

ARTICLE 69-05.3 ABANDONED MINE LAND RECLAMATION

Chapter
69-05.3-01 Abandoned Mine Land Reclamation

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69-05.3-01-01. Definitions.

1. "Emergency" means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal abandoned mine reclamation program procedures.
2. "Reclamation activities" means reclamation, abatement, control, or prevention of adverse effects of mining.

History: Effective January 1, 1980; amended effective November 1, 1983.

General Authority: NDCC 38-14.2-03

Law Implemented: NDCC 38-14.2-02

69-05.3-01-02. Eligible lands and water - Bond forfeiture.

In addition to the lands covered by North Dakota Century Code section 38-14.2-06, lands and water are eligible for reclamation activities if there is no continuing responsibility for reclamation by an operator or permittee under North Dakota Century Code chapter 38-14.1 as the result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation.

History: Effective January 1, 1980.

General Authority: NDCC 38-14.2-03

Law Implemented: NDCC 38-14.2-02

69-05.3-01-03. Abandoned mine reclamation plan - Reclamation project evaluation - Factors.

Proposed reclamation projects and completed reclamation work shall be evaluated in terms of the factors stated in this section. The factors shall be used to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the same

objective under North Dakota Century Code section 38-14.2-07. Completed reclamation shall be evaluated in terms of the factors set forth below as a means of identifying conditions which should be avoided, corrected, or improved in plans for future reclamation work. The factors shall include:

1. The need for reclamation work to accomplish one or more specific reclamation objectives as stated in North Dakota Century Code section 38-14.2-07.
2. The availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts.
3. The specific benefits of reclamation which are desirable in the area in which the work will be carried out. Benefits to be considered include but are not limited to:
 - a. Protection of human life, health, or safety.
 - b. Protection of the environment, including air and water quality, abatement of erosion and sedimentation, fish, wildlife, and plant habitat, visual beauty, historic or cultural resources, and recreation resources.
 - c. Protection of public or private property.
 - d. Improvement of environmental conditions which may be considered to generally enhance the quality of human life.
 - e. Improvement of the use of natural resources, including postreclamation land uses which:
 - (1) Increase the productive capability of the land to be reclaimed.
 - (2) Enhance the use of surrounding lands consistent with existing land use plans.
 - (3) Provide for construction or enhancement of public facilities.
 - (4) Provide for residential, commercial, or industrial developments consistent with the needs and plans of the community in which the site is located.
 - f. Demonstration to the public and industry of methods and technologies which can be used to reclaim areas disturbed by mining.
4. The acceptability of any additional adverse impacts to people or the environment that will occur during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation.
5. The costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation.
6. The availability of additional coal or other mineral or material resources within the project area which:
 - a. Results in a reasonable probability that the desired reclamation will be accomplished during the process of future mining; or
 - b. Requires special consideration to assure that the resource is not lost as a result of reclamation and that the benefits of reclamation are not negated by subsequent, essential resource recovery operations.

7. The acceptability of postreclamation land uses in terms of compatibility with land uses in the surrounding area, consistency with applicable state and local land use plans and laws, and the needs and desires of the community in which the project is located.
8. The probability of postreclamation management, maintenance, and control of the area consistent with the reclamation completed.

History: Effective January 1, 1980.

General Authority: NDCC 38-14.2-03

Law Implemented: NDCC 38-14.2-02, 38-14.2-03, 38-14.2-07

69-05.3-01-04. Reclamation contracts.

The commission may enter into any public and private contractual agreements deemed necessary to effectively accomplish the purposes of the abandoned mine reclamation program, including contracts for:

1. Reclamation and restoration of land and water resources;
2. Construction and construction inspection;
3. Operation and maintenance of facilities;
4. Planning and engineering;
5. Research and demonstration projects;
6. Extraction of remaining coal deposits; and
7. Such other purposes as the commission deems necessary.

History: Effective January 1, 1980.

General Authority: NDCC 38-14.2-03

Law Implemented: NDCC 38-14.2-03

69-05.3-01-05. Extraction of remaining coal deposits.

In order to maximize resource recovery, the commission may require the extraction of any remaining coal deposits in areas to be reclaimed under North Dakota Century Code chapter 38-14.2, and may enter into a contractual agreement with the owner of the coal, if necessary, subject to the following conditions:

1. Extraction must be performed by a qualified contractor approved by the commission;
2. Extraction must comply with the applicable performance standards of North Dakota Century Code section 38-14.1-24 as specified by the commission in the agreement;
3. Compensation may be paid to the owner of the coal, if warranted, under such terms and conditions as the commission may prescribe; and
4. Such other conditions as the commission may prescribe in the agreement.

History: Effective January 1, 1980.

General Authority: NDCC 38-14.2-03

Law Implemented: NDCC 38-14.2-03

69-05.3-01-06. Affected lands - Right of entry - Notice.

The commission shall give at least five days' notice before entry upon property pursuant to North Dakota Century Code section 38-14.2-09.

History: Effective January 1, 1980; amended effective November 1, 1983.

General Authority: NDCC 38-14.2-03

Law Implemented: NDCC 38-14.2-09

69-05.3-01-07. Consent to entry.

The commission shall take all reasonable actions to obtain written consent from the owner of record of the land or property to be entered in advance of such entry. The consent shall be in the form of a signed statement by the owner of record or the owner's authorized agent which, at a minimum, includes a legal description of the land to be entered, the projected nature of work to be performed on the lands, and any special conditions for entry. The statement shall not include any commitment by the commission to perform reclamation work nor to compensate the owner for entry.

History: Effective January 1, 1980.

General Authority: NDCC 38-14.2-03

Law Implemented: NDCC 38-14.2-08, 38-14.2-09

69-05.3-01-08. Entry for studies or exploration - Notice.

1. If the owner of the land to be entered under North Dakota Century Code section 38-14.2-08 will not provide consent to entry, the commission shall give notice in writing to the owner of its intent to enter for purposes of study and exploration to determine the existence of adverse effects of past coal mining or noncoal mining practices which may be harmful to the public health, safety, or general welfare.
2. The notice shall be by mail to the owner, if known, and shall include a statement of the reasons why entry is believed necessary.
3. If the owner is not known, or the current mailing address of the owner is not known, or the owner is not readily available, the notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in the official newspaper of each county and in other daily newspapers of general circulation in each county wherein the land lies.
4. Notice shall be given at least five days before entry.
5. Entry required to investigate and explore reported emergency conditions will be governed by the provisions of subsection 3 of section 69-05.3-01-09.

History: Effective January 1, 1980; amended effective November 1, 1983.

General Authority: NDCC 38-14.2-03

Law Implemented: NDCC 38-14.2-08

69-05.3-01-09. Entry for emergency reclamation.

1. The commission, its agents, employees, or contractors shall have the right to enter upon any land where an emergency exists and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining or noncoal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare.

2. Prior to entry under this section, the commission shall make a written finding with supporting reasons that:
 - a. An emergency exists constituting a danger to the public health, safety, or general welfare.
 - b. Emergency restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining or noncoal mining is necessary.
 - c. No other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining or noncoal mining practices.
3. Notice to the owner shall not be required prior to entry for emergency reclamation.
 - a. The commission shall make reasonable efforts to notify such owner and obtain consent prior to entry consistent with the emergency conditions that exist.
 - b. Written notice shall be given to the owner as soon after entry as practical.
 - c. The notice shall be mailed to the owner, if known, and shall include a copy of the findings required by this section.
 - d. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted on the property entered in one or more places where it is readily visible to the public and advertised once in the official newspaper of each county and in other daily newspapers of general circulation in each county wherein the land lies.
 - e. The notice posted on the property and advertised in the newspapers shall include a statement that an emergency existed and where the findings required by this section may be inspected or obtained.
4. The moneys expended for such work, and the benefits accruing to any such premises so entered, shall be chargeable against such land to the extent allowed in North Dakota Century Code section 38-14.2-14 and shall mitigate or offset any claim in, or any action brought by any owner of any interest in such premises for any alleged damages as a result of the entry, provided however, that this provision is not intended to create new rights of action or to eliminate existing immunities.
5. The reclamation work performed under this section shall be limited to that which is necessary to eliminate the existing emergency conditions.

History: Effective January 1, 1980.

General Authority: NDCC 38-14.2-03

Law Implemented: NDCC 38-14.2-08, 38-14.2-09

69-05.3-01-10. Land acquisition - Limitations.

The commission shall acquire only such interests in land under North Dakota Century Code section 38-14.2-10 as are necessary for the reclamation work planned or the postreclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired if:

1. Such interests are necessary to the reclamation work planned or the postreclamation use of the land; and
2. Adequate written assurances cannot be obtained from the owner of the severed interest that future use of the severed interest will not be in conflict with the reclamation to be accomplished.

History: Effective January 1, 1980.
General Authority: NDCC 38-14.2-03
Law Implemented: NDCC 38-14.2-10

69-05.3-01-11. Land acquisition - Procedures.

1. An appraisal of the fair market value of all land or interest in land to be acquired shall be obtained by the commission from an independent professional appraiser. The appraisal shall be acknowledged before a notary public or other officer authorized by law to administer oaths and shall state the fair market value of the land as adversely affected by past coal or noncoal mining and shall otherwise conform to generally accepted appraisal practices.
2. When practical, acquisition shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past coal or noncoal mining.
3. When necessary, land or interests in land may be acquired by condemnation pursuant to the procedures of North Dakota Century Code chapter 32-15 and other laws governing eminent domain. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interest in land from a willing seller.
4. The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [Pub. L. 91-646; 42 U.S.C. 4601 et seq.] shall be followed for all real property acquisitions and on relocation of persons, businesses, and farms.

History: Effective January 1, 1980; amended effective November 1, 1983.
General Authority: NDCC 38-14.2-03
Law Implemented: NDCC 38-14.2-10

69-05.3-01-12. Acceptance of gifts of land.

1. The commission may accept donations of title to land or interest in land that is necessary for reclamation activities.
2. A donation shall not be accepted if the terms and conditions of acceptance are inconsistent with the objectives or requirements of the abandoned mine reclamation program or North Dakota Century Code chapter 38-14.2.
3. Offers to make a gift of such land or interest in land shall be in writing and shall comply with the provisions of North Dakota Century Code section 1-08-04.
4. If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. The deed shall state that it is made "as a gift under North Dakota Century Code chapter 38-14.2." Title to donated land shall be in the name of the state of North Dakota.

History: Effective January 1, 1980; amended effective November 1, 1983.
General Authority: NDCC 38-14.2-03
Law Implemented: NDCC 38-14.2-10

69-05.3-01-13. Management of acquired lands.

1. Land acquired by the commission under North Dakota Century Code section 38-14.2-10 may be used pending disposition for any lawful purpose that is not inconsistent with the reclamation activities and postreclamation uses for which it was acquired.
2. Any user of land acquired under this chapter shall be charged a use fee. The fee shall be determined on the basis of the fair market value of the benefits granted to the user, charges

for comparable uses within the surrounding area, or the costs to the commission for providing the benefit, whichever is appropriate. The commission may waive the fee if it is found in writing that such a waiver is in the public interest.

3. All use fees shall be deposited in the state abandoned mine reclamation fund, after expenditures for maintenance have been deducted.

History: Effective January 1, 1980.

General Authority: NDCC 38-14.2-03

Law Implemented: NDCC 38-14.2-04, 38-14.2-10

69-05.3-01-14. Disposition of acquired lands.

1. Prior to the disposition of any land acquired under North Dakota Century Code section 38-14.2-10, the commission shall:
 - a. Publish a notice which describes the proposed disposition of the land in the official newspaper of each county and in other daily newspapers of general circulation in each county wherein the land lies once a week for four successive weeks.
 - (1) The notice shall provide at least thirty days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted.
 - (2) The notice shall also state that a public hearing will be held if requested by any person.
 - b. Hold a public hearing if requested as a result of the public notice.
 - (1) The commission may determine that a hearing is appropriate even if a request is not received.
 - (2) The hearing shall be scheduled at a time and place that affords local citizens and governments the maximum opportunity to participate.
 - (3) The time and place of the hearing shall be advertised in the official newspaper in each county and in other daily newspapers of general circulation in each county wherein the land lies at least thirty days before the hearing.
 - (4) All comments received at the hearing shall be recorded.
 - c. Make a written finding that the proposed disposition is appropriate considering all comments received and consistent with any local, state, or federal laws or regulations which apply.
2. The commission may transfer, with the approval of the director of the office of surface mining reclamation and enforcement, United States department of the interior, the administrative responsibility for land acquired under North Dakota Century Code section 38-14.2-10 to any agency or political subdivision of the state of North Dakota, with or without cost to that agency or political subdivision. The agreement, including amendments, under which a transfer is made shall specify:
 - a. The purposes for which the land may be used; and
 - b. That the administrative responsibility for the land will revert to the commission if, at any time in the future, the land is not used for the purposes specified.

3. The commission may, with approval by the director of the office of surface mining reclamation and enforcement, United States department of the interior, transfer title to abandoned and unclaimed land to the United States to be reclaimed and administered by the office of surface mining reclamation and enforcement.
 - a. The commission shall have a preference right to purchase such land from the office of surface mining reclamation and enforcement after reclamation is completed.
 - b. The price to be paid by the commission shall be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the commission.
4. The commission, with the approval of the director of the office of surface mining reclamation and enforcement, United States department of the interior, may sell land acquired under North Dakota Century Code section 38-14.2-10 by public sale if such land is suitable for industrial, commercial, residential, or recreational development and if such development is consistent with local or state land use plans, if any, for the area in which the land is located.
5. Land may be sold by public sale by the commission pursuant to North Dakota Century Code section 38-14.2-12 only if it is found that retention by the commission, or disposal under other subsections of this section, is not in the public interest.
6. All moneys received from disposal of land under this section shall be deposited in the state abandoned mine reclamation fund.

History: Effective January 1, 1980; amended effective November 1, 1983.

General Authority: NDCC 38-14.2-03

Law Implemented: NDCC 38-14.2-12, 38-14.2-13

69-05.3-01-15. Appraisals.

1. An appraisal of the fair market value of land to be reclaimed which may be subject to a lien shall be obtained by the commission from an independent professional appraiser. The appraisal shall be acknowledged before a notary public or other officer authorized by law to administer oaths and shall conform to generally accepted appraisal practices. The appraisal shall be obtained before any reclamation activities are started, unless the work must start without delay to abate an emergency. If work must start because of an emergency, the appraisal shall be completed at the earliest practical time and before related nonemergency work is commenced. The appraisal shall state the fair market value of the land as adversely affected by past coal or noncoal mining.
2. An appraisal of the fair market value of all land reclaimed shall be obtained after all reclamation activities have been completed. The appraisal shall be obtained in accordance with subsection 1 and shall state the market value of the land as reclaimed.
3. The landowner, if known, shall be provided with a statement of the increase in market value, an itemized statement of reclamation expenses, and notice that a lien is being or has been filed in accordance with North Dakota Century Code section 38-14.2-14.
4. Appraisals for land which fall under subdivisions a, b, and c of subsection 1 of North Dakota Century Code section 38-14.2-14 may be obtained from either an independent or staff professional appraiser.

History: Effective January 1, 1980; amended effective November 1, 1983.

General Authority: NDCC 38-14.2-03

Law Implemented: NDCC 38-14.2-07, 38-14.2-14