



Public Service Commission

State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: ndpsc@nd.gov
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

Policy Memorandum No. 23 to Mine Operators

DATE: July 12, 2006

TO: All Mine Operators and Lignite Energy Council

FROM: Commissioners Clark, Wefald and Cramer

SUBJECT: Mine related roads subject to design and performance standards and road certification requirements

This memorandum provides guidance to mine operators on mine related haul and access roads that must meet design requirements and performance standards under NDAC Article 69-05.2. It also addresses the post-construction certification of primary roads.

Road Definition

NDAC 69-05.2-01-02(93) defines a "road" to mean "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 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 mine waste disposal areas.**" (Emphasis added)

Road Classification and Design Criteria

Under NDAC 69-05.2-24-01 a **primary road** is any road which is: 1) used for transporting coal 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. For the purposes of item 2, "frequently used" is considered any road that is traveled several times per week. An **ancillary road** is any road not classified as a primary road. All roads must be designed, constructed and maintained to meet the performance standards of NDAC 69-05.2-24-01. In addition, primary roads must meet the additional design and construction standards under NDAC 69-05.2-24-03. Design plans and drawings for all primary roads must be certified in accordance with NDAC 69-05.2-09-06(2) and post-construction certification by the registered professional engineer is required under NDAC 69-05.2-24-03(1).

Ramps and Other Travel Routes within the Immediate Mining or Spoil Areas

As noted above, ramps and other routes of travel within the immediate mining and spoil areas are excluded from the definition of “road”. This policy document is intended to provide additional clarification on what is considered the “immediate mining area or within spoil areas”. Design plans and performance standards do not apply to these transportation routes.

The immediate mining area and spoil areas include: 1) those areas ahead of the open pit where the topsoil has been removed and runoff from those areas flows into the open pit or directly to a sedimentation pond; 2) spoil piles and other areas behind the open pit where no suitable plant growth material has been replaced; 3) other disturbed areas adjacent to active mining areas where the runoff directly flows into the open pit or a sedimentation pond without crossing undisturbed or reclaimed areas; 4) partially reclaimed watersheds near active mining areas where reconstructed drainageways have not been respread with topsoil because runoff from spoil piles or graded spoil within the watershed has to be treated by a downstream sedimentation pond; and 5) short term SPGM haulage routes where only topsoil has been removed for access to a stockpile or respread area.

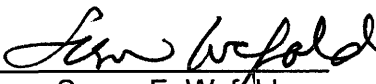
Once mined areas behind the open pit are graded and suitable plant growth material is replaced, and road ditches are not used to pass other spoil runoff directly into a downstream sedimentation pond, design plans for haul and access roads through the reclaimed area must be added to the applicable permit and the road must meet the applicable performance standards. In other words, when reclamation operations reach the point that suitable plant growth material is respread on both sides of a road constructed on graded spoil, it will be treated as a road constructed on otherwise undisturbed lands and subject to the applicable requirements of NDAC 69-05.2-09-06, 69-05.2-24-01 and 69-05.2-24-03.

Primary Road Certifications

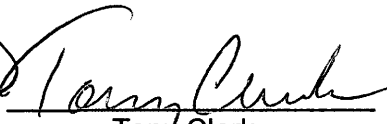
All primary roads must be **certified by a registered professional engineer** as required by NDAC 69-05.2-24-03(1) and the report must be filed with the Commission no later than 30 days after the completion of the construction or reconstruction of the road. The report must contain a statement that the primary road has been constructed according to the approved design plans and the applicable requirements of NDAC 69-05.2-24. Ancillary roads that are upgraded to primary roads must be certified within 30 days after upgrading is completed. Ramp extensions upgraded to primary road status during a construction season must be certified before the end of the calendar year by a professional engineer. Copies of all certification reports must also be maintained at or near the mine site.

Postmining Public Roads

If section line roads and other public roads constructed on reclaimed lands are first used by the mine operator for more than six months in support of mining and reclamation operations, they are considered primary roads under NDAC 69-05.2-24-01. Design plans for such roads must be included in the permit and a certification report must be filed with the Commission no later than 30 days after the completion of the construction that they were built as designed and meet the requirements of NDAC 69-05.2-24. Any more stringent design standards set by the road authority for eventual public use will supersede those listed under NDAC 69-05.2-24-03. If section line roads or other public roads constructed on reclaimed lands are solely used and maintained for public use, the provisions NDAC 69-05.2-24-01 and 69-05.2-24-03 do not apply. However, specifications and standards set by the road authority will apply.



Susan E. Wefald
Commissioner



Tony Clark
President



Kevin Cramer
Commissioner