

# MINING AND GAS AND OIL PRODUCTION

## CHAPTER 313

SENATE BILL NO. 2267  
(Stroup)

### COAL MINE LICENSING REPEAL

AN ACT to repeal chapter 38-04 of the North Dakota Century Code, relating to the licensing of coal mines.

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

\*SECTION 1. REPEAL.) Chapter 38-04 of the North Dakota Century Code is hereby repealed.

Approved April 8, 1975

\*NOTE: Section 38-04-03 was also repealed by section 673 and section 38-04-10 was amended by section 412 of Senate Bill No. 2039, chapter 106.

## CHAPTER 314

HOUSE BILL NO. 1084  
(Murphy)

## SUBSURFACE MINERALS

AN ACT to amend and reenact subdivision b of subsection 1 of section 38-08-04, subsection 1 of section 38-12-01, and subdivision b of subsection 1 of section 38-12-02 of the North Dakota Century Code, relating to the authority of the industrial commission and to the definition of "subsurface minerals".

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

SECTION 1. AMENDMENT.) Subdivision b of subsection 1 of section 38-08-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- b. The making and filing of all resistivity, radioactivity, and mechanical well logs and the filing of directional surveys if taken, and the filing of reports on well location, drilling, and production, and the filing free of charge of samples and core chips and of complete cores when requested in the office of the state geologist within six months after the completion or abandonment of the well;

SECTION 2. AMENDMENT.) Subsection 1 of section 38-12-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Subsurface minerals" means and includes all naturally occurring elements, and their compounds, natural mineral salts of boron, bromine, calcium, fluorine, helium, iodine, lithium, magnesium, nitrogen, phosphorus, potassium, sodium, thorium, uranium, and sulfur, and their compounds.

SECTION 3. AMENDMENT.) Subdivision b of subsection 1 of section 38-12-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- b. The delivery, free of charge, to the state geologist of the basic drilling data collected by the operator, within thirty days of field collection of such data. This data shall include:

- (1) Sample cuts, core chips, or whole cores;

- (2) Sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs;
- (3) Elevation and location information on the data collection points; and
- (4) Other pertinent information as may be requested by the state geologist.

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

Approved March 17, 1975

## CHAPTER 315

HOUSE BILL NO. 1083  
(Murphy)

## PLUGGING OF DRILL HOLES

AN ACT to provide for notice of drilling operations; requiring the plugging of drill holes; and providing a penalty.

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

SECTION 1. DEFINITIONS.) As used in this Act, unless the context requires otherwise:

1. "Drilling" means making any opening in the earth's surface by drilling or boring, and shall include inserting any object into any part of the earth's surface, for the purpose of subsurface mineral exploration. This Act, with the exception of section 6, shall not apply to holes drilled in the earth for the purpose of obtaining water, sand, gravel, stone, clay, scoria, and holes drilled in an operating coal mine to trace the coal seam.
2. "Person" means and includes any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof.

SECTION 2. PERSONS REQUIRED TO COMPLY WITH ACT.) Any person in this state engaged in drilling shall comply with the following provisions of this Act; provided, however, that compliance with the provisions of this Act by a drilling crew or its employer shall constitute compliance herewith by that person who has engaged the service of such crew, or its employer, as an independent contractor.

SECTION 3. DEEMED DOING BUSINESS WITHIN STATE - RESIDENT AGENT.) A person shall be deemed doing business within this state when engaged in drilling within the boundaries of this state, and shall, if not already qualified to do business within the state under chapter 10-22, prior to such drilling, file with the secretary of state an authorization designating an agent for the service of process.

SECTION 4. FILING OF NOTICE OF INTENTION TO ENGAGE IN DRILLING.) Any person desiring to engage in drilling within this state must, prior to actually engaging in such drilling, file a

notice of intention to engage in drilling with the county register of deeds in each county in which drilling is to be carried on. The notice of intention shall include the name of the person who intends to drill; his address or principal place of business; the name and address of the resident agent for the service of process on said person; the date upon which drilling will commence; the township, range, section, and quarter-section in which drilling is to be carried on; and the estimated depth of the drill hole. Notices filed with the county register of deeds under this section shall be maintained in a manner separate and apart from any other records or indices concerning the land described in the notice.

SECTION 5. DUTY TO FILE RECORD SHOWING WHERE WORK PERFORMED - REQUEST TO FILE LOCATION OF DRILL SITE - COMPLAINT OF PROPERTY OWNER.) Within thirty days following any calendar month in which drilling is begun by any person within this state, such person shall file with the county register of deeds in each county in which drilling is begun, and shall send to the owner or occupier of any land upon which drilling is begun, a record showing the township, range, section, and quarter-section in the county in which such drilling was performed and the date upon which such drilling was commenced. Upon written request by the owner or occupier of the land upon which the drilling has occurred, any person who has performed drilling within the state shall send to such landowner or occupier a record showing the date of drilling and a legal description of the drill site sufficiently exact to permit location and identification of the drill hole. The request must be based upon a written complaint of the property owner or occupier that physical damage to such property has occurred or is reasonably believed to have occurred by reason of the drilling. The written complaint shall designate the name and address of the complaining person and shall state the approximate date of the alleged damage. The required record of operations in response to the written demand therefor shall be supplied within ten days from the date on which such written demand is received.

SECTION 6. DUTY TO PLUG DRILL HOLES.) Unless otherwise agreed to between the owner of the surface and the person required by this section to plug the drill hole, prior to abandonment of any drill hole, it shall be the obligation of the person engaging the services of the drill, or if none, then the driller himself, to plug the drill hole as required by section 23-13-06 and to restore the surrounding surface as nearly as is practicable to its original condition. This section shall not apply to drill holes regulated by the industrial commission under sections 38-08-04 and 38-12-02.

SECTION 7. FAILURE TO COMPLY WITH ACT - PENALTY.) Any person violating any of the provisions of this Act is guilty of a class B misdemeanor.

Approved March 17, 1975

## CHAPTER 316

SENATE BILL NO. 2153  
(Committee on State and Federal Government)  
(At the request of the Land Department)

## STATE MINERAL LEASES

AN ACT to amend and reenact sections 38-09-17, 38-09-18, and 38-11-02 of the North Dakota Century Code, relating to the bidding or offers of bonus for leases; terms of an oil and gas lease and the unit of operation and providing for a minimum delay rental of twenty-five cents per acre; the leasing of certain mineral rights in state lands and providing that rentals shall not be deducted from royalties.

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

SECTION 1. AMENDMENT.) Section 38-09-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-09-17. BIDDING OR OFFERS.) Offers for leasing may be made in writing and such bids shall be opened at the time of the leasing and bids may be offered orally at the time of the leasing. Such bids shall be made upon the basis of acceptance of a lease upon the rental basis herein provided, plus such bonus as the bidder may offer. The leasing agency may reject all bids and no bid shall be accepted unless the bidder shall, at the time of the leasing, tender or pay to the leasing official an amount equal to the first year's rental for such oil and gas rights, plus any bonus offered for such lease.

SECTION 2. AMENDMENT.) Section 38-09-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-09-18. TERMS OF LEASE - UNIT OPERATION.) All leases for the purposes as hereinbefore provided shall be made by the state of North Dakota and all agencies and departments and political subdivisions thereof for not less than twenty-five cents per acre, per year for deferred drilling and shall be made with a royalty reservation of not less than one-eighth of all oil and gas produced from said land as long as oil and gas may be produced from said land. The term one-eighth as used herein shall be construed to mean one-eighth of such interest as may be owned by the lessor. All leases hereunder shall be made for a period of not less than five years and shall continue in effect under the terms thereof as

long as oil or gas may be produced thereon in commercial quantities. The state of North Dakota and all agencies, departments, and political subdivisions thereof, are specifically authorized to enter into agreements for the consolidation of land covered by leases on lands under the jurisdiction of such bodies with other adjoining or neighboring lands for the purpose of joint development and operation of the entire consolidated premises as a unit. In such a case, such agreement shall provide that the lessor shall share in the royalty on oil and gas produced from a consolidated tract in the proportion that the area of the land covered by such lease bears to the total area of such consolidated tract, or upon such other royalty sharing basis as may appear equitable to the governing body controlling or administering such lands; and operations or production on such consolidated tract shall have the same effect as operations or production under the terms of each such lease included therein.

SECTION 3. AMENDMENT.) Section 38-11-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-11-02. LEASES OF CERTAIN MINERAL RIGHTS IN STATE LANDS.) The state of North Dakota may lease land or minerals in tracts not exceeding six hundred forty acres, for the purpose of prospecting for and mining uranium, thorium, vanadium, molybdenum, germanium, and fissionable and nonfissionable metals and minerals mined therewith, including gravel where necessary to produce the minerals included herein that may be contained in any portion of lands owned by this state or that may be contained in state lands sold with a reservation of mineral deposits, or belong to the state of North Dakota by reason of being situate up to the low water mark of navigable rivers or lakes of this state. Such leases shall provide for an annual rental of not less than one dollar per mineral acre per year in advance and for such royalty upon the mineral product as the state may deem fair and in the interest of the state, provided that the minimum royalty shall not be less than five percent on the interest owned by the state and mined and marketed under the lease. The rental paid for any year shall not be deducted from the royalties as they accrue for that year.

Approved March 13, 1975

## CHAPTER 317

SENATE BILL NO. 2147  
(Stroup)

## EXPLORATION DATA

AN ACT to create and enact chapter 38-12.1 of the North Dakota Century Code, relating to filing basic exploration data with the state geologist; providing for injunctive relief; and providing a penalty.

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

SECTION 1.) Chapter 38-12.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-12.1-01. LEGISLATIVE FINDINGS.) The legislative assembly of the state of North Dakota finds that:

1. The discovery and evaluation of coal deposits is advantageous in an industrial society;
2. Coal occurs hidden under the ground and must be searched for by diverse techniques, and that the search, exploration, or prospecting for coal is a necessary and expensive prerequisite to coal extraction and for land-use planning in coal-bearing areas; and
3. It is to the benefit of society to allow coal exploration and to require the information generated from exploration to be available to the office of the state geologist.

38-12.1-02. DECLARATION OF POLICY.) It is hereby declared to be in the public interest to have persons engaged in coal exploration or evaluation report their findings to the office of the state geologist so that data on the location, quantity, and quality of coal, and the characteristics of associated material, will be available to assist the state in determining what the attitude of the state should be regarding future development of coal resources.

38-12.1-03. DEFINITIONS.) As used in this chapter, unless the context otherwise requires:

1. "Coal" means a dark-colored, compact, and earthy organic rock with less than forty percent inorganic components, based on dry material, formed by the accumulation and decomposition of plant material. The term shall include

lignite in both oxidized and nonoxidized forms, whether or not the material is enriched in radioactive materials.

2. "Coal exploration" means the use of any technique which when applied to the surface of the land will aid in the discovery or evaluation of coal or aid in determining the quantity and quality of coal present. It shall include drilling or digging, excavating, core sample drilling and collection, diamond drilling, trenching, or any other type of penetration of the surface of the earth.
3. "Commission" means the industrial commission of the state of North Dakota.
4. "Permit area" shall mean a county.
5. "Person" means and includes any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof; the masculine gender, in referring to a person, includes the feminine and the neuter genders.

38-12.1-04. JURISDICTION OF COMMISSION.) The industrial commission has jurisdiction and authority over all persons and property, both public and private, necessary to effectively enforce the provisions of this chapter. The state geologist shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to the provisions of this chapter. The commission has authority to make such investigations as it deems proper to determine whether facts exist which justify action by the commission. The commission acting through the office of the state geologist has the authority:

1. To require:
  - a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and regulations of the industrial commission prescribed to govern the exploration for coal on state and private lands within the state of North Dakota.
  - b. The delivery, free of charge, to the state geologist of the basic data collected during the course of the exploration within a reasonable time as may be prescribed by the state geologist. The data so submitted shall be confidential and available only to the office of the state geologist for official purposes for a period of two years, and such period of confidentiality shall, upon application, be extended for one-year periods by the state geologist, and in no event shall the period of confidentiality exceed

seven years. The basic data shall include, if specifically requested by the state geologist and if the information has been developed by or for a person conducting the exploration:

- (1) Sample cuts;
  - (2) Drillers' logs, sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs;
  - (3) Elevation and location information on the data collection points; and
  - (4) Other pertinent information as may be required by the state geologist.
2. To require the plugging, covering, or reburial in an appropriate manner so as to protect environmental quality, general health and safety, and economic values, of all holes, pits, or trenches excavated during the course of coal exploration.
  3. To promulgate and enforce rules, regulations, and orders to effectuate the provisions, purpose, and intent of this chapter.
  4. To inspect all drilling or exploration sites. For the purposes of this subsection, the state geologist or his representative shall have access to all drilling or exploration installations regulated by this Act for the purpose of inspection and sampling and shall have the authority to require the operators' aid if he finds it necessary and requests it.

38-12.1-05. DRILLING PERMIT REQUIRED - EXCEPTIONS.)

1. It shall be unlawful to commence operations for drilling for the exploration for coal without first obtaining a permit from the state geologist, under such rules and regulations as may be prescribed by the commission, and paying to the commission a fee of one hundred dollars for each such permit area. The permit shall be granted within thirty days after proper application is submitted therefor.
2. This permit shall not be required:
  - (a) In an area where a permit to surface mine land is in effect pursuant to chapter 38-14,
  - (b) For holes drilled to guide excavating equipment in an operating mine, or
  - (c) In areas where a drill-hole is required by any other state agency.

38-12.1-06. PROCEDURE.) The provisions of section 38-12-04 shall be applicable to the provisions of this chapter.

38-12.1-07. ACTION TO RESTRAIN VIOLATION OR THREATENED VIOLATION.) Whenever it appears that any person is violating or threatening to violate any provision of this chapter, or any rule, regulation, or any order of the commission, the commission shall bring suit against such person in the district court of any county where the violation occurs or is threatened, to restrain such person from continuing such violation or from carrying out the threat of violation. In any such suit, the court shall have jurisdiction to grant to the commission, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant.

38-12.1-08. PENALTY.) Any person who fails to perform any act required by this Act or any person who reports information required by this Act falsely or any person violating any of the rules, regulations, or orders promulgated under this Act shall, upon conviction, be guilty of a class A misdemeanor.

Approved March 19, 1975

## CHAPTER 318

SENATE BILL NO. 2095  
(Stroup)

## RECLAMATION OF STRIP MINED LAND

AN ACT to create and enact section 38-14-02.1 of the North Dakota Century Code, relating to soil surveys, and to amend and reenact sections 38-14-01, 38-14-02, 38-14-03, 38-14-04, 38-14-04.1, 38-14-05, 38-14-05.1, 38-14-07, and 38-14-12 of the North Dakota Century Code, relating to policy, definitions, licensing of mining operations, notice of intention to mine, duties of the operator, limitations in granting permits, bond of the operator, and providing a penalty.

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

SECTION 1. AMENDMENT.) Section 38-14-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-01. DECLARATION OF POLICY AND INTENT.) It is declared to be the policy and intent of this state to provide, after surface mining operations are completed, for reclamation of affected lands to encourage productive use including but not limited to: the planting of forests; the seeding of grasses and legumes for grazing purposes; the planting of crops for harvest; the enhancement of wildlife and aquatic resources; the establishment of recreational, home, and industrial sites; and for the conservation, development, management, and appropriate use of all of the natural resources of such areas for compatible multiple purposes; to aid in maintaining or improving the tax base; and protecting the health, safety, and general welfare of the people, as well as the natural beauty and aesthetic values, in the affected areas of this state.

It is also the intent of reclamation practices required by this chapter to restore mined areas designated for agricultural purposes to the level of inherent productivity equal to or greater than that which existed in the permit area prior to mining.

SECTION 2. AMENDMENT.) Section 38-14-02 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-02. DEFINITIONS.) Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

1. "Reclaimed" or "reclaim" means conditioning areas affected by surface mining to make them suitable for any uses or purposes consistent with those enumerated in the statement of policy.

2. "Overburden" means all of the earth and other materials, with the exception of suitable plant growth material, which lie above natural deposits of coal and also means such earth and other materials, with the exception of suitable plant growth material, disturbed from their natural state in the process of surface mining.
3. "Surface mining" relates to the mining of coal by removing the soil material lying above natural deposits thereof, and mining directly from the natural deposits thereby exposed.
4. "Operator" means any person, firm, association, cooperative, corporation, any department, agency, or instrumentality of the state, or any governmental subdivision thereof engaged in and controlling a surface mining operation.
5. "Pit" means a tract of land, from which overburden, or coal, or both, has been or is being removed for the purpose of surface mining.
6. "Final cut" means the last pit created in a surface-mined area.
7. "High wall" and "end wall" mean those sides of the pit adjacent to unmined land.
8. "Affected land" means the area of land from which overburden has been removed for surface mining of coal or upon which overburden or refuse has been deposited, or both.
9. "Refuse" means all waste material directly connected with the cleaning and preparation of coal mined by surface mining.
10. "Ridge" means a lengthened elevation of overburden created in the surface mining process.
11. "Peak" means a projecting point of overburden created in the surface mining process.
12. "Commission" means the public service commission, or such department, bureau, or commission as may lawfully succeed to the powers and duties of that commission.
13. "Permit term" means a period of time beginning with the date upon which a permit is given for surface mining of lands under the provisions of this chapter, and ending with the expiration of the next succeeding three years, plus any extension of the permit granted under this chapter.
14. "Original contour" means a terrain resembling and similar in nature to the terrain existing prior to commencement of mining operations.
15. "Rolling topography" means backfilled and graded at an angle not exceeding that of the approximate original grade of the land.
16. "Suitable plant growth material" means that portion of the soil material (normally the A and, in some cases, the upper portion of the B horizon) lying above the coal which, based upon a soil survey, is found by the commission to be acceptable for respreading on the surface of regraded areas to provide a medium for plant growth.

17. "Soil amendments" means those materials added by the operator to the replaced overburden or suitable plant growth material, or both, to improve the physical condition of the soil in its relation to plant growth capability.
18. "Coal" means a dark-colored compact and earthy organic rock with less than forty percent inorganic components, based on dry material, formed by the accumulation and decomposition of plant material. The term shall include lignite in both oxidized and nonoxidized forms as well as any coal bodies enriched in radioactive materials.
19. "Limited mining plan" means a detailed statement setting forth the matters specified in paragraph (1) of subdivision a of subsection 1 of section 38-14-04, and covering those years of mining included in the permit term.
20. "Extended mining plan" means a detailed written statement setting forth the matters specified in paragraph (1) of subdivision a of subsection 1 of section 38-14-04, and covering not less than ten years immediately succeeding the date of its making or the date of any amendments made thereto. The purpose of such plan shall be to inform the commission of conditions existing in the area proposed for mining sufficiently in advance of the commencement of operations so as to allow the commission to more accurately assess the effects of such proposed operations.
21. "Soil classifier" means a professional soil classifier as defined in subsection 2 of section 43-36-01.
22. "Soil survey" means the identification and mapping of all soil materials lying within the proposed permit area as well as the identification and location of those soil materials which can be used as suitable plant growth material.

SECTION 3.) Section 38-14-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-14-02.1. SOIL SURVEY REQUIRED.) Every operator desiring to engage in the surface mining of coal shall submit a soil survey of the soil material overlying the deposits of coal described in the limited mining plan. If not otherwise available, the survey shall be made by a professional soil classifier as described in subsection 2 of section 43-36-01. A report of the soil survey shall be given to the commission in accordance with subparagraph (e) of paragraph (1) of subdivision a of subsection 1 of section 38-14-04.

SECTION 4. AMENDMENT.) Section 38-14-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-03. NECESSITY OF PERMIT.) It shall be unlawful, after January 1, 1970, for any operator to engage in surface mining of coal without first obtaining from the commission a permit so to do, in such form as is hereinafter provided.

SECTION 5. AMENDMENT.) Section 38-14-04 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-04. APPLICATION FOR PERMIT - MINING PLANS - BOND - FEE.)

1. Any operator desiring to engage in surface mining of coal shall make written application to the commission for a permit. Application for such permit shall be made upon a form furnished by the commission.

Included in the application shall be:

- a. Both a limited and an extended mining plan, each of which shall:
    - (1) Include a description of the tract or tracts of land to be affected by surface mining by the operator during the period for which the plan is written. The description of the land shall include, in such form and detail as the commission may require, the following information:
      - (a) A legal description of the land, so that it may be identified and distinguished from other lands.
      - (b) The identity of the owner of record of the surface rights and subsurface mineral rights.
      - (c) The source of the operator's legal right to mine any such lands.
      - (d) Hydrologic data, and geologic, topographic, and soils maps.
      - (e) The report of the results of a soil survey as required by section 38-14-02.1.
    - (2) State the approximate number of tons of coal to be removed from the land described in the plan.
    - (3) Describe the location and composition of the coal to be mined from the land described in the plan.
    - (4) Include such other information as the commission may require.
  - b. A bond or security to attach to the described lands from and after the time a permit is granted which shall aid in meeting the requirements of section 38-14-07; and a fee computed as follows: A non-refundable filing fee in the amount of two hundred fifty dollars plus the sum of ten dollars per acre or fraction of an acre for all lands included within the permit which will be affected by mining during the permit term. Such ten dollar an acre fee shall be refunded to the operator in the event that his application or any amendments thereto, for which such fee is required, is rejected by the commission.
  - c. A reclamation plan, in such form and detail as the commission shall require, covering the land described in the limited mining plan.
2. Upon the receipt of such application, a bond or security and all fees due from the operator, along with the reclamation plan, mining plans, and other data required to be filed herein, the commission may issue a permit to the operator which shall entitle him during the permit term to engage in surface mining on the land therein described.

3. An operator desiring to have his permit amended to cover additional land under either mining plan shall file an amended application, along with amendments to the appropriate mining plan, the reclamation plan, and other data required to be filed herein, with the commission. Upon receipt of the amended application, and plans, and such additional filing fee, acre fee and bond or security as may be required under the provisions of this chapter, the commission may issue an amendment to the original permit covering the additional land described in the amended application.
4. An operator may withdraw any land described in either mining plan, excepting affected land, by notifying the commission thereof. If land covered by the permit term is so withdrawn, the penalty of the bond or security filed by such operator pursuant to the provisions of this chapter shall be reduced proportionately.
5. Where acreage for which a permit has been in effect is not mined, or where mining operations have not been completed thereon during the permit term, the permit as to such acreage shall, upon application, be extended by the commission for up to three years on a year-to-year basis without payment of any additional fee. Thereafter, the permit may be extended for up to two years on a year-to-year basis, for cause shown, without payment of any additional fee.
6. Other provisions of this section notwithstanding, an operator shall be required to amend his extended mining plan yearly so that such plan shall reflect all mining operations proposed to be conducted within not less than the succeeding ten years.
7. The application for a permit, or extension thereof, shall be deemed approved if not denied within sixty days after the filing thereof. If the permit is not approved, the commission shall state its reasons for disapproval, together with the requirements for approval.

SECTION 6. AMENDMENT.) Section 38-14-04.1 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-04.1. NOTICE.) Upon the filing of an application for a permit, or amendment thereto, as provided for by section 38-14-04, the commission shall serve notice of opportunity for hearing on such application by publication thereof to be printed in the official newspaper of each county wherein land to be included within the permit area lies. In addition, the commission shall cause copies of such notice of opportunity for hearing to be sent by certified mail to the owner of the surface rights of the land to be included within the permit area and to the county auditor of each county wherein land to be included within the permit area lies. The names and post-office addresses of those surface owners specified herein shall be determined from the records of the county register of deeds of each county wherein land to be included within the permit area lies. The commission shall fix a reasonable period of time within which any person desiring to be heard may file a protest or petition for a hearing, which period of time shall not be less than twenty days. Upon the expiration of such period of time in the absence of a protest or a request for hearing, the commission may forthwith dispose of the matter upon the basis of the application and of the submittals and all other factors under consideration. When a petition for a hearing has been made, and good cause has been shown therefor, the commission shall set a time and place for a hearing on the question of whether the permit should be granted. Notice of such hearing shall be given to the operator and to any party previously filing protest or petition for hearing.

SECTION 7. AMENDMENT.) Section 38-14-05 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-05. DUTIES OF THE OPERATOR.) After approval of the reclamation plan by the commission, the operator may engage in surface mining of coal during the permit term upon the lands described in the permit upon the performance of and subject to the following requirements with respect to such lands:

1. The operator shall regrade the area to approximately the original contour or topography unless a different contour or topography shall be required by the commission in order to carry out the purposes and intent of this Act.
2. The operator shall, in such a manner as shall be required by the commission, save, segregate, and respread, suitable plant growth material within the permit area up to a maximum of five feet; provided, however, that if up to five feet of such material is not available within the permit area, all suitable plant growth material that is available shall be spread over the regraded area as prescribed by the commission. In the interest of achieving the maximum reclamation provided for in this chapter, the operator may, or at the direction of the commission shall, utilize such soil amendments as described in subsection 17 of section 38-14-02.
3. The operator shall impound, drain, or treat all runoff water so as to minimize soil erosion, damage to agricultural lands, and pollution of streams and other waters.
4. All final cuts, high walls, and end walls must be backsloped to an angle not exceeding thirty-five percent from the horizontal; provided, however, that an operator may propose alternative plans other than backsloping where a water impoundment or other special topographic feature is desired, if such restoration will be consistent with the purposes of this chapter.
5. The operator shall remove or bury all metal, lumber, equipment, or other refuse resulting from the operation. No operator shall throw, dump, or pile, or permit the throwing, dumping, piling, or otherwise placing of any overburden, stones, rocks, coal, particles of coal, earth, soil, dirt, debris, trees, wood, logs, or other materials or substances of any kind or nature beyond or outside the area of land which is under permit and for which bond has been posted; nor shall any operator place any of the foregoing substances in such a way that normal erosion or slides brought about by natural causes will permit the same to go beyond or outside the area of land which is under permit and for which bond has been posted.
6. After backsloping or backfilling, or both, surface mining operations shall not approach property lines, established right-of-way lines of any public roads, streets, or highways closer than a distance of twenty feet.
7. The operator shall submit to the commission no later than the twenty-fifth day of October during each year of the permit term, a map in a form acceptable to the commission showing the location of the pit or pits by section, township, range, and county, with such other description as will identify the land which the operator has affected by surface mining during such permit term and has completed mining operations thereon, with a legend upon such map showing the number of acres of affected land.

8. The commission's approval or modification of the operator's reclamation plan shall include consideration of the advice and technical assistance of the state soil conservation committee, the state game and fish department, the state forester, the state geologist, the state engineer, and those state agencies versed in soils, agronomy, ecology, geology, and hydrology, and other agencies and individuals experienced in reclaiming surface-mined lands. In addition, the operator and the commission shall have the landowner designate his preference for a land use plan covering his affected land. The operator's plan shall designate which parts of the affected land shall be reclaimed for forest, pasture, crop, horticultural, homesite, recreational, industrial, or other uses including food, shelter, and ground cover for wildlife, and shall show the same by appropriate designation on the reclamation map. The plan shall be deemed approved if not disapproved or modified by the commission within sixty days of its receipt thereof. If the plan is disapproved or modified, the commission shall state the reasons for such disapproval or modification, together with the requirements for approval.
9. The operator shall sow, set out, or plant upon the affected land described in the reclamation plan and map or maps, seeds, plants, cuttings or trees, shrubs, grasses, or legumes as shall be approved in writing by the commission.
10. All reclamation provided for hereunder shall be carried to completion by the operator prior to the expiration of three years after termination of the permit term. Where, in the judgment of the commission, affected land fails to support approved perennial plant species or annual crop production, at the end of three years, the commission shall, at the request of the operator, extend the reclamation period from year to year for a period of five years from the termination of the permit term on the land in question. If further extension of the reclamation period is necessary to accomplish acceptable reclamation, such extension shall be made at the discretion of the commission, or the commission shall declare forfeiture of the surety bond or security on such land not satisfactorily reclaimed.
11. If the operator is unable to acquire sufficient planting stock of desired tree species from state nurseries or any nursery within the state, or acquire such tree species elsewhere at reasonable prices, the commission shall grant the operator an extension of time until planting stock is available to plant such land as originally planned, or shall permit the operator to select an alternate method of reclamation in keeping with the provisions of this chapter.
12. Upon the application of the operator, the commission in its discretion may allow, or upon its own motion may order, the modification of an approved reclamation plan, provided the modified plan will carry out the purposes of this chapter.
13. Until reclamation has been accomplished to the satisfaction of the commission, control of the affected lands shall remain in the commission, and the commission may allow use of the land which is not inconsistent with reclamation.
14. If the surface owner's domestic or livestock water supply has been disrupted, or diminished in quality or quantity by surface mining operations,

the operator shall, at no cost to the surface owner, make such repairs, alterations, or construction as will ensure the delivery to the surface owner of that quality and quantity of water available to such surface owner prior to mining. Repairs, alterations, or construction required herein shall be considered to be a part of reclamation for the purposes of subsection 3 of section 38-14-07.

15. The operator shall keep a book containing the following information concerning the permitted mine or mines:
  - a. Its name;
  - b. Its location;
  - c. Date when it began business;
  - d. Name of the owner;
  - e. Name of the operator;
  - f. Number of tons of coal mined therein;
  - g. Number of men employed therein; and
  - h. Price received for coal sold.

In addition, the operator shall annually make a verified report of the foregoing to the commission. The commission shall not make public the price received for coal sold at any individual mine, but may make public the total valuation of all coal sold in the state.

SECTION 8. AMENDMENT.) Section 38-14-05.1 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-05.1. LIMITATIONS.)

1. The legislature finds that there may be certain areas in the state of North Dakota which are impossible to reclaim either by natural growth or by technological activity, and that if surface mining is conducted in these certain areas, such operations may naturally cause stream pollution, landslides, flooding, the permanent destruction of land for agricultural purposes without approved rehabilitation for other uses, the permanent destruction of consequential aesthetic values, the permanent destruction of consequential recreational areas and the future use of the area and surrounding areas, thereby destroying or impairing the health and property rights of others, and, in general, creating hazards dangerous to life and property so as to constitute an imminent and inordinate peril to the welfare of the state, and that such areas shall not be mined by the surface mining process. Therefore, in such instances, authority is hereby vested in the commission to delete certain areas from all surface mining operations; to reject the application, or any part of such application; to require the operator to amend any application for a permit, or any part of such application, including any mining plan; or to require any combination of the foregoing.
2. No application for a permit or any part of such application shall be approved by the commission if there is found on the basis of the information set forth in the application or from information available to the commission

and made available to the applicant that the requirements of this chapter or rules and regulations hereafter adopted will not be observed or that there is not probable cause to believe that the proposed method of operation, backfilling, grading, or reclamation of the affected area can be carried out consistent with the purposes of this chapter.

3. If the commission finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the state of North Dakota with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in stream beds, landslides, water pollution, or permanent destruction of land for agricultural purposes without approved rehabilitation for other uses cannot feasibly be prevented, the commission may delete such part of the land described in the application upon which such overburden exists or take any other action set forth in subsection 1 of this section necessary to protect the water or land from impairment or destruction.
4. If the commission finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public or private property other than property subject to a coal lease, then it may delete such areas from the permit application before it can be approved or take any other action set forth in subsection 1 of this section necessary to protect such buildings, roads, or waters from impairment or destruction.
5. The commission shall not give approval to surface mine where the operation will adversely affect state, national, or interstate parks, or any historical, archaeological, or paleontological site, unless adequate screening and other measures as approved by the commission are incorporated into the permit application.
6. Whenever the commission finds that ongoing surface mining operations are causing or are likely to cause any of the conditions set forth in subsection 1 of this section, it may order immediate cessation of such operations and take such other action or make such changes in the permit as it may deem necessary to avoid such described conditions.

SECTION 9. AMENDMENT.) Section 38-14-07 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-07. BOND OF OPERATOR - AMOUNT - SUFFICIENCY OF SURETY - VIOLATIONS - COMPLIANCE.) Any bond herein provided to be filed with the commission by the operator shall be in such form as the commission shall prescribe, payable to the state of North Dakota, conditioned that the operator shall faithfully perform all requirements of this chapter and comply with all rules of the commission made in accordance with the provisions of this chapter. Such bond shall be signed by the operator as principal, and by a good and sufficient corporate surety, licensed to do business in North Dakota, as surety. The penalty of such bond shall be one thousand five hundred dollars for each acre or portion thereof of land to be affected by surface mining for the ensuing year. However, a larger bond may be required if the commission shall determine that the cost of reclamation may exceed one thousand five hundred dollars. In lieu of such bonds, the operator may deposit cash or government securities or both with the commission in an amount equal to that of the required surety bond on conditions as above prescribed. The penalty of the bond or amount of cash and securities shall be increased or reduced from time

to time as provided in this chapter. Such bond or security shall be in effect and subject to forfeiture in accordance with this chapter from and after the time a permit is granted by the commission until the mined acreages, or portions thereof, have been reclaimed, approved, and released.

A bond filed as above prescribed shall not be canceled by the surety unless it shall give not less than ninety days' notice to the commission, and in no event shall a bond be canceled on lands that at the time of cancellation have become affected lands under the provisions of this chapter.

If the license to do business in North Dakota of any surety upon a bond filed with the commission pursuant to this chapter shall be suspended or revoked, the operator, within thirty days after receiving notice thereof from the commission, shall substitute for such surety a good and sufficient corporate surety licensed to do business in North Dakota. Upon failure of the operator to make substitution of surety as herein provided, the commission shall have the right to suspend the permit of the operator until such substitution has been made.

The commission shall give written notice to the operator of any violation of this chapter or noncompliance with any of the rules and regulations promulgated by the commission hereunder and if corrective measures, approved by the commission, are not commenced, or agreed to within ninety days, the commission may proceed as provided in section 38-14-09 to request forfeiture of the bond or security. The amount of forfeiture shall be one thousand five hundred dollars, or the amount prescribed in the permit, for each acre or portion thereof of affected land. Such forfeiture shall fully satisfy all obligations of the operator to reclaim the affected land under the provisions of this chapter. However, any operator who refuses or willfully fails to comply with the provisions of this chapter shall be ineligible for any further mining permits, and shall cease all mining operations in this state within thirty days after the forfeiture.

The commission shall have the power to reclaim, in keeping with the provisions of this chapter, any affected land with respect to which a bond has been forfeited.

Whenever an operator shall have completed all requirements under the provisions of this chapter as to any affected land, he shall notify the commission thereof. If the commission determines that the operator has completed reclamation requirements on any portion of the affected land and achieved results thereon appropriate to the use for which the area was reclaimed, the commission shall release the operator from further obligations regarding any such affected land and the penalty of the bond shall be reduced proportionately.

Notwithstanding the foregoing requirements, the operator may secure a decrease in the penalty herein provided per acre in the following fashion:

1. Upon completion of the backsloping and grading, forty percent of the per-acre penalty will be released;
2. Upon completion of the respreading of suitable plant growth material as required herein, an additional thirty percent of the penalty per acre may be released; and
3. The remaining thirty percent of the penalty will remain in effect until reclamation has been accomplished as provided herein.

SECTION 10. AMENDMENT.) Section 38-14-12 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14-12. PENALTIES.) Any person required by this chapter to have a permit who engages in surface mining without previously securing a permit to do so as prescribed by this chapter, is guilty of a class B misdemeanor. Each day of operation without the permit required by this chapter shall be deemed a separate violation.

Any person who knowingly and willfully violates any regulation issued or approved pursuant to this chapter or makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or who willfully falsifies, tampers with, or knowingly and willfully renders inaccurate, any monitoring device or method required to be maintained under this chapter, shall be guilty of a class A misdemeanor.

Notwithstanding any other provision of this chapter, the commission may by injunctive procedures, without bond or other undertaking, proceed against any operator found to be surface mining without a permit or in violation of the provisions of this chapter, or the rules and regulations promulgated thereunder. No liability whatsoever shall accrue to the commission or its authorized representative in proceeding against any operator pursuant to this section.

Approved April 8, 1975

## CHAPTER 319

SENATE BILL NO. 2086  
(Stroup)

## SURFACE MINING REPORTS

AN ACT to provide for annual reports to the state soil conservation committee of surface mining operations for minerals other than coal, annual reports by the state soil conservation committee to local soil conservation districts of surface mining operations conducted within the districts, and exemption of certain surface mining operations.

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

SECTION 1. DEFINITIONS.) In this Act, unless the context or subject matter otherwise requires:

1. "Affected land" means the area of land from which overburden is removed as the result of a surface mining operation or upon which overburden or refuse is deposited as the result of a surface mining operation, or both.
2. "Committee" means the state soil conservation committee.
3. "Landowner" means the owner of land affected by a surface mining operation.
4. "Mineral" includes cement rock, clay, gravel, limestone, manganese, molybdenum, peat, potash, pumicite, salt, sand, scoria, sodium sulfate, stone, zeolite, or other minerals, but does not include coal.
5. "Overburden" means all of the earth and other materials which lie above natural deposits of minerals, and also means such earth and other materials disturbed from their natural state in a surface mining operation.
6. "Person" means any individual, firm, association, partnership, cooperative, corporation, or any department, agency, or instrumentality of the state or any subdivision thereof.
7. "Reclamation" means the reconditioning of the area of land affected by a surface mining operation to make the area suitable for productive use, including, but not limited to, forestry, agriculture, grazing, wildlife, recreation, residential, and industrial sites.

8. "Surface mining operation" relates to the mining of minerals by removing the overburden lying above natural deposits thereof, and mining directly from the natural deposits thereby exposed which will, within thirty-six consecutive months, result in the removal of ten thousand cubic yards or more of product, including overburden, or affect one acre or more.

SECTION 2. SURFACE MINING OPERATION - REPORT TO COMMITTEE REQUIRED.) Except as provided for in section 6 of this Act, no person shall conduct a surface mining operation without complying with the reporting requirements of this Act. Any person conducting a number of operations, each of which, within thirty-six consecutive months, results in the removal of less than ten thousand cubic yards of earthen material or product, including overburden, or affect less than one acre, but which, in the aggregate, result in the removal of ten thousand cubic yards or more of earthen material or product, including overburden, within thirty-six consecutive months, or affect one acre or more within thirty-six consecutive months, shall be subject to the provisions of this Act.

SECTION 3. ANNUAL REPORT TO COMMITTEE - WHEN FILED - CONTENTS.) Any person conducting a surface mining operation shall file with the committee a report on each surface mining operation conducted during the calendar year. The report shall be filed on or before December thirty-first of each year in which the surface mining operation is conducted. The annual report shall be on a form provided by the committee which shall, in addition to any pertinent data required by the committee, include:

1. The name and address of the landowner and of the person conducting the surface mining operation, and, if any of these are corporations or other business entities, the names and addresses of their principal officers and resident agent for service of process;
2. The location of the surface mining operation by section, township, range, and county;
3. The date the surface mining operation was commenced;
4. The minerals mined by the surface mining operation;
5. A description of the surface mining operation;
6. The maximum depth of the surface mining operation;
7. The number of acres affected by the surface mining operation for the calendar year covered by the report;
8. An estimate of the number of acres to be affected by the surface mining operation during the calendar year next succeeding the report;
9. The cubic yardage of mineral mined and overburden

- disturbed by the surface mining operation for the calendar year covered by the report;
10. An estimate of the cubic yardage of mineral to be mined and overburden to be disturbed by the surface mining operation during the calendar year next succeeding the report;
  11. A map of the affected land if more than ten acres have been disturbed by the surface mining operation, or, regardless of the amount of land to be disturbed, if the committee finds that conditions warrant it and so requests a map. The map shall show the boundaries of the affected land, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the affected land, and the location of access roads built in conjunction with the surface mining operation;
  12. The location of any segment of the affected land that will not be further disturbed by the surface mining operation;
  13. The date of completion or abandonment of the surface mining operation, if completed or abandoned; and
  14. The date of beginning, extent, and current status of any reclamation activities performed during the period covered by the annual report or planned to be performed after completion or abandonment of the surface mining operation or any segment of the surface mining operation. The description of reclamation activities shall indicate which parts of the affected land are intended to be reclaimed for forest, pasture, crop, horticultural, home-site, recreational, industrial, or other uses, including food, shelter, and ground cover for wildlife, and shall show the same by appropriate designation on a reclamation map.

SECTION 4. POWERS OF THE COMMITTEE.) The committee shall have the power to:

1. Exercise general supervision and administration and enforcement of this Act.
2. Encourage and conduct training, research, experiments, and demonstrations, and to collect and disseminate information relating to surface mining operations and reclamation of lands and waters affected by surface mining operations.
3. Make, amend, and rescind, from time to time, such rules and regulations, in the manner prescribed by chapter 28-32, as may be appropriate to effectuate the purposes and provisions of this Act.

4. Make investigations or inspections which may be deemed necessary to ensure compliance with any provisions of this Act.
5. Cooperate with and receive technical and financial assistance from the United States, any state, or any department, agency, or officer thereof for any purposes relating to the reclamation of any affected lands.

SECTION 5. COMMITTEE TO TRANSMIT ANNUAL REPORT TO LOCAL SOIL CONSERVATION DISTRICTS.) The committee shall prepare and transmit to local soil conservation districts, on or before June thirtieth of each year, a report giving information about surface mining operations and reclamation activities conducted in the soil conservation districts during the preceding calendar year.

SECTION 6. SURFACE MINING OPERATIONS EXEMPT FROM REPORTING REQUIREMENTS.) The reporting requirements of this Act shall not apply to a surface mining operation which is subject to a requirement by a department or agency of the state that the person conducting the surface mining operation obtain a written release from the landowner approving the condition of the affected land upon completion or abandonment of the surface mining operation. Nothing in this Act shall be construed to be applicable to a surface mining operation which is regulated under the provisions of chapter 38-14.

Approved March 12, 1975

## CHAPTER 320

SENATE BILL NO. 2059  
(L. Christensen)  
(From Legislative Council Study)

## COAL LEASING PRACTICES ACT

AN ACT to provide for legislative intent, to provide the authority to cancel coal leases by either party, to provide for a maximum primary term of years in a coal lease, to require that the advance royalty provision of a lease be acknowledged specially in order to be valid, and to declare an emergency.

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

SECTION 1. TITLE.) This Act shall be known as the "North Dakota Coal Leasing Practices Act".

SECTION 2. LEGISLATIVE INTENT.) It is the intent of the legislative assembly of the state of North Dakota to exercise the legitimate police power of the state in order to protect the economic welfare of the citizens who rely for their livelihood on agricultural production and thereby protect the agricultural economic base of the state. It is in the public interest that certain of the terms and conditions of the leases of coal in place be regulated. The provisions of this Act shall apply to all leases for the mining of coal entered into after the effective date of this Act.

SECTION 3. DEFINITIONS.) In this Act, unless the context or subject matter otherwise requires:

1. "Advance royalty" shall mean the offset contemplated which would allow payments for rent, bonuses, and damages under the terms of the lease to be deducted from the amount of the royalty due to the lessor when the mining operation actually begins.
2. "Mineral agreement" shall mean the agreement between either the surface estate owner and the mineral developer or between the mineral estate owner and the mineral developer which gives the mineral developer the right to conduct mining operations. The mineral agreement may consist of the mineral lease and any other document or documents used to express the entire agreement between the parties.

3. "Mining operation" shall mean any type of activity, the aim of which is to discover the presence of coal, or to remove the coal so discovered from its original position on or in the land by any means whatsoever.

SECTION 4. USE OF SIGHT DRAFT - CANCELLATION OF LEASE AUTHORIZED.)

1. Any trust or escrow document relating to a coal lease, or any sight draft or other negotiable or nonnegotiable instrument given as full or partial consideration for a coal lease, may authorize the first party to the document or instrument to reject the lease or refuse to honor the draft or other instrument at the time it is due and payable because of a bona fide failure of title.
2. Either party to a coal lease may cancel the coal lease until midnight of the fifteenth business day after the day on which the lessor executed the coal lease. Cancellation shall occur and be effective when the party desiring to cancel sends written notice of the cancellation of the lease to the other party by registered mail, return receipt requested, if mailed within the specified amount of time. Notice of cancellation given by either party shall be effective if it indicates that party's intention not to be bound by the lease.

SECTION 5. MAXIMUM TERM OF YEARS.)

1. No coal lease executed after the effective date of this Act shall be valid for a primary term of more than twenty years, unless operations for mining are taking place on the leased land within the primary term, or the land is subject to a valid mining permit, and for so long thereafter as coal is regularly mined therefrom, or the land is subject to permit. This limitation shall not prohibit agreements for extensions or renewals of the primary term.

SECTION 6. ACKNOWLEDGEMENT OF ADVANCE ROYALTY PROVISION REQUIRED.) All advance royalty provisions contained in coal leases executed after the effective date of this Act must be specially explained to the lessor before he executes the lease. The lessor must execute an acknowledgement indicating his knowledge of the presence of the advance royalty provision or the advance royalty provision shall be void. The acknowledgement must be printed on the lease document in print which is larger than any other print on the document, and it must refer the lessor to the exact provision of the lease which permits advance royalty.

An example of the type of acknowledgement required by this section is as follows: THE LESSOR HEREBY ACKNOWLEDGES THAT HE IS AWARE OF SECTION \_\_\_\_\_ OF THIS LEASE RELATING TO ADVANCE ROYALTIES

SECTION 7. WAIVER.) The terms of a coal lease regulated by this chapter are hereby declared to be absolute and unwaivable by either party to the coal lease or to the mineral agreement, regardless of lease terms to the contrary. Any instrument which purports to waive the terms specified in this Act is null and void and of no legal effect.

SECTION 8. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved April 9, 1975

## CHAPTER 321

HOUSE BILL NO. 1062  
(Bunker, Winge)  
(From Legislative Council Study)

## SURFACE OWNER PROTECTION ACT

AN ACT to require written notice and approval before a permit to surface mine land is issued by the public service commission, to provide for surface damage and disruption payments, and to provide for a financial obligation to reclaim land disturbed by a mining operation.

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

SECTION 1. TITLE.) This Act shall be known as the "Surface Owner Protection Act".

## SECTION 2. LEGISLATIVE FINDINGS.)

1. The legislative assembly finds that it is necessary to exercise the police power of the state as described in this Act to protect the public welfare of North Dakota which is largely dependent on agriculture, and to protect the economic well-being of individuals engaged in agricultural production. This finding recognizes that the people of North Dakota desire to retain a strong agricultural economy and that North Dakota currently produces three percent of the food for the entire nation.
2. Furthermore, the legislative assembly finds that there is an abundance of minerals in North Dakota which can be used for the production of electricity, synthetic natural gas, and other forms of energy, and that energy produced from North Dakota minerals is needed by the nation and North Dakota is capable of producing up to two and one-half percent of the nation's energy needs if the minerals found here are fully developed.
3. The legislative assembly further finds that mining development may temporarily interfere with portions of the agricultural economy.

SECTION 3. PURPOSE AND INTERPRETATION.) It is the purpose of this Act to provide the maximum amount of constitutionally permissible protection to surface owners from the undesirable effects of development, without their consent, of minerals underlying their surface. This Act is to be interpreted in light of the legislative intent expressed herein. The provisions of this Act shall be interpreted to benefit surface owners, regardless of how the mineral estate was separated from the surface estate and regardless of who executed the document which gave the mineral developer the right to conduct mining operations on the land.

SECTION 4. APPLICABILITY.) This Act shall apply to and place requirements on the holder of the mineral estate, on the mineral developer, and on the public service commission regardless of the means used to separate the mineral estate from the surface estate.

SECTION 5. DEFINITIONS.) In this Act unless the context or subject matter otherwise requires:

1. "Agricultural production" shall mean the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, whether or not such animals are to be sold commercially.
2. "Disturbed" shall mean any alteration of the topsoil of the land whether the alteration is for the purpose of exploring for coal or for the purpose of carrying out an actual mining operation.
3. "Minerals" shall mean coal.
4. "Mineral developer" shall mean the person who acquires the mineral rights or lease for the purpose of extracting or using the mineral for nonagricultural purposes.
5. "Mineral estate" shall mean an estate in or ownership of all or part of the minerals under a specified tract of land.
6. "Mineral lease" shall mean any lease which purports to convey the minerals or rights relating to the minerals under a specified tract of land separate from the surface, and any other type of lease which gives or conveys rights to minerals.
7. "Mineral owner" shall mean any person who owns the mineral estate under a specified tract of land by means of a mineral deed, or by an exception or reservation in the deed, grant, or conveyance of the surface, or by any other means whatsoever.
8. "Mining operation" shall mean any type of activity, the aim of which is to discover the presence of

minerals, or to remove the minerals so discovered from their original position on or in the land by any means whatsoever.

9. "Surface estate" shall mean an estate in or ownership of the surface of a particular tract of land.
10. "Surface owner" shall mean the person or persons who have valid title to the surface of the land, regardless of whether or not a portion of the land surface is occupied for a residence.

SECTION 6. WRITTEN NOTICE AND CONSENT REQUIRED BEFORE PERMIT TO SURFACE MINE LAND MAY BE ISSUED.)

1. Before the public service commission may issue a permit to surface mine land, the mineral developer must give the surface owner written notice of the type of land disturbance or mining operation contemplated by the mineral developer. This notice shall sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the extent of the land disturbance on his use of the property. The notice shall be accompanied by an enlarged United States geological survey topographic map showing the specific locations to be covered by the mining operation. The notice and map shall be submitted to the surface owner at least thirty days before the application for a permit to surface mine is to be submitted.
2. The public service commission shall not issue a permit to surface mine land unless the permit application is accompanied by statements of consent, executed by each surface owner whose land is included within the permit area, to have surface mining conducted upon his land. The requirement established by this section is in addition to the requirements of chapter 38-14.
3. A certified copy of a mineral lease executed by the surface owner in favor of the mineral developer proposing the mining project or his agent, or a certified copy of a surface lease executed by the surface owner in favor of the mineral developer proposing the mining project or his agent, if filed with the application for a permit to surface mine, may be used to fulfill the subsection 2 requirement of a statement of consent to have surface mining conducted.
4. If the mineral developer desires to have his permit amended to cover additional land, he must file either consent statements or surface or mineral leases executed by the surface owners of such additional land as required by this section with the application to amend the permit to cover additional land. If, in addition, all of the requirements of

chapter 38-14 are met, the public service commission may issue the amended permit.

5. If the mineral owner or the mineral developer is unable to obtain the surface owner's consent, the mineral owner or mineral developer may bring an action in district court to establish the relative rights of the parties and the measure of damages to the surface owner. At any time after the filing of any such action and either before or after the final decision of the district court, upon a showing to the satisfaction of the court that the surface owner will be adequately compensated for lost production, lost land value, and loss of the value of improvements due to the mining activity, the court shall issue an order which will authorize the public service commission to issue a permit to surface mine land without the consent which would otherwise be required by this section. In the event the damages awarded by the court to the surface owner exceed the amount tendered or otherwise provided for, the court shall award to the surface owner reasonable attorney's fees in addition to any other sums determined to be due to him.

#### SECTION 7. SURFACE DAMAGE AND DISRUPTION PAYMENTS.)

1. Unless the mineral lease, surface lease, or consent statement executed by the surface owner provides for payments to the surface owner, the mineral developer shall annually pay to the surface owner a sum of money equal to the amount of damages sustained by the surface owner for loss of agricultural production caused by mining activity, provided that it can be shown that the land disturbed or to be disturbed has regularly been used for agricultural production. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. The payments contemplated by this section shall only cover land actually mined, disturbed, or to be mined during the year or years during which agricultural production was actually interrupted and which land has not been restored to the level of agricultural productivity required by the plan submitted pursuant to chapter 38-14. The payments to be made hereunder shall be made before December thirty-first of that calendar year in which the loss occurred.
2. If a surface mining operation comes within five hundred feet of any farm building, the mineral developer shall pay to the owner of the farm building either the fair market value of the farm building or the entire cost of removing the farm building to a location where the mining operation will not come within five hundred feet of such building or buildings. The payments contemplated hereunder shall be in addition to any payments required by the terms of any mineral lease, unless the surface owner is a party to

the lease and the lease provides for damages as contemplated in this subsection in an amount not less than the amount which would be recoverable under this section.

3. The rights granted to the surface owner by this section are hereby declared to be absolute and unwaivable. Any instrument which purports to waive rights granted by this section is null and void and of no legal effect.

SECTION 8. FINANCIAL OBLIGATION TO RECLAIM.)

1. It is hereby declared to be the financial obligation of the mineral developer to pay the entire cost of the surface reclamation necessitated by that developer's mining operation. This obligation shall in no way be limited by the amount of the bond required of an "operator" by chapter 38-14.
2. If a mineral developer fails to begin reclamation of the land disturbed by a mining operation within one year after the completion of the mining operation in accordance with the plan submitted to the public service commission pursuant to chapter 38-14 and regulations promulgated thereunder, the surface owner may notify the public service commission, which commission shall take all of the necessary action lawfully authorized to obtain complete compliance with the reclamation plan.
3. An action at law may be maintained to recover sums due to the surface owner under this section and under section 7 of this Act. The surface owner shall be awarded reasonable attorney's fees for the maintenance of the action in addition to any other sums determined to be due to him.

Approved April 8, 1975