

MINING AND GAS AND OIL PRODUCTION

CHAPTER 329

H. B. No. 279

(Boustead, Olienyk, Glaspey)

COAL MINE INSPECTOR

AN ACT

To create and enact subsection 7 of section 38-03-07 of the North Dakota Century Code, relating to accident-prevention programs; to amend and reenact sections 38-03-02, 38-03-03, 38-03-05, subsection 1 of section 38-03-07, subsection 5 of section 38-03-07, and section 38-03-14 of the North Dakota Century Code, relating to the qualifications, bond, powers and duties, assistants of state coal mine inspector; to amend and reenact sections 38-04-06 and 38-04-07 of the North Dakota Century Code, relating to the contents of records to be kept by each coal mine and report to coal mine inspector; and to amend and reenact section 38-05-07 of the North Dakota Century Code, relating to certificate of qualification as mine foreman.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Amendment.) Section 38-03-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-03-02. Qualifications of Inspector.) No person shall be eligible to the office of inspector unless he:

1. Is a citizen of the United States of America;
2. Is a resident of this state;
3. Actually shall have been employed in mining in the state of North Dakota for a period of eight years prior to appointment, provided that up to four successfully completed academic years of college level training in engineering or general science may be substituted on a year-

for-year basis for such employment;

4. Shall possess a competent knowledge of coal mining.

Section 2. Amendment.) Section 38-03-03 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-03-03. Bond, Office, and Clerical Help of Inspector.) Before entering upon the duties of his office, the inspector shall furnish a bond in the penal sum of five thousand dollars. He may employ such necessary clerical help for the purpose of carrying out the provisions of this chapter for such compensation as the legislature may designate.

Section 3. Amendment.) Section 38-03-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-03-05. Inspector Not To Be Agent, Manager, Superintendent, Nor Be Interested in Coal Mining Companies.) The inspector, while he is in office, shall not act as an agent for any corporation, nor as the superintendent or manager of any mine. He shall not be in the employ of any mining company nor be interested in any coal mining operation as owner or lessee.

Section 4. Amendment.) Subsection 1 of section 38-03-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Enter, inspect, and examine any coal mine, including what is commonly known as a "strip mine", or any shaft, drift, slope, or other excavations in the process of sinking for the purpose of mining coal, and the workings and the machinery belonging thereto, at all reasonable times, either by day or night;

Section 5. Amendment.) Subsection 5 of section 38-03-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Carefully examine all the coal mines in operation in this state annually, and all mines having an annual output of twelve hundred tons or more, at least every three months and oftener, if necessary, to see that every precaution is taken to insure the safety of all the working

men that may be engaged in such coal mine;

Section 6.) Subsection 7 of section 38-03-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

7. Cooperate and assist in all accident-prevention programs sponsored by the workmen's compensation bureau which pertain to mining.

Section 7. Amendment.) Section 38-03-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-03-14. Technical Assistants and Advisers May Be Employed by Inspector—Pay—Instruments Furnished Inspector.) For the more efficient discharge of the duties imposed upon him pursuant to the provisions of this chapter, the inspector, with the approval of the commissioners of the workmen's compensation bureau, may hire all necessary technical assistants and advisers to aid him in determining the condition, fitness, and suitability of boilers and all other machinery or equipment, both electrical and mechanical, of coal mines in this state which may affect the safety of the miners therein and the inspector shall be the sole authority in making such determination. Such assistants and advisers shall be paid from appropriations made by the legislative assembly.

Section 8. Amendment.) Section 38-04-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-04-06. Record of Each Coal Mine To Be Kept—Contents.) The operator of each coal mine licensed under the provisions of this chapter shall keep a book containing the following information concerning the mine:

1. Its name;
2. Its location;
3. Date when it began business;
4. Name of the owner;

5. Name of the operator;
6. Number of tons of coal mined therein;
7. Number of men employed therein;
8. Price received for coal sold.

Section 9. Amendment.) Section 38-04-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-04-07. Coal Mine Operators to Report to Coal Mine Inspector—Contents of Report.) Each coal mine operator within this state shall make a verified report to the state coal mine inspector annually containing all the information required to be kept under the provisions of section 38-04-06. However, the state coal mine inspector shall not make public the price received for coal sold at any individual mine but may make public the total valuation of all coal sold in the state.

Section 10. Amendment.) Section 38-05-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-05-07. Certificate of Qualification as Mine Foreman—Issuance—Grade Required—Qualifications—Form—Evidence—Record.) The board of examiners shall issue a certificate of qualification for the position of mine foreman to each applicant who passes a successful examination showing his knowledge of mine workings, ventilation, gases, and black-damp, and his actual experience in underground or strip coal mining. No applicant receiving less than a grade of seventy-five percent on his entire examination shall be entitled to a certificate. A certificate shall be granted only to a person who is twenty-one years of age or over, of good moral character, a citizen of the United States, and a resident of this state, who has been employed in mining in the state of North Dakota for a period of five years prior to the issuance of a certificate, provided that up to four successfully completed academic years of college level training in engineering or general science may be substituted on a year-for-year basis for such employment, and shall possess a competent knowledge of coal mining. The certificate shall be in the form prescribed by the inspector, and shall show the full name, age, and birthplace of the person named therein and the length

or nature of his previous experience in coal mines, and shall designate the position for which he is qualified. A certificate shall be valid only when signed by a majority of the members of the board, and when so signed shall be sufficient evidence of the holder's competency for the duties of mine foreman under the provisions of this title. The inspector shall keep in his office a record of such certificates issued. All certificates issued shall cease to be valid in seven years after date of issuing.

Approved March 29, 1969.

CHAPTER 330

S. B. No. 321
(Wilhite)

DISCRIMINATION BY COMMON PURCHASERS OF CRUDE PETROLEUM

AN ACT

To create and enact section 38-08-19 of the North Dakota Century Code, defining common purchasers of crude petroleum, prohibiting discrimination among purchasers of crude petroleum.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1.) Section 38-08-19 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-08-19. Common Purchasers—Discrimination in Purchasing Prohibited.)

1. Every person, association of persons, or corporation now engaged or hereafter engaging in the business of purchasing crude petroleum in this state shall be a common purchaser thereof.
2. Every common purchaser of crude petroleum shall, without discrimination in favor of one producer or royalty owner as against another in the same marketing district as determined by the industrial commission, purchase all oil tendered to it at the wellhead or at its

receiving terminal, which has been lawfully produced, provided that no common purchaser shall be required to purchase crude petroleum of inferior quality or grade, or which is unsuitable for its operations.

3. Whenever a common purchaser is unable to purchase all of the oil tendered to it hereunder, it shall purchase ratably from each marketing district, field, pool, or well, with respect to which such tenders are made. As between wells, purchases shall be considered ratable only if such purchases are made in proportion to the allowables which are or would be assigned to such wells under existing North Dakota industrial commission rules and regulations, and, as between marketing districts or fields or pools, purchases shall be considered ratable if such purchases are made in proportion to the sum of the allowables which are or would be assigned to all wells from which tenders are made in each such marketing district or field or pool.
4. Every common purchaser of crude petroleum is hereby expressly prohibited from discriminating in favor of its own production or that of an affiliate as against that of others, and the oil produced by such common purchaser or by an affiliate of such common purchaser shall be treated as that of any other producer for the purposes of ratable taking.
5. It shall be unlawful for any common purchaser to discriminate between oil transported from the wellhead to its receiving terminal in favor of one carrier of crude oil as against another, and nothing herein shall be construed to prevent any person, association of persons, or corporation from transporting crude oil from wellhead to receiving terminal of said common purchaser from properties in which such person, association of persons, or corporation may own an interest, and such person, association of persons, or corporation shall not be deemed to be in the business of purchasing, or of purchasing and selling crude petroleum within the meaning of this Act. Nothing herein shall be construed to prohibit any common purchaser from requiring that proper and reasonable facilities be erected and maintained at its receiving terminal by any person, association of persons, or corporation transporting crude oil to such terminal,

requiring that a surety bond be posted indemnifying said common purchaser from liability for transporter's failure to properly account to the owners of crude oil so transported, or posting a just and reasonable handling charge for accepting delivery at its receiving terminal.

6. The provisions of this Act shall cover the purchase, or purchase and sale of crude petroleum, and that gathering, handling, marketing, and all other charges assessed by a common purchaser against crude oil produced within this state shall be just and reasonable. The industrial commission, after notice and hearing as provided in section 38-08-11, may determine the justness and reasonableness of charges on its own motion or upon motion of any interested person.

Approved March 14, 1969.

CHAPTER 331

H. B. No. 404
(Connolly)

HOLDER OF MINERAL INTEREST MAY FILE ADDRESS WITH SECRETARY OF STATE

AN ACT

To create and enact section 38-13-04 of the North Dakota Century Code, relating to the filing of addresses.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1.) Section 38-13-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-13-04. Filing of Addresses.) Upon payment of a fee of five dollars, any person owning an individual mineral, leasehold or royalty interest in land may file with the secretary of state of this state a notice of his place of residence of post-office address.

Approved March 25, 1969.

CHAPTER 332'

S. B. No. 45

(Butler, Kelly, Rait, Schultz, Stroup)

(From Legislative Research Committee Study)

RECLAMATION OF STRIP MINED
LANDS

AN ACT

To provide for the reclamation of strip mined lands, declaring a penalty, and providing an appropriation.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Declaration of Policy.) It is declared to be the policy of this state to provide, after surface mining operations are completed, for reclamation of affected lands to encourage productive use including but not limited to: the planting of forests; the seeding of grasses and legumes for grazing purposes; the planting of crops for harvest; the enhancement of wildlife and aquatic resources; the establishment of recreational, home, and industrial sites; and for the conservation, development, management and appropriate use of all the natural resources of such areas for compatible multiple purposes, to aid in maintaining or improving the tax base, and protecting the health, safety and general welfare of the people, as well as the natural beauty and aesthetic values, in the affected areas of this state.

Section 2. Definitions.) Wherever used or referred to in this Act, unless a different meaning clearly appears from the context:

1. "Reclaimed or reclaim" means conditioning areas affected by surface mining to make them suitable for any uses or purposes consistent with those enumerated in the statement of policy.
2. "Overburden" means all of the earth and other materials which lie above natural deposits of coal, clay, stone, sand, gravel, or other minerals, and also means such earth and other materials disturbed from their natural state in the process of surface mining.

3. "Surface mining" relates to the mining of coal, clay, stone, sand, gravel, or other minerals by removing the overburden lying above natural deposits thereof, and mining directly from the natural deposits thereby exposed.
4. "Operator" means any person, firm, association, cooperative, corporation, any department, agency, or instrumentality of the state, or any governmental subdivision thereof engaged in and controlling a surface mining operation.
5. "Pit" means a tract of land, from which overburden has been or is being removed for the purpose of surface mining.
6. "Final cut" means the last pit created in a surface-mined area.
7. "High wall" means that side of the pit adjacent to unmined land.
8. "Affected land" means the area of land from which overburden has been removed for surface mining of any mineral or upon which overburden or refuse has been deposited, or both.
9. "Refuse" means all waste material directly connected with the cleaning and preparation of minerals mined by surface mining.
10. "Ridge" means a lengthened elevation of overburden created in the surface mining process.
11. "Peak" means a projecting point of overburden created in the surface mining process.
12. "Commission" means the public service commission, or such department, bureau, or commission as may lawfully succeed to the powers and duties of said commission.
13. "Permit term" means a period of time beginning with the date upon which a permit is given for strip mining of lands under the provisions of this Act, and ending

with the expiration of the next succeeding three years.

Section 3. Necessity of License.) It shall be unlawful, after January 1, 1970, for any operator to engage in surface mining, in an area where the overburden shall exceed ten feet in depth, without first obtaining from the commission a permit so to do, in such form as is hereinafter provided.

Section 4. Application for License—Bond—Fee—Permit.) Any operator desiring to engage in surface mining, in an area where the overburden shall exceed ten feet in depth, shall make written application to the commission for a permit. Application for such permit shall be made upon a form furnished by the commission, which form shall contain a description of the tract or tracts of land and the estimated number of acres thereof to be affected by surface mining by the applicant in the next succeeding three years, which description shall include the section, township, range, and county in which the land is located and shall otherwise describe the land with sufficient certainty so that it may be located and distinguished from other lands, and a statement that the applicant has the right and power by legal estate owned to mine by surface mining and to reclaim the land so described.

Such application shall be accompanied by a bond or security to attach to the described lands from and after the time a permit is granted which shall meet the requirements of section 7 of this Act; and a fee computed as follows: For an area of ten acres or less to be affected during the permit term, a fee of twenty-five dollars and an amount equal to the amount of seven dollars and fifty cents multiplied by the number of acres to be affected between two and ten acres, inclusive; for an area of more than ten acres but not more than fifty acres to be affected during the permit term, a fee of one hundred dollars and an amount equal to the amount of three dollars and fifty cents multiplied by the number of acres to be affected between eleven and fifty acres, inclusive; for an area of more than fifty acres to be affected during the permit term, a fee of two hundred seventy-five dollars and an amount equal to the amount of two dollars and fifty cents multiplied by the number of acres to be affected in excess of fifty acres. Upon the receipt of such application, a bond or security and all fees due from the operator, the commission shall issue a permit to the applicant which shall entitle him during the permit term to engage in surface mining on the land therein described.

An operator desiring to have his permit amended to cover additional land may file an amended application with the commission. Upon receipt of the amended application, and such additional fee and bond or security as may be required under the provisions of this Act, the commission shall issue an amendment to the original permit covering the additional land described in the amended application.

An operator may withdraw any land covered by a permit, excepting affected land, by notifying the commission thereof, in which case the penalty of the bond or security filed by such operator pursuant to the provisions of this Act shall be reduced proportionately.

Where acreage for which a permit has been in effect is not mined, or where mining operations have not been completed thereon during the permit term, the permit as to such acreage shall be extended by the department on a year-to-year basis without payment of any additional fee.

Section 5. Duties of Operator.) Every operator to whom a permit is issued pursuant to the provisions of this Act may engage in surface mining during the permit term upon the lands described in the permit upon the performance of and subject to the following requirements with respect to such lands:

1. All ridges and peaks of land affected by surface mining within six hundred and sixty feet and which are visible from any public road maintained with public funds, public building or cemetery that is being maintained in a usable condition, shall be graded to a rolling topography traversable by machines necessary for maintenance in accordance with planned use, with slopes having no more than twenty-five percent grade; but, such slopes need not be reduced to less than the original grade of the overburden of that area prior to mining.
2. The operator shall construct earth dams, where lakes may be formed, in accordance with sound engineering practices if necessary to impound water, provided the formation of the lakes or ponds will not interfere with underground or other mining operations.
3. On all affected land which is to be afforested the

operator shall construct access roads through the areas; the roads shall not be less than twenty-five feet in width and shall be constructed so that the right-of-way limits will be not more than six hundred sixty yards apart, with road grades not to exceed twenty percent and all ridges and peaks to be afforested shall be struck off to a minimum width of twenty-four feet at the top.

4. On all affected land which is to be seeded to pasture the operator shall strike off all peaks or ridges to a minimum width of thirty-five feet at the top.
5. On all affected land which is to be used for crops including hay, the operator shall grade peaks and ridges to a slope of not more than twenty-five percent and fill valleys in such manner that the area can be traversed with farm machinery reasonably necessary for such use.
6. Surface mining operations that remove and do not replace the lateral support, unless mutually agreed upon by the operator and the adjacent property owner, shall not approach property lines, established right-of-way lines of any public roads, streets or highways closer than a distance equal to ten feet plus one and one-half times the depth of the excavation, except where consolidated material or materials of sufficient hardness or ability to resist weathering and to inhibit erosion or sloughing exists in the high wall, in which case the distance from the property line or any established right-of-way line, unless mutually agreed, shall not be closer than a distance equal to ten feet plus one and one-half times the depth from the natural ground surface to the top of the consolidated material or materials.
7. The operator shall submit to the commission no later than the first day of September during each year of the permit term, a map in a form acceptable to the commission showing the location of the pit or pits by section, township, range, and county, with such other description as will identify the land which the operator has affected by surface mining during such permit term and has completed mining operations thereon, with a

legend upon such map showing the number of acres of affected land.

8. A reclamation plan and map acceptable to the commission shall be submitted by the operator not later than the first day of December following the first year of the permit term. The operator's reclamation plan and the commission's approval or modification thereof shall be based upon the advice and technical assistance of the state soil conservation committee, the state game and fish department, the state forester, and other agencies or individuals having experience in foresting and reclaiming surface-mined lands with forest or agronomic or horticultural species, based upon scientific knowledge from research into reclaiming and utilizing forest and agronomic species on surface-mined lands. The operator's plan shall designate which parts of the affected land shall be reclaimed for forest, pasture, crop, horticultural, homesite, recreational, industrial, or other uses including food, shelter, and ground cover for wildlife and shall show the same by appropriate designation on the reclamation map. Any operator feeling aggrieved by the plan approved by the commission may request a hearing which shall be conducted in accordance with the provisions of chapter 28-32 of the North Dakota Century Code. The operator shall have the right of appeal in the manner prescribed therein.
9. The operator shall sow, set out, or plant upon the affected land described in the reclamation plan and map or maps, seeds, plants, cuttings of trees, shrubs, grasses, or legumes as shall be approved in writing by the commission.
10. All reclamation provided for hereunder shall be carried to completion by the operator prior to the expiration of three years after termination of the permit term, except that no planting of any kind shall be required to be made within depressed haulage roads or final cuts or any other area where pools or lakes may be formed by rainfall or drainage runoff from adjoining land.

Where natural weathering and leaching of any of such affected land fails to support plant growth at the end

of three years, the commission shall, at the request of the operator, extend the reclamation period from year to year for a period of five years from the termination of the permit term on the land in question. If further extension of the reclamation period is necessary to accomplish acceptable reclamation, such extension shall be made at the discretion of the commission, or the commission shall declare forfeiture of the surety bond or security on such land not satisfactorily reclaimed; however, after the second seeding or planting of any affected area, the area shall be deemed reclaimed.

11. If the operator is unable to acquire sufficient planting stock of desired tree species from state nurseries or any nursery within the state, or acquire such tree species elsewhere at comparable prices, the commission shall grant the operator an extension of time until planting stock is available to plant such land as originally planned, or shall permit the operator to select an alternate method of reclamation in keeping with the provisions of this Act.
12. Upon the application of the operator, the commission in its discretion may allow the modification of an approved reclamation plan, provided that justice requires the modification, and the modified plan will carry out the purposes of this Act.

Section 6. Entry upon Lands for Inspection.) The commission, or its accredited representatives, may enter upon lands of the operator at all reasonable times for the purpose of inspection, to determine whether the provisions of this Act have been complied with.

Section 7. Bond of Operator—Amount—Sufficiency of Surety—Violations—Compliance.) Any bond herein provided to be filed with the department by the operator shall be in such form as the commission shall prescribe, payable to the state of North Dakota, conditioned that the operator shall faithfully perform all requirements of this Act and comply with all rules of the commission made in accordance with the provisions of this Act. Such bond shall be signed by the operator as principal, and by a good and sufficient corporate surety, licensed to do business in North Dakota, as surety. The penalty of such bond shall be two hundred dollars for each acre or portion thereof of

land to be affected by surface mining in an area where the overburden shall exceed ten feet in depth, for the ensuing permit term. In lieu of such bonds, the operator may deposit cash or government securities or both with the commission in an amount equal to that of the required surety bond on conditions as above prescribed. The penalty of the bond or amount of cash and securities shall be increased or reduced from time to time as provided in this Act. Such bond or security shall be in effect and subject to forfeiture in accordance with this Act from and after the time a permit is granted by the commission until the mined acreages have been reclaimed, approved and released.

A bond filed as above prescribed shall not be canceled by the surety unless it shall give not less than ninety days' notice to the commission, and in no event shall a bond be canceled on lands that at the time of cancellation have become affected lands under the provisions of this Act.

If the license to do business in North Dakota of any surety upon a bond filed with the commission pursuant to this Act shall be suspended or revoked, the operator, within thirty days after receiving notice thereof from the commission, shall substitute for such surety a good and sufficient corporate surety licensed to do business in North Dakota. Upon failure of the operator to make substitution of surety as herein provided, the commission shall have the right to suspend the permit of the operator until such substitution has been made.

The commission shall give written notice to the operator of any violation of this Act or noncompliance with any of the rules and regulations promulgated by the commission hereunder and if corrective measures, approved by the commission, are not commenced, or agreed to within ninety days, the commission may proceed as provided in section 9 of this Act to request forfeiture of the bond or security. The amount of forfeiture shall be two hundred dollars for each acre or portion thereof of affected land. Such forfeiture shall fully satisfy all obligations of the operator to reclaim the affected land under the provisions of this Act.

The commission shall have the power to reclaim, in keeping with the provisions of this Act, any affected land with respect to which a bond has been forfeited.

Whenever an operator shall have completed all requirements

under the provisions of this Act as to any affected land, he shall notify the commission thereof. If the commission determines that the operator has completed reclamation requirements and achieved results appropriate to the use for which the area was reclaimed, the commission shall release the operator from further obligations regarding such affected land and the penalty of the bond shall be reduced proportionately.

Section 8. Fees and Forfeitures—Deposit.) All fees and forfeitures collected under the provisions of this Act shall be deposited in the general fund in the state treasury.

Section 9. Bond Forfeiture Proceedings—Prerequisites.) The commission may institute proceedings to have the bond of the operator forfeited for violation by the operator of any of the provisions of this Act or for noncompliance with any lawful rule or regulation promulgated by the commission thereunder.

Section 10. Administrative Agencies Practice Act to Apply To This Act—Rules and Regulations.) Chapter 28-32 of the North Dakota Century Code shall apply to this Act except as otherwise provided, and the commission may adopt and promulgate rules and regulations respecting the administration of this Act thereunder.

Section 11. State Mine Inspector Shall Be Administrative Officer.) The state mine inspector is designated as the chief administrative officer under this Act, and shall be responsible to the commission for carrying out its policies and directives in its administration. The state mine inspector shall devote an appropriate portion of his time to fulfilling his duties, and shall provide such office space as is necessary from his existing facilities.

Section 12. Penalties.) Any person required by this Act to have a permit who engages in surface mining in an area where the overburden shall exceed ten feet in depth, without previously securing a permit to do so as prescribed by this Act, is guilty of a misdemeanor, and on conviction thereof shall be fined not less than fifty dollars nor more than one thousand dollars. Each day of operation without the permit required by this Act shall be deemed a separate violation.

Notwithstanding any other provision of this Act, the com-

mission may by injunctive procedures, without bond or other undertaking, proceed against any operator found to be surface mining without a permit or in violation of the provisions of this Act, or the rules and regulations promulgated thereunder. No liability whatsoever shall accrue to the commission or its authorized representative in proceeding against any operator pursuant to this section.

Section 13. Cooperation with Federal and State Agencies.)

The commission shall have the authority to cooperate with and receive technical and financial assistance from the United States, state, or any department, agency or officer thereof, for any purposes relating to the reclamation of any affected lands.

Section 14. Appropriation.) There is hereby appropriated out of any moneys in the general fund of the state treasury, not otherwise appropriated, the sum of \$5,000.00, or so much thereof as may be necessary, to the public service commission for the purpose of administering the provisions of this Act for the biennium beginning July 1, 1969, and ending June 30, 1971. June 30, 1971.

Approved March 26, 1969.