

## **CHAPTER 85-06-02 COAL**

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### **85-06-02-01. Prospecting permits.**

A request for a prospecting permit is issued in accordance with chapter 85-04-04.

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

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

**Law Implemented:** NDCC 15-05-01, 15-05-08, 15-05-09

### **85-06-02-02. Lands subject to coal lease.**

A coal lease may be issued upon acreage not already under a coal lease as reflected in department records. A coal lease is limited to a maximum of one quarter section, unless otherwise authorized by the board.

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

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

**Law Implemented:** NDCC 15-05-01, 15-05-08, 15-05-09

### **85-06-02-03. Application for coal lease.**

A written application for a coal lease must include:

1. Legal description of the lands to be leased;
2. Proposed terms for the coal lease, including the bonus, length, delay rental, and royalty;
3. Documentation showing that the bonus, term, delay rental, and royalty being offered are consistent with market rates; and
4. Nonrefundable application fee in an amount set by the board.

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

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

**Law Implemented:** NDCC 15-05-01, 15-05-08, 15-05-09

#### **85-06-02-04. Notice of coal leasing.**

1. Upon receipt of an application for a coal lease and a determination by the board that the application covers a tract the board is willing to lease, the department shall post on the department's website a notice of the application for coal lease, any supporting documentation, and instructions for submitting public comments. Comments must be received by the department no later than five p.m. central standard time fourteen days after posting the notice of the application for a coal lease to be considered. All comments must be in writing and contain the following:
  - a. Name and address of the interested person;
  - b. Applicant's name and address;
  - c. The legal description of the proposed coal leased premises as shown on the posted notice; and
  - d. A detailed statement as to whether the interested person supports or opposes the issuance of the coal lease.
2. Those comments must be brought to the board along with the department's recommendations.

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

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

**Law Implemented:** NDCC 15-05-01, 15-05-09

#### **85-06-02-05. Negotiation of coal lease.**

The department may negotiate with the applicant the terms and conditions of a coal lease the department deems to be in the best interests of the trusts. If the board owns the surface estate of a coal leased premises, compensation for the surface damage must be negotiated separately. The applicant may propose modifications to the bonus, delay rental, royalty, or other terms of the coal lease application. The board may refuse to enter a coal lease for any reason. The board may not issue the coal lease until receipt of full payment of at least one year of delay rental, bonus payment, and any applicable fees.

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

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

**Law Implemented:** NDCC 15-05-01, 15-05-04, 15-05-09, 15-05-10, 15-05-13

#### **85-06-02-06. Testing.**

The department may require a lessee to conduct drilling tests on the coal leased premises prior to the coal mining operations. If required, sufficient test holes must be drilled to outline the boundaries, thickness, and depth of the coal deposit and estimate the quality, quantity, and type of coal located on the coal leased premises. The lessee shall provide the department a map of the coal leased premises showing the boundaries of the coal deposit and a written report estimating the thickness, depth, quality, quantity, and type of coal. All test holes must be reclaimed to the satisfaction of the department at the conclusion of testing. Failure to conduct drilling tests when required or failure to provide the required documentation, may result in termination of the coal lease under section 85-06-02-08.

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

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

**Law Implemented:** NDCC 15-05-01, 15-05-09

#### **85-06-02-07. Voluntary release.**

To request a voluntary release of a coal lease, or portion of a coal leased premises, a lessee shall submit a written request to the department 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 coal lease obligations must be current at the time the voluntary release is approved. The lessee shall remain bound by the terms and conditions of the coal 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 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09

#### **85-06-02-08. Breach of coal lease.**

1. A coal lease may be canceled for:
  - a. Nonpayment of any sum due under the coal lease;
  - b. Breach of any of the coal lease terms or conditions provided the cancellation does not release lessee from liability for any sum due lessor or from any damages due to the breach; or
  - c. Violation of the board rules and policies, and applicable laws.
2. Prior to cancellation of a coal lease, the department shall mail a notice of intention to cancel the coal 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 coal 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 coal 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 twenty days after the date of notice of intention to cancel the coal 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 commissioner may waive any breach except a breach of coal lease terms required under North Dakota Century Code, or the commissioner may allow the lessee time to cure the breach. Any waiver is limited to the particular breach waived and may not limit the board's right to cancel the coal lease for any other breach.
4. If the lessee has not remedied the default within twenty days after receipt of a notice of intention to cancel or the date of publication, the commissioner shall cancel the coal lease.
5. Cancellation of the coal lease does not release the lessee from liability for any sum due to the board or from any damages from a breach of the coal lease.
6. Upon cancellation of the coal lease, the department shall file a satisfaction of coal lease with the register of deeds' office in the county where the coal leased premises is located.

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

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

**Law Implemented:** NDCC 15-05-01, 15-05-09

#### **85-06-02-09. 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 board review is warranted.

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

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

**Law Implemented:** NDCC 15-05-01, 15-05-09

#### **85-06-02-10. Minimum delay rentals.**

1. The minimum delay rental is five dollars per acre per year payable for as long as the coal lease is in full force and effect.
2. The first year of delay rental must be paid upon the issuance of a coal lease. The delay rental for each subsequent year of the coal lease is due and payable before the anniversary date of the coal lease.

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

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

**Law Implemented:** NDCC 15-05-01, 15-05-09, 15-05-10

#### **85-06-02-11. Royalty.**

Royalties are due to the lessor for coal mined or saved from the coal leased premises. If any other valuable substance is found or discovered during exploration or coal mining operations, the operator must notify the department prior to extraction.

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

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

**Law Implemented:** NDCC 15-05-01, 15-05-09, 15-05-10

#### **85-06-02-12. Assignments.**

A lessee shall submit a written request to the department for an assignment of coal lease utilizing the form available on the department's website. A request for assignment must include any documents requested by the department. The lessee shall submit a coal lease assignment fee, in an amount set by the board, to the department with the request. Approval of an assignment is at the discretion of the commissioner and the department shall notify the lessee in writing whether or not the assignment is approved. All coal lease obligations must be current at the time the assignment is approved. The lessee remains bound by the terms and conditions of the coal lease, board rules and policies, and applicable laws, until the assignment is approved by the commissioner. Upon approval of the assignment, the assignee is bound by all the terms and conditions of the coal 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.

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

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

**Law Implemented:** NDCC 15-05-01, 15-05-09, 15-05-15

#### **85-06-02-13. Surface owner protection.**

For a coal lease or prospecting permit for which the board is leasing or granting the right to explore for coal and has no interest in the surface estate, the lessee or permittee shall comply with North Dakota Century Code chapter 38-18.

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

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

**Law Implemented:** NDCC 15-05-01, 15-05-09

#### **85-06-02-14. Financial obligation to reclaim.**

The lessee shall pay the entire cost of reclamation necessitated by the coal mining operation.

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

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

**Law Implemented:** NDCC 15-05-01, 15-05-09

#### **85-06-02-15. Reports of lessee - Delinquency penalty.**

A statement and payment of royalty must be received by the department on or before the last day of the month following the mining and removal of coal from the premises.

1. 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.
2. 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 is granted by the commissioner.
3. A lessee has thirty days from the date of the receipt of a notice of a penalty assessment to pay the penalty or request a waiver.
  - a. A request for a waiver of the penalty must be in writing and provide the grounds for the request.
  - b. The following factors may be considered when deciding to waive the penalty: 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 initially sought. A request for penalty waiver 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 of penalty does not constitute a waiver of the right to seek the full amount of the penalty if the initial claim for royalty payment is not paid. If a claim for unpaid royalties and penalties is settled and payment received, the amount of penalties not collected is deemed waived.

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

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

**Law Implemented:** NDCC 15-05-01, 15-05-09, 15-05-10

#### **85-06-02-16. Audit and examination.**

1. The department may audit and examine any records, including:

- a. Cuttings, cores, logs, mine plans, and estimated tonnage in place from any coal leased premises;
  - b. Books, accounts, sales invoices, and receipts;
  - c. Contracts and other records pertaining to the production, transportation, sale, and marketing of the coal produced from the coal leased premises; and
  - d. Documents supporting the cost of the coal mining operation used for calculating the price per ton royalty.
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, any additional royalties due, the basis for that determination, and the date by which a response to the findings is due. If an exact amount of any delinquent royalties cannot be determined from the documents provided, the department shall request the payor make appropriate adjustments.
4. A payor has sixty days from the date of the receipt of the audit findings to comply, respond to the findings, or request commissioner review. A request for commissioner review must be made in writing and 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 coal lease is subject to cancellation under section 85-06-02-08.

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

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

**Law Implemented:** NDCC 15-05-01, 15-05-09, 15-05-10