

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2377

Introduced by

Senators Bekkedahl, Bowman, Rust

Representative Hatlestad

1 A BILL for an Act to create and enact section 57-61-01.9 of the North Dakota Century Code,
2 relating to severance tax for leonardite; and to amend and reenact section 1-01-40,
3 subsection 7 of section 38-12-01, subsection 1 of section 38-12.1-03, section 38-14.1-02,
4 subsection 3 of section 38-14.1-05, subsection 3 of section 38-14.1-13, subdivisions r and s of
5 subsection 1 of section 38-14.1-14, subdivision c of subsection 2 of section 38-14.1-14,
6 paragraph 2 of subdivision e of subsection 3 of section 38-14.1-21, subdivision b of
7 subsection 4 of section 38-14.1-21, subsections 1 and 1.1 of section 38-14.1-24, subdivision b
8 of subsection 3 of section 38-14.1-24, subsections 5, 10, and 18 of section 38-14.1-24, section
9 38-14.1-25, subdivision b of subsection 1 of section 38-14.1-27, subsections 1, 3, and 4 of
10 section 38-14.1-37, and section 47-10-24 of the North Dakota Century Code, relating to the
11 definition of coal and leonardite.

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

13 **SECTION 1. AMENDMENT.** Section 1-01-40 of the North Dakota Century Code is amended
14 and reenacted as follows:

15 **1-01-40. Coal - Definition.**

16 Wherever the word "coal" appears in the laws of this state, or in the resolutions of the
17 legislative assembly, it means all kinds of coal, and includes what is known as lignite coal and
18 leonardite, unless a contrary intention plainly appears or is otherwise defined.

19 **SECTION 2. AMENDMENT.** Subsection 7 of section 38-12-01 of the North Dakota Century
20 Code is amended and reenacted as follows:

21 7. "Subsurface minerals" means all naturally occurring elements and their compounds,
22 leonardite, volcanic ash, precious metals, carbonates, and natural mineral salts of
23 boron, bromine, calcium, fluorine, iodine, lithium, magnesium, phosphorus, potassium,

1 sodium, thorium, uranium, and sulfur, and their compounds, but does not include sand
2 and gravel and rocks crushed for sand and gravel.

3 **SECTION 3. AMENDMENT.** Subsection 1 of section 38-12.1-03 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 1. "Coal" means a dark-colored, compact, and earthy organic rock with less than forty
6 percent inorganic components, based on dry material, formed by the accumulation
7 and decomposition of plant material. The term includes lignite in ~~both oxidized and~~
8 nonoxidized forms, whether or not the material is enriched in radioactive materials.
9 The term does not include leonardite.

10 **SECTION 4. AMENDMENT.** Section 38-14.1-02 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **38-14.1-02. Definitions.**

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

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

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

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

11 6. "Final cut" means the last pit created in a surface mining pit sequence.

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

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

21 9. "Leonardite" means a dark-colored, soft, earthy organic rock that is high in humic acid
22 content formed from the oxidation of lignite.

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

- 1 within twelve consecutive calendar months in any one location or who remove any
2 coal or leonardite pursuant to reclamation operations under chapter 38-14.2.
- 3 ~~40.11.~~ "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous
4 ores, and any other solid material or substances of commercial value occurring within
5 five hundred feet [152.4 meters] or less of the land surface and which are excavated in
6 solid form from natural deposits on or in the earth, exclusive of coal or leonardite and
7 those minerals which occur naturally in liquid or gaseous form.
- 8 ~~41.12.~~ "Other suitable strata" means those portions of the overburden determined by the
9 commission to be suitable for meeting the requirements of subsections 2 and 17 of
10 section 38-14.1-24 and based on data submitted by the permit applicant.
- 11 ~~42.13.~~ "Overburden" means all of the earth and other materials, with the exception of suitable
12 plant growth material, which lie above natural deposits of coal or leonardite and also
13 means such earth and other materials, with the exception of suitable plant growth
14 material, disturbed from their natural state by surface coal or leonardite mining
15 operations.
- 16 ~~42.1.14.~~ "Performance bond" means a surety bond, collateral bond, self-bond, deposit, a bond
17 issued under the state surface mining and reclamation bond fund, any alternative form
18 of security approved by the commission, or combination thereof, by which a permittee
19 assures faithful performance of all requirements of this chapter.
- 20 ~~43.15.~~ "Permit" means a permit to conduct surface coal mining and reclamation operations
21 issued by the commission.
- 22 ~~44.16.~~ "Permit applicant" means a person or operator applying for a permit.
- 23 ~~45.17.~~ "Permit area" means the area of land approved by the commission for surface coal
24 mining operations which shall be readily identifiable by appropriate markers on the
25 site.
- 26 ~~46.18.~~ "Permit renewal" means the extension of the permit term for areas within the
27 boundaries of the initial or existing permit, upon the expiration of the initial or existing
28 permit term.
- 29 ~~47.19.~~ "Permit revision" means the modification of permit provisions during the term of the
30 permit and includes changes in the mining and reclamation plans, incidental boundary
31 extensions, and the transfer, assignment, or sale of rights granted under the permit.

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

- 1 ~~27-29.~~ "Soil amendments" means those materials added by the operator to the replaced
2 overburden or suitable plant growth material, or both, to improve the physical or
3 chemical condition of the soil in its relation to plant growth capability.
- 4 ~~28-30.~~ "Soil classifier" means a professional soil classifier as defined in subsection 4 of
5 section 43-36-01.
- 6 ~~29-31.~~ "Soil survey" means the identification and location of all suitable plant growth material
7 within the proposed permit area and an accompanying report that describes,
8 classifies, and interprets for use such materials.
- 9 ~~30-32.~~ "State program" means the program established by the state of North Dakota in
10 accordance with the requirements of section 503 of the federal Surface Mining Control
11 and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 470; 30 U.S.C. 1253] to regulate
12 surface coal mining and reclamation operations on lands within the state of North
13 Dakota.
- 14 ~~31-33.~~ "Suitable plant growth material" means that soil material (normally the A, B, and
15 portions of the C horizons) located within the proposed permit area which, based upon
16 a soil survey, is found by the commission to be the most acceptable as a medium for
17 plant growth when respread on the surface of regraded areas.
- 18 ~~32-34.~~ "Surface coal mining and reclamation operations" means surface coal mining
19 operations and all activities necessary and incidental to the reclamation of such
20 operations after July 1, 1979.
- 21 ~~33-35.~~ "Surface coal mining operations" means:
22 a. Activities affecting the surface of lands in connection with a surface coal or
23 leonardite mine. Such activities include extraction of coal or leonardite from coal
24 or leonardite refuse piles, excavation for the purpose of obtaining coal or
25 leonardite, including such common methods as contour, strip, auger, box cut,
26 open pit, and area mining, the uses of explosives and blasting, and in situ
27 distillation or retorting, leaching or other chemical or physical processing, and the
28 cleaning, concentrating, or other processing or preparation, and loading of coal or
29 leonardite at or near the minesite, except that such activities do not include coal
30 or leonardite exploration subject to chapter 38-12.1, or the extraction of coal or
31 leonardite incidental to reclamation operations under chapter 38-14.2; and

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

11 ~~34.36.~~ "Unwarranted failure to comply" means the failure of a permittee to prevent the
12 occurrence of any violation of the permittee's permit or any requirement of this chapter
13 due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate
14 any violation of such permit or this chapter due to indifference, lack of diligence, or
15 lack of reasonable care.

16 **SECTION 5. AMENDMENT.** Subsection 3 of section 38-14.1-05 of the North Dakota
17 Century Code is amended and reenacted as follows:

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

24 **SECTION 6. AMENDMENT.** Subsection 3 of section 38-14.1-13 of the North Dakota
25 Century Code is amended and reenacted as follows:

- 26 3. Upon request by the permit applicant, the commission, in its discretion, may designate
27 specific information included in the plans required by subdivisions c and d of
28 subsection 1 as exempt from disclosure under section 44-04-18, provided such
29 specific information pertains only to the analysis of the chemical and physical
30 properties of the coal or leonardite (excepting information regarding such mineral or
31 elemental contents which is potentially toxic in the environment). Each request must

1 be accompanied by a statement specifying the need for nondisclosure, which
2 statement must be considered part of the permit application to be filed for public
3 inspection as specified in subsection 2. The confidential information is exempt for a
4 period not to exceed ten years subsequent to the date on which the request for
5 nondisclosure was filed, unless it is demonstrated by the permit applicant that such
6 period should be further extended in order to prevent possible resulting harm to the
7 permit applicant, or the applicant's successors and assigns.

8 **SECTION 7. AMENDMENT.** Subdivisions r and s of subsection 1 of section 38-14.1-14 of
9 the North Dakota Century Code are amended and reenacted as follows:

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

16 (1) The nature and depth of the various strata of overburden.

17 (2) The location of subsurface water, if encountered, and its quality.

18 (3) The nature and thickness of any coal, leonardite, or rider seam above the
19 coal or leonardite seam to be mined.

20 (4) The nature of the stratum immediately beneath the coal or leonardite seam
21 to be mined.

22 (5) All mineral crop lines and the strike and dip of the coal or leonardite to be
23 mined, within the area of land to be affected.

24 (6) Existing or previous surface mining limits.

25 (7) The location and extent of known workings of any underground mines,
26 including mine openings to the surface.

27 (8) The location of aquifers.

28 (9) The estimated elevation of the water table.

29 (10) The location of spoil, waste, or refuse areas, suitable plant growth material
30 stockpiling areas and, if necessary, stockpiling areas for other suitable
31 strata.

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

17 **SECTION 8. AMENDMENT.** Subdivision c of subsection 2 of section 38-14.1-14 of the

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

- 19 c. The consideration which has been given to maximize the utilization and
- 20 conservation of the coal or leonardite being recovered so that re-affecting the land
- 21 in the future can be minimized.

22 **SECTION 9. AMENDMENT.** Paragraph 2 of subdivision e of subsection 3 of section

23 38-14.1-21 of the North Dakota Century Code is amended and reenacted as follows:

- 24 (2) Not materially damage the quantity or quality of water in surface or
- 25 underground water systems that supply these alluvial valley floors. This
- 26 subdivision does not affect those surface coal mining operations which on
- 27 July 1, 1979, produce coal or leonardite in commercial quantities and are
- 28 located within or adjacent to alluvial valley floors or have obtained specific
- 29 permit approval by the commission to conduct surface coal mining
- 30 operations within said alluvial valley floors.

1 **SECTION 10. AMENDMENT.** Subdivision b of subsection 4 of section 38-14.1-21 of the
2 North Dakota Century Code is amended and reenacted as follows:

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

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

- 9 1. Conduct surface coal mining operations so as to maximize the utilization and
10 conservation of the coal or leonardite being recovered so that re-affecting the land in
11 the future through surface coal mining can be minimized.
- 12 1.1. Conduct any auger mining associated with surface coal mining operations in a manner
13 that will maximize recoverability of coal or leonardite and other mineral reserves
14 remaining after mining activities and reclamation operations are completed, and seal
15 or fill all auger holes as necessary to ensure long-term stability of the area and
16 minimize any adverse impact to the environment or hazard to public health or safety.
17 The commission may prohibit auger mining if necessary to maximize the utilization,
18 recoverability, or conservation of coal or leonardite resources, to ensure long-term
19 stability, or to protect against any adverse impact to the environment or hazard to
20 public health or safety.

21 **SECTION 12. AMENDMENT.** Subdivision b of subsection 3 of section 38-14.1-24 of the
22 North Dakota Century Code is amended and reenacted as follows:

- 23 b. The permittee, at a minimum, shall backfill, grade, and compact (where
24 advisable) using all available overburden and other spoil and waste materials to
25 attain the lowest practicable grade (not to exceed the angle of repose), to provide
26 adequate drainage, and to contain all toxic materials in order to achieve an
27 ecologically sound land use compatible with the surrounding region, in those
28 instances where:
- 29 (1) Surface coal mining operations are carried out over a substantial period of
30 time at the same location where the operation transects the coal or
31 leonardite deposit;

1 (2) The thickness of the coal or leonardite deposits relative to the volume of
2 overburden is large; and

3 (3) The permittee demonstrates that the overburden and other spoil and waste
4 materials at a particular point in the permit area or otherwise available from
5 the entire permit area are insufficient, giving due consideration to volumetric
6 expansion, to restore the approximate original contour.

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

9 5. Remove, segregate, and respread suitable plant growth material as required by the
10 commission within the permit area. The commission may require the permittee to
11 segregate suitable plant growth material in two or more soil layers. The commission
12 shall determine the soil layer or layers to be removed based upon the quality and
13 quantity of suitable plant growth material inventoried by the soil survey required in
14 subdivision t of subsection 1 of section 38-14.1-14. Based on the soil survey, the
15 commission shall also determine whether other suitable strata are necessary to meet
16 revegetation requirements. If other strata can be shown to be suitable and necessary
17 to meet revegetation requirements, the commission may require the permittee to
18 determine the areal extent of other suitable strata within the proposed permit area, and
19 to remove, segregate, protect, and respread such material. If the suitable plant growth
20 material or other suitable strata cannot be replaced on an approved graded area within
21 a time short enough to avoid deterioration of such material, the permittee shall
22 stockpile and stabilize such materials by establishing a successful cover of
23 quick-growing plants or by other means thereafter so that the suitable plant growth
24 material or other suitable strata will be protected from wind and water erosion and will
25 remain free from any contamination by toxic material. In the interest of achieving the
26 maximum reclamation provided for in this chapter, the permittee may, or at the
27 discretion of the commission shall, utilize such soil amendments as described in
28 ~~subsection 27 of~~ section 38-14.1-02.

29 10. Remove or bury all debris and other similar material resulting from the operation and
30 bury all mine wastes ~~and~~, coal, and leonardite processing wastes unless the
31 commission approves the surface disposal of such wastes. If the commission

1 approves the surface disposal of such wastes, the permittee shall stabilize all waste
2 piles in designated areas through construction in compacted layers, including the use
3 of incombustible and impervious materials if necessary, to assure that the final contour
4 of the waste pile will be compatible with natural surroundings and that the site can and
5 will be stabilized and revegetated according to the provisions of this chapter.

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

19 **SECTION 14. AMENDMENT.** Section 38-14.1-25 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **38-14.1-25. Prohibited mining practices.**

- 22 1. ~~No~~A permittee may not use any coal or leonardite mine waste piles consisting of mine
23 wastes, tailings, coal processing wastes, or other liquid or solid wastes either
24 temporarily or permanently as dams or embankments unless approved by the
25 commission, after consultation with the state engineer.
- 26 2. ~~No~~A permittee may not locate any part of the surface coal mining and reclamation
27 operations or deposit overburden, debris, or waste materials outside the permit area
28 for which bond has been posted, except as provided in subsection 24 of section
29 38-14.1-03.

- 1 3. ~~No~~A permittee may not deposit overburden, debris, or waste materials in such a way
2 that normal erosion or slides brought about by natural causes will permit the same to
3 go beyond or outside the permit area for which bond has been posted.

4 **SECTION 15. AMENDMENT.** Subdivision b of subsection 1 of section 38-14.1-27 of the
5 North Dakota Century Code is amended and reenacted as follows:

- 6 b. For those surface coal mining and reclamation operations which remove or
7 disturb strata that serve as aquifers which significantly ensure the hydrologic
8 balance of water use either on or off the mining site, the commission, in
9 consultation with other appropriate state agencies, shall specify those:

- 10 (1) Monitoring sites to record the quantity and quality of surface drainage above
11 and below the minesite as well as in the potential zone of influence.
12 (2) Monitoring sites to record level, amount, and samples of ground water and
13 aquifers potentially affected by the mining and also directly below the
14 lowermost (deepest) coal or leonardite seam to be mined.
15 (3) Records of well logs and borehole data to be maintained.
16 (4) Monitoring sites to record precipitation.

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

21 **SECTION 16. AMENDMENT.** Subsections 1, 3, and 4 of section 38-14.1-37 of the North
22 Dakota Century Code are amended and reenacted as follows:

- 23 1. The provisions of this chapter do not apply to any of the following activities:
24 a. Extraction of coal or leonardite by a landowner for the landowner's own
25 noncommercial use from land owned or leased by the landowner.
26 b. Extraction of coal or leonardite as an incidental part of federal, state, or local
27 government-financed highway or other construction under regulations
28 established by the commission.
29 3. The commission may provide or assume the cost of training coal or leonardite
30 operators who meet the qualifications in subsection 2 concerning the preparation of
31 permit applications and compliance with the regulatory program.

1 4. An operator who has received assistance under subsection 2 or 3 shall reimburse the
2 commission for the cost of the services rendered if the commission finds that the
3 operator's actual and attributed annual production of coal or leonardite for all locations
4 exceeds three hundred thousand tons [272155.41 metric tons] during the twelve
5 months immediately following the date the operator is issued a surface coal mining
6 and reclamation permit.

7 **SECTION 17. AMENDMENT.** Section 47-10-24 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **47-10-24. Description and definition of minerals in leases and conveyances.**

10 1. All conveyances of mineral rights or royalties in real property in this state, excluding
11 leases, shall be construed to grant or convey to the grantee thereof all minerals of any
12 nature whatsoever except those minerals specifically excluded by name in the deed,
13 grant, or conveyance, and their compounds and byproducts, but shall not be
14 construed to grant or convey to the grantee any interest in any gravel, clay, or scoria
15 unless specifically included by name in the deed, grant, or conveyance.

16 No

17 2. Except as provided in subsection 3, a lease of mineral rights in this state shall~~may not~~
18 be construed as passing any interest to any minerals except those minerals
19 specifically included and set forth by name in the lease. For the purposes of this
20 ~~paragraph~~subsection, the naming of either a specific metalliferous element, or
21 nonmetalliferous element, and if so stated in lease, shall be deemed to include all of
22 its compounds and byproducts, and in the case of oil and gas, all associated
23 hydrocarbons produced in a liquid or gaseous form so named shall be deemed to be
24 included in the mineral named. The use of the words "all other minerals" or similar
25 words of an all-inclusive nature in any lease shall not be construed as leasing any
26 minerals except those minerals specifically named in the lease and their compounds
27 and byproducts.

28 3. Any conveyance or lease of coal in this state grants, conveys, or leases to the grantee
29 any leonardite in the same real property, unless leonardite is excluded by name. This
30 subsection applies to every conveyance or lease of coal in this state, regardless of
31 when the conveyance or lease was or is made.

1 **SECTION 18.** Section 57-61-01.9 of the North Dakota Century Code is created and enacted
2 as follows:

3 **57-61-01.9. Severance tax on leonardite in lieu of sales and use taxes.**

4 A tax of twenty-five cents per ton of two thousand pounds [907.18 kilograms] is imposed on
5 all leonardite severed for sale or for industrial purposes within this state. A mine operator shall
6 remit the tax for each month within twenty-five days after the end of each month to the state tax
7 commissioner. The mine operator shall submit the tax with any report or any form required by
8 the state tax commissioner.