CHAPTER 43-02-02
SUBSURFACE MINERAL EXPLORATION AND DEVELOPMENT

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43-02-02-01. Definitions.

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-12, except:

1. "Barrel" means forty-two United States gallons [158.99 liters] measured at sixty degrees Fahrenheit [15.56 degrees Celsius] and fourteen and seventy-three hundreths pounds per square-inch absolute [1034.19 grams per square centimeter].

2. "Bottom hole or subsurface pressure" means the pressure in pounds per square-inch gauge under conditions existing at or near the producing horizon.

3. "Certified or registered mail" means any form of service by the United States postal service, federal express, Pitney Bowes, and any other commercial nationwide delivery service that provides the mailer with a document showing the date of delivery or refusal to accept delivery.

4. "Completion" means when the well is capable of producing subsurface minerals through wellhead equipment from the ultimate producing zone after casing has been run.

5. "Deep well" means any well to explore for, develop, or produce subsurface minerals which is drilled into rocks older than the Greenhorn formation or which encounters brackish or saline formation waters.

6. "Department" means the department of mineral resources of the industrial commission.

7. "Deposit" means an underground concentration containing a common accumulation of subsurface minerals.

8. "Director" means the director of the department of mineral resources of the industrial commission.

9. "Exception location" means a location which does not conform to the general spacing requirements established by the rules or orders of the commission but which has been specifically approved by the commission.

10. "Field" means the general area underlaid by a concentration of subsurface minerals. Field also includes the geological formation containing such subsurface minerals.

11. "Log or well log" means a systematic, detailed, and correct record of formations encountered in the drilling of a well, and includes commercial electrical logs and similar records.

12. "Nonhydrocarbon gas" means all naturally occurring gaseous elements and compounds except hydrocarbons and carbon dioxide as regulated under North Dakota Century Code chapter 38-08.

13. "Occupied dwelling" means a residence which is lived in by a person at least six months throughout a calendar year.

14. "Operator" means any person or persons who, duly authorized, is in charge of the development of a lease or the operation of a producing property.

15. "Product" means any commodity made from any subsurface mineral.

16. "Recomplete" means the subsequent completion of a well in a different pool.

17. "Reservoir" means a pool or common source of supply.

18. "Saltwater handling facility" means and includes any container, such as a pit, tank, or pool, whether covered or uncovered, used for the handling, storage, disposal of deleterious substances obtained, or used, in connection with the drilling or operation of wells.

19. "Shallow well" means any well drilled into rocks younger than the Belle Fourche formation which does not encounter saline or brackish formation waters for the purpose of developing or producing subsurface minerals.

20. "Shut-in pressure" means the pressure noted at the wellhead when the well is completely shut in, not to be confused with bottom hole pressure.

21. "Testhole" means any hole drilled to a total depth of less than one thousand feet [304.8 meters] for the purpose of gathering information on subsurface minerals.

22. "Waste" means:

    a. Physical waste;

    b. Operations which cause or tend to cause unnecessary or excessive surface loss; or

c. Operations that do not recover all of the mineral being mined that is technically and economically possible.

History: Amended effective August 1, 1986; July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-02. Scope of chapter.

This chapter contains general rules of statewide application which have been adopted by the industrial commission to conserve the natural resources of North Dakota, to prevent waste, and to provide for operation in a manner as to protect correlative rights of all owners of subsurface minerals. Special rules, pool rules, field rules, and regulations and orders have been and will be issued when required and shall prevail as against general rules, regulations, and orders if in conflict therewith. However, wherever this chapter does not conflict with special rules heretofore or hereafter adopted, this chapter will apply in each case. The commission may grant exceptions to this chapter, after due notice and hearing, when such exceptions will result in the prevention of waste and operation in a manner to protect correlative rights.

History: Amended effective August 1, 1986; July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-03. Promulgation of rules, regulations, or orders.

Repealed effective July 1, 2013.

43-02-02-04. Emergency rule, regulation, or order.

Repealed effective July 1, 2013.

43-02-02-05. Enforcement of laws, rules, and regulations dealing with exploration, development, and production of subsurface minerals.

The commission, its agents, representatives, and employees are charged with the duty and obligation of enforcing all rules and statutes of North Dakota relating to the exploration, development, and production of subsurface minerals. However, it shall be the responsibility of all owners or operators to obtain information pertaining to the regulation of subsurface minerals before operations have begun.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-05.1. Waste prohibited.

All operators, contractors, drillers, carriers, gas distributors, service companies, pipe pulling and salvaging contractors, or other persons shall at all times conduct their operations in the mining, drilling, equipping, operating, producing, plugging, and site reclamation of subsurface minerals in a manner that will prevent waste.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-06. United States government leases.

The commission recognizes that all persons drilling and producing on United States government land shall comply with the United States government regulations. Such persons shall also comply with all applicable state rules and regulations. Copies of the sundry notices, reports on wells, and well data required by this chapter of the wells on United States government land shall be furnished to the state geologist at no expense to the state geologist. Federal forms may be used when filing such notices and reports except for reporting the plugging and abandonment of a well. In such instance, the plugging record (form 7-sm) must be filed with the state geologist.

History: Amended effective August 1, 1986; July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-07. Forms upon request.

Forms for written notices, requests, and reports required by the commission will be furnished upon request. These forms shall be of such nature as prescribed by the commission to cover proposed work and to report the results of completed work.

General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-08. Authority to cooperate with other agencies.

The commission may from time to time enter into arrangements with state and federal government agencies, industry committees, and individuals with respect to special projects, services, and studies relating to subsurface minerals.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-09. Organization reports.

Every person acting as principal or agent for another or independently engaged in the drilling for, or in the production, storage, transportation, refining, reclaiming, treating, marketing, or processing of subsurface minerals in North Dakota shall immediately file with the state geologist the name under which such business is being conducted and operated; the name and post-office address of such person; the business or businesses in which the person is engaged; the plan of organization, and in case of a corporation, the law under which it is chartered; and the names and post-office addresses of any person acting as trustee, together with the names and post-office addresses of any officials on an organization report (form 2sm). If such business is conducted under an assumed name, such organization report shall show the names and post-office addresses of all owners in addition to the other information required. A new organization report shall be filed when and if there is a change in any of the information contained in the report.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-09.1. Reservoir surveys.

By special order of the commission, periodic surveys may be made of the reservoirs in the state containing subsurface minerals. These surveys will be thorough and complete and shall be made using methods approved by the director. The condition of the reservoirs containing subsurface minerals and the practices and methods employed by the operators shall be investigated. The produced volume and

source of subsurface mineral, reservoir pressure of the reservoir as an average, the areas of regional or differential pressure, and producing characteristics of the field as a whole and the individual wells within the field shall be specifically included.

All operators of mineral wells are required to permit and assist the agents of the commission in making any and all special tests that may be required by the commission on any or all wells.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-10. Record of permits and official well names.

The state geologist shall maintain an official permit list and a record of official well names.

1. The official permit list must include:
   a. The name of the permitholder;
   b. The permit number;
   c. The date the permit was issued; and
   d. The location of the permit.
2. The record of official well names, to be known as the well name register, must include:
   a. The name and location of each well;
   b. The well file number;
   c. The name of the operator or operator's agent; and
   d. Any subsequent name or names assigned to the well and approved by the director.

The last name assigned to a well in the well name register shall be the official name of the well, and the one by which it shall be known and referred to.

The director may, at the director's discretion, grant or refuse an application to change the official name. The application shall be accompanied by a fee of twenty-five dollars, which fee is established to cover the expense of recording the change. If the application is refused, the fee shall be refunded.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-10.1. Access to records.

The commission, director, and their representatives shall have access to all well records wherever located. All owners, operators, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, producing, or servicing wells shall permit the commission, director, and their representatives to come upon any lease, property, well, or drilling rig operated or controlled by them, complying with state safety rules and to inspect the records and operation of such wells, and to have access at all items to any and all records of wells. If requested, copies of such records must be filed with the commission. The confidentiality of any data submitted which is confidential pursuant to subdivision b of subsection 1 of North Dakota Century Code section 38-12-02 and North Dakota Administrative Code section 43-02-02-22 must be maintained.

History: Effective July 1, 2013.

General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-11. Bond.

Before any person receives a permit to explore for or produce subsurface minerals, the person shall submit to the commission and obtain its approval of a surety bond or cash bond. An alternate form of security may be approved by the commission after notice and hearing, as provided by law. The operator of a well or facility shall be the principal on the bond covering such activity. Each such surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

1. Bond amounts and limitations for projects that involve drill holes:

   a. For wells drilled to a total depth of less than two thousand feet [609.6 meters], the amount of the bond shall be commensurate with the number of wells, the type of project, and the environmental risk. The amount of a bond will be determined by a formula that assigns reclamation costs based upon the number of drill sites, the depths of the holes, and the anticipated surface restoration costs.

   b. For wells drilled to a total depth of two thousand feet [609.6 meters], or more, the bond shall be in the amount of fifty thousand dollars and applicable to one well only.

   When the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, the principal may submit a bond conditioned as provided by law. A well with an approved temporary abandoned status shall have the same status as an exploratory, mineral, or injection well. The commission may, after notice and hearing, require higher bond amounts than those required by this section. Such additional amounts for bonds must be related to the economic value of the well or wells and the expected cost of plugging and well site reclamation, as determined by the commission.

2. Bond terms. Bonds shall be conditioned upon full compliance with North Dakota Century Code chapter 38-12, and all administrative rules and orders of the commission, and continues until any of the following occurs:

   a. The testholes or wells have been satisfactorily plugged which shall include practical reclamation of the well site and appurtenances; and all logs, plugging records, and other pertinent data required by statute or rules and orders of the commission are filed and approved.

   b. The mined lands or lands disturbed by any method of exploration or production of subsurface minerals have been restored and approved by the director.

   c. The liability on the bond has been transferred to another bond and such transfer approved by the commission.

3. Transfer of property under bond. Transfer of property does not release the bond. In case of transfer of property or other interest in a well, extraction facility, or surface mining facility and the principal desires to be released from the bond covering the well or facility, such as producers, not ready for plugging, the principal must proceed as follows:

   a. The principal must notify the director, in writing, of all proposed transfers of property at least thirty days before the closing date of the transfer. The director may, for good cause, waive this requirement.

      The principal shall submit to the commission a form 8-sm reciting that a certain property or properties, describing each by quarter-quarter, section, township, and range, is to be

transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form signed by a party duly authorized to sign on behalf of the principal.

On said transfer form the transferee shall recite the following: "The transferee has read the foregoing statement and accepts such transfer and the responsibility of such property under the transferee's one-well bond, surface mining facility bond, or extraction facility bond." Such acceptance must be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.

b. When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of well plugging and site reclamation. If such wells include all the wells within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any well from a bond if the well is in violation of a statute, rule, or order.

c. The transferee (new operator) of any extraction facility, surface mining facility, or injection well shall be responsible for the plugging and site reclamation of any such property. For that purpose, the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue and attach to such well. The original or prior bond shall not be released as to the plugging and reclamation responsibility of any such transferor until the transferee submits to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging and site reclamation of such property is completed and approved.

4. Bond termination. The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging and reclamation is approved. If approved, liability under such bond may be formally terminated upon receipt of a written request by the principal. The request must be signed by an officer of the principal or a person authorized to sign for the principal.

5. Director's authority. The director is vested with the power to act for the commission as to all matters within this section, except requests for alternative forms of security, which may only be approved by the commission.

The commission may refuse to accept a bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of wells; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

History: Amended effective August 1, 1986; May 1, 2004; October 1, 2008; July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-11.1. Designation and responsibilities of operator.

The principal on the bond covering a well is the operator of the well. The operator is responsible for compliance with all laws relating to the well and well site. A dispute over designation of the operator of a well may be addressed by the commission. In doing so, the factors the commission may consider include those set forth in subsection 1 of section 43-02-02-12.1.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-12. Application for permit to drill and recomplete.

A permit shall be required prior to commencement of operations for the exploration or evaluation of subsurface minerals. The application for a permit to drill (form 1-sm) shall be filed with the director, together with a permit fee of one hundred dollars. In extenuating circumstances, verbal approval may be given for site preparation by the director. No drilling activity shall commence until such application is approved and a permit to drill is issued by the director. The application must be accompanied by the bond pursuant to section 43-02-02-11 or the applicant must have previously filed such bond with the commission, otherwise the application is incomplete. An incomplete application received by the commission has no standing and will not be deemed filed until it is complete.

A permit shall be required for each deep well not included in an approved mining plan.

A permit shall be required for each testhole drilling program exploring for subsurface minerals. The area to be explored shall be outlined on the application and the permit shall be valid in the area so outlined.

The application for permit to drill shall be accompanied by an accurate plat certified by a registered surveyor showing the location of the proposed well with reference to true north and the nearest lines of a governmental section. The plat shall also include latitude and longitude of the proposed well location to the nearest tenth of a second. Information to be included in such application shall be the proposed depth to which the well will be drilled; estimated depth to the top of important markers; estimated depth to the top of objective horizons; the proposed mud program; the proposed casing program, including size and weight; the depth at which each casing string is to be set; the proposed pad layout, including cut and fill diagrams; and the proposed amount of cement to be used, including the estimated top of the cement.

Prior to the commencement of recompletion operations or drilling horizontally, an application for permit shall be filed with the director. Included in such application shall be the notice of intention (form 4-sm) to reenter a well by drilling horizontally, deepening, or plugging back to any source of supply other than the producing horizon in an existing well. Such notice shall include the name and file number and exact location of the well, the approximate date operations will begin, the proposed procedure, the estimated completed total depth, the anticipated hydrogen sulfide content in produced gas from the proposed source of supply, the weight and grade of all casing currently installed in the well unless waived by the director, the casing program to be followed, and the original total depth with a permit fee of fifty dollars. The director may deny any application if it is determined, in accordance with the latest version of ANSI/NACE MR0175/ISO 15156, that the casing currently installed in the well would be subject to sulfide stress cracking.

The applicant shall provide any additional information requested by the director, in addition to that specifically required by this section. The director may impose such terms and conditions on the permits issued under this section as the state geologist deems necessary.

The director shall deny an application for a permit under this section if the proposal would violate correlative rights or would cause, or tend to cause, waste. The director shall state in writing to the applicant the reason for the denial of the permit. The applicant may appeal the decision of the director to the commission.

A permit to drill automatically expires one year after the date it was issued, unless the well is drilling or has been drilled before surface casing. A permit to recomplete or to drill horizontally automatically expires one year after the date it was issued, unless such project has commenced.

History: Amended effective May 1, 2004; July 1, 2013.
General Authority: NDCC 38-12-03
Law Implemented: NDCC 38-12-03

43-02-02-12.1. Revocation and limitation of drilling permits.

1. After notice and hearing, the commission may revoke a drilling, recompletion, or reentry permit or limit its duration. The commission may act upon its own motion or upon the application of an owner in the spacing or drilling unit. In deciding whether to revoke or limit a permit, the factors that the commission may consider include:

   a. The technical ability of the permitholder and other owners to drill and complete the well.

   b. The experience of the permitholder and other owners in drilling and completing similar wells.

   c. The number of wells in the area operated by the permitholder and other owners.

   d. Whether drainage of the spacing or drilling unit has occurred or is likely to occur in the immediate future and whether the permitholder has committed to drill a well in a timely fashion.

   e. Contractual obligations, such as an expiring lease.

   f. The amount of ownership the permitholder and other owners hold in the spacing or drilling unit. If the permitholder is the majority owner in the unit or if its interest when combined with that of its supporters is a majority of the ownership, it is presumed that the permitholder should retain the permit. This presumption, even if not rebutted, does not prohibit the commission from limiting the duration of the permit. However, if the amount of the interest owned by the owner seeking revocation or limitation and its supporters are a majority of the ownership, the commission will presume that the permit should be revoked.

2. The commission may suspend a permit that is the subject of a revocation or limitation proceeding. A permit will not be suspended or revoked after operations have commenced.

3. If the commission revokes a permit upon the application of an owner and issues a permit to that owner or to another owner who supported revocation, the commission may limit the duration of such permit. The commission may also, if the parties fail to agree, order the owner acquiring the permit to pay reasonable costs incurred by the former permitholder and the conditions under which payment is to be made. The costs for which reimbursement may be ordered may include those involving survey of the well site, title search of surface and mineral title, and preparation of an opinion of mineral ownership.

4. If the commission declines to revoke a permit or limit the time within which it must be exercised, it may include a term in its order restricting the ability of the permitholder to renew the permit or to acquire another permit within the same spacing or drilling unit.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-12.2. Design and construction of surface facilities.

The operator shall submit plans and specifications to the director before constructing the following surface facilities:

1. Process or recovery plants and satellite facilities;

2. Ponds and impoundments;

3. Pipelines;

4. Well houses or transfer stations;

5. Fuel storage areas;

6. Any haul roads that will be used for more than six months;

7. Byproduct disposal areas; and

8. Any other facility that may contain substances that could impact human health or degrade the environment if spilled, discharged, or released.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-03
Law Implemented: NDCC 38-12-03

43-02-02-12.3. Construction quality assurance plan.

1. The operator shall develop, for the department's approval, a construction quality assurance plan that addresses all aspects of constructing surface facilities. The plan must include the following:

   a. A description of the responsibilities and authorities of key personnel, including the personnel's level of experience and training;

   b. A description of the required level of experience, training, and duties of the contractor, the contractor's employees, and the quality assurance inspectors;

   c. A description of the testing protocols for every major phase of construction, including the frequency of inspections, field testing, and sampling for laboratory testing;

   d. The sampling and field testing procedures and the equipment to be used;

   e. The calibration of field testing equipment;

   f. The laboratory procedures to be used; and

   g. A description of the documentation to be maintained.

2. The operator shall submit the construction quality assurance plan at the same time the plans and specifications required in section 43-02-02-12.2 are submitted.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-12.4. Pipeline design and construction requirements.

1. Topsoil must be removed before the installation of underground pipelines and replaced after pipelines are installed.

2. Pipeline systems must be constructed with materials that have the strength, thickness, and chemical properties that prevent failure due to pressure gradients, physical contact with the waste or fluids to which the pipes are exposed, climatic conditions, stress of installation, seismic, and stress of daily operation.

3. Design and construction requirements for wellfield pipelines and pipelines between the wellfield and processing and satellite facilities must include an early detection and shutdown capability in the event of pressure drop or loss of flow. This may include automatic motor-operated valves with pressure transmitters and manually operated valves or devices.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-12.5. Disposal of liquid waste.

All liquid waste streams must be:

1. Disposed of in a permitted class I or V underground injection control disposal well under a state department of health underground injection control program permit in accordance with chapter 33-25-01;

2. Land applied under a solid waste permit in accordance with chapter 33-20-09; or

3. Treated, if necessary, and discharged under a North Dakota pollution discharge elimination system surface water discharge permit in accordance with chapter 33-16-01.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-13. Well location.

All well locations must be approved by the commission, after notification and hearing. No well drilled for solution mining of subsurface minerals shall be located closer than five hundred feet [152.4 meters] from the boundary line of property owned or leased by the operator except by order of the commission. The term boundary line as used herein is understood to mean the boundary of a contiguous set of properties either owned or leased by the operator.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-13.1. Exception location.

An operator may apply for an exception to drill at a distance less than five hundred feet [152.4 meters] from the boundary line of a property owned or leased by the operator if the operator submits geological and other technical data to the commission which indicates that waste would occur and that correlative rights will not be violated.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-13.2. Deviation tests and directional surveys.

When any well is drilled or deepened, tests to determine the deviation from the vertical shall be taken at least every one thousand feet [304.8 meters]. The director is authorized to waive the deviation test for a shallow gas well if the necessity therefor can be demonstrated to the director's satisfaction. When the deviation from the vertical exceeds five degrees at any point, the director may require that the hole be straightened. Directional surveys may be required by the director, whenever, in the director's judgement, the location of the bottom of the well is in doubt.

A directional survey shall be made and filed with the state geologist on any well utilizing a whipstock or any method of deviating the well bore. The obligation to run the directional survey may be waived by the director when a well bore is deviated to sidetrack junk in the hole, straighten a crooked hole, control a blowout, or if the necessity therefor can be demonstrated to the director's satisfaction.

The survey contractor shall file with the state geologist free of charge one certified electronic copy of all surveys, in a form approved by the director, within thirty days of attaining total depth. Such survey shall be in reference to true north. The director may require the directional survey to be filed immediately after completion if the survey is needed to conduct the operation of the director's office in a timely manner. Special permits may be obtained from the director to drill directionally in a predetermined direction as provided in this section.

If the director denies a request for a permit to directionally drill, the director shall advise the applicant immediately of the reasons for the denial. The decision of the director may be appealed to the commission.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-14. Sign on wells.

Every well associated with the exploration or mining of subsurface minerals shall be identified by a sign posted on the derrick or not more than twenty feet [6.10 meters] from the well. The sign shall be of durable construction and the lettering thereon shall be kept in a legible condition and shall be large enough to be legible under normal conditions at a distance of fifty feet [15.24 meters]. The wells on each lease or property shall be numbered in nonrepetitive sequence, unless some other system of numbering was adopted by the owner prior to the adoption of this chapter. Each sign must show the well name and number (which shall be different or distinctive for each well), the name of the operator, file number, and the location by quarter-quarter, section, township, and range.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-14.1. Site construction.

In the construction of a drill site, access road, and all associated facilities, topsoil shall be removed, stockpiled, and stabilized or otherwise reserved for use when the area is reclaimed. "Topsoil" means the suitable plant growth material on the surface; however, in no event shall this be deemed to be more than the top eight inches [20.32 centimeters] of soil. Soil stabilization additives and materials to be used onsite, access roads or associated facilities must have approval from the director before application.

When necessary to prevent pollution of the land surface and freshwaters, the director may require the drill site to be sloped and diked.

Well sites and associated facilities shall not be located in, or hazardously near, bodies of water, nor shall they block natural drainages. Sites and associated facilities shall be designed to divert surface drainage from entering the site.

Well sites and associated facilities or appropriate parts thereof shall be fenced if required by the director.

Within six months after completion of a well, the portion of the well site not used for well operations shall be reclaimed unless waived by the director. Well sites and all associated facilities shall be stabilized to prevent erosion.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-15. Pits for drilling fluid and drill cuttings.

Repealed effective July 1, 2013.

43-02-02-15.1. Fencing, screening, and netting of drilling and reserve pits.

All open pits and ponds which contain saltwater must be fenced. All pits and ponds which contain oil must be fenced, screened, and netted.

This is not to be construed as requiring the fencing, screening, or netting of a drilling pit or reserve pit used solely for drilling, completing, recompleting, or plugging unless such pit is not reclaimed within ninety days after completion of drilling operations.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-15.2. Disposal of waste material.

All waste material associated with exploration or production of a subsurface mineral through deep wells must be properly disposed of in an authorized facility.

All waste material recovered from spills, leaks, and undesirable events shall immediately be disposed of in an authorized facility, although the remediation of such material may be allowed onsite if approved by the director.

This is not to be construed as requiring the offsite disposal of drilling mud or drill cuttings associated with the drilling of a shallow well. However, water remaining in a drilling or reserve pit used in the drilling and completion operations of a deep well is to be removed from the pit and disposed of in an authorized disposal well or used in a manner approved by the director. The disposition or use of the water must be included on the sundry notice (form 4-sm) reporting the plan of reclamation pursuant to sections 43-02-02-15.4 and 43-02-02-15.5.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-15.3. Earthen pits and open receptacles.

Except as otherwise provided in sections 43-02-02-15.4 and 43-02-02-15.5, no saltwater, drilling mud, crude oil, waste oil, or other waste shall be stored in earthen pits or open receptacles except in an emergency and upon approval by the director.

A lined earthen pit or open receptacle may be temporarily used to retain oil, water, cement, solids, or fluids generated in well completion servicing or plugging operations. A pit or receptacle used for this purpose must be sufficiently impermeable to provide adequate temporary containment of the oil, water, or fluids. The contents of the pit or receptacle must be removed within seventy-two hours after operations have ceased and must be disposed of at an authorized facility in accordance with section 43-02-02-15.2. Within thirty days after operations have ceased, the earthen pit shall be reclaimed and the open receptacle shall be removed. The director may grant an extension of the thirty-day time period for no more than one year for good cause.

The director may permit pits or receptacles used solely for the purpose of flaring casinghead gas. A pit or receptacle used for this purpose must be sufficiently impermeable to provide adequate temporary containment of fluids. Permission for such pit or receptacle shall be conditioned on locating the pit not less than one hundred fifty feet [45.72 meters] from the vicinity of wells and tanks and keeping it free of

any saltwater, crude oil, waste oil, or other waste. Saltwater, drilling mud, crude oil, waste oil, or other waste shall be removed from the pit or receptacle within twenty-four hours after being discovered and must be disposed of at an authorized facility in accordance with section 43-02-02-15.2.

The director may permit pits used solely for storage of freshwater used in completion and well servicing operations. Permits for freshwater pits shall be valid for a period of one year but may be reauthorized upon application. Freshwater pits shall be lined and no pit constructed for this purpose shall be wholly or partially constructed of fill dirt unless approved by the director. The director may approve chemical treatment to municipal drinking water standards upon application. The freshwater pit shall have signage on all sides accessible to vehicular traffic clearly identifying the usage as freshwater only.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-15.4. Drilling pits.

A pit may be utilized to bury drill cuttings and solids generated during well and completion operations, providing the pit can be constructed, used, and reclaimed in a manner that will prevent pollution of the land surface and freshwaters. In special circumstances, the director may prohibit construction of a cuttings pit or may impose more stringent pit construction and reclamation requirements. Reserve and circulation of mud system through deep well earthen pits are prohibited unless a waiver is granted by the director. All pits shall be inspected by an authorized representative of the director prior to lining and use. Under no circumstances shall pits be used for disposal, dumping, or storage of fluids, wastes, and debris other than drill cuttings and solids recovered while drilling and completing the well.

Drill cuttings and solids must be stabilized in a manner approved by the director prior to placement in a cuttings pit. Any liquid accumulating in the cuttings pit shall be promptly removed. The pit shall be diked in a manner to prevent surface water from running into the pit.

During the drilling of a deep well, a small lined pit can be authorized by the director for the temporary containment of incidental fluids such as trench water and rig wash, if emptied and covered prior to the rig leaving the site.

Pits shall not be located in, or hazardously near, bodies of water, nor shall they block natural drainages. No pit shall be wholly or partially constructed of fill dirt unless approved by the director.

When required by the director, the drilling pit or appropriate parts thereof shall be fenced.

Within thirty days after the completion of drilling a deep well or expiration of a drilling permit, whichever occurs first, drilling pits shall be reclaimed. The director may grant an extension of the thirty day time period of no more than one year for good cause. Prior to reclaiming the pit, the operator or the operator's agent shall file a sundry notice (form 4-sm) with the director and obtain approval of a pit reclamation plan. Verbal approval to reclaim the pit may be given. The notice must include:

1. The name and address of the reclamation contractor;
2. The name and address of the service owner;
3. The location and name of the disposal site for the pit water when applicable; and
4. A description of the proposed work, including details on treatment and disposition of the drilling waste.

Any water or oil accumulated in the pit must be removed prior to reclamation. Drilling waste from a deep well shall be encapsulated in the pit and covered with at least four feet [1.22 meters] of backfill and topsoil. The surface shall be sloped, when practicable, to promote surface drainage away from the reclaimed pit area.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-15.5. Reserve pit for drilling mud and drill cuttings from shallow wells.

For wells drilled to a strata or formation, including lignite or coal strata or seam, located above the depth of five thousand feet [1524 meters] below the surface, or located more than five thousand feet [1524 meters] below the surface but above the top of the Rierdon formation, a container or reserve pit of sufficient size to contain said material or fluid, and the accumulation of drill cuttings may be utilized to contain solids and fluids used and generated during well drilling and completion operations, providing the pit can be constructed, used, and reclaimed in a manner that will prevent pollution of the land surface and freshwaters. A reserve pit may be allowed by an order of the commission after notice and hearing for wells drilled within a specified field and pool more than five thousand feet [1524 meters] below the surface and below the top of the Rierdon formation provided the proposed well or wells utilize a low sodium content water-based mud system and the reserve pit can be constructed, used, and reclaimed in a manner that will prevent pollution of the land surface and freshwaters. In special circumstances, based on site conditions, the director or authorized representative may prohibit construction of a reserve pit or may impose more stringent pit construction and reclamation requirements, including reserve pits previously authorized by a commission order within a specified field or pool. Under no circumstances shall reserve pits be used for disposal, dumping, or storage of fluids, wastes, and debris other than drill cuttings and fluids used or recovered while drilling and completing the well.

Reserved pits shall not be located in, or hazardously near, bodies of water, nor shall they block natural drainages. No reserve pit shall be wholly or partially constructed in fill dirt unless approved by the director.

Within thirty days after the completion of a shallow well, or prior to drilling below the surface casing shoe on any other well, the reserve pit shall be reclaimed. The director may grant an extension of the thirty-day time period of no more than one year for good cause. Prior to reclaiming the pit, the operator, or the operator's agent, shall file a sundry notice (form 4-sm) with the director and obtain approval of a pit reclamation plan. Verbal approval to reclaim the pit may be given. The notice must include:

1. The name and address of the reclamation contractor;
2. The name and address of the surface owner;
3. The location and name of the disposal site for the pit water; and
4. A description of the proposed work, including details on treatment and disposition of the drilling waste.

All pit water must be removed prior to reclamation. Drilling waste should be encapsulated in the pit and covered with at least four feet. [1.22 meters] of backfill and topsoil. The surface shall be sloped, when practicable, to promote surface drainage away from the reclaimed pit area.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-16. Sealing off strata.

During the drilling and operation of any well for subsurface minerals, all mineral-bearing and water strata above the producing horizon shall be sealed or separated where necessary in order to prevent their contents from passing into other strata.

All freshwaters and waters of present or probable value for domestic, commercial, or stock purposes shall be confined to their respective strata and shall be adequately protected by methods approved by the commission. Special precautions shall be taken in drilling and plugging wells to guard against any loss of artesian water from the strata in which it occurs, and the contamination of artesian water by objectionable water or subsurface minerals.

All water shall be shut off and excluded from the various subsurface mineral-bearing strata which are penetrated. Water shutoffs shall ordinarily be made by cementing casing or landing casing with or without the use of mud-laden fluid.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-17. Casing and tubing requirements.

All wells drilled for subsurface minerals below the base of the Fox Hills formation shall be completed with strings of casing which shall be properly cemented at sufficient depths to adequately protect and isolate all formations containing water, subsurface minerals, oil, or gas or any combination of these; protect the pipe through salt sections encountered; and isolate the uppermost sand of the Dakota group.

Drilling of the surface hole shall be with freshwater-based drilling mud or other method approved by the director which will protect all freshwater-bearing strata. The surface casing shall consist of new or reconditioned pipe that has been previously tested to one thousand pounds per square inch [6900 kilopascals]. The surface casing shall be set and cemented at a point not less than fifty feet [15.24 meters] below the base of the Fox Hills formation. Sufficient cement shall be used on surface casing to fill the annular space behind the casing to the bottom of the cellar, if any, or to the surface of the ground. If the annulus space is not adequately filled with cement, the director shall be notified immediately. The operator shall diligently perform work after obtaining approval from the director. All strings of surface casing shall stand cemented under pressure for at least twelve hours before drilling the plug or initiating tests. The term "under pressure" as used herein shall be complied with if one float valve is used or if pressure is otherwise held. Cementing shall be by the pump and plug method or other methods approved by the director. The director is authorized to require an accurate gauge be maintained on the surface casing of any well, not properly plugged and abandoned, to detect any buildup of pressure caused by the migration of fluids.

Surface casing strings must stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least three hundred fifty pounds per square inch [2415 kilopascals] within seventy-two hours. All compressive strengths on surface casing cement shall be calculated at a temperature of eighty degrees Fahrenheit [26.67 degrees Celsius].

Unless otherwise specified by the director, production or intermediate casing strings shall consist of new or reconditioned pipe that has been previously tested to two thousand pounds per square inch [13800 kilopascals]. Such strings must stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least five hundred pounds per square inch [3450

kilopascals] within a seventy-two hours, although in any horizontal well performing a single-stage cement job from a measured depth of greater than thirteen thousand feet [3962.4 meters], the filler cement utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within forty-eight hours and at least five hundred pounds per square inch [3450 kilopascals] within ninety-six hours. All compressive strengths on production or intermediate casing cement shall be calculated at a temperature found in the Mowry formation using a gradient of one and two tenths degrees Fahrenheit per one hundred feet [30.48 meters] of depth plus eight degrees Fahrenheit [26.674 degrees Celsius].

After cementing, each casing string shall be tested by application of pump pressure of at least one thousand five hundred pounds per square inch [10350 kilopascals]. If, at the end of thirty minutes, this pressure has dropped one hundred fifty pounds per square inch [1035 kilopascals] or more, the casing shall be repaired after receiving approval from the director. Thereafter, the casing shall again be tested in the same manner. Further work shall not proceed until a satisfactory test has been obtained. The casing in a horizontal well may be tested by use of a mechanical tool set near the casing shoe after the horizontal section has been drilled.

All flowing wells must be equipped with tubing. A tubing packer must also be utilized unless a waiver is obtained by demonstrating the casing will not be subjected to excessive pressure or corrosion. The packer must be set as near the producing interval as practicable, but in all cases must be above the perforations.

History: Amended effective August 1, 1986; July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-18. Defective casing or cementing.

In any well that appears to have defective casing or cementing, the operator shall report the defect to the state geologist on a sundry notice (form 4-sm). Prior to attempting remedial work on any casing, the operator must obtain approval from the director and proceed with diligence to conduct test, as approved or required by the director, to properly evaluate the condition of the well bore and correct the defect. The director is authorized to require a pressure test to verify casing integrity if its competence is questionable. The director may allow the well bore condition to remain if correlative rights can be protected without endangering potable waters. The well shall be properly plugged if requested by the director.

Any well with open perforations above a packer shall be deemed to have defective casing.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-18.1. Perforating, fracturing, and chemically treating wells.

During treatment operations, the director may prescribe pretreatment casing pressure testing as well as other operational requirements designed to protect wellhead and casing strings. If damage results to the casing or the casing seat from perforating, fracturing, or chemically treating a well, the operator shall immediately notify the director and proceed with diligence to use the appropriate method and means for rectifying such damage, pursuant to section 43-02-02-18. If perforating, fracturing, or chemical treating results in irreparable damage which threatens the mechanical integrity of the well, the commission may require the operator to plug the well.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-19. Blowout prevention.

In all drilling operations, proper and necessary precautions shall be taken for keeping the well under control, including the use of a blowout preventer and high-pressure fittings attached to properly cemented casing strings adequate to withstand anticipated pressures. During the course of drilling, the pipe rams shall be functionally operated at least once every twenty-four-hour period. The blind rams shall be functionally operated each trip out of the well bore. The blowout preventer shall be pressure-tested at installation on the wellhead, after modification of any equipment, and every thirty days thereafter. The director may postpone such pressure test if the necessity can be demonstrated to the director's satisfaction. All tests shall be noted in the driller's record.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-20. Safety regulation.

Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least one hundred fifty feet [45.72 meters] from the vicinity of wells and tanks. All waste shall be burned or disposed of in such manner as to avoid creating a fire hazard. All vegetation must be removed to a safe distance from any production equipment to eliminate a fire hazard.

The director may require remote operated or automatic shutdown equipment be installed on, or shut in for no more than forty days, any well that is likely to cause a serious threat of pollution or injury to the public health or safety.

No well shall be drilled or production or injection equipment installed less than five hundred feet [152.4 meters] from an occupied dwelling unless agreed to in writing by the owner of the dwelling or authorized by order of the commission.

1. No well (or subsurface mine) site may be placed within four hundred feet [121.92 meters] of the centerline of any state highway, unless otherwise approved by the director of the department of transportation, or the director's designee.

2. If direct access from a state highway to a well (or subsurface mine) site is desired, the mineral resource permit applicant must obtain a driveway permit from the department of transportation district office as required by department of transportation policies in force at the time of the request.

Subsurface pressure must be controlled during all drilling, completion, and well-servicing operations with appropriate fluid weight and pressure control equipment.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-20.1. Pulling string of casing.

When removing casing strings from any subsurface mineral or injection well, the space above the casing stub shall be kept and left full of fluid with adequate gel strength and specific gravity, cement, or combination thereof, to seal off all freshwater and saltwater strata and any strata bearing oil or gas not producing. No casing shall be removed without the prior approval of the director.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-21. Well and lease equipment.

Wellhead and lease equipment with a working pressure at least equivalent to the calculated or known pressure to which the equipment may be subjected shall be installed and maintained. Valves shall be installed and maintained in good working order to permit pressure readings to be obtained on both casing and tubing.

History: Amended effective August 1, 1986; July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-21.1. Notification of fires, leaks, spills, or blowouts.

All persons controlling or operating any well, pipeline, receiving tank, storage tank, or production facility into which subsurface minerals or water is produced, received, stored, processed, or through which subsurface minerals or water is injected, piped, or transported, shall verbally notify the director within twenty-four hours after discovery of any fire, leak, spill, blowout, or release of fluid. If any such incident occurs or travels offsite of a facility, the persons, as named above, responsible for proper notification shall within a reasonable time also notify the surface owners upon whose land the incident occurred or traveled. Notification requirements prescribed by this section shall not apply to any leak, spill, or release of fluid that is less than one barrel total volume and remains onsite of a facility. The verbal notification must be followed by a written report within ten days after cleanup of the incident, unless deemed unnecessary by the director. Such report must include the operator and description of the facility, the legal description of the location of the incident, date of occurrence, date of cleanup, amount and type of each fluid involved, amount of each fluid recovered, steps taken to remedy the situation, cause of the accident, and action taken to prevent reoccurrence. The signature, title, and telephone number of the company representative must be included on such report. The persons, as named above, responsible for proper notification, within a reasonable time, also shall provide a copy of the written report to the surface owners upon whose land the incident occurred or traveled.

The commission, however, may impose more stringent spill-reporting requirements if warranted because of proximity to sensitive areas, past spill performance, or careless operating practices as determined by the director.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-21.2. Leak and spill cleanup.

At no time shall any spill or leak be allowed to flow over, pool, or rest on the surface of the land or infiltrate soil. Discharge fluids must be properly removed and may not be allowed to remain standing within or outside of diked areas. Operators must respond with appropriate resources to contain and clean up spills.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-22. Well log, completion, and work-over report and basic data.

After the plugging of a well, a plugging records (form 7-sm) shall be filed with the state geologist. After the completion of a well, recompletion of a well in a different pool, or drilling horizontally in an existing pool, a completion report (form 6-sm) shall be filed with the state geologist. In no case shall subsurface minerals be transported from the lease prior to the filing of a completion report unless approved by the director. The operator shall cause to be run an open hole electrical, radioactivity, or other similar log, or combination of open hole logs, of the operator's choice, from which formation tops

and porosity zones can be determined. The operator shall run a gamma ray log from total depth to ground level elevation of the well bore. Prior to completing the well, the operator shall run a log form which the presence and quality of bonding of cement can be determined in every well in which production or intermediate casing has been set. The obligation to log may be waived or postponed by the director if the necessity therefore can be demonstrated to the director's satisfaction. Waiver will be contingent upon such terms and conditions as the director deems appropriate. All logs run shall be available to the director at the well site prior to proceeding with plugging or completion operations. All logs run shall be submitted to the state geologist free of charge. Logs shall be submitted as one digital tagged image file format (TIFF) copy and one digital LAS (log ASCII) formatted copy, or a format approved by the director. In addition, operators shall file two copies of drill stem test reports and charts, formation water analyses, core analyses, geologic reports, and noninterpretive lithologic logs or sample descriptions if compiled by the operator.

All information, except the operator name, well name, location, spacing or drilling unit description, spud date, rig contractor, and any production runs, furnished to the state geologist on recompletions or reentries, shall be kept confidential for a period of one year if requested by the operator and such period may be further extended upon approval by the commission. The one-year period shall commence on the expiration date of the permit. The confidentiality period will become void if the operator engages in a wholesale release of the confidential information in a wide public form. Any information furnished to the state geologist prior to approval of the recompletion or reentry shall remain public.

Approval must be obtained on a sundry notice (form 4-sm) from the director prior to perforating or recompleting a well in a pool other than the pool in which the well is currently permitted.

After the completion of any remedial work, or attempted remedial work, such as plugging back or drilling deeper, acidizing, shooting, formation fracturing, squeezing operations, setting liner, perforating, reperforating, or other similar operations not specifically covered herein, a report on the operation shall be filed on a sundry notice (form 4-sm) with the state geologist. The report shall present a detailed account of all work done and the date of such work; the daily production of subsurface minerals and water both prior to and after the operation; the shots per foot, size, and depth of perforations; the quantity of sand, crude, chemical, or other materials employed in the operation; and any other pertinent information or operations which affect the original status of the well and are not specifically covered herein.

Upon the installation of pumping equipment on a flowing well, or change in type of pumping equipment designed to increase productivity in a well, the operator shall submit a sundry notice (form 4-sm) of such installation. The notice shall include all pertinent information on the pump and its operation, including the date of such installation, and the daily production of the well prior to and after the pump has been installed.

All forms, reports, logs, and other information required by this section shall be submitted within thirty days after the completion of such work, although a completion report shall be filed immediately after the completion or recompletion of a well in a pool or reservoir not then covered by an order of the commission.

The following basic data collected by the operator shall be delivered, free of charge, to the state geologist within six months of the expiration date of the permit:

1. Washed and packaged sample cuts, core chips, or whole cores except those portions of cores used for necessary testing or analysis in which case the results of testing, the analysis and the description of missing portions shall be submitted to the state geologist upon request.

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 director.

When requested by the operator, the data submitted shall be confidential for a period of one year commencing on the expiration date of the permit. Such period may be further extended upon approval of the commission.

Data restricted to a particular stratigraphic interval containing the actual ore being explored, developed, or mined, shall be confidential as long as the operator is exploring, developing, or producing from that particular stratum. The general area, as used herein, shall be defined jointly by the state geologist and the operator. Definition of the stratigraphic interval will be made by the state geologist. Data from the stratigraphic interval will, at the discretion of the state geologist, be retained in the North Dakota office of the operator during the period of confidentiality. The industrial commission and the state geologist shall have access to all confidential data.

The director may release such confidential completion and production data to health care professionals, emergency responders, and state, federal, or tribal environmental and public health regulators if the state geologist deems it necessary to protect the public's health, safety, and welfare.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-22.1. Determination of well potential.

Repealed effective July 1, 2013.

43-02-02-22.2. Subsurface pressure test.

The operator shall conduct a subsurface pressure test on the discovery well of any new pool discovered and shall report the results to the director within thirty days after the completion of such discovery well. Drill stem test pressures are acceptable. After the discovery of a new pool, each operator shall make additional subsurface pressure tests as directed by the director or provided for in field rules. All tests shall be made by a person qualified by both training and experience to make such tests and with an approved subsurface pressure instrument. All wells shall remain completely shut in for at least forty-eight hours prior to the test. The subsurface determination shall be obtained as close as possible to the midpoint of the productive interval of the reservoir. The report of the reservoir pressure test shall be filed on form 9-sm.

The director may shut in any well for failure to make such test until such time as a satisfactory test has been made or satisfactory explanation given.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-22.3. Commingling of minerals from pools.

Except as directed by the commission after notice and hearing, each pool shall be produced as a single common reservoir without commingling in the well bore of fluids from different pools. After fluids from different pools have been brought to the surface, such fluids may be commingled provided that the amount of production from each pool is determined by a method approved by the director.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-23. Notice of intention to plug well.

The operator or the operator's agent shall file a notice of intention (form 4-sm) to plug with the state geologist, and obtain the approval of the director, prior to the commencement of plugging or plug-back operations. The notice shall state the name and location of the well, the name of the operator, and the method of plugging, which must include a detailed statement of proposed work. In the case of a recently completed test well that has not had production casing in the hole, the operator may commence plugging by giving reasonable notice to, and securing verbal approval of, the director as to the method of plugging and the time plugging operations are to begin. Within thirty days after the plugging of any well, the owner or operator thereof shall file a plugging record (form 7-sm), and, if requested, a copy of the cementer's trip ticket of job receipt, with the state geologist setting forth in detail the method used in plugging the well. This section shall not apply to testholes.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-24. Method of plugging.

All wells shall be plugged in a manner which will confine permanently all subsurface minerals, oil, gas, and water in the separate strata originally containing them. This operation shall be accomplished by the use of mud-laden fluid, cement, and plugs, used singly or in combination as may be approved by the director. All casing strings shall be cut off at least three feet [91.44 centimeters] below the final surface contour, and a cap shall be welded. Core or stratigraphic testholes drilled to or below sands containing freshwater shall be plugged in accordance with the applicable provisions recited above. After plugging, the site must be reclaimed pursuant to sections 43-02-02-14.1 and 43-02-02-24.2.

History: Amended effective August 1, 1986; July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-24.1. Abandonment of wells - Suspension of drilling.

1. The removal of production equipment or the failure to produce subsurface minerals, or the failure to produce water from the source well, for one year constitutes abandonment of the well. The removal of injection equipment or the failure to use an injection well for one year constitutes abandonment of the well. The failure to plug a stratigraphic testhole of reaching total depth within one year constitutes abandonment of the well. An abandoned well must be plugged and its site must be reclaimed pursuant to sections 43-02-02-24 and 43-02-02-24.2.

2. The director may waive the requirement to plug and reclaim an abandoned well for one year by giving the well temporarily abandoned status. This status may only be given to wells that are to be used for purposes related to the production of subsurface minerals. If a well is given temporarily abandoned status, the well's perforations must be isolated, the integrity of its casing must be proven, and its casing must be sealed at the surface, all in a manner approved by the director. The director may extend a well's temporarily abandoned status beyond one year. A fee of one hundred dollars shall be submitted for each application to extend the temporary abandonment status of any well.

3. In addition to the waiver in subsection 2, the director may also waive the duty to plug and reclaim an abandoned well for good cause as determined by the director. If the director exercises this discretion, the director shall set a date or circumstances upon which the waiver expires.

4. The director may approve suspension of the drilling of a well. If suspension is approved, a plug must be placed at the top of the casing to prevent any foreign matter from getting into the

well. When drilling has been suspended for thirty days, the well, unless otherwise authorized by the director, must be plugged and its site reclaimed pursuant to sections 43-02-02-24 and 43-02-02-24.2.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-24.2. Reclamation of surface.

1. Within a reasonable time, but not more than one year, after a well is plugged, or if a permit expires, has been canceled or revoked, the well site, access road, and other associated facilities constructed for the well shall be reclaimed as closely as practicable to original condition. Prior to site reclamation, the operator or the operator's agent shall file a sundry notice (form 4-sm) with the director and obtain approval of a reclamation plan. The operator or operator's agent shall provide a copy of the proposed reclamation plant to the surface owner at least ten days prior to commencing the work unless waived by the surface owner. Verbal approval to reclaim the site may be given. The notice must include:

   a. The name and address of the reclamation contractor;

   b. The name and address of the surface owner and the date when a copy of the proposed reclamation plan was provided to the surface owner;

   c. A description of the proposed work, including topsoil redistribution and reclamation plans for the access road and other facilities; and

   d. Reseeding plans, if applicable.

   The commission will mail a copy of the approved notice to the surface owner.

   All production equipment, waste, and debris shall be removed from the site. Flow lines shall be purged in a manner approved by the director. Flow lines shall be removed if buried less than three feet [91.44 centimeters] below final contour.

2. Gravel or other surfacing material shall be removed, stabilized soil shall be remediated, and the well site, access road, and other associated facilities constructed for the well shall be reshaped as near as is practicable to original contour.

3. The stockpiled topsoil shall be evenly distributed over the disturbed area, and where applicable, the area revegetated with native species or according to the reasonable specifications of the appropriate government land manager or surface owner.

4. Within thirty days after completing any reclamation, the operator shall file a sundry notice with the director reporting the work performed.

5. The director, with the consent of the appropriate government land manager or surface owner, may waive the requirement of reclamation of the site and access road after a well is plugged.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-25. Wells to be used for freshwater.

Repealed effective August 1, 1986.

43-02-02-25.1. Conversion of mineral wells to freshwater wells.

Any person desiring to convert a mineral well to a freshwater well shall file an application for approval with the commission. The application must include the following:

1. If the well is to be used for other than individual domestic and livestock use, a conditional water permit issued by the state water commission.
2. An affidavit by the person desiring to obtain approval for the conversion stating that such person has the authority and assumes all liability for the use and plugging of the proposed freshwater well.
3. The procedure which will be followed in converting the mineral well to a freshwater well.
4. If the well is not currently plugged and abandoned, an affidavit must be executed by the operator of the well indicating that the parties responsible for plugging the mineral well have no objection to the conversion of the mineral well to a freshwater well.

If the commission, after notice and hearing, determines that a mineral well may safely be used as a freshwater well, the commission may approve the conversion.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-26. Liability.

The owner and operator of any well, core hole, or stratigraphic testhole, whether cased or uncased, shall be liable and responsible for the plugging and site reclamation in accordance with the rules and regulations of the commission.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-27. Earthen pits.

Repealed effective July 1, 2013.

43-02-02-28. Preservation of cores and samples.

Sample cuttings of formations, taken at regular intervals in all wells drilled for subsurface minerals or geological information in North Dakota, shall be washed and packaged in standard sample envelopes which in turn must be placed in proper order in a standard sample box; carefully identified as to operator, well name, location, depth of sample, and shall be sent free of cost to the state geologist within thirty days after completion of drilling operations.

The operator of any well drilled for subsurface minerals in North Dakota, during the drilling of or immediately following the completion of any well, shall inform the state geologist or the state geologist's representative of all intervals that are to be cored, or have been cored. All cores taken shall be preserved and forwarded to the state geologist, free of cost, within ninety days after completion of drilling operations, unless specifically exempted by the state geologist. If an exemption is granted, the operator shall advise the state geologist of the final disposition of the core.

This section does not prohibit the operator from taking such samples of the core as the operator may desire for identification and testing. The operator shall furnish the state geologist with the results of identification and testing procedure.

History: Amended effective October 1, 1990; July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-29. Mining plan.

Before conducting any mining or production operations, the operator shall submit to the state geologist for approval a mining plan which shall show in detail the proposed development or mining operations to be conducted. Mining plans shall be consistent with and responsive to the requirements of not only this chapter but also statutes and rules for the protection of nonmineral resources, and for the reclamation of the surface of the lands affected by the operations. No operations shall be conducted except under an approved plan. Those portions of a mining plan which the director finds to contain information which is proprietary to a specific company's mining methods shall be retained at that company's office located nearest the mining site, and shall be approved by the director and open to inspection by the director and the industrial commission at all times. All portions of the mining plan which provide for the protection of natural resources, other than the mineral being mined, and for the reclamation of the surface shall be filed in the office of the state geologist.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-30. Report of production.

The operator of each and every well or mine shall, on or before the tenth day of the second month succeeding the month in which production occurs, file with the state geologist the amount of production made by each such well or mine upon form 5-sm or approved computer sheets no larger than eight and one-half by eleven inches [21.59 by 27.94 centimeters]. The report shall be signed by both the person responsible for the report and the person witnessing the signature. The printed name and title of both the person signing the report and the person witnessing the signature shall be included. Wells for which reports of production are not received by the close of business on the tenth day of the month may be shut in for a period not to exceed thirty days. The director shall notify, by certified mail, the operator and authorized transporter of the shut-in period for such wells. The term "mine" includes multiple closely spaced wells used to mine a deposit, and in such case production will be reported from the mine rather than from each individual well. "Multiple closely spaced wells" means where more than one well is used to produce subsurface minerals in each eighty-acre [32.37-hectare] subdivision of the mine.

Production data submitted to the state geologist shall be kept confidential for a period of one year when so requested by the operator. Such period may be further extended upon approval by the commission.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-31. Report of water injected.

The operator of each and every injection well shall, on or before the tenth day of the second month succeeding the month in which injection occurs, file with the state geologist the amount of liquid injected, the composition of the liquid, and the source thereof upon approved computer sheets no larger than eight and one-half by eleven inches [21.59 by 27.94 centimeters]. The report shall be signed by both the person responsible for the report and the person witnessing the signature. The printed name and title of both the person signing the report and the person witnessing the signature shall be included.

History: Amended effective August 1, 1986; July 1, 2013.

General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-32. Pollution by saltwater.

All saltwater liquids or brines produced shall be processed, stored, and disposed of without pollution of freshwater supplies. At no time shall saltwater liquids or brines be allowed to flow over the surface of the land or into streams.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-33. Investigative powers.

Upon receipt of a written complaint from any surface owner or lessee, royalty owner, mineral owner, local, state, or federal official, alleging a violation of the subsurface mineral conservation statutes or any rule, regulation, or order of the commission, the director shall within reasonable time reply in writing to the person who submitted the complaint stating that an investigation of such complaint will be made or the reason such investigation will not be made. The person who submitted the complaint may appeal the decision of the director to the commission. The director may also conduct such investigations on the director's own initiative or at the direction of the commission. If, after such investigation, the director affirms that cause for complaint exists, the director shall report the results of the investigation to the person who submitted the complaint, if any, to the person who was the subject of the complaint and to the commission. The commission shall institute such legal proceedings as, in its discretion, it believes necessary to enjoin further violations.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-34. Additional information may be required.

This chapter shall not be taken or construed to limit or restrict the authority of the commission to require the furnishing of such additional reports, data, or other information relative to production or products as may appear to be necessary or desirable, either generally or specifically, for the prevention of waste, protection of correlative rights, and the conservation of natural resources.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-35. Books and records to be kept to substantiate reports.

All producers within North Dakota shall make and keep appropriate books and records for a period not less than six years, covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-02
Law Implemented: NDCC 38-12-02

43-02-02-36. Public hearing.

Repealed effective July 1, 2013.

43-02-02-37. Institute proceedings.

Repealed effective July 1, 2013.

43-02-02-38. Application for hearing.

In any proceeding instituted upon application, the application shall be signed by the applicant or by the applicant's attorney. An application shall state (1) the name and general description of the common source or sources of supply affected by the order, rule, or regulation sought, if any, unless same is intended to apply to and affect the entire state, in which event the application shall so state, and such statement shall constitute sufficient description; and (2) briefly the general nature of the order, rule, or regulation sought in the proceedings.

History: Amended effective August 1, 1986.
General Authority: NDCC 38-12-04
Law Implemented: NDCC 38-12-04

43-02-02-39. Filing application for hearing.

When an application is filed, it shall be set for hearing before the commission at such time as will permit fifteen days' notice thereof to be given, as provided in section 43-02-02-40.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-04
Law Implemented: NDCC 38-12-04

43-02-02-40. Hearings - Complaint proceedings - Emergency proceedings - Other proceedings.

1. Except as more specifically provided in North Dakota Century Code section 38-12-04, the rules of procedure established in subsection 1 of North Dakota Century Code section 28-32-21 apply to proceedings involving a complaint and a specific-named respondent.

2. For proceedings that do not involve a complaint and a specific-named respondent, the commission shall give at least fifteen days' notice (except in an emergency) of the time and place of hearing thereon by one publication of such notice in a newspaper of general circulation in Bismarck, North Dakota, and in a newspaper of general circulation in the county where the land affected or some part thereof is situated, unless in some particular proceeding a longer period of time or a different method of publication is required by law, in which event such period of time and method of publication shall prevail. The notice shall issue in the name of the commission and shall conform to the other requirements provided by law.

3. In case an emergency is found to exist by the commission which in its judgement requires the making of a rule or order without first having a hearing, the emergency rule or order shall have the same validity as if a hearing with respect to the same had been held after notice. The emergency rule or order permitted by this section shall remain in force no longer than fifteen days from its effective date, and in any event, it shall expire when the rule or order made after due notice and hearing with respect to the subject matter of such emergency rule or order becomes effective.

4. Any person moving for a continuance of a hearing, and who is granted a continuance, shall submit a twenty-five dollar fee to the commission to pay the cost of republication of notice of the hearing.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-04

Law Implemented: NDCC 38-12-04

43-02-02-40.1. Investigatory hearings.

The commission may hold investigatory hearings upon the institution of a proceeding by application or by a motion of the commission. Notice of the hearing must be served upon all parties personally or by certified mail at least five days before the hearing.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-04
Law Implemented: NDCC 38-12-04

43-02-02-40.2. Official record.

The evidence in each case heard by the commission, unless specifically excluded by the hearing officer, includes the certified directional surveys and all subsurface mineral, oil, water, and gas production records on file with the commission.

Any interested party may submit written comments on or objections to the application prior to the hearing date. Such submissions must be received no later than five p.m. on the last business day prior to the hearing date and may be part of the record in the case if allowed by the hearing examiner.

History: Effective July 1, 2013.
General Authority: NDCC 28-32-06
Law Implemented: NDCC 28-32-06

43-02-02-40.3. Petitions for review of recommended order and oral arguments prohibited.

Neither petitions for review of a recommended order nor oral arguments following issuance of a recommended order and pending issuance of a final order are allowed.

History: Effective July 1, 2013.
General Authority: NDCC 28-32-13
Law Implemented: NDCC 28-32-13

43-02-02-40.4. Notice of order by mail.

The commission may give notice of an order by mailing the order, and findings and conclusions upon which it is based, to all parties by regular mail provided it files an affidavit of service by mail indicating upon whom the order was served.

History: Effective July 1, 2013.
General Authority: NDCC 28-32-13
Law Implemented: NDCC 28-32-13

43-02-02-40.5. Service and filing.

All pleadings, notices, written motions, requests, petitions, briefs, and correspondence to the commission or commission employees from a party (or vice versa) relating to a proceeding after its commencement, must be filed with the director and entered into the commission's official record of the procedure provided the record is open at the time of receipt. All parties shall receive copies upon request of any or all of the evidence in the record of the proceedings. The commission may charge for the actual cost of providing copies of evidence in the record. Unless otherwise provided by law, filing shall be complete when the material is entered into the record of the proceeding.

History: Effective July 1, 2013.
General Authority: NDCC 28-32-13
Law Implemented: NDCC 28-32-13

43-02-02-41. Application for rehearing.

Within thirty days after the entry of any order or decision of the commission or the director, any person affected thereby may file with the commission an application for rehearing in respect of any matter determined by the order or decision, setting forth the reasons the order or decision is believed to be erroneous. The commission shall grant or refuse any such application in whole or in part within fifteen days after it is filed. In the event the rehearing is granted, the commission may enter such new order or decision after rehearing as may be required under the circumstances.

History: Amended effective July 1, 2013.
General Authority: NDCC 38-12-04
Law Implemented: NDCC 38-12-04

43-02-02-42. Burden of proof.

Repealed effective August 1, 1986.

43-02-02-43. Designation of examiners.

The commission may by motion designate and appoint qualified individuals to serve as examiners. The commission may refer any matter or proceeding to any legally designated and appointed examiner or examiners.

History: Amended effective August 1, 1986; July 1, 2013.
General Authority: NDCC 38-12-04
Law Implemented: NDCC 38-12-04

43-02-02-44. Matters to be heard by examiner.

Repealed effective August 1, 1986.

43-02-02-45. Powers and duties of examiner.

The commission may, by motion, limit the powers and duties of any examiner in any particular case to such issues or to the performance of such acts as the commission deems expedient; however, subject only to such limitation as may be ordered by the commission, the examiner or examiners to whom any matter or proceeding is referred under this chapter shall have full authority to hold hearings on such matter or proceeding in accordance with and pursuant to this chapter. The examiner shall have the power to regulate all proceedings before the examiner and to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of such hearing, including ruling on prehearing motions, the swearing of witnesses, receiving of testimony and exhibits offered in evidence, subject to such objections as may be imposed, and shall cause a complete record of the proceedings to be made and retained.

History: Amended effective August 1, 1986; July 1, 2013.
General Authority: NDCC 38-12-04
Law Implemented: NDCC 38-12-04

43-02-02-46. Matters heard by commission.

Repealed effective August 1, 1986.

43-02-02-47. Examiner shall be disinterested umpire.

Repealed effective July 1, 2013.

43-02-02-48. Report of examiner.

Upon the conclusion of any hearing before an examiner, the examiner shall promptly consider the proceedings in such hearings, and based upon the record of such hearing, the examiner shall prepare a report and recommendations for the disposition of the matter or proceeding by the commission. The report and recommendations shall either be accompanied by a proposed order or shall be in the form of a proposed order, and shall be submitted to the commission.

History: Amended effective August 1, 1986.
General Authority: NDCC 38-12-04
Law Implemented: NDCC 38-12-04

43-02-02-49. Commission order from examiner hearing.

After receipt of the report and recommendation of the examiner, the commission shall enter its order disposing of the matter or proceeding.

General Authority: NDCC 38-12-04
Law Implemented: NDCC 38-12-04

43-02-02-50. Hearing de novo before commission.

Repealed effective August 1, 1986.

43-02-02-51. Prehearing motion practice.

In a matter pending before the commission, all prehearing motions must be served by the moving party upon all parties affected by the motion. Service must be upon a party unless a party is represented by an attorney, in which case service must be upon the attorney. Service must be made by delivering a copy of the motion and all supporting papers in conformance with one of the means of service provided for in rule 5(b) of the North Dakota Rules of Civil Procedure. Proof of service must be made as provided in rule 4 of the North Dakota Rules of Civil Procedure or by certificate of an attorney showing that service has been made. Proof of service must accompany the filing of a motion. Any motion filed without proof of service is not properly before the commission.

History: Effective July 1, 2013.
General Authority: NDCC 38-12-04
Law Implemented: NDCC 38-12-04