

MINING AND GAS AND OIL PRODUCTION

CHAPTER 422

SENATE BILL NO. 2187
(Committee on Natural Resources)
(At the request of the Industrial Commission)

ILLEGAL GAS AND OIL

AN ACT to amend and reenact subsections 5 and 6 of section 38-08-02 of the North Dakota Century Code, relating to the definition of the terms illegal gas and illegal oil.

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

SECTION 1. AMENDMENT. Subsections 5 and 6 of section 38-08-02 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

5. "Illegal gas" means gas which has been produced from any well within this state in excess of the quantity permitted by any rule, regulation, or order of the commission, or any gas produced or removed from the well premises in violation of any rule, regulation, or order of the commission, or any gas produced or removed from the well premises without the knowledge and consent of the operator.
6. "Illegal oil" means oil which has been produced from any well within the state in excess of the quantity permitted by any rule, regulation, or order of the commission, or any oil produced or removed from the well premises in violation of any rule, regulation, or order of the commission, or any oil produced or removed from the well premises without the knowledge and consent of the operator.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 423

HOUSE BILL NO. 1460
(Representative A. Olson)
(Senator Krauter)

OIL AND GAS BONDS

AN ACT to amend and reenact subsection 1 of section 38-08-04 of the North Dakota Century Code, relating to the oil and gas bonding authority 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. Subsection 1 of section 38-08-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 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.
 - 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~~ strata, the pollution of freshwater supplies by oil, gas, or saltwater, 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~~ orders 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, except that if the commission requires a bond to be furnished, the person required to furnish the bond may elect to deposit cash or property under such terms and conditions as the industrial commission may prescribe.

- 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, disposes of, or processes oil, gas, saltwater, or other related oilfield fluids in this state ~~shall~~ must 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.
- j. The payment of fees for services performed. The amount of the fee shall be set by the commission based on the anticipated actual cost of the service rendered. Unless otherwise provided by statute, all fees collected by the commission must be deposited in the general fund of this state, according to procedures established by the state treasurer.
- k. 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.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 424

SENATE BILL NO. 2183
(Committee on Natural Resources)
(At the request of the Industrial Commission)

ABANDONED WELL PLUGGING AND RECLAMATION

AN ACT to create and enact four new sections to chapter 38-08 of the North Dakota Century Code, relating to the powers, rights, and liabilities of the industrial commission in plugging or replugging abandoned wells and the reclamation of well sites; to amend and reenact sections 38-08-04.4 and 38-08-04.5 of the North Dakota Century Code, relating to the industrial commission entering into contracts for the plugging or replugging of wells and site reclamation and the establishment of an abandoned oil and gas well plugging and site reclamation fund; and to provide an appropriation.

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

SECTION 1. AMENDMENT. Section 38-08-04.4 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08-04.4. Commission authorized to enter into contracts. The commission is hereby authorized to enter into ~~contracts~~ public and private contractual agreements for the plugging or replugging of oil and gas or injection wells and the reclamation of abandoned oil and gas or injection well sites if any of the following apply:

1. The person or company drilling or operating the well cannot be found, has no assets with which to properly plug or replug the well or reclaim the well site, or cannot be legally required to plug or replug the well or to reclaim the well site; and.
2. There is no surety bond covering the well to be plugged or the site to be reclaimed or there is a forfeited surety bond but the cost of plugging or replugging the well or reclaiming the site exceeds the amount of the bond.
3. The well is leaking or likely to leak oil, gas, or saltwater or is likely to cause a serious threat of pollution or injury to the public health or safety.

Reclamation work shall be limited to abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads. Sealed bids for any well plugging or reclamation work under this section shall be solicited by placing a notice in the official county newspaper of the county in which the work is to be done and in such other newspapers of general circulation in the area as the commission may deem appropriate. Bids shall be addressed to the commission and shall be opened publicly at an industrial commission meeting designated in the notice. The contract shall be let to the lowest responsible bidder, but the commission may reject any or all bids submitted. If a well is leaking or likely to leak oil, gas, or saltwater or is likely to cause a serious threat of pollution or injury to the public health or safety, the commission, without notice or the letting of bids, may enter into contracts necessary to plug or replug such wells under such rules as the commission may prescribe.

The contracts for the plugging or replugging of wells or the reclamation of well sites shall be on terms and conditions as ~~set~~ prescribed by the commission, but at a minimum the contracts shall require the plugging and reclamation to comply with all statutes and rules governing the plugging of wells and reclamation of well sites.

SECTION 2. AMENDMENT. Section 38-08-04.5 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08-04.5. Abandoned oil and gas well plugging and site reclamation fund. There is hereby created an abandoned oil and gas well plugging and site ~~restoration~~ reclamation fund.

1. Revenue to the fund shall include:

- a. Fees collected by the oil and gas division of the industrial commission for permits or other services.
- b. Moneys received from the forfeiture of drilling and reclamation bonds.
- c. Moneys received from any federal agency for the purpose of this section.
- d. Moneys donated to the commission for the purposes of this section.
- e. Moneys received from the state's oil and gas impact fund.
- f. Moneys recovered under the provisions of section 4 of this Act.
- g. Moneys recovered from the sale of equipment confiscated under the provisions of section 5 of this Act.

- h. Such other moneys as may be deposited in the fund for use in carrying out the purposes of plugging or replugging of wells or the restoration of well sites.
2. Moneys in the fund may be used for the following purposes:
- a. Contracting for the plugging of abandoned wells.
 - b. Contracting for the reclamation of abandoned drilling and production pits, saltwater disposal pits, drilling fluid pits, and access roads.
3. Whenever All moneys collected under this section shall be deposited in the abandoned oil and gas well plugging and site reclamation fund. This fund must be maintained as a special fund and all moneys transferred into the fund are hereby appropriated and must be used and disbursed solely for the purpose of defraying the costs incurred in carrying out the plugging or replugging of wells, the reclamation of well sites, and all other related activities. However, when the money accumulated in the fund exceeds fifty thousand dollars, any additional fees collected by the oil and gas division of the industrial commission shall must be deposited in the general fund.

SECTION 3. A new section to chapter 38-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Right of entry. The commission, its agents, employees, or contractors shall have the right to enter any land for the purpose of plugging or replugging a well or the restoration of a well site as provided in section 38-08-04.4.

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

Recovery for costs of plugging. If the commission, its agents, employees, or contractors plugs or replugs a well or reclaims a well site under the provisions of this Act, the state has a cause of action for all reasonable expenses incurred in the plugging, replugging, or reclamation against the operator of the well at the time the well is required to be plugged and abandoned or any or all persons who own a working interest in the well at the time the well is required to be plugged and abandoned as a result of the ownership of a lease or mineral interest in the property on which the well is located. The term "working interest owner" does not mean a royalty owner or an overriding royalty interest owner. The commission shall seek reimbursement for all reasonable expenses incurred in plugging any well or reclaiming any well site through an action instituted by the attorney general. The liability of any working interest owner under this section shall be limited to that proportion of the reasonable expenses incurred by the commission that the interest of any such working interest owner bears to the entire working interest in the well. Any money collected in a suit

under this section shall be deposited in the state abandoned oil and gas well plugging and site reclamation fund. Any suit brought by the commission for reimbursement under this section may be brought in the district court for Burleigh County, the county in which the plugged well or reclaimed well site is located or the county in which any defendant resides.

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

Confiscation of equipment to cover plugging costs. If the commission, its agents, employees, or contractors plugs, replugs a well, or restores a well site pursuant to this Act, the commission, after notice and hearing, may order the confiscation of any production-related equipment at the abandoned well site owned by the operator or any working interest owner for the purpose of wholly or partially compensating the state for the cost of plugging or replugging or site restoration.

SECTION 6. A new section to chapter 38-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Penalties and other relief. The plugging or replugging of a well or reclamation of a well site by the commission, its agents, employees, or contractors, shall not prevent the commission from seeking penalties or other relief provided by law from any person who is required by statutes, rules, or order of the commission to plug or replug a well or reclaim the surface.

Approved April 17, 1987
Filed April 17, 1987

CHAPTER 425

SENATE BILL NO. 2193
(Committee on State and Federal Government)
(At the request of the Industrial Commission)

INDUSTRIAL COMMISSION REHEARING

AN ACT to amend and reenact section 38-08-13 of the North Dakota Century Code, relating to the procedure for applying for a rehearing before the industrial commission.

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

SECTION 1. AMENDMENT. Section 38-08-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08-13. Person adversely affected may apply for rehearing. Any person adversely affected by any ~~rule, regulation, or~~ order of the commission may within thirty days after its effective date apply to the commission in writing for a the entry of such order file in writing a petition for rehearing. The application for rehearing shall be acted upon within fifteen days after its filing, and if petition must state with particularity the evidence, facts, points of law, or newly discovered evidence which in the opinion of the petitioner indicate the order of the commission is erroneous. The commission shall grant or deny any such petition in whole or in part within thirty days after the same is filed. If a petition for rehearing is granted, the rehearing shall be held without undue delay.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 426

SENATE BILL NO. 2180
(Committee on Judiciary)
(At the request of the Industrial Commission)

APPEAL OF INDUSTRIAL COMMISSION ORDERS

AN ACT to amend and reenact subsection 1 of section 38-08-14 of the North Dakota Century Code, relating to the procedure for appealing an order of the industrial commission to the district court.

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

* SECTION 1. AMENDMENT. Subsection 1 of section 38-08-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any person adversely affected by an order entered by the commission may appeal from such order to the district court of Burleigh County. Notice of appeal must be filed by such person with the commission within thirty days after the entry of the order complained of by the appellant, or in the event a petition for rehearing has been filed as provided herein within thirty days following the entry of the order overruling a motion for rehearing or either sustaining or overruling the original order in the event a motion for rehearing has been filed, or within thirty days after the day upon which a petition for rehearing is denied. A copy of the notice of appeal shall be filed with the district court of Burleigh County at the same time the notice of appeal is filed with the commission. The notice of appeal must identify the order and the grounds of appeal, and reasonably specify that portion of the record which the appellant desires included in the transcript upon appeal. Immediately upon the filing of the notice of appeal the commission shall certify to the appellant the estimated cost of preparing the transcript of appeal of the proceedings upon which the order complained of was entered. The amount of the estimated cost must be deposited with the commission within ten days after the mailing of the certification of the costs to the appellant. Upon the deposit of the costs the commission shall prepare and certify under its seal

* NOTE: Section 38-08-14 was also amended by section 1 of House Bill No. 1061, chapter 427.

the transcript. The transcript shall be delivered to the district court of Burleigh County within sixty days after the filing of the notice of appeal. A copy of the transcript shall be delivered to the appellant, or his designated attorney, upon deposit of the cost of preparing same with the commission. Fees charged and collected for the transcript of evidence may be paid to the person preparing such transcript.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 427

HOUSE BILL NO. 1061
(Legislative Council)
(Interim Oil and Gas Committee)

INDUSTRIAL COMMISSION ORDER APPEALS

AN ACT to amend and reenact subsection 1 of section 38-08-14 of the North Dakota Century Code, relating to appeals from industrial commission orders.

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

* SECTION 1. AMENDMENT. Subsection 1 of section 38-08-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any person adversely affected by an order entered by the commission may appeal from such order to the district court of Burleigh County for the county in which the oil or gas well or the affected property is located. However, if the oil or gas well or the property affected by the order is located in or underlies more than one county, any appeal must be taken to the district court for any county in or under which any part of the affected property is located. Notice of appeal must be filed by such person with the commission within thirty days after the entry of the order complained of by the appellant, or within thirty days following the order overruling a motion for rehearing or sustaining the original order in the event a motion for rehearing has been filed. A copy of the notice of appeal shall be filed with the district court of Burleigh County for the county in which the appeal is taken at the same time the notice of appeal is filed with the commission. The notice of appeal must identify the order and the grounds of appeal, and reasonably specify that portion of the record which the appellant desires included in the transcript upon appeal. Immediately upon the filing of the notice of appeal the commission shall certify to the appellant the estimated cost of preparing the transcript of appeal of the proceedings upon which the order complained of was entered. The amount of the estimated cost must be deposited with the commission within ten days after the mailing of the certification of the costs to the

* NOTE: Section 38-08-14 was also amended by section 1 of Senate Bill No. 2180, chapter 426.

appellant. Upon the deposit of the costs the commission shall prepare and certify under its seal the transcript. The transcript shall be delivered to the district court of BarleIGH County for the county in which the appeal is taken within sixty days after the filing of the notice of appeal. A copy of the transcript shall be delivered to the appellant, or his designated attorney, upon deposit of the cost of preparing same with the commission. Fees charged and collected for the transcript of evidence may be paid to the person preparing such transcript.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 428

SENATE BILL NO. 2238
(Committee on Natural Resources)
(At the request of the Industrial Commission)

GAS ACTIVITY REGULATION

AN ACT to create and enact a new section to chapter 38-08 of the North Dakota Century Code, relating to industrial commission authority to regulate the exploration, development, and production of carbon dioxide and nitrogen gas; and to amend and reenact section 38-12-02 of the North Dakota Century Code, relating to the jurisdiction of the industrial commission to regulate carbon dioxide and nitrogen gas.

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

SECTION 1. A new section to chapter 38-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Regulation of carbon dioxide and nitrogen gas. The commission is hereby vested with the authority and duty to regulate the exploration, development, and production of carbon dioxide and nitrogen gas within the state, used for the development of oil and gas resources, in the same manner, insofar as is practicable, as it regulates oil or gas as defined in this chapter.

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

38-12-02. Jurisdiction of commission. The commission has jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of this chapter. The Subject to the provisions of section 1 of this Act, the state geologist shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to the subsurface mineral resources of this state and the provisions of this chapter. The commission has authority to make such investigations as it deems proper to determine whether facts exist which justify action by the commission. The commission acting through the office of the state geologist has the authority:

1. To require:

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

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

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

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 429

HOUSE BILL NO. 1461
(Representative Koland)
(Senator Bakewell)

GEOPHYSICAL EXPLORATION REQUIREMENTS

AN ACT to amend and reenact subsection 4 of section 38-08.1-03.1 and sections 38-08.1-04 and 38-08.1-04.1 of the North Dakota Century Code, relating to geophysical exploration bond requirements.

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

SECTION 1. AMENDMENT. Subsection 4 of section 38-08.1-03.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 10-19.1, 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 or any subcontractor of that person a certificate showing that the bond has been filed and showing the name and address of the surety company and the name of the person designated resident agent for service of process.

SECTION 2. AMENDMENT. Section 38-08.1-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08.1-04. Filing of notice of intention Application for permit to engage in geophysical exploration. Any person desiring to engage in geophysical exploration within this state must, prior to actually engaging in such exploration, file a notice of intention an application for a permit to engage in geophysical exploration with the board of county commission commissioners in each county in which exploration is to be carried on. The notice of intention shall include the name of the person who intends to 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 exploration will commence, the township, range, section, and quarter section in which the exploration is to be carried on, and the estimated depth of the drill hole, if any. Notices application for a permit for geophysical exploration must include the following information:

1. The name, address, and telephone number of the person intending to engage in geophysical exploration and the name and telephone number of any local representative who may be contacted by the board of county commissioners concerning geophysical exploration activities.
2. The name, address, and telephone number of any subcontractors, including drilling and plugging subcontractors, to be employed by the person intending to conduct geophysical exploration.
3. The name and address of the resident agent for service of process of the person intending to engage in geophysical exploration.
4. The date upon which geophysical exploration is to begin.
5. The approximate number and depth of any drill holes and the specific location of any drill holes or a description of the property on which the geophysical exploration is to be conducted described by township, range, section, and quarter section.
6. A certificate from the industrial commission indicating that the person intending to engage in geophysical exploration and any subcontractors to be employed by that person have each filed with the industrial commission a good and sufficient surety bond.
7. A fee to be determined by the board of county commissioners based on the anticipated actual expenses of administering and enforcing this chapter.

Applications filed with the board of county ~~commission~~ commissioners 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~~ application. The person making application for a geophysical exploration permit shall file an amended application whenever there is any new information or a change in the information contained in the application on file with the board of county commissioners.

SECTION 3. AMENDMENT. Section 38-08.1-04.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08.1-04.1. Exploration permit.

1. Upon filing a notice of intention a complete application for permit to explore pursuant to section 38-08.1-04 and the certificate issued by the industrial commission pursuant to section 38-08-1-03-1, the board of county commission commissioners or its 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. A person may not engage in geophysical exploration activities in any county without having first obtained a geophysical exploration permit from the board of county commission commissioners.
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 an application 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 must be signed by the chairman of the board of county commission commissioners or his that person's designee and shall must bear the official county seal. The permit is 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 holder shall notify the operator of the land at least three days prior to the commencement of any geophysical exploration activity, unless waived by mutual agreement of both parties. The notice must include the approximate time schedule and the location of the planned activity.
- 6- 5. The permit or a photostatic copy thereof shall must be carried at all times by a member of the crew during the period of geophysical exploration and shall must be exhibited upon demand of the landowner or tenant operator or county or state official or respective surface owner.

Approved March 12, 1987

Filed March 16, 1987

CHAPTER 430

SENATE BILL NO. 2409
(Senators Krauter, Kelsh)
(Representatives Martin, O'Shea)

STATE AND PRIVATE MINERAL LEASE OFFERINGS

AN ACT to create and enact a new section to chapter 38-09 of the North Dakota Century Code, relating to public offering of state mineral leases.

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

SECTION 1. A new section to chapter 38-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Sale of private mineral interests at public offerings for state mineral leases. The state or any of its departments and agencies when making a public offering for lease of state-owned mineral interests may allow private owners of mineral interests common to the state's mineral interests to offer their mineral interests at the public offering to be conducted by the state. The state-owned and privately owned mineral interests must be offered separately at the public offering. Privately owned mineral interests may only be offered when the common state-owned mineral interest is being offered. The private mineral owners shall submit a signed and notarized lease form to the state at the time they submit their minerals for inclusion in a public offering together with a current title opinion for the mineral interests certified by an attorney licensed to practice law in the state of North Dakota. The lease to be used by the private mineral owners must be on a form prescribed by the board of university and school lands in which the lease term, royalty rate, and rental rate are consistent with the state-owned mineral lease term and rates. The executed lease must be submitted to the leasing agency prior to the cutoff date for the public offering as established by the leasing agency. The private mineral interests must be advertised in the same manner as provided for in section 38-09-15. No bid may be accepted unless the bidder, at the time of the leasing, tenders or pays to the leasing official an amount equal to the bonus offered for the lease. The payment must be in the form of a thirty-day sight draft payable upon approval of title. The leasing official, in exchange for tender of the bonus, shall deliver to the successful bidder the executed lease. The leasing agency shall, as soon as practical after the sale, forward

the thirty-day draft to the private mineral owners. The person must agree to warrant and defend title to the mineral interest being offered for lease before being allowed to offer the mineral interest for sale under this section. When a person agrees to offer a mineral interest at a public offering that interest may not be withdrawn from the offering. A person offering a mineral interest at a public offering under this section shall agree to pay prior to sale an equitable share of the costs incurred by the state in making that public offering. Nothing in this Act shall be construed or interpreted to impose any liability or obligation upon the state or any of its departments, agencies, agents, or employees by reason of any acts or omissions done under this Act.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 431

SENATE BILL NO. 2073
(Legislative Council)
(Interim Oil and Gas Committee)

DRILLING OPERATIONS DEFINED

AN ACT to amend and reenact subsection 2 of section 38-11.1-03 of the North Dakota Century Code, relating to the definition of drilling operations.

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

SECTION 1. AMENDMENT. Subsection 2 of section 38-11.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Drilling operations" means the ~~exploration for, including seismograph activities, or~~ drilling of an oil and gas well and the production and completion operations ensuing from the drilling which requires require entry upon the surface estate and ~~was~~ which were commenced ~~subsequent to~~ after June 30, 1979, and ~~the production operations ensuing therefrom, provided, however, that this subsection is applicable only to~~ oil and gas geophysical and seismograph exploration activities commenced ~~subsequent to~~ after June 30, 1983.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 432

SENATE BILL NO. 2072
(Legislative Council)
(Interim Oil and Gas Committee)

SURFACE OWNER OIL AND GAS DAMAGES

AN ACT to amend and reenact subsection 7 of section 38-11.1-03 and section 38-11.1-04 of the North Dakota Century Code, relating to the definition of surface owner and surface damage payments with respect to oil and gas production damage.

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

SECTION 1. AMENDMENT. Subsection 7 of section 38-11.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. "Surface owner" means ~~the any~~ person who has possession of holds record title to the surface of the land ~~either as an owner or as a tenant~~.

SECTION 2. AMENDMENT. Section 38-11.1-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-11.1-04. Surface damage ~~Damage~~ and disruption payments. The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for loss of agricultural production and income, lost land value, lost use of and access to the surface owner's land, and lost value of improvements caused by drilling operations. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. When determining damages, consideration shall be given to the period of time during which the loss occurs and the surface owner may elect to be paid damages in annual installments over a period of time; except that the surface owner shall be compensated for harm caused by exploration only by a single sum payment. The payments contemplated by this section shall only cover land directly affected by drilling operations. Payments under this section are intended to compensate the ~~actual~~ surface owner for damage and disruption; any reservation or assignment of such compensation apart from the surface estate except to a tenant of the surface estate is prohibited. In the absence of an agreement between the surface owner and a tenant as to the division of compensation payable under this section, the tenant is entitled to recover from the surface owner that portion of the compensation attributable to the tenant's share of the damages sustained.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 433

SENATE BILL NO. 2075
(Legislative Council)
(Interim Oil and Gas Committee)

DRILLING OPERATIONS INSPECTION AND NOTICE

AN ACT to create and enact a new section to chapter 38-11.1 of the North Dakota Century Code, relating to inspection of well sites; and to amend and reenact section 38-11.1-05 of the North Dakota Century Code, relating to information that must accompany the notice of oil and gas drilling operations.

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

SECTION 1. A new section to chapter 38-11.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Inspection of well site. Upon request of the surface owner or adjacent landowner, the state department of health shall inspect and monitor the well site on the surface owner's land for the presence of hydrogen sulfide. If the presence of hydrogen sulfide is indicated, the state department of health shall issue appropriate orders under chapter 23-25 to protect the health and safety of the surface owner's health, welfare, and property.

SECTION 2. AMENDMENT. Section 38-11.1-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-11.1-05. Notice of drilling operations. Except for exploration activities governed by chapter 38-08.1, the mineral developer shall give the surface owner written notice of the drilling operations contemplated at least twenty days prior to the commencement of such activities the operations, unless waived by mutual agreement of both parties. If the mineral developer plans to begin drilling operations within twenty days of the termination date of the mineral lease, the required notice under this section may be given at any time prior to commencement of drilling operations. This notice shall must be given to the record surface owner at his that person's address as shown by the records of the county register of deeds at the time the notice is given. This notice shall must sufficiently disclose the plan of work and operations to enable the surface owner

to evaluate the effect of drilling operations on the surface owner's use of the property. Included with this notice ~~shall~~ must be a form prepared by the state geologist advising the surface owner of ~~his~~ the surface owner's rights and options under the chapter, including the right to request the state department of health to inspect and monitor the well site for the presence of hydrogen sulfide. If a mineral developer fails to give notice as provided under this section, the surface owner may seek any appropriate relief in the court of proper jurisdiction and may receive punitive as well as actual damages.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 434

SENATE BILL NO. 2304
(Senator Moore)
(Representative Whalen)

WATER SUPPLY DAMAGES

AN ACT to create and enact a new section to chapter 61-04 of the North Dakota Century Code, relating to damages awarded by a court for a diminution in quantity or quality of a water supply; and to amend and reenact section 38-11.1-06 of the North Dakota Century Code, relating to the protection of water wells and surface and ground water sources from damage caused by oil and gas exploration.

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

SECTION 1. AMENDMENT. Section 38-11.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-11.1-06. Protection of surface and ground water - Other responsibilities of mineral developer. If the domestic, livestock, or irrigation water supply of any person who owns an interest in real property within one-half mile [804.67 meters] of where geophysical or seismograph activities are or have been conducted or within one mile [1.61 kilometers] of an oil or gas well site has been disrupted, or diminished in quality or quantity by the drilling operations and certified water quality and a quantity test has been performed by the person who owns an interest in real property within one year preceding the commencement of drilling operations, the person who owns an interest in real property is entitled to recover the cost of making such repairs, alterations, or construction that will ensure the delivery to the surface owner of that quality and quantity of water available to the surface owner prior to the commencement of drilling operations. Any person who owns an interest in real property who obtains all or a part of that person's water supply for domestic, agricultural, industrial, or other beneficial use from an underground source has a claim for relief against a mineral developer to recover damages for disruption or diminution in quality or quantity of that person's water supply proximately caused from drilling operations conducted by the mineral developer. Prima facie evidence of injury under this section may be established by a showing that the mineral developer's drilling

operations penetrated or disrupted an aquifer in such a manner as to cause a diminution in water quality or quantity within the distance limits imposed by this section. An action brought under this section when not otherwise specifically provided by law must be brought within six years of the time the action has accrued. For purposes of this section, the claim for relief is deemed to have accrued at the time it is discovered or might have been discovered in the exercise of reasonable diligence.

A tract of land is not bound to receive water contaminated by drilling operations on another tract of land, and the owner of a tract has a claim for relief against a mineral developer to recover the damages proximately resulting from natural drainage of waters contaminated by drilling operations.

The mineral developer shall be is also responsible for all damages to person or property, ~~real or personal~~, resulting from the lack of ordinary care by the mineral developer. The mineral developer shall also be responsible for all damages to person or property, ~~real or personal~~, or resulting from a nuisance caused by drilling operations. This section does not create a cause of action if an appropriator of water can reasonably acquire the water under the changed conditions and if the changed conditions are a result of the legal appropriation of water by the mineral developer.

SECTION 2. A new section to chapter 61-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

If a court of competent jurisdiction determines that a water supply has been illegally diminished in quantity or quality and that a valid water right to use that supply has been damaged as a result of the diminishment, damages awarded to the owner of the water right shall be an amount to cover the cost of making such repairs, alterations, or construction that will ensure the delivery to the surface owner of that quality and quantity of water available to the surface owner prior to the diminishment.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 435

SENATE BILL NO. 2185
(Committee on Natural Resources)
(At the request of the Governor)

SURFACE MINING AND RECLAMATION BONDS

AN ACT to amend and reenact subsection 12.1 of section 38-14.1-02 of the North Dakota Century Code, relating to bonds issued under the state surface mining and reclamation bond fund.

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

SECTION 1. AMENDMENT. Subsection 12.1 of section 38-14.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 12.1. "Performance bond" means a surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, 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.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 436

SENATE BILL NO. 2236
(Committee on Natural Resources)
(At the request of the Public Service Commission)

RECLAMATION PERFORMANCE BONDS

AN ACT to amend and reenact subsections 2 and 7 of section 38-14.1-16 and subsection 7 of section 38-14.1-17 of the North Dakota Century Code, relating to minimum reclamation performance bond amounts, the substitution of surety, and the release of reclamation performance bonds.

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

SECTION 1. AMENDMENT. Subsections 2 and 7 of section 38-14.1-16 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. For areas where coal is mined and where overburden is removed or deposited, the amount of the bond shall be at a minimum one thousand five hundred dollars for each acre [-40 hectare] or portion thereof or an amount sufficient to assure the completion of The commission shall set the bond amount sufficient to complete the reclamation plan by the commission in the event of forfeiture, whichever is greater. For areas affected by all other activities conducted as part of a surface coal mining operation, the amount of the bond shall be at a minimum two hundred dollars for each acre [-40 hectare] or portion thereof or an amount sufficient to assure the completion of the reclamation plan by the commission in the event of forfeiture, whichever is greater. A bond that is greater than any minimum amount established by this subsection shall be required if the commission shall determine that the cost of reclamation exceeds such minimum amounts. In no case shall the The bond for the entire permit area must be less than at least ten thousand dollars.
7. If the corporate surety's license to do business in North Dakota of any surety upon a bond filed with the commission pursuant to this chapter shall be is suspended or revoked, the permittee, within thirty days after receiving notice thereof from the commission, shall substitute for such

surety a good and sufficient corporate surety licensed to do business in North Dakota or security as prescribed by subsection 5 provide a substitute performance bond. Upon failure of if the permittee fails to make substitution of surety within thirty days, the commission shall have the right to may suspend the permit until such substitution has been made. If substitution is not made within ninety days, the commission shall suspend the permit.

SECTION 2. AMENDMENT. Subsection 7 of section 38-14.1-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. The commission may release in whole or in part said bond or deposit if the commission is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this chapter according to the following schedule as follows:
 - a. When the permittee completes the backfilling, regrading, and drainage control of in a bonded area in accordance with the approved reclamation plan, the release of up to, forty percent of the bond or collateral for the applicable permit area may be released.
 - b. After spreading suitable plant growth material or other suitable strata on the regraded land in accordance with the approved reclamation plan, up to an additional, twenty percent of the bond or collateral for the applicable permit area may be released.
 - c. After vegetation has been is established on the regraded land in accordance with the approved reclamation plan, up to an additional twenty percent of the bond or collateral for the applicable permit area may be released. The commission shall retain that amount of sufficient bond for the revegetated area which would be sufficient for a to cover third party to cover the cost of reestablishing vegetation and revegetation and associated costs for the period specified for permittee responsibility in set by subsection 18 of section 38-14.1-24 of reestablishing vegetation, provided that:
 - (1) No part of the remaining bond or deposit shall be released under this subdivision so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of There may be no release under this subdivision until the requirements set by of subdivision b of subsection 8 of section 38-14.1-24 or until are

met and prime farmlands affected by surface coal mining operations have been are returned to a level of productivity equal to or greater than nonmined prime farmland in the surrounding area under equivalent management practices.

- (2) Where a silt dam is to be retained as a If there is a permanent silt dam impoundment pursuant to under subsection 7 of section 38-14.1-24, the portion of the remaining bond or deposit may be released under this subdivision so long as provisions for sound if the commission approves the commitments for future maintenance by the permittee or the landowner have been made with the commission.
- d. When the permittee has successfully completed successfully all surface coal mining and reclamation operations, and after the period set by subsection 18 of section 38-14.1-24, the remaining portion of the bond may be released, but not before the expiration of the period specified for permittee responsibility in subsection 18 of section 38-14-1-24. No bond shall be fully released until all reclamation requirements of this chapter are fully met.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 437

SENATE BILL NO. 2184
(Committee on Natural Resources)
(At the request of the Governor)

SURFACE MINING AND RECLAMATION BOND FUND

AN ACT to establish a state surface mining and reclamation bond fund.

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

SECTION 1. Definitions. In this chapter:

1. "Bond" means a bond required of a permittee under chapter 38-14.1.
2. "Fund" means the surface coal mining and reclamation bond fund.
3. "Permit" means a surface coal mining and reclamation operation permit approved by the public service commission under chapter 38-14.1.
4. "Permittee" means a person holding a permit.

SECTION 2. Surface coal mining and reclamation bond fund. The industrial commission may establish a surface coal mining and reclamation bond fund to be maintained at the Bank of North Dakota. All moneys collected and received under this Act are appropriated to the commission for the purposes provided for in this Act.

SECTION 3. Bond coverage available to permittees. The fund may provide bonds for the faithful performance of all surface coal mining laws, rules, and permit terms and conditions. An application for a bond may be made to the industrial commission, which shall approve or disapprove the application. The decision of the industrial commission may not be appealed. The industrial commission may establish conditions, require information and such guarantee and indemnity by the permittee as the industrial commission deems necessary for the preservation of the fund.

SECTION 4. Investment of fund. Investment of the fund is under the supervision of the Bank of North Dakota.

SECTION 5. Commission may employ staff. The industrial commission may employ staff and enter into public and private contracts as may be necessary to operate the fund. The salaries of employees and other expenditures for the operation of the fund must be paid out of the fund.

SECTION 6. Premiums - Amount and to whom paid. The premium for a bond under this Act must be set by the industrial commission. Premiums must be paid in advance to the industrial commission and deposited in the fund.

SECTION 7. Reinsurance contracts - Revenue bonds - Guarantees. The industrial commission shall do all things necessary to preserve the fund and ensure the ability of the fund to pay claims. The industrial commission is granted all powers necessary to effectuate the purposes of this Act, including but not limited to the power to:

1. Contract for reinsurance of any risk against which a bond is issued under this Act. A contract for reinsurance may be entered into without public bids and must be approved by the commissioner of insurance.
2. Issue evidences of indebtedness. The principal of, and interest on, evidences of indebtedness may be paid only from the fund. The evidences of indebtedness are not a debt of the state of North Dakota or of any officer or agent of the state within the meaning of any statutory or constitutional provision and shall contain a statement to that effect on their face. The evidences of indebtedness may be sold at public or private sale and must contain the terms and provisions set by the industrial commission. Any state department or public fund may invest its funds in the purchase of the evidences of indebtedness. The evidences of indebtedness are not subject to taxation by the state or by any political subdivision of the state.
3. Require, before issuing a bond, that a permittee guarantee and indemnify the fund against any loss and secure the guarantee and indemnity by the pledge or posting of real or personal property under terms and conditions set by the industrial commission. The industrial commission may not require the pledge or posting of property if the fund's reserves are sufficient to ensure the payment of all claims against it. The liability of a permittee under a guarantee or indemnity agreement under this Act is limited to the payment of any claims against the bond issued for the permittee.

SECTION 8. Claims - How paid. All claims against bonds provided for by this Act must be paid out of the fund in an amount not exceeding the face amount of the bond.

SECTION 9. Industrial commission may adopt rules. The industrial commission may adopt rules necessary to carry out this Act.

Approved April 1, 1987
Filed April 2, 1987