

# **NORTH DAKOTA ADMINISTRATIVE CODE**

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**Prepared by the Legislative Council staff  
for the  
Administrative Rules Committee**

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**TITLE 38**  
**HIGHWAY PATROL**



## CHAPTER 38-04-01

**38-04-01-02. Adoption of regulations.** The following parts of title 49, Code of Federal Regulations, including amendments are adopted by reference:

1. Part 382 - Controlled Substances and Alcohol Use and Testing.
2. Part 385 - Subpart C - Certification of Safety Auditors, Safety Investigators, and Safety Inspectors.
3. Part 385 - Subpart D - New Entrant Safety Assurance Program.
4. Part 385 - Subpart E - Hazardous Materials Safety Permits.
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Intrastate commercial motor vehicles with a gross vehicle weight, gross vehicle weight rating, gross combination weight, and gross combination weight rating of twenty-six thousand pounds [11793.52 kilograms] or less are exempt from all federal motor carrier safety regulations. ~~However, vehicles with a gross vehicle weight of twenty-six thousand pounds [11793.52 kilograms] or less are not exempt from the federal motor carrier regulations or hazardous materials regulations if~~

unless the vehicle is used to transport hazardous materials requiring a placard or if unless the vehicle is designed to transport more than fifteen ~~passengers~~ people, including the driver.

**History:** Effective October 1, 1983; amended effective February 1, 1999; February 1, 2000; April 1, 2008; July 1, 2013.

**General Authority:** NDCC 28-32-02, 39-32-02

**Law Implemented:** NDCC 39-21-46

## CHAPTER 38-05-02

### 38-05-02-01. Standards for marking vehicles and loads.

1. Any vehicle or load exempt from width limitations as provided for in North Dakota Century Code section 39-12-04 must display red or bright orange flags that shall be mounted on the most practical outside dimension on the traffic side of the overwidth vehicle or load, front and rear. If one flag is visible from both the front and rear, only one flag would be required. All flags shall be made of red or bright orange cloth or other suitable material and shall be at least ~~twelve~~ eighteen inches [~~30.48~~ 45.72 centimeters] by ~~twelve~~ eighteen inches [~~30.48~~ 45.72 centimeters] in size.
2. In lieu of the flagging requirements in subsection 1:
  - a. Overwidth movements may be followed by a vehicle with lighted flashing lights that are visible from the rear for a minimum five hundred feet [152.4 meters]; or
  - b. The overwidth vehicle itself, or vehicle towing or hauling an overwidth load, may be equipped with a lighted rotating or flashing amber light or lights that are visible from the rear for a minimum five hundred feet [152.4 meters].
3. Movements that exceed fourteen feet six inches [441.96 centimeters] in overall width are exempt from the above flagging requirements, however:
  - a. All movements ~~shall then be preceded and followed by pilot cars equipped with a lighted rotating or flashing amber light mounted on top of the highest part of the vehicles that is visible for a minimum five hundred feet [152.4 meters];~~ that exceed fourteen feet six inches [4.4196 meters] in overall width shall have a red or bright orange flag that is at least eighteen inches [45.72 centimeters] by eighteen inches [45.72 centimeters] in size mounted on a pole showing the extreme outside width and height on the traffic side of the load. If one flag is not clearly visible from the front and rear of the vehicle, then flags must be mounted on both the front and rear of the vehicle; or
  - b. Vehicles, or vehicles towing or hauling loads, that exceed fourteen feet six inches [441.96 centimeters] in overall width shall be equipped with a lighted rotating or flashing amber light or lights that are visible from the front and rear for a minimum five hundred feet [152.4 meters]; or
  - c. Movements that exceed fourteen feet six inches [441.96 centimeters] in overall width ~~shall have a red or bright orange~~

~~flag that is at least twelve inches [30.48 centimeters] by twelve inches [30.48 centimeters] in size mounted on a pole showing the extreme outside width and height on the traffic side of the load. If one flag is not clearly visible from the front and rear of the vehicle, then flags must be mounted on both the front and rear of the vehicle must be preceded and followed by pilot cars equipped with a lighted rotating or flashing amber light mounted on top of the highest part of the vehicles that is visible for a minimum of five hundred feet [152.4 meters].~~

**History:** Effective June 1, 1986; amended effective February 1, 2000; July 1, 2013.

**General Authority:** NDCC 39-12-04

**Law Implemented:** NDCC 39-12-04



## CHAPTER 38-05-04

### MIRROR REQUIREMENTS

Section

38-05-04-01

Mirror Requirements

**38-05-04-01. Mirror requirements.** All vehicles and loads exempt from width limitations must meet the mirror requirements required in North Dakota Century Code chapter 39-21. Every motor vehicle must be equipped with a mirror so located as to reflect to the driver a rear view of the highway for a distance of at least two hundred feet [60.96 meters].

**History:** Effective July 1, 2013.

**General Authority:** NDCC 28-32-02, 39-32-02

**Law Implemented:** NDCC 39-21-46, 39-21-38

**CHAPTER 38-06-02  
ADOPTION OF REGULATIONS**

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38-06-02-06	Size and Weight Limitations
38-06-02-07	Travel Restrictions

**38-06-02-02. Flagging, sign, lighting, and mirror requirements.**

1. All overdimensional vehicles and loads must have minimum ~~twelve-inch~~ eighteen-inch by ~~twelve-inch~~ eighteen-inch [~~304.8 millimeters~~ 45.72-centimeters by ~~304.8 millimeters~~ 45.72-centimeters] red or bright orange flags displayed on the traffic sides front and rear.
2. ~~When the overall length of an overdimensional movement exceeds seventy-five feet [22.86 meters] in length, there must be a minimum twelve-inch by sixty-inch [304.8 millimeters by 1524 millimeters] OVERSIZE LOAD sign on the rear. The lettering must be black on yellow background. Letters must be at least eight inches [203.2 millimeters] high with one-inch [25.4 millimeters] brush stroke. When the movement is overlength only, exceeding seventy-five feet [22.86 meters] in overall length, a LONG LOAD sign that is a minimum twelve inches by sixty inches [304.8 millimeters by 1524 millimeters] in size may be used in lieu of the OVERSIZE LOAD sign. The lettering must be black on yellow background. The letters must be at least eight inches [203.2 millimeters] high with one-inch [25.4 millimeters] brush stroke. The sign must be covered or removed when the movement is not overdimensional.~~
3. ~~2.~~ The towing A motor vehicle must have two outside mirrors, one on each side, to reflect to the driver a rear view of the roadway for a distance of no less than two hundred feet [60.96 meters] to the driver.
3. Between a half hour after sunset and a half hour before sunrise, a permitted overwidth vehicle or load must be equipped with the society of automotive engineers-approved class 1 lights and reflectors, in addition to those required in North Dakota Century Code chapter 39-21 and Code of Federal Regulations, title 49, part 393.
  - a. One rotating or two flashing amber lights shall be mounted above the cab and visible from the front and rear for a distance not less than five hundred feet [152.4 meters], under clear atmospheric conditions at night. If the lights on the cab are not visible to the rear, additional flashing amber lights are required at the rear.

- b. Clearance lights must be visible from the front, rear, and side, marking the outermost portion of the vehicle and load which extends beyond eight feet six inches [2.5908 meters].
- c. Vehicles must be capable of traveling at the posted highway speed unless otherwise noted on the permit.

**History:** Effective January 1, 1988; amended effective February 1, 1999; April 1, 2008; July 1, 2013.

**General Authority:** NDCC 39-12-02

**Law Implemented:** NDCC 39-12-02

### **38-06-02-07. Travel restrictions.**

1. Permits may not be issued for overdimensional movements between one-half hour after sunset and one-half hour before sunrise unless otherwise authorized by the superintendent.
2. Single trip permits for overwidth exceeding sixteen feet [4.88 meters] may not be issued authorizing movements on Saturday after twelve noon, all day Sunday, and on holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. No overwidth permit exceeding sixteen feet [4.88 meters] will be valid from twelve noon the day before the holiday until sunrise the day after the holiday.
  - ~~a. When any above-named holiday is on a Sunday, the following Monday is the holiday.~~
  - ~~b. When any above-named holiday is on a Saturday, the preceding Friday is the holiday.~~
  - ~~c. No overwidth permit exceeding sixteen feet [4.88 meters] will be valid from twelve noon the day before the holiday until sunrise the day after the holiday.~~
3. Permits do not authorize movements when inclement weather prevails, highways are slippery, or when visibility is poor.
4. Permits do not authorize travel on shoulders of road.
5. A single trip permit is required for each movement that is overdimensional or overweight. An annual permit for overwidth vehicle and load movements is required in lieu of the single trip permit issued for overwidth movements.

6. A minimum distance of one thousand feet [304.80 meters] is required between vehicles in a convoy of two or more vehicles.

**History:** Effective January 1, 1988; amended effective August 1, 1993; February 1, 1999; April 1, 2008; July 1, 2013.

**General Authority:** NDCC 39-12-02

**Law Implemented:** NDCC 39-12-02

## CHAPTER 38-06-03

**38-06-03-01. Permit fees.** The following fees are in addition to those found in North Dakota Century Code section 39-12-02:

1. The fee for each identification supplement, identifying a motor vehicle and axle configuration so that self-issuing single trip permits can be used, is ten dollars each.
2. The fee for exceeding the federal gross vehicle weight limitation of eighty thousand pounds [36287 kilograms] on the interstate highway system is five dollars per each "interstate only" single trip movement approval form. If the permit is issued on official receipt/permit, SFN 3507, the fee is ten dollars.
3. The fee for a seasonal permit is fifty dollars per year. The seasonal permit is issued to vehicles referenced in subdivision d of subsection 1 of North Dakota Century Code section 39-12-04.
4. There is a graduated fee schedule for overweight single trip movements exceeding one hundred fifty thousand pounds [68035 kilograms] gross vehicle weight.

<b>Gross Vehicle Weight</b>	<b>Permit Fee</b>
150,001 - 160,000 lbs.	\$30
160,001 - 170,000 lbs.	\$40
170,001 - 180,000 lbs.	\$50
180,001 - 190,000 lbs.	\$60
190,001 lbs. and over	\$70

5. There is an additional ton/mile fee of \$.05 per ton per mile on all those movements that exceed two hundred thousand pounds [90718 kilograms] gross vehicle weight. The ton/mile fee is only assessed upon that portion of gross vehicle weight exceeding two hundred thousand pounds [90718 kilograms] gross vehicle weight.
6. On those movements of extraordinary size or weight that require highway patrol escort there is an escort service fee of fifty cents per mile [kilometer] and fifty dollars per hour.
7. The fee for an equipment approval certificate is fifteen dollars.
8. The ton-mile for a vehicle or load movement that exceeds the weight limits on highways during the spring thaw or on highways with load limits year-round is as follows:
  - a. One dollar per ton-mile when exceeding axle weight limits.

b. The fees for vehicle or vehicle combinations hauling a load and in excess of the gross vehicle weight limit:

(1) One dollar per ton-mile when the gross vehicle weight exceeds one hundred five thousand five hundred pounds and travel is on highways restricted by legal weight or eight-ton and seven-ton designated state highways.

(2) Five dollars per ton-mile when the gross vehicle weight exceeds:

(a) One hundred thirty thousand pounds on highways restricted by legal weight.

(b) One hundred twenty thousand pounds on eight-ton highways.

(c) One hundred ten thousand pounds on seven-ton highways.

(d) Eighty thousand pounds on six-ton highways.

(3) The five dollar per ton-mile fee for self-propelled special mobile equipment is assessed when the gross vehicle weight exceeds:

(a) One hundred five thousand five hundred pounds on highways restricted by legal weight.

(b) One hundred five thousand five hundred pounds on eight-ton highways.

(c) One hundred five thousand five hundred pounds on seven-ton highways.

(d) Eighty thousand pounds on six-ton highways.

9. The fee for a weight increase on a work-over service rig is nine hundred ninety dollars. The fee shall be assessed on a work-over service rig that exceeds six hundred seventy pounds per inch of tire width on a single or tandem axle, exceeds sixty thousand pounds on a triple axle, and sixty-eight thousand pounds on a four-axle group.

a. The weight increase is valid for a calendar year.

b. The weight increase can only be assessed on model year 2010 work-over service rigs and older.

10. All permit fees must be deposited into the state highway distribution fund.

**History:** Effective January 1, 1988; amended effective May 1, 1988; January 1, 1992; August 1, 1993; February 1, 1999; February 1, 2000; April 1, 2008, July 1, 2013.

**General Authority:** NDCC 39-12-02, 39-12-03, 39-12-04, 39-12-05.3

**Law Implemented:** NDCC 39-12-02, 39-12-04, 39-12-05.3

## CHAPTER 38-06-05

### CERTIFICATION OF PORTABLE SCALES

Section

38-06-05-01

Certification

38-06-05-02

Recertification

**38-06-05-01. Certification.** Portable vehicle scales utilized for law enforcement purposes must be tested by an agent of the North Dakota highway patrol or a registered service person or company prior to being utilized for enforcement purposes. A portable vehicle scale utilized for enforcement purposes may be certified by the highway patrol or a registered service person or company. The highway patrol may certify scales used for enforcement purposes by actual testing of the device or by witnessing the test. The highway patrol will maintain a record of certification of portable vehicle scales utilized for law enforcement purposes.

The device utilized by the highway patrol or registered service person or company for the certification of portable vehicle scales should be one that is certified annually by a facility that has practices and standards that are traceable to the national institute of standards and technology, an agency of the United States department of commerce.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 39-12-02

**Law Implemented:** NDCC 39-12-07

**38-06-05-02. Recertification.** An agent of the North Dakota highway patrol or a registered service person or company may inspect, test, and calibrate portable vehicle scales utilized for law enforcement purposes. The owner of any portable vehicle scale utilized for enforcement purposes is responsible for its accuracy and should have the device tested and recertified annually. Failure to recertify a portable vehicle scale within fifteen months of the prior year's annual recertification will disqualify the device to be utilized for enforcement purposes. The highway patrol will maintain a record of recertification of portable vehicle scales utilized for law enforcement purposes.

The device utilized by the highway patrol or registered service person or company for the recertification of portable vehicle scales should be one that is certified annually by a facility that has practices and standards that are traceable to the national institute of standards and technology, an agency of the United States department of commerce.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 39-12-02

**Law Implemented:** NDCC 39-12-07



## CHAPTER 38-07-01

**38-07-01-01. Definitions.** In this article, unless the context or other subject matter requires:

1. "Commercial driver's license" means a license issued under North Dakota Century Code chapter 39-06.2 which authorizes an individual to drive a class of commercial motor vehicle as defined in subsection 6 of North Dakota Century Code section 39-06.2-02
- ~~4.~~ 2. "Contract" means a written agreement between the commercial driver training school and a student for classroom instruction, behind-the-wheel training, internet course, or any combination thereof.
- ~~2.~~ 3. "Internet course" means an electronic course of instruction as authorized under paragraph 2 of subdivision a of subsection 2 of North Dakota Century Code section 39-06-01.1.
- ~~3.~~ 4. "Lesson" means a continuous period of time during which instruction is given for the purpose of operating a motor vehicle whether by classroom instruction, practice driving, or internet course. A one-hour lesson means one hour of actual instruction.
- ~~4.~~ 5. "Location" means a designated site at which the business of a commercial driver training school is transacted and its records are kept.
- ~~5.~~ 6. "Superintendent" means the superintendent of the North Dakota highway patrol.
7. "Owner" means a person or persons, including a partnership, a corporation, or other business entity, that has a vested interest in and control over a school.
8. "Safe mechanical condition" means the continual compliance with safety requirements of vehicles that are used to train school students and have passed either a state safety inspection or a federal motor carrier safety administration inspection.

**History:** Effective December 1, 1988; amended effective June 1, 2002; July 1, 2013.

**General Authority:** NDCC 39-25-02

**Law Implemented:** NDCC 39-06-01.1, 39-25-01

## CHAPTER 38-07-02

### 38-07-02-06. Insurance and safety.

1. The licensee shall file with the superintendent evidence of liability insurance obtained from a company authorized to do business in the state of North Dakota. Proof of insurance is required for each vehicle used for driver training in the amount of:
  - a. At least one hundred thousand dollars because of bodily injury to or death of any one person in any one accident.
  - b. At least three hundred thousand dollars because of bodily injury to or death of two or more persons in any one accident.
  - c. At least twenty-five thousand dollars because of damage to or destruction of property of others in any one accident.
  - d. At least thirty thousand dollars for medical expenses regardless of liability.
2. The licensee shall furnish evidence of such coverage to the superintendent stipulating that such insurance will not be canceled or terminated except upon ten days' prior written notice to the superintendent.
3. In the event such insurance is canceled or terminated, the school license certificate shall terminate automatically. All vehicles used in the operation of the school may not thereafter be used for driver training school purposes until such school obtains adequate insurance coverage and said license is reenacted. School certificates terminated under the provision of this section must be surrendered to the superintendent within a period of ten days.
4. The commercial driver training school owner or operator shall secure and submit with the application for license a continuous surety company bond in the principal sum of two thousand five hundred dollars for class D and M instruction or a continuous surety company bond in the principal sum of five thousand dollars for commercial motor vehicle driver's license instruction for the protection of the contractual rights of students, undertaken by a company authorized to do business in the state of North Dakota. The concerned surety company may cancel said bond upon giving thirty days' written notice thereof to the superintendent. The surety company must be released of all liability

for any breach of any condition of the bond occurring after the effective date of the cancellation.

**History:** Effective December 1, 1988; amended effective July 1, 2013.

**General Authority:** NDCC 39-25-02

**Law Implemented:** NDCC 39-25-03

## CHAPTER 38-07-03

**38-07-03-05. Vehicle inspection.** All vehicles used for driver training purposes must be in safe mechanical condition. Vehicles must pass a vehicle inspection immediately after installation of dual control devices and periodically thereafter as may be designated by the superintendent. The department of transportation annual vehicle inspection will be accepted for commercial vehicles. The vehicle inspection must be done by a person authorized by the superintendent. The license of a commercial driver training school or instructor may be suspended at any time if a vehicle used for driver training purposes is not maintained in a safe operating condition.

**History:** Effective December 1, 1988; amended effective April 1, 1992; July 1, 2013.

**General Authority:** NDCC 39-25-02

**Law Implemented:** NDCC 39-25-02

## CHAPTER 38-07-04

**38-07-04-01. Instructor requirements.** An applicant for a commercial driver training instructor license shall must:

1. Be a resident of the state of North Dakota, unless waived by the superintendent for good cause.
2. Furnish the superintendent information relating to all previous places of residence located outside of the state of North Dakota.
3. Be at least twenty-one years of age.
4. Read, write, and speak the English language.
5. Have normal peripheral vision, depth perception, and color vision. Visual acuity of at least 20/40 in each eye, with or without corrective lenses.
6. Have been a licensed driver for three years for class license instruction, holding a valid North Dakota driver's license unless waived by the superintendent for good cause, free from requirement to show proof of financial responsibility, and have a satisfactory driving record free from any conviction that would constitute the basis for suspension or revocation of the instructor license.
7. Submit with the application a copy of the applicant's driving record dated not earlier than thirty days prior to the receipt of application by the superintendent.
8. Not have been convicted of a crime involving moral turpitude.
9. Furnish the superintendent with one set of fingerprints and photographs and authorize investigation with the bureau of criminal investigation and the federal bureau of investigation to determine if the applicant has a criminal record.
  - a. The attorney general's office request for criminal history record form, authorization form, fingerprints, and fee for background check must be submitted with the application for an instructor license.
  - b. If the applicant has been convicted of a misdemeanor or felony, then the applicant is ineligible to be an instructor unless:
    - (1) The superintendent determines the crime does not directly relate to the position of instructor; or

(2) The applicant has shown competent evidence of sufficient rehabilitation and present fitness to perform the duties of an instructor.

10. Pass a written and ~~driver training~~ road test for each class of license for which driver training is to be offered. The ~~test tests~~ must ~~have been developed and~~ be administered by the North Dakota department of transportation drivers license division. The superintendent may periodically require a licensed instructor to submit to a written examination consisting of all or any part of the test specified in this section. The test must include:
  - a. The operation of a motor vehicle.
  - b. Traffic laws.
  - c. Road signs, laws and regulations, and other material pertaining to and affecting the driver, traffic, and motor vehicle.
  
11. Be in good physical and mental health, and having no illness or condition that would render the applicant unable to safely perform the duties as an instructor. The applicant shall submit to a physical examination by a licensed physician and a certificate must accompany the application. For commercial driver's license instruction, the instructor shall submit a copy of the department of transportation medical card every two years. The superintendent may periodically require a licensed instructor to submit to a physical examination by a licensed physician and a certificate of the examination must be submitted to the superintendent.
  
12. Instructor preparation:
  - a. Hold a valid North Dakota driver education certificate issued by the department of public instruction; or
  - b. Have successfully completed an approved preparation course or courses for commercial driver education instructors. Instructor preparation courses must be submitted to and approved by the superintendent. Preparation courses conducted by a licensed commercial driver training school must consist of both classroom training and practical driving situations. At a minimum, instructor development training should consist of thirty hours of classroom and thirty hours of behind-the-wheel practical training. The behind-the-wheel practical training must consist of both actual driving and riding along and observing a licensed instructor during a student training session. Driver education instructor development courses offered through a university system will also be considered for approval.

13. Instructor requirements may be waived by the superintendent for good cause when pertaining to a commercial driving school licensed to offer the internet course only.

**History:** Effective December 1, 1988; amended effective April 1, 1992; June 1, 2002; July 1, 2013.

**General Authority:** NDCC 39-25-02

**Law Implemented:** NDCC 39-06-01.1, 39-25-04





**TITLE 43**  
**INDUSTRIAL COMMISSION**



**CHAPTER 43-02-02**  
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43-02-02-49	Commission Order From Examiner Hearing
43-02-02-50	Hearing De Novo Before Commission [Repealed]
<u>43-02-02-51</u>	<u>Prehearing Motion Practice</u>

**43-02-02-01. Definitions.** The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter ~~38-12.4~~ 38-12, except:

1. "Barrel" means forty-two United States gallons [158.99 liters] measured at sixty degrees Fahrenheit [15.56 degrees Celsius] and fourteen and seventy-three hundredths pounds per square-inch absolute [1034.19 grams per square centimeter].
2. "Bottom hole or subsurface pressure" means the pressure in pounds per square-inch gauge under conditions existing at or near the producing horizon.
3. "Certified or registered mail" means any form of service by the United States postal service, federal express, Pitney Bowes, and any other commercial nationwide delivery service that provides the mailer with a document showing the date of delivery or refusal to accept delivery.
- ~~4.~~ 4. "Completion" means when the well is capable of producing subsurface minerals through wellhead equipment from the ultimate producing zone after casing has been run.
- ~~2.~~ 5. "Deep well" means any ~~hole drilled below one thousand feet [304.8 meters]~~ well to explore for, develop, or produce subsurface minerals which is drilled into rocks older than the Greenhorn formation or which encounters brackish or saline formation waters.
6. "Department" means the department of mineral resources of the industrial commission.
- ~~3.~~ 7. "Deposit" means an underground concentration containing a common accumulation of subsurface minerals.
8. "Director" means the director of the department of mineral resources of the industrial commission.
9. "Exception location" means a location which does not conform to the general spacing requirements established by the rules or orders of the commission but which has been specifically approved by the commission.

- 4- 10. "Field" means the general area underlaid by a concentration of subsurface minerals. Field also includes the geological formation containing such subsurface minerals.
- 5- 11. "Log or well log" means a systematic, detailed, and correct record of formations encountered in the drilling of a well, and includes commercial electrical logs and similar records.
- 6- 12. "Nonhydrocarbon gas" means all naturally occurring gaseous elements and compounds except hydrocarbons and carbon dioxide as regulated under North Dakota Century Code chapter 38-08.
13. "Occupied dwelling" means a residence which is lived in by a person at least six months throughout a calendar year.
- 7- 14. "Operator" means any person or persons who, duly authorized, is in charge of the development of a lease or the operation of a producing property.
- 8- ~~"Owner" means the person who has the right to drill into and produce from a mineral-bearing formation and to appropriate the subsurface minerals the person produces therefrom either for that person or others or for that person and others.~~
- 9- ~~"Producer" means the owner of a well or wells capable of producing subsurface minerals.~~
- 10- 15. "Product" means any commodity made from any subsurface mineral.
16. "Recomplete" means the subsequent completion of a well in a different pool.
17. "Reservoir" means a pool or common source of supply.
18. "Saltwater handling facility" means and includes any container, such as a pit, tank, or pool, whether covered or uncovered, used for the handling, storage, disposal of deleterious substances obtained, or used, in connection with the drilling or operation of wells.
- 11- 19. "Shallow well" means any hole ~~drilled to a total depth of less than one thousand feet [304.8 meters]~~ well drilled into rocks younger than the Belle Fourche formation which does not encounter saline or brackish formation waters for the purpose of developing or producing subsurface minerals.
20. "Shut-in pressure" means the pressure noted at the wellhead when the well is completely shut in, not to be confused with bottom hole pressure.

~~42.~~ 21. "Testhole" means any hole drilled to a total depth of less than one thousand feet [304.8 meters] for the purpose of gathering information on subsurface minerals.

~~43.~~ 22. "Waste" means ~~and includes (a) physical waste, (b) operations which cause or tend to cause unnecessary or excessive surface loss, and (c) operations that do not recover all of the mineral being mined that is technically and economically possible.;~~

a. Physical waste;

b. Operations which cause or tend to cause unnecessary or excessive surface loss; or

c. Operations that do not recover all of the mineral being mined that is technically and economically possible.

**History:** Amended effective August 1, 1986; July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-02. Scope of chapter.** This chapter ~~is of statewide application and has~~ contains general rules of statewide application which have been adopted by the industrial commission to conserve the natural resources of North Dakota, to prevent waste, and to provide for operation in a manner as to protect correlative rights of all owners of subsurface minerals. Special rules, pool rules, field rules, and regulations and orders have been and will be issued when required and shall prevail as against ~~this chapter~~ general rules, regulations, and orders if in conflict therewith. However, wherever this chapter does not conflict with special rules heretofore or hereafter adopted, this chapter will apply in each case. The commission may grant exceptions to this chapter, after due notice and hearing, when such exceptions will result in the prevention of waste and operation in a manner to protect correlative rights.

**History:** Amended effective August 1, 1986; July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-03. Promulgation of rules, regulations, or orders.** ~~No rule, regulation, or order, including change, renewal, or exception thereof, shall, in the absence of an emergency, be made by the commission, except after a public hearing on at least ten days' notice given in the manner and form as may be prescribed by law. The public hearing shall be held at such time, place, and in such manner as may be prescribed by the commission, and any person having any interest in the subject matter of the hearing shall be entitled to be heard.~~ Repealed effective July 1, 2013.

**General Authority:** ~~NDCC 38-12-02~~

**Law Implemented:** ~~NDCC 38-12-02~~

**43-02-02-04. Emergency rule, regulation, or order.** ~~In the event an emergency is found to exist by the commission which in its judgment requires the making, revoking, changing, amending, modifying, altering, enlarging, renewing, or extending of a rule, regulation, or order without first having a hearing, such emergency rule, regulation, and order shall have the same validity as if a hearing with respect to the same had been held after due notice. The emergency rule, regulation, or order permitted by this section shall remain in force no longer than fifteen days from its effective date, and in any event, it shall expire when the rule, regulation, or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation, or order becomes effective. Repealed effective July 1, 2013.~~

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

**43-02-02-05. Enforcement of laws, rules, and regulations dealing with exploration, development, and production of subsurface minerals.** The commission, its agents, representatives, and employees are charged with the duty and obligation of enforcing all rules and statutes of ~~the state of~~ North Dakota relating to the exploration, development, and production of subsurface minerals. However, it shall be the responsibility of all owners or operators to obtain information pertaining to the regulation of subsurface minerals before operations have begun. ~~As a matter of practice, operators shall take precautions to prevent waste and damage to mineral-bearing formations, and shall take such action as may be needed to avoid, minimize, or repair soil erosion, and to avoid pollution of air, surface water, and ground water.~~

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-05.1. Waste prohibited.** All operators, contractors, drillers, carriers, gas distributors, service companies, pipe pulling and salvaging contractors, or other persons shall at all times conduct their operations in the mining, drilling, equipping, operating, producing, plugging, and site reclamation of subsurface minerals in a manner that will prevent waste.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-06. United States government leases.** The commission recognizes that all persons drilling and producing on United States government land ~~or United States minerals~~ shall comply with the federal United States government regulations. Such persons shall also comply with all applicable state rules and regulations ~~which are not in conflict with federal regulations~~. Copies of the sundry notices ~~and~~ reports on wells, ~~and the well log well data required by this chapter~~ of the wells on United States government land ~~or minerals~~ shall be furnished to the state geologist at no expense to the state geologist. Federal forms



may be used when filing such notices and reports except for reporting the plugging and abandonment of a well. In such instance, the plugging record (form 7-sm) must be filed with the state geologist.

**History:** Amended effective August 1, 1986; July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-08. Authority to cooperate with other agencies.** The commission may from time to time enter into arrangements with state and federal government agencies, ~~committees from~~ industry committees, and individuals with respect to special projects, services, and studies relating to subsurface minerals.

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-09. Organization reports.** Every person acting as principal or agent for another or independently engaged in the drilling for, or ~~any operation pertaining to,~~ in the production, storage, transportation, refining, reclaiming, treating, marketing, or processing of subsurface minerals in the ~~state of~~ North Dakota shall immediately file with the state geologist the name under which ~~the business is being conducted or operated,~~ such business is being conducted and operated; the name and post-office address of such person; the business or businesses in which the person is engaged; the plan of organization, and in case of a corporation, the law under which it is chartered, ~~the names under which it is chartered;~~ and the names and post-office addresses of any officials thereof. ~~In each case where the person acting as trustee, together with the names and post-office addresses of any officials on an organization report (form 2sm). If such business is conducted under an assumed name, the reports~~ such organization report shall show the names and post-office addresses of all owners in addition to the other information required. A new organization report shall be filed whenever when and if there is a change in any of the information required on the contained in the report.

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-09.1. Reservoir surveys.** By special order of the commission, periodic surveys may be made of the reservoirs in the state containing subsurface minerals. These surveys will be thorough and complete and shall be made using methods approved by the director. The condition of the reservoirs containing subsurface minerals and the practices and methods employed by the operators shall be investigated. The produced volume and source of subsurface mineral, reservoir pressure of the reservoir as an average, the areas of regional or differential pressure, and producing characteristics of the field as a whole and the individual wells within the field shall be specifically included.

All operators of mineral wells are required to permit and assist the agents of the commission in making any and all special tests that may be required by the commission on any or all wells.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-10. Record of permits and official well names.** The state geologist shall maintain an official permit list ~~in which shall be entered:~~ and a record of official well names.

~~1. The name of the permitholder.~~

~~2. The permit number.~~

~~3. The date the permit was issued.~~

~~4. The location of the permit.~~

1. The official permit list must include:

a. The name of the permitholder;

b. The permit number;

c. The date the permit was issued; and

d. The location of the permit.

2. The record of official well names, to be known as the well name register, must include:

a. The name and location of each well;

b. The well file number;

c. The name of the operator or operator's agent; and

d. Any subsequent name or names assigned to the well and approved by the director.

The last name assigned to a well in the well name register shall be the official name of the well, and the one by which it shall be known and referred to.

The director may, at the director's discretion, grant or refuse an application to change the official name. The application shall be accompanied by a fee of

twenty-five dollars, which fee is established to cover the expense of recording the change. If the application is refused, the fee shall be refunded.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-10.1. Access to records.** The commission, director, and their representatives shall have access to all well records wherever located. All owners, operators, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, producing, or servicing wells shall permit the commission, director, and their representatives to come upon any lease, property, well, or drilling rig operated or controlled by them, complying with state safety rules and to inspect the records and operation of such wells, and to have access at all items to any and all records of wells. If requested, copies of such records must be filed with the commission. The confidentiality of any data submitted which is confidential pursuant to subdivision b of subsection 1 of North Dakota Century Code section 38-12-02 and North Dakota Administrative Code section 43-02-02-22 must be maintained.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-11. Bond.** Before any person receives a permit to explore for or produce subsurface minerals, the person shall submit to the commission and obtain its approval of a surety bond or cash bond. An alternate form of security may be approved by the commission after notice and hearing, as provided by law. The operator of a well or facility shall be the principal on the bond covering such activity. Each such surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

1. ~~For Bond amounts and limitations for projects that involve drill holes, the amount of the bond shall be commensurate with the number of wells, the type of project, and the environmental risk. The amount of a bond will be determined by a formula that assigns reclamation costs based upon the number of drill sites, the depths of the holes, and the anticipated surface restoration costs.~~
  - a. For wells drilled to a total depth of less than two thousand feet [609.6 meters], the amount of the bond shall be commensurate with the number of wells, the type of project, and the environmental risk. The amount of a bond will be determined by a formula that assigns reclamation costs based upon the number of drill sites, the depths of the holes, and the anticipated surface restoration costs.
  - b. For wells drilled to a total depth of two thousand feet [609.6 meters], or more, the bond shall be in the amount of fifty thousand dollars and applicable to one well only.

When the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, the principal may submit a bond conditioned as provided by law. A well with an approved temporary abandoned status shall have the same status as an exploratory, mineral, or injection well. The commission may, after notice and hearing, require higher bond amounts than those required by this section. Such additional amounts for bonds must be related to the economic value of the well or wells and the expected cost of plugging and well site reclamation, as determined by the commission.

2. ~~For surface mining facilities, the amount of the bond will be five thousand dollars per acre [40 hectare].~~
3. 2. Liability on the bond is conditioned on Bond terms. Bonds shall be conditioned upon full compliance with North Dakota Century Code chapter 38-12 and the, and all administrative rules and orders of the commission, and continues until any of the following occurs:
  - a. ~~The testholes or wells have been satisfactorily plugged as provided in this chapter, the sites restored and approved by the state geologist, which shall include practical reclamation of the well site and appurtenances; and all logs, plugging records, and other pertinent data required by statute or rules and orders of the commission are filed and approved.~~
  - b. ~~The mined lands or lands disturbed by any method of exploration or production of subsurface minerals have been restored and approved by the director.~~
  - c. ~~The liability on the bond has been transferred to another bond and such transfer approved by the commission. The transferee of any well or the operator of any well is responsible for the plugging of any such well and for that purpose shall submit a new bond or produce the written consent of the surety of the original or prior plugging bond that the latter's responsibility shall continue. The original or prior bond may not be released as to the plugging responsibility of any such transferor until the transferee submits to the commission an acceptable bond to cover such well. All liability on bonds continues until the plugging of such well or wells and the restoration of the surface is completed and approved.~~
3. Transfer of property under bond. Transfer of property does not release the bond. In case of transfer of property or other interest in a well, extraction facility, or surface mining facility and the principal desires to be released from the bond covering the well or facility, such as producers, not ready for plugging, the principal must proceed as follows:

- a. The principal must notify the director, in writing, of all proposed transfers of property at least thirty days before the closing date of the transfer. The director may, for good cause, waive this requirement.

The principal shall submit to the commission a form 8-sm reciting that a certain property or properties, describing each by quarter-quarter, section, township, and range, is to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form signed by a party duly authorized to sign on behalf of the principal.

On said transfer form the transferee shall recite the following: "The transferee has read the foregoing statement and accepts such transfer and the responsibility of such property under the transferee's one-well bond, surface mining facility bond, or extraction facility bond." Such acceptance must be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.

- b. When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of well plugging and site reclamation. If such wells include all the wells within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any well from a bond if the well is in violation of a statute, rule, or order.

- c. The transferee (new operator) of any extraction facility, surface mining facility, or injection well shall be responsible for the plugging and site reclamation of any such property. For that purpose, the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue and attach to such well. The original or prior bond shall not be released as to the plugging and reclamation responsibility of any such transferor until the transferee submits to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging and site reclamation of such property is completed and approved.

4. Bond termination. The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging and reclamation is approved. If approved, liability under such bond may be formally terminated upon receipt of a written request by the principal.

The request must be signed by an officer of the principal or a person authorized to sign for the principal.

5. Director's authority. The director is vested with the power to act for the commission as to all matters within this section, except requests for alternative forms of security, which may only be approved by the commission.

~~The commission may refuse to accept a bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of wells; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.~~

The commission may refuse to accept a bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of wells; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

~~The commission shall advise the surety and the principal when liability on a surety bond is terminated.~~

~~The director is vested with the power to act for the commission as to all matters within this section.~~

**History:** Amended effective August 1, 1986; May 1, 2004; October 1, 2008; July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-11.1. Designation and responsibilities of operator.** The principal on the bond covering a well is the operator of the well. The operator is responsible for compliance with all laws relating to the well and well site. A dispute over designation of the operator of a well may be addressed by the commission. In doing so, the factors the commission may consider include those set forth in subsection 1 of section 43-02-02-12.1.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-12. Permit required Application for permit to drill and recomplete.** A permit shall be required prior to commencement of operations for the exploration or evaluation of subsurface minerals. The state geologist may grant a permit for one year upon receipt of a permit application on a form provided by the commission, the furnishing of a bond as provided in section 43-02-02-11, and the payment of a fee of one hundred dollars for each permit. The application for a permit to drill (form 1-sm) shall be filed with the director, together with a permit fee of one hundred dollars. In extenuating circumstances, verbal approval may be given for site preparation by the director. No drilling activity shall commence until

such application is approved and a permit to drill is issued by the director. The application must be accompanied by the bond pursuant to section 43-02-02-11 or the applicant must have previously filed such bond with the commission, otherwise the application is incomplete. An incomplete application received by the commission has no standing and will not be deemed filed until it is complete.

- ~~1. A permit shall be required for each deep well not included in an approved mining plan, and the application for such permit shall be accompanied by a plat prepared by a qualified person showing the exact location and elevation of the well.~~
- ~~2. A permit shall be required for each testhole drilling program exploring for subsurface minerals. The area to be explored shall be outlined on the application and the permit shall be valid only in the area so outlined.~~

A permit shall be required for each deep well not included in an approved mining plan.

A permit shall be required for each testhole drilling program exploring for subsurface minerals. The area to be explored shall be outlined on the application and the permit shall be valid in the area so outlined.

The application for permit to drill shall be accompanied by an accurate plat certified by a registered surveyor showing the location of the proposed well with reference to true north and the nearest lines of a governmental section. The plat shall also include latitude and longitude of the proposed well location to the nearest tenth of a second. Information to be included in such application shall be the proposed depth to which the well will be drilled; estimated depth to the top of important markers; estimated depth to the top of objective horizons; the proposed mud program; the proposed casing program, including size and weight; the depth at which each casing string is to be set; the proposed pad layout, including cut and fill diagrams; and the proposed amount of cement to be used, including the estimated top of the cement.

Prior to the commencement of recompletion operations or drilling horizontally, an application for permit shall be filed with the director. Included in such application shall be the notice of intention (form 4-sm) to reenter a well by drilling horizontally, deepening, or plugging back to any source of supply other than the producing horizon in an existing well. Such notice shall include the name and file number and exact location of the well, the approximate date operations will begin, the proposed procedure, the estimated completed total depth, the anticipated hydrogen sulfide content in produced gas from the proposed source of supply, the weight and grade of all casing currently installed in the well unless waived by the director, the casing program to be followed, and the original total depth with a permit fee of fifty dollars. The director may deny any application if it is determined, in accordance with the latest version of ANSI/NACE MR0175/ISO 15156, that the casing currently installed in the well would be subject to sulfide stress cracking.

The applicant shall provide any additional information requested by the director, in addition to that specifically required by this section. The director may impose such terms and conditions on the permits issued under this section as the state geologist deems necessary.

~~The state geologist may deny an application for permit if the drilling of a well or other exploration operation would violate correlative rights or would cause, or tend to cause, waste, damage to the environment, damage to mineral-bearing formations, or damage to nonmineral resources. The applicant may appeal the decision of the state geologist to the commission.~~

The director shall deny an application for a permit under this section if the proposal would violate correlative rights or would cause, or tend to cause, waste. The director shall state in writing to the applicant the reason for the denial of the permit. The applicant may appeal the decision of the director to the commission.

A permit to drill automatically expires one year after the date it was issued, unless the well is drilling or has been drilled before surface casing. A permit to recomplete or to drill horizontally automatically expires one year after the date it was issued, unless such project has commenced.

**History:** Amended effective May 1, 2004; July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

#### **43-02-02-12.1. Revocation and limitation of drilling permits.**

1. After notice and hearing, the commission may revoke a drilling, recompletion, or reentry permit or limit its duration. The commission may act upon its own motion or upon the application of an owner in the spacing or drilling unit. In deciding whether to revoke or limit a permit, the factors that the commission may consider include:
  - a. The technical ability of the permitholder and other owners to drill and complete the well.
  - b. The experience of the permitholder and other owners in drilling and completing similar wells.
  - c. The number of wells in the area operated by the permitholder and other owners.
  - d. Whether drainage of the spacing or drilling unit has occurred or is likely to occur in the immediate future and whether the permitholder has committed to drill a well in a timely fashion.
  - e. Contractual obligations, such as an expiring lease.



- f. The amount of ownership the permitholder and other owners hold in the spacing or drilling unit. If the permitholder is the majority owner in the unit or if its interest when combined with that of its supporters is a majority of the ownership, it is presumed that the permitholder should retain the permit. This presumption, even if not rebutted, does not prohibit the commission from limiting the duration of the permit. However, if the amount of the interest owned by the owner seeking revocation or limitation and its supporters are a majority of the ownership, the commission will presume that the permit should be revoked.
2. The commission may suspend a permit that is the subject of a revocation or limitation proceeding. A permit will not be suspended or revoked after operations have commenced.
3. If the commission revokes a permit upon the application of an owner and issues a permit to that owner or to another owner who supported revocation, the commission may limit the duration of such permit. The commission may also, if the parties fail to agree, order the owner acquiring the permit to pay reasonable costs incurred by the former permitholder and the conditions under which payment is to be made. The costs for which reimbursement may be ordered may include those involving survey of the well site, title search of surface and mineral title, and preparation of an opinion of mineral ownership.
4. If the commission declines to revoke a permit or limit the time within which it must be exercised, it may include a term in its order restricting the ability of the permitholder to renew the permit or to acquire another permit within the same spacing or drilling unit.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-12.2. Design and construction of surface facilities.** The operator shall submit plans and specifications to the director before constructing the following surface facilities:

1. Process or recovery plants and satellite facilities;
2. Ponds and impoundments;
3. Pipelines;
4. Well houses or transfer stations;
5. Fuel storage areas;
6. Any haul roads that will be used for more than six months;

7. Byproduct disposal areas; and
8. Any other facility that may contain substances that could impact human health or degrade the environment if spilled, discharged, or released.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

#### **43-02-02-12.3. Construction quality assurance plan.**

1. The operator shall develop, for the department's approval, a construction quality assurance plan that addresses all aspects of constructing surface facilities. The plan must include the following:
  - a. A description of the responsibilities and authorities of key personnel, including the personnel's level of experience and training;
  - b. A description of the required level of experience, training, and duties of the contractor, the contractor's employees, and the quality assurance inspectors;
  - c. A description of the testing protocols for every major phase of construction, including the frequency of inspections, field testing, and sampling for laboratory testing;
  - d. The sampling and field testing procedures and the equipment to be used;
  - e. The calibration of field testing equipment;
  - f. The laboratory procedures to be used; and
  - g. A description of the documentation to be maintained.
2. The operator shall submit the construction quality assurance plan at the same time the plans and specifications required in section 43-02-02-12.2 are submitted.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

#### **43-02-02-12.4. Pipeline design and construction requirements.**

1. Topsoil must be removed before the installation of underground pipelines and replaced after pipelines are installed.

2. Pipeline systems must be constructed with materials that have the strength, thickness, and chemical properties that prevent failure due to pressure gradients, physical contact with the waste or fluids to which the pipes are exposed, climatic conditions, stress of installation, seismic, and stress of daily operation.
3. Design and construction requirements for wellfield pipelines and pipelines between the wellfield and processing and satellite facilities must include an early detection and shutdown capability in the event of pressure drop or loss of flow. This may include automatic motor-operated valves with pressure transmitters and manually operated valves or devices.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-12.5. Disposal of liquid waste.** All liquid waste streams must be:

1. Disposed of in a permitted class I or V underground injection control disposal well under a state department of health underground injection control program permit in accordance with chapter 33-25-01;
2. Land applied under a solid waste permit in accordance with chapter 33-20-09; or
3. Treated, if necessary, and discharged under a North Dakota pollution discharge elimination system surface water discharge permit in accordance with chapter 33-16-01.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-13. Well location.** All well locations must be approved by the commission, after notification and hearing. No well drilled for solution mining of subsurface minerals shall be located closer than five hundred feet [152.4 meters] from the boundary line of property owned or leased by the operator except by order of the commission. ~~However, a well may be drilled three hundred feet [91.44 meters] from such boundary if the operator submits geological and other technical data to the commission which indicates that waste would occur and that correlative rights will not be violated.~~ The term boundary line as used herein is understood to mean the boundary of a contiguous set of properties either owned or leased by the operator.

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-13.1. Exception location.** An operator may apply for an exception to drill at a distance less than five hundred feet [152.4 meters] from the boundary line of a property owned or leased by the operator if the operator submits geological and other technical data to the commission which indicates that waste would occur and that correlative rights will not be violated.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-13.2. Deviation tests and directional surveys.** When any well is drilled or deepened, tests to determine the deviation from the vertical shall be taken at least every one thousand feet [304.8 meters]. The director is authorized to waive the deviation test for a shallow gas well if the necessity therefor can be demonstrated to the director's satisfaction. When the deviation from the vertical exceeds five degrees at any point, the director may require that the hole be straightened. Directional surveys may be required by the director, whenever, in the director's judgement, the location of the bottom of the well is in doubt.

A directional survey shall be made and filed with the state geologist on any well utilizing a whipstock or any method of deviating the well bore. The obligation to run the directional survey may be waived by the director when a well bore is deviated to sidetrack junk in the hole, straighten a crooked hole, control a blowout, or if the necessity therefor can be demonstrated to the director's satisfaction. The survey contractor shall file with the state geologist free of charge one certified electronic copy of all surveys, in a form approved by the director, within thirty days of attaining total depth. Such survey shall be in reference to true north. The director may require the directional survey to be filed immediately after completion if the survey is needed to conduct the operation of the director's office in a timely manner. Special permits may be obtained from the director to drill directionally in a predetermined direction as provided in this section.

If the director denies a request for a permit to directionally drill, the director shall advise the applicant immediately of the reasons for the denial. The decision of the director may be appealed to the commission.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-14. Sign on wells.** ~~Every exploratory deep well~~ Every well associated with the exploration or mining of subsurface minerals shall be identified by a sign; posted on the derrick or not more than twenty feet [6.10 meters] from such well, and such signs the well. The sign shall be of durable construction and the lettering thereon shall be kept in a legible condition and shall be large enough to be legible under normal conditions at a distance of fifty feet [15.24 meters]. The wells on each lease or property shall be numbered in a nonrepetitive, logical sequence nonrepetitive sequence, unless some other system of numbering was adopted by the owner prior to the adoption of this chapter. Each sign will must

~~show the well name and number of the well, the name of the lease (which shall be different or distinctive for each lease), the name of the lessee, owner, or operator, permit number, (which shall be different or distinctive for each well), the name of the operator, file number, and the location by quarter-quarter section, section, township, and range. Where wells producing subsurface minerals are closely spaced on the surface, this requirement shall be satisfied by one general sign giving the name of the lease, the name of the lessee, owner, or operator, permit number, and the location by quarter-quarter section, section, township, and range, provided this sign is visible from the individual wells. In this case, a sign showing the number of the well will be posted on each well.~~

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-14.1. Site construction.** In the construction of a drill site, access road, and all associated facilities, topsoil shall be removed, stockpiled, and stabilized or otherwise reserved for use when the area is reclaimed. "Topsoil" means the suitable plant growth material on the surface; however, in no event shall this be deemed to be more than the top eight inches [20.32 centimeters] of soil. Soil stabilization additives and materials to be used onsite, access roads or associated facilities must have approval from the director before application.

When necessary to prevent pollution of the land surface and freshwaters, the director may require the drill site to be sloped and diked.

Well sites and associated facilities shall not be located in, or hazardously near, bodies of water, nor shall they block natural drainages. Sites and associated facilities shall be designed to divert surface drainage from entering the site.

Well sites and associated facilities or appropriate parts thereof shall be fenced if required by the director.

Within six months after completion of a well, the portion of the well site not used for well operations shall be reclaimed unless waived by the director. Well sites and all associated facilities shall be stabilized to prevent erosion.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-15. Pits for drilling fluid and drill cuttings.** ~~In order to assure a supply of proper material or mud laden fluid to confine oil, gas, water, or any subsurface mineral to their native strata during the drilling of any well, each operator shall provide, before drilling is commenced, a pit of sufficient size to contain said material or fluid, and the accumulation of drill cuttings. Such pits~~

located in permeable material shall be lined in a manner approved by the state geologist. Repealed effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-15.1. Fencing, screening, and netting of drilling and reserve pits.** All open pits and ponds which contain saltwater must be fenced. All pits and ponds which contain oil must be fenced, screened, and netted.

This is not to be construed as requiring the fencing, screening, or netting of a drilling pit or reserve pit used solely for drilling, completing, recompleting, or plugging unless such pit is not reclaimed within ninety days after completion of drilling operations.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-15.2. Disposal of waste material.** All waste material associated with exploration or production of a subsurface mineral through deep wells must be properly disposed of in an authorized facility.

All waste material recovered from spills, leaks, and undesirable events shall immediately be disposed of in an authorized facility, although the remediation of such material may be allowed onsite if approved by the director.

This is not to be construed as requiring the offsite disposal of drilling mud or drill cuttings associated with the drilling of a shallow well. However, water remaining in a drilling or reserve pit used in the drilling and completion operations of a deep well is to be removed from the pit and disposed of in an authorized disposal well or used in a manner approved by the director. The disposition or use of the water must be included on the sundry notice (form 4-sm) reporting the plan of reclamation pursuant to sections 43-02-02-15.4 and 43-02-02-15.5.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-15.3. Earthen pits and open receptacles.** Except as otherwise provided in sections 43-02-02-15.4 and 43-02-02-15.5, no saltwater, drilling mud, crude oil, waste oil, or other waste shall be stored in earthen pits or open receptacles except in an emergency and upon approval by the director.

A lined earthen pit or open receptacle may be temporarily used to retain oil, water, cement, solids, or fluids generated in well completion servicing or plugging operations. A pit or receptacle used for this purpose must be sufficiently impermeable to provide adequate temporary containment of the oil, water, or fluids. The contents of the pit or receptacle must be removed within seventy-two hours

after operations have ceased and must be disposed of at an authorized facility in accordance with section 43-02-02-15.2. Within thirty days after operations have ceased, the earthen pit shall be reclaimed and the open receptacle shall be removed. The director may grant an extension of the thirty-day time period for no more than one year for good cause.

The director may permit pits or receptacles used solely for the purpose of flaring casinghead gas. A pit or receptacle used for this purpose must be sufficiently impermeable to provide adequate temporary containment of fluids. Permission for such pit or receptacle shall be conditioned on locating the pit not less than one hundred fifty feet [45.72 meters] from the vicinity of wells and tanks and keeping it free of any saltwater, crude oil, waste oil, or other waste. Saltwater, drilling mud, crude oil, waste oil, or other waste shall be removed from the pit or receptacle within twenty-four hours after being discovered and must be disposed of at an authorized facility in accordance with section 43-02-02-15.2.

The director may permit pits used solely for storage of freshwater used in completion and well servicing operations. Permits for freshwater pits shall be valid for a period of one year but may be reauthorized upon application. Freshwater pits shall be lined and no pit constructed for this purpose shall be wholly or partially constructed of fill dirt unless approved by the director. The director may approve chemical treatment to municipal drinking water standards upon application. The freshwater pit shall have signage on all sides accessible to vehicular traffic clearly identifying the usage as freshwater only.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-15.4. Drilling pits.** A pit may be utilized to bury drill cuttings and solids generated during well and completion operations, providing the pit can be constructed, used, and reclaimed in a manner that will prevent pollution of the land surface and freshwaters. In special circumstances, the director may prohibit construction of a cuttings pit or may impose more stringent pit construction and reclamation requirements. Reserve and circulation of mud system through deep well earthen pits are prohibited unless a waiver is granted by the director. All pits shall be inspected by an authorized representative of the director prior to lining and use. Under no circumstances shall pits be used for disposal, dumping, or storage of fluids, wastes, and debris other than drill cuttings and solids recovered while drilling and completing the well.

Drill cuttings and solids must be stabilized in a manner approved by the director prior to placement in a cuttings pit. Any liquid accumulating in the cuttings pit shall be promptly removed. The pit shall be diked in a manner to prevent surface water from running into the pit.

During the drilling of a deep well, a small lined pit can be authorized by the director for the temporary containment of incidental fluids such as trench water and rig wash, if emptied and covered prior to the rig leaving the site.

Pits shall not be located in, or hazardously near, bodies of water, nor shall they block natural drainages. No pit shall be wholly or partially constructed of fill dirt unless approved by the director.

When required by the director, the drilling pit or appropriate parts thereof shall be fenced.

Within thirty days after the completion of drilling a deep well or expiration of a drilling permit, whichever occurs first, drilling pits shall be reclaimed. The director may grant an extension of the thirty day time period of no more than one year for good cause. Prior to reclaiming the pit, the operator or the operator's agent shall file a sundry notice (form 4-sm) with the director and obtain approval of a pit reclamation plan. Verbal approval to reclaim the pit may be given. The notice must include:

1. The name and address of the reclamation contractor;
2. The name and address of the service owner;
3. The location and name of the disposal site for the pit water when applicable; and
4. A description of the proposed work, including details on treatment and disposition of the drilling waste.

Any water or oil accumulated in the pit must be removed prior to reclamation. Drilling waste from a deep well shall be encapsulated in the pit and covered with at least four feet [1.22 meters] of backfill and topsoil. The surface shall be sloped, when practicable, to promote surface drainage away from the reclaimed pit area.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-15.5. Reserve pit for drilling mud and drill cuttings from shallow wells.** For wells drilled to a strata or formation, including lignite or coal strata or seam, located above the depth of five thousand feet [1524 meters] below the surface, or located more than five thousand feet [1524 meters] below the surface but above the top of the Rierdon formation, a container or reserve pit of sufficient size to contain said material or fluid, and the accumulation of drill cuttings may be utilized to contain solids and fluids used and generated during well drilling and completion operations, providing the pit can be constructed, used, and reclaimed in a manner that will prevent pollution of the land surface and freshwaters. A reserve pit may be allowed by an order of the commission after notice and hearing for wells drilled within a specified field and pool more than five thousand feet [1524 meters] below the surface and below the top of the Rierdon formation provided the proposed well or wells utilize a low sodium content water-based mud system and the reserve pit can be constructed, used, and reclaimed in a manner that will prevent pollution of the land surface and freshwaters. In special circumstances, based on site conditions, the director or



authorized representative may prohibit construction of a reserve pit or may impose more stringent pit construction and reclamation requirements, including reserve pits previously authorized by a commission order within a specified field or pool. Under no circumstances shall reserve pits be used for disposal, dumping, or storage of fluids, wastes, and debris other than drill cuttings and fluids used or recovered while drilling and completing the well.

Reserved pits shall not be located in, or hazardously near, bodies of water, nor shall they block natural drainages. No reserve pit shall be wholly or partially constructed in fill dirt unless approved by the director.

Within thirty days after the completion of a shallow well, or prior to drilling below the surface casing shoe on any other well, the reserve pit shall be reclaimed. The director may grant an extension of the thirty-day time period of no more than one year for good cause. Prior to reclaiming the pit, the operator, or the operator's agent, shall file a sundry notice (form 4-sm) with the director and obtain approval of a pit reclamation plan. Verbal approval to reclaim the pit may be given. The notice must include:

1. The name and address of the reclamation contractor;
2. The name and address of the surface owner;
3. The location and name of the disposal site for the pit water; and
4. A description of the proposed work, including details on treatment and disposition of the drilling waste.

All pit water must be removed prior to reclamation. Drilling waste should be encapsulated in the pit and covered with at least four feet. [1.22 meters] of backfill and topsoil. The surface shall be sloped, when practicable, to promote surface drainage away from the reclaimed pit area.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-16. Sealing off strata.** During the drilling and operation of any well for subsurface minerals, all mineral-bearing and water strata above the producing horizon shall be sealed or separated where necessary in order to prevent their contents from passing into other strata.

All freshwaters and waters of present or probable value for domestic, commercial, or stock purposes shall be confined to their respective strata and shall be adequately protected by methods approved by the commission. Special precautions shall be taken in drilling and ~~abandoning~~ plugging wells to guard against any loss of artesian water from the strata in which it occurs, and the contamination of artesian water by objectionable water or subsurface minerals.

All water shall be shut off and excluded from the various subsurface mineral-bearing strata which are penetrated. Water shutoffs shall ordinarily be made by cementing casing or landing casing with or without the use of mud-laden fluid.

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-17. Casing and tubing requirements.** All wells drilled for subsurface minerals below the base of the Fox Hills formation shall be completed with strings of casing which shall be properly cemented at sufficient depths to adequately to protect the subsurface mineral-bearing strata to be produced and isolate all formations containing water, subsurface minerals, oil, or gas or any combination of these; protect the pipe through salt sections encountered; and isolate the uppermost sand of the Dakota group.

Drilling of the surface hole shall be with freshwater-based drilling mud or other method approved by the director which will protect all freshwater-bearing strata. The surface casing shall consist of new or reconditioned pipe that has been previously tested to one thousand pounds per square inch [6900 kilopascals]. The surface casing shall be set and cemented at a point not less than fifty feet [15.24 meters] below the base of the Fox Hills formation. Sufficient cement shall be used on surface casing to fill the annular space ~~back of~~ behind the casing to the bottom of the cellar, if any, or to the surface of the ground. If the annulus space is not adequately filled with cement, the director shall be notified immediately. The operator shall diligently perform work after obtaining approval from the director. All strings of surface casing shall stand cemented under pressure for at least twelve hours before drilling the plug or initiating tests. The term "under pressure" as used herein will shall be complied with if one float valve is used or if pressure is otherwise held. Cementing shall be by the pump and plug method; or other method methods approved by the ~~commission~~ director. The director is authorized to require an accurate gauge be maintained on the surface casing of any well, not properly plugged and abandoned, to detect any buildup of pressure caused by the migration of fluids.

Surface casing strings must stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least three hundred fifty pounds per square inch [2415 kilopascals] within seventy-two hours. All compressive strengths on surface casing cement shall be calculated at a temperature of eighty degrees Fahrenheit [26.67 degrees Celsius].

Unless otherwise specified by the director, production or intermediate casing strings shall consist of new or reconditioned pipe that has been previously tested to two thousand pounds per square inch [13800 kilopascals]. Such strings must stand under pressure until the tail cement has reached a compressive

strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least five hundred pounds per square inch [3450 kilopascals] within a seventy-two hours. although in any horizontal well performing a single-stage cement job from a measured depth of greater than thirteen thousand feet [3962.4 meters], the filler cement utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within forty-eight hours and at least five hundred pounds per square inch [3450 kilopascals] within ninety-six hours. All compressive strengths on production or intermediate casing cement shall be calculated at a temperature found in the Mowry formation using a gradient of one and two tenths degrees Fahrenheit per one hundred feet [30.48 meters] of depth plus eight degrees Fahrenheit [26.674 degrees Celsius].

After cementing, each casing string shall be tested by application of pump pressure of at least one thousand five hundred pounds per square inch [10350 kilopascals]. If, at the end of thirty minutes, this pressure has dropped one hundred fifty pounds per square inch [1035 kilopascals] or more, the casing shall be repaired after receiving approval from the director. Thereafter, the casing shall again be tested in the same manner. Further work shall not proceed until a satisfactory test has been obtained. The casing in a horizontal well may be tested by use of a mechanical tool set near the casing shoe after the horizontal section has been drilled.

All production ~~flowing~~ wells shall ~~must~~ be equipped with tubing and packer and the annulus pressure must be monitored to detect leaks or breaks in the casing or tubing, unless the entire casing string is cemented to surface when initially set in place. A tubing packer must also be utilized unless a waiver is obtained by demonstrating the casing will not be subjected to excessive pressure or corrosion. The packer must be set as near the producing interval as practicable, but in all cases must be above the perforations.

**History:** Amended effective August 1, 1986; July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-18. Defective casing or cementing.** In any well that appears to have defective casing, be faultily cemented, or have corroded casing which will permit or may create underground waste or pollution, the operator shall proceed with diligence to use the appropriate method and means to eliminate such hazard. If waste cannot be eliminated, the well shall be properly plugged and abandoned or cementing, the operator shall report the defect to the state geologist on a sundry notice (form 4-sm). Prior to attempting remedial work on any casing, the operator must obtain approval from the director and proceed with diligence to conduct test, as approved or required by the director, to properly evaluate the condition of the well bore and correct the defect. The director is authorized to require a pressure test to verify casing integrity if its competence is questionable. The director may allow the well bore condition to remain if correlative rights can be protected without

endangering potable waters. The well shall be properly plugged if requested by the director.

Any well with open perforations above a packer shall be deemed to have defective casing.

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-18.1. Perforating, fracturing, and chemically treating wells.**

During treatment operations, the director may prescribe pretreatment casing pressure testing as well as other operational requirements designed to protect wellhead and casing strings. If damage results to the casing or the casing seat from perforating, fracturing, or chemically treating a well, the operator shall immediately notify the director and proceed with diligence to use the appropriate method and means for rectifying such damage, pursuant to section 43-02-02-18. If perforating, fracturing, or chemical treating results in irreparable damage which threatens the mechanical integrity of the well, the commission may require the operator to plug the well.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

~~43-02-02-19. Blowout prevention. When drilling on lands valuable or potentially valuable for oil and gas, drilling equipment shall be equipped with blowout control devices before penetrating any formation, strata, or zone that might contain oil and gas.~~ In all drilling operations, proper and necessary precautions shall be taken for keeping the well under control, including the use of a blowout preventer and high-pressure fittings attached to properly cemented casing strings adequate to withstand anticipated pressures. During the course of drilling, the pipe rams shall be functionally operated at least once every twenty-four-hour period. The blind rams shall be functionally operated each trip out of the well bore. The blowout preventer shall be pressure-tested at installation on the wellhead, after modification of any equipment, and every thirty days thereafter. The director may postpone such pressure test if the necessity can be demonstrated to the director's satisfaction. All tests shall be noted in the driller's record.

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

~~43-02-02-20. Safety regulation. When coming out of the hole with drill pipe, drilling fluid shall be circulated until equalized and subsequently drilling fluid level shall be maintained at a height sufficient to control subsurface pressures. During the course of drilling, blowout preventers shall be tested at least once every twenty-four-hour period, and the test noted in driller's record. Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least one~~

hundred fifty feet [45.72 meters] from the vicinity of wells and tanks. All waste shall be burned or disposed of in such manner as to avoid creating a fire hazard. All vegetation must be removed to a safe distance from any production equipment to eliminate a fire hazard.

The director may require remote operated or automatic shutdown equipment be installed on, or shut in for no more than forty days, any well that is likely to cause a serious threat of pollution or injury to the public health or safety.

No well shall be drilled or production or injection equipment installed less than five hundred feet [152.4 meters] from an occupied dwelling unless agreed to in writing by the owner of the dwelling or authorized by order of the commission.

Subsurface pressure must be controlled during all drilling, completion, and well-servicing operations with appropriate fluid weight and pressure control equipment.

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-20.1. Pulling string of casing.** When removing casing strings from any subsurface mineral or injection well, the space above the casing stub shall be kept and left full of fluid with adequate gel strength and specific gravity, cement, or combination thereof, to seal off all freshwater and saltwater strata and any strata bearing oil or gas not producing. No casing shall be removed without the prior approval of the director.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-21. Well and lease equipment.** Wellhead and lease equipment with a working pressure at least equivalent to the calculated or known pressure to which the equipment may be subjected shall be installed and maintained in first-class condition so that tests may be made easily. Valves shall be installed and maintained in good working order to permit pressure readings to be obtained on both casing and tubing.

**History:** Amended effective August 1, 1986; July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-21.1. Notification of fires, leaks, spills, or blowouts.** All persons controlling or operating any well, pipeline, receiving tank, storage tank, or production facility into which subsurface minerals or water is produced, received, stored, processed, or through which subsurface minerals or water is injected, piped, or transported, shall verbally notify the director within twenty-four hours after discovery of any fire, leak, spill, blowout, or release of fluid. If any such incident

occurs or travels offsite of a facility, the persons, as named above, responsible for proper notification shall within a reasonable time also notify the surface owners upon whose land the incident occurred or traveled. Notification requirements prescribed by this section shall not apply to any leak, spill, or release of fluid that is less than one barrel total volume and remains onsite of a facility. The verbal notification must be followed by a written report within ten days after cleanup of the incident, unless deemed unnecessary by the director. Such report must include the operator and description of the facility, the legal description of the location of the incident, date of occurrence, date of cleanup, amount and type of each fluid involved, amount of each fluid recovered, steps taken to remedy the situation, cause of the accident, and action taken to prevent reoccurrence. The signature, title, and telephone number of the company representative must be included on such report. The persons, as named above, responsible for proper notification, within a reasonable time, also shall provide a copy of the written report to the surface owners upon whose land the incident occurred or traveled.

The commission, however, may impose more stringent spill-reporting requirements if warranted because of proximity to sensitive areas, past spill performance, or careless operating practices as determined by the director.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-21.2. Leak and spill cleanup.** At no time shall any spill or leak be allowed to flow over, pool, or rest on the surface of the land or infiltrate soil. Discharge fluids must be properly removed and may not be allowed to remain standing within or outside of diked areas. Operators must respond with appropriate resources to contain and clean up spills.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-22. ~~Completion Well log, completion, and work-over report and basic data collected.~~** Within thirty days after the completion of any well drilled for subsurface minerals, or the completion of an exploration program for subsurface minerals, a completion report shall be filed with the state geologist, on a form prescribed by the commission. After the plugging of a well, a plugging records (form 7-sm) shall be filed with the state geologist. After the completion of a well, recompletion of a well in a different pool, or drilling horizontally in an existing pool, a completion report (form 6-sm) shall be filed with the state geologist. In no case shall subsurface minerals be transported from the lease prior to the filing of a completion report unless approved by the director. The operator shall cause to be run an open hole electrical, radioactivity, or other similar log, or combination of open hole logs, of the operator's choice, from which formation tops and porosity zones can be determined. The operator shall run a gamma ray log from total depth to ground level elevation of the well bore. Prior to completing the well, the operator shall run a log form which the presence and quality of bonding of cement

can be determined in every well in which production or intermediate casing has been set. The obligation to log may be waived or postponed by the director if the necessity therefore can be demonstrated to the director's satisfaction. Waiver will be contingent upon such terms and conditions as the director deems appropriate. All logs run shall be available to the director at the well site prior to proceeding with plugging or completion operations. All logs run shall be submitted to the state geologist free of charge. Logs shall be submitted as one digital tagged image file format (TIFF) copy and one digital LAS (log ASCII) formatted copy, or a format approved by the director. In addition, operators shall file two copies of drill stem test reports and charts, formation water analyses, core analyses, geologic reports, and noninterpretive lithologic logs or sample descriptions if compiled by the operator.

All information, except the operator name, well name, location, spacing or drilling unit description, spud date, rig contractor, and any production runs, furnished to the state geologist on recompletions or reentries, shall be kept confidential for a period of one year if requested by the operator and such period may be further extended upon approval by the commission. The one-year period shall commence on the expiration date of the permit. The confidentiality period will become void if the operator engages in a wholesale release of the confidential information in a wide public form. Any information furnished to the state geologist prior to approval of the recompletion or reentry shall remain public.

Approval must be obtained on a sundry notice (form 4-sm) from the director prior to perforating or recompleting a well in a pool other than the pool in which the well is currently permitted.

After the completion of any remedial work, or attempted remedial work, such as plugging back or drilling deeper, acidizing, shooting, formation fracturing, squeezing operations, setting liner, perforating, reperforating, or other similar operations not specifically covered herein, a report on the operation shall be filed on a sundry notice (form 4-sm) with the state geologist. The report shall present a detailed account of all work done and the date of such work; the daily production of subsurface minerals and water both prior to and after the operation; the shots per foot, size, and depth of perforations; the quantity of sand, crude, chemical, or other materials employed in the operation; and any other pertinent information or operations which affect the original status of the well and are not specifically covered herein.

Upon the installation of pumping equipment on a flowing well, or change in type of pumping equipment designed to increase productivity in a well, the operator shall submit a sundry notice (form 4-sm) of such installation. The notice shall include all pertinent information on the pump and its operation, including the date of such installation, and the daily production of the well prior to and after the pump has been installed.

All forms, reports, logs, and other information required by this section shall be submitted within thirty days after the completion of such work, although a completion report shall be filed immediately after the completion or recompletion of a well in a pool or reservoir not then covered by an order of the commission.

The following basic data ~~developed~~ collected by the operator shall be delivered, free of charge, to the state geologist, ~~if requested~~, within six months of the expiration date of the permit:

1. Washed and packaged sample cuts, core chips, or whole cores ~~minus~~ except those portions of cores used for necessary testing or analysis in which case the results of testing, the analysis and the description of missing portions shall be submitted to the state geologist upon request.
2. Sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
3. Elevation and location information on the data collection points.
4. Other pertinent information as may be requested by the ~~state geologist~~ director.

When requested by the operator, the data submitted shall be confidential for a period of one year commencing on the expiration date of the permit. Such period may be further extended upon approval of the commission.

Data ~~on a particular stratum~~ restricted to that a particular stratigraphic interval containing the actual ore, ~~which is~~ being explored, developed, or mined, shall be confidential as long as the operator is exploring, developing, or producing from that particular stratum ~~within the general area being explored, developed, or mined by the operator~~. The general area, as used herein, shall be defined jointly by the state geologist and the operator. Definition of the stratigraphic interval will be made by the state geologist. Data from the stratigraphic interval will, at the discretion of the state geologist, be retained in the North Dakota office of the operator during the period of confidentiality. The industrial commission and the state geologist shall have access to all confidential data.

The director may release such confidential completion and production data to health care professionals, emergency responders, and state, federal, or tribal environmental and public health regulators if the state geologist deems it necessary to protect the public's health, safety, and welfare.

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-22.1. Determination of well potential.** ~~After the completion or recompletion of a nonhydrocarbon gas well, the operator shall conduct tests to determine the daily open flow potential of the well. The test results together with an analysis of the gas must be reported to the state geologist within thirty days after completion of the well.~~ Repealed effective July 1, 2013.

~~Operators shall conduct tests to determine the daily open flow potential volumes of gas wells from which gas is being used or marketed in accordance with~~



~~an order of the commission or at the request of the state geologist. Test procedures must be those commonly used in the industry unless otherwise approved by the state geologist.~~

~~History: Effective August 1, 1986.~~

~~General Authority: NDCC 38-12-02~~

~~Law Implemented: NDCC 38-12-02~~

**43-02-02-22.2. Subsurface pressure test.** The operator shall conduct a subsurface pressure test on the discovery well of any new pool discovered and shall report the results to the director within thirty days after the completion of such discovery well. Drill stem test pressures are acceptable. After the discovery of a new pool, each operator shall make additional subsurface pressure tests as directed by the director or provided for in field rules. All tests shall be made by a person qualified by both training and experience to make such tests and with an approved subsurface pressure instrument. All wells shall remain completely shut in for at least forty-eight hours prior to the test. The subsurface determination shall be obtained as close as possible to the midpoint of the productive interval of the reservoir. The report of the reservoir pressure test shall be filed on form 9-sm.

The director may shut in any well for failure to make such test until such time as a satisfactory test has been made or satisfactory explanation given.

~~History: Effective July 1, 2013.~~

~~General Authority: NDCC 38-12-02~~

~~Law Implemented: NDCC 38-12-02~~

**43-02-02-22.3. Commingling of minerals from pools.** Except as directed by the commission after notice and hearing, each pool shall be produced as a single common reservoir without commingling in the well bore of fluids from different pools. After fluids from different pools have been brought to the surface, such fluids may be commingled provided that the amount of production from each pool is determined by a method approved by the director.

~~History: Effective July 1, 2013.~~

~~General Authority: NDCC 38-12-02~~

~~Law Implemented: NDCC 38-12-02~~

**43-02-02-23. Notice of intention to abandon plug well.** ~~Notice of intention to abandon any well shall be filed with the state geologist by the~~ The operator or the operator's agent shall file a notice of intention (form 4-sm) to plug with the state geologist, and obtain the approval of the director, prior to the commencement of plugging or plug-back operations, on a form prescribed by the commission, which. The notice shall state the name and location of the well and, the name of the operator, and the method of plugging, which must include a detailed statement of proposed work. In the case of abandonment of any well a recently completed test well that has not had production casing in the hole, the operator may commence plugging by giving reasonable notice to, and securing verbal approval from of, the office of the state geologist director as to the method

of plugging and the time plugging operations are to begin. Within thirty days after the plugging of any well, the owner or operator thereof shall file a plugging record (form 7-sm), and, if requested, a copy of the cementer's trip ticket of job receipt, with the state geologist setting forth in detail the method used in plugging the well. This section shall not apply to testholes.

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-24. Method of plugging.** ~~Before any well or testhole is abandoned, it~~ All wells shall be plugged in a manner which will confine permanently all subsurface minerals, oil, gas, and water in the separate strata originally containing them. This operation shall be accomplished by the use of mud-laden fluid, cement, and plugs, used singly or in combination as may be approved by the state geologist director. Casing All casing strings shall be cut off at least three feet [.91 meters 91.44 centimeters] below the surface of the ground final surface contour, and a cap shall be welded. Core or stratigraphic testholes drilled to or below sands containing freshwater shall be plugged in accordance with the applicable provisions recited above. After plugging, the site must be reclaimed pursuant to sections 43-02-02-14.1 and 43-02-02-24.2. The top plug in any hole shall be set at least three feet [.91 meters] below ground level, and the land surface shall be restored as nearly as possible to its original condition.

~~A well may be abandoned temporarily upon approval of the state geologist. In such event, casing may not be pulled and a plug must be placed at the top of the casing, in such manner as to prevent the intrusion of any foreign matter into the well.~~

~~When drilling or production operations have been suspended for six months, wells must be plugged and abandoned in accordance with regulations of the commission unless a permit for temporary abandonment has been obtained from the state geologist.~~

**History:** Amended effective August 1, 1986; July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-24.1. Abandonment of wells - Suspension of drilling.**

1. The removal of production equipment or the failure to produce subsurface minerals, or the failure to produce water from the source well, for one year constitutes abandonment of the well. The removal of injection equipment or the failure to use an injection well for one year constitutes abandonment of the well. The failure to plug a stratigraphic testhole of reaching total depth within one year constitutes abandonment of the well. An abandoned well must be plugged and its site must be reclaimed pursuant to sections 43-02-02-24 and 43-02-02-24.2.

2. The director may waive the requirement to plug and reclaim an abandoned well for one year by giving the well temporarily abandoned status. This status may only be given to wells that are to be used for purposes related to the production of subsurface minerals. If a well is given temporarily abandoned status, the well's perforations must be isolated, the integrity of its casing must be proven, and its casing must be sealed at the surface, all in a manner approved by the director. The director may extend a well's temporarily abandoned status beyond one year. A fee of one hundred dollars shall be submitted for each application to extend the temporary abandonment status of any well.
3. In addition to the waiver in subsection 2, the director may also waive the duty to plug and reclaim an abandoned well for good cause as determined by the director. If the director exercises this discretion, the director shall set a date or circumstances upon which the waiver expires.
4. The director may approve suspension of the drilling of a well. If suspension is approved, a plug must be placed at the top of the casing to prevent any foreign matter from getting into the well. When drilling has been suspended for thirty days, the well, unless otherwise authorized by the director, must be plugged and its site reclaimed pursuant to sections 43-02-02-24 and 43-02-02-24.2.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

#### **43-02-02-24.2. Reclamation of surface.**

1. Within a reasonable time, but not more than one year, after a well is plugged, or if a permit expires, has been canceled or revoked, the well site, access road, and other associated facilities constructed for the well shall be reclaimed as closely as practicable to original condition. Prior to site reclamation, the operator or the operator's agent shall file a sundry notice (form 4-sm) with the director and obtain approval of a reclamation plan. The operator or operator's agent shall provide a copy of the proposed reclamation plant to the surface owner at least ten days prior to commencing the work unless waived by the surface owner. Verbal approval to reclaim the site may be given. The notice must include:
  - a. The name and address of the reclamation contractor;
  - b. The name and address of the surface owner and the date when a copy of the proposed reclamation plan was provided to the surface owner;
  - c. A description of the proposed work, including topsoil redistribution and reclamation plans for the access road and other facilities; and

d. Reseeding plans, if applicable.

The commission will mail a copy of the approved notice to the surface owner.

All production equipment, waste, and debris shall be removed from the site. Flow lines shall be purged in a manner approved by the director. Flow lines shall be removed if buried less than three feet [91.44 centimeters] below final contour.

2. Gravel or other surfacing material shall be removed, stabilized soil shall be remediated, and the well site, access road, and other associated facilities constructed for the well shall be reshaped as near as is practicable to original contour.
3. The stockpiled topsoil shall be evenly distributed over the disturbed area, and where applicable, the area revegetated with native species or according to the reasonable specifications of the appropriate government land manager or surface owner.
4. Within thirty days after completing any reclamation, the operator shall file a sundry notice with the director reporting the work performed.
5. The director, with the consent of the appropriate government land manager or surface owner, may waive the requirement of reclamation of the site and access road after a well is plugged.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-25.1. Conversion of mineral wells to freshwater wells.** Any person desiring to convert a mineral well to a freshwater well shall file an application for approval with the commission. The application must include the following:

1. If the well is to be used for other than individual domestic and livestock use, a conditional water permit issued by the state water commission.
2. An affidavit by the person desiring to obtain approval for the conversion stating that such person has the authority and assumes all liability for the use and plugging of the proposed freshwater well.
3. The procedure which will be followed in converting the mineral well to a freshwater well.
4. If the well is not currently plugged and abandoned, an affidavit must be executed by the operator of the well indicating that the parties responsible for plugging the mineral well have no objection to the conversion of the mineral well to a freshwater well.

If the commission, after notice and hearing, determines that a mineral well may safely be used as a freshwater well, the commission may approve the conversion.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-26. Liability.** The owner and operator of any well, core hole, or stratigraphic testhole, whether cased or uncased, shall be liable and responsible for the plugging ~~thereof~~ and site reclamation in accordance with the rules and regulations of the commission.

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

~~**43-02-02-27. Earthen pits.** All earthen pits used during the drilling of a well shall be filled and leveled within a reasonable time after the completion of the well. Earthen pits, except those necessary for the drilling of a well, shall not be used for any purpose without the prior approval of the state geologist. Repealed effective July 1, 2013.~~

~~**General Authority:** NDCC 38-12-02~~

~~**Law Implemented:** NDCC 38-12-02~~

**43-02-02-28. Preservation of cores and samples.** Sample cuttings of formations, taken at regular intervals; in all wells drilled for subsurface minerals or geological information in North Dakota, shall be washed and packaged in standard sample envelopes which in turn must be placed in proper order in a standard sample box; carefully identified as to operator, well name, ~~and~~ location, ~~and~~ depth of sample, and shall be ~~shipped sent~~ sent free of cost to the state geologist; ~~if requested within thirty days after completion of drilling operations.~~

The operator of any well drilled for subsurface minerals in North Dakota ~~shall~~, during the drilling of; or immediately following the completion of; any ~~given~~ well advise, shall inform the state geologist; or the state geologist's representative; of all intervals that are to be cored, or have been cored. All cores taken shall be preserved and forwarded to the state geologist, free of cost, within ninety days after completion of drilling operations, unless specifically exempted by the state geologist. ~~If the state geologist does not desire the core an exemption is granted,~~ the operator shall advise the state geologist of the final disposition of the core.

This section does not prohibit the operator from taking such samples of the core as the operator may desire for identification and testing. The operator shall furnish the state geologist with the results of identification ~~or~~ and testing procedure.

**History:** Amended effective October 1, 1990; July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-29. Mining plan.** Before conducting any mining or production operations, the operator shall submit to the state geologist for approval a mining plan which shall show in detail the proposed development or mining operations to be conducted. Mining plans shall be consistent with and responsive to the requirements of not only this chapter but also statutes and rules for the protection of nonmineral resources, and for the reclamation of the surface of the lands affected by the operations. No operations shall be conducted except under an approved plan. Those portions of a mining plan which the director finds to contain information which is proprietary to a specific company's mining methods shall be retained at that company's office located nearest the mining site, and shall be approved by the ~~state geologist~~ director and open to inspection by the ~~state geologist~~ director and the industrial commission at all times. ~~In the event of disagreement as to what constitutes proprietary information, it shall be resolved by the company, the state geologist, and the industrial commission.~~ All portions of the mining plan which provide for the protection of natural resources, other than the mineral being mined, and for the reclamation of the surface shall be filed in the office of the state geologist.

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-30. Report of production.** The operator of each and every well or mine shall, on or before the tenth day of the second month ~~following~~ succeeding the month in which production occurs, file with the state geologist ~~a sworn statement showing~~ the amount of production made by each such well or mine ~~during the month~~ upon form 5-sm or approved computer sheets no larger than eight and one-half by eleven inches [21.59 by 27.94 centimeters]. The report shall be signed by both the person responsible for the report and the person witnessing the signature. The printed name and title of both the person signing the report and the person witnessing the signature shall be included. Wells for which reports of production are not received by the close of business on the tenth day of the month may be shut in for a period not to exceed thirty days. The director shall notify, by certified mail, the operator and authorized transporter of the shut-in period for such wells. The term "mine" includes ~~the case where~~ multiple closely spaced wells are used to mine a deposit, and in such case production will be reported from the mine rather than from each individual well. "Multiple closely spaced wells" means where more than one well is used to produce subsurface minerals in each eighty-acre [32.37-hectare] subdivision of the mine.

Production data submitted to the state geologist shall be kept confidential for a period of one year when so requested by the operator. Such period may be further extended upon approval by the commission.

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-31. Report of water injected.** The operator of each and every injection well shall, on or before the tenth day of the second month ~~following~~ succeeding the month in which injection occurs, file with the state geologist a ~~sworn statement showing~~ the amount of liquid injected, the composition of the liquid, and the source thereof upon approved computer sheets no larger than eight and one-half by eleven inches [21.59 by 27.94 centimeters]. The report shall be signed by both the person responsible for the report and the person witnessing the signature. The printed name and title of both the person signing the report and the person witnessing the signature shall be included.

**History:** Amended effective August 1, 1986; July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-32. Pollution by saltwater.** All saltwater liquids or brines produced shall be processed, stored, and disposed of without pollution of freshwater supplies. ~~Disposal shall be in accordance with an order of the commission, after hearing.~~ At no time shall saltwater liquids or brines be allowed to flow over the surface of the land or into streams. ~~Pits shall not be constructed within natural surface drainage channels and, before any saltwater liquid or brine is placed in the pit, any pit which is bottomed in permeable materials, such as sand or gravel, shall be lined with an impermeable material. The commission shall have the authority to condemn any pit which does not properly impound such water.~~

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-33. Investigative powers.** Upon receipt of a written complaint from any ~~landowner~~ surface owner or lessee, royalty owner, mineral owner, local, state, or federal official, in the official's official capacity, or any member of the state legislative assembly, in the legislator's official representative capacity, or any other interested party, alleging ~~drilling or production operations which are in a~~ violation of the subsurface mineral conservation statutes or any rule, regulation, or order of the commission, the ~~state geologist~~ director shall ~~immediately cause an investigation of such complaint to be made within reasonable time~~ reply in writing to the person who submitted the complaint stating that an investigation of such complaint will be made or the reason such investigation will not be made. The person who submitted the complaint may appeal the decision of the director to the commission. The ~~state geologist~~ director may also conduct such investigations on the ~~geologist's~~ director's own initiative or at the direction of the commission. If, after such investigation, the ~~state geologist~~ director affirms that cause for complaint exists, the ~~state geologist~~ director shall ~~cause written notice of report~~ the results of the investigation to be mailed to the operator of the drilling or production operation and shall forthwith notify the commission, in writing, of the investigation the person who submitted the complaint, if any, to the person who was the subject of the complaint and to the commission. The commission shall institute such legal proceedings as, in its

discretion, it believes necessary to enjoin further ~~activities resulting in the violation~~  
~~complained of violations.~~

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-34. Additional information may be required.** This chapter shall not be taken or construed to limit or restrict the authority of the industrial commission to require the furnishing of such additional reports, data, or other information relative to production or products ~~in North Dakota~~ as may appear to be necessary or desirable, either generally or specifically, for the prevention of waste, protection of correlative rights, and the conservation of natural resources of ~~North Dakota.~~

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-35. Books and records to be kept to substantiate reports.** All producers within North Dakota shall make and keep appropriate books and records for a period not less than ~~five~~ six years, covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02-36. Public hearing.** ~~Except as provided for herein, before any rule, regulation, or order shall be made, including revocation, change, renewal, or extension thereof, a public hearing shall be held at the time, place, and manner as may be prescribed by the commission.~~ Repealed effective July 1, 2013.

**General Authority:** ~~NDCC 38-12-04~~

**Law Implemented:** ~~NDCC 38-12-04~~

**43-02-02-37. Institute proceedings.** ~~The commission, upon its own motion, and the attorney general, on behalf of the state, and any operator, producer, taker, or other person interested in any common source of supply of subsurface minerals may institute proceedings. The commission shall have jurisdiction to make any and all orders, rules, and regulations authorized by laws of this state.~~ Repealed effective July 1, 2013.

**General Authority:** ~~NDCC 38-12-04~~

**Law Implemented:** ~~NDCC 38-12-04~~



**43-02-02-39. Filing application for hearing.** When an application is filed, it shall be set for hearing before the commission at such time as will permit ~~ten~~ fifteen days' notice thereof to be given, as provided in section 43-02-02-40.

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

~~**43-02-02-40. Notice of hearings Hearings - Complaint proceedings - Emergency proceedings - Other proceedings.** Upon the institution of a proceeding by application, the commission shall give at least ten days' (except in emergency) notice of the time and place of hearing thereon by one publication of such notice in newspapers of general circulation published at Bismarck, North Dakota, and in the county where the land affected or some part thereof is situated, unless in some particular proceeding a longer period of time or a different method of publication is required by law, in which event such period of time and method of publication shall prevail. The notice shall issue in the name of the state and shall be signed by the chairman or secretary of the commission, and shall conform to the other requirements provided by law. In case an emergency is found to exist by the commission which in its judgment requires for the making of a rule, regulation, or order without first having a hearing, such emergency rule, regulation, or order shall have the same validity as if a hearing with respect to the same had been held after notice. The emergency rule, regulation, or order permitted by this section shall remain in force no longer than fifteen days from its effective date, and in any event, it shall expire when the rule, regulation, or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation, or order becomes effective.~~

1. Except as more specifically provided in North Dakota Century Code section 38-12-04, the rules of procedure established in subsection 1 of North Dakota Century Code section 28-32-21 apply to proceedings involving a complaint and a specific-named respondent.
2. For proceedings that do not involve a complaint and a specific-named respondent, the commission shall give at least fifteen days' notice (except in an emergency) of the time and place of hearing thereon by one publication of such notice in a newspaper of general circulation in Bismarck, North Dakota, and in a newspaper of general circulation in the county where the land affected or some part thereof is situated, unless in some particular proceeding a longer period of time or a different method of publication is required by law, in which event such period of time and method of publication shall prevail. The notice shall issue in the name of the commission and shall conform to the other requirements provided by law.
3. In case an emergency is found to exist by the commission which in its judgement requires the making of a rule or order without first having a hearing, the emergency rule or order shall have the same validity as if a hearing with respect to the same had been held after notice.

The emergency rule or order permitted by this section shall remain in force no longer than fifteen days from its effective date, and in any event, it shall expire when the rule or order made after due notice and hearing with respect to the subject matter of such emergency rule or order becomes effective.

4. Any person moving for a continuance of a hearing, and who is granted a continuance, shall submit a twenty-five dollar fee to the commission to pay the cost of republication of notice of the hearing.

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

**43-02-02-40.1. Investigatory hearings.** The commission may hold investigatory hearings upon the institution of a proceeding by application or by a motion of the commission. Notice of the hearing must be served upon all parties personally or by certified mail at least five days before the hearing.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

**43-02-02-40.2. Official record.** The evidence in each case heard by the commission, unless specifically excluded by the hearing officer, includes the certified directional surveys and all subsurface mineral, oil, water, and gas production records on file with the commission.

Any interested party may submit written comments on or objections to the application prior to the hearing date. Such submissions must be received no later than five p.m. on the last business day prior to the hearing date and may be part of the record in the case if allowed by the hearing examiner.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 28-32-06

**Law Implemented:** NDCC 28-32-06

**43-02-02-40.3. Petitions for review of recommended order and oral arguments prohibited.** Neither petitions for review of a recommended order nor oral arguments following issuance of a recommended order and pending issuance of a final order are allowed.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 28-32-13

**Law Implemented:** NDCC 28-32-13

**43-02-02-40.4. Notice of order by mail.** The commission may give notice of an order by mailing the order, and findings and conclusions upon which it is

based, to all parties by regular mail provided it files an affidavit of service by mail indicating upon whom the order was served.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 28-32-13

**Law Implemented:** NDCC 28-32-13

**43-02-02-40.5. Service and filing.** All pleadings, notices, written motions, requests, petitions, briefs, and correspondence to the commission or commission employees from a party (or vice versa) relating to a proceeding after its commencement, must be filed with the director and entered into the commission's official record of the procedure provided the record is open at the time of receipt. All parties shall receive copies upon request of any or all of the evidence in the record of the proceedings. The commission may charge for the actual cost of providing copies of evidence in the record. Unless otherwise provided by law, filing shall be complete when the material is entered into the record of the proceeding.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 28-32-13

**Law Implemented:** NDCC 28-32-13

**43-02-02-41. Application for rehearing.** Within thirty days after the entry of any order or decision of the commission or the ~~state geologist~~ director, any person affected thereby may file with the commission an application for rehearing in respect of any matter determined by the order or decision, setting forth the ~~respect in which~~ reasons the order or decision is believed to be erroneous. The commission shall grant or refuse any such application in whole or in part within fifteen days after it is filed. In the event the rehearing is granted, the commission may enter such new order or decision after rehearing as may be required under the circumstances.

**History:** Amended effective July 1, 2013.

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

**43-02-02-43. Designation of examiners.** The commission may by motion designate and appoint qualified individuals to serve as examiners. The commission may refer any matter or proceeding to any legally designated and appointed examiner ~~for hearing in accordance with this chapter~~ or examiners.

**History:** Amended effective August 1, 1986; July 1, 2013.

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

**43-02-02-45. Powers and duties of examiner.** The commission may, by motion, limit the powers and duties of the any examiner in any particular case to such issues or to the performance of such acts as the commission deems expedient. ~~However;~~ however, subject only to such limitation as may be ordered by the commission, the examiner or examiners to whom any matter or proceeding is referred under this chapter shall have full authority to hold hearings on such

matter or proceeding in accordance with and pursuant to this chapter. The examiner shall have the power to regulate all proceedings before the examiner and to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of ~~the~~ such hearing, including ruling on prehearing motions, the swearing of witnesses ~~and~~, receiving of testimony and exhibits offered in evidence, subject to such objections as may be imposed, and shall cause a complete record of the proceedings to be made and retained.

**History:** Amended effective August 1, 1986; July 1, 2013.

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

**43-02-02-47. Examiner shall be disinterested umpire.** ~~An examiner conducting a hearing under this chapter shall conduct oneself as a disinterested umpire.~~ Repealed effective July 1, 2013.

**General Authority:** ~~NDCC 38-12-04~~

**Law Implemented:** ~~NDCC 38-12-04~~

**43-02-02-51. Prehearing motion practice.** In a matter pending before the commission, all prehearing motions must be served by the moving party upon all parties affected by the motion. Service must be upon a party unless a party is represented by an attorney, in which case service must be upon the attorney. Service must be made by delivering a copy of the motion and all supporting papers in conformance with one of the means of service provided for in rule 5(b) of the North Dakota Rules of Civil Procedure. Proof of service must be made as provided in rule 4 of the North Dakota Rules of Civil Procedure or by certificate of an attorney showing that service has been made. Proof of service must accompany the filing of a motion. Any motion filed without proof of service is not properly before the commission.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-04

**Law Implemented:** NDCC 38-12-04

## CHAPTER 43-02-02.3

### SURFACE MINING (NONCOAL)

#### Section

<u>43-02-02.3-01</u>	<u>Definitions</u>
<u>43-02-02.3-02</u>	<u>Scope of Chapter</u>
<u>43-02-02.3-03</u>	<u>Uranium Surface Mining</u>
<u>43-02-02.3-04</u>	<u>Radioactive Material</u>
<u>43-02-02.3-05</u>	<u>Bond</u>
<u>43-02-02.3-06</u>	<u>Designation and Responsibilities of Operator</u>
<u>43-02-02.3-07</u>	<u>Permit Required</u>
<u>43-02-02.3-08</u>	<u>Submission of Permit Application</u>
<u>43-02-02.3-09</u>	<u>Summary Document</u>
<u>43-02-02.3-10</u>	<u>Small Mining Operation Permit Requirements</u>
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<u>43-02-02.3-12</u>	<u>Review for Completeness</u>
<u>43-02-02.3-13</u>	<u>Review Period</u>
<u>43-02-02.3-14</u>	<u>Permit Application Fees</u>
<u>43-02-02.3-15</u>	<u>Information Added After Filing Date</u>
<u>43-02-02.3-16</u>	<u>Notice to Agencies</u>
<u>43-02-02.3-17</u>	<u>Notice of Hearing</u>
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<u>43-02-02.3-21</u>	<u>Revocation and Limitation of Permits</u>
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<u>43-02-02.3-23</u>	<u>Performance and Reclamation Standards and Requirements</u>
<u>43-02-02.3-24</u>	<u>Report of Production</u>
<u>43-02-02.3-25</u>	<u>Annual Report</u>
<u>43-02-02.3-26</u>	<u>Additional Information May Be Required</u>

**43-02-02.3-01. Definitions.** The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-12, except:

1. "Adjacent area" means land located outside the permit area where air, surface or ground water, fish, wildlife, vegetation, or other resources may be adversely impacted by surface mining and reclamation operations.
2. "Certified or registered mail" means any form of service by the United States postal service, federal express, Pitney Bowes, and any other commercial, nationwide delivery service that provides the mailer with a document showing the date of delivery or refusal to accept delivery.
3. "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 consolidated lignite coal, in both oxidized and nonoxidized

forms, having less than eight thousand three hundred British thermal units per pound [453.59 grams], moist and mineral matter free, whether or not the material is enriched in radioactive materials.

4. "Department" means the department of mineral resources of the industrial commission.
5. "Deposit" means an underground concentration containing a common accumulation of subsurface minerals.
6. "Director" means the director of the department of mineral resources of the industrial commission.
7. "Disturbed area" means the surface area disturbed by mining and reclamation operations. Areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by North Dakota Century Code chapter 38-12 and this article is released.
8. "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one area to another.
9. "Geomembrane" means a synthetic, impermeable membrane used in contact with soil or other materials in geotechnical and civil engineering applications to contain liquids.
10. "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.
11. "Large mining operations" means mining operations which have a disturbed area of more than ten acres at any time.
12. "Operator" means any person or persons who, duly authorized, is in charge of the development of a lease or the operation of a producing property.
13. "Postmining land use" means a beneficial use or multiple uses which will be established on a permit area after completion of a mining project.
14. "Small mining operations" means mining operations which have a disturbed area of ten acres or less at any time.
15. "Surface mining" means mining conducted on the land surface including open pit, strip, or auger mining; dredging; quarrying; reworking abandoned dumps and tailing; and activities related thereto.
16. "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are

likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

17. "Waste" means:

a. Physical waste:

b. Operations which cause or tend to cause unnecessary or excessive surface loss; or

c. Operations that do not recover all of the mineral being mined that is technically and economically possible.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.3-02. Scope of chapter.** This chapter contains general rules of statewide application which have been adopted by the industrial commission to conserve the natural resources of North Dakota, to prevent waste, and to provide for operation in a manner as to protect correlative rights of all owners of subsurface minerals. Special rules and orders have been and will be issued when required and shall prevail as against general rules, regulations, and orders if in conflict therewith. However, wherever this chapter does not conflict with special rules heretofore or hereafter adopted, this chapter will apply in each case. The commission may grant exceptions to this chapter, and due notice and hearing, when such exceptions will result in the prevention of waste and operation in a manner to protect correlative rights.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.3-03. Uranium surface mining.** Surface mining activities targeting uranium ore from noncoal source rock are regulated under this chapter. Surface mining activities targeting uranium ore from uraniferous lignite deposits are not subject to this section and shall be conducted in accordance with North Dakota Century Code chapter 38-14.1 and North Dakota Administrative Code title 69-05.2 and under the regulatory authority of the public service commission.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.3-04. Radioactive material.** The handling, storage, transportation, and disposal of radioactive material shall be in accordance with United States nuclear regulatory commission requirements and those of the state department of health as set forth in North Dakota Century Code chapters 23-20.1,

23-20.2, and 23-20.5 and in North Dakota Administrative Code titles 33-10, 22-24, and 23-25.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.3-05. Bond.** Before any person receives a permit to explore for or produce subsurface minerals, the person shall submit to the commission and obtain its approval of a surety bond or cash bond. An alternate form of security may be approved by the commission after notice and hearing, as provided by law. The operator of a well or facility shall be the principal on the bond covering the well or facility. Each such surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

1. Bond amounts for surface mining facilities. For surface mining facilities, the amount of the bond will be five thousand dollars per acre [.40 hectare]. The applicant may file either the entire bond for the permit term or an incremental bond schedule and bond required for the first scheduled increment. Increments must be of sufficient size and configuration to provide for efficient reclamation operations.

When the operator elects to increment the amount of the bond, the operator shall:

- a. Furnish a legal description of each incremental area.
  - b. Furnish a schedule when each increment will require bond.
  - c. Furnish the estimated costs for the commission to complete the reclamation plan for the initial increment.
  - d. Provide the estimated cost to complete the reclamation plan for the next increment at least ninety days prior to the expected starting date of mining.
2. Bond terms. Bonds shall be conditioned upon full compliance with North Dakota Century Code chapter 38-12, and all administrative rules and orders of the commission, and continues until any of the following occurs:
    - a. The testholes or wells have been satisfactorily plugged which shall include practical reclamation of the well site and appurtenances thereto, and all logs, plugging records, and other pertinent data required by statute or rules and orders of the commission are filed and approved.



- b. The mined lands or lands disturbed by any method of exploration or production of subsurface minerals have been restored and approved by the director.
  - c. The liability on the bond has been transferred to another bond and such transfer approved by the commission.
3. Transfer of property under bond. Transfer of property does not release the bond. In case of transfer of property or other interest in a well, extraction facility, or surface mining facility, such as producers not ready for plugging, and the principal desires to be released from the bond covering the well or facility, the principal must proceed as follows:

- a. The principal must notify the director in writing of all proposed transfers of property at least thirty days before the closing date of the transfer. The director may, for good cause, waive this requirement.

The principal shall submit to commission a form 8-sm reciting that a certain property, or properties, describing each by quarter-quarter, section, township, and range, is to be transferred for the purpose of ownership or operation to a certain transferee, naming such transferee. The date of assignment or transfer must be stated and the form signed by a party duly authorized to sign on behalf of the principal.

On said transfer form the transferee shall recite the following: "The transferee has read the foregoing statement and accepts such transfer and the responsibility of such property under the transferee's one-well bond, surface mining facility bond, or extraction facility bond". Such acceptance must be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.

- b. When the commission has approved the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of well plugging and site reclamation. If such wells include all the wells within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any well from a bond if the well is in violation of a statute, rule, or order.
- c. The transferee (new operator) of any extraction facility, surface mining facility, or injection well shall be responsible for the plugging and site reclamation of any such property. For that purpose, the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior

bond that the latter's responsibility shall continue and attach to such well. The original or prior bond shall not be released as to the plugging and reclamation responsibility of any such transferor until the transferee submits to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging and site reclamation of such property is completed and approved.

4. Bond termination. The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging and reclamation is approved. If approved, liability under such bond may be formally terminated upon receipt of a written request by the principal. The request must be signed by an officer of the principal or person authorized to sign for the principal.
5. Director's authority. The director is vested with the power to act for the commission as to all matters within this section, except requests for alternative forms of security, which may only be approved by the commission.
6. The director shall periodically review the amount of bond. The director may require adjustments to the amount of bond to reflect inflationary increases or increases in the anticipated costs of reclamation.

The commission may refuse to accept a bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of wells; a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.3-06. Designation and responsibilities of operator.** The principal on the bond covering a surface mining facility is the operator of the mine. The operator is responsible for compliance with all laws relating to the mine site. A dispute over designation of the operator of a mine site may be addressed by the commission. In doing so, the factors the commission may consider include those set forth in subsection 1 of section 43-02-02.3-21.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.3-07. Permit required.** A permit is required prior to commencement of mining.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.3-08. Submission of permit application.** Any person who conducts or expects to conduct mining operations shall file with the department a complete permit application and all required materials. The applicant shall file with the department proof that it submitted a copy of the application to the county recorder in the county in which the proposed permit area is located.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.3-09. Summary document.** The permit application must contain a summary document that describes the main elements of the operation and identifies the major environmental issues involved.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.3-10. Small mining operation permit requirements.** Permit applications for small, noncoal, surface and subsurface mining operations shall address the following:

1. Identification of interests to include:
  - a. The name and address of the operator responsible for the mining operations and reclamation of the site.
  - b. The name and address of the surface landowners and mineral owners of all land to be affected by the mining operation.
  - c. The mine name and the mine safety and health administration identification number.
  - d. Documents evidencing the operator's right to enter the proposed permit area and conduct mining and reclamation, including showing that the surface owner will be compensated for loss of agricultural production.
2. Project location description and maps plotted at a scale to accurately identify locational landmarks and operational details, to include:
  - a. A legal description of the proposed permit area.

- b. The general location as shown on a topographic map which gives the location the following: perennial, intermittent and ephemeral streams; springs and seeps; wetlands, riparian areas, lakes and other water bodies; residences, businesses, and other structures; existing and proposed roads; other access routes; support facilities; cemeteries; burial grounds; cultural resources listed on the national register of historic places; electrical transmission and communication lines; pipelines; and oil, gas, and water wells on and within one-half mile of the permit area.
  - c. An operations map that identifies:
    - (1) The area to be disturbed;
    - (2) The location of any existing or proposed operations, including access roads, drill holes, trenches, pits, cuts, or other planned small mining activities; and
    - (3) Any previous adjacent disturbance for which the operator is not responsible.
3. Operation plan. A brief narrative description of the proposed mining operation. The description must include the following information:
- a. A general description of the minerals sought, the methods of extraction, and any processing to be conducted onsite. Any chemicals to be used onsite must be identified.
  - b. An estimate of depth to ground water and total dissolved solids concentration.
  - c. Estimated width and length of any new roads to be constructed.
  - d. An estimate of the total number of surface acres to be disturbed by the mining operation.
  - e. A discussion of plans for saving and replacing topsoil and subsoil from the areas to be affected.
  - f. The amount of material, including mineral deposit, overburden, waste rock, or core hole material, to be extracted, moved, or proposed to be moved, relating to the mining operation.
  - g. The locations proposed to be used for stockpiling topsoil, subsoil, overburden, and any other materials, including the mineral to be mined.

- h. A description of the plans for any structures that will be used for managing runoff from the disturbed areas and a discussion of other sediment control measures that will be used.
4. Reclamation plan. A reclamation plan must be submitted with the permit application to provide a general description of how the land surface of the permit area will be restored as nearly as possible to its original condition following closure. This must include a postmine topographic map or postmine cross sections showing how the disturbed area will conform to the adjacent undisturbed lands. The reclamation plan must discuss the postmining land uses for the disturbed lands and include plans for replacing any premine water supplies that are adversely affected by the mining operations. A detailed reclamation plan may be submitted at the time of application or as a permit modification to the general reclamation plan prior to commencing reclamation operations.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.3-11. Large mining operation permit requirements.** In addition to information requirements set forth in subsections 1 through 3 of section 43-02-02.3-10, permit applications for large, noncoal, surface and subsurface mining operations and extraction facilities shall address the following:

1. Identification of interests. In addition to the information requirements set forth in subsection 1 of section 43-02-02.3-10, the applicant will provide the following information:
  - a. A listing of all parties, including addresses, which have an ownership and controlling interest in the operation. Alternatively, the applicant may submit the applicant's most recent 10k form required by the United States securities and exchange commission.
  - b. A statement of all current or previous mining operations within the United States held during the five years prior to application owned, operated, or controlled by any person identified in subdivision a and the names and addresses of regulatory agencies with jurisdiction over the environmental aspects of those operations that could provide a compliance history for the operations.
  - c. The name and address of a designated agent for the service of notices and orders from the director.
  - d. A listing of all federal and state permits required for the operation.
2. A surface facilities map which identifies the locations of buildings; stationary mining/processing equipment; roads; underground utilities; power lines; proposed drainage control structures; the location of

topsoil and subsoil storage areas; tailings or processed waste facilities; disposal areas for overburden; and solid and liquid wastes and wastewater discharge treatment and containment facilities.

3. Sampling and analysis plan.

a. The applicant shall submit four copies of a proposed sampling and analysis plan (SAP) to the director for review prior to baseline data collection. The proposed SAP should contain, at a minimum, the following information for each relevant resource:

(1) Sampling objectives;

(2) A list of the data to be collected;

(3) Methods of collection;

(4) General water chemistry and the parameters to be analyzed for;

(5) Maps indicating the proposed sampling locations;

(6) Sampling frequency; and

(7) Laboratory and field quality assurance plans.

b. The director shall distribute the proposed SAP to other agencies as determined by the director. The agencies will have thirty days from receipt of the proposed SAP to submit written comments to the director. Any written comments received within thirty days shall be provided to the applicant. The director shall also provide written comments and recommendations to the applicant on the adequacy of the SAP.

c. The applicant may request a conference with the director to discuss the SAP.

4. Baseline data. Descriptions, maps, drawings, or photographs shall be included as required for determination of existing conditions, operations, reclamation, and postmining use. Baseline data shall include, as applicable:

a. A description of the climatological factors representative of the permit area, including precipitation, prevailing winds, and temperature.

b. A description of the thickness and nature of the topsoil and subsoil within the proposed permit area. A soil survey and soil analyses conducted in accordance with standard methods acceptable to the

director will be required to show variations in topsoil and subsoil depth and suitability. If a published soil survey is not available, a new survey must be prepared by a soil classifier as defined by North Dakota Century Code section 43-36-01.

- c. A map which delineates existing vegetation types and a description, including cover, density, and productivity of the plant communities within the proposed permit area. Included in this description shall be the results of an inventory conducted for any sensitive, threatened, or endangered plant species within the permit area.
- d. Wildlife information shall be obtained for the permit area and adjacent area. Where species may be impacted beyond these areas, the information shall include, to the extent practicable, the area of potential impact.
- e. A description of the ore body in the proposed permit area, including geologic plans and cross sections depicting the nature and depth of overburden, mineralized zone or ore body, and aquifers and springs. A description of the potential for geochemical alteration of overburden, ore body, and other materials present within the permit area. Detailed analyses may be required if the substrata is suspected to contain substances that are likely to create acid drainage or might degrade surface water or ground water or hinder reclamation.
- f. Surface and ground water information, including:
  - (1) A map indicating the location of surface waters and the location and size of watersheds in and adjacent to the proposed permit area. The map shall depict all watercourses, lakes, natural and artificial water bodies, springs, and riparian and wetland areas. Streams shall be classified as ephemeral, intermittent, or perennial. The map shall identify all watercourses, lakes, springs, and riparian and wetland areas into which surface or pit drainage will be discharged or may possibly be expected to reach;
  - (2) A description of surface drainage systems sufficient to identify the seasonal variation in surface water quantity and quality within the proposed permit and affected areas to the extent possible;
  - (3) Lithology and thickness of each geologic unit below the site indicating which units are water-bearing, cross sections and potentiometric maps indicating the locations of wells and the ground water flow direction in the vicinity of the site, and references or sources for this information;





- (2) Impoundments:
  - (3) Ponds:
  - (4) Diversions:
  - (5) Disposal systems:
  - (6) Pits:
  - (7) Tailings disposal facilities:
  - (8) Mills:
  - (9) Water treatment facilities:
  - (10) Storage areas for equipment, vehicles, fuel, chemicals, and solutions:
  - (11) Topsoil and subsoil stockpiles:
  - (12) Waste rock dumps: and
  - (13) Other facilities or structures.
- e. A contingency plan to mitigate impacts to wildlife when there has been an emergency or accidental discharge of toxic substances that may impact wildlife.
- f. A description of measures which will be undertaken to control sedimentation from the permit area and a plan for the monitoring of nonpoint source sediment pollution from the disturbed area.
6. Impact assessment. The operator shall provide a general narrative description identifying potential surface and subsurface impacts. This description will include, at a minimum:
- a. Projected impacts to surface and ground water systems:
  - b. Potential impacts to state and federal threatened and endangered species or their critical habitats:
  - c. Projected impacts of the mining operation on existing soil resources:
  - d. Projected impacts of mining operations on slope stability, erosion control, air quality, and public health and safety; and

- e. Actions which are proposed to mitigate any of the above referenced impacts.
7. Reclamation plan. Each application shall include a reclamation plan, including maps or drawings as necessary, consisting of a narrative description of the proposed reclamation, including:
- a. A statement of the current land use and the proposed postmining land use for the disturbed area, including a written preference statement from the surface owner for the proposed postmine land use.
  - b. A map at an appropriate scale and an approximate schedule indicating the reclamation activities to take place on disturbed areas of the mine site, including the number of acres to be reclaimed. The operator will be required to follow the sequence described unless modified or revised.
  - c. A description of the manner and the extent to which roads, highwalls, slopes, impoundments, drainages, pits and ponds, piles, drill holes, and similar structures will be reclaimed to the approximate original contour.
  - d. A detailed description of any surface facilities to be left as part of the postmining land use, included buildings, utilities, roads, pads, ponds, pits, and surface equipment where the postmine land use has been zoned as industrial or commercial land by the county.
  - e. A description of the treatment, location, and disposition of any toxic-forming or acid-forming materials generated and left onsite, including a map showing the location of such materials upon the completion of reclamation.
  - f. Plans for replacing the topsoil and subsoil that is removed and saved.
  - g. A planting program as best calculated to revegetate the disturbed area.
    - (1) Plans shall include, at a minimum, soil stabilization procedures, seedbed preparation, seed mixtures and rates, and timing of seeding.
    - (2) Where there is no original protective vegetative cover, an alternative practical procedure must be proposed to minimize or control erosion or siltation.

- h. A topographic map of the anticipated surface configuration of the permit area upon completion of reclamation operations. The map shall be at appropriate contour intervals and scale.
- i. A statement that the operator will conduct reclamation as required by these rules.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.3-12. Review for completeness.** The department will determine whether the application is complete. The department will notify the applicant in writing, within thirty days after the application is submitted, whether the application is complete or specify deficiencies that must be corrected in order to complete the application. If the application is substantially deficient, it will be rejected. The department will notify the applicant when the application is considered complete.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.3-13. Review period.**

- 1. The department will have one hundred eighty days after the filing date to approve or disapprove the application.
- 2. The department may extend the review period not to exceed an additional one hundred eight days if:
  - a. Additional time is needed to correct application deficiencies.
  - b. Significant changes are submitted that in the department's judgment require additional time to review. The department may require additional public notification of the amended application.
  - c. The department requires additional time to conduct an informal conference or a formal hearing or complete the decision.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.3-14. Permit application fees.**

- 1. A fee of one hundred dollars must accompany the application for a small mining facility permit.

2. A fee of five hundred dollars plus ten dollars per acre must accompany the application for a large mining facility permit.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.3-15. Information added after filing date.** Additional information submitted to the department by the applicant to supplement, correct, amend, or clarify an application following the filing date must also be submitted with the county recorder in the county or counties in which the proposed permit area is located. The additional information must be submitted at least thirty days before the hearing date. The applicant must transmit proof of submission with the county recorder to the department. The department shall give notice to the public of the additional information at least fifteen days before the scheduled hearing date.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.3-16. Notice to agencies.** Within the first ten days of the review period of a permit application, the department shall send copies of the application to the department of agriculture, the state department of health, and the state water commission.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.3-17. Notice of hearing.** Except in the case of an emergency, the commission will give thirty days' notice to the general public of the time and place of the hearing on the application by one publication in a newspaper of general circulation in the state capital and in a newspaper of general circulation in the county where the land affected, or some part, is situated. Immediately upon receiving notice of the hearing date, the permit applicant shall give notice by certified mail to surface and subsurface owners within the permit application area and to the county recorder in the county or counties in which the proposed permit area is located.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.3-18. Permit approval or denial.** Within ninety days of the hearing, or a reasonable time thereafter, the department will notify the applicant of the commission's decision as to whether the permit is approved or denied.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.3-19. Permit term.**

1. The permit will remain in effect as long as active mining continues at a mine site and the operator remains in full compliance with all permit conditions.
2. A permit shall be reviewed and may be required to be modified or revised for any of the following:
  - a. Additional applicable requirements under North Dakota Century Code chapters 38-12 and 38-12.1 and North Dakota Administrative Code article 43-02; or
  - b. The director determines that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit.
3. If the permit area contains property owned by the federal or state government, the expiration or termination of the government's authorization for the operator to conduct mining operations on the property automatically suspends the operator's authority to continue mining operations on the property, although not necessarily reclamation operations, by the permit issued under chapter 43-02-02.3.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.3-20. Permit modifications or revision.** An application for a permit modification or revision shall be in a format acceptable to the director and shall be accompanied by sufficient information for the director to determine whether any of the factors listed in this section are present. A permit modification or revision will not be granted unless the director determines that the proposed modification or revision meets the requirements of this rule.

1. A permit modification or revision for a mining operation is required for:
  - a. Each new discrete processing, leaching, excavation, storage, or stockpile unit located within the permit area and not identified in the permit;
  - b. Each expansion of such a unit identified in the permit that exceeds the design limits specified in the permit; and
  - c. Any change in the approved reclamation plan.
2. The operator may request additional acreage [hectarage] if the department considers the addition an incidental boundary change to the original permit area.

3. The operator may file an application to withdraw any lands previously approved as a part of a permit area, except lands on which operations have commenced. The operator shall demonstrate and certify that the proposed acreage [hectarage] to be deleted has not been affected by mining activities. Applications to delete undisturbed acreage [hectarage] are not subject to the public notice, procedural, and approval or denial standards of North Dakota Century Code chapter 38-12.
4. Revisions are modifications that require public notice and an opportunity for public hearing pursuant to this rule. The director shall review each request for a permit modification to determine whether it must be processed as a revision.
  - a. The director shall consider the following factors and their level of impact to determine whether a permit modification would have a significant environmental impact requiring a revision:
    - (1) Whether the proposed change would authorize an expansion of design limits beyond that currently authorized by the permit that:
      - (a) Would be located in or is expected to have a direct surface impact on wetlands, springs, perennial or intermittent streams, lakes, rivers, or other water bodies or riparian areas.
      - (b) Is expected to have a direct impact on ground water that has a total dissolved solids concentration of less than ten thousand milligrams per liter.
      - (c) Is expected to result in point or nonpoint source surface or subsurface releases of acid or other toxic substances from the permit area.
      - (d) Would be located in designation critical habitat areas as determined in accordance with the federal Endangered Species Act of 1973 or in areas determined by the game and fish department likely to result in an adverse impact on an endangered species.
      - (e) Would adversely impact archaeological and historical areas.
      - (f) Would be located in a known cemetery or other burial ground.
      - (g) Would be located in an area designated as a federal wilderness area, a wilderness study area, an area of

critical environmental concern, or an area within the national wild and scenic river system;

(2) Whether the proposed change would result in a significant increase in the required amount of financial assurance as determined by the director; or

(3) Whether the proposed change would significantly depart from the nature or scale of the permit.

b. An application for a permit modification or revision shall be accompanied by sufficient information for the director to determine whether any of the factors listed in this section are present.

5. The following actions do not require permit modifications or revisions:

a. The construction, relocation, or modification of roads within the disturbed area that does not change the reclamation plan;

b. Placement or movement of support buildings, equipment areas, maintenance shops, monitoring facilities, wells, power lines, power poles, substations, and communications facilities within the disturbed area that does not change the reclamation plan; and

c. The movement of tanks, pipelines, utilities, and portable units.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

#### **43-02-02.3-21. Revocation and limitation of permits.**

1. After notice and hearing, the commission may revoke a mining permit or limit its duration. The commission may act upon its own motion or upon the application of an owner in the permit area. In deciding whether to revoke or limit a permit, the factors that the commission may consider include:

a. The technical ability of the operator and other owners to conduct mining operations.

b. The experience of the operator and other owners in similar mining operations.

c. Contractual obligations, such as an expiring lease.

d. The amount of ownership the operator and other owners hold in the lease. If the operator is the majority owner or if its interest when combined with that of its supporters is a majority of the ownership.

it is presumed that the operator should retain the permit. The presumption, even if not rebutted, does not prohibit the commission from limiting the duration of the permit. However, if the amount of the interest owned by the owner seeking revocation or limitation and its supporters are a majority of the ownership, the commission will presume that the permit should be revoked.

2. The commission may suspend a permit that is the subject of a revocation or limitation proceeding. A permit will not be suspended or revoked after operations have commenced.
3. If the commission revokes a permit upon the application of an owner and issues a permit to that owner or to another owner who supported revocation, the commission may limit the duration of such permit. The commission may also, if the parties fail to agree, order the owner acquiring the permit to pay reasonable costs incurred by the former operator and the conditions under which payment is to be made. The costs for which reimbursement may be ordered may include those involving survey of the well site, title search of surface and mineral title, and preparation of an opinion of mineral ownership.
4. If the commission declines to revoke a permit or limit the time within which it must be exercised, it may include a term in its order restricting the ability of the operator to renew the permit or to acquire another permit within the same spacing or drilling unit.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.3-22. Operational practices.** The operator shall conform to the following practices:

1. The mining and reclamation operation shall be designed and operated using the most appropriate technology and best management practices.
2. Public safety and welfare. The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include:
  - a. The proper disposal of trash, scrap metal and wood, and extraneous debris;
  - b. The plugging or capping of drill, core, or other exploratory holes pursuant to section 43-02-02-24;
  - c. The posting of appropriate warning signs in locations where public access to operations is readily available; and



- d. The construction of berms, fences, or barriers above highwalls or other excavations.
3. Drainages. If natural channels are to be affected by the mining operation, then the operator shall take appropriate measures to avoid or minimize environmental damage.
4. Erosion control. Operations shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality, or other characteristics.
5. Toxic-forming materials. All toxic-forming or potentially deleterious material shall be safely removed from the site or kept in an isolated condition such that adverse environmental effects are eliminated or controlled.
6. Soils. All available topsoil and subsoil shall be removed, stored, and stabilized. The salvaged topsoil and subsoil must be respread following the backfill and grading of disturbed areas.
7. Concurrent reclamation. During operations, disturbed areas shall be reclaimed as soon as practicable when no longer needed, except to the extent necessary to preserve evidence of mineralization or proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition. All reclamation work through seeding must be completed within three years of completion of mining.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.3-23. Performance and reclamation standards and requirements.** The land surface of the permit area will be restored as nearly as possible to its original condition unless conflicting with the approved postmining land use. Each reclamation plan must be developed to meet the site-specific characteristics of the mining operation and the site.

1. Most appropriate technology and best management practices. The mining operation and the reclamation plan shall be designed and operated using the most appropriate technology and the best management practices.
2. Contemporaneous reclamation. Contemporaneous reclamation is required to the maximum extent practicable and in a manner that is consistent with the approved reclamation plan. All reclamation work must be completed within three years of completion of mining.

3. Assure protection. The mining operation and completed reclamation shall meet the following requirements established to assure protection of human health and safety, the environment, wildlife, and domestic animals.
- a. Signs, markers and safeguarding. Measures will be taken to safeguard the public to prevent falls from highwalls or pit edges. Depending on site-specific characteristics, the following measures shall be required:
- (1) Posting warning signs in locations near hazardous areas;
  - (2) Restricting access to hazardous areas;
  - (3) Marking the permit area boundaries;
  - (4) Posting a sign at the main entrances giving a telephone number of a person to call in the event of emergencies related to the mine; or
  - (5) Other measures as needed to protect human safety.
- b. Wildlife protection. Measures shall be taken to minimize adverse impacts on wildlife and important habitat. Based on site-specific characteristics, the following measures will be required:
- (1) Restricting access of wildlife and domestic animals to toxic chemicals or otherwise harmful materials;
  - (2) Minimizing harm to wildlife habitat during mining; and
  - (3) Reclaiming areas of wildlife habitat if not in conflict with the approved postmining land use.
- c. Cultural resources. Cultural resources listed on or eligible for listing on the national register of historic places, and any cemeteries or burial grounds shall be protected until clearance has been granted by the appropriate authority.
- d. Hydrologic balance. Operations shall be planned and conducted to minimize change to the hydrologic balance in both the permit and potentially affected areas. If not in conflict with the approved postmining land use, reclamation shall result in a hydrologic balance similar to premining conditions unless nonmining impacts have substantially changed the hydrologic balance.
- (1) Operations shall be designed so that nonpoint source surface releases of acid or other toxic substances shall be contained within the permit area, and that all other surface flows from

the disturbed area are treated to meet all applicable state and federal regulations.

(2) The disturbed areas shall not contribute suspended solids above background levels, or where applicable the state department of health standards, to ephemeral, intermittent, and perennial streams.

(3) To provide data to determine background levels for surface water entering the permit area, appropriate monitoring shall be conducted on drainages leading into the permit area.

(4) All diversions of overland flow shall be designed, constructed, and maintained to minimize adverse impacts to the hydrologic balance and to assure the safety of the public.

(a) No diversion shall be located so as to increase the potential for landslides.

(b) Unless site-specific characteristics require a different standard which is included in the approved permit, diversions which have watersheds larger than ten acres shall be designed, constructed, and maintained to safely pass the peak runoff from a ten-year, twenty-four-hour precipitation event.

(c) All diversion designs which have watersheds larger than ten acres shall be included in the permit application and certified by a registered professional engineer. Diversion designs shall be kept onsite or otherwise be made available, upon request, to the director for inspection.

(d) When no longer needed, temporary diversions shall be removed and the disturbed area reclaimed.

e. Stream diversions. When streams are to be diverted, the stream channel diversion shall be designed, constructed, and removed in accordance with the following:

(1) Unless site-specific characteristics require different measures to meet the performance standard and are included in the approved permit, the combination of channel, bank and floodplain configurations shall be adequate to safely pass the peak runoff of a ten-year, twenty-hour-hour precipitation event for temporary diversions, and a hundred-year, twenty-four-hour precipitation event for permanent diversions;

- (2) The design and construction of all intermittent and perennial stream channel diversions shall be certified by a registered professional engineer. As-built drawings shall be completed promptly after construction and be included in the permit application and retained onsite or otherwise made available upon request to the director; and
  - (3) When no longer needed, temporary stream channel diversions shall be removed and the disturbed area reclaimed.
- f. Impoundments. If impoundments are required, they shall be designed, constructed, and maintained to minimize adverse impacts to the hydrologic balance and adjoining property and to assure the safety of the public.
- (1) Unless site-specific characteristics require different measures to meet the performance standard and are included in the approved permit, impoundments having earthen embankments but not subject to the jurisdiction of the mine safety and health administration or the state department of health shall:
    - (a) Have a minimum elevation at the top of the settled embankment of two feet above the water surface in the pond with the spillway flowing at the design depth;
    - (b) Have a top width of the embankment not less than six feet;
    - (c) Have combined upstream and downstream side slopes of the settled embankment not less than five horizontal: one vertical with neither slope steeper than two horizontal: one vertical. Slopes shall be vegetated or otherwise stabilized to control erosion;
    - (d) Have the embankment foundation cleared of all vegetative matter, all surfaces sloped to no steeper than one horizontal: one vertical and the entire foundation area scarified;
    - (e) Have fill material free of vegetative matter and frozen soil;
    - (f) Have sufficient capacity for sediment storage and have sediment removed when that capacity is reached; and
    - (g) Have spillways provided to safely discharge the peak runoff of a twenty-five-year, twenty-four-hour

precipitation event, or an event with a ninety percent change of not being exceeded for the design life of the structure; or

(h) Have other site-specific design criteria for embankments as long as they result in a minimum static safety factor for 1.3 with water impounded to the design level;

(i) Be designed and certified by a registered professional engineer. As-built drawings shall be completed promptly after construction and be retained onsite or otherwise made available upon request to the director; and

(j) If necessary for sediment control, be in place before any other disturbance to the watershed for the impoundment.

(2) When no longer required, impoundments shall be graded to achieve positive drainage unless:

(a) The surface estate owner has requested in writing that they be retained;

(b) They are consistent with the approved reclamation plan; and

(c) They are appropriate for the postmining land use for the self-sustaining ecosystem.

g. Minimization of mass movement. All temporary stockpiles shall be constructed and maintained to minimize mass movement.

h. Riparian and wetland areas. Disturbance to riparian and wetland areas shall be minimized during mining. Adverse effects to riparian and wetland areas shall be mitigated during reclamation unless the mitigation conflicts with the approved postmining land use.

i. Roads. Roads shall be constructed and maintained to control erosion.

(1) Drainage control structures shall be used as necessary to control runoff and to minimize erosion, sedimentation, and flooding. Culverts or other drainage facilities shall be installed as road construction progresses and shall be capable of safely passing a ten-year, twenty-four-hour precipitation event unless site-specific characteristics indicate a different standard is appropriate and is included in the approved

permit. Culverts and drainage pipes shall be constructed and maintained to avoid plugging, collapsing, or erosion.

(2) Roads to be constructed in or across intermittent or perennial streams require site-specific designs to be submitted with the permit application.

(3) Permanent roads must be approved by the surface owner and be consistent with the approved postmining land use.

j. Explosives. Blasting shall be conducted to prevent injury to persons or damage to property not owned by the operator. Fly rock shall be confined to the permit area. The director may require a detailed blasting plan, preblast surveys or specify blast design limits to control possible adverse effects to structures.

4. Reclamation of surface facilities. The permit area shall be stabilized, to the extent practicable, to minimize future impact to the environment and protect air and water resources. Unless otherwise approved by the department, the reclamation of surface facilities shall include the removal of all buildings, road, and structures, and the surface restored as nearly as possible to its original condition. Tailings impoundments and ponds must be reclaimed and filled in and respread with topsoil and subsoil. All grading, backfilling, and topographic reconstruction must control erosion and sedimentation, protect areas outside the affected land from slides or other damage, and minimize the need for long-term maintenance.

Measures must be taken to reduce, to the extent practicable, the formation of acid and other toxic drainage that may otherwise occur following closure to prevent releases that cause federal or state standards to be exceeded. Nonpoint source surface releases for acid or other toxic substances shall be contained within the permit area.

Pond and impoundment reclamation must meet the following requirements:

a. Pond sludge must be chemically characterized to determine whether further treatment is necessary before disposal. Sludge must be removed for disposal at on offsite permitted solid waste facility or buried and covered onsite in a solid waste facility permitted in accordance with the applicable solid waste rules in North Dakota Administrative Code article 33-20; and

b. Geomembranes must be removed from impoundments, unless it is demonstrated to the department's satisfaction that they will serve a useful function consistent with the approved postmining land use. The geomembrane material must be disposed of in a permitted

landfill or may be disposed of onsite only if the operator first secures a solid waste permit in compliance with article 30-20.

5. Topsoil and subsoil. The operator shall take measures to remove and save all available topsoil and subsoil and protect it from erosion or contamination and assure that it is in a usable condition for sustaining vegetation when needed. The following requirements shall be met unless site-specific characteristics mandate different requirements and those requirements are included in the approved permit.
  - a. Topsoil and subsoil shall be sampled and analyzed for vegetation establishment suitability:
    - (1) Sample spacing and interval shall be based on site-specific materials; and
    - (2) Suitability will be identified by analysis based on site-specific materials.
  - b. Revegetation must be a component of the reclamation plan and all available topsoil and subsoil must be salvaged and replaced on disturbed areas.
  - c. Where direct distribution of topsoil and subsoil is not possible, it shall be stockpiled separately and in a manner to prevent loss of the resource.
  - d. Topsoil and subsoil shall be distributed in a manner to establish and maintain vegetation, consistent with the approved permit.
  - e. After distribution, topsoiled and subsoiled areas shall be stabilized to protect loss of the resource.
  - f. Where topsoil has been stockpiled for more than one year, the operator may be required to conduct analyses to determine if amendments are necessary.
6. Erosion control. Reclamation of disturbed lands must result in a condition that minimizes erosion. Revegetated lands must not contribute suspended solids above background levels, or where applicable, the state department of health standards, to streamflow of intermittent and perennial streams. Acceptable practices to control erosion include the following:
  - a. Stabilizing disturbed areas through land shaping, berming, or grading to final contour;
  - b. Minimizing reconstructed slope lengths and gradients;

- c. Diverting runoff:
- d. Establishing vegetation:
- e. Regulating channel velocity of water:
- f. Lining drainage channels with rock, vegetation, or other geotechnical materials; and
- g. Mulching.

7. Revegetation. Revegetated lands must meet the following standards:

- a. Revegetation success for a return as near as possible to original condition shall be determined through comparison of ground cover, productivity, and diversity and shall be made on the basis of the following approved reference areas:
  - (1) Foliage or basal cover and productivity of living perennial plants of the revegetated area shall be established equal to ninety percent of the reference area or equal to the approved revegetation standard using scientifically valid sampling techniques;
  - (2) Diversity of plant life forms (woody plants, grasses, forbs) shall consider what is reasonable based on the physical environment of the reclaimed area; and
  - (3) Woody plant species shall be established to the approved density standard.
- b. For areas for which the approved postmining land use is for wildlife habitat or forest land, success of vegetation shall be determined on the basis of tree or shrub stocking (density) and ground cover.
  - (1) The ground cover of living perennial plants shall be equal to ninety percent of the native ground cover of the reference area or other approved standard and shall be adequate to minimize erosion.
  - (2) Tree density for forest land shall have establishment rates of plant species equal to ninety percent of the approved reference area or other approved standard and shall be adequate to minimize erosion.
  - (3) If wildlife habitat is to be the postmining land use, the operator shall select and use plant species on the reclaimed areas based on the following criteria:



- (a) Their proven nutritional value for fish and wildlife;
- (b) Their uses as cover and security for wildlife;
- (c) Their ability to support and enhance fish and wildlife habitat; and
- (d) Distribution of plant life forms to maximize benefits of edge effect, cover, and other benefits for fish and wildlife.

c. Revegetation for other postmining land shall be consistent with the approved postmining land use. Site-specific standards may include standards for foliar or basal cover, production, and diversity and will be included in the approved permit.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.3-24. Report of production.** The operator of a mine shall, on or before the tenth day of the second month succeeding the month in which production occurs, file with the director the amount of production made by the mine upon form 5-sm or approved computer sheets no larger than eight and one-half by eleven inches [21.59 by 27.94 centimeters]. The report shall be signed by both the person responsible for the report and the person witnessing the signature. The printed name and title of both the person signing the report and the person witnessing the signature shall be included.

Production data submitted to the director shall be kept confidential for a period of one year when so requested by the operator. Such period may be further extended upon approval by the commission.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.3-25. Annual report.** Every operator shall, on or before April thirtieth of each year after a permit has been issued, submit, on a form provided by the director, a report for the preceding calendar year. The report must:

1. Provide the status of the operation;
2. Provide production figures for the operation;
3. Identify, on a separate map, the location of the disturbed areas and, if reclaimed, the year in which the work was done;

4. Identify the number of acres disturbed, the number of acres reclaimed during the reporting year, and the number of acres which have not yet been reclaimed;
5. Indicate the current market value of any collateral posted as financial assurance in accordance with section 43-02-02.3-05; and
6. Indicate the compliance status for all existing state and federal environmental permits held by the operator for this operation.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.3-26. Additional information may be required.** This chapter shall not be taken or construed to limit or restrict the authority of the commission to require the furnishing of such additional reports, data, or other information relative to production or products as may appear to be necessary or desirable, either generally or specifically, for the prevention of waste, protection of correlative rights, and the conservation of natural resources.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

## CHAPTER 43-02-02.4

### SOLUTION MINING

#### Section

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**43-02-02.4-01. Definitions.** The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-12, except:

1. "Adjacent area" means land located outside the permit area where air, surface or ground water, fish, wildlife, vegetation, or other resources may be adversely impacted by solution mining and reclamation operations.
2. "Certified or registered mail" means any form of service by the United States postal service, federal express, Pitney Bowes, and any other commercial, nationwide delivery service that provides the mailer with a document showing the date of delivery or refusal to accept delivery.
3. "Department" means the department of mineral resources of the industrial commission.
4. "Deposit" means an underground concentration containing a common accumulation of subsurface minerals.
5. "Director" means the director of the department of mineral resources of the industrial commission.
6. "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one area to another.
7. "Field" means the general area underlaid by a concentration of subsurface minerals. Field also includes the geological formation containing such subsurface minerals.
8. "Log or well log" means a systematic, detailed, and correct record of formations encountered in the drilling of a well, and includes commercial electrical logs and similar records.
9. "Occupied dwelling" means a residence which is lived in by a person at least six months throughout a calendar year.
10. "Product" means any commodity made from any subsurface mineral.
11. "Saltwater handling facility" means any container, such as a pit, tank, or pool, whether covered or uncovered, used for the handling, storage,

disposal of deleterious substances obtained, or used in connection with the drilling or operation of wells.

12. "Solution mining" means the process of injecting fluid into a well to dissolve rock salt or other readily soluble rock or mineral, and the production of the resulting artificial brine.
13. "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.
14. "Waste" means:
  - a. Physical waste:
  - b. Operations which cause or tend to cause unnecessary or excessive surface loss; or
  - c. Operations that do not recover all of the mineral being mined that is technically and economically possible.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-02. Scope of chapter.** This chapter contains general rules of statewide application which have been adopted by the industrial commission to conserve the natural resources of North Dakota, to prevent waste, and to provide for operation in a manner as to protect correlative rights of all owners of subsurface minerals. Special rules, pool rules, field rules, and regulations and orders have been and will be issued when required and shall prevail as against general rules, regulations, and orders if in conflict therewith. However, wherever this chapter does not conflict with special rules heretofore or hereafter adopted, this chapter will apply in each case. The commission may grant exceptions to this chapter, after due notice and hearing, when such exceptions will result in the prevention of waste and operation in a manner to protect correlative rights.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-03. Bond.** Before any person receives a permit to produce subsurface minerals via solution mining or commences extraction facility operations, the person shall submit to the commission, and obtain its approval, of a surety bond or cash bond. An alternate form of security may be approved by the commission after notice and hearing, as provided by law. The operator of a well or facility shall be the principal on the bond covering such activity. Each such surety

bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

1. Bond amounts and limitations for deep solution and injection wells.
  - a. For deep solution wells the amount of the bond shall be commensurate with the number of wells, the type of project, and the environmental risk. The amount of a bond will be determined by a formula that assigns reclamation costs based upon the number of drill sites, the depths of the holes, and the anticipated surface restoration costs.
  - b. Wells utilized for commercial disposal operations must be bonded in the amount of fifty thousand dollars.

When the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, the principal may submit a bond conditioned as provided by law. A well with an approved temporary abandoned status shall have the same status as an exploratory, mineral, or injection well.

2. Extraction facility bond requirements. The amount of the bond shall be specified by the commission in the order approving the permit area and based upon facility size and estimated reclamation costs. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.
3. Bond terms. Bonds shall be conditioned upon full compliance with North Dakota Century Code chapter 38-12, and all administrative rules and orders of the commission, and continues until any of the following occurs:
  - a. The testholes or wells have been satisfactorily plugged which shall include practical reclamation of the well site and appurtenances thereto, and all logs, plugging records, and other pertinent data required by statute or rules and orders of the commission are filed and approved.
  - b. The mined lands or lands disturbed by any method of exploration or production of subsurface minerals have been restored and approved by the director.
  - c. The liability on the bond has been transferred to another bond and such transfer approved by the commission.
4. Transfer of property under bond. Transfer of property does not release the bond. In case of transfer of property or other interest in a well, extraction facility, or surface mining facility and the principal desires to be released from the bond covering the well or facility, such as

producers, not ready for plugging, the principal must proceed as follows:

- a. The principal must notify the director in writing of all proposed transfers of property at least thirty days before the closing date of the transfer. The director may, for good cause, waive this requirement.

The principal shall submit to the commission a form 8-sm reciting that a certain property, or properties, describing each by quarter-quarter, section, township, and range, is to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form signed by a party duly authorized to sign on behalf of the principal.

On said transfer form the transferee shall recite the following: "The transferee has read the foregoing statement and accepts such transfer and the responsibility of such property under the transferee's one-well bond, surface mining facility bond, or extraction facility bond". Such acceptance must be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.

- b. When the commission has approved the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of well plugging and site reclamation. If such wells include all the wells within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any well from a bond if the well is in violation of a statute, rule, or order.

- c. The transferee (new operator) of any extraction facility, surface mining facility, or injection well shall be responsible for the plugging and site reclamation of any such property. For that purpose, the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue and attach to such well. The original or prior bond shall not be released as to the plugging and reclamation responsibility of any such transferor until the transferee submits to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging and site reclamation of such property is completed and approved.

5. Bond termination. The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging and

reclamation is approved. If approved, liability under such bond may be formally terminated upon receipt of a written request by the principal. The request must be signed by an officer of the principal or a person authorized to sign for the principal.

6. Director's authority. The director is vested with the power to act for the commission as to all matters within this section, except requests for alternative forms of security, which may only be approved by the commission.
7. The director shall periodically review the amount of bond. The director may require adjustments to the amount of bond to reflect inflationary increases or increases in the anticipated costs of reclamation.

The commission may refuse to accept a bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of wells; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-04. Designation and responsibilities of operator.** The principal on the bond covering a solution mining facility is the operator of the mine. The operator is responsible for compliance with all laws relating to the mine site. A dispute over designation of the operator of a well or mine site may be addressed by the commission. In doing so, the factors the commission may consider include those set forth in subsection 1 of section 43-02-02.4-18.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-05. Permit required.** A permit is required prior to the commencement of drilling or mining.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.4-06. Submission of permit applications.** Any person who conducts or expects to conduct solution mining operations shall file with the department a complete mining facility permit application, well permit application under chapter 43-02-02, an underground injection permit under chapter 43-02-2.1, and all required materials. The applicant shall file with the department proof that it



submitted a copy of the applications to the county recorder in the county in which the proposed permit area is located.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.4-07. Summary document.** The permit application must contain a summary document that describes the main elements of the operation and identifies the major environmental issues involved.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-08. Solution mining operation permit requirements.** Permit applications for solution mining operations shall address the following:

1. Identification of interests to include:
  - a. The name and address of the operator responsible for the mining operations and reclamation of the site.
  - b. A listing of all parties, including addresses, which have an ownership and controlling interest in the operation. Alternatively, the applicant may submit the applicant's most recent 10k form required by the United States securities and exchange commission.
  - c. A statement of all current or previous mining operations within the United States held during the five years prior to application owned, operated, or controlled by any person identified in subdivision b and the names and addresses of regulatory agencies with jurisdiction over the environmental aspects of those operations and that could provide a compliance history for the operations.
  - d. The name and address of the surface landowners and mineral owners of all land to be affected by the mining operation.
  - e. The name and address of a designated agent for the service of notices and orders from the director.
  - f. The mine name and the mine safety and health administration identification number.
  - g. A listing of all federal and state permits required for the operation.
  - h. The identification of all property interests the applicant holds, including options, in the lands for which a permit is sought and in all contiguous land. This identification must cover surface and

subsurface interests and legal descriptions must be provided identifying the location of each interest and option.

2. Project location description and maps plotted at a scale to accurately identify locational landmarks and operational details, to include:

a. A legal description of the proposed permit area.

b. The general location as shown on a topographic map which gives the location of the following: perennial, intermittent, and ephemeral streams; springs and seeps; wetlands, riparian areas, lakes and other water bodies; residences, businesses, and other structures; existing and proposed roads; other access routes; support facilities; cemeteries; burial grounds; cultural resources listed on the national register of historic places; electrical transmission and communication lines; pipelines; and oil, gas, and water wells on and within one-half mile of the permit area.

c. An operations map which identifies:

(1) The area to be disturbed;

(2) The location of any existing or proposed operations including access roads, drill holes, trenches, pits, cuts, or other planned small mining activities; and

(3) Any adjacent previous disturbance for which the operator is not responsible.

d. A surface facilities map which identifies: buildings; stationary mining/processing equipment; roads; utilities; power lines; proposed drainage control structures; the location of topsoil and subsoil storage areas; tailings or processed waste facilities; disposal areas for overburden; solid and liquid wastes and wastewater discharge treatment and containment facilities.

3. Sampling and analysis plan.

a. The applicant shall submit a proposed sampling and analysis plan (SAP) to the director for review prior to baseline data collection. Four copies should be submitted to facilitate the review. The proposed SAP should contain, at a minimum, the following information for each relevant resource:

(1) Sampling objectives;

(2) A list of the data to be collected;

(3) Methods of collection;



- e. A description of the ore body in the proposed permit area, including geologic plans and cross sections depicting the nature and depth of overburden, mineralized zone or ore body, and aquifers and springs. A description of the potential for geochemical alteration of overburden, ore body, and other materials present within the permit area. Detailed analyses may be required if the substrata is suspected to contain substances that are likely to create acid drainage or might degrade surface water or ground water or hinder reclamation.
- f. Surface and ground water information to include:
- (1) A map indicating the location of surface waters and the location and size of watersheds in and adjacent to the proposed permit area. The map shall depict all watercourses, lakes, natural or artificial water bodies, springs, and riparian and wetland areas. Streams shall be classified as ephemeral, intermittent, or perennial. The map shall identify all watercourses, lakes, springs, and riparian and wetland areas into which surface or pit drainage will be discharged or may possibly be expected to reach;
  - (2) A description of surface drainage systems sufficient to identify the seasonal variation in surface water quantity and quality within the proposed permit and affected areas to the extent possible;
  - (3) Lithology and thickness of each geologic unit below the site indicating which units are water bearing, cross sections and potentiometric maps indicating the locations of wells and the ground water flow direction in the vicinity of the site, and references or sources for this information;
  - (4) A description of the aquifer characteristics, including total dissolved solids concentration, maximum and minimum depths to ground water, direction of flow and gradients, transmissivity and storativity, and a general description of ground water quality, and references or sources for this information; and
  - (5) The location of all water wells and developed springs within and extending at least one mile from the proposed permit area. Water quality and quantity information for each well and spring shall be provided in the format required by the director.
- g. A description and delineation on topographic maps of any prior mining operations which may have affected the permit area including, if known, the type of mining and processing method and a list of any processing chemicals or reagents used.

- h. A list and accompanying map indicating all sites on or eligible for listing on the national register of historic places and known cemeteries and human burials within the proposed permit area. Included with this list and map shall be a description of the effects of the proposed mining operations may have on these sites and any proposed mitigation measures.
  - i. A description of the present and historic land use of the permit area, the general patterns of land use in the surrounding areas, and a narrative of land capability and productivity based upon natural resource conservation service land use.
- 5. Operation plan. Provide a brief narrative description of the proposed mining operation. The description must include the following information:
  - a. A general description of the minerals sought, the methods of extraction, and any processing to be conducted onsite. Any chemicals to be used on site must be identified.
  - b. An estimate of depth to ground water and total dissolved solids concentration.
  - c. Estimated width and length of any new roads to be constructed.
  - d. The identification of any toxic-forming or acid-forming materials present or to be left on the site as a result of mining or mineral processing.
  - e. A discussion of plans for saving and replacing topsoil and subsoil from the areas to be affected.
  - f. The amount of material (including mineral deposit, overburden, waste rock, or core hole material) to be extracted, moved, or proposed to be moved, relating to the mining operation.
  - g. Maps and plans indicating the location, size, and capacities for the mine facilities, including:
    - (1) Leach pads, heaps, ore dumps, and stockpiles;
    - (2) Impoundments;
    - (3) Ponds;
    - (4) Diversions;
    - (5) Disposal systems;

- (6) Pits:
  - (7) Tailings disposal facilities:
  - (8) Mills:
  - (9) Water treatment facilities:
  - (10) Storage areas for equipment, vehicles, fuel, chemicals, and solutions:
  - (11) Topsoil and subsoil stockpiles:
  - (12) Waste rock dumps; and
  - (13) Other facilities or structures.
- h. Plans for any structures that will be used for managing runoff from the disturbed areas and a discussion of other sediment control measures that will be used.
  - i. A contingency plan to mitigate impacts to wildlife when there has been an emergency or accidental discharge of toxic substances that may impact wildlife.
6. Reclamation plan. A reclamation plan will include maps or drawings as necessary and a narrative description of the proposed reclamation, including:
- a. A statement of the current land use and the proposed postmining land use for the disturbed area, including a written preference statement from the surface owner for the proposed postmine land use.
  - b. A description of the manner and the extent to which roads, highwalls, slopes, impoundments, drainages, pits and ponds, piles, drill holes, and similar structures will be reclaimed to the approximate original contour.
  - c. A detailed description of any surface facilities to be left as part of the postmining land use, including buildings, utilities, roads, pads, ponds, pits, and surface equipment in those instances where the postmine land use has been zoned as industrial or commercial land by the county.
  - d. A description of the treatment, location, and disposition of any toxic-forming or acid-forming materials generated and left onsite, including a map showing the location of such materials upon the completion of reclamation.

- e. Plans for replacing the topsoil and subsoil that is removed and saved.
- f. A planting program as best calculated to revegetate the disturbed area.
  - (1) Plans shall include, at a minimum, soil stabilization procedures, seedbed preparation, seed mixtures and rates, and timing of seeding.
  - (2) Where there is no original protective vegetative cover, an alternative practical procedure must be proposed to minimize or control erosion or siltation.
- g. A topographic map of the anticipated surface configuration of the permit area upon completion of reclamation operations. The map shall be at appropriate contour intervals and scale.
- h. A statement that the operator will conduct reclamation as required by these rules.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.4-09. Review for completeness.** The department will determine whether the application is complete. The department will notify the applicant in writing, within thirty days after the application is submitted, whether the application is complete or whether there are specific deficiencies that must be corrected in order to complete the application. If the application is substantially deficient, it will be rejected. The department will notify the applicant when the application is considered complete.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.4-10. Review period.**

1. The department will have one hundred eighty days after the filing date to approve or disapprove the application.
2. The department may extend the review period not to exceed an additional one hundred eight days if:
  - a. Additional time is needed to correct application deficiencies;

- b. Significant changes are submitted that in the department's judgement require additional time to review. The department may require additional public notification of the amended application; or
- c. The department requires additional time to conduct an informal conference or a formal hearing to complete the decision.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.4-11. Permit applications - Fees.** A fee of five hundred dollars must accompany the permit application.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.4-12. Information added after filing date.** Additional information submitted to the department by the applicant to supplement, correct, amend, or clarify an application following the filing date must also be submitted with the county recorder in the county or counties in which the proposed permit area is located. The additional information must be submitted at least thirty days before the hearing date. The applicant must provide proof of submission to the county recorder to the department. The department shall give notice to the public of the additional information at least fifteen days before the scheduled hearing date.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.4-13. Notice to agencies.** Within the first ten days of the review period of a permit application, the department shall send copies of the application to the department of agriculture, the state department of health, and to the state water commission.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.4-14. Notice of hearing.** Except in the case of an emergency, the commission will give thirty days' notice to the general public of the time and place of the hearing on the application. Immediately upon receiving notice of the hearing date, the permit applicant shall give notice by certified mail to surface and



subsurface owners within the permit application area and to the county recorder in the county or counties in which the proposed permit area is located.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.4-15. Permit approval or denial.** Within ninety days of the hearing, or a reasonable time thereafter, the department will notify the applicant of the commission's decision as to whether the permit is approved or denied.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.4-16. Permit term.**

1. The permit will remain in effect as long as active mining continues at a mine site and the operator remains in full compliance with all permit conditions.
2. A permit shall be reviewed and may be required to be modified or revised due to:
  - a. Additional applicable requirements under North Dakota Century Code chapters 38-12 and 38-12.1 and North Dakota Administrative Code article 43-02; or
  - b. The director determining that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit.
3. If the permit area contains property owned by the federal or state government, the expiration or termination of the government's authorization of the operator to conduct mining operations on the property automatically revokes the operator's permit, but does not suspend the operator's reclamation operations.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-03

**Law Implemented:** NDCC 38-12-03

**43-02-02.4-17. Permit modifications or revision.** An application for a permit modification or revision shall be in a format acceptable to the director and shall be accompanied by sufficient information for the director to determine whether any of the factors listed in the section are present. A permit modification or revision will not be granted unless the director determines that the proposed modification or revision meets the requirements of this section.

1. A permit modification or revision for a mining operation is required for:
  - a. Each new discrete processing, leaching, excavation, storage, or stockpile unit located within the permit area and not identified in the permit:
  - b. Each expansion of such a unit identified in the permit that exceeds the design limits specified in the permit; and
  - c. Any change in the approved reclamation plan.
2. Revisions are modifications that require public notice and an opportunity for public hearing pursuant to this rule. The director shall review each request for a permit modification to determine whether it must be processed as a revision.
  - a. The director shall consider the following factors and their level of impact to determine whether a permit modification would have a significant environmental impact requiring a revision:
    - (1) Whether the proposed change would authorize an expansion of design limits beyond that currently authorized by the permit that:
      - (a) Would be located in or is expected to have a direct surface impact on wetlands, springs, perennial or intermittent streams, lakes, rivers, and other water bodies or riparian areas.
      - (b) Is expected to have a direct impact on ground water that has a total dissolved solids concentration of less than ten thousand milligrams per liter.
      - (c) Is expected to result in point or nonpoint source surface or subsurface releases of acid or other toxic substances from the permit area.
      - (d) Would be located in designated critical habitat areas as determined in accordance with the federal Endangered Species Act of 1973 or in areas determined by the game and fish department likely to result in an adverse impact on an endangered species.
      - (e) Would adversely impact cultural resources listed on either the national register of historic places or the state register of cultural properties.
      - (f) Would be located in a known cemetery or other burial ground.



- d. The amount of ownership the operator and other owners hold in the lease. If the operator is the majority owner or if its interest when combined with that of its supporters is a majority of the ownership, it is presumed that the operator should retain the permit. This presumption, even if not rebutted, does not prohibit the commission from limiting the duration of the permit. However, if the amount of the interest owned by the owner seeking revocation or limitation and its supporters are a majority of the ownership, the commission will presume that the permit should be revoked.
2. The commission may suspend a permit that is the subject of a revocation or limitation proceeding. A permit will not be suspended or revoked after operations have commenced.
3. If the commission revokes a permit upon the application of an owner and issues a permit to that owner or to another owner who supported revocation, the commission may limit the duration of such permit. The commission may also, if the parties fail to agree, order the owner acquiring the permit to pay reasonable costs incurred by the former operator and the conditions under which payment is to be made. The costs for which reimbursement may be ordered may include those involving survey of the well site, title search of surface and mineral title, and preparation of an opinion of mineral ownership.
4. If the commission declines to revoke a permit or limit the time within which it must be exercised, it may include a term in its order restricting the ability of the operator to renew the permit or to acquire another permit within the same spacing or drilling unit.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-19. Surface facilities - Location - Exception to location requirements.**

1. All surface facilities and flow lines installed shall be constructed so that the materials contained in the facilities do not cause waste. Operation of surface facilities and flow lines shall not begin until the operator has complied with the methods and means to prevent pollution as specified in these rules.
2. Surface facilities may not be located less than five hundred feet from either of the following:
  - a. Existing recorded freshwater wells and reasonably identifiable freshwater wells utilized for human consumption.
  - b. Occupied dwellings.

3. Surface facilities may be located closer than five hundred feet from existing recorded freshwater wells and reasonably identifiable freshwater wells utilized for human consumption and occupied dwellings under either of the following conditions:
  - a. Upon presentation to the director of a written consent signed by the owner or owners of all existing recorded freshwater wells and reasonably identifiable freshwater wells utilized for human consumption and occupied dwellings.
  - b. After notice and hearing, the commission determines that the proposed surface facility location will prevent waste, protect environmental values, and not compromise public safety.
4. The director shall be notified within twenty-four hours of emergency repairs to existing surface facilities that substantially modify the facility or piping. Details regarding such emergency repairs, including changes in size or location of facility structures or piping, shall be submitted in writing within thirty days of the repair.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-20. Operators of class III injection wells.** Prior to the construction of any injection well to be utilized for the extraction of minerals or energy, an operator shall obtain an underground injection control permit pursuant to chapter 43-02-02.1.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-21. Notice of mechanical integrity testing.** At least thirty days before a regularly scheduled test, an operator shall notify the director of the date and approximate time of the test. The notification shall include a copy of the proposed test procedure, including procedures for wireline logging. Mechanical integrity testing shall not be conducted until an operator has received approval of the test procedure from the director. Mechanical integrity testing may be witnessed by the director.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-22. Mechanical integrity testing.**

1. Prior to commencing operations, the operator of a new injection well must demonstrate the mechanical integrity of the well. Injection wells

must demonstrate continual mechanical integrity and be tested at least once every five years. An injection well has mechanical integrity if:

- a. There is no significant leak in the casing, tubing, or packer; and
  - b. There is no significant fluid movement into an underground source of drinking water or an unauthorized zone through vertical channels adjacent to the injection bore.
2. One of the following methods must be used to evaluate the absence of significant leaks:
- a. Pressure test with liquid or gas.
  - b. Monitoring of positive annulus pressure following a valid pressure test.
  - c. Radioactive tracer survey.
3. One of the following methods must be used to establish the absence of significant fluid movement:
- a. A log from which cement can be determined or well records demonstrating the presence of adequate cement to prevent such migration.
  - b. Radioactive tracer survey, temperature log, or noise log.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-23. Calibration of pressure gauges.** The operator shall calibrate all pressure gauges used in mechanical integrity demonstrations according to the manufacturer's recommendations. A copy of the calibration certificate shall be submitted to the director at the time of demonstration and every time the gauge is calibrated. A pressure gauge shall have a resolution so as to allow detection of at least one-half of the maximum allowable pressure change.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-24. Reports of mechanical integrity.** The operator shall file a signed copy of the report of a mechanical integrity test with the director within sixty days after testing. A copy of the pressure record shall accompany the report. The report shall include evaluation of the test results by a person qualified to provide such an evaluation. Reports of mechanical integrity demonstrations utilizing

downhole logs shall be accompanied by an interpretation of the log by a person qualified to make such interpretations.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-25. Mechanical integrity testing required by the director.**  
The director may require a demonstration of mechanical integrity following a change of well status or if there is reason to believe a well does not have mechanical integrity.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-26. Cavity size.** The operator of a solution well shall submit a plan to monitor cavity size and shape for approval by the director. The plan shall include frequency of monitoring and shall include a description of the method used to determine the size and shape of the cavity.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-27. Subsidence monitoring above a cavity created by solution mining.** The operator shall submit a plan for subsidence monitoring above a cavity for approval by the director. The plan shall include frequency of monitoring and shall include a description of the method used to monitor subsidence.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-28. Abandonment of cavity created by solution mining.**  
Before abandoning a cavity used for storage, the operator shall remove stored product to the extent practicable and replace it with brine or freshwater subject to the approval of the director.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-29. Central production facility - Commingling of production.**

1. The director shall have the authority to approve requests to consolidate production equipment at a central location.

2. Commingling of production from two or more wells in a central production facility is prohibited unless approved by the director. There are two types of central production facilities that may be approved by the director.

a. A central production facility in which all production going into the facility has common ownership (working interests, royalty interests, and overriding royalties), known as a common ownership central production facility. The director may approve a common ownership central production facility provided the production from each well can be accurately determined at reasonable intervals.

b. A central production facility in which production going into the facility has diverse ownership, known as a diverse ownership central production facility. The director may approve a diverse ownership central production facility provided the production from each well is accurately metered prior to commingling. A diverse ownership central production facility that is not metered prior to commingling may only be approved by the commission after notice and hearing.

3. Common ownership central production facility. The application for permission to commingle solutions must be submitted on a sundry notice (form 4-sm) and shall include the following:

a. A plat or map showing thereon the location of the central facility and the name, well file number, and location of each well and flow lines from each well that will produce into the facility.

b. A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items should be shown, such as treaters, tanks, flow lines, valves, meters, and recycle pumps.

c. An affidavit executed by a person who has knowledge as to the state of title demonstrating common ownership.

d. An explanation of the procedures or method to be used to accurately determine individual well production at periodic intervals. Such procedures or method shall be performed at least once every three months.

A copy of all tests are to be filed with the director on form 11-sm within thirty days after the tests are completed.

4. Diverse ownership central production facility. The application for permission to commingle solutions must be submitted on a sundry notice (form 4-sm) and shall include the following:



- a. A plat or map showing thereon the location of the central facility and the name, well file number, and location of each well, and flow lines from each well that will produce into the facility.
- b. A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items should be shown, such as treaters, tanks, flow lines, valves, meters, and recycle pumps.
- c. The name of the manufacturer, size, and type of meters to be used. The meters must be proved at least once every three months and the results reported to the director within thirty days following the completion of the test.
- d. An explanation of the procedures or method to be used to accurately determine individual well production at periodic intervals. Such procedures or method shall be performed monthly.

A copy of all tests are to be filed with the director on form 11-sm within thirty days after the tests are completed.

5. Any changes to a previously approved central production facility must be reported on a sundry notice (form 4-sm) and approved by the director.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-30. Production equipment, dikes, and seals.** Storage of brine solution in underground or partially buried tanks or containers is prohibited. Surface tanks and production equipment must be devoid of leaks and in good condition. Unused tanks and production equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year. Dikes must be erected and maintained around tanks at any production facility.

Dikes must be erected around tanks at any new production facility within thirty days after the well has been completed. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid production. The required capacity of the dike may be lowered by the director if necessity can be demonstrated to the director's satisfaction.

Numbered metal security seals shall be properly utilized on all access valves and access points to secure the tank or battery of tanks.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-31. Tank cleaning permit.** No tank bottom waste shall be removed from any tank used for the storage or sale of crude oil without prior approval by the director. Verbal approval may be given. Prior approval to remove tank bottom waste from tanks not used for the storage or sale of crude oil is not required.

Within thirty days of the removal of the tank bottom waste of any tank used for the storage or sale of crude oil, the owner or operator shall submit a report (form 10-sm) showing an accurate gauge of the contents of the tank and the amount of merchantable oil determinable from a representative sample of the tank bottom by the standard centrifugal test as prescribed by the American petroleum institute's code for measuring, sampling, and testing crude oil.

Within thirty days of the removal of the tank bottom waste of any permanent tank not used for the storage or sale of crude oil, the owner or operator shall submit a sundry notice (form 4-sm) detailing the cleaning operation.

All tank bottom waste must be disposed of in a manner authorized by the director and in accordance with all applicable local, state, and federal laws and regulations. Nothing contained in this section shall apply to reclaiming of pipeline break oil or the treating of tank bottoms at a pipeline station, crude oil storage terminal, or refinery or to the treating by a gasoline plant operator of oil and other catchings collected in traps and drips in the gas-gathering lines connected to gasoline plants and in scrubbers at such plants.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-32. Saltwater handling facilities.**

1. All saltwater liquids or brines produced shall be processed, stored, and disposed of without pollution of freshwater supplies. At no time shall saltwater liquids or brines be allowed to flow over the surface of the land or into streams.
2. Underground injection of saltwater liquids and brines for the purpose of solution mining shall be in accordance with chapter 43-02-02.1.
3. Underground injection of a waste product shall be in accordance with chapter 33-25-01.
4. The operator shall take steps to minimize the amount of solids stored at the facility.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-33. Secondary containment - General requirements.**

Secondary containment measures at a wellhead or surface facility shall meet all of the following requirements:

1. The sidewalls and floor of a secondary containment area shall be constructed of sufficiently impermeable material to provide emergency containment.
2. Dikes or firewalls shall be maintained and the enclosure kept free of waste products, stored products, tank bottoms, brine, water, vegetation, debris, and any flammable or combustible material.
3. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid production.
4. An operator shall install an automatic surface facility shutdown system designed to prevent liquids from overflowing the secondary containment area. A surface facility shall be exempt from the requirement of an automatic shutdown system if the facility has staff present while operating and is equipped with alarm systems on the storage tank or tanks.
5. All transfer and injection pumps shall have leak containment constructed to prevent the seepage of any liquids moved by the pump or any lubricating oils into the surrounding soils, surface waters, or ground water.
6. Wellheads and flare stacks shall have secondary containment and spill containment areas constructed in a manner to prevent the seepage of waste product, stored product, or brine into the surrounding soils, surface waters, or ground water. Secondary containment at the wellhead shall be constructed in a manner to capture leakage of liquid that may occur. In addition, if the wellhead is equipped with a pump jack utilizing a gasoline or diesel-powered engine, then the engine shall also have secondary containment that is sufficient to prevent the seepage of any machine oils or fuels into the surrounding soils, surface waters, or ground water.
7. An operator shall keep secondary containment areas free of standing liquid. All spills in a secondary containment area shall be pumped up within forty-eight hours of discovering the spill.
8. An operator shall submit to the director a plan for inspections and monitoring of active wells and surface facilities.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-34. Secondary containment - Vessels.** A vessel at a surface facility shall be elevated and placed on impervious pads or constructed so that any leakage can be easily detected. A vessel that is to be used onsite for thirty days or less shall, at a minimum, be placed on leak-resistant material installed in a manner to contain spills or leaks.

A waste product, stored product, or brine storage vessel shall be located in a secondary containment area.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-35. Secondary containment - Loading and unloading areas.**

1. A truck loading and unloading area located outside of a secondary containment area shall be constructed and sealed in a manner that prevents the seepage of waste product, stored product, or brine into the surrounding soils, surface waters, or ground water. In addition, a ramp shall be constructed to contain any leakage from transfer operations at the vehicle being loaded or unloaded. The ramp area shall contain a sump and be connected to a secondary containment area so that any spillage drains into the sump and into the secondary containment area. The spill containment ramp and sump shall have a combined capacity of not less than one thousand gallons.
2. Sumps shall be constructed of materials impervious to the waste product, stored product, and brine and resistant to damage and deterioration during use. Sumps shall be connected to the ramp area and the secondary containment area in a manner that prevents leakage.
3. All loading and unloading facility transfer lines that are not in use shall be secured to prevent spillage. A shutoff valve shall be installed at the truck connect point and at the storage vessels. All shutoff valves shall be left in a normally closed position.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-36. Secondary containment - Piping.** All piping at a surface facility shall be routed above the ground and kept within the secondary containment area where practicable. Piping that cannot be routed above the ground shall have

its location marked with posts or with other location-identifying markers approved by the director so that the buried piping can be easily located.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-37. Secondary containment - Certification.** Upon completion of the construction of a surface facility, but before its use, an operator of a well shall certify to the director that the secondary containment area is constructed according to the approved plan. Following advance notice, the director may require an inspection of a surface facility before it is put into service. If an inspection is required it shall be conducted within five business days of the receipt of certification.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-38. Line markers for brine pipelines.** If a pipeline conveys liquids to or from a well located outside the perimeter of a manufacturing plant, it is subject to the provisions of this section.

1. Except as provided in subsection 2, a marker shall be placed and maintained as close as practicable over each buried brine pipeline, as follows:
  - a. At each crossing of a public road and railroad.
  - b. When necessary to identify the location of the brine pipeline to reduce the possibility of damage or interference.
  - c. At the point of crossing of or under waterways and other bodies of water.
2. Markers shall be placed and maintained along each section of a brine pipeline that is located aboveground in an area which is accessible to the public.
3. The following information shall be written legibly on a background of sharply contrasting color on each brine pipeline marker:
  - a. The word "warning", or "caution", followed by the words "waste product brine" or "brine pipeline", all of which, except for markers in heavily developed urban areas, shall be not less than one and one-half inches high and legible under normal conditions at a distance of twenty-five feet.

- b. The name of the operator and the telephone number, including the area code, where the operator can be reached at all times.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-39. Pipelines - Records.** An operator shall keep records covering each leak discovered, repair made, pipeline break, pipeline patrol, and inspection for as long as the segment of pipeline involved remains in service.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-40. Purging, removal, and abandonment of lines and vessels.** An operator of a well shall remove all flow lines and vessels, including tanks, if the flow lines or vessels are not used for one year and shall provide notification of the removal to the director. The director may allow a line to be purged and abandoned in place upon written application from the operator. The director may grant an exception to this section upon written application.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-41. Existing facilities - Maintenance.**

1. The operator of a well shall maintain all existing dikes or firewalls installed before July 1, 2013, and shall keep the containment area free of oil, emulsions, waste products, stored products, tank bottoms, brine, water, vegetation, debris, or any flammable or combustible material.
2. The director may require surface facilities constructed before July 1, 2013, to be upgraded to meet secondary containment requirements of this chapter if the facility is substantially modified or if losses have resulted in pollution.
3. Before any modification of a secondary containment area, other than routine maintenance, the operator of a well shall notify the director in writing. The notification shall include a modified secondary containment plan reflecting the proposed changes. The operator shall receive approval from the director before making the modification. The director shall approve or deny the request within eleven days of receipt

of the request. The director may require an inspection of the modified secondary containment area before it is returned to service.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-42. Operational practices.** The operator shall conform to the following practices:

1. The mining and reclamation operation shall be designed and operated using the most appropriate technology and best management practices.
2. Public safety and welfare. The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include:
  - a. The disposal of trash, scrap metal and wood, and extraneous debris;
  - b. The plugging or capping of drill, core, or other exploratory holes pursuant to section 43-02-02-24;
  - c. The posting of appropriate warning signs in locations where public access to operations is readily available; and
  - d. The construction of berms, fences, or barriers above highwalls or other excavations.
3. Drainages. If natural channels are to be affected by the mining operation, then the operator shall take appropriate measures to avoid or minimize environmental damage.
4. Erosion control. Operations shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality, or other characteristics.
5. Toxic-forming materials. All toxic-forming or potentially deleterious material shall be safely removed from the site or kept in an isolated condition such that adverse environmental effects are eliminated or controlled.
6. Soils. All available topsoil and subsoil shall be removed, stored, and stabilized. The salvaged topsoil and subsoil must be respread following the backfill and grading of disturbed areas.

7. Concurrent reclamation. During operations, disturbed areas shall be reclaimed as soon as practicable when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition. All reclamation work through seeding must be completed within three years of completion of mining.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-43. Performance and reclamation standards and requirements.** The land surface of the permit area will be restored as nearly as possible to its original condition unless conflicting with the approved postmining land use. Each reclamation plan must be developed to meet the site-specific characteristics of the mining operation and the site.

1. Most appropriate technology and best management practices. The mining operation and the reclamation plan shall be designed and operated using the most appropriate technology and the best management practices.
2. Contemporaneous reclamation. Contemporaneous reclamation is required to the maximum extent practicable and in a manner that is consistent with the approved reclamation plan. All reclamation work through seeding must be completed within three years of completion of mining.
3. Assure protection. The mining operation and completed reclamation shall meet the following requirements established to assure protection of human health and safety, the environment, wildlife, and domestic animals.
  - a. Signs, markers, and safeguarding. Measures will be taken to safeguard the public to prevent falls from highwalls or pit edges. Depending on site-specific characteristics, the following measures shall be required:
    - (1) Posting warning signs in locations near hazardous areas;
    - (2) Restricting access to hazardous areas;
    - (3) Marking the permit area boundaries;
    - (4) Posting a sign at the main entrances giving a telephone number of a person to call in the event of emergencies related to the mine; and



- (5) Other measures as needed to protect human safety.
- b. Wildlife protection. Measures shall be taken to minimize adverse impacts on wildlife and important habitat. Based on site-specific characteristics, the following measures will be required:
- (1) Restricting access of wildlife and domestic animals to toxic chemicals or otherwise harmful materials;
  - (2) Minimizing harm to wildlife habitat during mining; and
  - (3) Reclaiming areas of wildlife habitat if not in conflict with the approved postmining land use.
- c. Cultural resources. Cultural resources listed on or eligible for listing on the national register of historic places, and any cemeteries or burial grounds shall be protected until clearance has been granted by the appropriate authority.
- d. Hydrologic balance. Operations shall be planned and conducted to minimize change to the hydrologic balance in both the permit and potentially affected areas. If not in conflict with the approved postmining land use, reclamation shall result in a hydrologic balance similar to premining conditions unless nonmining impacts have substantially changed the hydrologic balance.
- (1) Operations shall be designed so that nonpoint source surface releases of acid or other toxic substances shall be contained within the permit area, and that all other surface flows from the disturbed area are treated to meet all applicable state and federal regulations.
  - (2) The disturbed areas shall not contribute suspended solids above background levels, or where applicable the state department of health standards, to ephemeral, intermittent, and perennial streams.
  - (3) To provide data to determine background levels for surface water entering the permit area, appropriate monitoring shall be conducted on drainages leading into the permit area.
  - (4) All diversions of overland flow shall be designed, constructed, and maintained to minimize adverse impacts to the hydrologic balance and to assure the safety of the public.
    - (a) No diversion shall be located so as to increase the potential for landslides.

- (b) Unless site-specific characteristics require a different standard which is included in the approved permit, diversions which have watersheds larger than ten acres shall be designed, constructed, and maintained to safely pass the peak runoff from a ten-year, twenty-four-hour precipitation event.
  - (c) All diversion designs which have watersheds larger than ten acres shall be included in the permit application and certified by a registered professional engineer. Diversion designs shall be kept onsite or otherwise be made available, upon request, to the director for inspection.
  - (d) When no longer needed, temporary diversions shall be removed and the disturbed area reclaimed.
- e. Stream diversions. When streams are to be diverted, the stream channel diversion shall be designed, constructed, and removed in accordance with the following:
  - (1) Unless site-specific characteristics require different measures to meet the performance standard and are included in the approved permit, the combination of channel, bank, and floodplain configurations shall be adequate to safely pass the peak runoff of a ten-year, twenty-four-hour precipitation event for temporary diversions, or a one-hundred-year, twenty-four-hour precipitation event for permanent diversions;
  - (2) The design and construction of all intermittent and perennial stream channel diversions shall be certified by a registered professional engineer. As-built drawings shall be completed promptly after construction and be included in the permit application and retained onsite or otherwise made available upon request to the director; and
  - (3) When no longer needed, temporary stream channel diversions shall be removed and the disturbed area reclaimed.
- f. Impoundments. If impoundments are required, they shall be designed, constructed, and maintained to minimize adverse impacts to the hydrologic balance and adjoining property and to assure the safety of the public.
  - (1) Unless site-specific characteristics require different measures to meet the performance standard and are included in the approved permit, impoundments having

earthen embankments but not subject to the jurisdiction of the mine safety and health administration or the state department of health shall:

- (a) Have a minimum elevation at the top of the settled embankment of two feet above the water surface in the pond with the spillway flowing at the design depth:
- (b) Have a top width of the embankment not less than six feet:
- (c) Have combined upstream and downstream side slopes of the settled embankment not less than five horizontal: one vertical with neither slope steeper than two horizontal: one vertical. Slopes shall be vegetated or otherwise stabilized to control erosion:
- (d) Have the embankment foundation cleared of all vegetative matter, all surfaces sloped to no steeper than one horizontal : one vertical and the entire foundation area scarified:
- (e) Have fill material free of vegetative matter and frozen soil:
- (f) Have sufficient capacity for sediment storage and have sediment removed when that capacity is reached; and
- (g) Have spillways provided to safely discharge the peak runoff of a twenty-five-year, twenty-four-hour precipitation event, or an event with a ninety percent chance of not being exceeded for the design life of the structure; or
- (h) Have other site-specific design criteria for embankments as long as they result in a minimum static safety factor of 1.3 with water impounded to the design level:
- (i) Be designed and certified by a registered professional engineer. As-built drawings shall be completed promptly after construction and be retained onsite or otherwise made available upon request to the director; and
- (j) If necessary for sediment control, be in place before any other disturbance to the watershed for the impoundment.

- (2) When no longer required, impoundments shall be graded to achieve positive drainage unless:
  - (a) The surface estate owner has requested in writing that they be retained;
  - (b) They are consistent with the approved reclamation plan; and
  - (c) They are appropriate for the postmining land use or the self-sustaining ecosystem.
  
- g. Minimization of mass movement. All temporary stockpiles shall be constructed and maintained to minimize mass movement.
  
- h. Riparian and wetland areas. Disturbance to riparian and wetland areas shall be minimized during mining. Adverse effects to riparian and wetland areas shall be mitigated during reclamation unless the mitigation conflicts with the approved postmining land use.
  
- i. Roads. Roads shall be constructed and maintained to control erosion.
  - (1) Drainage control structures shall be used as necessary to control runoff and to minimize erosion, sedimentation, and flooding. Culverts or other drainage facilities shall be installed as road construction progresses and shall be capable of safely passing a ten-year, twenty-four-hour precipitation event unless site-specific characteristics indicate a different standard is appropriate and is included in the approved permit. Culverts and drainage pipes shall be constructed and maintained to avoid plugging, collapsing, or erosion.
  
  - (2) Roads to be constructed in or across intermittent or perennial streams require site-specific designs to be submitted with the permit application.
  
  - (3) Permanent roads must be approved by the surface owner and be consistent with the approved postmining land use.
  
- j. Subsidence control. Underground and in situ solution mining activities shall be planned and conducted, to the extent technologically and economically feasible, to prevent subsidence which may cause material damage to structures or property not owned by the operator.
  - (1) Solution mining activities near any aquifer that serves as a significant source of water supply to the public water system shall be conducted so as to avoid disruption of the aquifer and

consequent exchange of ground water between the aquifer and other strata.

(2) Solution mining activities conducted beneath or adjacent to any perennial stream must be performed in a manner so that subsidence is not likely to cause material damage to streams, water bodies, and associated structures.

k. Explosives. Blasting shall be conducted to prevent injury to persons or damage to property not owned by the operator. Fly rock shall be confined to the permit area. The director may require a detailed blasting plan, or preblast surveys, or may specify blast design limits to control possible adverse effects to structures.

4. Reclamation of surface facilities. The permit area shall be stabilized, to the extent practicable, to minimize future impact to the environment and protect air and water resources. Unless otherwise approved by the department, the reclamation of surface facilities shall include the removal of all buildings, roads, and structures, and the surface restored as nearly as possible to its original condition. Tailings impoundments and ponds must be reclaimed and filled in and respread with topsoil and subsoil. All grading, backfilling, and topographic reconstruction must control erosion and sedimentation, protect areas outside the affected land from slides or other damage, and minimize the need for long-term maintenance.

Measures must be taken to reduce, to the extent practicable, the formation of acid and other toxic drainage that may otherwise occur following closure to prevent releases that cause federal or state standards to be exceeded. Nonpoint source surface releases for acid or other toxic substances shall be contained within the permit area.

Ponds and impoundment reclamation must meet the following requirements:

a. Pond sludge must be chemically characterized to determine whether further treatment is necessary before disposal. Sludge must be removed for disposal at an offsite permitted solid waste facility or buried and covered onsite in a solid waste facility permitted in accordance with the applicable solid waste rules in article 33-20; and

b. Geomembranes must be removed from impoundments, unless it is demonstrated to the department's satisfaction that they will serve a useful function consistent with the approved postmining land use. The geomembrane material must be disposed of in a permitted landfill or may be disposed of onsite only if the operator first secures a solid waste permit in compliance with article 33-20.

5. Topsoil and subsoil. The operator shall take measures to remove and save all available topsoil and subsoil and protect it from erosion or contamination and assure that it is in a usable condition for sustaining vegetation when needed. The following requirements shall be met unless site-specific characteristics mandate different requirements and those requirements are included in the approved permit.
  - a. Topsoil and subsoil shall be sampled and analyzed for vegetation establishment suitability:
    - (1) Sample spacing and interval shall be based on site-specific materials; and
    - (2) Suitability will be identified by analysis based on site-specific materials.
  - b. Revegetation must be a component of the reclamation plan and all available topsoil and subsoil must be salvaged and replaced on disturbed areas.
  - c. Where direct distribution of topsoil or subsoil is not possible, it shall be stockpiled separately in a manner to prevent the loss of the resource.
  - d. Topsoil and subsoil shall be distributed in a manner to establish and maintain vegetation, consistent with the approved permit.
  - e. After distribution, topsoiled and subsoiled areas shall be stabilized to protect loss of the resource.
  - f. Where topsoil has been stockpiled for more than one year, the operator may be required to conduct analyses to determine if amendments are necessary.
6. Erosion control. Reclamation of disturbed lands must result in a condition that minimizes erosion. Revegetated lands must not contribute suspended solids above background levels, or where applicable the state department of health standards, to streamflow of intermittent and perennial streams. Acceptable practices to control erosion include the following:
  - a. Stabilizing disturbed areas through land shaping, berming, or grading to final contour;
  - b. Minimizing reconstructed slope lengths and gradients;
  - c. Diverting runoff;

- d. Establishing vegetation;
  - e. Regulating channel velocity of water;
  - f. Lining drainage channels with rock, vegetation, or other geotechnical materials; and
  - g. Mulching.
7. Revegetation. Revegetated lands must meet the following standards:
- a. Revegetation success for a return as near as possible to original condition shall be determined through comparison of ground cover, productivity, and diversity and shall be made on the basis of the following approved reference areas:
    - (1) Foliage or basal cover and productivity of living perennial plants of the revegetated area shall be established equal to ninety percent of the reference area or equal to the approved revegetation standard using scientifically valid sampling techniques;
    - (2) Diversity of plant life forms (woody plants, grasses, and forbs) shall consider what is reasonable based on the physical environment of the reclaimed area; and
    - (3) Woody plant species shall be established to the approved density standard.
  - b. For areas for which the approved postmining land use is for wildlife habitat or forest land, success of vegetation shall be determined on the basis of tree or shrub stocking (density) and ground cover.
    - (1) The ground cover of living perennial plants shall be equal to ninety percent of the native ground cover of the reference area or other approved standard and shall be adequate to minimize erosion.
    - (2) Tree density for forest land shall have establishment rates of plant species equal to ninety percent of the approved reference area or other approved standard and shall be adequate to minimize erosion.
    - (3) If wildlife habitat is to be the postmining land use, the operator shall select and use plant species on the reclaimed areas based on the following criteria:
      - (a) Their proven nutritional value for fish and wildlife;

- (b) Their uses as cover and security for wildlife:
  - (c) Their ability to support and enhance fish and wildlife habitat; and
  - (d) Distribute plant life forms to maximize benefits of edge effect, cover, and other benefits for fish and wildlife.
- c. Revegetation for other postmining land shall be consistent with the approved postmining land use. Site-specific standards may include standards for foliar or basal cover, production, and diversity and will be included in the approved permit.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-44. Report of water injected.** The operator of each and every injection well shall, on or before the tenth day of the second month succeeding the month in which injection occurs, file with the director the amount of liquid injected, the composition of the liquid, and the source thereof upon approved computer sheets no larger than eight and one-half by eleven inches [21.59 by 27.94 centimeters]. The report shall be signed by both the person responsible for the report and the person witnessing the signature. The printed name and title of both the person signing the report and the person witnessing the signature shall be included.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**43-02-02.4-45. Report of production.** The operator of a mine shall, on or before the tenth day of the second month succeeding the month in which production occurs, file with the director the amount of production made by the mine upon form 5-sm or approved computer sheets no larger than eight and one-half by eleven inches [21.59 by 27.94 centimeters]. The report shall be signed by both the person responsible for the report and the person witnessing the signature. The printed name and title of both the person signing the report and the person witnessing the signature shall be included.

Production data submitted to the director shall be kept confidential for a period of one year when so requested by the operator. Such period may be further extended upon approval by the commission.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02



**43-02-02.4-46. Reports of natural brine produced.** A person who is producing natural brine shall be required by the director to report annually, within sixty days after the end of the calendar year of production, the amount of natural brine produced during the calendar year of production, unless an extension of time is granted by the director. The reports shall be signed by the person who is producing brine on forms prescribed by, or acceptable to, the director.

**History:** Effective July 1, 2013.  
**General Authority:** NDCC 38-12-02  
**Law Implemented:** NDCC 38-12-02

**43-02-02.4-47. Solution mining - Reporting.** An operator shall control cavity shape during solution mining of bedded salt.

An operator who is solution mining shall report annually, within sixty days after the end of the calendar year, the amount of soluble mineral or rock removed and the volumes of fluids injected into and removed from each cavity.

The report shall be signed by both the person responsible for the report and the person witnessing the signature. The printed name and title of both the person signing the report and the person witnessing the signature shall be included.

**History:** Effective July 1, 2013.  
**General Authority:** NDCC 38-12-02  
**Law Implemented:** NDCC 38-12-02

**43-02-02.4-48. Rock profile determination.** The operator shall determine the cavity roof position not less than biennially. Generally accepted wireline logging methods shall be utilized. The results of the determination shall be filed with the director not more than sixty days after completion and shall include all wireline logs run.

**History:** Effective July 1, 2013.  
**General Authority:** NDCC 38-12-02  
**Law Implemented:** NDCC 38-12-02

**43-02-02.4-49. Books and records to be kept to substantiate reports.** All operators within North Dakota shall make and keep appropriate books and records for a period not less than six years covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

**History:** Effective July 1, 2013.  
**General Authority:** NDCC 38-12-02  
**Law Implemented:** NDCC 38-12-02

**43-02-02.4-50. Additional information may be required.** This chapter shall not be taken or construed to limit or restrict the authority of the commission to require the furnishing of such additional reports, data, or other information relative to

production or products as may appear to be necessary or desirable, either generally or specifically, for the prevention of waste, protection of correlative rights, and the conservation of natural resources.

**History:** Effective July 1, 2013.

**General Authority:** NDCC 38-12-02

**Law Implemented:** NDCC 38-12-02

**TITLE 50**  
**STATE BOARD OF MEDICAL EXAMINERS**



## CHAPTER 50-02-13

**50-02-13-09. Fees.** The fee for a postgraduate training license is ~~twenty-five dollars for each year for which the license is valid~~ one hundred dollars for the duration of the postgraduate training program. That fee shall be paid in full at the time the license is issued.

**History:** Effective May 1, 2000; amended effective April 1, 2006; July 1, 2013.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 43-17-18

## CHAPTER 50-03-01

**50-03-01-14. License renewal requirements.** Every second year after the initial licensure of a physician assistant, the assistant's license renewal application must be accompanied with evidence of the successful completion of one hundred hours of continued education for physician assistants. ~~Every sixth year, the~~ The applicant must demonstrate ~~that the applicant has successfully passed reexamination~~ current certification by the national commission on certification of physician assistants or other certifying ~~reexamination~~ entity approved by the board.

**History:** Effective August 1, 1989; amended effective November 1, 1993; October 1, 1999; July 1, 2013.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 43-17-02(~~40~~ 9)

## CHAPTER 50-04-01

### 50-04-01-04. Compliance.

1. All physicians will periodically be required to answer questions on the board's annual license renewal forms to establish compliance, or eligibility for an exception, pursuant to this chapter. ~~Physicians whose surnames begin with letters A through H shall report their CME credits to the board in the year 2001 and every third year thereafter. Physicians whose surnames begin with letters I through O shall report their CME credits to the board in the year 2002 and every third year thereafter. Physicians whose surnames begin with letters P through Z shall report their CME credits to the board in the year 2003 and every third year thereafter.~~ Physicians are not required to provide additional documentation of compliance with continuing education requirements unless specifically requested to do so by the board.

Any physician who is required to report CME credits after having been licensed to practice medicine in North Dakota for more than one year but less than two full years will be required to demonstrate completion of twenty hours of board-approved CME credits during that physician's initial CME reporting period.

Any physician who is required to report CME credits after having been licensed to practice medicine in North Dakota for more than two years but less than three full years will be required to demonstrate completion of forty hours of board-approved CME during that physician's initial CME reporting period.

False statements regarding satisfaction of continuing education requirements on the renewal form or on any documents connected with the practice of medicine may subject the licensee to disciplinary action by the board.

2. Each year the board will audit randomly selected physicians to monitor compliance with the continuing medical education requirements. Any physician so audited will be required to furnish documentation of compliance including the name of the accredited CME provider, name of the program, hours of continuing medical education completed, dates of attendance, evidence of credit designation (i.e., category 1 designation, prescribed credit designation, etc.), and verification of attendance. Any physician who fails to provide verification of compliance with the CME requirements will be subject to revocation of licensure.
3. In order to facilitate the board's audits, every physician is required to maintain a record of all CME activities in which the physician has participated. Every physician must maintain those records for a period

of at least one year following the time when those CME activities were reported to the board.

**History:** Effective November 1, 1998; amended effective July 1, 2013.

**General Authority:** NDCC 43-17-27.1

**Law Implemented:** NDCC 43-17-27.1