

# MINING AND GAS AND OIL PRODUCTION

## CHAPTER 386

SENATE BILL NO. 2303  
(Senators Keller, Freborg)  
(Representatives Bodine, Urlacher)

### COAL MINING ROAD CLOSURE

AN ACT to create and enact two new sections to chapter 38-01 of the North Dakota Century Code, relating to the closing of roads for surface coal mining operations; and to repeal sections 38-01-06 and 38-01-07 of the North Dakota Century Code, relating to condemnation of roads for mining operations and to damages for condemnation of roads for mining operations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new sections to chapter 38-01 of the North Dakota Century Code are created and enacted as follows:

Road may be closed for surface coal mining operations. A surface coal mining operator may petition the board of county commissioners to temporarily close or relocate a section line road or other road if the road interferes with the operator's conduct of surface coal mining operations. The board of county commissioners, if so petitioned, may, after notice and public hearing, temporarily close or relocate the section line road or other road, providing the road is not required due to readily accessible alternate routes of travel and the closing or relocation does not deprive adjacent landowners access to their property. If a road is closed as provided for in this section, the board of county commissioners may require that after completion of surface coal mining operations the operator restore the road to as good a condition as existed prior to the closing of the road.

Notice required. Within thirty days after the board of county commissioners receives a petition to temporarily close or relocate a section line road or other road, the board shall fix a time and place for hearing, and the petitioner, at least ten days prior to the time fixed for the hearing, shall cause notice to be served personally or by mail on all surface owners of the land through which the road passes. The petitioner shall also cause notice to be published once each week for two successive weeks in a newspaper having a general circulation in the county in which the road is located, with the last publication being at least ten days prior to the time fixed for hearing.

SECTION 2. REPEAL. Sections 38-01-06 and 38-01-07 of the North Dakota Century Code are repealed.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 387

HOUSE BILL NO. 1115  
(Committee on Natural Resources)  
(At the request of the State Industrial Commission)

### INDUSTRIAL COMMISSION OIL AND GAS DIRECTOR

AN ACT to amend and reenact section 38-08-04.2 of the North Dakota Century Code, relating to the industrial commission's appointment of a director of oil and gas; and to repeal section 38-08-04.3 of the North Dakota Century Code, relating to the state geologist's duty to assist the industrial commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-04.2 of the North Dakota Century Code is amended and reenacted as follows:

~~38-08-04.2. Industrial commission - Personnel - Equipment transfer Director of oil and gas. The industrial commission is authorized to appoint a chief enforcement officer director of oil and gas and to set his the director's salary within the limits of legislative appropriations. The industrial commission may designate the state geologist as the chief enforcement officer director of oil and gas. With the approval of the industrial commission, the state geologist may appoint an assistant to have primary responsibility for rule enforcement. The industrial commission, within the limits of legislative appropriations, may make arrangements with the board of higher education, subject to the approval of the emergency commission, to transfer equipment, personnel, and material between the commission and the state geologist as necessary to carry out this chapter.~~

SECTION 2. REPEAL. Section 38-08-04.3 of the North Dakota Century Code is repealed.

Approved March 12, 1991  
Filed March 12, 1991

## CHAPTER 388

HOUSE BILL NO. 1500  
(Representatives Rennerfeldt, Byerly)  
(Senator Kinnoin)

### DRILLING RISK PENALTY

AN ACT to create and enact a new subsection to section 38-08-08 of the North Dakota Century Code, relating to the imposition of a risk penalty on leasehold owners who elect not to pay in advance their proportionate share of the costs of drilling an oil or gas well.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

In addition to any costs and charges recoverable under subsection 1 and 2, if a lessee owning an interest in a spacing unit elects not to participate in the risk and cost of drilling a well thereon, the owner paying for the nonparticipating lessee's share of the drilling and operation of a well may recover from the nonparticipating lessee a risk penalty for the risk involved in drilling the well. The risk penalty is one hundred percent of the nonparticipating lessee's share of the reasonable actual costs of drilling and completing the well and may be recovered out of, and only out of, production from the pooled spacing unit, as provided by section 38-08-10, exclusive of any royalty or overriding royalty. No risk penalty may be assessed against an unleased mineral interest.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 389

HOUSE BILL NO. 1333  
(Representatives A. Olson, Mahoney)  
(Senator Keller)

### UNITIZATION PLAN APPROVAL

AN ACT to amend and reenact sections 38-08-09.5 and 38-08-09.9 of the North Dakota Century Code, relating to ratification or approval of unitization plans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-09.5 of the North Dakota Century Code is amended and reenacted as follows:

38-08-09.5. Ratification or approval of plan by lessees and owners. At the time of filing of the petition for the approval of a unit agreement and the filing of the unit agreement, the commission shall set a time and place for the hearing. At least forty-five days prior to the hearing, the applicant or someone under his direction and control, shall give notice of the time and place of said hearing and shall mail, postage prepaid, a copy of the application and the proposed plan of unitization to each affected person owning an interest of record in the unit outline, at such person's last known post-office address. In addition, such applicant shall file with the commission engineering, geological, and all other technical exhibits to be used at said hearing, and further, the notice must so specify that such material is filed and is available for inspection. Service is complete in the mailing of the notice of hearing and unit agreement to each interest owner as hereinbefore prescribed at his last known address and the filing of an affidavit of mailing with the commission. No order of the commission creating a unit and prescribing the plan of unitization applicable thereto becomes effective unless and until the plan of unitization has been signed, or in writing ratified or approved by those persons who, under the commission's order, will be required to pay at least ~~eighty~~ seventy percent of the costs of the unit operation and also by the owners of at least ~~eighty~~ seventy percent of the royalty interests under the commission's order, excluding overriding royalties, production payments, and other interests carved out of the working interest, and in addition it shall be required that when there is more than one person who will be obligated to pay costs of the unit operation, at least two nonaffiliated such persons and at least two royalty interest owners, shall be required as voluntary parties, and the commission has made a finding either in the order creating the unit or in a supplemental order that the plan of unitization has been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest in and to the unit area. Where the plan of unitization has not been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest in and to the unit area at the time the order creating the unit is made, the commission shall, upon petition and notice, hold such additional and supplemental hearings as may be requested or required to determine if and when the plan of unitization has been so signed,

ratified, or approved by lessees and royalty owners owning the required percentage interest in and to the unit area and shall, in respect to such hearings, make and enter a finding of its determination in such regard. In the event lessees and royalty owners, or either, owning the required percentage interest in and to the unit area have not so signed, ratified, or approved the plan of unitization within a period of six months from and after the date on which the order creating the unit is made, the order creating the unit ceases to be of further force and effect and shall be revoked by the commission.

SECTION 2. AMENDMENT. Section 38-08-09.9 of the North Dakota Century Code is amended and reenacted as follows:

38-08-09.9. Enlargement of area - Creation of new units - Amendment of plan. The unit area of a unit may be enlarged at any time by the commission, subject to the limitations hereinbefore provided to include adjoining portions of the same common source of supply, including the unit area of another unit, and a new unit created for the unitized management, operation, and further development of such enlarged unit area, or the plan of unitization may be otherwise amended, all in the same manner, upon the same conditions and subject to the same limitations as provided with respect to the creation of a unit in the first instance, except, that where an amendment to a plan of unitization relates only to the rights and obligations as between lessees, or the amendment to a plan of unitization or the enlargement of a unit area is found by the commission to be reasonably necessary in order to effectively carry on the joint effort, to prevent waste, and to protect correlative rights, and that such will result in the general advantage of the owners of the oil and gas rights within the unit area and the proposed enlarged unit area, and the persons and owners in the proposed added unit area have ratified or approved the plan of unitization as required by section 38-08-09.5, then such amendment to a plan of unitization or the enlargement of a unit area need not be ratified or approved by royalty owners of record in the existing unit area provided that written notice thereof is mailed to such royalty owners by the operator of a unit not more than forty days nor less than thirty days prior to the commission hearing. The notice must describe the plan for the unit amendment or enlargement together with the participation factor to be given each tract in the unit area and in the proposed area and must contain the time and place of the commission hearing. An affidavit of mailing verifying such notice must be filed with the commission. Said notice must further provide that in the event ten percent of the royalty interests or working interests in the existing unit area file with the commission at least ten days prior to the commission proceeding an objection to the plan of enlargement, the commission shall require that the unit amendment or enlargement be approved by ~~eighty~~ seventy percent of all royalty interests and working interests in the existing and proposed areas.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 390

HOUSE BILL NO. 1412  
(Byerly, Schmidt, Rennerfeldt)

### OIL AND GAS WELLHEAD WELDER CERTIFICATION

AN ACT to amend and reenact section 38-08-22 of the North Dakota Century Code, relating to regulation of welders; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-22 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

38-08-22. Regulation of welders by oil and gas division of industrial commission - Continuing appropriation. No person may weld on an oil and gas wellhead unless that person is certified. A welder shall submit to the oil and gas division of the industrial commission for verification sufficient data to show satisfactory performance in a qualification test for American society of mechanical engineers section nine position six-G. The test of a welded specimen must be made by a certified testing laboratory. Before welding on an oil and gas wellhead, the welder shall furnish a statement to the person for whom the work is performed showing that the welder's certification has been verified by the commission. A person who violates this section is subject to a civil penalty to be imposed by the commission not to exceed five hundred dollars for each violation and shall pay all legal, administrative, and other costs incurred by the commission in investigating and litigating a violation. The commission may charge ~~an annual~~ a fee of twenty-five dollars for verifying a certification. ~~Annual~~ A certification must be verified every three years. The fees collected under this section must be deposited into the state treasury in a special revolving fund. All moneys in the fund are hereby appropriated to the commission on a continuing basis to be used in administering this section.

Approved March 19, 1991  
Filed March 19, 1991

## CHAPTER 391

HOUSE BILL NO. 1146  
(Committee on Natural Resources)  
(At the request of the State Geological Survey)

### COAL EXPLORATION ACTIVITIES

AN ACT to create and enact a new subdivision to subsection 2 of section 38-12.1-05, relating to requirements for a coal exploration permit; and to amend and reenact subdivision b of subsection 2 of section 38-12.1-03 of the North Dakota Century Code, relating to the definition of "coal exploration".

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision b of subsection 2 of section 38-12.1-03 of the North Dakota Century Code is amended and reenacted as follows:

- b. Environmental data gathering activities which substantially disturb the natural land surface and which are conducted for the purpose of establishing the conditions of an area prior to applying for a permit under chapter 38-14.1. The provisions of sections 38-12.1-04 and 38-12.1-05 are not applicable to such environmental data gathering activities unless the natural land surface will be substantially disturbed or such activities are located on lands designated unsuitable for mining under section 38-14.1-05.

SECTION 2. A new subdivision to subsection 2 of section 38-12.1-05 of the North Dakota Century Code is created and enacted as follows:

For environmental data gathering activities that do not substantially disturb the land, unless the environmental data gathering activities are located on land designated unsuitable for mining under section 38-14.1-05.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 392

HOUSE BILL NO. 1175  
(Committee on Natural Resources)  
(At the request of the Public Service Commission)

### COAL MINING AND EXPLOSIVES NOTICE

AN ACT to amend and reenact subsection 33 of section 38-14.1-02 and subsection 13 of section 38-14.1-24 of the North Dakota Century Code, relating to the definition of surface coal mining operations and notice of the use of explosives.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 33 of section 38-14.1-02 of the North Dakota Century Code is amended and reenacted as follows:

33. "Surface coal mining operations" means:

- a. Activities affecting the surface of lands in connection with a surface coal mine. Such activities include extraction of coal from coal refuse piles, excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, and loading of coal at or near the minesite: except that such activities do not include ~~the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds per centum of the tonnage of minerals removed for purposes of commercial use or sale,~~ coal exploration subject to chapter 38-12.1, or the extraction of coal incidental to reclamation operations under chapter 38-14.2; and
- b. The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all adjacent lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

SECTION 2. AMENDMENT. Subsection 13 of section 38-14.1-24 of the North Dakota Century Code is amended and reenacted as follows:

13. Ensure that explosives are used only in accordance with existing state law and the regulations promulgated by the commission, which must include provisions to:
- a. Provide adequate advance written notice to local governments and residents who might be affected by the use of such explosives by the publication of the planned blasting schedule in ~~the official newspaper of each county wherein the surface coal mining operation is located and in other daily newspapers~~ a newspaper of general circulation in the locality, by mailing a copy of the proposed blasting schedule to every resident living within one-half mile [804.67 meters] of the proposed blasting site, and by providing daily notice to residents in such areas prior to any blasting.
  - b. Maintain for a period of at least three years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts.
  - c. Limit the type of explosives and detonating equipment, the size, the timing, and the frequency of blasts based upon the physical conditions of the site so as to prevent:
    - (1) Injury to persons.
    - (2) Damage to public and private property outside the permit area.
    - (3) Change in the course, channel, or availability of ground or surface water outside the permit area.
  - d. Require that all blasting operations be conducted by trained and competent persons as certified by the commission.
  - e. Provide that upon the request of a resident or owner of a manmade dwelling or structure within one-half mile [804.67 meters] of any portion of the permitted area the permittee shall conduct a preblasting survey of such structures and submit the survey to the commission and a copy to the resident or owner making the request. The area of the survey must be decided by the commission and must include such provisions as the commission may promulgate.

Approved April 3, 1991

Filed April 4, 1991

## CHAPTER 393

SENATE BILL NO. 2180  
(Committee on Appropriations)  
(At the request of the Public Service Commission)

### **ABANDONED MINE RECLAMATION FUND**

AN ACT to create and enact a new subsection to section 38-14.2-04 of the North Dakota Century Code, relating to creation of an abandoned mine reclamation set-aside trust account.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 38-14.2-04 of the North Dakota Century Code is created and enacted as follows:

There is created a special fund in the state treasury called the state abandoned mine reclamation fund set-aside trust account. Revenue to the set-aside trust account must be ten percent of the amount granted by the secretary of the interior under Title IV of P.L. 95-87 as provided by P.L. 100-34. This account must be interest bearing and all interest must be credited to the set-aside trust account. No funds from this account may be expended prior to September 30, 1995. After September 30, 1995, the funds may be expended as provided in this subsection. The legislature shall authorize expenditure by appropriation from the account as necessary to defray the administrative expenses of the program. The remaining funds in the account may only be used in accordance with section 38-14.2-07. The liability of the state to fulfill the requirements of this subsection is limited to the amount of funds available in the account established in this subsection. The state has no obligations under this subsection except to the extent of federal funds deposited in the coal mine mitigation account and the interest thereon to operate the program.

Approved April 5, 1991  
Filed April 8, 1991