

CHAPTER 38-08.1

GEOPHYSICAL EXPLORATION REQUIREMENTS

38-08.1-01. Definitions.

As used in this chapter, unless the context requires otherwise:

1. "Commission" means the industrial commission.
2. "Geophysical exploration" means any method of obtaining petroleum-related geophysical surveys.
3. "Operator of the land" means the surface owner or the surface owner's tenant of the land upon or within one-half mile [.80 kilometer] of the land on which geophysical operations are to be conducted.
4. "Permitting agent" means a person who secures a permit from an operator of the land to conduct geophysical exploration activities.
5. "Person" means and includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof.

38-08.1-02. Enforcement by commission - Persons required to comply with chapter.

Notwithstanding any other provision of this chapter, the commission is the primary enforcement agency governing geophysical exploration in this state. Any person in this state engaged in geophysical exploration or engaged as a subcontractor of a person engaged in geophysical exploration shall comply with this chapter; provided, however, that compliance with this chapter by a crew or its employer constitutes compliance herewith by that person who has engaged the service of the crew, or its employer, as an independent contractor.

38-08.1-03. Deemed doing business within state - Resident agent.

A person must be deemed doing business within this state when engaged in geophysical exploration within the boundaries of this state, and shall, if not already qualified to do business within the state under chapter 10-19.1, 10-32.1, 45-10.2, 45-22, or 45-23 prior to such exploration, file with the secretary of state an authorization provided under the governing statute of the organization.

38-08.1-03.1. Surety bond - Certificate - Release.

1. A geophysical exploration contractor desiring to engage in geophysical exploration in this state shall file with the commission a good and sufficient surety bond in the amount of fifty thousand dollars if the contractor intends to conduct shot hole operations or in the amount of twenty-five thousand dollars if the contractor intends to use any other method of geophysical exploration. Each subcontractor engaged by the geophysical exploration contractor for the drilling or plugging of seismic shot holes must file with the commission a good and sufficient surety bond in the amount of ten thousand dollars. The bond must be in a form prescribed by the commission and must indemnify all owners of property within the state, including the state and its political subdivisions, against physical damages to property which may result from geophysical exploration and the plugging of drill holes. The bond must cover all geophysical exploration and plugging operations conducted within one year of the date the bond is issued and must be automatically renewed unless the commission and the person covered by the bond receive notice sixty days before any anniversary date of the surety's intent not to renew the bond. If the surety does not renew the geophysical exploration contractor's bond, the surety's liability under the bond ceases six years from the date that geophysical exploration or reclamation covered by the bond was last conducted in the state. If the surety does not renew the drilling or plugging bond, the surety's liability under the bond ceases two years from the date the drilling and plugging covered by the bond was last conducted in this state. A person required to

- post a bond under this subsection may post cash or a certificate of deposit in lieu of the bond under rules adopted by the commission.
2. The aggregate liability of the surety on the bond may in no event exceed the amount of the bond.
 3. Upon filing the bond required by this section and presenting a certificate of authority to transact business in this state issued under section 10-19.1-136, a certificate of incorporation issued under 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 commission shall issue to the person desiring to engage in geophysical exploration or plugging operations 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.
 4. The proceeds of a surety bond become the property of the commission or the cash or certificate of deposit posted in lieu of a surety bond may not be returned to that person if the principal or person posting the bond, cash, or certificate of deposit fails to comply with this chapter and rules adopted by the commission under this chapter. This must be determined by the commission after notice and hearing in accordance with rules adopted by the commission. Notice of the hearing must be given to the principal and surety on the bond or to the person posting the cash or certificate of deposit by mailing a copy of the notice of hearing and a copy of a complaint, stating the grounds for forfeiture to them, filed by the commission. This must be done by certified mail, return receipt requested, and addressed to their last-known address listed with the commission. If the principal or surety or person posting the cash or certificate of deposit has a defense to, or otherwise wishes to contest the complaint of the commission, that person must file a written statement or answer setting forth the defense with the commission at least three business days before the commission hearing. Any defense or reason for contesting the complaint is waived if that person fails to do so. The commission may treat the failure to file a defense or reason to contest the complaint or the failure to appear at the hearing as default by the party. If the commission determines the principal on the bond or the person posting the cash or certificate of deposit as security has complied with this chapter and rules adopted by the commission under this chapter, including the proper plugging of wells and seismic holes and reclamation of the surrounding affected area, with respect to all operations secured by the bond, the commission shall release the obligation of the bond or return the cash or certificate of deposit upon its next anniversary date.

38-08.1-04. Application for permit to engage in geophysical exploration.

Any person desiring to engage in geophysical exploration before actually engaging in the exploration shall file an application for a permit to engage in geophysical exploration with the commission. The application for a permit for geophysical exploration must include the following:

1. The name, address, and telephone number of the person intending to engage in geophysical exploration or plugging operations and the name and telephone number of any local representative who may be contacted by the commission 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 or plugging operations.
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 fee of up to one hundred dollars.

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 commission.

38-08.1-04.1. Exploration permit.

1. Upon filing a complete application for permit to explore pursuant to section 38-08.1-04, the commission may issue to any person desiring to engage in geophysical exploration a "geophysical exploration permit". A person may not engage in geophysical exploration activities in this state without having first obtained a geophysical exploration permit from the commission.
2. The permit must 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 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 must be signed by the director of the commission's oil and gas division or the director's designee. The permit is valid for one year.
4. Within seven days of initial contact between the permitting agent and the operator of the land, the permitting agent shall provide the operator of the land and each landowner owning land within one-half mile [.80 kilometer] of the land on which geophysical exploration activities are to be conducted a written copy of section 38-08.1-04.1 and chapter 38-11.1.
5. The permitting agent shall notify the operator of the land at least seven days before 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. The permit or a photostatic copy thereof must be carried at all times by a member of the crew during the period of geophysical exploration and must be exhibited upon demand of the landowner or tenant operator or county or state official.
7. The permit holder shall notify the county auditor or the auditor's designee at least twenty-four hours, excluding Saturdays and holidays, before the permit holder commences geophysical exploration in the county. Notice must include the approximate time schedule and location of the planned activity.

38-08.1-04.2. Notification of issuance of permit - Revocation - Suspension.

The commission shall immediately forward notice of the issuance of a permit to the board of county commissioners of the county in which the lands are located. The commission may revoke the permit of any person engaging in geophysical exploration upon a showing that that person has violated any applicable requirement pertaining to geophysical exploration. The commission shall notify that person, by the most effective written means, of the permit revocation. Upon notification, the person engaging in geophysical exploration may, within fifteen days, request a hearing before the commission on the matter. The commission shall either affirm, modify, or deny the permit revocation. The commission may also suspend the permit temporarily in those cases where climate and physical conditions are such as to cause harm, damage, or undue stress to roads, bridges, pastures, crops, or other physical features. For these same reasons, a board of county commissioners, upon notice to the permit holder and the commission, also may suspend, for not longer than forty-eight hours, a permit for operations within the county.

38-08.1-05. Duty to file record showing where work performed.

Within thirty days following any calendar month in which geophysical exploration is begun by any person within this state, such person shall file with the commission and shall send to the owner or occupier of any land upon which work is begun, a record showing the township, range, section, and quarter section in the county in which such work was performed and the date upon

which such work was commenced. The notice also must include the actual shot point location and the amount of explosive charge, if any, in each drill hole.

38-08.1-06. Duty to plug drill holes.

1. Drill holes must be plugged and abandoned as required by this section.
2. The seismic company responsible for the plugging and abandonment of seismic shot holes shall notify the commission in writing that it intends to plug and abandon the drill hole. The required notice must be received by the commission at least twenty-four hours before the time plugging activities are scheduled to begin. The notice must include the date and time the activities are expected to commence, the location by section, township, and range of the holes to be plugged, and the name and telephone number of the person in charge of the plugging operations. A copy of the notice must be sent to the landowner or lessee at the same time it is sent to the commission. The seismic company shall notify the commission in writing upon completion of the plugging operation.
3. All seismic shot holes must be plugged as soon after being used as reasonably is practicable; however, they may not remain unplugged for a period of more than thirty days unless, upon application, the commission grants an extension which may not exceed ninety days. All seismic shot holes must be temporarily capped during the period between drilling and final plugging.
4. The plug must have permanently affixed to it a durable nonrusting metal or plastic tag or plate imprinted with the name of the operator responsible for the plugging of the hole and the operator's permit number.
5. The surface around each seismic shot hole must be restored to its original condition insofar as restoration is practicable and all stakes, markers, cables, ropes, wires, primacord, cement or mud stacks, and any other debris or material not native to the area must be removed from the drill site and lawfully disposed of.

38-08.1-06.1. Plugging requirements - Rules - Liability for damage.

All seismic holes must be plugged in accordance with rules adopted by the commission. The commission shall review and revise its rules governing plugging requirements as technology in the field evolves. The seismic company is liable for all damages resulting from failure to comply with rules adopted by the commission pursuant to this section.

38-08.1-07. Civil and criminal penalties.

1. A person who violates any provision of this chapter or commission rule or order is subject to a civil penalty imposed by the commission not to exceed one thousand dollars for each offense, and each day's violation is a separate offense. A penalty imposed under this section, if not paid, may be recovered by the commission in the district court of the county in which the defendant resides, or in which any defendant resides if there is more than one defendant, or in the district court of any county in which the violation occurred. Payment of the penalty does not legalize the activity for which the penalty was imposed, or relieve the person upon whom the penalty was imposed from liability to any other person for damage caused by the violation.
2. Notwithstanding this section, a person who willfully violates any provision of this chapter or a commission rule or order is guilty of a class C felony.

38-08.1-08. Commission to adopt rules.

The commission may adopt and enforce rules to implement this chapter.