

REGULATORY ANALYSIS

A New Chapter: NDAC 43-02-02.5 Exploration & Production of Critical Minerals in Coal-Bearing Formations

December 5, 2025

1. Who are the classes of persons who will probably be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule?

Coal-mining companies, critical mineral processors, and mineral owners with coal leases. There has never been a critical mineral processing facility in North Dakota.

2. What is the probable impact, including economic impact, of the proposed rule?

There will be little impact for coal-mining companies. Rules for critical mineral exploration in coal-bearing formations will largely mirror the current rules for coal exploration. Critical mineral processors will have greater understanding of permit application fees and procedures, bonding requirements, and performance standards. Mineral owners may benefit from additional critical mineral royalty payments on their coal leases.

43-02-02.5-09 Exploration permit

A critical mineral in coal exploration permit fee is \$100, the same amount as the fee for a coal exploration permit, which a critical mineral permit will supersede.

43-02-02.5-10 Exploration bond

The required bond for critical mineral exploration is \$100 per testhole, or a \$10,000 blanket bond to cover any number of holes on permits issued within one year. These are the same bond requirements currently placed upon coal exploration permits, which critical mineral permits will supersede.

43-02-02.5-11 Processing Facility permit

The amount of the processing facility application fee will be determined based on the number of staff hours required to process the permit application. It is anticipated that the application fee will range from \$10,000 - \$30,000 depending upon the size of the facility.

43-02-02.5-12 Processing Facility Bond

The amount of the bond required will be determined by the cost to demolish the buildings and associated structures and reclaim the site. The bond amount is expected to be approximately \$5,000,000 and the annual premium would likely be \$50,000 plus.

3. What is the probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues?

Inspections of a new facility could start out as frequently as once a week and then transition to once every two weeks or once a month within a two or three month timeframe, depending upon startup problems, etc., real-time gauges could reduce on-sight inspections, etc. Inspection cost for the first year would be approximately \$8,300 and the following years would be approximately \$5,600.

4. What were the alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency/board and why was each method rejected in favor of the proposed rule?

We closely modeled the exploration portion of this rule on the coal exploration regulatory program which has been in existence for fifty years and the coal companies are very familiar with that program. We modeled the facility portion of this rule from the other regulatory programs administered under NDCC 38-12 which regulate facilities.

Please explain the information and data assessment as well as how the amounts of impact were determined, to the extent practicable.

Processing Facility Permit Fee

One month

1st person: \$65.09/hr x 34 hours/week x 4 weeks = \$8,852.

2nd person: \$54.93/hr x 34 hours/week x 4 weeks = \$7,470.

Two months

1st person: \$65.09/hr x 34 hours/week x 8 weeks = 17,704.50

2nd person: \$54.93/hr x 34 hours/week x 8 weeks = 14,941.

Processing Facility Bond

A ChatGPT search gave the following examples for demolition costs for a processing facility.

Scenario A — 100,000 sq ft facility

- At \$10/ft² → ~\$1,000,000
- At \$20/ft² → ~\$2,000,000

Scenario B — 250,000 sq ft facility

- At \$10/ft² → ~\$2,500,000
- At \$25/ft² → ~\$6,250,000

Scenario C — 500,000 sq ft facility

- At \$10/ft² → ~\$5,000,000
- At \$25/ft² → ~\$12,500,000

Processing Facility Bond Premiums

Based on an average five-million-dollar facility bond:

Rate	Premium on \$5M bond
0.5 % (strong credit, low risk)	\$25,000
1 % (common for larger bonds)	\$50,000
2 % (mid-range for moderate risk)	\$100,000
3 % (higher risk or weaker credit)	\$150,000
5 %+ (special situations)	\$250,000+

Cost of Inspections

The First Year

18 onsite inspections @ 8 hrs =144 hrs x \$50/hr =	\$ 7,200
2,160 miles (18x120 miles) @ .41/mile =	\$ 886
PerDiem =18 x \$14 (lunch) =	<u>\$ 252</u>
TOTAL =	\$ 8,338

The Second Year +

12 onsite inspections @ 8 hrs =96 hrs x \$50/hr =	\$ 4,800
1,440 miles (12x120 miles) @ .41/mile =	\$ 590
PerDiem =12 x \$14 (lunch) =	<u>\$ 168</u>
TOTAL =	\$ 5,558
