

MINING AND GAS AND OIL PRODUCTION

CHAPTER 314

HOUSE BILL NO. 1071

(Representatives Drovdal, S. Meyer, Froseth)
(Senator Lyson)

AN ACT to amend and reenact subsection 1 of section 38-08-08 and section 47-16-39.1 of the North Dakota Century Code, relating to the provisions of pooling orders and the failure to pay royalties to unleased mineral interest owners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

1. When two or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of the spacing unit, then the owners and royalty owners thereof may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling, the commission upon the application of any interested person shall enter an order pooling all interests in the spacing unit for the development and operations thereof. Each such pooling order must be made after notice and hearing, and must be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive, without unnecessary expense, that owner's just and equitable share. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order must be deemed, for all purposes, the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order must, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon. For the purposes of this section and section 38-08-10, any unleased mineral interest pooled by virtue of this section before August 1, 2009, is entitled to a cost-free royalty interest equal to the acreage weighted average royalty interest of the leased tracts within the spacing unit, but in no event may the royalty interest of an unleased tract be less than a one-eighth interest. An unleased mineral interest pooled after July 31, 2009, is entitled to a cost-free royalty interest equal to the acreage weighted average royalty interest of the leased tracts within the spacing unit or, at the operator's election, a cost-free royalty interest of sixteen percent. The remainder of the unleased interest must be treated as a lessee or cost-bearing interest. ~~Any unleased mineral interest pooled prior to July 4, 1983, is entitled to the cost-free royalty~~

interest and working interest as provided in this section from and after July 1, 1983.

SECTION 2. AMENDMENT. Section 47-16-39.1 of the North Dakota Century Code is amended and reenacted as follows:

47-16-39.1. Obligation to pay royalties - Breach. The obligation arising under an oil and gas lease to pay oil or gas royalties to the mineral owner or the mineral owner's assignee, or to deliver oil or gas to a purchaser to the credit of the mineral owner or the mineral owner's assignee, or to pay the market value thereof is of the essence in the lease contract, and breach of the obligation may constitute grounds for the cancellation of the lease in cases where it is determined by the court that the equities of the case require cancellation. If the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral owner or the mineral owner's assignee within one hundred fifty days after oil or gas produced under the lease is marketed and cancellation of the lease is not sought or if the operator fails to pay oil or gas royalties to an unleased mineral interest owner within one hundred fifty days from initial oil or gas production from the unleased mineral interest owner's mineral interest, the operator shall pay interest on the unpaid royalties at the rate of eighteen percent per annum until paid, except that the commissioner of university and school lands may negotiate a rate to be no less than the prime rate as established by the Bank of North Dakota plus four percent per annum with a maximum of eighteen percent per annum, for unpaid royalties on minerals owned or managed by the board of university and school lands. Provided, that the operator may remit semiannually to a person entitled to royalties the aggregate of six months' monthly royalties where the aggregate amount is less than fifty dollars. The district court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. The prevailing party in any proceeding brought pursuant to this section is entitled to recover any court costs and reasonable attorney's fees. This section does not apply when mineral owners or their assignees elect to take their proportionate share of production in kind ~~or~~, in the event of a dispute of title existing that would affect distribution of royalty payments, or when a mineral owner cannot be located after reasonable inquiry by the operator; however, the operator shall make royalty payments to those mineral owners whose title and ownership interest is not in dispute.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 315

SENATE BILL NO. 2141

(Natural Resources Committee)

(At the request of the Industrial Commission)

AN ACT to create and enact chapter 38-11.2 of the North Dakota Century Code, relating to damages to land surface caused by subsurface mineral extraction and related exploration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 38-11.2 of the North Dakota Century Code is created and enacted as follows:

38-11.2-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Agricultural production" means the production of any grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, whether or not the animals are to be sold commercially.
2. "Drilling operations" means the drilling of a subsurface mineral extraction well and the injection, production, and completion operations ensuing from the drilling which require entry upon the surface estate, and includes subsurface mineral exploration activities.
3. "Mineral developer" means the person who acquires the mineral estate or lease for the purpose of extracting or using the subsurface minerals for nonagricultural purposes.
4. "Mineral estate" means an estate in or ownership of all or part of the subsurface minerals underlying a specified tract of land.
5. "Subsurface mineral" means any naturally occurring element or compound recovered under the provisions of chapter 38-12, but for the purpose of this chapter excludes coal, oil and gas, sand and gravel, and rocks crushed for sand and gravel.
6. "Subsurface mineral exploration activities" means any method of obtaining information relative to locating and defining subsurface minerals that results in surface disturbance.
7. "Surface estate" means an estate in or ownership of the surface of a particular tract of land.
8. "Surface owner" means any person who holds record title to the surface of the land as an owner.

38-11.2-02. Inspection of well site. Upon request of another state agency, the surface owner, or an adjacent landowner, the state department of health shall conduct a site visit and evaluate site-specific environmental data as necessary to

ensure compliance with applicable environmental protection laws and regulations relating to air, water, and land management under the jurisdiction of the department.

38-11.2-03. Notice of drilling operations.

1. The mineral developer shall give the surface owner written notice of the drilling operations contemplated at least twenty days prior to the commencement of the operations, unless waived by agreement of both parties.
2. This notice must be given to the record surface owner at that person's address as shown by the records of the county recorder at the time the notice is given.
3. This notice must sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. Included with this notice must be a copy of this chapter.
4. If a mineral developer fails to give notice as provided under this section, the surface owner may seek any appropriate relief in the court of proper jurisdiction and may receive punitive as well as actual damages.

38-11.2-04. Damage and disruption payments - Statute of limitations.

1. The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for loss of agricultural production and income, lost land value, lost use of and access to the surface owner's land, and lost value of improvements caused by drilling operations. The amount of damages may be determined by any formula agreeable between the surface owner and the mineral developer. When determining damages, consideration must be given to the period of time during which the loss occurs.
2. The surface owner may elect to be paid damages in annual installments over a period of time.
3. The surface owner must be compensated for harm caused by subsurface mineral exploration only by a single sum payment.
4. The payments contemplated by this section only cover land directly affected by drilling operations.
5. Payments under this section are intended to compensate the surface owner for damage and disruption. Any reservation or assignment of such compensation apart from the surface estate except to a tenant of the surface estate is prohibited. In the absence of an agreement between the surface owner and a tenant as to the division of compensation payable under this section, the tenant is entitled to recover from the surface owner that portion of the compensation attributable to the tenant's share of the damages sustained.
6. To receive compensation under this section, any person shall notify the mineral developer of the damages sustained by the person within two

years after the injury occurs or would become apparent to a reasonable person.

38-11.2-05. Agreement - Offer of settlement. Unless both parties provide otherwise by written agreement, the mineral developer shall make a written offer of settlement to the person seeking compensation for damages when the notice required by section 38-11.2-03 is presented. The person seeking compensation may accept or reject any offer so made.

38-11.2-06. Rejection - Legal action - Fees and costs. If the person seeking compensation rejects the offer of the mineral developer, that person may bring an action for compensation in the court of proper jurisdiction. The court, in its discretion, may award the person seeking compensation reasonable attorney's fees, any costs assessed by the court, and interest on the amount of the final compensation awarded by the court from the day drilling operations are commenced. The rate of interest awarded must be the prime rate charged by the Bank of North Dakota on the date of the judgment.

38-11.2-07. Protection of surface and ground water - Other responsibilities of mineral developer.

1. The mineral developer shall conduct or have conducted an inventory of water wells located within one-half mile [804.67 meters] of where subsurface mineral exploration activities are conducted, if such exploration activities appear reasonably likely to encounter ground water, or within one mile [1.61 kilometers] of a subsurface mineral production site.
2. The mineral developer shall conduct or have conducted a certified water quality and quantity test within one year preceding the commencement of subsurface mineral production operations on each water well or water supply located on the involved real property and as identified by the surface owner of that real property.
3. If the domestic, livestock, or irrigation water supply of any person who owns an interest in real property within one-half mile [804.67 meters] of where subsurface mineral exploration activities are or have been conducted or within one mile [1.61 kilometers] of a subsurface mineral production site has been disrupted, or diminished in quality or quantity by the drilling operations, the person who owns an interest in real property is entitled to recover the cost of making such repairs, alterations, or construction that will ensure the delivery to the surface owner of that quality and quantity of water available to the surface owner prior to the commencement of drilling operations.
4. Any person who owns an interest in real property who obtains all or a part of that person's water supply for domestic, agricultural, industrial, or other beneficial use has a claim for relief against a mineral developer to recover damages for disruption or diminution in quality or quantity of that person's water supply proximately caused from drilling operations conducted by the mineral developer.
5. Prima facie evidence of injury under this section may be established by a showing that the mineral developer's drilling operations penetrated or disrupted an aquifer in such a manner as to cause a diminution in water quality or quantity within the distance limits imposed by this section.

6. An action brought under this section when not otherwise specifically provided by law must be brought within six years of the time the action has accrued. For purposes of this section, the claim for relief is deemed to have accrued at the time it is discovered or might have been discovered in the exercise of reasonable diligence.
7. A tract of land is not bound to receive water contaminated by drilling operations on another tract of land and the owner of a tract has a claim for relief against a mineral developer to recover the damages proximately resulting from natural drainage of waters contaminated by drilling operations.
8. The mineral developer is also responsible for all damages to person or property resulting from the lack of ordinary care by the mineral developer or resulting from a nuisance caused by drilling operations.
9. This section does not create a cause of action if an appropriator of water can reasonably acquire the water under the changed conditions and if the changed conditions are a result of the legal appropriation of water by the mineral developer.

38-11.2-08. Application of chapter. The remedies provided by this chapter do not preclude any person from seeking other remedies allowed by law. This chapter does not apply to the operation, maintenance, or use of a motor vehicle upon the highways of this state as these terms are defined in section 39-01-01.

Approved April 30, 2009
Filed May 1, 2009

CHAPTER 316**SENATE BILL NO. 2140**

(Natural Resources Committee)

(At the request of the Public Service Commission)

AN ACT to amend and reenact subsection 18 of section 38-14.1-24 and subsection 2 of section 38-14.2-14 of the North Dakota Century Code, relating to the time period for successful revegetation on lands permitted for surface coal mining and reclamation operations and limitations for filing liens on abandoned mine lands that are reclaimed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 18 of section 38-14.1-24 of the North Dakota Century Code is amended and reenacted as follows:

18. Assume the responsibility for successful revegetation, as required by subsection 17, for a period of ten full years after the last year of augmented seeding, fertilizing, irrigation, or other work, provided that, when the commission approves a long-term intensive agricultural postmining land use, the ten-year period of responsibility for revegetation commences at the date of initial planting. However, for previously mined areas that are affected by remining, the operator's responsibility for successful revegetation will extend for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, and other work in order to assure compliance with the applicable standards. For the purposes of this subsection, "previously mined areas" are lands that were affected by coal mining activities prior to January 1, 1970, and "augmented seeding, fertilizing, irrigation, or other work" does not include normal conservation practices recognized locally as good management for the postmining land use.

SECTION 2. AMENDMENT. Subsection 2 of section 38-14.2-14 of the North Dakota Century Code is amended and reenacted as follows:

2. No lien may be filed against the property of any person, in accordance with this section, ~~who owned the surface prior to May 2, 1977, and who~~ neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

Approved April 8, 2009

Filed April 9, 2009

CHAPTER 317**HOUSE BILL NO. 1370**

(Representatives S. Meyer, Drovdal, Kempenich, Onstad)
(Senators Bowman, Wardner)

AN ACT to create and enact a new section to chapter 38-18.1 of the North Dakota Century Code, relating to perfecting title to dormant minerals; and to amend and reenact sections 38-18.1-03, 38-18.1-04, 38-18.1-05, and 38-18.1-06 of the North Dakota Century Code, relating to termination of mineral interests.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-18.1-03 of the North Dakota Century Code is amended and reenacted as follows:

38-18.1-03. When mineral interest deemed to be used.

1. A mineral interest is deemed to be used when:
 - a. There are any minerals produced under that interest.
 - b. Operations are being conducted thereon for injection, withdrawal, storage, or disposal of water, gas, or other fluid substances.
 - c. In the case of solid minerals, there is production from a common vein or seam by the owners of such mineral interest.
 - d. The mineral interest on any tract is subject to a lease, mortgage, assignment, or conveyance of the mineral interest recorded in the office of the recorder in the county in which the mineral interest is located.
 - e. The mineral interest on any tract is subject to an order or an agreement to pool or unitize, recorded in the office of the recorder in the county in which the mineral interest is located.
 - f. Taxes are paid on the mineral interest by the owner or the owner's agent.
 - g. A proper statement of claim is recorded as provided by section 38-18.1-04.
 - ~~h. The owner or lessee utilizes the mineral interest in a manner pursuant to, or authorized by, the instrument creating the mineral interest.~~
2. The payment of royalties, bonus payments, or any other payment to a named or unnamed interest-bearing account, trust account, escrow account, or any similar type of account on behalf of a person who cannot be located does not satisfy the requirements of this section and the mineral interest is not deemed to be used for purposes of this section. Interest on such account must be credited to the account and

may not be used for any other purpose. A named or unnamed interest-bearing account, trust account, escrow account, or any similar type of account that has been in existence for three years is deemed to be abandoned property and must be treated as abandoned property under chapter 47-30.1. A lease given by a trustee remains valid.

SECTION 2. AMENDMENT. Section 38-18.1-04 of the North Dakota Century Code is amended and reenacted as follows:

38-18.1-04. Statement of claim - Recording - Time. The statement of claim provided for in section 38-18.1-02 must:

1. Be recorded by the owner of the mineral interest or the owner's representative prior to the end of the twenty-year period set forth in section 38-18.1-02; ~~or within two years after July 1, 1983, whichever is later.~~ A joint tenant, but not a tenant in common, may record a claim on behalf of oneself and other joint tenants.
2. Contain the name and address of the owner of the mineral interest, and a legal description of the land on, or under which, the mineral interest is located as well as the type of mineral interest involved.
3. Be recorded in the office of the recorder in the county in which the mineral interest is located.

The mineral interest is deemed to be in use at the date of recording, if the recording is made within the time provided by this section. A statement of claim filed after July 31, 2009, by a person other than the owner of record of the mineral interest is not effective to preserve a mineral interest unless accompanied by a reference to the name of the record owner under whom the owner of the mineral interest claims.

SECTION 3. AMENDMENT. Section 38-18.1-05 of the North Dakota Century Code is amended and reenacted as follows:

38-18.1-05. Failure to record the statement of claim. Failure to record the statement of claim within the time period provided in section 38-18.1-04 will not cause a mineral interest to be extinguished if ~~the owner of the mineral interest meets all of the following requirements:~~

1. ~~Owns one or more mineral interests in the county in which the mineral interest in question is located at the time of the expiration of the time period provided in section 38-18.1-04.~~
 2. ~~Has failed to preserve the mineral interest in question.~~
 3. ~~Within sixty days after first publication of the notice provided for in section 38-18.1-06, recorded a statement of claim.~~
1. The owner of record of the mineral interest satisfies either one of the following requirements within sixty days after first publication of the notice provided for in section 38-18.1-06:
 - a. Files with the county recorder a statement of claim as required in section 38-18.1-04; or

- b. Files with the county recorder documentation that at least one of the activities under subsection 1 of section 38-18.1-03 took place during the twenty-year period immediately preceding the first publication of notice.
2. A person other than the owner of record of the mineral interest files with the county recorder within sixty days after first publication of the notice provided for in section 38-18.1-06 an affidavit under oath or a declaration under oath which includes an explanation of the factual and legal basis for the person's assertion of title to the mineral interest. This explanation must be accompanied by documentation supporting the assertion or an explanation why documentation is unavailable.

SECTION 4. AMENDMENT. Section 38-18.1-06 of the North Dakota Century Code is amended and reenacted as follows:

38-18.1-06. Notice of lapse of mineral interest - Method.

1. ~~Any person~~ The owner or owners of the surface estate in the land in or under which the mineral interest is located intending to succeed to the ownership of a mineral interest upon its lapse shall give notice of the lapse of the mineral interest by publication.
2. The publication provided for in subsection 1 must be made once each week for three weeks in the official county newspaper of the county in which the mineral interest is located; however, if the address of the mineral interest owner is shown of record or can be determined upon reasonable inquiry as defined in subsection 6, notice must also be made by mailing a copy of the notice to the owner of the mineral interest within ten days after the last publication is made.
3. The notice must state:
 - a. The name of the record owner of the mineral ~~interests~~ interest;
 - b. A description of the land on which the mineral interest involved is located; and
 - c. The name of the ~~person~~ owner or owners of the surface estate in the land in or under which the mineral interest is located giving the notice.
4. A copy of the notice and an affidavit of service of the notice must be recorded in the office of the recorder of the county in which the mineral interest is located and constitutes prima facie evidence in any legal proceedings that such notice has been given.
5. ~~A person~~ The owner or owners of the surface estate in the land in or under which the mineral interest is located who succeeds to the ownership of a mineral interest upon its lapse under this chapter is entitled to record a statement of succession in interest indicating that ~~that person~~ owner or owners of the surface estate in the land in or under which the mineral interest is located has succeeded to the ownership of the mineral interest.

6. To constitute a reasonable inquiry as provided in subsection 2, the owner or owners of the surface estate or the owner's authorized agent must conduct a search of:
 - a. The county recorder's records for the existence of any uses as defined in section 38-18.1-03 by the owner of the mineral interest;
 - b. The clerk of court's records for the existence of any judgments, liens, or probate records which identify the owner of the mineral interest;
 - c. The social security death index for the last-known residence of the owner of the mineral interest, if deceased; and
 - d. One or more public internet databases to locate or identify the owner of the mineral interest or any known heirs of the owner. The owner or owners of the surface estate are not required to conduct internet searches on private fee internet databases.

SECTION 5. A new section to chapter 38-18.1 of the North Dakota Century Code is created and enacted as follows:

Perfecting title in surface owner.

1. Upon completion of the procedure provided in section 38-18.1-06, the owner or owners of the surface estate may maintain an action in district court in the county in which the minerals are located and obtain a judgment in quiet title in the owner or owners of the surface estate. This action must be brought in the same manner and is subject to the same procedure as an action to quiet title pursuant to chapter 32-17.
2. In an action brought under this section, the owner or owners of the surface estate shall submit evidence to the district court establishing that all procedures required by this chapter were properly completed and that a reasonable inquiry as defined by subsection 6 of section 38-18.1-06 was conducted. If the district court finds that the surface owner has complied with all procedures of the chapter and has conducted a reasonable inquiry, the district court shall issue its findings of fact, conclusions of law, and enter judgment perfecting title to the mineral interest in the owner or owners of the surface estate.
3. A judgment obtained by the owner or owners of the surface estate in compliance with this section is deemed conclusive except for fraud, misrepresentation, or other misconduct.
4. A mineral lessee that obtains a lease from the owner of the surface estate, which owner has obtained a judgment to minerals pursuant to this section, is deemed a bona fide purchaser and its lease remains effective in the event the judgment is subsequently vacated for any reason. Further, the lessee is not liable to any third party for lease bonus, royalties, or any other proceeds paid to the surface owner under the lease before the judgment being vacated.

5. Absent fraud or misrepresentation, the owner or owners of the surface estate which obtain a judgment under this section and lease minerals to a lessee are entitled to retain all lease bonus, royalties, or any other proceeds paid to the surface owner under the lease before the judgment being vacated.

Approved April 24, 2009

Filed April 29, 2009

CHAPTER 318

SENATE BILL NO. 2095

(Natural Resources Committee)

(At the request of the Industrial Commission)

AN ACT to create and enact chapter 38-22 of the North Dakota Century Code, relating to the geologic storage of carbon dioxide; to repeal section 38-08-24 of the North Dakota Century Code, relating to priorities in permitting carbon dioxide geologic storage projects; to provide a penalty; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 38-22 of the North Dakota Century Code is created and enacted as follows:

38-22-01. Policy. It is in the public interest to promote the geologic storage of carbon dioxide. Doing so will benefit the state and the global environment by reducing greenhouse gas emissions. Doing so will help ensure the viability of the state's coal and power industries, to the economic benefit of North Dakota and its citizens. Further, geologic storage of carbon dioxide, a potentially valuable commodity, may allow for its ready availability if needed for commercial, industrial, or other uses, including enhanced recovery of oil, gas, and other minerals. Geologic storage, however, to be practical and effective requires cooperative use of surface and subsurface property interests and the collaboration of property owners. Obtaining consent from all owners may not be feasible, requiring procedures that promote, in a manner fair to all interests, cooperative management, thereby ensuring the maximum use of natural resources.

38-22-02. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Carbon dioxide" means carbon dioxide produced by anthropogenic sources which is of such purity and quality that it will not compromise the safety of geologic storage and will not compromise those properties of a storage reservoir which allow the reservoir to effectively enclose and contain a stored gas.
2. "Commission" means the industrial commission.
3. "Geologic storage" means the permanent or short-term underground storage of carbon dioxide in a storage reservoir.
4. "Permit" means a permit issued by the commission allowing a person to operate a storage facility.
5. "Pore space" means a cavity or void, whether natural or artificially created, in a subsurface sedimentary stratum.
6. "Reservoir" means a subsurface sedimentary stratum, formation, aquifer, cavity, or void, whether natural or artificially created, including

oil and gas reservoirs, saline formations, and coal seams suitable for or capable of being made suitable for injecting and storing carbon dioxide.

7. "Storage facility" means the reservoir, underground equipment, and surface facilities and equipment used or proposed to be used in a geologic storage operation. It does not include pipelines used to transport carbon dioxide to the storage facility.
8. "Storage operator" means a person holding or applying for a permit.
9. "Storage reservoir" means a reservoir proposed, authorized, or used for storing carbon dioxide.

38-22-03. Commission authority. The commission has authority:

1. Over all persons and property necessary to administer and enforce this chapter and its objectives.
2. To regulate activities relating to a storage facility, including construction, operation, and closure.
3. To enter, at a reasonable time and manner, a storage facility to inspect equipment and facilities; to observe, monitor, and investigate operations; and to inspect records required to be maintained at the facility.
4. To require that storage operators provide assurance, including bonds, that money is available to fulfill the storage operator's duties.
5. To exercise continuing jurisdiction over storage operators and storage facilities, including the authority, after notice and hearing, to amend provisions in a permit and to revoke a permit.
6. To dissolve or change the boundaries of any commission-established oil or gas field or unit that is within or near a storage reservoir's boundaries.
7. To grant, for good cause, exceptions to this chapter's requirements and implementing rules.

38-22-04. Permit required - Permit transfer. Geologic storage is allowed if permitted by the commission. A permit may be transferred if the commission consents.

38-22-05. Permit applications, fees, costs, and priorities - Carbon dioxide storage administrative fund.

1. A person applying for a permit shall:
 - a. Comply with application requirements set by the commission.
 - b. Pay a fee in an amount set by the commission. The amount of the fee must be set by rule and must be based on the commission's anticipated cost of processing the application. The fee must be deposited in the carbon dioxide storage administrative fund.

- c. Pay to the commission the costs the commission incurs in publishing notices for hearings and holding hearings on permit applications.
2. In processing permit applications the commission shall give priority to storage operators who intend to store carbon dioxide produced in North Dakota.

38-22-06. Permit hearing - Hearing notice.

1. The commission shall hold a public hearing before issuing a permit.
2. Notice of the hearing must be published for two consecutive weeks in the official newspaper of the county or counties where the storage reservoir is proposed to be located and in any other newspaper the commission requires. Publication deadlines must comply with commission requirements.
3. Notice of the hearing must be given to each mineral lessee, mineral owner, and pore space owner within the storage reservoir and within one-half mile of the storage reservoir's boundaries.
4. Notice of the hearing must be given to each surface owner of land overlying the storage reservoir and within one-half mile of the reservoir's boundaries.
5. Notice of the hearing must be given to any additional persons that the commission requires.
6. Service of hearing notices required by this section must conform to personal service provisions in rule 4 of the North Dakota Rules of Civil Procedure.
7. Hearing notices required by this section must comply with deadlines set by the commission.
8. Hearing notices required by this section must contain the information the commission requires.

38-22-07. Permit consultation. Before issuing a permit, the commission shall consult the state department of health.

38-22-08. Permit requirements. Before issuing a permit, the commission shall find:

1. That the storage operator has complied with all requirements set by the commission.
2. That the storage facility is suitable and feasible for carbon dioxide injection and storage.
3. That the carbon dioxide to be stored is of a quality that allows it to be safely and efficiently stored in the storage reservoir.
4. That the storage operator has made a good-faith effort to get the consent of all persons who own the storage reservoir's pore space.

5. That the storage operator has obtained the consent of persons who own at least sixty percent of the storage reservoir's pore space.
6. Whether the storage facility contains commercially valuable minerals and, if it does, a permit may be issued only if the commission is satisfied that the interests of the mineral owners or mineral lessees will not be adversely affected or have been addressed in an arrangement entered into by the mineral owners or mineral lessees and the storage operator.
7. That the proposed storage facility will not adversely affect surface waters or formations containing fresh water.
8. That carbon dioxide will not escape from the storage reservoir.
9. That substances that compromise the objectives of this chapter or the integrity of a storage reservoir will not enter a storage reservoir.
10. That the storage facility will not endanger human health nor unduly endanger the environment.
11. That the storage facility is in the public interest.
12. That the horizontal and vertical boundaries of the storage reservoir are defined. These boundaries must include buffer areas to ensure that the storage facility is operated safely and as contemplated.
13. That the storage operator will establish monitoring facilities and protocols to assess the location and migration of carbon dioxide injected for storage and to ensure compliance with all permit, statutory, and administrative requirements.
14. That all nonconsenting pore space owners are or will be equitably compensated.

38-22-09. Permit provisions. The commission may include in a permit or order all things necessary to carry out this chapter's objectives and to protect and adjust the respective rights and obligations of persons affected by geologic storage.

38-22-10. Amalgamating property interests. If a storage operator does not obtain the consent of all persons who own the storage reservoir's pore space, the commission may require that the pore space owned by nonconsenting owners be included in a storage facility and subject to geologic storage.

38-22-11. Certificate. When the commission issues a permit it shall also issue a certificate stating that the permit has been issued, describing the area covered, and containing other information the commission deems appropriate. The commission shall file a copy of the certificate with the county recorder in the county or counties where the storage facility is located.

38-22-12. Environmental protection - Reservoir integrity.

1. The commission shall take action to ensure that a storage facility does not cause pollution or create a nuisance. For the purposes of this provision and in applying other laws, carbon dioxide stored, and which remains in storage under a commission permit, is not a pollutant nor does it constitute a nuisance.

2. The commission's authority in subsection 1 does not limit the jurisdiction held by the state department of health. Nothing else in this chapter limits the jurisdiction held by the state department of health.
3. The commission shall take action to ensure that substances that compromise the objectives of this chapter or the integrity of a storage reservoir do not enter a storage reservoir.
4. The commission shall take action to ensure that carbon dioxide does not escape from a storage facility.

38-22-13. Preservation of rights. Nothing in this chapter nor the issuing of a permit:

1. Prejudices the rights of property owners within a storage facility to exercise rights that have not been committed to a storage facility.
2. Prevents a mineral owner or mineral lessee from drilling through or near a storage reservoir to explore for and develop minerals, provided the drilling, production, and related activities comply with commission requirements that preserve the storage facility's integrity and protect this chapter's objectives.

38-22-14. Fees - Carbon dioxide storage facility administrative fund - Continuing appropriation.

1. Storage operators shall pay the commission a fee on each ton of carbon dioxide injected for storage. The fee must be in the amount set by commission rule. The amount must be based on the commission's anticipated expenses that it will incur in regulating storage facilities during their construction, operational, and preclosure phases.
2. The fee must be deposited in the carbon dioxide storage facility administrative fund. The fund must be maintained as a special fund and all money in the fund is appropriated and may be used only for defraying the commission's expenses in processing permit applications; regulating storage facilities during their construction, operational, and preclosure phases; and making storage amount determinations under section 38-22-23. The commission, however, through a cooperative agreement with another state agency, may use the fund to compensate the cooperating agency for expenses the cooperating agency incurs in carrying out regulatory responsibilities that agency may have over a storage facility. Interest earned by the fund must be deposited the fund.

38-22-15. Fees - Carbon dioxide trust fund - Continuing appropriation.

1. Storage operators shall pay the commission a fee on each ton of carbon dioxide injected for storage. The fee must be in the amount set by commission rule. The amount must be based on the commission's anticipated expenses associated with the long-term monitoring and management of a closed storage facility.
2. The fee must be deposited in the carbon dioxide storage facility trust fund. The fund must be maintained as a special fund and all money in the fund is appropriated and may be used only for defraying expenses the commission incurs in long-term monitoring and management of a

closed storage facility. The commission, however, through a cooperative agreement with another state agency, may use the fund to compensate the cooperating agency for expenses the cooperating agency incurs in carrying out regulatory responsibilities that agency may have over a storage facility. Interest earned by the fund must be deposited in the fund.

3. The industrial commission shall file with the director of the legislative council a report discussing whether the amount in the carbon dioxide storage facility trust fund and fees being paid into it are sufficient to satisfy the fund's objectives. The first report is due in December of 2014 and subsequent reports are due every four years thereafter.

38-22-16. Title to carbon dioxide. The storage operator has title to the carbon dioxide injected into and stored in a storage reservoir and holds title until the commission issues a certificate of project completion. While the storage operator holds title, the operator is liable for any damage the carbon dioxide may cause, including damage caused by carbon dioxide that escapes from the storage facility.

38-22-17. Certificate of project completion - Release - Transfer of title and custody.

1. After carbon dioxide injections into a reservoir end and upon application by the storage operator, the commission shall consider issuing a certificate of project completion.
2. The certificate may only be issued after public notice and hearing. The commission shall establish notice requirements for this hearing.
3. The certificate may only be issued after the commission has consulted with the state department of health.
4. The certificate may not be issued until at least ten years after carbon dioxide injections end.
5. The certificate may only be issued if the storage operator:
 - a. Is in full compliance with all laws governing the storage facility.
 - b. Shows that it has addressed all pending claims regarding the storage facility's operation.
 - c. Shows that the storage reservoir is reasonably expected to retain the carbon dioxide stored in it.
 - d. Shows that the carbon dioxide in the storage reservoir has become stable. Stored carbon dioxide is stable if it is essentially stationary or, if it is migrating or may migrate, that any migration will be unlikely to cross the storage reservoir boundary.
 - e. Shows that all wells, equipment, and facilities to be used in the postclosure period are in good condition and retain mechanical integrity.
 - f. Shows that it has plugged wells, removed equipment and facilities, and completed reclamation work as required by the commission.

6. Once a certificate is issued:
 - a. Title to the storage facility and to the stored carbon dioxide transfers, without payment of any compensation, to the state.
 - b. Title acquired by the state includes all rights and interests in, and all responsibilities associated with, the stored carbon dioxide.
 - c. The storage operator and all persons who generated any injected carbon dioxide are released from all regulatory requirements associated with the storage facility.
 - d. Any bonds posted by the storage operator must be released.
 - e. Monitoring and managing the storage facility is the state's responsibility to be overseen by the commission until such time as the federal government assumes responsibility for the long-term monitoring and management of storage facilities.

38-22-18. Penalties.

1. A person who violates a provision of this chapter or a commission rule or order under this chapter, is subject to a civil penalty imposed by the commission or a court not to exceed twelve thousand five hundred dollars for each offense, and each day's violation is a separate offense. Paying the penalty does not make legal an illegal act nor relieve a person on whom the penalty is imposed from correcting the violation or from liability for damages caused by the violation.
2. In determining the amount of the penalty, the commission shall consider:
 - a. The nature of the violation, including its circumstances and gravity, and the hazard or potential hazard to the public's or a private person's health, safety, and economic welfare.
 - b. The economic or environmental harm caused by the violation.
 - c. The economic value or other advantage gained by the person committing the violation.
 - d. The history of previous violations.
 - e. The amount necessary to deter future violations.
 - f. Efforts to correct the violation.
 - g. Other matters justice requires.

38-22-19. Enhanced recovery projects.

1. This chapter does not apply to applications filed with the commission proposing to use carbon dioxide for an enhanced oil or gas recovery project, rather such applications will be processed under chapter 38-08.

2. The commission may allow an enhanced oil or gas recovery project to be converted to a storage facility. In considering whether to approve a conversion, and upon conversion, the provisions of this chapter and its implementing rules apply, but if during the conversion process unique circumstances arise, the commission, to better ensure that the chapter's objectives are fulfilled, may waive such provisions and may impose additional ones.

38-22-20. Cooperative agreements and contracts.

1. The commission may enter into agreements with other governments, government entities, and state agencies for the purpose of carrying out this chapter's objectives.
2. The commission may enter into contracts with private persons to assist it in carrying out this chapter's objectives. Unless the circumstances require otherwise, the commission shall, in entering such contracts, follow the process set out in section 38-08-04.4. If an emergency exists the commission may enter contracts without public notice and without competitive bidding.

38-22-21. Trusts, monopolies, restraint of trade. Cooperative operation of a storage facility permitted by the commission does not violate North Dakota statutes relating to trusts, monopolies, or restraint of trade.

38-22-22. Participation of public interests. The entity or official controlling state interests or the interests of political subdivisions is authorized to consent to and participate in a geologic storage project.

38-22-23. Determining storage amounts - Carbon credits - Fee.

1. The commission, under procedures and criteria it may adopt, shall determine the amount of injected carbon dioxide stored in a reservoir that has been or is being used for an enhanced oil or gas recovery project. The commission may also make such a determination for carbon dioxide stored under this chapter.
2. The purpose for determining storage amounts is to facilitate using the stored carbon dioxide for such matters as carbon credits, allowances, trading, emissions allocations, and offsets, and for other similar purposes.
3. The commission may charge a reasonable fee to the person requesting a storage determination. The fee must be set by rule.
4. Fees the commission receives for storage determinations must be deposited into the carbon dioxide storage facility administrative fund.

SECTION 2. REPEAL. Section 38-08-24 of the North Dakota Century Code is repealed.