

## CHAPTER 1 COAL

**Definitions.** The following definitions apply to this chapter:

1. "Board" means the Board of University and School Lands.
2. "Bonus" means the monetary consideration paid by a lessee for the execution of a lease by the Board.
3. "Coal" means a dark-colored compact and earthy organic rock with less than forty percent inorganic components, based on dry material, formed by the accumulation and decomposition of plant material. The term includes consolidated lignitic coal, in both oxidized and nonoxidized forms, and leonardite, having less than eight thousand three hundred British thermal units per pound [453.59 grams], moist and mineral matter free, whether or not the material is enriched in radioactive materials.
4. "Coal mining operation" means any type of activity, the aim of which is to discover the presence of coal, or to remove the coal so discovered from their original position on or in the land by any means whatsoever.
5. "Commissioner" means the Commissioner of University and School Lands.
6. "Delay rental" means the annual minimum payment given to maintain a coal lease in the absence of production in commercial quantities during the primary term.
7. "Department" means the Office of the Commissioner and the Department of Trust Lands.
8. "Leased premises" means the land subject to a given coal lease.
9. "Payor" means either the lessee or an entity other than the lessee who assumes, or agrees to perform, any of the lessee's rights and responsibilities under a lease.
10. "Trusts" means permanent trusts and other funds managed or controlled by the Board.

**Prospecting permits.** A request for a prospecting permit is issued in accordance with the Board's Surface Land Management Policy Manual.

**Lands subject to lease.** A lease may be issued upon acreage not already under lease as reflected in Department records. A lease is limited to a maximum of one quarter section, unless otherwise authorized by the Board.

**Application for lease.** A written application for a lease must include:

1. Legal description of the lands to be leased;
2. Proposed terms for the lease including the bonus, length, delay rental, and royalty;

3. Documentation showing that the bonus, term, delay rental, and royalty being offered are consistent with market rates; and
4. Nonrefundable application fee in an amount set by the Board.

**Notice of leasing.** Upon receipt of an application for a lease and a determination by the Board that the application covers a tract the Board is willing to lease, the Department shall post on the Department's website a notice of the application for lease, any supporting documentation, and instructions for submitting public comments. Comments must be received by the Department no later than five p.m. central standard time fourteen days after posting the notice of the application for a lease to be considered. All comments must be in writing and contain the following:

1. Name and address of the interested person;
2. Applicant's name and address;
3. The legal description of the proposed leased premises as shown on the published notice; and
4. A detailed statement as to whether the interested person supports or opposes the issuance of the lease.

Those comments will be brought to the Board along with the Department's recommendations.

**Negotiation of lease.** The Department may negotiate with the applicant the terms and conditions of a lease that it deems to be in the best interests of the trusts. If the Board owns the surface estate of a leased premises, compensation for the surface damage must be negotiated separately. The applicant may propose modifications to the bonus, delay rental, royalty, or other terms of the lease application. The Board may refuse to enter into a lease for any reason. The Board shall not issue the lease until receipt of full payment of at least one year of delay rental, bonus payment, and any applicable fees.

**Testing.** The Department may require a lessee to conduct drilling tests on the leased premises prior to the coal mining operations. If required, sufficient test holes must be drilled to outline the boundaries, thickness, and depth of the coal deposit and estimate the quality, quantity, and type of coal located on the leased premises. Lessee shall provide the Department a map of the leased premises showing the boundaries of the coal deposit and a written report estimating the thickness, depth, quality, quantity, and type of coal. All test holes must be reclaimed to the satisfaction of the Department at the conclusion of testing. Failure to conduct drilling tests when required or failure to provide the required documentation, may result in termination of the lease under the Breach of Lease policy.

**Voluntary release.** To request a voluntary release of a lease, or portion of a leased premises, a lessee shall submit a written request to the Department utilizing the form available on the Department's website and all other documents requested by the Department. Approval of a voluntary release is at the discretion of the Commissioner and the Department shall notify lessee in writing whether or not the voluntary release is approved. All lease obligations must be current at the time the voluntary release is approved. The lessee shall remain bound by the terms and conditions of the lease and the Board's policies until the voluntary release is approved by the Commissioner.

### **Breach of lease.**

1. A lease may be cancelled for:
  - a. Nonpayment of any sum due under the lease;
  - b. Breach of any of the lease terms or conditions provided that the cancellation must not release lessee from liability for any sum due lessor or from any damages due to the breach; or
  - c. Violation of the Board's policies.
2. Prior to cancellation of a lease, the Department must mail a notice of intention to cancel the lease specifying the reason for cancellation to the lessee by mail requiring a signed receipt at the address of the lessee as shown in the records of the Department. If the notice of intention to cancel is returned undeliverable or refused, the notice must be published in the official newspaper of the county in which the leased premises is located.
3. A lessee may file with the Commissioner a request for a waiver, a request to review the notice of intention to cancel the lease, which must include a statement of the specific grounds for the request. A request must be in writing and filed with the Commissioner within ten days after the date of notice of intention to cancel the lease is received or the date of publication. A request for a waiver or review is deemed filed when personally delivered or when received by the Department. The Board may waive any breach except a breach of lease terms required under North Dakota Century Code, or the Board may allow the lessee time to cure the breach. Any waiver must be limited to the particular breach waived and must not limit the Board's right to cancel the lease for any other breach.
4. If lessee has not remedied the default within twenty days after receipt of a notice of intention to cancel or the date of publication, the lease must be cancelled. The Department must mail a notice of cancellation of the lease to the lessee by mail at the address of the lessee as shown in the records of the Department.
5. Cancellation of the lease does not release the lessee from liability for any sum due to the Board or from any damages from a breach of the lease.
6. Upon cancellation of the lease, the Department shall file a satisfaction of lease with the register of deeds' office in the county where the leased premises is located.

### **Minimum delay rentals.**

1. The minimum delay rental shall be five dollars (\$5.00) per acre per year payable for as long as the lease is in full force and effect.
2. The first year of delay rental must be paid upon the issuance of a lease. The delay rental for each subsequent year of the lease is due and payable before the anniversary date of the lease.

**Royalty.** Royalties are due to lessor for coal mined or saved from the leased premises. If any other valuable substance is found or discovered during exploration or mining operations, the operator must notify the Department prior to extraction.

**Assignments.** A lessee shall submit a written request to the Department for an assignment of lease utilizing the form available on the Department's website. A request for assignment must include any documents requested by the Department. Lessee shall submit a lease assignment fee, in an amount set by the Board, to the Department with the request. Approval of an assignment is at the discretion of the Commissioner and the Department shall notify lessee in writing whether or not the assignment is approved. All lease obligations must be current at the time the assignment is approved. The lessee shall remain bound by the terms and conditions of the lease and the Board's policies until the assignment is approved by the Department. Upon approval of the assignment, the assignee shall be bound by all the terms and conditions of the lease and the Board's policies. Assignor shall provide the Department with a copy of the fully executed assignment within thirty days from the approval.

**Surface owner protection.** For a lease or prospecting permit where the Board is leasing or granting the right to explore for coal and has no interest in the surface estate, the lessee or permittee shall comply with North Dakota Century Code chapter 38-18.

**Financial obligation to reclaim.** The lessee shall pay the entire cost of reclamation necessitated by the coal mining operation.

**Reports of lessee – delinquency penalty.** A statement and payment of royalty must be received by the Department on or before the last day of the month following the mining and removal of coal from the premises.

1. The royalty payment and reporting deadline may be extended by the Commissioner upon written request. An extension, if granted, only applies to future royalty payments and reporting.
2. Any sum, other than delay rentals, not paid when due is delinquent and is subject to a delinquency penalty of one percent of the sum for each thirty day period of delinquency or fraction of delinquency period, unless a waiver is granted by the Commissioner.
3. A lessee shall have thirty days from the date of the receipt of a notice of a penalty assessment to pay the penalty or request a waiver.
  - a. A request for a waiver of the penalty must be in writing and provide the grounds for the request.
  - b. The following factors may be considered when deciding to waive the penalty: the reason for the late payment; the degree of control the payor had over the late payment; any unusual or mitigating circumstances involved; the loss of interest earnings to the trust involved; and any other relevant factors.
  - c. The Commissioner may, for good cause, waive up to twenty-five thousand dollars of the penalty initially sought. A request for penalty waiver in excess of twenty-five thousand dollars must be presented to the Board, with the Commissioner's recommendation, for review and decision.

- d. A waiver of penalty does not constitute a waiver of the right to seek the full amount of the penalty if the initial claim for royalty payment is not paid. If a claim for unpaid royalties and penalties is settled and payment received, the amount of penalties not collected is deemed waived.

### **Audit and examination.**

1. The Department may audit and examine any records, including:
  - a. Cuttings, cores, logs, mine plans, and estimated tonnage in place from any leased premises;
  - b. Books, accounts, sales invoices, and receipts;
  - c. Contracts and other records pertaining to the production, transportation, sale, and marketing of the coal produced from the leased premises; and
  - d. Documents supporting the cost of the coal mining operation used for calculating the price per ton royalty.
2. The Department shall serve by certified mail, a written request to payor specifying the documents requested. Payor shall have ninety days from the date of receipt of the request to provide the requested documents. Payor may request an extension of time to produce the documents. Any request must be in writing, specify the reason for the request, and be received by the Department within sixty days of receipt of the Department's request for documents. The Department may extend the time for production of documents. If the Department denies a request for an extension, the payor shall produce the information:
  - a. Fifteen days after receipt of a denial of the request for an extension; or
  - b. Ninety days after the date of the original document request, whichever is later.
3. A payor who intends to withhold requested documents beyond ninety days after the date of receipt of the request shall provide a detailed explanation of the legal basis for withholding the documents. If no explanation is provided, the lease is subject to cancellation under the Breach of Lease policy.
4. After audit and examination of the records set forth in subsection one, the Department shall notify payor of the results, including the audit findings, any additional royalties due, the basis for that determination, and the date by which a response to the findings is due. If an exact amount of any delinquent royalties cannot be determined from the documents provided, the Department shall request the payor make appropriate adjustments.
5. A payor shall have sixty days from the date of the receipt of the audit findings to comply or respond to the findings. If a payor fails to comply with the audit findings or respond to the findings, the lease is subject to cancellation under the Breach of Lease policy.