

# MINING AND GAS AND OIL PRODUCTION

## CHAPTER 401

HOUSE BILL NO. 1521  
(R. Anderson)

### GAS FLARING

AN ACT to limit flaring of gas.

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

SECTION 1. Flaring of gas restricted - Imposition of tax - Payment of royalties - Industrial commission authority. As permitted under rules of the industrial commission, gas produced with crude oil from an oil well may be flared during a one-year period from the date of first production from the well, or until June 30, 1986, for wells in production prior to July 1, 1985. Thereafter, flaring of gas from the well must cease and the well must either be capped or connected to a gas gathering line. For a well operated in violation of this section, the producer shall pay royalties to royalty owners and gross production tax imposed under section 57-51-02 upon the value of the flared gas. The industrial commission shall enforce this section and, for each well operator found to be in violation of this section, shall determine the value of flared gas for purposes of payment of gross production tax and royalties under this section and its determination is final. A producer may obtain an exemption from this section from the industrial commission upon application and a showing that connection of the well to a natural gas gathering line is economically infeasible at the time of the application or in the foreseeable future or that a market for the gas is not available.

Approved March 29, 1985

## CHAPTER 402

SENATE BILL NO. 2471  
(D. Meyer)

## INDUSTRIAL COMMISSION RULE VIOLATIONS

AN ACT to amend and reenact subsection 3 of section 38-08-14 and section 38-08-16 of the North Dakota Century Code, relating to the suspension of orders of the industrial commission and fixing the amount of supersedeas bonds and penalties imposed upon violators of rules, regulations, or orders of the industrial commission; and to declare an emergency.

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

SECTION 1. AMENDMENT. Subsection 3 of section 38-08-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. At the time of filing the notice of appeal, if an application for the suspension of the order is filed, the commission ~~shall~~ may enter an order suspending the order complained of and fixing the amount of the supersedeas bond. Within ten days after the entry of an order by the commission which suspends the order complained of and fixes the amount of the bond, the appellant must file with the commission a supersedeas bond in the required amount and with proper surety. Upon approval of the bond, the order of the commission shall suspend ~~suspend~~ suspending the order complained of is effective until its final disposition upon appeal. The bond shall run in favor of the commission for the use and benefit of any person who may suffer damage by reason of the suspension of the order in the event the same is affirmed by the district court. If the order of the commission is not superseded, it shall continue in force and effect as if no appeal was pending, unless a stay is ordered by the court to which the appeal is taken under section 28-32-20.

SECTION 2. AMENDMENT. Section 38-08-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**38-08-16. Civil penalty.** Any person who violates any provision of this chapter, or any rule, regulation, or order of the commission shall be subject to a civil penalty to be imposed by the commission not to exceed twelve thousand five hundred dollars for each offense, and each day's violation shall be a separate offense, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter. Any such civil penalty may be compromised by the commission. The penalties provided in this section, if not paid, shall be recoverable by suit filed by the attorney general in the name and on behalf of the commission, in the district court of the county in which the defendant resides, or in which any defendant resides, if there be more than one defendant, or in the district court of any county in which the violation occurred. The payment of the penalty shall not operate to legalize any illegal oil, illegal gas, or illegal product involved in the violation for which the penalty is imposed, or to relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of the violation.

**SECTION 3. EMERGENCY.** This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 27, 1985

## CHAPTER 403

SENATE BILL NO. 2455  
(Senator D. Meyer)  
(Representative Murphy)

### OIL AND GAS PRODUCTION COMMINGLING

AN ACT to create and enact a new section to chapter 38-08 and a new section to chapter 64-02 of the North Dakota Century Code, relating to commingling of production from two or more oil or gas wells in a storage facility, metering of oil and gas production, and testing of oil and gas production meters; and to provide an appropriation.

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

SECTION 1. A new section to chapter 38-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Commingling of production - Central production facility - Metering of production - Testing of meters. A producer may not commingle production from two or more oil or gas wells with diverse ownership in a storage facility without prior approval of the commission after notice and opportunity for hearing. If the commingling of production is for the express purpose of separating, metering, holding, and marketing of production, the owner of the wells shall apply to the commission for approval of the proposed commingling of production at a storage facility. If wells producing into a centralized storage facility have diverse ownership, the production from each well must be measured by meters approved by the commission and tested by the department of weights and measures as provided in section 2 of this Act or production must be measured by some other method the commission has approved after notice and opportunity for hearing. If wells producing into a centralized storage facility have common ownership, including the common ownership of the working interest, the common ownership of the royalty ownership, and the common ownership of any overriding royalty owners, the production from each well need not be measured on meters approved by the commission if the owner of the wells demonstrates to the commission that the production from each well can be accurately determined at reasonable intervals by other means.

SECTION 2. A new section to chapter 64-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Duty of department to test accuracy of oil and gas production meters. The department shall randomly test and certify the accuracy of meters used to measure oil and gas production under section 1 of this Act. The owner of the well shall contract for the testing of all meters with an independent contractor or may employ a qualified meter specialist approved by the department. The owner of the well shall repair or replace any meter that has a variance in excess of department standards. The department shall, in accordance with chapter 28-32, determine the fee to be charged by the department for testing meters. All fees collected under this section must be paid to the general fund in the state treasury.

SECTION 3. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$163,800, or so much thereof as may be necessary, to the public service commission for the purpose of implementing section 2 of this Act for the biennium beginning July 1, 1985, and ending June 30, 1987.

Approved April 15, 1985

## CHAPTER 404

HOUSE BILL NO. 1544  
(Hughes)

### OIL AND GAS RESERVOIR DATA FUND

AN ACT to create and enact a new section to chapter 38-08 of the North Dakota Century Code, to establish a fund for providing oil and gas reservoir data compiled by the industrial commission to state, federal, and county departments and agencies, and members of the general public; and to provide an appropriation.

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

SECTION 1. A new section to chapter 38-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Oil and gas reservoir data fund - Appropriation. There is hereby established an oil and gas reservoir data fund to be used for defraying the costs of providing reservoir data compiled by the commission to state, federal, and county departments and agencies, and members of the general public. All moneys collected pursuant to section 38-08-04 for providing reservoir data under this section shall be deposited in the oil and gas reservoir data fund. This fund shall be maintained as a special fund and all moneys transferred into the fund are hereby appropriated and shall be used and disbursed solely for the purpose of paying the current cost of providing such information as determined by the commission, based on actual costs.

Approved March 14, 1985

## CHAPTER 405

HOUSE BILL NO. 1399  
(Martin, Knudson)

## DRILL HOLE PLUGGING REQUIREMENTS

AN ACT to amend and reenact sections 38-08.1-06 and 38-08.1-06.1 of the North Dakota Century Code, relating to the plugging of drill holes for subsurface mineral exploration; and to provide a penalty.

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

SECTION 1. AMENDMENT. Section 38-08.1-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

1. ~~Unless otherwise agreed to between the owner of the surface or lessee and the person required by this section to plug the drill hole,~~ Drill holes must be plugged and abandoned as required by this section.
2. The seismic company responsible for the plugging and abandonment of seismic shot holes shall notify the board of county ~~commission~~ commissioners in writing that it intends to plug and abandon the drill hole. The required notice must be received by the commission board at least twenty-four hours prior to the time plugging activities are scheduled to begin. The notice must include the date and time the activities are expected to commence, the location by section, township, and range of the holes to be plugged, and the name and telephone number of the person in charge of the plugging operations. A copy of the notice must be sent to the landowner or lessee at the same time it is sent to the board of county ~~commission~~ commissioners. The seismic company shall notify the board of county commissioners in writing upon completion of the plugging operation. Any person violating this subsection is guilty of an infraction.

3. All seismic shot holes must be plugged as soon after being used as reasonably is practicable; however, they may not remain unplugged for a period of more than thirty days unless, upon application, the board of county commission commissioners grants an extension which may not exceed ninety days. All seismic shot holes must be temporarily capped during the period between drilling and final plugging.
4. The plug must have permanently affixed to it a durable nonrusting metal or plastic tag or plate imprinted with the name of the operator responsible for the plugging of the hole and the operator's permit number.
5. The surface around each seismic shot hole must be restored to its original condition insofar as restoration is practicable and all stakes, markers, cables, ropes, wires, primacord, cement or mud stacks, and any other debris or material not native to the area must be removed from the drill site and deposited in a sanitary landfill.

SECTION 2. AMENDMENT. Section 38-08.1-06.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

1. Except as provided in this section, all seismic holes must be filled:
  - a. Filled with a bentonite-water slurry by hose injection and displacement upwards from the bottom up. The slurry mixture must have a marsh funnel viscosity of sixty seconds or greater per quart [0.95 liter] (subject to field verification on site), and must contain a minimum of twenty-eight pounds [12.70 kilograms] of commercial plugging bentonite per forty-two gallons [158.99 liters] of water. A mechanical bridge plug must be set on top of the slurry mixture followed by a cement plug at least one foot [30.48 centimeters] in length. The top of a cement plug must be at least four feet [1.22 meters] below the ground surface. The remainder of the hole must be filled with native surface material nonmetallic perma-plug, imprinted or tagged with the name and permit number of the person conducting the geophysical exploration, must be set four feet [1.22 meters] below the surface and, above the perma-plug, native surface material must be used to fill the seismic hole to the surface; or
  - b. Preplugged using coarse-ground, sodium bentonite chunks of sizes not less than three-eighths of an inch [9.53 millimeters] nor greater than seven-eighths of

an inch [22.23 millimeters] in diameter, which have not been chemically treated. Sodium bentonite chunks in packages that have moisture contents lower than fifteen percent or higher than nineteen percent, or with greater than fifteen percent inert solids may not be used. Under this subdivision, a seismic hole must be preplugged with a minimum of one hundred pounds [45.36 kilograms] of sodium bentonite for each fifty feet [15.24 meters] of hole depth, placed above the explosive charge, with the remainder of the hole plugged with drill cuttings to within four feet [1.22 meters] of the surface. Backfill shot holes must be filled with sodium bentonite to four feet [1.22 meters] below the surface and with a filling of native material to the surface.

2. Seismic holes that penetrate artesian water deposits must be stabilized with a cement slurry from the maximum depth attainable up to approximately four feet [1.22 meters] below the ground surface or with sodium bentonite chunks pursuant to subdivision b of subsection 1 of this section, and stabilization must occur within a reasonable length of time. The cement slurry or sodium bentonite chunks must be of sufficient density to contain water to their native strata. The remainder of the hole must be filled with native surface material.
3. Seismic holes that penetrate artesian water deposits and encounter alkaline or saline waters must be plugged immediately as set forth in subsection 1 except that a heavier slurry mixture must be used with the addition of inorganic drying or stabilizing chemicals such as calcium chloride, sodium bicarbonate, or soda ash to assist in the effective plugging and stability of the bentonite column in the hole.
4. The seismic company is liable for all damages resulting from failure to comply with the provisions of this section.

Approved March 31, 1985

## CHAPTER 406

HOUSE BILL NO. 1106  
(Committee on Natural Resources)  
(At the request of the Public Service Commission)

## MINING PROHIBITED IN CERTAIN AREAS

AN ACT to amend and reenact section 38-14.1-07 of the North Dakota Century Code, relating to mining prohibited in certain areas.

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

SECTION 1. AMENDMENT. Section 38-14.1-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14.1-07. Mining is prohibited. After July 1, 1979 August 3, 1977, and subject to valid existing rights, no surface coal mining operations except those which exist existed on July 1, 1979 August 3, 1977, shall be permitted:

1. On any lands within the boundaries of units of the North Dakota state park system, the national park system, the national wildlife refuge systems, the national system of trails, the national wilderness preservation system, the national wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act [Pub. L. 90-542; 82 Stat. 906; 16 U.S.C. 1271 et seq.] and national recreation areas designated by Act of the Congress of the United States.
2. On any federal lands within the boundaries of any national forest unless the requirements of 30 U.S.C. 1272(e)(2) are met.
3. Within three hundred feet [91.44 meters] of any publicly owned park or places included in the state historic sites registry or the national register of historic places unless approved jointly by the commission and the federal, state, or local agency with jurisdiction over the park or the historic site.
4. Within one hundred feet [30.48 meters] of the outside right-of-way line of any public road, except where mine

access roads or haulage roads join such right-of-way line and except that the commission with the approval of the proper authority may permit such roads to be relocated or the area affected to lie within one hundred feet [30.48 meters] of such road, if after public notice and the opportunity for public hearing in the locality a written finding is made by the proper authority that the interests of the public and the landowners affected thereby will be protected.

5. Within five hundred feet [152.4 meters] of any occupied dwelling unless approved by the owner thereof and in accordance with the provisions of chapter 38-18, nor within three hundred feet [91.44 meters] of any public building, school, church, community, or institutional building, or within one hundred feet [30.48 meters] of a cemetery.

Approved February 6, 1985

## CHAPTER 407

HOUSE BILL NO. 1105  
(Committee on Natural Resources)  
(At the request of the Public Service Commission)

## COAL MINING AND RECLAMATION PERMITS

AN ACT to amend and reenact subdivisions e, f, and g of subsection 1 of section 38-14.1-14, subsection 5 of section 38-14.1-21, and subsection 3 of section 38-14.1-33 of the North Dakota Century Code, relating to permit application requirements for surface coal mining and reclamation operations, permit approval and denial standards for surface coal mining and reclamation operations, and the issuance of permits for surface coal mining and reclamation operations.

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

SECTION 1. AMENDMENT. Subdivisions e, f, and g of subsection 1 of section 38-14.1-14 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- e. If the applicant is a partnership, corporation, association, or other business entity, the following where applicable:
- (1) The names and addresses of every officer, partner, director, or person performing a function similar to a director, of the permit applicant.
  - (2) The name and address of any person owning of record ten percent or more of any class of voting stock of the applicant.
  - (3) A list of all names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation within the any state of North Dakota within the five-year period preceding the date of the application.

- f. A statement of any current or previous surface coal mining permits in ~~the any state of North Dakota~~ held by the applicant and the permit identification for said permits and for each pending application.
- g. A schedule listing any and all notices of violation of this chapter, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201; et seq.], and any law, rule, or regulation of the United States or of the state of North Dakota, or of any department or agency ~~of in the United States or of the~~ state of North Dakota pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application. The schedule shall also indicate the final resolution of any such notice of violation.

**SECTION 2. AMENDMENT.** Subsection 5 of section 38-14.1-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Where information available to the commission indicates that any surface coal mining operation owned or controlled by the permit applicant is currently in violation of this chapter in this state or such other applicable air or water environmental protection laws of this state, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201, et. seq.], or any law or rule of the United States or of the state of North Dakota, or of any department or agency in the United States or the state of North Dakota pertaining to air or water environmental protection, incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application the permit shall not be issued until the permit applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority ~~which has~~ with jurisdiction over such the violation.

**SECTION 3. AMENDMENT.** Subsection 3 of section 38-14.1-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. A permittee who refuses or willfully fails to comply with this chapter shall be ineligible for any further mining permits. After an opportunity for hearing and after a finding by the commission that the permit applicant, or operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this chapter, or the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87;

91 Stat. 445; 30 U.S.C. 1201, et. seq.], of such nature and duration that result in and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this chapter, or the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201, et. seq.], no permit shall be issued to said permit applicant or permittee.

Approved February 12, 1985

## CHAPTER 408

SENATE BILL NO. 2242  
(Lips)

## SURFACE MINING APPLICATION CERTIFICATION

AN ACT to amend and reenact subdivision r of subsection 1 of section 38-14.1-14 of the North Dakota Century Code, relating to permit applications for surface mining and reclamation operations.

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

SECTION 1. AMENDMENT. Subdivision r of subsection 1 of section 38-14.1-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- r. Cross ~~section~~ sections, maps or plans of the land to be affected including the actual area to be mined, prepared by or under the direction of and certified by a registered professional engineer, a registered land surveyor, or a qualified professional geologist with assistance from experts in related fields such as land surveying and landscape architecture, showing pertinent elevation and location of test borings or core samplings and depicting all of the following information:
- (1) The nature and depth of the various strata of overburden.
  - (2) The location of subsurface water, if encountered, and its quality.
  - (3) The nature and thickness of any coal or rider seam above the coal seam to be mined.
  - (4) The nature of the stratum immediately beneath the coal seam to be mined.
  - (5) All mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected.

- (6) Existing or previous surface mining limits.
- (7) The location and extent of known workings of any underground mines, including mine openings to the surface.
- (8) The location of aquifers.
- (9) The estimated elevation of the water table.
- (10) The location of spoil, waste, or refuse areas, suitable plant growth material stockpiling areas and, if necessary, stockpiling areas for other suitable strata.
- (11) The location of all impoundments for waste or erosion control.
- (12) Any settling or water treatment facility.
- (13) Constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto.
- (14) Profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the applicant's proposed reclamation plan.

Approved March 29, 1985

## CHAPTER 409

SENATE BILL NO. 2254  
(Committee on Natural Resources)  
(At the request of the Public Service Commission)

## CULTURAL RESOURCE MINING AND RECLAMATION

AN ACT to create and enact a new subdivision to subsection 1 of section 38-14.1-14 of the North Dakota Century Code, relating to surface coal mining and reclamation permit application requirements for cultural resources; to amend and reenact section 38-14.1-10, subdivision q of subsection 1 of section 38-14.1-14, subsection 4 of section 38-14.1-21, subsection 1 of section 38-14.1-30, and section 55-03-01 of the North Dakota Century Code, relating to the necessity of a permit, administrative review, permit for investigation, evaluation, or mitigation of adverse effects on cultural resources, permit application requirements for topographic maps, and to permit approval or denial standards.

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

SECTION 1. A new subdivision to subsection 1 of section 38-14.1-14 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Cultural resource information including all of the following:

- (1) A statement evidencing compliance with the requirements of chapter 55-03.
- (2) A cultural resource inventory, including all buildings, structures, and objects referred to in section 55-03-01, covering the proposed permit and adjacent area conducted in accordance with guidelines developed by the state historic preservation office and the superintendent of the state historical board.
- (3) An evaluation of each cultural resource site which will be affected by any surface coal mining and reclamation operation. The evaluation must include sufficient information to allow the

superintendent to determine if the cultural resource site is significant in accordance with the national register criteria [36 CFR 60.4] and guidelines established by the superintendent.

- (4) An appropriately scaled map identifying the location of each cultural resource site determined significant by the superintendent within the proposed permit area and the adjacent area.
- (5) A description of adverse effects on significant cultural resources that may result from the proposed surface coal mining operations.
- (6) A statement that the permit applicant will inform the superintendent and the commission of any discovery within the permitted area of previously unrecorded archeological, cultural, or historic materials and allow reasonable time for the superintendent to determine the significance of the discovery and, if determined significant, to approve a mitigation plan.
- (7) A plan approved by the superintendent that has been or will be used to mitigate adverse effects on significant sites that are known, or a statement that such a plan will be approved and implemented prior to any adverse effects. Any mitigation plan which has not begun implementation within five years of plan approval is subject to review by the superintendent.

SECTION 2. AMENDMENT. Section 38-14.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14.1-10. Necessity of permit - Exception. It shall be unlawful for any operator to engage in surface coal mining operations without first obtaining from the commission a permit to do so, in such form as is hereinafter provided. All existing surface coal mining operations shall on July 1, 1979, comply with the provisions of this chapter and all regulations promulgated pursuant thereto, except that lands from which the coal has been removed prior to July 1, 1979, shall be governed by the reclamation standards that were in effect at the time of coal removal from such lands. Any person or operator may engage in the inventorying and evaluation of cultural resources upon compliance with section 55-03-01 and may implement a cultural resource mitigation plan approved by the superintendent of the state historical board prior to applying for or receiving an approved surface coal mining and reclamation permit.

SECTION 3. AMENDMENT. Subdivision g of subsection 1 of section 38-14.1-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- g. Topographic maps to an appropriate scale, as prescribed by the commission by regulation, clearly showing the land to be affected as of the date of the application. Such a map, among other things specified by the commission, shall show all of the following information:
- (1) All manmade features.
  - (2) ~~All significant known archaeological sites existing on the date of application.~~
  - (3) The holders of record (surface and subsurface) of any leasehold interest in the property.
  - (4) (3) Any purchaser of record (surface and subsurface) of the property under a real estate contract.
  - (5) (4) The operator, if he is a person different from the permit applicant.
  - (6) (5) If any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent.

SECTION 4. AMENDMENT. Subsection 4 of section 38-14.1-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 4. The commission may delete certain areas from a permit or revision application, reject the application, require the permit applicant to amend the application or any part of such application, including any mining plan, or require any combination of the foregoing, if:
  - a. 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.
  - b. The commission finds that the proposed surface coal mining 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.

- e- The commission finds that the proposed surface coal mining operation would adversely affect any historical, archaeological, or paleontological site. If mining is permitted, the commission, in consultation with the state historical board, shall establish procedures for the protection and preservation of such sites throughout the surface coal mining operation.

Whenever the commission finds that ongoing surface mining operations are causing or are likely to cause any of the conditions set forth in this subsection, it may make such changes in the permit as it may deem necessary to avoid such described conditions.

**SECTION 5. AMENDMENT.** Subsection 1 of section 38-14.1-30 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Within thirty days after a permit applicant is notified of a ruling by the commission pursuant to section 38-14.1-20, or after an operator or permittee is issued a notice or order pursuant to subdivision a or b of subsection 1 of section 38-14.1-28, or after the commission disapproves an application for release of all or a portion of a performance bond under section 38-14.1-17, or after the superintendent of the state historical board renders a decision on an application for approval of a cultural resources mitigation plan under sections 1 and 2 of this Act, such applicant, or operator, or permittee, or any person with an interest which is or may be adversely affected by such ruling, notice, or order or by an order modifying, vacating, or terminating a notice or order, may request and thereby initiate formal hearing procedures before the commission. The right to such administrative review shall be forfeited if not requested within thirty days of such notification of any ruling or issuance of a notice of violation or order as provided in this subsection. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

**SECTION 6. AMENDMENT.** Section 55-03-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-03-01. Permit required to investigate, evaluate, or mitigate adverse effect on cultural resources, historic buildings, structures, or objects - Application - Fee. Any individual, organization, institution, or company engaged on one's own behalf or on behalf of another in identifying, evaluating, or mitigating adverse effects on cultural resources, historic buildings, structures, or objects on any lands

in North Dakota, under section 106 of the National Historic Preservation Act of 1966 [Pub. L. 89-665; 80 Stat. 915; 16 U.S.C. 470, as amended by Pub. L. 91-243, Pub. L. 93-54, Pub. L. 94-422, and Pub. L. 94-458], 36 CFR 800, North Dakota Century Code section 38-14-1-21, or North Dakota Administrative Code section 69-05-2-08-03, 69-05-2-09-08, 69-06-08-01, or 69-06-08-02, section 1 of this Act first shall obtain an annual permit from the superintendent of the state historical board of North Dakota. Such permit may be issued when an application in such form and including such information as prescribed by the superintendent has been filed with such officer. Each such application shall be accompanied by a filing fee of fifty dollars. The superintendent may waive the fee requirement if the applicant is an instrumentality of the state of North Dakota. Following issuance of the annual permit, the permittee shall submit to the state historical society of North Dakota payment in the amount of twenty-five dollars with every cultural resources identification, evaluation, and mitigation report submitted to the superintendent in compliance with the federal and state statutory and regulatory requirements identified in this section. A permittee submitting a report on behalf of a nonprofit corporation formed under chapters 10-24 through 10-28 does not have to pay the fee for filing the report.

Approved March 22, 1985

## CHAPTER 410

HOUSE BILL NO. 1569  
(Keller, Murphy, O. Hanson)

### RECLAMATION OF LAND MINED FOR GRAVEL OR SAND

AN ACT to create and enact a new section to chapter 38-16 of the North Dakota Century Code, relating to the reclamation of lands affected by certain gravel and sand surface mining operations; and to provide a penalty.

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

SECTION 1. A new section to chapter 38-16 of the North Dakota Century Code is hereby created and enacted to read as follows:

Gravel and sand surface mining operations - Reclamation - Civil action - Penalty. Any surface mining operator conducting a gravel or sand surface mining operation on land in this state owned by another person shall, upon completion or abandonment of the surface mining operation, reclaim the affected land. Each surface mining operator shall negotiate with the landowner a written agreement providing for the reclamation of the affected land. The reclamation agreement must, at a minimum, provide for restoration by the surface mining operator of the affected land as nearly as possible to its original contour and productivity, unless the affected land is to be used for other purposes as agreed upon between the surface mining operator and the landowner, within a time period agreed upon between the parties, but within one year after the final cessation of surface mining operations. A landowner may bring a claim for relief in any appropriate district court against a surface mining operator who has failed to reclaim properly affected land pursuant to a reclamation agreement under this section. In an action under this section, a surface mining operator is liable for damage in an amount necessary to reclaim the land. Any person violating any provision of this section is guilty of a class B misdemeanor.

Approved March 22, 1985

## CHAPTER 411

SENATE BILL NO. 2095  
(Legislative Council)  
(Interim Tenneco Plant Committee)

### TENNECO PLANT IMPACT ASSISTANCE PACT

AN ACT to create the Tenneco plant impact assistance interstate compact.

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

SECTION 1. Definitions. As used in this compact, unless the context clearly requires a different construction:

1. "Commission" means the Tenneco plant impact assistance interstate compact commission.
2. "Compact" means the Tenneco plant impact assistance interstate compact.
3. "Fund" means the Tenneco plant impact assistance fund.
4. "Party states" means the states of North Dakota and Montana.
5. "Plant" means the coal gasification plant and related mining and other facilities planned for construction in the Beach, North Dakota-Wibaux, Montana area by the Tenneco company or its legal successor in interest.

SECTION 2. Policy and purpose. The states of North Dakota and Montana recognize that the development of the natural resources of both states must be accomplished in a manner which best benefits and protects the health, safety, and economic well-being of the citizens of both states. The party states recognize that social and economic impacts may occur in the areas in both states where the development of natural resources is taking place and that these impacts accrue to both states without regard to the existence of political boundaries. It is further recognized that the protection of the health, safety, and economic well-being of the citizens of the party states can be accomplished through the cooperation of the party states in providing the necessary assistance to the areas in the party states affected by the development of natural resources.

The party states recognize that the Tenneco company is planning to construct and operate a coal gasification facility in Montana near the Beach, North Dakota-Wibaux, Montana area. The proposed facility is expected to cause significant social and economic impacts in that area which are beyond the financial capacities of the affected local governmental entities in both states to mitigate.

It is the purpose of this compact to provide the means for a cooperative effort between the party states to ensure the existence of financial support to the areas in both states necessary to mitigate the resulting impacts from the Tenneco coal gasification plant.

### SECTION 3. Entry into force and termination.

1. This compact is effective when the party states have enacted the compact by appropriate legislation in substantially similar form and when the necessary permits for siting of the plant have been approved and issued under the North Dakota Energy Conversion and Transmission Facility Siting Act or the Montana Major Facility Siting Act.
2. This compact is terminated when unanimously agreed to by the party states or when the plant has permanently ceased operations. In the event of termination, all rights established under this compact continue unimpaired. The unobligated moneys and assets of the fund at termination must be paid over to the party states in proportion to the coal mined for the plant in each respective state.

### SECTION 4. Tenneco plant impact assistance commission.

1. There is hereby created an interstate administrative agency to be known as the Tenneco plant impact assistance commission. The commission must be composed of the director of the North Dakota energy development impact office; the chairman of the Montana coal board; one Montana resident, residing in the area impacted by the plant, appointed by the governor of Montana; one North Dakota resident, residing in the area impacted by the plant, appointed by the governor of North Dakota; one person from Montana appointed by the chairman of the Montana legislative council; and one person from North Dakota appointed by the chairman of the North Dakota legislative council. The governors and chairmen of the legislative councils of each party state shall appoint their party state's respective commission members for terms and conditions and in a manner as each party state may choose. The commission members appointed by the party states shall unanimously choose an additional member who shall serve a term of two years and who shall, when present, act as chairman of the commission. The

- additional member may be removed as a member of the commission by a vote of three of the other commission members. There shall be no alternates or proxies for commission members.
2. Each commission member is entitled to one vote on any subject matter before the commission. No action of the commission is binding unless a majority of the total membership cast affirmative votes.
  3. The commission shall meet at least once each six months and shall also meet upon the call of the chairman or upon the call of two or more members. Meetings of the commission may be held in any place in either state the commission determines to be reasonably convenient for the attendance of persons required or entitled to attend and where adequate accommodations can be found. The commission shall afford reasonable public notice and opportunity for comment at each meeting. All meetings of the commission must be open to the public. All commission action and decisions must be appropriately recorded.
  4. Each party state is responsible for the payment of the compensation and necessary expenses of their respective commission members. All other expenses, including the compensation and expenses of the chairman, resulting from administration of the compact must be allocated to and borne one-half by each party state. The commission shall submit to the governor or designated officer of each party state a budget of its estimated expenditures for the relevant period and as required by the laws of each party state for presentation to the legislative assembly of each party state. The commission budget report must contain specific recommendations of the amounts to be appropriated by each party state.
  5. The commission shall keep accurate records and accounts of all receipts and disbursements. The commission shall engage an independent certified public accountant who shall annually audit all receipts and disbursements of commission funds and submit an audit report to the commission. The commission shall forward copies of the audit report to the legislative assemblies of each party state. The accounts of the commission must be open at any reasonable time for inspection by the party states.
  6. The commission shall adopt and publish bylaws and administrative rules as are necessary for the performance of its powers and duties under this compact. The commission shall file copies of any bylaws and rules adopted with the North Dakota energy development impact office and Montana coal tax oversight subcommittee.

7. The commission is a legal entity separate and distinct from the party states. The commission is capable of action in its own behalf and is liable for its own actions. Liabilities of the commission are not liabilities of the party states. Commission members are not personally liable for actions taken by them in their official capacity. The commission may sue and be sued in its official capacity in any federal court of the party states and may accept for any of its purposes and functions donations, grants of money, equipment, supplies, materials, and services from any person or the federal government.
8. The commission may employ a staff to carry out its duties and functions and may contract with any person for the purpose of providing expert consulting services. Employees of the commission shall participate in the federal social security system. The commission may establish additional employee benefit programs to afford terms and conditions of employment similar to those provided to employees of the party states.

#### SECTION 5. Impact assistance program.

1. There is hereby created the Tenneco plant impact assistance fund to be administered under this compact by the commission. Each party state shall contribute to the fund an amount equal to ten percent of the coal severance tax revenue for coal mined in that state for the plant using the lesser of the coal severance tax rates of the party states. The commission may seek loans and grants from the party states' respective agencies charged with providing financial assistance to coal development impact areas. These moneys must be deposited in the fund. The loan may be repaid out of any moneys in the fund available for that purpose. The commission shall issue evidences of indebtedness as may be required to secure those loans. The commission shall provide financial assistance under this Act using moneys received from a party state's coal impact agency only in the state from which the money is received.
2. The commission shall develop a program for providing loans from the fund to the counties, cities, school districts, or other appropriate political subdivisions in the party states affected by the development and operation of the plant. The commission shall prescribe the terms and conditions of the loans. An entity receiving a loan from the fund shall execute a warrant as evidence of the loan. The warrant must bear interest at a rate not to exceed six percent and is payable from any moneys available to the governing entity for repayment of indebtedness. The warrants must be negotiable. The commission shall deposit any proceeds from the sale of the warrants in the fund.

The proceeds are not subject to taxation by the party states or by any political subdivision of the party states.

3. The commission shall develop a plan for providing financial grants from the fund for services and facilities to the counties, cities, school districts, and other appropriate political subdivisions in the party states affected by the development and operation of the plant. The commission shall make grants to counties, cities, school districts, and other political subdivisions in the party states according to procedures and criteria established by rule.
4. The grants and loans from the fund are to be provided for the purpose of mitigating impacts affecting governmental services, and directly necessitated by the construction and operation of the plant. All loan and grant applications and presentations to the commission must be made by an appointed or elected governmental official with authority to represent the political subdivision seeking the grant. The commission shall not provide loans or grants from the fund for the purpose of providing marriage or guidance counseling services, programs to alleviate other sociological impacts, or service or facilities to meet secondary impacts.

**SECTION 6. Amendment and statutory construction.**

1. This compact may be amended by the party states in the same manner as is required to ratify the compact.
2. Nothing in this compact may be construed to abrogate or limit the applicability of any act of Congress or diminish or otherwise impair the jurisdiction of any federal agency expressly conferred thereon by the Congress.

Approved March 27, 1985