

**ARTICLE 43-02
MINERAL EXPLORATION AND DEVELOPMENT**

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**CHAPTER 43-02-01
COAL EXPLORATION**

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43-02-01-01. Definitions.

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-12.1.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-03

43-02-01-02. Scope of chapter.

This chapter is of statewide application and has been adopted by the industrial commission to accumulate basic coal exploration data in order to better serve the public interest and to assist the state in determining what the attitude of the state should be regarding the development of coal resources. Special rules and orders will be issued when required and shall prevail as against this chapter, if in conflict therewith. Wherever this chapter does not conflict with special rules 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 a greater benefit to the state and will protect the interests of all persons.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-02

43-02-01-03. 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 prescribed by law. The public hearing shall be held at such time and place and in such a 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.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-04

43-02-01-04. 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, amending, modifying, altering, enlarging, renewing, or extending of a rule, regulation, or order without first holding a hearing after due notice, such emergency rule, regulation, or order shall have the same validity as if a hearing after due notice with respect to the same had been held.

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

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-06

43-02-01-05. Enforcement.

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 coal exploration and evaluation.

It shall be the responsibility of all permit applicants and permit holders to obtain information pertaining to the regulation of coal exploration and evaluation before the operations of the permit applicants and permit holders have begun.

Whenever a corporate permittee violates North Dakota Century Code chapter 38-12.1 or any permit condition or rule implemented thereunder, a director, officer, or agent of the corporate permittee who knowingly causes such violation is subject to the criminal penalties imposed under subsection 2 of North Dakota Century Code section 38-12.1-08. "Knowingly" is to be understood as defined by North

Dakota Century Code section 12.1-02-02. In addition, whenever a director, officer, or agent of a corporate permittee willfully or negligently violates North Dakota Century Code chapter 38-12.1 or any permit condition or rule implemented thereunder, civil penalties may be imposed under subsection 1 of North Dakota Century Code section 38-12.1-08. "Willfully" and "negligently" are to be understood as defined by North Dakota Century Code section 12.1-02-02.

History: Amended effective April 1, 1994.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-04, 38-12.1-07, 38-12.1-08

43-02-01-06. United States government leases.

The commission recognizes that all persons exploring on United States government land or for United States government minerals shall comply with the federal regulations. Such persons shall also comply with all applicable state rules and regulations which are not in conflict with federal regulations, except that no fee shall be required or a permit application if such permit is a permit to explore on United States government land. All other rules, regulations, and orders apply to permit applicants and permit holders where the permit in question covers United States government land, including the requirement that the permit holder shall furnish the state geologist with copies of the basic data reports, with no charge to the state geologist.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-04

43-02-01-07. Forms upon request.

Forms for written notices, requests, and reports required by the commission will be furnished upon request. These forms shall be of such a nature as prescribed by the commission covering proposed work, work in progress, and the results of completed work.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-04

43-02-01-08. 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, and individuals with respect to special projects, services, and studies relating to coal exploration.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-04

43-02-01-09. Record of permits.

The state geologist shall maintain an official permit list in which shall be entered:

1. The name of the permit holder.
2. The permit number.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-04

43-02-01-10. Bond.

Any person engaged in coal exploration and evaluation, or who proposes to do so, 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, and such bond shall

be required for each permit area. The bond shall be in the amount of one hundred dollars for each testhole drilled in the permit area. Each such surety bond shall be executed by a responsible surety company, authorized to transact business in the state of North Dakota. A blanket bond in the amount of ten thousand dollars, conditioned as above provided, may be submitted to cover any number of testholes drilled in one or more permit areas. The blanket bond shall cover all permits issued in one year commencing on the date the first permit covered by the bond is issued.

Any person providing a blanket bond in lieu of several individual bonds is required to comply with the rules, regulations, and orders of the commission in the same manner as if the person had provided several individual bonds. Violation shall result in forfeiture of the blanket bond in its entirety, if the violation would have resulted in forfeiture had the action in question been covered by an individual bond.

For the purposes of the commission the bond required is a performance bond, as well as a plugging bond, and is to endure up to and including receipt by the state geologist of all basic exploration data required by law and approved plugging of all holes drilled.

The commission will in writing advise the principal and sureties on any surety bond as to whether the provisions of statutes and rules have been satisfied, and that liability under the bond may be formally terminated.

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

Any state or federal agency engaged in coal exploration or evaluation shall be exempt from providing the bond.

History: Amended effective May 1, 2004.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-04

43-02-01-11. Public availability of permit application information.

1. Except as provided in subdivisions a, b, and c, all information submitted to the commission with a permit application for coal exploration shall be made available for public inspection and copying at the office of the state geologist.
 - a. The state geologist shall not make information submitted with a coal exploration permit application available for public inspection, if the person submitting it requests in writing, at the time of permit application submission, that it not be disclosed and the state geologist determines that the information is confidential. However, such information shall remain confidential only for the time period specified in North Dakota Century Code section 38-12.1-04.
 - b. The state geologist shall determine that permit application information is confidential only if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.
 - c. Information requested to be held as confidential under this subsection shall not be made publicly available until after proper notice and hearing before the commission.
2. Basic data collected during the course of the exploration and submitted to the state geologist shall be confidential and available only to the office of the state geologist. The period of confidentiality shall continue for a period of two years, beginning on the expiration date of the permit. One year extensions shall be granted if an application for extension is filed with the state geologist prior to the expiration date of the confidentiality period. In no event shall the

total period of confidentiality exceed the time period specified in North Dakota Century Code section 38-12.1-04.

3. The permitholder may waive the holder's right to confidentiality by providing written notice of the waiver to the state geologist.

History: Amended effective August 1, 1980; December 1, 1992.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-04

43-02-01-12. Basic data.

Basic data developed by or for the person conducting the coal exploration or evaluation, consisting of testhole locations, testhole elevations, total depths, driller's logs, radioactivity, resistivity, or other types of electrical or mechanical logs shall be delivered free of charge to the state geologist within six months of the expiration date of the permit covering the exploration or evaluation.

Sample cuts, portions of cores not required for analysis, or core analyses developed by or for the person conducting the coal exploration or evaluation shall also be submitted free of cost to the state geologist if requested.

History: Amended effective March 1, 1991.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-04

43-02-01-13. Reports.

Quarterly progress reports, listing locations of testholes completed and plugged, shall be filed by the twenty-fifth day of January, April, July, and October by all permitholders. If no drilling occurred during the quarter, a report so stating shall be filed.

Completion reports shall also be filed upon completion of the exploration or evaluation, or upon the expiration of the permit, whichever occurs first, by all permitholders. The completion reports shall include all progress on exploration and evaluation and any other information requested by the state geologist.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-04

43-02-01-14. Method of plugging.

Before any testhole is abandoned, all of the cuttings possible must be returned to the testhole, and it shall be plugged in such a manner as to prevent the intrusion of any foreign material. Any cuttings not returned to the hole must be spread at the surface, if approved by the landowner, or properly disposed of off the testhole site, if approved by the owner of the disposal site. The plugging shall be accomplished immediately when all desired information has been obtained.

If a testhole penetrates water bearing sands it shall be plugged with cement or some other method approved by the state geologist, in such a manner as to permanently confine the water to its original stratum.

History: Amended effective August 1, 1986.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-04

43-02-01-15. Testholes to be used for freshwater.

When a testhole to be plugged may safely be used as a freshwater well, and such utilization is desired by the landowner, the testhole need not be filled above a sealing plug set below the freshwater aquifer; provided, that written authority and assumption of liability for such use and plugging shall be secured from the landowner and filed with the state geologist. The person conducting the coal exploration shall be relieved of that person's responsibility under this chapter.

The landowner assuming ownership and liability for the testhole shall comply with the rules for water well construction and water well pump installation pursuant to North Dakota Century Code chapter 43-35.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-04

43-02-01-16. Confining of water to their original strata.

During the drilling of any testhole, all freshwaters and waters of present or probable value for domestic, commercial, or stock purposes encountered shall be confined to their respective strata and shall be adequately protected by methods approved by the state geologist. Special precautions shall be taken in drilling and abandoning of testholes to guard against any loss of artesian water from the strata in which it occurs, and to prevent contamination of artesian water by objectionable water.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-04

43-02-01-17. Inspection.

The state geologist or the state geologist's representative shall have access to all drilling or exploration installations regulated under this chapter for the purpose of inspection and sampling. The state geologist may require the aid of the permitholder if the state geologist finds such aid necessary, and if the state geologist requests such aid.

If samples are to be collected by the state geologist, details relating to the starting date of the collection of such samples and the drill site locations shall be worked out between the state geologist or the state geologist's agents and the permitholder or the permitholder's agents prior to the starting date of such collection.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-04

43-02-01-18. Permits.

A permit shall be required prior to commencement of operations for the exploration and evaluation of coal, except as provided in subsection 2 of North Dakota Century Code section 38-12.1-05. A permit shall be granted for one year upon receipt of a permit application, on a form provided by the commission, and the furnishing of a bond, as set out in this chapter, and the payment of a fee of one hundred dollars per permit. A permit shall be valid for one permit area only, and only for those exploration operations which will remove less than two hundred fifty tons [226.80 metric tons] of coal from a permit area. The removal of more than two hundred fifty tons [226.80 metric tons] of coal from an area shall be considered a surface coal mining operation and shall be subject to the requirements of North Dakota Century Code chapter 38-14.1 and the regulations of the public service commission promulgated thereunder.

History: Amended effective August 1, 1980.

General Authority: NDCC 38-12.1-05

Law Implemented: NDCC 38-12.1-05

43-02-01-18.1. Notice of environmental data gathering activities.

1. So that the state geologist can decide if a permit is required, notice of all planned environmental data gathering activities, except for those specified in subsections 2 and 3, must be provided to the state geologist before beginning any such activities. The notice must include:
 - a. The name, address, and telephone number of the person seeking to conduct environmental data gathering activities.
 - b. The name, address, and telephone number of the person's representative who will be present at and will supervise the activities.
 - c. A narrative describing the activities or a map at a scale of one to twenty-four thousand, or greater, showing the proposed area of activities and the general location of drill holes and trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of surface water, and pipelines.
 - d. A statement of the period of the planned activities.
 - e. A description of all the environmental data gathering activities and the practices that will be followed to protect the environment and to reclaim the area from adverse impacts of the activities as required by this chapter.
2. The notice required by this section is not required for the following activities: fish and wildlife surveys, premine land use determinations, vegetation surveys, collection of climatological data, topographical surveys, and walk-through cultural resource surveys.
3. Notice is not required for environmental data gathering activities on lands designated as unsuitable for mining under North Dakota Century Code section 38-14.1-05. However, an exploration permit from the state geologist is required for those activities on such lands.

History: Effective March 1, 1991; amended effective May 1, 1992.

General Authority: NDCC 38-12.1-05

Law Implemented: NDCC 38-12.1-05

43-02-01-19. Contents of permit application.

The permit application shall include:

1. The name, address, and telephone number of the person seeking to explore.
2. The name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration activities.
3. A precise description of the exploration area.
4. A statement of the period of intended exploration.
5. A description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration activities.
6. A statement by the permit applicant that the applicant will comply with all of the coal exploration performance standards of article 43-02 for all coal exploration and reclamation which substantially disturbs the natural land surface.
7. Any other information required by the commission.

History: Effective August 1, 1980.

General Authority: NDCC 38-12.1-03, 38-12.1-05

Law Implemented: NDCC 38-12.1-05

43-02-01-20. Performance standards for coal exploration.

The performance standards in this section are applicable to coal exploration which substantially disturbs land surface and on land designated unsuitable for mining under North Dakota Century Code section 38-14.1-05. Whether the land surface will be substantially disturbed shall be determined by the state geologist.

1. For purposes of this section, "substantially disturb" means, for purposes of coal exploration, to impact significantly upon land, air, or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of land.
2. Coal exploration activities which will substantially disturb land surface shall not be allowed to affect the following:
 - a. Habitats of unique value for fish, wildlife, and other related environmental values.
 - b. Threatened or endangered species of plants or animals listed by the Endangered Species Act of 1973, as amended [16 U.S.C. 1531 et seq.] and their critical habitats.
 - c. Species such as eagles, migrating birds or other animals protected by state or federal law, and their habitats.
 - d. Habitats of unusually high value for fish and wildlife, such as wetlands, riparian areas, cliffs, supporting raptors, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.
3. The person who conducts coal exploration shall, to the extent practicable, measure important environmental characteristics of the exploration area during the operations, to minimize environmental damage to the area and to provide supportive information for any permit application that person may submit as part of the permit application.
 - a. Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts coal exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to graded and surface roads during periods when excessive damage to vegetation or rutting of the land surface could result.
 - b. Any new road in the exploration area shall comply with the provisions of chapter 69-05.2-24.
 - c. Existing roads may be used for exploration in accordance with the following:
 - (1) All applicable federal, state, and local requirements shall be met.
 - (2) If the road is significantly altered for exploration, including, but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to streamflow or runoff, then subsection 7 and subsections 1 and 2 of section 69-05.2-24-01 shall apply to all areas of the road which are altered or which result in such additional contributions. A road is altered if it is constructed, reconstructed, improved, or maintained in any way that causes the changes described in this section.

- (3) If the road is significantly altered for exploration activities and will remain as a permanent road after exploration activities are completed, the person conducting exploration shall ensure that the requirements of chapter 69-05.2-24, as appropriate, are met for the design, construction, alteration, and maintenance of the road.
- d. Promptly after exploration activities are completed, existing roads used during exploration shall be reclaimed either:
 - (1) To a condition equal to or better than their preexploration condition; or
 - (2) To the condition required for permanent roads under chapter 69-05.2-24, as appropriate.
4. If excavations, artificial flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.
5. Suitable plant growth material, as defined in subsection 31 of North Dakota Century Code section 38-14.1-02 shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by the commission.
6. Revegetation of areas disturbed by coal exploration shall be performed by the person who conducts the exploration or the person's agent. All revegetation shall be in compliance with the plan approved by the commission and carried out in a manner that encourages prompt vegetative cover and recovery of productivity levels compatible with approved postexploration land use and in accordance with the following:
 - a. All disturbed lands shall be seeded or planted to the same seasonal variety native to the disturbed area or to some suitable, commercially available mixture approved by the state geologist. If both the preexploration and postexploration land uses are intensive agriculture, planting of the crops normally grown will meet the requirements of this section.
 - b. The vegetative cover shall be capable of stabilizing the soil surface in regards to erosion.
7. With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities, no ephemeral, intermittent or perennial stream shall be diverted during coal exploration activities. Overland flow of water shall be diverted in a manner that:
 - a. Prevents erosion.
 - b. To the extent possible using the best technology currently available, prevents additional contributions of suspended solids to streamflow or runoff outside the exploration area.
 - c. Complies with all other applicable state or federal requirements.
8. Each exploration hole, borehole, well, or other exposed underground opening created during exploration must be cased or sealed to meet the requirements of chapter 69-05.2-14 and section 43-02-01-14.
9. All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that the state geologist determines may remain to:
 - a. Provide additional environmental quality data.

- b. Reduce or control the onsite or offsite effects of the exploration activities.
 - c. Facilitate future surface mining and reclamation operations by the person conducting the exploration, under an approved permit.
10. Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, and shall include appropriate sediment control measures such as those specified in section 69-05.2-16-08. The commission may specify additional measures which shall be adopted by the person engaged in coal exploration.
11. Toxic-forming materials shall be handled and disposed of in accordance with sections 69-05.2-16-11 and 69-05.2-21-03. If specified by the commission, additional measures shall be adopted by the person engaged in coal exploration.

History: Effective August 1, 1980; amended effective March 1, 1991; April 1, 1994.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-04

43-02-01-21. Removal of coal.

No coal shall be extracted for commercial sale during a coal exploration operation. No other coal shall be extracted except for cores and samples necessary for testing and analysis.

History: Effective August 1, 1980.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-04