

MINING AND GAS AND OIL PRODUCTION

CHAPTER 365

HOUSE BILL NO. 1536
(Kloubec)

RESOURCE MANAGEMENT

AN ACT to provide for the assumption of certain functions of the water commission by the state engineer; to create and enact two new sections to chapter 38-08 of the North Dakota Century Code, relating to the enforcement of that chapter and to the transfer of certain equipment and functions from the state geologist to the industrial commission; to amend and reenact sections 38-08-04, 38-08-05, 38-08-07, and 61-14-03 of the North Dakota Century Code, relating to powers and duties of the industrial commission and the issuance of irrigation permits; and to repeal chapter 54-49.1 and section 61-02-20 of the North Dakota Century Code, relating to the establishment of the natural resources council and construction of dams; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 38-08-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08-04. JURISDICTION OF COMMISSION. The commission has continuing 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 crude petroleum oil and natural gas resources of this state and the provisions of this chapter.~~ The commission has authority, and it is its duty, to make such investigations as it deems proper to determine whether waste exists or is imminent or whether other 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. Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and

facilities for the transportation or refining of oil and gas.

- b. The making and filing with the industrial commission and the state geologist of all resistivity, radioactivity, and mechanical well logs and the filing of directional surveys if taken, and the filing of reports on well location, drilling, and production, and the filing free of charge of samples and core chips and of complete cores when requested in the office of the state geologist within six months after the completion or abandonment of the well.
- c. The drilling, casing, operation, and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas stratum, the pollution of fresh water supplies by oil, gas, or salt water, and to prevent blowouts, cavings, seepages, and fires.
- d. 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 of the state of North Dakota prescribed to govern the production of oil and gas on state and private lands within the state of North Dakota.
- e. That the production from wells be separated into gaseous and liquid hydrocarbons, and that each be accurately measured by such means and upon such standards as may be prescribed by the commission.
- f. The operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios.
- g. Certificates of clearance in connection with the transportation or delivery of oil, gas, or any product.
- h. Metering or other measuring of oil, gas, or product in pipelines, gathering systems, barge terminals, loading racks, refineries, or other places.
- i. That every person who produces, sells, purchases, acquires, stores, transports, refines, or processes oil or gas in this state shall keep and maintain within this state complete and accurate records of the quantities thereof, which records shall be available for examination by the commission or its agents at all reasonable times, and that every such person file with the commission such reports as it may prescribe with respect to such oil or gas or the products thereof.

2. To regulate:
 - a. The drilling, producing, and plugging of wells, and all other operations for the production of oil or gas.
 - b. The shooting and chemical treatment of wells.
 - c. The spacing of wells.
 - d. Operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations.
 - e. Disposal of salt water and oil field wastes.
3. To limit and to allocate the production of oil and gas from any field, pool, or area and to establish and define as separate marketing districts those contiguous areas within the state which supply oil and gas to different markets, and to limit and allocate the production of oil and gas for each separate marketing district.
4. To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.
5. To promulgate and to enforce rules, regulations, and orders to effectuate the purposes and the intent of this chapter.

SECTION 2. AMENDMENT. Section 38-08-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08-05. DRILLING PERMIT REQUIRED. It shall be unlawful to commence operations for the drilling of a well for oil or gas without first giving to the ~~state-geologist~~ industrial commission notice of intention to drill, or 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 well in an amount to be prescribed by the commission.

SECTION 3. AMENDMENT. Section 38-08-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08-07. COMMISSION SHALL SET SPACING UNITS. The commission shall set spacing units as follows:

1. When necessary to prevent waste, to avoid the drilling of unnecessary wells, or to protect correlative rights, the commission shall establish spacing units for a pool. Spacing units when established shall be of uniform size and shape for the entire pool, except that when found to be necessary for any of the purposes above mentioned, the

commission is authorized to divide any pool into zones and establish spacing units for each zone, which units may differ in size and shape from those established in any other zone.

2. The size and shape of spacing units are to be such as will result in the efficient and economical development of the pool as a whole.
3. An order establishing spacing units for a pool shall specify the size and shape of each unit and the location of the permitted well thereon in accordance with a reasonably uniform spacing plan. Upon application, if the ~~state-geologist~~ commission finds that a well drilled at the prescribed location would not produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such well, the ~~state-geologist~~ commission is authorized to enter an order permitting the well to be drilled at a location other than that prescribed by such spacing order; however, the ~~state-geologist~~ commission shall include in the order suitable provisions to prevent the production from the spacing unit of more than its just and equitable share of the oil and gas in the pool. ~~Any such order of the state geologist allowing exceptions to the established spacing pattern may be appealed within a reasonable time to the commission by filing such an appeal with the commission. Upon the filing of such an appeal and after a due hearing, the commission may affirm or repeal the order of the state geologist.~~
4. An order establishing units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the commission from time to time to include additional areas determined to be underlaid by such pool. When found necessary for the prevention of waste, or to avoid the drilling of unnecessary wells, or to protect correlative rights, an order establishing spacing units in a pool may be modified by the commission to increase or decrease the size of spacing units in the pool or any zone thereof, or to permit the drilling of additional wells on a reasonably uniform plan in the pool, or any zone thereof, or an additional well on any spacing unit thereof.

SECTION 4. A new section to chapter 38-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

INDUSTRIAL COMMISSION - PERSONNEL - EQUIPMENT TRANSFER. The industrial commission is authorized to appoint a chief enforcement officer and to set his salary within the limits of legislative appropriations. The industrial commission may designate the state geologist as the chief enforcement officer. With the approval of the industrial commission, the state geologist may appoint an

assistant to have primary responsibility for rule enforcement. The industrial commission, within the limits of legislative appropriations, may make arrangements with the board of higher education, subject to the approval of the emergency commission, to transfer equipment, personnel, and material between the commission and the state geologist as necessary to carry out this chapter.

SECTION 5. A new section to chapter 38-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

STATE GEOLOGIST TO ASSIST COMMISSION. The state geologist shall furnish the industrial commission with such technical services and assistance as the duties of the office permit.

SECTION 6. STATE ENGINEER TO BE SUBSTITUTED FOR THE WATER COMMISSION.

1. Whenever the term "water conservation commission", "water commission", or "commission", or any derivative of those terms, which when used in context, indicates an intention to refer to that commission regarding those duties specified in sections 61-04-01, 61-04-03, and 61-04-04 and chapters 61-16 and 61-20, shall appear in the North Dakota Century Code, the term "state engineer", or "engineer", as the case may be, shall be substituted therefor. The state engineer shall be substituted for, shall take any action previously to be taken by, and perform any duties previously performed by the water commission under sections 61-04-01, 61-04-03, and 61-04-04 and chapters 61-16 and 61-20.
2. Any legislative measure, enacted by the forty-seventh legislative assembly and referring to the terms "water conservation commission", "water commission", or "commission" and amending any section or chapter cited in subsection 1 of this section, shall be construed as granting full administrative and enforcement authority to the state engineer.

SECTION 7. Section 61-14-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-14-03. AMOUNT OF WATER FOR IRRIGATION. In the issuance of a permit to appropriate water for irrigation or in the adjudication of the rights to the use of water for such purpose, the amount allowed shall not be in excess of the rate of one cubic foot [28.32 liters] of water per second for each eighty acres [32.37 hectares], for a specified time in each year, or the equivalent thereof, delivered on the land. Provided, that the state engineer may allow a higher rate of diversion where the method of irrigation stipulated in the permit or the type of soil to which the water is to be applied so requires, but in such event, the total amount allowed shall not be in excess of two acre-feet per acre [2,466.96 cubic

meters per .40 hectare] delivered to the land for any one irrigation season, and in no case more than can be used beneficially, except that during periods of sufficient water supply the state engineer, ~~with the approval of the state water commission and~~ in accordance with the method of irrigation being used, the type of soil to which the water is to be applied, and other criteria established by the state engineer, may increase the amount of water allowed to three acre-feet per acre [3,700.45 cubic meters per .40 hectare], per irrigation season, for a specified period of time which in no event shall be of greater duration than the period of sufficient water supply.

SECTION 8. REPEAL. Chapter 54-49.1 and section 61-02-20 of the 1979 Supplement to the North Dakota Century Code are hereby repealed.

SECTION 9. EMERGENCY. Sections 1 through 7 of this Act are hereby declared to be an emergency measure and shall be in effect from and after the passage and approval of this Act.

Approved April 13, 1981

CHAPTER 366

SENATE BILL NO. 2437

(Nothing)

(Approved by Committee on Delayed Bills)

OIL EXTRACTION TAX RESPONSIBILITIES

AN ACT to create and enact a new section to chapter 54-17 of the North Dakota Century Code, relating to the responsibilities of the industrial commission under initiated measure No. 6 as approved in the 1980 general election; to amend and reenact subsections 4 and 5 of section 38-08-04 of the North Dakota Century Code, relating to the authority of the industrial commission and the state geologist to classify oil and gas wells; to provide an appropriation; and to declare an emergency.

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

SECTION 1. AMENDMENT. Subsections 4 and 5 of section 38-08-04 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter, and to classify and determine the status of stripper well property as defined in subsection 2 of section 4 of initiated measure No. 6 as approved in the 1980 general election.
5. To ~~promulgate~~ adopt and to enforce rules, ~~regulations~~, and orders to effectuate the purposes and the intent of this chapter and of subsections 2 and 3 of section 4 of initiated measure No. 6 as approved in the 1980 general election.

SECTION 2. A new section to chapter 54-17 of the North Dakota Century Code is hereby created and enacted to read as follows:

OIL EXTRACTION TAX TRUST FUND - INDUSTRIAL COMMISSION RESPONSIBILITIES.

1. The industrial commission may, within the limits of legislative appropriations, enter into contracts with

institutions of higher education in this state, or with other parties, for the following purposes:

- a. Studies on the development of cogeneration systems.
 - b. Studies on the promotion and development of energy conservation programs and renewable energy sources.
 - c. Studies of the feasibility of developing waste products utilization.
2. The industrial commission may, within the limits of legislative appropriations, provide for the making of grants in aid of those persons or entities doing research or development with respect to energy conservation, renewable energy sources, cogeneration, or waste products utilization. Grants under this subsection shall be made to persons or entities residing, located, or doing business, in this state. No grant made pursuant to this subsection shall exceed ten thousand dollars in amount, and grants shall not be made for time periods which run beyond any fiscal biennium during which the grant is made. As used in this subsection, "entity" means any firm, partnership, corporation, cooperative, association, or other business entity, and any governmental entity.
3. The industrial commission may adopt rules to implement its power to make grants and enter into contracts pursuant to this section. Any rules shall be adopted in accordance with chapter 28-32.

SECTION 3. APPROPRIATION. There is hereby appropriated out of the interest and income accrued to the special trust fund created by subsection 2 of section 7 of initiated measure No. 6 as approved in the 1980 general election, the sum of \$150,000, or so much thereof as may be necessary, to the industrial commission for use in carrying out the provisions of section 2 of this Act for the biennium beginning July 1, 1981, and ending June 30, 1983.

SECTION 4. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 31, 1981

CHAPTER 367

HOUSE BILL NO. 1179
 (Committee on Natural Resources)
 (At the request of the Industrial Commission)

CIVIL PENALTY FOR VIOLATING OIL AND GAS PROVISIONS

AN ACT to amend and reenact section 38-08-16 of the North Dakota Century Code, relating to penalties imposed upon violators of rules, regulations, or orders of the industrial commission; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 38-08-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08-16. CIVIL PENALTY. Any person who violates any provision of this chapter, or any rule, regulation, or order of the commission shall be subject to a civil penalty ~~of not more than one thousand dollars for each violation--and--for--each--day--that--such violation--continues~~ to exceed twelve thousand five hundred dollars for each offense, and each day's violation shall be a separate offense, unless the penalty for such the violation is otherwise specifically provided for and made exclusive in this chapter. The penalties provided in this section shall be recoverable by suit filed by the attorney general in the name and on behalf of the commission, in the district court of the county in which the defendant resides, or in which any defendant resides, if there be more than one defendant, or in the district court of any county in which the violation occurred. The payment of ~~any such~~ the penalty shall not operate to legalize any illegal oil, illegal gas, or illegal product involved in the violation for which the penalty is imposed, or to relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of ~~such~~ the violation.

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 11, 1981

CHAPTER 368

HOUSE BILL NO. 1444
 (Representative Wald)
 (Senator Lee)

GEOPHYSICAL EXPLORATION REQUIREMENTS

AN ACT to create and enact three new sections to chapter 38-08.1 of the North Dakota Century Code, relating to the filing of a surety bond before engaging in geophysical exploration and the issuance of an exploration permit; and to amend and reenact subsection 1 of section 38-08.1-01 and sections 38-08.1-02, 38-08.1-03, 38-08.1-04, and 38-08.1-05 of the North Dakota Century Code, relating to definitions, persons required to comply with certain requirements, filing a notice of intention to engage in geophysical exploration, and filing a record of work performed.

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

SECTION 1. AMENDMENT. Subsection 1 of section 38-08.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Drilling" means making any opening in the earth's surface by drilling or boring, and shall include inserting any object into any part of the earth's surface, for the purpose of subsurface mineral exploration. This chapter, with the exception of section 38-08.1-06, shall not apply to holes drilled in the earth for the purpose of obtaining water, sand, gravel, stone, clay, seoria, and holes drilled in an operating coal mine to trace the coal seam. "Geophysical exploration" means any method of obtaining petroleum-related geophysical surveys.

SECTION 2. AMENDMENT. Section 38-08.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08.1-02. PERSONS REQUIRED TO COMPLY WITH CHAPTER. Any person in this state engaged in drilling geophysical exploration or engaged as a subcontractor of a person engaged in geophysical exploration shall comply with the following provisions of this chapter; provided, however, that compliance with the provisions of this chapter by a drilling crew or its employer shall constitute

compliance herewith by that person who has engaged the service of such crew, or its employer, as an independent contractor.

SECTION 3. AMENDMENT. Section 38-08.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08.1-03. DEEMED DOING BUSINESS WITHIN STATE - RESIDENT AGENT. A person shall be deemed doing business within this state when engaged in ~~drilling~~ geophysical exploration within the boundaries of this state, and shall, if not already qualified to do business within the state under chapter 10-22, prior to such ~~drilling~~ exploration, file with the secretary of state an authorization designating an agent for the service of process.

SECTION 4. A new section to chapter 38-08.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

SURETY BOND - CERTIFICATE - RELEASE.

1. A person desiring to engage in geophysical exploration in this state shall also file with the industrial commission a good and sufficient surety bond in the amount of fifteen thousand dollars for a single geophysical crew or a blanket surety bond in the amount of thirty thousand dollars for all geophysical crews operating within the state for such person. The bond shall be in a form prescribed by the industrial commission and shall indemnify all owners of property within the state, including the state and its political subdivisions, against physical damages to property which may result from geophysical exploration. The bond shall cover a period of one year and shall be automatically renewed unless the industrial commission and the person covered thereby receive notice sixty days prior to any anniversary date of the surety's intent not to renew the bond.
2. The bond shall remain on file with the industrial commission so long as the exploration is carried on or engaged in within the state, plus an additional one year thereafter; provided, however, that the aggregate liability of the surety shall in no event exceed the amount of the bond.
3. A bond filed pursuant to this section shall be the sole bond required of persons engaging in geophysical exploration within the state of North Dakota and shall supersede any bonds which may be required by the individual counties. Upon compliance with the provisions of this Act, any bond which may previously have been filed in any county shall be released; provided, however, that the surety of any such bond shall remain liable under its contract for all actions of its principal prior to the date of compliance with this section.

4. Upon filing the bond required by this section and presenting a certificate of authority to transact business in this state issued pursuant to chapter 10-22, a certificate of incorporation issued pursuant to chapter 10-19, or some other certificate issued by the secretary of state showing the name of the person designated as resident agent for service of process, the industrial commission shall issue to the person desiring to engage in geophysical exploration a certificate showing that the bond has been filed and showing the name of the person designated resident agent for service of process.

SECTION 5. AMENDMENT. Section 38-08.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08.1-04. FILING OF NOTICE OF INTENTION TO ENGAGE IN ~~DRILLING~~ GEOPHYSICAL EXPLORATION. Any person desiring to engage in ~~drilling~~ geophysical exploration within this state must, prior to actually engaging in such ~~drilling~~ exploration, file a notice of intention to engage in ~~drilling~~ geophysical exploration with the county ~~register-of-deeds~~ commission in each county in which ~~drilling~~ exploration is to be carried on. The notice of intention shall include the name of the person who intends to ~~drill~~ explore; his address or principal place of business; the name and address of the resident agent for the service of process on said person; the date upon which ~~drilling~~ exploration will commence; the township, range, section, and quarter section in which ~~drilling~~ the exploration is to be carried on; and the estimated depth of the drill hole, if any. Notices filed with the county ~~register-of-deeds~~ commission under this section shall be maintained in a manner separate and apart from any other records or indices concerning the land described in the notice.

SECTION 6. A new section to chapter 38-08.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

EXPLORATION PERMIT.

1. Upon filing a notice of intention to explore pursuant to section 38-08.1-04 and the certificate issued by the industrial commission pursuant to section 4 of this Act, the county commission or their designee may issue to any person desiring to engage in geophysical exploration a "geophysical exploration permit" subject to such other conditions or restrictions as may be provided by county ordinances established pursuant to chapter 11-33.
2. The permit shall show, at a minimum:
 - a. The name of the person.
 - b. The name and address of the resident agent for service of process.

- c. That a notice of intention to engage in geophysical exploration has been duly filed.
- d. That a good and sufficient surety bond has been filed by the person, naming the surety company and giving its address.
3. The permit shall be signed by the chairman of the county commission or his designee and shall bear the official county seal. The permit shall be valid and effective for all geophysical crews of the permittee for a one-year period in which it is issued.
4. The cost of the permit shall be set by the county commission based on anticipated actual expenses of administering and enforcing provisions of this chapter, and the revenues realized therefrom shall go to the county so issuing.
5. The permit or a photostatic copy thereof shall be carried at all times by a member of the crew during the period of geophysical exploration and shall be exhibited upon demand of the landowner or tenant operator or county or state official or respective surface owner.

SECTION 7. A new section to chapter 38-08.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

COUNTY COMMISSION TO NOTIFY COMMISSION OF ISSUANCE OF PERMIT. The county commission of any county in which a permit is issued shall immediately forward notice of the issuance of a permit to the industrial commission. The county commission may revoke the permit of any person engaging in geophysical exploration upon a showing that that person has violated county ordinances or any other applicable requirement pertaining to geophysical exploration. The county commission shall notify that person, by the most effective written means, of the permit revocation. Upon notification, the person engaging in geophysical exploration may, within fifteen days, request a hearing before the board of county commissioners, at its next regular or special meeting, on the matter. The board of county commissioners shall either affirm, modify, or deny the permit revocation. The board of county commissioners may also suspend the permit temporarily in those cases where climate and physical conditions are such as to cause harm or damage to roads, bridges, pastures, crops, or similar factors that could cause undue stress to the normal physical well-being within the county. However, the permit suspension time period shall not be included in the one-year permit period.

SECTION 8. AMENDMENT. Section 38-08.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08.1-05. DUTY TO FILE RECORD SHOWING WHERE WORK PERFORMED - REQUEST TO FILE LOCATION OF DRILL-SITE WORKSITE - COMPLAINT OF PROPERTY OWNER. Within thirty days following any calendar month in which drilling geophysical exploration is begun by any person within this state, such person shall file with the county register-of-deeds commission in each county in which drilling work is begun, and shall send to the owner or occupier of any land upon which drilling work is begun, a record showing the township, range, section, and quarter section in the county in which such drilling work was performed and the date upon which such drilling work was commenced. Upon written request by the owner or occupier of the land upon which the drilling work has occurred, any person who has performed drilling work within the state shall send to such landowner or occupier a record showing the date of drilling and a legal description of the drill-site worksite sufficiently exact to permit location and identification of the drill-site. This shall include the actual shot point location and the amount of explosive charge, if any, in each drill hole. The request must be based upon a written complaint of the property owner or occupier that physical damage to such property has occurred or is reasonably believed to have occurred by reason of the drilling work. The written complaint shall designate the name and address of the complaining person and shall state the approximate date of the alleged damage. The required record of operations in response to the written demand therefor shall be supplied within ten days from the date on which such written demand is received.

Approved April 1, 1981

CHAPTER 369

SENATE BILL NO. 2139
(Committee on Natural Resources)
(At the request of the Public Service Commission)

COAL EXPLORATION DATA

AN ACT to amend and reenact subsection 2 of section 38-12.1-03, subdivision b of subsection 1 of section 38-12.1-04, and subsection 3 of section 38-14.1-13 of the North Dakota Century Code, relating to definitions for coal exploration data, delivery of exploration data to the state geologist, and coal mining permit applications.

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

SECTION 1. AMENDMENT. Subsection 2 of section 38-12.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Coal exploration" means ~~the~~:

- a. The use of any technique which when applied to the surface of the land will aid in the discovery or evaluation of coal or aid in determining the quantity and quality of coal present. It shall include drilling or digging, excavating, core sample drilling and collection, diamond drilling, trenching, or any other type of penetration of the surface of the earth; or
- b. Environmental data gathering activities which substantially disturb the natural land surface and which are conducted for the purpose of establishing the conditions of an area prior to applying for a permit under chapter 38-14.1. The provisions of sections 38-12.1-04 and 38-12.1-05 shall not be applicable to such environmental data gathering activities unless the natural land surface will be substantially disturbed.

SECTION 2. AMENDMENT. Subdivision b of subsection 1 of section 38-12.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

b. The delivery, free of charge, to the state geologist of the basic data collected during the course of the exploration within a reasonable time as may be prescribed by the state geologist. The data so submitted shall be confidential and available only to the office of the state geologist for official purposes for a period of two years, and such period of confidentiality shall, upon application, be extended for one-year periods by the state geologist, ~~and---in---no---event---shall---the---period---of---confidentiality---exceed---seven---years~~ for a total period not to exceed ten years unless it is demonstrated that such period should be further extended in order to prevent possible resulting harm to the person, his successors, and assigns, who delivered such basic data to the state geologist. The basic data shall include, if specifically requested by the state geologist and if the information has been developed by or for a person conducting the exploration:

- (1) Sample cuts.
- (2) Drillers' logs, sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
- (3) Elevation and location information on the data collection points.
- (4) Other pertinent information as may be required by the state geologist.

SECTION 3. AMENDMENT. Subsection 3 of section 38-14.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 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. The confidential information shall be exempt for a period not to exceed ~~seven~~ ten years subsequent to the date on which the request for nondisclosure was filed, unless it is demonstrated by the permit applicant that such period should be further extended in order to prevent possible resulting harm to the permit applicant, his successors and assigns.

Approved March 18, 1981

CHAPTER 370

SENATE BILL NO. 2287
(Senator Lee)
(Representative A. Hausauer)

EXTENDED MINING PLAN REQUIREMENTS

AN ACT to amend and reenact subsection 5 of section 38-14.1-02 and sections 38-14.1-14 and 38-14.1-15 of the North Dakota Century Code, relating to the definition of extended mining plan, permit application requirements for mining and reclamation requirements, and requirements for the extended mining plan.

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

SECTION 1. AMENDMENT. Subsection 5 of section 38-14.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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.~~

SECTION 2. AMENDMENT. Section 38-14.1-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 percent 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. 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 [804.67 meters] 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.
 - (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.
 - l. An estimate of the cost per acre [.40 hectare] 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.

SECTION 3. AMENDMENT. Section 38-14.1-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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.

Approved March 18, 1981

CHAPTER 371

SENATE BILL NO. 2309
(Senator Lips)
(Representative Kloubec)

COAL MINING PERFORMANCE BONDING SYSTEM

AN ACT to create and enact a new subsection to section 38-14.1-02 and a new subsection to section 38-14.1-03 of the North Dakota Century Code, relating to definitions and powers and duties of the public service commission for surface coal mining and reclamation operations.

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

SECTION 1. A new subsection to section 38-14.1-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Performance bond" means a surety bond, collateral bond, self-bond, deposit, any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter.

SECTION 2. A new subsection to section 38-14.1-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

To establish a performance bonding system and an alternative to the performance bonding system which achieve the objectives and purposes of this chapter.

Approved March 18, 1981

CHAPTER 372

HOUSE BILL NO. 1130
(Committee on Natural Resources)
(At the request of the Public Service Commission)

**SURFACE MINING AREAS, PERMITS,
AND INTERESTS**

AN ACT to amend and reenact section 38-14.1-07, subsection 4 of section 38-14.1-30, and section 38-14.1-38 of the North Dakota Century Code, relating to areas where mining is prohibited, temporary relief, and conflict of interest provisions for surface coal mining and reclamation operations.

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

SECTION 1. AMENDMENT. Section 38-14.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14.1-07. MINING IS PROHIBITED. After July 1, 1979, and subject to valid existing rights, no surface coal mining operations except those which exist on July 1, 1979, 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 [Pub. L. 90-542; 82 Stat. 906; 16 U.S.C. 1271 et seq.] and national recreation areas designated by Act of the Congress of the United States.
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 [91.44 meters] of any publicly owned park or places included in the state historic sites registry or the national register of historic ~~sites~~ places 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 [30.48 meters] 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 [30.48 meters] 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 [152.4 meters] 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 [91.44 meters] of any public building, school, church, community, or institutional building, or within one hundred feet [30.48 meters] of a cemetery.

SECTION 2. AMENDMENT. Subsection 4 of section 38-14.1-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Pending completion of any investigation and hearing procedures being conducted under this section in connection with a request for review of a ruling on a permit application pursuant to section 38-14.1-20 or in connection with any notice or order issued pursuant to subdivision a or b of subsection 1 of section 38-14.1-28 and at any time prior to a decision by the commission on the request for review of a ruling on a permit application or a request for review of a notice or order, the permittee or any person with an interest which is or may be adversely affected by such notice, order, or the issuance of a permit may file with the commission a written request for temporary relief from such notice or order or permit decision 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 regulation. Provided, where the permittee or person with an interest which is or may be adversely affected 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 have been met; ~~or~~

- b. The permittee or person 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.

SECTION 3. AMENDMENT. Section 38-14.1-38 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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.

Approved March 11, 1981

CHAPTER 373

HOUSE BILL NO. 1123
(Committee on Natural Resources)
(At the request of the Public Service Commission)

SURFACE COAL MINING PERMIT ISSUANCE

AN ACT to amend and reenact subsection 3 of section 38-14.1-20 of the North Dakota Century Code, relating to temporary relief from the issuance of a permit for surface coal mining and reclamation operations.

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

SECTION 1. AMENDMENT. Subsection 3 of section 38-14.1-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 subject to the right of any person with an interest which is or may be adversely affected to request formal hearing pursuant to North Dakota Century Code section 38-14.1-30; if the application is disapproved, specific reasons therefor must be set forth in the notification of disapproval together with the requirements for approval.

Approved February 16, 1981

CHAPTER 374

HOUSE BILL NO. 1455
(Representatives Gunsch, Nagel)
(Senators Bakewell, Olin)

MINE RECLAMATION RESTORATION REQUIREMENTS

AN ACT to amend and reenact subsections 17 and 18 of section 38-14.1-24 of the North Dakota Century Code, relating to environmental protection performance standards required of surface coal mining and reclamation permittees.

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

SECTION 1. AMENDMENT. Subsection 17 of section 38-14.1-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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, under equivalent management practices, than nonmined agricultural lands of similar soil types 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 in the surrounding area having equivalent historical management practices and that are undisturbed by mining, or comparable disruptive activities.

SECTION 2. AMENDMENT. Subsection 18 of section 38-14.1-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

18. Assume the responsibility for successful revegetation, as required by subsection 17, for a period of ten full years after ~~vegetation--has--been--established,--as--determined--by~~

the--commission the last year of augmented seeding, fertilizing, irrigation, or other work, 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. For the purposes of this subsection, "augmented seeding, fertilizing, irrigation, or other work" does not include normal conservation practices recognized locally as good management for the postmining land use.

Approved March 16, 1981

CHAPTER 375

HOUSE BILL NO. 1385
(Representatives Murphy, Conmy, Wald)
(Senators Albers, Nelson, Stenehjem)

SURFACE OWNER PROTECTION PROVISIONS

AN ACT to amend and reenact subsection 3 of section 38-18-05 and section 38-18-07 of the North Dakota Century Code, relating to the definition of mineral developer and surface damage and disruption payments.

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

SECTION 1. AMENDMENT. Subsection 3 of section 38-18-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Mineral developer" means the person who acquires ~~the mineral rights or lease~~ at least seventy-five percent of the mineral rights or a lease of at least seventy-five percent of the mineral rights for the purpose of extracting or using the mineral for nonagricultural purposes.

SECTION 2. AMENDMENT. Section 38-18-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-18-07. SURFACE DAMAGE AND DISRUPTION PAYMENTS.

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 38-14.1. The payments to be made hereunder shall be made before December thirty-first of that calendar year in which the loss occurred.

2. ¶¶ Unless waived by the owner of a farm building, if the coal removal area of a surface mining operation comes within five hundred feet [152.4 meters] of any farm building, the mineral developer shall pay to the owner of the farm building either the fair market value of the farm building or the entire cost of removing the farm building to a location where the coal removal area of the mining operation will not come within five hundred feet [152.4 meters] of such building or buildings. The payments contemplated hereunder shall be in addition to any payments required by the terms of any mineral lease, unless the surface owner is a party to the lease and the lease provides for damages as contemplated in this subsection in an amount not less than the amount which would be recoverable under this section.
3. The rights granted to the surface owner by this section are hereby declared to be absolute and unwaivable, except as provided in subsection 2 of this section. Any instrument which purports to waive rights granted by this section is null and void and of no legal effect.

Approved March 16, 1981

CHAPTER 376

SENATE BILL NO. 2329
(Senators Albers, Nelson, Stenehjem)
(Representatives Murphy, Conmy, Wald)

SURFACE OWNER CONSENT PROVISIONS

AN ACT to amend and reenact subsections 6 and 10 of section 38-18-05 and subsection 3 of section 38-18-06 of the North Dakota Century Code, relating to surface owner consent before a permit to surface mine land may be issued and the definition of mineral owner and surface owner.

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

SECTION 1. AMENDMENT. Subsection 6 of section 38-18-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. "Mineral owner" means any person or persons who owns presently own the mineral estate, their successors, assigns, or predecessors in title, under a specified tract of land by means of a mineral deed, or by an exception or reservation in the deed, grant, or conveyance of the surface, or by any other means whatsoever.

SECTION 2. AMENDMENT. Subsection 10 of section 38-18-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10. "Surface owner" means the person or persons who presently have valid title to the surface of the land, their successors, assigns, or predecessors in title, regardless of whether or not a portion of the land surface is occupied for a residence.

SECTION 3. AMENDMENT. Subsection 3 of section 38-18-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. A certified copy of a mineral lease executed by the surface owner in favor of the mineral developer proposing the mining project or his agent, or a certified copy of a surface lease executed by the surface owner in favor of

the mineral developer proposing the mining project or his agent, if filed with the application for a permit to surface mine, may be used to fulfill the subsection 2 requirement of a statement of consent to have surface mining conducted. Any previously executed mineral lease or surface lease in favor of the mineral developer, his successors, assigns or predecessors in title shall run with the land and be binding on a subsequent mineral owner or owners or surface owner or owners, as the case may be.

Approved March 16, 1981

CHAPTER 377

HOUSE BILL NO. 1362
(Kloubec)

GEOHERMAL RESOURCE DEVELOPMENT REGULATION

AN ACT providing for regulation of the exploration, development, and utilization of geothermal resources by the industrial commission; and providing penalties.

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

SECTION 1. DECLARATION OF POLICY. It is hereby declared to be in the public interest to encourage, and promote the proper use of geothermal resources in a manner which will prevent waste; to authorize and provide for the operation of geothermal resource extraction facilities in such manner as will achieve the optimum utilization of the geothermal resource and protect the correlative rights of all owners; to prevent contamination and pollution of surface and ground water sources; and to avoid creation of secondary hazards of a geologic nature.

SECTION 2. DEFINITIONS. As used in this Act:

1. "Commission" means the industrial commission of North Dakota.
2. "Geothermal energy" means the internal energy of the earth, available to man as heat from rocks or liquids.
3. "Geothermal energy extraction facility" means and includes any drilled, bored, or excavated device or installation to provide for the extraction of geothermal energy but shall not include any device used for private residential heating or cooling purposes.
4. "Geothermal resource" means the recoverable stored heat of the earth.
5. "Producer" means the owner of a geothermal energy extraction facility or facilities, and his agents or employees.

6. "Product" means anything produced, whether usable or unusable, by means of a geothermal energy extraction facility.
7. "Waste" means and includes the locating, spacing, drilling, excavating, or operating of any geothermal energy extraction facility in a manner which causes or tends to cause reduction in the quantity or quality of geothermal energy ultimately recoverable from a geothermal resource, or which causes or tends to cause unnecessary or excessive use, or degradation, of land surface.

SECTION 3. JURISDICTION OF THE INDUSTRIAL COMMISSION. The industrial commission has jurisdiction and authority and is charged with the responsibility to enforce the provisions of this Act. This Act shall not apply to any activity regulated under chapters 38-08, 38-12, 38-12.1, 38-14.1, and 61-28. The jurisdiction granted to the commission by this Act shall not be exclusive and shall not affect the jurisdiction of other governmental entities. The industrial commission acting through the office of the state geologist has the authority:

1. To require:
 - a. Identification of ownership of all facilities, installations, and equipment used in the extraction of geothermal energy.
 - b. The making and filing of all logs and reports on facility location, drilling, boring, excavating, and construction and the filing, free of charge, of samples, core chips, and complete cores, when requested, in the office of the state geologist.
 - c. The drilling, boring, casing, excavating, plugging, and construction of facilities in a manner to prevent contamination and pollution of surface and ground water sources and unnecessary environmental degradation.
 - d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the rules of the commission relating to the extraction of geothermal energy.
 - e. Metering or measuring all products extracted from or by means of a facility regulated by this Act.
 - f. That every person who operates a geothermal energy extraction facility in this state shall keep and maintain complete and accurate records of the quantities and nature of products extracted from or by means of any facility, and the ultimate disposition of such products, which records shall be available to the

commission or its agents at all times, and that every such person file with the commission such reports as it may prescribe.

- g. That upon termination of the operation of any facility or activity regulated by this Act, the operator of the facility shall restore the surface as nearly as possible to its original condition and productivity.
2. To regulate:
 - a. The drilling, boring, excavating, and construction of all geothermal energy extraction facilities.
 - b. Operations to assure the optimum performance of all facilities regulated under this Act.
 3. To limit and prescribe the nature, quantity, and source of geothermal energy to be extracted from any facility regulated by this Act.
 4. To adopt rules and issue orders to effectuate the purposes of this Act.

SECTION 4. PERMIT REQUIRED. It shall be unlawful to commence any operations for the drilling, boring, excavating, or construction of a geothermal energy extraction facility without first securing a permit from the state geologist, under such rules as may be adopted by the commission and after paying to the commission a fee for each such facility in an amount to be prescribed by the commission by rule. The fee set shall be related to the cost of regulation and inspection under this Act.

SECTION 5. COMMISSION MAY EMPLOY EXAMINERS. The industrial commission may use hearing examiners under such rules as the commission may adopt.

SECTION 6. ACTION TO RESTRAIN VIOLATION OR THREATENED VIOLATION. Whenever it appears that any person is violating or threatening to violate any provision of this Act, or any rule or order of the commission, the commission may bring action against that person, in the district court of the county where the violation occurs or is threatened, to restrain that person from continuing the violation or from carrying out the threat of violation. In any such action, the court shall have jurisdiction to issue, without the filing of a bond or other undertaking by the commission, such prohibitory and mandatory injunctions as are necessary, including temporary restraining orders, preliminary injunctions, temporary, preliminary, or final orders restraining the person from continuing the violation or from carrying out the threat of violation.

SECTION 7. PENALTIES.

1. Any person who violates any provision of this Act, or any rule or order of the commission adopted or issued under this Act, shall be subject to a civil penalty of not more than twelve thousand five hundred dollars for each act of violation and for each day the violation continues.
2. It is a class C felony for any person, for the purpose of evading this Act, or any rule or order of the commission, to make or cause to be made any false entry or statement in a report required by this Act or by any rule or order adopted or issued or promulgated by the commission, or to make or cause to be made any false entry in any record, account, or memorandum required by this Act, or by any rule or order of the commission, or to omit, or cause to be omitted, from any such record, account, or memorandum, full, true, and correct entries as required by this Act or by any rule or order of the commission, or to remove from this state or destroy, mutilate, alter, or falsify any record, account, or memorandum.
3. The civil penalties provided in subsection 1 shall be recoverable by suit filed by the attorney general in the name and on behalf of the commission, in the district court of the county in which the defendant resides, or in which any defendant resides, if there is more than one defendant, or in the district court of any county in which the violation occurred. The payment of the penalty shall not operate to relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of such violation.

SECTION 8. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW. Any proceedings under this Act for the adoption or modification of rules or orders, including emergency orders relating to extraction of geothermal energy and determining compliance with rules of the commission, shall be conducted in accordance with sections 38-08-11, 38-08-12, 38-08-13, and 38-08-14; and chapter 28-32 shall govern administrative practice where consistent with the provisions of this Act and the above-referenced sections.

SECTION 9. DISPOSITION OF UNUSABLE PRODUCTS. Products for which there is no beneficial use and which the commission determines to be hazardous, must be disposed of in accordance with the provisions of chapter 23-20.2 of the North Dakota Century Code and other state laws and regulations regarding the management of hazardous waste.

Approved March 11, 1981