

## **CHAPTER 15-05 LEASING COAL, OIL, GAS, AND OTHER RIGHTS**

### **15-05-01. Coal lands or coal in tracts - Leases - Term.**

The board of university and school lands may lease any lands or coal in tracts that may be contained in lands sold with a reservation of coal deposits under its control for coal mining purposes. Any lease made under this chapter must be for a period of time as the board may determine. Lands or coal in tracts that may be contained in lands sold with a reservation of coal deposits must be leased for coal mining purposes for a royalty upon the coal as the board may deem fair and in the best interest of the state. The royalty applies only to coal actually mined and saved from the leased premises. If the board owns or controls a smaller interest than the entire and undivided coal estate, the royalty must be paid to it only in proportion to which its interest bears to the entire undivided fee. The board may lease land or coal in tracts for the purpose of prospecting for and mining coal for an annual rental of not less than one dollar per acre [.40 hectare] per year. The rental paid for any year may not be deducted from the royalties as they accrue. The board may adjust the royalty of existing coal leases as the board determines fair and in the best interest of the state.

### **15-05-02. Rental for coal lands - Regulations governing.**

Repealed by S.L. 1975, ch. 135, § 3.

### **15-05-03. Lease for coal mining purposes not to interfere with right to lease for pasture - Exception.**

Repealed by S.L. 1975, ch. 135, § 3.

### **15-05-04. Lands containing coal leased for agricultural purposes - Contents of lease.**

When any lands containing coal are leased for agricultural purposes, the lease must contain a provision authorizing the board of university and school lands to lease the same land for coal mining purposes and must reserve to the board the right to use and occupy or to lease for use and occupancy so much of the surface of the land as the lessee of the land for coal mining purposes requires for the extracting, mining, and marketing of the coal.

### **15-05-05. Board to make rules and regulations governing coal leasing.**

The board of university and school lands may make such rules and regulations consistent with the provisions of this code as it deems necessary to determine the amount of rent due under any coal lease, to fix the manner and time of payment thereof, and to regulate the leasing of coal lands.

### **15-05-06. Valuable deposits found on school and public institution lands - Disposal.**

Any lands belonging to the state, or lands known as school lands and public institution lands, in which is discovered any valuable deposit of coal or minerals of any kind, clay, gravel, or stone, are and remain the property of the state until provision for the sale or leasing thereof is especially provided for by law.

### **15-05-07. State geologist to determine lands on which coal exists.**

The board of university and school lands may request that the state geologist determine the quantity and description of all lands under its control on which coal exists.

### **15-05-08. Penalty for mining and prospecting in violation of requirements governing.**

Any person who mines, removes, or causes to be mined or removed, from any lands subject to the control of the board of university and school lands, any coal, lignite, uranium, oil and gas, or potash, unless mined or removed pursuant to the provisions of this chapter, or any person who prospects or explores for coal, lignite, uranium, oil and gas, or potash without permission from the board of university and school lands, is guilty of theft as defined in chapter

12.1-23. The offense is a class C felony. In addition, such person is civilly liable for trespass pursuant to chapter 15-08.

**15-05-09. Leases for oil, gas, and other products.**

The board of university and school lands may lease any lands under its control believed to contain oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, colloidal or other clays, or other naturally occurring elements and their compounds, and may make and establish rules and regulations for development, drilling, and mining operations.

**15-05-10. Royalties from oil and gas leases - Obligation to pay - Rents from other leases - Breach - Rules.**

1. Oil and gas leases must be made by the board of university and school lands at such annual minimum payments as are determined by the board, but the royalty may not be less than twelve and one-half percent of the gross output of oil from the lands leased. Oil and gas leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties or individual stripper wells and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases issued by the board under section 15-05-09 for products other than oil and gas must provide for adequate rental payments and other provisions as determined by the board.
2. The obligation arising under an oil and gas lease to pay oil or gas royalties to the board of university and school lands, to deliver oil or gas to a purchaser to the credit of the board, or to pay the market value thereof is of the essence in the lease contract, and breach of the obligation may constitute grounds for the cancellation of the lease in any case in which it is determined by the court that the equities of the case require cancellation. If the lessee or the lessee's representative or assignee under an oil and gas lease fails to pay oil or gas royalties to the board within the time prescribed by administrative rule and cancellation of the lease is not sought, the lessee or the lessee's representative or assignee thereafter shall pay interest on the unpaid royalties at a rate of three-quarters of one percent per month, not to exceed nine percent per annum. The commissioner may waive all or a portion of the interest under this subsection for good cause.
3. If a lessee or the lessee's representative or assignee fails to respond or refuses to file an amended royalty statement and pay the royalty owed within ninety days of receiving written notice by mail of an underpayment, as provided by rule 4 of the North Dakota Rules of Civil Procedure, the board may impose a penalty of one-half percent per month, not to exceed six percent per annum. A party is deemed to have failed to respond if the party has not responded within ninety days of receipt of the written notice, or the party in response to the notice affirmatively indicates the intent not to pay the royalty or amounts due. The commissioner may waive all or a portion of the interest under this subsection for good cause.
4. If a lessee or the lessee's representative or assignee disputes a royalty assessment or demand by the board, the lessee or the lessee's representative or assignee may tender full payment of the disputed amount under protest any time after an assessment or demand is made by the board. Upon payment of the disputed amount under protest, all interest and penalties must cease to accrue. If it is determined that the payment of the disputed amount resulted in an overpayment, the party that made the payment is entitled to a refund of the overpayment amount plus interest at the rate established under section 28-20-34.
5. If a lessee or the lessee's representative or assignee fails or refuses to comply with demands by the board to pay royalties, interest, or penalties under this chapter, the board may file an action to cancel the lease, recover unpaid royalties, and recover interest and penalties on the unpaid royalties. Notwithstanding chapter 28-01, an action under this subsection must be commenced within seven years of the date oil or gas was produced under a lease. An action to cancel a lease, recover unpaid royalties,

or recover interest or penalties on unpaid royalties may not be filed for production that occurred under a lease before August 1, 2013.

6. The board may adopt rules regarding rental payments and royalties under this section.

**15-05-11. Improvements defined.**

The word "improvements" must be construed to mean surface improvements, machinery, and other equipment used and necessary for the operation of drilling on the land for oil or gas and the extraction of coal, cement materials, sodium sulfate, sand and gravel, road materials, building stone, chemical substances, metallic ores, or colloidal or other clays, and work performed in the development of the property for such purposes when the development work is of practical value for future operation and drilling upon the land. Wells drilled for oil or gas which do not produce oil or gas in commercial quantities may not be considered improvements.

**15-05-12. Sale or lease of land on which improvements have been made - Right of owner of improvements.**

Repealed by S.L. 1977, ch. 141, § 3.

**15-05-12.1. Improvements made on lands by a mineral lessee.**

The board of university and school lands may provide by rule or lease term for the sale, disposal, removal, or acquisition of improvements placed on lands by a lessee.

**15-05-13. Oil, gas, and other leases separate from grazing and farming leases.**

All leases made for the purpose of obtaining and extracting oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays must be separate and distinct from any lease of the land for grazing and farming purposes and the regulations made by the board of university and school lands must provide for the use of the lands for grazing and farming purposes without interference on the part of the lessee for the purposes aforesaid.

**15-05-14. Bonds for rents and royalties.**

The board of university and school lands may require the lessee to execute a good and sufficient bond conditioned for the payment of all moneys, rentals, and royalties stipulated by the terms of the lease and for the full compliance with and observance of all rules and regulations established by the board and of all other terms set forth in the lease.

**15-05-15. Assignment of lease only with consent of board.**

Leases made for the purpose of obtaining or extracting oil, gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays may not be assigned nor transferred except with the written consent of the board of university and school lands.

**15-05-16. Reports - State geologist - Department of health and human services - Department of environmental quality.**

The state geologist, department of health and human services, or department of environmental quality, on the request of the board of university and school lands, shall visit any land leased under section 15-05-09 and shall make a report of the visit to the board. The state geologist, department of health and human services, or department of environmental quality may not receive a fee for making the examination and report but must be paid necessary expenses incurred in connection with the examination.

**15-05-17. Lessee first establishing oil well has preference as to leasing of adjacent lands.**

Repealed by S.L. 1977, ch. 322, § 9.

**15-05-18. Leases of sand and gravel, construction aggregate, and other construction minerals.**

Notwithstanding the provisions of chapter 38-09, the board of university and school lands may enter into mineral leasing agreements for sand and gravel, road material, building stone, and construction aggregate or colloidal or other clays under rules adopted by the board. No lease under this section may be issued by the board for less than fair market value, nor may any lease under this section be issued for a period of more than five years.

**15-05-19. Appropriation for lease expenses - Continuing appropriation.**

There is appropriated annually the amounts necessary to pay expenses for minerals controlled by the board of university and school lands, including appraisal fees, consulting fees, refunds, and expenses determined by the board as necessary to manage, preserve, and enhance the value of the trust asset. Each payment must be made from the trust fund for which the land is held.