

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.~~for an Act to create and enact section 57-61-01.9 of the North  
 12 Dakota Century Code, relating to severance tax for commercial leonardite; to amend and  
 13 reenact subsection 5 of section 38-11.2-01, sections 38-12.1-01, 38-12.1-02, 38-12.1-03,  
 14 38-12.1-04, 38-12.1-05, and 38-14.1-02, subsection 3 of section 38-14.1-05, subsection 3 of  
 15 section 38-14.1-13, subdivisions r and s of subsection 1 of section 38-14.1-14, subdivision c of  
 16 subsection 2 of section 38-14.1-14, paragraph 2 of subdivision e of subsection 3 of section  
 17 38-14.1-21, subdivision b of subsection 4 of section 38-14.1-21, subsections 1 and 1.1 of  
 18 section 38-14.1-24, subdivision b of subsection 3 of section 38-14.1-24, subsections 5, 10, and  
 19 18 of section 38-14.1-24, section 38-14.1-25, subdivision b of subsection 1 of section  
 20 38-14.1-27, subsections 1, 3, and 4 of section 38-14.1-37, and sections 38-15-01, 38-15-02,  
 21 38-18-05, and 38-18-07 of the North Dakota Century Code, relating to the definition of coal and  
 22 commercial leonardite; and to provide for application.

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

1 ~~— **SECTION 4. AMENDMENT.** Section 38-14.1-02 of the North Dakota Century Code is~~  
2 ~~amended and reenacted as follows:~~

3 ~~— **38-14.1-02. Definitions.**~~

4 ~~— Wherever used or referred to in this chapter, unless a different meaning clearly appears~~  
5 ~~from the context:~~

6 ~~— 1. "Alluvial valley floors" means the unconsolidated stream-laid deposits holding streams~~  
7 ~~where water availability is sufficient for subirrigation or flood irrigation agricultural~~  
8 ~~activities but does not include upland areas which are generally overlain by a thin~~  
9 ~~vener of colluvial deposits composed chiefly of sediment from sheet erosion, deposits~~  
10 ~~by unconcentrated runoff or slope wash, together with talus, other mass movement~~  
11 ~~accumulation, and windblown deposits.~~

12 ~~— 2. "Approximate original contour" means that surface configuration achieved by~~  
13 ~~backfilling and grading an area affected by surface coal mining operations so that the~~  
14 ~~reclaimed area closely resembles the general surface configuration of the land prior to~~  
15 ~~being affected by surface coal mining operations and blends into and complements~~  
16 ~~the surrounding undisturbed land.~~

17 ~~— 3. "Coal" means a dark-colored compact and earthy organic rock with less than forty~~  
18 ~~percent inorganic components, based on dry material, formed by the accumulation~~  
19 ~~and decomposition of plant material. The term includes consolidated lignitic coal, in~~  
20 ~~both oxidized and nonoxidized forms, having less than eight thousand three hundred~~  
21 ~~British thermal units per pound [453.59 grams], moist and mineral matter free, whether~~  
22 ~~or not the material is enriched in radioactive materials. The term does not include~~  
23 ~~leonardite.~~

24 ~~— 4. "Commission" means the public service commission, or such other department,~~  
25 ~~bureau, or commission as may lawfully succeed to the powers and duties of that~~  
26 ~~commission. The commission is the state regulatory authority for all purposes relating~~  
27 ~~to the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat.~~  
28 ~~445; 30 U.S.C. 1201 et seq.].~~

29 ~~— 5. "Extended mining plan" means a written statement setting forth the matters specified~~  
30 ~~in section 38-14.1-15 and covering the estimated life of the surface coal mining~~  
31 ~~operation.~~

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

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

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

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

13 ~~10.~~ "Operator" means any individual, person, partnership, firm, association, society, joint  
14 stock company, company, cooperative, corporation, limited liability company, or other  
15 business organization, or any department, agency, or instrumentality of the state,  
16 local, or federal government, or any governmental subdivision thereof including any  
17 publicly owned utility or publicly owned corporation of the state, local, or federal  
18 government, engaged in or controlling a surface coal mining operation. Operator does  
19 not include those who remove or intend to remove two hundred fifty tons [226.80  
20 metric tons] or less of coal or leonardite from the earth by coal or leonardite mining  
21 within twelve consecutive calendar months in any one location or who remove any  
22 coal or leonardite pursuant to reclamation operations under chapter 38-14.2.

23 ~~10.11.~~ "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous  
24 ores, and any other solid material or substances of commercial value occurring within  
25 five hundred feet [152.4 meters] or less of the land surface and which are excavated in  
26 solid form from natural deposits on or in the earth, exclusive of coal or leonardite and  
27 those minerals which occur naturally in liquid or gaseous form.

28 ~~11.12.~~ "Other suitable strata" means those portions of the overburden determined by the  
29 commission to be suitable for meeting the requirements of subsections 2 and 17 of  
30 section 38-14.1-24 and based on data submitted by the permit applicant.

1 ~~12.13.~~—"Overburden" means all of the earth and other materials, with the exception of suitable  
2 plant growth material, which lie above natural deposits of coal or leonardite and also  
3 means such earth and other materials, with the exception of suitable plant growth  
4 material, disturbed from their natural state by surface coal or leonardite mining  
5 operations.

6 ~~12.1.14.~~—"Performance bond" means a surety bond, collateral bond, self bond, deposit, a bond  
7 issued under the state surface mining and reclamation bond fund, any alternative form  
8 of security approved by the commission, or combination thereof, by which a permittee  
9 assures faithful performance of all requirements of this chapter.

10 ~~13.15.~~—"Permit" means a permit to conduct surface coal mining and reclamation operations  
11 issued by the commission.

12 ~~14.16.~~—"Permit applicant" means a person or operator applying for a permit.

13 ~~15.17.~~—"Permit area" means the area of land approved by the commission for surface coal  
14 mining operations which shall be readily identifiable by appropriate markers on the  
15 site.

16 ~~16.18.~~—"Permit renewal" means the extension of the permit term for areas within the  
17 boundaries of the initial or existing permit, upon the expiration of the initial or existing  
18 permit term.

19 ~~17.19.~~—"Permit revision" means the modification of permit provisions during the term of the  
20 permit and includes changes in the mining and reclamation plans, incidental boundary  
21 extensions, and the transfer, assignment, or sale of rights granted under the permit.

22 ~~18.20.~~—"Permit term" means a period of time beginning with the date upon which a permit is  
23 given for surface coal mining and reclamation operations under the provisions of this  
24 chapter, and ending with the expiration of the next succeeding five years plus any  
25 renewal of the permit granted under this chapter.

26 ~~19.21.~~—"Permittee" means a person or operator holding a permit.

27 ~~20.22.~~—"Person" means an individual, partnership, firm, association, society, joint stock  
28 company, company, cooperative, corporation, limited liability company, or other  
29 business organization.

30 ~~21.23.~~—"Pit" means a tract of land, from which overburden, or coal or leonardite, or both, has  
31 been or is being removed for the purpose of surface coal mining operations.

1 ~~22.24.~~—"Prime farmland" means lands as prescribed by commission regulation that have the  
2 soil characteristics and moisture supply needed to produce sustained high yields of  
3 adapted crops economically when treated and managed, including management of  
4 water, according to modern farming methods. Furthermore, such lands historically  
5 have been used for intensive agricultural purposes and are large enough in size to  
6 constitute a viable economic unit.

7 ~~23.25.~~—"Prime soils" means those soils that have the required soil characteristics (including  
8 slope and moisture supply) needed to produce sustained high yields of adapted crops,  
9 as determined by the state conservationist of the United States department of  
10 agriculture soil conservation service.

11 ~~24.26.~~—"Reclaimed" or "reclaim" means conditioning areas affected by surface coal mining  
12 operations to make them capable of supporting the uses which they were capable of  
13 supporting prior to any mining, or higher or better uses, pursuant to subsection 2 of  
14 section 38-14.1-24.

15 ~~25.27.~~—"Reclamation plan" means a plan submitted by an applicant for a permit which sets  
16 forth a plan for reclamation of the proposed surface coal mining operations pursuant to  
17 subsection 2 of section 38-14.1-14.

18 ~~26.28.~~—"Refuse" means all waste material directly connected with the production of coal or  
19 leonardite mined by surface coal mining operations.

20 ~~27.29.~~—"Soil amendments" means those materials added by the operator to the replaced  
21 overburden or suitable plant growth material, or both, to improve the physical or  
22 chemical condition of the soil in its relation to plant growth capability.

23 ~~28.30.~~—"Soil classifier" means a professional soil classifier as defined in subsection 4 of  
24 section 43-36-01.

25 ~~29.31.~~—"Soil survey" means the identification and location of all suitable plant growth material  
26 within the proposed permit area and an accompanying report that describes,  
27 classifies, and interprets for use such materials.

28 ~~30.32.~~—"State program" means the program established by the state of North Dakota in  
29 accordance with the requirements of section 503 of the federal Surface Mining Control  
30 and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 470; 30 U.S.C. 1253] to regulate

1 surface coal mining and reclamation operations on lands within the state of North-  
2 Dakota.

3 ~~31.33.~~ "Suitable plant growth material" means that soil material (normally the A, B, and  
4 portions of the C horizons) located within the proposed permit area which, based upon  
5 a soil survey, is found by the commission to be the most acceptable as a medium for  
6 plant growth when respread on the surface of regraded areas.

7 ~~32.34.~~ "Surface coal mining and reclamation operations" means surface coal mining  
8 operations and all activities necessary and incidental to the reclamation of such  
9 operations after July 1, 1979.

10 ~~33.35.~~ "Surface coal mining operations" means:

11 ~~———— a. Activities affecting the surface of lands in connection with a surface coal or~~  
12 ~~leonardite mine. Such activities include extraction of coal or leonardite from coal~~  
13 ~~or leonardite refuse piles, excavation for the purpose of obtaining coal or~~  
14 ~~leonardite, including such common methods as contour, strip, auger, box cut,~~  
15 ~~open pit, and area mining, the uses of explosives and blasting, and in situ~~  
16 ~~distillation or retorting, leaching or other chemical or physical processing, and the~~  
17 ~~cleaning, concentrating, or other processing or preparation, and loading of coal or~~  
18 ~~leonardite at or near the minesite, except that such activities do not include coal~~  
19 ~~or leonardite exploration subject to chapter 38-12.1, or the extraction of coal or~~  
20 ~~leonardite incidental to reclamation operations under chapter 38-14.2; and~~

21 ~~———— b. The areas upon which such activities occur or where such activities disturb the~~  
22 ~~natural land surface. Such areas shall also include any adjacent land the use of~~  
23 ~~which is incidental to any such activities, all adjacent lands affected by the~~  
24 ~~construction of new roads or the improvement or use of existing roads to gain~~  
25 ~~access to the site of such activities and for haulage, and excavations, workings,~~  
26 ~~impoundments, dams, refuse banks, dumps, stockpiles, overburden piles, spoil~~  
27 ~~banks, culm banks, tailings, holes or depressions, repair areas, storage areas,~~  
28 ~~processing areas, shipping areas, and other areas upon which are sited~~  
29 ~~structures, facilities, or other property or materials on the surface, resulting from~~  
30 ~~or incident to such activities.~~

1 ~~34.36.~~ "Unwarranted failure to comply" means the failure of a permittee to prevent the  
2 occurrence of any violation of the permittee's permit or any requirement of this chapter  
3 due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate  
4 any violation of such permit or this chapter due to indifference, lack of diligence, or  
5 lack of reasonable care.

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

8 ~~3.~~ Prior to designating any land area as unsuitable for surface coal mining operations,  
9 the commission shall prepare a detailed statement on:

10 ~~a.~~ The potential coal or leonardite resources of the area;

11 ~~b.~~ The demand for coal or leonardite resources; and

12 ~~c.~~ The impact of such designation on the environment, the economy, and the supply  
13 of coal or leonardite.

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

16 ~~3.~~ Upon request by the permit applicant, the commission, in its discretion, may designate  
17 specific information included in the plans required by subdivisions c and d of  
18 subsection 1 as exempt from disclosure under section 44-04-18, provided such  
19 specific information pertains only to the analysis of the chemical and physical  
20 properties of the coal or leonardite (excepting information regarding such mineral or  
21 elemental contents which is potentially toxic in the environment). Each request must  
22 be accompanied by a statement specifying the need for nondisclosure, which  
23 statement must be considered part of the permit application to be filed for public  
24 inspection as specified in subsection 2. The confidential information is exempt for a  
25 period not to exceed ten years subsequent to the date on which the request for  
26 nondisclosure was filed, unless it is demonstrated by the permit applicant that such  
27 period should be further extended in order to prevent possible resulting harm to the  
28 permit applicant, or the applicant's successors and assigns.

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

1 ~~r. Cross sections, maps or plans of the land to be affected, including the actual area~~  
2 ~~to be mined, prepared by or under the direction of and certified by a registered~~  
3 ~~professional engineer, a registered land surveyor, or a qualified professional~~  
4 ~~geologist with assistance from experts in related fields, showing pertinent~~  
5 ~~elevation and location of test borings or core samplings and depicting all of the~~  
6 ~~following information:~~

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

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

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

11 ~~(4) The nature of the stratum immediately beneath the coal or leonardite seam~~  
12 ~~to be mined.~~

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

15 ~~(6) Existing or previous surface mining limits.~~

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

18 ~~(8) The location of aquifers.~~

19 ~~(9) The estimated elevation of the water table.~~

20 ~~(10) The location of spoil, waste, or refuse areas, suitable plant growth material~~  
21 ~~stockpiling areas and, if necessary, stockpiling areas for other suitable~~  
22 ~~strata.~~

23 ~~(11) The location of all impoundments for waste or erosion control.~~

24 ~~(12) Any settling or water treatment facility.~~

25 ~~(13) Constructed or natural drainways and the location of any discharges to any~~  
26 ~~surface body of water on the area of land to be affected or adjacent thereto.~~

27 ~~(14) Profiles at appropriate cross sections of the anticipated final surface~~  
28 ~~configuration that will be achieved pursuant to the applicant's proposed~~  
29 ~~reclamation plan.~~

30 ~~s. A statement by the applicant of the result of test borings or core samplings from~~  
31 ~~the permit area, including logs of the drill holes, the thickness of the coal or~~

1           ~~leonardite~~ seam found, an analysis of the chemical properties of such coal or  
2           ~~leonardite~~, the sulfur content of any coal or ~~leonardite~~ seam, chemical analysis of  
3           potentially toxic forming sections of the overburden, and chemical analysis of the  
4           stratum lying immediately underneath the coal or ~~leonardite~~ to be mined. The  
5           provisions of this subdivision may be waived by the commission with respect to  
6           the specific application by a written determination that such requirements are  
7           unnecessary.

8       ~~— SECTION 8. AMENDMENT. Subdivision c of subsection 2 of section 38-14.1-14 of the~~  
9       ~~North Dakota Century Code is amended and reenacted as follows:~~

10       ~~— c. — The consideration which has been given to maximize the utilization and~~  
11           ~~conservation of the coal or leonardite being recovered so that re-affecting the land~~  
12           ~~in the future can be minimized.~~

13       ~~— SECTION 9. AMENDMENT. Paragraph 2 of subdivision e of subsection 3 of section~~  
14       ~~38-14.1-21 of the North Dakota Century Code is amended and reenacted as follows:~~

15       ~~— (2) — Not materially damage the quantity or quality of water in surface or~~  
16           ~~underground water systems that supply these alluvial valley floors. This~~  
17           ~~subdivision does not affect those surface coal mining operations which on~~  
18           ~~July 1, 1979, produce coal or leonardite in commercial quantities and are~~  
19           ~~located within or adjacent to alluvial valley floors or have obtained specific~~  
20           ~~permit approval by the commission to conduct surface coal mining~~  
21           ~~operations within said alluvial valley floors.~~

22       ~~— SECTION 10. AMENDMENT. Subdivision b of subsection 4 of section 38-14.1-21 of the~~  
23       ~~North Dakota Century Code is amended and reenacted as follows:~~

24       ~~— b. — The commission finds that the proposed surface coal mining operation will~~  
25           ~~constitute a hazard to a dwelling house, public building, school, church, cemetery,~~  
26           ~~commercial or institutional building, public road, stream, lake, or other public or~~  
27           ~~private property other than property subject to a coal or leonardite lease.~~

28       ~~— SECTION 11. AMENDMENT. Subsections 1 and 1.1 of section 38-14.1-24 of the North~~  
29       ~~Dakota Century Code are amended and reenacted as follows:~~

~~1. Conduct surface coal mining operations so as to maximize the utilization and conservation of the coal or leonardite being recovered so that re-affecting the land in the future through surface coal mining can be minimized.~~

~~1.1. Conduct any auger mining associated with surface coal mining operations in a manner that will maximize recoverability of coal or leonardite and other mineral reserves remaining after mining activities and reclamation operations are completed, and seal or fill all auger holes as necessary to ensure long-term stability of the area and minimize any adverse impact to the environment or hazard to public health or safety. The commission may prohibit auger mining if necessary to maximize the utilization, recoverability, or conservation of coal or leonardite resources, to ensure long-term stability, or to protect against any adverse impact to the environment or hazard to public health or safety.~~

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

~~b. The permittee, at a minimum, shall backfill, grade, and compact (where advisable) using all available overburden and other spoil and waste materials to attain the lowest practicable grade (not to exceed the angle of repose), to provide adequate drainage, and to contain all toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region, in those instances where:~~

~~(1) Surface coal mining operations are carried out over a substantial period of time at the same location where the operation transects the coal or leonardite deposit;~~

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

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

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

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

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

29 ~~18. Assume the responsibility for successful revegetation, as required by subsection 17,~~  
30 ~~for a period of ten full years after the last year of augmented seeding, fertilizing,~~  
31 ~~irrigation, or other work, provided that, when the commission approves a long-term~~

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

11 ~~SECTION 14. AMENDMENT.~~ Section 38-14.1-25 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 ~~38-14.1-25. Prohibited mining practices.~~

14 ~~1. NoA permittee may not use any coal or leonardite mine waste piles consisting of mine~~  
15 ~~wastes, tailings, coal processing wastes, or other liquid or solid wastes either~~  
16 ~~temporarily or permanently as dams or embankments unless approved by the~~  
17 ~~commission, after consultation with the state engineer.~~

18 ~~2. NoA permittee may not locate any part of the surface coal mining and reclamation~~  
19 ~~operations or deposit overburden, debris, or waste materials outside the permit area~~  
20 ~~for which bond has been posted, except as provided in subsection 24 of section~~  
21 ~~38-14.1-03.~~

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

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

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

1 ~~————— (1) — Monitoring sites to record the quantity and quality of surface drainage above-~~  
2 ~~and below the minesite as well as in the potential zone of influence.~~

3 ~~————— (2) — Monitoring sites to record level, amount, and samples of ground water and-~~  
4 ~~aquifers potentially affected by the mining and also directly below the~~  
5 ~~lowermost (deepest) coal or leonardite seam to be mined.~~

6 ~~————— (3) — Records of well logs and borehole data to be maintained.~~

7 ~~————— (4) — Monitoring sites to record precipitation.~~

8 ~~————— The monitoring data collection and analysis required by this section must be~~  
9 ~~conducted according to standards and procedures set forth by the commission in~~  
10 ~~consultation with other appropriate state agencies in order to assure their~~  
11 ~~reliability and validity.~~

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

14 ~~— 1. — The provisions of this chapter do not apply to any of the following activities:~~

15 ~~————— a. — Extraction of coal or leonardite by a landowner for the landowner's own-~~  
16 ~~noncommercial use from land owned or leased by the landowner.~~

17 ~~————— b. — Extraction of coal or leonardite as an incidental part of federal, state, or local-~~  
18 ~~government financed highway or other construction under regulations-~~  
19 ~~established by the commission.~~

20 ~~— 3. — The commission may provide or assume the cost of training coal or leonardite-~~  
21 ~~operators who meet the qualifications in subsection 2 concerning the preparation of~~  
22 ~~permit applications and compliance with the regulatory program.~~

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

29 ~~— **SECTION 17. AMENDMENT.** Section 47-10-24 of the North Dakota Century Code is-~~  
30 ~~amended and reenacted as follows:~~

1 ~~47-10-24. Description and definition of minerals in leases and conveyances.~~

2 ~~1. All conveyances of mineral rights or royalties in real property in this state, excluding~~  
3 ~~leases, shall be construed to grant or convey to the grantee thereof all minerals of any~~  
4 ~~nature whatsoever except those minerals specifically excluded by name in the deed,~~  
5 ~~grant, or conveyance, and their compounds and byproducts, but shall not be~~  
6 ~~construed to grant or convey to the grantee any interest in any gravel, clay, or scoria~~  
7 ~~unless specifically included by name in the deed, grant, or conveyance.~~

8 ~~No~~

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

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

24 ~~SECTION 18. Section 57-61-01.9 of the North Dakota Century Code is created and enacted~~  
25 ~~as follows:~~

26 ~~57-61-01.9. Severance tax on leonardite in lieu of sales and use taxes.~~

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

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

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

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

9       **38-12.1-01. Legislative findings.**

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

- 11           1. The discovery and evaluation of coal or commercial leonardite deposits is  
12           advantageous in an industrial society.
- 13           2. Coal or commercial leonardite occurs hidden under the ground and must be searched  
14           for by diverse techniques, and that the search, exploration, or prospecting for coal or  
15           commercial leonardite is a necessary and expensive prerequisite to coal or  
16           commercial leonardite extraction and for land use planning in coal-bearing or  
17           commercial leonardite-bearing areas.
- 18           3. It is to the benefit of society to allow coal or commercial leonardite exploration and to  
19           require the information generated from exploration to be available to the office of the  
20           state geologist.

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

23       **38-12.1-02. Declaration of policy.**

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

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

1       **38-12.1-03. Definitions.**

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

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

7           The term does not include commercial leonardite.

8       2. "Coal exploration" means:

- 9           a. The use of any technique which when applied to the surface of the land will aid in  
10           the discovery or evaluation of coal or commercial leonardite or aid in determining  
11           the quantity and quality of coal or commercial leonardite present. It includes  
12           drilling or digging, excavating, core sample drilling and collection, diamond  
13           drilling, trenching, or any other type of penetration of the surface of the earth; or  
14           b. Environmental data gathering activities conducted for the purpose of establishing  
15           the conditions of an area prior to applying for a permit under chapter 38-14.1. The  
16           provisions of sections 38-12.1-04 and 38-12.1-05 are not applicable to such  
17           environmental data gathering activities unless the natural land surface will be  
18           substantially disturbed or such activities are located on lands designated  
19           unsuitable for mining under section 38-14.1-05.

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

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

24       ~~4.5.~~ "Permit area" means a county.

25       ~~5.6.~~ "Person" means and includes any natural person, corporation, limited liability  
26           company, association, partnership, receiver, trustee, executor, administrator, guardian,  
27           fiduciary, or other representative of any kind, and includes any department, agency, or  
28           instrumentality of the state or of any governmental subdivision thereof; the masculine  
29           gender, in referring to a person, includes the feminine and the neuter genders.

30       ~~6.7.~~ "Road" means a surface or right of way for purposes of travel by land vehicles used in  
31           coal or commercial leonardite exploration. A road consists of the entire area of the

1 right of way, including the roadbed, shoulders, parking and side areas, approaches,  
2 structures, ditches, and surface.

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

5 **38-12.1-04. Jurisdiction of commission.**

6 The commission has jurisdiction and authority over all persons and property, both public  
7 and private, necessary to effectively enforce the provisions of this chapter. The director of  
8 mineral resources shall act as a supervisor charged with the duty of enforcing the regulations  
9 and orders of the commission applicable to the provisions of this chapter. The commission has  
10 authority to make such investigations as it deems proper to determine whether facts exist which  
11 justify action by the commission. The commission acting through the director of mineral  
12 resources has the authority:

13 1. To require:

14 a. The furnishing of a reasonable bond with good and sufficient surety, conditioned  
15 upon the full compliance with the provisions of this chapter, and the rules and  
16 orders of the commission prescribed to govern the exploration for coal or  
17 commercial leonardite on state and private lands and roads used in coal or  
18 commercial leonardite exploration within the state of North Dakota. The person  
19 required to furnish the bond may elect to deposit a collateral bond, self-bond,  
20 cash, or any alternative form of security approved by the commission, or  
21 combination thereof, by which a permittee assures faithful performance of all  
22 requirements of this chapter and the rules and orders of the industrial  
23 commission.

24 b. The delivery, free of charge, to the state geologist of the basic data collected  
25 during the course of the exploration within a reasonable time as may be  
26 prescribed by the state geologist. The data so submitted is confidential and  
27 available only to the office of the state geologist for official purposes for a period  
28 of two years, and such period of confidentiality must, upon application, be  
29 extended for one-year periods by the state geologist, for a total period not to  
30 exceed ten years unless it is demonstrated that such period should be further  
31 extended in order to prevent possible resulting harm to the person, or the

1 person's successors and assigns, who delivered such basic data to the state  
2 geologist. The basic data must include, if specifically requested by the state  
3 geologist and if the information has been developed by or for a person  
4 conducting the exploration:

- 5 (1) Sample cuts.
- 6 (2) Drillers' logs, sample logs, radioactivity logs, resistivity logs, or other types  
7 of electrical or mechanical logs.
- 8 (3) Elevation and location information on the data collection points.
- 9 (4) Other pertinent information as may be required by the state geologist.

10 2. To require the plugging, covering, or reburial in an appropriate manner so as to protect  
11 environmental quality, general health and safety, and economic values of all holes,  
12 pits, or trenches excavated during the course of coal or commercial leonardite  
13 exploration.

14 3. To promulgate and enforce rules, regulations, and orders to effectuate the provisions,  
15 purpose, and intent of this chapter.

16 4. To inspect all drilling or exploration sites. For the purposes of this subsection, the  
17 director of mineral resources or the director's representative shall have access to all  
18 drilling or exploration installations regulated by this chapter for the purpose of  
19 inspection and sampling and shall have the authority to require the operators' aid if the  
20 director finds it necessary and requests it.

21 5. Notwithstanding any of the other provisions of this section, the commission acting  
22 through the director of mineral resources shall require that any lands substantially  
23 disturbed in coal or commercial leonardite exploration, including excavations, roads,  
24 and drill holes, and the removal of necessary facilities and equipment be reclaimed in  
25 accordance with the applicable performance standards of section 38-14.1-24.

26 Reclamation must be accomplished to protect environmental quality, general health  
27 and safety, and economic values.

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

1       **38-12.1-05. Notice and drilling permit required - Exceptions - Limits on coal or**  
2       **commercial leonardite removal.**

- 3           1. It is unlawful to commence operations for drilling for the exploration for coal or  
4           commercial leonardite without first obtaining a permit from the director of mineral  
5           resources, under such rules and regulations as may be prescribed by the commission,  
6           and paying to the commission a fee of one hundred dollars for each such permit area.  
7           The permit application must include a description of the exploration area and the  
8           period of proposed exploration. The permit must be granted within thirty days after a  
9           proper application has been submitted.
- 10          2. This permit may not be required:
- 11           a. In an area where a permit to conduct surface coal mining operations is in effect  
12           pursuant to chapter 38-14.1;
- 13           b. For holes drilled to guide excavating equipment in an operating mine;
- 14           c. In areas where a drill hole is required by any other state agency; or
- 15           d. For environmental data gathering activities that do not substantially disturb the  
16           land, unless the environmental data gathering activities are located on land  
17           designated unsuitable for mining under section 38-14.1-05.
- 18          3. No person may remove more than two hundred fifty tons [226.80 metric tons] of coal  
19           or commercial leonardite pursuant to an exploration permit without first obtaining a  
20           permit from the public service commission.

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

23       **38-14.1-02. Definitions.**

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

- 26           1. "Alluvial valley floors" means the unconsolidated stream-laid deposits holding streams  
27           where water availability is sufficient for subirrigation or flood irrigation agricultural  
28           activities but does not include upland areas which are generally overlain by a thin  
29           veneer of colluvial deposits composed chiefly of sediment from sheet erosion, deposits  
30           by unconcentrated runoff or slope wash, together with talus, other mass movement  
31           accumulation, and windblown deposits.

- 1           2. "Approximate original contour" means that surface configuration achieved by  
2           backfilling and grading an area affected by surface coal mining operations so that the  
3           reclaimed area closely resembles the general surface configuration of the land prior to  
4           being affected by surface coal mining operations and blends into and complements  
5           the surrounding undisturbed land.
- 6           3. "Coal" means a dark-colored compact and earthy organic rock with less than forty  
7           percent inorganic components, based on dry material, formed by the accumulation  
8           and decomposition of plant material. The term includes consolidated lignitic coal, in  
9           both oxidized and nonoxidized forms, having less than eight thousand three hundred  
10          British thermal units per pound [453.59 grams], moist and mineral matter free, whether  
11          or not the material is enriched in radioactive materials. The term does not include  
12          commercial leonardite.
- 13          4. "Commercial leonardite" means a dark-colored, soft, earthy organic rock formed from  
14          the oxidation of lignite coal, and is produced from a mine that has as its only function  
15          for supply for purposes other than gasification or combustion to generate electricity.
- 16          5. "Commission" means the public service commission, or such other department,  
17          bureau, or commission as may lawfully succeed to the powers and duties of that  
18          commission. The commission is the state regulatory authority for all purposes relating  
19          to the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat.  
20          445; 30 U.S.C. 1201 et seq.].
- 21          ~~5.6.~~ "Extended mining plan" means a written statement setting forth the matters specified  
22          in section 38-14.1-15 and covering the estimated life of the surface coal mining  
23          operation.
- 24          ~~6.7.~~ "Final cut" means the last pit created in a surface mining pit sequence.
- 25          ~~7.8.~~ "Highwall" and "endwall" mean those sides of the pit adjacent to unmined land.
- 26          ~~8.9.~~ "Imminent danger to the health and safety of the public" means the existence of any  
27          condition or practice, or any violation of a permit or other requirement of this chapter in  
28          a surface coal mining and reclamation operation, which condition, practice, or violation  
29          could reasonably be expected to cause substantial physical harm to persons outside  
30          the permit area before such condition, practice, or violation can be abated. A  
31          reasonable expectation of death or serious injury before abatement exists if a rational

1 person, subjected to the same conditions or practices giving rise to the peril, would not  
2 expose the person's self to the danger during the time necessary for abatement.

3 ~~9.10.~~ "Operator" means any individual, person, partnership, firm, association, society, joint  
4 stock company, company, cooperative, corporation, limited liability company, or other  
5 business organization, or any department, agency, or instrumentality of the state,  
6 local, or federal government, or any governmental subdivision thereof including any  
7 publicly owned utility or publicly owned corporation of the state, local, or federal  
8 government, engaged in or controlling a surface coal mining operation. Operator does  
9 not include those who remove or intend to remove two hundred fifty tons [226.80  
10 metric tons] or less of coal or commercial leonardite from the earth by coal or  
11 commercial leonardite mining within twelve consecutive calendar months in any one  
12 location or who remove any coal or commercial leonardite pursuant to reclamation  
13 operations under chapter 38-14.2.

14 ~~40.11.~~ "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous  
15 ores, and any other solid material or substances of commercial value occurring within  
16 five hundred feet [152.4 meters] or less of the land surface and which are excavated in  
17 solid form from natural deposits on or in the earth, exclusive of coal or commercial  
18 leonardite and those minerals which occur naturally in liquid or gaseous form.

19 ~~41.12.~~ "Other suitable strata" means those portions of the overburden determined by the  
20 commission to be suitable for meeting the requirements of subsections 2 and 17 of  
21 section 38-14.1-24 and based on data submitted by the permit applicant.

22 ~~42.13.~~ "Overburden" means all of the earth and other materials, with the exception of suitable  
23 plant growth material, which lie above natural deposits of coal or commercial  
24 leonardite and also means such earth and other materials, with the exception of  
25 suitable plant growth material, disturbed from their natural state by surface coal or  
26 commercial leonardite mining operations.

27 ~~42.1.14.~~ "Performance bond" means a surety bond, collateral bond, self-bond, deposit, a bond  
28 issued under the state surface mining and reclamation bond fund, any alternative form  
29 of security approved by the commission, or combination thereof, by which a permittee  
30 assures faithful performance of all requirements of this chapter.

- 1 | ~~13.15.~~ "Permit" means a permit to conduct surface coal mining and reclamation operations  
2 | issued by the commission.
- 3 | ~~14.16.~~ "Permit applicant" means a person or operator applying for a permit.
- 4 | ~~15.17.~~ "Permit area" means the area of land approved by the commission for surface coal  
5 | mining operations which shall be readily identifiable by appropriate markers on the  
6 | site.
- 7 | ~~16.18.~~ "Permit renewal" means the extension of the permit term for areas within the  
8 | boundaries of the initial or existing permit, upon the expiration of the initial or existing  
9 | permit term.
- 10 | ~~17.19.~~ "Permit revision" means the modification of permit provisions during the term of the  
11 | permit and includes changes in the mining and reclamation plans, incidental boundary  
12 | extensions, and the transfer, assignment, or sale of rights granted under the permit.
- 13 | ~~18.20.~~ "Permit term" means a period of time beginning with the date upon which a permit is  
14 | given for surface coal mining and reclamation operations under the provisions of this  
15 | chapter, and ending with the expiration of the next succeeding five years plus any  
16 | renewal of the permit granted under this chapter.
- 17 | ~~19.21.~~ "Permittee" means a person or operator holding a permit.
- 18 | ~~20.22.~~ "Person" means an individual, partnership, firm, association, society, joint stock  
19 | company, company, cooperative, corporation, limited liability company, or other  
20 | business organization.
- 21 | ~~21.23.~~ "Pit" means a tract of land, from which overburden, ~~or~~ coal, or commercial leonardite,  
22 | or both, any combination of overburden, coal, or commercial leonardite has been or is  
23 | being removed for the purpose of surface coal mining operations.
- 24 | ~~22.24.~~ "Prime farmland" means lands as prescribed by commission regulation that have the  
25 | soil characteristics and moisture supply needed to produce sustained high yields of  
26 | adapted crops economically when treated and managed, including management of  
27 | water, according to modern farming methods. Furthermore, such lands historically  
28 | have been used for intensive agricultural purposes and are large enough in size to  
29 | constitute a viable economic unit.
- 30 | ~~23.25.~~ "Prime soils" means those soils that have the required soil characteristics (including  
31 | slope and moisture supply) needed to produce sustained high yields of adapted crops,

1 as determined by the state conservationist of the United States department of  
2 agriculture soil conservation service.

3 ~~24-26.~~ "Reclaimed" or "reclaim" means conditioning areas affected by surface coal mining  
4 operations to make them capable of supporting the uses which they were capable of  
5 supporting prior to any mining, or higher or better uses, pursuant to subsection 2 of  
6 section 38-14.1-24.

7 ~~25-27.~~ "Reclamation plan" means a plan submitted by an applicant for a permit which sets  
8 forth a plan for reclamation of the proposed surface coal mining operations pursuant to  
9 subsection 2 of section 38-14.1-14.

10 ~~26-28.~~ "Refuse" means all waste material directly connected with the production of coal or  
11 commercial leonardite mined by surface coal mining operations.

12 ~~27-29.~~ "Soil amendments" means those materials added by the operator to the replaced  
13 overburden or suitable plant growth material, or both, to improve the physical or  
14 chemical condition of the soil in its relation to plant growth capability.

15 ~~28-30.~~ "Soil classifier" means a professional soil classifier as defined in subsection 4 of  
16 section 43-36-01.

17 ~~29-31.~~ "Soil survey" means the identification and location of all suitable plant growth material  
18 within the proposed permit area and an accompanying report that describes,  
19 classifies, and interprets for use such materials.

20 ~~30-32.~~ "State program" means the program established by the state of North Dakota in  
21 accordance with the requirements of section 503 of the federal Surface Mining Control  
22 and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 470; 30 U.S.C. 1253] to regulate  
23 surface coal mining and reclamation operations on lands within the state of North  
24 Dakota.

25 ~~31-33.~~ "Suitable plant growth material" means that soil material (normally the A, B, and  
26 portions of the C horizons) located within the proposed permit area which, based upon  
27 a soil survey, is found by the commission to be the most acceptable as a medium for  
28 plant growth when respread on the surface of regraded areas.

29 ~~32-34.~~ "Surface coal mining and reclamation operations" means surface coal mining  
30 operations and all activities necessary and incidental to the reclamation of such  
31 operations after July 1, 1979.

1 ~~33.~~35. "Surface coal mining operations" means:

- 2 a. Activities affecting the surface of lands in connection with a surface coal or  
3 commercial leonardite mine. Such activities include extraction of coal or  
4 commercial leonardite from coal or commercial leonardite refuse piles,  
5 excavation for the purpose of obtaining coal or commercial leonardite, including  
6 such common methods as contour, strip, auger, box cut, open pit, and area  
7 mining, the uses of explosives and blasting, and in situ distillation or retorting,  
8 leaching or other chemical or physical processing, and the cleaning,  
9 concentrating, or other processing or preparation, and loading of coal or  
10 commercial leonardite at or near the minesite, except that such activities do not  
11 include coal or commercial leonardite exploration subject to chapter 38-12.1, or  
12 the extraction of coal or commercial leonardite incidental to reclamation  
13 operations under chapter 38-14.2; and
- 14 b. The areas upon which such activities occur or where such activities disturb the  
15 natural land surface. Such areas shall also include any adjacent land the use of  
16 which is incidental to any such activities, all adjacent lands affected by the  
17 construction of new roads or the improvement or use of existing roads to gain  
18 access to the site of such activities and for haulage, and excavations, workings,  
19 impoundments, dams, refuse banks, dumps, stockpiles, overburden piles, spoil  
20 banks, culm banks, tailings, holes or depressions, repair areas, storage areas,  
21 processing areas, shipping areas, and other areas upon which are sited  
22 structures, facilities, or other property or materials on the surface, resulting from  
23 or incident to such activities.

24 ~~34.~~36. "Unwarranted failure to comply" means the failure of a permittee to prevent the  
25 occurrence of any violation of the permittee's permit or any requirement of this chapter  
26 due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate  
27 any violation of such permit or this chapter due to indifference, lack of diligence, or  
28 lack of reasonable care.

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

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

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

- 9           3. Upon request by the permit applicant, the commission, in its discretion, may designate  
10           specific information included in the plans required by subdivisions c and d of  
11           subsection 1 as exempt from disclosure under section 44-04-18, provided such  
12           specific information pertains only to the analysis of the chemical and physical  
13           properties of the coal or commercial leonardite (excepting information regarding such  
14           mineral or elemental contents which is potentially toxic in the environment). Each  
15           request must be accompanied by a statement specifying the need for nondisclosure,  
16           which statement must be considered part of the permit application to be filed for public  
17           inspection as specified in subsection 2. The confidential information is exempt for a  
18           period not to exceed ten years subsequent to the date on which the request for  
19           nondisclosure was filed, unless it is demonstrated by the permit applicant that such  
20           period should be further extended in order to prevent possible resulting harm to the  
21           permit applicant, or the applicant's successors and assigns.

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

- 24           r. Cross sections, maps or plans of the land to be affected, including the actual area  
25           to be mined, prepared by or under the direction of and certified by a registered  
26           professional engineer, a registered land surveyor, or a qualified professional  
27           geologist with assistance from experts in related fields, showing pertinent  
28           elevation and location of test borings or core samplings and depicting all of the  
29           following information:
- 30           (1) The nature and depth of the various strata of overburden.  
31           (2) The location of subsurface water, if encountered, and its quality.

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

1       **SECTION 11. AMENDMENT.** Subdivision c of subsection 2 of section 38-14.1-14 of the  
2 North Dakota Century Code is amended and reenacted as follows:

- 3           c.    The consideration which has been given to maximize the utilization and  
4                conservation of the coal or commercial leonardite being recovered so that  
5                reaffecting the land in the future can be minimized.

6       **SECTION 12. AMENDMENT.** Paragraph 2 of subdivision e of subsection 3 of section  
7 38-14.1-21 of the North Dakota Century Code is amended and reenacted as follows:

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

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

- 17           b.   The commission finds that the proposed surface coal mining operation will  
18                constitute a hazard to a dwelling house, public building, school, church, cemetery,  
19                commercial or institutional building, public road, stream, lake, or other public or  
20                private property other than property subject to a coal or commercial leonardite  
21                lease.

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

- 24           1.    Conduct surface coal mining operations so as to maximize the utilization and  
25                conservation of the coal or commercial leonardite being recovered so that reffecting  
26                the land in the future through surface coal mining can be minimized.
- 27           1.1.   Conduct any auger mining associated with surface coal mining operations in a manner  
28                that will maximize recoverability of coal or leonardite and other mineral reserves  
29                remaining after mining activities and reclamation operations are completed, and seal  
30                or fill all auger holes as necessary to ensure long-term stability of the area and  
31                minimize any adverse impact to the environment or hazard to public health or safety.

1           The commission may prohibit auger mining if necessary to maximize the utilization,  
2           recoverability, or conservation of coal or commercial leonardite resources, to ensure  
3           long-term stability, or to protect against any adverse impact to the environment or  
4           hazard to public health or safety.

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

7           b.    The permittee, at a minimum, shall backfill, grade, and compact (where  
8           advisable) using all available overburden and other spoil and waste materials to  
9           attain the lowest practicable grade (not to exceed the angle of repose), to provide  
10          adequate drainage, and to contain all toxic materials in order to achieve an  
11          ecologically sound land use compatible with the surrounding region, in those  
12          instances where:

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

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

- 24           5.    Remove, segregate, and respread suitable plant growth material as required by the  
25           commission within the permit area. The commission may require the permittee to  
26           segregate suitable plant growth material in two or more soil layers. The commission  
27           shall determine the soil layer or layers to be removed based upon the quality and  
28           quantity of suitable plant growth material inventoried by the soil survey required in  
29           subdivision t of subsection 1 of section 38-14.1-14. Based on the soil survey, the  
30           commission shall also determine whether other suitable strata are necessary to meet  
31           revegetation requirements. If other strata can be shown to be suitable and necessary

1 to meet revegetation requirements, the commission may require the permittee to  
2 determine the areal extent of other suitable strata within the proposed permit area, and  
3 to remove, segregate, protect, and respread such material. If the suitable plant growth  
4 material or other suitable strata cannot be replaced on an approved graded area within  
5 a time short enough to avoid deterioration of such material, the permittee shall  
6 stockpile and stabilize such materials by establishing a successful cover of  
7 quick-growing plants or by other means thereafter so that the suitable plant growth  
8 material or other suitable strata will be protected from wind and water erosion and will  
9 remain free from any contamination by toxic material. In the interest of achieving the  
10 maximum reclamation provided for in this chapter, the permittee may, or at the  
11 discretion of the commission shall, utilize such soil amendments as described in  
12 ~~subsection 27~~ of section 38-14.1-02.

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

21 18. Assume the responsibility for successful revegetation, as required by subsection 17,  
22 for a period of ten full years after the last year of augmented seeding, fertilizing,  
23 irrigation, or other work, provided that, when the commission approves a long-term  
24 intensive agricultural postmining land use, the ten-year period of responsibility for  
25 revegetation commences at the date of initial planting. However, for previously mined  
26 areas that are affected by remining, the operator's responsibility for successful  
27 revegetation will extend for a period of five full years after the last year of augmented  
28 seeding, fertilizing, irrigation, and other work in order to assure compliance with the  
29 applicable standards. For the purposes of this subsection, "previously mined areas"  
30 are lands that were affected by coal or commercial leonardite mining activities prior to  
31 January 1, 1970, and "augmented seeding, fertilizing, irrigation, or other work" does

1 not include normal conservation practices recognized locally as good management for  
2 the postmining land use.

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

5 **38-14.1-25. Prohibited mining practices.**

- 6 1. ~~NeA~~ permittee may not use any coal or commercial leonardite mine waste piles  
7 consisting of mine wastes, tailings, coal processing wastes, or other liquid or solid  
8 wastes either temporarily or permanently as dams or embankments unless approved  
9 by the commission, after consultation with the state engineer.
- 10 2. ~~NeA~~ permittee may not locate any part of the surface coal mining and reclamation  
11 operations or deposit overburden, debris, or waste materials outside the permit area  
12 for which bond has been posted, except as provided in subsection 24 of section  
13 38-14.1-03.
- 14 3. ~~NeA~~ permittee may not deposit overburden, debris, or waste materials in such a way  
15 that normal erosion or slides brought about by natural causes will permit the same to  
16 go beyond or outside the permit area for which bond has been posted.

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

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

30 The monitoring data collection and analysis required by this section must be  
31 conducted according to standards and procedures set forth by the commission in

1 consultation with other appropriate state agencies in order to assure their  
2 reliability and validity.

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

- 5 1. The provisions of this chapter do not apply to any of the following activities:
  - 6 a. Extraction of coal or commercial leonardite by a landowner for the landowner's  
7 own noncommercial use from land owned or leased by the landowner.
  - 8 b. Extraction of coal or commercial leonardite as an incidental part of federal, state,  
9 or local government-financed highway or other construction under regulations  
10 established by the commission.
- 11 3. The commission may provide or assume the cost of training coal or commercial  
12 leonardite operators who meet the qualifications in subsection 2 concerning the  
13 preparation of permit applications and compliance with the regulatory program.
- 14 4. An operator who has received assistance under subsection 2 or 3 shall reimburse the  
15 commission for the cost of the services rendered if the commission finds that the  
16 operator's actual and attributed annual production of coal or commercial leonardite for  
17 all locations exceeds three hundred thousand tons [272155.41 metric tons] during the  
18 twelve months immediately following the date the operator is issued a surface coal  
19 mining and reclamation permit.

20 **SECTION 20. AMENDMENT.** Section 38-15-01 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **38-15-01. Policy.**

23 It is hereby declared to be in the public interest to foster, encourage, and promote the  
24 development, production, and utilization of all natural resources of coal, commercial leonardite,  
25 oil, gas, and subsurface minerals in a manner as will prevent waste and allow a greater ultimate  
26 recovery of the natural resources, and to protect the rights of all owners so that the greatest  
27 possible economic recovery of natural resources be obtained in the state, to the end that  
28 landowners, royalty owners, producers, and the general public realize and enjoy the greatest  
29 possible good from these vital natural resources.

30 **SECTION 21. AMENDMENT.** Section 38-15-02 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1 **38-15-02. Definitions.**

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

3 1. "Coal" means all kinds of coal, and includes what is known as lignite coal, unless a  
4 contrary intention plainly appears.

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

8 3. "Commission" means the industrial commission.

9 ~~3.4.~~ "Conflicting interests" means those interests of producers which are in conflict, so that  
10 full production and utilization by one producer is prohibited or impeded by the interests  
11 of another producer of a separate natural resource.

12 ~~4.5.~~ "Gas" means all natural gas and other fluid hydrocarbons not hereinbelow defined as  
13 oil.

14 ~~5.6.~~ "Natural resources" means coal, oil, gas, and subsurface minerals as defined herein.

15 ~~6.7.~~ "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which  
16 are produced at the wellhead in liquid form, and the liquid hydrocarbons known as  
17 distillate or condensate recovered or extracted from gas other than gas produced in  
18 association with oil and commonly known as casinghead gas.

19 ~~7.8.~~ "Owner" means the person who has the right to produce natural resources either for  
20 that person or others.

21 ~~8.9.~~ "Person" means any natural person, corporation, limited liability company, association,  
22 partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other  
23 representative of any kind, and includes any department, agency, instrumentality, or  
24 political subdivision of the state. The masculine gender, in referring to a person,  
25 includes the feminine and the neuter genders.

26 ~~9.10.~~ "Producer" means the owner of a well or wells, or mine or mines, capable of producing  
27 coal, commercial leonardite, oil, gas, or subsurface minerals.

28 ~~10.11.~~ "Subsurface minerals" means all naturally occurring elements and their compounds,  
29 volcanic ash, precious metals, carbonates, and natural mineral salts of boron,  
30 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 ~~11.12.~~ "Waste" means the inefficient utilization of reserves of oil, gas, subsurface minerals, ~~or~~  
4 coal, or commercial leonardite, as the case may be.

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

7 **38-18-05. Definitions.**

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

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

1       9. "Surface estate" means an estate in or ownership of the surface of a particular tract of  
2       land.

3       10. "Surface owner" means the person or persons who presently have valid title to the  
4       surface of the land, their successors, assigns, or predecessors in title, regardless of  
5       whether or not a portion of the land surface is occupied for a residence.

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

8       **38-18-07. Surface damage and disruption payments.**

9       1. Unless the mineral lease, surface lease, or consent statement executed by the surface  
10       owner provides for payments to the surface owner, the mineral developer shall  
11       annually pay to the surface owner a sum of money equal to the amount of damages  
12       sustained by the surface owner for loss of agricultural production caused by mining  
13       activity, provided that it can be shown that the land disturbed or to be disturbed has  
14       regularly been used for agricultural production. The amount of damages may be  
15       determined by any formula mutually agreeable between the surface owner and the  
16       mineral developer. The payments contemplated by this section only cover land  
17       actually mined, disturbed, or to be mined during the year or years during which  
18       agricultural production was actually interrupted and which land has not been restored  
19       to the level of agricultural productivity required by the plan submitted pursuant to  
20       chapter 38-14.1. The payments to be made hereunder must be made before  
21       December thirty-first of that calendar year in which the loss occurred.

22       2. Unless waived by the owner of a farm building, if the coal or commercial leonardite  
23       removal area of a surface mining operation comes within five hundred feet [152.4  
24       meters] of any farm building, the mineral developer shall pay to the owner of the farm  
25       building either the fair market value of the farm building or the entire cost of removing  
26       the farm building to a location where the coal or commercial leonardite removal area of  
27       the mining operation will not come within five hundred feet [152.4 meters] of such  
28       building or buildings. The payments contemplated hereunder are in addition to any  
29       payments required by the terms of any mineral lease, unless the surface owner is a  
30       party to the lease and the lease provides for damages as contemplated in this

1 subsection in an amount not less than the amount which would be recoverable under  
2 this section.

3 3. The rights granted to the surface owner by this section are hereby declared to be  
4 absolute and unwaivable, except as provided in subsection 2. Any instrument which  
5 purports to waive rights granted by this section is null and void and of no legal effect.

6 **SECTION 24.** Section 57-61-01.9 of the North Dakota Century Code is created and enacted  
7 as follows:

8 **57-61-01.9. Severance tax on commercial leonardite in lieu of sales and use taxes.**

9 A tax of thirty-seven and one-half cents per ton of two thousand pounds [907.18 kilograms]  
10 is imposed on all commercial leonardite severed for sale or for industrial purposes within this  
11 state. A mine operator shall remit the tax for each month within twenty-five days after the end of  
12 each month to the state tax commissioner. The mine operator shall submit the tax with any  
13 report or any form required by the state tax commissioner.

14 **SECTION 25. APPLICATION.** Notwithstanding any provision of this Act, the rates or  
15 application of severance and conversion taxation of coal or leonardite are not amended except  
16 as provided in section 24.