

## **CHAPTER 38-14.2 ABANDONED SURFACE MINE RECLAMATION**

### **38-14.2-01. Declaration of findings and purpose.**

The legislative assembly finds and declares that there are a substantial number of acres [hectares] within the state disturbed by surface coal mining operations and noncoal mining operations on which little or no reclamation was conducted, and the impacts from these unreclaimed lands impose social and economic costs on residents in nearby and adjoining areas as well as continuing to impair environmental quality. It is, therefore, the purpose of this chapter to promote the reclamation of mined areas left without adequate reclamation prior to the enactment of this chapter and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public.

### **38-14.2-02. Definitions.**

For the purpose of this chapter:

1. "Abandoned mine reclamation plan" means a plan for the reclamation of lands and water adversely affected by past coal mining and noncoal mining practices. The plan must generally identify all areas to be reclaimed in the state of North Dakota, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, and the specific criteria for ranking and identifying projects to be funded.
2. "Abandoned mine reclamation program" means a program established in accordance with this chapter for the reclamation of lands and water adversely affected by past coal mining and noncoal mining practices and includes the abandoned mine reclamation plan, annual projects under the plan, and all other activities necessary in development of the program.
3. "Commission" means the public service commission, or such department, bureau, or commission as may lawfully succeed to the powers and duties of that commission. The commission is the state regulatory authority for all purposes relating to title IV of the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 456; 30 U.S.C. 1231 et seq.].
4. "Extreme danger" means a condition which could reasonably be expected to cause considerable physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.
5. "Fund" means the state abandoned mine reclamation fund to be used in carrying out a program of reclamation of abandoned mine lands pursuant to this chapter.
6. "Noncoal mining" means the mining of metalliferous and nonmetalliferous ores, clay, stone, sand, gravel, scoria, uranium, and other solid materials or substances of commercial value and which have been extracted in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.
7. "Person" means an individual, partnership, firm, association, society, joint-stock company, company, cooperative, corporation, limited liability company, or other business organization.

### **38-14.2-03. Powers and duties of the commission.**

The commission:

1. Shall develop an abandoned mine reclamation plan.
2. Shall submit such applications, abandoned mine reclamation plan, projects, and reports necessary to accomplish the purposes of this chapter, and to accomplish the purposes of title IV of Public Law 95-87 [91 Stat. 456; 30 U.S.C. 1231 et seq.].
3. Shall include in each annual request for projects the following information:
  - a. A general description of each proposed project;
  - b. A priority evaluation of each proposed project;

- c. A statement of the estimated benefits in such terms as number of acres [hectares] restored, miles [kilometers] of stream improved, acres [hectares] of surface lands protected from subsidence, population protected from subsidence, air pollution, and hazards of mine and coal refuse disposal area fires;
  - d. An estimate of the cost for each proposed project;
  - e. In the case of proposed research and demonstration projects, a description of the specific techniques to be evaluated or objective to be attained;
  - f. An identification of lands or interest therein to be acquired and the estimated cost;
  - g. In each year after the first in which a plan is filed under this chapter, an inventory of each project funded under the previous year's grant, which inventory must include details of financial expenditures on such project together with a brief description of each project, including project locations, landowner's name, acreage [hectareage], type of reclamation performed; and
  - h. Other information as prescribed by the commission.
4. Shall include the following costs in each proposed project:
    - a. Actual construction costs;
    - b. Actual operation and maintenance costs of permanent facilities;
    - c. Planning and engineering costs;
    - d. Construction inspection costs; and
    - e. Other necessary administrative expenses.
  5. May request and accept grants of funds or services or transfer such funds or services for the implementation of the purposes of this chapter and of title IV of Public Law 95-87 [91 Stat. 456; 30 U.S.C. 1231 et seq.].
  6. May enter any property without a warrant for the purpose of conducting studies to determine the existence of adverse effects of past coal mining and noncoal mining practices.
  7. May enter and lease or acquire land adversely affected by past coal mining or noncoal mining practices for the purpose of reclaiming such lands pursuant to this chapter.
  8. May engage in cooperative projects under this chapter with any federal or state agency.
  9. May engage in any work and do all things necessary or expedient, including the promulgation of regulations for all provisions of this chapter, to implement and administer the provisions of this chapter and of title IV of Public Law 95-87 [91 Stat. 456; 30 U.S.C. 1231 et seq.], and to develop and implement an abandoned mine reclamation program.
  10. May initiate, in addition to any other remedies provided for in this chapter, in any court of competent jurisdiction, an action in equity for an injunction (either temporary or permanent) to restrain any interference with the exercise of the right to enter or to conduct any work provided for in this chapter.
  11. May require, by contractual agreement with the appropriate persons, the extraction of any remaining coal deposits in areas reclaimed under this chapter, in order to maximize resource recovery. The commission may promulgate such regulations as may be necessary to ensure that such extraction is performed by a qualified contractor in compliance with the applicable performance standards of section 38-14.1-24 and, if warranted, provide for compensation to the person entitled thereto.
  12. May expend moneys from the fund for emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices on eligible lands, if the commission makes a finding of fact and the office of surface mining reclamation and enforcement concurs that:
    - a. An emergency exists constituting a danger to the public health, safety, or general welfare; and
    - b. No other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices.
  13. Its agents, employees, and contractors may enter upon any land where the emergency exists and any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices

and to do all things necessary or expedient to protect the public health, safety, or general welfare. Such entry is an exercise of police power and is not condemnation or trespass of property. The moneys and the benefits accruing are charged against the land and mitigate or offset any claim by any owner for any alleged damages. This provision does not create new rights of action or eliminate existing immunities.

14. Every successful bidder for an abandoned mine lands contract must be eligible based on available information concerning federal and state failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued pursuant to section 518 of the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.], bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of federal and state laws and rules and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation.

#### **38-14.2-04. State abandoned mine reclamation fund.**

There is hereby created the state abandoned mine reclamation fund.

1. Revenue to the fund must include:
  - a. Moneys applied for and received by the commission pursuant to title IV of Public Law 95-87 [91 Stat. 456; 30 U.S.C. 1231 et seq.], for the purposes of this chapter.
  - b. Moneys donated to the commission by persons, corporations, limited liability companies, associations, and foundations for the purposes of this chapter.
  - c. Moneys collected by the commission from charges for uses of lands acquired or reclaimed with moneys from the fund, after expenditures for maintenance have been deducted.
  - d. Moneys recovered by the commission through satisfaction of liens filed against privately owned lands reclaimed with moneys from the fund.
  - e. Moneys recovered by the commission from the sale of lands acquired with moneys from the fund.
  - f. Such other moneys as may be deposited in the fund for use in carrying out the purposes of the abandoned mine reclamation program.
2. Moneys in the fund may be used for the following purposes:
  - a. Reclamation and restoration of land and water resources as defined by section 38-14.2-06 and adversely affected by past mining, including but not limited to:
    - (1) Reclamation and restoration of abandoned surface mined areas, abandoned coal processing areas, and abandoned coal refuse disposal areas.
    - (2) Reclamation of lands affected by underground mine subsidence.
    - (3) Planting of land adversely affected by past coal mining or noncoal mining to prevent erosion and sedimentation.
    - (4) Prevention, abatement, treatment, and control of water pollution created by coal mine or noncoal mine drainage including restoration of streambeds, and construction and operation of water treatment plants.
    - (5) Prevention, abatement, and control of burning coal refuse disposal areas and burning coal in situ.
    - (6) Prevention, abatement, and control of coal mine subsidence.
  - b. Acquisition or lease of land as provided for in this chapter.
  - c. Studies by the commission by contract with public and private organizations to provide information, advice, and technical assistance, including research and demonstration projects, conducted for the purposes of this chapter.
  - d. All other necessary expenses to accomplish the purposes of this chapter, including administrative expenses and costs incurred in the development of the abandoned mine reclamation plan and the abandoned mine reclamation program.
3. There is created a special fund in the state treasury called the state abandoned mine reclamation fund set-aside trust account. Revenue to the set-aside trust account must be ten percent of the amount granted by the secretary of the interior under title IV of Public Law 95-87 as provided by Public Law 100-34. This account must be interest

bearing and all interest must be credited to the set-aside trust account. No funds from this account may be expended prior to September 30, 2004. After September 30, 2004, the funds may be expended as provided in this subsection but no funds may be used to reclaim noncoal projects. The legislative assembly shall authorize expenditure by appropriation from the account as necessary to defray the administrative expenses of the program. The remaining funds in the account may only be used in accordance with section 38-14.2-07 but no funds may be used on noncoal projects. The liability of the state to fulfill the requirements of this subsection is limited to the amount of funds available in the account established in this subsection. The state has no obligations under this subsection except to the extent of federal funds deposited in the coal mine mitigation account and the interest thereon to operate the program.

#### **38-14.2-05. Construction of public facilities.**

Upon reclamation of all abandoned coal mine areas and all abandoned noncoal areas pursuant to the provisions of this chapter, if there is a need for the construction of specific public facilities in communities impacted by coal development and if impact funds which may be available are inadequate, the governor of the state of North Dakota shall certify to the existence of such conditions to the secretary of the interior and funds may be allocated and expended for such construction upon the approval of the specific public facilities by the commission.

#### **38-14.2-06. Eligible lands and water.**

Lands and water eligible for reclamation or drainage abatement expenditures under this chapter are those which were mined for coal or which were affected by such mining, wastebanks, coal processing or other coal mining processes and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under other state laws. Lands and water which were mined or affected by mining for minerals and materials other than coal are also eligible for reclamation under this chapter if such reclamation is necessary to protect the public health, safety, general welfare, and property and such noncoal abandoned mine lands were left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under other state laws.

#### **38-14.2-07. Commission authorized to administer abandoned mine reclamation program - Objectives - Priorities.**

The commission is hereby authorized to develop, administer, and enforce an abandoned mine reclamation program. Expenditure of funds for the projects under this program must reflect priorities in the order stated:

1. Administrative expenses and costs incurred in the development of the abandoned mine reclamation plan and the abandoned mine reclamation program.
2. The protection of public health, safety, general welfare, and property from extreme danger resulting from the adverse effects of past coal mining practices.
3. The protection of public health, safety, and general welfare from adverse effects of past coal mining practices which do not constitute an extreme danger.
4. The restoration of eligible land and water and the environment previously degraded by adverse effects of past coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity.
5. Research and demonstration projects relating to the development of surface coal mining reclamation and water quality control program methods and techniques.
6. The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by past coal mining practices.
7. The development of publicly owned land adversely affected by past coal mining practices, including land acquired as provided in this chapter, for recreation, historic, conservation, and reclamation purposes and open space benefits.

8. The protection of the public from hazards endangering life and property resulting from the adverse effects of past noncoal mining practices. However, upon request by the governor of the state of North Dakota and approval by the secretary of the interior, such work may be undertaken before the priorities related to past coal mining have been fulfilled.
9. The protection of the public from hazards to health and safety from the adverse effects of past noncoal mining practices.
10. The restoration of the environment degraded by the adverse effects of past noncoal mining.
11. The construction of public facilities in accordance with section 38-14.2-05.

**38-14.2-08. Right to conduct studies.**

The commission has the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining and noncoal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry must be construed as an exercise of the police power for the protection of public health, safety, and general welfare and may not be construed as an act of condemnation of property nor trespass thereon.

**38-14.2-09. Affected lands - Right of entry.**

If the commission makes a finding of fact that:

1. Land or water resources have been adversely affected by past coal mining or noncoal mining practices; and
2. The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and
3. The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining or noncoal mining practices are not known or readily available; or
4. The owner will not give permission for the commission, its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining or noncoal mining practices,

then, upon giving notice by mail to the owners if known or if not known by posting notice upon the premises and advertising once in the official newspaper of each county and in other daily newspapers of general circulation in each county wherein the land lies, the commission, its agents, employees, or contractors has the right to enter upon the property adversely affected by past coal mining or noncoal mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. Such entry must be construed as an exercise of the police power for the protection of public health, safety, and general welfare and may not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for such work and the benefits accruing to any such premises so entered upon are chargeable against such land to the extent allowed in section 38-14.2-14 and mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry; provided, however, that this provision is not intended to create new claims for relief or eliminate existing immunities.

**38-14.2-10. Land acquisition.**

The commission may acquire any land, by purchase, donation, or condemnation, pursuant to the procedures of chapter 32-15, and other laws governing eminent domain, which is adversely affected by past coal mining or noncoal mining practices if the commission determines in accordance with the rules of practice and procedure established by the commission that acquisition of such land is necessary for successful reclamation and that:

1. The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining or noncoal mining practices, will serve

- recreation, historic, conservation, and reclamation purposes or provide open space benefits; and
2. Permanent facilities such as a mine drainage treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining or noncoal mining practices; or
  3. Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this chapter or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining or noncoal mining practices.

**38-14.2-11. Title to lands.**

Title to all lands acquired pursuant to this chapter must be in the name of the state of North Dakota. The price paid for land acquired under this chapter must reflect the market value of the land as adversely affected by past coal mining or noncoal mining practices.

**38-14.2-12. Transfer or sale of acquired lands.**

The commission may transfer land acquired pursuant to this chapter to the appropriate state or federal agency. Where land acquired pursuant to this chapter is deemed to be suitable for industrial, commercial, residential, or recreational development, the commission may sell such land by public sale under a system of competitive bidding, at not less than fair market value, pursuant to the provisions of chapter 54-01 and other laws applicable to the sale of state-owned land and under such other regulations promulgated to ensure that such lands are put to proper use consistent with local and state land use plans, if any, as determined by the commission.

**38-14.2-13. Public hearing on disposition of acquired lands.**

The commission, when requested, shall hold a public hearing, with the appropriate public notice, in the county or counties in which lands acquired pursuant to this chapter are located. The hearings must be held at a time which affords local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining or noncoal mining practices. The hearing must be conducted pursuant to chapter 28-32.

**38-14.2-14. Liens for reclamation on private lands.**

1. Within six months after the completion of projects to restore, abate, control, or prevent adverse effects of past coal mining or noncoal mining practices on privately owned land, the commission shall itemize the moneys so expended and may file a statement thereof in the office of the county recorder in the county in which the land is located, together with notarized appraisals by an independent appraiser of the value of the land before and after the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining or noncoal mining practices if the moneys so expended result in a significant increase in property value. Such statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisals to be the increase in the market value of the land as the result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining or noncoal mining practices. The lien may be waived by the commission if:
  - a. The cost of filing the lien, including indirect costs, exceeds the increase in the fair market value of the land as the result of reclamation activities;
  - b. The reclamation work performed on private land primarily benefits health, safety, or environmental values of the greater community or area in which the land is located; or
  - c. The reclamation work performed is necessitated by an unforeseen occurrence and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the occurrence.

2. No lien may be filed against the property of any person, in accordance with this section, who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed hereunder.
3. The landowner may petition the commission for a hearing within sixty days of the filing of the lien to determine the increase in the market value of the land as the result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining or noncoal mining practices. The amount determined to be the increase in value of the premises constitutes the amount of the lien and must be recorded with the statement herein provided. The hearing must be conducted pursuant to chapter 28-32.
4. Any statement filed pursuant to this section constitutes a lien upon the land as of the date of the expenditure of the moneys and has priority as a lien second only to the lien of real estate taxes imposed upon the land.
5. The commission may bring an action to enforce the lien in the district court of the county in which the land is located. Any number of persons claiming liens against the same property may join in the action and when separate actions are commenced, the court may consolidate them. Before the lien may be enforced, written notice of intention to enforce the lien must be given by personal service upon the record owner of the land affected at least ten days before an action to enforce the lien is commenced, or by certified mail directed to the owner's last-known address at least twenty days before the action is commenced. The land affected may not be sold for less than the fair market value of the land after the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining or noncoal mining practices. No deficiency judgment may issue against the record owner of the land affected if the proceeds from the sale are insufficient to satisfy the total amount of the lien on the land.

**38-14.2-15. Hearing and appeal.**

Any person claiming to be aggrieved or adversely affected by any regulation or order of the commission or its failure to enter an order under this chapter may request a hearing by the commission. The hearing must be conducted pursuant to chapter 28-32. There is a right of appeal to the district court from any adverse ruling by the commission issued pursuant to this chapter.