



Public Service Commission

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Policy Memorandum No. 20 to Mine Operators

Date: January 29, 2009 (Revised)
(Original Issue Date September 6, 1989, Revised July 21, 1992, July 30, 1997
and June 9, 2004)

To: Mine Operators and Lignite Council

From: Commissioners Cramer, Clark and Kalk

Subject: Performance Bond Responsibility Period for Water Management Structures,
Other Support Facilities, and Re-affected Reclaimed Areas

BACKGROUND: In late 1988 the Commission presented a proposal to the Office of Surface Mining to make the period of performance bond responsibility for sedimentation ponds and associated access roads, diversions, and stockpiles coincide with that of the surrounding reclamation tract. The Director of OSM decided the Amendment was unnecessary and informed the Commission that adequate discretion existed within the State's regulatory program to do what the Amendment proposed. The Commission adopted a policy in 1989 for granting variances so the ten-year responsibility period for water management structures coincides with that of the surrounding reclamation tract. The policy has since been amended to allow variances for other support facilities and for reclamation repair work and drainage improvement work of a limited nature and size following the initial seeding of reclaimed tracts.

POLICY: The Commission, in its discretion, may grant specific variances so the ten-year responsibility period for water management structures, other support facilities, and reclaimed areas that are re-affected by repair and drainage improvement work coincides with that of the surrounding reclamation tract. For the purposes of this policy memorandum, water management and other support facilities may include, but not be limited to, sedimentation ponds, diversions, other water management structures, soil stockpiles, access roads, segments of haulroads, and electrical substations. Primary haulroads and associated disturbances that remain in use for many years following reclamation of the surrounding areas will not be considered for variances.

The Commission may grant similar variances for small isolated mined areas that were not reclaimed in conjunction with the surrounding tract if the permittee provides a detailed explanation with reasons for not reclaiming the small area at the same time as the surrounding tract. In addition, the permittee will need to explain the potential obstacles and any bond release delays that are likely to occur if the small area and surrounding tract cannot be treated as a single unit for final bond release.

The Commission will allow variances to the ten-year responsibility period for small portions of a reclaimed tract that are re-affected by repair work to eliminate settling and/or erosion features or to improve drainage. For any repairs or drainage improvement that is carried out during the first five years of the ten-year responsibility period, variances will be considered approved as long as these areas are described and clearly depicted with the annual map submitted for the year(s) that the work was done. The cumulative acreage of the areas re-affected during the first five years of a tract's ten-year liability period cannot exceed twenty percent of the disturbed acreage within a larger reclaimed tract that is a logical bond release unit without re-initiating the ten-year responsibility period on that entire reclaimed tract. For the purposes of this policy, a logical bond release unit will typically be a quarter section of reclaimed land but it may be a larger or smaller tract that seems reasonable for final bond release purposes given the boundaries and ownership of the tract. If the seeding of multiple reclamation parcels within a quarter section or other logical bond release unit was carried out over a number of years, the initiation date of the ten-year liability period for the purposes of this policy may be based on the date that the last reclaimed parcel was seeded within that tract. Also, if the same area is repaired multiple times, the Reclamation Division will determine on a case-by-case basis if the ten-year liability period for that tract needs to be re-initiated.

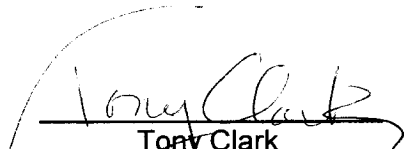
For any repair and drainage improvement work that is done more than five years after the ten-year liability period was initiated on the disturbed lands within a quarter section or other logical bond release unit, a written request must be submitted for a variance from the ten-year liability period. Variances may be granted by the Commission to the extent that the total re-affected acreage does not exceed five percent of the disturbed acreage within the larger tract. However, no variance will be needed if the repair work is limited to one or more features that are each less than 0.5 acre in size and if the repair work only involves bringing in a small quantity of additional topsoil or reshaping the respread topsoil to repair each area.

WRITTEN REQUESTS FOR VARIANCES and RECLAMATION STANDARDS: As part of a written request for a variance, the permittee must affirmatively demonstrate that reclamation carried out on the proposed variance area provides equal or greater protection to the environment and to public health and safety. A further condition is that the support facilities must be removed, the affected land reclaimed, and all applicable reclamation performance standards in NDAC Article 69-05.2 are met when final bond release is requested. The vegetation measurements taken to prove reclamation success for a reclaimed tract that contains one or more variance areas must include samples that were taken from each variance area. However, for isolated small areas that require repair near the end of the liability period, a permittee may be granted approval to use an alternative sampling method to demonstrate reclamation success on the repair area. These methods must be described and justified in the variance request.

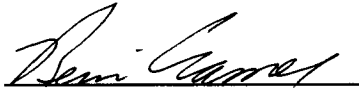
Areas considered for variances should be small in size when compared to the entire reclamation tract. The cumulative acreage of the areas for which a variance(s) is requested, including the total acreage of reclaimed water management structures, other support structures, small isolated mined areas, and areas re-affected by repair and drainage improvement work after the fifth year of the liability period, generally should not exceed twenty percent of the surrounding reclamation tract. (As discussed above, reclaimed areas re-affected by repair and drainage improvement work after the fifth year of the liability period cannot exceed five percent of the total acreage within the larger tract.) However, the Commission will consider granting variances for larger areas on a case-by-case basis if it appears final bond release will be otherwise significantly delayed on the surrounding reclamation tracts and the permittee explains the steps that were taken to previously reclaim as much of the area as possible.

Requests for specific variances to the responsibility period must be made and approved prior to submitting final bond release applications. A request must include the appropriate information demonstrating that the conditions discussed above are met and it must be accompanied by a post-mining topographic map showing the proposed variance areas, surrounding reclamation tract and watershed boundaries. The map must also clearly identify where all water management structures, other support facilities, and/or areas re-affected by repair and drainage improvement work were located within the entire reclamation tract, and show any support facilities that have not been reclaimed. For areas re-affected by repair and drainage improvement work, the request needs to describe the type of repair work performed (filling with topsoil, removing the respread topsoil and bringing in more subsoil, etc.) and the dates that the work was done. In addition, seeding dates for initiating the ten-year responsibility period on the proposed variance area and on the surrounding reclamation tracts need to be shown on a map.

PUBLIC SERVICE COMMISSION



Tony Clark
Commissioner



Kevin Cramer
President



Brian P. Kalk
Commissioner