

BEFORE THE INDUSTRIAL COMMISSION
OF THE STATE OF NORTH DAKOTA

CASE NO. 32456
ORDER NO. 35230

IN THE MATTER OF A HEARING CALLED
ON A MOTION OF THE COMMISSION TO
CONSIDER THE CREATION OF THE
“RULES AND REGULATIONS FOR
EXPLORATION AND PRODUCTION OF
CRITICAL MINERALS IN COAL-BEARING
FORMATIONS” CODIFIED AS ARTICLE 43-
02 NORTH DAKOTA ADMINISTRATIVE
CODE.

ORDER OF THE COMMISSION

THE COMMISSION FINDS:

- (1) This cause came on for hearing at 1:30 p.m. on the 20th day of January, 2026.
- (2) The record of this case was open for ten (10) days after the hearing to receive written comments on the proposed new rules. The record closed January 30, 2026 after the January 20, 2026 hearing.
- (3) The Commission is authorized to adopt, and from time to time amend or repeal, reasonable rules in conformity with the provisions of any statute administered or enforced by the agency.
- (4) It is necessary to adopt new rules codified in North Dakota Administrative Code (NDAC) Chapter 43-02-02.5 to implement, administer, and enforce the provisions of North Dakota Century Code (NDCC) Chapter 38-12.
- (5) Pursuant to NDCC Sections 28-32-14 and 28-32-15, the new rules shown in the appendix to this order will become effective July 1, 2026 but only upon the Attorney General determining their legality and after approval by the North Dakota Legislative Assembly Administrative Rules Committee.
- (6) The creation of new rules is in the public interest.

IT IS THEREFORE ORDERED:

(1) New NDAC Chapter 43-02-02.5 as shown in the appendix to this order, is hereby approved and adopted.

(2) Pursuant to NDCC Sections 28-32-14 and 28-32-15, the new rules in the appendix to this order will become effective July 1, 2026 but only upon the Attorney General determining their legality and after approval by the North Dakota Legislative Assembly Administrative Rules Committee.

(3) Existing regulations not specifically amended by this order shall remain in full force and effect.

(4) Existing regulations specifically amended by this order shall remain in full force and effect in their current form until the amendments are effective.

(5) This order shall be effective pursuant to the applicable statutes and laws of this state and shall remain in full force and effect until further order of the Commission.

Dated this 24th day of February, 2026.

INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA

/s/ Kelly Armstrong, Governor

/s/ Drew H. Wrigley, Attorney General

/s/ Doug Goehring, Agriculture Commissioner

APPENDIX TO THE COMMISSION ORDER NO. 35230**NORTH DAKOTA INDUSTRIAL COMMISSION****RULES AND REGULATIONS – NORTH DAKOTA ADMINISTRATIVE CODE****2026 RULES CHANGES****RULES AND REGULATIONS****NORTH DAKOTA ADMINISTRATIVE CODE****CHAPTER 43-02-02.5 (EXPLORATION AND PRODUCTION OF CRITICAL MINERALS IN COAL-BEARING FORMATIONS)****EXPLORATION AND PRODUCTION OF CRITICAL MINERALS
IN COAL-BEARING FORMATIONS
CHAPTER 43-02-02.5****43-02-02.5-01. Definitions.**

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-12, except:

1. "Certified mail" means any form of service by the United States postal service, federal express, Pitney Bowes, and any other commercial nationwide delivery service that provides the mailer with a document showing the date of delivery or refusal to accept delivery.
2. "Commission" means the industrial commission.
3. "Director" means the director of the department of mineral resources of the industrial commission.
4. ~~"Gross proceeds" means the gross receipts received by an operator from any sale of critical minerals which constitutes an arms-length transaction.~~
5. "Log or well log" means a systematic, detailed, and accurate record of one or more properties as a function of depth in an open or cased well bore. This includes but is not limited to geophysical, petrophysical, image, or engineered/composite logs, or other well bore measurements acquired while drilling or by wireline operations recorded in paper or digital format.
6. "Mined area" means the area where coal has been mined for its critical mineral content from within the boundaries of a public service commission approved mine permit: within one calendar year.
7. "Processing facility" means a facility that extracts critical minerals from coal-bearing formations.
8. "Testhole" means any hole drilled for the purpose of gathering information on subsurface minerals.
9. "Waste" means:
 - a. Physical waste;

- b. Operations which cause or tend to cause unnecessary or excessive surface loss; or
- c. Operations that do not recover all of the mineral being mined that is technically and economically possible.

History:**General Authority:** NDCC 38-12-02**Law Implemented:** NDCC 38-12-02**43-02-02.5-02. Scope of chapter.**

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

History:**General Authority:** NDCC 38-12-02**Law Implemented:** NDCC 38-12-02**43-02-02.5-03. Enforcement of laws, rules, and regulations.**

The commission, its agents, representatives, and employees are charged with the duty and obligation of enforcing all rules and statutes of North Dakota relating to the exploration, development, and production of critical minerals. However, it shall be the responsibility of all owners or operators to obtain information pertaining to the regulation of subsurface minerals before operations have begun.

History:**General Authority:** NDCC 38-12-02**Law Implemented:** NDCC 38-12-02**43-02-02.5-04. United States government leases.**

The commission recognizes that all persons exploring for, producing, or processing critical minerals 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.

History:**General Authority:** NDCC 38-12-02**Law Implemented:** NDCC 38-12-02

43-02-02.5-05. 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 nature as prescribed by the commission covering proposed work, work in progress, and the results of completed work.

History:**General Authority:** NDCC 38-12-02**Law Implemented:** NDCC 38-12-02**43-02-02.5-06. Authority to cooperate with other agencies.**

The commission may from time to time enter into arrangements with state and federal government agencies, industry committees, and individuals with respect to special projects, services, and studies relating to critical minerals.

History:**General Authority:** NDCC 38-12-02**Law Implemented:** NDCC 38-12-02**43-02-02.5-07. Organization reports.**

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

History:**General Authority:** NDCC 38-12-02**Law Implemented:** NDCC 38-12-02**43-02-02.5-08. Record of permits.**

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

1. The name of the permitholder.
2. The permit number.
3. The date the permit was issued, and
4. The location (county) of the permit.

History:**General Authority:** NDCC 38-12-02**Law Implemented:** NDCC 38-12-02**43-02-02.5-09. Exploration permit.**

A permit shall be required prior to commencement of operations for the exploration and evaluation of critical minerals. 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.

A critical minerals exploration permit is not required within a coal mine permit boundary, but a permit from the public service commission is required. ~~h~~However, ownership and all exploratory data used to determine critical mineral concentrations shall be provided ~~upon request:~~ to the commission.

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

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. Any other information required by the commission.

History:**General Authority:** NDCC 38-12-03**Law Implemented:** NDCC 38-12-03**43-02-02.5-10. Exploration bond.**

Any person engaged in critical mineral 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 critical mineral exploration or evaluation shall be exempt from providing the bond.

History:

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.5-11. Processing facility permit.

A processing facility permit application is required prior to commencement of operations to create or construct a processing facility. The application for a processing facility permit must be filed with the director, together with a permit fee. The amount of the permit fee is determined by the state geologist based upon the cost for the commission to review, investigate, and process the application. No activity may commence until such application is approved and a permit is issued by the director. Upon successful review of the application, the amount of the facility bond will be determined. The permit application will not be approved until the facility bond is in effect.

Permit applications for a processing facility shall address the following:

1. Identification of interests to include:
 - a. The name and address of the operator responsible for the processing facility operations and reclamation of the site.
 - b. The name and address of the surface landowners of all land within the permit boundary of the processing facility.
2. Project location description and maps plotted at a scale to accurately identify locational landmarks and operational details, to include:

- a. A legal description of the proposed processing facility permit area.
 - b. The general location as shown on a topographic map which gives the location the following: perennial, intermittent and ephemeral streams; springs and seeps; wetlands, riparian areas, lakes and other water bodies; residences, businesses, and other structures; existing and proposed roads; other access routes; support facilities; cemeteries; burial grounds; cultural resources listed on the national register of historic places; electrical transmission and communication lines; pipelines; and oil, gas, and water wells on and within one-half mile of the permit area.
 - c. An operations map that identifies:
 - (1) All buildings, structures, tanks, pits, vats, pipelines, access roads, and other types of infrastructure; a surface facilities map which identifies the locations of buildings; processing equipment; roads; underground utilities; power lines; proposed drainage control structures; the location of topsoil and subsoil storage areas, if warranted; tailings or processed waste facilities; and solid and liquid wastes and wastewater discharge treatment and containment facilities;
 - (2) Any dikes or berms or other structures that are meant to contain processing fluids onsite.
3. Operation plan. A brief narrative description of the proposed processing facility plan of operation. The description must include the following information:
- a. A general description and list of the critical minerals sought and the methods of extraction. Any chemicals to be used onsite must be identified, where and how they will be stored, and where and how they will be disposed. Any forms of disposal will need to comply with the rules and regulations of the North Dakota Department of Environmental Quality.
 - b. A geological cross-section across the permit application area to a depth of 100 feet.
 - c. An estimate of depth to ground water and general water chemistry.
 - d. Estimated width and length of any new roads to be constructed.
 - e. An estimate of the total number of surface acres to be disturbed by the processing facility.
 - f. A description of the plans for any structures that will be used for managing runoff from the site, if warranted.
 - g. A contingency plan to mitigate impacts to wildlife when there has been an emergency or accidental discharge of toxic substances that may impact wildlife.
 - h. A description of measures which will be undertaken to control sedimentation from the permit area and a plan for the monitoring of nonpoint source sediment pollution from the disturbed area.
4. Impact assessment. The operator shall provide a general narrative description identifying potential surface and subsurface impacts. At a minimum, this description is to include:
- a. Projected impacts to surface and groundwater systems; ~~and~~
 - b. Actions which are proposed to mitigate any of the above referenced impacts; ~~and~~
 - c. A plan for the management of waste streams in accordance with chapters 33.1-25-01, 33.1-20-01.1, 33.1-20-09, and 33.1-16-01, as applicable.

All persons controlling or operating any processing facility shall verbally notify the director within twenty-four hours after discovery of any fire, leak, spill, or release of fluid. If any such incident occurs or travels offsite of a facility, the persons, as named above, responsible for proper notification shall within ~~a reasonable time~~ twenty-four hours after the discovery of the incident also notify the surface owners upon whose land the incident occurred or traveled.

5. Reclamation plan. Each application shall include a reclamation plan, including maps or drawings as necessary, consisting of a narrative description of the proposed reclamation, including:
 - a. A detailed description of any surface facilities that are proposed to be left at closure, including buildings, utilities, roads, pads, ponds, pits, and surface equipment.
 - b. A description of the treatment, location, and disposition of any toxic-forming or acid-forming materials generated and left onsite, including a map showing the location of such materials upon the completion of reclamation.
 - ~~e. A statement by the permit applicant that the applicant will comply with all of the critical mineral performance standards of article 43-02 for all processing, mining and reclamation which substantially disturbs the natural land surface.~~

The reclamation plan shall be updated as necessary and submitted for approval prior to the commencement of final reclamation activities.

Unless otherwise approved in the reclamation plan, all buildings and infrastructure must be removed. All disturbed lands must be reclaimed to a condition consistent with prior land use and productive capacity.

The commission shall review the facility permit at least once every five years to determine whether it should be amended, modified, or revoked.

History:

General Authority: NDCC 38-12-03

Law Implemented: NDCC 38-12-03

43-02-02.5-12. Processing facility bond.

Before any person receives a permit to conduct processing facility operations for critical minerals, the person shall submit to the commission, and obtain its approval of a surety bond, executed by a responsible surety company authorized to transact business in North Dakota, or a cash bond. An alternate form of security may be approved by the commission after notice and hearing, as provided by law. The operator of a processing facility shall be the principal on the bond covering such activity. The amount of the bond shall be specified by the commission and will be based upon the estimated reclamation costs.

Processing facility bond requirements.

1. Bond terms. Bonds shall be conditioned upon full compliance with North Dakota Century Code chapter 38-12, and all administrative rules and orders of the

commission, and continues until any of the following occurs:

- a. The lands disturbed by any method of processing of critical minerals have been restored and approved by the director.
 - b. The liability on the bond has been transferred to another bond and such transfer approved by the commission.
2. Transfer of property under bond. Transfer of property does not release the bond. In case of transfer of property or other interest in a processing facility and the principal desires to be released from the bond covering the facility, the principal must proceed as follows:
- a. The principal must notify the director in writing of all proposed transfers of property at least thirty days before the closing date of the transfer. The director may, for good cause, waive this requirement.
The principal shall submit to the commission on a transfer form reciting that a certain property, or properties, describing each by quarter-quarter, section, township, and range, is to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form signed by a party duly authorized to sign on behalf of the principal.
On said transfer form the transferee shall recite the following: "The transferee has read the foregoing statement and accepts such transfer and the responsibility of such property under the transferee's processing facility bond". Such acceptance must be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.
 - b. When the commission has approved the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of site reclamation.
 - c. The transferee (new operator) of any processing facility shall be responsible for the site reclamation of any such property. For that purpose, the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue. The original or prior bond shall not be released as to the reclamation responsibility of any such transferor until the transferee submits to the commission an acceptable bond to cover such facility. All liability on bonds shall continue until all structures are removed and the reclamation of such property is completed and approved.
3. Bond review. The director shall periodically review the amount of bond and, with the commission's approval, may require adjustments to the amount of bond to reflect inflationary increases or increases in the anticipated costs of reclamation. An operator may request a hearing to dispute an adjustment.
4. Bond termination. The commission shall, in writing, advise the principal and any sureties on any bond as to whether the reclamation is approved. If approved, liability under such bond may be formally terminated upon receipt of a written request by the principal. The request must be signed by an officer of the principal or a person authorized to sign for the principal.
5. Director's authority. The director is vested with the power to act for the commission as to all matters within this section, except requests for alternative forms of security,

which may only be approved by the commission.

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

History:

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.5-13. Mining permit.

Mining of non-coal rock for its critical mineral content will need to follow North Dakota Administrative Code chapters 43-02-02.2, 43-02-02.3 or 43-02-02.4, as applicable.

History:

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.5-14. 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 critical mineral 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 critical mineral 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 38-12-02.
 - 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 critical mineral 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. The director can withhold specific information in a processing facility application if releasing the information would reveal trade secrets or in other ways cause the applicant financial harm.
3. The permitholder may waive the holder's right to confidentiality by providing written notice of the waiver to the state geologist.

History:

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.5-15. 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.

History:**General Authority:** NDCC 38-12-02**Law Implemented:** NDCC 38-12-02**43-02-02.5-16. 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:**General Authority:** NDCC 38-12-02**Law Implemented:** NDCC 38-12-02**43-02-02.5-17. 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 critical mineral 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.

History:**General Authority:** NDCC 38-12-02**Law Implemented:** NDCC 38-12-02

43-02-02.5-18. Inspections.

The state geologist or the state geologist's representative shall have access to all drilling or exploration sites, mines, and processing facilities regulated under this chapter for the purpose of inspection and sampling. The state geologist may require the aid of the permit holder 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 permit holder or the permit holder's agents prior to the starting date of such collection.

History:**General Authority:** NDCC 38-12-02**Law Implemented:** NDCC 38-12-02**43-02-02.5-19. Basic data.**

Basic data developed by or for the person conducting critical mineral exploration or evaluation, consisting of testhole locations, testhole elevations, total depths, driller's logs, radioactivity, resistivity, or other types of electrical or mechanical logs, as well as laboratory analyses, or any other pertinent data collected during the project shall be delivered free of charge to the state geologist.

When requested by the operator, the data submitted shall be confidential for a period of one year commencing on the expiration date of the permit. Such period may be further extended upon approval of the commission. As long as the operator is exploring, developing, or producing critical minerals, the basic data may remain confidential. The industrial commission and the state geologist shall have access to all confidential data. The director may release such confidential completion and production data to health care professionals, emergency responders, and state, federal, or tribal environmental and public health regulators if the state geologist deems it necessary to protect the public's health, safety, and welfare.

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

History:**General Authority:** NDCC 38-12-02**Law Implemented:** NDCC 38-12-02**43-02-02.5-20. Exploration 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 permit holders. 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 permit holders. The completion reports shall include all progress on exploration and evaluation and any other information requested by the state geologist.

History:

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.5-21. Report of production.

The operator of a processing facility shall, on or before the first day of the second month succeeding the month in which production occurs, file with the state geologist a report containing the following information:

1. The volume of coal that is processed.
2. The volume and chemical makeup of the critical mineral concentrate.
3. The volume of the concentrate shipped, and
4. The shipping destination.

The report shall be signed by both the person responsible for the report and the person witnessing the signature. The printed name and title of both the person signing the report and the person witnessing the signature shall be included.

Production data submitted to the state geologist shall be kept confidential for a period of one year when so requested by the operator. Such period may be further extended upon approval by the commission. The commission may share production data with other state agencies, upon request, for purposes of administering statutory duties related to mineral ownership, royalty oversight or trust administration. Such other state agencies shall not share such data with any other entity and shall protect the confidentiality of any such production data subject to the requirements of NDCC ch. 44-04.

History:

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02.5-22. Commingled production.

~~After coal from differing mineral ownership parcels has been mined, the coal must be commingled prior to processing provided the volume produced has been recorded.~~

When two or more separately owned tracts are embraced within a mined area, or when there are separately owned interests in all or a part of the mined area, then the critical minerals therefrom must be commingled by the operator for the purpose of allocating production and payment of royalties. Each such mined area must afford to the owner of each tract or interest within the mined area the opportunity to recover or receive, without unnecessary expense, that owner's equitable share. based on the volume of mined coal.

History:**General Authority:** NDCC 38-12-06**Law Implemented:** NDCC 38-12-06**43-02-02.5-23. Investigative powers.**

Upon receipt of a written complaint from any surface owner or lessee, royalty owner, mineral owner, local, state, or federal official, alleging a violation of the subsurface mineral conservation statutes or any rule, regulation, or order of the commission, the director shall within reasonable time reply in writing to the person who submitted the complaint stating that an investigation of such complaint will be made or the reason such investigation will not be made. The person who submitted the complaint may appeal the decision of the director to the commission. The director may also conduct such investigations on the director's own initiative or at the direction of the commission. If, after such investigation, the director affirms that cause for complaint exists, the director shall report the results of the investigation to the person who submitted the complaint, if any, to the person who was the subject of the complaint and to the commission. The commission shall institute such legal proceedings as, in its discretion, it believes necessary to enjoin further violations.

History:**General Authority:** NDCC 38-12-02**Law Implemented:** NDCC 38-12-02**43-02-02.5-24. Additional information may be required.**

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

History:**General Authority:** NDCC 38-12-02**Law Implemented:** NDCC 38-12-02**43-02-02.5-25. Books and records to be kept to substantiate reports.**

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

History:**General Authority:** NDCC 38-12-02**Law Implemented:** NDCC 38-12-02

43-02-02.5-26. Application for hearing.

In any proceeding instituted upon application, the application shall be signed by the applicant or by the applicant's attorney. An application shall state (1) the name and general description of the common source or sources of supply affected by the order, rule, or regulation sought, if any, unless same is intended to apply to and affect the entire state, in which event the application shall so state, and such statement shall constitute sufficient description; and (2) briefly the general nature of the order, rule, or regulation sought in the proceedings.

History:**General Authority:** NDCC 38-12-04**Law Implemented:** NDCC 38-12-04**43-02-02.5-27. Hearings - Proceedings.**

1. Except as more specifically provided in North Dakota Century Code section 38-12-04, the rules of procedure established in subsection 1 of North Dakota Century Code section 28-32-21 apply to proceedings involving a complaint and a specific-named respondent.
2. For proceedings that do not involve a complaint and a specific-named respondent, the commission shall give at least fifteen days' notice (except in an emergency) of the time and place of hearing thereon by one publication of such notice in a newspaper of general circulation in Bismarck, North Dakota, and in a newspaper of general circulation in the county where the land affected or some part thereof is situated, unless in some particular proceeding a longer period of time or a different method of publication is required by law, in which event such period of time and method of publication shall prevail. The notice shall issue in the name of the commission and shall conform to the other requirements provided by law.
3. In case an emergency is found to exist by the commission which in its judgement requires the making of a rule or order without first having a hearing, the emergency rule or order shall have the same validity as if a hearing with respect to the same had been held after notice. The emergency rule or order permitted by this section shall remain in force no longer than fifteen days from its effective date, and in any event, it shall expire when the rule or order made after due notice and hearing with respect to the subject matter of such emergency rule or order becomes effective.
4. Any person moving for a continuance of a hearing, and who is granted a continuance, shall submit a twenty-five dollar fee to the commission, or if the cost or republication exceeds fifty dollars the commission may bill the applicant, to pay the cost of republication of notice of the hearing.

History:**General Authority:** NDCC 38-12-04**Law Implemented:** NDCC 38-12-04

43-02-02.5-28. Investigatory hearings.

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

History:**General Authority:** NDCC 38-12-04**Law Implemented:** NDCC 38-12-04**43-02-02.5-29. Official record.**

The evidence in each case heard by the commission, unless specifically excluded by the hearing examiner, includes all subsurface mineral basic data and production records on file with the commission.

Any interested party may submit written comments on or objections to the application prior to the hearing date. Such submissions must be received no later than five p.m. on the last business day prior to the hearing date and may be part of the record in the case if allowed by the hearing examiner. Settlement negotiations between parties to a contested case are only admissible as governed by North Dakota Century Code section 28-32-24, although the hearing examiner may strike such testimony from the record for good cause.

History:**General Authority:** NDCC 28-32-06**Law Implemented:** NDCC 28-32-06**43-02-02.5-30. Petitions and oral arguments prohibited.**

Neither petitions for review of a recommended order nor oral arguments following issuance of a recommended order and pending issuance of a final order are allowed.

History:**General Authority:** NDCC 28-32-13**Law Implemented:** NDCC 28-32-13**43-02-02.5-31. Notice of order.**

The commission may give notice of an order, and findings and conclusions upon which it is based, to all parties provided it files an affidavit of service indicating upon whom the order was served.

History:**General Authority:** NDCC 28-32-13**Law Implemented:** NDCC 28-32-13

43-02-02.5-32. Service and filing.

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

History:**General Authority:** NDCC 28-32-13**Law Implemented:** NDCC 28-32-13**43-02-02.5-33. Designation of examiners.**

The commission may by motion designate and appoint qualified individuals to serve as examiners. The commission may refer any matter or proceeding to any legally designated and appointed examiner or examiners.

History:**General Authority:** NDCC 38-12-04**Law Implemented:** NDCC 38-12-04**43-02-02.5-34. Powers and duties of examiner.**

The commission may, by motion, limit the powers and duties of any examiner in any particular case to such issues or to the performance of such acts as the commission deems expedient; however, subject only to such limitation as may be ordered by the commission, the examiner or examiners to whom any matter or proceeding is referred under this chapter shall have full authority to hold hearings on such matter or proceeding in accordance with and pursuant to this chapter. The examiner shall have the power to regulate all proceedings before the examiner and to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of such hearing, including ruling on prehearing motions, the swearing of witnesses, receiving of testimony and exhibits offered in evidence, subject to such objections as may be imposed, and shall cause a complete record of the proceedings to be made and retained.

History:**General Authority:** NDCC 38-12-04**Law Implemented:** NDCC 38-12-04**43-02-02.5-35. Report of examiner.**

Upon the conclusion of any hearing before an examiner, the examiner shall promptly consider the proceedings in such hearings, and based upon the record of such hearing, the examiner shall prepare a report and recommendations for the disposition of the matter or

proceeding by the commission. The report and recommendations shall either be accompanied by a proposed order or shall be in the form of a proposed order, and shall be submitted to the commission.

History:

General Authority: NDCC 38-12-04

Law Implemented: NDCC 38-12-04

43-02-02.5-36. Commission order from examiner hearing.

After receipt of the report and recommendation of the examiner, the commission shall enter its order disposing of the matter or proceeding.

History:

General Authority: NDCC 38-12-04

Law Implemented: NDCC 38-12-04

43-02-02.5-37. Prehearing motion practice.

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

History:

General Authority: NDCC 38-12-04

Law Implemented: NDCC 38-12-04