

Fifty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1342

Introduced by

Representatives Wald, Brown, Drovdal, Wardner

Senators Christmann, Urlacher

1 A BILL for an Act to create and enact a new subsection to section 38-08.1-01 of the North
2 Dakota Century Code, relating to definitions for purposes of geophysical exploration; and to
3 amend and reenact sections 38-08.1-02, 38-08.1-03.1, subsections 1, 2, and 7 of section
4 38-08.1-04, subsections 1 and 5 of section 38-08.1-04.1, sections 38-08.1-04.2, 38-08.1-05,
5 subsections 2 and 3 of section 38-08.1-06, and section 38-08.1-06.1 of the North Dakota
6 Century Code, relating to geophysical exploration requirements.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1.** A new subsection to section 38-08.1-01 of the 1995 Supplement to the
9 North Dakota Century Code is created and enacted as follows:

10 "Commission" means the industrial commission.

11 **SECTION 2. AMENDMENT.** Section 38-08.1-02 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **38-08.1-02. Enforcement by commission - Persons required to comply with**
14 **chapter.** Notwithstanding any other provision of this chapter, the commission is the primary
15 enforcement agency governing geophysical exploration in this state. Any person in this state
16 engaged in geophysical exploration or engaged as a subcontractor of a person engaged in
17 geophysical exploration shall comply with ~~the following provisions of this chapter; provided,~~
18 ~~however, that compliance with the provisions of this chapter by a crew or its employer~~
19 ~~constitutes compliance herewith by that person who has engaged the service of such the crew,~~
20 or its employer, as an independent contractor.

21 **SECTION 3. AMENDMENT.** Section 38-08.1-03.1 of the North Dakota Century Code
22 is amended and reenacted as follows:

23 **38-08.1-03.1. Surety bond - Certificate - Release.**

- 1 1. A person, including contractors and subcontractors, desiring to engage in
2 geophysical exploration in this state shall ~~also~~ file with the ~~industrial~~ commission a
3 good and sufficient surety bond in the amount of ~~fifteen thousand dollars for a~~
4 ~~single geophysical crew or a blanket surety bond in the amount of thirty~~ fifty
5 ~~thousand dollars for all geophysical crews operating within the state for such~~
6 ~~person.~~ Each person, including contractors and subcontractors, drilling or plugging
7 a seismic shot hole must file with the commission a good and sufficient surety bond
8 in the amount of ten thousand dollars. The bond must be in a form prescribed by
9 the ~~industrial~~ commission and must indemnify all owners of property within the
10 state, including the state and its political subdivisions, against physical damages to
11 property which may result from geophysical exploration and the plugging of drill
12 holes. The bond must cover all geophysical exploration and plugging operations
13 conducted within one year of the date the bond is issued and must be
14 automatically renewed unless the ~~industrial~~ commission and the person covered
15 ~~thereby by the bond~~ receive notice sixty days ~~prior to~~ before any anniversary date
16 of the surety's intent not to renew the bond. ~~In the event~~ If the surety does not
17 renew the bond, the surety's liability under the bond ceases six years from the date
18 that geophysical exploration or reclamation covered by the bond was last
19 conducted in the state. A person required to post a bond under this subsection
20 may post cash or a certificate of deposit in lieu of the bond under rules adopted by
21 the commission.
- 22 2. The bond must remain on file with the ~~industrial~~ commission so long as the
23 exploration or plugging operations covered by the bond ~~is~~ are carried on or
24 engaged in within the state, plus an additional six years thereafter; provided,
25 however, that the aggregate liability of the surety may in no event exceed the
26 amount of the bond.
- 27 3. A bond filed pursuant to this section is the sole bond required of persons engaging
28 in geophysical exploration and plugging operations within ~~the this state of North~~
29 ~~Dakota and supersedes any bonds which may be required by the individual~~
30 ~~counties.~~ Upon compliance with ~~the provisions of~~ sections 38-08.1-01 through
31 38-08.1-05, any bond ~~which~~ that may previously have been filed in any county

1 ~~shall~~ must be released; provided, however, that the surety of any such bond
2 remains liable under its contract for all actions of its principal ~~prior to~~ before the
3 date of compliance with this section.

4 4. Upon filing the bond required by this section and presenting a certificate of
5 authority to transact business in this state issued pursuant to chapter 10-22, a
6 certificate of incorporation issued pursuant to chapter 10-19.1, or some other
7 certificate issued by the secretary of state showing the name of the person
8 designated as resident agent for service of process, the ~~industrial~~ commission shall
9 issue to the person desiring to engage in geophysical exploration or plugging
10 operations or any subcontractor of that person a certificate showing that the bond
11 has been filed and showing the name and address of the surety company and the
12 name of the person designated resident agent for service of process.

13 5. The proceeds of a surety bond become the property of the commission or the cash
14 or certificate of deposit posted in lieu of a surety bond may not be returned to that
15 person if the principal or person posting the bond, cash, or certificate of deposit
16 fails to comply with this chapter and rules adopted by the commission under this
17 chapter. This must be determined by the commission after notice and hearing in
18 accordance with rules adopted by the commission. Notice of the hearing must be
19 given to the principal and surety on the bond or to the person posting the cash or
20 certificate of deposit by mailing a copy of the notice of hearing and a copy of a
21 complaint, stating the grounds for forfeiture to them, filed by the commission. This
22 must be done by certified mail, return receipt requested, and addressed to their last
23 known address listed with the commission. If the principal or surety or person
24 posting the cash or certificate of deposit has a defense to, or otherwise wishes to
25 contest the complaint of the commission, that person must file a written statement
26 or answer setting forth the defense with the commission at least three business
27 days before the commission hearing. Any defense or reason for contesting the
28 complaint is waived if that person fails to do so. The commission may treat the
29 failure to file a defense or reason to contest the complaint or the failure to appear
30 at the hearing as default by the party. If the commission determines the principal
31 on the bond or the person posting the cash or certificate of deposit as security has

1 complied with this chapter and rules adopted by the commission under this
2 chapter, including the proper plugging of wells and seismic holes and reclamation
3 of the surrounding affected area, with respect to all operations secured by the
4 bond, the commission shall release the obligation of the bond or return the cash or
5 certificate of deposit upon its next security date.

6 **SECTION 4. AMENDMENT.** Subsections 1, 2, and 7 of section 38-08.1-04 of the
7 North Dakota Century Code are amended and reenacted as follows:

- 8 1. The name, address, and telephone number of the person intending to engage in
9 geophysical exploration or plugging operations and the name and telephone
10 number of any local representative who may be contacted by the ~~board of county~~
11 ~~commissioners~~ commission concerning geophysical exploration activities.
- 12 2. The name, address, and telephone number of any subcontractors, including drilling
13 and plugging subcontractors, to be employed by the person intending to conduct
14 geophysical exploration or plugging operations.
- 15 7. A fee ~~to be determined by the board of county commissioners based on the~~
16 ~~anticipated actual expenses of administering and enforcing this chapter~~ of up to
17 one hundred dollars.

18 **SECTION 5. AMENDMENT.** Subsections 1 and 5 of section 38-08.1-04.1 of the North
19 Dakota Century Code are amended and reenacted as follows:

- 20 1. Upon filing a complete application for permit to explore pursuant to section
21 38-08.1-04, the board of county commissioners or its designee may issue to any
22 person desiring to engage in geophysical exploration a "geophysical exploration
23 permit" ~~subject to such other conditions or restrictions as may be provided by~~
24 ~~county ordinances established pursuant to chapter 11-33.~~ A person may not
25 engage in geophysical exploration activities in any county without having first
26 obtained a geophysical exploration permit from the board of county commissioners.
- 27 5. The permit or a photostatic copy thereof must be carried at all times by a member
28 of the crew during the period of geophysical exploration and must be exhibited
29 upon demand of the landowner or tenant operator or ~~county~~ or state official or
30 respective surface owner.

1 **SECTION 6. AMENDMENT.** Section 38-08.1-04.2 of the North Dakota Century Code
2 is amended and reenacted as follows:

3 **38-08.1-04.2. County ~~commission~~ to notify industrial commission of issuance of**
4 **permit.** The board of county ~~commission~~ commissioners of any county in which a permit is
5 issued shall immediately forward notice of the issuance of a permit to the ~~industrial~~ commission.
6 The ~~county~~ commission may revoke the permit of any person engaging in geophysical
7 exploration upon a showing that that person has violated ~~county ordinances or any other~~
8 applicable requirement pertaining to geophysical exploration. The ~~county~~ commission shall
9 notify that person, by the most effective written means, of the permit revocation. Upon
10 notification, the person engaging in geophysical exploration may, within fifteen days, request a
11 hearing before the ~~board of county commissioners, at its next regular or special meeting,~~
12 commission on the matter. The ~~board of county commissioners~~ commission shall either affirm,
13 modify, or deny the permit revocation. The ~~board of county commissioners~~ commission may
14 also suspend the permit temporarily in those cases where climate and physical conditions are
15 such as to cause harm or damage to roads, bridges, pastures, crops, or similar factors that
16 could cause undue stress to the normal physical well-being within the county. However, the
17 permit suspension time period may not be included in the one-year permit period.

18 **SECTION 7. AMENDMENT.** Section 38-08.1-05 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **38-08.1-05. Duty to file record showing where work performed - Request to file**
21 **location of worksite - Complaint of property owner.** Within thirty days following any
22 calendar month in which geophysical exploration is begun by any person within this state, such
23 person shall file with the ~~county~~ commission ~~in each county in which work is begun,~~ and shall
24 send to the owner or occupier of any land upon which work is begun, a record showing the
25 township, range, section, and quarter section in the county in which such work was performed
26 and the date upon which such work was commenced. Upon written request by the owner or
27 occupier of the land upon which the work has occurred, any person who has performed work
28 within the state shall send to such landowner or occupier a record showing the date and a legal
29 description of the worksite sufficiently exact to permit location and identification of the site. This
30 must include the actual shot point location and the amount of explosive charge, if any, in each
31 drill hole. The request must be based upon a written complaint of the property owner or

1 occupier that physical damage to such property has occurred or is reasonably believed to have
2 occurred by reason of the work. The written complaint must designate the name and address
3 of the complaining person and shall state the approximate date of the alleged damage. The
4 required record of operations in response to the written demand therefor must be supplied
5 within ten days from the date on which such written demand is received.

6 **SECTION 8. AMENDMENT.** Subsections 2 and 3 of section 38-08.1-06 of the North
7 Dakota Century Code are amended and reenacted as follows:

- 8 2. The seismic company responsible for the plugging and abandonment of seismic
9 shot holes shall notify the ~~board of county commissioners~~ commission in writing
10 that it intends to plug and abandon the drill hole. The required notice must be
11 received by the ~~board~~ commission at least twenty-four hours ~~prior to~~ before the
12 time plugging activities are scheduled to begin. The notice must include the date
13 and time the activities are expected to commence, the location by section,
14 township, and range of the holes to be plugged, and the name and telephone
15 number of the person in charge of the plugging operations. A copy of the notice
16 must be sent to the landowner or lessee at the same time it is sent to the ~~board of~~
17 ~~county commissioners~~ commission. The seismic company shall notify the ~~board of~~
18 ~~county commissioners~~ commission in writing upon completion of the plugging
19 operation. Any person violating this subsection is guilty of an infraction.
- 20 3. All seismic shot holes must be plugged as soon after being used as reasonably is
21 practicable; however, they may not remain unplugged for a period of more than
22 thirty days unless, upon application, the ~~board of county commissioners~~
23 commission grants an extension which may not exceed ninety days. All seismic
24 shot holes must be temporarily capped during the period between drilling and final
25 plugging.

26 **SECTION 9. AMENDMENT.** Section 38-08.1-06.1 of the North Dakota Century Code
27 is amended and reenacted as follows:

28 **38-08.1-06.1. Plugging requirements - Rules - Liability for damage.**

- 29 4. ~~Except as provided in this section, all~~ All seismic holes must be: plugged in
30 accordance with rules adopted by the commission. The commission shall review

and revise its rules governing plugging requirements as technology in the field evolves.

a. ~~Filled with a bentonite water slurry by hose injection and displacement upwards from the bottom up. The slurry mixture must have a marsh funnel viscosity of sixty seconds or greater per quart [0.95 liter] (subject to field verification on site), and must contain a minimum of twenty eight pounds [12.70 kilograms] of commercial plugging bentonite per forty two gallons [158.99 liters] of water. The remainder of the hole must be filled with nonmetallic perma plug, imprinted or tagged with the name and permit number of the person conducting the geophysical exploration, must be set four feet [1.22 meters] below the surface and, above the perma plug, native surface material must be used to fill the seismic hole to the surface; or~~

b. ~~Preplugged using coarse ground, sodium bentonite chunks of sizes not less than three eighths of an inch [9.53 millimeters] nor greater than seven eighths of an inch [22.23 millimeters] in diameter, which have not been chemically treated. Sodium bentonite chunks in packages that have moisture contents lower than fifteen percent or higher than nineteen percent, or with greater than fifteen percent inert solids may not be used. Under this subdivision, a seismic hole must be preplugged with a minimum of one hundred pounds [45.36 kilograms] of sodium bentonite for each fifty feet [15.24 meters] of hole depth, placed above the explosive charge, with the remainder of the hole plugged with drill cuttings to within four feet [1.22 meters] of the surface. Backfill shot holes must be filled with sodium bentonite to four feet [1.22 meters] below the surface and with a filling of native material to the surface.~~

2. ~~Seismic holes that penetrate artesian water deposits must be stabilized with a cement slurry from the maximum depth attainable up to approximately four feet [1.22 meters] below the ground surface or with sodium bentonite chunks pursuant to subdivision b of subsection 1 of this section, and stabilization must occur within a reasonable length of time. The cement slurry or sodium bentonite chunks must be of sufficient density to contain water to their native strata. The remainder of the hole must be filled with native surface material.~~

- 1 3. ~~Seismic holes that penetrate artesian water deposits and encounter alkaline or~~
2 ~~saline waters must be plugged immediately as set forth in subsection 1 except that~~
3 ~~a heavier slurry mixture must be used with the addition of inorganic drying or~~
4 ~~stabilizing chemicals such as calcium chloride, sodium bicarbonate, or soda ash to~~
5 ~~assist in the effective plugging and stability of the bentonite column in the hole.~~
6 4. The seismic company is liable for all damages resulting from failure to comply with
7 rules adopted by the commission pursuant to this section.