

MINING AND GAS AND OIL PRODUCTION

CHAPTER 367

SENATE BILL NO. 2230
(Senator Yockim)
(Representative Wald)

OIL AND GAS METER TESTING

AN ACT to create and enact a new section to chapter 38-08 of the North Dakota Century Code, relating to testing of oil and gas meter and measuring devices; to amend and reenact subdivision h of subsection 1 of section 38-08-04, sections 38-08-20, and 64-02-13 of the North Dakota Century Code, relating to the authority of the industrial commission to test and approve oil and gas meters and measuring devices; and to repeal section 64-02-15.1 of the North Dakota Century Code, relating to the duty of the public service commission to test and certify oil and gas production meters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision h of subsection 1 of section 38-08-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- h. Metering or other measuring of oil, gas, or product related to production in pipelines, gathering systems, storage tanks, barge terminals, loading racks, refineries, or other places, by meters or other measuring devices approved by the commission.

SECTION 2. AMENDMENT. Section 38-08-20 of the North Dakota Century Code is amended and reenacted as follows:

38-08-20. 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 and tested by or under the direction of the commission and tested by the department of weights and measures as provided in section 64-02-15.1 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 3. A new section to chapter 38-08 of the North Dakota Century Code is created and enacted as follows:

Testing upon request of a royalty owner. Upon request by a royalty owner to test an oil and gas meter or measuring device, the commission shall test the meter or measuring device or contract for the testing by a qualified meter tester who is independent of any operator or purchaser of production from the metered well.

SECTION 4. AMENDMENT. Section 64-02-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

64-02-13. Commission to test weighing or measuring devices annually. The commission may test or calibrate weighing or measuring devices annually. The owner of any weighing or measuring device used in this state is responsible for its accuracy and condition, and shall have it tested at least annually. If upon testing the weighing or measuring device is within the permitted tolerance, it must be sealed. Inspections and testing of farm milk bulk tank equipment may be made only by the state dairy department under section 4-30-18. Inspections and testing of oil and gas production meters and measuring devices may be made only by or under the direction of the industrial commission under section 38-08-04. If upon complaint, the commission finds the weighing or measuring device is within the permitted tolerance, the cost of the test must be paid by the complainant; and in all other cases the cost of testing must be paid by the owner of the equipment.

SECTION 5. REPEAL. Section 64-02-15.1 of the 1991 Supplement to the North Dakota Century Code is repealed.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 368

SENATE BILL NO. 2342
(Senators Krauter, Goetz)
(Representatives Byerly, Hokana)

FLARED GAS TAXATION

AN ACT to amend and reenact section 38-08-06.4 of the North Dakota Century Code, relating to the flaring of gas, the imposition of the gross production tax and the payment of royalties for gas flared illegally, and the industrial commission's duties; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-06.4 of the North Dakota Century Code is amended and reenacted as follows:

38-08-06.4. 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 and shall also pay gross production tax on the flared gas at the rate imposed under section 57-51-02.2. The industrial commission shall ~~may~~ enforce this section and, for each well operator found to be in violation of this section, shall ~~may~~ 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.

SECTION 2. APPLICATION OF ACT. This Act applies to all gas flared from and after July 1, 1987; provided, however, that this amendment may not be construed to entitle any producer to obtain a refund of taxes or royalty paid prior to the effective date of this Act.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 369

HOUSE BILL NO. 1112
(Natural Resources Committee)
(At the request of the Industrial Commission)

COAL EXPLORATION ROAD

AN ACT to amend and reenact section 38-12.1-03, subdivision a of subsection 1 of section 38-12.1-04, and section 38-12.1-08 of the North Dakota Century Code, relating to a definition of road for coal exploration purposes and application of the penalty provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-12.1-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹ **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 includes lignite in both oxidized and nonoxidized forms, whether or not the material is enriched in radioactive materials.
2. "Coal exploration" means:
 - a. 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 includes drilling or digging, excavating, core sample drilling and collection, diamond drilling, trenching, or any other type of penetration of the surface of the earth; or
 - b. Environmental data gathering activities 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.
3. "Commission" means the industrial commission of the state of North Dakota.
4. "Permit area" means a county.

¹ NOTE: Section 38-12.1-03 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

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.
6. "Road" means a surface or right of way for purposes of travel by land vehicles used in coal exploration. A road consists of the entire area of the right of way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface.

SECTION 2. AMENDMENT. Subdivision a of subsection 1 of section 38-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

- 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 commission prescribed to govern the exploration for coal on state and private lands and roads used in coal exploration within the state of North Dakota.

SECTION 3. AMENDMENT. Section 38-12.1-08 of the North Dakota Century Code is amended and reenacted as follows:

38-12.1-08. Civil and criminal penalties - Unclassified.

1. Any person, including a director, officer, or agent of a corporate permittee, who violates this chapter, or any permit condition or regulation implementing this chapter is subject to a civil penalty not to exceed five thousand dollars per day of such violation.
2. Any person, including a director, officer, or agent of a corporate permittee, who knowingly violates this chapter, or any permit condition or regulation implementing this chapter or who knowingly reports information required by this chapter falsely is subject, upon conviction, to a criminal penalty of not more than ten thousand dollars or by imprisonment for not more than one year.

Approved March 22, 1993

Filed March 23, 1993

CHAPTER 370

HOUSE BILL NO. 1129
(Natural Resources Committee)
(At the request of the Public Service Commission)

SURFACE MINING APPLICANT HISTORY

AN ACT to amend and reenact subsection 5 of section 38-14.1-21 of the North Dakota Century Code, relating to surface coal mine permit approval or denial standards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 38-14.1-21 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted 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, 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 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 may 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 with jurisdiction over the violation.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 371

HOUSE BILL NO. 1130
(Natural Resources Committee)
(At the request of the Public Service Commission)

PREBLASTING SURVEY RADIUS

AN ACT to amend and reenact subdivision e of subsection 13 of section 38-14.1-24 to the North Dakota Century Code, relating to the distance from a permitted area within which an owner or resident of a structure may request a preblasting survey of such structure to be submitted to the public service commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision e of subsection 13 of section 38-14.1-24 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- e. Provide that upon the request of a resident or owner of a manmade dwelling or structure within ~~one-half mile [804.67 meters]~~ one mile [1.61 kilometers] 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 March 15, 1993
Filed March 16, 1993

CHAPTER 372

HOUSE BILL NO. 1271
(Representatives Brown, Martin)
(Senators Keller, Krauter, Urlacher)

SMALL MINING OPERATORS ASSISTANCE

AN ACT to amend and reenact section 38-14.1-37 of the North Dakota Century Code, relating to the expansion of the small operators assistance program to cover the cost of surface mining permit applications; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-14.1-37 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

38-14.1-37. Small operators.

1. The provisions of this chapter do not apply to any of the following activities:
 - a. Extraction of coal by a landowner for his own noncommercial use from land owned or leased by him.
 - b. Extraction of coal as an incidental part of federal, state, or local government-financed highway or other construction under regulations established by the commission.
2. If the commission finds that the probable total annual production at all locations to be mined by any permit applicant will not exceed one three hundred thousand tons [90,710.47 272155.41 metric tons], the cost of the following activities, which must be performed by a qualified public or private entity designated by the commission, may be assumed by the commission upon the written request of the operator in connection with a permit application:
 - a. The determination of probable hydrologic consequences required by subdivision o of subsection 1 of section 38-14.1-14, including the engineering analyses and designs necessary for the determination.
 - b. The development of cross sections, maps, and plans required by subdivision r of subsection 1 of section 38-14.1-14.
 - c. The geologic drilling and the statement of the result of test borings ~~or~~ and core samplings required by subdivision s of subsection 1 of section 38-14.1-14 must, upon the written request of the permit applicant, be performed by a qualified public or private laboratory designated by the commission. The cost of the preparation of such determination and statement must be assumed by the commission.
 - d. The collection of cultural resource information required by subdivision u of subsection 1 of section 38-14.1-14, any other

- archaeological and historical information required by the superintendent of the state historical board, and the preparation of mitigation plans necessitated thereby.
- e. Preblast surveys required by subdivision e of subsection 13 of section 38-14.1-24.
 - f. The collection of site-specific resource information, and the development of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the commission in accordance with this chapter.
3. The commission may provide or assume the cost of training coal operators who meet the qualifications in subsection 2 concerning the preparation of permit applications and compliance with the regulatory program.
 4. An operator who has received assistance under subsection 2 shall reimburse the commission for the cost of the services rendered if the commission finds that the operator's actual and attributed annual production of coal for all locations exceeds three hundred thousand tons [272155.41 metric tons] during the twelve months immediately following the date the operator is issued a surface coal mining and reclamation permit.
 5. Proposed surface coal mining operations that will not be subject to payment of reclamation fees required by the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201, et seq.] are not eligible for the assistance to small operators provided by subsections 2 and 3.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 373

SENATE BILL NO. 2193
(Natural Resources Committee)
(At the request of the Public Service Commission)

ABANDONED MINE RECLAMATION

AN ACT to create and enact two new subsections to section 38-14.2-03 of the North Dakota Century Code, relating to powers of the public service commission under the abandoned surface mine reclamation laws; and to amend and reenact subsection 3 of section 38-14.2-04 and section 38-14.2-06 of the North Dakota Century Code, relating to the state abandoned mine reclamation fund and eligible lands and water.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 38-14.2-03 of the North Dakota Century Code are created and enacted as follows:

May expend moneys from the fund for emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices on eligible lands, if the commission makes a finding of fact and the office of surface mining reclamation and enforcement concurs that:

- a. An emergency exists constituting a danger to the public health, safety, or general welfare; and
- b. No other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices.

Its agents, employees, and contractors may enter upon any land where the emergency exists and any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare. Such entry is an exercise of police power and is not condemnation or trespass of property. The moneys and the benefits accruing are charged against the land and mitigate or offset any claim by any owner for any alleged damages. This provision does not create new rights of action or eliminate existing immunities.

¹ SECTION 2. AMENDMENT. Subsection 3 of section 38-14.2-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹ NOTE: Section 38-14.2-04 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

3. 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~~ 2004. After September 30, ~~1995~~ 2004, the funds may be expended as provided in this subsection but no funds may be used to reclaim noncoal projects. The ~~legislature~~ legislative assembly 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 but no funds may be used on noncoal projects. 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.

SECTION 3. AMENDMENT. Section 38-14.2-06 of the North Dakota Century Code is amended and reenacted as follows:

38-14.2-06. Eligible lands and water. Lands and water eligible for reclamation or drainage abatement expenditures under this chapter are those which were mined for coal or which were affected by such mining, wastebanks, coal processing or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to ~~July 1, 1979~~ August 3, 1977, and for which there is no continuing reclamation responsibility under other state laws. Lands and water which were mined or affected by mining for minerals and materials other than coal are also eligible for reclamation under this chapter if such reclamation is necessary to protect the public health, safety, general welfare, and property and such noncoal abandoned mine lands were left in an inadequate reclamation status prior to ~~July 1, 1979~~ August 3, 1977, and for which there is no continuing reclamation responsibility under other state laws.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 374

HOUSE BILL NO. 1270
(Representatives Martin, Brown, Drovdal, Wardner)
(Senators Keller, Urlacher)

GRAVEL AND SAND MINING RECLAMATION

AN ACT to amend and reenact section 38-16-01.1 of the North Dakota Century Code, relating to reclamation of lands affected by gravel and sand surface mining operations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

38-16-01.1. 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~~ Unless the affected land is to be used for other purposes as agreed upon between the surface mining operator and the landowner, 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, ; indicate the amount of topsoil and subsoil to be saved, segregated, and respread; and indicate the party responsible for compaction of backfill, soil testing, fertilization, revegetation, weed control, rock disposal, and replacement or establishment of conservation practices. The reclamation must be 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 the 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~~ who violates any provision of this section is guilty of a class B misdemeanor.

Approved April 7, 1993
Filed April 8, 1993