



THE FALKIRK MINING COMPANY  
2801 1st St. SW  
P.O. Box 1087  
Underwood, ND 58576-1087  
(701) 442-5751 • Fax (701) 250-2473

April 6, 2010

Mr. James R. Deutsch  
Reclamation Director  
ND State Public Service Commission  
600 East Boulevard, Dept. 408  
Bismarck, ND 58505

**RE: Affidavit of Publication for Revision 19 to Permit NAFK-9503**

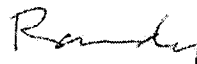
Dear Mr.  Deutsch:

Please find enclosed copies of the Affidavit of Publication for Revision 19 to Falkirk's Mining Permit NAFK-9503. This Legal Notice was published on February 25, March 4, March 11, and March 18, 2010 in The Bismarck Tribune, The Underwood News, The McLean County Independent and The Washburn Leader News.

If you have any questions or comments, please contact me at 250-2403.

Sincerely,

**THE FALKIRK MINING COMPANY**

  
D. Randall Crooke  
Environmental Manager

DRC/dge  
Attachments



27 RC-10-14 Filed: 5/24/2010 Pages: 16  
Informal Conference - Exhibit 5

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02/25/10	03/18/10	4	Revision NAFK-9503/605044 Bismarck Tribune PO - 9399 OP	276.00	Legals	2,520.00	2,520.00

Affidavit of Publication  
State of North Dakota ) SS. County of Burleigh  
Before me, a Notary Public for the State of North Dakota  
personally appeared CL, who being duly sworn, deposes  
and says that he (she) is the Clerk of Bismarck Tribune Co.,  
and that the publication(s) were made through the  
Bismarck Tribune on the following dates:  
2/25, 3/4, 11, 18 Signed Calvin G. Smith  
sworn and subscribed to before me this 22nd  
day of MAY 2010  
Notary Public in and for the State of North Dakota

GREGORY P. ZIEGLER  
Notary Public  
State of North Dakota  
My Commission Expires 12/2, 2015

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**NOTICE OF A FILING TO REVISE A PERMIT FOR  
SURFACE COAL MINING OPERATIONS**

The Falkirk Mining Company, P.O. Box 1087, Underwood, ND 58576, has filed an application to revise surface coal mining activities in Permit NAFK-9503. The permit revision contains detailed plans to revise the mine plan, post-mining topography, and reclamation schedule for the remaining unmined areas within the permit. Additional mining is being proposed for lands within Sections 15, 22, 21, 28, and 33, T145N, R83W. Falkirk and the following landowners have lands and/or coal on which the additional mining is proposed:

**TRACT 56**

**T145N-R83W-Section 15:**  
SURFACE OWNERSHIP:  
COAL OWNERSHIP:

**NW1/4**

The Falkirk Mining Company  
Barbara J. Hoffer  
Eileen C. Zander  
State of North Dakota - State Land Department

**TRACT 60**

**T145N-R83W-Section 15:**  
SURFACE OWNERSHIP:  
COAL OWNERSHIP:

**SW1/4**

The Falkirk Mining Company  
MDR Landenberger Family Trust Dated 10-19-02  
The Reserve Petroleum Company

**TRACT 62**

**T145N-R83W-Section 21:**  
SURFACE OWNERSHIP:  
COAL OWNERSHIP:

**SE1/4**

The Falkirk Mining Company  
The Falkirk Mining Company

**TRACT 63**

**T145N-R83W-Section 22:**  
SURFACE OWNERSHIP:  
COAL OWNERSHIP:

**NW1/4**

The Falkirk Mining Company  
George V. Swanson  
Carl H. Reimers and Margaret A. Reimers  
Darlene Ostboe  
Michael Ranum  
Mark Ranum  
Andrew Ranum  
Norm Ostboe and Darlene A. Ostboe  
Donna L. Bloomquist  
Noreen L. Woolworth  
Patricia A. Reimers  
Mary O. Reimers  
Charlotte L. Potter  
Gary B. Reimers  
Ronald J. Stroh and Arlyce J. Stroh  
The Estate of Agnes Soderstrom, Deceased

**TRACT 65**

**T145N-R83W-Section 22:**

SURFACE OWNERSHIP:  
COAL OWNERSHIP:

**SW1/4, less 5 ac. in the SW corner and less the**

**SE1/4SE1/4SW1/4**

The Falkirk Mining Company  
Erma Carlson  
Marva Deane Finck  
Karen Carlson

**TRACT 69**

**T145N-R83W-Section 28:**  
SURFACE OWNERSHIP:  
COAL OWNERSHIP:

**N1/2NW1/4, W1/2NE1/4**

The Falkirk Mining Company  
Erma Carlson  
Marva D. Finck  
Karen J. Carlson

**TRACT 70**

**T145N-R83W-Section 28:**  
SURFACE OWNERSHIP:  
COAL OWNERSHIP:

**E1/2NE1/4**

Marva Deane Finck  
Marva Deane Finck

**TRACT 71**

**T145N-R83W-Section 28:**  
SURFACE OWNERSHIP:  
COAL OWNERSHIP:

**SW1/4, S1/2NW1/4**

Eileen C. Zander  
Eileen C. Zander  
Barbara J. Hoffer

**TRACT 72**

**T145N-R83W-Section 28:**  
SURFACE OWNERSHIP:  
COAL OWNERSHIP:

**SE1/4**

Dwight D. Gradin and Denise Gradin  
Dwight D. Gradin and Denise Gradin  
Miles W. Gradin  
Walyn K. Lee  
Mark E. Gradin  
Kyle E. Gradin  
The Irene V. Johannes Revocable Living Trust  
Dated 5-15-96

**TRACT 77**

**T145N-R83W-Section 33:**  
SURFACE OWNERSHIP:  
COAL OWNERSHIP:

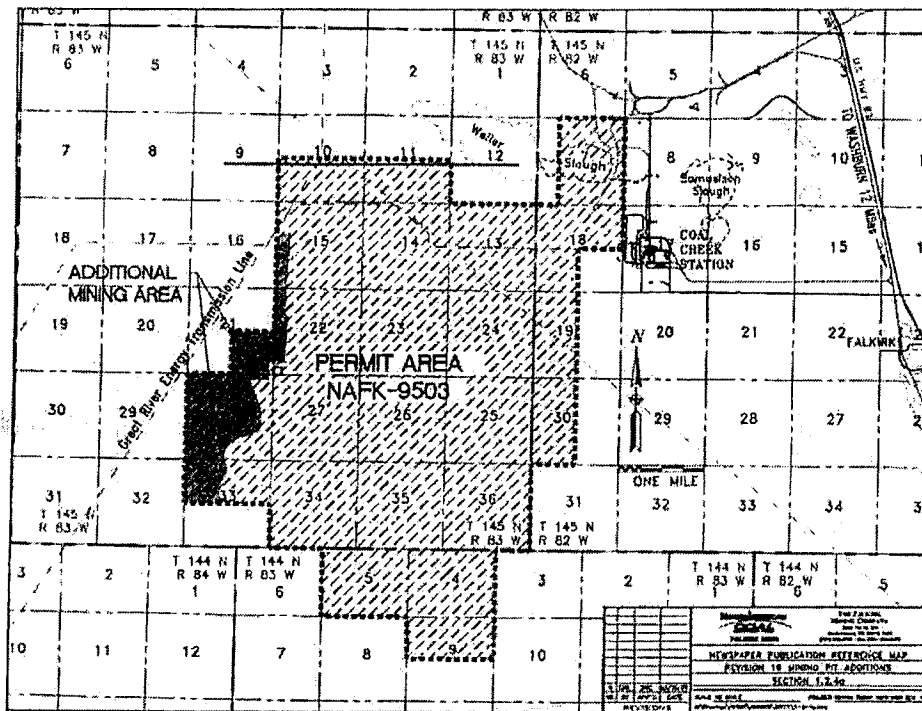
**NW1/4**

Dwight D. Gradin and Denise Gradin  
Dwight D. Gradin and Denise Gradin  
Miles W. Gradin  
Walyn K. Lee  
Mark E. Gradin  
Kyle E. Gradin  
The Irene V. Johannes Revocable Living Trust  
Dated 5-15-96

The revision application contains a revised extended mine plan depicting Falkirk's plans to mine lands up to the Great River Energy (GRE) transmission line which connects Coal Creek Station to Stanton Station, which is located west of the current permit area. The post-mining topography and reclamation schedule are based upon this updated mine plan and result in changes needed to the post-mining topography and reclamation schedules within the permit area. No changes in post-mining land use are being contemplated; the majority of the area is being reclaimed to cropland.

Copies of the application for revision of a surface coal mining permit are available for public inspection at the offices of the North Dakota Public Service Commission, Capitol Building, Bismarck, ND and at the office of the County Auditor, McLean County Courthouse, Washburn, ND.

Written comments, objections, or requests for informal conferences on the application may be submitted by any person with an interest which is or may be adversely affected to the North Dakota Public Service Commission, Capitol Building, Bismarck, ND 58505 within 30 days after the last publication of this notice.



2/25, 3/4, 11 & 18 - 605044



North Dakota Supreme Court Opinions ◀▲□/?

Lee v. Gulf Oil Expoloration & Production Co., 318 N.W.2d 766 (N.D. 1982)

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Filed Apr. 29, 1982

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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Peter H. Lee, Robert P. Wegleitner, and Dale Tjelde, Plaintiffs and Appellants  
 v.  
 Gulf Oil Exploration and Production Company, Defendant and Appellee

Civil No. 10157

Appeal from the District Court of McKenzie County, the Honorable William M. Beede, Judge.

DISMISSED.

Opinion of the Court by Sand, Justice.

Anseth & Rustad, P.O. Box 2536, Williston, for plaintiffs and appellants; argued by Janet Holter Zander.

Bjella, Neff, Rathert, Wahl & Eiken, P.O. Box 1526, Williston, for defendant and appellee; argued by Dwight C. Eiken.

[318 N.W.2d 767]

**Lee v. Gulf Oil Exploration and Production Co.**

Civil No. 10157

**Sand, Justice.**

This is an attempted appeal in a quiet title action by the plaintiffs, Peter H. Lee, Robert P. Wegleitner, and Dale Tjelde, from an order for judgment which determined that an oil and gas lease had not terminated because of the purported failure to comply with an "unless" clause in the lease. We are confronted with the issue whether or not we have jurisdiction before we resolve the issues regarding the effect of the "unless" clause under the facts of this case.

On 21 August 1974 Evelyn Gould and Mildred Gould, both single women, jointly executed a ten-year term oil and gas lease to Gulf Oil Exploration and Production Co. [Gulf]. The lease contained a standard provision:

"If no well be commenced on said land on or before one

year from the date [21 August 1974] hereof, this lease shall terminate as to both parties, unless lessee [Gulf] on or before that date shall pay or tender to the lessor or to the lessor's credit in the Santa Monica Bank (P.O. Box 550), at Santa Monica, Calif. 90406 or its successors ... the sum of One Hundred Sixty and No/100 \_\_\_\_\_ \$160.00 \_\_\_\_\_ Dollars."

The lease also contained a provision allowing assignment of interest:

"... but no change in the ownership of the land or assignment of rentals or royalties shall be binding on the lessee [Gulf] until after the lessee has been furnished with a written transfer or assignment or a certified copy thereof ....

"This lease and all its terms, conditions and stipulations binds each executing lessor and shall extend to and be binding on his assigns, heirs and devisees and successors, and those of the lessee, though unsigned by other lessors named herein."

After the lease was executed, Evelyn Gould purchased Mildred Gould's interest in the property. On 10 Dec 1979 Evelyn Gould transferred by warranty deed all of her interest in the property with no reservation of minerals to Peter H. Lee and Robert P. Wegleitner, who transferred all of their rights in 20 mineral acres in the property to Dale Tjelde and Elaine M. Tjelde on 11 April 1980.

On 1 July 1980, Gulf mailed the delayed rental payment which was due 21 Aug 1980 to the Santa Monica bank as the depository bank for Evelyn Gould and Mildred Gould. The bank, by letter dated 21 July 1980, returned the rental payment check to Gulf informing Gulf that Evelyn Gould and Mildred Gould no longer had an account with the bank.

On 21 July 1980, Lee telephoned Gulf at its division office in Casper, Wyoming, and spoke with Gulf's division agent Bill Groom concerning the mineral transfers which had occurred. He explained that he and Wegleitner had purchased Evelyn Gould's interest and that he and Wegleitner had subsequently transferred 20 of the mineral acres to Dale J. Tjelde and Elaine M. Tjelde. He also requested that the rental payments now be sent to them accordingly. Lee, at the request of Gulf, mailed a copy of the abstract entry to Bill Groom (Gulf) showing transfer of property from Evelyn Gould to Lee and Wegleitner, and a copy of the abstract entry showing transfer of the 20 mineral acres to Dale J. Tjelde and Elaine M. Tjelde.

Gulf held on to the rental payments until 1 May 1981, at which time the funds were deposited with the trial court. Prior to doing this,

Gulf, on 5 Aug 1980, in a letter to Evelyn Gould and Mildred Gould at the address shown on the oil and gas lease asked what should be done with the delayed rental payments because tender had been made but refused by the depository bank. Evelyn Gould responded with a letter 25 Aug 1980 stating that Mildred had died in July of 1979 and that she was the successor to the entire interest formerly owned by Mildred.

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[318 N.W.2d 768]

In addition, Evelyn stated that she had since sold the surface of the land but reserved 50% of the oil and mineral rights "for my lifetime." Gulf then asked Evelyn Gould for copies of the deed by which she acquired the interest of Mildred Gould, and advised that they were seeking copies of the deeds to Lee and Wegleitner and that when they received all the necessary deeds, changes would be made regarding delayed rentals.

On 9 September 1980 Evelyn Gould sent Gulf a copy of the warranty deed from Mildred to Evelyn Gould. On 25 August 1980 Gulf sent a letter to Lee informing him that it was necessary to complete all changes on the ownership schedule and to supply copies of the recorded deeds to Gulf. A similar request for recorded deeds was made by Gulf to the attorneys for Lee, Wegleitner and Tjelde on 2 Oct and 20 Oct 1980 in which Gulf stated, "as soon as we have received complete copies of all the Warranty Deeds affecting this property, we will re-issue the 1980 check to the owners of record as of the rental date."

The quiet title action was instituted by Peter H. Lee, Robert P. Wegleitner and Dale Tjelde on 10 Dec 1980 in which the parties attempted to have the basic lease terminated on the grounds that the delay rental payments were not made on or before the date specified. The defendant filed an answer and counterclaim on 5 January 1981.

The case was tried to the court without a jury upon stipulated facts, depositions, affidavits, and briefs. The court on 2 Nov 1981 issued its order for judgment directing that judgment for Gulf be entered. Lee, Wegleitner and Tjelde appealed from the order for judgment but not from the judgment.

We must consider and resolve the issue whether or not this Court has jurisdiction. This issue may be raised sua sponte. City of Bismarck v. Walker, 308 N.W.2d 359 (N.D. 1981); Huso v. Bismarck Public School Board, 219 N.W.2d 100 (N.D. 1974). To resolve this question we must determine if the order for judgment is appealable. The right of appeal is statutory. City of Bismarck v. Walker, supra; Huso v. Bismarck Public School Board, supra; Hansen v. Dennis, 232 N.W.2d 49 (N.D. 1975).

North Dakota Century Code section 28-27-01 and section 28-27-02 state which judgments and orders are appealable, and rule 4, North Dakota appellate procedure states the time separately within which an appeal from a judgment and an order may be taken. An order for judgment is not included in section 28-27-02, and is not appealable

pursuant to case law of this State. See, Simpler v. Lowrey, 316 N.W.2d 330 (N.D. 1982); First National Bank of Hettinger v. Dangerud, 316 N.W.2d 102 (N.D. 1982); Bismarck Public School No. 1 v. Ritterbush Associates, 313 N.W.2d 712 (N.D. 1981); Farmers Cooperative Ass'n of Churchs Ferry v. Cole, 239 N.W.2d 808 (N.D. 1976); Gebeke v. Arthur Mercantile Co., 138 N.W.2d 796 (N.D. 1965); Schrock v. Roy, 111 N.W.2d 703 (N.D. 1961); and Rusch's Estate, 62 N.D. 138, 241 N.W. 789 (1932).

An order for judgment is not final until the judgment is entered. Until then the court may be persuaded by motion or by some other appropriate method to change either the amounts or the conditions or any other item which normally is found in a judgment. Such changes may eliminate any contemplated appeal or, in the alternative, may cause an appeal to be taken.

The only significant exception to the case law of this State was made in Allstate Insurance Co. v. Knutson, 278 N.W.2d 383 (N.D. 1979), wherein this Court had under consideration an order for judgment of the district court involving an appeal from an administrative agency which is readily distinguishable from an order for judgment of a court case.

The appeal from an administrative agency is governed by NDCC § 28-32-15 and § 28-32-21. Pursuant to these statutory provisions and case law in an appeal from a decision of an administrative agency to the district court which is then appealed to this Court we will review the decision of the administrative agency rather than the decision of the district court [Nelson v. N.D. Workmen's Compensation Bureau, 316 N.W.2d 790 (N.D. 1982); Geo. E. Haggart, Inc., v. North Dakota Workmen's Compensation Bureau, 171 N.W.2d 104 (N.D. 1969)],

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[318 N.W.2d 769]

whereas in reviewing a decision of a district court case we review that decision, if it is to be a final decision.

On the basis of the foregoing authority, we are compelled to conclude that the order for judgment from which the appeal is taken is not appealable, and consequently this Court does not have jurisdiction to hear the appeal.

However, we recognize that the appellants may cause the judgment

to be entered and then properly appeal the same issues. Taking this into consideration and for the sake of judicial economy, we make the following observations.

The "unless" clause has been considered and discussed by this Court in numerous instances. Borth v. Gulf Oil Exploration & Production Co., 313 N.W.2d 706 (N.D. 1981); Norman Jessen & Associates v. Amoco Production Co., 305 N.W.2d 648 (N.D. 1981); Schwartzenberger v. Hunt Trust Estate, 244 N.W.2d 711 (N.D. 1976); Woodside v. Lee, 81 N.W.2d 745 (N.D. 1957). The facts of this case distinguish it from the discussion in Woodside, *supra*. In Borth, *supra*, we said that equitable relief is applicable under a variety of circumstances to prevent the automatic termination of a lease containing an "unless" clause.

In the instant case Gulf attempted to make the payment but because the successors in interest did not adequately or properly inform Gulf of such acquired interest in the manner provided for in the lease, Gulf could not and did not make the payments without assuming some risk of making payment to the wrong party or parties and under these circumstances it is questionable if the "unless" clause became operational.

If the appeal were properly before us we would be constrained to conclude that the "unless" clause, under the facts of this case, did not become operative and the oil and gas lease was not terminated for failure to make the payment to the successors in interest because the successors in interest did not advise and inform Gulf of their interest in the manner provided for in the lease.

The appeal is dismissed.

Paul M. Sand  
Ralph J. Erickstad, C.J.  
William L. Paulson  
Vernon R. Pederson  
Gerald W. VandeWalle

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application is full and complete for such specified longer term, the commission may grant a permit for such longer term.

3. A permit terminates if the permittee has not commenced the surface coal mining operations covered by such permit within three years of the issuance of the permit, provided that:
  - a. The commission may grant reasonable extensions of time upon a showing that such extensions are necessary by reason of litigation precluding such commencement or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee.
  - b. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee must be deemed to have commenced surface coal mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.

#### **38-14.1-13. Permit applications - General requirements.**

1. Any person or operator desiring to engage in surface coal mining operations shall make written application to the commission for a permit. Application for such permit must be made upon a form furnished by the commission. Included in the application must be:
  - a. A bond or security to attach to the lands for which a permit is sought from and after the time a permit is granted pursuant to the requirements of section 38-14.1-16.
  - b. A nonrefundable filing fee of five hundred dollars, plus ten dollars for each acre [.40 hectare] included in the permit application.
  - c. Mining and reclamation plans and other information required to be submitted pursuant to section 38-14.1-14.
  - d. An extended mining plan as required by section 38-14.1-15.
2. Each applicant for a surface coal mining and reclamation permit shall file a copy of the applicant's application for public inspection with the office of the county auditor for each county where the mining is proposed to occur.
3. Upon request by the permit applicant, the commission, in its discretion, may designate specific information included in the plans required by subdivisions c and d of subsection 1 as exempt from disclosure under section 44-04-18, provided such specific information pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental contents which is potentially toxic in the environment). Each request must be accompanied by a statement specifying the need for nondisclosure, which statement must be considered part of the permit application to be filed for public inspection as specified in subsection 2. The confidential information is exempt for a period not to exceed ten years subsequent to the date on which the request for nondisclosure was filed, unless it is demonstrated by the permit applicant that such period should be further extended in order to prevent possible resulting harm to the permit applicant, or the applicant's successors and assigns.

#### **38-14.1-14. Permit applications - Mining and reclamation plans.**

1. The permit application must be submitted in a manner satisfactory to the commission and must contain among other things:

- a. A legal description of the land for which a permit is sought, so that it may be identified and distinguished from other lands.
- b. An identification of all lands, interests in lands, or options on such interests (both surface and subsurface) held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit.
- c. The names and addresses of all of the following:
  - (1) The permit applicant.
  - (2) Every legal or equitable owner of record (surface and subsurface) of the property for which a permit is sought.
  - (3) The holders of record (surface and subsurface) of any leasehold interest in the property.
  - (4) Any purchaser of record (surface and subsurface) of the property under a real estate contract.
  - (5) The operator, if the operator is a person different from the permit applicant.
  - (6) If any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent.
- d. The names and addresses of the owners of record of all surface and subsurface areas adjacent to any part of the permit area as prescribed by the commission by regulation.
- e. If the applicant is a partnership, corporation, limited liability company, association, or other business entity, the following where applicable:
  - (1) The names and addresses of every officer, manager, partner, director, governor, or person performing a function similar to a director, of the permit applicant.
  - (2) The name and address of any person owning of record ten percent or more of any class of voting stock or membership interests of the applicant.
  - (3) A list of all names under which the applicant, partner, principal shareholder, or principal member previously operated a surface coal mining operation within any state within the five-year period preceding the date of the application.
- f. A statement of any current or previous surface coal mining permits in any state held by the applicant and the permit identification for said permits and for each pending application.
- g. A schedule listing any and all notices of violation of this chapter, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.], and any law, rule, or regulation of the United States or of the state of North Dakota, or of any department or agency in the United States or of the state of North Dakota pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application. The schedule must also indicate the final resolution of any such notice of violation.

- h. A statement of whether the permit applicant, any subsidiary, affiliate, or persons controlled by or under common control with the permit applicant, has ever held any federal or state mining permit which in the five-year period prior to the date of submission of the application has been suspended or revoked, or has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved.
- i. A copy of the permit applicant's advertisement as required in section 38-14.1-18.
- j. A map or plan, to an appropriate scale, clearly showing the land to be affected within the permit area upon which the applicant has the legal right to enter and commence surface coal mining operations.
- k. A copy of those documents upon which the permit applicant bases the applicant's legal right to enter and commence surface coal mining operations and whether that right is the subject of pending court litigation.
- l. A description of the type and method of surface coal mining operation that exists or is proposed, the engineering techniques proposed or used, and the equipment used or proposed to be used.
- m. The anticipated or actual starting and termination dates of each phase of the mining operations.
- n. The name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged, including the drainage permit application to the state engineer, if required, pursuant to other applicable state law.
- o. A determination by the permit applicant of the probable hydrologic consequences of the mining and reclamation operations, both on and off the minesite, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the minesite and surrounding areas so that an assessment can be made by the commission of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability.
- p. The climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges.
- q. Topographic maps to an appropriate scale, as prescribed by the commission by regulation, clearly showing the land to be affected as of the date of the application. Such a map, among other things specified by the commission, must show all of the following information:
  - (1) All manmade features.
  - (2) All boundaries of the land to be affected.
  - (3) The boundary lines and names of present owners of record of all surface areas abutting the permit area.
  - (4) The location of all buildings within one-half mile [804.67 meters] of the permit area.

- r. Cross sections, maps or plans of the land to be affected, including the actual area to be mined, prepared by or under the direction of and certified by a registered professional engineer, a registered land surveyor, or a qualified professional geologist with assistance from experts in related fields, showing pertinent elevation and location of test borings or core samplings and depicting all of the following information:
- (1) The nature and depth of the various strata of overburden.
  - (2) The location of subsurface water, if encountered, and its quality.
  - (3) The nature and thickness of any coal or rider seam above the coal seam to be mined.
  - (4) The nature of the stratum immediately beneath the coal seam to be mined.
  - (5) All mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected.
  - (6) Existing or previous surface mining limits.
  - (7) The location and extent of known workings of any underground mines, including mine openings to the surface.
  - (8) The location of aquifers.
  - (9) The estimated elevation of the water table.
  - (10) The location of spoil, waste, or refuse areas, suitable plant growth material stockpiling areas and, if necessary, stockpiling areas for other suitable strata.
  - (11) The location of all impoundments for waste or erosion control.
  - (12) Any settling or water treatment facility.
  - (13) Constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto.
  - (14) Profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the applicant's proposed reclamation plan.
- s. A statement by the applicant of the result of test borings or core samplings from the permit area, including logs of the drill holes, the thickness of the coal seam found, an analysis of the chemical properties of such coal, the sulfur content of any coal seam, chemical analysis of potentially toxic forming sections of the overburden, and chemical analysis of the stratum lying immediately underneath the coal to be mined. The provisions of this subdivision may be waived by the commission with respect to the specific application by a written determination that such requirements are unnecessary.
- t. A soil survey of all the suitable plant growth material within the permit area. Such survey must also locate and identify prime soils in the permit area. The survey must be made by a professional soil classifier as described in subsection 4 of section 43-36-01.

- u. Cultural resource information, including all of the following:
  - (1) A statement evidencing compliance with the requirements of chapter 55-03.
  - (2) A cultural resource inventory, including all buildings, structures, and objects referred to in section 55-03-01, covering the proposed permit and adjacent area conducted in accordance with guidelines developed by the state historic preservation office and the director of the state historical society.
  - (3) An evaluation of each cultural resource site which will be affected by any surface coal mining and reclamation operation. The evaluation must include sufficient information to allow the director to determine if the cultural resource site is significant in accordance with the national register criteria [36 CFR 60.4] and guidelines established by the director.
  - (4) An appropriately scaled map identifying the location of each cultural resource site determined significant by the director within the proposed permit area and the adjacent area.
  - (5) A description of adverse effects on significant cultural resources that may result from the proposed surface coal mining operations.
  - (6) A statement that the permit applicant will inform the director and the commission of any discovery within the permitted area of previously unrecorded archaeological, cultural, or historic materials and allow reasonable time for the director to determine the significance of the discovery and, if determined significant, to approve a mitigation plan.
  - (7) A plan approved by the director that has been or will be used to mitigate adverse effects on significant sites that are known, or a statement that such a plan will be approved and implemented before any adverse effects. Any mitigation plan that has not begun implementation within five years of plan approval is subject to review by the director.
- 2. Each applicant for a permit shall submit as part of the permit application a reclamation plan that must include, in the degree of detail necessary to demonstrate that reclamation as required by this chapter can be accomplished, a statement of:
  - a. The condition of the land to be covered by the permit prior to any mining, including all of the following:
    - (1) The uses existing at the time of the application, and if the land has a history of previous mining, the uses which preceded any mining.
    - (2) The capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, vegetative cover, and the soil survey prepared pursuant to subdivision t of subsection 1.
    - (3) The productivity of the land prior to mining, including appropriate identification of prime farmlands, as well as the average yield of food, fiber, and forage products from such lands obtained under high levels of management.
  - b. The use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land

use policies and plans, the surface owner's preferred use, and the comments of state and local governments or agencies thereof, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

- c. The consideration which has been given to maximize the utilization and conservation of the coal being recovered so that re-affecting the land in the future can be minimized.
- d. The consideration which has been given to making the surface mining and reclamation operations consistent with surface owner plans and applicable state and local land use plans and programs.
- e. The consideration which has been given to developing the reclamation plan in a manner consistent with local physical, environmental, and climatological conditions, including the use made of hydrologic and geochemical information in addressing problems of subsurface drainage and stability.
- f. A detailed description of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use.
- g. The engineering techniques proposed to be used in mining and reclamation and a description of the major equipment.
- h. Plans for:
  - (1) The control of surface water drainage and of water accumulation.
  - (2) Backfilling, soil stabilization, compacting, grading, and appropriate revegetation.
  - (3) Soil reconstruction, replacement, and stabilization, pursuant to the performance standards in subsections 5 and 6 of section 38-14.1-24.
- i. A detailed description of the measures to be taken during the mining and reclamation process to assure the protection of:
  - (1) The quality of surface and ground water systems, both onsite and offsite, from adverse effects of the mining and reclamation process.
  - (2) The rights of present users to such water.
  - (3) The quantity of surface and ground water systems, both onsite and offsite, from adverse effects of the mining and reclamation process or to provide alternative sources of water where such protection of quantity cannot be assured.
- j. The steps to be taken to comply with applicable air quality and water quality and quantity laws and regulations and any applicable health and safety standards.
- k. A detailed estimated timetable for the accomplishment of each major step in the reclamation plan.
- l. An estimate of the cost per acre [.40 hectare] of the reclamation, including a statement as to how the applicant plans to comply with each of the requirements set out in section 38-14.1-24.

- m. The results of test borings which the applicant has made of the area to be covered by the permit, or other equivalent information and data, in a form satisfactory to the commission, including the location of subsurface water and an analysis of the chemical properties, including toxic forming properties of the mineral and overburden.
3. Each applicant for a permit shall submit to the commission as part of the permit application a certificate issued by an insurance company authorized to do business in this state certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which such permit is sought. Such policy must provide for personal injury and property damage protection in an amount adequate to compensate any persons, except employees covered by workforce safety and insurance pursuant to chapter 65-01, damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled to compensation under the applicable provisions of state law. Such policy must be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations. The policy must include a rider requiring that the insurer notify the commission whenever substantive changes are made in the policy, including any termination or failure to renew. All operations must cease if the policy is terminated or is not renewed.
4. Each applicant for a surface coal mining and reclamation permit shall submit to the commission as part of the permit application a blasting plan which must outline the procedures and standards by which the permittee will meet the provisions of subsection 13 of section 38-14.1-24.

**38-14.1-15. Permit applications - Extended mining plan.**

1. An applicant shall submit as part of a permit application a plan identifying the lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits will be sought.
2. The permittee shall annually advise the commission of the status of the plan and shall amend such plan if changes are made in anticipated mining operations or if updated information is available.

**38-14.1-16. Performance bond - Amount - Sufficiency of surety - Amount of forfeiture.**

1. As part of a surface coal mining and reclamation permit application, the permit applicant shall file with the commission, on a form prescribed and furnished by the commission, a bond for performance payable to the state of North Dakota and conditional upon faithful performance of all the requirements of this chapter and the requirements of all regulations promulgated pursuant to this chapter and all permit terms and conditions.
2. The commission shall set the bond amount sufficient to complete the reclamation plan in event of forfeiture. The bond for the permit area must be at least ten thousand dollars.
3. The bond must cover that area of land within the permit area upon which the permittee will initiate and conduct surface coal mining and reclamation operations for the ensuing year. Prior to initiating and conducting succeeding increments of surface coal mining and reclamation operations within the permit area, the permittee shall file with the commission an additional bond or bonds to cover such increments in accordance with this section.