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CONTROL OF GAS AND OIL RESOURCES  
CHAPTER 38-08

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**CONTROL OF GAS AND OIL RESOURCES**  
**CHAPTER 38-08**

**38-08-01. DECLARATION OF POLICY.** It is hereby declared to be in the public interest to foster, to encourage, and to promote the development, production, and utilization of natural resources of oil and gas in the state in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas be had and that the correlative rights of all owners be fully protected; and to encourage and to authorize cycling, recycling, pressure maintenance, and secondary recovery operations in order that the greatest possible economic recovery of oil and gas be obtained within the state to the end that the landowners, the royalty owners, the producers, and the general public realize and enjoy the greatest possible good from these vital natural resources.

Source: N.D. Century Code.

**38-08-02. DEFINITIONS.** As used in this chapter, unless the context otherwise requires:

1. "Certificate of clearance" means a permit prescribed by the commission for the transportation or the delivery of oil or gas or product and issued or registered in accordance with the rule, regulation, or order requiring such permit.
2. "Commission" means the industrial commission.
3. "Field" means the general area underlaid by one or more pools.
4. "Gas" means and includes all natural gas and all other fluid hydrocarbons not hereinbelow defined as oil.
5. "Illegal gas" means gas which has been produced from any well within this state in excess of the quantity permitted by any rule, regulation, or order of the commission, or any gas produced or removed from the well premises in violation of any rule, regulation, or order of the commission, or any gas produced or removed from the well premises without the knowledge and consent of the operator.
6. "Illegal oil" means oil which has been produced from any well within the state in excess of the quantity permitted by any rule, regulation, or order of the commission, or any oil produced or removed from the well premises in violation of any rule, regulation, or order of the commission, or any oil produced or removed from the well premises without the knowledge and consent of the operator.
7. "Illegal product" means any product derived in whole or in part from illegal oil or illegal gas.
8. "Oil" means and includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.

9. "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others.
10. "Person" means and includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof; the masculine gender, in referring to a person, includes the feminine and the neuter genders.
11. "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.
12. "Producer" means the owner of a well or wells capable of producing oil or gas or both.
13. "Product" means any commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural-gas gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas, and blends or mixtures of two or more liquid products or byproducts derived from oil or gas, whether hereinabove enumerated or not.
14. "Reasonable market demand" means the demand for oil or gas for reasonable current requirements for consumption and use within and without the state, together with such quantities as are reasonably necessary for building up or maintaining reasonable working stocks and reasonable reserves of oil or gas product.
15. "Reserve pit" means an excavated area used to contain drill cuttings accumulated during oil and gas drilling operations and mud-laden oil and gas drilling fluids used to confine oil, gas, or water to its native strata during the drilling of an oil and gas well.
16. "Waste" means and includes:
  - a. Physical waste, as that term is generally understood in the oil and gas industry.
  - b. The inefficient, excessive, or improper use of, or the unnecessary dissipation of reservoir energy.
  - c. The locating, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner which causes, or tends to cause, reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas.
  - d. The inefficient storing of oil.
  - e. The production of oil or gas in excess of transportation or marketing facilities or in excess of reasonable market demand.

17. The word "and" includes the word "or" and the use of the word "or" includes the word "and." The use of the plural includes the singular and the use of the singular includes the plural.

Source: N.D. Century Code.

**38-08-03. WASTE PROHIBITED.** Waste of oil and gas is prohibited.

Source: N.D. Century Code.

**38-08-04. JURISDICTION OF COMMISSION.** 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:

1. To require:
  - a. 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. 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.
  - c. 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. 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 prescribed to govern the production of oil and gas on public and private lands within the state, except that if the commission requires a bond to be furnished, the person required to furnish the bond may elect to deposit cash or property under such terms and conditions as the industrial commission may prescribe.
  - e. 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. The operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios.
  - g. Certificates of clearance in connection with the transportation or delivery of oil, gas, or any product.
  - h. 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. 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. 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. 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.
2. To regulate:
    - a. 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. The shooting and chemical treatment of wells.
    - c. The spacing of wells.
    - d. 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. Disposal of saltwater and oil field wastes.
    - f. The underground storage of oil or gas.
  3. 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. 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 subsection 8 of section 57-51.1-01, to certify to the tax commissioner which wells are stripper wells and the depth of those wells, and to certify to the tax commissioner which wells involve secondary or tertiary recovery operations under section 57-51.1-01, and the date of qualification for the reduced rate of oil extraction tax for secondary and tertiary recovery operations.
  5. 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.
  6. 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.

Source: N.D. Century Code.



**38-08-04.1. COMMISSION MAY EMPLOY EXAMINERS.** The industrial commission may use hearing examiners under such rules and regulations as the commission may prescribe.

Source: N.D. Century Code.

**38-08-04.2. DIRECTOR OF OIL AND GAS.** The industrial commission is authorized to appoint a director of oil and gas and to set the director's salary within the limits of legislative appropriations. The industrial commission may designate the state geologist as the director of oil and gas.

Source: N.D. Century Code.

**38-08-04.3. STATE GEOLOGIST TO ASSIST COMMISSION.** Repealed.

Source: N.D. Century Code.

**38-08-04.4. COMMISSION AUTHORIZED TO ENTER INTO CONTRACTS.** The commission is hereby authorized to enter into public and private contractual agreements for the plugging or replugging of oil and gas or injection wells and the reclamation of abandoned oil and gas or injection well sites if any of the following apply:

1. The person or company drilling or operating the well cannot be found, has no assets with which to properly plug or replug the well or reclaim the well site, or cannot be legally required to plug or replug the well or to reclaim the well site.
2. There is no surety bond covering the well to be plugged or the site to be reclaimed or there is a forfeited surety bond but the cost of plugging or replugging the well or reclaiming the site exceeds the amount of the bond.
3. The well is leaking or likely to leak oil, gas, or saltwater or is likely to cause a serious threat of pollution or injury to the public health or safety.

Reclamation work must be limited to abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads. Sealed bids for any well plugging or reclamation work under this section must be solicited by placing a notice in the official county newspaper of the county in which the work is to be done and in such other newspapers of general circulation in the area as the commission may deem appropriate. Bids must be addressed to the commission and must be opened publicly at an industrial commission meeting designated in the notice. The contract must be let to the lowest responsible bidder, but the commission may reject any or all bids submitted. If a well is leaking or likely to leak oil, gas, or saltwater or is likely to cause a serious threat of pollution or injury to the public health or safety, the commission, without notice or the letting of bids, may enter into contracts necessary to plug or replug such wells under such rules as the commission may prescribe.

The contracts for the plugging or replugging of wells or the reclamation of well sites must be on terms and conditions as prescribed by the commission, but at a minimum the contracts shall require the plugging and reclamation to comply with all statutes and rules governing the plugging of wells and reclamation of well sites.

Source: N.D. Century Code.

**38-08-04.5. (Effective through June 30, 2003) ABANDONED OIL AND GAS WELL PLUGGING AND SITE RECLAMATION FUND.** 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 confiscated under the provisions of section 38-08-04.9.
  - h. 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.
2. Moneys in the fund may be used for the following purposes:
  - 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.
3. All moneys collected under this section must be deposited in the abandoned oil and gas well plugging and site reclamation fund. 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 purpose of defraying the costs incurred in carrying out the plugging or replugging of wells, the reclamation of well sites, and all other related activities. However, when the fees accumulated in the fund exceeds fifty thousand dollars, any additional fees collected by the oil and gas division of the industrial commission must be deposited in the general fund.

Source: N.D. Century Code.

**38-08-04.5. (Effective after June 30, 2003) ABANDONED OIL AND GAS WELL PLUGGING AND SITE RECLAMATION FUND.** 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 confiscated under the provisions of section 38-08-04.9.
  - h. 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.
2. Moneys in the fund may be used for the following purposes:
    - 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.
  3. All moneys collected under this section must be deposited in the abandoned oil and gas well plugging and site reclamation fund. 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 purpose of defraying the costs incurred in carrying out the plugging or replugging of wells, the reclamation of well sites, and all other related activities. However, when the fees accumulated in the fund exceed two hundred fifty thousand dollars, any additional fees collected by the oil and gas division of the industrial commission must be deposited in the general fund.

Source: N.D. Century Code.

**38-08-04.6. OIL AND GAS RESERVOIR DATA FUND - APPROPRIATION.**

There is hereby established an oil and gas reservoir data fund to be used for defraying the costs of providing reservoir data compiled by the commission to state, federal, and county departments and agencies, and members of the general public. All moneys collected pursuant to section 38-08-04 for providing reservoir data under this section must be deposited in the oil and gas reservoir data fund. This fund must be maintained as a special fund and all moneys transferred into the fund are hereby appropriated and must be used and disbursed solely for the purpose of paying the current cost of providing such information as determined by the commission, based on actual costs.

Source: N.D. Century Code.

**38-08-04.7. RIGHT OF ENTRY.** The commission, its agents, employees, or contractors shall have the right to enter any land for the purpose of plugging or replugging a well or the restoration of a well site as provided in section 38-08-04.4.

Source: N.D. Century Code.

**38-08-04.8. RECOVERY FOR COSTS OF PLUGGING.** If the commission, its agents, employees, or contractors plugs or replugs a well or reclaims a well site under the

provisions of sections 38-08-04.4, 38-08-04.5, 38-08-04.7, 38-08-04.8, 38-08-04.9, and 38-08-04.10, the state has a cause of action for all reasonable expenses incurred in the plugging, replugging, or reclamation against the operator of the well at the time the well is required to be plugged and abandoned or any or all persons who own a working interest in the well at the time the well is required to be plugged and abandoned as a result of the ownership of a lease or mineral interest in the property on which the well is located. The term "working interest owner" does not mean a royalty owner or an overriding royalty interest owner. The commission shall seek reimbursement for all reasonable expenses incurred in plugging any well or reclaiming any well site through an action instituted by the attorney general. The liability of any working interest owner under this section shall be limited to that proportion of the reasonable expenses incurred by the commission that the interest of any such working interest owner bears to the entire working interest in the well. Any money collected in a suit under this section must be deposited in the state abandoned oil and gas well plugging and site reclamation fund. Any suit brought by the commission for reimbursement under this section may be brought in the district court for Burleigh County, the county in which the plugged well or reclaimed well site is located or the county in which any defendant resides.

Source: N.D. Century Code.

**38-08-04.9. CONFISCATION OF EQUIPMENT TO COVER PLUGGING COSTS.** If the commission, its agents, employees, or contractors plugs, replugs a well, or restores a well site pursuant to sections 38-08-04.4, 38-08-04.5, 38-08-04.7, 38-08-04.8, 38-08-04.9 and 38-08-04.10, the commission, after notice and hearing, may order the confiscation of any production-related equipment at the abandoned well site owned by the operator or any working interest owner for the purpose of wholly or partially compensating the state for the cost of plugging or replugging or site restoration.

Source: N.D. Century Code.

**38-08-04.10. PENALTIES AND OTHER RELIEF.** The plugging or replugging of a well or reclamation of a well site by the commission, its agents, employees, or contractors, shall not prevent the commission from seeking penalties or other relief provided by law from any person who is required by statutes, rules, or order of the commission to plug or replug a well or reclaim the surface.

Source: N.D. Century Code.

**38-08-04.11. CASH BOND FUND FOR PLUGGING OIL AND GAS WELLS AND RECLAMATION OF OIL AND GAS WELL SITES - APPROPRIATION.**

1. There is hereby created a cash bond fund for the plugging of abandoned oil and gas wells and the reclamation of abandoned oil and gas well sites.
2. From all moneys held or controlled by the commission under subdivision d of subsection 1 of section 38-08-04, there is to be deposited in the cash bond fund

such amount as determined by the commission but such amount may not exceed an amount equal to an annual return of two percent of the cash bond deposit.

3. Moneys in the cash bond fund are hereby appropriated to the commission to be used for the following purposes:
  - a. Defraying costs incurred in the plugging of abandoned oil and gas wells, and related activities.
  - b. Defraying costs incurred in the reclamation of abandoned oil and gas drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads, and related activities.

Source: N.D. Century Code.

**38-08-05. DRILLING PERMIT REQUIRED.** It is unlawful to commence operations for the drilling of a well for oil or gas without first obtaining a permit from the industrial commission under such rules as may be prescribed by the commission and paying to the commission a fee for each such well in an amount to be prescribed by the commission.

Source: N.D. Century Code.

**38-08-06. COMMISSION SHALL DETERMINE MARKET DEMAND AND REGULATE THE AMOUNT OF PRODUCTION.** The commission shall determine market demand for each marketing district and regulate the amount of production as follows:

1. The commission shall limit the production of oil and gas within each marketing district to that amount which can be produced without waste, and which does not exceed the reasonable market demand.
2. Whenever the commission limits the total amount of oil or gas which may be produced in the state or a marketing district, the commission shall allocate or distribute the allowable production among the pools therein on a reasonable basis, giving, where reasonable under the circumstances to each pool with small wells of settled production, an allowable production which prevents the general premature abandonment of such wells in the pool.
3. Whenever the commission limits the total amount of oil or gas which may be produced in any pool in this state to an amount less than that amount which the pool could produce if no restriction was imposed, which limitation is imposed either incidental to, or without, a limitation of the total amount of oil or gas produced in the marketing district wherein the pool is located, the commission shall allocate or distribute the allowable production among the several wells or producing properties in the pool on a reasonable basis, preventing or minimizing reasonable avoidable drainage, so that each property will have the opportunity to produce or to receive its just and equitable share, subject to the reasonable necessities for the prevention of waste.
4. In allocating the market demand for gas as between pools within marketing districts, the commission shall give due regard to the fact that gas produced from oil pools is to be regulated in a manner as will protect the reasonable use of its energy for oil production.

5. The commission is not required to determine the reasonable market demand applicable to any single pool, except in relation to all other pools within the same marketing district, and in relation to the demand applicable to the marketing district. In allocating allowables to pools, the commission may consider, but is not bound by, nominations of purchasers to purchase from particular fields, pools, or portions thereof. The commission shall allocate the total allowable for the state in such manner as prevents undue discrimination between marketing districts, fields, pools, or portions thereof resulting from selective buying or nomination by purchasers.

Source: N.D. Century Code.

**38-08-06.1. NATURAL GAS WELL STATUS DETERMINATIONS AND FINDINGS.** Repealed.

Source: N.D. Century Code.

**38-08-06.2. DISCRIMINATION IN THE PROCESSING AND PURCHASING OF GAS PROHIBITED.** Gas produced in this state must be processed and purchased without discrimination between producers in the same reservoir, recognizing the right of the purchaser to establish reasonable quality standards for acceptance of gas, which must be applied without discrimination among producers. After notice and hearing, for good cause, the commission may relieve any person of the duty to process and purchase gas produced in this state without discrimination.

Source: N.D. Century Code.

**38-08-06.3. INFORMATION STATEMENT TO ACCOMPANY PAYMENT TO ROYALTY OWNER - PENALTY.** Any person who makes a payment to an owner of a royalty interest in land in this state for the purchase of oil or gas produced from that royalty interest shall provide with the payment to the royalty owner an information statement that will allow the royalty owner to clearly identify the amount of oil or gas sold and the amount and purpose of each deduction made from the gross amount due. The statement must be on forms approved by the industrial commission and contain the information that the commission prescribes by rule. A person who fails to comply with the requirements of this section is guilty of a class B misdemeanor.

Source: N.D. Century Code.

**38-08-06.4. FLARING OF GAS RESTRICTED - IMPOSITION OF TAX - PAYMENT OF ROYALTIES - INDUSTRIAL COMMISSION AUTHORITY.** As permitted under rules of the industrial commission, gas produced with crude oil from an oil well may be flared during a one-year period from the date of first production from the well, or until

June 30, 1986, for wells in production prior to July 1, 1985. Thereafter, flaring of gas from the well must cease and the well must either be capped or connected to a gas gathering line. For a well operated in violation of this section, the producer shall pay royalties to royalty owners upon the value of the flared gas and shall also pay gross production tax on the flared gas at the rate imposed under section 57-51-02.2. The industrial commission may enforce this section and, for each well operator found to be in violation of this section, may determine the value of flared gas for purposes of payment of royalties under this section and its determination is final. A producer may obtain an exemption from this section from the industrial commission upon application and a showing that connection of the well to a natural gas gathering line is economically infeasible at the time of the application or in the foreseeable future or that a market for the gas is not available.

Source: N.D. Century Code.

**38-08-07. COMMISSION SHALL SET SPACING UNITS.** The commission shall set spacing units as follows:

1. When necessary to prevent waste, to avoid the drilling of unnecessary wells, or to protect correlative rights, the commission shall establish spacing units for a pool. Spacing units when established must be of uniform size and shape for the entire pool, except that when found to be necessary for any of the purposes above mentioned, the commission is authorized to divide any pool into zones and establish spacing units for each zone, which units may differ in size and shape from those established in any other zone.
2. The size and shape of spacing units are to be such as will result in the efficient and economical development of the pool as a whole.
3. An order establishing spacing units for a pool must specify the size and shape of each unit and the location of the permitted well thereon in accordance with a reasonably uniform spacing plan. Upon application, if the commission finds that a well drilled at the prescribed location would not produce in paying quantities, that surface conditions would substantially add to the burden or hazard of drilling such well, or that the drilling of such well at a location other than the prescribed location is otherwise necessary either to protect correlative rights, to prevent waste, or to effect greater ultimate recovery of oil and gas, the commission is authorized to enter an order permitting the well to be drilled at a location other than that prescribed by such spacing order; however, the commission shall include in the order suitable provisions to prevent the production from the spacing unit of more than its just and equitable share of the oil and gas in the pool.
4. An order establishing units for a pool must cover all lands determined or believed to be underlaid by such pool, and may be modified by the commission from time to time to include additional areas determined to be underlaid by such pool. When found necessary for the prevention of waste, or to avoid the drilling of unnecessary wells, or to protect correlative rights, an order establishing spacing units in a pool may be modified by the commission to increase or decrease the size of spacing units in the pool or any zone thereof, or to permit the drilling of additional wells on a

reasonably uniform plan in the pool, or any zone thereof, or an additional well on any spacing unit thereof.

Source: N.D. Century Code.

**38-08-08. INTEGRATION OF FRACTIONAL TRACTS.**

1. When two or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of the spacing unit, then the owners and royalty owners thereof may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling, the commission upon the application of any interested person shall enter an order pooling all interests in the spacing unit for the development and operations thereof. Each such pooling order must be made after notice and hearing, and must be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive, without unnecessary expense, his just and equitable share. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order must be deemed, for all purposes, the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order must, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon. For the purposes of this section and section 38-08-10, any unleased mineral interest pooled by virtue of this section is entitled to a cost-free royalty interest equal to the acreage weighted average royalty interest of the leased tracts within the spacing unit, but in no event may the royalty interest of an unleased tract be less than a one-eighth interest. The remainder of the unleased interest must be treated as a lessee or cost-bearing interest. Any unleased mineral interest pooled prior to July 1, 1983, is entitled to the cost-free royalty interest and working interest as provided in this section from and after July 1, 1983.
2. Each such pooling order must make provision for the drilling and operation of a well on the spacing unit, and for the payment of the reasonable actual cost thereof by the owners of interests in the spacing unit, plus a reasonable charge for supervision. In the event of any dispute as to such costs the commission shall determine the proper costs. If one or more of the owners shall drill and operate, or pay the expenses of drilling and operating the well for the benefit of others, then, the owner or owners so drilling or operating shall, upon complying with the terms of section 38-08-10, have a lien on the share of production from the spacing unit accruing to the interest of each of the other owners for the payment of his proportionate share of such expenses. All the oil and gas subject to the lien must be marketed and sold and the proceeds applied in payment of the expenses secured by such lien as provided for in section 38-08-10.
3. In addition to any costs and charges recoverable under subsections 1 and 2, if a lessee owning an interest in a spacing unit elects not to participate in the risk and cost of drilling a well thereon, the owner paying for the nonparticipating lessee's share of the drilling and operation of a well may recover from the nonparticipating



lessee a risk penalty for the risk involved in drilling the well. The risk penalty is one hundred percent of the nonparticipating lessee's share of the reasonable actual costs of drilling and completing the well and may be recovered out of, and only out of, production from the pooled spacing unit, as provided by section 38-08-10, exclusive of any royalty or overriding royalty. No risk penalty may be assessed against an unleased mineral interest.

Source: N.D. Century Code.

**38-08-09. VOLUNTARY AGREEMENTS FOR UNIT OPERATION VALID.** An agreement for the unit or cooperative development and operation of a field or pool, in connection with the conduct of repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, or any other method of operation, including water floods, is authorized and may be performed and may not be held or construed to violate any of the statutes of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade, if the agreement is approved by the commission as being in the public interest, protective of correlative rights, and reasonably necessary to increase ultimate recovery or to prevent waste of oil or gas. Such agreements bind only the persons who execute them, and their heirs, successors, assigns, and legal representatives.

Source: N.D. Century Code.

**38-08-09.1. LEGISLATIVE FINDING.** The legislative assembly finds and determines that it is desirable and necessary, under the circumstances and for the purposes hereinafter set out, to authorize and provide for unitized management, operation, and further development of the oil and gas properties to which sections 38-08-09.1 through 38-08-09.16 are applicable, to the end that a greater ultimate recovery of oil and gas may be had therefrom, waste prevented, the drilling of unnecessary wells eliminated, and the correlative rights of the owners in a fuller and more beneficial enjoyment of the oil and gas rights be protected.

Source: N.D. Century Code.

**38-08-09.2. POWER AND AUTHORITY OF COMMISSION.** The commission is hereby vested with continuing jurisdiction, power and authority, including the right to describe and set forth in its orders all those things pertaining to the plan of unitization which are fair, reasonable, and equitable and which are necessary or proper to protect, safeguard, and adjust the respective rights and obligations of the several persons affected, and it is its duty to make and enforce such orders and do such things as may be necessary or proper to carry out and effectuate the purposes of sections 38-08-09.1 through 38-08-09.16.

Source: N.D. Century Code.

**38-08-09.3. MATTERS TO BE FOUND BY COMMISSION - REQUISITES OF PETITION.** If upon the filing of a petition therefor and after notice and hearing, all in the form and manner and in accordance with the procedure and requirements hereinafter provided, the commission shall find:

1. That the unitized management, operation, and further development of a common source of supply of oil and gas or portion thereof is reasonably necessary in order to effectively carry on pressure-maintenance or repressuring operations, cycling operations, water flooding operations, or any combination thereof, or any other form of joint effort calculated to substantially increase the ultimate recovery of oil and gas from the common source of supply;
2. That one or more of said unitized methods of operation as applied to such common source of supply or portion thereof are feasible, will prevent waste and will with reasonable probability result in the increased recovery of substantially more oil and gas from the common source of supply than would otherwise be recovered;
3. That the estimated additional cost, if any, of conducting such operations will not exceed the value of the additional oil and gas so recovered; and
4. That such unitization and adoption of one or more of such unitized methods of operation is for the common good and will result in the general advantage of the owners of the oil and gas rights within the common source of supply or portion thereof directly affected, it shall make a finding to that effect and make an order creating the unit and providing for the unitization and unitized operation of the common source of supply or portion thereof described in the order, all upon such terms and conditions, as may be shown by the evidence to be fair, reasonable, equitable, and which are necessary or proper to protect, safeguard, and adjust the respective rights and obligations of the several persons affected, including royalty owners, owners of overriding royalties, oil and gas payments, carried interests, mortgagees, lien claimants, and others, as well as the lessees. The petition must set forth a description of the proposed unit area with a map or plat thereof attached, must allege the existence of the facts required to be found by the commission as hereinabove provided and must have attached thereto a proposed plan of unitization applicable to such proposed unit area and which the petitioner or petitioners consider to be fair, reasonable, and equitable.

Source: N.D. Century Code.

**38-08-09.4. ORDER - UNITS AND UNIT AREAS - PLAN OF UNITIZATION.** The order of the commission must define the area of the common source of supply or portion thereof to be included within the unit area and prescribe with reasonable detail the plan of unitization applicable thereto.

Each unit and unit area must be limited to all or a portion of a single common source of supply.

A unit may be created to embrace less than the whole of a common source of supply only where it is shown by the evidence that the area to be so included within the unit area is of such size and shape as may be reasonably required for the successful and efficient conduct of the

unitized method or methods of operation for which the unit is created, and that the conduct thereof will have no material adverse effect upon the remainder of such common source of supply.

The plan of unitization for each such unit and unit area must be one suited to the needs and requirements of the particular unit dependent upon the facts and conditions found to exist with respect thereto. In addition to such other terms, provisions, conditions, and requirements found by the commission to be reasonably necessary or proper to effectuate or accomplish the purposes of sections 38-08-09.1 through 38-08-09.16, and subject to the further requirements hereof, each such plan of unitization must contain fair, reasonable, and equitable provisions for:

1. The efficient unitized management or control of the further development and operation of the unit area for the recovery of oil and gas from the common source of supply affected. Under such a plan, the actual operations within the unit area may be carried on in whole or in part by the unit itself, or by one or more of the lessees within the unit area as unit operator subject to the supervision and direction of the unit, dependent upon what is most beneficial or expedient. The designation of the unit operator must be by a vote of the working interest owners in the unit in a manner provided by the plan of unitization and not by the commission, and the unit operating agreement must contain a provision that the owners of a simple majority of the working interest in the unit area may vote to change the unit operator.
2. The division of interest or formula for the apportionment and allocation of the unit production, among and to the several separately owned tracts within the unit area such as will reasonably permit persons otherwise entitled to share in or benefit by the production from such separately owned tracts to produce or receive, in lieu thereof, their fair, equitable, and reasonable share of the unit production or other benefits thereof. A separately owned tract's fair, equitable, and reasonable share of the unit production must be measured by the value of each such tract for oil and gas purposes and its contributing value to the unit in relation to like values of other tracts in the unit, taking into account acreage [hectarage], the quantity of oil and gas recoverable therefrom, location on structure, its probable productivity of oil and gas in the absence of unit operations, the burden of operation to which the tract will or is likely to be subjected, or so many of said factors, or such other pertinent engineering, geological, or operating factors, as may be reasonably susceptible of determination. Unit production as that term is used in sections 38-08-09.1 through 38-08-09.16 means and includes all oil and gas produced from a unit area from and after the effective date of the order of the commission creating the unit regardless of the well or tract within the unit area from which the same is produced.
3. The manner in which the unit and the further development and operation of the unit area shall or may be financed and the basis, terms, and conditions on which the cost and expense thereof shall be apportioned among and assessed against the tracts and interests made chargeable therewith, including a detailed accounting procedure governing all charges and credits incident to such operations. Upon and subject to such terms and conditions as to time and legal rate of interest as may be fair to all concerned, reasonable provision must be made in the plan of unitization for carrying or otherwise financing lessees who are unable to promptly meet their financial obligations in connection with the unit.
4. The procedure and basis upon which wells, equipment, and other properties of the several lessees within the unit area are to be taken over and used for unit operations,

including the method of arriving at the compensation therefor, or of otherwise proportionately equalizing or adjusting the investment of the several lessees in the project as of the effective date of unit operation.

5. The creation of an operating committee to have general overall management and control of the unit and the conduct of its business and affairs and the operations carried on by it, together with the creation or designation of such other subcommittees, boards, or officers to function under authority of the operating committee as may be necessary, proper, or convenient in the efficient management of the unit, defining the powers and duties of all such committees, boards, or officers and prescribing their tenure and time and method for their selection.
6. The time when the plan of unitization shall become and be effective.
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, 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.

Source: N.D. Century Code.

**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 percent of the costs of the unit operation and by the owners of at least sixty 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. Where 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.

Source: N.D. Century Code.

**38-08-09.6. UNLAWFUL OPERATION.** From and after the effective date of an order of the commission creating a unit and prescribing the plan of unitization applicable thereto, the operation of any well producing from the common source of supply or portion thereof within the unit area defined in the order by persons other than the unit or persons acting under its authority or except in the manner and to the extent provided in such plan of unitization is unlawful and is hereby prohibited.

Source: N.D. Century Code.

**38-08-09.7. STATUS AND POWERS OF UNIT - LIABILITY FOR EXPENSES - LIENS.** Each unit created under the provisions of sections 38-08-09.1 through 38-08-09.16 is a body politic and corporate, capable of suing, being sued, and contracting as such in its own name. Each such unit is authorized on behalf and for the account of all the owners of the oil and gas rights within the unit area, without profit to the unit, to supervise, manage, and conduct the further development and operations for the production of oil and gas from the unit area, pursuant to the powers conferred, and subject to the limitations imposed by the provisions of sections 38-08-09.1 through 38-08-09.16 and by the plan of unitization.

The obligation or liability of the lessee or other owners of the oil and gas rights in the several separately owned tracts for the payment of unit expense is at all times several and not joint or collective and in no event may a lessee or other owner of the oil and gas rights in the separately owned tract be chargeable with, obligated or liable, directly or indirectly, for more than the amount apportioned, assessed, or otherwise charged to his interest in such separately owned tract pursuant to the plan of unitization and then only to the extent of the lien provided for within sections 38-08-09.1 through 38-08-09.16.

Any nonsigning working interest owner may withdraw from the unit to which his interest is committed by transferring, without warranty of title, either express or implied, to the unit operator on the behalf of the other working interest owners, all of his working interest in all unit equipment and in all wells used in unit operations. The instrument of transfer must be delivered to the unit operator. Such transfer relieves the withdrawing working interest owner from any liability for unit operations except any incurred pursuant to sections 38-08-09.1 through 38-08-09.16. The interest so transferred is owned by the other working interest owners in

proportion to their respective participation in the unit. The unit operator, on the behalf of the other working interest owners, in proportion to their respective interests so acquired, shall pay the transferor for his interest in unit equipment and wells the net salvage value thereof as determined by agreement between the transferor and the unit operator. In the event such net salvage value is not agreed upon within sixty days after such transfer, then either party may request a hearing of the matter before the commission, and, after notice and hearing, the commission shall determine such value.

Subject to such reasonable limitations as may be set out in the plan of unitization, the unit has a first and prior lien upon the leasehold production (exclusive of such interests which are free of costs, such as royalties, overriding royalties, and production payments) in and to each separately owned tract, the interest of the owners thereof in and to the unit production in the possession of the unit, to secure the payment of the amount of the unit expense charged to and assessed against such separately owned tract. The interest of the lessee or other persons who by lease, contract, or otherwise are obligated or responsible for the cost and expense of developing and operating a separately owned tract for oil and gas in the absence of unitization, must, however, be primarily responsible for and charged with any assessment for unit expense made against such tract. Any landowner royalty or any overriding royalty, or any production payment which is a part of the unit production allocated to each separately owned tract must in all events be regarded as royalty to be distributed to and among, or the proceeds thereof paid to the royalty owners free and clear of all unit expense and free of any lien thereof.

Source: N.D. Century Code.

**38-08-09.8. MODIFICATION OF PROPERTY RIGHTS, LEASES, AND CONTRACTS - TITLE TO PROPERTY - DISTRIBUTION OF PROCEEDS - EFFECT OF OPERATIONS.** Property rights, leases, contracts, and all other rights and obligations must be regarded as amended and modified to the extent necessary to conform to the provisions and requirements of sections 38-08-09.1 through 38-08-09.16 and to any valid and applicable plan of unitization or order of the commission made and adopted pursuant hereto, but otherwise to remain in full force and effect.

Nothing contained in sections 38-08-09.1 through 38-08-09.16 may be construed to require a transfer to or vesting in the unit of title to the separately owned tracts or leases thereon within the unit area, other than the right to use and operate the same to the extent set out in the plan of unitization; nor may the unit be regarded as owning the unit production. The unit production and the proceeds from the sale thereof are owned by the several persons to whom the same is allocated under the plan of unitization. All property, whether real or personal, which the unit may in any way acquire, hold, or possess may not be acquired, held, or possessed by the unit for its own account but must be so acquired, held, and possessed by the unit for the account and as agent of the several lessees and is the property of such lessees as their interests may appear under the plan of unitization, subject, however, to the right of the unit to the possession, management, use, or disposal of the same in the proper conduct of its affairs.

The amount of the unit production allocated to each separately owned tract within the unit, and only that amount, regardless of the well or wells in the unit area from which it may be produced, and regardless of whether it be more or less than the amount of the production from the well or wells, if any, on any such separately owned tract, must for all intents, uses, and

purposes be regarded and considered as production from such separately owned tract, and, except as may be otherwise authorized in sections 38-08-09.1 through 38-08-09.16, or in the plan of unitization approved by the commission, must be distributed among or the proceeds thereof paid to the several persons entitled to share in the production from such separately owned tract in the same manner, in the same proportions, and upon the same conditions that they would have participated and shared in the production or proceeds thereof from such separately owned tract had not said unit been organized, and with the same legal force and effect. If adequate provisions are made for the receipt thereof, the share of the unit production allocated to each separately owned tract must be delivered in kind to the persons entitled thereto by virtue of ownership of oil and gas rights therein or by purchase from such owners subject to the rights of the unit to withhold and sell the same in payment of unit expense pursuant to the plan of unitization, and subject further to the call of the unit on such proportions of the gas for operating purposes as may be provided in the plan of unitization.

Operations carried on under and in accordance with the plan of unitization must be regarded and considered as a fulfillment of and compliance with all of the provisions, covenants, and conditions, express or implied, of the several oil and gas mining leases upon lands included within the unit area, or other contracts pertaining to the development thereof, insofar as said leases or other contracts may relate to the common source of supply or portion thereof included in the unit area. Wells drilled or operated on any part of the unit area no matter where located must for all purposes be regarded as wells drilled on each separately owned tract within such unit area.

Nothing herein or in any plan of unitization may be construed as increasing or decreasing the express or implied covenants of a lease in respect to a unit source of supply or lands not included within the unit area of a unit. However, when an oil and gas lease covers and affects lands partially within and partially without the unit area, unit operations and unit production allocated to the lease, as provided in this section, may not be deemed operations on or production from the lease as to the lands covered by the lease lying outside the unit area after two years from the effective date of the order of the commission creating and approving the unit or the expiration of the primary term of the lease, whichever is the later date. After the later date, the lease as to lands outside the unit area may be maintained in force and effect only in accordance with the terms and provisions contained in the lease.

Source: N.D. Century Code.

**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 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 such 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 such 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 such 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 such notice must be filed with the commission. Said 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 seventy percent of all royalty interests and working interests in the existing and proposed areas.

Source: N.D. Century Code.

**38-08-09.10. REASONABLENESS OF PLAN.** A plan of unitization may not be considered fair and reasonable if it contains a provision for operating charges which include any part of district or central office expense other than reasonable overhead charges.

Source: N.D. Century Code.

**38-08-09.11. PARTICIPATING BY PUBLIC LANDS.** The proper board or officer of the state having the control and management of state land, and the proper board or officer of any political, municipal, or other subdivision or agency of the state, are hereby authorized and have the power on behalf of the state or of such political, municipal, or other subdivision or agency thereof, with respect to land or oil and gas rights, subject to the control and management of such respective body, board, or officer, to consent to or participate in any plan or program of unitization adopted pursuant to sections 38-08-09.1 through 38-08-09.16.

Source: N.D. Century Code.

**38-08-09.12. RECEIPTS AS INCOME.** Neither the unit production, nor proceeds from the sale thereof, nor other receipts may be treated, regarded, or taxed as income or profits of the unit; but instead, all such receipts are the income of the several persons to whom or to whose credit the same are payable under the plan of unitization. To the extent the unit may receive or disburse said receipts it shall only do so as a common administrative agent of the persons to whom the same are payable.

Source: N.D. Century Code.



**38-08-09.13. DEFINITIONS.** For the purposes of sections 38-08-09.1 through 38-08-09.16, unless the context otherwise requires:

1. "Lessee" refers not only to lessees under oil and gas leases but also includes owners of unleased mineral rights having the right to develop the same for oil and gas to the extent of a seven-eighths interest.
2. "Oil and gas" refers not only to oil and gas as such in combination one with the other, but shall have general reference to oil, gas, casinghead gas, casinghead gasoline, gas-distillate, or other hydrocarbons, or any combination or combinations thereof, which may be found in or produced from a common source of supply of oil, oil and gas or gas-distillate.
3. "Person" means and includes any individual, corporation, limited liability company, partnership, common-law or statutory trust, association of any kind, the state of North Dakota, or any subdivision or agency thereof acting in a proprietary capacity, guardian, executor, administrator, fiduciary of any kind, or any other entity or being capable of owning an interest in and to a unit source of supply of oil and gas.
4. "Unit expense" includes and means any and all cost and expense in the conduct and management of its affairs or the operations carried on by it.
5. Any reference to a separately owned tract, although in general terms broad enough to include the surface and all underlying common sources of supply of oil and gas, shall have reference thereto only in relation to the unit source of supply or portion thereof embraced within the unit area of a particular unit.

Source: N.D. Century Code.

**38-08-09.14. SEVERABILITY OF PROVISIONS.** Repealed by S.L. 1983, ch. 82, § 154.

**38-08-09.15. AGREEMENT NOT VIOLATIVE OF LAWS GOVERNING MONOPOLIES OR RESTRAINT OF TRADE.** No agreement between or among lessees or other owners of oil and gas rights in oil and gas properties, entered into pursuant hereto or with a view or for the purpose of bringing about the unitized development or operation of such properties, may be held to violate any of the statutes of this state prohibiting monopolies or acts, arrangements, agreements, contracts, combinations, or conspiracies in restraint of trade or commerce.

Source: N.D. Century Code.

**38-08-09.16. APPEALS.** Any person adversely affected by an order of the commission made under sections 38-08-09.1 through 38-08-09.16 may appeal from such order to the district court of the county in which the land or a part thereof involved in the unit lies, in the manner provided in section 38-08-14.

Source: N.D. Century Code.

**38-08-09.17. UNIT OF MORE THAN ONE POOL - UNIT SOURCE OF SUPPLY.**

The commission upon its own motion may, and upon petition of any interested person shall, after notice therefor, hold a hearing to consider the need for the operation as a unit of two or more pools or parts thereof separated vertically in one field, and has the power to create such a unit and provide for the unitization and unitized operation of the unit source of supply. "Unit source of supply" means those pools or parts thereof to be produced by such unit operation as designated by order of the industrial commission. The petition, the hearing, the commission's findings and order and all other matters must be in the form and manner and in accordance with the procedure and requirements hereinabove set forth in sections 38-08-09.1 through 38-08-09.16; provided, however, whenever and wherever the words "common source of supply" appear in said sections the words "unit source of supply" must be substituted in lieu thereof and all other provisions of the sections shall otherwise apply.

Source: N.D. Century Code.

**38-08-10. DEVELOPMENT AND OPERATING COSTS OF INTEGRATED FRACTIONAL TRACTS.** A person to whom another is indebted for expenses incurred in drilling and operating a well on a drilling unit required to be formed as provided for in section 38-08-08, may, in order to secure payment of the amount due, fix a lien upon the interest of the debtor in the production from the drilling unit or the unit area, as the case may be, by filing for record, with the register of deeds of the county where the property involved, or any part thereof, is located, an affidavit setting forth the amount due and the interest of the debtor in such production. The person to whom the amount is payable may, at the expense of the debtor, store all or any part of the production upon which the lien exists until the total amount due, including reasonable storage charges, is paid or the commodity is sold at foreclosure sale and delivery is made to the purchaser. The lien may be foreclosed as provided for with respect to foreclosure of a lien on chattels.

Source: N.D. Century Code.

**38-08-11. RULES COVERING PRACTICE BEFORE COMMISSION.**

1. The commission may adopt rules governing the practice and procedure before the commission, which rules must be adopted pursuant to the provisions of chapter 28-32.
2. When an emergency requiring immediate action is found to exist, the commission may issue an emergency order without notice or hearing, reciting the existence of

the emergency and requiring that necessary action be taken to meet the emergency, which order is effective upon issuance. No emergency order may remain in effect for more than forty days.

3. Any notice required by this chapter must be given at the election of the commission either in accordance with chapter 28-32 or by one publication in a newspaper of general circulation in the state capital and in a newspaper of general circulation in the county where the land affected, or some part thereof, is situated. The notice must issue in the name of the state, must be signed by the chairman or secretary of the commission, and must specify the style and number of the proceeding, the time and place of the hearing, and must briefly state the purpose of the proceeding. Should the commission elect to give notice by personal service, such service may be made by any officer authorized to serve process, or by any agent of the commission, in the same manner as is provided by law for the service of summons in civil actions in the courts of the state. Proof of the service by such agent must be by the affidavit of the person making personal service. In proceedings that do not involve a complaint and a specifically named respondent, including agency hearings on applications seeking some right or authorization from the commission, the notice of hearing must be given at least fifteen days before the hearing, except in cases of emergency.
4. The commission may act upon its own motion, or upon the petition of any interested person. On the filing of a petition concerning any matter within the jurisdiction of the commission, the commission must fix a date for a hearing and give notice. Upon the filing of a petition of any interested party, the commission must enter its order within thirty days after a hearing. A copy of any order of the commission must be mailed to all the persons filing written appearances at the hearing.

Source: N.D. Century Code.

**38-08-12. COMMISSION HAS POWER TO SUMMON WITNESSES, ADMINISTER OATHS, AND TO REQUIRE PRODUCTION OF RECORDS.**

1. The commission has the power to summon witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by it. No person may be excused from attending and testifying, or from producing books, papers, and records before the commission or a court, or from obedience to the subpoena of the commission or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; provided, that nothing herein contained may be construed as requiring any person to produce any books, papers, or records, or to testify in response to any inquiry not pertinent to some question lawfully before such commission or court for determination. No natural person may be subjected to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which, in spite of his objection, he may be required to testify or produce evidence, documentary or otherwise, before the commission or court, or in

obedience to its subpoena; provided, that no person testifying may be exempted from prosecution and punishment for perjury committed in so testifying.

2. In case of failure or refusal on the part of any person to comply with the subpoena issued by the commission, or in case of the refusal of any witness to testify as to any matter regarding which he may be interrogated, any court in the state, upon the application of the commission, may in termtime or vacation issue an attachment for such person and compel him to comply with such subpoena, and to attend before the commission and produce such records, books, and documents for examination, and to give his testimony. Such court has the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

Source: N.D. Century Code.

**38-08-13. PERSON ADVERSELY AFFECTED MAY APPLY FOR RECONSIDERATION.** Any person adversely affected by any order of the commission may file in writing a petition for reconsideration in accordance with the procedures of section 28-32-40. The commission shall grant or deny any such petition in whole or in part in accordance with the provisions of section 28-32-40 or rules adopted pursuant to it.

Source: N.D. Century Code.

**38-08-14. PERSON ADVERSELY AFFECTED MAY APPEAL TO DISTRICT COURT.**

1. Any person adversely affected by an order entered by the commission may appeal, pursuant to chapter 28-32, from the order to the district court for the county in which the oil or gas well or the affected property is located. However, if the oil or gas well or the property affected by the order is located in or underlies more than one county, any appeal may be taken to the district court for any county in or under which any part of the affected property is located.
2. At the time of filing of the notice of appeal, if an application for the suspension of the order is filed, the commission may enter an order suspending the order complained of and fixing the amount of a supersedeas bond. Within ten days after the entry of an order by the commission which suspends the order complained of and fixes the amount of the bond, the appellant shall file with the commission a supersedeas bond in the required amount and with proper surety. Upon approval of the bond, the order of the commission suspending the order complained of is effective until its final disposition upon appeal. The bond must run in favor of the commission for the use and benefit of any person who may suffer damage by reason of the suspension of the order in the event the same is affirmed by the district court. If the order of the commission is not superseded, it must continue in force and effect as if no appeal was pending, unless a stay is ordered by the court to which the appeal is taken under section 28-32-48.

3. Orders of the commission must be sustained by the district court if the commission has regularly pursued its authority and its findings and conclusions are sustained by the law and by substantial and credible evidence.

Source: N.D. Century Code.

**38-08-15. ACQUISITION AND HANDLING ILLEGAL OIL AND GAS PROHIBITED - SEIZURE OF ILLEGAL OIL AND GAS AND SALE THEREOF.**

1. The sale, purchase, acquisition, transportation, refining, processing, or handling of illegal oil, illegal gas, or illegal product is hereby prohibited. However, no penalty by way of fine may be imposed upon a person who sells, purchases, acquires, transports, refines, processes, or handles illegal oil, illegal gas, or illegal product unless:
  - a. Such person knows, or is put on notice, of facts indicating that illegal oil, illegal gas, or illegal product is involved; or
  - b. Such person fails to obtain a certificate of clearance with respect to such oil, gas, or product where prescribed by order of the commission, or fails to follow any other method prescribed by an order of the commission for the identification of such oil, gas, or product.
2. Illegal oil, illegal gas, and illegal product are declared to be contraband and are subject to seizure and sale as herein provided; seizure and sale to be in addition to any and all other remedies and penalties provided in this chapter for violations relating to illegal oil, illegal gas, or illegal product. Whenever the commission believes that any oil, gas, or product is illegal, the commission acting by the attorney general, shall bring a civil action in rem in the district court of the county where such oil, gas, or product is found, to seize and sell the same, or the commission may include such an action in rem for the seizure and sale of illegal oil, illegal gas, or illegal product in any suit brought for an injunction or penalty involving illegal oil, illegal gas, or illegal product. Any person claiming an interest in oil, gas, or product affected by any such action in rem has the right to intervene as an interested party in such action.
3. Actions for the seizure and sale of illegal oil, illegal gas, or illegal product must be strictly in rem, and must proceed in the name of the state as plaintiff against the illegal oil, illegal gas, or illegal products as defendant. No bond or similar undertaking may be required of the plaintiff. Upon the filing of the petition for seizure and sale, the attorney general shall issue a summons, with a copy of the complaint attached thereto, which must be served in the manner provided for service in civil actions, upon any and all persons having or claiming any interest in the illegal oil, illegal gas, or illegal product described in the petition. Service must be completed by the filing of an affidavit by the person making the service, stating the time and manner of making such service. Any person who fails to appear and answer within the period of thirty days is forever barred by the judgment based on such service. The posting of copies of the summons and petition as above provided operates to place the state in constructive possession of the oil, gas, or product described in the petition. In addition, if the court, on a properly verified petition, or

affidavits, or oral testimony, finds that grounds for seizure and for sale exist, the court shall issue an immediate order of seizure, describing the oil, gas, or product to be seized and directing the sheriff of the county to take such oil, gas, or product into his custody, actual or constructive, and to hold the same subject to the further order of the court. The court, in such order of seizure, may direct the sheriff to deliver the oil, gas, or product seized by him under the order to an agent appointed by the court, as the agent of the court; such agent to give bond in an amount and with such surety as the court may direct, conditioned upon his compliance with the orders of the court concerning the custody and disposition of such oil, gas, or product.

4. Any person having an interest in oil, gas, or product described in an order of seizure and contesting the right of the state to the seizure and sale thereof may, prior to the sale thereof as herein provided, obtain the release thereof, upon furnishing bond to the sheriff approved by the court, in an amount equal to one hundred fifty percent of the market value of the oil, gas, or product to be released, and conditioned as the court may direct upon redelivery to the sheriff of such product released or upon payment to the sheriff of the market value thereof as the court may direct, if and when ordered by the court, and upon full compliance with the further orders of the court.
5. If the court, after a hearing upon a petition for the seizure and sale of oil, gas, or product, finds that such oil, gas, or product is contraband, the court shall order the sale thereof by the sheriff in the same manner and upon the same notice of sale as provided by law for the sale of personal property on execution of judgment entered in a civil action, except that the court may order that the illegal oil, illegal gas, or illegal product be sold in specified lots or portions and at specified intervals. Upon such sale, title to the oil, gas, or product sold vests in the purchaser free of the claims of any and all persons having any title thereto or interest therein at or prior to the seizure thereof, and the same is legal oil, legal gas, or legal product, as the case may be, in the hands of the purchaser.
6. All proceeds derived from the sale of illegal oil, illegal gas, or illegal product, as above provided, after payment of costs of suit and expenses incident to the sale and all amounts paid as penalties provided for by this chapter must be paid to the state treasurer and credited to the general fund.

Source: N.D. Century Code.

### **38-08-16. CIVIL AND CRIMINAL PENALTIES.**

1. Any person who violates any provision of this chapter, or any rule, regulation, or order of the commission is subject to a civil penalty to be imposed by the commission not to exceed twelve thousand five hundred dollars for each offense, and each day's violation is a separate offense, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter. Any such civil penalty may be compromised by the commission. The penalties provided in this section, if not paid, are recoverable by suit filed by the attorney general in the name and on behalf of the commission, in the district court of the county in which the defendant resides, or in which any defendant resides, if there be more than one

defendant, or in the district court of any county in which the violation occurred. The payment of the penalty may not operate to legalize any illegal oil, illegal gas, or illegal product involved in the violation for which the penalty is imposed, or to relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of the violation.

2. Notwithstanding any of the other provisions of this section, a person who willfully violates any provision of this chapter, or any rule or order of the commission that pertains to the prevention or control of pollution or waste is guilty of a class C felony unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter. The criminal penalty provided for in this subsection may only be imposed by a court of competent jurisdiction.

Source: N.D. Century Code.

**38-08-17. ACTION TO RESTRAIN VIOLATION OR THREATENED VIOLATION.**

1. Whenever it appears that any person is violating or threatening to violate any provision of this chapter, or any rule, regulation, or order of the commission, the commission shall bring suit against such person in the district court of any county where the violation occurs or is threatened, to restrain such person from continuing such violation or from carrying out the threat of violation. In any such suit, the court has jurisdiction to grant to the commission, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders, preliminary injunctions, temporary, preliminary or final orders restraining the movement or disposition of any illegal oil, illegal gas, or illegal product, any of which the court may order to be impounded or placed in the custody of an agent appointed by the court.
2. If the commission fails to bring suit to enjoin a violation or threatened violation of any provision of this chapter, or any rule, regulation, or order of the commission, within ten days after receipt of written request to do so by any person who is or will be adversely affected by such violation, the person making such request may bring suit in his own behalf to restrain such violation or threatened violation in any court in which the commission might have brought suit. The commission must be made a party defendant in such suit in addition to the person violating or threatening to violate a provision of this chapter, or a rule, regulation, or order of the commission, and the action must proceed and injunctive relief may be granted to the commission without bond in the same manner as if suit had been brought by the commission.

Source: N.D. Century Code.

**38-08-18. EXISTING REGULATIONS STILL IN FORCE.** Omitted.

Note.

Not repealed but omitted as a statute not of a general and permanent nature.

**38-08-19. COMMON PURCHASERS - DISCRIMINATION IN PURCHASING PROHIBITED.**

1. Every person, association of persons, corporation, or limited liability company now engaged or hereafter engaging in the business of purchasing crude petroleum in this state shall be a common purchaser thereof.
2. Every common purchaser of crude petroleum shall, without discrimination in favor of one producer or royalty owner as against another in the same marketing district as determined by the commission, purchase all oil tendered to it at the wellhead or at its receiving terminal, which has been lawfully produced, provided that no common purchaser may be required to purchase crude petroleum of inferior quality or grade, or which is unsuitable for its operations.
3. Whenever a common purchaser is unable to purchase all of the oil tendered to it hereunder, it shall purchase ratably from each marketing district, field, pool, or well, with respect to which such tenders are made. As between wells, purchases shall be considered ratable only if such purchases are made in proportion to the allowables which are or would be assigned to such wells under existing commission rules and regulations, and, as between marketing districts or fields or pools, purchases may be considered ratable if such purchases are made in proportion to the sum of the allowables which are or would be assigned to all wells from which tenders are made in each such marketing district or field or pool.
4. Every common purchaser of crude petroleum is hereby expressly prohibited from discriminating in favor of its own production or that of an affiliate as against that of others, and the oil produced by such common purchaser or by an affiliate of such common purchaser must be treated as that of any other producer for the purposes of ratable taking.
5. It is unlawful for any common purchaser to discriminate between oil transported from the wellhead to its receiving terminal in favor of one carrier of crude oil as against another, and nothing herein may be construed to prevent any person, association of persons, corporation, or limited liability company from transporting crude oil from wellhead to receiving terminal of said common purchaser from properties in which such person, association of persons, corporation, or limited liability company may own an interest, and such person, association of persons, corporation, or limited liability company may not be deemed to be in the business of purchasing, or of purchasing and selling crude petroleum within the meaning of this section. Nothing herein may be construed to prohibit any common purchaser from requiring that proper and reasonable facilities be erected and maintained at its receiving terminal by any person, association of persons, corporation, or limited liability company transporting crude oil to such terminal, requiring that a surety bond be posted indemnifying said common purchaser from liability for transporter's failure to properly account to the owners of crude oil so transported, or posting a just and reasonable handling charge for accepting delivery at its receiving terminal.
6. The provisions of this section cover the purchase, or purchase and sale of crude petroleum, and that gathering, handling, marketing, and all other charges assessed by a common purchaser against crude oil produced within this state must be just and reasonable. The commission, after notice and hearing as provided in section



38-08-11, may determine the justness and reasonableness of charges on its own motion or upon motion of any interested person.

Source: N.D. Century Code.

**38-08-20. COMMINGLING OF PRODUCTION - CENTRAL PRODUCTION FACILITY - METERING OF PRODUCTION - TESTING OF METERS.** A producer may not commingle production from two or more oil or gas wells with diverse ownership in a storage facility without prior approval of the commission after notice and opportunity for hearing. If the commingling of production is for the express purpose of separating, metering, holding, and marketing of production, the owner of the wells shall apply to the commission for approval of the proposed commingling of production at a storage facility. If wells producing into a centralized storage facility have diverse ownership, the production from each well must be measured by meters approved and tested by or under the direction of the commission or production must be measured by some other method the commission has approved after notice and opportunity for hearing. If wells producing into a centralized storage facility have common ownership, including the common ownership of the working interest, the common ownership of the royalty ownership, and the common ownership of any overriding royalty owners, the production from each well need not be measured on meters approved by the commission if the owner of the wells demonstrates to the commission that the production from each well can be accurately determined at reasonable intervals by other means.

Source: N.D. Century Code.

**38-08-20.1 TESTING UPON REQUEST OF A ROYALTY OWNER.** Upon request by a royalty owner to test an oil and gas meter or measuring device, the commission shall test the meter or measuring device or contract for the testing by a qualified meter tester who is independent of any operator or purchaser of production from the metered well.

Source: N.D. Century Code.

**38-08-21. REGULATION OF CARBON DIOXIDE AND NITROGEN GAS.** The commission is vested with the authority and duty to regulate the exploration, development, and production of carbon dioxide, coal bed methane gas, helium gas, and nitrogen gas within the state, in the same manner, insofar as is practicable, as it regulates oil or gas as defined in this chapter.

Source: N.D. Century Code.

**38-08-22. REGULATION OF WELDERS BY OIL AND GAS DIVISION OF INDUSTRIAL COMMISSION - CONTINUING APPROPRIATION.** Repealed by S.L. 1995, ch. 358, § 1.

**38-08-23. PLATS.** Any person reclaiming a reserve pit after the completion of oil and gas drilling operations shall record an accurate plat certified by a registered surveyor showing the location of the well and notice that an abandoned reserve pit may be on the location within six months of the completion of the reclamation with the register of deeds of the county in which the reserve pit is located. A plat filed for record in accordance with this section may be recorded without acknowledgement or further proof as required by chapter 47-19 and without the auditor's certificate referred to in section 11-18-02.

Source: N.D. Century Code.

**GEOPHYSICAL EXPLORATION REQUIREMENTS  
CHAPTER 38-08.1**

**38-08.1-01. DEFINITIONS.** As used in this chapter, unless the context requires otherwise:

1. "Commission" means the industrial commission.
2. "Geophysical exploration" means any method of obtaining petroleum-related geophysical surveys.
3. "Person" means and includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof.

Source: N.D. Century Code.

**38-08.1-02. ENFORCEMENT BY COMMISSION - PERSONS REQUIRED TO COMPLY WITH CHAPTER.** Notwithstanding any other provision of this chapter, the commission is the primary enforcement agency governing geophysical exploration in this state. Any person in this state engaged in geophysical exploration or engaged as a subcontractor of a person engaged in geophysical exploration shall comply with this chapter; provided, however, that compliance with this chapter by a crew or its employer constitutes compliance herewith by that person who has engaged the service of the crew, or its employer, as an independent contractor.

Source: N.D. Century Code.

**38-08.1-03. DEEMED DOING BUSINESS WITHIN STATE - RESIDENT AGENT.** A person must be deemed doing business within this state when engaged in geophysical exploration within the boundaries of this state, and shall, if not already qualified to do business within the state under chapter 10-19.1, prior to such exploration, file with the secretary of state an authorization designating an agent for the service of process.

Source: N.D. Century Code.

**38-08.1-03.1. SURETY BOND - CERTIFICATE - RELEASE.**

1. A geophysical exploration contractor desiring to engage in geophysical exploration in this state shall file with the commission a good and sufficient surety bond in the amount of fifty thousand dollars if the contractor intends to conduct shot hole operations or in the amount of twenty-five thousand dollars if the contractor intends to use any other method of geophysical exploration. Each subcontractor engaged by the geophysical exploration contractor for the drilling or plugging of seismic shot

holes must file with the commission a good and sufficient surety bond in the amount of ten thousand dollars. The bond must be in a form prescribed by the commission and must indemnify all owners of property within the state, including the state and its political subdivisions, against physical damages to property which may result from geophysical exploration and the plugging of drill holes. The bond must cover all geophysical exploration and plugging operations conducted within one year of the date the bond is issued and must be automatically renewed unless the commission and the person covered by the bond receive notice sixty days before any anniversary date of the surety's intent not to renew the bond. If the surety does not renew the geophysical exploration contractor's bond, the surety's liability under the bond ceases six years from the date that geophysical exploration or reclamation covered by the bond was last conducted in the state. If the surety does not renew the drilling or plugging bond, the surety's liability under the bond ceases two years from the date the drilling and plugging covered by the bond was last conducted in this state. A person required to post a bond under this subsection may post cash or a certificate of deposit in lieu of the bond under rules adopted by the commission.

2. The aggregate liability of the surety on the bond may in no event exceed the amount of the bond.
3. Upon filing the bond required by this section and presenting a certificate of authority to transact business in this state issued under section 10-19.1-136, a certificate of incorporation issued under chapter 10-19.1, or some other certificate issued by the secretary of state showing the name of the person designated as resident agent for service of process, the commission shall issue to the person desiring to engage in geophysical exploration or plugging operations or any subcontractor of that person a certificate showing that the bond has been filed and showing the name and address of the surety company and the name of the person designated resident agent for service of process.
4. The proceeds of a surety bond become the property of the commission or the cash or certificate of deposit posted in lieu of a surety bond may not be returned to that person if the principal or person posting the bond, cash, or certificate of deposit fails to comply with this chapter and rules adopted by the commission under this chapter. This must be determined by the commission after notice and hearing in accordance with rules adopted by the commission. Notice of the hearing must be given to the principal and surety on the bond or to the person posting the cash or certificate of deposit by mailing a copy of the notice of hearing and a copy of a complaint, stating the grounds for forfeiture to them, filed by the commission. This must be done by certified mail, return receipt requested, and addressed to their last known address listed with the commission. If the principal or surety or person posting the cash or certificate of deposit has a defense to, or otherwise wishes to contest the complaint of the commission, that person must file a written statement or answer setting forth the defense with the commission at least three business days before the commission hearing. Any defense or reason for contesting the complaint is waived if that person fails to do so. The commission may treat the failure to file a defense or reason to contest the complaint or the failure to appear at the hearing as default by the party. If the commission determines the principal on the bond or the person posting the cash or certificate of deposit as security has complied with this chapter and rules

adopted by the commission under this chapter, including the proper plugging of wells and seismic holes and reclamation of the surrounding affected area, with respect to all operations secured by the bond, the commission shall release the obligation of the bond or return the cash or certificate of deposit upon its next anniversary date.

Source: N.D. Century Code.

**38-08.1-04. APPLICATION FOR PERMIT TO ENGAGE IN GEOPHYSICAL EXPLORATION.** Any person desiring to engage in geophysical exploration before actually engaging in the exploration, shall file an application for a permit to engage in geophysical exploration with the commission. The application for a permit for geophysical exploration must include the following:

1. The name, address, and telephone number of the person intending to engage in geophysical exploration or plugging operations and the name and telephone number of any local representative who may be contacted by the commission concerning geophysical exploration activities.
2. The name, address, and telephone number of any subcontractors, including drilling and plugging subcontractors, to be employed by the person intending to conduct geophysical exploration or plugging operations.
3. The name and address of the resident agent for service of process of the person intending to engage in geophysical exploration.
4. The date upon which geophysical exploration is to begin.
5. The approximate number and depth of any drill holes and the specific location of any drill holes or a description of the property on which the geophysical exploration is to be conducted described by township, range, section, and quarter section.
6. A fee of up to one hundred dollars.

The person making application for a geophysical exploration permit shall file an amended application whenever there is any new information or a change in the information contained in the application on file with the commission.

Source: N.D. Century Code.

**38-08.1-04.1. EXPLORATION PERMIT.**

1. Upon filing a complete application for permit to explore pursuant to section 38-08.1-04, the commission may issue to any person desiring to engage in geophysical exploration a "geophysical exploration permit". A person may not engage in geophysical exploration activities in this state without having first obtained a geophysical exploration permit from the commission.
2. The permit must show, at a minimum:
  - a. The name of the person.

- b. The name and address of the resident agent for service of process.
  - c. That an application to engage in geophysical exploration has been duly filed.
  - d. That a good and sufficient surety bond has been filed by the person, naming the surety company and giving its address.
3. The permit must be signed by the director of the commission's oil and gas division or the director's designee. The permit is valid for one year.
  4. The permitholder shall notify the operator of the land at least three days prior to the commencement of any geophysical exploration activity, unless waived by mutual agreement of both parties. The notice must include the approximate time schedule and the location of the planned activity.
  5. The permit or a photostatic copy thereof must be carried at all times by a member of the crew during the period of geophysical exploration and must be exhibited upon demand of the landowner or tenant operator or county or state official.
  6. The permitholder shall notify the county auditor or the auditor's designee at least twenty-four hours, excluding Saturdays and holidays, before the permitholder commences geophysical exploration in the county. Notice must include the approximate time schedule and location of the planned activity.

Source: N.D. Century Code.

**38-08.1-04.2. NOTIFICATION OF ISSUANCE OF PERMIT - REVOCATION - SUSPENSION.** The commission shall immediately forward notice of the issuance of a permit to the board of county commissioners of the county in which the lands are located. The commission may revoke the permit of any person engaging in geophysical exploration upon a showing that that person has violated any applicable requirement pertaining to geophysical exploration. The commission shall notify that person, by the most effective written means, of the permit revocation. Upon notification, the person engaging in geophysical exploration may, within fifteen days, request a hearing before the commission on the matter. The commission shall either affirm, modify, or deny the permit revocation. The commission may also suspend the permit temporarily in those cases where climate and physical conditions are such as to cause harm, damage, or undue stress to roads, bridges, pastures, crops, or other physical features. For these same reasons, a board of county commissioners, upon notice to the permitholder and the commission, also may suspend, for not longer than forty-eight hours, a permit for operations within the county.

Source: N.D. Century Code.

**38-08.1-05. DUTY TO FILE RECORD SHOWING WHERE WORK PERFORMED.** Within thirty days following any calendar month in which geophysical exploration is begun by any person within this state, such person shall file with the commission and shall send to the owner or occupier of any land upon which work is begun, a record showing the township, range, section, and quarter section in the county in which such work was performed and the date upon which

such work was commenced. The notice also must include the actual shot point location and the amount of explosive charge, if any, in each drill hole.

Source: N.D. Century Code.

### **38-08.1-06. DUTY TO PLUG DRILL HOLES - PENALTY.**

1. Drill holes must be plugged and abandoned as required by this section.
2. The seismic company responsible for the plugging and abandonment of seismic shot holes shall notify the commission in writing that it intends to plug and abandon the drill hole. The required notice must be received by the commission at least twenty-four hours before the time plugging activities are scheduled to begin. The notice must include the date and time the activities are expected to commence, the location by section, township, and range of the holes to be plugged, and the name and telephone number of the person in charge of the plugging operations. A copy of the notice must be sent to the landowner or lessee at the same time it is sent to the commission. The seismic company shall notify the commission in writing upon completion of the plugging operation.
3. All seismic shot holes must be plugged as soon after being used as reasonably is practicable; however, they may not remain unplugged for a period of more than thirty days unless, upon application, the commission grants an extension which may not exceed ninety days. All seismic shot holes must be temporarily capped during the period between drilling and final plugging.
4. The plug must have permanently affixed to it a durable nonrusting metal or plastic tag or plate imprinted with the name of the operator responsible for the plugging of the hole and the operator's permit number.
5. The surface around each seismic shot hole must be restored to its original condition insofar as restoration is practicable and all stakes, markers, cables, ropes, wires, primacord, cement or mud stacks, and any other debris or material not native to the area must be removed from the drill site and lawfully disposed of.

Source: N.D. Century Code.

### **38-08.1-06.1. PLUGGING REQUIREMENTS - RULES - LIABILITY FOR DAMAGE.**

All seismic holes must be plugged in accordance with rules adopted by the commission. The commission shall review and revise its rules governing plugging requirements as technology in the field evolves. The seismic company is liable for all damages resulting from failure to comply with rules adopted by the commission pursuant to this section.

Source: N.D. Century Code.

**38-08.1-07. CIVIL AND CRIMINAL PENALTIES.**

1. A person who violates any provision of this chapter or commission rule or order is subject to a civil penalty imposed by the commission not to exceed one thousand dollars for each offense, and each day's violation is a separate offense. A penalty imposed under this section, if not paid, may be recovered by the commission in the district court of the county in which the defendant resides, or in which any defendant resides if there is more than one defendant, or in the district court of any county in which the violation occurred. Payment of the penalty does not legalize the activity for which the penalty was imposed, or relieve the person upon whom the penalty was imposed from liability to any other person for damage caused by the violation.
2. Notwithstanding this section, a person who willfully violates any provision of this chapter or a commission rule or order is guilty of a class C felony.

Source: N.D. Century Code.

**38-08.1-08. COMMISSION TO ADOPT RULES.** The commission may adopt and enforce rules to implement this chapter.

Source: N.D. Century Code.



RULES AND REGULATIONS  
NORTH DAKOTA ADMINISTRATIVE CODE  
 CHAPTER 43-02-03

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**RULES AND REGULATIONS  
NORTH DAKOTA ADMINISTRATIVE CODE  
CHAPTER 43-02-03**

**A. DEFINITIONS**

**43-02-03-01. DEFINITIONS.** The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-08 except:

1. "Adjusted allowable" means the allowable production a proration unit receives after all adjustments are applied.
2. "Allocated pool" is one in which the total oil or natural gas production is restricted and allocated to various proration units and fractional proration units therein in accordance with proration schedules.
3. "Allowable production" means that number of barrels of oil or cubic feet of natural gas authorized to be produced from the respective proration units and fractional proration units in an allocated pool.
4. "Back allowable" means the authorized accumulative underage or shortage for a given proration unit or fractional proration unit.
5. "Barrel" means forty-two United States gallons [158.99 liters] measured at sixty degrees Fahrenheit [15.56 degrees Celsius] and fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter].
6. "Barrel of oil" means forty-two United States gallons [158.99 liters] of oil after deductions for the full amount of basic sediment, water, and other impurities present, ascertained by centrifugal or other recognized and customary test.
7. "Bottom hole or subsurface pressure" means the pressure in pounds per square inch gauge under conditions existing at or near the producing horizon.
8. "Bradenhead gas well" means any well capable of producing gas through wellhead connections from a gas reservoir which has been successfully cased off from an underlying oil or gas reservoir.
9. "Casinghead gas" means any gas or vapor, or both gas and vapor, indigenous to and produced from a pool classified as an oil pool by the commission.
10. "Certified or registered 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.

11. "Common purchaser for natural gas" means any person now or hereafter engaged in purchasing, from one or more producers, gas produced from gas wells within each common source of supply from which it purchases, for processing or resale.
12. "Common purchaser for oil" means every person now engaged or hereafter engaging in the business of purchasing oil in this state.
13. "Common source of supply" is synonymous with pool and is a common accumulation of oil or gas, or both, as defined by commission orders.
14. "Completion" means an oil well shall be considered completed when the first oil is produced through wellhead equipment into tanks from the ultimate producing interval after casing has been run. A gas well shall be considered complete when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after casing has been run. A dry hole shall be considered complete when all provisions of plugging are complied with as set out in this chapter.
15. "Condensate" means the liquid hydrocarbons recovered at the surface that result from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.
16. "Cubic foot of gas" means that volume of gas contained in one cubic foot [28.32 liters] of space and computed at a pressure of fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter] at a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius].
17. "Director" means the director of oil and gas of the industrial commission, the assistant director of oil and gas of the industrial commission, and their designated representatives.
18. "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool, which artificial means or application includes pressuring, cycling, pressure maintenance, or injection to the pool of a substance or form of energy but does not include the injection in a well of a substance or form of energy for the sole purpose of (a) aiding in the lifting of fluids in the well, or (b) stimulation of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.
19. "Exception well location" means a location which does not conform to the general spacing requirements established by the rules or orders of the commission but which has been specifically approved by the commission.
20. "Fractional proration unit for oil" means a tract of land containing more or less than forty acres [16.19 hectares] predominantly situated within the confines of a pool.

21. "Gas lift" means any method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.
22. "Gas-oil ratio" means the ratio of the gas produced in cubic feet [cubic meters] to a barrel of oil concurrently produced during any stated period.
23. "Gas-oil ratio adjustment" means the reduction in allowable of a high gas-oil ratio proration unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.
24. "Gas transportation facility" means a pipeline in operation serving one or more gas wells for the transportation of natural gas, or some other device or equipment in like operation whereby natural gas produced from gas wells connected therewith can be transported.
25. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the commission.
26. "High gas-oil ratio proration unit" means a proration unit with a producing oil well with a gas-oil ratio in excess of the limiting gas-oil ratio for the pool.
27. "Injection or input well" means any well used for the injection of air, gas, water, or other fluids into any underground stratum.
28. "Limiting gas-oil ratio" means the gas-oil ratio assigned by the commission to a particular oil pool to limit the volumes of casinghead gas which may be produced from the various oil-producing units within that particular pool.
29. "Log or well log" means a systematic, detailed, and correct record of formations encountered in the drilling of a well, including commercial electric logs, radioactive logs, dip meter logs, and other related logs.
30. "Marginal unit" means a proration unit or fractional proration unit that cannot produce at a rate equal to the top unit allowable for the proration period for the pool.
31. "Minimum allowable" means the minimum amount of production from an oil or gas well which will encourage the continued operation of such well and below which the well might be threatened with premature plugging and resulting waste.
32. "Multiple completion" means the completion of any well so as to permit the production from more than one common source of supply.
33. "Natural gas or gas" means and includes all natural gas and all other fluid hydrocarbons not herein defined as oil.
34. "Nonmarginal unit" means a proration unit or a fractional proration unit that can produce at a rate equal to the top unit allowable for the proration period for the pool.



35. "Normal unit allowable" means the amount of allowable production allocated to proration units which are producing from a depth of five thousand feet [1,524 meters] or above.
36. "Official gas-oil ratio test" means the periodic gas-oil ratio test made by order of the commission and by such method and means and in such manner as prescribed by the commission.
37. "Offset" means a well drilled on a forty-acre [16.19-hectare] tract cornering or contiguous to a forty-acre [16.19-hectare] tract having an existing oil well, or a well drilled on a one hundred sixty-acre [64.75-hectare] tract cornering or contiguous to a one hundred sixty-acre [64.75-hectare] tract having an existing gas well; provided, however, that for wells subject to a fieldwide spacing order, "offset" means any wells located on spacing units cornering or contiguous to the spacing unit or well which is the subject of an inquiry or a hearing.
38. "Oil well" means any well capable of producing oil or oil and casinghead gas from a common source of supply as determined by the commission.
39. "Operator" is the principal on the bond covering a well and such person shall be responsible for drilling, completion, and operation of the well, including plugging and reclamation of the well site.
40. "Overage or overproduction" means the amount of oil or the amount of natural gas produced during a proration period in excess of the amount authorized on the proration
41. "Potential" means the properly determined capacity of a well to produce oil, or gas, or both, under conditions prescribed by the commission.
42. "Pressure maintenance" means the injection of gas or other fluid into a reservoir, either to increase or maintain the existing pressure in such reservoir or to retard the natural decline in the reservoir pressure.
43. "Proration day" consists of twenty-four consecutive hours which shall begin at seven a.m. and end at seven a.m. on the following day.
44. "Proration month" means the calendar month which shall begin at seven a.m. on the first day of such month and end at seven a.m. on the first day of the next succeeding month.
45. "Proration period" means for oil the proration month and for gas six consecutive calendar months which shall begin at seven a.m. on the first day of a calendar month and end at seven a.m. on the first day of the seventh succeeding month.

46. "Proration schedule" means the periodic order of the commission authorizing the production, purchase, and transportation of oil or of natural gas from the various units of oil or of natural gas proration in allocated pools.
47. "Proration unit for gas" consists of such geographical area as may be prescribed by special pool rules issued by the commission.
48. "Proration unit for oil" consists of a tract of land containing forty acres [16.19 hectares] predominantly situated within the confines of a pool.
49. "Recomplete" means the subsequent completion of a well in a different pool.
50. "Reservoir" means pool or common source of supply.
51. "Saltwater handling facility" means and includes any container such as a pit, tank, or pool, whether covered or uncovered, used for the handling, storage, disposal of deleterious substances obtained, or used, in connection with the drilling or operation of wells.
52. "Shut-in pressure" means the pressure noted at the wellhead when the well is completely shut in, not to be confused with bottom hole pressure.
53. "Spacing unit" is the area in each pool which is assigned to a well for drilling, producing, and proration purposes in accordance with the commission's rules or orders.
54. "Stratigraphic test well" means any well or hole, except a seismograph shot hole, drilled for the purpose of gathering information in connection with the oil and gas industry with no intent to produce oil or gas from such well.
55. "Tank bottoms" means that accumulation of hydrocarbon material and other substances which settle naturally below crude oil in tanks and receptacles that are used in handling and storing of crude oil, and which accumulation contains basic sediment and water in an amount rendering it unsaleable to an ordinary crude oil purchaser; provided, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet thereto.
56. "Top unit allowable for gas" means the maximum number of cubic feet [cubic meters] of natural gas, for the proration period, allocated to a proration unit for gas in an allocated gas pool.
57. "Top unit allowable for oil" means the maximum number of barrels of oil daily for each calendar month allocated to a proration unit for oil in a pool to nonmarginal units.

58. "Treating plant" means any plant permanently constructed or portable used for the purpose of wholly or partially reclaiming, treating, processing, or in any manner making tank bottoms or any other waste oils marketable.
59. "Underage" means the amount of oil or the amount of natural gas during a proration period by which a given proration unit failed to produce in an amount equal to that authorized on the proration schedule.

History: Amended effective January 1, 1983; May 1, 1992; July 1, 1996; December 1, 1996; September 1, 2000; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

## **B. MISCELLANEOUS RULES**

**43-02-03-02. 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 crude oil and natural gas. Special rules, pool rules, field rules, and 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 operate in a manner to protect correlative rights.

History: Amended effective May 1, 1992.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-03. PROMULGATION OF RULES, REGULATIONS, OR ORDERS.** Repealed effective January 1, 1983.

**43-02-03-04. EMERGENCY RULE, REGULATION, OR ORDER.** Repealed effective January 1, 1983.

**43-02-03-05. ENFORCEMENT OF LAWS, RULES, AND REGULATIONS DEALING WITH CONSERVATION OF OIL AND GAS.** 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 conservation of oil and gas. However, it shall be the

responsibility of all the owners or operators to obtain information pertaining to the regulation of oil and gas before operations have begun.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-06. WASTE PROHIBITED.** All operators, contractors, drillers, carriers, gas distributors, service companies, pipe pulling and salvaging contractors, or other persons shall at all times conduct their operations in the drilling, equipping, operating, producing, plugging, and site reclamation of oil and gas wells in a manner that will prevent waste.

History: Amended effective January 1, 1983; May 1, 1992.

General Authority  
NDCC 38-08-03

Law Implemented  
NDCC 38-08-03

**43-02-03-07. UNITED STATES GOVERNMENT LEASES.** The commission recognizes that all persons drilling and producing on United States government land shall comply with the United States government regulations. Such persons shall also comply with all applicable state rules and regulations. Copies of the sundry notices, reports on wells, and well data required by this chapter of the wells on United States government land shall be furnished to the commission at no expense to the commission. Federal forms may be used when filing such notices and reports except for reporting the plugging and abandonment of a well. In such instance, the plugging record (form 7) must be filed with the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1994.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-08. CLASSIFYING AND DEFINING POOLS.** Repealed effective January 1, 1983.

**43-02-03-09. 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 to cover proposed work and to report the results of completed work.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-10. 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 conservation of oil and gas.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-11. ORGANIZATION REPORTS.** Every person acting as principal or agent for another or independently engaged in the drilling of oil or gas wells, or in the production, storage, transportation, refining, reclaiming, treating, marketing, or processing of crude oil or natural gas in North Dakota shall immediately file with the director the name under which such business is being conducted or operated; and 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 thereof on an organization report (form 2). In each case where 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 original report.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-12. RESERVOIR SURVEYS.** By special order of the commission, periodic surveys may be made of the reservoirs in this state containing oil and gas. These surveys will be thorough and complete and shall be made using methods approved by the director. The condition of the reservoirs containing oil and gas and the practices and methods employed by the operators shall be investigated. The produced volume and source of crude oil and natural gas, the reservoir pressure of the reservoir as an average, the areas of regional or differential pressure, stabilized gas-oil ratios, and the producing characteristics of the field as a whole and the individual wells within the field shall be specifically included.

All operators of oil wells are required to permit and assist the agents of the commission in making any and all special tests that may be required by the commission on any or all wells.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-13. RECORD OF WELLS.** The director shall maintain a record of official well names, to be known as the well-name register, in which shall be entered: (1) the name and location of each well; (2) the well file number; (3) the name of the operator, or the operator's agent; and (4) any subsequent name or names assigned to the well and approved by the director.

The last name assigned to a well in the well-name register shall be the official name of the well, and the one by which it shall be known and referred to.

The director may, at the director's discretion, grant or refuse an application to change the official name. The application shall be accompanied by a fee of twenty-five dollars, which fee is established to cover the expense of recording the change. If the application is refused, the fee shall be refunded.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-14. ACCESS TO RECORDS.** The commission, director, and their representatives shall have access to all well records wherever located. All owners, operators, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, producing, or servicing wells shall permit the commission, director, and their representatives to come upon any lease, property, well, or drilling rig operated or controlled by them, complying with state safety rules and to inspect the records and operation of such wells, and to have access at all times to any and all records of wells. If requested, copies of such records must be filed with the commission. The confidentiality of any data submitted which is confidential pursuant to subsection 6 of North Dakota Century Code section 38-08-04 and section 43-02-03-31 must be maintained.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-14.1 VERIFICATION OF CERTIFIED WELDERS.** Repealed effective July 1, 1996.

**43-02-03-14.2. OIL AND GAS METERING SYSTEMS.**

1. Application of section. This section is applicable to all metering stations measuring production from oil and gas wells within the state of North Dakota, including private, state, and federal wells. If these rules differ from federal requirements on measurement of production from federal oil and gas wells, the federal rules take precedence.

2. Definitions. As used in this section:
  - a. "Allocation meter" means a meter used by the producer to determine the volume from an individual well before it is commingled with production from one or more other wells prior to the custody transfer point.
  - b. "Calibration test" means the process or procedure of adjusting an instrument, such as a gas meter, so its indication or registration is in satisfactorily close agreement with a reference standard.
  - c. "Custody transfer meter" means a meter used to transfer oil or gas from the producer to transporter or purchaser.
  - d. "Gas gathering meter" means a meter used in the custody transfer of gas into a gathering system.
  - e. "Meter factor" means a number obtained by dividing the net volume of fluid (liquid or gaseous) passed through the meter during proving by the net volume registered by the meter.
  - f. "Metering proving" means the procedure required to determine the relationship between the true volume of a fluid (liquid or gaseous) measured by a meter and the volume indicated by the meter.
3. Inventory filing requirements. The owner of metering equipment shall file with the commission an inventory of all meters used for custody transfer and allocation of production from oil or gas wells, or both. Inventories must be updated on an annual basis, and filed with the commission on or before the first day of each year, or they may be updated as frequently as monthly, at the discretion of the operator. Inventories must include the following:
  - a. Well name and legal description of location or meter location if different.
  - b. North Dakota industrial commission well file number.
  - c. Meter information:
    - (1) Gas meters:
      - (a) Make and model.
      - (b) Differential, static, and temperature range.
      - (c) Orifice tube size (diameter).
      - (d) Meter station number.

(2) Oil meters:

- (a) Make and model.
- (b) Size.
- (c) Meter station number.

4. Installation and removal of meters. The commission must be notified of all custody transfer meters placed in service. The owner of the custody transfer equipment shall notify the commission of the date a meter is placed in service, the make and model of the meter, and the meter or station number. The commission must also be notified of all metering installations removed from service. The notice must include the date the meter is removed from service, and the meter or station number. The required notices must be filed with the commission within thirty days of the installation or removal of a meter.

All allocation meters must be approved prior to installation and use. The application for approval must be on a sundry notice (form 4) and shall include the make and model number of the meter, the meter or station number, the well name, its location, and the date the meter will be placed in service.

Meter installations for measuring production from oil or gas wells, or both, must be constructed to American petroleum institute or American gas association standards or to meter manufacturer's recommended installation. Meter installations constructed in accordance with American petroleum institute or American gas association standards in effect at the time of installation shall not automatically be required to retrofit if standards are revised. The commission will review any revised standards, and when deemed necessary will amend the requirements accordingly.

5. Registration of persons proving or testing meters. All persons engaged in meter proving or testing of oil and gas meters must be registered with the commission. Those persons involved in oil meter testing, by flowing fluid through the meter into a test tank and then gauging the tank, are exempted from the registration process. However, such persons must notify the commission prior to commencement of the test to allow a representative of the commission to witness the testing process. A report of the results of such test shall be filed with the commission within thirty days after the test is completed. Registration must include the following:
- a. Name and address of company.
  - b. Name and address of measurement personnel.
  - c. Qualifications, listing experience, or specific training.



Any meter tests performed by a person not registered with the commission will not be accepted as a valid test.

6. Calibration requirements. Oil and gas metering equipment must be proved or tested to American petroleum institute or American gas association standards or to the meter manufacturer's recommended procedure to establish a meter factor or to ensure measurement accuracy. The owner of a custody transfer meter or allocation meter shall notify the commission at least ten days prior to the testing of any meter.
  - a. Oil allocation meter factors shall be maintained within two percent of original meter factor. If the factor change between provings or tests is greater than two percent, the meter must be repaired or adjusted and tested within forty-eight hours of repair or replaced.
  - b. Copies of all oil allocation meter test procedures are to be filed with and reviewed by the commission to ensure measurement accuracy.
  - c. All gas meters must be tested with a minimum of a three point test for static and differential pressure elements and a two point test for temperature elements. The test reports must include an as-found and as-left test and a detailed report of changes.
  - d. Test reports must include the following:
    - (1) Producer name.
    - (2) Lease name.
    - (3) Pipeline company or company name of test contractor.
    - (4) Test personnel's name.
    - (5) Station or meter number.
  - e. Unless required more often by the director, minimum frequency of meter proving or calibration tests are as follows:
    - (1) Oil meters used for custody transfer shall be proved monthly for all measured volumes which exceed two thousand barrels per month. For volumes two thousand barrels or less per month, meters shall be proved at each two thousand barrel interval or more frequently at the discretion of the operator.
    - (2) Quarterly for oil meters used for allocation of production.
    - (3) Semiannually for gas meters used for allocation of production.

- (4) Semiannually for gas meters in gas gathering systems.
  - (5) For meters measuring more than one hundred thousand cubic feet [2831.68 cubic meters] per day on a monthly basis, orifice plates shall be inspected semiannually, and meter tubes shall be inspected at least every five years to ensure continued conformance with the American gas association meter tube specifications.
  - (6) For meters measuring one hundred thousand cubic feet [2831.68 cubic meters] per day or less on a monthly basis, orifice plates shall be inspected annually.
- f. Meter test reports must be filed within thirty days of completion of proving or calibration tests unless otherwise approved. Test reports are to be filed on, but not limited to, all meters used for allocation measurement of oil or gas and all meters used in crude oil custody transfer.
  - g. Accuracy of all equipment used to test oil or gas meters must be traceable to the standards of the national institute of standards and technology. The equipment must be certified as accurate either by the manufacturer or an independent testing facility. The certificates of accuracy must be made available upon request. Certification of the equipment must be updated as follows:
    - (1) Annually for all equipment used to test the pressure and differential pressure elements.
    - (2) Annually for all equipment used to determine temperature.
    - (3) Biennially for all conventional pipe provers.
    - (4) Annually for all master meters.
    - (5) Five years for equipment used in orifice tube inspection.
7. Variances. Variances from all or part of this section may be granted by the commission on the basis of economic necessity providing the variance does not affect measurement accuracy. All requests for variances must be on a sundry notice (form 4).

A register of variances requested and approved must be maintained by the commission.

History: Effective May 1, 1994; amended effective July 1, 1996; September 1, 2000; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

## C. DRILLING

### 43-02-03-15. BOND AND TRANSFER OF WELLS.

1. Bond requirements. Prior to commencing drilling operations, any person who proposes to drill a well for oil, gas, or injection shall submit to the commission, and obtain its approval, a surety bond or cash bond in a form approved by the commission, conditioned as provided by law. The operator of such well shall be the principal on the bond covering the well. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.
2. Bond amounts and limitations. The bond shall be in the amount of fifteen thousand dollars when applicable to one well only. Wells drilled to a total depth of less than two thousand feet [609.6 meters] may be bonded in a lesser amount if approved by the director. When the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, the principal may submit a bond conditioned as provided by law. A blanket bond covering ten wells or less shall be in the amount of fifty thousand dollars provided the bond shall be limited to no more than five of the following in aggregate and a blanket bond covering more than ten wells shall be in the amount of one hundred thousand dollars, provided the bond shall be limited to no more than ten of the following in aggregate:
  - a. A well that is a dry hole and is not properly plugged;
  - b. A well that is plugged and the site is not properly reclaimed; and
  - c. A well that is abandoned pursuant to section 43-02-03-55 and is not properly plugged and the site is not properly reclaimed.

If this aggregate of wells is reached, all well permits, for which drilling has not commenced, held by the principal of such bond are suspended. No rights may be exercised under the permits until the aggregate of wells drops below the required limit, or the operator files the appropriate bond to cover the permits, at which time the rights given by the drilling permits are reinstated. A well with an approved temporary abandoned status shall have the same status as an oil, gas, or injection well. The commission may, after notice and hearing, require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the economic value of the well or wells and the expected cost of plugging and well site reclamation, as determined by the commission. The commission may refuse to accept a bond or to add wells to a blanket bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of wells; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

3. Unit bond requirements. Prior to commencing unit operations, the operator of any area under unitized management shall submit to the commission, and obtain its approval, a surety bond or cash bond in a form approved by the commission,

conditioned as provided by law. The operator of the unit shall be the principal on the bond covering the unit. The amount of the bond shall be specified by the commission in the order approving the plan of unitization. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

Prior to transfer of a unit to a new operator, the commission, after notice and hearing, may revise the bond amount for a unit, or in the case when the unit was not previously bonded, the commission may require a bond and set a bond amount for the unit.

4. Bond terms. The bond herein required shall be conditioned upon full compliance with North Dakota Century Code chapter 38-08, and all administrative rules and orders of the commission. It shall be a plugging bond, as well as a drilling bond, and is to endure up to and including approved plugging of all oil, gas, and injection wells as well as dry holes. Approved plugging shall also include practical reclamation of the well site and appurtenances thereto. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.
5. Transfer of wells under bond. Transfer of property does not release the bond. In case of transfer of property or other interest in the well and the principal desires to be released from the bond covering the well, such as producers, not ready for plugging, the principal should proceed as follows:
  - a. The principal must notify the director, in writing, of all proposed transfers of wells 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 a form 15 reciting that a certain well, or wells, describing each well 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 said transfer form the transferee shall recite the following: "The transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such well under the transferee's one-well bond or, as the case may be, does accept the responsibility of such wells under the transferee's blanket bond, said bond being tendered to or on file with the commission." Such acceptance must likewise be signed by a party authorized to sign and the transferee's surety.

- b. When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of plugging the well and site reclamation. If such wells include all the wells within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor.

The director may refuse to transfer any well from a bond if the well is in violation of a statute, rule, or order.

- c. The transferee (new operator) of any oil, gas, or injection well, shall be responsible for the plugging and site reclamation of any such well. 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. This section shall apply to transfers of any such wells made prior to the effective date of this section as well as thereafter. The original or prior bond shall not be released as to the plugging and reclamation responsibility of any such transferor until the transferee shall submit to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging and site reclamation of such wells is completed and approved.
6. Treating plant bond. Prior to the commencement of operations, any person proposing to operate a treating plant must submit to the commission and obtain its approval, of a surety, or cash bond conditioned as provided by law. The person responsible for the operation of the plant shall be the principal on the bond. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be as prescribed in section 43-02-03-51. It is to remain in force until the operations cease, all equipment is removed from the site, and the site and appurtenances thereto are reclaimed, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.
7. Bond termination. The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging and 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.
8. Director's authority. The director is vested with the power to act for the commission as to all matters within this section.

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; December 1, 1996; September 1, 2000; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-16. APPLICATION FOR PERMIT TO DRILL AND RECOMPLETE.**

Before any person shall begin any well-site preparation for the drilling of any well other than surveying and staking, such person shall file an application for permit to drill (form 1) with the director, together with a permit fee of one hundred dollars. Verbal approval may be given for site

preparation by the director in extenuating circumstances. No drilling activity shall commence until such application is approved and a permit to drill is issued by the director. The application must be accompanied by the bond pursuant to section 43-02-03-15 or the applicant must have previously filed such bond with the commission, otherwise the application is incomplete. An incomplete application received by the commission has no standing and will not be deemed filed until it is completed.

The application for permit to drill shall be accompanied by an accurate plat certified by a registered surveyor showing the location of the proposed well with reference to the nearest lines of a governmental section. The plat shall also include latitude and longitude of the proposed well location to the nearest tenth of a second. Information to be included in such application shall be the proposed depth to which the well will be drilled, estimated depth to the top of important markers, estimated depth to the top of objective horizons, the proposed mud program, the proposed casing program, including size and weight thereof, the depth at which each casing string is to be set, and the proposed amount of cement to be used, including the estimated top of cement.

Prior to the commencement of recompletion operations or drilling horizontally in the existing pool, an application for permit shall be filed with the director. Included in such application shall be the notice of intention (form 4) to reenter a well by drilling horizontally, deepening, or plugging back to any source of supply other than the producing horizon in an existing well. Such notice shall include the name and file number and exact location of the well, the approximate date operations will begin, the proposed procedure, the estimated completed total depth, the casing program to be followed, and the original total depth with a permit fee of fifty dollars.

The applicant shall provide all information, in addition to that specifically required by this section, if requested by the director. The director may impose such terms and conditions on the permits issued under this section as the director deems necessary.

The director shall deny an application for a permit under this section if the proposal would cause, or tend to cause, waste or violate correlative rights. The director of oil and gas shall state in writing to the applicant the reason for the denial of the permit. The applicant may appeal the decision of the director to the commission.

A permit to drill automatically expires one year after the date it was issued, unless the well is drilling or has been drilled below surface casing. A permit to recomplete or to drill horizontally automatically expires one year after the date it was issued, unless such project has commenced.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; September 1, 2000; July 1, 2002.

General Authority  
NDCC 38-08-05

Law Implemented  
NDCC 38-08-05

**43-02-03-16.1. DESIGNATION AND RESPONSIBILITIES OF OPERATOR.** The principal on the bond covering a well is the operator of the well. The operator is responsible for compliance with all laws relating to the well and well site. A dispute over designation of the operator of a well may be addressed by the commission. In doing so, the factors the commission may consider include those set forth in subsection 1 of section 43-02-03-16.2.

History: Effective December 1, 1996.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-16.2. REVOCATION AND LIMITATION OF DRILLING PERMITS.**

1. After notice and hearing, the commission may revoke a drilling permit or limit its duration. The commission may act upon its own motion or upon the application of an owner in the spacing or drilling unit. In deciding whether to revoke or limit a permit, the factors that the commission may consider include:
  - a. The technical ability of the permitholder and other owners to drill and complete the well.
  - b. The experience of the permitholder and other owners in drilling and completing similar wells.
  - c. The number of wells in the area operated by the permitholder and other owners.
  - d. Whether drainage of the spacing or drilling unit has occurred or is likely to occur in the immediate future and whether the permitholder has committed to drill a well in a timely fashion.
  - e. Contractual obligations such as an expiring lease.
  - f. The amount of ownership the permitholder and other owners hold in the spacing or drilling unit. If the permitholder is the majority owner in the unit or if its interest when combined with that of its supporters is a majority of the ownership, it is presumed that the permitholder should retain the permit. This presumption, even if not rebutted, does not prohibit the commission from limiting the duration of the permit to drill. However, if the amount of the interest owned by the owner seeking revocation or limitation and its supporters are a majority of the ownership, the commission will presume that the permit should be revoked.
2. The commission may suspend a permit that is the subject of a revocation or limitation proceeding. A permit will not be suspended or revoked after a well has spudded.
3. If the commission revokes a permit upon the application of an owner and issues a permit to drill to that owner or to another owner who supported revocation, the

commission may limit the duration of such permit. The commission may also, if the parties fail to agree, order the owner acquiring the permit to pay reasonable costs incurred by the former permitholder and the conditions under which payment is to be made. The costs for which reimbursement may be ordered may include those involving survey of the well site, title search of surface and mineral title, and preparation of an opinion of mineral ownership.

4. If the commission declines to revoke a permit or limit the time within which it must be exercised, it may include a term in its order restricting the ability of the permitholder to renew the permit or to acquire another permit within the same spacing or drilling unit.

History: Effective December 1, 1996.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-16.3. RECOVERY OF A RISK PENALTY.** The following govern the recovery of the risk penalty of subsection 3 of North Dakota Century Code section 38-08-08:

1. An owner may recover the risk penalty, provided the owner gives, to the owner from whom the penalty is sought, a written invitation to participate in the risk and cost of drilling.
2. The invitation to participate must contain the following:
  - a. The location of the proposed well and its proposed depth and objective zone.
  - b. An itemization of the estimated costs of drilling and completion.
  - c. The approximate date upon which the well will be spudded.
  - d. The time within which the invitation must be accepted. At least thirty days should be given, for it is presumed that at least thirty days is needed to adequately consider and respond to an invitation. In unusual circumstances, however, the owner seeking the risk penalty may allow less than thirty days in which to respond to the invitation, but in no circumstances may less than fifteen days be allowed.
3. A valid acceptance of the invitation to participate must be in writing.
4. An invitation to participate and an acceptance of the invitation must be served personally, by mail requiring a signed receipt, by facsimile transmission followed within one business day by mailing, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service.



5. An election to participate is only binding upon an owner electing to participate if the well is spudded within ninety days after the date the owner extending the invitation to participate sets as the date upon which a response to the invitation is to be received. If an election to participate lapses, a risk penalty can only be collected if the owner seeking it again complies with the provisions of this section.
6. The right to a risk penalty expires if the owner seeking it does not spud the well within ninety days after the date set by the owner as the date upon which a response to the invitation is to be received. It also expires if the permit to drill expires without having been exercised.
7. Upon its own motion or the request of a party, the commission may include in a pooling order requirements relating to the invitation and election to participate, in which case the pooling order will control to the extent it is inconsistent with this section.

History: Effective December 1, 1996.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
38-08-08

**43-02-03-17. SIGN ON WELL.** Every well associated with the production of oil and gas except plugged wells shall be identified by a sign posted on the derrick or not more than twenty feet [6.10 meters] from the well. The sign shall be of durable construction and the lettering thereon shall be kept in a legible condition and shall be large enough to be legible under normal conditions at a distance of fifty feet [15.24 meters]. The wells on each lease or property shall be numbered in nonrepetitive sequence, unless some other system of numbering was adopted by the owner prior to the adoption of this chapter. Each sign must show the well name and number (which shall be different or distinctive for each well), the name of the operator, file number, and the location by quarter-quarter, section, township, and range.

Existing well identification signs that are otherwise in accord with this section except that well locations are shown by quarter section rather than quarter-quarter section or show the permit number rather than the file number shall be allowed to remain.

History: Amended effective January 1, 1983; May 1, 1992; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-18. DRILLING UNITS - WELL LOCATIONS.** In the absence of an order by the commission setting spacing units for a pool:

1. a. Vertical or directional oil wells projected to a depth not deeper than the Mission Canyon formation shall be drilled upon a governmental quarter-quarter section or equivalent lot, located not less than five hundred feet [152.4 meters] to the boundary of such governmental quarter-quarter section or equivalent lot. No more than one well shall be drilled to the same pool on any such governmental quarter-quarter section or equivalent lot, except by order of the commission, nor shall any well be drilled on any such governmental quarter-quarter section or equivalent lot containing less than thirty-six acres [14.57 hectares] except by order of the commission.
- b. Vertical or directional oil wells projected to a depth deeper than the Mission Canyon formation shall be drilled on a governmental quarter section or equivalent lots, located not less than six hundred sixty feet [201.17 meters] to the boundary of such governmental quarter section or equivalent lots. No more than one well shall be drilled to the same pool on any such governmental quarter section or equivalent lots, except by order of the commission, nor shall any well be drilled on any such governmental quarter section or equivalent lots containing less than one hundred forty-five acres [58.68 hectares] except by order of the commission.
2. a. Horizontal wells projected to a depth not deeper than the Mission Canyon formation, with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least three hundred feet [91.4 meters], must be drilled upon a tract described as two adjacent governmental quarter-quarter sections within the same quarter section or equivalent lots, located not less than five hundred feet [152.4 meters] to the outside boundary of such tract. No more than one well may be drilled to the same pool on any such tract, except by order of the commission.
- b. Horizontal wells projected to a depth deeper than the Mission Canyon formation, with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least five hundred feet [152.4 meters], must be drilled upon a tract described as two adjacent governmental quarter sections within the same section or equivalent lots, located not less than six hundred sixty feet [201.2 meters] to the outside boundary of such tract. No more than one well may be drilled to the same pool on any such tract, except by order of the commission.
3. a. Gas wells projected to a depth not deeper than the Mission Canyon formation shall be drilled upon a governmental quarter section or equivalent lots, located not less than five hundred feet [152.4 meters] to the boundary of such governmental quarter section or equivalent lots. No more than one well shall be drilled to the same pool on any such governmental quarter section or equivalent lots, except by order of the commission, nor shall any well be drilled on any such governmental quarter section or equivalent lot containing less than one hundred forty-five acres [14.57 hectares] except by order of the commission.

- b. Gas wells projected to a depth deeper than the Mission Canyon formation shall be drilled upon a governmental quarter section or equivalent lots, located not less than six hundred sixty feet [201.17 meters] to the boundary of such governmental quarter section or equivalent lots. No more than one well shall be drilled to the same pool on any such governmental quarter section or equivalent lots, except by order of the commission, nor shall any well be drilled on any such governmental quarter section or equivalent lot containing less than one hundred forty-five acres [14.57 hectares] except by order of the commission.
4. Within thirty days, or a reasonable time thereafter, following the discovery of oil or gas in a pool not then covered by an order of the commission, a spacing hearing shall be docketed. Following such hearing the commission shall issue an order prescribing a temporary spacing pattern for the development of the pool. This order shall continue in force for a period of not more than eighteen months at the expiration of which time a hearing shall be held at which the commission may require the presentation of such evidence as will enable the commission to determine the proper spacing for the pool.

During the interim period between the discovery and the issuance of the temporary order, no permits shall be issued for the drilling of an offset well to the discovery well, unless approved by the director. Approval shall be consistent with anticipated spacing for the orderly development of the pool.

Any well drilled within one mile [1.61 kilometers] of an established field shall conform to the spacing requirements in that field except when it is apparent that the well will not produce from the same common source of supply. In order to assure uniform and orderly development, any well drilled within one mile [1.61 kilometers] of an established field boundary shall conform to the spacing and special field rules for the field, and for the purposes of spacing and pooling, the field boundary shall be extended to include the spacing unit for such well and any intervening lands. The foregoing shall not be applicable if it is apparent that the well will not produce from the same common source of supply as wells within the field.

- 5. If the director denies an application for permit, the director shall advise the applicant immediately of the reasons for denial. The decision of the director may be appealed to the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; July 1, 1996; July 1, 2002.

General Authority  
 NDCC 38-08-04  
 38-08-07

Law Implemented  
 NDCC 38-08-04  
 38-08-07

**43-02-03-18.1. EXCEPTION LOCATION.** If upon application for an exception location, the commission finds that a well drilled at the location prescribed by any applicable rule

or order of the commission would not produce in paying quantities, that surface conditions would substantially add to the burden or hazard of such well, or that the drilling of such well at a location other than the prescribed location is otherwise necessary either to protect correlative rights, to prevent waste, or to effect greater ultimate recovery from oil and gas, the commission may enter an order, after notice and hearing, permitting the well to be drilled at a location other than that prescribed and shall include in such order suitable provisions to prevent the production from that well of more than its just and equitable share of the oil and gas in the pool. The application for an exception well location shall set forth the names of the lessees of adjoining properties and the names of any unleased mineral owners of the adjoining properties. The application shall be accompanied by a plat or sketch accurately showing the property for which the exception well location is sought, the location of the proposed well, and all other completed and drilling wells on this property and on the adjoining properties. The applicant or its attorney shall certify that a copy of the application has been sent by certified or registered mail to all lessees and all unleased mineral owners of properties adjoining the tract which would be affected by the exception location. If the applicant is the lessee of adjoining tracts that would be affected by the exception, the applicant must give notice, as prescribed above, to its lessors of such tracts.

History: Amended effective January 1, 1983; May 1, 1990; May 1, 1994; July 1, 1996.

General Authority  
NDCC 38-08-04  
38-08-07

Law Implemented  
NDCC 38-08-04  
38-08-07

**43-02-03-19. RESERVE PIT FOR DRILLING MUD AND DRILL CUTTINGS - RECLAMATION OF SURFACE.** In the construction of a drill site, access road, and all associated facilities, the topsoil shall be removed, stockpiled, and stabilized or otherwise reserved for use when the area is reclaimed. "Topsoil" means the suitable plant growth material on the surface; however, in no event shall this be deemed to be more than the top eight inches [20.32 centimeters] of soil.

In order to assure a supply of proper material or mud-laden fluid to confine oil, gas, or water to its native strata during the drilling of any well, each operator shall provide, before drilling is commenced, a container or reserve pit of sufficient size to contain said material or fluid, and the accumulation of drill cuttings. A reserve pit may be utilized to contain solids and fluids used and generated during well drilling and completion operations, providing the pit can be constructed, used and reclaimed in a manner that will prevent pollution of the land surface and freshwaters. In special circumstances, the director may prohibit construction of a reserve pit or may impose more stringent pit reclamation requirements. Under no circumstances shall reserve pits be used for disposal, dumping, or storage of fluids, wastes, and debris other than drill cuttings and fluids used or recovered while drilling and completing the well.

Reserve pits shall not be located in, or hazardously near, bodies of water, nor shall they block natural drainages. No reserve pit shall be wholly or partially constructed in fill dirt unless approved by the director.

When required by the director, the reserve pit or site or appropriate parts thereof must be fenced.

1. Within a reasonable time, but not more than one year, after the completion of a well, the reserve pit shall be reclaimed. Prior to reclaiming the pit, the operator or the operator's agent shall file a sundry notice (form 4) with the director and obtain approval of a pit reclamation plan. Verbal approval to reclaim the pit may be given. The notice shall include, but not be limited to:
  - a. The name and address of the reclamation contractor;
  - b. The name and address of the surface owner;
  - c. The location and name of the disposal site for the pit water; and,
  - d. A description of the proposed work, including details on treatment and disposition of the drilling waste.

All pit water and oil on the pit must be removed prior to reclamation. Drilling waste should be encapsulated in the pit and covered with at least four feet [1.22 meters] of backfill and topsoil and surface sloped, when practicable, to promote surface drainage away from the reclaimed pit area.

2. Within a reasonable time, but not more than one year, after a well is plugged, the well site, access road, and other associated facilities constructed for the well shall be reclaimed as closely as practicable to original condition, or in the case of a completed well, the unused portion of the site shall be reclaimed. Prior to site reclamation, the operator or the operator's agent shall file a sundry notice (form 4) with the director and obtain approval of a reclamation plan. Verbal approval to reclaim the site may be given. The notice shall include, but not be limited to:
  - a. The name and address of the reclamation contractor;
  - b. The name and address of the surface owner;
  - c. A description of the proposed work, including reclamation plans for the access road and other associated facilities; and,
  - d. Reseeding plans, if applicable.

All production equipment, waste and debris shall be removed from the site. Flow lines shall be purged in a manner approved by the director. Flow lines shall be removed if buried less than three feet [91.44 centimeters] below final contour.

3. Gravel or other surfacing material shall be removed and the well site, access road, and other associated facilities constructed for the well shall be reshaped as near as is practicable to original contour.

4. The stockpiled topsoil shall be evenly distributed over the disturbed area, and where applicable the area revegetated with native species or according to the reasonable specifications of the appropriate government land manager or surface owner.
5. Within thirty days after completing any reclamation, the operator shall file a sundry notice with the director reporting the work performed.
6. The director, with the consent of the appropriate government land manager or surface owner, may waive the requirement of reclamation of the site and access road.

History: Amended effective March 1, 1982; January 1, 1983; May 1, 1992; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-19.1. FENCING, SCREENING, AND NETTING OF PITS.** All open pits and ponds which contain saltwater must be fenced. All pits and ponds which contain oil must be fenced, screened, and netted.

This is not to be construed as requiring the fencing, screening, or netting of a reserve pit or other earthen pit used solely for drilling, completing, recompleting, or plugging unless such pit is not reclaimed in excess of ninety days after completion of the operation.

History: Effective May 1, 1992.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-19.2. DISPOSAL OF WASTE.** All waste associated with exploration or production of oil and gas must be properly disposed of in an authorized facility in accord with all applicable local, state, and federal laws and regulations.

This is not to be construed as requiring the offsite disposal of drilling mud or drill cuttings associated with the drilling of a well. However, top water remaining in the reserve pit used in the drilling and completion operations is to be removed from the reserve pit and disposed of in an authorized disposal well or used in a manner approved by the director. The disposition or use of

the water must be included on the sundry notice (form 4) reporting the plan of reclamation pursuant to section 43-02-03-19.

History: Effective May 1, 1992; amended effective May 1, 1994; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-19.3 EARTHEN PITS AND OPEN RECEPTACLES.** Except as otherwise provided in section 43-02-03-19, no saltwater, drilling mud, crude oil, waste oil, or other waste shall be stored in earthen pits or open receptacles except in an emergency and upon approval by the director.

An earthen pit or open receptacle may be temporarily used to retain oil, water or fluids generated in well servicing or plugging operations. A pit used for this purpose must be sufficiently impermeable to provide adequate temporary containment of the oil, water, or fluids. The contents of the pit or receptacle must be removed within seventy-two hours after operations have ceased and must be disposed of at an authorized facility in accordance with section 43-02-03-19.2.

The director may permit pits used solely for the purpose of flaring casinghead gas. Permission for such a pit will be conditioned on keeping the pit free of any saltwater, crude oil, waste oil, or other waste.

History: Effective September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-20. SEALING OFF STRATA.** During the drilling of any oil or natural gas well, all oil, gas, and water strata above the producing horizon shall be sealed or separated where necessary in order to prevent their contents from passing into other strata.

All freshwaters and waters of present or probable value for domestic, commercial, or stock purposes shall be confined to their respective strata and shall be adequately protected by methods approved by the commission. Special precautions shall be taken in drilling and plugging wells to guard against any loss of artesian water from the strata in which it occurs and the contamination of artesian water by objectionable water, oil, or gas.

All water shall be shut off and excluded from the various oil-bearing and gas-bearing strata which are penetrated. Water shutoffs shall ordinarily be made by cementing casing or landing casing with or without the use of mud-laden fluid.

History: Amended effective May 1, 1992.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-21. CASING, TUBING, AND CEMENTING REQUIREMENTS.** All wells drilled for oil, natural gas or injection shall be completed with strings of casing which shall be properly cemented at sufficient depths to adequately protect and isolate all formations containing water, oil or gas or any combination of these; protect the pipe through salt sections encountered; and isolate the Dakota-Lakota series.

Drilling of the surface hole shall be with freshwater-based drilling mud or other method approved by the director which will protect all freshwater-bearing strata. The surface casing shall consist of new or reconditioned pipe that has been previously tested to one thousand pounds per square inch [6900 kilopascals]. The surface casing shall be set and cemented at a point not less than fifty feet [15.24 meters] below the base of the Fox Hills formation. Sufficient cement shall be used on surface casing to fill the annular space behind the casing to the bottom of the cellar, if any, or to the surface of the ground. All strings of surface casing shall stand cemented under pressure for at least twelve hours before drilling the plug or initiating tests. The term "under pressure" as used herein shall be complied with if one float valve is used or if pressure is otherwise held. Cementing shall be by the pump and plug method or other methods approved by the director.

Surface casing strings must be allowed to stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least three hundred fifty pounds per square inch [2415 kilopascals] within seventy-two hours. All compressive strengths on surface casing cement shall be calculated at a temperature of eighty degrees Fahrenheit [26.67 degrees Celsius].

Production or intermediate casing strings shall consist of new or reconditioned pipe that has been previously tested to two thousand pounds per square inch [13800 kilopascals]. Such strings must be allowed to stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least five hundred pounds per square inch [3450 kilopascals] within seventy-two hours. All compressive strengths on production or intermediate casing cement shall be calculated at a temperature found in the Mowry formation using a gradient of 1.2 degrees Fahrenheit per one hundred feet [30.48 meters] of depth plus eighty degrees Fahrenheit [26.67 degrees Celsius]. After cementing, the casing shall be tested by application of pump pressure of at least one thousand five hundred pounds per square inch [10350 kilopascals].



If, at the end of thirty minutes, this pressure has dropped one hundred fifty pounds per square inch [1035 kilopascals] or more, the casing shall be repaired. Thereafter, the casing shall again be tested in the same manner. Further work shall not proceed until a satisfactory test has been obtained. The casing in a horizontal well may be tested by use of a mechanical tool set near the casing shoe after the horizontal section has been drilled.

All flowing wells must be equipped with tubing and a tubing packer. The packer must be set as near the producing interval as practicable, but in all cases must be above the perforations.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; January 1, 1997; September 1, 2000; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-22. DEFECTIVE CASING OR CEMENTING.** In any well that appears to have defective casing or cementing, the operator shall report the defect to the director on a sundry notice (form 4) and shall proceed with diligence to conduct tests, as approved or required by the director, to properly evaluate the condition of the well bore. The director may allow the well bore condition to remain if correlative rights can be protected without endangering potable waters. The well shall be properly plugged if requested by the director.

Any well with open perforations above a packer shall be considered to have defective casing.

History: Amended effective January 1, 1983; May 1, 1992; September 1, 2000; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-23. BLOWOUT PREVENTION.** In all drilling operations, proper and necessary precautions shall be taken for keeping the well under control, including the use of a blowout preventer and high pressure fittings attached to properly cemented casing strings adequate to withstand anticipated pressures. During the course of drilling, the pipe rams shall be functionally operated at least once every twenty-four-hour period. The blind rams shall be functionally operated each trip out of the well bore. The blowout preventer shall be pressure tested at installation on the wellhead, after modification of any equipment, and every thirty days thereafter. The director may postpone such pressure test if the necessity therefor can be demonstrated to the director's satisfaction. All tests shall be noted in the driller's record.

History: Amended effective January 1, 1983; September 1, 2000; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-24. PULLING STRING OF CASING.** In pulling strings of casing from any oil, gas, or injection well, the space above the casing stub shall be kept and left full of fluid with adequate gel strength and specific gravity, cement, or combination thereof, to seal off all freshwater and saltwater strata and any strata bearing oil or gas not producing. No casing shall be removed without the prior approval of the director.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-25. DEVIATION TESTS AND DIRECTIONAL SURVEYS.** When any well is drilled or deepened, tests to determine the deviation from the vertical shall be taken at least every one thousand feet [304.8 meters]. When the deviation from the vertical exceeds five degrees at any point, the director may require that the hole be straightened. Directional surveys may be required by the director, whenever, in the director's judgment, the location of the bottom of the well is in doubt.

A directional survey shall be made and filed with the director on any well utilizing a whipstock or any method of deviating the well bore. The obligation to run the directional survey may be waived by the director when a well bore is deviated to sidetrack junk in the hole, straighten a crooked hole, control a blowout, or if the necessity therefor can be demonstrated to the director's satisfaction. The survey contractor shall file two certified copies of all surveys with the director free of charge within thirty days of completion. Surveys must be submitted as one paper copy and one electronic copy, or in a form approved by the director. However, the director may require the directional survey to be filed immediately after completion if the survey is needed to conduct the operation of the director's office in a timely manner. Special permits may be obtained to drill directionally in a predetermined direction as provided above, from the director.

If the director denies a request for a permit to directionally drill, the director shall advise the applicant immediately of the reasons for denial. The decision of the director may be appealed to the commission.

History: Amended effective April 1, 1980; April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-26. MULTIPLE ZONE COMPLETIONS.** Multiple zone completions in any pool may be permitted by the director.

An application for a multiple zone completion shall be accompanied by an exhibit showing the location of all wells on the applicant's lease and all offset wells on offset leases and shall set

forth all material facts on the common sources of supply involved and the manner and method of completion proposed.

Multiply completed wells shall at all times be operated, produced, and maintained in a manner to ensure the complete segregation of the various common sources of supply. The director may require such tests as the director deems necessary to determine the effectiveness of the segregation of the different sources of supply.

History: Amended effective January 1, 1983; May 1, 1992.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-27. PERFORATING, FRACTURING, AND CHEMICALLY TREATING WELLS.** If damage results to the casing or the casing seat from perforating, fracturing, or chemically treating a well, the operator shall proceed with diligence to use the appropriate method and means for rectifying such damage. If perforating, fracturing or chemical treating results in irreparable damage which threatens the mechanical integrity of the well, the commission may require the operator to plug the well.

History: Amended effective January 1, 1983; May 1, 1992.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-28. SAFETY REGULATION.** During drilling operations all oil wells shall be cleaned into a pit or tank, not less than forty feet [12.19 meters] from the derrick floor and one hundred fifty feet [45.72 meters] from any fire hazard.

All flowing oil wells must be produced through an approved oil and gas separator or emulsion treater of ample capacity and in good working order. No boiler or portable electric lighting generator shall be placed or remain nearer than one hundred fifty feet [45.72 meters] to any producing well or oil tank. Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least one hundred fifty feet [45.72 meters] from the vicinity of wells and tanks. All waste shall be burned or disposed of in such manner as to avoid creating a fire hazard. All vegetation must be removed to a safe distance from any production equipment to eliminate a fire hazard.

No well shall be drilled nor production equipment installed less than three hundred and thirty feet [100.58 meters] from a building or residence unless agreed to in writing by the surface owner or authorized by order of the commission.

Subsurface pressure must be controlled during all drilling, completion, and well-servicing operations with appropriate fluid weight and pressure control equipment.

History: Amended effective January 1, 1983; May 1, 1990; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-29. WELL AND LEASE EQUIPMENT.** Wellhead equipment with a working pressure at least equivalent to the calculated or known pressure to which the equipment may be subjected shall be installed and maintained. Equipment on producing wells shall be installed to facilitate gas-oil ratio tests, and static bottom hole or other pressure tests. Valves shall be installed and maintained in good working order to permit pressure readings to be obtained on both casing and tubing.

History: Amended effective January 1, 1983.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-30. NOTIFICATION OF FIRES, LEAKS, SPILLS, OR BLOWOUTS.** All persons controlling or operating any well, pipeline, receiving tank, storage tank, or production facility into which oil, gas, or water is produced, received, stored, processed, or through which oil, gas, or water is injected, piped, or transported, shall verbally notify the director within twenty-four hours after discovery of any fire, leak, spill, blowout, or release of fluid. Notification requirements prescribed by this section shall not apply to any leak, spill, or release of fluid that is less than one barrel total volume and remains onsite of a facility. The verbal notification must be followed within ten days by a written report of the incident, if deemed necessary by the director. Such report must include the following information: the operator and description of the facility, the legal description of the location of the incident, date of occurrence, date of cleanup, amount and type of each fluid involved, amount of each fluid recovered, steps taken to remedy the situation, cause of the accident, and action taken to prevent reoccurrence. The signature, title, and telephone number of the company representative must be included on such report. If any such incident occurs or travels offsite of a facility, the persons, as named above, responsible for proper notification shall also notify the surface owners upon whose land the incident occurred or traveled.

The commission, however, may impose more stringent spill reporting requirements if warranted by proximity to sensitive areas, past spill performance, or careless operating practices as determined by the director.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-31. WELL LOG, COMPLETION, AND WORKOVER REPORTS.** After the plugging of a well, a plugging record (form 7) shall be filed with the director. After the completion of a well, recompletion of a well in a different pool, or drilling horizontally in an existing pool, a completion report (form 6) shall be filed with the director. In no case shall oil or gas be transported from the lease prior to the filing of a completion report unless approved by the director. The operator shall cause to be run an electrical, radioactivity, or other similar log, or combination of logs, of the operator's choice, from which formation tops and porosity zones can be determined. The operator shall cause to be run a gamma ray log from total depth to ground level elevation of the well bore. The operator shall cause to be run a log from which the presence of cement can be determined in every well in which production or intermediate casing has been set. The obligation to log may be waived by the director if the necessity therefor can be demonstrated to the director's satisfaction. Waiver will be contingent upon such terms and conditions as the director deems appropriate. All logs run shall be available to the director at the well site prior to proceeding with plugging or completion operations. Two copies of all logs run shall be submitted to the director free of charge. Logs shall be submitted as one paper copy and one digital LAS (log ASCII) formatted copy, or a format approved by the director. In addition, operators shall file two copies of drill stem test reports and charts, formation water analyses, core analyses, and noninterpretive lithologic logs or sample descriptions if compiled by the operator.

All information furnished to the director on new permits, except the operator name, well name, location, and any production runs, shall be kept confidential for not more than six months if requested by the operator in writing. The six-month period shall commence on the date the well is completed or the date the written request is received, whichever is earlier. If the written request accompanies the application for permit to drill or is filed after permitting but prior to spudding, the six-month period shall commence on the date the well is spudded.

All information furnished to the director on recompletions or reentries, except the operator name, well name, location, and any production runs, shall be kept confidential for not more than six months if requested by the operator in writing. The six-month period shall commence on the date the well is completed or the date the well was approved for recompletion or reentry, whichever is earlier. Any information furnished to the director prior to approval of the recompletion or reentry shall remain public.

Approval must be obtained on a sundry notice (form 4) from the director prior to perforating or recompleting a well in a pool other than the pool in which the well is currently permitted.

After the completion of any remedial work, or attempted remedial work such as plugging back or drilling deeper, acidizing, shooting, formation fracturing, squeezing operations, setting liner, perforating, reperforating, or other similar operations not specifically covered herein, a report on the operation shall be filed on a sundry notice (form 4) with the director. The report shall present a detailed account of all work done and the date of such work; the daily production of oil, gas, and water both prior to and after the operation; the shots per foot, size, and depth of perforations; the quantity of sand, crude, chemical, or other materials employed in the operation;

and any other pertinent information or operations which affect the original status of the well and are not specifically covered herein.

Upon the installation of pumping equipment on a flowing well, or change in type of pumping equipment designed to increase productivity in a well, the operator shall submit a sundry notice (form 4) of such installation. The notice shall include all pertinent information on the pump and the operation thereof including the date of such installation, and the daily production of the well prior to and after the pump has been installed.

All forms, reports, logs, and other information required by this section shall be submitted within thirty days after the completion of such work, although a completion report shall be filed immediately after the completion or recompletion of a well in a pool or reservoir not then covered by an order of the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; September 1, 2000; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-32. STRATIGRAPHIC TEST AND CORE HOLES.** Stratigraphic test and core holes shall be permitted the same as oil and gas wells, although no setback from a drilling unit shall be required.

History: Amended effective April 30, 1981; January 1, 1983; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

## **D. PLUGGING OF WELLS**

**43-02-03-33. NOTICE OF INTENTION TO PLUG WELL.** The operator or the operator's agent shall file a notice of intention (form 4) to plug with the director, and obtain the approval of the director, prior to the commencement of plugging operations. The notice shall state the name and location of the well, the name of the operator, and the method of plugging, which must include a detailed statement of proposed work. In the case of a recently completed test well that has not had production casing in the hole, the operator may commence plugging by giving reasonable notice to, and securing verbal approval of, the director as to the method of plugging, and the time plugging operations are to begin. Within thirty days after the plugging of any well has been accomplished, the owner or operator thereof shall file a plugging record

(form 7), and, if requested, a copy of the cementer's trip ticket or job receipt, with the director setting forth in detail the method used in plugging the well.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-34. METHOD OF PLUGGING.** All wells shall be plugged in a manner which will confine permanently all oil, gas, and water in the separate strata originally containing them. This operation shall be accomplished by the use of mud-laden fluid, cement, and plugs, used singly or in combination as may be approved by the director. All casing strings shall be cut off at least three feet [91.44 centimeters] below the final surface contour, and a cap shall be welded thereon. Core or stratigraphic test holes drilled to or below sands containing freshwater shall be plugged in accordance with the applicable provisions recited above. After plugging, the site must be reclaimed pursuant to section 43-02-03-19.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-35. CONVERSION OF MINERAL WELLS TO FRESHWATER WELLS.** Any person desiring to convert a mineral well to a freshwater well, as provided by North Dakota Century Code section 61-01-27, shall file an application for approval with the commission. The application must include, but is not limited to, the following:

1. If the well is to be used for other than individual domestic and livestock use, a conditional water permit issued by the state water commission.
2. An affidavit by the person desiring to obtain approval for the conversion stating that such person has the authority and assumes all liability for the use and plugging of the proposed freshwater well.
3. The procedure which will be followed in converting the mineral well to a freshwater well.
4. If the well is not currently plugged and abandoned, an affidavit must be executed by the operator of the well indicating that the parties responsible for plugging the mineral well have no objection to the conversion of the mineral well to a freshwater well.

If the commission, after notice and hearing, determines that a mineral well may safely be used as a freshwater well, the commission may approve the conversion.

History: Amended effective April 30, 1981; January 1, 1983; September 1, 1987; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-36. LIABILITY.** The owner and operator of any well, core hole, or stratigraphic test hole, whether cased or uncased, shall be liable and responsible for the plugging and site reclamation thereof in accordance with the rules and regulations of the commission.

History: Amended effective January 1, 1983; May 1, 1994.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-37. SLUSH PITS.** Repealed effective January 1, 1983.

**43-02-03-38. PRESERVATION OF CORES AND SAMPLES.** Repealed effective January 1, 1983.

**43-02-03-38.1 PRESERVATION OF CORES AND SAMPLES.** Sample cuttings of formations, taken at regular intervals in all wells drilled for oil or gas or geologic information in North Dakota, shall be washed and packaged in standard sample envelopes which in turn shall be placed in proper order in a standard sample box; carefully identified as to operator, well name, location, depth of sample; and shall be sent free of cost to the state geologist.

The operator of any well drilled for oil or gas in North Dakota, during the drilling of or immediately following the completion of any well, shall inform the state geologist or the geologist's representative of all intervals that are to be cored, or have been cored. All cores taken shall be preserved and forwarded to the state geologist, free of cost, unless specifically exempted by the state geologist. Those cores requested by the state geologist shall be forwarded to the state geologist within thirty days after completion of drilling operations. If the state geologist does not desire the core, the operator shall advise the state geologist of the final disposition of the core.



This section does not prohibit the operator from taking such samples of the core as the operator may desire for identification and testing. The operator shall furnish the state geologist with the results of identification and testing procedures.

History: Effective October 1, 1990.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

## E. OIL PRODUCTION OPERATING PRACTICES

**43-02-03-39. LIMITING GAS-OIL RATIO.** In the event the commission has not set a limiting gas-oil ratio for a particular oil pool, the operator of any well in such pool whose gas-oil ratio exceeds two thousand shall demonstrate to the director that production from such well should not be restricted pending a hearing before the commission to establish a limiting gas-oil ratio. The director may restrict production of any well with a gas-oil ratio exceeding two thousand, until the commission can determine that restrictions are necessary to conserve reservoir energy.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-39.1. OIL PRODUCTION LIMITATION.** In the event the commission has not established spacing and special field rules for a particular oil pool, oil production from any well completed therein shall be a maximum of two thousand barrels per day until the commission issues a decision after hearing. The director shall have the authority to waive production limitations for good cause, and for special tests.

History: Effective July 1, 1996.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-40. GAS-OIL RATIO TEST.** Each operator shall take a gas-oil ratio test within thirty days following the completion or recompletion of an oil well. Each test shall be conducted using standard industry practices unless otherwise specified by the director. The initial gas-oil ratio must be reported on the well completion or recompletion report (form 6). After the discovery of a new pool, each operator shall make additional gas-oil ratio tests as directed by the director or provided for in field rules. During tests each well shall be produced at a maximum efficient rate. The director may shut in any well for failure to make such test until such time as a satisfactory test can be made, or satisfactory explanation given. The results of all gas-oil ratio

tests shall be submitted to the director on form 9, which shall be accompanied by a statement that the data on form 9 is true and correct.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-41. SUBSURFACE PRESSURE TESTS.** The operator shall make a subsurface pressure test on the discovery well of any new pool hereafter discovered and shall report the results thereof to the director within thirty days after the completion of such discovery well. Drill stem test pressures are acceptable. After the discovery of a new pool, each operator shall make additional subsurface pressure tests as directed by the director or provided for in field rules. All tests shall be made by a person qualified by both training and experience to make such tests and with an approved subsurface pressure instrument. All wells shall remain completely shut in for at least forty-eight hours prior to the test. The subsurface determination shall be obtained as close as possible to the midpoint of the productive interval of the reservoir. The report of the reservoir pressure test shall be filed on form 9a.

The director may shut in any well for failure to make such test as herein above described until such time as a satisfactory test has been made or satisfactory explanation given.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-42. COMMINGLING OF OIL FROM POOLS.** Except as directed by the commission after hearing, each pool shall be produced as a single common reservoir without commingling in the well bore of fluids from different pools. After fluids from different pools have been brought to surface, such fluids may be commingled provided that the amount of production from each pool is determined by a method approved by the director.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-43. CONTROL OF MULTIPLY COMPLETED WELLS.** Repealed effective January 1, 1983.

**43-02-03-44. METERED CASINGHEAD GAS.** All casinghead gas produced shall be reported monthly to the director in units of one thousand cubic feet [28.32 cubic meters]

computed at a pressure of fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter] at a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius]. Associated gas production may not be transported from a well premises or central production facility until its volume has been determined through the use of properly calibrated measurement equipment. All measurement equipment and volume determinations must conform to American gas association standards. The operator of a well shall notify the director of the connection date to a gas gathering system, the metering equipment, transporter, and purchaser of the gas. Any gas produced and used on lease for fuel purposes or flared must be estimated and reported on a gas production report (form 5b) in accordance with section 43-02-03-52.1.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-45. VENTED CASINGHEAD GAS.** Pending arrangements for disposition for some useful purpose, all vented casinghead gas shall be burned. Each flare shall be equipped with an automatic ignitor or a continuous burning pilot, unless waived by the director for good reason. The estimated volume of gas used and flared shall be reported to the director on a gas production report (form 5b) or before the fifth day of the second month succeeding that in which gas is produced.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-46. USE OF VACUUM PUMPS.** Repealed effective January 1, 1983.

**43-02-03-47. PRODUCED WATER.** Monthly water production from each well must be determined through the use of properly calibrated meter measurements, tank measurements, or an alternate measurement method approved by the director. This includes allocating water production back to individual wells on a monthly basis, provided the method of volume determination and allocation procedure results in reasonably accurate production volumes. Operators shall report monthly to the director the amount of water produced by each well on form 5. The reports must be filed on or before the first day of the second month following that in which production occurred.

History: Amended effective January 1, 1983; May 1, 1992; May 1, 1994; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-48. MEASUREMENT OF OIL.** Oil production may not be transported from a well premises or central production facility until its volume has been determined through the use of properly calibrated meter measurements or tank measurements. All meter and tank measurements, and volume determinations must conform to American petroleum institute standards and be corrected to a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius].

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1992; May 1, 1994; July 1, 1996.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-48.1. CENTRAL PRODUCTION FACILITY - COMMINGLING OF PRODUCTION.**

1. The director shall have the authority to approve requests to consolidate production equipment at a central location.
2. Commingling of production from two or more wells in a central production facility is prohibited unless approved by the director. There are two types of central production facilities in which production from two or more wells is commingled that may be approved by the director.
  - a. A central production facility in which all production going into the facility has common ownership (working interests, royalty interests, and overriding royalties).
  - b. A central production facility in which production going into the facility has diverse ownership.
3. The commingling of production in a central production facility from two or more wells having common ownership may be approved by the director provided the production from each well can be accurately determined at reasonable intervals. Commingling of production in a central production facility from two or more wells having diverse ownership may be approved by the director provided the production from each well is accurately metered prior to commingling. Commingling of production in a central production facility from two or more wells having diverse ownership that is not metered prior to commingling may only be approved by the commission after notice and hearing.
  - a. Common ownership central production facility. The application for permission to commingle oil and gas in a central production facility with common ownership must be submitted on a sundry notice (form 4) and shall include the following:

- (1) A plat or map showing thereon the location of the central facility and the name, well file number, and location of each well and flow lines from each well that will produce into the facility.
- (2) A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items such as treaters, tanks, flow lines, valves, meters, recycle pumps, etc., should be shown.
- (3) A current or most recent division order or title opinion showing the ownership of each well to be commingled.
- (4) An explanation of the procedures or method to be used to determine, accurately, individual well production at periodic intervals. Such procedures or method shall be performed at least once every three months.

A copy of all tests are to be filed with the director on form 11 within thirty days after the tests are completed.

- b. Diverse ownership central production facility. The application for permission to commingle oil and gas in a central production facility having diverse ownership must be submitted on a sundry notice (form 4) and shall include the following:

- (1) A plat or map showing thereon the location of the central facility and the name, well file number, and location of each well, and flow lines from each well that will produce into the facility.
- (2) A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items such as treaters, tanks, flow lines, valves, meters, recycle pumps, etc., should be shown.
- (3) The name of the manufacturer, size, and type of meters to be used. The meters must be proved at least once every three months and the results reported to the director within thirty days following the completion of the test.
- (4) An explanation of the procedures or method to be used to determine, accurately, individual well production at periodic intervals. Such procedures or method shall be performed monthly.

A copy of all tests are to be filed with the director on form 11 within thirty days after the tests are completed.

4. Any changes to a previously approved central production facility must be reported on a sundry notice (form 4) and approved by the director.

History: Effective May 1, 1992; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-49. OIL SPILLS, TANKS, DIKES, AND SEALS.** Storage of oil in underground or partially buried tanks or containers is prohibited. Oil may be stored in surface tanks providing they are devoid of leaks and in good condition. Dikes must be erected and maintained around oil tanks at any production facility built or rebuilt on or after July 1, 2000.

Dikes must be erected around oil tanks at any new production facility within thirty days after the well has been completed. Dikes must be erected and maintained around oil tanks at production facilities built prior to July 1, 2000, when deemed necessary by the director. Dikes must be constructed of sufficiently impermeable material to provide emergency containment and of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid production. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction.

At no time shall oil be allowed to flow over or pool on the surface of the land or infiltrate the soil. Discharged oil must be properly removed and may not be allowed to remain standing within or outside of any diked areas.

Numbered metal security seals shall be properly utilized on all oil access valves and access points to secure the tank or battery of tanks.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-50. TANK CLEANING PERMIT.** No tank bottom shall be removed from any tank used for the storage of crude oil or a tank in which crude oil accumulates without prior approval by the director. Verbal approval may be given. All tank bottom waste must be disposed of in a manner authorized by the director and in accordance with all applicable local, state, and federal laws and regulations. Within thirty days of completion of the tank bottom cleaning, the owner or operator shall submit a report (form 23) showing an accurate gauge of the contents of the tank and the amount of merchantable oil determinable from a representative sample of the tank bottom by the standard centrifugal test as prescribed by the American petroleum institute's code for measuring, sampling, and testing crude oil. Nothing contained in this section shall apply to reclaiming of pipeline break oil or the treating of tank bottoms at a pipeline station, crude oil storage terminal, or refinery or to the treating by a gasoline plant operator of oil and other

catchings collected in traps and drips in the gas gathering lines connected to gasoline plants and in scrubbers at such plants.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-51. TREATING PLANT.** Before construction of a treating plant and upon written application for a treating plant permit stating in detail the location, type, capacity of the plant contemplated, method of processing proposed, and the plan of operation for all plant waste, the commission shall set such application for hearing to determine whether the proposed plant and method of processing will actually and efficiently process, treat, and reclaim tank bottom emulsion and other waste oils, and whether there is need for such a plant. The operator of any portable treating plant shall notify the director as to all changes in location of said plant. No treating plant shall operate except by order of the commission. The disposition of all products and waste must be reported monthly on form 5p. Upon approval of a treating plant and before construction begins, the permittee shall file with the commission a surety bond or cash bond conditioned upon compliance with all laws, rules and regulations, and orders of the commission. The bond amount shall be specified in the commission order authorizing the treating plant and shall be based upon the location, type, and capacity of the plant, processing method, and plan of operation for all plant

waste approved in the commission order and shall be payable to the industrial commission of North Dakota. In no case shall the bond amount be set lower than twenty-five thousand dollars.

History: Amended effective January 1, 1983; May 1, 1990; May 1, 1992; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-52. REPORT OF OIL PRODUCTION.** The operator of each well in every pool shall, on or before the first day of the second month succeeding the month in which production occurs, file with the director the amount of production made by each such well upon form 5 or approved computer sheets no larger than eight and one-half by eleven inches [21.59 by 27.94 centimeters]. 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. Wells for which reports of production are not received by the close of business on said first day of the month may be shut in for a period not to exceed thirty days. The director shall notify, by certified mail, the operator and authorized

transporter of the shut-in period for such wells. Any oil produced during such shut-in period shall be deemed illegal oil and subject to the provisions of North Dakota Century Code section 38-08-15.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; December 1, 1997; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-52.1. REPORT OF GAS PRODUCED IN ASSOCIATION WITH OIL.**

The operator of each well in every pool shall, on or before the fifth day of the second month succeeding the month in which production occurs, file with the director the amount of gas produced by each such well upon form 5b or approved computer sheets no larger than eight and one-half by eleven inches [21.59 by 27.94 centimeters]. 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. Wells for which reports of production are not received by the close of business on said fifth day of the month may be shut in for a period not to exceed thirty days. The director shall notify, by certified mail, the operator and authorized transporter of the shut-in period for such wells. Any gas produced during such shut-in period must be deemed illegal gas and subject to the provisions of North Dakota Century Code section 38-08-15.

History: Effective May 1, 1992; amended effective December 1, 1997; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-53. SALTWATER HANDLING FACILITIES.**

1. All saltwater liquids or brines produced with oil and natural gas shall be processed, stored, and disposed of without pollution of freshwater supplies. At no time shall saltwater liquids or brines be allowed to flow over or pool on the surface of the land or infiltrate the soil.
2. Underground disposal of saltwater liquids and brines shall be in accordance with chapter 43-02-05.
3. Surface tanks are an acceptable facility provided that:
  - a. They are devoid of leaks and constructed of materials resistant to the effects of produced saltwater liquids, brines, or chemicals that may be contained therein. The above materials requirement may be waived by the director for tanks presently in service and in good condition.



- b. Dikes must be erected and maintained around saltwater tanks at any saltwater handling facility built or rebuilt on or after July 1, 2000. Dikes must be erected around saltwater tanks at any new facility within thirty days after the well has been completed. Dikes must be erected and maintained around saltwater tanks at saltwater handling facilities built prior to July 1, 2000, when deemed necessary by the director. Dikes must be constructed of sufficiently impermeable material to provide emergency containment and of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid production. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction. Discharged saltwater liquids or brines must be properly removed and may not be allowed to remain standing within or outside of any diked areas.

- 4. The operator shall take steps to minimize the amount of solids stored at the facility.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-54. INVESTIGATIVE POWERS.** Upon receipt of a written complaint from any surface owner or lessee, royalty owner, mineral owner, local, state, or federal official, or any other interested party, alleging a violation of the oil and gas conservation statutes or any rule, regulation, or order of the commission, the director shall immediately cause an investigation of such complaint to be made. 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 are necessary to enjoin further violations.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority  
NDCC 38-08-04  
38-08-12

Law Implemented  
NDCC 38-08-04  
38-08-12

**43-02-03-55. ABANDONMENT OF WELLS - SUSPENSION OF DRILLING.**

- 1. The removal of production equipment or the failure to produce oil or gas, other than a gas well shut in for lack of a market, for one year constitutes abandonment of the well. The removal of injection equipment or the failure to use an injection well for one year constitutes abandonment of the well. An abandoned well must be plugged and its site must be reclaimed pursuant to sections 43-02-03-34 and 43-02-03-19.

2. The director may waive for one year the requirement to plug and reclaim an abandoned well by giving the well temporarily abandoned status. This status may only be given to wells that are to be used for purposes related to the production of oil and gas. If a well is given temporarily abandoned status, the well's perforations must be isolated, the integrity of its casing must be proven, and its casing must be sealed at the surface, all in a manner approved by the director. The director may extend a well's temporarily abandoned status beyond one year.
3. In addition to the waiver in subsection 2, the director may also waive the duty to plug and reclaim an abandoned well for any other good cause found by the director. If the director exercises this discretion, the director shall set a date or circumstance upon which the waiver expires.
4. The director may approve suspension of the drilling of a well. If suspension is approved, a plug must be placed at the top of the casing to prevent any foreign matter from getting into the well. When drilling has been suspended for thirty days, the well, unless otherwise authorized by the director, must be plugged and its site reclaimed pursuant to sections 43-02-03-34 and 43-02-03-19.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; August 1, 1999.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-56. UNDERGROUND DISPOSAL OF WATER.** Repealed effective November 1, 1982.

## F. NATURAL GAS PRODUCTION OPERATING PRACTICE

**43-02-03-57. DETERMINATION OF GAS WELL POTENTIAL.** After the completion or recompletion of a gas well, the operator shall conduct tests to determine the daily open flow potential of the well. The test results together with an analyses of the gas shall be reported to the director within thirty days after completion of the well.

Operators shall conduct either a stabilized one-point back-pressure test or a multipoint back-pressure test in accordance with the "Manual of Back-Pressure Testing of Gas Wells" published by the interstate oil and gas compact commission unless otherwise approved by the director.

History: Amended effective January 1, 1983; May 1, 1992; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-58. METHOD AND TIME OF SHUT-IN PRESSURE TESTS.** Repealed effective January 1, 1983.

**43-02-03-59. PRODUCTION FROM GAS WELLS TO BE MEASURED AND REPORTED.** Gas production may not be transported from gas well premises until its volume has been determined through the use of properly calibrated measurement equipment. All measurement equipment and volume determinations must conform to American gas association standards and corrected to a pressure of fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter] at a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius]. Gas production reports (form 5b) shall be filed with the director on or before the fifth day of the second month succeeding that in which production occurs.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; July 1, 1996; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-60. NATURAL GAS UTILIZATION.** Repealed effective January 1, 1983.

**43-02-03-60.1. VALUATION OF FLARED GAS.** The value of gas flared from an oil well in violation of North Dakota Century Code section 38-08-06.4 must be deemed ninety-five cents per thousand cubic feet [28.32 cubic meters] (MCF). This valuation will be periodically reviewed by the industrial commission.

History: Effective October 1, 1990; amended effective May 1, 1992; May 1, 1994.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-06.4

**43-02-03-60.2. FLARING EXEMPTION.** The connection of a well to a natural gas gathering line is "economically infeasible" under North Dakota Century Code section 38-08-06.4, if the direct costs of connecting the well to the line and the direct costs of operating the facilities connecting the well to the line during the life of the well, are greater than the amount of money the operator is likely to receive for the gas, less production taxes and royalties, should the well be connected. In making this calculation, the applicant may add ten percent to the amount of the cost of connecting the well and of operating the connection facilities used to determine whether a connection is economically infeasible. This ten percent may be added in consideration of the cost of money and other overhead costs that are not figured in the direct costs of connecting the well and operating the connecting facilities.

An applicant for an exemption under North Dakota Century Code section 38-08-06.4 must, at the minimum, present evidence covering the following areas:

1. Basis for the gas price used to determine whether it is economically infeasible to connect the well to a natural gas gathering line;
2. Cost of connecting the well to the line and operating the facilities connecting the well to the line;
3. Current daily rate of the amount of gas flared; and
4. The amount of gas reserves and the amount of gas available for sale.

History: Effective May 1, 1994.

General Authority  
NDCC 38-07-04

Law Implemented  
NDCC 38-08-06.4

**43-02-03-61. STORAGE GAS.** With the exception of the requirement to meter and report monthly the amount of gas injected and the amount of gas withdrawn from storage, in the absence of waste, this chapter shall not apply to gas being injected into or removed from storage.

History: Amended effective January 1, 1983.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-62. CARBON DIOXIDE, COAL BED METHANE, HELIUM, AND NITROGEN.** Insofar as is applicable, the provisions of this chapter relating to gas, gas wells, and gas reservoirs shall also apply to carbon dioxide, coal bed methane, helium, nitrogen, carbon dioxide wells, coal bed methane wells, helium wells, nitrogen wells, carbon dioxide reservoirs, coal bed methane reservoirs, helium reservoirs, and nitrogen reservoirs.

History: Amended effective January 1, 1983; September 1, 1987; August 1, 2001; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
38-08-21

## G. OIL PRORATION AND ALLOCATION

**43-02-03-63. REGULATION OF POOLS.** To prevent waste and to protect correlative rights, the commission shall prorate or distribute the allowable production among the proration units and fractional proration units in a pool upon a reasonable basis.

After notice and hearing, the commission, in order to prevent waste and protect correlative rights, may promulgate rules, regulations, or orders pertaining to any pool.

History: Amended effective January 1, 1983.

General Authority  
NDCC 38-08-04  
38-08-06

Law Implemented  
NDCC 38-08-04  
38-08-06

**43-02-03-64. RATE OF PRODUCING WELLS.** In allocated oil and gas pools the owner or operator of any producing unit shall not produce from any proration unit during any proration period more oil or gas than the allowable production from such units as shown by the proration schedule, provided that such owners or operators shall be permitted to maintain a uniform rate of production for each unit during the proration period. In order to maintain a uniform rate of production from the pool during any proration period, any operator may produce a total volume of oil and gas equal to that shown on the applicable proration schedule plus or minus five days top unit allowable, and any such overproduction shall be deducted from the total allowable for the well in the second month following; and any such underproduction shall be added to the total allowable on the well for the second month following; provided, that if the underproduction shall exceed five days top unit allowable for the unit, none of the underproduction shall be added to the allowable for the second month following, except as provided in section 43-02-03-65.

A fractional proration unit shall be allowed to produce only in the proportion that the acreage content thereof bears to forty acres [16.19 hectares].

Where the commission has adopted special rules in any pool, wells drilled in accordance with those special rules shall be allowed to produce a daily amount of oil and gas equal to the top unit allowable as set by the commission multiplied by a factor, the numerator of which shall be the number of acres assigned to a spacing unit in the pool and the denominator of which shall be forty.

History: Amended effective January 1, 1983; September 1, 2000.

General Authority  
NDCC 38-08-04  
38-08-06

Law Implemented  
NDCC 38-08-04  
38-08-06

**43-02-03-65. AUTHORIZATION FOR PRODUCTION, PURCHASE, AND TRANSPORTATION.** When necessary the commission shall hold a hearing to set the normal unit allowable for the state.

The commission shall consider all evidence of market demand for oil and gas, including sworn statements of individual demand as submitted by each purchaser or buyer in the state, and determine the amount to be produced from all pools. The amount so determined will be allocated among the various pools in accordance with existing regulations and in each pool in accordance with regulations governing each pool. In allocated pools, effective the first day of each proration period, the commission will issue a proration schedule which will authorize the production of oil and gas from the various units in strict accordance with the schedule, and the purchase and transportation of such production. Allowable for wells completed after the first day of the proration period will become effective from the date of well completion. A supplementary order will be issued by the commission to the operator of a newly completed or recompleted well, and to the purchaser or transporter of the production from a newly completed or recompleted well, establishing the effective date of completion, the amount of production permitted during the remainder of the proration period, and the authority to purchase and transport same from said proration units and fractional proration units.

When it appears that a single normal unit allowable will not supply the amounts of oil or gas required by the markets available, the commission may designate separate marketing districts within the state and prescribe separate normal unit allowables for each district.

A marginal unit shall be permitted to produce any amount of oil which it is capable of producing up to and including the top unit allowable for that particular pool for the particular proration period; provided the operator of such unit shall file with the commission for a supplemental order covering the difference between the amount shown on the proration schedule and the top unit allowable for the pool. The commission shall issue such supplemental order setting forth the daily amount of production which such unit shall be permitted to produce for the particular proration period and shall furnish such supplemental order to the operator of the unit and a copy thereof to the transporter authorized to transport the production from the unit.

Underages may be made up or unavoidable and lawful overages compensated for during the third proration period next following the proration period in which such underages or overages occurred.

All back allowables authorized for purchase will be published in a proration schedule. No back allowable, except as provided in section 43-02-03-64, shall be placed on the proration schedule unless requested by the producer. In requesting back allowables, the producer shall indicate the reason for the underage and the director may approve any portion of the request. The usual grounds for back allowable which may be considered are (1) failure of purchaser to transport assigned allowable, (2) mechanical failure or repairs to well equipment during the proration period, and (3) testing or gathering engineering data.

In order to preclude premature plugging, a common purchaser within its purchasing area is authorized and directed to make one hundred percent purchases from units of settled production producing ten barrels or less daily of oil, or sixty thousand cubic feet [169.9 cubic meters] or less daily of gas, in lieu of ratable purchases or takings. Provided such purchaser's takings are curtailed below ten barrels per unit of oil daily, or below sixty thousand cubic feet [169.9 cubic meters] per unit of gas daily, then such purchaser is authorized and directed to purchase equally from all such units within its purchasing area regardless of their producing ability insofar as they are capable of producing.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996.

General Authority  
NDCC 38-08-04  
38-08-06

Law Implemented  
NDCC 38-08-04  
38-08-06

**43-02-03-66. APPLICATION FOR ALLOWABLE ON NEW OIL WELLS.** No well shall be placed on the proration schedule until a completion report (form 6) has been filed with the director.

The first four wells in any field or pool hereafter discovered shall be allowed to produce any amount of oil it is capable of producing but in no case to exceed a maximum of two hundred barrels of oil per day if the same can be done without waste and provided further, that a market can be obtained for such oil produced.

The allowable production provided for above shall continue in effect for a period of not more than eighteen months from the date of completion of the first well in the field or pool, or until the completion of the fifth well in the pool, whichever shall occur first, and shall produce thereafter, only pursuant to the general rules and regulations of the commission.

The producer or operator of any well claiming a discovery allowable under this section shall report to the director, not later than the tenth of each month, the results of a potential test, made on or about the first day of the month, in accordance with the provisions of section 43-02-03-40.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000.

General Authority  
 NDCC 38-08-04  
 38-08-06

Law Implemented  
 NDCC 38-08-04  
 38-08-06

**43-02-03-67. OIL PRORATION.** The allocation between pools shall be in accordance with the top of the producing depth of the pool and the corresponding proportional factor set out below. The depth to the casing shoe or the top perforation in the casing, whichever is the higher in the first well completed in a pool determines the depth classification for the pool. Top unit allowables shall be calculated for each of the several ranges of depth in the following proportions:

	<b>Pool Depth Range</b>	<b>Proportional Factor</b>
from	0 to 5,000 feet	1.00
	5,000 to 6,000 feet	1.33
	6,000 to 7,000 feet	1.77
	7,000 to 8,000 feet	2.33
	8,000 to 9,000 feet	3.00
	9,000 to 10,000 feet	3.77
	10,000 to 11,000 feet	4.67
	11,000 to 12,000 feet	5.67
below	12,000 feet	6.75

The normal unit allowable shall be set by the commission and shall be uniform for all proration units within all pools producing from five thousand feet [1524 meters] or above.

Top unit allowables for each range of depth shall then be determined by multiplying the normal unit allowable by the proportional factor for each depth range as set out in the table hereinabove; any fraction of a barrel shall be regarded as a full barrel for both normal and top unit allowables.

At the beginning of each calendar month, the distribution or proration to the respective units in each pool shall be changed in order to take into account all new wells which have been completed and were not in the proration schedule during the previous calendar month. Where any well is completed between the first and last day of the calendar month, its proration unit shall be



assigned an allowable in accordance with whether such unit is marginal or nonmarginal, beginning at seven a.m., on the date of completion and for the remainder of that calendar month.

History: Amended effective January 1, 1983.

General Authority  
NDCC 38-08-04  
38-08-06

Law Implemented  
NDCC 38-08-04  
38-08-06

**43-02-03-68. GAS-OIL RATIO LIMITATION.** In allocated pools containing a well or wells producing from a reservoir which contains both oil and gas, each proration unit shall be permitted to produce only that volume of gas equivalent to the applicable limiting gas-oil ratio multiplied by the top unit oil allowable for the depth of the pool and currently assigned to the pool. In the event the commission has not set a gas-oil ratio limit for a particular oil pool, the limiting gas-oil ratio shall be two thousand cubic feet [56.63 cubic meters] of gas for each barrel of oil produced.

A gas-oil limit shall be placed on all allocated oil pools, and all proration units or fractional proration units having a gas-oil ratio exceeding the limit for the pool shall be adjusted unless previously exempted by the commission after hearing, in accordance with the following formula:

1. Any proration unit which, on the basis of the latest official gas-oil ratio test has a gas-oil ratio in excess of the limiting gas-oil ratio for the pool in which it is located, shall be permitted to produce daily that number of barrels of oil which shall be determined by multiplying the current top unit allowable by the fraction, the numerator of which shall be the limiting gas-oil ratio for the pool and the denominator of which shall be the official gas-oil ratio test of the well.
2. Any unit containing a well or wells producing from a reservoir which contains both oil and gas shall be permitted to produce only that volume of gas equivalent to the applicable limiting gas-oil ratio multiplied by the top unit allowable currently assigned to the pool.
3. A marginal unit shall be permitted to produce the same total volume of gas which it would be permitted to produce if it were a nonmarginal unit.
4. All gas produced with the current oil allowable determined in accordance with this rule shall be deemed to have been lawfully produced.

All proration units to which gas-oil ratio adjustments are applied shall be so indicated in the proration schedule with adjusted allowables stated. The adjustment shall be made effective on the first day of the month following that in which the gas-oil ratio tests were reported for the pool, as set forth in the special field rules applicable to the pool.

In cases of new pools the limiting gas-oil ratio shall be two thousand cubic feet [56.63 cubic meters] per barrel until such time as changed by the commission after a hearing. After notice and

hearing, the commission shall determine or redetermine, the specific gas-oil ratio limit which is applicable to a particular allocated oil pool.

History: Amended effective January 1, 1983.

General Authority  
NDCC 38-08-04  
38-08-06

Law Implemented  
NDCC 38-08-04  
38-08-06

## H. GAS PRORATION AND ALLOCATION

**43-02-03-69. ALLOCATION OF GAS PRODUCTION.** When the commission determines that allocation of gas production in a designated gas pool is necessary to prevent waste, and to protect correlative rights, the commission, after notice and hearing, shall consider the nominations of purchasers from that gas pool and other relevant data, and shall fix the allowable production of that pool, and shall allocate production among the proration units and fractional proration units in the pool delivering to a gas transportation facility upon a reasonable basis. The commission shall include in the proration schedule of such pool any proration unit or fractional proration unit which it finds is being unreasonably discriminated against through denial of access to a gas transportation facility which is reasonably capable of handling the type of gas producible from such proration unit or fractional proration unit.

History: Amended effective January 1, 1983.

General Authority  
NDCC 38-08-04  
38-08-06

Law Implemented  
NDCC 38-08-04  
38-08-06

**43-02-03-70. GAS PRORATION PERIOD.** The gas proration period shall be set by order of the commission.

History: Amended effective January 1, 1983.

General Authority  
NDCC 38-08-04  
38-08-06

Law Implemented  
NDCC 38-08-04  
38-08-06

**43-02-03-71. ADJUSTMENT OF GAS ALLOWABLES.** When the actual market demand from any allocated gas pool during a proration period is more than or less than the allowable set by the commission for the pool for the period, the commission shall adjust the gas proration unit allowables for the pool for the next proration period so that each gas proration unit

shall have a reasonable opportunity to produce its fair share of the gas production from the pool in a manner that shall protect correlative rights.

History: Amended effective January 1, 1983.

General Authority  
NDCC 38-08-04  
38-08-06

Law Implemented  
NDCC 38-08-04  
38-08-06

**43-02-03-72. GAS PRORATION UNITS.** Before issuing a proration schedule for an allocated gas pool, the commission, after notice and hearing, shall fix the gas proration unit for that pool.

General Authority  
NDCC 38-08-04  
38-08-06

Law Implemented  
NDCC 38-08-04  
38-08-06

## **I. SECONDARY RECOVERY AND PRESSURE MAINTENANCE**

**43-02-03-73. PERMIT FOR INJECTION OF GAS, AIR, OR WATER.** Repealed effective November 1, 1982.

**43-02-03-74. CASING AND CEMENTING OF INJECTION WELLS.** Repealed effective November 1, 1982.

**43-02-03-75. NOTICE OF COMMENCEMENT AND DISCONTINUANCE OF INJECTION OPERATIONS.** Repealed effective November 1, 1982.

**43-02-03-76. RECORDS.** Repealed effective November 1, 1982.

**43-02-03-77. APPLICATION FOR UNITIZED MANAGEMENT UNDER COMMISSION ORDER.** Any plan of unitized management or any injection into a reservoir for the purpose of maintaining reservoir pressure or for enhanced recovery operations shall be permitted only by order of the commission after notice and hearing. The application for an order shall include a complete statement of all matters required by North Dakota Century Code section 38-08-09 et seq.

The application shall be submitted to the commission, in duplicate, at least forty-five days prior to the date requested for such hearings and shall be accompanied by all engineering, geological, and other technical exhibits which will be introduced at the hearing.

In addition, the application shall set forth that all the provisions of North Dakota Century Code section 38-08-09.5 have been complied with.

History: Amended effective November 1, 1982; January 1, 1983; May 1, 1992.

General Authority  
NDCC 38-08-09

Law Implemented  
NDCC 38-08-09

## **J. OIL PURCHASING AND TRANSPORTING**

**43-02-03-78. ILLEGAL SALE PROHIBITED.** Repealed effective January 1, 1983.

**43-02-03-79. PURCHASE OF LIQUIDS FROM GAS WELLS.** Provided that a supplemental order is issued authorizing such production on the proration schedule, any common purchaser is authorized to purchase one hundred percent of the amount of associated crude oil or condensate produced and recovered from a gas proration unit.

History: Amended effective January 1, 1983.

General Authority  
NDCC 38-08-06

Law Implemented  
NDCC 38-08-06

**43-02-03-80. REPORTS OF PURCHASERS AND TRANSPORTERS OF CRUDE OIL.** On or before the first day of the second month succeeding that in which oil is removed, purchasers and transporters, including truckers, shall file with the director the appropriate monthly reporting forms. The purchaser shall file on form 10 and the transporter on form 10a the amount of all crude oil removed and purchased by them from each well or central production facility during the reported month. The transporter shall report the disposition of such crude oil on form 10b. All meter and tank measurements, and volume determinations of crude oil removed and purchased from a well or central production facility must conform to American petroleum institute standards and corrected to a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius] and fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter].

Prior to removing any oil from a well or central production facility, purchasers and transporters shall obtain an approved copy of a producer's authorization to purchase and transport oil from a well or central production facility (form 8) from either the producer or the director.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-81. AUTHORIZATION TO TRANSPORT OIL FROM A WELL OR CENTRAL PRODUCTION FACILITY.** Before any crude oil is transported from a well or central production facility, the operator of the well or central production facility shall file with the director, and obtain the director's approval, an authorization to purchase and transport oil from a well or central production facility (form 8).

Oil transported from a well or central production facility before the authorization is obtained or if such authorization has been revoked shall be considered illegal oil.

The director may revoke the authorization to purchase and transport oil from a well or central production facility for failure to comply with any rule, regulation, or order of the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-81.1 REPORTS OF PURCHASES FOR RESALE AND TRANSPORTING OF DRY GAS.** Transporters of and purchasers for the resale of dry gas shall file a report (form 8a) with the director showing the amount of gas taken from each plant or well during the monthly reporting period.

All gas shall be reported monthly to the director in one thousand cubic feet [28.32 cubic meters] computed at a pressure of fourteen and seventy-three hundredths pounds per square inch [1034.19 grams per square centimeter] absolute at a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius].

History: Effective January 1, 1983; amended effective May 1, 1992; July 1, 1996.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

## K. REFINING

**43-02-03-82. REFINERY REPORTS.** Each refiner of oil within North Dakota shall furnish for each calendar month a report (form 13) containing information and data respecting crude oil and products involved in such refiner's operations during each month. The report for each month shall be prepared and filed on or before the fifteenth of the next succeeding month with the director.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-83. GAS PROCESSING PLANT REPORTS.** Each operator of a gas processing plant, cycling plant, or any other plant at which gas processing, gasoline, butane, propane, condensate, kerosene, oil, or other products are extracted from gas shall furnish to the director a report containing the amount of gas received from each lease or well on form 12a.

Crude oil recovered shall be reported to the director, on form 5 on or before the close of business on the first day of the second month succeeding that in which oil is removed. Other operations shall be reported to the director, on form 12 and 12a, on or before the fifth day of the second month following that in which gas is processed.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

## L. REPORTS

**43-02-03-84. 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 production, transportation, storing, refining, processing, or handling of crude oil, gas, or products 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: Amended effective January 1, 1983.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-85. BOOKS AND RECORDS TO BE KEPT TO SUBSTANTIATE REPORTS.** All producers, transporters, storers, refiners, gasoline or extraction plant operators, and initial purchasers 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: Amended effective January 1, 1983; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**M. SPECIAL RULES OF ORDER ON PROCEDURE  
GOVERNING THE CONSERVATION OF OIL AND GAS**

**43-02-03-86. PUBLIC HEARING REQUIRED.** Repealed effective January 1, 1983.

**43-02-03-87. INSTITUTE PROCEEDINGS.** Repealed effective January 1, 1983.

**43-02-03-88. 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: Amended effective January 1, 1983.

General Authority  
NDCC 38-08-11

Law Implemented  
NDCC 38-08-11

**43-02-03-88.1. SPECIAL PROCEDURES FOR POOLING, FLARING EXEMPTION, UNDERGROUND INJECTION, COMMINGLING, CONVERTING MINERAL WELLS TO FRESHWATER WELLS, AND CENTRAL TANK BATTERY OR CENTRAL PRODUCTION FACILITIES APPLICATIONS.**

1. Applications for pooling under North Dakota Century Code section 38-08-08, for a flaring exemption under North Dakota Century Code section 38-08-06.4 and section 43-02-03-60.2, for underground injection under chapter 43-02-05, for commingling in one well bore the fluids from two or more pools under section 43-02-03-42, for converting a mineral well to a freshwater well under section 43-02-03-35, and for establishing central tank batteries or central production facilities under section 43-02-

03-48.1, must be accompanied by an affidavit signed by the applicant or the applicant's representative. The affidavit must contain or refer to attachments that contain all the information required by law as well as all the information the applicant wants the commission to consider in deciding whether to grant the application. The affidavit must designate an employee or representative of the applicant to whom the commission can direct inquiries regarding the application. Two copies of the application and affidavit and any accompanying materials must be submitted, unless the director consents to fewer copies.

2. The applications referred to in subsection 1 will be advertised and scheduled for hearing as are all other applications received by the commission. The applicant, however, unless required by the director, need not appear at the hearing scheduled to consider the application. The affidavit referred to in subsection 1 will be made an exhibit in the case unless the applicant fails to appear at the hearing after requested to do so by the director. Any interested party may appear at the hearing to oppose or comment on the application. Any interested party may also submit written comments on or objections to the application prior to the hearing date. Such submissions will be part of the record in the case.
3. The director is authorized, on behalf of the commission, to grant or deny the applications referred to in subsection 1.
4. In any proceeding under this section, the applicant, at the hearing, may supplement the affidavit required in subsection 1 by offering testimony and exhibits in support of the application.
5. In the event the applicant is not required by the director to appear at the hearing and an interested party does appear to oppose the application or submits a written objection to the application, the hearing officer shall continue the hearing to a later date, keep the record open for the submission of additional evidence, or take any other action necessary to ensure that the applicant, who does not appear at the hearing as the result of subsection 2, is accorded due process.

History: Effective May 1, 1992; amended effective May 1, 1994.

General Authority  
NDCC 38-08-04  
38-08-11

Law Implemented  
NDCC 38-08-04  
38-08-08

**43-02-03-88.2. HEARING PARTICIPANTS BY TELEPHONE.** In any hearing, the commission may, at its option, allow telephonic communication of witnesses and interested parties. The procedure shall be as follows:

1. Telephonic communication of an applicant's witness will only be considered if a written request is made at the time the application is filed with the commission.



2. Telephonic communication of an interested party will only be considered if said party notifies the applicant and the commission in writing at least three business days prior to the hearing date. Such notice shall include the subject hearing, the name and telephone number of the participant, and the name and telephone number of the applicant's attorney or representative that will be present at the hearing.
3. In the event an objection to any party's telephonic communication is received, the examiner may disallow such communication by telephone and may reschedule for an in-person hearing. The commission will notify all parties whether or not the request to participate by telephone is granted or denied.
4. All parties participating by telephone shall have an attorney or representative present at the hearing who shall be responsible for actually calling said party once the case is called for hearing, for providing the commission at the time of the hearing with any documentary evidence requested to be included in the record, and for any other matters necessary for the party to participate by telephone.
5. All parties participating by telephone shall file an affidavit verifying the identity of such party. The record of such telephonic communication shall not be considered evidence in the case unless said affidavit is received by the examiner prior to an order being issued by the commission. The commission shall provide a form affidavit. The commission has the discretion to refuse to consider all or any part of the information received from any party participating by telephone.
6. For all hearings allowing communication by telephone, the commission shall provide a hearing room equipped with a speaker telephone.
7. The cost of telephonic communication shall be paid by the party requesting its use.

History: Effective July 1, 2002.

General Authority  
NDCC 38-08-11

Law Implemented  
NDCC 28-32-11

**43-02-03-89. UPON APPLICATION HEARING IS SET.** Repealed effective January 1, 1983.

**43-02-03-90. HEARINGS - COMPLAINT PROCEEDINGS - EMERGENCY PROCEEDINGS - OTHER PROCEEDINGS.**

1. Except as more specifically provided in North Dakota Century Code section 38-08-11, 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 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 judgment 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 forty 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.

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 to pay the cost of republication of notice of the hearing.

History: Amended effective March 1, 1982; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; July 1, 2002.

General Authority  
NDCC 38-08-11

Law Implemented  
NDCC 28-32-21,  
38-08-11

**43-02-03-90.1. INVESTIGATORY HEARINGS.** The commission may hold investigatory hearings upon the institution of a proceeding by application or by 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: Effective May 1, 1992.

General Authority  
NDCC 28-32-08

Law Implemented  
NDCC 28-32-08

**43-02-03-90.2. OFFICIAL NOTICE.** The evidence in each case heard by the commission, unless specifically excluded by the hearing officer, includes the oil, water, and gas production records on file with the commission.

History: Effective May 1, 1992.

General Authority  
NDCC 28-32-06

Law Implemented  
NDCC 28-32-06

**43-02-03-90.3. PETITIONS FOR REVIEW OF RECOMMENDED ORDER 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: Effective May 1, 1992.

General Authority  
NDCC 28-32-13

Law Implemented  
NDCC 28-32-13

**43-02-03-90.4. NOTICE OF ORDER BY MAIL.** The commission may give notice of an order by mailing the order, and findings and conclusions upon which it is based, to all parties by regular mail provided it files an affidavit of service by mail indicating upon whom the order was served.

History: Effective May 1, 1992.

General Authority  
NDCC 28-32-13

Law Implemented  
NDCC 28-32-13

**43-02-03-90.5. SERVICE AND FILING.** All pleadings, notices, written motions, requests, petitions, briefs, and correspondence to the commission or commission employee 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: Effective May 1, 1992.

General Authority  
NDCC 28-32-13

Law Implemented  
NDCC 28-32-13

**43-02-03-91. REHEARING.** Repealed effective May 1, 1992.

**43-02-03-92. BURDEN OF PROOF.** Repealed effective January 1, 1983.

**43-02-03-93. 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: Amended effective April 30, 1981; January 1, 1983.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-94. MATTERS TO BE HEARD BY EXAMINER.** Repealed effective January 1, 1983.

**43-02-03-95. 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 proceeding to be made and retained.

History: Amended effective January 1, 1983; May 1, 1990.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-96. MATTERS HEARD BY COMMISSION.** Repealed effective January 1, 1983.

**43-02-03-97. EXAMINER DISINTERESTED UMPIRE.** Repealed effective January 1, 1983.

**43-02-03-98. REPORT OF EXAMINER.** Upon the conclusion of any hearing before an examiner, the examiner shall promptly consider the proceedings in such hearing, 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. Such 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: Amended effective January 1, 1983.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-99. COMMISSION ORDER FROM EXAMINER HEARING.** After receipt of the report and recommendations of the examiner, the commission shall enter its order disposing of the matter or proceeding.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**43-02-03-100. HEARING DE NOVO BEFORE COMMISSION.** Repealed effective January 1, 1983.

**43-02-03-101. 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 the 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 and must be returned to the moving party.

History: Effective May 1, 1990.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

**NATURAL GAS WELL STATUS DETERMINATIONS  
CHAPTER 43-02-04**

[Repealed effective July 1, 1996]

UNDERGROUND INJECTION CONTROL  
CHAPTER 43-02-05

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**UNDERGROUND INJECTION CONTROL  
CHAPTER 43-02-05**

**43-02-05-01. DEFINITIONS.** The terms used throughout this chapter have the same meaning as in chapter 43-02-03 and North Dakota Century Code chapter 38-08 except:

1. "Area of review" means an area encompassing a fixed radius around the injection well, field, or project of not less than one-quarter mile [402.34 meters].
2. "Underground injection" means the subsurface emplacement of fluids:
  - a. Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with wastewaters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.
  - b. For enhanced recovery of oil or natural gas.
  - c. For storage of hydrocarbons which are liquids at standard temperature and pressure.
3. "Underground source of drinking water" means an aquifer or any portion thereof which supplies drinking water for human consumption, or in which the ground water contains fewer than ten thousand milligrams per liter total dissolved solids and which is not an exempted aquifer.

History: Effective November 1, 1982; amended effective May 1, 1994.

General Authority  
NDCC 38-08-04(2)

Law Implemented  
NDCC 38-08-04(2)

**43-02-05-01.1. APPLICATION OF RULES FOR UNDERGROUND INJECTION WELLS.** All underground injection wells are also subject to the provisions of chapter 43-02-03 where applicable.

History: Effective July 1, 1996.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04



**43-02-05-02. INJECTION INTO UNDERGROUND SOURCE OF DRINKING WATER PROHIBITED.** Underground injection that causes or allows movement of fluid into an underground source of drinking water is prohibited, unless the underground source of drinking water is an exempted aquifer as provided in section 43-02-05-03.

History: Effective November 1, 1982.

General Authority  
NDCC 38-08-04(2)

Law Implemented  
NDCC 38-08-04(2)

**43-02-05-03. EXEMPTED AQUIFERS.** An aquifer or a portion thereof which meets the criteria for an underground source of drinking water may be determined by the commission, after notice and hearing, to be an exempted aquifer if it meets the following criteria:

1. It does not currently serve as a source of drinking water; and
2. It cannot now and will not in the future serve as a source of drinking water because:
  - a. It is mineral, hydrocarbon, or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for an underground injection permit to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible; or
  - b. It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; or
  - c. It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or
3. The total dissolved solids content of the ground water is more than three thousand and less than ten thousand milligrams per liter and it is not reasonably expected to supply a public water system.

History: Effective November 1, 1982; amended effective January 1, 1997.

General Authority  
NDCC 38-08-04(2)

Law Implemented  
NDCC 38-08-04(2)

**43-02-05-04. PERMIT REQUIREMENTS.**

1. No underground injection may be conducted without obtaining a permit from the industrial commission after notice and hearing. An application for a permit for underground injection shall be submitted to the commission at least thirty days prior

to the hearing. The application shall be on a form 14 provided by the commission and shall include at least the following information:

- a. The name and address of the operator of the injection well.
- b. The surface and bottom hole location.
- c. Appropriate geological data on the injection zone and the confining zones including geologic names, lithologic descriptions, thicknesses, and depths.
- d. The estimated fracture pressure of the top confining zone.
- e. Average and maximum daily rate of fluids to be injected.
- f. Average and maximum injection pressure.
- g. Geologic name and depth to base of all underground sources of drinking water which may be affected by the injection.
- h. Existing or proposed casing, tubing, and packer data.
- i. A plat depicting the area of review, (one-fourth-mile [402.34-meter] radius) and detailing the location, well name, and operator of all wells in the area of review. The plat should include all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes, and water wells. The plat should also depict faults, if known or suspected.
- j. A tabulation of data on all wells of public record within the area of review that penetrated the proposed injection zone. Include the following data: location, date drilled, total depth, well type, construction, record of plugging or completion, and any additional information the commission may require.
- k. The need for corrective action on wells penetrating the injection zone in the area of review.
- l. Proposed injection program.
- m. Quantitative analysis from a state-certified laboratory of freshwater from the two nearest freshwater wells. Location of wells must also be submitted. This requirement may be waived by the director in certain instances.
- n. Quantitative analysis from a state-certified laboratory of a representative sample of water to be injected. A compatibility analysis with the receiving formation may also be required.
- o. List identifying all source wells or sources of injectate.

- p. A legal description of the land ownership within the area of review.
  - q. An affidavit of mailing certifying that all landowners within the area of review have been notified of the proposed injection well. If the proposed injection well is within an area permit, the notice shall inform the landowners within the area of review that comments or objections may be submitted to the commission within thirty days. If the proposed injection well is not within an area permit, the notice shall inform the landowners within the area of review that a hearing will be held at which comments or objections may be directed to the commission. A copy of the letter sent to each landowner must be attached to the affidavit.
  - r. All logging and testing data on the well which has not been previously submitted.
  - s. Schematic drawings of the injection system, including current well bore construction and proposed well bore and surface facility construction.
  - t. Sundry notice detailing the proposed procedure.
2. Permits may contain such terms and conditions as the commission deems necessary.
  3. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit or any applicable rule or statute.
  4. Before a permit for underground injection will be issued, the applicant must satisfy the commission that the proposed injection well will not endanger any underground source of drinking water.
  5. No person shall commence construction of an underground injection well until the commission has issued a permit for the well.
  6. Permits are transferable only with approval of the commission.
  7. Permits may be modified by the commission.
  8. Before a permit for underground injection will be issued, the applicant must complete any needed corrective action on wells penetrating the injection zone in the area of review.

9. All injection wells permitted before November 1, 1982, shall be deemed to have a permit for purposes of this section; however, all such prior permitted wells are subject to all other requirements of this chapter.

History: Effective November 1, 1982; amended effective May 1, 1992; May 1, 1994; July 1, 1996.

General Authority  
NDCC 38-08-04(2)

Law Implemented  
NDCC 38-08-04(2)

**43-02-05-05. SITING.** All new injection wells shall be sited in such a fashion that they inject into a formation which has confining zones that are free of known open faults or fractures within the area of review.

History: Effective November 1, 1982.

General Authority  
NDCC 38-08-04(2)

Law Implemented  
NDCC 38-08-04(2)

**43-02-05-06. CONSTRUCTION REQUIREMENTS.**

1. All injection wells shall be cased and cemented to prevent movement of fluids into or between underground sources of drinking water. The casing and cement used in construction of each new injection well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, all of the following factors shall be considered:
  - a. Depth to the injection zone.
  - b. Depth to the bottom of all underground sources of drinking water.
  - c. Estimated maximum and average injection pressures.
  - d. Fluid pressure.
  - e. Estimated fracture pressure.
  - f. Physical and chemical characteristics of the injection zone.
2. Appropriate logs and other tests shall be conducted during the drilling and construction of injection wells. Any well drilled or converted to an injection well shall have a log run from which the quality of the cement bond can be determined. Cement bond logs shall contain at least the following elements: a gamma ray curve; a casing collar locator curve; a transit time curve; an amplitude curve; and a variable

density curve. A descriptive report interpreting the results of these logs and tests shall be prepared by a qualified log analyst and submitted to the commission if deemed necessary by the director.

3. All injection wells must be equipped with tubing and packer.

History: Effective November 1, 1982; amended effective May 1, 1992; July 1, 1996.

General Authority  
NDCC 38-08-04(2)

Law Implemented  
NDCC 38-08-04(2)

#### **43-02-05-07. MECHANICAL INTEGRITY.**

1. Prior to commencing operations, the operator of a new injection well must demonstrate the mechanical integrity of the well. All existing injection wells must demonstrate continual mechanical integrity and be tested at least once every five years. An injection well has mechanical integrity if:
  - a. There is no significant leak in the casing, tubing or packer.
  - b. There is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection bore.
2. One of the following methods must be used to evaluate the absence of significant leaks:
  - a. Pressure test with liquid or gas.
  - b. Monitoring of annulus pressure.
  - c. Records of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate.
  - d. Spinner survey.
  - e. Radioactive tracer survey.
3. One of the following methods must be used to establish the absence of significant fluid movement:
  - a. Well records demonstrating the presence of adequate cement to prevent such migration.

b. The results of a temperature or noise log.

History: Effective November 1, 1982; amended effective May 1, 1990; July 1, 1996.

General Authority  
NDCC 38-08-04(2)

Law Implemented  
NDCC 38-08-04(2)

**43-02-05-08. PLUGGING OF INJECTION WELLS.** The proper plugging of an injection well requires the well be plugged with cement or other types of plugs, or both, in a manner which will not allow movement of fluids into an underground source of drinking water. The operator shall file a notice of intention to plug (form 4) with the oil and gas division of the industrial commission and shall obtain the director's approval of the plugging method prior to the commencement of plugging operations.

History: Effective November 1, 1982; amended effective May 1, 1992; May 1, 1994.

General Authority  
NDCC 38-08-04(2)

Law Implemented  
NDCC 38-08-04(2)

**43-02-05-09. OPERATING REQUIREMENTS.** Injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fracture or propagate existing fractures in the confining zone adjacent to the freshwater resource. In no case shall injection pressure initiate fractures in the confining zone or cause the movement of injection or formation fluids into an underground source of drinking water.

Annular injection of fluids is prohibited.

History: Effective November 1, 1982; amended effective May 1, 1992.

General Authority  
NDCC 38-08-04(2)

Law Implemented  
NDCC 38-08-04(2)

**43-02-05-10. CORRECTIVE ACTION.** If any monitoring indicates the movement of injection or formation fluids into underground sources of drinking water, the commission shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting as are necessary to prevent such movement.

History: Effective November 1, 1982.

General Authority  
NDCC 38-08-04(2)

Law Implemented  
NDCC 38-08-04(2)

**43-02-05-11. BONDING REQUIREMENTS.** All injection wells, except commercial injection wells, must be bonded as provided in section 43-02-03-15. A commercial injection well is one that only receives fluids produced from wells operated by a person other than the principal on the bond. Each commercial injection well must be bonded at the single well bond rate as provided in section 43-02-03-15.

History: Effective November 1, 1982; amended effective May 1, 1992; July 1, 2002.

General Authority  
NDCC 38-08-04(2)

Law Implemented  
NDCC 38-08-04(2)

**43-02-05-12. REPORTING AND MONITORING REQUIREMENTS.**

1. The operator of an injection well shall meter or use an approved method to keep records and shall report monthly to the industrial commission, oil and gas division, the volume and nature, i.e., produced water, makeup water, etc., of the fluid injected, the injection pressure, and such other information as the commission may require. The operator of each injection well shall, on or before the fifth day of the second month succeeding the month in which the well is capable of injection, file with the director a sworn statement showing the amount of injection by each well upon forms furnished therefor, or approved computer sheets. The operator shall retain all records required by the industrial commission for at least five years.
2. Immediately upon the commencement or recommencement of injection, the operator shall notify the oil and gas division of the injection date.
3. The operator shall place accurate gauges on the tubing and the tubing-casing annulus. Accurate gauges shall also be placed on any other annuluses deemed necessary by the director.
4. The operator of an injection well shall keep the well and injection system under continuing surveillance and conduct such monitoring and sampling as the commission may require.
5. The operator of an injection well shall report any noncompliance with regulations or permit conditions to the director orally within twenty-four hours followed by a written explanation within five days. The operator shall cease injection operations if so directed by the director.
6. Within ten days after the discontinuance of injection operations, the operator shall notify the oil and gas division of the date of such discontinuance and the reason therefor.

7. Upon the completion or recompletion of an injection well or the completion of any remedial work or attempted remedial work such as plugging back, deepening, acidizing, shooting, formation fracturing, squeezing operations, setting liner, perforating, reperforating, tubing repairs, packer repairs, casing repairs, or other similar operations not specifically covered herein, a report on the operation shall be filed on a form 4 sundry notice with the director. The report shall present a detailed account of all work done including the reason for the work, the date of such work, the shots per foot and size and depth of perforations, the quantity of sand, crude, chemical, or other materials employed in the operation, the size and type of tubing, the type and location of packer, the result of the packer pressure test, and any other pertinent information or operations which affect the status of the well and are not specifically covered herein.

History: Effective November 1, 1982; amended effective May 1, 1992; May 1, 1994; July 1, 1996.

General Authority  
NDCC 38-08-04(2)

Law Implemented  
NDCC 38-08-04(2)

**43-02-05-13. ACCESS TO RECORDS.** The industrial commission and the commission's authorized agents shall have access to all injection well records wherever located. All owners, operators, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, operating, or servicing injection wells shall permit the industrial commission, or its authorized agents, to come upon any lease, property, well, or drilling rig operated or controlled by them, complying with state safety rules and to inspect the records and operation of wells and to conduct sampling and testing. Any information so obtained shall be public information. If requested, copies of injection well records must be filed with the commission.

History: Effective November 1, 1982; amended effective May 1, 1992; May 1, 1994.

General Authority  
NDCC 38-08-04(2)

Law Implemented  
NDCC 38-08-04(2)

**43-02-05-13.1. BOOKS AND RECORDS TO BE KEPT TO SUBSTANTIATE REPORTS.** All owners, operators, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, operating, or servicing injection wells shall make and keep appropriate books and records for a period of 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: Effective September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04



**43-02-05-14. AREA PERMITS.**

1. The commission may issue a permit on an area basis, rather than for each well individually, provided that the permit is for injection wells:
  - a. Described and identified by location in permit applications, if they are existing wells;
  - b. Within the same well field, facility site, reservoir, project, or similar unit in the same state;
  - c. Of similar construction;
  - d. Of the same class; and
  - e. Operated by a single owner or operator.
2. Area permits shall specify:
  - a. The area within which underground injections are authorized; and
  - b. The requirements for construction, monitoring, reporting, operation, and plugging for all wells authorized by the permit.
3. The area permit may authorize the permittee to construct and operate new injection wells within the permit area provided:
  - a. The permittee notifies the director when and where the new well has been or will be located.
  - b. The additional well meets the area permit criteria.
  - c. The cumulative effects of drilling and operation of additional injection wells are acceptable to the director.
4. If the director determines that any additional well does not meet the area permit requirements, the director may modify or terminate the permit or take enforcement action.
5. If the director determines the cumulative effects are unacceptable, the permit may be modified.

History: Effective November 1, 1982; amended effective May 1, 1992.

General Authority  
NDCC 38-08-04(2)

Law Implemented  
NDCC 38-08-04(2)

ROYALTY STATEMENTS  
CHAPTER 43-02-06

Section

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**ROYALTY STATEMENTS**  
**CHAPTER 43-02-06**

**43-02-06-01. ROYALTY OWNER INFORMATION STATEMENT.** Whenever payment is made for oil or gas production to an interest owner, whether pursuant to a division order, lease, servitude, or other agreement, all of the following information must be included on the check stub or on an attachment to the form of payment, unless the information is otherwise provided on a regular monthly basis:

1. The lease, property, or well name or any lease, property, or well identification number used to identify the lease, property, or well; provided, that if a lease, property, or well identification number is used the royalty owner must initially be provided with the lease, property, or well name to which the lease, property, or well name refers.
2. The month and year during which sales occurred for which payment is being made.
3. One hundred percent of the corrected volume of oil, regardless of ownership, which is sold measured in barrels, and one hundred percent of the volume of either wet or dry gas, regardless of ownership, which is sold or removed from the premises for the purpose of sale, or sale of its contents and residue, measured in thousand cubic feet.
4. Price.
  - a. Oil. Weighted average price per barrel received by the producer for all oil sold during the period for which payment is made. The price would be the net price received by the producer after purchaser's deductions. The purchaser's deductions are to be explained pursuant to subsection 6.
  - b. Gas. Weighted average price per thousand cubic feet [28.32 cubic meters] received by the producer for all gas sold during the period for which payment is made. The price would be the net price received by the producer after purchaser's deductions. The purchaser's deductions are to be explained pursuant to subsection 6.
5. Total amount of state severance and other production taxes.
6. Any other deductions or adjustments. Those not explained on the statement or in a separate mailing must be explained to the royalty owner upon inquiry to the disburser.
7. Net value of total sales after deductions.
8. Owner's interest in sales from the lease, property, or well expressed as a decimal.
9. Owner's share of the total value of sales prior to any tax deductions.

10. Owner's share of sales value less deductions.
11. An address where additional information may be obtained and any questions answered. If information is requested by certified mail, the answer must be mailed by certified mail within thirty days of receipt of the request.

History: Effective November 1, 1983; amended effective April 1, 1984; November 1, 1987; May 1, 1992.

General Authority  
NDCC 38-08-06.3

Law Implemented  
NDCC 38-08-06.3

**43-02-06-02. ANNUAL WINDFALL PROFITS TAX INFORMATION STATEMENT.** Repealed effective May 1, 1992.

**43-02-06-03. ANNUAL STORED GAS INFORMATION STATEMENT.** Any person required to submit information, as provided by this chapter, to a royalty owner shall, if gas either wholly or partially owned by a royalty owner is being placed into storage off the leased premises, provide the royalty owner with an annual statement containing the following information:

1. Total corrected volume of gas measured in standard thousand cubic feet (MCF) in storage at the beginning of the calendar year;
2. Total corrected volume of gas measured in thousand cubic feet added each month to storage during the calendar year;
3. Total corrected volume of gas measured in thousand cubic feet removed each month from storage during the calendar year; and
4. Total corrected volume of gas measured in thousand cubic feet in storage at the end of the calendar year.

The information required by this section must be supplied for all royalty owner gas placed into storage after December 31, 1986, and must be mailed to the royalty owner annually no later than March thirty-first immediately following each calendar year covered by the statement.

History: Effective November 1, 1987; amended effective May 1, 1992.

General Authority  
NDCC 38-08-06.3

Law Implemented  
NDCC 38-08-06.3

**43-02-06-04. BOOKS AND RECORDS TO BE KEPT TO SUBSTANTIATE REPORTS.** All operators shall make and keep appropriate books and records for a period of 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: Effective September 1, 2000.

General Authority  
NDCC 38-08-06.3

Law Implemented  
NDCC 38-08-06.3

STRIPPER WELL PROPERTY DETERMINATION  
 CHAPTER 43-02-08

<u>Section</u>		
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**STRIPPER WELL PROPERTY DETERMINATION  
CHAPTER 43-02-08**

**43-02-08-01. DEFINITIONS.** The terms used throughout this chapter have the same meaning as in chapter 43-02-03 and North Dakota Century Code chapters 38-08 and 57-51.1, except:

1. "Commercial quantities" means production exceeding in value current operating costs.
2. "Condensate recovered in nonassociated production" means a liquid hydrocarbon recovered from a well classified as a gas well by the commission.
3. "Maximum efficient rate" means the maximum economic rate of production of oil which can be sustained under prudent operations, using sound engineering practices, without loss of ultimate recovery.
4. "Operator" means any person who owns a fee interest or an interest in an oil and gas leasehold, and has the right to produce oil therefrom.
5. "Qualifying period" means any preceding consecutive twelve-month period beginning after December 31, 1972, that the qualified maximum total production from a property did not exceed the production levels as specified in subsection 2 of section 43-02-08-03.
6. "Well depth" means the depth of the midpoint between the highest and lowest perforations (measured in feet from ground level) producing from the pool during the qualifying period. In the event there is more than one well on a property producing from the same pool during the qualifying period, "well depth" means the average depth of the midpoints between the highest and lowest perforations of all wells in the property.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1994.

General Authority  
NDCC 38-08-04(5)

Law Implemented  
NDCC 38-08-04(4)  
57-51.1-01

**43-02-08-02. APPLICATION FOR STRIPPER WELL PROPERTY DETERMINATION.** Any operator desiring to classify a property as a stripper well property for purposes of exempting production from the imposition of the oil extraction tax as provided under North Dakota Century Code chapter 57-51.1 shall file an application for stripper well property determination with the director and obtain a determination certifying the property as a stripper well property. The

applicant has the burden of establishing entitlement to stripper well property status and shall submit all data necessary for a determination by the director.

The application must include the following:

1. The name and address of the applicant and the name and address of the person operating the well, if different.
2. The legal description of the property for which a determination is requested.
3. The well name and number and legal description of each oil-producing well on the property during the qualifying period and at the time of application.
4. The depth of all perforations (measured in feet from ground level) from each producing well on the property during the qualifying period which produces from the same pool.
5. Designation of the property which the applicant requests to be certified as a stripper well property. Such designation must be accompanied by sufficient documentation for the director to determine (as set forth in section 43-02-08-02.1) that the property the applicant desires to be certified as a stripper well property constitutes a property as specified in North Dakota Century Code section 57-51.1-01.
6. The monthly production of each oil-producing well on the property during the qualifying period.
7. An affidavit stating that all working interest owners of the property and all purchasers of the crude oil produced from the property have been notified of the application by certified or registered mail.

If the application does not contain sufficient information to make a determination, the director may require the applicant to submit additional information.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992; May 1, 1994; July 1, 1996; August 1, 1999; July 1, 2002.

General Authority  
NDCC 38-08-04(5)

Law Implemented  
NDCC 38-08-04(4)  
57-51.1-01

**43-02-08-02.1. PROPERTY DETERMINATION.** For purposes of this chapter, property will be determined by reference to the geographical boundaries of the right to produce crude oil as such right existed on January 1, 1972, provided such right was in production in commercial quantities on that date. If such right was not in production in commercial quantities on January 1, 1972, the determination of property will be made by reference to the geographical



boundaries of the right to produce crude oil when crude oil is first produced thereafter in commercial quantities. For purposes of determining what constitutes a property, the director shall recognize as separate properties the following:

1. A unit, where the unit is the aggregation of separate interests into a single right to produce. For the purposes of property determination, a unit means the total geographical area incorporated in a unitization agreement approved by order of the commission. In cases where a property has been unitized, portions of the property outside the unit boundary are separate properties.
2. Separate and distinct reservoirs, as defined by orders of the commission.
3. Noncontiguous tracts. (Tracts abutting solely at a corner are considered noncontiguous tracts.)
4. A single well, or any portion of a property which has been developed and produced separately. Any well or portion of a property previously qualified as a stripper well property may not be redesignated to be included in another property.

History: Effective September 1, 1987; amended effective May 1, 1992.

General Authority  
NDCC 38-08-04(5)

Law Implemented  
NDCC 38-08-04(4)  
57-51.1-01

**43-02-08-03. DIRECTOR SHALL DETERMINE STRIPPER WELL PROPERTY STATUS.**

1. Upon receipt of an application for stripper well property determination, the director shall review the application, information, or comments submitted by any interested person and all relevant information contained in the books, files, and records of the commission.
2. Stripper well property status will be determined on the basis of the qualified maximum total production of oil from the property. In order to qualify production from a property as maximum total production, each oil-producing well on the property must have been maintained at the maximum efficient rate of production throughout the twelve-month qualifying period. A property meets the requirements of a stripper well property if the qualified maximum total production of oil from the property excluding condensate did not exceed the following:
  - a. Production from a well with a well depth of six thousand feet [1828.8 meters] or less did not exceed an average of ten barrels per day;

- b. Production from a well with a well depth of more than six thousand feet [1828.8 meters] but not more than ten thousand feet [3048.0 meters] did not exceed an average of fifteen barrels per day; or
  - c. Production from a well with a well depth of more than ten thousand feet [3048.0 meters] did not exceed an average of thirty barrels per day.
- 3. Within thirty days of the receipt of a complete application for stripper well property status, or a reasonable time thereafter, the director shall either grant or deny the application. The application must be submitted to the commission within twelve months after the end of the stripper well property's qualification period.
- 4. If an application for stripper well property status is denied, the director shall enter a written determination denying the application and specify the basis for the denial. If an application for stripper well property status is granted, the director shall enter a written determination granting the application. A copy of the determination either granting or denying the application must be forwarded by the director by mail to the applicant and all other persons submitting written comments. It is the obligation of the applicant to notify and advise the state tax commissioner, all other operators in the property, and the purchaser of the crude oil of the determination of the director.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992; July 1, 1996.

General Authority  
NDCC 38-08-04(5)

Law Implemented  
NDCC 38-08-04(4)  
57-51.1-01

**43-02-08-04. APPLICANT ADVERSELY AFFECTED MAY SUBMIT AMENDED APPLICATION - PROCEDURE.** Any applicant adversely affected by a determination of the director made under sections 43-02-08-02 through 43-02-08-03 may within thirty days after the entry of such a determination submit an amended application. If an amended application is submitted, the director shall issue a determination of stripper well property status within thirty days of the receipt of the amended application or a reasonable time thereafter.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992.

General Authority  
NDCC 38-08-04(5)

Law Implemented  
NDCC 38-08-04(4)  
57-51.1-01

**43-02-08-05. PERSON ADVERSELY AFFECTED MAY PETITION THE COMMISSION - PROCEDURE.** Any person adversely affected by a determination of the director of either an application or an amended application for stripper well property status made

under sections 43-02-08-02 through 43-02-08-03 may within thirty days after the entry of such a determination petition the commission for a hearing in accordance with the provisions of North Dakota Century Code chapter 38-08 and chapter 43-02-03.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992.

General Authority  
NDCC 38-08-04(5)

Law Implemented  
NDCC 38-08-04(4)  
57-51.1-01

**43-02-08-06. EXPIRATION DATE.** Repealed effective September 1, 1987.

**43-02-08-07. APPLICATION TO CERTIFY A QUALIFYING SECONDARY RECOVERY PROJECT.** Repealed effective May 1, 1992.

**43-02-08-08. COMMISSION CERTIFICATION OF SECONDARY RECOVERY PROJECT.** Repealed effective May 1, 1992.

**43-02-08-09. APPLICATION TO CERTIFY A QUALIFYING TERTIARY RECOVERY PROJECT.** Repealed effective May 1, 1992.

**43-02-08-10. COMMISSION CERTIFICATION OF TERTIARY RECOVERY PROJECT.** Repealed effective May 1, 1992.

**43-02-08-11. BOOKS AND RECORDS TO BE KEPT TO SUBSTANTIATE REPORTS.** Any operator desiring to classify a property as a stripper well property pursuant to this chapter shall make and keep records for a period of 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: Effective September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

WORKOVER PROJECTS

CHAPTER 43-02-09

Section

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**WORKOVER PROJECTS**  
**CHAPTER 43-02-09**

**43-02-09-01. DEFINITIONS.** The terms used throughout this chapter have the same meaning as in chapter 43-02-03 and North Dakota Century Code chapters 38-08 and 57-51.1, except:

1. "Continuous employment" means the specific period of time a workover rig has been obtained to perform a workover project on a qualifying well.
2. "Continuous production" means production in the latest six consecutive calendar months prior to filing the notice of intention to perform a workover project during which the well produced an average of at least fifteen days per month.
3. "Recompletion" means the subsequent completion of a well in a different pool from the pool in which it is completed at the time of the notice given pursuant to section 43-02-09-03.
4. "Reentry" means the entering of a well that has been plugged.
5. "Workover" means the employment of a workover rig and other services for the purpose of restoring or improving producing capability of a well from the pool in which it is presently completed.
6. "Workover project" means the continuous employment of a workover rig for workovers, recompletions, or reentries.
7. "Workover rig" means any rig used to perform work on a workover project.

Upon approval by the commission, an applicant may obtain an exception to the definition of "continuous production" set forth in subsection 2 if it is shown that the well was produced an average of less than fifteen days per month because such method of operation was the most efficient and allowed for approximately the same amount of production as would have resulted had the well produced an average of fifteen or more days per month.

History: Effective May 1, 1990; amended effective May 1, 1992; May 1, 1994.

General Authority  
NDCC 57-51.1-03

Law Implemented  
NDCC 57-51.1-03

**43-02-09-02. EXEMPTION FROM TAXES.** Production from a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production, upon which a workover project has been performed, is exempt from taxes

imposed pursuant to North Dakota Century Code chapter 57-51.1 for twelve months beginning with the first day of the third calendar month after the completion of a workover project if:

1. The commission has received a notice of intention to begin a workover project in accordance with section 43-02-09-03.
2. A workover project is performed on the well.
3. The cost of the workover project exceeds sixty-five thousand dollars, or if the average daily production is increased at least fifty percent during the first two months after completion of the workover project, based upon a comparison to the average daily production for the latest six calendar months of continuous production prior to the filing of the notice of intention to begin a workover project.

For the exemption from the oil extraction tax for workover projects pursuant to North Dakota Century Code section 57-51.1-03, the reentry of a plugged and abandoned well is a workover project provided the cost of the operation exceeds sixty-five thousand dollars. The application must be submitted to the commission within twelve months after the completion of the workover project.

History: Effective May 1, 1990; amended effective May 1, 1994; July 1, 1996.

General Authority  
NDCC 57-51.1-03

Law Implemented  
NDCC 57-51.1-03

**43-02-09-03. NOTICE OF INTENTION TO BEGIN A WORKOVER PROJECT.** If an exemption from taxation is sought pursuant to subsection 4 of North Dakota Century Code section 57-51.1-03, a notice of intention to begin a workover project must be filed by the well operator with the commission prior to commencement of the project. The notice of intention must be sent to the following address:

North Dakota State Industrial Commission  
Oil and Gas Division  
600 East Boulevard  
Bismarck, ND 58505-0840

The notice of intention must include, but is not limited to, the following:

1. A sundry notice (form 4) upon which it is indicated that it is a notice of intention to perform a workover project.
2. The sundry notice must contain a detailed description of the nature and scope of the workover project. The information provided must include a description of all replacement equipment to be installed that is known to the well operator at the time of filing, and whether such equipment is new or used.

3. The average daily production during the latest six calendar months of continuous production.

If required by the director, the operator of the well to be worked over shall make arrangements to determine the crude oil inventory stored on the well premises immediately before the commencement of the workover and submit all gauge tickets for the month.

Workover projects must be completed within one year after the initial notice of intention to perform a workover is filed. Thereafter such notice is null and void.

History: Effective May 1, 1990; amended effective May 1, 1994; July 1, 1996; July 1, 2002.

General Authority  
NDCC 57-51.1-03

Law Implemented  
NDCC 57-51.1-03

**43-02-09-04. APPLICATION FOR WORKOVER PROJECT DETERMINATION.**

The applicant has the burden of establishing entitlement to the exemption provided in North Dakota Century Code section 57-51.1-03 and upon completion of the workover project shall submit all information necessary for a determination by the director. The cost of a workover project includes only direct costs for material, equipment, services, and labor used in the workover project. Labor and services included must be performed onsite and materials and equipment must be used onsite. The value of capital equipment removed from the site must be deducted from the cost of the project.

The application must include the following:

1. The name and address of the applicant and the name and address of the person operating the well, if different.
2. The well name and number and legal description of the well.
3. The dates during which the workover rig was in service actually performing work on the workover project, and the date the workover was completed.
4. A detailed list identifying all labor, services, and materials used and equipment replaced during the workover project, the cost of each item, and whether the replacement equipment was new or used. Also, the value of all of the equipment removed from service must be listed. The list must be verified by a person knowledgeable in the costs of workover projects and the value of used equipment. At any time the director may require the applicant to submit actual invoices to verify any costs set forth in the application.
5. A sundry notice (form 4) detailing all work done.

6. The average daily oil production from the well during the first two months after completion of the project, if the costs of the project did not exceed sixty-five thousand dollars. The project is completed and the two-month period commences the first day of production through the wellhead equipment after the workover rig is removed from over the well.
7. All gauge tickets of oil produced in incomplete months during the first two months after completion of the workover, and the volume of oil stored on the well premises immediately prior to the commencement of the workover project.

If the application does not contain sufficient information to make a determination, the director will advise the applicant of the additional information that must be filed in order to make a determination. If the requested additional information is not received within fifteen working days after receipt of the request, the application will be returned to the applicant.

History: Effective May 1, 1990; amended effective May 1, 1992; May 1, 1994; July 1, 1996; August 1, 1999.

General Authority  
NDCC 38-08-04  
57-51.1-03

Law Implemented  
NDCC 57-51.1-03

#### **43-02-09-05. WORKOVER PROJECT DETERMINATION.**

1. Upon receipt of an application for workover project determination, the director shall review the application, information, or comments submitted by an interested person and all relevant information contained in the books, files, and records of the commission.
2. Within thirty days of the receipt of a complete application for workover project determination, or a reasonable time thereafter, the director shall either grant or deny the application.
3. If an application for workover project determination is denied, the director shall enter a written determination denying the application and specifying the basis for denial. If an application is granted, the director shall enter a written determination granting the application.



4. A copy of the determination either granting or denying the application must be forwarded by the director by mail to the applicant and all other persons submitting written comments. It is the obligation of the applicant to notify and advise all other operators in the well and the purchaser of the crude oil of the determination of the director.

History: Effective May 1, 1990; amended effective May 1, 1992.

General Authority  
NDCC 57-51.1-03

Law Implemented  
NDCC 57-51.1-03

**43-02-09-06. NOTICE TO TAX DEPARTMENT.** If the director determines a well is entitled to a tax exemption under this chapter, the director shall send a notice to the state tax commissioner stating:

1. That the workover project meets the requirements set forth in North Dakota Century Code section 57-51.1-03.
2. The name and number of the well.
3. The location of the well.
4. The name of the well operator applying for the tax exemption.
5. The date the notice of intention was filed.
6. The average daily production of the well during the latest six calendar months of continuous production prior to the commencement of the workover project.
7. The cost of the workover project.
8. The average daily production of the well as determined pursuant to subsection 7 of section 43-02-09-04
9. The dates during which the workover project was performed.

The notice required under this section must be signed by a representative of the commission.

History: Effective May 1, 1990; amended effective May 1, 1992; July 1, 1996.

General Authority  
NDCC 57-51.1-03

Law Implemented  
NDCC 57-51.1-03

**43-02-09-07. PETITION FOR HEARING.** Any person adversely affected by a determination of the director pursuant to subsection 4 of North Dakota Century Code section

57-51.1-03 or this chapter, within thirty days after receiving notice of such determination, may petition the commission for a hearing in accordance with the provisions of North Dakota Century Code chapter 38-08 and chapter 43-02-03.

In the event the North Dakota tax department, pursuant to its authority, determines an exemption was granted improperly pursuant to North Dakota Century Code section 57-51.1-03, the tax department may request a hearing on the exemption any time after the exemption was granted. If after the hearing the commission determines an exemption was improperly granted, it may revoke the exemption. The exemption may be revoked effective the date the exemption was originally granted.

History: Effective May 1, 1990; amended effective May 1, 1992.

General Authority  
NDCC 57-51.1-03

Law Implemented  
NDCC 57-51.1-03

**43-02-09-08. BOOKS AND RECORDS TO BE KEPT TO SUBSTANTIATE REPORTS.** All operators shall make and keep appropriate books and records for a period of 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: Effective September 1, 2000.

General Authority  
NDCC 57-51.1-03

Law Implemented  
NDCC 57-51.1-03

CERTIFICATION OF SECONDARY AND TERTIARY RECOVERY PROJECTS -  
DETERMINATION OF INCREMENTAL PRODUCTION

CHAPTER 43-02-10

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**CERTIFICATION OF SECONDARY AND TERTIARY RECOVERY PROJECTS  
DETERMINATION OF INCREMENTAL PRODUCTION  
CHAPTER 43-02-10**

**43-02-10-01. DEFINITIONS.** The terms used throughout this chapter have the same meaning as in chapter 43-02-03 and North Dakota Century Code chapters 38-08 and 57-51.1 except:

1. "New secondary recovery project" means a secondary recovery project which results in incremental production.
2. "Normal production" means production from a unit obtained in the same manner and from the same wells which produce approximately the same amount of time.

History: Effective May 1, 1992; amended effective May 1, 1994.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 57-51.1-03

**43-02-10-02. APPLICATION TO CERTIFY A QUALIFYING SECONDARY RECOVERY PROJECT.** Any unit operator desiring to certify a secondary recovery project as a "qualifying secondary recovery project" for purposes of eligibility for the tax incentive provided in North Dakota Century Code chapter 57-51.1 shall submit to the director an application for certification of a qualifying secondary recovery project. The unit operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether the project is a qualifying secondary recovery project, and is entitled to the tax reduction and tax exemption provided in North Dakota Century Code sections 57-51.1-02 and 57-51.1-03 respectively.

History: Effective May 1, 1992; amended effective July 1, 1996; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
57-51.1-03

**43-02-10-03. COMMISSION CERTIFICATION OF SECONDARY RECOVERY PROJECT.** Upon the filing of an application for certification of a qualifying secondary recovery project, the commission shall promptly set a date for hearing. In determining whether a secondary recovery project shall be certified as a "qualifying secondary recovery project", the commission shall determine:

1. The amount of crude oil which would have been recovered from the unit source of supply if the secondary recovery project had not been commenced;

2. Whether, for the purposes of a tax reduction, the secondary recovery project has achieved for six consecutive months an average production level of at least twenty-five percent above the amount of production which would have been recovered from the unit source of supply (as determined in subsection 1) if the secondary recovery project had not been commenced; and
3. Whether, for the purposes of a tax exemption and subsequent thereto the tax reduction, there has been incremental production.

History: Effective May 1, 1992.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
57-51.1-03

**43-02-10-04. APPLICATION TO CERTIFY A QUALIFYING TERTIARY RECOVERY PROJECT.** Any unit operator desiring to certify a tertiary recovery project as a “qualifying tertiary recovery project” for purposes of eligibility for the tax incentive provided in North Dakota Century Code chapter 57-51.1 shall submit to the director an application for certification of a qualifying tertiary recovery project. The unit operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether the project is a qualifying tertiary recovery project, and is entitled to the tax reduction and tax exemption provided in North Dakota Century Code sections 57-51.1-02 and 57-51.1-03 respectively.

History: Effective May 1, 1992; amended effective July 1, 1996; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
57-51.1-03

**43-02-10-05. COMMISSION CERTIFICATION OF TERTIARY RECOVERY PROJECT.** Upon the filing of an application for certification of a qualifying tertiary recovery project, the commission shall promptly set a date for hearing. In determining whether a tertiary recovery project shall be certified as a “qualifying tertiary recovery project”, the commission shall determine:

1. Whether the tertiary recovery project meets the requirements of the tertiary recovery methods specified in subsection 8 of North Dakota Century Code section 57-51.1-01;
2. The amount of crude oil which would have been recovered from the unit source of supply if the tertiary recovery project had not been commenced;

3. Whether the tertiary recovery project has achieved for at least one month an average production level of at least fifteen percent above the amount of production which would have been recovered from the unit source of supply (as determined in subsection 2) if the tertiary recovery project had not been commenced; and
4. Whether, for the purposes of the tax exemption and subsequent thereto the tax reduction, there has been incremental production.

The commission will, upon application or its own motion, have a hearing to determine whether the project operator continues to operate the unit as a qualifying tertiary recovery project.

History: Effective May 1, 1992; amended effective September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
57-51.1-01

**43-02-10-06. INCREMENTAL PRODUCTION DETERMINATION FOR A SECONDARY RECOVERY PROJECT.**

1. a. In a unit where there has not been a secondary recovery project, the commission will establish a primary production decline curve. In such instance, incremental production is the production above the established primary production decline curve which production is a result of the secondary recovery project.
- b. The total amount of primary production from the unit will be determined by the commission through the use of a computer-generated production decline curve developed by software used by the commission at the time of certification. The decline curve will be a production versus time plot. The oil production and the time used to develop the curve will be that production occurring and period of time from the latest peak in production through the last month of oil production prior to the month in which secondary recovery project operations commence. However, the director shall have discretionary authority to select a different period of time to establish the decline curve if deemed necessary to obtain a more accurate estimate of the ultimate primary production.
- c. The production decline curve established in subdivision b of this subsection is projected from the end of the last month in which production was used to develop the primary decline curve to a producing rate of one barrel of oil per well per day, but no projection shall be made greater than fifty years in duration. All production above the projected decline curve is incremental production and production below the decline curve is primary production. The total projected primary production, on a monthly basis in numerical form, is derived from the projected primary production decline curve. A copy of the projected monthly

primary production, in numerical form, will be furnished to the unit operator and the tax commissioner.

- d. For purposes of determining the primary production provided for in this subsection, where practices and procedures used by the commission cannot be used because production has been restricted due to the prolific nature of the reservoir (such as a Lodgepole reservoir), where unitization is accomplished early in the life of the reservoir, and sufficient primary production history does not exist for decline curve analysis, the commission will have the authority to determine an alternate method using fundamental reservoir engineering principles. One example the commission might use is a pressure decline versus cumulative production plot to estimate the ultimate primary production. Based on available data and reservoir characteristics an initial rate and decline percent would be extrapolated to match the estimated ultimate recovery. In this case the operating company would be required to monitor the reservoir pressure and production and coordinate all activities and measurements with the commission.
2. In a unit which commences a new secondary recovery project where a secondary recovery project was in existence prior to July 1, 1991, and the commission cannot establish an accurate production decline curve, incremental production will be determined pursuant to paragraph 2 of subdivision c of subsection 5 of North Dakota Century Code section 57-51.1-03.
  3.
    - a. In a unit which commences a new secondary recovery project where a secondary recovery project was in existence before July 1, 1991, and where the commission can establish an accurate production decline curve, incremental production is the production above the established production decline curve which production is a result of the new secondary recovery project.
    - b. The total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced will be determined by the commission through the use of a computer-generated production decline curve developed by software used by the commission at the time of certification. The decline curve will be a production versus time plot. The oil production and the time used to develop the curve will be that production occurring and period of time from the latest peak in production through the last month of oil production prior to the month in which the new secondary recovery project operations commence. However, the director shall have discretionary authority to select a different period of time to establish the decline curve if deemed necessary to obtain a more accurate estimate of the ultimate production that would have been produced if the new secondary recovery project had not been commenced.
    - c. The production decline curve established in subdivision b of this subsection is projected from the end of the last month in which production was used to develop the decline curve to a producing rate of one barrel of oil per well per day. All production above the projected decline curve is incremental production

and production below the decline curve is production which would have occurred in the absence of the new secondary recovery project. The total projected production below the curve, on a monthly basis in numerical form, is derived from the projected production decline curve. A copy of the projected monthly production below the curve, in numerical form, will be furnished to the unit operator and the tax commissioner.

4. The commission will hold a hearing to establish a decline curve and a projection of the curve from which incremental production can be determined. At the hearing the project operator of a secondary recovery project or a new secondary recovery project must introduce evidence regarding the work proposed or accomplished which will result in incremental production, and evidence showing that the project is a qualifying project. Application for the hearing may, at the discretion of the project operator, be made prior or subsequent to the commencement of a secondary recovery project or commencement of a new secondary recovery project.

History: Effective May 1, 1992; amended effective February 1, 1998; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
57-51.1-01

**43-02-10-07. INCREMENTAL PRODUCTION DETERMINATION FOR A TERTIARY RECOVERY PROJECT.**

1. a. In a unit where there has not been a secondary recovery project and a tertiary project is commenced, the commission will establish a primary production decline curve. In such instance, incremental production is the production above the established primary production decline curve which production is a result of the tertiary recovery project.
- b. The total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced will be determined by the commission through the use of a computer-generated production decline curve developed by software used by the commission at the time of certification. The decline curve will be a production versus time plot. The oil production and the time used to develop the curve will be that production occurring and period of time from the latest peak in production through the last month of oil production prior to the month in which the tertiary recovery project operations commence. However, the director shall have discretionary authority to select a different period of time to establish the decline curve if deemed necessary to obtain a more accurate estimate of the ultimate primary production.
- c. The production decline curve established in subdivision b of this subsection is projected from the end of the last month in which production was used to



develop the primary decline curve to a producing rate of one barrel of oil per well per day. All production above the projected decline curve is incremental production and production below the decline curve is primary production. The total projected primary production, on a monthly basis in numerical form, is derived from the projected primary production decline curve. A copy of the projected monthly primary production, in numerical form, will be furnished to the unit operator and the tax commissioner.

2. In a unit which commences a tertiary recovery project where there is or has been a secondary recovery project and the commission cannot establish an accurate production decline curve, incremental production will be determined pursuant to paragraph 5 of subdivision c of subsection 5 of North Dakota Century Code 57 -51.1-03.
3.
  - a. In a unit which commences a tertiary recovery project where there is or has been a secondary recovery project and where the commission can establish an accurate production decline curve, incremental production is the production above the established production decline curve which production is a result of the tertiary recovery project.
  - b. The total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced will be determined by the commission through the use of a computer-generated production decline curve developed by software used by the commission at the time of certification. The decline curve will be a production versus time plot. The oil production and the time used to develop the curve will be that production occurring and period of time from the latest peak in production through the last month of oil production prior to the month in which the tertiary recovery project operations commence. However, the director shall have discretionary authority to select a different period of time to establish the decline curve if deemed necessary to obtain a more accurate estimate of the ultimate production that would have been produced if the tertiary recovery project had not been commenced.
  - c. The production decline curve established in subdivision b of this subsection is projected from the end of the last month in which production was used to develop the decline curve to a producing rate of one barrel of oil per well per day. All production above the projected decline curve is incremental production and production below the decline curve is production which would have occurred in the absence of the tertiary recovery project. The total projected production below the curve, on a monthly basis in numerical form, is derived from the projected production decline curve. A copy of the projected monthly production below the curve, in numerical form, will be furnished to the unit operator and the tax commissioner.
4. The commission will hold a hearing to establish a decline curve and a projection of the curve from which incremental production can be determined. At the hearing the

project operator of a tertiary recovery project must introduce evidence regarding the work proposed or accomplished which will result in incremental production, and evidence showing that the project is a qualifying project. Application for the hearing may, at the discretion of the project operator, be made prior or subsequent to the commencement of a tertiary recovery project.

History: Effective May 1, 1992.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
57-51.1-03

**43-02-10-08. BOOKS AND RECORDS TO BE KEPT TO SUBSTANTIATE REPORTS.** Any unit operator desiring to certify a secondary recovery project shall make and keep appropriate books and records for a period of 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: Effective September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04

CERTIFICATION OF HORIZONTAL WELLS, HORIZONTAL REENTRY WELLS, AND TWO-YEAR INACTIVE WELLS

CHAPTER 43-02-11

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**CERTIFICATION OF HORIZONTAL WELLS, HORIZONTAL  
REENTRY WELLS, AND TWO-YEAR INACTIVE WELLS  
CHAPTER 43-02-11**

**43-02-11-01. DEFINITIONS.** The terms used throughout this chapter have the same meaning as in chapter 43-02-03 and North Dakota Century Code chapters 38-08 and 57-51.1, except:

1. "Horizontal reentry well" means a well that was initially drilled and completed as a vertical well which is reentered and recompleted as a horizontal well after March 31, 1995. A horizontal reentry well includes a vertical well classified by the industrial commission as a dry hole which is reentered and recompleted as a horizontal well after March 31, 1995.
2. "Horizontal well" means a well with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least three hundred feet [91.44 meters].
3. "New well" means a well that was spudded and completed after April 27, 1987.
4. "Two-year inactive well" means a well as defined under North Dakota Century Code section 57-51.1-01. A well that has never produced oil, a dry hole, and a plugged and abandoned well are eligible for status as a two-year inactive well.

History: Effective July 1, 1996; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
57-51.1-03

**43-02-11-02. APPLICATION TO CERTIFY AS QUALIFYING A HORIZONTAL WELL, HORIZONTAL REENTRY WELL, OR TWO-YEAR INACTIVE WELL.** Any operator desiring to certify a horizontal, horizontal reentry, or two-year inactive well as a "qualifying well" for purposes of eligibility for the tax incentive provided in North Dakota Century Code chapter 57-51.1 shall submit to the director an application for certification of a qualifying well. The operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether a well is a qualifying well and is entitled to the tax reduction and tax exemption provided in North Dakota Century Code sections 57-51.1-02 and 57-51.1-03 respectively.

History: Effective July 1, 1996; amended effective September 1, 2000; July 1, 2002.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
57-51.1-03

**43-02-11-03. APPLICATION FOR A TAX EXEMPTION AND REDUCTION FOR A NEW WELL.** Repealed effective July 1, 2002.

**43-02-11-04. APPLICATION FOR TAX EXEMPTION AND REDUCTION FOR A HORIZONTAL WELL.** The application must include the following:

1. The name and address of the applicant and the name and address of the person operating the well, if different.
2. The name and number of the well, and the legal description of the surface location of the well for which a determination is requested.
3. The date the well was spudded, its completion date, and the volume of oil produced prior to completion, if any.
4. The length of the horizontal leg of the well bore within the productive formation and its inclination.
5. An affidavit stating that all working interest owners of the property and all purchasers of the crude oil produced from the well have been notified of the application by certified or registered mail.

Test oil produced from a horizontal well prior to completion is exempted from the extraction tax. If the application does not contain sufficient information to make a determination, the director may require the applicant to submit additional information.

History: Effective July 1, 1996.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
57-51.1-03

**43-02-11-05. APPLICATION FOR TAX EXEMPTION AND REDUCTION FOR A HORIZONTAL REENTRY WELL.** The application must include the following:

1. The name and address of the applicant and the name and address of the person operating the well, if different.
2. The name and number of the well, and the legal description of the surface location of the well for which a determination is requested.
3. The dates the well was initially spudded and completed as a vertical well, the dates the well was reentered and recompleted as a horizontal well, the total volume of test oil recovered prior to recompletion, and, if applicable, the date the well was initially plugged and abandoned as a dry hole.

4. The length of the horizontal leg of the well bore within the productive formation, and its inclination.
5. The total volume of test oil recovered prior to completion.
6. An affidavit stating that all working interest owners of the property, and all purchasers of the crude oil produced from the well have been notified of the application by certified or registered mail.

Test oil from a horizontal reentry well is exempt from the extraction tax. If the application does not contain sufficient information to make a determination, the director may require the applicant to submit additional information.

History: Effective July 1, 1996.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
57-51.1-03

**43-02-11-06. APPLICATION FOR TAX EXEMPTION AND REDUCTION FOR A TWO-YEAR INACTIVE WELL.** The application must include the following:

1. The name and address of the applicant and the name and address of the person operating the well, if different.
2. The name and number of the well and the legal description of the location of the well for which a determination is requested.
3. Monthly production during the two years prior to date of application.
4. An affidavit stating that all working interest owners of the property and all purchasers of the crude oil produced from the property have been notified of the application by certified or registered mail.

Test oil produced from a two-year inactive well prior to recompletion is exempted from the extraction tax. If the application does not contain sufficient information to make a determination, the director may require the applicant to submit additional information.

History: Effective July 1, 1996; amended effective September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
57-51.1-03

**43-02-11-07. BOOKS AND RECORDS TO BE KEPT TO SUBSTANTIATE REPORTS.** Any operator desiring to certify a new, horizontal, horizontal reentry, or two-year inactive well shall make and keep appropriate books and records for a period of 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: Effective September 1, 2000.

General Authority  
NDCC 38-08-04

Law Implemented  
NDCC 38-08-04  
57-51.1-03

GEOPHYSICAL EXPLORATION REQUIREMENTS  
CHAPTER 43-02-12

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Geophysical Forms



**GEOPHYSICAL EXPLORATION REQUIREMENTS  
CHAPTER 43-02-12**

**43-02-12-01. DEFINITIONS.** The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 38-08.1 except:

1. "Building" means any residence or commercial structure including a barn, stable, or other similar structure.
2. "Director" means the director of oil and gas of the industrial commission, the assistant director of oil and gas of the industrial commission, and their designated representatives.
3. "Operator of the land" means the surface owner or the surface owner's tenant of the land upon which geophysical operations are to be conducted.

History: Effective December 1, 1997; amended effective September 1, 2000.

General Authority  
NDCC 38-08.1

Law Implemented  
NDCC 38-08.1-01

**43-02-12-02. CERTIFICATION TO DO BUSINESS WITHIN STATE - RESIDENT AGENT.** Any person desiring to engage in geophysical exploration within this state, including a contractor and subcontractor, shall obtain from the secretary of state a certificate of authority to transact business in this state. A copy of this certificate must be filed with the commission prior to, or together with, the bond required herein and the application for permit to engage in geophysical exploration.

History: Effective December 1, 1997.

General Authority  
NDCC 38-08.1

Law Implemented  
NDCC 38-08.1-03

**43-02-12-03. BONDING REQUIREMENTS.**

1. To satisfy the obligation that a geophysical exploration contractor desiring to engage in geophysical exploration shall file with the commission a good and sufficient surety bond, the contractor, in lieu of a surety bond, may post cash or a certificate of deposit with the Bank of North Dakota. Persons desiring to file a cash bond or certificate of deposit shall file with the commission an application to deposit cash or certificate of deposit. If the applicant is currently in compliance with the statutes, rules, and orders of the commission, the commission will issue to the Bank of North Dakota a compliance statement authorizing the Bank of North Dakota to accept cash or a certificate of deposit as a bond for the applicant.

2. Geophysical exploration contractors shall file with the commission a good and sufficient bond in the amount of fifty thousand dollars if the contractor intends to conduct shot hole operations or in the amount of twenty-five thousand dollars if the contractor intends to use any other method of geophysical exploration. Each subcontractor engaged by the geophysical exploration contractor for the drilling and plugging of seismic shot holes shall file with the commission a good and sufficient bond in the amount of ten thousand dollars.

History: Effective December 1, 1997.

General Authority  
NDCC 38-08.1

Law Implemented  
NDCC 38-08.1-03.1

#### **43-02-12-04. EXPLORATION PERMIT - APPLICATION.**

1. Any person applying to the commission for an exploration permit must have a certificate to conduct geophysical exploration pursuant to subsection 3 of North Dakota Century Code section 38-08.1-03.1. A person may not commence geophysical exploration activities in this state without first obtaining an exploration permit from the commission. An application for an exploration permit must include the following:
  - a. The name, permanent address, and telephone number of the geophysical contractor and the geophysical contractor's local representative.
  - b. The name, permanent address, and telephone number of the drilling and hole plugging contractor, if different from the seismic contractor.
  - c. The name and address of the resident agent for service of process of the person intending to engage in geophysical exploration.
  - d. The bond number, type, and amount for the geophysical company.
  - e. The geophysical exploration method (i.e., shot hole, nonexplosive, 2D, or 3D).
  - f. The number, depth, and location of the seismic holes and the size of the explosive charges, if applicable.
  - g. The anticipated starting date of seismic and plugging operations.
  - h. The anticipated completion date of seismic and plugging operations.
  - i. A description of hole plugging procedures.

- j. A description of the identifying marks that will be on the hat or nonmetallic plug to be used in the plugging of the seismic hole.
  - k. A preplot map displaying the proposed seismic source points and receiver lines and specifically identifying all source points that do not comply with section 43-02-12-05.
  - l. A fee of one hundred dollars.
2. The permit holder shall notify the commission at least twenty-four hours, excluding Saturdays and holidays, before commencing geophysical activity.

History: Effective December 1, 1997; amended effective September 1, 2000.

General Authority  
NDCC 38-08.1

Law Implemented  
NDCC 38-08.1-04.1

**43-02-12-05. DISTANCE RESTRICTIONS - SHOT HOLE OPERATIONS - NONEXPLOSIVE METHODS.** Seismic shot hole operations may not be conducted less than one thousand three hundred twenty feet [402.34 meters] from water wells, buildings, underground cisterns, pipelines, and flowing springs.

Nonexplosive exploration methods may not be conducted less than three hundred feet [91.44 meters] from water wells, buildings, underground cisterns, pipelines, and flowing springs.

Variances may be granted to this section by written agreement between the permit holder and the operator of the land and must be available to the director upon request.

History: Effective December 1, 1997; amended effective September 1, 2000.

General Authority  
NDCC 38-08.1

Law Implemented  
NDCC 38-08.1-08

**43-02-12-06. NOTIFICATION OF WORK PERFORMED.** Within thirty days following the completion of geophysical exploration by any person within this state, such person shall file with the commission a seismic completion report in the form of an affidavit deposing that the seismic project was completed in accordance with chapter 43-02-12, and incorporating a postplot map displaying the actual source point location and the location of all undetonated (loaded) holes, blowouts, and flowing holes or any other problem holes the director deems necessary.

Any person plugging a seismic hole must submit a plugging report and an affidavit of plugging detailing the line number, shot point number, hole depth, drill type, hole condition (wet, dry), bentonite used (sacks, capsules), and the depth at which the surface plug was set, and all other information necessary to describe the conditions of the shot hole.

History: Effective December 1, 1997; amended effective September 1, 2000.

General Authority  
NDCC 38-08.1

Law Implemented  
NDCC 38-08.1-02,  
38-08.1-05

### **43-02-12-07. DRILLING AND PLUGGING REQUIREMENTS.**

1. Prior to commencement of any drilling or plugging operations, the director may require a field meeting with the geophysical contractor and subcontractors.
2. Except in those circumstances in which the director allows otherwise, all seismic shot holes must be plugged the same day as they were drilled and loaded. Any blown out shot holes must be plugged as soon as reasonably practicable, unless, upon application, the director grants an extension which may not exceed ninety days. All seismic shot holes must be temporarily capped until final plugging.
3. If the number of drilling rigs on a proposed project exceeds the director's capacity to provide appropriate inspection, the director may limit the number of drilling rigs.
4. Bentonite materials used in seismic hole plugging must be derived from naturally occurring untreated, high swelling sodium bentonite which consists principally of the mineral montmorillonite.
5. A durable nonrusting metal or plastic tag must be set at a depth of approximately three feet [91.44 centimeters] below the surface of every shot hole and shall be imprinted with the name of the operator responsible for the plugging and its permit number.
6. Unless the contractor can prove to the satisfaction of the commission that another method will provide better protection to ground water and long-term land stability, seismic shot hole plugging shall be conducted in the following manner:
  - a. When water is used in conjunction with the drilling of seismic shot holes or when water is encountered in the hole, the shot holes are to be filled with coarse ground bentonite approximately three-fourths of one inch [19.05 millimeters] in diameter from the top of the charge up to a depth above the final water level. Cuttings shall be added from the top of the bentonite to the surface. All cuttings added above the nonmetallic plug shall be tamped.

- b. When drilling with air only, and in completely dry holes, a plugging may be accomplished by returning the cuttings to the hole. A small mound must be left over the hole for settling allowance.
- c. Any drilling fluid or cuttings which are deposited on the surface around the seismic hole will be spread out in such a manner that the growth of natural grasses or foliage will not be impaired.
- d. The existing cap leads must be cut off below ground level.

History: Effective December 1, 1997; amended effective September 1, 2000.

General Authority  
NDCC 38-08.1

Law Implemented  
NDCC 38-08.1-02,  
38-08.1-06,  
38-08.1-06.1

**43-02-12-08. BOOKS AND RECORDS TO BE KEPT TO SUBSTANTIATE REPORTS.** All geophysical, drilling, and plugging contractors shall make and keep appropriate books and records for a period of 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: Effective September 1, 2000.

General Authority  
NDCC 38-08.1

Law Implemented  
NDCC 38-08.1-08

Affidavit of Plugging

Geophysical Exploration Bond (Drilling/Plugging)

Geophysical Exploration Bond (Non-Explosive Methods)

Geophysical Exploration Bond (Shot Hole Operations)

Geophysical Exploration Permit

Organization Report - Drilling/Plugging

Organization Report - Geophysical

Seismic Completion Report

Seismic Hole Plugging Report

Sundry Notice

## FORMS

Form 1	Application for Permit to Drill
Form 2	Organization Report
Form 3	Single Well Bond (2000' in Depth, or Less)
Form 3A	Single Well Bond (In Excess of 2000' Depth)
Form 3B	Blanket Bond (Ten Wells or Less)
Form 3C	Blanket Bond (More Than Ten Wells)
Form 3D	Treating Plant Bond
Form 3D.3	Application to Deposit Cash or Property in Lieu of Surety Bond
Form 4	Sundry Notices and Reports on Wells
Form 5	Oil Production Report
Form 5A	Oil Production Report Continuation
Form 5B	Gas Production Report
Form 5P	Monthly Treating Plant Report
Form 5 SWD	Oil Recovered from Saltwater Disposal Wells
Form 6	Well Completion or Recompletion Report
Form 7	Plugging Report
Form 8	Authorization to Purchase and Transport Oil From Lease
Form 8A	Purchaser And Transporter of Dry Gas Report
Form 9	Gas-Oil Ratio Report
Form 9A	Reservoir Pressure Test
Form 9B	Fluid Level Test
Form 10	Oil Purchasers Monthly Report

Form 10A	Oil Transporters Monthly Report
Form 10B	Oil Transporters and Storers Monthly Report
Form 11	Central Tank Battery Well Test Report
Form 11A	Central Tank Battery Well Test Report Continuation
Form 12	Gasoline Plant Report
Form 12A	Gas Processing Plant Report of Receipts From Wells
Form 13	Refiner's Monthly Report
Form 14	Application for Injection
Form 15	Notice of Transfer of Oil and Gas Wells
Form 16	Saltwater Disposal Report
Form 16A	Saltwater Disposal Report Continuation
Form 17	Enhanced Recovery Report
Form 17A	Enhanced Recovery Source Report
Form 18	Gas Storage Report
Form 19	Well Integrity Report
Form 20	Multipoint Back-Pressure Test Report
Form 21	One-Point Back-Pressure Test Report
Form 22	Deliverability Test Report
Form 23	Tank Bottom Cleaning Report
Form 24	Annual Report of Unit Operations