

**ARTICLE 85-06
MINERAL LEASING AND EXPLORATION**

**Chapter 85-06-03
Construction Aggregate Rules**

85-06-03-01 DEFINITIONS. The terms used throughout this chapter have the same meaning as in the North Dakota Century Code Chapter 15-05 except:

1. "**Board**" means the board of university and school lands.
2. "**Commissioner**" means the commissioner of university and school lands.
3. "**Construction aggregate**" means gravel, sand, scoria, road material, building stone, colloidal or other clays, and cement materials.
4. "**Fair market value**" means the price set by the commissioner after an analysis of prices paid for pit run construction aggregate in the area of the leased premises. The commissioner will determine what constitutes the "area of the leased premises."
5. "**Disturbed**" means any alteration of the topsoil resulting from a mining operation.
6. "**Leased premises**" means the land area subject to a given construction aggregate lease.
7. "**Lessee**" means the party specified in a construction aggregate lease and permissible assignees or other successors in interest.
8. "**Lessor**" means the state of North Dakota acting by and through the board of university and school lands and its agent, the commissioner of university and school lands.
9. "**Net construction aggregate interest**" means the undivided portions of the total construction aggregate estate on a given tract of land the title to which is in the state of North Dakota acting by and through the board of university and school lands.
10. "**Person**" means an individual, corporation, cooperative, partnership, a joint venture, an unincorporated association, or other legal entity.

85-06-03-02 POLICY. It is the policy of the board to provide for the orderly development and maximum extraction of construction aggregate while adequately protecting the environment. Persons may produce construction aggregate by obtaining a lease in accordance with these rules

85-06-03-03 LEASE APPLICATIONS. Lease applications must be made only on forms furnished by the commissioner. Applications must be accompanied by the application fee. Each application and lease is limited to a maximum of one hundred sixty contiguous acres (about 65 hectares) of like net construction aggregate interest. Lease applications must designate the type of construction aggregate desired.

85-06-03-04 REJECTION OF APPLICATIONS AND BIDS. The commissioner may reject any and all applications or bids at any time prior to the issuance of a lease.

85-06-03-05 LEASE TERMS - DESIGNATION OF LANDS. Lease terms may be for a maximum of five years. The board may designate any tracts as open or closed to construction aggregate leasing.

85-06-03-06 NEGOTIATED LEASES. The commissioner is authorized to approve and issue construction aggregate leases on the board's behalf, under the following conditions:

1. The construction aggregate lease is to the state or a political subdivision of the state for a term of one year or less with a fixed royalty rate, or for a term greater than one year with an annually adjusted royalty rate based on fair market value.
2. The applicant is a private entity requesting less than 5,000 cubic yards for a term of one year or less,
3. When the construction aggregate is needed for an emergency situation for a term of one year or less.

If the above conditions are not met, or if the commissioner otherwise determines that board review is desirable, the application will be brought before the board for its consideration. The commissioner will prepare a monthly report for the board of the construction aggregate leases issued since the previous board meetings.

85-06-03-07 AUCTIONED LEASES. Except as provided in section 85-06-03-06(1), leases with a term greater than one year must be offered at public auction. The commissioner, on behalf of the board, is authorized to approve leases for a term greater than a year. If the commissioner determines that board review is warranted, the application will be brought before the board for its consideration. Notice of such an auction must be published in the official newspaper of the county where the lands are located and in the Bismarck Tribune. Such notice must be published once, at least ten days prior to the day of the auction. The notice must contain the legal description of the land, the lease term, and the time and place where the auction will be held. Bidding must be on a royalty per yard basis with proportionate per ton adjustments rounded to the nearest cent. The commissioner will prepare a report for the board of the construction aggregate leases issued since the previous board meetings.

85-06-03-08 USE OF LEASED OR LICENSED PREMISES. Lessee may use as much of the leased premises as necessary for prospecting, mining, removal of construction aggregate and reclamation subject to section 85-06-03-24, where applicable.

85-06-03-09 ADVANCE ROYALTIES. As consideration for a lease with a term greater than one year, lessee must pay to lessor as advance royalty on the date a lease is issued not less than one thousand dollars. This amount must be paid annually for each year in which the lease is in force; payment is due prior to the lease anniversary date. Advance royalties paid in a given year may be credited against construction aggregate mined during that year. Advance royalty payments for which a credit is not claimed in the year for which the payment was made must be forfeited. The board, upon its own motion, may adjust the advance royalty payment; any adjustment takes effect on the anniversary date of the lease following six months notice to lessee.

The commissioner, at his option, may require an advance royalty deposit for leases with a term of one year or less. The deposit will be credited against construction aggregate mined during the lease.

85-06-03-10 ROYALTIES. Royalties must be paid by the last day of the calendar month following sale, utilization, or removal from the leased premises. Royalties must be paid in full on any stockpiled construction aggregate remaining on the leased premises 90 days prior to the expiration of the lease.

85-06-03-11 TESTING. In the first year of a multiple year lease a lessee must conduct drilling tests on the leased premises unless the commissioner issues a written waiver of this requirement. Sufficient test holes must be drilled to outline the boundaries, thickness, and depth of the construction aggregate deposit and estimate the quality, quantity, and type of construction aggregate located on the leased premises. Lessee must furnish lessor a map of the leased premises showing the boundaries of the construction aggregate deposit and furnish lessor a written report estimating the thickness, depth, quality, quantity, and type of construction aggregate located on the leased premises. Failure to conduct test drilling or failure to furnish the required information will result in automatic termination of the lease at the end of the first year. All holes must be filled at the conclusion of testing. The commissioner, at his option, may require similar testing on a lease with a term of one year or less.

85-06-03-12 MINING AND RECLAMATION PLAN. Prior to mining construction aggregate on the leased premises, lessee must submit a mining and reclamation plan to the commissioner for review. The plan must indicate the exact location of the mining operation in relation to the construction aggregate deposit, an estimate of the thickness, depth, quantity, quality and type of construction aggregate to be removed from such location, what the construction aggregate will be used for, and a plan for the reclamation of the surface once all construction aggregate has been removed from the exact location. The reclamation plan must include the leveling of the disturbed surface at the close of mining operations to as close to its original contour as is reasonably possible taking into consideration the amount of construction aggregate removed, the saving and respreading of topsoil present on the surface prior to mining, and the revegetation of the surface with appropriate flora. The intent of these reclamation plans is to reclaim the land to its previous potential use and previous potential productivity. The reclamation plan may be modified by the commissioner. Mining may not begin on the leased premises unless the mining and reclamation plan is approved by the commissioner. In the event that the commissioner does not approve a reclamation plan or approves a reclamation plan that is unacceptable to lessee then all consideration paid for the lease will be refunded to lessee.

Special reclamation plans for the propagation of wildlife habitat, the creation of a nature preserve, or other alternate land use may be required by the commissioner, provided the costs of such reclamation do not exceed the cost of reclamation to its previous potential use and previous potential productivity.

85-06-03-13 BOND. Payment of all royalties and reclamation of any portion of the leased premises that is disturbed by lessee, lessee's agent or lessee's assigns, is the responsibility of lessee. To assure payment of royalties and proper reclamation, lessee must obtain and retain in force a bond, in an amount and in the form required by the commissioner. If the commissioner consents, lessee may, in-lieu of a bond, file another form of security. The commissioner may adjust bonding amounts yearly, with the adjustment based on the estimated cost to reclaim the remaining disturbed site and the amount of stockpiled construction aggregate. If the commissioner determines that additional bond or other securities are required, lessee must submit additional security within 30 days after requested by the commissioner in the form as required by this section. Lessee may submit a written request to the commissioner stating the reasons for a full or partial release of the bond or other security. At the commissioner's sole discretion, a bond or other security may be released in whole or in part.

When all royalties have been paid and reclamation is accomplished by lessee pursuant to a reclamation plan approved by the commissioner, the commissioner will release the bond or other security. If royalties owed are not paid or reclamation is not accomplished in accordance with the approved reclamation plan, the bond or other security must be forfeited. The commissioner will determine whether or not reclamation has been accomplished. The forfeiture of the reclamation bond or other reclamation security by the lessee will not absolve the lessee of the duty and responsibility to reclaim the leased premises. The commissioner may specifically enforce lessee's contractual and statutory duty to reclaim through appropriate court proceedings.

The commissioner may waive the requirement for a bond from a political subdivision.

Lessees may appeal any decision made by the commissioner under this section, to the board. A written explanation of the reason why the commissioner's decision should be changed must accompany an appeal.

85-06-03-14 RECLAMATION CONTRACTS. The board may contract with lessees, or any person for the reclamation of the leased premises. The costs of such reclamation may be paid for from forfeited bonds, or through credits applied against construction aggregate sold, utilized, or stockpiled by lessee.

85-06-03-15 THEFT OF CONSTRUCTION AGGREGATE. Royalty for all construction aggregate mined must be paid by lessee in accordance with section 85-06-03-10. Lessee shall be responsible for the loss or theft of any construction aggregate from the leased premises and such loss or theft does not relieve the lessee from the responsibility to pay for the construction aggregate.

85-06-03-16 RECORDS AND INSPECTIONS. Lessee must keep an accurate record of the quantity, quality, and type of construction aggregate mined. Lessor or its representative may audit, examine and copy such records as may be necessary to assure lessor that lessee is complying with all provisions of the lease, these rules, and related laws and may examine all samples, logs, assays, or

cores. All mining operations and reclamation operations may be inspected by lessor or its representative at any time.

85-06-03-17 MINING OPERATIONS. Lessee must conduct mining operations in a good and workmanlike manner and in accordance with all local, state and federal laws. Lessee must take reasonable steps to prevent mining operations from unnecessarily causing or increasing soil erosion or drainage, and damage to crops, pasture, or trees.

85-06-03-18 COMPLIANCE WITH OTHER AUTHORITIES. Lessee at its own expense must comply with all laws and requirements of local, state, and federal authorities and agencies, as may be required to commence and conduct mining operations and reclamation operations on the leased premises that are presently effective or that may be enacted or promulgated by such governments.

85-06-03-19 TERMINATION BY LESSOR. For any breach of the lease conditions or for violation of any local, state or federal laws, a lease may be cancelled by lessor. Cancellation by lessor will not release lessee from liability for royalty or rental owed to lessor or from any damages resulting from a breach of a lease condition or from the responsibility to reclaim the leased premises. Lessor may cancel a lease by giving written notice of the breach to lessee at the address specified in the lease.

85-06-03-20 TERMINATION BY LESSEE. Lessee may surrender a lease upon payment of all royalties and other debts owed lessor. Termination of lease by lessee does not release lessee from its responsibility to reclaim the leased premises.

85-06-03-21 CONDITIONS ON EXPIRATION OR TERMINATION. At the expiration, cancellation, or termination of a lease and, unless waived, upon the completion of reclamation, lessee must remove its property from the leased premises within one hundred twenty days from the date of termination or the date reclamation is completed. Lessee will be liable to lessor for the costs of removal of any property remaining on the leased premises after time for removal has expired. Lessee must remove all stockpiled construction aggregate from the leased premises by the lease expiration date.

85-06-03-22 TITLE AND LESSOR INTERESTS. Lessor neither warrants nor agrees to defend title to the leased premises. If lessor is found to own a lesser net construction aggregate interest in the leased premises than is specified in the lease, royalties must be paid lessor only in the proportion which lessor's interest bears to the entire fee simple estate.

85-06-03-23 WAIVER OF CONDITIONS. Lessor may, in writing, waive any breach of the lease conditions specified in these rules except such as are specifically required by law, but any such waiver extends only to the particular breach so waived and does not limit the rights of lessor with respect to any future breach.

85-06-03-24 SURFACE OWNER PROTECTION. Where the surface of the leased premises is not owned by the state, lessee must give each surface owner a written description of the land disturbance contemplated by lessee prior to the commencement of any mining operations on the leased premises. If there is a change in the nature of the land disturbance contemplated, an updated written description must be furnished each surface owner as soon as possible. Each description must be accompanied by a map showing the specific locations of any contemplated mining operations.

85-06-03-25 SURFACE LESSEE PROTECTION. Where the surface of the leased premises is owned by the state and is leased to a person other than the construction aggregate lessee, the construction aggregate lessee must restore all fences that have been damaged, moved or removed as a result of mining operations and must further compensate the surface lessee for any damage to or loss of other improvements owned by the surface lessee. The commissioner will notify the surface lessee of the issuance of a construction aggregate lease.

85-06-03-26 INDEMNIFICATIONS. Lessee accepts liability and indemnifies and holds harmless lessor for any loss that may be suffered by the person or property of lessee, lessee's employees and agents, and anyone else, when such loss is any way related to lessee's use and management of the leased premises.

85-06-03-27 RESERVED RIGHTS - EXTENSIONS. Lessor reserves the right to use, rent, lease, sell, or encumber the leased premises and reserves all historical, archaeological, and paleontological materials on or beneath the surface of the leased premises. Leases for the production of coal, oil and gas, uranium, potash or other valuable minerals have priority over any lease for the production of construction aggregate; lessor may cancel any construction aggregate lease where such lease would interfere with the production of other minerals that would provide a higher return to the state. In the event of such lease cancellation, lessor will refund to lessee advance royalties not already credited or forfeited as provided in Section 85-06-03-09. The commissioner may grant lease extensions where equitable.

85-06-03-28 PROTECTION OF CULTURAL RESOURCES. If any historical, archaeological, paleontological, or other cultural artifacts, vestiges or remains are found prior to, during or after any exploration, testing, production, mining, or reclamation operations on the leased premises, the superintendent of the state historical board and the commissioner must be notified immediately and the site and the materials must be protected by lessee from further disturbance until a professional examination can be made or until some other form of clearance to proceed is authorized by the commissioner. The commissioner may grant extensions of time to a lessee where there are delays as a result of this section. In the event no further disturbance is allowed the lease may be cancelled and lessor will refund to lessee advance royalties not already credited or forfeited as provided in Section 85-06-03-09. The commissioner and the superintendent of the state historical board or their representative shall have authority to inspect the leased premises at all times to determine compliance with this section.

85-06-03-29 ASSIGNMENT. No interest in a lease may be assigned in whole or in part without the written consent of lessor.

85-06-03-30 AMENDMENTS. Lease amendments must be in writing and executed by both lessor and lessee. Amendments to these rules and regulations may be made by the board at its option.

85-06-03-31 FEES. (Repealed June 26, 2014)

History

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