§ 934.20 Approval of North Dakota abandoned mine plan.

The North Dakota Abandoned Mine Plan as submitted on July 28, 1981, is approved. Copies of the approved program are available at:

Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601–1918; Telephone: (307) 261–5776.

North Dakota Public Service Commission, Abandoned Mine Land Division, State Capitol, Bismarck, ND 58505; Telephone: (701) 224–4996.

§ 934.25 Approval of North Dakota abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director’s decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

<table>
<thead>
<tr>
<th>Original amendment submission date</th>
<th>Date of final publication</th>
<th>Citation/description</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 4, 1983</td>
<td>June 24, 1983</td>
<td>Definition of reclamation terms; right of entry; land acquisition, management, and disposition; other policies and procedures.</td>
</tr>
<tr>
<td>October 25, 1993</td>
<td>September 27, 1993</td>
<td>Emergency response reclamation program; set-aside trust funds, eligible lands.</td>
</tr>
<tr>
<td>September 20, 1995</td>
<td>October 8, 1996</td>
<td>NDCC 38–14.2–03(14); Public Service Commission Procurement and Contract Procedures; PSC policies Nos. 2–01–81(5), 2–02–81(5); PSC organizational structure.</td>
</tr>
</tbody>
</table>

§ 934.30 State-Federal Cooperative Agreement.

COOPERATIVE AGREEMENT

This is a Cooperative Agreement (Agreement) between North Dakota (State) acting by and through the North Dakota Public Service Commission (Commission) and the Governor, and the United States Department of the Interior (Interior), acting by and through the Secretary of the Interior (Secretary) and the Office of Surface Mining (OSM).

ARTICLE I: INTRODUCTION AND PURPOSE

A. Authority: This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Federal Act), Pub. L. 95–68, 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved under 30 U.S.C. 1253 to elect to enter into an Agreement for the regulation and control of surface coal mining on Federal lands, and by Chapter 38–14.1 of the North Dakota Century Code, Reclamation of Surface Mined Lands (State Act). This Agreement provides for State regulation of surface coal mining and reclamation operations on Federal lands within North Dakota consistent with the State and Federal Acts and the Federal lands program (section 523(a) of the Federal Act and 30 CFR Chapter VII, Subchapter D).

B. Purpose: The purpose of the Agreement is to: (1) Foster State-Federal cooperation in the regulation of surface coal mining and reclamation operations; (2) eliminate unnecessary intergovernmental overlap and duplication; and (3) provide uniform and effective application of the State Program on all non-Indian lands in North Dakota.

ARTICLE II: EFFECTIVE DATE

Following signing by the Secretary, the Governor, and the Commission, the Agreement shall take effect upon publication in the FEDERAL REGISTER as a final rule. This Agreement shall remain in effect until terminated as provided in Article X.
ARTICLE III: SCOPE

In accordance with the Federal lands program in 30 CFR parts 740–746, the laws, rules, terms, and conditions of North Dakota’s Permanent State Program (Program) (conditionally approved effective December 15, 1980, 30 CFR 934.11 or as hereinafter amended in accordance with 30 CFR 732.17) are applicable to Federal lands within North Dakota except as otherwise stated in this Agreement, the Federal Act, 30 CFR 745.13, or other applicable laws or rules and regulations. Orders and decisions issued by the Commission in accordance with the State Program that are reviewable shall be reviewed pursuant to section 38–14.1–30 of the North Dakota Century Code. Orders and decisions issued by the Department that are appealable shall be appealed to the Department of the Interior’s Office of Hearings and Appeals.

ARTICLE IV: REQUIREMENTS FOR COOPERATIVE AGREEMENT

The Commission and the Secretary affirm that they will comply with all of the provisions of this Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. Responsible Administrative Agency: The Commission is, and shall continue to be, the sole agency responsible for administering this Agreement on behalf of North Dakota on Federal lands throughout the State. OSM shall administer this Agreement on behalf of the Secretary, in accordance with the regulations in 30 CFR Chapter VII.

B. Authority of State Agency: The Commission has and shall continue to have authority under State law to carry out this Agreement.

C. Funds: The State will devote adequate funds to the administration and enforcement on Federal lands in North Dakota of the requirements contained in the Program. If the State complies with the terms of this Agreement, and if necessary funds have been appropriated, OSM shall reimburse the State as provided in section 795(c) of the Federal Act and 30 CFR 735.16, for costs associated with carrying out responsibilities under this Agreement. The grants procedures established in 30 CFR part 735 are applicable to funding under this Agreement. Reimbursement shall be in the form of annual grants, and applications for grants shall be processed and grants awarded in a prompt manner.

If sufficient funds have not been appropriated, OSM and the Commission shall promptly meet to decide on appropriate measures that will insure that surface coal mining and reclamation operations are regulated in accordance with the Program.

D. Reports and Records: The Commission shall make annual reports to OSM pursuant to 30 CFR 745.12(d), containing information respecting its implementation and administration of the terms of this Agreement. The Commission and OSM shall exchange, upon request, information developed under this Agreement except where prohibited by Federal law. OSM shall provide the Commission with a copy of any final evaluation report concerning State administration and enforcement of this Agreement.

E. Personnel: The Commission shall provide the necessary personnel to fully implement this Agreement in accordance with the provisions of the Federal and State Acts and the State Program.

F. Equipment and Laboratories: The Commission shall assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed and which are necessary to carry out the requirements of this Agreement.

G. Permit Application Fees and Civil Penalty Assessments: The amount of the fee accompanying an application for a permit shall be determined in accordance with section 38–14.1–13 of the State Act. All permit fees and civil penalty assessments collected by the State from operators on Federal lands shall be retained by the State and deposited with the State Treasurer. These funds shall be disposed of in accordance with Federal requirements in OMB Circular No. A–102. Attachment E. The financial status report submitted pursuant to 30 CFR 735.26 shall include a report of the amount of permit application fees collected and attributable to Federal lands during the prior Federal fiscal year.

ARTICLE V: POLICIES AND PROCEDURES: REVIEW OF A PERMIT APPLICATION PACKAGE OR AN APPLICATION FOR A PERMIT RENEWAL OR REVISION

A. Contents of Permit Application Package: The Commission and the Secretary will require that an operator proposing to mine on Federal land shall submit an identical permit application package in an appropriate number of copies to the Commission and OSM. Any documentation or information submitted by the operator for the sole purpose of complying with the 3-year requirement of section 7(c) of the Mineral Leasing Act (30 U.S.C. 181 et seq.) will be submitted directly to the Bureau of Land Management, Department of the Interior. The permit application package shall be in the form required by the Commission and include any supplemental information required by the Secretary. The permit application package shall satisfy the requirements of 30 CFR Chapter VII, Subchapter D and shall include the information required by, or necessary for, the Commission and the Secretary, acting within their statutory authority, to make a determination of compliance with;
§ 934.30

30 CFR Ch. VII (7–1–10 Edition)

(1) Chapter 38–14.1 and Chapter 38–18 of the North Dakota Century Code;
(2) Article 69–65.2 of the North Dakota Administrative Code (NDAC);
(3) Applicable terms and conditions of the Federal coal lease;
(4) Applicable requirements of the Bureau of Land Management’s 30 CFR part 211 regulations pertaining to the Mineral Leasing Act; and
(5) Applicable requirements of other Federal laws and the Program, including but not limited to those listed in Appendix A of this Agreement.

B. Review Procedures:

1. The Commission shall assume primary responsibility for the analysis, review, and approval of permit applications required by 30 CFR Chapter VII, Subchapter D for surface coal mining on Federal lands in North Dakota. OSM shall, as requested, assist the Commission in this analysis and review.

2. The Commission shall be the primary point of contact for operators regarding the approval of the permit application package, except on matters concerned exclusively with the 30 CFR part 211 regulations administered by the Bureau of Land Management. The Commission will be responsible for informing the applicant of all joint State-Federal or Federal determinations, except matters concerned exclusively with the 30 CFR part 211 regulations. The Commission shall send to the Bureau of Land Management all correspondence with the applicant which may have a bearing on decisions regarding Mineral Leasing Act requirements. Except in exigent circumstances, OSM shall generally not independently initiate contacts with applicants regarding completeness or deficiencies of permit application packages with respect to matters which are properly within the jurisdiction of the Commission. The Commission may arrange for an operator to send written communications and documents regarding a permit application package directly to OSM. The Secretary reserves the right to act independently of the Commission to carry out his responsibilities under laws other than the Federal Act. A copy of any independent correspondence with the applicant required to carry out these responsibilities which may have a bearing on decisions regarding the permit application package shall be sent to the State.

3. OSM is responsible for ensuring that any information OSM receives from an applicant regarding the permit application package is sent to the Commission and the Commission will send any information received from the applicant to OSM. OSM shall have access to Commission files for mines on Federal lands.

4. OSM shall be responsible for obtaining, in a timely manner, the views of all Federal agencies with jurisdiction or responsibility over a permit application package on Federal lands in North Dakota and for making these views known to the Commission within 90 days of the receipt of the application by OSM. The Commission shall keep OSM informed of findings during the review which bear on the responsibilities of other Federal agencies. OSM shall take appropriate steps to facilitate discussions between the Commission and the concerned agencies wherever desirable to resolve issues or problems identified in the review.

5. Upon receipt of a permit application package, both OSM and the Commission shall each designate its application manager. The application managers shall serve as the primary point of contact between OSM and the Commission throughout the review process and shall be responsible for identifying areas of avoidable duplication of review and analysis, which shall be eliminated where possible. Not later than 15 days after an application has been received, OSM and the Commission shall discuss the application and agree upon a work plan and schedule for the review of the application. OSM shall thereafter inform the Commission of any specific or general areas of concern, including the scope of required environmental analyses under the National Environmental Policy Act, which require special handling or analysis. The Commission shall likewise inform OSM where OSM assistance will be needed to perform any specific or general analysis or prepare any studies or similar work.

6. The Commission shall prepare a technical-environmental analysis on the permit application package. Copies of drafts of this document shall be sent to OSM for review and comment. OSM shall independently evaluate the documents and inform the Commission of any specific or general areas of concern, including the scope of required environmental analyses under the National Environmental Policy Act, which require special handling or analysis. The Commission shall likewise inform OSM where OSM assistance will be needed to perform any specific or general analysis or prepare any studies or similar work.

1 EDITORIAL NOTE: 30 CFR part 211 was re-designated as 43 CFR part 3480 at 48 FR 41589, Sept. 16, 1983.
lands within the permit area on obtaining mining plan approval from the Secretary. The Commission shall, in the approved permit, reserve the right to amend or rescind its action taken or terms or conditions imposed, by the Secretary when approving the mining plan. After the Commission makes its decision on the request, it shall send a notice to the applicant and OSM with a statement of findings and conclusions in support of the action.

7. The Commission may approve and issue permits, permit renewals, and permit revisions for surface disturbances associated with surface coal mining and reclamation operations, and disturbance of the surface may commence without need for an approved mining plan on lands where:
   (a) The surface estate is non-Federal and non-Indian;
   (b) The mineral estate is Federal and is unleased;
   (c) The Commission consults with the Bureau of Land Management through OSM in order to insure that actions are not taken which would substantially and adversely affect the Federal mineral estate; and
   (d) The proposed surface disturbances are planned to support surface coal mining and reclamation operations on adjacent non-Federal lands and this is specified in the permit, permit renewal, or permit revision.

8. Any permit renewal requested pursuant to applicable State laws and rules for a surface coal mining and reclamation operation on Federal lands, and for which a mining plan has been approved by the Secretary, shall be reviewed and approved or disapproved by the Commission in consultation with OSM for Federal responsibility under other laws. The Commission shall inform OSM and BLM of the approval or disapproval of the renewal and provide OSM and BLM with copies of the application documents.

9. The Commission shall inform OSM of each permit revision request with respect to surface coal mining and reclamation operations on Federal lands containing leased Federal coal. For other Federal lands, the Commission shall inform the Federal land management agency of each permit revision request. Surface coal mining and reclamation operations shall not occur pursuant to the revision unless the permit revision request has been approved by the Commission and:
   (a) With respect to Federal lands containing leased Federal coal—
      (i) The Secretary has determined that the permit revision does not constitute a mining plan modification, or
      (ii) If the revision does constitute a mining plan modification, the modification has been approved by the Secretary.
   (b) With respect to other Federal lands, the Commission has consulted with the Federal land management agency to ensure that the permit revision is consistent with Federal laws and regulations other than the Act.

10. When the Commission and OSM cannot resolve differences that develop during permit application package review or cannot agree on the final actions to be taken by the Commission and the Department, the matter shall be referred to the Governor and the Secretary for resolution.

ARTICLE VI: INSPECTIONS

The Commission shall conduct inspections on Federal lands and prepare and file inspection reports in accordance with the approved Program. 

A. Inspection Reports: The Commission shall, within 15 days of conducting any inspection on Federal lands, file with OSM an inspection report describing (1) the general conditions of the lands under the permit; (2) whether the operator is complying with applicable performance and reclamation requirements; and (3) the manner in which specific operations are being conducted.

B. Commission Authority: The Commission shall be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described in this Agreement and the Secretary’s regulations. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

C. OSM Authority: For the purpose of evaluating the manner in which this Agreement is being carried out and to insure that performance and reclamation standards are being met, OSM may conduct inspections of surface coal mining and reclamation operations on Federal lands without prior notice to the Commission. In order to facilitate a joint Federal-State inspection, when OSM is responding to a citizen complaint of an imminent danger to the health or safety of the public or of a significant, imminent environmental harm pursuant to 30 CFR 842.11(b)(1)(i), it will contact the Commission if circumstances and time permit, prior to the Federal inspection. The Department may conduct any inspections necessary to comply with 30 CFR part 842 and 30 CFR 740.17 (as 30 CFR 740.17 relates to obligations under laws other than the Federal Act). If an inspection is made without Commission inspectors, OSM shall provide the Commission with a copy of the inspection report within 15 days after the inspections.

D. Witness Availability: Personnel of the State and the Department shall be mutually available to serve as witnesses in enforcement actions taken by either party.
ARTICLE VII: ENFORCEMENT

A. Commission Enforcement: The Commission shall have primary enforcement authority on Federal lands in accordance with the Program and this Agreement. During any joint inspection by OSM and the Commission, the Commission shall take appropriate enforcement action, including issuance of orders of cessation and notices of violation. OSM and the Commission shall consult prior to issuance of any decision to suspend or revoke a permit.

B. Notification: The Commission and OSM shall promptly notify each other of all violations of applicable laws, regulations, orders, approved mining and reclamation plans and permits subject to this Agreement and of all actions taken with respect to such violations.

C. Secretary’s Authority: (1) This Agreement does not affect or limit the Secretary’s authority to enforce violations of laws other than the Federal Act. (2) During any inspection made solely by OSM or any joint inspection where the Commission and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR parts 843 and 845. Such enforcement action shall be based on the substantive standards included in the approved Program and shall be taken using the procedures and penalty system contained in 30 CFR parts 843 and 845.

ARTICLE VIII: BONDS

A. Bond Coverage and Terms: The Commission and OSM shall require all operators on Federal lands to submit a single performance bond to cover the operator’s responsibilities under the Federal Act and the Program, payable to both the United States and North Dakota. The performance bond shall be of sufficient amount to comply with the requirements of both State and Federal law and release of the performance bond shall be conditioned upon compliance with all applicable requirements. If this Agreement is terminated, the bond will continue in effect and to the extent that Federal lands are involved will be payable to the United States.

Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR Subpart 3474 or a lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of the Federal Act.

B. Bond Release: The Commission shall obtain OSM’s concurrence prior to releasing the operator from any performance bonding obligation required under the Program for any Federal lands containing leased Federal coal. For surface coal mining and reclamation operations on other Federal lands, the Commission shall obtain the concurrence of the Federal land management agency prior to releasing the performance bond. The Commission shall advise OSM of any release of and adjustments made to the performance bond.

C. Forfeiture: The operator’s performance bond shall be subject to forfeiture with the consent of OSM, in accordance with the procedures and requirements of the Program.

ARTICLE IX: DESIGNATION OF LANDS AS UNSUITABLE

The Commission and OSM shall cooperate in the review and processing of petitions to designate lands as unsuitable for surface coal mining operations. When either agency receives a petition which could have an impact on lands the designation of which as unsuitable for mining would be the responsibility of the other agency, the agency shall: (1) Notify the other of its receipt of the petition and of the anticipated schedule for reaching a decision; and (2) request and fully consider data, information and views of the other. The authority to designate Federal lands as unsuitable for mining is reserved to the Secretary or his designated representative.

ARTICLE X: TERMINATION OF COOPERATIVE AGREEMENT

This Agreement may be terminated as follows:

A. Termination by the State: This Agreement may be terminated by the Commission upon written notice to the Secretary, specifying the date upon which the Agreement shall be terminated. The date of termination shall not be less than 90 days from the date of the notice.

B. Termination by the Secretary: This Agreement may be terminated by the Secretary according to the following procedures:

1. A written notice from the Secretary to the Commission shall specify the grounds upon which he proposes to terminate the Agreement. In addition, a written notice containing the grounds for termination shall be published in the FEDERAL REGISTER affording the Commission and the public a minimum of 30 days for comment.

2. A written notice in the FEDERAL REGISTER and a local newspaper of general circulation shall also specify the date and place within the State of North Dakota where the Commission and the public shall be afforded the opportunity for a hearing. The date of such hearing shall not be less than 30 days from the date of publication in the FEDERAL REGISTER. Prior to the time fixed for public hearing, representatives of the Commission may be permitted to appear and confer in person with representatives of the Secretary and present oral or written statements, and any other documents relative to the proposed termination.
3. The proposed termination hearing shall be conducted by OSM and a record shall be made of the hearing. The Commission shall be entitled to have legal, and technical and other representatives present at the hearing, and may present, either orally or in writing, evidence, information, testimony, documents, records or materials as may be relevant to the issues involved.

4. The Secretary’s decision shall be made after the hearing and close of the comment period.

5. A decision to terminate the Agreement may be made if the Secretary finds in writing that:

(a) The Commission has substantially failed to comply with the requirements of the Federal Act, 30 CFR parts 740–746, the Program, or provisions of this Agreement, or

(b) The Commission has failed to comply with any undertaking by the Commission in this Agreement upon which the approval of the Program, this Agreement, or grants by OSM for administration or enforcement of the Program or this Agreement were based.

6. The Secretary shall send written notice of the decision and findings to the Commission and publish notice of it in the FEDERAL REGISTER.

7. This Agreement shall terminate not less than 60 days after publication of the notice of the decision to terminate in the FEDERAL REGISTER. The Commission may remedy any failure during the 60-day period. If the Secretary determines that the State has taken effective remedial action, the Agreement will not terminate.

C. Termination by Operation of Law: This Agreement shall terminate by operation of law under either of the following circumstances:

1. When no longer authorized by Federal law or North Dakota laws and regulations; or

2. Upon termination or withdrawal of the Secretary’s approval of the Program pursuant to 30 CFR part 733.

D. Mutual Termination: This Agreement may be terminated at any time upon mutual agreement by the Secretary and the Commission.

ARTICLE XI: REINSTATEMENT OF COOPERATIVE AGREEMENT

If this Agreement has been terminated as provided in Article X, it may be reinstated upon application by the Commission and upon its giving evidence satisfactory to the Secretary that the Commission can and will comply with all the provisions of the Agreement and that the Commission has remedied all defects in administration for which this Agreement was terminated.

ARTICLE XII: AMENDMENTS TO COOPERATIVE AGREEMENT

This Agreement may be amended by mutual agreement of the Commission and the Secretary. An amendment proposed by one party shall be submitted to the other with a statement of the reasons for such proposed amendment. The amendment shall be adopted or rejected in accordance with the requirements of 30 CFR part 745.11. The party to whom the proposed amendment is submitted shall signify its acceptance or rejection of the proposed amendment and if rejected shall state the reason for rejection.

ARTICLE XIII: CHANGES IN STATE OR FEDERAL STANDARDS

A. Time for Change: The Secretary or the State may from time to time promulgate new Federal or State regulations, including new or revised performance or reclamation requirements or enforcement or administration procedures. OSM and the Commission shall immediately inform each other of any final changes in their respective laws or regulations as provided in 30 CFR part 732. Each party shall, if it is determined to be necessary to keep this Agreement in force, change or revise its regulations and request necessary legislative action. Such changes shall be made under the procedures of 30 CFR part 732 for changes to the Program and section 501 of the Federal Act for changes to the Federal lands program.

B. Copies of Changes: The State and OSM shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XIV: CHANGES IN PERSONNEL AND ORGANIZATION

The Commission and the Secretary shall, consistent with 30 CFR part 745, advise each other of changes in the organization, structure, functions, duties, and funds of the offices, departments, divisions, and persons within their organizations which could affect administration and enforcement of this Agreement. Each shall promptly advise the other in writing of changes in key personnel, including the head of a department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the program. The Commission and OSM shall advise each other in writing of changes in the location of offices, addresses, telephone numbers, and changes in the names, location and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible.
ARTICLE XV: RESERVATION OF RIGHTS
In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations, including but not limited to those listed in Appendix A.

ARTICLE XVI: DEFINITIONS
Terms and phrases used in this Agreement which are defined in 30 CFR part 700, 701 and 740 shall be given the meanings set forth in those definitions.

Approved:
James G. Watt,
Secretary of the Interior.
Dated: August 11, 1983.
Allen I. Olson,
Governor of North Dakota.
Dated: August 30, 1983.
Bruce Hagen,
President, North Dakota Public Service Commission.
Dated: August 30, 1983.
Leo M. Reinbold,
Commissioner, North Dakota Public Service Commission.
Dated: August 30, 1983.
Dale Sandstrom,
Commissioner, North Dakota Public Service Commission.
Dated: August 30, 1983.

APPENDIX A

PART 935—OHIO

Sec. 935.1 Scope.
935.10 State regulatory program approval.
935.11 Conditions of State regulatory program approval.
935.12 [Reserved]
935.15 Approval of Ohio regulatory program amendments.
935.16 [Reserved]
935.20 Approval of Ohio abandoned mine land reclamation plan.
935.25 Approval of Ohio abandoned mine land reclamation plan amendments.
935.30 State-Federal Cooperative Agreement.

AUTHORITY: 30 U.S.C. 1201 et seq.

§ 935.1 Scope.

This part contains all rules applicable only within Ohio that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[47 FR 34717, Aug. 10, 1982]

§ 935.10 State regulatory program approval.

The Ohio State regulatory program as submitted on February 29, 1980, and resubmitted on January 22, 1982, is conditionally approved, effective August 16, 1982. Beginning on that date, the Department of Natural Resources shall be deemed the regulatory authority in Ohio for all surface coal mining and reclamation operations on non-Indian and non-Federal lands. Only surface coal mining and reclamation operations on non-Indian and non-Federal lands shall be subject to the provisions...