

## **ARTICLE 85-06 MINERALS MANAGEMENT**

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### **CHAPTER 85-06-01 OIL AND GAS**

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#### **85-06-01-01. Oil and gas lease nomination.**

The department shall accept an oil and gas lease nomination for a tract not already under an oil and gas lease as reflected in department records and may accept a nomination for a tract under an oil and gas lease which will expire prior to the date of the oil and gas lease sale. The first nomination received on a tract is considered an offer and determines the opening bid.

1. The department shall accept a nomination for an oil or gas lease either electronically through the department's website or in writing. The nomination period for an oil and gas lease must be the period set by the commissioner during which the department shall accept oil and gas lease nominations. A nomination must be accompanied by a nonrefundable nomination fee, in an amount set by the department, and the fee must be submitted to the department prior to the published deadline for each nomination period.
2. An oil and gas lease nomination must be limited to a maximum of one quarter section, unless otherwise authorized under subsection 3, or by the board.
3. A nomination for a tract containing a body of water may include up to a section of land if the tract cannot reasonably be subdivided by quarter section or half section. The tract acreage, including islands, may be offered and described as "more or less" and may be adjusted by the board within each quarter section.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 61-33-06, 61-33.1

#### **85-06-01-02. Advertisement for public auction.**

The department shall publish notice of an oil and gas lease auction in the official newspaper of the county where the nominated tract is located and in the Bismarck Tribune. The notice must be published once, ten days prior to the day of the auction. The advertisement must specify the date, time, and place of the auction, and how an interested person may obtain a list of the tracts to be auctioned. Should publication of any notice is inadvertently omitted by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled leasing if it appears the omission or error is not prejudicial to the department's interest.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 38-09-15

#### **85-06-01-03. Public auction.**

The board may issue an oil and gas lease by public auction. Public auctions may be hosted either live or online at the discretion of the commissioner. Bidding is based on a bonus of not less than one dollar per acre, and an annual delay rental of not less than one dollar per acre per year based on the acreage shown in the records of the department at the time the oil and gas lease is issued.

1. The successful bidder at an online auction shall pay the bonus, the rental payments for the primary term as defined by the oil and gas lease, the advertising fee, and any processing fees via automated clearing house or wire transfer, by five p.m. central standard time, ten days after the date the auction closed. The board may not issue an oil and gas lease until receipt of the bonus, rental payments, and fees.
2. The successful bidder at a live auction shall pay the bonus, at least one year of rental payments, and the advertising fee via automated clearing house or wire transfer, by five p.m. central standard time ten days after the date the auction closed. The board may not issue the oil and gas lease until receipt of the bonus, rental payments, and fees.
3. If no bids are received, the nominator is deemed the successful bidder and shall pay the bonus, at least one year of rental payments, the advertising fees, and any processing fee via cash, check, automated clearing house, or wire transfer, by five p.m. central standard time, ten days after the date the auction closed. The board may not issue the oil and gas lease until receipt of the bonus, rental payments, and fees.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

#### **85-06-01-04. Rejection of nomination and bids.**

The commissioner, in the best interests of the trusts, may reject a nomination or a bid any time prior to the issuance of an oil and gas lease.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09

#### **85-06-01-05. Form and term of oil and gas lease.**

An oil and gas lease must be issued on a form approved by the board. An oil and gas lease must be made for a term of not less than five years and continue in effect under such term and for as long as oil or gas may be produced from the oil and gas leased premises in commercial quantities or unless otherwise extended. An oil and gas lease must provide for a bonus of not less than one dollar per acre

and an annual delay rental of not less than one dollar per acre per year based on the acreage shown in the records of the department at the time the oil and gas lease is issued. An oil and gas lease may contain such other terms and conditions as the board deems appropriate.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

#### **85-06-01-06. Assignment, amendment, or extension.**

A lessee shall submit a written request to the department for an assignment, amendment, or extension of an oil and gas lease, or a portion of the oil and gas leased premises, utilizing the form available on the department's website. A request must include any documents requested by the department. The lessee shall submit a fee, in an amount set by the board, to the department with the request.

1. Assignments. All oil and gas lease obligations must be current at the time the assignment is approved. The lessee remains bound by the terms and conditions of the oil and gas lease, board rules and policies, and applicable laws until the assignment is approved by the department. Upon approval of the assignment, the assignee is bound by all the terms and conditions of the oil and gas lease, board rules and policies, and applicable laws. The assignor shall provide the department with a copy of the fully executed assignment within thirty days from the approval.
2. Extensions. If, at the expiration of the primary term, production of oil or gas or both has not been obtained in commercial quantities on the leased premises but drilling, testing, completion, recompletion, reworking, deepening, plugging back, or repairing operations are being conducted thereon in good faith, the lessee may, on or before the expiration of the primary term, file a written application with the department for a one hundred eighty day extension of this oil and gas lease, such application to be accompanied by a payment of ten dollars per acre, and the commissioner, in writing, shall extend this oil and gas lease for a period of one hundred eighty days beyond the expiration of the primary term and as long as oil or gas or both is produced in commercial quantities; the lessee may, as long as such drilling, testing, or completion operations are being conducted in good faith, make written application to the commissioner, on or before the expiration of the initial extended period of one hundred eighty days for an additional extension of one hundred eighty days, such application to be accompanied by a payment of twenty dollars per acre, and the commissioner, in writing, shall extend this oil and gas lease for an additional one hundred eighty day period from and after the expiration of the initial extended period of one hundred eighty days, and as long as oil or gas or both is produced in commercial quantities; this oil and gas lease must not be extended for more than a total of three hundred sixty days from and after the expiration of the primary term unless production in commercial quantities has been obtained or unless extended by some other provision hereof.
3. Amendments. A lessee may request an amendment to an oil and gas lease for a specific purpose. A request for an amendment must state the specific grounds for the request. Approval of a request is at the discretion of the commissioner and the department shall notify the lessee in writing whether or not the request is approved.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-15

### **85-06-01-07. Voluntary release.**

To request a voluntary release of an oil and gas lease, a lessee shall submit a written request to the department for the voluntary release of an oil and gas lease, or portion of an oil and gas leased premises, utilizing the form available on the department's website and all other documents requested by the department. Approval of a voluntary release is at the discretion of the commissioner and the department shall notify the lessee in writing whether or not the voluntary release is approved. All oil and gas lease obligations must be current at the time the voluntary release is approved. The lessee remains bound by the terms and conditions of the oil and gas lease, board rules and policies, and applicable laws until the voluntary release is approved by the commissioner.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09

### **85-06-01-08. Royalties.**

If a sale of gas, carbon black, sulfur, or any other products produced or manufactured from gas produced and marketed from the oil and gas leased premises, including liquid hydrocarbons recovered from such gas processed in a plant, does not constitute an arm's length transaction, the royalties due the lessor are as follows:

1. On any gas produced and marketed, except as provided herein with respect to gas processed in a plant for the extraction of gasoline, liquid hydrocarbons, or other products; the royalty, as determined by the board, is based on the gross production or the market value thereof, at the option of the lessor, such value to be based on the highest market price paid for gas of comparable quality and quantity under comparable conditions of sale for the area where produced and when run, or the gross proceeds of sale, whichever is greater; provided the maximum pressure base in measuring the gas under an oil and gas lease at any time may not exceed fourteen and seventy-three hundredths (14.73) pounds per square inch absolute, and the standard base temperature shall be sixty degrees Fahrenheit, correction to be made for pressure according to Boyle's Law, and for specific gravity according to a test made by the balance method or by the most approved method of testing being used by the industry at the time of testing.
2. On any gas processed in a gasoline plant or other plant for the recovery of gasoline or other liquid hydrocarbons, the royalty, as determined by the board, is based on the residue gas and the liquid hydrocarbons extracted or the market value thereof, at the option of the lessor. All royalties due herein is based on eighty percent or that percent accruing to the lessee, whichever is greater, of the total plant production of residue gas attributable to gas produced from the oil and gas leased premises, and on forty percent or that percent accruing to the lessee, whichever is greater, of the total plant production of liquid hydrocarbons attributable to the gas produced from the oil and gas leased premises; provided that if a third party or parties are processing gas through the same plant pursuant to arm's length transaction and one such transaction accounts for an annual average of ten percent or more, or all such transactions collectively account for an annual average of thirty percent or more of the gas being processed in such plant, the royalty is based on the gross proceeds of sale that would accrue to the lessee if the gas were processed under the terms of the most remunerative third-party transaction for processing gas in such plant. Respective royalties on residue gas and on liquid hydrocarbons for which the requirements for using third-party transactions cannot be met must be determined by the greater of:
  - a. The highest market price paid for any gas or liquid hydrocarbons of comparable quality and quantity under comparable conditions of sale in the general area F.O.B. at the plant after processing;

- b. The gross proceeds of sale for such residue gas or the weighted average gross proceeds of sale for the respective grades of liquid hydrocarbons, F.O.B. at the plant after processing; or
  - c. The gross proceeds of sale paid to a third party processing gas through the plant. The lessee shall furnish copies of any and all third-party gas processing agreements pertaining to the plant upon lessor's request.
- 3. On carbon black, sulfur, or any other products produced or manufactured from gas, excepting liquid hydrocarbons, whether said gas be "casinghead", "dry", or any other gas, by fractionating, burning, or any other processing, is based on the gross production of such productions, or the market value thereof, at the option of the lessor. Such market value is to be the greater of:
  - a. The highest market price paid for each of the products of comparable quality and quantity under comparable conditions of sale in the general area during the same month in which such products are produced; or
  - b. The average gross proceeds of sale for each of the products for the same month in which such productions are produced, provided that if a third-party transaction is used to determine royalty in accordance with subsection 2, the royalty due under this subsection shall be determined in accordance with such transaction.
- 4. The lessee agrees all royalties accruing to the lessor under this rule are without deduction for the cost of producing, gathering, storing, separating, treating, dehydrating, vapor recovery, compressing, processing, transporting, conditioning, removing impurities, depreciation, risk capital, and otherwise making the oil, gas, and other products produced hereunder ready for sale or use.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

#### **85-06-01-09. Disputed title royalty escrow account.**

Any payor that proposes to withhold royalty payments based upon an ownership dispute shall establish an escrow deposit account and shall deposit the disputed payments into this account.

- 1. The account must be established at the Bank of North Dakota, or other state or national chartered insured financial institution approved by the commissioner, with the board as a party to the escrow agreement.
- 2. Prior to a final resolution of the dispute, a partial release of the disputed payments may be made upon written approval by the commissioner and the payor. Upon approval, the disputed payments must be distributed back to the payor for proper distribution to the rightful owner.
- 3. Upon final resolution of the ownership dispute, and with consent of the commissioner, the escrow agent is authorized to release all disputed payments held in the account to the payor for proper distribution to the rightful owner. The board is entitled to any interest income earned on the account attributable to North Dakota's ownership interest.
- 4. This section applies to matters where the amount of the disputed payments is twenty-five thousand dollars or more over a twelve-month period. The commissioner and the payor may agree this section applies to oil and gas leases executed prior to the effective date of this section.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

**85-06-01-10. Breach of oil and gas lease.**

1. Other than as provided in subsection 7, an oil and gas lease may be canceled for:
  - a. Nonpayment of any sum due under the oil and gas lease;
  - b. Breach of any of the oil and gas lease terms or conditions provided such cancellation must not release the lessee from liability for any sum due the lessor or from any damages due to the breach; or
  - c. A violation of the board rules and policies, and applicable laws.
2. Before an oil and gas lease is canceled, the department shall mail a notice of intention to cancel the oil and gas lease specifying the reason for cancellation to the lessee by mail requiring a signed receipt at the address of the lessee as shown in the records of the department. If the notice of intention to cancel is returned undeliverable or refused, the notice must be published in the official newspaper of the county in which the oil and gas leased premises is located.
3. A lessee may file with the commissioner a request for a waiver or a request for the commissioner to review the notice of intention to cancel the oil and gas lease, which must include a statement of the specific grounds for the request. A request must be in writing and filed with the commissioner within thirty days after the date of notice of intention to cancel the oil and gas lease is received or the date of publication. A request for a waiver or review is deemed filed when personally delivered or when received by the department. The board may waive any breach except a breach of oil and gas lease terms required under North Dakota Century Code, or the board may allow the lessee time to cure the breach. Any waiver must be limited to the particular breach waived and may not limit the board's right to cancel the oil and gas lease for any other breach.
4. If the lessee has not requested waiver or commissioner review or remedied the default within thirty days after receipt of a notice of intention to cancel or the date of publication, the commissioner shall cancel the oil and gas lease.
5. Cancellation of the oil and gas lease does not release the lessee from liability for any sum due to the board, other than as provided in subsection 7, or from any damages from a breach of the oil and gas lease.
6. Upon cancellation of the oil and gas lease, the department shall file a satisfaction of oil and gas lease with the register of deeds' office in the county where the oil and gas leased premises is located.
7. An oil and gas lease automatically terminates for failure to pay the annual delay rental by the date due without further notice by the department or opportunity for the lessee to remedy the default.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

**85-06-01-11. Board review.**

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information

required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall recommend if a board review is warranted.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

**85-06-01-12. Reports of lessee - Delinquency penalty.**

Royalty payment and reporting are due on forms prescribed by the department as follows:

1. For gas:
  - a. Within one hundred twenty-three days of the last day of the month in which initial production occurs, royalty payment and reporting are due for the first, second, and third months of production.
  - b. Successive royalty payments and reporting are due within sixty-one days of the last day of the month in which production occurs.
2. For oil:
  - a. Within ninety-two days of the last day of the month in which initial production occurs, royalty payment and reporting are due for the first, second, and third months of production.
  - b. Successive royalty payments and reporting are due within thirty days of the last day of the month in which production occurs.
3. The royalty payment and reporting deadline may be extended by the commissioner upon written request. An extension, if granted, only applies to future royalty payments and reporting.
4. Any sum, other than delay rentals, not paid when due is delinquent and is subject to a delinquency penalty of one percent of the sum for each thirty day period of delinquency or fraction of delinquency period, unless a waiver or board review is requested under subsection 6.
5. Unpaid royalties bear interest under North Dakota Century Code section 47-16-39.1.
6. A lessee has thirty days from the date of the receipt of a notice of a penalty and interest assessment to pay the penalty and interest, request a waiver or reduction, or to request board review.
  - a. A request for a waiver or reduction of the penalty or interest or a request for board review must be in writing and provide the grounds for the request.
  - b. The following factors may be considered when deciding to waive or reduce the penalty or interest: the reason for the late payment; the degree of control the payor had over the late payment; any unusual or mitigating circumstances involved; the loss of interest earnings to the trust involved; and any other relevant factors.
  - c. The commissioner, for good cause, may waive up to twenty-five thousand dollars of the penalty or reduce interest initially sought. A request for a waiver or reduction of penalty in excess of twenty-five thousand dollars must be presented to the board, with the commissioner's recommendation, for review and decision.

- d. A waiver or reduction of penalty and interest does not constitute a waiver of the right to seek the full amount of both penalty and interest if the initial claim for royalty payment is not paid. If a claim for unpaid royalties, penalties, and interest is settled and payment received, the amount of penalties and interest not collected is deemed waived.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10, 47-16-39.1, 47-16-39.2

#### **85-06-01-13. Audit and examination.**

1. The department may audit and examine any records, including:
  - a. Books, accounts, and receipts; and
  - b. Contracts and other records pertaining to the production, transportation, sale, and marketing of the oil or gas or other products produced from the oil and gas leased premises.
2. The department shall serve by certified mail, a written request to the payor specifying the documents requested.
3. After audit and examination of the records set forth in subsection 1, the department shall notify the payor of the results, including the audit findings, the basis for that determination, and the date by which a response to the findings is due.
4. A payor has sixty days from the date of the receipt of the audit findings to comply, request an extension, respond to the findings, or request commissioner review. A request for an extension or for commissioner review must be made in writing. A request for commissioner review must include a statement of the reasons for disagreement with the audit findings. If a payor fails to comply with the audit findings, respond to the findings, or request commissioner review within sixty days, the oil and gas lease is subject to cancellation under section 85-06-01-10.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 47-16-39.1, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10, 47-16-39.2

#### **85-06-01-14. Request for shut-in status for oil.**

1. A lessee requesting shut-in status of an oil well, without canceling the oil and gas lease, shall submit a written request to the department utilizing the form available on the department's website. The request must contain the following information:
  - a. The name and well file number assigned by the North Dakota department of mineral resources oil and gas division;
  - b. The township, range, and section of the surface location of the well;
  - c. The board's oil and gas lease number for the subject lease, the date of the oil and gas lease, the acreage covered by the oil and gas lease, and the current lessee;
  - d. The name and address of the operator of the well;
  - e. The cumulative oil production and the number of days of production for the three months immediately preceding the request;
  - f. The written approval of the request from the operator;



- g. The grounds for the request and the anticipated length of time the well will be shut-in; and
  - h. Any additional information requested by the department.
2. An application fee, in an amount set by the department, and the shut-in royalty payment must be submitted with the application. If the application is denied, the shut-in royalty payment will be refunded by the department.
  3. An application is deemed filed when the department receives the application form, application fee, shut-in royalty payment, and any additional information requested by the department.
  4. Within fifteen days of receipt of an application, the commissioner shall notify the applicant in writing, as follows:
    - a. The application is approved and the terms of the shut-in approval;
    - b. The application is denied;
    - c. An additional fifteen day period is necessary to consider the application; or
    - d. The application requires board approval.
  5. If an application is denied, a lessee may file with the department a written request for commissioner review, specifying the grounds for the request.
  6. A shut-in approval is effective for one year from the date of approval unless the commissioner determines a shorter amount of time is appropriate.
  7. The commissioner may revoke a shut-in approval if the commissioner determines the action is in the best interests of the trusts. If a shut-in approval is revoked prior to its expiration, the department shall provide notice to the lessee by certified mail. Within sixty days from the date of receipt of the notice, the lessee shall re-establish production. If the lessee fails to re-establish production, the oil and gas lease is subject to cancellation under section 85-06-01-10.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

#### **85-06-01-15. Offset obligations for vertical oil and gas wells.**

1. If a vertical oil and gas well has been drilled and is producing in commercial quantities from mineral acreage owned by another or from adjacent trust lands leased at a lesser royalty, which vertical oil and gas well is within one thousand feet [304.8 meters] of the trust lands, the lessee of the trust lands shall, within one hundred twenty days after completion of such vertical oil and gas well, exercise one of the following options:
  - a. Diligently begin in good faith the drilling of a corresponding offset well on the leased trust lands, or on lands pooled therewith;
  - b. Pay a compensatory royalty, as determined by the commissioner, in lieu of the drilling of an offset well. If a lessee elects to pay a compensatory royalty, the lessee shall submit to the commissioner, within thirty days of the date such election, a proposed compensatory royalty agreement based on the estimated drainage area of the vertical oil and gas well located within one thousand feet [304.8 meters] of the trust lands. Geological, engineering, or other evidence in the form of a narrative or maps, or both, which form the basis for the offset drainage computation must be included with the proposed agreement;

- c. Release the leased acreage to avoid the offset requisites; or
- d. Submit a request to the commissioner for a waiver of the offset obligation as follows:
  - (1) A request for a waiver of the offset obligation must be in writing and provide the grounds for the request. If a request is made, the lessee shall submit to the commissioner, within thirty days of the request, geological, engineering, or other evidence in the form of a narrative or maps, or both, which, in the opinion of the lessee, indicates that an additional offset well need not be drilled to reasonably develop or protect the trust lands from offset drainage due to the vertical oil and gas well located within one thousand feet [304.8 meters] on trust land. After a review of the evidence required to be submitted, the commissioner may:
    - (a) Request that the lessee supply additional evidence to support:
      - [1] The request for a waiver of the offset obligation; or
      - [2] The proposed compensatory royalty agreement submitted by the lessee.
    - (b) Grant a waiver of the offset obligation;
    - (c) Approve the proposed compensatory royalty agreement of the lessee;
    - (d) Require the lessee to pay compensatory royalties as determined by the commissioner;
    - (e) Take such other action as the commissioner may deem appropriate, including the acceptance of a release either in whole or in part as to all or less than all strata included in the lease; or
    - (f) Cancel the lease in accordance with section 85-06-01-10.
  - (2) A waiver of offset obligation is effective from the date of approval by commissioner. The commissioner may revoke a waiver of offset obligation if the commissioner determines the action is in the best interests of the trusts. If a waiver of offset obligation is revoked, the department shall provide notice to the lessee by certified mail. In the event of revocation, the lessee shall have one hundred twenty days from the date of revocation to exercise one of the options under this section.
  - (3) Lessee shall submit a report as to the conditions regarding offset drainage from an offset well every five years from the date of approval of waiver of offset obligation. If there is a change of conditions regarding offset drainage from an offset well at any time, the lessee shall be required to submit a report notifying the department of the change within one hundred twenty days of the change of conditions.
  - (4) The commissioner shall notify the lessee of the commissioner's decision.
- 2. If the lessee fails to exercise any of the options in subsection 1 the oil and gas lease is subject to cancellation under section 85-06-01-10.
- 3. The commissioner may approve compensatory royalties on the board's behalf in accordance with this section.
- 4. If an application does not comply with this section, or if the commissioner determines board review is desirable, the application may be brought before the board for its consideration.

**History:** Effective January 1, 2021.

**General Authority:** NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 61-33-06, 61-33.1