

MINING AND GAS AND OIL PRODUCTION

CHAPTER 316

SENATE BILL NO. 2459
(Rait, Maher, Krauter)

REGISTERED AGENTS OF MINERAL EXPLORATION ORGANIZATIONS

AN ACT to provide for registered agents of mineral exploration organizations and to provide for service of process on the secretary of state; and declaring an emergency.

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

SECTION 1. EXPLORATION ORGANIZATIONS - AGENT - SERVICE OF PROCESS.) Each person, firm, association, partnership, or corporation exploring for oil, gas, coal, or other minerals in this state shall appoint an agent who shall be registered with the secretary of state for the purpose of accepting service for any nonresident representative of the person or organization.

Whenever such a person or organization fails to appoint or maintain a registered agent in this state, or whenever the registered agent cannot with reasonable diligence be found at the registered office, the secretary of state shall be an agent of such person or organization upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with him, or any clerk having charge of the corporation department of his office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by registered or certified mail, addressed to the person or organization at his or its registered office or to the nonresident representative at his filed address, as the case may be. Any such service on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices, and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing in this section shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served in any other manner permitted by law.

SECTION 2. 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, 1977

CHAPTER 317

SENATE BILL NO. 2203
(Sandness, Lips)

MINE INSPECTOR QUALIFICATIONS AND DUTIES

AN ACT to amend and reenact sections 38-03-02 and 38-03-07 of the North Dakota Century Code, relating to the qualifications and the powers and duties of mine inspectors.

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

SECTION 1. AMENDMENT.) Section 38-03-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-03-02. QUALIFICATIONS OF INSPECTOR.) No person shall be eligible for the office of inspector unless he possesses a competent knowledge of coal mining.

SECTION 2. AMENDMENT.) Section 38-03-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-03-07. INSPECTOR'S POWERS AND DUTIES RELATING TO MINE INSPECTIONS.) The inspector shall:

1. Enter, inspect, and examine any coal mine, including what is commonly known as a "strip mine", or any shaft, drift, slope, or other excavations in the process of sinking for the purpose of mining coal, and the workings and the machinery belonging thereto, at all reasonable times, either by day or night.
2. Make inquiry into the condition of such mine workings, machinery, scales, ventilation, drainage, method of lighting or using lights, and into all methods and things connected therewith or relating thereto.
3. Make suggestions providing for the health and safety of persons employed in or about such mines.
4. Make inquiry whether or not the provisions of the laws providing for the regulation of the coal mines have been complied with.
5. Make a report of each inspection, noting the time and the material circumstance of the inspections.
6. Cooperate and assist in all accident prevention programs sponsored by the workmen's compensation bureau.

CHAPTER 318

SENATE BILL NO. 2415
(Wenstrom)

MINERAL EXPLORATION PERMIT FEES

AN ACT to amend and reenact sections 38-08-05 and 38-12-03 of the North Dakota Century Code, relating to the fees to be charged for the permit to drill an oil and gas well and the permit to explore for subsurface minerals.

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

SECTION 1. 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 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 2. AMENDMENT.) Section 38-12-03 of 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 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 April 9, 1977

CHAPTER 319

SENATE BILL NO. 2429
(Wenstrom)

OIL AND GAS WELL SPACING UNITS

AN ACT to amend and reenact subsection 4 of section 38-08-07 of the North Dakota Century Code, relating to the establishment of spacing units for oil and gas wells and the number of wells drilled therein; and declaring an emergency.

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

SECTION 1. AMENDMENT.) Subsection 4 of section 38-08-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 2. 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 23, 1977

CHAPTER 320

SENATE BILL NO. 2395
(Freed, Jacobson)

UNIT AREA ENLARGEMENT AND UNITIZATION PLAN AMENDMENT

AN ACT to amend and reenact section 38-08-09.9 of the North Dakota Century Code, relating to the enlargement of a unit area or the amendment of a plan of unitization.

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

SECTION 1. AMENDMENT.) Section 38-08-09.9 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08-09.9. ENLARGEMENT OF AREA - CREATION OF NEW UNITS - AMENDMENT OF PLAN.) The unit area of a unit may be enlarged at any time by the commission, subject to the limitations hereinbefore provided to include adjoining portions of the same unit source of supply, including the unit area of another unit, and a new unit created for the unitized management, operation, and further development of such enlarged unit area, or the plan of unitization may be otherwise amended, all in the same manner, upon the same conditions and subject to the same limitations as provided with respect to the creation of a unit in the first instance, except, that where an amendment to a plan of unitization relates only to the rights and obligations as between lessees, or the amendment to a plan of unitization or the enlargement of a unit area is found by the commission to be reasonably necessary in order to effectively carry on the joint effort, to prevent waste, and to protect correlative rights, and that such will result in the general advantage of the owners of the oil and gas rights within the unit area and the proposed enlarged unit area, and the persons and owners in the proposed added unit area have ratified or approved the plan of unitization as required by section 38-08-09.5, then such amendment to a plan of unitization or the enlargement of a unit area need not be ratified or approved by royalty owners of record in the existing unit area provided that written notice thereof is mailed to such royalty owners by the operator of a unit not more than forty days nor less than thirty days prior to the commission hearing. The notice shall describe the plan for the unit amendment or enlargement together with the participation factor to be given each tract in the unit area and in the proposed area and shall contain the time and place of commission hearing. An affidavit of mailing verifying such notice shall be

filed with the commission. Said notice shall further provide that in the event ten percent of the royalty interests or working interests in the existing unit area file with the commission at least ten days prior to commission proceeding an objection to the plan of enlargement, the commission shall require that the unit amendment or enlargement be approved by eighty percent of all royalty interests and working interests in the existing and proposed areas.

Approved April 21, 1977

CHAPTER 321

SENATE BILL NO. 2456
(Rait, Maher, Krauter)

DUTY TO PLUG DRILL HOLES

AN ACT to amend and reenact section 38-08.1-06 of the North Dakota Century Code, relating to the duty to plug drill holes.

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

SECTION 1. AMENDMENT.) Section 38-08.1-06 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08.1-06. DUTY TO PLUG DRILL HOLES.) Unless otherwise agreed to between the owner of the surface and the person required by this section to plug the drill hole, prior to abandonment of any drill hole, it shall be the obligation of the person engaging the services of the drill, or if none, then the driller himself, to plug the drill hole as required by section 23-13-06 or to install casing in the drill hole, and to restore the surrounding surface as nearly as is practicable to its original condition. Each drill hole required to be filled under this section shall be filled with clay, bentonite, or concrete or a mixture of any of the three. This section shall not apply to drill holes regulated by the industrial commission under sections 38-08-04 and 38-12-02, and chapter 38-12.1.

Approved April 6, 1977

CHAPTER 322

SENATE BILL NO. 2111

(Committee on Natural Resources)

(At the request of the Board of University and School Lands)

PUBLIC LAND MINERAL LEASING

AN ACT to create and enact sections 38-11-02.1, 38-11-02.2, 38-11-02.3, and 38-11-02.4 of the North Dakota Century Code, relating to the leasing of minerals on public lands; to amend and reenact subsection 2 of section 38-11-01 and sections 38-11-02, 38-11-04, and 38-11-10 of the North Dakota Century Code, relating to the leasing of minerals on public lands; and to repeal sections 15-05-17, 38-11-03, 38-11-05, 38-11-06, 38-11-07, 38-11-08, and 38-11-09 of the North Dakota Century Code, relating to the leasing of minerals on public lands.

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

SECTION 1. AMENDMENT.) Subsection 2 of section 38-11-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Mineral" shall mean and include any valuable inert or lifeless substance formed or deposited in its present position through natural agencies, and which is found within the earth or beneath the soil, except that it shall not mean oil or gas, topsoil, or surface rocks.

SECTION 2. AMENDMENT.) Section 38-11-02 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* 38-11-02. LEASES OF CERTAIN MINERAL RIGHTS IN STATE LANDS.) The state may issue prospecting permits or issue leases for the purpose of prospecting for and mining minerals contained in any portion of lands owned by this state or that may be contained in state lands sold with a reservation of mineral deposits.

SECTION 3.) Section 38-11-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-11-02.1. BOARD OF UNIVERSITY AND SCHOOL LANDS TO OVERSEE ALL MINERAL LEASING.) The board of university and school

*NOTE: Section 38-11-02 was also amended by section 2 of Senate Bill No. 2110, chapter 144.

lands shall supervise the issuance of all prospecting permits and leases for the exploration and mining of state-owned minerals. Any agency of the state that desires to issue mineral prospecting permits or mineral leases shall do so in accordance with the standards, terms, conditions, policies, rules, and regulations promulgated by the board of university and school lands. The board of university and school lands shall not have the authority to mandate or to prohibit mineral leasing or mineral prospecting on lands not under its immediate control, but it shall have authority to establish standards, policies, terms, conditions, rules, and regulations for such activity.

SECTION 4.) Section 38-11-02.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-11-02.2. AUTHORITY OF THE BOARD.) The authority given the board of university and school lands by section 38-11-02.1 shall include, but shall not be limited to:

1. The approval of all forms used by agencies for mineral prospecting and mineral leasing.
2. The setting of minimum bonuses, minimum delay rentals, and minimum royalties.
3. The setting of terms and conditions relating to prospecting, mining, surface damages, and reclamation.
4. The method and manner of negotiations or sales for leasing or prospecting.

SECTION 5.) Section 38-11-02.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-11-02.3. AUTHORITY OF OTHER AGENCIES.) An agency shall have the following authority over lands under its immediate control:

1. To designate lands as open or closed to mineral leasing or mineral prospecting.
2. To finally approve or disapprove a mineral leasing or mineral prospecting offer.
3. To attach special conditions to mineral prospecting permits or mineral leases in addition to those of the board of university and school lands.
4. To conduct its own mineral prospecting and mineral leasing negotiations or sales in accordance with the standards, policies, terms, conditions, rules, and regulations of the board of university and school lands.

SECTION 6.) Section 38-11-02.4 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-11-02.4. AGENCIES MAY CONTRACT WITH BOARD.) An agency may contract with the board of university and school lands for the purpose of conducting the mineral prospecting or mineral leasing negotiations or sale on behalf of the agency. The board may collect such costs as the agency and the board might agree as consideration for conducting the negotiations or sale.

SECTION 7. AMENDMENT.) Section 38-11-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-11-04. OFFERING OF MINERAL LEASES TO BE PUBLIC.) Prior to the execution of a mineral lease by any agency of the state of North Dakota, that agency owning or controlling the mineral interest shall first advertise the minerals offered for lease in the official paper of the county or counties in which such lands are located, and in a newspaper of general circulation published in the city of Bismarck. Such advertisement shall be published once a week for at least two weeks, the last publication to be at least ten days prior to the day of such leasing. The notice as published shall contain a statement showing the legal description of the lands to be leased, the time and place where the leasing will be held, and such other information as may be deemed by the leasing agency to be applicable. The leasing shall be by public auction held at the offices of the agency owning or controlling state-owned minerals.

SECTION 8. AMENDMENT.) Section 38-11-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-11-10. RULES AND REGULATIONS.) The board of university and school lands shall be authorized to promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter and to provide such terms and conditions in leases upon state minerals as may be in the best interests of the state.

SECTION 9. REPEAL.) Sections 15-05-17, 38-11-03, 38-11-05, 38-11-06, 38-11-07, 38-11-08, and 38-11-09 of the North Dakota Century Code are hereby repealed.

Approved April 9, 1977

CHAPTER 323

HOUSE BILL NO. 1178
(Committee on Natural Resources)
(At the request of the Public Service Commission)

RECLAMATION ACT AMENDMENTS

AN ACT to create and enact subsection 8 of section 38-14-03.1, and subsection 16 of section 38-14-05, relating to powers of the public service commission, and duties of the operator; to amend and reenact subsections 3 and 8 of section 38-14-02, subsection 2 of section 38-14-04, subsections 1, 2, 3, and 14 of section 38-14-05, subsection 6 of section 38-14-05.1, and section 38-14-12, relating to definitions, data required to be filed in the application for a mining permit, topography of reclaimed land, suitable plant growth material requirement, drainage on reclaimed land, limitations, and civil penalties.

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

SECTION 1. AMENDMENT.) Subsection 3 of section 38-14-02 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Surface mining" relates to the mining of coal by removing the suitable plant growth materials and the overburden lying above natural deposits thereof, and mining directly from the natural deposits thereby exposed.

SECTION 2. AMENDMENT.) Subsection 8 of section 38-14-02 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. "Affected land" means the area of land whether located inside or outside the permit area from which suitable plant growth material or overburden has been removed for surface mining of coal or upon which suitable plant growth material, overburden, or refuse has been deposited, and any area on which roads or sediment ponds have been or will be constructed related to mining activities.

SECTION 3.) Subsection 8 of section 38-14-03.1 of the 1975 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

8. To attach conditions to all permits and certificates as necessary to carry out the provisions of this chapter.

SECTION 4. AMENDMENT.) Subsection 2 of section 38-14-04 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Upon the receipt of such application, a bond or security and all fees due from the operator, along with the reclamation plan, mining plans, and other data required to be filed herein, the commission may issue a permit to the operator which shall entitle him during the permit term to engage in surface mining on the land therein described. The commission may delete or modify portions of the information called for in subparagraph (d) of paragraph (1) of subdivision a of subsection 1 of this section in the case of an application from an operator who will affect less than two acres per year during the permit term.

SECTION 5. AMENDMENT.) Subsections 1, 2, and 3 of section 38-14-05 of the 1975 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The operator shall backfill and regrade the mined area to the gentlest topography consistent with adjacent unmined landscape elements in order to develop a postmined landscape that will provide for maximum moisture retention, maximum stability, and minimum soil losses from runoff and erosion, unless a different contour or topography shall be required by the commission in order to carry out the purpose and intent of this chapter.
2. The operator shall, in such a manner as shall be required by the commission, save, segregate, and respread all soil material within the permit area determined by the commission to be suitable for plant growth. In the interest of achieving the maximum reclamation provided for in this chapter, the operator may, or at the direction of the commission shall, utilize such soil amendments as described in subsection 17 of section 38-14-02.
3. The operator shall establish natural drainage compatible with the topography on all reclaimed land, and shall impound, drain, or treat all runoff water so as to minimize soil erosion, drainage to agricultural lands, and pollution of streams and other waters.

SECTION 6. AMENDMENT.) Subsection 14 of section 38-14-05 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14. If a surface owner's domestic or livestock water supply has been disrupted, or diminished in quality or quantity by surface mining operations, the operator shall, at no cost to the surface owner, make such repairs, alterations, or construction as will ensure the delivery to the surface owner of that quality and quantity of water available to such surface owner prior to mining. Repairs, alterations, or construction required herein shall be considered to be a part of reclamation for the purposes of subsection 3 of section 38-14-07.

SECTION 7.) Subsection 16 of section 38-14-05 of the 1975 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

16. The operator, under the direction of the commission, shall restore all lands outside the permit area affected by road construction and related mining activities.

SECTION 8. AMENDMENT.) Subsection 6 of section 38-14-05.1 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. Whenever the commission finds that ongoing surface mining operations are causing or are likely to cause any of the conditions set forth in subsection 1 or subsection 4 of this section, it may order immediate cessation of such operations and take such other action or make such changes in the permit as it may deem necessary to avoid such described conditions.

SECTION 9. AMENDMENT.) Section 38-14-12 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-12. PENALTIES.)

1. Any person required by this chapter to have a permit who knowingly engages in surface mining without previously securing a permit to do so as prescribed by this chapter, or who knowingly violates any permit condition or limitation implementing this chapter, is guilty of a class B misdemeanor.
2. Any person who willfully makes any false statement,

representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or who willfully falsifies, tampers with, or knowingly and willfully renders inaccurate, any monitoring device or method required to be maintained under this chapter, shall be guilty of a class A misdemeanor.

3. Any person who violates this chapter, or any permit condition or regulation implementing this chapter, and any person who violates any order of the commission, shall be subject to a civil penalty not to exceed ten thousand dollars per day of such violation. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

Notwithstanding any other provision of this chapter, the commission may by injunctive procedures, without bond or other undertaking, proceed against any operator found to be surface mining without a permit or in violation of the provisions of this chapter, or the rules and regulations promulgated thereunder. No liability whatsoever shall accrue to the commission or its authorized representative in proceeding against any operator pursuant to this section. Each day of operation without the permit required by this chapter shall be deemed a separate violation.

Approved April 20, 1977

CHAPTER 324

HOUSE BILL NO. 1037
(Legislative Council)
(Interim Committee on Industry, Business & Labor "A")

NOTICE OF NONCOMPLIANCE WITH RECLAMATION ACT

AN ACT to create and enact a new section to chapter 38-14 of the North Dakota Century Code, relating to notice of noncompliance and surface mining permit suspension and revocation; to amend and reenact section 38-14-01, subsection 9 of section 38-14-02, subsections 1 and 3 of section 38-14-04, subsection 5 of section 38-14-05, and section 38-14-07 of the North Dakota Century Code, relating to the declaration of policy on reclamation of affected lands, definition of refuse, application requirements for surface mining permits, amended applications, placement of material outside the permit area, and operator bonds; and to repeal subsections 10, 11, and 15 of section 38-14-02 of the North Dakota Century Code, relating to the definition of ridge, peak, and rolling topography.

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

SECTION 1.) A new section to chapter 38-14 of the North Dakota Century Code is hereby created and enacted to read as follows:

NOTICE OF NONCOMPLIANCE - PERMIT SUSPENSION - PERMIT
REVOCATION.)

1. If any requirement of this chapter or of any regulation adopted by the commission under this chapter has not been complied with, the commission shall serve on the operator a notice of noncompliance which shall specify in what respects the operator has failed to comply and what remedial measures are necessary. The notice of noncompliance shall be served upon the operator personally or by registered mail addressed to the permanent address of the operator.
2. If the operator does not comply with the remedial measures set forth in the notice of noncompliance, the commission shall after opportunity for hearing issue an order suspending the operator's permit. If the operator has complied with the requirements set forth in the order of suspension for permit reinstatement, the commission shall reinstate the permit upon a showing of compliance by the operator.

3. If the operator does not comply with the order of suspension, the commission shall issue an order revoking the operator's permit and forfeiting the performance bond to the commission. An operator whose bond has been forfeited shall cease all mining operations in this state within thirty days after the forfeiture. An operator whose permit has been revoked is not eligible to receive another permit unless the land for which any bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum which, added to the value of the bond, the commission finds adequate to reclaim the land. An operator who refuses or willfully fails to comply with this chapter shall be ineligible for any further mining permits. If the refusal or willful failure to comply with the provisions of this chapter is by an operator that is organized as a cooperative or a corporation, then all of its parent companies or wholly owned subsidiary companies shall also be ineligible for any further mining permits in this state.

SECTION 2. AMENDMENT.) Section 38-14-01 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-01. DECLARATION OF POLICY AND INTENT.) It is declared to be the policy and intent of this state to provide, after surface mining operations are completed, for reclamation of affected lands to encourage productive use including but not limited to: the planting of forests; the seeding of grasses and legumes for grazing purposes; the planting of crops for harvest; the enhancement of wildlife and aquatic resources; the establishment of recreational, home, and industrial sites; the conservation, development, management, and appropriate use of all of the natural resources of such areas for compatible multiple purposes; to aid in maintaining or improving the tax base; and to protect the health, safety, and general welfare of the people, as well as the natural beauty and aesthetic values, in the affected areas of this state.

It is also the intent of reclamation practices required by this chapter to restore affected lands designated for agricultural purposes to the level of inherent productivity equal to or greater than that which existed in the permit area prior to mining.

SECTION 3. AMENDMENT.) Subsection 9 of section 38-14-02 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. "Refuse" means all waste material directly connected with the production of coal mined by surface mining.

SECTION 4. AMENDMENT.) Subsections 1 and 3 of section 38-14-04 of the 1975 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Any operator desiring to engage in surface mining of coal 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. Both a limited and an extended mining plan, each of which shall:
 - (1) Include a description of the tract or tracts of land to be affected by surface mining by the operator during the period for which the plan is written. The description of the land shall include, in such form and detail as the commission may require, the following information:
 - (a) A legal description of the land, so that it may be identified and distinguished from other lands.
 - (b) The identity of the owner of record of the surface rights and subsurface mineral rights.
 - (c) The source of the operator's legal right to mine or affect any such lands.
 - (d) Hydrologic data, and geologic, topographic, and soils maps.
 - (e) For the limited mining plan, the report of the results of a soil survey as required by section 38-14-02.1.
 - (2) State the approximate number of tons of coal to be removed from the land described in the plan.
 - (3) Describe the location and composition of the coal to be mined from the land described in the plan.
 - (4) Include such other information as the commission may require.
 - b. A bond or security to attach to the described lands from and after the time a permit is granted which shall aid in meeting the requirements of section 38-14-07; and a fee computed as follows: A non-refundable filing fee in the amount of two hundred fifty dollars plus a refundable fee of ten dollars per acre or fraction of an acre for all lands included within the permit which will be affected by mining during the permit term. The ten dollar an acre fee shall be refunded to the operator in the event the operator's application or any amendments thereto,

for which such fee is required, is rejected by the commission.

- c. A reclamation plan, in such form and detail as the commission shall require, covering the land described in the limited mining plan.
3. An operator desiring to have his permit amended to cover additional land under the limited mining plan shall file an amended application, the reclamation plan, and other data required to be filed herein, with the commission. Upon receipt of the amended application, and plans, and such additional filing fee, acre fee, and bond or security as may be required under this chapter, the commission may issue an amendment to the original permit covering the additional land described in the amended application. The commission may grant an expedited amendment to an existing permit upon application by the operator for the mining of not more than an additional fifteen acres of land contiguous to existing active permit areas. Any amendment granted shall be subject to the same conditions as contained in the existing permit. The commission is empowered, if justified by the operator, to waive or modify the provisions of subsections 1 and 7 of this section.

SECTION 5. AMENDMENT.) Subsection 5 of section 38-14-05 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. The operator shall remove or bury all metal, lumber, equipment, or other refuse resulting from the operation. No operator shall throw, dump, or pile, or permit the throwing, dumping, piling, or other placement of any overburden, stones, rocks, debris, trees, wood, logs, or other materials or substances of a detrimental nature beyond or outside the area of land which is under permit and for which bond has been posted; nor shall any operator place any of the foregoing substances in such a way that normal erosion or slides brought about by natural causes will permit the same to go beyond or outside the area of land which is under permit and for which bond has been posted. The operator, under conditions set out by the commission, may stockpile suitable plant growth material outside of the permit area. Such surface area must be owned or leased by the operator and all suitable plant growth material stockpiled outside the permit area must be returned for respreading to the permit area.

SECTION 6. AMENDMENT.) Section 38-14-07 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-07. BOND OF OPERATOR - AMOUNT - SUFFICIENCY OF SURETY - AMOUNT OF FORFEITURE - COMPLIANCE.)

1. Any bond required to be filed with the commission by the operator shall be in such form as the commission shall prescribe, payable to the state of North Dakota, conditioned that the operator shall faithfully perform all requirements of this chapter and comply with all rules of the commission made in accordance with this chapter. Such bond shall be signed by the operator as principal, and by a good and sufficient corporate surety, licensed to do business in North Dakota, as surety. The penalty of such bond shall be one thousand five hundred dollars for each acre or portion thereof of land to be affected by surface mining for the ensuing year. However, a larger bond may be required if the commission shall determine that the cost of reclamation may exceed one thousand five hundred dollars. In lieu of such bonds, the operator may deposit cash or government securities or both with the commission in an amount equal to that of the required surety bond on conditions as above prescribed. The penalty of the bond or amount of cash and securities shall be increased or reduced from time to time as provided in this chapter. Such bond or security shall be in effect and subject to forfeiture in accordance with this chapter from and after the time a permit is granted by the commission until the mined acreages, or portions thereof, have been reclaimed, approved, and released.
2. A bond filed as prescribed in subsection 1 shall not be canceled by the surety unless it shall give not less than ninety days' notice to the commission, and in no event shall a bond be canceled on lands that at the time of cancellation have become affected lands under this chapter.
3. If the license to do business in North Dakota of any surety upon a bond filed with the commission pursuant to this chapter shall be suspended or revoked, the operator, within thirty days after receiving notice thereof from the commission, shall substitute for such surety a good and sufficient corporate surety licensed to do business in North Dakota. Upon failure of the operator to make substitution of surety, the commission shall have the right to suspend the permit of the operator until such substitution has been made.
4. The amount of any forfeiture of the bond or security shall be one thousand five hundred dollars, or the amount prescribed in the permit, for each acre or portion thereof of affected land. Such forfeiture shall fully satisfy all obligations of the operator to reclaim the affected land under this chapter.

5. The commission shall have the power to reclaim, in keeping with this chapter, any affected land with respect to which a bond has been forfeited.
6. Whenever an operator shall have completed all requirements under this chapter as to any affected land, he shall notify the commission thereof. If the commission determines that the operator has completed reclamation requirements on any portion of the affected land and achieved results thereon appropriate to the use for which the area was reclaimed, the commission shall release the operator from further obligations regarding any such affected land and the penalty of the bond shall be reduced proportionately.
7. Notwithstanding the foregoing requirements, the operator may secure a decrease in the penalty herein provided per acre in the following fashion:
 - a. Upon completion of the backsloping and grading, forty percent of the per-acre penalty will be released.
 - b. Upon completion of the respreading of suitable plant growth material as required herein, an additional thirty percent of the penalty per acre may be released.
 - c. The remaining thirty percent of the penalty will remain in effect until reclamation has been accomplished as provided herein.

SECTION 7. REPEAL.) Subsections 10, 11, and 15 of section 38-14-02 of the 1975 Supplement to the North Dakota Century Code are hereby repealed.

Approved April 19, 1977

CHAPTER 325

SENATE BILL NO. 2428
(Lee)

SURFACE MINING REPORTS

AN ACT to amend and reenact subsection 8 of section 38-16-01 and section 38-16-02 of the North Dakota Century Code, relating to the definition of "surface mining operation" and to reports of surface mining operations.

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

SECTION 1. AMENDMENT.) Subsection 8 of section 38-16-01 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 8. "Surface mining operation" relates to the mining of minerals by removing the overburden lying above natural deposits thereof, and mining directly from the natural deposits thereby exposed which will, within one calendar year, result in the removal of ten thousand cubic yards or more of product, including overburden, or affect one-half acre or more.

SECTION 2. AMENDMENT.) Section 38-16-02 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-16-02. SURFACE MINING OPERATION - REPORT TO COMMITTEE REQUIRED.) Except as provided for in section 38-16-06, no person shall conduct a surface mining operation without complying with the reporting requirements of this chapter. Any person conducting a number of operations, each of which, within one calendar year, results in the removal of less than ten thousand cubic yards of earthen material or product, including overburden, or affect less than one-half acre, but which, in the aggregate, result in the removal of ten thousand cubic yards or more of earthen material or product, including overburden, within one calendar year, or affect one-half acre or more within one calendar year, shall be subject to the provisions of this chapter.

Approved April 9, 1977