

MINING AND GAS AND OIL PRODUCTION

CHAPTER 284

HOUSE BILL NO. 1023
(H. Johnson, Mertens, Thorsgard)
(From Legislative Council Study)

NOTICE OF LEASING OF STATE MINERAL RIGHTS

AN ACT to amend and reenact section 38-09-15 of the North Dakota Century Code, relating to the notice of the leasing of certain state mineral rights.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 38-09-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-09-15. PUBLIC OFFERING OF LEASES - STATE.) Before leasing any land or interest therein or any mineral rights reserved therein, the state of North Dakota or any of its departments or agencies shall first advertise the lands offered for lease in the official paper of the county in which such lands are situated, and in some newspaper of general circulation published in the city of Bismarck, said advertisement to be made by publication in the official newspaper of said county once each week for at least two weeks, the last publication to be at least ten days before the day of such leasing. The leasing shall be held at the office of the department or agency owning or controlling such lands and the notice as published shall contain a statement showing the legal description of the lands to be leased, the time and place where the leasing will be held and such other information as may be deemed by such state or department or agency thereof to be applicable. Should publication of any notice of the leasing of mineral rights be inadvertently omitted by any newspaper or should such notice as published contain typographical errors, the state or department or agency may, in its discretion, proceed with the scheduled leasing where it appears that the omission or error is not prejudicial to the state's interest.

Approved February 25, 1973

CHAPTER 285

SENATE BILL NO. 2091
(Stroup, Barth, Christensen, Rait, Roen)

RECLAMATION OF STRIP MINED LAND

AN ACT to create and enact subsections 14, 15, and 16 of section 38-14-02, sections 38-14-03.1, 38-14-04.1, 38-14-05.1, and 38-14-07.1 of the North Dakota Century Code, relating to definitions, the powers of the public service commission in the regulation of strip coal mining, notice provisions, and limitations in granting permits; to amend and reenact sections 38-14-04, 38-14-05, 38-14-07, 38-14-08, 38-14-12, and 38-14-13 of the North Dakota Century Code, relating to license applications, duties of the operator, bond of the operator, the deposit of forfeitures and penalties, and cooperation with federal and state agencies; and to repeal section 38-14-11 of the North Dakota Century Code, relating to the administrative officer in strip coal mining regulation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) Subsections 14, 15, and 16 of section 38-14-02 of the North Dakota Century Code are hereby created and enacted to read as follows:

14. "Original contour" means a terrain resembling, and similar in nature to, the terrain existing prior to commencement of mining operations.
15. "Rolling topography" means backfilled and graded at an angle not exceeding that of the approximate original grade of the land.
16. "Topsoil" means that material (normally the A and, in some cases, the upper portion of the B horizon) which, based upon an official national cooperative soils survey, is acceptable for respreading on the surface of regraded areas to provide a medium for plant growth.

SECTION 2.) Section 38-14-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-14-03.1. POWERS OF THE COMMISSION.) The commission shall have the following powers:

1. To exercise general supervision and administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder;
2. To encourage and conduct training, research, experiments, and demonstrations, and to collect and disseminate information relating to strip mining and reclamation of lands and waters affected by strip mining;
3. To adopt rules and regulations with respect to the filing of reports, the issuance of permits, and other matters of procedure and administration;
4. To examine and act upon all plans and specifications submitted by the operator for the method of operation, backfilling, grading, and for the reclamation of the area of land affected by his operation;
5. To make investigations or inspections which may be deemed necessary to ensure compliance with any provision of this chapter;
6. To order the suspension of any permit for failure to comply with any of the provisions of this chapter or any regulations adopted pursuant thereto; and
7. To order the stopping of any operation that is started without first having secured a permit and approval of the plan as required by this chapter.

SECTION 3. AMENDMENT.) Section 38-14-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-04. 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. The 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 during the permit term, which term shall extend for the next succeeding three years. The 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 aid in meeting the requirements of section 38-14-07; 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 ten dollars 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 ten dollars 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 ten dollars 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 may 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 chapter, the commission may 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 chapter 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. The application for a permit shall be deemed approved if not denied within thirty days after the filing thereof. If the permit is not approved, the commission shall state its reasons for disapproval, together with the requirements for approval.

SECTION 4.) Section 38-14-04.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-14-04.1. NOTICE.) Upon receipt of an application for a permit, the commission shall publish notice of such application and the area to be covered by it in the official county newspaper of the county in which the area lies.

SECTION 5. AMENDMENT.) Section 38-14-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-05. DUTIES OF THE OPERATOR.) Every operator to whom a permit is issued pursuant to the provisions of this chapter shall file with the commission a reclamation plan, together with geologic, topographic, and soils maps acceptable to the commission, before December first of the year in which the permit was issued. After approval of the reclamation plan by the commission, the operator 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. The operator shall regrade the area to approximately the original contour or rolling topography unless a different topography shall be required for an intended higher use.
2. The operator shall spread topsoil or approved surface material within the permit area over the regraded area to a depth of two feet; provided, however, that if two feet of such material is not available within the permit area, all topsoil or approved surface material that is available shall be spread over the regraded area.
3. The operator shall impound, drain, or treat all runoff water so as to reduce soil erosion, damage to agricultural lands, and pollution of streams and other waters.
4. All final cuts and end walls must be backsloped to an angle not exceeding thirty-five degrees from the horizontal; provided, however, that an operator may propose alternative plans other than backfilling where a water impoundment or other special topographic feature is desired, if such restoration will be consistent with the purposes of this chapter.
5. The operator shall remove or bury all metal, lumber, equipment, or other refuse resulting from the operation. No operator shall throw, dump or pile, or permit the throwing, dumping, piling, or otherwise placing of any overburden, stones, rocks, coal, particles of coal, earth, soil, dirt, debris, trees, wood, logs, or other materials or substances of any kind or nature beyond or outside the area of land which is under permit and for which bond has been posted; nor shall any operator place any of the foregoing substances in such a way that normal erosion or slides brought about by natural causes will permit the same to go beyond or outside the area of land which is under permit and for which bond has been posted.
6. After backsloping, surface mining operations shall not approach property lines, established right-of-way lines of any public roads, streets, or highways closer

than a distance of twenty feet.

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. 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. In addition, the operator and the commission shall have the landowner designate his preference for a reclamation plan covering his affected land. 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. The plan shall be deemed approved if not disapproved or modified by the commission within sixty days of its receipt thereof. If the plan is disapproved or modified, the commission shall state the reasons for such disapproval or modification, together with the requirements for approval.
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 or 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. Where affected land fails to support approved perennial plant species, except in cases of annual crop production or other approved uses, 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.

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 chapter.
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 chapter.
13. Until reclamation has been accomplished to the satisfaction of the commission, control of the affected lands shall remain in the agency engaged in the reclaiming activity.

SECTION 6.) Section 38-14-05.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-14-05.1. LIMITATIONS.) The legislature finds that there are certain areas in the state of North Dakota which are impossible to reclaim either by natural growth or by technological activity, and that if surface mining is conducted in these certain areas, such operations may naturally cause stream pollution, landslides, flooding, the permanent destruction of land for agricultural purposes without approved rehabilitation for other uses, the permanent destruction of consequential aesthetic values, the permanent destruction of consequential recreational areas and the future use of the area and surrounding areas, thereby destroying or impairing the health and property rights of others, and, in general, creating hazards dangerous to life and property so as to constitute an imminent and inordinate peril to the welfare of the state, and that such areas shall not be mined by the surface mining process.

Therefore, authority is hereby vested in the commission to delete certain areas from all surface mining operations:

1. No application for a permit shall be approved by the commission if there is found on the basis of the information set forth in the application or from information available to the commission and made available to the applicant that the requirements of this chapter or rules and regulations

hereafter adopted will not be observed or that there is not probable cause to believe that the proposed method of operation, backfilling, grading, or reclamation of the affected area can be carried out consistent with the purpose of this chapter.

2. If the commission finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the state of North Dakota with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in stream beds, landslides, water pollution, or permanent destruction of land for agricultural purposes without approved rehabilitation for other uses cannot feasibly be prevented, the commission may delete such part of the land described in the application upon which such overburden exists.
3. If the commission finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, then it shall delete such areas from the permit application before it can be approved.
4. The commission shall not give approval to strip mine where the operation will adversely affect a state, national, or interstate park unless adequate screening and other measures as approved by the commission are incorporated into the permit application.

Whenever the commission finds that ongoing surface mining operations are causing or are likely to cause any of the conditions set forth in the first paragraph of this section, it may order immediate cessation of such operations and take such other action or make such changes in the permit as it may deem necessary to avoid said described conditions.

SECTION 7. AMENDMENT.) Section 38-14-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-07. 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 chapter and comply with all rules of the commission made in accordance with the provisions of this chapter. 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 five 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 chapter. Such bond or security shall be in effect and subject to forfeiture in accordance with this chapter 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 chapter.

If the license to do business in North Dakota of any surety upon a bond filed with the commission pursuant to this chapter 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 chapter 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 38-14-09 to request forfeiture of the bond or security. The amount of forfeiture shall be five 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 chapter. However, any operator who refuses or willfully fails to comply with the provisions of this chapter shall be ineligible for any further mining permits, and shall cease all mining operations in this state within thirty days after the forfeiture.

The commission shall have the power to reclaim, in keeping with the provisions of this chapter, 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 chapter 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.) Section 38-14-07.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-14-07.1. HEARING AND APPEAL.) Any person claiming to be aggrieved or adversely affected by any rule and regulation or order of the commission or its failure to enter an order may request a hearing by the commission. The hearing shall be conducted pursuant to chapter 28-32. There shall be a right of appeal to the district court from any adverse ruling by the commission.

SECTION 9. AMENDMENT.) Section 38-14-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-08. FEES AND FORFEITURES - DEPOSIT.) All fees and forfeitures collected under the provisions of this chapter shall be deposited in the state treasury and credited to a special account to be designated as the strip mining and reclamation fund. This fund shall be available to the commission and, subject to legislative appropriation, may be expended for the administration and enforcement of this chapter and for the reclamation of land affected by strip mining operations.

SECTION 10. AMENDMENT.) Section 38-14-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-12. PENALTIES.) Any person required by this chapter 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 chapter, 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 chapter shall be deemed a separate violation.

Any person who knowingly and willfully violates any regulation issued or approved pursuant to this chapter or makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or who willfully falsifies, tampers with, or knowingly and willfully renders inaccurate, any monitoring device or method required to be maintained under this chapter, shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment.

Notwithstanding any other provision of this chapter, the commission 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 chapter, 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 11. AMENDMENT.) Section 38-14-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-13. 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, any state, or any department, agency or officer thereof, and to file such reports as required by federal law for any purposes relating to the reclamation of any affected lands.

SECTION 12. REPEAL.) Section 38-14-11 of the North Dakota Century Code is hereby repealed.

Approved March 29, 1973