

# MINING AND GAS AND OIL PRODUCTION

## CHAPTER 394

SENATE BILL NO. 2156  
(Committee on Natural Resources)  
(At the request of the Industrial Commission)

### NATURAL GAS WELL STATUS DETERMINATIONS

AN ACT to authorize the industrial commission or its designee to make natural gas well status determinations and findings pursuant to the Natural Gas Policy Act of 1978 and to make oil well status determinations and findings pursuant to any future federal legislation or rules; and declaring an emergency.

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

SECTION 1. NATURAL GAS WELL STATUS DETERMINATIONS AND FINDINGS.) The industrial commission or its designee is hereby authorized to make natural gas well status determinations and findings in accordance with the Natural Gas Policy Act of 1978 and subsequent amendments thereto, rules and regulations of the federal energy regulatory commission now or hereinafter promulgated, and such rules and regulations as the industrial commission may promulgate. The right of appeal from such determinations shall be as specified in the Natural Gas Policy Act of 1978 and subsequent amendments thereto. In the event that similar federal legislation or federal rules are adopted that require or permit oil well status determinations and findings by a state regulatory authority, the industrial commission or its designee is hereby designated as the state regulatory authority and authorized to make such determinations and findings in accordance with such legislation or rules.

SECTION 2. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 13, 1979

## CHAPTER 395

HOUSE BILL NO. 1180  
(Committee on Natural Resources)  
(At the request of the Industrial Commission)

## INDUSTRIAL COMMISSION EMERGENCY RULES

AN ACT to amend and reenact subsection 3 of section 38-08-11 of the North Dakota Century Code, relating to emergency rules of the industrial commission.

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

SECTION 1. AMENDMENT.) Subsection 3 of section 38-08-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. When an emergency requiring immediate action is found to exist, the commission is authorized to issue an emergency order without notice or hearing, which shall be effective upon promulgation. No emergency order shall remain effective for more than ~~fifteen~~ forty days.

Approved March 3, 1979

## CHAPTER 396

HOUSE BILL NO. 1198  
(Representatives Murphy, Backes, Richard)  
(Senator Jacobson)

### OIL AND GAS PRODUCTION DAMAGE COMPENSATION

AN ACT to provide for the award of damages for harm caused by activities associated with the exploration for, the development, and production of oil and gas.

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

SECTION 1. LEGISLATIVE FINDINGS.) The legislative assembly finds the following:

1. It is necessary to exercise the police power of the state to protect the public welfare of North Dakota which is largely dependent on agriculture, and to protect the economic well-being of individuals engaged in agricultural production.
2. Exploration for and development of oil and gas reserves in this state interferes with the use, agricultural or otherwise, of the surface of certain land.
3. Owners of the surface estate and other persons should be justly compensated for injury to their persons or property and interference with the use of their property occasioned by oil and gas development.

SECTION 2. PURPOSE AND INTERPRETATION.) It is the purpose of this Act to provide the maximum amount of constitutionally permissible protection to surface owners and other persons from the undesirable effects of development of minerals. This Act is to be interpreted in light of the legislative intent expressed herein. Sections 4 and 5 of this Act shall be interpreted to benefit surface owners, regardless of whether the mineral estate was separated from the surface estate and regardless of who executed the document which gave the mineral developer the right to conduct drilling operations on the land. Sections 6 through 10 of this Act shall be interpreted to benefit all persons.

SECTION 3. DEFINITIONS.) In this Act, unless the context or subject matter otherwise requires:

1. "Agricultural production" means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, whether or not the animals are to be sold commercially.
2. "Drilling operations" means the exploration for or drilling of an oil and gas well which requires entry upon the surface estate and was commenced subsequent to June 30, 1979, and the production operations ensuing therefrom.
3. "Mineral developer" means the person who acquires the mineral estate or lease for the purpose of extracting or using the minerals for nonagricultural purposes.
4. "Mineral estate" means an estate in or ownership of all or part of the minerals underlying a specified tract of land.
5. "Minerals" means oil and gas.
6. "Surface estate" means an estate in or ownership of the surface of a particular tract of land.
7. "Surface owner" means the person who has possession of the surface of the land either as an owner or as a tenant.

SECTION 4. SURFACE DAMAGE AND DISRUPTION PAYMENTS.) The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner for loss of agricultural production and income, lost land value, and lost value of improvements caused by drilling operations. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. When determining damages, consideration shall be given to the period of time during which the loss occurs and the surface owner may elect to be paid damages in annual installments over a period of time; except that the surface owner shall be compensated for harm caused by exploration only by a single sum payment. The payments contemplated by this section shall only cover land directly affected by drilling operations. Payments under this section are intended to compensate the actual surface owner for damage and disruption; any reservation or assignment of such compensation apart from the surface estate except to a tenant of the surface estate is prohibited.

SECTION 5. NOTICE OF DRILLING OPERATIONS.) Except for exploration activities governed by chapter 38-08.1, the mineral developer shall give the surface owner written notice of the drilling operations contemplated. This notice shall be given to the record surface owner at his address as shown by the records of the county register of deeds at the time the notice is given. This notice shall sufficiently disclose the plan of work and operations

to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. Included with this notice shall be a form prepared by the state geologist advising the surface owner of his rights and options under the Act.

SECTION 6. OTHER RESPONSIBILITIES OF MINERAL DEVELOPER.) The mineral developer shall be responsible for all damages to person or property, real or personal, resulting from the lack of ordinary care by the mineral developer. The mineral developer shall also be responsible for all damages to person or property, real or personal, resulting from a nuisance caused by drilling operations.

SECTION 7. NOTIFICATION OF INJURY.) Any person, to receive compensation, under sections 8 and 9, shall notify the mineral developer of the damages sustained by the person within two years after the injury occurs or would become apparent to a reasonable man.

SECTION 8. AGREEMENT - OFFER OF SETTLEMENT.) Unless both parties provide otherwise by written agreement, within sixty days after the mineral developer receives notice of damages the mineral developer shall make a written offer of settlement to the person seeking compensation for the damages. The person seeking compensation may accept or reject any offer so made.

SECTION 9. REJECTION - LEGAL ACTION - FEES AND COSTS.) If the person seeking compensation receives a written rejection, rejects the offer of the mineral developer, or receives no reply, that person may bring an action for compensation in the court of proper jurisdiction. If the amount of compensation awarded by the court is greater than that which had been offered by the mineral developer, the court shall award the person seeking compensation reasonable attorney fees and any costs assessed by the court.

SECTION 10. APPLICATION OF ACT.) The remedies provided by this Act shall not preclude any person from seeking other remedies allowed by law. This Act does not apply to the operation, maintenance, or use of a motor vehicle upon the highways of this state as these terms are defined in section 39-01-01.

Approved April 7, 1979

## CHAPTER 397

HOUSE BILL NO. 1250  
(Committee on Natural Resources)  
(At the request of the Industrial Commission)

## SUBSURFACE MINERAL REGULATION

AN ACT to amend and reenact section 38-12-01, section 38-12-02 and section 38-12-03 of the North Dakota Century Code, relating to subsurface mineral regulation.

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

SECTION 1. AMENDMENT.) Section 38-12-01 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-12-01. DEFINITIONS.) As used in this chapter, unless the context otherwise requires:

1. "Subsurface minerals" means and includes all naturally occurring elements, and their compounds, natural mineral salts of boron, bromine, calcium, fluorine, helium, iodine, lithium, magnesium, nitrogen, phosphorus, potassium, sodium, thorium, uranium, and sulfur, and their compounds.
2. "Commission" means the industrial commission of the state of North Dakota.
3. "Person" means and includes any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof; the masculine gender, in referring to a person, includes the feminine and the neuter genders.
4. "Extraction facility" means any well or mine or other extractive process operated for the purpose of recovering subsurface minerals.

5. "Operator" means any person who, duly authorized, is in charge of the development of a lease or the operation of a producing property.
6. "Owner" means the person who has the right to explore for, develop and produce subsurface minerals and to appropriate the subsurface minerals he produces either for himself or for himself and others.
7. "Producer" means the owner of an extraction facility which is or has been capable of producing subsurface minerals.

SECTION 2. AMENDMENT.) Section 38-12-02 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-12-02. JURISDICTION OF COMMISSION.) The commission has jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of this chapter. The state geologist shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to the subsurface mineral resources of this state and the provisions of this chapter. The commission has authority to make such investigations as it deems proper to determine whether facts exist which justify action by the commission. The commission acting through the office of the state geologist has the authority:

1. To require:

- a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and regulations of the industrial commission prescribed to govern the exploration, development and production of subsurface minerals on state and private lands within the state of North Dakota.
- b. The delivery, free of charge, to the state geologist of the basic ~~drilling~~ exploration data collected by the operator, within thirty days of field collection of such data. This data shall include:
  - (1) Sample cuts, core chips, or whole cores;
  - (2) Sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs;
  - (3) Elevation and location information on the data collection points; and
  - (4) Other pertinent information as may be requested by the state geologist.

The data so submitted shall be confidential for a period of one year when so requested by the operator and such period may be further extended upon approval by the commission.

- c. The filing of monthly production reports in the manner prescribed by the commission, and any other reports deemed necessary by the commission.
  - d. The conducting of all exploration, development and production operations in such a manner as to prevent pollution of freshwater supplies, to provide for the protection of the environment and public safety, and to ensure the optimum recovery of the mineral resource.
  - e. The reclamation of all land disturbed by operations regulated by this Act to a condition consistent with prior land-use and productive capacity.
2. To regulate the drilling, and plugging abandonment of exploration test holes and producing wells and all other operations---governing---the---method---of---production---of subsurface-minerals exploration, development, production and reclamation operations.
  3. To promulgate and to enforce rules, regulations, and orders to effectuate the purposes and the intent of this chapter.
  4. To inspect all drilling exploration, development and production sites. For the purposes of this subsection, the state geologist or his representative shall have access to all drilling exploration, development or production installations for purposes of inspection and shall have the authority to require the operator's aid if same is necessary and is requested.

SECTION 3. AMENDMENT.) Section 38-12-03 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-12-03. DRILLING PERMIT REQUIRED.) It shall be unlawful to commence operations ~~for drilling~~ for the exploration, development or production of subsurface minerals without first obtaining a permit from the state geologist, under such rules and regulations as may be prescribed by the commission and paying to the commission a fee for each such permit in an amount to be prescribed by the commission.

Approved March 15, 1979



## CHAPTER 398

HOUSE BILL NO. 1262

(Committee on Natural Resources)

(At the request of the North Dakota Public Service Commission)

### MINE REGULATION AMENDMENTS

AN ACT to create and enact subsection 5 to section 38-12.1-04 of the North Dakota Century Code, relating to the jurisdiction of the Industrial Commission; to create and enact a new section under chapter 65-11 of the North Dakota Century Code, relating to the promulgation of rules by the Workmen's Compensation Bureau regarding mine foremen; to amend and reenact sections 38-12.1-05, 38-12.1-08, and 38-16-06, subsections 2 and 4 of section 38-18-06, subsection 1 of section 38-18-07, and subsections 1 and 2 of section 38-18-08 of the North Dakota Century Code, relating to the necessity of a drilling permit, penalties, exemptions from surface mining operation reporting requirements, requirement of surface owner consent to surface mining operations, payment of damages sustained by the surface owner, and financial obligation of the mineral developer to pay the costs of reclamation; and to repeal chapters 38-03, 38-05, 38-06, and 38-07, and sections 38-01-01 and 38-01-08 of the North Dakota Century Code, relating to the state mine inspector, mine foreman examinations and qualifications, protection of the health and safety of miners, maps or surveys of mines, regulation of surface coal mining and reclamation operations, definitions, and penalties.

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

SECTION 1.) Subsection 5 of section 38-12.1-04 of the 1977 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

5. Notwithstanding any of the other provisions of this section, the commission acting through the office of the state geologist shall require that any lands substantially disturbed in coal exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment be reclaimed in accordance with the applicable performance standards of section 38-14.1-24. Reclamation shall be accomplished so as to

protect environmental quality, general health and safety, and economic values.

SECTION 2. AMENDMENT.) Section 38-12.1-05 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-12.1-05. NOTICE AND DRILLING PERMIT  
REQUIRED - EXCEPTIONS - LIMITS ON COAL REMOVAL.)

1. It shall be unlawful to commence operations for drilling for the exploration for coal without first obtaining a permit from the state geologist, under such rules and regulations as may be prescribed by the commission, and paying to the commission a fee of one hundred dollars for each such permit area. The permit application shall include a description of the exploration area, and the period of proposed exploration. The permit shall be granted within thirty days after proper application is submitted therefor.
2. This permit shall not be required:
  - a. In an area where a permit to ~~surface-mine-land~~ conduct surface coal mining operations is in effect pursuant to chapter ~~38-14~~ 38-14.1;
  - b. For holes drilled to guide excavating equipment in an operating mine; or
  - c. In areas where a drill hole is required by any other state agency.
3. No person shall remove more than two hundred fifty tons of coal pursuant to an exploration permit without first obtaining a permit from the public service commission.

SECTION 3. AMENDMENT.) Section 38-12.1-08 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-12.1-08. PENALTY.) ~~Any--person-who-fails-to-perform-any act-required-by-this-chapter-or-any-person-who--reports--information required--by-this-chapter-falsely-or-any-person-violating-any-of-the rules,-regulations,-or-orders-promulgated-under-this-chapter--shall, upon-conviction,-be-guilty-of-a-class-A-misdemeanor-~~

1. Any person who violates this chapter, or any permit condition or regulation implementing this chapter shall be subject to a civil penalty not to exceed five thousand dollars per day of such violation.
2. Any person who knowingly violates this chapter, or any permit condition or regulation implementing this chapter

or who knowingly reports information required by this chapter falsely shall be subject, upon conviction, to a criminal penalty of not more than ten thousand dollars or by imprisonment for not more than one year.

SECTION 4. AMENDMENT.) Section 38-16-06 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-16-06. SURFACE MINING OPERATIONS EXEMPT FROM REPORTING REQUIREMENTS.) The reporting requirements of this chapter shall not apply to a surface mining operation which is subject to a requirement by a department or agency of the state that the person conducting the surface mining operation obtain a written release from the landowner approving the condition of the affected land upon completion or abandonment of the surface mining operation. Nothing in this chapter shall be construed to be applicable to a surface mining operation which is regulated under the provisions of chapter ~~38-14~~ 38-14.1.

SECTION 5. AMENDMENT.) Subsections 2 and 4 of section 38-18-06 of the 1977 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. The public service commission shall not issue a permit to surface mine land unless the permit application is accompanied by statements of consent, executed by each surface owner whose land is included within the permit area, to have surface mining conducted upon his land. The requirement established by this section is in addition to the requirements of chapter ~~38-14~~ 38-14.1.
4. If the mineral developer desires to have his permit amended to cover additional land, he must file either consent statements or surface or mineral leases executed by the surface owners of such additional land as required by this section with the application to amend the permit to cover additional land. If, in addition, all of the requirements of chapter ~~38-14~~ 38-14.1 are met, the public service commission may issue the amended permit.

SECTION 6. AMENDMENT.) Subsection 1 of section 38-18-07 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Unless the mineral lease, surface lease, or consent statement executed by the surface owner provides for payments to the surface owner, the mineral developer shall annually pay to the surface owner a sum of money equal to the amount of damages sustained by the surface owner for loss of agricultural production caused by mining activity, provided that it can be shown that the land disturbed or to be disturbed has regularly been used for agricultural production. The amount of damages may be determined by

any formula mutually agreeable between the surface owner and the mineral developer. The payments contemplated by this section shall only cover land actually mined, disturbed, or to be mined during the year or years during which agricultural production was actually interrupted and which land has not been restored to the level of agricultural productivity required by the plan submitted pursuant to chapter ~~38-14~~ 38-14.1. The payments to be made hereunder shall be made before December thirty-first of that calendar year in which the loss occurred.

SECTION 7. AMENDMENT.) Subsections 1 and 2 of section 38-18-08 of the 1977 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

38-18-08. FINANCIAL OBLIGATION TO RECLAIM.)

1. It is hereby declared to be the financial obligation of the mineral developer to pay the entire cost of the surface reclamation necessitated by that developer's mining operation. This obligation shall in no way be limited by the amount of the bond required of an "operator" by chapter ~~38-14~~ 38-14.1.
2. If a mineral developer fails to begin reclamation of the land disturbed by a mining operation within one year after the completion of the mining operation in accordance with the plan submitted to the public service commission pursuant to chapter ~~38-14~~ 38-14.1 and regulations promulgated thereunder, the surface owner may notify the public service commission, which commission shall take all of the necessary action lawfully authorized to obtain complete compliance with the reclamation plan.

SECTION 8.) A new section to chapter 65-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

MINE FOREMEN - RULES REGARDING.) The workmen's compensation bureau may promulgate, issue, and enforce all necessary and proper rules for the qualification, examination, and certification of mine foremen.

SECTION 9. REPEAL.) Chapters 38-03, 38-05, 38-06, and 38-07, and section 38-01-01 of the North Dakota Century Code and section 38-01-08 of the 1977 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 19, 1979

## CHAPTER 399

HOUSE BILL NO. 1252

(Committee on Natural Resources)

(At the request of the North Dakota Public Service Commission)

## SURFACE MINING AND RECLAMATION

AN ACT to create and enact chapter 38-14.1 of the North Dakota Century Code, relating to surface mining and reclamation operations; the designation of areas unsuitable for mining; the necessity of a mining permit; permit terms; permit application requirements; mining and reclamation plans; extended mining plans; performance bonds; release of performance bonds; informal conference procedures; permit renewals; environmental protection performance standards; prohibited mining practices; inspections and monitoring; enforcement procedures; formal hearings; permit revocation; bond forfeitures; administrative review of regulations; judicial review; small operators; conflict of interest; citizen suits; cooperation with federal and state agencies and penalties; and to repeal chapter 38-14, relating to the regulation of surface coal mining operations.

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

SECTION 1.) Chapter 38-14.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-14.1-01. DECLARATION OF FINDINGS AND INTENT.) The legislative assembly finds and declares that:

1. Many surface coal mining operations may result in disturbances of surface areas that adversely affect the public welfare by diminishing the utility of land for commercial, industrial, residential, cultural, educational, scientific, recreational, agricultural, and forestry purposes, by causing erosion, by polluting the water, by destroying fish and wildlife habitats, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property, by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water, other natural resources, and cultural resources.

2. The expansion of coal mining to meet the nation's energy needs makes even more urgent the establishment of appropriate standards to minimize damage to the environment and to productivity of the soil and to protect the health and safety of the public.
3. Surface mining and reclamation technology as now developed requires effective and reasonable regulation of surface coal mining operations in accordance with the requirements of this chapter to minimize so far as practicable the adverse social, economic, and environmental effects of such mining operations.
4. Surface coal mining operations contribute to the economic well-being, security, and general welfare of the state and should be conducted in an environmentally sound manner.
5. Surface coal mining and reclamation operations should be so conducted as to aid in maintaining and improving the tax base, to provide for the conservation, development, management, and appropriate use of all the natural resources of affected areas for compatible multiple purposes, and to insure the restoration of affected lands designated for agricultural purposes to the level of productivity equal to or greater than that which existed in the permit area prior to mining.
6. Warrantless inspections are necessary in this state to insure effective enforcement of surface coal mining and reclamation operation requirements.

38-14.1-02. DEFINITIONS.) Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

1. "Alluvial valley floors" means the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of sediment from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits.
2. "Approximate original contour" means that surface configuration achieved by backfilling and grading an area affected by surface coal mining operations so that the reclaimed area closely resembles the general surface configuration of the land prior to being affected by surface coal mining operations and blends into and complements the surrounding undisturbed land.

3. "Coal" means a dark-colored compact and earthy organic rock with less than forty percent inorganic components, based on dry material, formed by the accumulation and decomposition of plant material. The term shall include consolidated lignitic coal, in both oxidized and nonoxidized forms, having less than eight thousand three hundred British thermal units per pound, moist and mineral matter free, whether or not the material is enriched in radioactive materials.
4. "Commission" means the public service commission, or such other department, bureau, or commission as may lawfully succeed to the powers and duties of that commission. The commission is the state regulatory authority for all purposes relating to the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 30 U.S.C. 1201 et seq.
5. "Extended mining plan" means a detailed written statement setting forth the matters specified in section 38-14.1-15, and covering the estimated life of the surface coal mining operation. The purpose of such plan shall be to inform the commission of conditions existing in the area proposed for mining sufficiently in advance of the commencement of operations to allow the commission to accurately assess the effects of such proposed operations.
6. "Final cut" means the last pit created in a surface mining pit sequence.
7. "High wall" and "end wall" mean those sides of the pit adjacent to unmined land.
8. "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself to the danger during the time necessary for abatement.
9. "Operator" means any individual, person, partnership, firm, association, society, joint stock company, company, cooperative, corporation, or other business organization, or any department, agency, or instrumentality of the state, local, or federal government, or any governmental subdivision thereof including any publicly owned utility or publicly owned corporation of state, local, or federal

government, engaged in or controlling a surface coal mining operation. Operator does not include those who remove or intend to remove two hundred and fifty tons or less of coal from the earth by coal mining within twelve consecutive calendar months in any one location or who remove any coal pursuant to reclamation operations under chapter 38-14.2.

10. "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value occurring within five hundred feet or less of the land surface and which are excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.
11. "Other suitable strata" means those portions of the overburden determined by the commission to be suitable for meeting the requirements of subsections 2 and 17 of section 38-14.1-24 and based on data submitted by the permit applicant.
12. "Overburden" means all of the earth and other materials, with the exception of suitable plant growth material, which lie above natural deposits of coal and also means such earth and other materials, with the exception of suitable plant growth material, disturbed from their natural state by surface coal mining operations.
13. "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the commission.
14. "Permit applicant" means a person or operator applying for a permit.
15. "Permit area" means the area of land approved by the commission for surface coal mining operations which shall be readily identifiable by appropriate markers on the site.
16. "Permit renewal" means the extension of the permit term for areas within the boundaries of the initial or existing permit, upon the expiration of the initial or existing permit term.
17. "Permit revision" means the modification of permit provisions during the term of the permit and includes changes in the mining and reclamation plans, incidental boundary extensions, and the transfer, assignment, or sale of rights granted under the permit.
18. "Permit term" means a period of time beginning with the date upon which a permit is given for surface coal mining and reclamation operations under the provisions of this



chapter, and ending with the expiration of the next succeeding five years plus any renewal of the permit granted under this chapter.

19. "Permittee" means a person or operator holding a permit.
20. "Person" means an individual, partnership, firm, association, society, joint stock company, company, cooperative, corporation, or other business organization.
21. "Pit" means a tract of land, from which overburden, or coal, or both, has been or is being removed for the purpose of surface coal mining operations.
22. "Prime farmland" means lands as prescribed by commission regulation that have the soil characteristics and moisture supply needed to produce sustained high yields of adapted crops economically when treated and managed, including management of water, according to modern farming methods. Furthermore, such lands historically have been used for intensive agricultural purposes and are large enough in size to constitute a viable economic unit.
23. "Prime soils" means those soils that have the required soil characteristics (including slope and moisture supply) needed to produce sustained high yields of adapted crops, as determined by the state conservationist of the U.S.D.A. Soil Conservation Service.
24. "Reclaimed" or "reclaim" means conditioning areas affected by surface coal mining operations to make them capable of supporting the uses which they were capable of supporting prior to any mining, or higher or better uses, pursuant to subsection 2 of section 38-14.1-24.
25. "Reclamation plan" means a plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to subsection 2 of section 38-14.1-14.
26. "Refuse" means all waste material directly connected with the production of coal mined by surface coal mining operations.
27. "Soil amendments" means those materials added by the operator to the replaced overburden or suitable plant growth material, or both, to improve the physical or chemical condition of the soil in its relation to plant growth capability.
28. "Soil classifier" means a professional soil classifier as defined in subsection 2 of section 43-36-01.

29. "Soil survey" means the identification and location of all suitable plant growth material within the proposed permit area and an accompanying report that describes, classifies, and interprets for use such materials.
30. "State program" means the program established by the state of North Dakota in accordance with the requirements of section 503 of the federal Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 30 U.S.C. 1253, to regulate surface coal mining and reclamation operations on lands within the state of North Dakota.
31. "Suitable plant growth material" means that soil material (normally the A, B, and portions of the C horizons) located within the proposed permit area which, based upon a soil survey, is found by the commission to be the most acceptable as a medium for plant growth when respread on the surface of regraded areas.
32. "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incidental to the reclamation of such operations after the date of enactment of this chapter.
33. "Surface coal mining operations" means:
  - a. Activities affecting the surface of lands in connection with a surface coal mine. Such activities include extraction of coal from coal refuse piles, excavation for the purpose of obtaining coal including such common methods as contour, strip, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, and loading of coal at or near the mine site: except that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds per centum of the tonnage of minerals removed for purposes of commercial use or sale, coal exploration subject to chapter 38-12.1, or the extraction of coal incidental to reclamation operations under chapter 38-14.2; and
  - b. The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all adjacent lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, refuse banks, dumps, stockpiles, overburden

piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

34. "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or this chapter due to indifference, lack of diligence, or lack of reasonable care.

38-14.1-03. POWERS AND DUTIES OF THE COMMISSION.) The commission shall have and may exercise the following powers and duties:

1. To establish a program to protect society and the environment from the adverse effects of surface coal mining operations.
2. To assure that surface coal mining operations are so conducted as to protect the environment.
3. To assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations.
4. To assure that surface coal mining operations are not conducted where reclamation as required by this chapter is not feasible.
5. To assure that appropriate procedures are provided for public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the commission under this chapter.
6. To encourage the voluntary cooperation of persons or affected groups to achieve the purposes of this chapter.
7. To encourage and support training, research, experiments and demonstrations, to utilize the expertise of other state agencies, and to collect and disseminate information relating to surface mining and reclamation of lands and waters affected by surface mining.
8. To examine and act upon all plans and specifications submitted by the permit applicant for the method of operation, backfilling, grading, and for the reclamation of the area of land affected by his operation.

9. To attach conditions to all permits and permit revisions as necessary to carry out the provisions of this chapter.
10. To issue permits for surface coal mining operations in accordance with the requirements of this chapter and the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 30 U.S.C. 1201, et seq.
11. To promulgate such regulations as may be necessary to carry out the purposes and provisions of this chapter and the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 30 U.S.C. 1201, et seq.
12. To promulgate regulations consistent with state law, in consultation with the state geologist, state health department and the state engineer for the protection of the quality and quantity of waters affected by surface coal mining operations.
13. To promulgate regulations requiring the training, examination, and certification of persons engaged in or directly responsible for blasting or use of explosives in surface coal mining and reclamation operations.
14. To exercise general supervision and administration and enforcement of this chapter and all regulations and orders promulgated thereunder and all incidental powers necessary to carry out the purposes of this chapter, including the utilization of the powers of other state agencies by delegation to those other state agencies, by cooperative agreement or regulation, certain responsibilities to avoid duplication of effort, to promote the efficient use of personnel, and to assure effective reclamation of surface mined lands in the state of North Dakota.
15. To make investigations and inspections which may be deemed necessary to insure compliance with any provision of this chapter. The commission or its authorized representatives, upon presentation of appropriate credentials, shall have the right of entry without a warrant for the purposes of such investigations or inspections.
16. To issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial procedures.
17. To hold any hearings and informal conferences necessary for the proper administration of this chapter.
18. To reclaim, in keeping with this chapter, any land with respect to which a performance bond has been forfeited.

19. To exercise those additional powers and duties relative to the designation of lands unsuitable for surface coal mining operations granted in section 38-14.1-04.
20. To take all action necessary and appropriate including the promulgation of regulations for all provisions of this chapter to secure for this state the benefits of and to implement the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 30 U.S.C. 1201, et seq., and similar federal acts.
21. To advise, consult, and cooperate with other agencies of the state, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter.
22. To accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any functions pursuant to this chapter, which loans and grants shall not be expended for other than the purposes for which provided.
23. To provide by regulation standards and procedures for specific variances to any permittee so long as the permittee affirmatively demonstrates that the requested variance provides equal or greater protection to the environment and to public health and safety and will achieve reclamation consistent with the purposes of this chapter.
24. To provide by regulation for the conservation and utilization of other minerals found within the permit area during surface coal mining and reclamation operations in consultation with the state geologist, and to approve plans for the use of such other minerals outside the permit area so long as the permittee affirmatively demonstrates that such removal is lawful and will provide equal or greater protection to the environment and to public health and safety and will achieve reclamation consistent with the purposes of this chapter.
25. To exercise the full reach of the state constitutional powers wherever necessary to insure the protection of the public interest through effective control of surface coal mining operations.

38-14.1-04. POWERS AND DUTIES OF THE COMMISSION RELATIVE TO DESIGNATION OF LANDS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS.) The commission shall have the following powers and duties:

1. To be responsible for surface coal mining lands review.
2. To develop a data base and an inventory system which will permit proper evaluation of the capacity of different land

areas of the state to support and permit reclamation of surface coal mining operations.

3. To develop a method or methods for implementing land use planning decisions concerning surface coal mining operations.
4. To develop procedures insuring proper notice, opportunities for public participation, including a public hearing prior to making a designation or redesignation, pursuant to this chapter.
5. To develop procedures whereby determinations of the unsuitability of land for surface coal mining, as provided for in this chapter, are integrated as closely as possible with land use planning and regulation processes at the state and local levels.
6. To develop a planning process in order to designate which, if any, land areas are unsuitable for all or certain types of surface coal mining operations, providing said decisions are based upon competent and scientifically sound data and information and accomplished pursuant to the procedures of sections 38-14.1-05 and 38-14.1-06.

38-14.1-05. AREAS UNSUITABLE FOR ALL OR CERTAIN SURFACE COAL MINING OPERATIONS.)

1. Upon petition pursuant to section 38-14.1-06, the commission shall designate an area as unsuitable for all or certain types of surface coal mining operations if the commission determines, after hearings conducted in accordance with this chapter, that reclamation pursuant to the requirements of this chapter is not technologically and economically feasible.
2. Upon petition pursuant to section 38-14.1-06, and after hearings conducted in accordance with this chapter, the commission may designate an area as unsuitable for certain types of surface coal mining operations if such operations will:
  - a. Be incompatible with existing state or local land use plans or programs; or
  - b. Affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems; or
  - c. Affect renewable resource lands in which such operations could result in a substantial loss or reduction of productivity of long-range water supply

or food or fiber products, and such lands include aquifers and aquifer recharge areas; or

- d. Affect natural hazard lands in which such operations could substantially endanger life and property, and such lands include areas subject to frequent flooding and areas of unstable geology.
3. Prior to designating any land area as unsuitable for surface coal mining operations, the commission shall prepare a detailed statement on:
    - a. The potential coal resources of the area;
    - b. The demand for coal resources; and
    - c. The impact of such designation on the environment, the economy, and the supply of coal.

38-14.1-06. RIGHT TO PETITION - NOTICE AND HEARING - RIGHT TO INTERVENE.)

1. Any person having an interest which is or may be adversely affected, including state agencies other than the commission, shall have the right to petition the commission to hold a hearing for the purpose of having an area designated as unsuitable for surface coal mining operations, or to have such designation terminated. Such petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations.
2. Prior to designating an area as unsuitable for surface coal mining operations and within ten months after receipt of a complete petition pursuant to subsection 1 of this section, the commission shall hold a public hearing in the locality of the affected area.
3. Notice of the hearing shall be published in the official newspaper of each county wherein the affected area lies and in other daily newspapers of general circulation in the locality of the affected area at least once a week for four successive weeks prior to the hearing. The names and post-office addresses of surface and subsurface mineral rights owners shall be determined as specified by the commission from the records of the county register of deeds in each affected county. Notice of the hearing shall be sent by certified mail to the owners of surface rights and subsurface mineral rights in the affected area and to the county auditor of each county wherein such area lies no later than two weeks prior to the date of the hearing.

4. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this section, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations.
5. Within sixty days after the hearing, the commission shall issue and furnish to all petitioners and any other party to the hearing, a written decision regarding the petition and reasons therefor.
6. In the event that all petitioners stipulate agreement prior to the requested hearing, and withdraw their request, such hearing need not be held.
7. If petitions are filed on lands adjacent to or in close proximity to each other, hearings required by each petition may be consolidated by the commission.

38-14.1-07. MINING IS PROHIBITED.) After the enactment of this section and subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this section shall be permitted:

1. On any lands within the boundaries of units of the North Dakota state park system, the national park system, the national wildlife refuge systems, the national system of trails, the national wilderness preservation system, the national wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act and national recreation areas designated by Act of the U. S. Congress.
2. On any federal lands within the boundaries of any national forest unless the requirements of 30 U.S.C. 1272 (e)(2) are met.
3. Within three hundred feet of any publicly owned park or places included in the state historic sites registry or the national register of historic sites unless approved jointly by the commission and the federal, state, or local agency with jurisdiction over the park or the historic site.
4. Within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the commission with the approval of the proper authority may permit such roads to be relocated or the area affected to lie within one hundred feet of such road, if after public notice and the opportunity for public hearing in the locality a written finding is made by the proper authority that the interests of the public and the landowners affected thereby will be protected.



5. Within five hundred feet of any occupied dwelling unless approved by the owner thereof and in accordance with the provisions of chapter 38-18, nor within three hundred feet of any public building, school, church, community, or institutional building, or within one hundred feet of a cemetery.

38-14.1-08. MINERAL EXPLORATION NOT PROHIBITED.) The designation of an area as unsuitable for all or certain types of surface coal mining operations shall not prevent the mineral exploration of such an area.

38-14.1-09. SAVINGS PROVISION.) The requirements and provisions of this chapter dealing with designation of lands unsuitable for all or certain types of surface coal mining operations (sections 38-14.1-04 through 38-14.1-08) shall not apply:

1. To lands on which surface coal mining operations are being conducted on the effective date of this chapter or under a permit issued pursuant to this chapter.
2. To lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.
3. To lands where a permit application has been filed pursuant to the provisions of this chapter and the petition to have an area designated as unsuitable for surface coal mining operations has not been filed within thirty days of the last publication of the notice required by subsection 1 of section 38-14.1-18.

38-14.1-10. NECESSITY OF PERMIT.)

1. It shall be unlawful for any operator to engage in surface coal mining operations without first obtaining from the commission a permit to do so, in such form as is hereinafter provided. All existing surface coal mining operations shall on the effective date of this chapter comply with the provisions of this chapter and all regulations promulgated pursuant thereto, except that lands from which the coal has been removed prior to the effective date of this chapter shall be governed by the reclamation standards that were in effect at the time of coal removal from such lands.

38-14.1-11. REAPPLICATION FOR PERMIT UNDER APPROVED STATE PROGRAM.) No later than two months following approval of the state program in accordance with the requirements of section 503 of the federal Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 30 U.S.C. 1253, regardless of litigation contesting that approval, all permittees who expect to continue to conduct surface coal mining operations after the expiration of eight months from the approval of such state program, shall file an application with the

commission for a new permit in accordance with the requirements of section 38-14.1-13. Such application shall cover those lands to be surface mined after the expiration of eight months from the approval of the state program. The commission shall process such applications and grant or deny a permit within eight months after the date of approval of the state program.

38-14.1-12. PERMITS - TERM - TERMINATION.)

1. All permits for surface coal mining and reclamation operations shall comply with the standards of this chapter, any regulations promulgated thereunder, and such other requirements as the commission shall establish.
2. All permits issued pursuant to the requirements of this chapter shall be issued for a term not to exceed five years; provided, that if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation and if the application is full and complete for such specified longer term, the commission may grant a permit for such longer term.
3. A permit shall terminate if the permittee has not commenced the surface coal mining operations covered by such permit within three years of the issuance of the permit, provided that:
  - a. The commission may grant reasonable extensions of time upon a showing that such extensions are necessary by reason of litigation precluding such commencement or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee.
  - b. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface coal mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.

38-14.1-13. PERMIT APPLICATIONS - GENERAL REQUIREMENTS.)

1. Any person or operator desiring to engage in surface coal mining operations shall make written application to the commission for a permit. Application for such permit shall be made upon a form furnished by the commission. Included in the application shall be:
  - a. A bond or security to attach to the lands for which a permit is sought from and after the time a permit is

granted pursuant to the requirements of section 38-14.1-16.

- b. A nonrefundable filing fee of not less than two hundred and fifty dollars or as prescribed by the commission by regulation. In establishing the amount of the fee, the commission may consider the actual or anticipated cost of reviewing, administering, and enforcing such permit. Any amount in excess of the minimum two hundred and fifty dollar fee may be refunded as prescribed by the commission by regulation.
  - c. Mining and reclamation plans and other information required to be submitted pursuant to section 38-14.1-14.
  - d. An extended mining plan as required by section 38-14.1-15.
2. Each applicant for a surface coal mining and reclamation permit shall file a copy of his application for public inspection with the office of the county auditor for each county where the mining is proposed to occur.
3. Upon request by the permit applicant, the commission, in its discretion, may designate specific information included in the plans required by subdivisions c and d of subsection 1 of this section as exempt from disclosure under section 44-04-18, provided such specific information pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental contents which is potentially toxic in the environment). Each request shall be accompanied by a statement specifying the need for nondisclosure, which statement shall be considered part of the permit application to be filed for public inspection as specified in subsection 2 of this section. The confidential information shall be exempt for a period not to exceed seven years subsequent to the date on which the request for nondisclosure was filed.

38-14.1-14. PERMIT APPLICATIONS - MINING AND RECLAMATION PLANS.)

1. The permit application shall be submitted in a manner satisfactory to the commission and shall contain among other things:
- a. A legal description of the land for which a permit is sought, so that it may be identified and distinguished from other lands.

- b. An identification of all lands, interests in lands, or options on such interests (both surface and subsurface) held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit.
- c. The names and addresses of all of the following:
  - (1) The permit applicant.
  - (2) Every legal or equitable owner of record (surface and subsurface) of the property for which a permit is sought.
  - (3) The holders of record (surface and subsurface) of any leasehold interest in the property.
  - (4) Any purchaser of record (surface and subsurface) of the property under a real estate contract.
  - (5) The operator, if he is a person different from the permit applicant.
  - (6) If any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent.
- d. The names and addresses of the owners of record of all surface and subsurface areas adjacent to any part of the permit area as prescribed by the commission by regulation.
- e. If the applicant is a partnership, corporation, association or other business entity, the following where applicable:
  - (1) The names and addresses of every officer, partner, director, or person performing a function similar to a director, of the permit applicant.
  - (2) The name and address of any person owning of record ten per centum or more of any class of voting stock of the applicant.
  - (3) A list of all names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation within the state of North Dakota within the five-year period preceding the date of the application.
- f. A statement of any current or previous surface coal mining permits in the state of North Dakota held by

the applicant and the permit identification for said permits and for each pending application.

- g. A schedule listing any and all notices of violation of this chapter and any law or regulation of the state of North Dakota or of any department or agency of the state of North Dakota pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application. The schedule shall also indicate the final resolution of any such notice of violation.
- h. A statement of whether the permit applicant, any subsidiary, affiliate, or persons controlled by or under common control with the permit applicant, has ever held any federal or state mining permit which in the five-year period prior to the date of submission of the application has been suspended or revoked, or has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved.
- i. A copy of the permit applicant's advertisement as required in section 38-14.1-18.
- j. A map or plan, to an appropriate scale, clearly showing the land to be affected within the permit area upon which the applicant has the legal right to enter and commence surface coal mining operations.
- k. A copy of those documents upon which the permit applicant bases his legal right to enter and commence surface coal mining operations and whether that right is the subject of pending court litigation.
- l. A description of the type and method of surface coal mining operation that exists or is proposed, the engineering techniques proposed or used, and the equipment used or proposed to be used.
- m. The anticipated or actual starting and termination dates of each phase of the mining operations.
- n. The name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged, including the drainage permit application to the state engineer, if required, pursuant to other applicable state law.
- o. A determination by the permit applicant of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and

quality of water in surface and ground water systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the commission of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability.

- p<sup>5</sup> The climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges.
- q. Topographic maps to an appropriate scale, as prescribed by the commission by regulation, clearly showing the land to be affected as of the date of the application. Such a map, among other things specified by the commission, shall show all of the following information:
- (1) All manmade features.
  - (2) All significant known archaeological sites existing on the date of application.
  - (3) All boundaries of the land to be affected.
  - (4) The boundary lines and names of present owners of record of all surface areas abutting the permit area.
  - (5) The location of all buildings within one-half mile of the permit area.
- r. Cross-section maps or plans of the land to be affected including the actual area to be mined, prepared by or under the direction of and certified by a registered professional engineer, or professional geologist with assistance from experts in related fields such as land surveying and landscape architecture, showing pertinent elevation and location of test borings or core samplings and depicting all of the following information:
- (1) The nature and depth of the various strata of overburden.
  - (2) The location of subsurface water, if encountered, and its quality.
  - (3) The nature and thickness of any coal or rider seam above the coal seam to be mined.

- (4) The nature of the stratum immediately beneath the coal seam to be mined.
  - (5) All mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected.
  - (6) Existing or previous surface mining limits.
  - (7) The location and extent of known workings of any underground mines, including mine openings to the surface.
  - (8) The location of aquifers.
  - (9) The estimated elevation of the water table.
  - (10) The location of spoil, waste, or refuse areas, suitable plant growth material stockpiling areas and, if necessary, stockpiling areas for other suitable strata.
  - (11) The location of all impoundments for waste or erosion control.
  - (12) Any settling or water treatment facility.
  - (13) Constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto.
  - (14) Profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the applicant's proposed reclamation plan.
- s. A statement by the applicant of the result of test borings or core samplings from the permit area including logs of the drill holes, the thickness of the coal seam found, an analysis of the chemical properties of such coal, the sulfur content of any coal seam, chemical analysis of potentially toxic forming sections of the overburden, and chemical analysis of the stratum lying immediately underneath the coal to be mined. The provisions of this subdivision may be waived by the commission with respect to the specific application by a written determination that such requirements are unnecessary.
- t. A soil survey of all the suitable plant growth material within the permit area. Such survey shall also locate and identify prime soils in the permit area. The survey shall be made by a professional soil

classifier as described in subsection 2 of section 43-36-01.

- u. Such other requirements as the commission shall prescribe by regulation.
2. Each applicant for a permit shall submit as part of the permit application a reclamation plan that shall include, in the degree of detail necessary to demonstrate that reclamation as required by this chapter can be accomplished, a statement of:
- a. The condition of the land to be covered by the permit prior to any mining including all of the following:
    - (1) The uses existing at the time of the application, and if the land has a history of previous mining, the uses which preceded any mining.
    - (2) The capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, vegetative cover and the soil survey prepared pursuant to subdivision t of subsection 1 of this section.
    - (3) The productivity of the land prior to mining, including appropriate identification of prime farmlands, as well as the average yield of food, fiber, and forage products from such lands obtained under high levels of management.
  - b. The use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans, the surface owner's preferred use, and the comments of state and local governments or agencies thereof, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.
  - c. The consideration which has been given to maximize the utilization and conservation of the coal being recovered so that re-affecting the land in the future can be minimized.
  - d. The consideration which has been given to making the surface mining and reclamation operations consistent with surface owner plans, and applicable state and local land use plans and programs.



- e. The consideration which has been given to developing the reclamation plan in a manner consistent with local physical, environmental, and climatological conditions, including the use made of hydrologic and geochemical information in addressing problems of subsurface drainage and stability.
- f. A detailed description of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use.
- g. The engineering techniques proposed to be used in mining and reclamation and a description of the major equipment.
- h. Plans for:
  - (1) The control of surface water drainage and of water accumulation.
  - (2) Backfilling, soil stabilization, compacting, grading, and appropriate revegetation.
  - (3) Soil reconstruction, replacement, and stabilization, pursuant to the performance standards in subsections 5 and 6 of section 38-14.1-24.
- i. A detailed description of the measures to be taken during the mining and reclamation process to assure the protection of:
  - (1) The quality of surface and ground water systems, both onsite and offsite, from adverse effects of the mining and reclamation process.
  - (2) The rights of present users to such water.
  - (3) The quantity of surface and ground water systems, both onsite and offsite, from adverse effects of the mining and reclamation process or to provide alternative sources of water where such protection of quantity cannot be assured.
- j. The steps to be taken to comply with applicable air quality and water quality and quantity laws and regulations and any applicable health and safety standards.
- k. A detailed estimated timetable for the accomplishment of each major step in the reclamation plan.

1. An estimate of the cost per acre of the reclamation, including a statement as to how the applicant plans to comply with each of the requirements set out in section 38-14.1-24.
  - m. The results of test borings which the applicant has made of the area to be covered by the permit, or other equivalent information and data, in a form satisfactory to the commission, including the location of subsurface water and an analysis of the chemical properties including toxic forming properties of the mineral and overburden.
  - n. Such other requirements as the commission shall prescribe by regulation.
3. Each applicant for a permit shall submit to the commission as part of the permit application a certificate issued by an insurance company authorized to do business in the state of North Dakota certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which such permit is sought. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons, except employees covered by workmen's compensation insurance pursuant to chapter 65-01, damaged as a result of surface coal mining and reclamation operations including use of explosives and entitled to compensation under the applicable provisions of state law. Such policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations. The policy shall include a rider requiring that the insurer notify the commission whenever substantive changes are made in the policy, including any termination or failure to renew. All operations must cease if the policy is terminated or is not renewed.
  4. Each applicant for a surface coal mining and reclamation permit shall submit to the commission as part of the permit application a blasting plan which shall outline the procedures and standards by which the permittee will meet the provisions of subsection 13 of section 38-14.1-24.

38-14.1-15. PERMIT APPLICATIONS - EXTENDED MINING PLAN.)

1. An applicant shall submit as part of a permit application a plan identifying the lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits will be sought. The following information shall be included, in such form and detail as prescribed by commission regulations:

- a. A legal description of the land, so that it may be identified and distinguished from other lands;
  - b. Available hydrologic data and geologic, topographic, and soils maps;
  - c. A statement of the approximate number of tons of coal to be removed from the land;
  - d. Such other information as the commission may require.
2. The permittee shall annually advise the commission of the status of the plan, and shall amend such plan if changes are made in anticipated mining operations or if updated information is available.

38-14.1-16. PERFORMANCE BOND - AMOUNT - SUFFICIENCY OF SURETY - AMOUNT OF FORFEITURE.)

1. As part of a surface coal mining and reclamation permit application, the permit applicant shall file with the commission, on a form prescribed and furnished by the commission, a bond for performance payable to the state of North Dakota and conditional upon faithful performance of all the requirements of this chapter and the requirements of all regulations promulgated pursuant to this chapter and all permit terms and conditions.
2. For areas where coal is mined and where overburden is removed or deposited, the amount of the bond shall be at a minimum one thousand five hundred dollars for each acre or portion thereof or an amount sufficient to assure the completion of the reclamation plan by the commission in the event of forfeiture, whichever is greater. For areas affected by all other activities conducted as part of a surface coal mining operation, the amount of the bond shall be at a minimum two hundred dollars for each acre or portion thereof or an amount sufficient to assure the completion of the reclamation plan by the commission in the event of forfeiture, whichever is greater. A bond that is greater than any minimum amount established by this subsection shall be required if the commission shall determine that the cost of reclamation exceeds such minimum amounts. In no case shall the bond for the entire permit area be less than ten thousand dollars.
3. The bond shall cover that area of land within the permit area upon which the permittee will initiate and conduct surface coal mining and reclamation operations for the ensuing year. Prior to initiating and conducting succeeding increments of surface coal mining and reclamation operations within the permit area, the permittee shall file with the commission an additional

bond or bonds to cover such increments in accordance with this section.

4. Liability under the bond, subject to allowable releases under subsection 7 of section 38-14.1-17, shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with the permittee's responsibility for revegetation requirements in subsection 18 of section 38-14.1-24 and until such time as the lands included in the surface coal mining operation have been approved and released by the commission. The bond shall be executed by the permit applicant and a corporate surety licensed to do business in North Dakota, except that the permit applicant may elect to deposit cash, negotiable bonds of the United States or of North Dakota, or negotiable certificates of deposit of any bank organized or transacting business in the state. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.
5. Cash or securities so deposited shall be deposited upon the same terms as the terms upon which surety bonds may be deposited. Such securities shall be security for the repayment of such negotiable certificate of deposit.
6. A bond filed as prescribed in subsection 2 of this section for areas not yet affected by surface coal mining and reclamation operations shall not be cancelled by the surety unless it shall give not less than ninety days notice to the commission. For lands on which surface coal mining and reclamation operations are being conducted, the bond shall not be cancelled by the surety unless a substitute surety assuming liability from the initiation of such operations is obtained and is approved by the commission.
7. 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 permittee, 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 or security as prescribed by subsection 5 of this section. Upon failure of the permittee to make substitution of surety, the commission shall have the right to suspend the permit until such substitution has been made.
8. The commission may accept the bond of the permit applicant itself without separate surety when the permit applicant demonstrates to the satisfaction of the commission the existence of a suitable agent to receive service of process and a history of financial solvency and continuous

operation sufficient for authorization to self-insure or bond such amount.

9. The amount of the bond or deposit required and the terms of each acceptance of the permit applicant's bond shall be adjusted by the commission from time to time as acreages affected by surface coal mining operations are increased or decreased or where the cost of future reclamation changes.
10. The amount of any forfeiture of the bond or security shall be the amount prescribed in the permit for each acre or portion thereof on which surface coal mining and reclamation operations are being conducted.

38-14.1-17. RELEASE OF PERFORMANCE  
BOND - SCHEDULE - NOTIFICATION - PUBLIC HEARING.)

1. The permittee may file a request with the commission for the release of all or part of a performance bond or deposit furnished subsequent to July 1, 1975. As part of any bond release application, the permittee shall submit:
  - a. Within thirty days after filing of the request, a copy of an advertisement placed at least once a week for four successive weeks in the official newspaper of each county wherein the surface coal mining operation is located and in other daily newspapers of general circulation in the locality of the surface coal mining operation. Such advertisement shall contain notification of all of the following:
    - (1) The precise location and the number of acres of the land affected.
    - (2) The permit and the date approved.
    - (3) The amount of the bond filed and the portion sought to be released.
    - (4) The type and approximate dates of reclamation work performed and a description of the results achieved as they relate to the permittee's approved reclamation plan.
    - (5) The right to file written objections and to request a public hearing or an informal conference as specified in subsection 2 of this section.
  - b. Copies of letters which the permittee has sent to all owners of surface rights within the permit area proposed for bond release, all owners of subsurface rights within the permit area proposed for bond

release, adjoining property owners, state agencies specified in subsection 2 of section 38-14.1-21, heads of local governmental bodies, including the county commissioners and mayors of municipalities, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operations took place, notifying them of his intention to seek release from the bond. Such letters shall also contain notice of the right to file written objections and request an informal conference or a public hearing as specified in subsection 2 of this section.

2. Any person having a valid legal interest which is or may be adversely affected by release of the bond or the responsible officer or head of any state or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the surface coal mining operation, or is authorized to develop and enforce environmental standards with respect to such operations shall have the right to file written objections to the proposed release from bond with the commission and to request an informal conference pursuant to the procedures established in section 38-14.1-19 or a public hearing pursuant to procedures established in subsection 3 of section 38-14.1-30 within thirty days after the last publication of the notice required in subsection 1 of this section.
3. Upon receipt of the application for bond release, the commission shall, within thirty days, conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, all of the following:
  - a. The degree of difficulty to complete any remaining reclamation.
  - b. Whether pollution of surface and subsurface water is occurring.
  - c. The probability of continuance or future occurrence of such pollution.
  - d. The estimated cost of abating such pollution.
  - e. The effectiveness of soil erosion control measures employed.
  - f. The level of bonding..

The commission shall make written findings with its ruling to release or not to release all or part of the

performance bond or deposit within sixty days from the filing of the request for bond release, if no informal conference or public hearing is held, and if there has been an informal conference or a public hearing, within thirty days thereafter.

4. Time periods established by subsection 3 of this section shall not apply if effective inspections cannot be carried out because of inclement weather.
5. If the commission disapproves the application for release of the bond or portion thereof the commission shall state the reasons for disapproval, recommend corrective actions necessary to secure said release and provide the permittee with an opportunity for a formal public hearing pursuant to the procedures of section 38-14.1-30.
6. If the commission decides to release the bond either totally or in part, the commission shall notify the county commissioners and the mayors of the municipalities in the county in which the applicable surface coal mining operation is located by certified mail, at least thirty days prior to the actual release of all or a portion of the bond.
7. The commission may release in whole or in part said bond or deposit if the commission is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this chapter according to the following schedule:
  - a. When the permittee completes the backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation plan, the release of up to forty per centum of the bond or collateral for the applicable permit area.
  - b. After spreading suitable plant growth material or other suitable strata on the regraded land in accordance with the approved reclamation plan, up to an additional twenty per centum of the bond or collateral for the applicable permit area may be released.
  - c. After vegetation has been established on the regraded land in accordance with the approved reclamation plan, up to an additional twenty per centum of the bond or collateral for the applicable permit area may be released. The commission shall retain that amount of bond for the revegetated area which would be sufficient for a third party to cover the cost of reestablishing vegetation and for the period specified for permittee responsibility in subsection 18 of

section 38-14.1-24 of reestablishing vegetation, provided that:

- (1) No part of the remaining bond or deposit shall be released under this subdivision so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by subsection 8 of section 38-14.1-24 or until prime farmlands affected by surface coal mining operations have been returned to a level of productivity equal to or greater than nonmined prime farmland in the surrounding area under equivalent management practices.
  - (2) Where a silt dam is to be retained as a permanent impoundment pursuant to subsection 7 of section 38-14.1-24, the portion of the remaining bond or deposit may be released under this subdivision so long as provisions for sound future maintenance by the permittee or the landowner have been made with the commission.
- d. When the permittee has completed successfully all surface coal mining and reclamation operations, the remaining portion of the bond may be released, but not before the expiration of the period specified for permittee responsibility in subsection 18 of section 38-14.1-24. No bond shall be fully released until all reclamation requirements of this chapter are fully met.
8. Until reclamation has been accomplished to the satisfaction of the commission and until the bond has been fully released pursuant to subsection 7 of this section, control of the affected lands shall remain in the commission, and the commission shall not allow use of the land which is inconsistent with reclamation.

38-14.1-18. PERMIT APPLICATION PROCEDURES - NOTICE REQUIREMENTS.)

1. At the time of filing an application for a permit, or for revision of an existing permit, the applicant shall submit to the commission a copy of the applicant's advertisement of the ownership, precise location, and boundaries of the land proposed to be affected by the permit or permit revision and the location where the application is available for public inspection. Such advertisement shall include notification to any person with an interest which is or may be adversely affected that a petition to designate an area as unsuitable for surface coal mining operations that is within the proposed permit area must be filed within thirty days of the last publication of the



notice. The permit applicant shall place such advertisement in the official newspaper of each county wherein land to be included within the permit area lies and in other daily newspapers of general circulation in the locality of the proposed surface coal mining operation at least once a week for four consecutive weeks from the date of filing the application for a permit. Affidavits of publication for all advertisements published pursuant to this subsection shall be furnished to the commission by the permit applicant.

2. The permit applicant shall also conduct a search of the records of the county register of deeds for each county for land within the proposed permit area and shall supply the commission with a list of names and addresses of all owners of surface rights of land within the proposed permit area and a list of all subsurface mineral owners within the proposed permit area. The lists shall be submitted to the commission along with the application for a permit or permit revision.
3. Upon receipt of an application for a permit, or a revision thereof, the commission shall serve notice upon state agencies specified in subsection 2 of section 38-14.1-21, city and county governmental authorities, planning agencies, sewage and water treatment authorities, and water companies in the locality of the proposed surface coal mining operation, of the permit applicant's intent to surface mine the particularly described tract of land, indicating the application's permit number and where a copy of the proposed mining and reclamation plan may be inspected, and informing them of their right to submit written comments or objections pursuant to this section with respect to the effect of the proposed surface coal mining operations on the environment within their area of responsibility.
4. In addition, the commission shall send by certified mail to all owners of surface rights of the land to be included within the permit area, a notice of the opportunity to submit comments or objections pursuant to this section on the proposed permit application and its effect on the environment and the surface owner. This notice shall also inform each surface owner of his right to request an informal conference within the time prescribed in subsection 5 of this section, and of his right to request a formal hearing within thirty days of the ruling of the commission pursuant to subsection 3 of section 38-14.1-30.
5. Any person having an interest which is or may be adversely affected including state agencies other than the commission, shall have the right to file written comments or objections to the application for a proposed initial or revised permit and to submit a request for an informal

conference pursuant to section 38-14.1-19, provided that the written comments or objections and any request for an informal hearing are made within thirty days after the last publication of the advertisement referred to in subsection 1 of this section.

6. Any comments, objections and requests for an informal conference shall immediately upon receipt be transmitted to the permit applicant by the commission and shall be made available to the public at the same location as is the permit application.

38-14.1-19. INFORMAL CONFERENCE PROCEDURES.)

1. If written objections or comments are filed and an informal conference is requested as provided in sections 38-14.1-17 or 38-14.1-18, the commission shall schedule such informal conference within thirty days of the receipt of such request but in no event prior to the expiration of the thirty-day period allowed for submission of comments, objections and requests in subsection 2 of section 38-14.1-17 or subsections 3, 4, and 5 of section 38-14.1-18.
2. The informal conference shall be held in the locality of the proposed mining if the request for such conference so specifies. Date, time and location of such informal conference shall be advertised by the commission in the official newspaper of each county wherein land included in the proposed permit area lies and in other daily newspapers of general circulation in the locality of the proposed surface coal mining operation at least two weeks prior to the scheduled conference date.
3. Upon request of any party to the informal conference, the commission may arrange with the applicant access by the requesting party to the proposed mining area for the purpose of gathering information relative to such conference.
4. An electronic or stenographic record shall be made of the informal conference proceedings, unless waived by all parties. Such record shall be maintained and shall be accessible to the parties until final release of the permittee's performance bond pursuant to this chapter.
5. In the event all parties requesting the informal conference stipulate agreement prior to the requested informal conference and withdraw their request, such informal conference need not be held.
6. The commission shall issue its written findings and ruling within thirty days of the informal conference. Along with these findings and ruling, notice shall be served upon all

persons who were parties to the informal conference, informing them of their right, within thirty days of such service, to request that a formal administrative hearing be held by the commission pursuant to section 38-14.1-30 in order to review the findings and ruling.

38-14.1-20. RULING ON PERMIT APPLICATION - TIMING AND CONTENT.)

1. If an informal conference in reference to a permit application has been held pursuant to section 38-14.1-19, the commission shall issue its written findings approving or disapproving the application in whole or in part and stating the reasons for such findings within thirty days of the informal conference. At the time of issuance, copies of the findings, reasons, and the commission's ruling shall be furnished to the permit applicant and all persons who were parties to the informal conference along with the notice of the right to request a formal hearing provided for in section 38-14.1-30.
2. If no informal conference has been held, the commission shall notify the permit applicant within a reasonable time as set forth in regulations, whether the application has been approved or disapproved in whole or in part along with notice of the right to request a formal hearing pursuant to section 38-14.1-30. In setting such reasonable time, the commission shall take into account the time needed for proper investigation of the site, the complexity of the permit application, and whether or not objections to the application have been filed.
3. Under either subsection 1 or 2 of this section: if the application is approved, a permit shall be issued only after the thirty-day period for requesting a formal hearing has elapsed without such a request being made; if the application is disapproved, specific reasons therefor must be set forth in the notification of disapproval together with the requirements for approval.

38-14.1-21. PERMIT APPROVAL OR DENIAL STANDARDS.)

1. Upon the basis of a complete mining application and reclamation plan or a revision thereof as required by this chapter and pursuant to regulations established under this chapter, the commission shall grant, require modification of, or deny the application for a permit and notify the applicant in writing within a reasonable time as established by regulation if no informal conference is held and if an informal conference is held, within thirty days of such conference. The applicant for a permit, or a revision of a permit, shall have the burden of establishing that his application is in compliance with all the requirements of this chapter. Within ten days

after the granting of a permit, the commission shall notify the appropriate local governmental officials in the county in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

2. The commission's approval or modification of the permit or permit revision application shall include consideration of the advice and technical assistance of the state historical society, the state department of health, the state soil conservation committee, the state game and fish department, the state forester, the state geologist, and the state engineer, and may also include those state agencies versed in soils, agronomy, ecology, geology, and hydrology, and other agencies and individuals experienced in reclaiming surface mined lands.
3. No permit or revision application shall be approved unless the applicant affirmatively demonstrates and the commission finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval and made available to the applicant, that all the following requirements are met:
  - a. The permit application is accurate and complete and all the requirements of this chapter and of regulations promulgated by the commission have been complied with.
  - b. The permit applicant has demonstrated that reclamation as required by this chapter and by regulations promulgated by the commission can be accomplished under the reclamation plan contained in the permit application.
  - c. The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in subdivision o of subsection 1 of section 38-14.1-14 has been made by the commission and the proposed operation thereof has been designed to prevent material damage to the hydrologic balance outside the permit area.
  - d. The area proposed to be mined is not included within an area designated unsuitable for all or certain types of surface coal mining operations pursuant to section 38-14.1-05 or is not within an area under study for such designation in an administrative proceeding, provided the petition to have an area so designated has been filed prior to or within the time period specified in subsection 1 of section 38-14.1-18, or unless in such an area as to which an administrative proceeding has commenced, the permit applicant

demonstrates that prior to January 4, 1977, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit.

- e. The proposed surface coal mining operation, if located west of the one hundredth meridian west longitude, would:
  - (1) Not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, but, excluding undeveloped range lands which are not significant to farming on said alluvial valley floors and those lands as to which the commission finds that if the farming that will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on the farm's agricultural production; or
  - (2) Not materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors.

This subdivision shall not affect those surface coal mining operations which on the effective date of this chapter produce coal in commercial quantities and are located within or adjacent to alluvial valley floors or have obtained specific permit approval by the commission to conduct surface coal mining operations within said alluvial valley floors.

- f. In cases where the mineral estate has been severed from the surface estate, the applicant has complied with the requirements of chapter 38-18.
4. The commission may delete certain areas from a permit or revision application, reject the application, require the permit applicant to amend the application or any part of such application, including any mining plan, or require any combination of the foregoing, if:
- a. 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.
  - b. The commission finds that the proposed surface coal mining 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 or private property other than property subject to a coal lease.

- c. The commission finds that the proposed surface coal mining operation would adversely affect any historical, archaeological, or paleontological site. If mining is permitted, the commission, in consultation with the state historical society, shall establish procedures for the protection and preservation of such sites throughout the surface coal mining operation.

Whenever the commission finds that ongoing surface mining operations are causing or are likely to cause any of the conditions set forth in this subsection, it may make such changes in the permit as it may deem necessary to avoid such described conditions.

5. Where information available to the commission indicates that any surface coal mining operation owned or controlled by the permit applicant is currently in violation of this chapter in this state or such other applicable air or water environmental protection laws of this state, the permit shall not be issued until the permit applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority which has jurisdiction over such violation.
6. In addition to finding the application in compliance with other requirements of this section, if the area proposed to be mined contains prime farmland pursuant to paragraph 3 of subdivision a of subsection 2 of section 38-14.1-14, the commission shall, pursuant to regulations issued by the commission, grant a permit to mine on prime farmland if the commission finds in writing that the permit applicant has the technological capability to restore such mined area, within a reasonable time, to a level of productivity equal to or greater than nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in subsection 6 of section 38-14.1-24. Nothing in this chapter pertaining to prime farmland shall apply to any permit issued prior to the date of enactment of this section, or to any revisions or renewals thereof, or to any existing surface coal mining operations for which a permit was issued prior to the date of enactment of this section.

38-14.1-22. PERMIT RENEWAL.)

1. Any valid permit issued pursuant to this chapter shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply for renewal and such renewal shall be issued within a reasonable time as set forth in regulations promulgated by the commission subsequent to fulfillment of the public notice requirements of subsection 1 of section 38-14.1-18 unless it is established that and written findings are made by the commission that:
  - a. The terms and conditions of the existing permit are not being satisfactorily met; and
  - b. The present surface coal mining and reclamation operation is not in compliance with the provisions of this chapter; or
  - c. The renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas; and
  - d. The permittee has not provided evidence that the performance bond in effect for said operation will continue in full force and effect for any renewal requested in such application as well as any additional bond the commission might require pursuant to section 38-14.1-16; or
  - e. Any additional revised or updated information required by the commission has not been provided.
2. On application for renewal, the burden shall be on the opponents of renewal.
3. Any permit renewal shall be for a term not to exceed the period of the original permit established by this chapter. Application for permit renewal shall be made at least one hundred and twenty days prior to the expiration of the valid permit.

38-14.1-23. PERMIT REVISION.)

1. During the term of the permit the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the commission.
2. An application for a revision of a permit shall not be approved unless the commission finds that reclamation as required by this chapter can be accomplished under the revised reclamation plan. The revision shall be approved or disapproved within a reasonable time as established by commission regulation. The commission shall establish guidelines for a determination of the scale or extent of a

revision request for which all permit application information requirements and procedures, including notice and hearing, shall apply. Any revisions which propose significant alterations in the reclamation plan shall, at a minimum, be subject to the notice and hearing requirements of sections 38-14.1-18, 38-14.1-19, and 38-14.1-20.

3. Any extensions to the area covered by the permit except incidental boundary revisions must be made by application for another permit.
4. No transfer, assignment or sale of the rights granted under any permit issued pursuant to this chapter shall be made without the written approval of the commission. The commission shall deny approval to the successor in interest of the permittee if the successor in interest is unable to obtain the bond coverage of the original permittee or its equivalent. If the successor in interest is able to obtain the bond coverage of the original permittee, or its equivalent, the successor in interest may arrange for the continuation of surface mining and reclamation operations according to the approved surface mining and reclamation plan of the original permittee pending commission approval of the transfer, assignment, or sale of the rights granted under said permit and any necessary revision or modification of said permit, provided the successor in interest furnishes the necessary information to the commission within thirty days of succeeding to such interest so that the permit in issue can be properly revised or modified.
5. The commission shall within a time limit prescribed by commission regulation, review outstanding permits and may require reasonable revision or modification of the permit provisions during the term of such permit. Any such revision or modification shall be based upon a written finding and subject to notice and hearing requirements in accordance with sections 38-14.1-18, 38-14.1-19, and 38-14.1-20.
6. A permittee may withdraw any land described in either the permit application required in section 38-14.1-14 or the extended mining plan required in section 38-14.1-15, except land on which surface coal mining operations have commenced, by notifying the commission thereof. If land covered by the permit term is so withdrawn the amount of the bond or security filed by the permittee pursuant to the provisions of this chapter shall be reduced proportionately.

38-14.1-24. ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS.)  
General performance standards shall be applicable to all surface



coal mining and reclamation operations and shall require the permittee at a minimum to:

1. Conduct surface coal mining operations so as to maximize the utilization and conservation of the coal being recovered so that re-affecting the land in the future through surface coal mining can be minimized.
2. Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses approved by the commission, which may include industrial, commercial, agricultural, residential, recreational, or public facilities. In approving the postmining land use, or changes thereto, the commission shall establish by regulation postmining land use criteria that shall be demonstrated by the permittee and considered by the commission in making its decision.
3. Backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials) and grade to reshape all areas affected by surface coal mining operations to the gentlest topography consistent with adjacent unmined landscape elements in order to develop a postmining landscape that will provide for maximum moisture retention, drainage that will complement the surrounding terrain, maximum stability, minimum soil losses from runoff and erosion, with all highwalls, spoil piles, and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this chapter), and with maximum postmining graded slopes that do not exceed the approximate original contour; provided, however, that:
  - a. A different contour or topography may be required by the commission to better achieve the approved postmining land use;
  - b. The permittee, at a minimum, shall backfill, grade, and compact (where advisable) using all available overburden and other spoil and waste materials to attain the lowest practicable grade (not to exceed the angle of repose), to provide adequate drainage, and to contain all toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region, in those instances where:
    - (1) Surface coal mining operations are carried out over a substantial period of time at the same location where the operation transects the coal deposit;

- (2) The thickness of the coal deposits relative to the volume of overburden is large; and
  - (3) The permittee demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area are insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour.
4. Stabilize and protect all surface areas, including spoil piles affected by the surface coal mining and reclamation operation, to effectively control erosion and attendant air and water pollution.
  5. Remove, segregate and respread suitable plant growth material as required by the commission within the permit area. The commission may require the permittee to segregate suitable plant growth material in two or more soil layers. The commission shall determine the soil layer or layers to be removed based upon the quality and quantity of suitable plant growth material inventoried by the soil survey required in subdivision t of subsection 1 of section 38-14.1-14. Based on the soil survey, the commission shall also determine whether other suitable strata are necessary to meet revegetation requirements. If other strata can be shown to be suitable and necessary to meet revegetation requirements, the commission may require the permittee to determine the areal extent of other suitable strata within the proposed permit area, and to remove, segregate, protect and respread such material. If the suitable plant growth material or other suitable strata cannot be replaced on an approved graded area within a time short enough to avoid deterioration of such material, the permittee shall stockpile and stabilize such materials by establishing a successful cover of quick growing plants or by other means thereafter so that the suitable plant growth material or other suitable strata will be protected from wind and water erosion and will remain free from any contamination by toxic material. In the interest of achieving the maximum reclamation provided for in this chapter, the permittee may, or at the discretion of the commission shall, utilize such soil amendments as described in subsection 27 of section 38-14.1-02.
  6. For all prime farmlands as identified in paragraph 3 of subdivision a of subsection 2 of section 38-14.1-14 to be mined and reclaimed, the permittee shall, at a minimum, be required to:
    - a. Segregate the A horizon of the natural soil or a combination of the A horizon materials and other

available suitable plant growth materials that will create a final soil having a productive capacity equal to or greater than that which existed prior to mining; and if not utilized immediately, stockpile this material and provide needed protection from wind and water erosion or contamination;

- b. Segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of such horizons or other strata that are shown to be physically and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil. If not utilized immediately, such material shall be stockpiled and provided needed protection from wind and water erosion or contamination;
  - c. Replace the material described in subdivision b of this subsection with proper compaction and uniform depth as determined by the commission over the regraded spoil material; and
  - d. Redistribute in a uniform manner as determined by the commission the surface soil described in subdivision a of this subsection.
7. Create, if authorized in the approved mining and reclamation plan and permit, as part of reclamation activities, permanent water impoundments in accordance with the requirements of the state engineer pursuant to other applicable state law and all of the following standards:
- a. The size of the impoundment will be adequate for its intended purposes.
  - b. The impoundment dam construction will be designed to achieve necessary stability with an adequate margin of safety compatible with the requirements of applicable state law.
  - c. The quality of impounded water will be suitable on a permanent basis for its intended use and discharges from the impoundment will not exceed the quality limitations imposed by the North Dakota pollutant discharge elimination system or degrade the water quality below water quality standards established pursuant to this chapter, whichever is more stringent.
  - d. The level of water will be reasonably stable.

- e. Final grading will provide adequate safety and access for maintenance and proposed water users.
  - f. Such water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.
8. Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation by:
- a. Avoiding toxic mine drainage by such measures as, but not limited to:
    - (1) Preventing water from coming in contact with, or removing water from, toxic producing deposits.
    - (2) Treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses.
    - (3) Casing, sealing, or otherwise managing boreholes and wells to keep toxic drainage from entering ground and surface waters.
  - b. Conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contribution of suspended solids to stream flow, or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state law.
  - c. Constructing any siltation structures pursuant to subdivision b of this subsection prior to commencement of surface coal mining operations, such structures to be certified by a registered professional engineer to be constructed as designed and as approved in the reclamation plan.
  - d. Cleaning out and removing temporary settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the commission.
  - e. Restoring recharge capacity of the mined area to approximate premining conditions to the extent possible using the best technology currently available.

- f. Avoiding natural channel deepening or enlargement in operations requiring the discharge of water from mines.
  - g. Preserving throughout the surface coal mining and reclamation process the essential hydrologic functions of alluvial valley floors.
  - h. Such other actions as the commission may prescribe.
9. Make such repairs, alterations, or construction as necessary to insure the delivery of that quality and quantity of water available prior to mining to a surface owner whose supply of water for domestic, agricultural, industrial, or other legitimate use has been disrupted or diminished in quality or quantity by the surface coal mining operation. Such repairs, alterations, or construction shall be considered to be part of reclamation and shall be made at no cost to the surface owner. Nothing in this chapter shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by a surface coal mining operation.
10. Remove or bury all debris and other similar material resulting from the operation and bury all mine wastes and coal processing wastes unless the commission approves the surface disposal of such wastes. If the commission approves the surface disposal of such wastes, the permittee shall stabilize all waste piles in designated areas through construction in compacted layers, including the use of incombustible and impervious materials if necessary, to assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this chapter.
11. Refrain from surface coal mining within five hundred feet of underground mines in order to prevent breakthroughs; provided that the commission shall allow a permittee to mine near, through, or partially through an underground mine if such operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.
12. Insure that all debris, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion. If a fire hazard exists, the commission shall have the authority to require the permittee to take such actions as are necessary to abate the hazard, both inside and outside the permit area.

13. Insure that explosives are used only in accordance with existing state law and the regulations promulgated by the commission, which shall include provisions to:
  - a. Provide adequate advance written notice to local governments and residents who might be affected by the use of such explosives by the publication of the planned blasting schedule in the official newspaper of each county wherein the surface coal mining operation is located and in other daily newspapers of general circulation in the locality, by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed blasting site, and by providing daily notice to residents in such areas prior to any blasting.
  - b. Maintain for a period of at least three years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts.
  - c. Limit the type of explosives and detonating equipment, the size, the timing, and the frequency of blasts based upon the physical conditions of the site so as to prevent:
    - (1) Injury to persons.
    - (2) Damage to public and private property outside the permit area.
    - (3) Change in the course, channel, or availability of ground or surface water outside the permit area.
  - d. Require that all blasting operations be conducted by trained and competent persons as certified by the commission.
  - e. Provide that upon the request of a resident or owner of a manmade dwelling or structure within one-half mile of any portion of the permitted area the permittee shall conduct a pre-blasting survey of such structures and submit the survey to the commission and a copy to the resident or owner making the request. The area of the survey shall be decided by the commission and shall include such provisions as the commission may promulgate.
14. Insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations, provided that all reclamation through the initial planting

- on any land within the permit area shall be completed by the operator no later than three years from completion of surface coal mining operations on such lands, unless otherwise prescribed by the commission.
15. Insure that the construction, maintenance, and postmining conditions of haul roads and access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property.
  16. Refrain from the construction of haul roads and access roads up a stream bed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water.
  17. Restore lands affected by the surface coal mining operation which have been designated for postmining agricultural purposes to the level of productivity equal to or greater than nonmined agricultural lands in the surrounding area under equivalent management practices. For those lands which are to be rehabilitated to native grasslands, a diverse, effective and permanent vegetative cover shall be established of the same seasonal variety native to the area to be affected and capable of self-regeneration, plant succession, and at least equal in extent of cover and productivity to the natural vegetation of the area. The level of productivity and cover attained on disturbed lands within the permit area shall be demonstrated by the permittee using comparisons with similar lands undisturbed by mining or comparable disruptive activities.
  18. Assume the responsibility for successful revegetation, as required by subsection 17 of this section, for a period of ten full years after vegetation has been established, as determined by the commission, provided that, when the commission approves a long-term intensive agricultural postmining land use, the ten-year period of responsibility for revegetation shall commence at the date of initial planting.
  19. Place all spoil material from the initial pit or other excess spoil material resulting from surface coal mining and reclamation activities in such a manner that all of the following requirements are met:
    - a. Spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way so as to assure mass stability and to prevent mass movement.
    - b. The areas of disposal are within the bonded permit areas.

- c. Appropriate surface and internal drainage systems and diversion ditches are used so as to minimize spoil erosion and movement.
  - d. The disposal area does not contain springs, natural water courses or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented.
  - e. If placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the commission, the spoil could be placed in compliance with all the requirements of this chapter.
  - f. The final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses.
  - g. Design of the spoil disposal area is certified by a registered professional engineer in conformance with professional standards.
  - h. All other provisions of this chapter are met.
20. Meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this chapter, taking into consideration the physical, climatological, and other characteristics of the site.
21. To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the surface coal mining operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable.

38-14.1-25. PROHIBITED MINING PRACTICES.)

- 1. No permittee shall use any coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid or solid wastes either temporarily or permanently as dams or embankments unless approved by the commission, after consultation with the state engineer.
- 2. No permittee shall locate any part of the surface coal mining and reclamation operations or deposit overburden, debris, or waste materials outside the permit area for which bond has been posted, except as provided in subsection 24 of section 38-14.1-03.
- 3. No permittee shall deposit overburden, debris, or waste materials in such a way that normal erosion or slides



brought about by natural causes will permit the same to go beyond or outside the permit area for which bond has been posted.

38-14.1-26. INTERFERENCE WITH COMMISSION EMPLOYEES.) No operator or permittee shall, except as provided by law, willfully resist, prevent, impede, or interfere with the commission or any of its agents in the performance of duties under this chapter. Whoever knowingly violates this section shall, upon conviction, be subject to the penalty provided in subsection 4 of section 38-14.1-32.

38-14.1-27. INSPECTIONS AND MONITORING.)

1. For the purpose of developing or assisting in the development, administration, and enforcement of this chapter and of regulations promulgated by the commission in accordance with this chapter or in the administration and enforcement of any permit under this chapter, or of determining whether any operator or permittee is in violation of any requirement of this chapter or the regulations promulgated by the commission in accordance with this chapter:
  - a. The commission shall require any permittee to:
    - (1) Establish and maintain appropriate records.
    - (2) Submit monthly, semiannual, annual, and other reports including information as the commission may require.
    - (3) Install, use, and maintain any necessary monitoring equipment or methods.
    - (4) Evaluate results in accordance with such methods, at such locations, intervals, or in such manner as the commission shall prescribe.
    - (5) Provide such other information relative to surface coal mining and reclamation operations as the commission deems reasonable and necessary.
  - b. For those surface coal mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance of water use either on or off the mining site, the commission, in consultation with other appropriate state agencies, shall specify those:
    - (1) Monitoring sites to record the quantity and quality of surface drainage above and below the minesite as well as in the potential zone of influence.

- (2) Monitoring sites to record level, amount, and samples of ground water and aquifers potentially affected by the mining and also directly below the lowermost (deepest) coal seam to be mined.
- (3) Records of well logs and borehole data to be maintained.
- (4) Monitoring sites to record precipitation.

The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the commission in consultation with other appropriate state agencies in order to assure their reliability and validity.

- c. An annual map shall be submitted by the operator to the commission for each year of the permit term and until the total bond amount has been released. The map shall be in a form prescribed by the commission showing the status of surface coal mining and reclamation operations that have occurred during the year being reported, with a legend showing the number of acres affected by such operations.
  - d. The authorized representatives of the commission, without advance notice, without a warrant, and upon presentation of appropriate credentials:
    - (1) Shall have the right of entry to, upon, or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained under this subsection are located; and
    - (2) May at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under this chapter.
2. The commission shall cause to be made such inspections of any surface coal mining and reclamation operation as are necessary to insure compliance with this chapter and any regulations promulgated pursuant thereto. However, the inspections by the commission shall:
- a. Occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit.

- b. Occur without prior notice to the permittee or his agents or employees except for necessary onsite meetings with the permittee.
  - c. Include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this chapter.
  - d. Occur without a warrant.
- 3. Each permittee shall conspicuously maintain at the entrances to surface coal mining and reclamation operations a clearly visible sign which sets forth the name, business address, and phone number of the permittee and the permit number of the surface coal mining and reclamation operation.
  - 4. Each inspector, upon detection of each violation of any requirement of this chapter or the regulations promulgated by the commission shall inform the operator or permittee in writing, and shall report in writing any such violations to the commission.
  - 5. Copies of any material records, reports, inspection materials, or information required under this section by the commission shall be filed in the office of the county auditor of the county in which the surface coal mining operations occur.

38-14.1-28. ENFORCEMENT PROCEDURES.)

- 1. Whenever, on the basis of any information available to it, including information from any person, the commission has reason to believe that any requirement of this chapter or of any regulation adopted by the commission under this chapter or any permit condition has not been complied with, the commission shall immediately conduct an inspection, without a warrant, of the surface coal mining operation at which the alleged violation is occurring unless the information available is a result of a previous inspection of such operation. If, based on such inspection, the commission determines enforcement measures are appropriate, it shall initiate one of the following procedures:
  - a. Cessation Order Resulting From Imminent Environmental Harm. If the commission or its authorized representative determines that any condition, practice, or violation exists which also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause, significant, imminent environmental harm to land, air, or water resources, the commission or its authorized representative shall immediately order a cessation of

surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice or violation. Such cessation order shall remain in effect until the commission or its authorized representative determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the commission or its authorized representative pursuant to paragraph 2 of this subdivision.

- (1) Affirmative Relief. Where the commission finds that the ordered cessation will not completely abate the imminent danger or the significant imminent environmental harm, the commission shall, in addition to the cessation order, impose any remedial measures on the operator deemed necessary to abate the imminent danger or the significant environmental harm.
  - (2) Limitation. Any cessation order issued pursuant to this paragraph shall expire within thirty days of actual notice to the operator or permittee unless a public hearing is held within that period within such reasonable proximity of the site to allow viewings of the site during the course of the hearing.
- b. Notice of Violation Fixing Abatement Period. If the commission or its authorized representative determines that any operator or permittee is in violation of any requirement of this chapter or regulations thereunder or any permit condition but it is unable to make the additional finding that a condition, practice or violation exists which also creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, the commission or its authorized representative shall serve on the operator or permittee a notice of violation. The notice shall fix a reasonable time, not more than ninety days, for the abatement of the violation and shall provide opportunity for an informal conference pursuant to section 38-14.1-19 and for public hearing, if requested, pursuant to the procedures of section 38-14.1-30.
- (1) Cessation Order Resulting From Failure to Perform Remedial Measures Established in Notice of Violation. If the operator or permittee does not comply with the remedial measures set forth in the notice within the abatement period as originally fixed or subsequently extended for good cause shown and upon the written findings of

the commission or its authorized representative, the commission or its authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or that portion thereof relevant to the violation. Such cessation order shall remain in effect until the commission determines that the violation has been abated, or until modified, vacated or terminated by the commission or pursuant to paragraph 2 of this subdivision.

- (2) Limitation. Any cessation order issued pursuant to this paragraph shall expire within thirty days of actual notice to the operator or permittee unless a public hearing is held within that period within such reasonable proximity of the site to allow viewings of the site during the course of the hearing.
- c. Order to Show Cause. If the commission or its authorized representative determines that a pattern of violations of any requirements of this chapter or of regulations thereunder or of any permit conditions exists or has existed and also finds that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this chapter or any permit conditions, or that such violations are willfully caused by the permittee, an order to show cause why the permit should not be suspended or revoked shall promptly issue from the commission or its authorized representative and opportunity for a hearing on such order pursuant to procedures in subsection 2 of section 38-14.1-30 shall be provided. Upon the permittee's failure to show cause why the permit should not be suspended or revoked, the commission or its authorized representative shall promptly suspend or revoke the permit.
2. Notices and Orders. Any notices and orders issued pursuant to subsection 1 of this section shall set forth with reasonable specificity the nature of the violation and any remedial action required, any period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. All such notices and orders shall be in writing, shall be signed by the commission or its authorized representative, and shall be served promptly upon the operator and permittee personally or by certified mail addressed to the permanent address of the operator and permittee.

38-14.1-29. PROCEDURES FOR IMPOSING CIVIL PENALTIES.)

1. A civil penalty shall be assessed by the commission as authorized by section 38-14.1-32 only after the operator or permittee has been given an opportunity for public hearing pursuant to the procedures specified in section 38-14.1-30.
  - a. Where such public hearing has been held, the commission shall make findings of fact and issue a written decision pursuant to subdivision g of subsection 3 of section 38-14.1-30 as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.
  - b. Where the operator or permittee charged with such violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the commission if it determines that a violation did occur and issues a final order requiring that the penalty be paid.
2. Hearings under this section shall be consolidated with any enforcement hearings under section 38-14.1-30.
3. Any civil penalties assessed under this chapter may be recovered by the commission in a civil action in the North Dakota district court for the county in which the violation occurred or in which the party assessed has his residence or principal office in the state.

38-14.1-30. ADMINISTRATIVE REVIEW OF COMMISSION  
RULINGS - FORMAL HEARINGS.)

1. Within thirty days after a permit applicant is notified of a ruling by the commission pursuant to section 38-14.1-20, or after an operator or permittee is issued a notice or order pursuant to subdivision a or b of subsection 1 of section 38-14.1-28, or after the commission disapproves an application for release of all or a portion of a performance bond under section 38-14.1-17, such applicant, or operator, or permittee, or any person with an interest which is or may be adversely affected by such ruling, notice, or order or by an order modifying, vacating, or terminating a notice or order, may request and thereby initiate formal hearing procedures before the commission. The right to such administrative review shall be forfeited if not requested within thirty days of such notification of any ruling or issuance of a notice of violation or order as provided in this subsection. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

2. Following the issuance pursuant to subdivision c of subsection 1 of section 38-14.1-28 of an order to show cause as to why a permit should not be suspended or revoked, the commission shall hold a public hearing pursuant to procedures specified in subsection 3 of this section on such order to show cause. After such public hearing, the commission shall issue a written decision concerning suspension or revocation of the permit pursuant to subdivision g of subsection 3.
  - a. If the commission issues an order of permit suspension, it shall subsequently reinstate the permit in accordance with procedures established by commission regulations, upon a showing of compliance with the condition for reinstatement as specified in the suspension order.
  - b. If the permittee fails to comply with the conditions for reinstatement as specified in an order of suspension, the commission shall, pursuant to procedures established by commission regulations, issue an order revoking the permit and forfeiting the performance bond to the state of North Dakota.
  - c. If the commission revokes a permit, all surface coal mining operations shall cease immediately in the permit area.
3. Administrative hearings pursuant to this section shall be conducted in accordance with the following procedures:
  - a. A hearing shall be held within thirty days of a request for a formal hearing under subsection 1 of this section or the issuance of an order to show cause under subsection 2 of this section.
  - b. The commission shall cause such investigation to be made as it deems appropriate in connection with any hearing under this section. Evidence taken at a hearing under this section held in connection with a permit application ruling under section 38-14.1-20 may include, but not be limited to, site inspections of the land to be affected and other surface coal mining operations carried on by the applicant for a permit in the general vicinity of the proposed operation.
  - c. Hearings held pursuant to this section shall be conducted in accordance with appropriate procedures in chapter 28-32 and shall be subject to judicial review in accordance with that chapter. However, any time requirements or other procedural requirements imposed under this section which are in conflict with requirements in chapter 28-32 shall supercede chapter 28-32.

- d. All parties to any informal conference held in reference to a permit application or application for release of performance bond under section 38-14.1-19, and all persons who submitted comments or written objections to the application for release of performance bond or the permit application under sections 38-14.1-17 and 38-14.1-18 respectively, and the permittee and other interested parties in hearings to review enforcement actions taken pursuant to section 38-14.1-28 shall be given written notice of the date, place, and time of the hearing at least twenty days prior to such hearing under this section. In case of an emergency, such notification period may be shortened, but in no event shall notice be given less than five days prior to the hearing. Time periods as provided in section 28-32-05 for any pleadings or filing of other papers before the commission in connection with the hearing shall be adjusted to accommodate time periods set by this subdivision.
- e. In addition, notice of hearings under this section shall be published in the official newspaper of each county in which the subject matter of the hearing is located and in other daily newspapers of general circulation in the general vicinity of such counties, at least once a week for two successive weeks prior to the hearing. In case of an emergency, such publication period may be shortened, but in no event shall notice be published less than five days prior to the hearing in daily newspapers of general circulation in the general locality of the subject matter involved.
- f. No person, except a commissioner, who presides at any informal conference under section 38-14.1-19 in reference to a permit application shall preside at a formal administrative hearing under this section or participate in making the final administrative decision pursuant to section 28-32-13.
- g. All final orders of the commission under this section, except those issued under subsection 4 of this section, shall be issued pursuant to the following procedures:
  - (1) Whenever a formal hearing has been held, the commission shall issue a written decision pursuant to section 28-32-13, provided that the findings, conclusion and decision must be issued within thirty days after the hearing. The commission shall have no discretion to increase such time period.



- (2) In the event that no one with standing to request an administrative hearing under subsection 1 of this section avails himself of the right to a hearing as provided therein, the commission shall establish whether or not a permit should be granted or suspended or revoked; or, in enforcement proceedings, whether the violation has in fact occurred; or, in connection with an application for release of a bond, whether such application should be approved or denied, in whole or in part; and shall issue a final decision as appropriate pursuant to regulations established by the commission.
4. Pending completion of any investigation and hearing procedures being conducted under this section in connection with any notice or order issued pursuant to subdivision a or b of subsection 1 of section 38-14.1-28, the permittee may file with the commission a written request for temporary relief from such notice or order together with a detailed statement giving reasons why such temporary relief should be granted. The commission shall issue an order granting or denying such relief expeditiously as provided by commission regulations. Provided, where the permittee requests relief from a cessation order, the commission's order under this subsection shall be issued within five days of receipt of such request. The commission may grant such relief, under such conditions as it may prescribe, if:
- a. A hearing on the request for temporary relief has been held in the locality of the permit area, providing all parties with an opportunity to be heard and the requirements of subdivisions b and c of this subsection have been met; or
  - b. The permittee shows that there is substantial likelihood that the findings of the commission in the formal administrative proceedings being conducted pursuant to this section will be favorable to him; and
  - c. Such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.
- An order granting or denying temporary relief pursuant to this subsection shall be final and not subject to review in any subsequent administrative or judicial proceeding since any temporary relief granted is in effect only until the investigation and hearing procedures of this section are completed.
5. Nothing in this section shall be construed to eliminate any additional enforcement rights or procedures which may

be available under state law but are not specifically enumerated herein.

38-14.1-31. CIVIL ACTION FOR INJUNCTIVE RELIEF.)

1. In addition to other relief available, the commission may without bond or other undertaking institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the North Dakota district court for the district in which the surface mining and reclamation operation is located or in which the permittee thereof has his principal office in the state, whenever such permittee or his agent:
  - a. Fails to comply with any order or decision issued by the commission under this chapter; or
  - b. Interferes with or delays the commission or its authorized representative in carrying out the provisions of this chapter; or
  - c. Refuses to admit such authorized representative to the mine; or
  - d. Refuses to permit inspection of the mine by such authorized representative; or
  - e. Refuses to furnish any information or report requested by the commission in furtherance of this chapter; or
  - f. Refuses to permit access to, and copying of, such records as the commission determines necessary in carrying out the provisions of this chapter; or
  - g. Refuses to permit inspection of monitoring equipment.
2. The court shall have jurisdiction to provide such relief as may be appropriate, including a permanent or temporary injunction or restraining order.
3. Any relief granted by the court to enforce an order or decision under subdivision a of subsection 1 of this section shall continue in effect until the completion or termination of all proceedings for administrative and judicial review of such order or decision unless the district court granting relief under this section shall set it aside or modify it prior to such final determination.
4. No liability shall accrue to the commission or its authorized representatives in proceeding against any operator or permittee pursuant to this section.

38-14.1-32. PENALTIES.)

1. Any operator or permittee who violates this chapter, or any permit condition or regulation implementing this chapter may be assessed a civil penalty not to exceed ten thousand dollars per day of such violation except that if such violation leads to the issuance of a cessation order, a civil penalty shall be assessed. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to:
  - a. The operator's or permittee's history of previous violations at the particular surface coal mining operation;
  - b. The seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;
  - c. Whether the operator or permittee was negligent; and
  - d. The demonstrated good faith of the operator or permittee charged in attempting to achieve rapid compliance after notification of the violation.
2. Any operator or permittee who fails to correct a violation for which a notice or order has been issued under section 38-14.1-28 within the period permitted for the accomplishment of remedial measures shall be assessed a civil penalty of not less than seven hundred and fifty dollars for each day during which such failure or violation continues.
3. Any person, operator or permittee shall, upon conviction, be punished by a fine of not more than fifteen thousand dollars or by imprisonment for not more than one year, or both, who:
  - a. Knowingly engages in surface coal mining operations without previously securing a permit as required by this chapter; or
  - b. Knowingly violates any permit condition or limitation implementing this chapter; or
  - c. Willfully makes any false statement, representation, or certification, or willfully fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter; or
  - d. Willfully falsifies, tampers with, or knowingly and willfully renders inaccurate, any monitoring device or

method required to be maintained under this chapter;  
or

- e. Fails or refuses to comply with a final order by a court pursuant to section 38-14.1-35, an order issued by the commission pursuant to section 38-14.1-28, or any order incorporated in a final decision by the commission, except an order incorporated in a decision requiring the payment of a penalty.
4. Any operator or permittee who knowingly violates section 38-14.1-26 shall, upon conviction, be punished by a fine of not more than five thousand dollars or by imprisonment for not more than one year, or both.
5. Any employee of the commission who willfully violates section 38-14.1-38 shall, upon conviction, be punished by a fine of not more than two thousand five hundred dollars, or by imprisonment of not more than one year, or both.
6. Whenever a corporate permittee violates a condition of a permit or fails or refuses to comply with an order issued by the commission pursuant to section 38-14.1-28, or any order incorporated in a final decision issued by the commission, except an order incorporated in a decision requiring the payment of a penalty, any director, officer, or agent of such corporation who willfully and knowingly authorized, or carried out such violation, failure or refusal shall be subject to the same criminal and civil penalties, fines and imprisonment that may be imposed under subsections 1 and 3 of this section.
7. Any action for the collection of civil penalties under this section shall be tried in the district court for the county in which the alleged violation occurred or in which the person or operator alleged to have committed the violation has his residence or principal office in the state.

38-14.1-33. PERMIT REVOCATION - BOND FORFEITURE.)

1. The commission may institute proceedings for the revocation of the permit and forfeiture of the performance bond of a permittee for violation by the permittee of any of the provisions of this chapter or of regulations implementing this chapter. The commission shall issue an order forfeiting the bond and revoking the permit of a permittee who fails to comply with an order of the commission suspending the permit pursuant to subsection 2 of section 38-14.1-30.
2. A permittee whose bond has been forfeited and permit revoked shall immediately cease all surface coal mining operations in this state. The permittee shall not be

eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the permittee has paid into the reclamation account a sum which, added to the value of the bond, the commission finds adequate to reclaim the land.

3. A permittee who refuses or willfully fails to comply with this chapter shall be ineligible for any further mining permits. After an opportunity for hearing and after a finding by the commission that the permit applicant, or operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this chapter of such nature and duration that result in irreparable damage to the environment as to indicate an intent not to comply with the provisions of this chapter, no permit shall be issued to said permit applicant or permittee.

38-14.1-34. ADMINISTRATIVE REVIEW OF REGULATIONS.) Any person aggrieved or adversely affected by any regulation promulgated by the commission under this chapter may petition the commission for a hearing to reconsider or amend such regulation. The commission shall grant a public hearing pursuant to procedures established in chapter 28-32.

38-14.1-35. JUDICIAL REVIEW.)

1. There shall be a right to judicial review pursuant to sections 15 through 21 of chapter 28-32 of the North Dakota Century Code:
  - a. To any applicant or any person with an interest which is or may be adversely affected who has participated in administrative proceedings under section 38-14.1-30 as an objector, and who is aggrieved by the decision of the commission.
  - b. To any person with an interest which is or may be adversely affected who has participated in the administrative proceedings if the commission fails to act within the time limits specified in this chapter or in accordance with the provisions of chapter 28-32.
  - c. To any permittee who is subject to an order by the commission implementing a final decision to suspend or revoke his permit under section 38-14.1-28 or to any operator or permittee who is subject to an order by the commission implementing a final decision imposing a penalty under section 38-14.1-29, or any person having an interest which is or may be adversely affected by such order or by any modification, vacation, or termination of such order.

- d. To any person claiming to be aggrieved or adversely affected by any regulation promulgated by the commission to carry out the provisions of this chapter or by any order of the commission or by its failure to enter an order.
2. Availability of judicial review under this section shall not be construed to limit the operation of the rights established in section 38-14.1-40 except as provided therein.

38-14.1-36. ASSESSMENT OF COSTS - ATTORNEY'S FEES.)

1. Administrative Proceedings. Whenever an order is issued as a result of any administrative proceeding under this chapter, at the request of any party, a sum equal to the aggregate amount of all costs and expenses including attorney's fees as determined by the commission to have been reasonably incurred by such party for or in connection with his participation in such proceedings, may be assessed against any party as the commission deems proper.
2. Judicial Review. The court, in issuing any final order pursuant to chapter 28-32 in review of commission proceedings under this chapter may assess costs, including attorney's fees against any party whenever the court determines such award is appropriate.
3. Citizen Suits. The court, in issuing any final order in a civil action brought under section 38-14.1-40 by any person having an interest which is or may be adversely affected to compel compliance with this chapter, may award costs of litigation, including attorney and expert witness fees, to any party whenever the court determines such award is appropriate.
4. In civil proceedings pertaining to this chapter, the provisions of this section shall govern as herein provided, rather than those provided for in section 28-26-01.

38-14.1-37. SMALL OPERATORS.)

1. The provisions of this chapter shall not apply to any of the following activities:
  - a. The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him.
  - b. The extraction of coal for commercial purposes where the surface mining operations affect two acres or less.

- c. The extraction of coal as an incidental part of federal, state, or local government-financed highway or other construction under regulations established by the commission.
2. If the commission finds that the probable total annual production at all locations mined by any permit applicant will not exceed one hundred thousand tons, the determination of probable hydrologic consequences required by subdivision o of subsection 1 of section 38-14.1-14 and the statement of the result of test borings or core samplings required by subdivision s of subsection 1 of section 38-14.1-14 shall, upon the written request of the permit applicant, be performed by a qualified public or private laboratory designated by the commission. The cost of the preparation of such determination and statement shall be assumed by the commission.

38-14.1-38. CONFLICT OF INTEREST.) No employee of the commission performing any decision-making function or duty under this chapter shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever willfully violates this section shall, upon conviction, be subject to the penalty provided in subsection 5 of section 38-14.1-32. The commission shall promulgate regulations to establish methods by which the provisions of this section will be monitored and enforced by the commission, including appropriate provisions for the filing by such employees and the review of statements and supplements thereto concerning any financial interests which may be affected by this section.

38-14.1-39. FEES AND FORFEITURES - DEPOSIT.) All permit application fees and performance bond 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 surface 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 surface coal mining operations.

38-14.1-40. CITIZEN SUITS.)

1. Any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this chapter, or any regulation, order, or permit issued pursuant to this chapter:
  - a. Against any person or any governmental instrumentality or agency who is alleged to be in violation of any regulation, order, or permit issued pursuant to this chapter; or

- b. Against the commission where there is alleged a failure of the commission to perform any act or duty under this chapter which is not discretionary with the commission.
2. Notice of the violation shall be given to the commission and to any alleged violator sixty days before commencement of an action under subdivision a of subsection 1 of this section. Notice of the commencement of an action under subdivision b of subsection 1 of this section shall be given to the commission in such manner as the commission shall prescribe by regulation sixty days before commencement of such action, except that such action may be brought immediately after notification if the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.
  3. No action may be commenced if the commission has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this chapter, or any regulation, order, or permit issued pursuant to this chapter. In any such action, any person with an interest which is or may be adversely affected may intervene as a matter of right.
  4. Any person who is injured in his person or property through the violation by any operator or permittee of any regulation, order, or permit issued pursuant to this chapter may bring an action for damages (including reasonable attorney and expert witness fees) or for temporary or permanent equitable relief. Nothing in this subsection shall affect the rights established by or limits imposed under the state workmen's compensation laws.
  5. Any action brought under this section may be brought only in the district court in which the surface coal mining operation complained of is located. The commission, if not a party, may intervene in any such action as a matter of right.
  6. Nothing in this section shall restrict any right which any person or class of persons may have under any statute or common law to seek enforcement of any of the provisions of this chapter and the regulations thereunder, or to seek any other relief, including relief against the commission.

38-14.1-41. ADMINISTRATIVE AGENCIES PRACTICE ACT TO APPLY TO THIS CHAPTER - REGULATIONS.) Chapter 28-32 shall apply to this chapter except as otherwise provided in specific provisions of this chapter. The commission may promulgate regulations with respect to the administration of this chapter under chapter 28-32 except that if the commission determines that an emergency exists due to changes



in federal performance standards promulgated under the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 30 U.S.C. 1201, et seq., and any amendments thereto, the commission may adopt emergency regulations in accordance with the purposes of this chapter which shall be effective immediately upon approval by the attorney general. Such emergency regulations shall remain in effect for a period not to exceed ninety days unless a public hearing is held pursuant to section 28-32-02.

38-14.1-42. 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 and promulgate regulations as required by federal law for any purposes relating to reclamation. In the administration, inspection, and enforcement of North Dakota's reclamation program, the commission is also authorized and encouraged to cooperate with other federal and state agencies in order to eliminate duplication of effort and unnecessary review, establish a common data base for similar reviews and timely decisions, and to promulgate rules and regulations relevant to such authorization.

38-14.1-43. SEVERABILITY.) If any provision of this chapter or the applicability thereof to any person or circumstances is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 2. REPEAL.) Chapter 38-14 of the North Dakota Century Code is hereby repealed.

Approved March 27, 1979

## CHAPTER 400

HOUSE BILL NO. 1239

(Committee on Natural Resources)

(At the request of the North Dakota Public Service Commission)

### ABANDONED SURFACE MINE RECLAMATION PROGRAM

AN ACT to create and enact chapter 38-14.2 of the North Dakota Century Code, relating to the development of a reclamation program for abandoned surface mined areas.

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

SECTION 1.) Chapter 38-14.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-14.2-01. DECLARATION OF FINDINGS AND PURPOSE.) The legislature finds and declares that there are a substantial number of acres within the state disturbed by surface coal mining operations and non-coal mining operations on which little or no reclamation was conducted, and the impacts from these unreclaimed lands impose social and economic costs on residents in nearby and adjoining areas as well as continuing to impair environmental quality. It is, therefore, the purpose of this chapter to promote the reclamation of mined areas left without adequate reclamation prior to the enactment of this chapter and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public.

38-14.2-02. DEFINITIONS.) For the purpose of this chapter:

1. "Abandoned mine reclamation plan" means a plan for the reclamation of lands and water adversely affected by past coal mining and non-coal mining practices. The plan shall generally identify all areas to be reclaimed in the state of North Dakota, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, and the specific criteria for ranking and identifying projects to be funded.
2. "Abandoned mine reclamation program" means a program established in accordance with this chapter for the

reclamation of lands and water adversely affected by past coal mining and non-coal mining practices and includes the abandoned mine reclamation plan, annual projects under the plan, and all other activities necessary in development of the program.

3. "Commission" means the public service commission, or such department, bureau, or commission as may lawfully succeed to the powers and duties of that commission. The commission is the state regulatory authority for all purposes relating to Title IV of the Surface Mining Control and Reclamation Act of 1977 [Public Law 95-87, 30 U.S.C. 1231 et seq.].
4. "Extreme danger" means a condition which could reasonably be expected to cause considerable physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.
5. "Fund" means the state abandoned mine reclamation fund to be used in carrying out a program of reclamation of abandoned mine lands pursuant to this chapter.
6. "Non-coal mining" means the mining of metalliferous and nonmetalliferous ores, clay, stone, sand, gravel, scoria, uranium, and other solid materials or substances of commercial value and which have been extracted in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.
7. "Person" means an individual, partnership, firm, association, society, joint stock company, company, cooperative, corporation, or other business organization.

38-14.2-03. POWERS AND DUTIES OF THE COMMISSION.) The commission:

1. Shall develop an abandoned mine reclamation plan.
2. Shall submit such applications, abandoned mine reclamation plan, projects, and reports necessary to accomplish the purposes of this chapter, and to accomplish the purposes of Title IV of Public Law 95-87, 30 U.S.C. 1231, et seq.
3. Shall include in each annual request for projects the following information:
  - a. A general description of each proposed project;
  - b. A priority evaluation of each proposed project;
  - c. A statement of the estimated benefits in such terms as: number of acres restored, miles of stream

improved, acres of surface lands protected from subsidence, population protected from subsidence, air pollution, hazards of mine and coal refuse disposal area fires;

- d. An estimate of the cost for each proposed project;
  - e. In the case of proposed research and demonstration projects, a description of the specific techniques to be evaluated or objective to be attained;
  - f. An identification of lands or interest therein to be acquired and the estimated cost;
  - g. In each year after the first in which a plan is filed under this chapter, an inventory of each project funded under the previous year's grant, which inventory shall include details of financial expenditures on such project together with a brief description of each project, including project locations, landowner's name, acreage, type of reclamation performed; and
  - h. Other information as prescribed by the commission.
4. Shall include the following costs in each proposed project:
    - a. Actual construction costs;
    - b. Actual operation and maintenance costs of permanent facilities;
    - c. Planning and engineering costs;
    - d. Construction inspection costs; and
    - e. Other necessary administrative expenses.
  5. May request and accept grants of funds or services or transfer such funds or services for the implementation of the purposes of this chapter, and of Title IV of Public Law 95-87, 30 U.S.C. 1231, et seq.
  6. May enter any property without a warrant for the purpose of conducting studies to determine the existence of adverse effects of past coal mining and non-coal mining practices.
  7. May enter and lease or acquire land adversely affected by past coal mining or non-coal mining practices for the purpose of reclaiming such lands pursuant to this chapter.

8. May engage in cooperative projects under this chapter with any federal or state agency.
9. May engage in any work and do all things necessary or expedient, including the promulgation of regulations for all provisions of this chapter, to implement and administer the provisions of this chapter and of Title IV of Public Law 95-87, 30 U.S.C. 1231, et seq., and to develop and implement an abandoned mine reclamation program.
10. May initiate, in addition to any other remedies provided for in this chapter, in any court of competent jurisdiction, an action in equity for an injunction (either temporary or permanent) to restrain any interference with the exercise of the right to enter or to conduct any work provided for in this chapter.
11. May require, by contractual agreement with the appropriate persons, the extraction of any remaining coal deposits in areas reclaimed under this chapter, in order to maximize resource recovery. The commission may promulgate such regulations as may be necessary to insure that such extraction is performed by a qualified contractor in compliance with the applicable performance standards of section 38-14.1-24 and, if warranted, provide for compensation to the person entitled thereto.

38-14.2-04. STATE ABANDONED MINE RECLAMATION FUND.) There is hereby created the state abandoned mine reclamation fund.

1. Revenue to the fund shall include:

- a. Moneys applied for and received by the commission pursuant to Title IV of Public Law 95-87, 30 U.S.C. 1231 et seq., for the purposes of this chapter.
- b. Moneys donated to the commission by persons, corporations, associations, and foundations for the purposes of this chapter.
- c. Moneys collected by the commission from charges for uses of lands acquired or reclaimed with moneys from the fund, after expenditures for maintenance have been deducted.
- d. Moneys recovered by the commission through satisfaction of liens filed against privately owned lands reclaimed with moneys from the fund.
- e. Moneys recovered by the commission from the sale of lands acquired with moneys from the fund.

- f. Such other moneys as may be deposited in the fund for use in carrying out the purposes of the abandoned mine reclamation program.
2. Moneys in the fund may be used for the following purposes:
- a. Reclamation and restoration of land and water resources as defined by section 38-14.2-06 and adversely affected by past mining, including but not limited to:
    - (1) Reclamation and restoration of abandoned surface mined areas, abandoned coal processing areas, and abandoned coal refuse disposal areas;
    - (2) Reclamation of lands affected by underground mine subsidence;
    - (3) Planting of land adversely affected by past coal mining or non-coal mining to prevent erosion and sedimentation;
    - (4) Prevention, abatement, treatment, and control of water pollution created by coal mine or non-coal mine drainage including restoration of stream beds, and construction and operation of water treatment plants;
    - (5) Prevention, abatement, and control of burning coal refuse disposal areas and burning coal in situ;
    - (6) Prevention, abatement, and control of coal mine subsidence.
  - b. Acquisition or lease of land as provided for in this chapter.
  - c. Studies by the commission by contract with public and private organizations to provide information, advice, and technical assistance, including research and demonstration projects, conducted for the purposes of this chapter.
  - d. All other necessary expenses to accomplish the purposes of this chapter, including administrative expenses and costs incurred in the development of the abandoned mine reclamation plan and the abandoned mine reclamation program.

38-14.2-05. CONSTRUCTION OF PUBLIC FACILITIES.) Upon reclamation of all abandoned coal mine areas and all abandoned non-coal areas pursuant to the provisions of this chapter, if there is a need for the construction of specific public facilities in

communities impacted by coal development and if impact funds which may be available are inadequate, the governor of the state of North Dakota shall certify to the existence of such conditions to the secretary of the interior and funds may be allocated and expended for such construction upon the approval of the specific public facilities by the commission.

38-14.2-06. ELIGIBLE LANDS AND WATER.) Lands and water eligible for reclamation or drainage abatement expenditures under this chapter are those which were mined for coal or which were affected by such mining, wastebanks, coal processing or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to the date of enactment of this chapter, and for which there is no continuing reclamation responsibility under other state laws. Lands and water which were mined or affected by mining for minerals and materials other than coal shall also be eligible for reclamation under this chapter if such reclamation is necessary to protect the public health, safety, general welfare and property and such non-coal abandoned mine lands were left in an inadequate reclamation status prior to the date of enactment of this chapter, and for which there is no continuing reclamation responsibility under other state laws.

38-14.2-07. COMMISSION AUTHORIZED TO ADMINISTER ABANDONED MINE RECLAMATION PROGRAM - OBJECTIVES - PRIORITIES.) The commission is hereby authorized to develop, administer, and enforce an abandoned mine reclamation program. Expenditure of funds for the projects under this program shall reflect priorities in the order stated:

1. Administrative expenses and costs incurred in the development of the abandoned mine reclamation plan and the abandoned mine reclamation program.
2. The protection of public health, safety, general welfare and property from extreme danger resulting from the adverse effects of past coal mining practices.
3. The protection of public health, safety, and general welfare from adverse effects of past coal mining practices which do not constitute an extreme danger.
4. The restoration of eligible land and water and the environment previously degraded by adverse effects of past coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity.
5. Research and demonstration projects relating to the development of surface coal mining reclamation and water quality control program methods and techniques.

6. The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by past coal mining practices.
7. The development of publicly owned land adversely affected by past coal mining practices, including land acquired as provided in this chapter, for recreation, historic, conservation, and reclamation purposes and open space benefits.
8. The protection of the public from hazards endangering life and property resulting from the adverse effects of past non-coal mining practices. However, upon request by the governor of the state of North Dakota and approval by the secretary of the interior, such work may be undertaken before the priorities related to past coal mining have been fulfilled.
9. The protection of the public from hazards to health and safety from the adverse effects of past non-coal mining practices.
10. The restoration of the environment degraded by the adverse effects of past non-coal mining.
11. The construction of public facilities in accordance with section 38-14.2-05.

38-14.2-08. RIGHT TO CONDUCT STUDIES.) The commission shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining and non-coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

38-14.2-09. AFFECTED LANDS - RIGHT OF ENTRY.) If the commission makes a finding of fact that:

1. Land or water resources have been adversely affected by past coal mining or non-coal mining practices; and
2. The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and
3. The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining or non-coal mining practices are not known or readily available; or



4. The owner will not give permission for the commission, its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining or non-coal mining practices;

Then, upon giving notice by mail to the owners if known or if not known by posting notice upon the premises and advertising once in the official newspaper of each county and in other daily newspapers of general circulation in each county wherein the land lies, the commission, its agents, employees, or contractors shall have the right to enter upon the property adversely affected by past coal mining or non-coal mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land to the extent allowed in section 38-14.2-14 and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry: provided, however, that this provision is not intended to create new rights of action or eliminate existing immunities.

38-14.2-10. LAND ACQUISITION.) The commission may acquire any land, by purchase, donation, or condemnation, pursuant to the procedures of chapter 32-15, and other laws governing eminent domain, which is adversely affected by past coal mining or non-coal mining practices if the commission determines in accordance with the rules of practice and procedure established by the commission that acquisition of such land is necessary for successful reclamation and that:

1. The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining or non-coal mining practices, will serve recreation, historic, conservation and reclamation purposes or provide open space benefits; and
2. Permanent facilities such as a mine drainage treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining or non-coal mining practices; or
3. Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this chapter or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining or non-coal mining practices.

38-14.2-11. TITLE.) Title to all lands acquired pursuant to this chapter shall be in the name of the state of North Dakota. The price paid for land acquired under this chapter shall reflect the market value of the land as adversely affected by past coal mining or non-coal mining practices.

38-14.2-12. TRANSFER OR SALE OF ACQUIRED LANDS.) The commission may transfer land acquired pursuant to this chapter to the appropriate state or federal agency. Where land acquired pursuant to this chapter is deemed to be suitable for industrial, commercial, residential or recreational development, the commission may sell such land by public sale under a system of competitive bidding, at not less than fair market value, pursuant to the provisions of chapter 54-01 and other laws applicable to the sale of state-owned land and under such other regulations promulgated to insure that such lands are put to proper use consistent with local and state land use plans, if any, as determined by the commission.

38-14.2-13. PUBLIC HEARING ON DISPOSITION OF ACQUIRED LANDS.) The commission, when requested, shall hold a public hearing, with the appropriate public notice, in the county or counties in which lands acquired pursuant to this chapter are located. The hearings shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining or non-coal mining practices. The hearing shall be conducted pursuant to chapter 28-32.

38-14.2-14. LIENS FOR RECLAMATION ON PRIVATE LANDS.)

1. Within six months after the completion of projects to restore, abate, control, or prevent adverse effects of past coal mining or non-coal mining practices on privately owned land, the commission shall itemize the moneys so expended and may file a statement thereof in the office of the county register of deeds in the county in which the land is located, together with notarized appraisals by an independent appraiser of the value of the land before and after the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining or non-coal mining practices if the moneys so expended result in a significant increase in property value. Such statement shall constitute a lien upon the land. The lien shall not exceed the amount determined by the appraisals to be the increase in the market value of the land as the result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining or non-coal mining practices. The lien may be waived by the commission if:
  - a. The cost of filing the lien, including indirect costs, exceeds the increase in the fair market value of the land as the result of reclamation activities;

- b. The reclamation work performed on private land primarily benefits health, safety, or environmental values of the greater community or area in which the land is located; or
  - c. The reclamation work performed is necessitated by an unforeseen occurrence and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the occurrence.
- 2. No lien shall be filed against the property of any person, in accordance with this section, who owned the surface prior to May 2, 1977, and who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed hereunder.
  - 3. The landowner may petition the commission for a hearing within sixty days of the filing of the lien to determine the increase in the market value of the land as the result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining or non-coal mining practices. The amount determined to be the increase in value of the premises shall constitute the amount of the lien and shall be recorded with the statement herein provided. The hearing shall be conducted pursuant to chapter 28-32.
  - 4. Any statement filed pursuant to this section shall constitute a lien upon the land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.
  - 5. The commission may bring an action to enforce the lien in the district court of the county in which the land is located. Any number of persons claiming liens against the same property may join in the action and when separate actions are commenced, the court may consolidate them. Before the lien may be enforced, written notice of intention to enforce the lien shall be given by personal service upon the record owner of the land affected at least ten days before an action to enforce the lien is commenced, or by certified mail directed to the owner's last known address at least twenty days before the action is commenced. The land affected shall not be sold for less than the fair market value of the land after the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining or non-coal mining practices. No deficiency judgment shall issue against the record owner of the land affected if the proceeds from the sale are insufficient to satisfy the total amount of the lien on the land.

38-14.2-15. HEARING AND APPEAL.) Any person claiming to be aggrieved or adversely affected by any regulation or order of the commission or its failure to enter an order under this chapter 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 issued pursuant to this chapter.

Approved March 19, 1979