal mining operation" means, for purposes of restrictions on financial interests of employees, the business of developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite, or lignite or commercial leonardite, or of reclaiming the areas upon which such activities occur.
10. "Coal preparation" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal or commercial leonardite.
11. "Coal preparation plant" means a facility where coal or commercial leonardite is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities, storage and stockpile facilities, sheds, shops and other buildings, water treatment and water-storage facilities, settling basins and impoundments, and coal or commercial leonardite processing and other waste disposal areas.
12. "Coal processing waste" means earth materials which are wasted and separated from product coal or commercial leonardite during cleaning, concentrating, or other processing or preparation of coal or commercial leonardite.
32. "Extraction of coal or commercial leonardite as an incidental part" means the extraction of coal or commercial leonardite which is necessary to enable government-financed construction to be accomplished. Only that coal or commercial leonardite extracted from within the right of way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal or commercial leonardite outside the right of way or boundary of the area directly affected by the construction shall be subject to the requirements of North Dakota Century Code chapter 38-14.1 and this article.
64. "Owned or controlled" and "owns or controls" mean any one or a combination of the relationships specified in subdivisions a and b:
 - a. Being a permittee of a surface coal mining operation; based on instrument of ownership or voting securities, owning of record in excess of fifty percent of an entity; or having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant,

operator, or other entity conducts surface coal mining operations.

b. The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

- (1) Being an officer or director of an entity;
- (2) Being the operator of a surface coal mining operation;
- (3) Having the ability to commit the financial or real property assets or working resources of an entity;
- (4) Being a general partner in a partnership;
- (5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten through fifty percent of the entity; or
- (6) Owning or controlling coal or commercial leonardite to be mined by another person under a lease, sublease or other contract and having the right to receive the coal or commercial leonardite after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

88. "Refuse pile" means a surface deposit of coal or commercial leonardite mine waste that does not impound water, slurry, or other liquid or semiliquid material.

93. "Road" means a surface right of way used, constructed, reconstructed, improved, or maintained for travel by land vehicles for use in surface coal mining and reclamation operations. The term includes access and haul roads used in surface coal mining and reclamation operations, including use by coal or commercial leonardite hauling vehicles to and from transfer, processing, or storage areas. A road consists of the entire area within the right of way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term does not include ramps and routes of travel within the immediate mining area

or within spoil or coal or commercial leonardite mine waste disposal areas.

104. "Substantial legal and financial commitments in a surface coal mining operation" means significant investments that have been made on the basis of a long-term coal or commercial leonardite contract in power plants, railroads, coal or commercial leonardite handling, preparation, extraction or storage facilities, and other capital-intensive activities.
108. "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal or commercial leonardite from the earth by removing the materials over a coal or commercial leonardite seam, before recovering the coal or commercial leonardite, or by recovery of coal or commercial leonardite from a deposit that is not in its original geologic location.
120. "Valid existing rights" means: a set of circumstances under which a person, subject to commission approval, may conduct surface coal mining operations on lands where North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 would otherwise prohibit such operations. Possession of valid existing rights confers an exception from these prohibitions. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of North Dakota Century Code chapter 38-14.1 and this article.
- a. Property rights demonstration. Except as provided in subdivision c, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. Applicable state statutory or case law will govern interpretation of documents relied upon to establish property rights, unless federal law provides otherwise. If no applicable state law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.
- b. Except as provided in subdivision c, a person claiming valid existing rights must also demonstrate compliance with one of the following standards:

- (1) All permits or good-faith standard. All permits and other authorizations required to conduct surface coal mining operations had been obtained or a good-faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-1.1. At a minimum, an application must have been submitted for the permit required under this article.

- (2) Needed for and adjacent standard. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained or a good-faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. Except for operations in existence before August 3, 1977, or for which a good-faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 when the commission approved the permit for the original operation or when the good-faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the commission may consider factors such as:
 - (a) The extent to which coal or commercial leonardite supply contracts or other legal and business commitments that predate the time that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 depend upon use of that land for surface coal mining operations.

- (b) The extent to which plans used to obtain financing for the operation before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 rely upon use of that land for surface coal mining operations.
 - (c) The extent to which investments in the operation before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 rely upon use of that land for surface coal mining operations.
 - (d) Whether the land lies within the area identified on the life-of-mine map submitted under chapter 69-05.2-07 before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.
- c. Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 must demonstrate that one or more of the following circumstances exist if the road is included within the definition of "surface coal mining operations" in subsection 33 of North Dakota Century Code section 38-14.1-02:
 - (1) The road existed when the land upon which it is located came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 and the person has a legal right to use the road for surface coal mining operations.
 - (2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1, and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations.

- (3) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.
- (4) Valid existing rights exist under subdivisions a and b.

History: Effective August 1, 1980; amended effective June 1, 1983; April 1, 1985; June 1, 1986; January 1, 1987; May 1, 1990; May 1, 1992; June 1, 1997; May 1, 1999; March 1, 2004: _____.

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

Law Implemented: NDCC 38-14.1-02, 38-14.1-03, 38-14.1-21, 38-14.1-38

69-05.2-02-06. Gifts and gratuities.

- 1. Except as provided in subsection 2, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a coal or commercial leonardite company which:
 - a. Conducts, or is seeking to conduct, operations or activities regulated by the commission; or
 - b. Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

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

General Authority: NDCC 38-14.1-38

Law Implemented: NDCC 38-14.1-38

69-05.2-03-01. Incidental coal or commercial leonardite extraction - Possession of documents. Any person conducting coal or commercial leonardite extraction as an incidental part of government-financed construction is responsible for possessing, onsite, the documentation required by section 69-05.2-03-02.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-37

69-05.2-03-02. Incidental coal or commercial leonardite extraction - Information to be maintained onsite. Any person extracting coal or commercial leonardite incident to government-financed highway or other

construction who extracts more than two hundred fifty tons [226.80 metric tons] shall maintain, onsite, documents which:

1. Describe the project.
2. Show the exact location of the construction, right of way, or the boundaries of the area which will be directly affected.
3. Identify the government agency providing the financing and the kind and amount of public financing, including the percentage of all costs represented by the government financing.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-37

69-05.2-04-01.5. Areas unsuitable for mining - Submission of requests for valid existing rights determinations.

2. A request for a valid existing rights determination may be submitted before preparing and submitting an application for a permit or incidental boundary revision for the land. The request must include the following:
 - a. A property rights demonstration under subdivision a of the definition of valid existing rights of section 69-05.2-01-02 if the request relies upon the "all permits or good-faith standard" or the "needed for and adjacent standard" in subdivision b of that definition. The demonstration must include the following items:
 - (1) A legal description of the land to which the request pertains.
 - (2) Complete documentation of the character and extent of the applicant's current interests in the surface and mineral estates of the land to which the request pertains.
 - (3) A complete chain of title for the surface and mineral estates of the land to which the request pertains.
 - (4) A description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or

method of mining or mining-related surface disturbances and facilities.

- (5) A description of the type and extent of surface coal mining operations that the applicant claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with state property law.
- (6) Complete documentation of the nature and ownership, as of the date that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1, of all property rights for the surface and mineral estates of the land to which the request pertains.
- (7) Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains.
- (8) If the coal or commercial leonardite interests have been severed from other property interests, documentation that the applicant has notified and provided reasonable opportunity for the owners of other property interests in the land to which the request pertains to comment on the validity of claimed property rights.
- (9) Any comments that the applicant receives in response to the notification provided under paragraph 8.

History: Effective March 1, 2004; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-02, 38-14.1-04, 38-14.1-07

69-05.2-04-04. Areas unsuitable for mining - Initial processing - Recordkeeping - Notification requirements for designating lands unsuitable.

2. The commission will determine whether any identified coal or commercial leonardite resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the commission finds no identified coal or commercial leonardite resources in that area, it will return the petition with a statement of findings.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04, 38-14.1-06, 38-14.1-09, 38-14.1-18

69-05.2-04-07. Areas unsuitable for mining - Data base and inventory system for designating lands unsuitable.

3. The commission will add to the data base and inventory system information:
 - a. On potential coal or commercial leonardite resources of the state, demand for those resources, the environment, the economy, and the supply of coal or commercial leonardite, sufficient to enable the commission to prepare the statements required by subsection 3 of North Dakota Century Code section 38.14.1-05; and
 - b. That becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

History: Effective August 1, 1980; amended effective May 1, 1990; July 1, 1995;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04

69-05.2-04-09. Areas unsuitable for mining - Commission responsibility for implementation for designating lands unsuitable. The commission will:

3. Make available to any person information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment, but excepting proprietary information on the chemical and physical properties of the coal or commercial leonardite according to subsection 3 of North Dakota Century Code section 38-14.1-13.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04

69-05.2-05-08. Permit applications - Permit term.

1. A permit will be issued for a fixed term not to exceed five years except as provided in subsection 3. The permit area shall be no larger than a logical pit sequence and include lands used for activities incidental to coal or commercial leonardite extraction. Coal or commercial leonardite removal boundaries cannot go beyond those approved for the permit term without obtaining a revision under section 69-05.2-11-02.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993; April 1, 2013; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-12

69-05.2-06-01. Permit applications - Identification of interests.

1. In addition to satisfying the applicable requirements of subsection 1 of North Dakota Century Code section 38-14.1-14, each application must contain:
 - a. The names and addresses of the owner of record of surface and coal or commercial leonardite subsurface rights contiguous to the permit area extending one-fourth mile [402.33 meters] from the permit boundary.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; July 1, 1995; April 1, 2013; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-06-03. Permit applications - Right of entry and operation information.

2. Following completion of coal or commercial leonardite removal operations on the lands covered by a coal or commercial leonardite lease, the copy of the lease may be deleted from an approved permit if:
 - a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or
 - b. The lease has expired or has been terminated.

If a coal or commercial leonardite lease is no longer provided for surface right of entry, other documents granting the permittee surface right of entry must be added to the permit.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-01. Permit applications - Permit area - Environmental resources information.

2. When the permit area contains a logical pit sequence where the coal or commercial leonardite 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 or commercial leonardite removal subareas.

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:
 - I. Location and dimensions of existing areas of spoil, coal, commercial leonardite and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the permit area.

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

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

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 or commercial leonardite 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.

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 or commercial leonardite 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 or commercial leonardite 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 or commercial leonardite 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 or commercial leonardite 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 or commercial leonardite 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 or commercial leonardite 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 or commercial leonardite 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 or commercial leonardite 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 or commercial leonardite crop lines and the strike and dip of the coal or commercial leonardite to be mined.

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:
 - d. Contour maps or maps showing the water table or piezometric surface in each aquifer (including water-bearing coal and commercial leonardite seams) down to and including the lowest water-bearing coal or commercial leonardite 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.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-01. Permit applications - Operation plans - General requirements. Each application must contain a detailed description of the proposed mining operations, including:

1. A narrative of mining procedures and engineering techniques, anticipated annual and total coal or commercial leonardite production, and major equipment.

2. A plan stating the anticipated or actual starting and termination date of each phase of mining activities and the amount of land to be affected for each phase over the life of the permit.
3. A narrative for each operations plan explaining the plan in detail and the construction, modification, use and maintenance of each mine facility, water and air pollution control facilities or structures, transportation and coal or commercial leonardite handling facilities, and other structures required for implementing the plans.
4. A plan for each support facility to be constructed, used, or maintained within the permit area including maps, appropriate cross sections, design drawings, and specifications of each facility sufficient to demonstrate compliance with section 69-05.2-24-08 or 69-05.2-24-09 as applicable.
5. If coal or commercial leonardite removal areas are proposed within five hundred feet [152.40 meters] of any farm building, the applicant must provide documentation showing compliance or plans to comply with North Dakota Century Code section 38-18-07.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992; June 1, 1994; March 1, 2004; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-18-07

69-05.2-09-02. Permit applications - Operation plans - Maps and plans. Each application must contain an appropriate combination of 1:4,800 scale topographic maps, planimetric maps, and plans of the proposed permit and adjacent areas showing:

3. The boundaries of areas to be affected during the permit term according to the sequence of mining and reclamation operations and a description of size and timing of operations for each coal or commercial leonardite removal subarea.
6. Location of coal or commercial leonardite processing waste dams and embankments under section 69-05.2-09-09, and fill areas for the disposal of initial cut and other excess spoil under section 69-05.2-09-14 and North Dakota Century Code section 38-14.1-24.
8. Each coal or commercial leonardite storage, cleaning and loading area, and each coal or commercial leonardite waste and noncoal waste storage area. For noncoal wastes that will be disposed of in the proposed permit area, the applicant must provide a description of any wastes listed under subdivision i of subsection 2 of section

33-20-02.1-01 and any other wastes requiring a permit from the state department of health. The location of any such disposal areas must be shown on a map of the permit area.

12. Each source of waste and each waste disposal facility relating to coal or commercial leonardite processing or pollution control.
14. If an applicant proposes to remine or otherwise disturb lands that were affected by coal or commercial leonardite mining activities prior to January 1, 1970:
 - a. Detailed maps and other available information that clearly depicts the boundaries of the site that was previously affected by mining activities before January 1, 1970. This includes the identification of any sinkholes and other features that are the result of any past underground coal or commercial leonardite mining activities.
 - b. The applicant must identify and describe potential environmental and safety problems related to prior mining activity at the site and those that could be reasonably anticipated to occur. This identification must be based on a due diligence investigation which includes visual observations at the site, a record review of past mining at the site, and any necessary environmental sampling tailored to the current condition of the site.
 - c. With regard to potential environmental and safety problems referred to in subdivision b, a description of the mitigative measures that will be taken to ensure that the applicable reclamation requirements can be met.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; June 1, 1997; April 1, 2011; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-09. Permit applications - Operation plans - Surface water management - Ponds, impoundments, banks, dams, embankments, and diversions.

1. Each application must include a surface water management plan describing each water management structure intended to meet the requirements of chapter 69-05.2-16. Each plan must:

- f. Identify the location of proposed temporary coal or commercial leonardite processing waste disposal areas, along with design specifications to meet the requirements in section 69-05.2-19-03.

- g. Identify the location of proposed coal or commercial leonardite processing waste dams and embankments along with design specifications to meet the requirements in chapter 69-05.2-20. The plan must include the results of a geotechnical investigation of each proposed coal or commercial leonardite dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment and the impounded material. The geotechnical investigation must be planned and supervised by an engineer or engineering geologist, as follows:
 - (1) Determine the number, location, and depth of borings and test pits using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.
 - (2) Consider the character of the overburden, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site.
 - (3) Identify springs, seepage, and ground water flow observed or anticipated during wet periods in the proposed dam or embankment area.
 - (4) Consider the possibility of mudflows or other landslides into the dam, embankment, or impounded material.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; January 1, 1993; May 1, 1999;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-18. Permit applications - Operation and reclamation plans - Auger mining. If applicable, the applicant shall submit a plan explaining how the applicant intends to comply with section 69-05.2-13-12 and subsection 1.1 of North Dakota Century Code section 38-14.1-24. This plan must contain:

3. A description of how the applicant intends to ensure the long-term stability of the augered area. This description should contain specific engineering designs ensuring that:
 - a. Material backfilled into the holes can be compacted to provide sufficient strength to prevent subsidence;
 - b. The coal or commercial leonardite remaining between the auger holes and the overlying overburden is sufficiently strong to prevent subsidence; or
 - c. The auger mined area can be collapsed in a controlled manner through the use of explosive or other techniques to eliminate future subsidence.

History: Effective September 1, 1984; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

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

69-05.2-09-19. Permit applications - Operation and reclamation plans - Coal preparation plants not located within the permit area of a mine.

1. This section applies to any person who operates or intends to operate a coal preparation plant in connection with a coal or commercial leonardite mine but outside the permit area mine for a specific mine. A permit to operate must be obtained from the commission.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-10-01. Permit applications - Public notices of filing and entering data into the applicant violator system.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:
 - b. A map or description which must:
 - (4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or commercial leonardite or conduct activities that may

impact future coal or commercial leonardite recovery, the names of each owner of record of coal or commercial leonardite rights within the permit boundaries.

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 or commercial leonardite to be mined, except information on coal or commercial leonardite components potentially toxic in the environment.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; April 1, 2007; April 1, 2013; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-18

69-05.2-11-02. Permit revisions.

1. A permit revision is required:
 - c. When a new coal or commercial leonardite removal subarea of the existing permit area is proposed to be disturbed in accordance with the timing and sequence approved in the permit. The revision is considered a significant alteration to the mining and reclamation plan.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990, May 1 1992; January 1, 1993; July 1, 1995; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-23

69-05.2-13-05. Performance standards - General requirements - Minimize disturbances - Best technology currently available. All surface coal mining and reclamation operations must be conducted to minimize disturbances on lands where coal or commercial leonardite is not removed and utilize the best technology currently available.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03, 38-14.1-24

69-05.2-13-08. Performance standards - General requirements - Protection of fish, wildlife, and related environmental values.

6. The permittee shall, to the extent possible using the best technology currently available:
 - h. To the extent possible prevent, control, and suppress range, forest, and coal or commercial leonardite fires not approved by the commission as part of a management plan.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990, May 1, 1992; January 1, 1993; June 1, 1994; May 1, 1999;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-13-12. Performance standards - General requirements - Auger mining. The operator shall:

1. Conduct auger mining to maximize the utilization and conservation of coal or commercial leonardite.

History: Effective September 1, 1984; amended effective June 1, 1986; May 1, 1990; May 1, 1992;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-13-13. Performance Standards - General requirements - Coal preparation plants not located within the permit area of a mine. Each person who operates a coal preparation plant in connection with a coal or commercial leonardite mine but outside the permit area for a specific mine shall obtain a permit in accordance with section 69-05.2-09-19, obtain a bond in accordance with chapter 69-05.2-12, and comply with the following:

1. Signs and markers for coal preparation plants, coal processing waste disposal areas, and water-treatment facilities must comply with section 69-05.2-13-04.
2. Stream channel diversions must comply with section 69-05.2-16-07.

3. Drainage from any disturbed areas related to coal preparation plants must comply with chapter 69-05.2-16.
4. Permanent impoundments associated with coal preparation plants must comply with section 69-05.2-16-12. Dams constructed of or impounding coal processing waste must comply with chapter 69-05.2-20.
5. Disposal of coal processing waste, non-coal mine waste and excess spoil must comply with chapters 69-05.2-19 and 69-05.2-18, respectively.
6. Fish, wildlife and related environmental values must be protected in accordance with section 69-05.2-13-08.
7. Support facilities related to coal preparation plants must comply with section 69-05.2-24-09.
8. Roads associated with coal preparation plants must comply with chapter 69-05.2-24.
9. Cessation of operations must be in accordance with sections 69-05.2-13-10 and 69-05.2-13-11.
10. Erosion and attendant air pollution must be controlled in accordance with sections 69-05.2-15-06 and 69-05.2-13-07, respectively.
11. Underground mine areas must be avoided in accordance with section 69-05.2-13-06.
12. Reclamation must follow proper suitable plant growth material handling, backfilling and grading, revegetation, and postmining land use procedures in accordance with chapters 69-05.2-15, 69-05.2-21, 69-05.2-22 and 69-05.2-23, respectively.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-18-01. Performance standards - Disposal of excess spoil - Requirements. In addition to satisfying subsection 19 of North Dakota Century Code section 38-14.1-24, the operator shall:

13. Provide an underdrain system, if required by subsection 19 of North Dakota Century Code section 38-14.1-24, that is protected by an adequate filter and designed and constructed using standard geotechnical engineering methods. Underdrains must consist of nondegradable, non-toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, commercial leonardite, clay, or shale.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-19-02. Performance standards - Waste materials - Permanent disposal of coal or commercial leonardite wastes.

1. All coal processing waste and waste materials from coal or commercial leonardite utilization processes and coal conversion facilities to be permanently disposed of within a permit area and that are required to be permitted under the solid waste management rules of the North Dakota state department of health must be disposed of according to those rules and this chapter.
 - a. The permittee or operator shall file application for and design the disposal site as required by the state department of health and concurrently submit a copy of the application to the commission.
 - b. The permittee or operator shall also submit to the commission a permit revision that will incorporate the disposal activities into the operations and reclamation plan. The commission will not approve the revision until the state department of health issues a solid waste permit.

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 38-14.1-24

69-05.2-19-04. Performance standards - Waste materials - Disposal of noncoal wastes.

4. At no time may any solid waste material be deposited at embankment or impoundment sites, nor may any excavation for solid waste disposal be located within eight feet [2.44 meters] of

any coal or commercial leonardite outcrop or coal or commercial leonardite storage area.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; May 1, 1999;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-21-01. Performance standards - Backfilling and grading - Timing requirements.

2. Area surface mining. Rough backfilling and grading must be completed within one hundred eighty days following coal or commercial leonardite removal and may not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The commission may grant additional time or distance for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under subsection 3 of section 69-05.2-09-11, that additional time or distance is necessary.

History: Effective August 1, 1980; amended effective May 1, 1990; July 1, 1995;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-21-03. Performance standards - Backfilling and grading - Covering coal, commercial leonardite and toxic-forming materials. All exposed coal seams, commercial leonardite seams, and toxic-forming and combustible materials exposed, used, or produced during mining must be adequately covered with nontoxic and noncombustible materials, or treated, to control the impact on surface and ground water in accordance with chapter 69-05.2-16, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-21-04. Performance standards - Backfilling and grading - Thin overburden. The provisions of this section apply only to mining activities where the final thickness of all available spoil and waste materials over the permit area is less than 0.8 of the initial thickness of the overburden and the coal or commercial leonardite prior to coal or commercial leonardite removal. The final thickness is the product of the overburden thickness prior to coal or

commercial leonardite removal times the overburden swell factor. When the demonstration is made that thin overburden exists over the permit area, in addition to meeting subdivision b of subsection 3 of North Dakota Century Code section 38-14.1-24, the operator shall:

1. Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire permit area, to attain the lowest practicable stable grade, to achieve a static safety factor of 1.3 to provide adequate drainage and long-term stability of the regraded areas, and to cover all toxic-forming materials.
2. Eliminate highwalls by grading or backfilling to stable slopes not exceeding thirty-five percent, or lesser slopes as the commission may specify to reduce erosion, maintain the hydrologic balance, or achieve the approved postmining land use.
3. Transport, backfill, grade, and revegetate to achieve an ecologically sound land use compatible with the prevailing use in unmined areas surrounding the permit area.
4. Transport, backfill, and grade to ensure that impoundments are constructed only where:
 - a. It has been demonstrated to the commission that all requirements of chapter 69-05.2-16 have been met; and
 - b. The impoundments have been approved by the commission as suitable for the approved postmining land use and meet the requirements of this article and all other applicable state laws and regulations.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-22-07. Performance standards - Revegetation - Standards for success.

4. The success of revegetation on the permit area at the time of final bond release must be determined for each postmining land use according to the following:
 - i. For previously mined areas that were not reclaimed to the requirements of this chapter, any reclamation requirements in effect when the areas were mined must be met. In

addition, the ground cover must not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion as approved by the commission. If lands affected by coal or commercial leonardite mining activities prior to January 1, 1970 are remined or otherwise redisturbed, the applicable standard must be met for the last two consecutive years of the minimum five year responsibility period that applies to remined lands. However, if the postmining land use for the remined area is woodlands, shelterbelts or fish and wildlife habitat, the applicable standard must be met for just the last year of the responsibility period.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; January 1, 1993; June 1, 1997; May 1, 1999; May 1, 2001; March 1, 2004; April 1, 2007; April 1, 2011; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-24-01. Performance standards - Roads - General requirements.

1. Each road, as defined in subsection 93 of section 69-05.2-01-02, must be classified as either a primary or ancillary road.
 - a. A primary road is any road which is:
 - (1) Used for transporting coal or commercial leonardite or spoil;
 - (2) Frequently used for access or other purposes for a period in excess of six months; or
 - (3) To be retained for an approved postmining land use.
 - b. An ancillary road is any road not classified as a primary road.

History: Effective August 1, 1980; amended effective May 1, 1992; April 1, 2007; _____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-24-09. Performance standards – Support facilities and utility installations.

1. Support facilities required for, or used incidentally to, the operation of the mine, including mine buildings, coal or commercial leonardite loading facilities at or near the minesite, coal or commercial leonardite storage facilities, equipment storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops, and other buildings, must be designed, constructed or reconstructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-25-04. Performance standards – Alluvial valley floors – Protection of farming and water supplies.

2. Paragraphs 1 and 2 of subdivision e of subsection 3 of North Dakota Century Code section 38-14.1-21 do not apply to lands identified in a reclamation plan approved by the commission prior to July 1, 1979, for any operation that, in the year preceding July 1, 1979:
 - a. Produced coal or commercial leonardite in commercial quantities and was located within or adjacent to an alluvial valley floor; or
 - b. Obtained specific permit approval to conduct operations within an alluvial valley floor.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-24, 38-14.1-28

69-05.2-26-06. Performance standards - Prime farmland - Exemptions. This chapter does not apply to:

3. Lands included in any existing surface coal mining operations for which a permit was issued for all or any part before July 1, 1979; provided that:
 - c. The lands contain part of a continuous recoverable coal or commercial leonardite seam that was being mined in a

single continuous mining operation begun under a permit issued prior to July 1, 1979.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-31-01. Training of blasters.

3. Training courses must be given by competent, experienced persons at a frequency not to exceed one every three months. Courses developed and taught by coal or commercial leonardite mining industry personnel may be approved by the commission for training persons seeking to become certified blasters.

History: Effective April 1, 1985; amended effective May 1, 1990;_____.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24