

**FIRST ENGROSSMENT
with Conference Committee Amendments
ENGROSSED SENATE BILL NO. 2377**

Introduced by

Senators Bekkedahl, Bowman, Rust

Representative Hatlestad

1 A BILL for an Act to amend and reenact subsection 5 of section 38-11.2-01, sections
2 38-12.1-01, 38-12.1-02, 38-12.1-03, 38-12.1-04, 38-12.1-05, and 38-14.1-02, subsection 3 of
3 section 38-14.1-05, subsection 3 of section 38-14.1-13, subdivisions r and s of subsection 1 of
4 section 38-14.1-14, subdivision c of subsection 2 of section 38-14.1-14, paragraph 2 of
5 subdivision e of subsection 3 of section 38-14.1-21, subdivision b of subsection 4 of section
6 38-14.1-21, subsections 1 and 1.1 of section 38-14.1-24, subdivision b of subsection 3 of
7 section 38-14.1-24, subsections 5, 10, and 18 of section 38-14.1-24, section 38-14.1-25,
8 subdivision b of subsection 1 of section 38-14.1-27, subsections 1, 3, and 4 of section
9 38-14.1-37, sections 38-15-01, 38-15-02, 38-18-05, 38-18-07, 57-61-01, and 57-61-01.2,
10 subsection 1 of section 57-61-01.5, sections 57-61-01.7, 57-61-02, and 57-61-03, and
11 subsection 1 of section 57-61-04 of the North Dakota Century Code, relating to the definition of
12 coal and commercial leonardite and the taxation of commercial leonardite.

13 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

14 **SECTION 1. AMENDMENT.** Subsection 5 of section 38-11.2-01 of the North Dakota
15 Century Code is amended and reenacted as follows:

16 5. "Subsurface mineral" means any naturally occurring element or compound recovered
17 under the provisions of chapter 38-12, but for the purpose of this chapter excludes
18 coal, commercial leonardite, oil and gas, sand and gravel, and rocks crushed for sand
19 and gravel.

20 **SECTION 2. AMENDMENT.** Section 38-12.1-01 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **38-12.1-01. Legislative findings.**

23 The legislative assembly of the state of North Dakota finds that:

- 1 1. The discovery and evaluation of coal or commercial leonardite deposits is
- 2 advantageous in an industrial society.
- 3 2. Coal or commercial leonardite occurs hidden under the ground and must be searched
- 4 for by diverse techniques, and that the search, exploration, or prospecting for coal or
- 5 commercial leonardite is a necessary and expensive prerequisite to coal or
- 6 commercial leonardite extraction and for land use planning in coal-bearing or
- 7 commercial leonardite-bearing areas.
- 8 3. It is to the benefit of society to allow coal or commercial leonardite exploration and to
- 9 require the information generated from exploration to be available to the office of the
- 10 state geologist.

11 **SECTION 3. AMENDMENT.** Section 38-12.1-02 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **38-12.1-02. Declaration of policy.**

14 It is hereby declared to be in the public interest to have persons engaged in coal or
15 commercial leonardite exploration or evaluation report their findings to the office of the state
16 geologist so that data on the location, quantity, and quality of coal or commercial leonardite, and
17 the characteristics of associated material, will be available to assist the state in determining
18 what the attitude of the state should be regarding future development of coal or commercial
19 leonardite resources.

20 **SECTION 4. AMENDMENT.** Section 38-12.1-03 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **38-12.1-03. Definitions.**

23 As used in this chapter, unless the context otherwise requires:

- 24 1. "Coal" means a dark-colored, compact, and earthy organic rock with less than forty
- 25 percent inorganic components, based on dry material, formed by the accumulation
- 26 and decomposition of plant material. The term includes lignite in both oxidized and
- 27 nonoxidized forms, whether or not the material is enriched in radioactive materials.
- 28 The term does not include commercial leonardite.
- 29 2. "Coal exploration" means:
 - 30 a. The use of any technique which when applied to the surface of the land will aid in
 - 31 the discovery or evaluation of coal or commercial leonardite or aid in determining

1 the quantity and quality of coal or commercial leonardite present. It includes
2 drilling or digging, excavating, core sample drilling and collection, diamond
3 drilling, trenching, or any other type of penetration of the surface of the earth; or
4 b. Environmental data gathering activities conducted for the purpose of establishing
5 the conditions of an area prior to applying for a permit under chapter 38-14.1. The
6 provisions of sections 38-12.1-04 and 38-12.1-05 are not applicable to such
7 environmental data gathering activities unless the natural land surface will be
8 substantially disturbed or such activities are located on lands designated
9 unsuitable for mining under section 38-14.1-05.

10 3. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the
11 oxidation of lignite coal, and is produced from a mine that has as its only function for
12 supply for purposes other than gasification or combustion to generate electricity.

13 4. "Commission" means the industrial commission of the state of North Dakota.

14 4.5. "Permit area" means a county.

15 5.6. "Person" means and includes any natural person, corporation, limited liability
16 company, association, partnership, receiver, trustee, executor, administrator, guardian,
17 fiduciary, or other representative of any kind, and includes any department, agency, or
18 instrumentality of the state or of any governmental subdivision thereof; the masculine
19 gender, in referring to a person, includes the feminine and the neuter genders.

20 6.7. "Road" means a surface or right of way for purposes of travel by land vehicles used in
21 coal or commercial leonardite exploration. A road consists of the entire area of the
22 right of way, including the roadbed, shoulders, parking and side areas, approaches,
23 structures, ditches, and surface.

24 **SECTION 5. AMENDMENT.** Section 38-12.1-04 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **38-12.1-04. Jurisdiction of commission.**

27 The commission has jurisdiction and authority over all persons and property, both public
28 and private, necessary to effectively enforce the provisions of this chapter. The director of
29 mineral resources shall act as a supervisor charged with the duty of enforcing the regulations
30 and orders of the commission applicable to the provisions of this chapter. The commission has
31 authority to make such investigations as it deems proper to determine whether facts exist which

1 justify action by the commission. The commission acting through the director of mineral
2 resources has the authority:

3 1. To require:

4 a. The furnishing of a reasonable bond with good and sufficient surety, conditioned
5 upon the full compliance with the provisions of this chapter, and the rules and
6 orders of the commission prescribed to govern the exploration for coal or
7 commercial leonardite on state and private lands and roads used in coal or
8 commercial leonardite exploration within the state of North Dakota. The person
9 required to furnish the bond may elect to deposit a collateral bond, self-bond,
10 cash, or any alternative form of security approved by the commission, or
11 combination thereof, by which a permittee assures faithful performance of all
12 requirements of this chapter and the rules and orders of the industrial
13 commission.

14 b. The delivery, free of charge, to the state geologist of the basic data collected
15 during the course of the exploration within a reasonable time as may be
16 prescribed by the state geologist. The data so submitted is confidential and
17 available only to the office of the state geologist for official purposes for a period
18 of two years, and such period of confidentiality must, upon application, be
19 extended for one-year periods by the state geologist, for a total period not to
20 exceed ten years unless it is demonstrated that such period should be further
21 extended in order to prevent possible resulting harm to the person, or the
22 person's successors and assigns, who delivered such basic data to the state
23 geologist. The basic data must include, if specifically requested by the state
24 geologist and if the information has been developed by or for a person
25 conducting the exploration:

26 (1) Sample cuts.

27 (2) Drillers' logs, sample logs, radioactivity logs, resistivity logs, or other types
28 of electrical or mechanical logs.

29 (3) Elevation and location information on the data collection points.

30 (4) Other pertinent information as may be required by the state geologist.

- 1 2. To require the plugging, covering, or reburial in an appropriate manner so as to protect
2 environmental quality, general health and safety, and economic values of all holes,
3 pits, or trenches excavated during the course of coal or commercial leonardite
4 exploration.
- 5 3. To promulgate and enforce rules, regulations, and orders to effectuate the provisions,
6 purpose, and intent of this chapter.
- 7 4. To inspect all drilling or exploration sites. For the purposes of this subsection, the
8 director of mineral resources or the director's representative shall have access to all
9 drilling or exploration installations regulated by this chapter for the purpose of
10 inspection and sampling and shall have the authority to require the operators' aid if the
11 director finds it necessary and requests it.
- 12 5. Notwithstanding any of the other provisions of this section, the commission acting
13 through the director of mineral resources shall require that any lands substantially
14 disturbed in coal or commercial leonardite exploration, including excavations, roads,
15 and drill holes, and the removal of necessary facilities and equipment be reclaimed in
16 accordance with the applicable performance standards of section 38-14.1-24.
17 Reclamation must be accomplished to protect environmental quality, general health
18 and safety, and economic values.

19 **SECTION 6. AMENDMENT.** Section 38-12.1-05 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **38-12.1-05. Notice and drilling permit required - Exceptions - Limits on coal or**
22 **commercial leonardite removal.**

- 23 1. It is unlawful to commence operations for drilling for the exploration for coal or
24 commercial leonardite without first obtaining a permit from the director of mineral
25 resources, under such rules and regulations as may be prescribed by the commission,
26 and paying to the commission a fee of one hundred dollars for each such permit area.
27 The permit application must include a description of the exploration area and the
28 period of proposed exploration. The permit must be granted within thirty days after a
29 proper application has been submitted.
- 30 2. This permit may not be required:

- 1 a. In an area where a permit to conduct surface coal mining operations is in effect
 - 2 pursuant to chapter 38-14.1;
 - 3 b. For holes drilled to guide excavating equipment in an operating mine;
 - 4 c. In areas where a drill hole is required by any other state agency; or
 - 5 d. For environmental data gathering activities that do not substantially disturb the
 - 6 land, unless the environmental data gathering activities are located on land
 - 7 designated unsuitable for mining under section 38-14.1-05.
- 8 3. No person may remove more than two hundred fifty tons [226.80 metric tons] of coal
 - 9 or commercial leonardite pursuant to an exploration permit without first obtaining a
 - 10 permit from the public service commission.

11 **SECTION 7. AMENDMENT.** Section 38-14.1-02 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **38-14.1-02. Definitions.**

14 Wherever used or referred to in this chapter, unless a different meaning clearly appears
15 from the context:

- 16 1. "Alluvial valley floors" means the unconsolidated stream-laid deposits holding streams
- 17 where water availability is sufficient for subirrigation or flood irrigation agricultural
- 18 activities but does not include upland areas which are generally overlain by a thin
- 19 veneer of colluvial deposits composed chiefly of sediment from sheet erosion, deposits
- 20 by unconcentrated runoff or slope wash, together with talus, other mass movement
- 21 accumulation, and windblown deposits.
- 22 2. "Approximate original contour" means that surface configuration achieved by
- 23 backfilling and grading an area affected by surface coal mining operations so that the
- 24 reclaimed area closely resembles the general surface configuration of the land prior to
- 25 being affected by surface coal mining operations and blends into and complements
- 26 the surrounding undisturbed land.
- 27 3. "Coal" means a dark-colored compact and earthy organic rock with less than forty
- 28 percent inorganic components, based on dry material, formed by the accumulation
- 29 and decomposition of plant material. The term includes consolidated lignitic coal, in
- 30 both oxidized and nonoxidized forms, having less than eight thousand three hundred
- 31 British thermal units per pound [453.59 grams], moist and mineral matter free, whether

1 or not the material is enriched in radioactive materials. The term does not include
2 commercial leonardite.

3 4. "Commercial leonardite" means a dark-colored, soft, earthy organic rock formed from
4 the oxidation of lignite coal, and is produced from a mine that has as its only function
5 for supply for purposes other than gasification or combustion to generate electricity.

6 5. "Commission" means the public service commission, or such other department,
7 bureau, or commission as may lawfully succeed to the powers and duties of that
8 commission. The commission is the state regulatory authority for all purposes relating
9 to the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat.
10 445; 30 U.S.C. 1201 et seq.].

11 5-6. "Extended mining plan" means a written statement setting forth the matters specified
12 in section 38-14.1-15 and covering the estimated life of the surface coal mining
13 operation.

14 6-7. "Final cut" means the last pit created in a surface mining pit sequence.

15 7-8. "Highwall" and "endwall" mean those sides of the pit adjacent to unmined land.

16 8-9. "Imminent danger to the health and safety of the public" means the existence of any
17 condition or practice, or any violation of a permit or other requirement of this chapter in
18 a surface coal mining and reclamation operation, which condition, practice, or violation
19 could reasonably be expected to cause substantial physical harm to persons outside
20 the permit area before such condition, practice, or violation can be abated. A
21 reasonable expectation of death or serious injury before abatement exists if a rational
22 person, subjected to the same conditions or practices giving rise to the peril, would not
23 expose the person's self to the danger during the time necessary for abatement.

24 9-10. "Operator" means any individual, person, partnership, firm, association, society, joint
25 stock company, company, cooperative, corporation, limited liability company, or other
26 business organization, or any department, agency, or instrumentality of the state,
27 local, or federal government, or any governmental subdivision thereof including any
28 publicly owned utility or publicly owned corporation of the state, local, or federal
29 government, engaged in or controlling a surface coal mining operation. Operator does
30 not include those who remove or intend to remove two hundred fifty tons [226.80
31 metric tons] or less of coal or commercial leonardite from the earth by coal or

- 1 commercial leonardite mining within twelve consecutive calendar months in any one
2 location or who remove any coal or commercial leonardite pursuant to reclamation
3 operations under chapter 38-14.2.
- 4 ~~40.11.~~ "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous
5 ores, and any other solid material or substances of commercial value occurring within
6 five hundred feet [152.4 meters] or less of the land surface and which are excavated in
7 solid form from natural deposits on or in the earth, exclusive of coal or commercial
8 leonardite and those minerals which occur naturally in liquid or gaseous form.
- 9 ~~41.12.~~ "Other suitable strata" means those portions of the overburden determined by the
10 commission to be suitable for meeting the requirements of subsections 2 and 17 of
11 section 38-14.1-24 and based on data submitted by the permit applicant.
- 12 ~~42.13.~~ "Overburden" means all of the earth and other materials, with the exception of suitable
13 plant growth material, which lie above natural deposits of coal or commercial
14 leonardite and also means such earth and other materials, with the exception of
15 suitable plant growth material, disturbed from their natural state by surface coal or
16 commercial leonardite mining operations.
- 17 ~~42.1.14.~~ "Performance bond" means a surety bond, collateral bond, self-bond, deposit, a bond
18 issued under the state surface mining and reclamation bond fund, any alternative form
19 of security approved by the commission, or combination thereof, by which a permittee
20 assures faithful performance of all requirements of this chapter.
- 21 ~~43.15.~~ "Permit" means a permit to conduct surface coal mining and reclamation operations
22 issued by the commission.
- 23 ~~44.16.~~ "Permit applicant" means a person or operator applying for a permit.
- 24 ~~45.17.~~ "Permit area" means the area of land approved by the commission for surface coal
25 mining operations which shall be readily identifiable by appropriate markers on the
26 site.
- 27 ~~46.18.~~ "Permit renewal" means the extension of the permit term for areas within the
28 boundaries of the initial or existing permit, upon the expiration of the initial or existing
29 permit term.

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- 1 ~~17-19.~~ "Permit revision" means the modification of permit provisions during the term of the
2 permit and includes changes in the mining and reclamation plans, incidental boundary
3 extensions, and the transfer, assignment, or sale of rights granted under the permit.
- 4 ~~18-20.~~ "Permit term" means a period of time beginning with the date upon which a permit is
5 given for surface coal mining and reclamation operations under the provisions of this
6 chapter, and ending with the expiration of the next succeeding five years plus any
7 renewal of the permit granted under this chapter.
- 8 ~~19-21.~~ "Permittee" means a person or operator holding a permit.
- 9 ~~20-22.~~ "Person" means an individual, partnership, firm, association, society, joint stock
10 company, company, cooperative, corporation, limited liability company, or other
11 business organization.
- 12 ~~21-23.~~ "Pit" means a tract of land, from which overburden, ~~or coal, or commercial leonardite,~~
13 ~~or both, any combination of overburden, coal, or commercial leonardite~~ has been or is
14 being removed for the purpose of surface coal mining operations.
- 15 ~~22-24.~~ "Prime farmland" means lands as prescribed by commission regulation that have the
16 soil characteristics and moisture supply needed to produce sustained high yields of
17 adapted crops economically when treated and managed, including management of
18 water, according to modern farming methods. Furthermore, such lands historically
19 have been used for intensive agricultural purposes and are large enough in size to
20 constitute a viable economic unit.
- 21 ~~23-25.~~ "Prime soils" means those soils that have the required soil characteristics (including
22 slope and moisture supply) needed to produce sustained high yields of adapted crops,
23 as determined by the state conservationist of the United States department of
24 agriculture soil conservation service.
- 25 ~~24-26.~~ "Reclaimed" or "reclaim" means conditioning areas affected by surface coal mining
26 operations to make them capable of supporting the uses which they were capable of
27 supporting prior to any mining, or higher or better uses, pursuant to subsection 2 of
28 section 38-14.1-24.
- 29 ~~25-27.~~ "Reclamation plan" means a plan submitted by an applicant for a permit which sets
30 forth a plan for reclamation of the proposed surface coal mining operations pursuant to
31 subsection 2 of section 38-14.1-14.

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- 1 ~~26-28.~~ "Refuse" means all waste material directly connected with the production of coal or
2 commercial leonardite mined by surface coal mining operations.
- 3 ~~27-29.~~ "Soil amendments" means those materials added by the operator to the replaced
4 overburden or suitable plant growth material, or both, to improve the physical or
5 chemical condition of the soil in its relation to plant growth capability.
- 6 ~~28-30.~~ "Soil classifier" means a professional soil classifier as defined in subsection 4 of
7 section 43-36-01.
- 8 ~~29-31.~~ "Soil survey" means the identification and location of all suitable plant growth material
9 within the proposed permit area and an accompanying report that describes,
10 classifies, and interprets for use such materials.
- 11 ~~30-32.~~ "State program" means the program established by the state of North Dakota in
12 accordance with the requirements of section 503 of the federal Surface Mining Control
13 and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 470; 30 U.S.C. 1253] to regulate
14 surface coal mining and reclamation operations on lands within the state of North
15 Dakota.
- 16 ~~31-33.~~ "Suitable plant growth material" means that soil material (normally the A, B, and
17 portions of the C horizons) located within the proposed permit area which, based upon
18 a soil survey, is found by the commission to be the most acceptable as a medium for
19 plant growth when respread on the surface of regraded areas.
- 20 ~~32-34.~~ "Surface coal mining and reclamation operations" means surface coal mining
21 operations and all activities necessary and incidental to the reclamation of such
22 operations after July 1, 1979.
- 23 ~~33-35.~~ "Surface coal mining operations" means:
- 24 a. Activities affecting the surface of lands in connection with a surface coal or
25 commercial leonardite mine. Such activities include extraction of coal or
26 commercial leonardite from coal or commercial leonardite refuse piles,
27 excavation for the purpose of obtaining coal or commercial leonardite, including
28 such common methods as contour, strip, auger, box cut, open pit, and area
29 mining, the uses of explosives and blasting, and in situ distillation or retorting,
30 leaching or other chemical or physical processing, and the cleaning,
31 concentrating, or other processing or preparation, and loading of coal or

1 commercial leonardite at or near the minesite, except that such activities do not
2 include coal or commercial leonardite exploration subject to chapter 38-12.1, or
3 the extraction of coal or commercial leonardite incidental to reclamation
4 operations under chapter 38-14.2; and

- 5 b. The areas upon which such activities occur or where such activities disturb the
6 natural land surface. Such areas shall also include any adjacent land the use of
7 which is incidental to any such activities, all adjacent lands affected by the
8 construction of new roads or the improvement or use of existing roads to gain
9 access to the site of such activities and for haulage, and excavations, workings,
10 impoundments, dams, refuse banks, dumps, stockpiles, overburden piles, spoil
11 banks, culm banks, tailings, holes or depressions, repair areas, storage areas,
12 processing areas, shipping areas, and other areas upon which are sited
13 structures, facilities, or other property or materials on the surface, resulting from
14 or incident to such activities.

15 ~~34-36.~~ "Unwarranted failure to comply" means the failure of a permittee to prevent the
16 occurrence of any violation of the permittee's permit or any requirement of this chapter
17 due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate
18 any violation of such permit or this chapter due to indifference, lack of diligence, or
19 lack of reasonable care.

20 **SECTION 8. AMENDMENT.** Subsection 3 of section 38-14.1-05 of the North Dakota
21 Century Code is amended and reenacted as follows:

- 22 3. Prior to designating any land area as unsuitable for surface coal mining operations,
23 the commission shall prepare a detailed statement on:
24 a. The potential coal or commercial leonardite resources of the area;
25 b. The demand for coal or commercial leonardite resources; and
26 c. The impact of such designation on the environment, the economy, and the supply
27 of coal or commercial leonardite.

28 **SECTION 9. AMENDMENT.** Subsection 3 of section 38-14.1-13 of the North Dakota
29 Century Code is amended and reenacted as follows:

- 30 3. Upon request by the permit applicant, the commission, in its discretion, may designate
31 specific information included in the plans required by subdivisions c and d of

1 subsection 1 as exempt from disclosure under section 44-04-18, provided such
2 specific information pertains only to the analysis of the chemical and physical
3 properties of the coal or commercial leonardite (excepting information regarding such
4 mineral or elemental contents which is potentially toxic in the environment). Each
5 request must be accompanied by a statement specifying the need for nondisclosure,
6 which statement must be considered part of the permit application to be filed for public
7 inspection as specified in subsection 2. The confidential information is exempt for a
8 period not to exceed ten years subsequent to the date on which the request for
9 nondisclosure was filed, unless it is demonstrated by the permit applicant that such
10 period should be further extended in order to prevent possible resulting harm to the
11 permit applicant, or the applicant's successors and assigns.

12 **SECTION 10. AMENDMENT.** Subdivisions r and s of subsection 1 of section 38-14.1-14 of
13 the North Dakota Century Code are amended and reenacted as follows:

14 r. Cross sections, maps or plans of the land to be affected, including the actual area
15 to be mined, prepared by or under the direction of and certified by a registered
16 professional engineer, a registered land surveyor, or a qualified professional
17 geologist with assistance from experts in related fields, showing pertinent
18 elevation and location of test borings or core samplings and depicting all of the
19 following information:

- 20 (1) The nature and depth of the various strata of overburden.
- 21 (2) The location of subsurface water, if encountered, and its quality.
- 22 (3) The nature and thickness of any coal, commercial leonardite, or rider seam
23 above the coal or commercial leonardite seam to be mined.
- 24 (4) The nature of the stratum immediately beneath the coal or commercial
25 leonardite seam to be mined.
- 26 (5) All mineral crop lines and the strike and dip of the coal or commercial
27 leonardite to be mined, within the area of land to be affected.
- 28 (6) Existing or previous surface mining limits.
- 29 (7) The location and extent of known workings of any underground mines,
30 including mine openings to the surface.
- 31 (8) The location of aquifers.

- 1 (9) The estimated elevation of the water table.
- 2 (10) The location of spoil, waste, or refuse areas, suitable plant growth material
- 3 stockpiling areas and, if necessary, stockpiling areas for other suitable
- 4 strata.
- 5 (11) The location of all impoundments for waste or erosion control.
- 6 (12) Any settling or water treatment facility.
- 7 (13) Constructed or natural drainways and the location of any discharges to any
- 8 surface body of water on the area of land to be affected or adjacent thereto.
- 9 (14) Profiles at appropriate cross sections of the anticipated final surface
- 10 configuration that will be achieved pursuant to the applicant's proposed
- 11 reclamation plan.
- 12 s. A statement by the applicant of the result of test borings or core samplings from
- 13 the permit area, including logs of the drill holes, the thickness of the coal or
- 14 commercial leonardite seam found, an analysis of the chemical properties of
- 15 such coal or commercial leonardite, the sulfur content of any coal or commercial
- 16 leonardite seam, chemical analysis of potentially toxic forming sections of the
- 17 overburden, and chemical analysis of the stratum lying immediately underneath
- 18 the coal or commercial leonardite to be mined. The provisions of this subdivision
- 19 may be waived by the commission with respect to the specific application by a
- 20 written determination that such requirements are unnecessary.

21 **SECTION 11. AMENDMENT.** Subdivision c of subsection 2 of section 38-14.1-14 of the

22 North Dakota Century Code is amended and reenacted as follows:

- 23 c. The consideration which has been given to maximize the utilization and
- 24 conservation of the coal or commercial leonardite being recovered so that
- 25 reffecting the land in the future can be minimized.

26 **SECTION 12. AMENDMENT.** Paragraph 2 of subdivision e of subsection 3 of section

27 38-14.1-21 of the North Dakota Century Code is amended and reenacted as follows:

- 28 (2) Not materially damage the quantity or quality of water in surface or
- 29 underground water systems that supply these alluvial valley floors. This
- 30 subdivision does not affect those surface coal mining operations which on
- 31 July 1, 1979, produce coal or commercial leonardite in commercial

1 quantities and are located within or adjacent to alluvial valley floors or have
2 obtained specific permit approval by the commission to conduct surface coal
3 mining operations within said alluvial valley floors.

4 **SECTION 13. AMENDMENT.** Subdivision b of subsection 4 of section 38-14.1-21 of the
5 North Dakota Century Code is amended and reenacted as follows:

- 6 b. The commission finds that the proposed surface coal mining operation will
7 constitute a hazard to a dwelling house, public building, school, church, cemetery,
8 commercial or institutional building, public road, stream, lake, or other public or
9 private property other than property subject to a coal or commercial leonardite
10 lease.

11 **SECTION 14. AMENDMENT.** Subsections 1 and 1.1 of section 38-14.1-24 of the North
12 Dakota Century Code are amended and reenacted as follows:

- 13 1. Conduct surface coal mining operations so as to maximize the utilization and
14 conservation of the coal or commercial leonardite being recovered so that re-affecting
15 the land in the future through surface coal mining can be minimized.
- 16 1.1. Conduct any auger mining associated with surface coal mining operations in a manner
17 that will maximize recoverability of coal or commercial leonardite and other mineral
18 reserves remaining after mining activities and reclamation operations are completed,
19 and seal or fill all auger holes as necessary to ensure long-term stability of the area
20 and minimize any adverse impact to the environment or hazard to public health or
21 safety. The commission may prohibit auger mining if necessary to maximize the
22 utilization, recoverability, or conservation of coal or commercial leonardite resources,
23 to ensure long-term stability, or to protect against any adverse impact to the
24 environment or hazard to public health or safety.

25 **SECTION 15. AMENDMENT.** Subdivision b of subsection 3 of section 38-14.1-24 of the
26 North Dakota Century Code is amended and reenacted as follows:

- 27 b. The permittee, at a minimum, shall backfill, grade, and compact (where
28 advisable) using all available overburden and other spoil and waste materials to
29 attain the lowest practicable grade (not to exceed the angle of repose), to provide
30 adequate drainage, and to contain all toxic materials in order to achieve an

1 ecologically sound land use compatible with the surrounding region, in those
2 instances where:

- 3 (1) Surface coal mining operations are carried out over a substantial period of
4 time at the same location where the operation transects the coal or
5 commercial leonardite deposit;
- 6 (2) The thickness of the coal or commercial leonardite deposits relative to the
7 volume of overburden is large; and
- 8 (3) The permittee demonstrates that the overburden and other spoil and waste
9 materials at a particular point in the permit area or otherwise available from
10 the entire permit area are insufficient, giving due consideration to volumetric
11 expansion, to restore the approximate original contour.

12 **SECTION 16. AMENDMENT.** Subsections 5, 10, and 18 of section 38-14.1-24 of the North
13 Dakota Century Code are amended and reenacted as follows:

- 14 5. Remove, segregate, and respread suitable plant growth material as required by the
15 commission within the permit area. The commission may require the permittee to
16 segregate suitable plant growth material in two or more soil layers. The commission
17 shall determine the soil layer or layers to be removed based upon the quality and
18 quantity of suitable plant growth material inventoried by the soil survey required in
19 subdivision t of subsection 1 of section 38-14.1-14. Based on the soil survey, the
20 commission shall also determine whether other suitable strata are necessary to meet
21 revegetation requirements. If other strata can be shown to be suitable and necessary
22 to meet revegetation requirements, the commission may require the permittee to
23 determine the areal extent of other suitable strata within the proposed permit area, and
24 to remove, segregate, protect, and respread such material. If the suitable plant growth
25 material or other suitable strata cannot be replaced on an approved graded area within
26 a time short enough to avoid deterioration of such material, the permittee shall
27 stockpile and stabilize such materials by establishing a successful cover of
28 quick-growing plants or by other means thereafter so that the suitable plant growth
29 material or other suitable strata will be protected from wind and water erosion and will
30 remain free from any contamination by toxic material. In the interest of achieving the
31 maximum reclamation provided for in this chapter, the permittee may, or at the

1 discretion of the commission shall, utilize such soil amendments as described in ~~of~~
2 subsection ~~27~~ section 38-14.1-02.

3 10. Remove or bury all debris and other similar material resulting from the operation and
4 bury all mine wastes ~~and, coal, and commercial leonardite~~ processing wastes unless
5 the commission approves the surface disposal of such wastes. If the commission
6 approves the surface disposal of such wastes, the permittee shall stabilize all waste
7 piles in designated areas through construction in compacted layers, including the use
8 of incombustible and impervious materials if necessary, to assure that the final contour
9 of the waste pile will be compatible with natural surroundings and that the site can and
10 will be stabilized and revegetated according to the provisions of this chapter.

11 18. Assume the responsibility for successful revegetation, as required by subsection 17,
12 for a period of ten full years after the last year of augmented seeding, fertilizing,
13 irrigation, or other work, provided that, when the commission approves a long-term
14 intensive agricultural postmining land use, the ten-year period of responsibility for
15 revegetation commences at the date of initial planting. However, for previously mined
16 areas that are affected by reining, the operator's responsibility for successful
17 revegetation will extend for a period of five full years after the last year of augmented
18 seeding, fertilizing, irrigation, and other work in order to assure compliance with the
19 applicable standards. For the purposes of this subsection, "previously mined areas"
20 are lands that were affected by coal or commercial leonardite mining activities prior to
21 January 1, 1970, and "augmented seeding, fertilizing, irrigation, or other work" does
22 not include normal conservation practices recognized locally as good management for
23 the postmining land use.

24 **SECTION 17. AMENDMENT.** Section 38-14.1-25 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **38-14.1-25. Prohibited mining practices.**

27 1. ~~No~~A permittee may not use any coal or commercial leonardite mine waste piles
28 consisting of mine wastes, tailings, coal processing wastes, or other liquid or solid
29 wastes either temporarily or permanently as dams or embankments unless approved
30 by the commission, after consultation with the state engineer.

1 2. ~~Not~~A permittee may not locate any part of the surface coal mining and reclamation
2 operations or deposit overburden, debris, or waste materials outside the permit area
3 for which bond has been posted, except as provided in subsection 24 of section
4 38-14.1-03.

5 3. ~~Not~~A permittee may not deposit overburden, debris, or waste materials in such a way
6 that normal erosion or slides brought about by natural causes will permit the same to
7 go beyond or outside the permit area for which bond has been posted.

8 **SECTION 18. AMENDMENT.** Subdivision b of subsection 1 of section 38-14.1-27 of the
9 North Dakota Century Code is amended and reenacted as follows:

- 10 b. For those surface coal mining and reclamation operations which remove or
11 disturb strata that serve as aquifers which significantly ensure the hydrologic
12 balance of water use either on or off the mining site, the commission, in
13 consultation with other appropriate state agencies, shall specify those:
- 14 (1) Monitoring sites to record the quantity and quality of surface drainage above
15 and below the minesite as well as in the potential zone of influence.
- 16 (2) Monitoring sites to record level, amount, and samples of ground water and
17 aquifers potentially affected by the mining and also directly below the
18 lowermost (deepest) coal or commercial leonardite seam to be mined.
- 19 (3) Records of well logs and borehole data to be maintained.
- 20 (4) Monitoring sites to record precipitation.

21 The monitoring data collection and analysis required by this section must be
22 conducted according to standards and procedures set forth by the commission in
23 consultation with other appropriate state agencies in order to assure their
24 reliability and validity.

25 **SECTION 19. AMENDMENT.** Subsections 1, 3, and 4 of section 38-14.1-37 of the North
26 Dakota Century Code are amended and reenacted as follows:

- 27 1. The provisions of this chapter do not apply to any of the following activities:
- 28 a. Extraction of coal or commercial leonardite by a landowner for the landowner's
29 own noncommercial use from land owned or leased by the landowner.

- 1 3. "Commission" means the industrial commission.
- 2 ~~3.4.~~ "Conflicting interests" means those interests of producers which are in conflict, so that
3 full production and utilization by one producer is prohibited or impeded by the interests
4 of another producer of a separate natural resource.
- 5 ~~4.5.~~ "Gas" means all natural gas and other fluid hydrocarbons not hereinbelow defined as
6 oil.
- 7 ~~5.6.~~ "Natural resources" means coal, oil, gas, and subsurface minerals as defined herein.
- 8 ~~6.7.~~ "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which
9 are produced at the wellhead in liquid form, and the liquid hydrocarbons known as
10 distillate or condensate recovered or extracted from gas other than gas produced in
11 association with oil and commonly known as casinghead gas.
- 12 ~~7.8.~~ "Owner" means the person who has the right to produce natural resources either for
13 that person or others.
- 14 ~~8.9.~~ "Person" means any natural person, corporation, limited liability company, association,
15 partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other
16 representative of any kind, and includes any department, agency, instrumentality, or
17 political subdivision of the state. The masculine gender, in referring to a person,
18 includes the feminine and the neuter genders.
- 19 ~~9.10.~~ "Producer" means the owner of a well or wells, or mine or mines, capable of producing
20 coal, commercial leonardite, oil, gas, or subsurface minerals.
- 21 ~~10.11.~~ "Subsurface minerals" means all naturally occurring elements and their compounds,
22 volcanic ash, precious metals, carbonates, and natural mineral salts of boron,
23 bromine, calcium, fluorine, iodine, lithium, magnesium, phosphorus, potassium,
24 sodium, thorium, uranium, and sulfur, and their compounds but does not include sand
25 and gravel and rocks crushed for sand and gravel.
- 26 ~~11.12.~~ "Waste" means the inefficient utilization of reserves of oil, gas, subsurface minerals, or
27 coal, or commercial leonardite, as the case may be.

28 **SECTION 22. AMENDMENT.** Section 38-18-05 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **38-18-05. Definitions.**

31 In this chapter, unless the context or subject matter otherwise requires:

- 1 1. "Agricultural production" means the production of any growing grass or crop attached
2 to the surface of the land, whether or not the grass or crop is to be sold commercially,
3 and the production of any farm animals, including farmed elk, whether or not the
4 animals are to be sold commercially.
- 5 2. "Disturbed" means any alteration of the topsoil of the land whether the alteration is for
6 the purpose of exploring for coal or commercial leonardite, or for the purpose of
7 carrying out an actual mining operation.
- 8 3. "Mineral developer" means the person who acquires at least seventy-five percent of
9 the mineral rights or a lease of at least seventy-five percent of the mineral rights for
10 the purpose of extracting or using the mineral for nonagricultural purposes.
- 11 4. "Mineral estate" means an estate in or ownership of all or part of the minerals under a
12 specified tract of land.
- 13 5. "Mineral lease" means any lease which purports to convey the minerals or rights
14 relating to the minerals under a specified tract of land separate from the surface, and
15 any other type of lease which gives or conveys rights to minerals.
- 16 6. "Mineral owner" means any person or persons who presently own the mineral estate,
17 their successors, assigns, or predecessors in title, under a specified tract of land by
18 means of a mineral deed, or by an exception or reservation in the deed, grant, or
19 conveyance of the surface, or by any other means whatsoever.
- 20 7. "Minerals" means coal or commercial leonardite.
- 21 8. "Mining operation" means any type of activity, the aim of which is to discover the
22 presence of minerals, or to remove the minerals so discovered from their original
23 position on or in the land by any means whatsoever.
- 24 9. "Surface estate" means an estate in or ownership of the surface of a particular tract of
25 land.
- 26 10. "Surface owner" means the person or persons who presently have valid title to the
27 surface of the land, their successors, assigns, or predecessors in title, regardless of
28 whether or not a portion of the land surface is occupied for a residence.

29 **SECTION 23. AMENDMENT.** Section 38-18-07 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **38-18-07. Surface damage and disruption payments.**

- 2 1. Unless the mineral lease, surface lease, or consent statement executed by the surface
3 owner provides for payments to the surface owner, the mineral developer shall
4 annually pay to the surface owner a sum of money equal to the amount of damages
5 sustained by the surface owner for loss of agricultural production caused by mining
6 activity, provided that it can be shown that the land disturbed or to be disturbed has
7 regularly been used for agricultural production. The amount of damages may be
8 determined by any formula mutually agreeable between the surface owner and the
9 mineral developer. The payments contemplated by this section only cover land
10 actually mined, disturbed, or to be mined during the year or years during which
11 agricultural production was actually interrupted and which land has not been restored
12 to the level of agricultural productivity required by the plan submitted pursuant to
13 chapter 38-14.1. The payments to be made hereunder must be made before
14 December thirty-first of that calendar year in which the loss occurred.
- 15 2. Unless waived by the owner of a farm building, if the coal or commercial leonardite
16 removal area of a surface mining operation comes within five hundred feet [152.4
17 meters] of any farm building, the mineral developer shall pay to the owner of the farm
18 building either the fair market value of the farm building or the entire cost of removing
19 the farm building to a location where the coal or commercial leonardite removal area of
20 the mining operation will not come within five hundred feet [152.4 meters] of such
21 building or buildings. The payments contemplated hereunder are in addition to any
22 payments required by the terms of any mineral lease, unless the surface owner is a
23 party to the lease and the lease provides for damages as contemplated in this
24 subsection in an amount not less than the amount which would be recoverable under
25 this section.
- 26 3. The rights granted to the surface owner by this section are hereby declared to be
27 absolute and unwaivable, except as provided in subsection 2. Any instrument which
28 purports to waive rights granted by this section is null and void and of no legal effect.

29 **SECTION 24. AMENDMENT.** Section 57-61-01 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **57-61-01. Severance tax upon coal - Imposition - In lieu of sales and use taxes -**
2 **Payment to the tax commissioner.**

3 There is hereby imposed upon all coal severed for sale or for industrial purposes by coal
4 mines within the state a tax of thirty-seven and one-half cents per ton of two thousand pounds
5 [907.18 kilograms]. ~~Such~~The severance tax is in lieu of any sales or use taxes imposed by law.
6 Each coal mine owner or operator shall remit ~~such~~the tax for each month, within twenty-five
7 days after the end of each month, to the ~~state~~ tax commissioner ~~upon such~~on reports and forms
8 as the tax commissioner deems necessary. For the purposes of this chapter, commercial
9 leonardite is taxed in the same manner as coal.

10 **SECTION 25. AMENDMENT.** Section 57-61-01.2 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **57-61-01.2. When coal or commercial leonardite considered severed.**

13 Coal or commercial leonardite is considered to be severed for the purposes of this chapter
14 when it is first removed from where it was placed by nature, unless within thirty days of first
15 removal it is placed into a long-term inventory storage deposit, in which case it is considered to
16 be severed when removed from the deposit or it is pledged as collateral on a loan. A long-term
17 inventory storage deposit is one which is so identified in a mining plan approved by the public
18 service commission pursuant to chapter 38-14.1 and which as part of that plan is covered with
19 soil and subjected to reclamation requirements during the time it serves as a deposit and before
20 coal or commercial leonardite is removed therefrom.

21 **SECTION 26. AMENDMENT.** Subsection 1 of section 57-61-01.5 of the North Dakota
22 Century Code is amended and reenacted as follows:

- 23 1. There is imposed upon all coal or commercial leonardite severed for sale or for
24 industrial purposes by coal or commercial leonardite mines within the state a tax,
25 separate from and additional to the tax imposed by section 57-61-01, of two cents per
26 ton of two thousand pounds [907.18 kilograms]. All of the provisions of this chapter for
27 administration of the coal or commercial leonardite severance tax apply to the tax
28 imposed under this section. The state tax commissioner shall transfer revenue from
29 the tax imposed by this section to the state treasurer for deposit in a special fund in
30 the state treasury, known as the lignite research fund. Such moneys must be used for
31 contracts for land reclamation research projects and for research, development, and

1 marketing of lignite and products derived from lignite. The industrial commission shall
2 adopt rules for submission and consideration of research, development, and marketing
3 proposals and entering into contracts under the lignite research, development, and
4 marketing program.

5 **SECTION 27. AMENDMENT.** Section 57-61-01.7 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-61-01.7. Severance tax reduction for coal or commercial leonardite mined for**
8 **out-of-state shipment.**

9 For coal or commercial leonardite subject to taxes under this chapter which is shipped out
10 of state after June 30, 2001:

- 11 1. The coal or commercial leonardite is subject to thirty percent of the taxes imposed
12 under section 57-61-01 and the entire revenue under this subsection must be
13 deposited in the coal development trust fund for use as provided in subsection 1 of
14 section 57-62-02 and allocation to the lignite research fund as provided in
15 subsection 2 of section 57-61-01.5.
- 16 2. In addition to the taxes under subsection 1, the coal or commercial leonardite may be
17 subject to up to seventy percent of the severance taxes imposed under section
18 57-61-01 at the option of the county in which the coal or commercial leonardite is
19 mined. The board of county commissioners, by resolution, may grant to the operator of
20 a mine from which the coal or commercial leonardite is shipped out of state a partial or
21 complete exemption from this portion of the severance tax. Any tax revenue from full
22 or partial taxation under this subsection must be allocated to the county under
23 subsection 2 of section 57-62-02.
- 24 3. Taxes imposed under section 57-61-01.5 apply to coal or commercial leonardite
25 subject to this section and must be allocated as provided in section 57-61-01.5.

26 **SECTION 28. AMENDMENT.** Section 57-61-02 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **57-61-02. When tax due - When delinquent.**

29 The severance tax as provided in this chapter is due within twenty-five days after the end of
30 each month, and if not received by the twenty-fifth day, becomes delinquent and must be
31 collected as herein provided. The tax commissioner, upon request and a proper showing of the

1 necessity therefor, may grant an extension of time, not to exceed fifteen days, for paying the
2 tax, and when such a request is granted, the tax is not delinquent until the extended period has
3 expired. The tax commissioner shall require a report to be filed monthly by each owner or
4 operator of a coal or commercial leonardite mine, in such form as the tax commissioner may
5 specify, to list a full description of the mine, the number of tons of coal or commercial leonardite
6 severed, the amount of tax due and remitted, and any other information deemed necessary by
7 the tax commissioner for the proper administration of this chapter.

8 **SECTION 29. AMENDMENT.** Section 57-61-03 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **57-61-03. Powers of state tax commissioner.**

11 The state tax commissioner has the power to require any person engaged in such
12 production, and the agent or employee of such person, or purchaser of such coal or commercial
13 leonardite, or the owner of any royalty interest therein, to furnish any additional information the
14 tax commissioner deems necessary for the purpose of correctly computing the amount of said
15 tax; to examine the books, records, and files of such person; to conduct hearings and compel
16 the attendance of witnesses, the production of books, records, and papers of any person; and
17 to make any investigation or hold any inquest deemed necessary to a full and complete
18 disclosure of the true facts as to the amount of production from any coal or commercial
19 leonardite mine or of any company or other producer thereof and as to the rendition thereof for
20 taxing purposes.

21 **SECTION 30. AMENDMENT.** Subsection 1 of section 57-61-04 of the North Dakota
22 Century Code is amended and reenacted as follows:

- 23 1. The tax commissioner has the power and authority to ascertain and determine
24 whether or not any return or remittances filed with the tax commissioner are correct,
25 and if the owner or operator has made an untrue or incorrect return or remittance or
26 has failed to make the required return, the tax commissioner shall ascertain the correct
27 amount of taxes due and give immediate notice to the owner or operator filing the
28 incorrect return or remittance or who failed to file the required return. Any coal or
29 commercial leonardite mine operator or owner receiving notice from the tax
30 commissioner that the owner or operator has filed an incorrect return or remittance or
31 failed to file the required return shall remit the tax assessed by the tax commissioner

1 within fifteen days of such notice unless within fifteen days of the notice such person
2 makes application in writing to the tax commissioner for a hearing under chapter 28-32
3 before the tax commissioner. The tax becomes delinquent if within fifteen days of the
4 notice it is not paid or an application for a hearing is not made. Taxes assessed by
5 decision of the tax commissioner pursuant to chapter 28-32, if not paid, become
6 delinquent five days after the time for appeal from the tax commissioner's decision has
7 expired, except that if an appeal from the tax commissioner's decision is taken to the
8 district court of Burleigh County, such taxes if not paid become delinquent five days
9 following final judicial determination.