

# MINING AND GAS AND OIL PRODUCTION

## CHAPTER 250

### HOUSE BILL NO. 1151

(Representatives Streytle, Dockter, Lefor)  
(Senators O. Larsen, Schaible, Unruh)

AN ACT to amend and reenact section 38-08-04 of the North Dakota Century Code, relating to the reporting of well pad or oil and gas production facility fluid spills.

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

**SECTION 1. AMENDMENT.** Section 38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **38-08-04. Jurisdiction of commission.**

1. The commission has continuing jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of this chapter. The commission has authority, and it is its duty, to make such investigations as it deems proper to determine whether waste exists or is imminent or whether other facts exist which justify action by the commission. The commission has the authority:
  4. a. To require:
    - a- (1) Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the transportation or refining of oil and gas.
    - b- (2) The making and filing with the industrial commission of all resistivity, radioactivity, and mechanical well logs and the filing of directional surveys, if taken, and the filing of reports on well location, drilling, and production.
    - e- (3) The drilling, casing, operation, and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas strata, the pollution of freshwater supplies by oil, gas, or saltwater, and to prevent blowouts, cavings, seepages, and fires.
    - d- (4) The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter, and the rules and orders of the industrial commission, including without limitation a bond covering the operation of any underground gathering pipeline transferring oil or produced water from a production facility for disposal, storage, or sale purposes, except that if the commission

requires a bond to be furnished, the person required to furnish the bond may elect to deposit under such terms and conditions as the industrial commission may prescribe a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which an operator assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.

- e- (5) That the production from wells be separated into gaseous and liquid hydrocarbons, and that each be accurately measured by such means and upon such standards as may be prescribed by the commission.
- f. (6) The operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios.
- g- (7) Certificates of clearance in connection with the transportation or delivery of oil, gas, or any product.
- h- (8) Metering or other measuring of oil, gas, or product related to production in pipelines, gathering systems, storage tanks, barge terminals, loading racks, refineries, or other places, by meters or other measuring devices approved by the commission.
- i. (9) Every person who produces, sells, purchases, acquires, stores, transports, refines, disposes of, or processes oil, gas, saltwater, or other related oilfield fluids in this state to keep and maintain within this state complete and accurate records of the quantities thereof, which records must be available for examination by the commission or its agents at all reasonable times, and to file with the commission reports as the commission may prescribe with respect to oil or gas or the products thereof. An oil and gas production report need not be notarized but must be signed by the person submitting the report.
- j- (10) The payment of fees for services performed. The amount of the fee shall be set by the commission based on the anticipated actual cost of the service rendered. Unless otherwise provided by statute, all fees collected by the commission must be deposited in the general fund of this state, according to procedures established by the state treasurer.
- k- (11) The filing free of charge of samples and core chips and of complete cores when requested in the office of the state geologist within six months after the completion or abandonment of the well.
- l. (12) The placing of wells in abandoned-well status which have not produced oil or natural gas in paying quantities for one year. A well in abandoned-well status must be promptly returned to production in paying quantities, approved by the commission for temporarily abandoned status, or plugged and reclaimed within six months. If none of the three preceding conditions are met, the industrial commission may require the well to be placed immediately on a single-well bond in an amount equal to the cost of plugging the well and reclaiming the well site. In setting the bond amount, the commission shall use information from recent plugging and reclamation operations. After a well has been in abandoned-well status for one year, the well's equipment, all well-related equipment at the well site, and salable oil at

the well site are subject to forfeiture by the commission. If the commission exercises this authority, section 38-08-04.9 applies. After a well has been in abandoned-well status for one year, the single-well bond referred to above, or any other bond covering the well if the single-well bond has not been obtained, is subject to forfeiture by the commission. A surface owner may request a review of the temporarily abandoned status of a well that has been on temporarily abandoned status for at least seven years. The commission shall require notice and hearing to review the temporarily abandoned status. After notice and hearing, the surface owner may request a review of the temporarily abandoned status every two years.

2. b. To regulate:
  - a. (1) The drilling, producing, and plugging of wells, the restoration of drilling and production sites, and all other operations for the production of oil or gas.
  - b. (2) The shooting and chemical treatment of wells.
  - c. (3) The spacing of wells.
  - d. (4) Operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations.
  - e. (5) Disposal of saltwater and oilfield wastes.
    - (1) (a) The commission shall give all affected counties written notice of hearings in such matters at least fifteen days before the hearing.
    - (2) (b) The commission may consider, in addition to other authority granted under this section, safety of the location and road access to saltwater disposal wells, treating plants, and all associated facilities.
  - f. (6) The underground storage of oil or gas.
3. c. To limit and to allocate the production of oil and gas from any field, pool, or area and to establish and define as separate marketing districts those contiguous areas within the state which supply oil and gas to different markets, and to limit and allocate the production of oil and gas for each separate marketing district.
4. d. To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter, to classify and determine the status and depth of wells that are stripper well property as defined in section 57-51.1-01, to certify to the tax commissioner which wells are stripper wells as defined in section 57-51.1-01 and the depth of those wells, and to certify to the tax commissioner which wells involve secondary or tertiary recovery operations as defined in section 57-51.1-01, and the date of qualification for the oil extraction tax exemption for secondary and tertiary recovery operations.

- 5- e. To adopt and to enforce rules and orders to effectuate the purposes and the intent of this chapter and the commission's responsibilities under chapter 57-51.1. When adopting a rule, issuing an order, or creating a policy, the commission shall give due consideration to the effect of including locations within this state which may also be under the jurisdiction of the federal government or a tribal government. When reporting information resulting from adopting a rule, issuing an order, or creating a policy that affects locations within this state which may also be under the jurisdiction of the federal government or a tribal government, the commission shall provide sufficient information to indicate the effect of including locations that may also be under the regulatory jurisdiction of the federal government or a tribal government.
- 6- f. To provide for the confidentiality of well data reported to the commission if requested in writing by those reporting the data for a period not to exceed six months. However, the commission may release:
  - a- (1) Volumes injected into a saltwater injection well.
  - b- (2) Information from the spill report on a well on a site at which more than ten barrels of fluid, not contained on the well site, was released for which an oilfield environmental incident report is required by law.
2. A person controlling or operating a well, pipeline, receiving tank, storage tank, treating plant, or other receptacle or production facility associated with oil and gas, or with water production, injection, processing, or well servicing, shall report to the commission any leak, spill, or release of fluid. A report to the commission is not required if the leak, spill, or release is crude oil, produced water, or natural gas liquids in a quantity of less than ten barrels cumulative over a fifteen-day time period, remains on the site or facility, and is on a well site where the well was spud after September 1, 2000, or on a facility, other than a well site, constructed after September 1, 2000.
3. Any written violation notice issued by the commission regarding the notification of a fire, leak, spill, blowout, or leak and spill cleanup must be placed in the well file or facility file and the files must be available for review by the surface owner.

Approved April 7, 2017

Filed April 7, 2017

## CHAPTER 251

### HOUSE BILL NO. 1347

(Representatives D. Anderson, Boschee, C. Johnson, Mock, M. Nelson, Schmidt, Steiner)  
(Senators Armstrong, Bekkedahl, Unruh, Vedaa)

AN ACT to amend and reenact section 38-08-04.5 of the North Dakota Century Code, relating to the abandoned oil and gas well plugging and site reclamation fund; to provide an appropriation; and to provide a report to the legislative management.

#### **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

<sup>111</sup> **SECTION 1. AMENDMENT.** Section 38-08-04.5 of the North Dakota Century Code is amended and reenacted as follows:

#### **38-08-04.5. Abandoned oil and gas well plugging and site reclamation fund - Continuing appropriation - Budget section report.**

There is hereby created an abandoned oil and gas well plugging and site reclamation fund.

1. Revenue to the fund must include:
  - a. Fees collected by the oil and gas division of the industrial commission for permits or other services.
  - b. Moneys received from the forfeiture of drilling and reclamation bonds.
  - c. Moneys received from any federal agency for the purpose of this section.
  - d. Moneys donated to the commission for the purposes of this section.
  - e. Moneys received from the state's oil and gas impact fund.
  - f. Moneys recovered under the provisions of section 38-08-04.8.
  - g. Moneys recovered from the sale of equipment and oil confiscated under section 38-08-04.9.
  - h. Moneys transferred from the cash bond fund under section 38-08-04.11.
  - i. Such other moneys as may be deposited in the fund for use in carrying out the purposes of plugging or replugging of wells or the restoration of well sites.
  - j. Civil penalties assessed under section 38-08-16.
2. Moneys in the fund may be used for the following purposes:

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<sup>111</sup> Section 38-08-04.5 was also amended by section 33 of Senate Bill No. 2327, chapter 199.

- a. Contracting for the plugging of abandoned wells.
  - b. Contracting for the reclamation of abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads.
  - c. To pay mineral owners their royalty share in confiscated oil.
  - d. Defraying costs incurred under section 38-08-04.4 in reclamation of oil and gas-related pipelines and associated facilities.
  - e. Reclamation and restoration of land and water resources impacted by oil and gas development, including related pipelines and facilities that were abandoned or were left in an inadequate reclamation status before August 1, 1983, and for which there is not any continuing reclamation responsibility under state law. Land and water degraded by any willful act of the current or any former surface owner are not eligible for reclamation or restoration. The commission may expend up to ~~one~~<sup>five</sup> million ~~five-hundred thousand~~ dollars per biennium from the fund in the following priority:
    - (1) For the restoration of eligible land and water that are degraded by the adverse effects of oil and gas development including related pipelines and facilities.
    - (2) For the development of publicly owned land adversely affected by oil and gas development including related pipelines and facilities.
    - (3) For administrative expenses and cost in developing an abandoned site reclamation plan and the program.
    - (4) Demonstration projects for the development of reclamation and water quality control program methods and techniques for oil and gas development, including related pipelines and facilities.
  - f. For transfer by the office of management and budget, upon request of the industrial commission, to the environmental quality restoration fund for use by the state department of health for the purposes provided under chapter 23-31, if to address environmental emergencies relating to oil and natural gas development, including the disposal of oilfield waste and oil or natural gas production and transportation by rail, road, or pipeline. If a transfer requested by the industrial commission has been made under this subdivision, the state department of health shall request the office of management and budget to transfer from subsequent deposits in the environmental quality restoration fund an amount sufficient to restore the amount transferred from the abandoned oil and gas well plugging and site reclamation fund.
3. This fund must be maintained as a special fund and all moneys transferred into the fund are appropriated and must be used and disbursed solely for the purposes in this section.
  4. The commission shall report to the budget section of the legislative management on the balance of the fund and expenditures from the fund each biennium.

**SECTION 2. APPROPRIATION - ABANDONED OIL AND GAS WELL PLUGGING AND SITE RECLAMATION FUND - ONE-TIME FUNDING - EXEMPTION - BRINE POND AND SOIL REMEDIATION STUDIES - REPORT TO LEGISLATIVE MANAGEMENT.**

1. Notwithstanding section 38-08-04.5, there is appropriated out of any moneys in the abandoned oil and gas well plugging and site reclamation fund in the state treasury, not otherwise appropriated, the sum of \$5,000,000, or so much of the sum as may be necessary, to the industrial commission for the purpose of conducting brine pond and soil remediation studies, for the biennium beginning July 1, 2017, and ending June 30, 2019. The funding provided in this section is considered a one-time funding item. The industrial commission shall conduct the following studies, during the biennium beginning July 1, 2017, and ending June 30, 2019:
  - a. A study of the number of brine ponds in the north central portion of this state which were active between 1951 and 1984 and which require the remediation of salt and any other contamination from the surrounding soil. The industrial commission may contract with or cooperate with research facilities in this state to conduct the study.
  - b. A study of the number of brine ponds in the north central portion of this state which were active between 1951 and 1984 and for which landowners received compensation due to contamination to the surrounding soil.
  - c. A study of the best techniques for remediating salt and any other contamination from the soil surrounding brine ponds in the north central portion of this state which were active between 1951 and 1984 as a continuation of the study conducted pursuant to section 9 of chapter 254 of the 2015 Session Laws.
  - d. A study of the best techniques for remediating soil compaction due to oil and gas operations on well and facility sites in this state. The industrial commission may contract with or cooperate with research facilities in this state to conduct the study.
  - e. A pilot project to study and to test the best techniques for remediating salt and any other contamination from the soil surrounding brine ponds in the north central portion of this state which were active between 1951 and 1984. The industrial commission may contract with or cooperate with research facilities in this state to conduct the study.
2. The industrial commission shall provide a report to the energy development and transmission committee by September 30, 2018, regarding the results of the studies conducted under this section.

**SECTION 3. OIL AND GAS RESEARCH FUND - CONTINUATION OF PIPELINE LEAK DETECTION STUDY - EXEMPTION - REPORT TO THE LEGISLATIVE MANAGEMENT.** The industrial commission shall use \$500,000, or so much of the sum as may be necessary, from the oil and gas research fund to contract with the energy and environmental research center to continue a study regarding pipeline leak detection technology, for the biennium beginning July 1, 2017, and ending June 30, 2019. The study must include an analysis of leak detection and monitoring technology and a risk assessment of new and existing pipeline systems. Notwithstanding any oil and gas research program policies, the contract does not require matching funds. The energy and environmental research center shall provide a report to the industrial

commission and the legislative management by September 30, 2018, regarding the results and recommendations of the study.

Approved April 11, 2017

Filed April 12, 2017

## CHAPTER 252

### SENATE BILL NO. 2333

(Senators Rust, Wanzek)

(Representatives B. Anderson, D. Anderson, Longmuir, Mock)

AN ACT to create and enact a new section to chapter 38-08 of the North Dakota Century Code, relating to reclamation requirements for land disturbed by oil and gas activity.

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

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

#### **Reclamation of land disturbed by oil and gas activity.**

1. Any land disturbed by construction of well sites, treating plants, saltwater handling facilities, access roads, underground gathering pipelines and associated facilities, and from remediation of leaks or spills within the jurisdiction of the commission shall be reclaimed as close as practicable to its original condition as it existed before the construction of the well site or other disturbance. The commission, 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 or treating plant or saltwater handling facility is decommissioned. The commission shall record documentation of the waiver with the recorder of the county in which the site or road is located.
2. This section may not be construed to require removal of a properly reclaimed reserve pit or a properly abandoned underground gathering pipeline.
3. A person may not bring a legal proceeding under this section, unless the person has exhausted all administrative remedies.

Approved March 22, 2017

Filed March 23, 2017

## CHAPTER 253

### HOUSE BILL NO. 1257

(Representatives Steiner, Kempenich, J. Nelson, Schneider, Vetter, Zubke)  
(Senators Bekkedahl, Campbell)

AN ACT to amend and reenact subsection 7 of section 38-08-09.4 and sections 38-08-09.5 and 38-08-09.9 of the North Dakota Century Code, relating to approval requirements for unitization plans.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 38-08-09.4 of the North Dakota Century Code is amended and reenacted as follows:

7. The time when and conditions under which and the method by which the unit must or may be dissolved and its affairs wound up; however, the unit may be dissolved ten years after the unit agreement becomes effective upon a petition to the commission by the royalty owners who are credited with at least ~~eighty~~ percent of the production and proceeds thereof or for units established after August 1, 2001, upon a petition to the commission by the royalty owners who are credited with at least ~~sixty~~ percent of the production and proceeds thereof the percentage of interest of the royalty production and proceeds thereof required to ratify the unit agreement on the date the unit agreement was initially approved by the commission, and a subsequent hearing and order by the commission. The commission may not dissolve any unit if the dissolution would be likely to result in waste or the violation of the correlative rights of any owner. This provision does not limit or restrict any other authority which the commission has.

**SECTION 2. AMENDMENT.** Section 38-08-09.5 of the North Dakota Century Code is amended and reenacted as follows:

#### **38-08-09.5. Ratification or approval of plan by lessees and owners.**

At the time of filing of the petition for the approval of a unit agreement and the filing of the unit agreement, the commission shall schedule a hearing. At least forty-five days prior to the hearing, the applicant shall give notice of the hearing and shall mail, postage prepaid, a copy of the application and the proposed plan of unitization to each affected person owning an interest of record in the unit outline, at such person's last-known post-office address. In addition, the applicant shall file with the commission engineering, geological, and all other technical exhibits to be used at the hearing, and further, the notice must specify that such material is filed and is available for inspection. Service is complete in the mailing of the notice of hearing and unit agreement to each interest owner as described in this section and the filing of an affidavit of mailing with the commission. No order of the commission creating a unit and prescribing its plan of unitization becomes effective until the plan of unitization has been signed, or in writing ratified or approved by those persons who, under the commission's order, will be required to pay ~~at least sixty~~ more than fifty-five percent of the costs of the unit operation and by the owners of ~~at least sixty~~ more than fifty-five percent of the royalty interests, excluding overriding royalties, production payments, and other interests carved out of the working interest, and in addition it is required

that when there is more than one person who will be obligated to pay costs of the unit operation, at least two nonaffiliated such persons and at least two royalty interest owners, are required as voluntary parties, and the commission has made a finding either in the order creating the unit or in a supplemental order that the plan of unitization has been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest. If the plan of unitization has not been signed, ratified, or approved by lessees and royalty owners owning the required percentage interest at the time the order creating the unit is made, the commission shall, upon petition and notice, hold such additional hearings as may be requested or required to determine if and when the plan of unitization has been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest and shall, in respect to such hearings, enter a finding of its determination in such regard. In the event lessees and royalty owners, or either, owning the required percentage interest have not signed, ratified, or approved the plan of unitization within six months from the date on which the order creating the unit is made, the order ceases to be of further force and effect and shall be revoked by the commission.

**SECTION 3. AMENDMENT.** Section 38-08-09.9 of the North Dakota Century Code is amended and reenacted as follows:

**38-08-09.9. Enlargement of area - Creation of new units - Amendment of plan.**

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

Approved March 24, 2017

Filed March 24, 2017

## CHAPTER 254

### HOUSE BILL NO. 1409

(Representative M. Nelson)

AN ACT to amend and reenact section 38-11.2-07 of the North Dakota Century Code, relating to well water testing preceding subsurface mineral production and liability for damages to water supplies.

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

**SECTION 1. AMENDMENT.** Section 38-11.2-07 of the North Dakota Century Code is amended and reenacted as follows:

#### **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. Results of water quality tests conducted under this subsection must be reported in a prescribed format to the state department of health, which shall maintain a database of the results. The water quality test must be collected as prescribed by the department of health and analyzed by a state-certified laboratory.
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, or by showing the mineral developer did not conduct or have conducted the testing required under subsection 2.

6. If a person refuses to consent to the testing of a water well or water supply on land owned by the person, as required under subsection 2, the person forfeits any claim for relief under subsection 3 or 4.
7. 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.
- ~~7-8.~~ 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.
- ~~8-9.~~ 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.
- ~~9-10.~~ 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.

Approved March 22, 2017

Filed March 23, 2017